



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 Procedural Rules, Regulation #21 (5 CCR 1002-21).

The revisions to Regulation #21 proposed by the Water Quality Control Division, 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 **January 25, 2015**. In addition, any written responsive comments must be received by **February 25, 2015**.

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: Tuesday, March 10, 2015
TIME: 9:30 a.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 section 25-8-401 (2), 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 11th day of November 2014 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Trisha Oeth, Administrator

EXHIBIT 1
WATER QUALITY CONTROL DIVISION

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

PROCEDURAL RULES

5 CCR 1002-21

21.3 Rulemaking Procedures

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E. Prehearing Conference

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2) In accordance with, and by the deadlines specified in the hearing notice, each applicant for party status, where applicable, the Division, and every interested person who intends to call witnesses at the hearing and offer exhibits into the record of the hearing, shall provide one PDF version of a prehearing statement to the Water Quality Control Commission. In addition, everyone who submits a prehearing statement electronically shall may be required to provide paper copies to the Commission Office in the number and by the deadline established in hearing notice. The hearing notice may establish different deadlines for prehearing statements by rulemaking proponents and by those responding to proposals. A prehearing statement shall contain the following:

- a) A specific statement of the factual and legal claims asserted or a list of the issues to be resolved;
- b) Copies of all exhibits to be introduced at the hearing;
 - i) Where the nature of an exhibit is such that providing copies would be unduly burdensome, the prehearing statement shall describe the exhibit and indicate that the exhibit shall be available for inspection at a specified location prior to the hearing. Any such exhibit shall where feasible be made available electronically and also be available for inspection at the prehearing conference and at the hearing, and shall become part of the record of the hearing.
 - ii) Where a party's or any governmental entity's position or proposal in a hearing is based in part on analysis of water quality data, the party or governmental entity shall submit its analysis of the data and a description of the data upon which the analysis is based, but is not required to submit the raw data into the hearing record. However, the party or governmental entity shall provide an electronically manipulable copy of its data to the Division and any party that requests it. If the Division or any party or governmental entity chooses to submit some or all of the data into the hearing record, it must be provided in PDF format. the data exhibit may be provided in any electronic format, notwithstanding the requirement to submit the prehearing statement in PDF format as specified above.
- c) A list of witnesses to be called and a brief description of their testimony;

- d) Any alternative proposal to the proposed rule (Note: The submission of a proposed statement of basis and purpose and regulatory analysis for any alternative proposal is encouraged but not required);
- e) All written testimony to be offered into evidence at the hearing.

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M. Procedures to be Followed in Classifying State Waters, Setting Water Quality Standards and Adopting Control Regulations

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- 3) Any person desiring to propose a standard or regulation differing from the standard or regulation proposed by the Commission shall email one PDF version of such other written proposal and, in accordance with the notice of proposed rulemaking may be required to provide paper copies thereof to the Commission as part of a prehearing statement in accordance with section 21.3(E), or, if party status is not applied for, by submission to the Commission Office prior to the prehearing conference. When on file, such proposal shall be open for public inspection.

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21.4 Adjudicatory Procedures

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E. Prehearing Conference

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- 2) Seven days prior to any prehearing conference, or at such other time as stated in the hearing notice, each party or applicant for party status shall provide one PDF version of a prehearing statement to every other party or applicant for party status, (one copy to the hearing officer, as appropriate), and for hearings before the Commission, to the Commission, the Assistant Attorney(s) General, and the Director of the Water Quality Control Division. In addition, each party or applicant for party status ~~shall~~may be required to provide paper copies to the Commission Office in the number and by the deadline established in the hearing notice. The prehearing statement shall contain the following:

- a) A specific statement of the factual and legal claims asserted;
- b) Copies of all exhibits to be introduced at the hearing;
- c) A list of witnesses to be called and a brief description of their testimony, or written testimony for each witness if required by the hearing notice;
- d) Proposed findings of fact and conclusions of law, unless a later date for this submission is specified in the hearing notice.

The notice may specify separate deadlines for submission of prehearing statements and rebuttal statements by proponents and opponents of an appeal.

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PROPOSED BY
WATER QUALITY CONTROL DIVISION

21.40 Statement of Basis, Specific Statutory Authority and Purpose (March 13, 2015 Rulemaking, Effective April 30, 2015)

The provisions of sections 25-8-202 and 401 provide the specific statutory authority for adoption of these regulatory requirements. The Commission also adopted the following statement of basis and purpose.

Basis and Purpose

In this rulemaking, the Commission amended section 21.3(E)(2)(b)(ii) to allow more flexibility in the format in which raw data can be submitted into the hearing record. The requirement that data exhibits be provided to the Commission office in PDF format was modified to allow data exhibits in any electronic format.

In addition, the Commission amended provisions regarding the format in which material must be submitted to the Commission office. The Commission revised language to allow the hearing notice to specify whether or not a paper copy of material must be submitted.