

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>

4300 Cherry Creek Dr. South
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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 the adoption of revisions to the Biosolids Regulation #64 (5 CCR 1002-64).

The revisions to Regulation #64 proposed by the Water Quality Control 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. 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, February 8, 2010
TIME: 1:30 p.m.
PLACE: Florence Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

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 Office 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 21.3(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, December 1, 2009
TIME: 5:00 p.m.

A single copy of the party status or mailing list status request may be transmitted as an email attachment to cdphe.wgcc@state.co.us, submitted by fax to 303-691-7702, mailed or otherwise conveyed so as to be received in the Commission Office no later than this deadline. 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 that wishes to receive hard copies of documents instead of emailed copies should so indicate in the 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 **Proponent's Prehearing Statement from the Water Quality Control Division, as proponent of the revisions proposed in Exhibit 1 attached to this notice**, including written testimony and exhibits providing the basis for the proposals, must be received in the Commission Office no later than **December 9, 2009**; and (2) an original and 13 copies of a **Responsive Prehearing Statement**, including any exhibits, written testimony, and alternative proposals of the Water Quality Control Division or **anyone seeking party status and intending to respond to the proponent's proposals** must be received in the Commission Office no later than **December 29, 2009**.

For each deadline, the required number of hard copies of documents must be received in the Commission office by the specified deadline. These requirements are not satisfied by electronic transmission of a facsimile copy or copies. However, **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 must 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 the 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 at <http://www.cdphe.state.co.us/op/wgcc/PublicParticipation/HBappC.pdf>. Following the suggestions set forth in this document will enhance the effectiveness of parties' input for this proceeding. **Please note the request that all parties submit two-sided 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., **December 29, 2009**. Copies shall be submitted and distributed in the same manner as noted above for prehearing statements.

PREHEARING CONFERENCE:

DATE: Tuesday, January 12, 2010
TIME: 10:00 a.m.
PLACE: Sabin Room, Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado

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.

REBUTTAL STATEMENTS:

Written rebuttal statements responding to the prehearing statements due on December 29, 2009 may be submitted by anyone seeking party status or mailing list status. Any such rebuttal statements must be received in the Commission Office by **January 27, 2010**. 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 must 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.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(c) and (2); 25-8-205(1)(e); 25-8-501(1) and (2); and 25-8-509 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 13th day of October 2009 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 1002-64

BIOSOLIDS REGULATION

REGULATION NO. 64

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64.7 FEES

A. Assessment of Fees and Billing

- (1) A non-refundable fee of ~~one dollar and eighty-seven cents~~ two dollars and forty cents ~~(\$1.87)~~ (\$2.40) per dry ton of biosolids shall be assessed to generators whose biosolids are used for beneficial purposes. The Division will notify generators when adjustments are made to the fee schedule and the effective date for implementing the changes.

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64.9 DEFINITIONS

The following definitions are applicable within the intent of these regulations:

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KK. "SITE TRANSFER" means the transfer of an NOA to a new person as outlined in Section 64.10(J) of this regulation.

LL. ~~KK.~~ "TREAT BIOSOLIDS" or "TREATMENT OF BIOSOLIDS" means the preparation of biosolids for final use or distribution including, but is not limited to, thickening, stabilization, stockpiling, dewatering, and blending of biosolids from different sources or with other materials. This does not include storage of biosolids except as such storage is incidental to treatment.

MM. ~~LL.~~ "TREATMENT WORKS TREATING DOMESTIC SEWAGE" means a domestic wastewater treatment works or other sludge or biosolids handling facility, regardless of ownership, used in the storage, treatment, recycling or reclamation of domestic sewage or land application of biosolids.

NN. ~~MM.~~ "UNRESTRICTED USE" means the use or distribution of biosolids for lawns or home gardens use.

OO. ~~NN.~~ "WETLANDS" means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal

circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

64.10 ADMINISTRATION

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- C. Issuance of Notices of Authorization for the Use and Distribution of Biosolids. The Division shall either issue or deny the Notice of Authorization for the Use and Distribution of Biosolids within thirty (30) days of its determination that the Letter of Intent for the Use and Distribution of Biosolids is complete. The applicant shall be notified in writing upon denial of the Notice of Authorization for the Use and Distribution of Biosolids of such action and the reason(s) for such action.
- D. Appeal of Issuance or Denial of Notice of Authorization for the Use and Distribution of Biosolids. The applicant or any other person, potentially adversely affected or aggrieved by Division issuance or denial of Letters of Intent for the Use and Distribution of Biosolids, may submit a request, within thirty (30) days of the date of issuance or denial, to the Director, Water Quality Control Division, for an adjudicatory hearing.
- (1) Any such adjudicatory hearing shall be conducted pursuant to the requirements of sections 24-4-105 and 25-8-401, et seq C.R.S. The Colorado Water Quality Control Act, section 25-8-100, et seq C.R.S., the Procedural Regulations for all Proceedings before the Water Quality Control Commission and the Water Quality Control Division, Regulation No. 21, 5 CCR 1002-21, and the State Administrative Procedures Act, section 24-4-100, et seq C.R.S., shall be applicable to all hearings held pursuant to this section.
 - (2) Only issues of law or fact raised by the applicant or other person prior to an adjudicatory hearing may be raised at the adjudicatory hearing. The person requesting the adjudicatory hearing shall have the burden of proof in all hearings held pursuant to this section.
 - (3) The adjudicatory hearing shall be before an administrative law judge or hearing officer.
- E. Terms and Conditions of Notices of Authorization for the Use and Distribution of Biosolids. Notices of Authorization for the Use and Distribution of Biosolids issued by the Division shall contain such terms, limitations, and conditions as are deemed necessary by the Division to ensure compliance with the criteria contained in these regulations, with applicable water quality standards for surface or groundwater and with control regulations except for those Notices of Authorization for the Use and Distribution of Biosolids which contain terms, limitations and criteria and a schedule of compliance as determined by the Division. At a minimum, all Notices of Authorization for the Use and Distribution of Biosolids shall contain the following:
- (1) issuance date;
 - (2) terms for modification, revocation, or termination;
 - (3) biosolids monitoring requirements;
 - (4) soils monitoring requirements, if applicable;
 - (5) other monitoring requirements, such as vegetation, subsurface soil, groundwater, and surface water monitoring, as determined by the Division to be applicable;
 - (6) grazing and cropping restrictions, if applicable;

- (7) reporting and recordkeeping requirements;
 - (8) labeling requirements, if applicable;
 - (9) public access restrictions, if applicable;
 - (10) a statement of applicable civil and criminal penalties; and
 - (11) a requirement to notify the Division of a site deactivation or a site closure as outlined in section 64.10(H) and (I) below.
- F. Notice of Authorization for the Use and Distribution of Biosolids - Duration. Except for terms and conditions incorporated into Colorado Discharge Permit System Regulations as authorized pursuant to section 64.11 below, Notices of Authorization for the Use and Distribution of Biosolids may be issued by the Division for any period except that no Notice of Authorization for the Use and Distribution of Biosolids, or any permit which is issued by the Division may allow application of biosolids in exceedance of the cumulative application limits as described in section 64.12(A) Table 2 of this regulation.
- G. Notice of Authorization for the Use and Distribution of Biosolids Required. No person shall use biosolids, distribute biosolids for use, or cause biosolids to be used for any beneficial use unless a Notice of Authorization for the Use and Distribution of Biosolids has been issued by the Division to a treatment works treating domestic sewage for such use or distribution.
- H. Notice of Authorization for the Use and Distribution of Biosolids. Site Deactivation: Persons no longer applying biosolids to an authorized application site and who no longer intend on applying biosolids to that site shall submit to the Division in writing a request to deactivate the application site. The Division will terminate the Notice of Authorization for the Use and Distribution of Biosolids and will follow-up with a written confirmation. Authorized sites that have not been reported in the annual report in accordance with section 64.17(B)(2) may be deactivated by the Division. Note: a deactivated site is still available for biosolids application by other persons.
- I. Notice of Authorization for the Use and Distribution of Biosolids. Site Closure: Persons no longer applying biosolids to an authorized application site because: 1) the site has reached or exceeded the Cumulative Pollutant Loading Rates outlined in section 64.12(A), Table 2 of this regulation, or 2) biosolids application has ceased due to land-use changes e.g. proposed development, shall submit to the Division in writing a request to close the application site. The Division will terminate the Notice of Authorization for the Use and Distribution of Biosolids and will follow-up with a written confirmation. A closed site is no longer available for biosolids application by any person.
- J. Notice of Authorization for the Use and Distribution of Biosolids. Site Transfer: An NOA may be transferred to a new person from a person no longer applying biosolids to an authorized application site and who no longer intends on applying biosolids to that site. A signed transfer document showing the agreement between the parties shall be submitted to the Division. The Division will complete the transfer and will follow-up with a written confirmation. Note: all the information relating to biosolids application for the site shall be transferred to the new persons.

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64.16 MONITORING AND ANALYSIS

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B. Soils Monitoring.

- (1) Collection and analysis of soils for the parameters identified in Table 9 shall be accomplished prior to the initial biosolids application and on a once per application basis thereafter. Sampling conducted subsequent to the initial sampling event shall occur after completion of the cropping cycle, i.e. after harvest, but prior to any additional application. For purposes of this section biosolids application shall be considered as one or more individual application of biosolids which are intended to supply the agronomic nitrogen requirement for the crop for a single cropping cycle.

TABLE 9. SOILS FERTILITY ANALYSES AND REPORTING UNITS			
PARAMETERS	UNITS		UNITS
		PARAMETERS	
pH	standard units	conductivity	mmhos/cm
ammonium as N	mg/kg	organic matter	percent
nitrate as N	mg/kg	available phosphorus	ppm extract
total phosphorus	mg/kg		

- (2) Analysis of soil samples for the parameters listed in Table 9 shall be performed using methods approved by the Division.
- (3) Collection and analysis of soils for the parameters identified in Table 10 shall be accomplished prior to biosolids application and once every ten years thereafter. Sampling conducted subsequent to the initial sampling event shall occur after completion of the cropping cycle, i.e. after harvest, but prior to any additional application. For purposes of this section, biosolids application shall be considered as one or more individual application of biosolids which are intended to supply the agronomic nitrogen requirement for the crop for a single cropping cycle. Analyses performed to satisfy the requirements of this paragraph and of Table 10 shall include determination of extractable metals concentrations.

TABLE 10 . SOILS METALS AND PHYSICAL CHARACTERISTICS REPORTING UNITS			
PARAMETERS	UNITS	PARAMETERS	UNITS
arsenic	mg/kg soil	mercury	mg/kg soil
cadmium	mg/kg soil	molybdenum	mg/kg soil
chromium	mg/kg soil	nickel	mg/kg soil
copper	mg/kg soil	selenium	mg/kg soil
lead	mg/kg soil	zinc	mg/kg soil

- (4) Samples collected to satisfy the requirements of paragraphs (1) and (3) of this subsection shall be composite samples made up of soil taken from no fewer than sixteen core holes per 320 acres and completely mixed to form a minimum one pound sample.

- (a) A minimum of one composite sample per 320 acres is required. The Division may require more intensive sampling in instances where multiple crops are cultivated or different soil types are present.
 - (b) Except as otherwise required in the Notice of Authorization for the Use or Distribution of Biosolids samples shall be collected to a depth of one foot and composited.
 - (c) Notwithstanding any other requirements of this section 64.16(B), the Division may require deep soil (nitrate) monitoring.
- (5) Analysis of soil samples for metals shall be performed utilizing ~~AB-DTPA extraction~~ USEPA Method 3050.
 - (6) The Division may specify more frequent monitoring than otherwise required in paragraphs (1), (3) and (4) above when biosolids are applied for the reclamation of disturbed land.

C. Additional Monitoring.

- (1) Additional monitoring, including but not limited to monitoring of additional biosolids or soils parameters, monitoring of biosolids or soils parameters more frequently than otherwise specified, deep soil monitoring, monitoring of groundwater, monitoring surface water, or monitoring of plant tissue may be required by the Division.

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WQCD PROPOSED

64.31 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE; February 8, 2010 Hearing; Amended March 9, 2010; Effective April 30, 2010

The provisions of Colorado Revised Statute Sections 25-8-202(1)(c) and (2), 25-8-205(1)(e), 25-8-501(1) and (2), and 25-8-509 C.R.S, provide the specific statutory authority for the Colorado Biosolids Regulations adopted by the Commission. The Commission has also adopted, in compliance with Colorado Revised Statute Section 24-4-203(4) C.R.S., the following Statement of Basis and Purpose.

BASIS AND PURPOSE

The Commission found that revisions to this regulation were necessary to add a new section, a new definition and modify the soil analysis method for metals. The Commission also changed the biosolids fees to fully fund the program.

The Commission found it necessary to add a section (Section 16.10(J)) to grant site transfers between persons to allow seamless site transfers. Site transfer will allow not only farmers to work with the biosolids applier of their choice, but will also help reduce the administrative tasks of the Division. In addition, a definition was added for the following term to correspond with changes made to the regulation: "Site Transfer." All remaining definitions were re-lettered accordingly.

Analysis of soil samples to be performed for metals in Section 64.16(B)(5) changed from AB-DTPA extraction to USAEPA Method 3050. Federal Regulation (40 CFR Part 503) requires USAEPA Method 3050 to be used for biosolids analysis. Also, to be able to compare the metals accumulated in the soil from biosolids applications and the amount of biosolids metals calculated as the cumulative pollutant loading rates, this change was necessary. This change will fully align the soil metals analysis method in this regulation with the Federal Regulation. The Commission found that this will help facilitate a seamless transition from EPA to State oversight when the Division obtains delegation of the biosolids program.

The Commission found that the increase of the biosolids fees from \$1.87 per dry short ton to \$2.40 per dry short ton was necessary to fully fund biosolids program. Program costs have been above the revenues the program has generated.