



# COLORADO

Water Quality  
Control Commission

Department of Public Health & Environment

## NOTICE OF WRITTEN-COMMENT-ONLY PUBLIC RULEMAKING HEARING BEFORE THE COLORADO WATER QUALITY CONTROL COMMISSION

### SUBJECT:

For consideration of the adoption of new regulation, Regulation #101, Water Quality Civil Penalty Inflation Adjustment Regulation (5 CCR 1002-101), attached to this notice as Exhibit 1.

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)(5) of the Procedural Rules. It is the goal of the commission to complete this rulemaking without oral testimony.

### SCHEDULE OF IMPORTANT DATES

Proponent’s Initial Comments Due	9/1/2021 5:00 pm	Additional Information Below
Responsive Comments Due	9/29/2021 5:00 pm	Additional Information Below
Rulemaking Deliberations	10/12/2021 9:00 am	Sabin Cleere Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246  Or <a href="#">Remote via Zoom</a>

### 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.wqcc@state.co.us](mailto:cdphe.wqcc@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:

Pursuant to section 21.3.C.5 and Section 21.3.D. of the commission’s Procedural Rules, there shall be no party status for this rulemaking proceeding.

### WRITTEN COMMENTS:

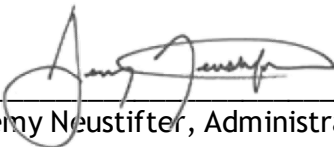
The commission encourages input from interested members of the public. Written comments should be emailed to [cdphe.wqcc@state.co.us](mailto:cdphe.wqcc@state.co.us) by 5:00 pm on 9/29/2021.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-1.5-202; 25-8-202(1)(n); and 25-8-401 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 15<sup>th</sup> day of June, 2021 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION



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Jeremy Neustifter, Administrator

# Exhibit 1

## DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

### Water Quality Control Commission

#### REGULATION NO. 101 - WATER QUALITY CIVIL PENALTY INFLATION ADJUSTMENT REGULATION

##### 5 CCR 1002-101

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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#### 101.1 AUTHORITY

These regulations are promulgated pursuant to the Colorado Water Quality Control Act, sections 25-8-101 through 25-8-803 C.R.S., In particular, they are promulgated under sections 25-8-202 and 25-8-608(1) C.R.S..

#### 101.2 PURPOSE

The purpose of these regulations is to annually adjust the amount of the maximum civil penalty applied to violations of the Colorado Water Quality Control Act, based on the percentage change in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood for All Items and All Urban Consumer, or its successor index.

#### 101.3 REGULATIONS

- A. Beginning on January 1, 2022, the maximum civil penalty identified in 25-8-803(1) C.R.S. for a person who violates the Water Quality Control Act, a permit issued under the Act, A control regulation promulgated pursuant to the Act, or a final cease-and-desist order or clean-up order shall be not more than the calculated adjusted maximum penalty for 2022 per day per violation.
- B. The calculated adjusted maximum penalty for 2022 shall be \$54,833 adjusted by the percent change in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora- Lakewood for All Items and All Urban Consumer Index from July 2020 to July 2021.

#### 101.4 DEFINITIONS

The following definitions are applicable within the intent of these regulations:

- A. "Colorado Water Quality Control Act" or "Act" means the Colorado Water Quality Control Act as from time to time amended, section 25-8-101 C.R.S., 1973, et seq.
- B. "Commission" means the water quality control commission created by section 25-8-201 C.R.S..
- C. "Division" means the Colorado Department of Public Health and Environment, Water Quality Control Division.
- D. "Person" means an individual, corporation, partnership, association, state or political subdivision thereof, federal agency, state agency, municipality, commission, or interstate body.

#### 101.5 – 101.9 RESERVED

## 101.10 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE

The provisions of Colorado Revised Statute Sections 25-8-608(1) provides the specific statutory authority for the Water Quality Civil Penalty Inflation Adjustment Regulation adopted by the Commission. The Commission has also adopted, in compliance with Colorado Revised Statute Section 24-4-103(4) C.R.S., the following Statement of Basis and Purpose.

### BASIS AND PURPOSE

25-8-803(1) C.R.S. directs that “on or before December 31, 2021, the commission shall, by rule, annually adjust the amount of the maximum civil penalty based on the percentage change in the United States Department of Labor’s Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood for All Items and All Urban Consumers, or its successor index.”

This regulation implements this statutory direction and provides for the new annually adjusted maximum civil penalty identified in 25-8-803(1) C.R.S.. The maximum penalty prior to adjustment that is identified in statute is fifty-four thousand eight hundred thirty-three dollars (\$54,833). This maximum penalty applied from the revision of the statute that applied this maximum on July 2, 2020 through the application of the 2022 adjusted maximum penalty identified in this regulation on January 1, 2022. In accordance with the statutory direction to adjust the maximum penalty annually, the commission intends to revise this regulation annually to identify a new maximum penalty to become effective no later than January 1st of each subsequent year.

#### 1) Method for Determining the Percentage Change in the Consumer Price Index:

The Commission used the following method to calculate the percent change in the United States Department of Labor’s Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood for all Items and all Urban Consumers (the Consumer Price Index) to be used for calculating the new maximum penalty.

The commission based the percentage change calculation on the change between the July 2020 Consumer Price Index and the July 2021 Consumer Price Index. Using the July Consumer Price Index values for this calculation aligns with the statutory direction to provide an annual adjustment to the maximum penalty because the previous maximum was established in statute effective in July 2020. This method also allows for the use of the most recent available data.

The commission expects that the same method will be used for future revisions to this regulation. Any changes to the method will be addressed in the applicable future Statement of Basis and Purpose.

#### 2) Calculation of the 2022 Adjusted Maximum Penalty:

The new maximum penalty is calculated by adjusting the previous maximum penalty by the percent change in the Consumer Price Index from July 2020 to July 2021.

The Previous Maximum Penalty is identified in 25-8-803(1) C.R.S as \$54,833.

The July 2020 Consumer Price Index is 275.589. The July 2021 Consumer Price Index will be published in July 2021 at: <https://www.bls.gov/regions/mountain-plains/news-release/home.htm>.

The adjusted maximum penalty is therefore equal \$54,833 multiplied by  $(1 + ((\text{The July 2021 Consumer Price Index} - 275.589) / 275.589))$ .

#### 3) Regulatory Process for Future Adjustments:

To meet the statutory direction to apply an annual adjustment, the Commission must revise this regulation annually to be effective by January 1 of each subsequent year. It is the Commission's intention to make these adjustments effective on January 1. To meet this timeline, the Commission intended to annually schedule a rulemaking no later than October of each year. The Division will provide to the Commission a proposed revision to this regulation identifying the proposed new adjusted maximum penalty which will include proposed language for the Statement of Basis and Purpose that identifies the method and the values for the Consumer Price Index used in the calculation.

#### PARTIES TO THE RULEMAKING HEARING

October 12, 2021

HEARING CHAIR:

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**Editor's Notes**

**History**