

## APPENDIX C

### INFORMATION FOR PARTIES TO WATER QUALITY CONTROL COMMISSION RULEMAKING HEARINGS

#### A. Water Quality Control Commission Procedural Rules

The Water Quality Control Commission (Commission) has adopted "Procedural Rules" (Regulation #21, codified at 5 CCR 1002-21). The Procedural Rules are available online at <http://www.cdphe.state.co.us/regulations/wqccregs/reg212007CCR.pdf>. They are also available for review in the Commission Office, 4300 Cherry Creek Dr. South, A-5, Denver, Colorado and a copy may be obtained at a charge of \$5.00 pursuant to section 24-4-103(9), C.R.S.

The Procedural Rules (principally section 21.3) govern all Commission rulemaking hearings and should be carefully reviewed by all parties. This informational statement is intended to provide supplemental, practical information to assist in hearing preparation. It in no way supersedes the Procedural Rules or specific information in a rulemaking hearing notice. **Persons petitioning the Commission to amend water quality classifications or standards should note the requirement of section 21.3 B(2)(c), regarding section 208 agency review of proposals.**

#### B. Prehearing Statements and Other Written Materials

The hearing notice establishes deadlines for the submission of prehearing statements, with accompanying written testimony and exhibits, from the Water Quality Control Division (Division) as staff to the Commission and from external parties. For many hearings, the Commission establishes two separate deadlines for prehearing statements. The first is a deadline for prehearing statements from **proponents of new or revised rules** – i.e., the Division and any external party advancing a proposal that is referenced in or attached to the hearing notice. These prehearing statements, with accompanying written testimony and exhibits, provide the principal opportunity for proponents to submit the evidence and policy rationale supporting their proposals. **Please clearly identify these prehearing statements as “Proponent’s Prehearing Statement of [Party Name]”.**

If two separate deadlines for prehearing statements are established in a hearing notice, the second will be for the submission of prehearing statements from those **responding to proposals submitted by proponents of new or revised rules**. These prehearing statements, with accompanying written testimony and exhibits, provide the principal opportunity for other parties to state their position regarding noticed proposals, including presenting their evidence and policy rationale for supporting, opposing or suggesting alternatives to such proposals. **Please clearly identify these prehearing statements as “Responsive Prehearing Statement of [Party Name]”.** Note that the Division and external parties who are proponents of noticed proposals may submit **both** a Proponent’s Prehearing Statement in support of their own proposals and a Responsive Prehearing Statement responding to the proposals of others.

The hearing notice also generally will provide the opportunity for the Division and external parties to submit written **rebuttal statements**. The purpose of rebuttal statements is to provide an opportunity to respond to the evidence and policy rationale provided in responsive prehearing statements.

Please refer to the hearing notice regarding the specific requirements for submission and distribution of written materials. Generally, an original and 13 copies should be submitted to the Commission Office, with copies provided to those requesting party status or mailing list status and to the attorneys for the Commission and the Division. (The Certificate of Service should be attached only to the original.)

Although the required number of hard copies must be received in the Commission Office by the specified deadline, **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. **The Commission also requests that the Division and all parties submit the hard copies of all hearing documents on three-hole punch paper.** Whenever possible, please do not submit materials in a bound document. These steps will greatly facilitate Commission members' ability to collate the materials into three-ring binders for reference during a hearing. (Note: If written statements are referencing specific portions of a regulation, it is helpful to identify both the subsection of the regulation in question, as well as the page number that it appears on in the regulation.)

In order to most effectively utilize the time available for the hearing, the Commission strongly encourages parties to fully explain their perspective on proposals in writing, in accordance with the process laid out above. Evidence and policy positions may be spelled out either in the prehearing/rebuttal statements themselves or in separate written testimony and exhibits that are attached. Parties are strongly encouraged to keep testimony as concise as possible. Shorter presentations often are more effective than longer presentations. **An introductory summary is strongly recommended, to succinctly summarize the party's specific proposals or positions on the issues.** Parties are encouraged to coordinate their efforts whenever practical, to minimize duplication of testimony.

Parties should be particularly careful to provide appropriate explanation as to how the various written documents submitted – e.g., alternative proposals, written testimony, appendices, and exhibits – fit together. For example, if an expert witness' written testimony on technical issues is submitted without any explanation of how it relates to the overall position advanced by the party, much of its impact may be lost. Where multiple documents are submitted, parties should consider including in the prehearing statement or other summary document a "road map" to the overall set of documents. **Please be sure to include the party's name on each document submitted, since materials can become separated. Finally, please note that all written materials submitted to the Commission should be submitted to the Commission Office for distribution to Commission members. Documents should not be mailed or emailed directly to individual Commission member.**

#### C. Preparation of Exhibits

Exhibits submitted should be clearly labeled and numbered (e.g. "[Party Name] Exhibit 1", "[Party Name] Exhibit 2", etc.). Where data is at issue, appropriate data summaries should be submitted as exhibits along with appropriate statistical analysis. For example, data summaries may be included for each sampling point and/or stream reach, identifying 50th or 85th percentiles, or other relevant statistics. Analytical techniques and units of measurement should be clearly indicated. Raw data sheets generally should not be submitted as exhibits.

**Parties are encouraged to provide appropriate maps as exhibits whenever they would be helpful to understanding the issues.** Both general location maps and maps showing the site in question in greater detail are helpful (e.g. the locations of all relevant sampling stations and discharge points should be shown). **Maps are particularly important for water quality classification and standard-setting hearings.**

#### D. Prehearing Conference

The prehearing conference is intended as an opportunity to narrow and resolve the issues, and to plan for the allocation of the time available for the hearing itself. Specific time allocations are established at the

prehearing conference for oral testimony from the Division and from each of the parties. As described above, prehearing statements, any alternative proposals, written testimony and exhibits are required to be exchanged prior to the prehearing conference (see the hearing notice for specific requirements). All parties should review the written materials received from other parties prior to the prehearing conference. **All parties should be present at the prehearing conference or be represented at the prehearing conference by persons authorized to enter into stipulations potentially narrowing or resolving the issues raised by the rulemaking proposal.** Where scheduling permits and it appears that an additional prehearing discussion would be useful, a decision may be made at the prehearing conference to schedule an additional status conference prior to the hearing.

E. Other Prehearing Procedures

Rules regarding prehearing motions, discovery and subpoenas are contained in the Procedural Rules and should be reviewed by the parties.

F. The Hearing

Direct oral testimony at the hearing should be brief and succinct, generally providing a concise summary of the written prehearing materials already submitted. The principal focus of the hearing should be on questions from the Commission regarding these written prehearing documents. Although the Commission has consistently found direct testimony to be more useful than cross-examination, parties have the right to use a portion of their time allocation for cross-examination of witnesses. Parties with similar positions are encouraged to coordinate their cross-examination to minimize duplication. Additional written material from those with party status or mailing lists status generally will not be accepted at the hearing unless such material could not reasonably have been submitted earlier. (An exception is material such as copies of overheads that merely summarize information already submitted.)

Audio tapes will be available for review in the Commission Office following the hearing. The tapes may also be purchased for \$5.00 each, with approximately a one-week lead time. For hearings for which a court reporter is present, a transcript of a hearing may be ordered directly from the court reporter for the payment of his/her fee.

G. Additional Information

The Colorado Department of Public Health and Environment building, where the Commission Office is located, locks all doors for security reasons promptly at 5:00 p.m. Documents delivered after 5:00 p.m. will be stamped in as received the following business day.

Parties with additional questions regarding WQCC rulemaking practices and procedures should contact the Commission Administrator, Paul Frohardt at: (303) 692-3468 or the Program Assistant, Nancy Horan at: (303) 692-3463, Colorado Department of Public Health and Environment building, 4300 Cherry Creek Dr. South, Building A, Fifth Floor, Denver, Colorado 80246. Fax: (303) 691-7702; Email: [cdphe.wqcc@state.co.us](mailto:cdphe.wqcc@state.co.us).