

WATER QUALITY CONTROL COMMISSION RULEMAKING HEARING PROCESS SUMMARY

I. Before the Hearing

A. Hearing Notice

A rulemaking process for the Water Quality Control Commission to formally consider new or revised water quality regulations is initiated by distribution of a Notice of Public Rulemaking Hearing. The notice provides information as to the date, time and place of the hearing, as well as information regarding the prehearing opportunities and requirements for those interested in participating in the rulemaking process. Generally, the proposed regulations or proposed revisions are attached to the hearing notice, along with a proposed Statement of Basis, Specific Statutory Authority and Purpose, which describes the proposed rationale for the changes that will be considered. Official publication of the notice is in the Colorado Register, although copies are also sent to persons that have expressed a specific interest in that rulemaking and all hearing notices are made available on the Commission's website. Typically, a hearing notice and proposal are approved by the Commission four months before the date of a hearing, and published/distributed approximately three months before the hearing.

B. Options for Participation

There are two options for participating in Commission rulemaking hearings: (1) those requesting "party status" must meet certain prehearing deadlines for the submission of documents and have the right to cross-examine witnesses at the hearing; and (2) any interested member of the public may provide written or oral comments without requesting party status.

C. Prehearing Procedures

The hearing notice establishes deadlines for the submission of prehearing statements (outlining parties' positions regarding the proposal) and rebuttal statements (responding to the other parties' positions) by parties. A prehearing conference is scheduled for about one month before the hearing, to resolve any procedural issues regarding the hearing, identify unresolved substantive issues, and schedule time for parties' testimony at the hearing.

D. Written Comment

Deadlines are established in the hearing notice for written input from those with party status. Other members of the public may submit written comment any time up to and including the day of the hearing. However, the submission of written comments at least a week and a half before the hearing is strongly encouraged, so that the comments can be distributed to Commission members for review prior to the hearing. It is very difficult for Commission members to review materials received while the hearing is in process. Furthermore, for logistical reasons, the Commission office cannot guarantee that electronic submissions received after 1:00 p.m. the work day before the hearing will be provided to Commissioners for consideration. All hearing documents are available for review on the Commission's website.

II. At the Hearing

A. Testimony from Staff and Parties

Generally, the hearing will start with testimony from those requesting party status and from the Water Quality Control Division, which serves as staff to the Commission for rulemaking hearings. Typically, testimony is heard first from the proponent of the proposal, and then from others. Each entity has been allotted a specific amount of time as a result of discussions at the prehearing conference. Witnesses are sworn in and their testimony is heard, followed by questions from the Commission and any cross-examination.

B. Public Comment

Depending on the anticipated length of the hearing, sometimes a specific time is set to receive comments from members of the public who have not requested party status. Otherwise, public comment is generally heard at the conclusion of testimony from the parties and the Division staff. You may contact the Commission office prior to the hearing to find out what time has been scheduled. **If you wish to comment and have specific time constraints, notify the Commission Administrator, Trisha Oeth, or Program Assistant, Nancy Horan, so that appropriate arrangements can be made.** When a hearing is expected to be lengthy, a time limit (e.g., five minutes per person) may be established. Members of the public are sworn in and their testimony is heard. They may then be asked questions by Commission members or cross-examined by parties or the Division staff. Cross-examination of public commenters is rare.

C. Deliberations

After the Commission has heard all of the testimony from the parties, Division staff and the general public, and has received all written documents offered in a timely manner, the hearing record is closed. Generally, the Commission begins its deliberations immediately after the completion of a hearing, while the information is most fresh. Deliberations are open to the public. No new information can be introduced during deliberations, although the Commission will sometimes ask clarifying questions regarding information already in the record. Most commonly, the Commission's initial deliberations are concluded by giving "preliminary final approval" to any agreed upon changes, by vote of a majority of the Commission members present. This preliminary approval is subject to a final vote at a subsequent meeting. The Commission often will ask the staff to prepare appropriate revisions to the proposed regulations and the proposed Statement of Basis and Purpose, to reflect the changes given preliminary approval, which may vary from the initial proposal attached to the hearing notice after considering the information received. A set of "draft final action" documents is then typically circulated to the parties and other interested persons to review for accuracy prior to final action by the Commission.

D. Final Action

Final action is most commonly scheduled for the Commission's monthly meeting that follows the meeting at which the hearing is held. Any changes to the regulation are then officially published in the Colorado Register and posted on the Commission's website. Revisions usually become effective at the end of the month following final Commission approval, although some revisions have a delayed effective date to allow for EPA review.

For more information: See the Public Participation Handbook on the Commission's website or contact Commission Administrator, Trisha Oeth at 303-692-3468 or Program Assistant, Nancy Horan at 303-692-3463.