

STATE OF COLORADO

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Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

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

SUBJECT:

For consideration of revisions to the Regulations for Effluent Limitations, Regulation #62 (5 CCR 1002-62). The revisions to Regulation #62 proposed by the Water Quality Control Division (the Division) as staff to the Commission, along with a proposed Statement of Basis, Specific Statutory Authority, and Purpose, are attached to this Notice as Exhibit 1. Any alternative proposals related to the revisions proposed in Exhibit 1 and developed in response to those proposed revisions will also be considered.

HEARING SCHEDULE:

DATE: Monday, January 14, 2008
TIME: 10:00 a.m.
PLACE: Florence Sabin Conference Room
 Department of Public Health and Environment
 4300 Cherry Creek Drive South
 Denver, Colorado

PUBLIC PARTICIPATION ENCOURAGED:

The Commission encourages all interested persons to provide their opinions or recommendations regarding the matters to be addressed in this rulemaking hearing, either orally at the hearing or in writing prior to or at the hearing. Although oral testimony from those with party status (see below) and other interested persons will be received at the hearing, the time available for such oral testimony may be limited. Written submissions prior to the hearing are encouraged, so that they can be distributed to the Commission for review prior to the hearing. 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 or mailing list status (see below) generally will not be permitted.

PARTY STATUS/MAILING LIST STATUS:

Participation as a "party" to this hearing or acquisition of "mailing list status," will require compliance with section 21.4(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). Mailing list status will allow receipt of all party documents (except individual exhibits more than five pages in length). It is not necessary to acquire party status or mailing list status in order to testify or comment. **For**

each request for party status or mailing list status, please provide the organization's name, a contact person, mailing address, phone number, fax number and email address if available. Written party status or mailing list status requests are due in the Commission Office on or before:

DATE: Tuesday, October 30, 2007
TIME: 5:00 p.m.

Party status or mailing list status requests may be submitted by a fax to 303-691-7702 by this deadline, or by email to www.cdphe.state.co.us/op/wqcc/wqcchom.asp, provided that the original and three copies are mailed by this same date.

PREHEARING STATEMENTS:

PLEASE NOTE that for this hearing two separate deadlines for prehearing statements are established: (1) An original and 13 copies of an initial prehearing statement from **the Division as proponents of revisions proposed in Exhibit 1 attached to this notice**, including written testimony and exhibits providing the basis for the proposals, must be received in the Commission Office no later than **November 6, 2007**; and (2) An original and 13 copies of a prehearing statement, including any exhibits, written testimony, and alternative proposals of **anyone seeking party status and intending to respond to the Division proposal** must be received in the Commission Office no later than **November 27, 2007**. **Those requesting mailing list status shall provide written testimony, if any testimony is to be offered for the hearing, by this same date.**

For each deadline, the required number of hard copies of documents must be received in the Commission office by the specified deadline. These requirements are not satisfied by electronic transmission of a facsimile copy or copies. However, **parties are also strongly encouraged to email a copy of their written documents to the Commission Office**, so that materials received can be posted on the Commission's web site. (Please email to www.cdphe.state.co.us/op/wqcc/wqcchom.asp.) In addition, copies of these documents must be mailed or hand-delivered by the specified dates to all persons requesting party status or mailing list status, and to the Attorney General's Office representatives for the Commission and Division, in accordance with a list provided by the Commission Office following the party status/ mailing list status deadline.

Also **note** that the Commission has revised a document entitled **Information for Parties to Water Quality Control Commission Rulemaking Hearings**. A copy of this document will be mailed to all persons requesting party status or mailing list status. It is also posted on the Commission's web site noted above, under "General Information – Public Participation in Commission Proceedings". Following the suggestions set forth in this document will enhance the effectiveness of parties' input for this proceeding. **Please note the new request that all parties submit their hard copies of all hearing documents on three-hole punch paper.**

PREHEARING CONFERENCE:

DATE: Wednesday, December 12, 2007
TIME: 2:00 p.m.
PLACE: Snow Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado

Attendance at the prehearing conference is mandatory for all persons requesting party status.

REBUTTAL STATEMENTS:

Written rebuttal statements responding to the prehearing statements due on November 27, 2007 may be submitted by the Division or anyone seeking party status or mailing list status. Any such rebuttal statements must be received in the Commission Office by **January 2, 2008**. An original and 13 copies of written rebuttal statements must be received in the Commission Office by this deadline. Please also email a copy to www.cdphe.state.co.us/op/wqcc/wqcchom.asp. This requirement is not satisfied by electronic transmission of a facsimile copy or copies. In addition, copies of these documents must be mailed or hand-delivered by that date to all those requesting party status or mailing list status, and to the Attorney General's Office representatives for the Commission and Division. No other documentation, exhibits, or other materials will be accepted following this deadline except for good cause shown.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202 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.

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 12th day of September 2007 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION



Paul D. Frohardt, Administrator

EXHIBIT 1

WATER QUALITY CONTROL DIVISION

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL COMMISSION

5 CCR 1002-62

REGULATION #62

REGULATIONS FOR EFFLUENT LIMITATIONS

62.1 AUTHORITY

The Water Quality Control Commission is directed by section 25-8-205 C.R.S., to promulgate control regulations to describe prohibitions, standards, concentrations, and effluent limitations on the extent of specifically identified pollutants that any person may discharge into any specific class of state waters.

Materials incorporated by reference are available for public inspection during normal business hours, or copies may be obtained at a reasonable cost, from the Administrator, Water Quality Control Commission, 4300 Cherry Creek Drive South, Denver, Colorado 80222. Unless expressly stated otherwise, materials incorporated by reference are those editions in existence as of the date this regulation is promulgated or revised by the Water Quality Control Commission and references do not include later amendments to or editions of the incorporated. All material incorporated by reference may be examined at any state publications depository library.

62.2 DEFINITIONS

See the Colorado Water Quality Control Act and the Water Quality Control Commission codified regulations for additional definitions.

- (1) "STATE WATERS" - means any and all surface or subsurface waters which are contained in or flow in or through this state, except waters in sewage systems, water in treatment works of disposal systems, water in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

62.3 REGULATIONS

- (1) These effluent limitations for the discharge of ~~wastewater pollutants~~ shall ~~pertain~~ apply to all ~~wastewater~~ discharges prior to mixing with state waters, except storm~~water runoff waters~~ and agricultural return flows, ~~into any state waters~~.
- (2) No person (except as provided in subparagraph (3) below) shall discharge any pollutants ~~wastewater~~ into any state waters if such ~~wastewater~~ violate discharge exceeds any of the specific limitations contained in paragraph 62.4 below, applicable to such ~~wastewater~~ discharge, ~~unless the discharge is covered by a discharge permit providing for compliance with the effluent limitations, according to a planned schedule~~. Violations occur when measured concentration of a pollutant parameters exceeds the ~~these~~ limits indicated in section 62.4(1), below.

- (3) At such time as effluent limitation guidelines are promulgated by the commission for any industry pursuant to section 25-8-205(2)(d) C.R.S., such industry shall be subject to those guidelines and shall not be subject to effluent limitations set forth below in paragraph 62.4. If the Commission has not so promulgated effluent limitation guidelines for any particular industry, but that industry is subject to effluent limitation guidelines promulgated by the United States Environmental Protection Agency pursuant to the Federal Water Pollution Control Act of 1972, the effluent from these industries shall be subject to the applicable EPA guidelines and shall not be subject to the effluent limitations of paragraph 62.4 below.
- (4) The effluent limitation set forth below, or promulgated according to subparagraph (3) above, are also subject to being superseded if augmented when it is found that stricter limitations are required in order to insure that water quality standards are maintained.

62.4 SPECIFIC LIMITATIONS FOR THE DISCHARGE OF WASTES

The following numeric limits shall apply where the Division identifies the pollutant as one that may be present in the discharge at a level approaching the relevant limit. Except as required under federal law, where the Division determines that a numeric limit is infeasible, the Division shall require implementation of best management practices as a condition of the permit as necessary to control or abate the discharge of pollutants to state waters. In no case will a discharge be held to be in compliance with any of the limitations set forth below where the discharge is diluted with other waters, unless such compliance would exist without such dilution.

(1) Numeric Limitations

PARAMETER	PARAMETER LIMITATIONS		
	7-Day Average 1 ¹	30-Day Average 2 ²	Instantaneous Maximum 3 ³
(a) BOD ₅	45 mg/l	30 mg/l	N/A
(b) Total Suspended Solids (TSS)	45 mg/l	30 mg/l	N/A
(c) CBOD ₅	40 mg/l	25 mg/l	N/A
(d) Residual Chlorine			0.5 mg/l 3 ³ , 6 ⁶
(e) pH			6.0 - 9.0 s.u. 3 ³ , 4 ⁴
(f) Oil and Grease			10 mg/l 3 ³ , 5 ⁵

~~1~~¹ 7-Day Average: The arithmetic mean of all samples taken in a 7-day period.

~~2~~² 30 Day-Average: The arithmetic mean of all samples taken in a 30-day period.

~~3~~³ As determined by the results of any single grab sample.

~~4~~⁴ The pH shall remain at or between these values.

~~5~~⁵ A numeric effluent limit will be assigned in permits for discharges to surface waters, however, monitoring for a "visual sheen" will generally be required. Where a visual sheen is detected, the discharger will be required to collect a grab

sample and have it analyzed for oil and grease. Monitoring for oil and grease may be required where there is a reasonable potential that oil and grease will be present in the effluent at concentrations at or above 10 mg/l.

~~6/6~~ This limitation shall not apply to discharges to irrigation ditches or to ground water.

~~Numeric limitations for fecal coliform shall be determined by the Division of Administration of the State Department of Public Health and Environment to protect public health in the state water to which the discharge occurs.~~

These numeric limits and sampling requirements have been set with the inherent variability of the analytical procedures taken into consideration.

- (2) In addition to the above effluent limitations, the arithmetic mean of the values for effluent samples for CBOD₅, BOD₅ and TSS collected in a period of 30 consecutive days shall not exceed 15 percent of the arithmetic mean of the values for influent samples collected at approximately the same time during the same period (85 percent removal). Where the permittee has demonstrated that the treatment facility is unable to meet the 85% removal requirement for a parameter and the inability to meet the requirement is not caused by excessive infiltration, as defined in 40-CFR 35.2005(b)(16), a lower percent removal requirement or a mass loading limit may be substituted provided that the permittee can demonstrate that the provisions of 40 CFR 133.103(d) can be met.
- (3) The numeric limitations for TSS in section 62.4(1)(b), above, may be adjusted for waste stabilization ponds which treat domestic waste provided that (1) the waste stabilization ponds are the principal process used for secondary treatment; and (2) the facility is designed to achieve the solids removal possible with best waste stabilization pond technology. Best waste stabilization pond technology is defined as that design criteria for ponds currently in effect as adopted by the Water Quality Control Commission. Since this criteria will be upgraded periodically, any municipality not in conformance with the approved design criteria will be given an opportunity to establish a reasonable implementation schedule given due consideration to design, construction, and financial capability of municipality. The adjusted limitations shall be as described below:

Treatment Type	7-Day Average 4 ¹	30-Day Average 2 ²
Non-aerated Waste Stabilization Ponds	160 mg/l	105 mg/l
Aerated Waste Stabilization Ponds	110 mg/l	75 mg/l

1 7-Day Average: The arithmetic mean of all samples taken in a 7-day period.

2 30 Day-Average: The arithmetic mean of all samples taken in a 30-day period.

In addition, where adjusted TSS limitations are given, the 85 percent removal requirement for TSS shall be waived.

- (4) The numeric limits for pH for domestic wastewater treatment facilities may be adjusted to values outside of the limits in section 4 62.4(1)(e), above, where inorganic chemicals are not added to the waste stream as part of the treatment process and where industrial contributions do not cause the pH to be less than 6.0 s.u. or greater than 9.0 s.u..

- (5) For the purpose of enforcement of the effluent limitations for the discharge of pollutants wastes set forth in ~~paragraph~~ section 62.4(1) above, sampling of waste discharges shall be made prior to any admixture of waste discharges with the receiving water. All new discharges, except for individual sewage disposal (onsite) systems, ~~constructed after the effective date of this regulation,~~ shall be constructed so ~~designed or modified~~ that a sample of the effluent can be obtained at a point after the final treatment process and before discharge to state waters.

If samples for BOD₅, CBOD₅ or TSS are taken at the outfall of a final quiescent pond, with a detention time of at least 48 hours, the sample may be a grab sample. In all other plants which cannot meet this requirement, effluent samples shall be a composite sample, comprised of a minimum of four grab samples taken approximately two hours apart.

- (6) Normally the numeric limits for BOD₅ will be applied, however, they may be replaced with the numeric limits for CBOD₅ (62.4(1)(c)) at the request of the permittee.

62.5 TECHNICAL DATA

- ~~(1) Analytical and sampling methods utilized by the discharger shall conform to those designated in one of the following references or equivalent methods approved by the Director, Water Quality Control Division, Colorado Department of Public Health and Environment:~~

~~(a) Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992 (American Public Health Association/ Water Environment Federation, Washington, DC 20015).~~

~~(b) A.S.T.M. Standards, part 23, Water: Atmospheric Analysis, American Society for Testing and Materials (1916 Race St., Philadelphia, Pennsylvania 19103), 1970.~~

- ~~(2) In no case will wastewaters be held to be in compliance with any of the limitations set forth in paragraph 62.4(1), above, where those wastewaters are diluted with other waters, unless such compliance would exist without such dilution.~~

- ~~(37) The permittee must be able to show proof at the request of the Director, Water Quality Control Division, Colorado Department of Public Health and Environment, of the accuracy of any flow-measuring device used in obtaining data submitted in the discharge monitoring report. The flow-measuring device must indicate values within ten percent of the actual flow being measured.~~

- ~~(48) If wastewater is returned to the source from which it was obtained, the numeric limitations specified in ~~paragraph~~ section 62.4(1) above, may be in addition to the measured values of the same parameter(s) in the incoming water except where an exceedance of a water quality standard would take place.~~

- ~~(59) Any person discharging wastewater into any waters of the state subject to the numeric limits for BOD₅, or CBOD₅ shall have the option of establishing, to the continuing satisfaction of the division, a relationship between BOD₅ or CBOD₅ and COD (chemical oxygen demand), TOC (total organic carbon), or TOD (total oxygen demand) with respect to such effluent, and the COD, TOC, or TOD values so established shall be substituted for the BOD₅, or CBOD₅, values required under section 62.4(1).~~

62.5 Reserved.

62.6 Reserved.

62.7 Reserved.

62.8 Reserved.

62.9 – 62.17 PREVIOUS STATEMENTS OF BASIS AND PURPOSE – NOT SHOWN HERE

PROPOSED

62.18 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: JANUARY, 2008 RULEMAKING

The provisions of sections 25-8-202 and 25-8-401, C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The Commission made several editorial revisions to Regulation #62 to provide clarity and/or update terminology. Those changes that are more noteworthy will be identified in the discussion for the section where they were first made.

The Commission revised the language in section 62.3(1) to clarify that the applicable limit must be met prior to discharge to state waters. This is particularly important for discharges to ground water in order to ensure that the technology-based treatment requirement has been met and will typically require that compliance with the limits be demonstrated prior to application to the land. The Commission also revised the wording of this section and the remainder of the regulation to delete “wastewater” and, generally, replace that term with “pollutant(s)” in order to be consistent with the language of the Colorado Water Quality Control Act.

The Commission deleted the allowance in section 62.3(2) for a compliance schedule to meet the identified limits as:

1. The federal secondary treatment regulation requires compliance with the limits for five-day biochemical oxygen demand (BOD₅) and total suspended solids (TSS) for publicly owned treatment works (POTWs);
2. The applicable limits have been applied to each existing discharge; and
3. It is reasonable to expect any new discharge to implement the level of technology necessary to attain the limits for pollutants identified in the regulation that may be present in their discharge.

The Commission modified section 62.4 to provide that the limits in section 62.4(1) will only be applied when the Division determines that a pollutant is “of concern” for that particular discharge. The Commission also modified section 62.4 to add flexibility for the Division to require implementation of best management practices (BMPs) in lieu of numeric limitations where it finds the application of numeric limits to be infeasible. This language was based on a similar provision in Regulation #61 at 61.8(3)(r) and the Commission finds it appropriate to provide the same level of flexibility to the Division in imposing the technology-based requirements of this regulation to sources not subject to federal secondary treatment requirements. Finally, the Commission moved former section 62.5(2) to section 62.4 as it is directly relevant to the limits identified in the following section 62.4(1).

The commission modified footnote 6 of section 62.4(1) to expand the exemption from the limit for total residual chlorine to discharges to ground water. Similar to the basis for the exemption for discharges to irrigation ditches, this is appropriate as there is no aquatic life use assigned to ground water. The

Commission deleted the section regarding the setting of limitations for fecal coliform as limits for bacteriological indicator organisms (E. coli at present) are established in accordance with section 61.3 of the discharge permit regulations and section 31.14 of the basic standards.

The Commission modified section 61.4(5) to provide that onsite treatment systems are not required to collect samples of their effluent as it is generally impractical to collect samples from the bottom of a leach field. This condition will work in tandem with the modifications to section 62.4 allowing for the implementation of BMPs in lieu of requiring numeric limits.

The Commission deleted section 62.5(1) as Regulation #61 (61.8(4)(j)) requires monitoring of discharges in accordance with EPA approved methods rather than the methods identified in this section. As was previously noted, section 62.5(2) was moved to section 62.4. The Commission also found that the "Technical Data" heading for section 62.5 does not accurately describe the remaining items in that section and deleted the heading and added the remaining items to section 62.4.