



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 the Colorado Discharge Permit System Regulations, Regulation #61 (5 CCR 1002-61). Revisions proposed by the Water Quality Control Division, along with a proposed Statement of Basis, Specific Statutory Authority and Purpose, are attached to this notice as Exhibit 1.

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.

SCHEDULE OF IMPORTANT DATES

Party status requests due	07/18/2018 5 pm	Additional information below.
Proponent's prehearing statement due	07/25/2018 5 pm	Additional information below.
Responsive prehearing statements due	08/22/2018 5 pm	Additional information below.
Rebuttal statements due	09/19/2018 5 pm	Additional information below.
Last date for submittal of motions	09/21/2018 5 pm	Additional information below.
Notify commission office if participating in prehearing conference by phone	09/24/2018 by noon	Send email to cdphe.wgcc@state.co.us with participant(s) name(s)
Prehearing Conference (mandatory for parties)	09/25/2018 2:00 pm	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246 Call-in: 1-857-216-6700, Code: 425132
Rulemaking Hearing	10/09/2018 1:00 pm	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246

HEARING SUBMITTALS:

For this hearing, the commission will receive all submittals electronically. Submittals must be provided as PDF documents, except for raw data exhibits which may be provided as Excel

workbooks. Submittals may be emailed to cdphe.wgcc@state.co.us, provided via an FTP site, CD or flash drive, or otherwise conveyed to the commission office so as to be received no later than the specified date.

PARTY STATUS:

Party status requests must be in writing and must provide:

- the organization's name,
- one contact person,
- a mailing address,
- a phone number, and
- email addresses of all individuals associated with the party who wish to be notified when new submittals are available on the commission's website for review.

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, along with an explanation of the alleged harm, in their party status request.

PREHEARING AND REBUTTAL STATEMENTS:

Each party must submit a prehearing statement: parties that have proposed revisions attached as exhibits to the notice must submit a proponent's prehearing statement. All other parties must submit a responsive prehearing statement. Proponents may also submit responsive prehearing statements when there are multiple proposals attached to the notice.

Each prehearing and rebuttal statement must be provided as a separate PDF document from any accompanying written testimony or exhibits.

Following the rebuttal statement due date, no other written materials will be accepted from parties except for good cause shown.

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 will not be permitted unless authorized by the commission.

PREHEARING CONFERENCE:

Attendance at the prehearing conference is mandatory for all persons requesting party status. Parties needing to participate by telephone are encouraged to notify the commission office prior to the prehearing conference. Remote participants can call 1-857-216-6700 and enter the conference code 425132.

Following the cut-off date for motions, no motions will be accepted, except for good cause shown.

PUBLIC PARTICIPATION ENCOURAGED:

The commission encourages input from non-parties, either orally at the hearing or in writing prior to the hearing. Written submissions should be emailed to cdphe.wqcc@state.co.us by September 26, 2018.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(d) and 25-8-501 to 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.

Dated this 11th day of June, 2018 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

A handwritten signature in purple ink, appearing to read "Trisha Oeth", is written over a horizontal line.

Trisha Oeth, Administrator

EXHIBIT 1
WATER QUALITY CONTROL DIVISION

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 61 - COLORADO DISCHARGE PERMIT SYSTEM

5 CCR 1002-61

....

61.1(2) INCORPORATION BY REFERENCE

Throughout these regulations, standards and requirements promulgated by the U.S. Environmental Protection Agency have been adopted and incorporated by reference. The federal references cited herein include only those versions that were in effect as of ~~June 14, 2016~~October 9, 2018, and not later amendments to the incorporated material.

All material incorporated by reference is available at no cost in the online edition of the Code of Federal Regulations (CFR) hosted by the U.S. Government Printing Office. Requests for public inspection of materials incorporated by reference in this regulation should be made to the Permits Section, Water Quality Control Division, at the Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

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61.2 DEFINITIONS

NOTE: Several terms used in this regulation that are not defined below are defined in the Colorado Water Quality Control Act, 25-8-103, C.R.S.

- (1) "ACT" means the Colorado Water Quality Control Act as from time to time amended, section 25-8-101 et seq., C.R.S.

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61.3(2) APPLICABILITY - STORMWATER

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- (f) Stormwater Discharges for ~~Which~~which a Permit is Required - Phase II. The following discharges composed entirely of stormwater are required to be covered under a permit.

....

- (h) Discharges composed entirely of stormwater are conditionally excluded from stormwater permitting by way of not meeting the definition of "stormwater discharges associated with industrial activity" if there is "no exposure" of industrial materials and/or activities to precipitation, snowmelt and/or runoff, and the discharger satisfies the conditions in paragraphs (h)(i) through

(h)(iv) of this section. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to precipitation, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(i) To qualify for this exclusion, the discharger must:

(A) Provide a storm resistant shelter to protect industrial materials and activities from exposure to precipitation, snow-melt, and runoff;

....

(iv) Certification. The no exposure certification requires the submission of the following information, at a minimum, to aid the Division in determining if the facility qualifies for the no exposure exclusion:

....

(D) All "no exposure" certifications must include the following certification statement, and be signed in accordance with the signatory requirements of section 61.4(1)(e): "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from CDPS stormwater permitting; and that there are no discharges of stormwater contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph (h)(ii) of this section). I understand that I am obligated to submit a no exposure certification form once every five years to the Division and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the Division, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under a CDPS permit prior to any point source discharge of stormwater from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

....

61.4(1) APPLICATION REQUIREMENTS - GENERALLY

....

(h) Any person signing a document under section 61.4 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- (i) Reserved. By January 1, 2020, all permit applications for certifications under a general permit must be submitted electronically using the Division's online system, unless otherwise directed by the Division.

....

- (k) The Division may request such additional information as is reasonably necessary in order for it to evaluate the discharge, including but not limited to the following:

....

- (ix) Any currently available information regarding the impact from surface waters, to which the treatment facility discharges, on aquifers which may be recharged by such surface waters.

- (x) Any quantitative information that is required to be submitted as part of the permit application, or are submitted in response to a Division request for additional information, must be collected in accordance with sufficiently sensitive analytical methods defined by 40 C.F.R. 122.21(e)(3). An applicant who wishes to submit information to the Division that was with methods other than sufficiently sensitive analytical methods must notify the Division of the alternative methodology used.

....

61.4(2) APPLICATION REQUIREMENTS - EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURE DISCHARGES

Existing manufacturing, commercial, mining, and silviculture discharges applying for permits, except for those facilities which discharge only non-process wastewater, shall provide the following information to the Division, using the application forms provided by the Division.

....

- (h) When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 C.F.R. Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method.

....

- (vii) The Division may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow-melt or rain-fall),

protocols for collecting samples under 40 C.F.R. Part 136, and additional time for submitting data on a case-by-case basis.

....

61.4(4) APPLICATION REQUIREMENTS FOR, MANUFACTURING, COMMERCIAL MINING AND SILVICULTURAL FACILITIES WHICH DISCHARGE ONLY NON-PROCESS WASTEWATER

Except for stormwater discharges, all manufacturing, commercial, mining, and silvicultural dischargers applying for permits which discharge only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the Division, using application forms provided by the Division.

....

(d) Effluent characteristics.

....

(iii) If the applicant is a new discharger, the applicant must provide quantitative data in accordance with subsection (4) no later than two years after commencement of discharge. However, the applicant need not perform tests which ~~he has~~ been already performed and reported under the discharge monitoring requirements of the applicant's permit.

(iv) The requirements of subsections (a) and (c) do not apply for pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present ~~Net-net~~ credit may be provided for the presence of pollutants in intake water if the requirements are met.

(e) Flow. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for stormwater runoff, leaks, or spills).

(f) Treatment system. A brief description of any system used or to be used.

(g) Optional information. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining "net" credits pursuant to section 61.8(2)(d).

....

61.4(6) APPLICATION REQUIREMENTS FOR NEW AND EXISTING POTWS

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(d) Each applicant required to perform whole effluent toxicity testing pursuant to paragraph (b) of this section must provide:

(i) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(ii) Results from four tests performed at least annually in the four and one half year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the permitting authority.

....

61.5(2) PUBLIC NOTICE AND COMMENT - DRAFT PERMITS

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(d) Interested persons may submit written comments to the Division on the draft permit, and may request a public meeting pursuant to section 61.5(3). The period for public comment shall close thirty (30) days from the date of notice of the permit application and the Division's draft permit, unless extended in section 61.5(2)(d)(i)(A) or if a public meeting is held on the application and draft permit. ~~except that, if~~ a public meeting is held on the application and draft permit, the period for public comment shall close sixty (60) days from the date of notice.

(i) Additional Discretionary public comment periods.

(A) Extension of comment period. A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of sections 61.5 and 61.7. Additional time may be granted to the extent that a commenter who requests additional time demonstrates the need for such time and the extension does not unduly delay permit issuance.

(B) Reopening of comment period. In some cases, the Division may reopen or extend the public comment period for limited purposes to expedite decision-making. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under section 61.5(2)(e) shall define the scope of the reopening. If the comment period is reopened, it will be for a minimum of thirty (30) days from the date of public notice publication of any revised permitting documents. A commenter may request an extension of the comment period, as necessary, pursuant to section 61.5(2)(d)(i)(A).

(C) Responsive comment period. The Division may also establish a responsive period of public comment, no less than 10 days in length, in which any person may file a written response to the material filed by any other person during the comment period. This period would be granted in addition to any time granted under the public comment period in sections 61.5(2)(d)(i) and 61.5(2)(d)(i)(A).

(ii) If any data information or arguments submitted during the public comment period, including information or arguments required under section 61.7(c), appear to raise substantial new questions concerning a permit, the Division may take one or more of the below actions. Public notice of any of the below actions shall be issued under section 61.5(2)(e).

(A) Prepare a new or revised draft permit, fact sheet or water quality assessment under §61.5(2)(b) and reopen the comment period under §61.5(2)(d);

(B) Reopen or extend the comment period under §61.5(2)(d) to give interested persons an opportunity to comment on the information or arguments submitted; or

(C) Establish a responsive comment period

(e) Public Notice of every complete application for a discharge permit, and of every draft permit and, where applicable, of the Division's preliminary antidegradation determination pursuant to the

Procedural Rules, Regulation No. 21, section 16, shall be transmitted to the applicant and circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the draft permit. Procedures for the circulation of public notice shall include at least the following:

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61.5(4) PUBLIC ACCESS TO INFORMATION

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- (c) The Division shall provide facilities for the inspection of information relating to discharge permits and their applications and shall ~~insure~~ ensure to the best of its ability that State employees act on a request for such inspection promptly without undue requirements or restrictions.
- (d) The Division shall either ensure that a machine or device for copying of papers and documents is available for a reasonable fee or otherwise provide for coordination with copying facilities or services such that the request for copies of non-confidential documents may be honored within a reasonable period of time.

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61.7 PERMIT ADJUDICATORY HEARINGS

- (a) The ~~application applicant~~ or any other person, affected or aggrieved by the Division's final determination, may demand an adjudicatory hearing within thirty (30) days of the issuance of the final permit determination.
- (b) Such hearing shall be conducted pursuant to the requirements of sections 24-4-105 and 25-8-401, et seq, C.R.S.
- (c) Only issues of law or fact raised by the applicant or other person prior to an adjudicatory hearing during the public comment period (including any public hearing) or not reasonably ascertainable from the draft permit may be raised at the adjudicatory hearing. The request for hearing must include a demonstration that each issue being raised in the request for hearing was raised during the public comment period (including any public hearing). For each issue raised that was not raised previously, the request for hearing must include an explanation as to why such issues were not required to be raised during the public comment period. The permit will become effective in its entirety thirty (30) days after issuance, or on such later date as specified by the Division, unless a stay is granted in accordance with section 25-8-404 (3) and (4) or section 25-8-406 of the Colorado Water Quality Control Act or the provisions of the State Administrative Procedures Act, whichever is applicable.
- (d) The person requesting the adjudicatory hearing shall have the burden of proof in all hearings held pursuant to this section, except that the Division shall have the burden of proof under the following circumstances:
 - (i) Where the Division initiated the permit revocation or modification; and
 - (ii) Where the Division denies renewal of a permit or changes the terms of a renewed permit and that denial or change is not based either upon significant changes in the facts relevant to water quality considerations or upon changes in the applicable statutes ~~of or~~ regulations.

- (e) The Colorado Water Quality Control Act, the Procedural Rules for all proceedings before the Water Quality Control Commission and the Water Quality Control Division and the State Administrative Procedures Act shall be applicable to all hearings held pursuant to this section.

....

61.8(2) DEFINITION OF EFFLUENT LIMITATIONS

Effluent limitations for each permit will, as a minimum, include the following effluent limitations and standards. Effluent limitations for land disposal systems shall, as a minimum, meet the applicable provisions of the "Regulations for Effluent Limitations" (Regulation 62, 5 CCR 1002-62) except that the limitation for residual chlorine at section 4(d) shall not apply.

....

- (c) Wasteload Allocation and Trading

....

- (iii) Where the discharge contains a pollutant for which the receiving waters are impaired and a TMDL is required, a permit may be extended with the permittee's concurrence based on the imminent completion of the TMDL and/or other factors deemed relevant by the Division. If, in the Division's judgment, an extension is not appropriate, a renewal permit may be issued that allows the discharge to continue at a level up to the existing permitted point source load. Where the Commission has adopted a temporary modification for a parameter for which the segment receiving the discharge is impaired, effluent limits shall be set in accordance with the provisions of Regulation No. 31.

Within a reasonable time of EPA's approval of the TMDL, the Division shall reopen or reissue the permit and incorporate effluent limits consistent with the wasteload allocation established under the TMDL. Where necessary, the Division shall also include interim limits and a schedule of compliance to attain such limits.

....

- (l) The "Colorado River Salinity Standards" state that "the objective for discharges shall be a no-salt return policy whenever practicable." This is the policy that shall be followed in issuing CDPS permits for all new discharges, and upon reissuance of permits for all existing discharges. All CDPS permits for discharges to surface waters within the Colorado River Basin shall contain limitations and monitoring conditions consistent with those specified below.

....

- (v) Discharge of Once-Through Non-Contact Cooling Water

....

- (B) Permits shall be authorized for discharges of water that has been used for once-through non-contact cooling purposes based upon a finding that the returned water does not contribute to the loading of salts or the concentration of salts in the waters of the receiving stream in excess of a de ~~minimum~~ minimus-minimis amount.

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61.8(4) MONITORING, RECORDING AND REPORTING

....

(d) All permits shall specify required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring. Monitoring results required by the permit shall be reported on a discharge monitoring report (DMR) or other forms provided or specified by the Division electronically using the eDMR system unless a waiver from eDMR reporting requirements is obtained by the Division.

(i) Permanent waivers will only be granted by the division if the permittee submits a written request demonstrating that they do not have access to electronic reporting because they are a member of a religious community that chooses not to use certain modern technologies like electricity or computers.

(ii) Temporary electronic reporting waivers cannot exceed five years. They will be granted at the discretion of the division upon request of a CDPS permittee. Approval or denial of the request for temporary waiver will be provided in writing and based on the information provided in the application and justification of the requestor's need. A waiver granted by the division that extends beyond the length of a permit term will remain applicable through the administrative extension of a permit.

(iii) Episodic waivers from electronic reporting for 60 days or less may be granted by the division at the division's discretion for emergencies, situations beyond the permittee's control, and system outages. If the delay is due to a system outage or a situation internal to the division that lasts a week or more, late reporting violations will be waived for DMRs submitted electronically within 1 week of resumption of normal system operation for the missed DMR(s) that were due during the outage. Notification of the episodic waiver will be posted on the Division's website. The permittee may use the DMR forms provided by the division at the issuance of their permit to submit the DMR(s) due during the outage. If the delay is due to an emergency or other situation beyond the control of the permittee, the permittee shall submit a request for an episodic waiver. Upon approval of the waiver, DMR forms for the discharge will be provided to the permittee

(iv) The term "eDMR" refers to an electronic DMR submitted using the netDMR system maintained by EPA.

....

(h) Any records of monitoring activities and results shall include for all samples:

(i) The date, type, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

- (j) All sampling shall be performed by the permittee according to ~~specified methods in 40 C.F.R. Part 136; methods approved by EPA pursuant to 40 C.F.R. Part 136~~sufficiently sensitive test procedures required by 40 C.F.R. 122.44(i)(1)(iv); or methods approved by the Division, in the absence of a method specified in or approved pursuant to 40 C.F.R. Part 136.
- (k) The permittee shall retain for a minimum of three (3) years records of all monitoring information, including all original strip chart recordings for continuous monitoring instrumentation, all calibration and maintenance records copies of all reports required by this permit and records of all data used to complete the application for this permit. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Division or Regional Administrator.
- (l) For all permittees monitoring, recording, and reporting requirements of discharges under the permit shall be as specified by the Division. Reporting shall be as frequent as the Division shall reasonably determine to be necessary.
- (m) All reports required by permits and any other report or information submitted to the Division shall be signed and certified in accordance with the signature and certification requirements set forth in section 61.4(1). Falsification and tampering of information may result in criminal liability pursuant to section 25-8-610 C.R.S.
- (n) Reporting by municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Division under 61.3(2)(e)(vii) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:
 - (i) The status of implementing the components of the stormwater management program that are established as permit conditions;
 - (ii) Proposed changes to the stormwater management programs that are established as permit condition. Such proposed changes shall be consistent with 61.4(3)(c)(ii)(D);
 - (iii) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under 61.4(3)(c)(ii)(E) and (F);
 - (iv) A summary of data, including monitoring data, that is accumulated throughout the reporting year;
 - (v) Annual expenditures and budget for year following each annual report;
 - (vi) A summary describing the number and nature of enforcement actions, inspections, and public education programs; and
 - (vii) Identification of water quality improvements or degradation.
- (o) Reporting for stormwater discharges associated with industrial activity.
 - (i) Requirements to report monitoring results for stormwater discharges associated with industrial activity that are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge but in no case less than once a year.
 - (ii) Requirements to report monitoring results for stormwater discharges associated with industrial activity (other than those addressed in 61.8(4)(o)(i)) shall be established on a

case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge may require:

- (A) The discharger to conduct an annual inspection of the facility site to identify areas contributing to a stormwater discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;
- (B) The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;
- (C) Such report and certification be signed in accordance with 61.4(1)(e)and(f));
- (D) Permits for stormwater discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(p) Permits shall require that the permittee report all instances of noncompliance at least annually.

....

61.8(8) PERMIT MODIFICATION, SUSPENSION, REVOCATION AND REISSUANCE AND TERMINATION

....

(f) Upon consent by the permittee, the Division may make minor permit modifications without following the requirements of sections 61.5(2), 61.5(3), 61.7 and 61.15 of these regulations. Minor modifications to permits are limited to:

- (i) Correcting typographical errors; or
- (ii) Increasing the frequency of monitoring or reporting by the permittee; or
- (iii) Changing a date for a special study or an interim date in a schedule of compliance, provided the new date of compliance is not more than 120 days after the date specific in the existing permit and does not interfere with attainment of the final compliance date requirement; or
- (iv) Allowing for a transfer in ownership or operational control of a facility where the Division determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittees has been submitted to the Division; or

....

(j) If cause does not exist under this section, the Division shall not modify, terminate or revoke and reissue the permit.

....

61.9(1) TEMPORARY AND EXTENDED PERMITS

....

- (e) If an existing permit is extended or a temporary permit issued pursuant to section 25-8-502 (a)(l) or 24-4-104 C.R.S., the temporary or extended permit shall be noticed in accordance with section 25-8-502, C.R.S., and section 61.5(2) of these regulations.

....

61.14(1) APPLICABILITY

- (a) Pursuant to this section a permit shall be required for all land application discharges and for all discharges from impoundments unless:
 - (i) The discharge is exempted under section 61.14(1)(b);
 - (ii) The discharge is subject to the jurisdiction of one of the implementing agencies described in 61.14(2);
 - (iii) The impoundment has received a waiver from the Division pursuant to section 61.14(9)(a); or
 - (iv) The owner of a land application system can demonstrate that:
 - (A) The design and operation of the system will result in complete evapotranspiration of the effluent;
 - (B) There is adequate storage provided for the effluent during periods of inclement weather or where the ground has been frozen unless the provisions of (A) above, can be met during the entire year; and;
 - (C) Any augmentation plan or substitute supply plan for the land application site does not provide a credit for return of the effluent to ground water.
 - (v) Land application of reclaimed water is occurring under the provisions of a notice of authorization issued pursuant to Regulation 84, including any return flow.

(iv) The discharge consists entirely of animal or agricultural waste on farms, ranches, and horticultural operations and is exempted from permitting under section 25-8-504(2)(a), C.R.S.

- (b) The following facilities are specifically exempted from coverage under the ground water discharge provisions of this regulation:

....

61.18 - 61.20 Reserved

....

61.72 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE – OCTOBER 9, 2018 RULEMAKING HEARING; EFFECTIVE DATE DECEMBER 31, 2018

The provisions of 25-8-202(1)(d) and (2), 25-8-401, 25-8-501, 25-8-501.1, and 25-8-502, 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

On October 9, 2018, the commission amended Regulation 61 to make general clean-up and corrections; update the incorporation by reference date; to incorporate EPA's Sufficiently Sensitive Test Method rule; to incorporate EPA's Electronic Reporting rule; to clarify the administrative adjudication procedural requirements; to add additional opportunities for public comment; and to incorporate the statutory agricultural waste exemption.

Adoption of sufficiently sensitive methods

EPA finalized updates to the NPDES requirements regarding sufficiently sensitive test methods on August 19, 2014. The final rule added 40 CFR § 122.21(e)(3), and revised § 122.44(i)(1)(iv) to require that where EPA-approved methods exist, National Pollutant Discharge Elimination System (NPDES) applicants use sufficiently sensitive EPA-approved analytical methods when submitting information quantifying the presence of pollutants in a discharge. Sufficiently sensitive EPA-approved analytical test methods must be used for analyses of pollutants or pollutant parameters that are required to be submitted under permit condition monitoring requirements. The commission is updating Regulation 61 to ensure consistency with the federal regulations.

Changes to proposed language for application requirements:

The application requirements for CDPS permits are outlined in Reg. 61.4. Regulation 61.4(1)(k) outlines the general CDPS application requirements for permittees. The commission is adding a new subsection, 61.4(1)(k)(x), to clarify the requirements for analysis of quantitative information submitted as part of the permit application. This language specifies that any quantitative information that is required to be submitted as a part of the permit application must be collected in accordance with sufficiently sensitive analytical methods. By using the term "required," the commission is allowing for the submission of information collected by methods other than sufficiently sensitive methods. However, the commission is also requiring that an applicant notify the division if it submits quantitative information that was analyzed by a method that is not consistent with the federal sufficiently sensitive method requirements.

In the past, the division has discovered that incorrect reasonable potential findings have been made based on the submission of improper analytical data. If laboratory analysis are conducted that are not sufficiently sensitive, laboratory analysis may indicate a pollutant of concern was "non-detect" when in fact sufficiently sensitive methods may have demonstrated the presence of a pollutant. In order to prevent this mistake moving forward, the commission is clarifying that the division may exclude data collected through methods other than sufficiently sensitive methods if inclusion of the data would result in an improper determination about effluent limits, or would falsely indicate that that no reasonable potential exists. If the division makes a determination to exclude data, the division must explain the reasons for exclusion of the data in the record for the permit.

This clarification is not intended to exclude historic data from analysis that were collected in accordance with the appropriate analytical methods in place at the time, but which may no longer meet the requirements for sufficiently sensitive test procedures as defined by 40 C.F.R. 122.44(i)(1)(iv). The commission recognizes that laboratory methods are constantly evolving. The commission further recognizes that reviewing historic data is an important part of the permitting process.

Changes to permit condition monitoring requirements:

The permit condition requirements for CDPS permits are outlined in Reg. 61.8(3), and monitoring requirements are outlined in Reg. 61.8(4). The commission is clarifying language in subsection (j) in order to ensure consistency and appropriate citation to the updated federal regulations.

Adoption of the electronic reporting rule

The Environmental Protection Agency (EPA) finalized the electronic reporting rule on December 21, 2015. The final rule substitutes electronic reporting for paper-based reports, and, over the long term, saves time and resources for permittees, states, tribes, territories, and EPA. The e-reporting rule was comprised of the Phase 1 implementation, which requires authorized programs to electronically transmit discharge monitoring reports (DMRs) data to EPA, and Phase 2, which requires that authorized programs to begin electronically collecting, managing, and sharing the remaining set of information, including permit application materials for general permits.

Changes requiring mandatory use of netDMR:

Under Phase 1 of the e-Reporting rule authorized NPDES programs, such as Colorado, must ensure that permittees submit DMRs electronically using an approved system. Colorado has elected to use the EPA netDMR system to comply with this requirement. The commission is amending Regulation 61.8(4)(d) to include mandatory language regarding use of netDMR. Permittees are required to submit DMRs electronically using the netDMR system unless a waiver is obtained by the division.

The commission is including language allowing for three types of waivers from the netDMR requirements: permanent waivers, temporary waivers, and episodic waivers. Permanent waivers are extremely limited in scope and are only allowed for religious communities that chooses not to use certain modern technologies like electricity or computers. Temporary waivers are limited in duration, and can only be granted upon approval by the division. Episodic waivers are allowed for a maximum of 60 days, and are only appropriate in limited situations such as emergencies, situations beyond the permittees control and system outages. It is the commission's expectation that waivers will only be granted under the limited circumstances defined by the regulation.

Changes regarding electronic applications for general permits:

Under Phase 2 of the e-reporting rule, authorized programs have five years to begin electronically collecting, managing, and sharing the remaining set of information, including permit application materials for general permits. In order to comply with this effort, the Colorado Department of Public Health and Environment is developing the Colorado Environmental Online System (CEOS) for permit applications. Adoption of CEOS will allow the permits section to accept electronic applications for most general permit certifications. Beta testing of CEOS will occur throughout 2018. The Section expects that numerous general permits will begin to use the system throughout 2018 and 2019.

To implement Phase 2 of the e-reporting rule, the commission is amending the general permit application requirements in Regulation 61.4(1). It is adding language to new section (i) in order to incorporate mandatory language regarding Phase 2 implementation of the e-reporting rule.

Clarification of the administrative adjudication procedural requirement – Reg. 61.7(c)

The commission has amended Regulation 61.7(c) to clarify that Regulation 61.7(c) requires that only those issues of law or fact raised during the permitting process (typically, the public comment period) may be raised at a subsequent adjudicatory hearing, unless the issue was not reasonably ascertainable from the draft permit. This clarification is consistent with federal Clean Water Act permitting processes.

This clarification does not necessarily limit the evidence that can be offered at a hearing to address such issues, consistent with an 2009 Office of Administrative Courts order stating that Regulation 61.7 "does

not permit a petitioner to unfairly expand the scope of the issues beyond those presented to the agency during the permitting process. The rule, however, does not necessarily limit the evidence offered at a hearing. Evidence relevant to a properly raised issue of law or fact is not excluded simply because it was not previously considered by the Division." In Re: *COPS Permit No. C0-0035394, U.S. Energy Corporation, Lucky Jack Project, Order Regarding Respondents' Motion For Determination Of Law And Motion In Limine*, Case No. WQ 2008-0003 (May 22, 2009).

Additional Opportunities for Public Notice - Regulation 61.5(2)

The commission has amended Regulation 61.5(2) to include a number of new opportunities for public comment in certain circumstances. The new 61.5(2)(d)(i)(A) reflects the division's current practice of extending the comment period when needed. The new 61.5(2)(d)(i)(B) allows the division to reopen the comment period in order to take comments on specific new issues. The new 61.5(2)(d)(i)(C) allows the division to establish a responsive public comment period, when needed, in which any person may file a written response to the material filed by any other person during the comment period.

Statutory agricultural waste exemption – Reg. 61.14

The commission has amended Regulation to be consistent with section 25-8-504(2)(a), C.R.S., which states "Neither the commission nor the division shall require any permit for animal or agricultural waste on farms, ranches, and horticultural operations, except as may be required by the federal act or regulations. The provisions of any permit that are not so required shall not be any more stringent than, and shall not contain any condition for monitoring or reporting in excess of, the minimum required by federal act or regulations."