



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 the Pretreatment Regulations, Regulation #63. Revisions to Regulation #63 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	09/27/2016 5 pm	Additional information below.
Proponent's prehearing statement due	10/04/2016 5 pm	Additional information below.
Responsive prehearing statements due	10/25/2016 5 pm	Additional information below.
Rebuttal statements due	11/15/2016 5 pm	Additional information below.
Last date for submittal of motions	11/23/2016 5 pm	Additional information below.
Notify commission office if participating in prehearing conference by phone	11/28/2016 by noon	Send email to cdphe.wqcc@state.co.us with participant(s) name(s)
Prehearing Conference (mandatory for parties)	11/29/2016 1:00 pm	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246
Rulemaking Hearing	12/12/2016 11:15 am	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 November 30, 2016.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202; 25-8-205; and 25-8-508, 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 9th day of August, 2016 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Trisha Oeth, Administrator

EXHIBIT 1
WATER QUALITY CONTROL DIVISION PROPOSAL

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL COMMISSION

5 CCR 1002-63

REGULATION NO. 63

PRETREATMENT REGULATIONS

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63.4 IMPLEMENTATION

These regulations will be implemented directly by the Division in a manner complimentary to the EPA's implementation of the federal pretreatment regulations found at 40 CFR Part 403. POTW's and Industrial Users will be expected to know of these regulations and comply with them.

Requirements for POTW's will be incorporated in their CDPS permits. Industrial Users must follow the requirements of the POTW they discharge into as well as these regulations. If an Industrial User discharges to a POTW without an approved program, the Control Authority is the Division.

63.5 STANDARDS INCORPORATED BY REFERENCE

Throughout these regulations, pretreatment standards and requirements promulgated by the United States Environmental Protection Agency found in Parts 405 through 471, Chapter I, subchapter N, Title 40, of the Code of Federal Regulations have been adopted and incorporated by reference. These are from the Code of Federal Regulations dated ~~November 14, 2005~~ December 12, 2016. These incorporations do not include later amendments to, or editions of the incorporated material.

Future amendments to this regulation will be necessary to keep the regulation in conformance with Federal regulations. Such amendments will need to be adopted by the Commission.

All materials incorporated by reference ~~may be examined at any state publication depository library is available at no cost in the online edition of the Code of Federal Regulations (CFR) hosted by the U.S. Government Printing Office.~~ Requests for public inspection of materials incorporated by reference in this regulation should be made to ~~Staff Assistant~~ the Colorado Department of Public Health and Environment, Water Quality Control Division, Permits Section, 4300 Cherry Creek Drive South, Denver, Colorado, 80246-1530.

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63.9 POTW PRETREATMENT PROGRAM REQUIREMENTS

This section incorporates 40 CFR 403.8 by reference. This is from the Code of Federal Regulations dated December 12, 2016 ~~November 14, 2005~~, and does not include later amendments to, or editions of the incorporated material.

63.10 POTW MONITORING AND REPORTING REQUIREMENTS

This section incorporates 40 CFR 403.8 by reference. This is from the Code of Federal Regulations dated December 12, 2016 ~~November 14, 2005~~, and does not include later amendments to, or editions of the incorporated material.

A. Provisions Governing Fraud and False Statement

This section incorporates 40 CFR 403.12(n) by reference. This is from the Code of Federal Regulations dated December 12, 2016 ~~November 14, 2005~~, and does not include later amendments to, or editions of the incorporated material.

63.11 NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES

This section incorporates 40 CFR 403.8 by reference. This is from the Code of Federal Regulations dated December 12, 2016 ~~November 14, 2005~~, and does not include later amendments to, or editions of the incorporated material.

A. Division Enforcement Actions

(1) POTWs and Industrial Users of Approved Programs

If, within 30 days after notice by the Director of a violation of Regulation 63, 40 CFR 403, applicable Pretreatment Standards and Requirements, or the POTW's CDPS permit to a POTW and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, the Director may take appropriate enforcement action against the POTW, the User or Users who caused the violation, or both.

The Director may seek judicial relief and may exercise administrative penalty authority when the POTW has sought a monetary penalty which the Director determines to be insufficient.

(2) POTWs and Industrial Users of Non-Approved Programs

When the Director finds that an industrial user has violated, or continues to violate, any provision of Regulation 63, 40 CFR 403, applicable Pretreatment Standards and Requirements, or the Industrial User's Authorization to Discharge, the Director may take appropriate enforcement action against the User to correct the violation.

POTWs without an approved pretreatment program are required by their CDPS permit to prevent pass through or interference at their POTW. Failure to prevent pass through or interference may cause the Director to initiate an enforcement action against the POTW and/or industrial user or users causing or contributing to the violation(s).

63.12 NATIONAL CATEGORICAL PRETREATMENT STANDARDS: GENERAL REQUIREMENTS

Categorical standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new Industrial Users in specific industrial subcategories have been established by EPA and are hereby incorporated by reference in this regulation, in accordance with the provisions of section 63.5. The specific limits for each subcategory must be met by all significant industrial users that fall within the industrial categories set forth in Table I of these regulations. Unless otherwise specified Categorical Pretreatment Standards shall be in addition to all applicable pretreatment standards and requirements set forth in this regulation. Failure to meet the limitations established is a violation of this regulation and will result in the necessary enforcement action.

Table 1 – Effluent Guidelines and Standards

40 CFR 405	Dairy Products Processing
40 CFR 406	Grain Mills Point
40 CFR 407	Canned and Preserved Fruits and Vegetables Processing
40 CFR 408	Canned and Preserved Seafood Processing
40 CFR 409	Sugar Processing
40 CFR 410	Textile Mills
40 CFR 411	Cement Manufacturing
40 CFR 412	Concentrated Animal Feeding Operations (CAFO)
40 CFR 413	Electroplating
40 CFR 414	Organic Chemicals, Plastics, and Synthetic Fibers
40 CFR 415	Inorganic Chemicals Manufacturing
40 CFR 417	Soap and Detergent Manufacturing
40 CFR 418	Fertilizer Manufacturing
40 CFR 419	Petroleum Refining
40 CFR 420	Iron and Steel Manufacturing
40 CFR 421	Nonferrous Metals Manufacturing
40 CFR 422	Phosphate Manufacturing
40 CFR 423	Steam Electric Power Generating
40 CFR 424	Ferroalloy Manufacturing
40 CFR 425	Leather Tanning and Finishing
40 CFR 426	Glass Manufacturing
40 CFR 427	Asbestos Manufacturing

40 CFR 428	Rubber Manufacturing
40 CFR 429	Timber Products Processing
40 CFR 430	The Pulp, Paper, and Paperboard
40 CFR 432	Meat Products
40 CFR 433	Metal Finishing
40 CFR 434	Coal Mining
40 CFR 435	Oil and Gas Extraction
40 CFR 436	Mineral Mining and Processing
40 CFR 437	Centralized Waste Treatment
40 CFR 439	Pharmaceutical Manufacturing
40 CFR 440	Ore Mining and Dressing
40 CFR 442	Transportation Equipment Cleaning
40 CFR 443	Paving and Roofing Materials (Tars and Asphalt)
40 CFR 444	Waste Combustors
40 CFR 445	Landfills
40 CFR 446	Paint Formulating
40 CFR 447	Ink Formulating
40 CFR 454	Gum and Wood Chemicals Manufacturing
40 CFR 455	Pesticide Chemicals
40 CFR 457	Explosives Manufacturing
40 CFR 458	Carbon Black Manufacturing
40 CFR 459	Photographic
40 CFR 460	Hospital

40 CFR 461	Battery Manufacturing
40 CFR 463	Plastics Molding and Forming
40 CFR 464	Metal Molding and Casting
40 CFR 465	Coil Coating
40 CFR 466	Porcelain Enameling
40 CFR 467	Aluminum Forming
40 CFR 468	Copper Forming
40 CFR 469	Electrical and Electronic Components
40 CFR 471	Nonferrous Metals Forming and Metal Powders

This section incorporates 40 CFR 403.8 by reference. This is from the Code of Federal Regulations dated December 12, 2016 ~~November 14, 2005~~, and does not include later amendments to, or editions of the incorporated material.

A. Significant Industrial Users in Non-Approved Programs - Procedure for Implementation of Pretreatment Standards and Requirements

Pretreatment Standards and Requirements shall be implemented for those Significant Industrial Users as defined at 63.7(FF)(2) for which the Director is the Control Authority.

- (1) Industrial Users which are identified by the Director to meet those criteria at 63.7(FF) and the POTW to which the Industrial User discharges will be notified of the Industrial User's status as a significant Industrial User by a letter of notification of applicable discharge requirements.
- (2) Significant Industrial Users and/or the POTWs to which the Industrial User discharges may petition the Director pursuant to 63.7(FF)(4) at any time requesting de-designation. Upon the Director's finding that an Industrial User meeting the criteria of Section 63.7(FF)(2) has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Director may de-designate the Industrial User.
- (3) Notice of Discharge Requirements shall contain, at a minimum;
 - (a) A statement of prohibitive discharge standards as defined in 40 CFR 403.5(a)(b).
 - (b) Effluent limits based on applicable general pretreatment standards found at 40 CFR 403.5(a) and in local limits developed pursuant to 40 CFR 403.5(c)(2);
 - (c) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable

general pretreatment standards found at 40 CFR 403.12(b) and in local limits developed pursuant to 40 CFR 403.5(c)(2);

- (d) A statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;
- (e) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule; and
- (f) Other pertinent requirements of the regulations.

B. Procedure for Implementation of the Categorical Pretreatment Standards

The following implementation procedure is to be followed for those Industrial Users subject to categorical discharge requirements for which the Director is the Control Authority. Industrial Users discharging to POTW's with approved programs are to follow those procedures established by the POTW.

- (1) Submission of the Baseline Monitoring Report (BMR) as required in 40 CFR 403.12(b) shall be to the Director by the required deadline as specified in 40 CFR 403.12(b);
- (2) Upon receipt of the BMR, the Director shall evaluate it for completeness. If the Director determines it to be incomplete, he will notify the Industrial User in writing of the deficiencies and require that they be corrected as soon as possible;
- (3) Once a BMR is judged to be complete the Director will commence his review. The review will be done to certify that:
 - (a) The Industrial User does belong in the suggested category;
 - (b) The categorical standards determined by the Industrial User are applicable to the process in question;
 - (c) The calculations for the limitations have been done correctly by using the proper data in the proper equation;
 - (d) The sampling data that has been submitted by the facility demonstrates that they can (or cannot) meet the categorical standards, and substantiates its claim of compliance (or non-compliance);
 - (e) Any compliance schedule proposed for facility modifications to meet categorical standards is reasonable and meets the deadlines as specified by the applicable categorical standard;

The Director may request additional information if needed to support the statements above.

- (4) Once the Director finds that the BMR is complete, he will notify the Industrial User of such via a letter of notification of applicable discharge requirements. This letter will also inform the Industrial User of its obligations under these regulations. These include, but may not be limited to:
 - (a) The parameters to be sampled, sampling frequency, and sample types;

- (b) The equivalent limitations along with the production and flow rates used to calculate these limits;
- (c) The reporting requirements for the Industrial User;
- (d) Any compliance schedules required; and
- (e) Other pertinent requirements of the regulations.

Failure of the Director to include a requirement of the regulations in the letter does not constitute a waiver of the requirement. The Industrial User will be expected to comply with all applicable portions of the regulations.

63.13 INDUSTRIAL USER MONITORING AND REPORTING REQUIREMENTS

This section incorporates 40 CFR 403.8 by reference. This is from the Code of Federal Regulations dated ~~November 14, 2005~~ December 12, 2016, and does not include later amendments to, or editions of the incorporated material.

- A. Monitoring and Reporting requirements for Significant Industrial Users in non-approved pretreatment programs.
 - (1) Industrial Users which are identified by the Director to meet those criteria at 63.7(FF) and the POTW to which the Industrial User discharges will be notified of the Industrial User's status as a significant Industrial User by the Director's issuance of a Notice of Discharge Requirements.
 - (2) Significant non-categorical Industrial Users and/or the POTW's to which the Industrial User discharges may petition the Director pursuant to 63.7(FF)(4) at any time requesting de-designation. Upon the Director's finding that an Industrial User meeting the criteria of Section 63.7(FF)(2) has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Director may de-designate the Industrial User.
 - (3) A Notice of Discharge Requirements shall contain, at a minimum;
 - (a) A statement of prohibitive discharge standards as specified at 40 CFR 403.5(b);
 - (b) Effluent limits, including Best Management Practices, based on applicable general Pretreatment Standards in 40 CFR 403, categorical Pretreatment Standards, local limits, and any other applicable limits established by the Director;
 - (c) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency and sample type. For sampling and reporting frequency, the minimum frequencies are set forth in the Table below;
 - (d) A statement of non-transferability without, at a minimum, prior notification to the POTW, and provision of a copy of the existing control mechanism to the new owner or operator;
 - (e) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule; and

(f) Other requirements as appropriate.

FLOW OF REGULATED PROCESS (GPD)*	REPORTING PERIOD	REPORT DUE DATE
0 - 10,000	January – June	July 31
	July – December	January 31
Over 10,000	January	February 28
	February	March 31
	March	April 30
	April	May 31
	May	June 30
	June	July 31
	July	August 31
	August	September 30
	September	October 31
	October	November 30
	November	December 31
	December	January 31

* Where there are multiple regulated flows, sampling frequency is determined by the sum of all regulated flows.

(g) Sampling Frequencies. The following chart lists the required sampling frequencies:

FLOW OF REGULATED PROCESS (GPD)*	CONVENTIONAL POLLUTANTS**, INORGANICS (METALS INCLUDED), CYANIDE, AND PHENOL	ORGANICS (TT0s)
0 - 10,000	1/quarter	2/year

over 10,000	12/year	2/year
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* Where there are multiple regulated flows, sampling frequency is determined by the sum of all regulated flows.

** This includes pollutants such as BOD₅, TSS, Oil and Grease, and Metals.

- (h) TTO. Monitoring for TTO (other than for BMRs and 90 day compliance reports) need only be done when an Industrial User does not certify as allowed in the individual categorical standard, or such certification is not allowed under the industrial category.
- (i) Batch Discharges. Industrial Users that batch discharge are to sample when they discharge but need not sample more frequently than specified in paragraph (e).
- (j) The Approval Authority may authorize the Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This authorization is subject to the following conditions:

The Approval Authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.

The monitoring waiver is valid only for the duration of the effective period of the Notice of Discharge Requirements or other equivalent individual control mechanism, but in no case longer than five years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism.

In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver must be signed, and include the certification statement in 40 CFR 403.6(a)(2)(ii). Non-detectable sample results may only be used as a demonstration that a pollutant is not present if the EPA-approved method from 40 CFR 136 with the lowest minimum detection level for that pollutant was used in the analysis.

Any grant of the monitoring waiver by the Approval Authority must be included as a condition in the User's control mechanism. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the Approval Authority for three years after expiration of the waiver.

Upon approval of the monitoring waiver and revision of the User's control mechanism by the Approval Authority, the Industrial User must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User:

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report.

In the event that a waived pollutant is found to be present or is expected to be immediately: Comply with the monitoring requirements listed above or other more frequent monitoring requirements imposed by the Approval Authority and notify the Approval Authority.

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63.84 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE; (December 12, 2016 Hearing, Effective March 1, 2017)

The provisions of sections 25-8-202(1); 25-8-205(1)(b); 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 adopted the changes proposed by the Water Quality Control Division. These changes are as follows.

1. Update of Federal Regulations Incorporated by Reference

The regulation now contains updated date of incorporation by reference for the numerous federal pretreatment regulations referenced in Regulation 63. November 14, 2005 was changed to December 12, 2016.

2. Clarification Regarding Complimentary Implementation

Section 63.4, Implementation, now clarifies that the Water Quality Control Division's pretreatment program, i.e. this regulation, will be implemented in a manner complimentary to the EPA's implementation of federal pretreatment regulations. At this time, the State of Colorado does not have delegation of the federal pretreatment program from EPA, and complimentary implementation will include avoiding unnecessary redundancies in oversight and documentation, and focusing on areas of the pretreatment program where EPA lacks the State's broad authority or where additional action is needed in order to effectuate the purposes of this regulation described in Section 63.2. These purposes include preventing the introduction of pollutants into POTW's which interfere with the operation of a POTW or pass through the treatment works without receiving effective treatment or otherwise be incompatible with such works; and to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges. The Commission emphasizes that Regulation 63 continues to fully authorize the Water Quality Control Division to implement a statewide and comprehensive pretreatment program.