

# STATE OF COLORADO

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

## **WATER QUALITY CONTROL COMMISSION**

<http://www.cdphe.state.co.us/op/wqcc/index.html>

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Denver, Colorado 80246-1530  
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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 the adoption of revisions to the Colorado Discharge Permit System Regulations, Regulation #61 (5 CCR 1002-61), and the Animal Feeding Operations Control Regulation, Regulation #81 (5 CCR 1002-81), to implement new fee provisions. The proposed revisions to Regulation #61, along with a proposed Statement of Basis, Specific Statutory Authority, and Purpose, are attached to this notice as Exhibit 1. The proposed revisions to Regulation #81, along with a proposed Statement of Basis, Specific Statutory Authority, and Purpose, are attached to this notice as Exhibit 2. 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.

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 June 30, 2009. In addition, any written rebuttal statements must be received in the Commission Office by July 27, 2009.

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, August 10, 2009  
TIME: 9:00 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(1)(c), (d) and (2); 25-8-205; 25-8-401; 25-8-402 and 25-8-501 to 25-8-504, 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 28<sup>th</sup> day of May 2009 at Denver, Colorado

WATER QUALITY CONTROL COMMISSION

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Paul D. Frohardt, Administrator

**EXHIBIT 1**  
**ENVIRONMENTAL AGRICULTURE PROGRAM**

**DEPARTMENT OF HEALTH AND ENVIRONMENT**

**Water Quality Control Commission**

**5 CCR 1002-61**

**COLORADO DISCHARGE PERMIT SYSTEM**

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**61.13(5) PERMIT FEES**

- (a) ~~The Division shall assess Eeach housed commercial swine feeding operation covered by a single permit an annual permit fee of 20 cents per animal, based on the operation's working capacity, to offset direct and indirect costs of the program.~~ shall pay permit fees in accordance with the schedule set forth in 25-8-502(1)(b)(I), C.R.S., and in accordance with section 61.15 of this regulation.
- (b) ~~As used in this paragraph (a), "working capacity" means the number of weaned swine that the housed commercial swine feeding operation is capable of housing at one time.~~

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## **PROPOSED**

### **61.63 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: AUGUST 10, 2009** **RULEMAKING – HB 09-1330 IMPLEMENTING REGULATIONS, EFFECTIVE DATE OF SEPTEMBER** **30, 2009**

The provisions of sections 25-8-202(1)(d) and (2); 25-8-401; and 25-8-501 to 25-8-504, 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 section 24-4-103(4) C.R.S., the following statement of basis and purpose.

### **BASIS AND PURPOSE**

House Bill 09-1330 was passed by the Colorado General Assembly in the 2009 legislative session. Effective July 1, 2009, the legislation increases annual fees assessed by the Department of Public Health and Environment on permitted housed commercial swine feeding and concentrated animal feeding operations and adds a new administrative fee for non-permitted concentrated animal feeding operations under the Colorado Water Quality Control Act. The bill also transfers certain funds from the Water Quality Control Fund to a newly created Animal Feeding Operation Fund. In addition, the bill requires the Department of Public Health and Environment to report annually to a joint session of the Senate Agriculture and Natural Resources Committee and the House of Representatives Agriculture, Livestock and Natural Resources Committee on or before March 31<sup>st</sup> of each year.

In this written-comment-only rulemaking hearing, the Commission adopted revisions to the Colorado Discharge Permit System Regulation #61 (5 CCR 1002-61) and to the Animal Feeding Operations Control Regulation #81 (CCR 1002-81) as needed. In particular, the specific annual fee and additional explanatory information included in sections 61.13(5)(a) and (b) of Regulation #61 were revised to generally cite the section of the Colorado Revised Statute, section 25-8-502(1)(b)(I), C.R.S., and to reference the general provisions included in section 61.15 that are applicable to Housed Commercial Swine Feeding Operations. In addition, a new section, 81.7(4), was added to Regulation #81 to clarify that non-permitted concentrated animal feeding operations are subject to a new administrative fee as set forth in section 25-8-502(1)(g), C.R.S. Also included in this section were additional process-related billing requirements associated with the Division's collection and proration of non-permitted concentrated animal feeding operation registration fees.

**EXHIBIT 2**  
**ENVIRONMENTAL AGRICULTURE PROGRAM**

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**Water Quality Control Commission**

**ANIMAL FEEDING OPERATIONS CONTROL REGULATION**

**5 CCR 1002-81**

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**81.7 ADDITIONAL REQUIREMENTS – NON-PERMITTED LARGE CAFOs**

- (1) Performance Standards – Surface Water Protection
  - (a) There shall be no discharge of manure or wastewater from the production area to waters of the U.S. without a discharge permit.
  - (b) There shall be no discharge of manure or wastewater from the production area to surface water, except whenever precipitation causes a discharge and the production area is designed, constructed, operated, and maintained to contain all manure and wastewater, including the runoff and direct precipitation from a 25-year, 24-hour storm or Chronic Storm, whichever is greater.
  - (c) The discharge of manure and wastewater to waters of the U.S. from a CAFO as the result of the application of that manure or wastewater by the CAFO to a land application site is a discharge from that CAFO subject to permit requirements, except where it is an agricultural storm water discharge. Where the manure or wastewater has been applied in accordance with the requirements of sections 81.6(2)(a-d), a precipitation-related discharge of manure or wastewater from the site to waters of the U.S. is an agricultural storm water discharge.
  - (d) Manure and wastewater shall not be applied directly to surface water.
- (2) Recordkeeping – The operator shall create, maintain at the facility for five years from the date they are created, and make available to the Division or its designee, upon request, the following records:
  - (a) A copy of its current FMP shall be compiled and maintained in one discrete place at the facility, such as an office or filing cabinet.
  - (b) The land application records specified in section 81.6(2)(b)(iv).
  - (c) Weekly records of the depth of the manure and wastewater as indicated by the depth markers in the impoundments required to be inspected by section 81.6(1)(c)(i), or as indicated by an alternative method approved by the Division.
  - (d) The records and certifications specified in sections 81.8(2)(c) and 81.8(3)(d).

- (3) Discharge Reporting – The operator shall notify the Division of a discharge of manure or wastewater to surface water.
- (a) Such notification shall be made by telephone, electronic mail, or facsimile within 24 hours after the operator becomes aware of the discharge.
  - (b) The notification shall describe, at minimum, the date, time, cause of the discharge, approximate volume of the discharge, the estimated length of time of the discharge, the level of wastewater in the discharging impoundment(s), and whether the discharge entered, or could enter, waters of the U.S.
- (4) Fees – Non-permitted Large CAFOs shall pay fees in accordance with the schedule set forth in section 25-8-502(1)(g), C.R.S.
- (a) All annual fees must be paid within 30 days of receipt of the Division's billing statement.
  - (b) All fees collected under this regulation shall be made payable to the Colorado Department of Public Health and Environment.
  - (c) The annual fee for non-permitted Large CAFOs shall be prorated if the following occur during a fiscal year in which a fee has been paid:
    - (i) Issuance of a concentrated animal feeding operation discharge permit.
    - (ii) Termination of a registration at the registrant's request with Division approval.
- The prorated fee for terminations shall be based on the period of time the registration is in effect for the fiscal year during which the termination is requested, except that the period of time shall not exceed 90 days from the date the registration termination request is received by the Division. Prorated amounts less than \$75 will not be refunded.
- (d) The administrative fee shall be applicable to all non-permitted Large CAFOs as of July 1, 2009, regardless of the date upon which registration with the Division is made.

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## **PROPOSED**

### **81.24 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: AUGUST 10, 2009** **RULEMAKING – HB 09-1330 IMPLEMENTING REGULATIONS; EFFECTIVE DATE OF SEPTEMBER** **30, 2009**

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