



COLORADO

Water Quality
Control Commission

Department of Public Health & Environment

NOTICE OF PUBLIC RULEMAKING HEARING BEFORE THE COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of the adoption of revisions to the Housed Commercial Swine Feeding Operations in section 61.13 of the Colorado Discharge Permit System, Regulation #61 (5 CCR 1002-61).

The revisions to Regulation #61 proposed by the Environmental Agriculture Program of the Colorado Department of Public Health and Environment, along with proposed Statement of Basis, Specific Statutory Authority and Purpose language, are attached to this notice as Exhibit 1. In this attachment, 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 RESPONSIVE COMMENTS:

Initial written comments and evidence with respect to the proposed amendments are due by **October 29, 2014**. In addition, any written responsive comments must be received by **November 24, 2014**.

Anyone providing written comments and evidence or responsive comments should deliver

1) an electronic copy to cdphe.wqcc@state.co.us AND

2) 16 paper copies to the commission office or department mail room by the due date.

Anyone for whom the expense of providing paper copies presents an economic hardship should contact the commission office to make alternative arrangements. All written comments will be available to the public on the commission's web site.

HEARING SCHEDULE:

DATE: Monday, December 8, 2014
TIME: 1:30 p.m.
PLACE: Florence Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246

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)(d) and (2); 25-8-401; 25-8-501.1; and 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 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 3rd day of September 2014 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Trisha Oeth, 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 HOUSED COMMERCIAL SWINE FEEDING OPERATIONS

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61.13(3) APPLICATIONS AND REQUIRED PLANS

- (f) Swine Waste Management Plan – Any permit issued to a housed commercial swine feeding operation (“HCSFO”) must require compliance with the terms of the HCSFO’s site-specific swine waste management plan. The terms of the swine waste management plan are the information, protocols, best management practices, and other conditions in the swine waste management plan determined by the Division to be necessary to meet the requirements of subsections 61.13(3)(f), 61.13(4)(e) and 61.13(4)(f)(iii). A housed commercial swine feeding operation (“HCSFO”) shall develop and implement a complete swine waste management plan as of the date of permit coverage. ~~The swine waste management plan must comply with the provisions of subsections 61.13(4)(e) and 61.13(4)(f)(iii).~~ The plan shall be prepared under the supervision of a professional engineer registered in the State of Colorado, by the Natural Resources Conservation Service, by a qualified Cooperative Extension Agent, by a certified crop advisor certified by the American Society of Agronomy or by an independent crop consultant certified by the National Alliance of Independent Crop Consultants. The plan shall include sufficient site-specific hydrologic and agronomic information, supplemented by other scientifically supported information, to document that land application of all residual solids and swine feeding process wastewater will be conducted and sustained at or below the agronomic rate of application for crops or vegetation to be grown on the application site(s). The plan shall quantify the disposition of all residual solids and swine feeding process wastewater produced at the facility whether put to beneficial use through land application on-site or transported off-site. The swine waste management plan must identify and address the following:

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ENVIRONMENTAL AGRICULTURE PROGRAM PROPOSED

61.67 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE – DECEMBER 8, 2014 RULEMAKING HEARING; EFFECTIVE DATE JANUARY 30, 2015

The provisions of 25-8-202(1)(d) and (2), 25-8-401, 25-8-501.1, and 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 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

In 2008, the U.S. Environmental Protection Agency (EPA) revised the federal Concentrated Animal Feeding Operation (CAFO) Rule in response to federal litigation and added a requirement for the terms of the nutrient management plan to be incorporated into the terms of the permit. In August 2011, the Commission adopted revisions to Regulation #61 in response to changes made to the 2008 federal CAFO rule by EPA. After review of the provisions adopted in 2011, the Attorney General's Office concluded that, although required by the permits, the current housed commercial swine feeding operations (HCSFO) regulatory provisions do not require that terms of the nutrient management plans [i.e., swine waste management plan (SWMP)] be incorporated into permits.

In order to ensure that the provisions of Regulation #61 are as stringent as the provisions of the federal CAFO Rule, the Commission adopted revisions in subsection 61.13(3)(f) requiring that any permit issued to a HCSFO must require compliance with the terms of the HCSFO's site-specific SWMP.