

STATE OF COLORADO

John W. Hickenlooper, Governor
Christopher E. Urbina, MD, MPH
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 PROCEEDING BEFORE THE COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of the adoption of revisions to Section 34.6 in the Classifications and Numeric Standards for San Juan River and Dolores River Basins, Regulation #34 (5 CCR 1002-34) and Section 35.6 in the Classifications and Numeric Standards for Gunnison and Lower Dolores River Basins, Regulation #35 (5 CCR 1002-35).

The revisions to Regulations #34 and #35 proposed by the Water Quality Control Division as staff to the Commission, along with proposed Findings in Support of Adoption of Emergency Revisions and Statements of Basis, Specific Statutory Authority, and Purpose, are attached to this notice as Exhibits 1 and 2, respectively. 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.

It is anticipated that the proposed revisions to zinc standards equations in Regulation #34 would be adopted on both an emergency and a permanent basis, so that such revisions become effective immediately. It is anticipated that the proposed temperature standard revisions for both regulations would be adopted on a permanent, non-emergency basis.

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 19, 2013. In addition, any written rebuttal statements must be received in the Commission Office by April 16, 2013.

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 13, 2013
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)(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 25th day of January 2013 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Paul D. Frohardt, Administrator

EXHIBIT 1

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WATER QUALITY CONTROL COMMISSION

5 CCR 1002-34

REGULATION NO. 34

CLASSIFICATIONS AND NUMERIC STANDARDS

FOR

SAN JUAN AND DOLORES RIVER BASINS

34.6 TABLES

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(3) Table Value Standards

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Temperature

TEMPERATURE TIER	TIER CODE	SPECIES EXPECTED TO BE PRESENT	APPLICABLE MONTHS	TEMPERATURE STANDARD (°C)	
				MWAT	DM
Cold Stream Tier 1	CS-I	brook trout, cutthroat trout	June – Sept.	17.0	21.7
			Oct. – May	9.0	13.0
Cold Stream Tier 2	CS-II	all other cold-water species	April – Oct.	18.3	23.9
			Nov. – March	9.0	13.0
Cold Lakes	CL	brook trout, brown trout, cutthroat trout, lake trout, rainbow trout, Arctic grayling, sockeye salmon	April – Dec.	17.0	21.2
			Jan. – March	9.0	13.0
Cold Large Lakes (>100 acres surface area)	CLL	rainbow trout, brown trout, lake trout	April – Dec.	18.3	23.8
			Jan. – March	9.0	13.0
Warm Stream Tier 2	WS-II	brook stickleback, central stoneroller, creek chub, longnose dace, Northern redbelly dace, finescale dace, razorback sucker, white sucker	March – Nov.	27.5	28.6
			Dec. – Feb.	14.3	15.9
Warm Stream Tier 3	WS-III	all other warm-water species	March – Nov.	28.7	31.8
			Dec. – Feb.	44.3 <u>13.8</u>	45.9 <u>14.3</u>
Warm Lakes	WL	black crappie, bluegill, common carp, gizzard shad, golden shiner, largemouth bass, Northern pike, pumpkinseed, sauger, smallmouth bass, spottail shiner, striped bass, tiger muskellunge, walleye, wiper, white bass, white crappie, yellow perch	April – Dec.	26.3	29.5
			Jan. – March	13.2	14.8

Uranium

$$\text{Acute} = e^{(1.1021[\ln(\text{hardness})]+2.7088)}$$

$$\text{Chronic} = e^{(1.1021[\ln(\text{hardness})]+2.2382)}$$

Zinc

$$\text{Acute} = 0.978 * e^{\frac{(0.8525[\ln(\text{hardness})]+1.0617) * (0.9094[\ln(\text{hardness})]+0.9095)}{(0.8525[\ln(\text{hardness})]+0.9109) * (0.9094[\ln(\text{hardness})]+0.6235)}}$$

$$\text{Chronic} = 0.986 * e^{\frac{(0.8525[\ln(\text{hardness})]+1.0617) * (0.9094[\ln(\text{hardness})]+0.9095)}{(0.8525[\ln(\text{hardness})]+0.9109) * (0.9094[\ln(\text{hardness})]+0.6235)}}$$

if hardness less than ~~113~~ 102 mg/l CaCO₃

$$\text{Chronic (sculpin)} = e^{\frac{(2.227[\ln(\text{hardness})]-5.604) * (2.140[\ln(\text{hardness})]-5.084)}{(2.227[\ln(\text{hardness})]-5.604) * (2.140[\ln(\text{hardness})]-5.084)}}$$

WATER QUALITY CONTROL DIVISION **PROPOSAL**

34.38 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY AND PURPOSE and FINDINGS IN SUPPORT OF ADOPTION OF EMERGENCY REVISIONS, MAY13, 2013 **WRITTEN COMMENT RULEMAKING**

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 in compliance with 24-4-103(4) C.R.S. the following statement of basis and purpose.

BASIS AND PURPOSE (for changes effective June30, 2013)

The Commission adopted revisions to Regulation #34 after a rulemaking hearing in September 2012. Changes to two table value criteria that were made in the 2010 Basic Standards hearing were inadvertently overlooked at the time the proposal for that rulemaking was developed: revisions to the zinc standard equations and temperature values for the Warm Stream Tier 2 subclass. In today's action the Commission adopted the corrections to the table values for these parameters in section 34.6.

The changes to the zinc equations were adopted as an emergency temporary action (see below) and as a permanent action. Since this is the initial implementation of the new temperature standards in this basin, it is not anticipated that the changes to the temperature table values will result in adverse impacts in any permitting action or to the public.

FINDINGS IN SUPPORT OF ADOPTION OF EMERGENCY REVISIONS (for changes effective immediately)

The Commission adopted the corrections to the zinc table value equations as an emergency action, making the revisions effective immediately. If the Commission does not adopt revisions as an emergency, the effective date would be delayed and discharge permits with zinc limits may be issued incorrectly, which would result in an unnecessary adverse impact on the public. The Commission finds that these amount to exigent circumstances which warrant emergency adoption of these interim revisions to the relevant water quality standards. The Commission further finds that these emergency revisions are imperatively necessary to preserve public health and welfare and that compliance with the procedural requirements of section 24-4-103, C.R.S., resulting in further delay, would be contrary to the public interest.

The changes to the zinc equations are to be effective immediately upon adoption by the Commission, and continue in effect until the effective date of permanent regulations.

EXHIBIT 2

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WATER QUALITY CONTROL COMMISSION

5 CCR 1002-35

REGULATION NO. 35

CLASSIFICATIONS AND NUMERIC STANDARDS FOR GUNNISON AND LOWER DOLORES RIVER BASINS

35.6 TABLES

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(3) Table Value Standards

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Temperature

TEMPERATURE TIER	TIER CODE	SPECIES EXPECTED TO BE PRESENT	APPLICABLE MONTHS	TEMPERATURE STANDARD (°C)	
				MWAT	DM
Cold Stream Tier 1	CS-I	brook trout, cutthroat trout	June – Sept.	17.0	21.7
			Oct. – May	9.0	13.0
Cold Stream Tier 2	CS-II	all other cold-water species	April – Oct.	18.3	23.9
			Nov. – March	9.0	13.0
Cold Lakes	CL	brook trout, brown trout, cutthroat trout, lake trout, rainbow trout, Arctic grayling, sockeye salmon	April – Dec.	17.0	21.2
			Jan. – March	9.0	13.0
Cold Large Lakes (>100 acres surface area)	CLL	rainbow trout, brown trout, lake trout	April – Dec.	18.3	23.8
			Jan. – March	9.0	13.0
Warm Stream Tier 2	WS-II	brook stickleback, central stoneroller, creek chub, longnose dace, Northern redbelly dace, finescale dace, razorback sucker, white sucker	March – Nov.	27.5	28.6
			Dec. – Feb.	14.3	15.9
Warm Stream Tier 3	WS-III	all other warm-water species	March – Nov.	28.7	31.8
			Dec. – Feb.	44.3 13.8	45.9 14.3
Warm Lakes	WL	black crappie, bluegill, common carp, gizzard shad, golden shiner, largemouth bass, Northern pike, pumpkinseed, sauger, smallmouth bass, spottail shiner, striped bass, tiger muskellunge, walleye, wiper, white bass, white crappie, yellow perch	April – Dec.	26.3	29.5
			Jan. – March	13.2	14.8

WATER QUALITY CONTROL DIVISION **PROPOSAL**

35.38 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY AND PURPOSE, MAY13, 2013 **WRITTEN COMMENT RULEMAKING**

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 in compliance with 24-4-103(4) C.R.S. the following statement of basis and purpose.

BASIS AND PURPOSE (for changes effective June 30, 2013)

The Commission adopted revisions to Regulation #35 after a rulemaking hearing in September 2012. Changes to table value criteria for temperature Warm Stream Tier 2 subclass that were made in the 2010 Basic Standards hearing were inadvertently overlooked at the time the proposal for that rulemaking was developed. In today's action the Commission adopted the corrections to the table values for this parameter in section 34.6.