

# STATE OF COLORADO

Bill Ritter, Jr., Governor  
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department  
of Public Health  
and Environment

## NOTICE OF PUBLIC RULEMAKING PROCEEDING BEFORE THE COLORADO WATER QUALITY CONTROL COMMISSION

### SUBJECT:

For consideration of revisions to the Procedural Rules, Regulation #21 (5 CCR 1002-21). The proposed revisions, along with a proposed Statement of Basis, Specific Statutory Authority, and Purpose, are attached to this Notice as Exhibit 1. In this attachment, 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.

During the Commission's consideration of whether to approve this notice of rulemaking, the Commission determined that there is not a likelihood of significant controversy during the rulemaking process. Therefore, the Commission has chosen to pursue an alternative rulemaking process consistent with section 24-4-103(4)(a) C.R.S.; and section 21.3(C)(6) of the Procedural Rules. Questions or comments regarding this process are welcome.

It is the goal of the Commission to complete this rulemaking without oral testimony.

### PARTY STATUS:

Pursuant to section 21.3(D) of the Commission's Procedural Rules, there shall be no party status for this rulemaking proceeding.

### WRITTEN COMMENTS AND REBUTTAL STATEMENTS:

Initial written comments and evidence with respect to the proposed amendments are due in the Commission Office by March 4, 2008. In addition, any written rebuttal statements must be received in the Commission Office by April 2, 2008.

Anyone providing written comments and evidence or rebuttal statements should provide an original plus twenty-five copies to the Commission Office. Anyone for whom the expense of providing these copies presents an economic hardship should contact the Commission Office to make alternative arrangements. Those who wish to receive the written comments and rebuttal statements from other members of the public should so indicate in a cover letter with their submission of written comments.

RULEMAKING DELIBERATION SCHEDULE:

DATE: Monday, May 12, 2008  
TIME: 10:00 a.m.  
PLACE: Florence Sabin Conference Room  
Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, Colorado

At this time and place, the Commission will conduct its deliberations, based on the written comments and evidence submitted.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202 and 25-8-401 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 fully explain the basis for their claim in the written comments submitted. 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 15<sup>th</sup> day of January 2008 at Denver, Colorado

WATER QUALITY CONTROL COMMISSION



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Paul D. Frohardt, Administrator

# EXHIBIT 1

## DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

### Water Quality Control Commission

#### PROCEDURAL RULES

#### 5 CCR 1002-21

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#### 21.3 Rulemaking procedures

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#### D. Party Status/Mailing List Status

- 1) Unless in its notice of proposed rulemaking issued pursuant to section 21.3(C) of this regulation the Commission specifies otherwise, status as a party as that term is defined in section 24-4-102(11), C.R.S., will be granted in rulemaking proceedings before the Commission. Where an opportunity to obtain party status is provided, it may be obtained in the manner prescribed in the notice issued pursuant to section 21.3(C). ~~The original and 3 copies~~ One original, email attachment or fax of each party status request shall be submitted by the deadline established in the notice. Party status shall always be available in proceedings specified in section 21.3(M). Any person requesting a rulemaking hearing shall be granted party status without application therefor. Parties to rulemaking hearings shall have those rights specified in section 21.3(K)(2).

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#### M. Procedures to be Followed in Classifying State Waters, Setting Water Quality Standards and Adopting Control Regulations

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- 5) Except in written-comment-only rulemaking proceedings pursuant to section 21.3(C)(~~65~~) of these rules, in any proceeding under this subsection M the Commission shall provide interested persons the opportunity to participate as parties to the proceedings. The notice, procedures, and requirements for party status shall be the same in this regard as specified in section 21.4 of this regulation for adjudicatory hearings.

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#### 21.12 Civil Penalty Appeals

- A. The Division may assess civil penalties as provided in section 608 of the Act.
- B. Upon application of the Division, penalties shall be determined by the Executive Director or his/her designee without a hearing. Such penalty determinations may be appealed to the Commission, except for penalties for violating a surface water discharge permit or portions thereof, which may be appealed to the Division in accordance with section 21.4(A)(3)(b). The appeal shall be made in writing to the office of the Administrator of the Commission or the Director of the Water Quality Control Division, as appropriate, and shall be postmarked no later

than 30 days after the issuance of the decision of the Executive Director or his/her designee. In his/her written appeal the appellant shall also admit or deny each allegation set forth in the Division's application for civil penalty filed with the Executive Director or his/her designee, and shall state those mitigating factors which the appellant desires to raise before the Commission.

- C. The Commission or Division, as appropriate, shall conduct such hearings in accordance with section 105 of the APA and section 21.4 of this regulation. In any such hearing the Commission or Division shall not hear evidence for the purpose of determining if the underlying violations have occurred, but may only consider evidence relevant to the appropriateness of the amount of the penalty.

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#### **21.14 Reconsideration**

##### **A. Reconsideration of Adjudicatory Action Upon Motion of a Party**

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- 3) If the application for a hearing, rehearing, or reconsideration is denied, the order or determination to which such application pertains shall be considered final agency action as of the date specified in section 21.4(~~L~~K)(6). An application under this section extends the time period for seeking judicial review of the original order or determination only for the number of days that it is pending, since such an application merely stays the time period for seeking judicial review.

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#### **21.16 Antidegradation Review Procedures-Public Participation and Intergovernmental Coordination**

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##### **B. Notice of Preliminary Antidegradation Review Determination**

These notice requirements apply to activities with new or increased water quality impacts that may degrade the quality of reviewable waters subject to antidegradation review requirements (see Basic Standards and Methodologies for Surface Water, Regulation No. 31, section 31.8(1)(b)).

- 1) Notice that the Division has reached a preliminary antidegradation review determination shall be provided at the time and in the manner described below for each category of Division reviews. Only one antidegradation review shall occur, in conjunction with the earliest applicable Division review listed below; provided, that the Division may perform a supplemental antidegradation review if it determines that subsequent changes in the project would result in substantially different water quality impacts.

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- c) When the Division receives a surface water discharge permit application, pursuant to section 25-~~68-6~~501 C.R.S.; the Division shall give notice of the preliminary antidegradation determination by inclusion with the notice of the proposed permit pursuant to the procedures in section 61.5(2)(e), of the Colorado State Discharge Permit System Regulations.

## **PROPOSED**

### **21.34 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; MAY, 2008 RULEMAKING, EFFECTIVE DATE OF JUNE 30, 2008**

The provisions of sections 25-8-202 and 401 provide the specific statutory authority for adoption of these regulatory amendments. The Commission also adopted the following statement of basis and purpose.

#### **Basis and Purpose**

As a result of this rulemaking, the Commission corrected the following four references:

- In section 23.3 (M)(5), the reference to section 21.3 (C)(6) was changed to 21.3 (C)(5);
- In section 21.12 (B), the reference to section 21.4 (3)(b) was changed to 21.4 (A)(3)(b);
- In section 21.14 (A)(3), the reference to section 21.4 (L)(6) was changed to 21.4 (K)(6);
- In section 21.16 (B)(1)(c), the reference to section 25-6-601, C.R.S. was changed to 25-8-501, C.R.S.

The Commission reduced the required number of copies of requests for party status. Because multiple copies of the party status requests are rarely needed, the Commission determined that a single original, email attachment or fax would suffice.

The Commission amended the language in section 21.12 to clarify that civil penalty appeals to the Division have the same requirements and deadlines as appeals to the Commission.