

Issues Scoping Hearing Process Description

Overview

The Issues Scoping Hearing is the first step in a three-step process used by the Water Quality Control Commission for triennial review of water quality classifications and standards in Colorado. In short, the Issues Scoping Hearing provides an opportunity for early identification of potential issues that may need to be addressed in the next major rulemaking hearing for particular regulations, and for identification of any issues that may need to be addressed in rulemaking prior to that time. The second step in the triennial review process – the Issues Formulation Hearing – results in the identification of the specific issues to be addressed in the next major rulemaking hearing. The third step is the Rulemaking Hearing, where any revisions to the water quality classifications and standards are formally adopted. The timing of the three steps is as follows: (1) the Issues Scoping Hearing – for the Basic Standards and Methodologies for Surface Water or individual river basin classifications and standards – is held in October of Year 1; (2) the Issues Formulation Hearing is held in November of Year 2; and (3) the Rulemaking Hearing is held in June of Year 3.

The Water Quality Control Commission's web site includes a section regarding water quality classifications and standards reviews. Separate sub-pages are set up for the Basic Standards and Methodologies for Surface Water and for the individual river basins. These sub-pages identify when the last major rulemaking hearing occurred, and when the next Issues Scoping Hearing, Issues Formulation Hearing, and Rulemaking Hearing will occur for each of the regulations. As the date of a particular hearing approaches, the plan is to post the hearing notice, Water Quality Control Division testimony/comments, and any other testimony or comments submitted in an electronic format. Following an Issues Scoping Hearing, there will also be an effort to summarize and/or provide contact information for anyone who offered oral comments only at the hearing. The web site also includes a sub-page for tracking the status of EPA's review of water quality standards adopted by the Commission.

Hearing Notice

A notice of the Issues Scoping Hearing will be prepared and circulated approximately one month prior to the hearing. In addition to information regarding the hearing logistics (date, time, location), the notice will contain a general description of the three steps in the triennial review process (as noted above), including the purpose of this hearing and an explanation of the opportunity to provide input. In addition, the notice will: (1) list any outstanding EPA water quality standards disapprovals for the regulation(s) in question; and (2) reference the relevant portions of the section 305(b) report and section 303(d) list that provide further information regarding current water quality for the basin(s).

The notice will be distributed principally by email to a list of persons who have expressed an interest in receiving notice of proceedings related to the regulation(s) in question. This list of interested persons will be developed initially from responses to a broadly distributed mailing that will notify potentially interested persons of the opportunity to be included on the list. (An option will be offered to receive notices by mail, for those who may not have easy access to a computer.) The initial mailing will be sent to: (1) all local governments, local health agencies and regional water quality planning agencies; (2) all participants in prior rulemaking hearings for these regulations; (3) all persons who receive the monthly Water Quality Information Bulletin, (4) water conservancy/water conservation districts, (5) watershed groups, (6) environmental groups, (7) permitted dischargers, (8) public water supply systems, (9) Riverwatch groups and (10) any

other potentially interested persons identified by Water Quality Control Division watershed coordinators or district engineers. The opportunity to be included on the notification lists maintained for each regulation will also be publicized by publishing information regarding this opportunity in the Colorado NPS Connection newsletter. In addition, information regarding being added to the list at any time will be posted on the Commission's web site.

Once the lists of interested persons for each regulation are developed, emails sent to the list will include information regarding how to be added to or deleted from the list. In addition, the lists will be updated by information received in response to an annual mailing that is broadly distributed as noted above. No changes would be made unless persons ask to be added to or deleted from the lists.

In addition to those who request to be included on the notification lists for each regulation as noted above, the following state agencies will automatically be included: State Engineer's Office, Colorado Water Conservation Board, Division of Minerals and Geology, Oil and Gas Conservation Commission, Division of Wildlife, Division of Oil and Public Safety, Department of Agriculture, and the Hazardous Materials and Waste Management Division.

In addition to distribution as described above, all hearing notices are posted on the Commission's web site.

Division Input

The primary focus of the Issues Scoping Hearing is for the Water Quality Control Division to identify the potential issues that it anticipates will need to be addressed in the next major rulemaking hearing.

For individual river basin classifications and standards this would include: (1) any revisions to implement changes to the Basic Standards and Methodologies for Surface Water that have been adopted since the last review of that basin; (2) any outstanding EPA disapprovals of water quality standards in that basin; (3) review of the status of temporary modifications in the basin; (4) review of segment classifications requiring a use attainability analysis (i.e., recreation class 2 segments or those without an aquatic life classification); and (5) any issues arising from new information regarding segments in the basin. The goal is to make interested persons aware of these issues early enough that they can consider additional information that they may wish to develop prior to the rulemaking hearing. For example, this might include additional water quality monitoring and/or preparation or review of a use attainability analysis.

In addition to identifying pending issues, at the Issues Scoping Hearing for a particular basin the Division will provide an overview of its water quality sampling and analysis plans for that basin prior to the next major rulemaking hearing. This should help other persons determine whether they want to undertake their own monitoring efforts, perhaps in coordination with the Division's efforts.

For the Basic Standards and Methodologies for Surface Water, at the Issues Scoping Hearing the Division would identify issues that are already being addressed in an informal work group process prior to the next major rulemaking hearing, or for which the Division believes such a work group should be established. This should increase awareness regarding these issues among persons who may want to participate in such work group efforts.

Third Party Input

Third parties are encouraged to identify at the Issues Scoping Hearing issues that they believe should be addressed in the next major rulemaking hearing. It is extremely helpful to the Division and other interested persons to be aware of likely rulemaking issues as early as possible. Early awareness is also generally in the interest of parties advancing proposals, to provide adequate time to help identify and resolve potential concerns regarding the proposals. The extent of informal exploration of proposals with the Division and other interested persons will be considered by the Commission at the Issues Formulation Hearing in determining whether issues or proposals are “ripe” for rulemaking.

If there are issues that third parties believe need to be addressed in rulemaking prior to the next major rulemaking hearing, those issues should be identified at the Issues Scoping Hearing if possible. Any such recommendations should include a concise summary of the issue or proposed changes. An explanation should be included as to why these issues or changes need to be addressed prior to the basin-wide rulemaking hearing. At the Issues Scoping Hearing the Commission does not desire to hear the full evidence that would be presented at a rulemaking hearing that would follow. Rather, the Commission requests only information needed for it to determine whether or not to propose a regulatory change, and whether to schedule a separate rulemaking prior to the next basin-wide rulemaking hearing.

In addition to the opportunity to raise issues at an Issues Scoping Hearing, note that anyone may petition the Commission for rulemaking at any time, pursuant to section 21.3(B)(2) of the Procedural Rules, Regulation #21 (5 CCR 1002-21).

Commission Action

As described above, the functions of the Issues Scoping Hearing are to encourage early identification of potential issues for the next major rulemaking, and to identify any issues that may need to be addressed in rulemaking prior to that time. Therefore, when appropriate the Commission will schedule any separate rulemaking hearing that may be determined necessary as a result of input at the Issues Scoping Hearing. If no such separate rulemaking is needed, the Commission will take no specific action at the conclusion of the Issues Scoping Hearing.