



COLORADO

Air Quality Control Commission

Department of Public Health & Environment

NOTICE OF RULEMAKING HEARING

Regarding proposed revisions to:

**Regulation Number 3 and Regulation Number 7
5 CCR 1001-5 and 5 CCR 1001-9**

SUBJECT:

The Air Quality Control Commission will hold a rulemaking hearing to consider:

- Revisions to Regulation Number 3, to (1) direct the fees collected under the Disproportionately Impacted Community Monitoring Program to the Stationary Source Fund (SSF) and make additional clarifications to the Disproportionately Impacted Community Permitting requirements in Part A, (2) make clarifications to the permitting rules regarding environmental justice summaries and Disproportionately Impacted Community Monitoring in Parts B and C, and (3) remove emergency affirmative defense provision from Part C for Title V Operating Permits to correspond to federal revisions.
- Revisions to Regulation Number 7 to update the definition of disproportionately impacted community.

All required documents for this rulemaking can be found on the Commission website at:

<https://cdphe.colorado.gov/aqcc>

PUBLIC COMMENT SESSION

DATE: May 15, 2024

TIME: 4:30 p.m. to 7:30 p.m.

PLACE: The session will be held online only; there will be no in-person participation. Details related to participation and registration can be found at:

<https://cdphe.colorado.gov/aqcc>

NOTE: The public comment session may end early if all commenters that are registered have had an opportunity to speak.

PARTY TESTIMONY & DELIBERATIONS

DATE: May 16-17, 2024

TIME: To begin at or after 9:00 a.m.

PLACE: The hearing will be held hybrid fashion both in-person and via Zoom. Details related to participation and registration can be found at: <https://cdphe.colorado.gov/aqcc>

IMPORTANT: The Commission may reestablish conducting meetings at the Colorado Department of Public Health and Environment in its entirety or structured as a hybrid meeting. Any such changes will be noticed on the Commission's website at: <https://cdphe.colorado.gov/aqcc>

The hearing may be continued at such places and time as the Commission may announce. Any such changes will be noticed on the Commission's website. Interested parties may contact the Commission Office at cdphe.aqcc-comments@state.co.us to confirm meeting details.

PUBLIC COMMENT:

The Commission encourages input from the public, either orally during the public comment session or in writing prior to the hearing. However, oral public comment will generally not be permitted by persons who offer comment on behalf of an entity that is a party. Those persons may, however, submit written public comment.

Instructions for registering to provide oral public comment will be posted in the agenda on the Commission's website at <https://cdphe.colorado.gov/aqcc> on May 3, 2024.

Written comments should be submitted no later than **April 30, 2024** by emailing cdphe.aqcc-comments@state.co.us or mailing to:

Colorado Air Quality Control Commission
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, EDO-AQCC-A5
Denver, Colorado 80246

IMPORTANT DATES AND DEADLINES:

PROCESS DESCRIPTION	DUE DATE & TIME
Request for Party Status	March 12, 2024 by 5:00 p.m.
Status Conference	March 18, 2024 at 3:00 p.m.
Alternate Proposal	April 2, 2024 by 5:00 p.m.
Prehearing Statement	April 2, 2024 by 5:00 p.m.
Prehearing Conference	April 9, 2024 at 9:00 a.m.
Rebuttal Statement	April 23, 2024 by 5:00 p.m.
Written Public Comments	April 30, 2024 by 5:00 p.m.

Submittals for this hearing should be emailed to cdphe.aqcc-comments@state.co.us unless an exception is granted pursuant to Subsection III.1.3. of the Commissions Procedural Rules.

REQUEST FOR PARTY STATUS:

A request for party status must:

- 1) identify the applicant (this could be a company and/or contact name);
- 2) provide the name, address, telephone and email address of the applicant's representative or counsel; and
- 3) briefly summarize what, if any, policy, factual, and legal issues the applicant has with the proposal(s) as of the time of filing the application.

In addition, requests for party status should indicate whether the applicant intends to file an alternate proposal and, if so, briefly describe the scope and nature of the alternate proposal.

The request for party status must be electronically mailed to:

- Air Quality Control Commission staff: theresa.martin@state.co.us
- Air Quality Control Commission attorney: robyn.wille@coag.gov
- Air Pollution Control Division staff: jermey.schuster@state.co.us
- Air Pollution Control Division attorney: emily.splittek@coag.gov

Requests received beyond the stated deadline shall only be considered upon a written motion for good cause shown. The Commission reserves the right to deny party status to anyone that does not comply with the Commission's Procedural Rules.

STATUS CONFERENCE:

Attendance at the status conference is mandatory for anyone who has requested party status, though each party need only have one representative present. The status conference is intended to ascertain and discuss the issues involved, and to ensure that parties are making all necessary efforts to discuss and resolve such issues prior to the submission of prehearing statements. Parties will be confirmed and a party list will be generated and distributed. The status conference will be held virtually via video conference. A registration link will be provided by the Commission's office prior to the status conference. Note that if the Hearing Officer deems the status conference unnecessary, the status conference may be cancelled.

ALTERNATE PROPOSAL:

Alternate proposals will be considered by the Commission "only if the subject matter of the alternative proposal is consistent with and fits within the scope of the notice." 5 CCR 1001-1, Section (V)(E)(4)(b). The submittal of an alternate proposal must be accompanied by a separate electronic copy of the alternate proposed rule and statement of basis and purpose language and all other associated documents as required by the Commission's Procedural Rules, including an economic impact analysis. Alternate proposals and associated exhibits must be emailed to all persons listed on the party status list or otherwise provided through an approved method of electronic transmission.

PREHEARING STATEMENTS:

Each party must submit a prehearing statement. Exhibits to a prehearing statement must be submitted in a separate electronic transmission. Prehearing statements and associated exhibits must be emailed to all persons listed on the party status list or otherwise provided through an approved method of electronic transmission. Prehearing statements must contain all the necessary elements described in subsection V.E.6.c of the Commission's Procedural Rules (5 CCR 1001-1).

PREHEARING CONFERENCE:

Attendance at the prehearing conference is mandatory for all parties to this hearing, though each party need only have one representative present. The prehearing conference will be held virtually, and registration information will be provided by the Commission's office prior to the prehearing conference.

REBUTTAL STATEMENTS:

Rebuttal statements may be submitted by the Division and any party to the hearing to respond to issues and arguments identified in prehearing statements. Rebuttal statements may not raise any issues, or be accompanied by alternate proposals, that could have been raised in the party's prehearing statement. Rebuttal statements and associated exhibits must be emailed to all persons listed on the party status list or otherwise provided through an approved method of electronic transmission. The filing of rebuttal statements is optional.

DELIBERATION AND FINAL ACTION:

The Commission intends to deliberate and take final action on the proposed changes to these Regulations at the conclusion of the testimony.

STATUTORY AUTHORITY FOR THE COMMISSION'S ACTIONS:

The Colorado Air Pollution Prevention and Control Act, Section 25-7-114.2, C.R.S. authorizes the construction permitting program. Sections 25-7-114.1 and 25-7-114.7 authorize annual emission fees, air pollutant emission notice filing fees, and permit application processing fees. Section 25-7-105(12), C.R.S. authorizes the Commission to promulgate regulations necessary to implement the provisions of the emission notice, construction permit, and Title V programs. Section 25-7-106, C.R.S. provides the Commission the maximum flexibility in establishing an air quality control program and authorizes the Commission to promulgate regulations as necessary or desirable to carry out that program. Section 25-7-106(6), C.R.S. further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report information. Section 25-7-114.4(5), C.R.S. authorizes the Commission to promulgate enhanced modeling and monitoring requirements for new or modified sources of affected pollutants in disproportionately impacted communities, and to identify those disproportionately impacted communities. Further, Section 25-7-106(1)(c), C.R.S., authorizes the Commission to promulgate "[e]mission control regulations that are applicable to the entire state, that are applicable only within specified areas or zones of the state, or that are applicable only when a specified class of pollution is present." Section 24-4-109 provides for the definition of "disproportionately impacted community" and directs statewide agencies to use that definition in their agency actions.

The rulemaking hearing will be conducted in accordance with Sections 24-4-103 and 25-7-110, 25-7-110.5 and 25-7-110.8 C.R.S., as applicable and amended, the Commission's Procedural Rules, all other applicable rules and regulations, and as otherwise stated in this notice. This list of statutory authority is not intended as an exhaustive list of the Commission's statutory authority to act in this matter.

Dated this 15th day of February 2024 at Denver, Colorado

Colorado Air Quality Control Commission

A handwritten signature in black ink, appearing to read 'Jojo La', is written above a horizontal line.

Jojo La, Administrator