

STATE OF COLORADO

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

WATER QUALITY CONTROL COMMISSION

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

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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 Basic Standards and Methodologies for Surface Water, Regulation #31 (5 CCR 1002-31), and the Basic Standards for Ground Water, Regulation #41 (5 CCR 1002-41), to extend the effective dates of standards for nonylphenol and 1,4 dioxane. The revisions to Regulation #31 proposed by Metro Wastewater Reclamation District, along with a proposed Statement of Basis, Specific Statutory Authority, and Purpose, are attached to this notice as Exhibit 1. Revisions to Regulation #31 proposed by the City and County of Denver and Waste Management of Colorado, along with a proposed Statement of Basis, Specific Statutory Authority, and Purpose, are attached to this notice as Exhibit 2. Revisions to Regulation #41 proposed by the City and County of Denver and Waste Management of Colorado, along with a proposed Statement of Basis, Specific Statutory Authority, and Purpose, are attached to this notice as Exhibit 3. 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 September 1, 2009. In addition, any written rebuttal statements must be received in the Commission Office by September 29, 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: Tuesday, October 13, 2009
TIME: 12:55 p.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)(b); 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.

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 14th day of July 2009 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Paul D. Frohardt, Administrator

EXHIBIT 1
METRO WASTEWATER RECLAMATION DISTRICT

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL COMMISSION

REGULATION NO. 31

THE BASIC STANDARDS AND METHODOLOGIES FOR SURFACE WATER
(5 CCR 1002-31)

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BASIC STANDARDS FOR ORGANIC CHEMICALS (in micrograms per liter)						
Parameter	CAS No.	Human Health Based ¹			Aquatic Life Based ⁴	
		Water Supply ²	Water+Fish ³	Fish Ingestion ⁸	Acute	Chronic
....						
Nonylphenol	84852-15-3 and 25154-52-3	---	---	---	28 (effective <u>7/1/2010</u> <u>1/1/2011</u>)	6.6 (effective <u>7/1/2010</u> <u>1/1/2011</u>)
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METRO WASTEWATER RECLAMATION DISTRICT PROPOSED

31.47 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: OCTOBER 13, 2009 RULEMAKING, EFFECTIVE DATE OF NOVEMBER 30, 2009

The provisions of sections 25-8-202(1)(b); 25-8-204; and 25-8-402, 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

In 2007, the Commission adopted aquatic life-based standards for nonylphenol with a delayed effective date of 7/1/2010. The purpose of the delayed effective date was to address uncertainties associated with analytical methods and possible source control options. The effective date for nonylphenol standards was identified as an issue for the June 2010 Basic Standards Rulemaking Hearing. In this written comment rulemaking, the Commission postponed the effective date for nonylphenol standards until January 1, 2011 to avoid implementation of these standards prior to their being addressed at the June 2010 hearing.

EXHIBIT 2
CITY AND COUNTY OF DENVER and WASTE MANAGEMENT OF
COLORADO

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL COMMISSION

REGULATION NO. 31

THE BASIC STANDARDS AND METHODOLOGIES FOR SURFACE WATER
(5 CCR 1002-31)

....

BASIC STANDARDS FOR ORGANIC CHEMICALS (in micrograms per liter)						
Parameter	CAS No.	Human Health Based ¹			Aquatic Life Based ⁴	
		Water Supply ²	Water+ Fish ³	Fish Ingestion ⁸	Acute	Chronic
....						
Dioxane 1,4-	123-91-1	6.1 (effective through 3/21/2010 ²)	---	---	---	---
Dioxane 1,4-	123-91-1	3.2 (effective 3/22/2010 ²)	---	---	---	---
....						

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CITY AND COUNTY OF DENVER and WASTE MANAGEMENT OF COLORADO PROPOSED

31.47 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: OCTOBER 13, 2009 RULEMAKING, EFFECTIVE DATE OF NOVEMBER 30, 2009

The provisions of sections 25-8-202(1)(b); 25-8-204; and 25-8-402, 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

During its September 2004 rulemaking, the Commission adopted two standards for 1,4 dioxane -- 6.1 ug/L to be effective through March 21, 2010; and 3.2 ug/L to become effective on March 22, 2010. The dual standard was adopted, in part, due to the uncertainty about the risks posed by 1,4 dioxane and the fact that EPA was in the process of updating the Integrated Risk Information System ("IRIS") database for that compound. At that time, the Commission adopted the 6.1 µg/L value (which had been typically used for remedial activities in Colorado) as a temporary standard in order to maintain the status quo for a period of five years to give EPA time to complete its IRIS update. The Commission determined that if EPA's pending review resulted in a change in the IRIS value, the Commission could consider a corresponding revision of its standards. As of this date, EPA has not completed the IRIS review.

In May 2009, EPA released an updated draft toxicological review on 1,4 dioxane for external peer review. According to the current schedule, final completion of the IRIS update should occur before the end of 2011.

In order to continue the status quo until EPA completes the IRIS update, the Commission is postponing the effective date for the more restrictive 1,4 dioxane standard of 3.2 ug/L from March 22, 2010 to March 22, 2012 to give EPA time to finish the IRIS update.

EXHIBIT 3
CITY AND COUNTY OF DENVER and WASTE MANAGEMENT OF
COLORADO

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL COMMISSION

REGULATION NO. 41

THE BASIC STANDARDS FOR GROUND WATER
(5 CCR 1002-41)

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TABLE A		
GROUND WATER ORGANIC CHEMICAL STANDARDS		
(in micrograms per liter)		
Parameter	CAS No.	STANDARD ¹
....		
Dioxane 1,4- ^C	123-91-1	6.1(effective through 3/21/2010 2)
Dioxane 1,4- ^C	123-91-1	3.2(effective 3/22/2010 2)
....		

....

CITY AND COUNTY OF DENVER and WASTE MANAGEMENT OF COLORADO PROPOSED

41.26 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; OCTOBER 13, 2009 RULEMAKING; EFFECTIVE NOVEMBER 30, 2009

The provisions of sections 25-8-202(1)(b); 25-8-204; 25-8-402, C.R.S., provide the specific statutory authority for adoption. 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

During its September 2004 rulemaking, the Commission adopted two standards for 1,4 dioxane -- 6.1 ug/L to be effective through March 21, 2010; and 3.2 ug/L to become effective on March 22, 2010. The dual standard was adopted, in part, due to the uncertainty about the risks posed by 1,4 dioxane and the fact that EPA was in the process of updating the Integrated Risk Information System ("IRIS") database for that compound. At that time, the Commission adopted the 6.1 µg/L value (which had been typically used for remedial activities in Colorado) as a temporary standard in order to maintain the status quo for a period of five years to give EPA time to complete its IRIS update. The Commission determined that if EPA's pending review resulted in a change in the IRIS value, the Commission could consider a corresponding revision of its standards. As of this date, EPA has not completed the IRIS review.

In May 2009, EPA released an updated draft toxicological review on 1,4 dioxane for external peer review. According to the current schedule, final completion of the IRIS update should occur before the end of 2011.

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