

STATE OF COLORADO

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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 proposed revisions to the Regulations Controlling Discharges to Storm Sewers, Regulation #65 (5 CCR 1002-65), addressing issues identified in the October 2007 triennial review informational hearing. The revisions to Regulation #65 proposed by the Water Quality Control Division (Division) as staff to the Commission, 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 revisions proposed in Exhibit 1 and developed in response to those proposed revisions will also be considered.

HEARING SCHEDULE:

DATE: Monday, April 14, 2008
TIME: 9:30 a.m.
PLACE: Florence Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado

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. Written submissions prior to the hearing are encouraged, so that they can be distributed to the Commission for review prior 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 or mailing list status (see below) 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/MAILING LIST STATUS:

Participation as a "party" to this hearing or acquisition of "mailing list status", will require compliance with section 21.4(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). Mailing list status will allow receipt of all party documents (except individual exhibits more than five pages in length). It is not necessary

to acquire party status or mailing list status in order to testify or comment. **For each request for party status or mailing list status, please provide the organization's name, a contact person, mailing address, phone number, fax number and email address if available.** Written party status or mailing list status requests are due in the Commission Office on or before:

DATE: Tuesday January 29, 2008
TIME: 5:00 p.m.

Party status or mailing list status requests may be submitted by a fax to 303-691-7702 by this deadline, or by email to cdphe.wgcc@state.co.us, provided that the original and three copies have been mailed by this same date, PLEASE NOTE that, as indicated below, parties will have the option of distributing materials to other parties electronically, except in instances where a party has requested receiving hard copies of documents. Therefore, **anyone requesting party or mailing list status who wishes to receive hard copies of documents instead of emailed copies should so indicate in your party status/ mailing list status request so that this information can be included on the list distributed by the Commission Office.**

PREHEARING STATEMENTS:

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

(1) An original and 13 copies of a **Proponent's Prehearing Statement from the Water Quality Control Division as proponent of revisions proposed in Exhibit 1 attached to this notice**, including written testimony and exhibits providing the basis for the proposal, must be received in the Commission Office no later than **February 5, 2008**; and (2) An original and 13 copies of a **Responsive Prehearing Statement**, including any exhibits, written testimony, and alternative proposals of **anyone seeking party status and intending to respond to the Division proposal** must be received in the Commission Office no later than **March 4, 2008**. [Note: Although the required number of hard copies of documents must be received in the Commission Office by the specified deadlines, **parties are also strongly encouraged to email a copy of their written documents to the Commission Office**, so that materials received can be posted on the Commission's web site. (Please email to cdphe.wgcc@state.co.us.) In addition, copies of these documents shall be mailed or hand-delivered by the specified dates to all persons requesting party status or mailing list status, and to the Attorney General's Office representatives for the Commission and Division, in accordance with a list provided by the Commission Office following the party status/ mailing list status deadline. **Alternatively, parties may email documents to those with party status or mailing list status by the specified dates**, except to those that the list distributed by the Commission Office identifies as requesting hard copies.

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 mailed or emailed to all persons requesting party status or mailing list status. It is also posted on the Commission's web site noted above, under "General Information – Public Participation in Commission Proceedings". Following the suggestions set forth in this document will enhance the effectiveness of parties' input for this proceeding. **Please note the new request that all parties submit their hard copies of all hearing documents on three-hole punch paper.**

MAILING LIST STATUS COMMENTS:

Those requesting mailing list status shall provide written testimony, if any testimony is to be offered for the hearing, by the above deadline for responsive prehearing statements – i.e., **March 4, 2008**. Copies shall be submitted and distributed in the same manner as noted above for prehearing statements.

REBUTTAL STATEMENTS:

Written Rebuttal Statements responding to the responsive prehearing statements due on March 4, 2008 may be submitted by anyone seeking party status or mailing list status. Any such rebuttal statements must be received in the Commission Office by **April 2, 2008**. An original and 13 copies of written rebuttal statements must be received in the Commission Office by this deadline, and submission of an emailed copy as noted above is strongly encouraged. In addition, copies of these documents shall be mailed or hand-delivered by that date to all those requesting party status or mailing list status, and to the Attorney

General's Office representatives for the Commission and Division. **Alternatively, parties may email documents to those with party status or mailing list status by this deadline**, except to those that the list distributed by the Commission Office identifies as requesting hard copies. No other written materials will be accepted following this deadline except for good cause shown.

PREHEARING CONFERENCE:

DATE: Thursday, March 13, 2008
TIME: 1:00 p.m.
PLACE: Board Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado

PLEASE NOTE: 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.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-205; 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 11th day of December 2007 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION



Paul D. Frohardt, Administrator

EXHIBIT 1
WATER QUALITY CONTROL DIVISION

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL COMMISSION

5 CCR 1002-65

REGULATION NO. 65

REGULATION CONTROLLING DISCHARGES TO STORM SEWERS

65.1 AUTHORITY

Section 25-8-205 and 25-8-401, C.R.S.

65.2 REGULATIONS

- (1) No person shall discharge any pollutant from a point source that flows into a storm sewer pipe or inlet to such pipe, except for pollutants in waters that only flow as a result of a storm event, naturally-occurring stormwater, from a point source that flows to a storm sewer without first having obtained a permit, where required, for such discharge from the Division pursuant to section 25-8-501, C.R.S.
- (2) ~~Any connections to storm sewers from other drainage or discharge conveyances that are not the subject of a discharge permit, other than connections carrying solely naturally-occurring stormwater runoff, shall be disconnected, even if the connection is no longer in use. Where the responsible party for a spill can demonstrate to the Division that a discharge to a storm sewer system is contained within and removed from the storm sewer system without reaching waters of the state, no violation of this regulation will have occurred.~~

65.3 - 65.9 RESERVED

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PROPOSED

65.14 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE:

The provisions of sections 25-8-205 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 affirms that the intent of Regulation 65 is to allow the Division to make a finding of violation where a discharge enters a storm sewer inlet or pipe based on the premise that such discharge will reach state waters, either directly or as a result of a subsequent storm or other unrelated flow event. The Commission finds that this authority is necessary above and beyond that provided to the Division under the Colorado Discharge Permit System Regulations, which would otherwise require the Division to demonstrate that the discharge reached water of the state. The Commission finds that it is appropriate to apply a more proactive regulatory approach due to the risk that such discharges could pose to the beneficial uses of state waters. In addition, the Commission finds that it is not appropriate to require the Division to expend what could be significant resources to monitor the outlet for potentially long periods before a subsequent storm or other flow event flushed the pollutants in the discharge into state waters. The Commission also states that this regulation does not authorize any storm water discharge that is otherwise required to obtain a permit pursuant to Regulation No. 61.

At the same time, the Commission also modified section 65.2(2) to provide an opportunity for a person responsible for a discharge to demonstrate that the discharge did not reach water of the state and that the pollutants were removed from the storm sewer such that there would be no risk of a subsequent flow event flushing them into state waters. This could be accomplished by cleaning of the storm sewer system to prevent later transmission of the spilled materials to waters of the state. The Commission finds this is appropriate, particularly for spills which may be of relatively short duration and of small volume. Colorado has a semi-arid climate, in which stormwater channels may be dry for significant portions of the year and stormwater systems are composed of impervious pipes and basins and present numerous opportunities to capture and detain spills, including curbside catch basins, detention basins, and flow diversion structures.

Finally, the Commission modified section 65.2(1) of the regulation to further clarify that the regulation does not apply to pollutants in discharges that would only flow as a result of a storm event (e.g. runoff of pollutants deposited on streets by automobiles). Section 65.2(1) was also modified to clarify that the regulation applies to discharges to infrastructure (storm sewer inlets and pipes) and that the regulation does not apply to discharges that are not required to obtain a permit (e.g. irrigation return flow).