

STATE OF COLORADO

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Executive Director and Chief Medical Officer

WATER QUALITY CONTROL COMMISSION

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

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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 a temporary modification to the chronic arsenic standard for Boulder Creek segment 9 in the Classifications and Numeric Standards for South Platte River Basin, Laramie River Basin, Republican River Basin, Smoky Hill River Basin, Regulation #38 (5 CCR 1002-38).

The revisions to Regulation #38 proposed by the City of Boulder, along with a proposed Statement of Basis, Specific Statutory Authority, and Purpose, are attached to this notice as Exhibit 1. Anyone with questions regarding this proposal may contact Gabe Racz, Vranesh and Raisch, LLP, 303-443-6151, gr@vrlaw.com.

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: Tuesday, October 9, 2012
TIME: 1:00 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. Written submissions by interested members of the public that do not have party status or mailing list status (see below) should be sent in such a manner as to be received in the Colorado Department of Public Health and Environment's (Department's) mail room by September 26, 2012.

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.

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, July 24, 2012
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.wqcc@state.co.us, submitted by fax to 303-691-7702, mailed or otherwise conveyed so as to be received in the Department's mail room 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 an initial **Prehearing Statement from the City of Boulder, 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 Department's mail room no later than **July 31, 2012**; 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 Department's mail room no later than **August 28, 2012**.

For each deadline, the required number of hard copies of documents must be received in the Department's mail room 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.wqcc@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 Water Quality Control 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/wqcc/PubPart/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., **August 28, 2012**. Copies shall be submitted and distributed in the same manner as noted above for prehearing statements.

PREHEARING CONFERENCE:

DATE: Wednesday, September 12, 2012
TIME: 1:30 p.m.
PLACE: Board 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 August 28, 2012 may be submitted by the City of Boulder, the Division and anyone seeking party status or mailing list status. Any such rebuttal statements must be received in the Department's mail room by **September 26, 2012**. An original and 13 copies of written rebuttal statements must be received in the Department's mail room 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, 25-8-203, 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 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 Department's mail room 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 12th day of June 2012 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Paul D. Frohardt, Administrator

EXHIBIT 1
City of Boulder

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL COMMISSION

5 CCR 1002-38

REGULATION NO. 38

CLASSIFICATIONS AND NUMERIC STANDARDS

FOR

SOUTH PLATTE RIVER BASIN, LARAMIE RIVER BASIN,
REPUBLICAN RIVER BASIN, SMOKY HILL RIVER BASIN

REGION: 3 AND 4	Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
			PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS µg/l			
BASIN: Boulder Creek									
Stream Segment Description									
9. Mainstem of Boulder Creek from a point immediately above the confluence with South Boulder Creek to the confluence with Coal Creek.		Aq Life Warm 1 Recreation E Water Supply Agriculture	T=TVS(WS-II) oC D.O.=5.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH ₃ (ac/ch)=TVS Cl ₂ (ac)=0.019 Cl ₂ (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO ₂ =0.05 NO ₃ =10 Cl=250 SO ₄ =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS Fe(ch)=WS(dis)	Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Mn(ch)=WS(dis) Hg(ch)=0.01(Tot) Ni(ac/ch)=TVS	Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary modifications: Cu (ac/ch)=Current Condition. (Type iii). Expiration date of 12/31/2015. <u>As(ch)=Current Condition. Expiration date of 12/31/2016.</u>

PROPOSED BY
City of Boulder

38.82 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY AND PURPOSE: OCTOBER 9, 2012 RULEMAKING FOR BOULDER CREEK SEGMENT 9; EFFECTIVE DECEMBER 31, 2012

The provisions of C.R.S. 25-8-202(1)(a), (b) and (2); 25-8-203; 25-8-204; and 25-8-402; provide the specific statutory authority for adoption of these regulatory amendments. The Commission also adopted the following statement of basis and purpose pursuant to C.R.S. 24-4-103(4).

BASIS AND PURPOSE

The Commission adopted a temporary modification for arsenic set at “current condition” for Boulder Creek Segment 9, pursuant to Regulation 31.7(3)(a)(i)&(ii)(A), (B), and (C). This temporary modification is set to expire on 12/31/2016.

Monitoring data indicate that ambient concentrations of arsenic in Segment 9 exceed “water + fish” table value standards and there is significant uncertainty as to the source and cause (i.e., naturally occurring or irreversible human-induced) of elevated arsenic concentrations in the stream. There is also uncertainty regarding the water quality standard necessary to protect current and future uses. Finally, there is uncertainty regarding the timing of implementing attainable source controls or treatment. The City of Boulder, which is authorized to discharge into Segment 9 under a CDPS permit, demonstrated that it has a predicted water quality effluent limit compliance problem.

The temporary modification is set at “current condition.” The Commission intends that, when implementing this temporary modification in a CDPS permit and interpreting the term “current condition,” the Division will assess the current effluent quality, recognizing that it changes over time due to variability in treatment plant removal efficiency and influent loading from natural sources in the raw drinking water sources, industrial, commercial, and residential sources. Maintaining the current condition will include maintaining total loading from commercial and industrial contributors at the levels existing on the date of adoption of the temporary modification.

The Commission adopted this temporary modification to allow time for the City of Boulder to continue a comprehensive monitoring program to identify the sources of arsenic in the City of Boulder raw drinking water sources and Segment 9, and to determine the extent these sources represent naturally occurring or irreversible human-induced conditions. The adopted temporary modification also will allow time to evaluate a recalculated arsenic standard for possible future adoption as a site-specific standard for Segment 9.