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States' Wetlands Permitting Statutes:

Colorado



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Colo. Rev. Stat. Ann. § 25-8-103 Colo. Rev. Stat. Ann. T. 25, art. 8, Pt. 2

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CO Rev. Stat § 25-8-103. Definitions.

As used in this article 8, unless the context otherwise requires:

(1) "Agricultural chemical" means any of the following:

(a) A pesticide as defined in section 35-10-103, C.R.S.; or

(b) A commercial fertilizer as defined in section 35-12-103, C.R.S.

(1.1) "Agricultural management area" means a designated geographic area defined by the commissioner of agriculture that includes natural or man-made features where there is a significant risk of contamination or pollution of state waters from agricultural activities conducted at or near the land surface.

(1.2) "Agricultural management plan" means any activity, procedure, or practice adopted as a rule by the commissioner of agriculture pursuant to article 4 of title 24, in consultation with the Colorado cooperative extension service established pursuant to part 7 of article 31 of title 23 and the water quality control division, to prevent or remedy the introduction of agricultural chemicals into state waters to the extent technically and economically practical.

(1.3) "Best management practices" means any voluntary activity, procedure, or practice established by the department of agriculture, in consultation with the Colorado cooperative extension service established pursuant to part 7 of article 31 of title 23 and the water quality control division, to prevent or remedy the introduction of agricultural chemicals into state waters to the extent technically and economically practical.



(1.4) "Biosolids" means the accumulated residual product resulting from a domestic wastewater treatment works or other domestic sources. "Biosolids" does not include grit or screenings from a wastewater treatment works or commercial and industrial septage or on-site wastewater treatment systems regulated by article 10 of this title.

(1.5) "Commission" means the water quality control commission created by section 25-8-201.

(1.7) "Commissioner" means the commissioner of agriculture.

(2) "Control regulation" means any regulation promulgated by the commission pursuant to section 25-8-205.

(3) "Discharge of pollutants" means the introduction or addition of a pollutant into state waters.

(4) "Division" means the division of administration of the department of public health and environment.

(5) "Domestic wastewater treatment works" means a system or facility for treating, neutralizing, stabilizing, or disposing of domestic wastewater which system or facility has a designed capacity to receive more than two thousand gallons of domestic wastewater per day. The term "domestic wastewater treatment works" also includes appurtenances to such system or facility, such as outfall sewers and pumping stations, and to equipment related to such appurtenances. The term "domestic wastewater treatment works" does not include industrial wastewater treatment plants or complexes whose primary function is the treatment of industrial wastes, notwithstanding the fact that human wastes generated incidentally to the industrial processes are treated therein.

(6) "Effluent limitation" means any restriction or prohibition established under this article or federal law on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into state waters, including, but not limited to, standards of performance for new sources, toxic effluent standards, and schedules of compliance.

(7) "Executive director" means the executive director of the department of public health and environment.



(8) "Federal act" means the "Federal Water Pollution Control Act", commonly referred to as the "Clean Water Act".

(8.3)

(a) "Graywater" means that portion of wastewater that, before being treated or combined with other wastewater, is collected from fixtures within residential, commercial, or industrial buildings or institutional facilities for the purpose of being put to beneficial uses authorized by the commission in accordance with section 25-8-205 (1)(g); except that graywater use for purposes of scientific research must comply with the requirements of section 25-8-205.3, but need not comply with the commission's control regulations established under section 25-8-205 (1).

(b) Sources of graywater may include discharges from bathroom and laundry room sinks, bathtubs, showers, laundry machines, and other sources authorized by rule. Graywater does not include the wastewater from toilets, urinals, kitchen sinks, dishwashers, or nonlaundry utility sinks. Graywater must be collected in a manner that minimizes household wastes, human excreta, animal or vegetable matter, and chemicals that are hazardous or toxic, as determined by the commission; except that a person may collect, treat, and use graywater in a manner that departs from the commission's control regulations established under section 25-8-205 (1) if the person collects, treats, and uses graywater for purposes of scientific research in accordance with the requirements of section 25-8-205.3.

(8.4) "Graywater treatment works" means an arrangement of devices and structures used to:

(a) Collect graywater from within a building or a facility; and

(b) Treat, neutralize, or stabilize graywater within the same building or facility to the level necessary for its authorized uses.

(8.5) "Industrial discharger" means any entity which introduces pollutants into a domestic wastewater treatment works from any nondomestic source subject to regulation under section 307 (b), (c), or (d) of the federal act.

(9) "Irrigation return flow" means tailwater, tile drainage, or surfaced groundwater flow from irrigated land.



(10) "Issue" or "issuance" means the mailing to all parties of any order, permit, determination, or notice, other than notice by publication, by certified mail to the last address furnished to the agency by the person subject thereto or personal service on such person, and the date of issuance of such order, permit, determination, or notice shall be the date of such mailing or service or such later date as is stated in the order, permit, determination, or notice.

(11) "Municipality" means any regional commission, county, metropolitan district offering sanitation service, sanitation district, water and sanitation district, water conservancy district, metropolitan sewage disposal district, service authority, city and county, city, town, Indian tribe or authorized Indian tribal organization, or any two or more of them which are acting jointly in connection with a sewage treatment works.

(12) "Permit" means a permit issued pursuant to part 5 of this article.

(13) "Person" means an individual, corporation, partnership, association, state or political subdivision thereof, federal agency, state agency, municipality, commission, or interstate body.

(14) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. "Point source" does not include irrigation return flow.

(15) "Pollutant" means dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal, or agricultural waste.

(16) "Pollution" means the man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

(16.5) "Pretreatment requirement and standard" means any requirement, prohibition, standard, concentration, or effluent limitation described in enforceable pretreatment requirements by the commission pursuant to section 25-8-205 (1)(b), (1)(c), or (1)(d).

(17) "Promulgate" means and includes authority to adopt, and from time to time amend, repeal, modify, publish, and put into effect.



(17.5) "Reclaimed domestic wastewater" means wastewater that has received treatment in accordance with section 25-8-205.7, 25-8-205.8, or 25-8-205.9 and that enables the wastewater to meet the requirements, prohibitions, standards, and concentration limitations adopted by the commission for subsequent reuses other than drinking.

(18) "Schedule of compliance" means a schedule of remedial measures and times including an enforceable sequence of actions or operations leading to compliance with any control regulation or effluent limitation.

(19) "State waters" means any and all surface and subsurface waters that are contained in or flow in or through this state, including wetlands, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

(20) "Water quality standard" means any standard promulgated pursuant to section 25-8-204.

CO Rev. Stat § 25-8-201. Water quality control commission created.

(1)

(a)

(I) There is created in the department of public health and environment a water quality control commission, which is a type 1 entity, as defined in section 24-1-105, and which exercises its powers and performs its duties and functions under the department of public health and environment.

(II) The commission consists of nine citizens of the state appointed by the governor, with the consent of the senate, for terms of three years; except that the terms must be staggered so that no more than five members' terms expire in the same year. Members of the commission must be appointed so as to achieve geographical representation and to reflect the various interests in water in the state. At least two members must reside in that portion of the state that is west of the continental divide. No more than five members of the commission may be affiliated with the same political party.



(III) At least one member of the commission must have agricultural experience, preferably a member with agricultural experience who is also regulated by the division. At least three other members of the commission must be from the community regulated by the division, employed by an entity that is subject to fees set pursuant to this article 8, and, to the extent practicable, employed by an entity that is subject to a different type of fee pursuant to this article 8 than the type of fee that the employers of the other two members are subject.

(IV) A member of the commission must have experience or training in one or more of the following areas:

- (A) Science;
- (B) Engineering;
- (C) Technology;
- (D) Industry;
- (E) Construction;
- (F) Labor;
- (G) Agriculture;
- (H) Environmental law;
- (I) Environmental policy;
- (J) Environmental justice;
- (K) Municipal water treatment;
- (L) Municipal wastewater treatment;
- (M) Municipal government; or
- (N) County government.

(b) Repealed.



(c) Whenever a vacancy exists, the governor shall appoint a member for the remaining portion of the unexpired term created by the vacancy, subject to confirmation by the senate.

(2)

(a) The governor may remove any appointed member of the commission for malfeasance in office, failure to regularly attend meetings, or for any cause that renders such a member incapable or unfit to discharge the duties of his office.

(b) If any member of the commission is absent from two consecutive meetings, the chairman of the commission shall determine whether the cause of such absences was reasonable. If he determines that the cause of the absences was unreasonable, he shall so notify the governor who may remove such member and appoint a qualified person for the unexpired portion of the regular term, subject to confirmation by the senate.

(3) Each member of the commission not otherwise in full-time employment of the state shall receive a per diem which shall be the same amount paid to the general assembly for attendance at interim committees for each day actually and necessarily spent in the discharge of official duties, not to exceed twelve hundred dollars in any one year; and each member shall receive traveling and other necessary expenses actually incurred in the performance of his official duties as a member of the commission.

(4) The commission shall select from its own membership a chairman, a vice-chairman, and a secretary. The commission shall keep a record of its proceedings.

(5) The commission shall hold regular public meetings and may hold special meetings on the call of the chairman or vice-chairman at such other times as deemed necessary. Written notice of the time and place of each meeting shall be mailed to each member at least five days in advance.

(6) All members shall have a vote. Two-thirds of the commission shall constitute a quorum, and the concurrence of a majority of the quorum in any matter within its powers and duties shall be required for any determination made by the commission.

CO Rev. Stat § 25-8-0202. Duties of commission – rules.



(1) The commission shall develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state and, to ensure provision of continuously safe drinking water by public water systems, and, in connection therewith, shall:

- (a) Classify state waters in accordance with section 25-8-203;
- (b) Promulgate water quality standards in accordance with section 25-8-204;
- (c) Promulgate control regulations in accordance with section 25-8-205;
- (d) Promulgate permit regulations in accordance with sections 25-8-501 to 25-8-504;
- (e) Perform duties assigned to the commission in part 7 of this article with respect to the location, design, construction, financing, and operation of domestic wastewater treatment plants;
- (f) Review from time to time, at intervals of not more than three years, classification of waters, water quality standards, and control regulations which it has promulgated;
- (g) Promulgate rules and adopt priority ranking for the administration of federal and other public source construction loans or grants, and grants from the water quality improvement fund, which the commission or the division administers and which shall not be expended for any purpose other than that for which they were provided;
- (h) Advise and consult and cooperate with other agencies of the state, the federal government, and other states, and with groups, political subdivisions, and industries affected by the provisions of this article and the policies or regulations of the commission;
- (i) Exercise all incidental powers necessary or proper for carrying out the purposes of this article including the powers to issue and enforce rules and orders;
- (i.5) Promulgate rules and regulations to govern the division's certification activities pursuant to section 401 of the federal act;



- (j) Perform such other duties as may lawfully be assigned to it by Colorado statutes;
- (k) Act as an appellate body to review all determinations by the division except those determinations dealing with surface water discharge permits or portions thereof;
- (l) Coordinate with the United States secretary of the interior and the United States secretary of agriculture to develop water quality management plans for federal lands pursuant to 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 43 U.S.C. sec. 1712;
- (m) Adopt rules providing minimum standards for the location, construction, performance, installation, alteration, and use of on-site wastewater treatment systems within the state of Colorado, in accordance with section 25-10-104;
- (n) Adopt minimum general sanitary standards for drinking water systems in accordance with section 25-1.5-202;
- (o) Develop additions or modifications to the drinking water project eligibility list in accordance with section 37-95-107.8, C.R.S.;
- (p) Establish, and revise as necessary, a schedule of nonrefundable fees to cover the reasonable costs of implementing a program for the beneficial use of biosolids, in accordance with section 30-20-110.5, C.R.S.; and
- (q) Hear appeals of penalties imposed pursuant to section 25-1-114.1 (2.5) for a violation of minimum general sanitary standards and regulations for drinking water.

(2) The commission shall have authority to implement the legislative declaration as prescribed in section 25-8-102.

(3) The commission shall hold a public hearing during the month of October of each year in order to hear public comment on water pollution problems within the state, alleged sources of water pollution within this state, and the availability of practical remedies therefor; and at such hearing the commission, administrator, and division personnel shall answer reasonable questions from the public concerning administration and enforcement of the various



provisions of this article, as well as rules and regulations promulgated under the authority of this article.

(4) The commission shall employ an administrator and shall delegate to such administrator such duties and responsibilities as it may deem necessary, including acting as a hearing officer for the commission; but no authority shall be delegated to such administrator to promulgate standards or regulations, or to make determinations, or to issue or countermand orders of the commission. Such administrator shall have appropriate practical, educational, and administrative experience related to water quality control and shall be employed pursuant to section 13 of article XII of the state constitution.

(5) Repealed.

(6) The commission is hereby designated as the state water pollution control agency for this state for all purposes of the federal act. The commission shall maintain a program which does not conflict with the provisions of the federal act and is hereby authorized to take all action necessary and appropriate to secure to this state, its municipalities, or intermunicipal or interstate agencies the benefits of said act.

(7) The commission and the division shall recognize water quality responsibilities of the following state agencies, referred to in this subsection (7) as the "implementing agencies": The office of mined land reclamation; the state engineer; the energy and carbon management commission created in section 34-60-104.3 (1); and the state agency responsible for activities related to the federal "Resource Conservation and Recovery Act of 1976", 42 U.S.C. sec. 6901 et seq., as amended, and related state programs. Activities subject to the jurisdiction of the implementing agencies that result in discharge to state waters shall be regulated as follows:

(a) The commission shall be solely responsible for the adoption of water quality standards and classifications for state waters affected by such discharges. Except as set forth in paragraph (b) of this subsection (7), such classifications and standards shall be implemented by the implementing agencies, after consultation with the division and the commission, through their own programs. For the purpose of subsection (7), water quality standards and classifications under this section for state waters other than surface waters shall not specify applicable points of compliance, but such points of compliance shall be adopted, in accordance with criteria established through rule-making after public hearing and consultation with the commission and division, by the



appropriate agency with jurisdiction as specified in paragraph (b) of this subsection (7) so as to protect present and future beneficial uses of water.

(b)

(I) The division shall be solely responsible for the issuance and enforcement of permits authorizing point source discharges to surface waters of the state affected by such discharges.

(II) Neither the commission nor the division shall require permits for, or otherwise regulate, other activities subject to the jurisdiction of the implementing agencies, unless the commission finds, after notice and public hearing, that:

(A) Such regulation is necessary to assure compliance with the federal act, the provisions of articles 80 to 93 of title 37, C.R.S., or water quality standards and classifications adopted for state waters or to protect present and future beneficial uses of water; or

(B) Such regulation is necessary to avoid the imposition of a disproportionate burden on other dischargers or classes of dischargers to the affected state waters who are subject to the requirements of this article; or

(C) The implementing agency fails to provide reasonable assurance that compliance with this subsection (7) has been obtained through its own programs.

(III) Regulation by the commission under this paragraph (b) shall be undertaken solely through the adoption of control regulations under section 25-8-205, or permit regulations under section 25-8-501, and the division may enforce such regulations as provided in this article.

(c) Nothing in this subsection (7) shall relieve any activity from participation in waste load allocation proceedings under this article or limit the emergency authority of the division pursuant to section 25-8-307.



(d) This subsection (7) is intended to restate and clarify existing law and to provide a procedure for coordination between state agencies which have responsibilities to implement water quality protection of state waters. It is not intended either to grant additional jurisdiction to any agency or to curtail the jurisdiction of any agency to fulfill its statutory responsibilities, including jurisdiction to maintain a program consistent with the requirements of the federal "Resource Conservation and Recovery Act of 1976", as amended.

(8)

(a) The commission may adopt rules more stringent than corresponding enforceable federal requirements only if it is demonstrated at a public hearing, and the commission finds, based on sound scientific or technical evidence in the record, that state rules more stringent than the corresponding federal requirements are necessary to protect the public health, beneficial use of water, or the environment of the state. Those findings shall be accompanied by a statement of basis and purpose referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the commission's conclusion.

(b) The existing policies, rules, and regulations of the commission and division shall be applied in conformance with section 25-8-104 and this section.

CO Rev. Stat § 25-8-203. Classification of state waters.

(1) The commission may classify state waters.

(2) The types of classes shall be determined by regulations and may be based upon or intended to indicate or describe any relevant characteristic, such as:

(a) The existing extent of pollution or the maximum extent of pollution to be tolerated as a goal;

(b) Whether or not pollution arises from natural sources;

(c) Present beneficial uses of the water, or the beneficial uses that may be reasonably expected in the future for which the water is suitable in its present condition, or the beneficial uses for which it is to become suitable as a goal;



- (d) The character and uses of the land area bordering the water;
 - (e) The need to protect the quality of the water for beneficial uses such as domestic, agricultural, municipal, and industrial uses, the protection and propagation of fish and wildlife, recreation, drinking water, or such beneficial uses as the commission deems consistent with the policies of section 25-8-102 and the need to minimize negative impacts on water rights;
 - (f) The type and character of the water, such as surface or subsurface, lake or stream, together with volume, flow, depth, stream gradient, temperature, surface area involved, and daily or seasonal variability of any of such characteristics. Waters in ditches and other man-made conveyance structures shall not be classified, and water quality standards shall not be applied to them but may be utilized for purposes of discharge permits.
- (3) The particular class into which any particular segment of state waters is placed shall be determined by regulation.

CO Rev. Stat § 25-8-204. Water quality standards.

- (1) Water quality standards shall be promulgated by the commission by regulations which describe water characteristics or the extent of specifically identified pollutants for state waters.
- (2) Water quality standards may be promulgated with respect to any measurable characteristic of water, including, but not limited to:
 - (a) Toxic substances;
 - (b) Suspended solids, colloids, and combinations of solids with other suspended substances;
 - (c) Bacteria, fecal coliform, fungi, viruses, and other biological constituents and characteristics;
 - (d) Dissolved oxygen, and the extent of oxygen demanding substances;
 - (e) Phosphates, nitrates, and other dissolved nutrients;
 - (f) pH and hydrogen compounds;



- (g) Chlorine, heavy metals, and other chemical constituents;
- (h) Salinity, acidity, and alkalinity;
- (i) Trash, refuse, oil and grease, and other foreign material;
- (j) Taste, odor, color, and turbidity;
- (k) Temperature.

(3) Water quality standards may be promulgated for use in connection with any one or more of the classes of state waters established by the commission pursuant to section 25-8-203 and may be made applicable with respect to any designated portion of state water or to all state waters.

(4) In promulgating water quality standards, the commission shall consider:

- (a) The need for standards which regulate specified pollutants;
- (b) Such information as may be available to the commission as to the degree to which any particular type of pollutant is subject to treatment; the availability, practicality, and technical and economic feasibility of treatment techniques; the impact of treatment requirements upon water quantity; and the extent to which the discharge to be controlled is significant;
- (c) The continuous, intermittent, or seasonal nature of the pollutant to be controlled;
- (d) The existing extent of pollution or the maximum extent of pollution to be tolerated as a goal;
- (e) Whether the pollutant arises from natural sources;
- (f) Beneficial uses of water; and
- (g) Such information as may be available to the commission regarding the risk associated with the pollutants including its persistence, degradability, the usual or potential presence of the affected organism in any waters, the importance of the affected organisms, and the nature and extent of the effect of the pollutant on such organisms.



(5) In establishing water quality standards using statistical methodologies or in requiring the use of statistical methodologies for permit or enforcement purposes, statistical methodologies used must be based on assumptions that are compatible with the water quality data.

(6) For the purpose of implementing section 303(c)(2)(B) of the federal act, the commission may adopt numerical water quality standards for toxic pollutants listed pursuant to section 307(a)(1) of the federal act for which criteria have been published under section 304(a) of the federal act, and these standards may be applied in accordance with this article to discharges of pollutants to specified portions or segments of surface waters where such pollutants may be discharged or are present in the affected surface waters and could reasonably be expected to interfere with classified uses. Monitoring requirements for discharges of such pollutants shall be reasonably related to the potential for the presence of such pollutants in the discharge at levels inconsistent with water quality standards and shall be imposed to the maximum extent practical on those responsible for the presence of the pollutants. This subsection (6) does not in any way limit the commission's authority to adopt water quality standards in order to comply with provisions of the federal act.

(7) If, after full application of publicly owned treatment work authority pursuant to section 307(b)(1) of the federal act, stream standards or effluent limitations established pursuant to subsection (6) of this section are exceeded as a result of a discharge from a publicly owned treatment work, the commission, upon request of a publicly owned treatment work, shall conduct a public hearing to investigate the source of pollution causing such exceedance.

CO Rev. Stat § 25-8-205. [Effective Until 1/1/2026] Control regulations.

(1) The commission may promulgate control regulations for the following purposes:

(a) To describe prohibitions, standards, concentrations, and effluent limitations on the extent of specifically identified pollutants, including, but not limited to, those mentioned in section 25-8-204, that any person may discharge into any specified class of state waters;

(b) To describe pretreatment requirements, prohibitions, standards, concentrations, and effluent limitations on wastes any person may discharge into any specified class of state water from any specified type of facility, process, activity, or waste pile including, but not limited to, all types specified in section 306 (b)(1)(A) of the federal act;



(c) To describe precautionary measures, both mandatory and prohibitory, that must be taken by any person owning, operating, conducting, or maintaining any facility, process, activity, or waste pile that does cause or could reasonably be expected to cause pollution of any state waters in violation of control regulations or that does cause the quality of any state waters to be in violation of any applicable water quality standard;

(d) To adopt toxic effluent standards and pretreatment standards for pollutants which interfere with, pass through, or are otherwise incompatible with sewage treatment works;

(e) To describe requirements, prohibitions, standards, and concentration limitations on the use and disposal of biosolids to protect public health and to prevent the discharge of pollutants into state waters, except as authorized by permit. The commission requirements described pursuant to this paragraph (e) shall be no more restrictive than the requirements adopted for solid wastes disposal sites and facilities pursuant to part 1 of article 20 of title 30, C.R.S., except as necessary to be consistent with section 405 of the federal act. Fees shall be established as set forth in section 30-20-110.5, C.R.S., and the commission shall have no authority to levy additional or duplicative fees.

(f) In accordance with sections 25-8-205.7, 25-8-205.8, and 25-8-205.9, to describe requirements, prohibitions, standards, and concentration limitations on the reuse of reclaimed domestic wastewater for purposes other than drinking that will protect public health and encourage the reuse of reclaimed domestic wastewater;

(g)

(I) To describe requirements, prohibitions, and standards for the use of graywater for nondrinking purposes, to encourage the use of graywater, and to protect public health and water quality.

(II) Except as authorized in section 25-8-205.3, graywater may be used only in areas where the local city, city and county, or county has adopted an ordinance or resolution approving the use of graywater pursuant to section 30-11-107(1)(kk) or 31-15-601(1)(m). The city, city and county, or county that has adopted an ordinance or resolution approving the use of graywater pursuant to section 30-11-107(1)(kk) or 31-15-601(1)(m) has exclusive



enforcement authority regarding compliance with the ordinance or resolution.

(III) Use of graywater shall be allowed only in accordance with the terms and conditions of the decrees, contracts, and well permits applicable to the use of the source water rights or source water and any return flows therefrom, and no use of graywater shall be allowed that would not be allowed under such decrees, contracts, or permits if the graywater ordinance or resolution did not exist.

(IV) A local city, city and county, or county may only authorize the use of graywater in accordance with federal, state, and local requirements.

(h) In accordance with section 25-8-205.1, to establish requirements, prohibitions, and standards for the discharge of dredged or fill material into state waters.

(2) In the formulation of each control regulation, the commission shall consider the following:

(a) The need for regulations that control discharges of specified pollutants that are the subject of water quality standards for the receiving state waters;

(b) The need for regulations that specify treatment requirements for various types of discharges;

(c) The degree to which any particular type of discharge is subject to treatment, the availability, practicality, and technical and economic feasibility of treatment techniques, and the extent to which the discharge to be controlled is significant;

(d) Control requirements promulgated by agencies of the federal government;

(e) The continuous, intermittent, or seasonal nature of the discharge to be controlled;

(f) Whether a regulation that is to be applicable to discharges into flowing water should be written in such a way that the degree of pollution tolerated or treatment required will be dependent upon the



volume of flow of the receiving water or the extent to which the discharge is diluted therein, or the capacity of the receiving water to assimilate the discharge; and

(g) The need for specification of safety precautions that should be taken to protect water quality including, but not limited to, requirements for the keeping of logs and other records, requirements to protect subsurface waters in connection with mining and the drilling and operation of wells, and requirements as to settling ponds, holding tanks, and other treatment facilities for water that will or might enter state waters.

(3) Control regulations may be promulgated for use in connection with any one or more of the classes of state waters authorized pursuant to section 25-8-203 and may be made applicable with respect to any designated portion of state waters or to all state waters.

(4) The commission shall coordinate and cooperate with the state engineer, the Colorado water conservation board, the energy and carbon management commission created in section 34-60-104.3 (1), the state board of health, and other state agencies having regulatory powers in order to avoid adopting control regulations that would be either redundant or unnecessary.

(5) The commission shall not adopt control regulations that require agricultural nonpoint source dischargers to utilize treatment techniques that require additional consumptive or evaporative use which would cause material injury to water rights. With regard to nonpoint source water pollution control related to agricultural practices, the commission and division shall pursue incentive, grant, and cooperative programs in preference to the promulgation of control regulations. When interested water conservation districts, water conservancy districts, and conservation districts recommend nonpoint source control activities related to agricultural practices to the division and commission, the division and commission, after consultation with such districts, shall give substantial weight to the recommendations of such districts into the approved program. Except as provided by section 25-8-205.5, control regulations related to agricultural practices shall be promulgated only if incentive, grant, and cooperative programs are determined by the commission to be inadequate and such regulations are necessary to meet state law or the federal act. This subsection (5) does not allocate wasteloads or relieve any source from participation in wasteload allocations determined necessary under any duly promulgated regulations established by the water quality control commission under this section.



(6) The division may issue a variance from a control regulation of general applicability, based upon a determination that the benefits derived from meeting the control regulation do not bear a reasonable relationship to the economic, environmental, or energy impacts or other factors which are particular to the applicant in complying with the control regulation; except that such variance shall be consistent with the purposes of this article including the protection of existing beneficial uses. No variance shall be issued for longer than five years. Variances shall be granted or renewed according to the procedure established in section 25-8-401(5).

**CO Rev. Stat § 25-8-205. [Effective 1/1/2026] [Effective until 7/1/2026].
Control regulations.**

(1) The commission may promulgate control regulations for the following purposes:

(a) To describe prohibitions, standards, concentrations, and effluent limitations on the extent of specifically identified pollutants, including, but not limited to, those mentioned in section 25-8-204, that any person may discharge into any specified class of state waters;

(b) To describe pretreatment requirements, prohibitions, standards, concentrations, and effluent limitations on wastes any person may discharge into any specified class of state water from any specified type of facility, process, activity, or waste pile including, but not limited to, all types specified in section 306 (b)(1)(A) of the federal act;

(c) To describe precautionary measures, both mandatory and prohibitory, that must be taken by any person owning, operating, conducting, or maintaining any facility, process, activity, or waste pile that does cause or could reasonably be expected to cause pollution of any state waters in violation of control regulations or that does cause the quality of any state waters to be in violation of any applicable water quality standard;

(d) To adopt toxic effluent standards and pretreatment standards for pollutants which interfere with, pass through, or are otherwise incompatible with sewage treatment works;

(e) To describe requirements, prohibitions, standards, and concentration limitations on the use and disposal of biosolids to protect public health and to prevent the discharge of pollutants into state



waters, except as authorized by permit. The commission requirements described pursuant to this paragraph (e) shall be no more restrictive than the requirements adopted for solid wastes disposal sites and facilities pursuant to part 1 of article 20 of title 30, C.R.S., except as necessary to be consistent with section 405 of the federal act. Fees shall be established as set forth in section 30-20-110.5, C.R.S., and the commission shall have no authority to levy additional or duplicative fees.

(f) In accordance with sections 25-8-205.7, 25-8-205.8, and 25-8-205.9, to describe requirements, prohibitions, standards, and concentration limitations on the reuse of reclaimed domestic wastewater for purposes other than drinking that will protect public health and encourage the reuse of reclaimed domestic wastewater;

(g)

(I) To describe requirements, prohibitions, and standards for the use of graywater for nondrinking purposes, to encourage the use of graywater, and to protect public health and water quality.

(II) A city, city and county, or county that has adopted an ordinance or resolution regarding the use of graywater pursuant to section 30-11-107 (1)(kk) or 31-15-601 (1)(m) has exclusive enforcement authority regarding compliance with the ordinance or resolution.

(III) Use of graywater is allowed only in accordance with the terms and conditions of the decrees, contracts, and well permits applicable to the use of the source water rights or source water and any return flows from the source water, and graywater use shall not be allowed in A manner that is not allowed under such decrees, contracts, or permits.

(h) In accordance with section 25-8-205.1, to establish requirements, prohibitions, and standards for the discharge of dredged or fill material into state waters.

(2) In the formulation of each control regulation, the commission shall consider the following:



- (a) The need for regulations that control discharges of specified pollutants that are the subject of water quality standards for the receiving state waters;
- (b) The need for regulations that specify treatment requirements for various types of discharges;
- (c) The degree to which any particular type of discharge is subject to treatment, the availability, practicality, and technical and economic feasibility of treatment techniques, and the extent to which the discharge to be controlled is significant;
- (d) Control requirements promulgated by agencies of the federal government;
- (e) The continuous, intermittent, or seasonal nature of the discharge to be controlled;
- (f) Whether a regulation that is to be applicable to discharges into flowing water should be written in such a way that the degree of pollution tolerated or treatment required will be dependent upon the volume of flow of the receiving water or the extent to which the discharge is diluted therein, or the capacity of the receiving water to assimilate the discharge; and
- (g) The need for specification of safety precautions that should be taken to protect water quality including, but not limited to, requirements for the keeping of logs and other records, requirements to protect subsurface waters in connection with mining and the drilling and operation of wells, and requirements as to settling ponds, holding tanks, and other treatment facilities for water that will or might enter state waters.

(3) Control regulations may be promulgated for use in connection with any one or more of the classes of state waters authorized pursuant to section 25-8-203 and may be made applicable with respect to any designated portion of state waters or to all state waters.

(4) The commission shall coordinate and cooperate with the state engineer, the Colorado water conservation board, the energy and carbon management commission created in section 34-60-104.3 (1), the state board of health, and



other state agencies having regulatory powers in order to avoid adopting control regulations that would be either redundant or unnecessary.

(5) The commission shall not adopt control regulations that require agricultural nonpoint source dischargers to utilize treatment techniques that require additional consumptive or evaporative use which would cause material injury to water rights. With regard to nonpoint source water pollution control related to agricultural practices, the commission and division shall pursue incentive, grant, and cooperative programs in preference to the promulgation of control regulations. When interested water conservation districts, water conservancy districts, and conservation districts recommend nonpoint source control activities related to agricultural practices to the division and commission, the division and commission, after consultation with such districts, shall give substantial weight to the recommendations of such districts into the approved program. Except as provided by section 25-8-205.5, control regulations related to agricultural practices shall be promulgated only if incentive, grant, and cooperative programs are determined by the commission to be inadequate and such regulations are necessary to meet state law or the federal act. This subsection (5) does not allocate wasteloads or relieve any source from participation in wasteload allocations determined necessary under any duly promulgated regulations established by the water quality control commission under this section.

(6) The division may issue a variance from a control regulation of general applicability, based upon a determination that the benefits derived from meeting the control regulation do not bear a reasonable relationship to the economic, environmental, or energy impacts or other factors which are particular to the applicant in complying with the control regulation; except that such variance shall be consistent with the purposes of this article including the protection of existing beneficial uses. No variance shall be issued for longer than five years. Variances shall be granted or renewed according to the procedure established in section 25-8-401(5).

CO Rev. Stat § 25-8-205. [Effective 7/1/2026] Control regulations.

(1) The commission may promulgate control regulations for the following purposes:

(a) To describe prohibitions, standards, concentrations, and effluent limitations on the extent of specifically identified pollutants, including, but not limited to, those mentioned in section 25-8-204, that any person may discharge into any specified class of state waters;



(b) To describe pretreatment requirements, prohibitions, standards, concentrations, and effluent limitations on wastes any person may discharge into any specified class of state water from any specified type of facility, process, activity, or waste pile including, but not limited to, all types specified in section 306 (b)(1)(A) of the federal act;

(c) To describe precautionary measures, both mandatory and prohibitory, that must be taken by any person owning, operating, conducting, or maintaining any facility, process, activity, or waste pile that does cause or could reasonably be expected to cause pollution of any state waters in violation of control regulations or that does cause the quality of any state waters to be in violation of any applicable water quality standard;

(d) To adopt toxic effluent standards and pretreatment standards for pollutants which interfere with, pass through, or are otherwise incompatible with sewage treatment works;

(e) To describe requirements, prohibitions, standards, and concentration limitations on the use and disposal of biosolids to protect public health and to prevent the discharge of pollutants into state waters, except as authorized by permit. The commission requirements described pursuant to this subsection (1)(e) must not be more restrictive than the requirements adopted for solid wastes disposal sites and facilities pursuant to part 1 of article 20 of title 30, except as necessary to be consistent with section 405 of the federal act. Fees must be established as set forth in rules adopted by the commission pursuant to section 25-8-210.

(f) In accordance with sections 25-8-205.7, 25-8-205.8, and 25-8-205.9, to describe requirements, prohibitions, standards, and concentration limitations on the reuse of reclaimed domestic wastewater for purposes other than drinking that will protect public health and encourage the reuse of reclaimed domestic wastewater;

(g)

(I) To describe requirements, prohibitions, and standards for the use of graywater for nondrinking purposes, to encourage the use of graywater, and to protect public health and water quality.



(II) A city, city and county, or county that has adopted an ordinance or resolution regarding the use of graywater pursuant to section 30-11-107 (1)(kk) or 31-15-601 (1)(m) has exclusive enforcement authority regarding compliance with the ordinance or resolution.

(III) Use of graywater is allowed only in accordance with the terms and conditions of the decrees, contracts, and well permits applicable to the use of the source water rights or source water and any return flows from the source water, and graywater use shall not be allowed in A manner that is not allowed under such decrees, contracts, or permits.

(h) In accordance with section 25-8-205.1, to establish requirements, prohibitions, and standards for the discharge of dredged or fill material into state waters.

(2) In the formulation of each control regulation, the commission shall consider the following:

(a) The need for regulations that control discharges of specified pollutants that are the subject of water quality standards for the receiving state waters;

(b) The need for regulations that specify treatment requirements for various types of discharges;

(c) The degree to which any particular type of discharge is subject to treatment, the availability, practicality, and technical and economic feasibility of treatment techniques, and the extent to which the discharge to be controlled is significant;

(d) Control requirements promulgated by agencies of the federal government;

(e) The continuous, intermittent, or seasonal nature of the discharge to be controlled;

(f) Whether a regulation that is to be applicable to discharges into flowing water should be written in such a way that the degree of pollution tolerated or treatment required will be dependent upon the volume of flow of the receiving water or the extent to which the



discharge is diluted therein, or the capacity of the receiving water to assimilate the discharge; and

(g) The need for specification of safety precautions that should be taken to protect water quality including, but not limited to, requirements for the keeping of logs and other records, requirements to protect subsurface waters in connection with mining and the drilling and operation of wells, and requirements as to settling ponds, holding tanks, and other treatment facilities for water that will or might enter state waters.

(3) Control regulations may be promulgated for use in connection with any one or more of the classes of state waters authorized pursuant to section 25-8-203 and may be made applicable with respect to any designated portion of state waters or to all state waters.

(4) The commission shall coordinate and cooperate with the state engineer, the Colorado water conservation board, the energy and carbon management commission created in section 34-60-104.3 (1), the state board of health, and other state agencies having regulatory powers in order to avoid adopting control regulations that would be either redundant or unnecessary.

(5) The commission shall not adopt control regulations that require agricultural nonpoint source dischargers to utilize treatment techniques that require additional consumptive or evaporative use which would cause material injury to water rights. With regard to nonpoint source water pollution control related to agricultural practices, the commission and division shall pursue incentive, grant, and cooperative programs in preference to the promulgation of control regulations. When interested water conservation districts, water conservancy districts, and conservation districts recommend nonpoint source control activities related to agricultural practices to the division and commission, the division and commission, after consultation with such districts, shall give substantial weight to the recommendations of such districts into the approved program. Except as provided by section 25-8-205.5, control regulations related to agricultural practices shall be promulgated only if incentive, grant, and cooperative programs are determined by the commission to be inadequate and such regulations are necessary to meet state law or the federal act. This subsection (5) does not allocate wasteloads or relieve any source from participation in wasteload allocations determined necessary under any duly promulgated regulations established by the water quality control commission under this section.



(6) The division may issue a variance from a control regulation of general applicability, based upon a determination that the benefits derived from meeting the control regulation do not bear a reasonable relationship to the economic, environmental, or energy impacts or other factors which are particular to the applicant in complying with the control regulation; except that such variance shall be consistent with the purposes of this article including the protection of existing beneficial uses. No variance shall be issued for longer than five years. Variances shall be granted or renewed according to the procedure established in section 25-8-401(5).

CO Rev. Stat § 25-8-205.1. State waters protection – applicability – program to regulate the discharge of dredged or fill material – duties of commission and division – applicability and scope of section – legislative declaration – definitions – rules – repeal.

(1) Legislative declaration.

(a) The general assembly finds that:

(I) On May 25, 2023, the United States supreme court issued an opinion in *Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023), that interpreted the types of water resources that are considered to be "waters of the United States", which are subject to federal permitting requirements under section 404 of the federal "Clean Water Act", Pub.L. 92-500, codified at 33 U.S.C. sec. 1251 et seq., as amended, for the discharge of dredged or fill material. The Sackett ruling became immediately effective in Colorado, and the federal environmental protection agency and the United States Army corps of engineers subsequently published new regulations seeking to conform to the Sackett ruling. As a result, federal permitting requirements for the discharge of dredged or fill material no longer apply to certain state waters, including many wetlands.

(II) As of March 2024, Colorado has not had a state program to authorize the discharge of dredged or fill material into state waters and has instead relied on the United States Army corps of engineers section 404 permit program. The new definition of "waters of the United States" under Sackett, which narrows federal jurisdiction in this area, has created a need for a state dredge and fill program. With fewer federal discharge permits being issued by the United States Army corps of engineers



following Sackett, many streams, lakes, and wetlands in Colorado are at risk of irreversible harm.

(III) Some projects involving the discharge of dredged or fill material, such as those for flood control; stream restoration; water development; construction or maintenance of underground utilities, roads, transit, rail, and housing; and similar efforts that are no longer regulated by the federal act as a result of Sackett, face regulatory uncertainty unless Colorado develops its own dredge and fill program; and

(IV) The department of public health and environment led stakeholder efforts during 2023 that focused on regulatory options to address the Sackett decision, and the provisions of this section directly reflect the input received during these efforts concerning exempted activities and excluded types of waters.

(b) The general assembly further finds that:

(I) Water is Colorado's most critical natural resource, and safeguarding water quality is of paramount importance for the protection of public health and Colorado's environment;

(II) Colorado's wetlands and seasonal streams play a crucial role in maintaining water quality for drinking water and wildlife habitats, recharging groundwater, controlling floods, and keeping pollution from entering larger bodies of water;

(III) Given the crucial role that wetlands play in protecting Colorado's water resources, it is in the state's interest to expressly include "wetlands" as a category of "state waters" in the definition of that term used in this article 8. This clarification is consistent with and reiterates the department of public health and environment's longstanding recognition through rules and program implementation that wetlands are state waters deserving of protection under this article 8.

(IV) Developing a state dredge and fill program will benefit the entities that wish to engage in dredge and fill projects within Colorado because, without a discharge authorization framework, those projects will be prohibited to the detriment of Colorado's economy and general welfare;



(V) A state dredge and fill program can provide a mechanism for protecting the chemical, physical, and biological integrity of Colorado's water resources while facilitating a strong and prosperous economy; and

(VI) Notwithstanding the narrower scope of waters protected at the federal level after the Sackett decision, the United States Army corps of engineers' section 404 permit program provides a well-established and protective framework upon which Colorado should model its own dredge and fill program.

(c) Now, therefore, the general assembly declares that:

(I) This section is necessary to establish a comprehensive dredge and fill program to protect state waters, no matter how the federal term "waters of the United States" is defined in the future; and

(II) For the purpose of providing clarification concerning the limitations on the scope of Colorado's dredge and fill program going forward, the program established in this section includes:

(A) Express exemptions for certain types of activities that are not subject to dredge and fill program requirements; and

(B) Express exclusions for certain types of waters that may otherwise fall under the definition of "state waters".

(2) Applicability - limitations. Nothing in this section applies to the activities of federally recognized Indian tribes, Indians, their political subdivisions, or tribally controlled affiliates, which activities are undertaken or to be undertaken on lands within the boundaries of an Indian reservation located within the state. Additionally, nothing in this section applies to the activities of third-party non-Indian owners and operators, which activities are undertaken or to be undertaken with respect to reservation waters on Indian trust lands within the boundaries of an Indian reservation located within the state. With regard to privately owned fee land, as defined in section 25-7-1302 (4), within the boundaries of an Indian reservation located within the state, this section applies only to the discharge of dredged or fill materials of persons who are not Indians.

(3) Definitions. As used in this section, unless the context otherwise requires:



(a) "Clean Water Policy 17" means the division's Clean Water Policy 17, "Enforcement of Unpermitted Discharges of Dredged and Fill Material into state waters".

(b) "Compensatory mitigation" means the restoration, reestablishment, rehabilitation, establishment, creation, enhancement, or preservation of state waters for the purpose of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

(c) "Consultation" means to give a federal, state, local, or tribal entity the opportunity to provide special expertise to authorization processes and technical groups, act as a cooperating agency, or engage as mutually agreed by the division and the entity.

(d)

(I) "Discharge of dredged or fill material" means, except as described in subsection (3)(d)(II) of this section, any addition of dredged or fill material into, including redeposit of dredged or fill material other than incidental fallback within, state waters. The term includes:

(A) The addition of dredged or fill material to a specified discharge site located in state waters;

(B) Runoff or overflow from a contained land or water disposal area; and

(C) Any addition, including redeposit other than incidental fallback, of dredged or fill material into state waters that is incidental to any activity, including mechanized land clearing, ditching, channelization, or other excavation.

(II) "Discharge of dredged or fill material" does not include:

(A) Discharges of pollutants into state waters resulting from the onshore processing of dredged material that is extracted for any commercial use other than fill, which discharges are subject to section 402 of the federal act, even though the extraction and deposit of such material may



require a section 404 permit or an authorization issued pursuant to this section;

(B) Activities that involve only the cutting or removing of vegetation above the ground, such as mowing, rotary cutting, and chainsawing, so long as the activity neither substantially disturbs the vegetation's root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material; or

(C) Incidental fallback.

(e)

(I) "Discharge of fill material" means, except as described in subsection (3)(e)(II) of this section, the addition of fill material into state waters. The term includes:

(A) Placement of fill material that is necessary for the construction of any structure or infrastructure in state waters;

(B) The building of any structure, infrastructure, or impoundment requiring rock, sand, dirt, or other material for its construction;

(C) Site development fills for recreational, industrial, commercial, residential, or other uses;

(D) Causeways or road fills;

(E) Dams and dikes;

(F) Artificial islands;

(G) Property protection or reclamation devices such as riprap;

(H) Levees;



(I) Placement of fill material for infrastructure such as sewage treatment facilities, intake and outfall pipes associated with power plants, and subaqueous utility lines;

(J) Placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills; and

(K) Placement of overburden, slurry, tailings, or similar mining-related materials.

(II) "Discharge of fill material" does not include:

(A) Plowing, cultivating, seeding, or harvesting for the production of food, fiber, or forest products; or

(B) Placement of pilings in state waters, unless the placement has or would have the effect of a discharge of fill material. Placement of pilings for linear projects, such as bridges, elevated walkways, and power line structures, generally does not have the effect of a discharge of fill material. Furthermore, placement of pilings in state waters for a pier, a wharf, or an individual house on stilts generally does not have the effect of a discharge of fill material. Examples of activities that would have the effect of a discharge of fill material include projects where the pilings are so closely spaced that sedimentation rates would be increased, projects in which the pilings themselves effectively would replace the bottom of a body of state waters, projects involving the placement of pilings that would reduce the reach or impair the flow or circulation of state waters, and projects involving the placement of pilings that would result in the adverse alteration or elimination of aquatic functions.

(f) "Drainage ditch" means a ditch that is designed for at least the partial purpose of increasing drainage of a particular land area or infrastructure for purposes including agriculture; transportation, including roadside and railroad transportation; mosquito abatement; and stormwater management.



(g) "Dredge and fill activity" means an activity that includes the discharge of dredged or fill material.

(h) "Dredge and fill program" means the regulatory dredge and fill discharge authorization program described by this section, including the rules promulgated by the commission, as administered by the division pursuant to this section.

(i) "Dredged material" means material that is excavated or dredged from state waters.

(j) "Dredged or fill material" means dredged material or fill material.

(k) "Ecological lift" means an improvement in the biological health, as well as the chemical, geomorphic, or hydrologic health, of an area that has been damaged, degraded, or destroyed.

(l) "Fens or peatlands" means wetlands with organic soil that are classified as a histosol in the guidance document titled "Field Indicators of Hydric Soils in the United States" published by the federal natural resources conservation service.

(m)

(I) "Fill material" means, except as described in subsection (3)(m)(III) of this section, material placed in state waters where the material has the effect of:

(A) Replacing any portion of state waters with upland; or

(B) Changing the bottom elevation of any portion of any state waters.

(II) "Fill material" includes rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in state waters.

(III) "Fill material" does not include solid waste.



(n) "Isolated ordinary high watermark reaches" means reaches of state waters with an ordinary high watermark that are bordered upstream and downstream by uplands.

(o) "Isolated ponds and impoundments" means ponds and impoundments that are not within the one-hundred-year floodplain or within one thousand five hundred feet of an ordinary high watermark of other state waters. In the absence of one-hundred-year floodplain mapping by the federal emergency management agency, the one thousand five hundred feet distance criterion applies.

(p) "Isolated wetlands" means wetlands wholly surrounded by uplands. "Isolated wetlands" does not include wetlands where any portion of the wetland is within the one-hundred-year floodplain or within one thousand five hundred feet of the ordinary high watermark of other state waters. In the absence of one-hundred-year floodplain mapping by the federal emergency management agency, the one thousand five hundred feet distance criterion applies.

(q) "Kettle ponds" means lakes, ponds, or wetlands located within a formerly glaciated landscape and formed by ice blocks left by a retreating glacier.

(r) "Ordinary high watermark" means that line on the shore established by the fluctuations of water and indicated by physical characteristics, such as:

(I) A clear, natural line impressed on the bank;

(II) Shelving;

(III) Changes in the character of soil;

(IV) Destruction of terrestrial vegetation;

(V) The presence of litter and debris; or

(VI) Other appropriate means that consider the characteristics of the surrounding area.

(s) "Section 404 permit" means a permit issued by the United States Army corps of engineers pursuant to section 404 of the federal act. The



term includes an individual permit, activities authorized by a nationwide or regional permit, and a letter of permission issued in accordance with regulations of the United States Army corps of engineers.

(t) "state waters" has the meaning set forth in section 25-8-103 (19).

(u) "Upland" means any land area that, under normal circumstances, is not a wetland and does not lie below the ordinary high watermark.

(v) "Wetlands" means areas that are inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, under normal circumstances, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(4) Duties of the commission.

(a)

(I) Rules for state dredge and fill discharge authorization program - definition. The commission shall promulgate rules by December 31, 2025, as necessary to implement a state dredge and fill discharge authorization program. The rules must focus on avoidance and minimization of adverse impacts and on compensation for unavoidable adverse impacts of dredge and fill activity and must incorporate the guidelines developed pursuant to section 404 (b)(1) of the federal act.

(II) The rules promulgated pursuant to subsection (4)(a)(I) of this section must include:

(A) Procedures for the issuance, modification, and termination of individual and general authorizations, including public notice and participation requirements;

(B) The duration of authorizations; except that the duration of an authorization must not exceed five years;

(C) The establishment of authorization fees that will be utilized to implement the program pursuant to section 25-8-210;



(D) Details concerning the division's consultation with federal, state, local, and tribal entities, especially those entities with special expertise with respect to any environmental-, natural resource-, or agriculture-related issue; and

(E) An exemption for voluntary stream restoration efforts in ephemeral streams that do not require compensatory mitigation and are designed solely to provide ecological lift where the activity is taking place. As used in this subsection (4)(a)(I)(E), "ephemeral stream" means a stream channel or a reach of a stream channel that carries flow during, and for a short duration as the direct result of, precipitation events and that has a channel bottom that is always above the groundwater table.

(III) The rules promulgated pursuant to subsection (4)(a)(I) of this section may include:

(A) Further minor clarification of the terminology used to define the exemptions and exclusions in subsections (8)(b) and (8)(d) of this section without limiting or expanding the scope of the exemptions and exclusions; and

(B) A deadline shorter than two years for the division to act upon a complete application for an individual authorization for projects that involve minimal to moderate costs and have minimal water quality impacts or limited potential water quality impacts.

(IV)

(A) In promulgating the rules described in subsection (4)(a)(I) of this section, the commission shall ensure that the rules are as protective as the guidelines set forth in section 404 (b)(1) of the federal act and in effect as of the effective date of this section.

(B) If the commission finds, based on a demonstration at a public rulemaking hearing, that the guidelines set forth in section 404 (b)(1) of the federal act are not protecting state waters, the commission shall amend its rules or adopt new



rules to protect state waters. Such a hearing may be initiated by the commission upon its own motion or upon a petition from the division. Any interested person may petition to the commission to initiate a hearing, and the commission may grant or deny such a request.

(C) The commission's findings to support any changes to its rules must be based on sound scientific or technical evidence in the record demonstrating that rules more protective than the guidelines set forth in section 404 (b)(1) of the federal act are necessary to protect the chemical, physical, and biological integrity of state waters. The findings must be accompanied by a statement of basis and purpose referring to and evaluating the information and studies contained in the record, which form the basis for the commission's conclusion.

(b) Rules for individual authorizations. The commission shall promulgate rules by December 31, 2025, concerning individual authorizations for dredge and fill activities. The rules must include:

(I) Application requirements, including:

(A) Project location information;

(B) A project description, including site plans;

(C) An alternatives analysis;

(D) A purpose and need statement;

(E) A description of avoidance and minimization measures;

(F) A projected impacts analysis; and

(G) A compensatory mitigation plan;

(II) A prohibition against the discharge of dredged or fill material where there is a practicable alternative to the proposed discharge that would have less adverse impact on state waters so long as the alternative does not have other significant adverse environmental consequences. Any purpose and need statement, evaluation of



alternatives, and impacts analysis developed through the section 404 permitting process shall be used for the purpose of implementing this prohibition. The rules must also include criteria for the division to use to implement the prohibition.

(III) Direction to the division to include conditions in individual authorizations, which conditions are designed to:

(A) Remove or reduce the impact to state waters of a discharge of Dredged or fill material;

(B) Protect downstream uses;

(C) Address the direct, indirect, and cumulative impacts of the activity on the chemical, physical, and biological integrity of state waters; and

(D) Ensure that an authorized activity as a whole will comply with all applicable state water quality requirements, either as proposed or as conditioned in the authorization; and

(IV) Other individual authorization terms, such as monitoring, record-keeping, and reporting requirements.

(c) Rules for compensatory mitigation. The commission shall promulgate rules by December 31, 2025, to provide details concerning compensatory mitigation requirements, including methods for assuring impacts to wetlands and streams are fully compensated through functional assessments and ratios that can be applied through individual mitigation projects or by applying acre-based ratios using the watershed approach as described by the United States Army corps of engineers.

(5) Duties of the division. The division has the following duties in administering the state dredge and fill discharge authorization program:

(a) Individual authorizations.

(I) Upon the commission's promulgation of rules pursuant to subsection (4) of this section, the division shall issue individual authorizations consistent with the rules promulgated by the commission under subsection (4) of this section.



(II) In addition to any compensatory mitigation requirements the division determines are necessary to comply with the commission's rules and subsection (5)(c) of this section, for projects subject to the requirements of section 37-60-122.2 (1)(b), the division shall take into consideration the official state position regarding mitigation for fish and wildlife resources, which position is established pursuant to section 37-60-122.2 (1), and may adopt all or part of such position into individual authorizations as conditions.

(III) The division shall act upon an application for an individual authorization within two years after receiving a complete application. This period may be extended by a written agreement between the division and the applicant. This period may also be extended by the division if there are significant changes to the project that is the subject of the application or if there is significant new information concerning the environmental impacts of the project, in which case the division shall provide notice to the applicant of the extension in writing along with an explanation of the basis for the extension.

(IV) An individual authorization, including all conditions incorporated into the individual authorization, is subject to administrative reconsideration by the commission under section 25-8-403 and then judicial review under section 25-8-404.

(b) General authorizations - categories - definitions.

(I) In addition to the division's authority in subsection (5)(b)(III) of this section to issue a statewide general authorization for discharges to isolated state waters, the division shall issue general authorizations for the discharge of dredged or fill material into state waters for categories of activities that are similar in nature and similar in impact on the quality of state waters, cause only minimal adverse impacts to state waters when performed separately, and have only minimal cumulative adverse impacts on state waters. The categories of general authorizations must correspond with the various nationwide and regional permits issued by the United States Army corps of engineers. The division may tailor the terms of certain nationwide or regional permits or create additional general authorizations to achieve greater efficiency and to address Colorado-specific needs, including but



not limited to emergency response to wildfire and voluntary ecological restoration and enhancement projects.

(II) Beginning January 1, 2025, until the rules described in subsection (4) of this section are promulgated and the division issues general authorizations under the rules, the nationwide and regional general permits issued by the United States Army corps of engineers, as such permits apply to Colorado and subject to subsections (8)(b) and (8)(d) of this section, constitute valid authorizations to discharge dredged or fill material into state waters that are not subject to federal jurisdiction. The division shall recognize compliance with the applicable terms of the nationwide and regional general permits as constituting compliance with this section. Beginning January 1, 2025, an applicant seeking authorization for discharges of dredged or fill material into state waters that are not subject to federal jurisdiction shall submit to the division any preconstruction notification required under the applicable nationwide or regional general permit. If the applicable nationwide or regional general permit requires compensatory mitigation, the applicant shall obtain a temporary authorization from the division pursuant to subsection (6)(a)(II) of this section before the commencement of the activity.

(III)

(A) As expeditiously as is prudent and feasible, the division shall issue a statewide general authorization for discharges to isolated state waters. For purposes of this subsection (5)(b)(III), "isolated state waters" are isolated wetlands, isolated ponds and impoundments, and isolated ordinary highwater mark reaches.

(B) The division's statewide general authorization for discharges to isolated state waters does not include the following state waters, which may be isolated state waters: Fens or peatlands or kettle ponds. Discharges of dredged or fill material to these isolated state waters of significance require an authorization by the division as described in subsection (5)(a), (5)(b)(I), or (5)(b)(II) of this section.



(C) The division's statewide general authorization for discharges to isolated state waters must identify best management practices to protect isolated state waters. The statewide general authorization for discharges to isolated state waters must not require preconstruction notification as described in subsection (5)(d) of this section.

(D) The division's statewide general authorization for discharges to isolated waters must not authorize a project where the entire project's unavoidable adverse impacts exceed one-tenth of an acre of wetlands or three-hundredths of an acre of streambed. A project in excess of one of these thresholds requires a permit by the division as described in subsection (5)(a), (5)(b)(I), or (5)(b)(II) of this section.

(E) If the division issues the statewide authorization for discharges to isolated state waters described in this subsection (5)(b)(III) prior to the commission's rule-making described in subsection (4) of this section, the division shall notice the draft general authorization for public comment for sixty days prior to its issuance. The statewide general authorization for discharges to isolated state waters is subject to administrative review by the commission pursuant to section 25-8-403.

(F) The authorization term of the statewide general authorization for discharges to isolated state waters is five years.

(IV) General authorizations issued by the division are subject to administrative reconsideration by the commission under section 25-8-403; except that notices of authorization to conduct an activity under a general authorization are not subject to such administrative reconsideration but are subject to judicial review under section 25-8-404.

(c) Compensatory mitigation requirements.

(I) The division shall include compensatory mitigation requirements in all individual authorizations and in general



authorizations where the division determines that the proposed discharge of dredged or fill material will result in:

(A) Greater than one-tenth of an acre of unavoidable adverse impacts to wetlands; or

(B) Greater than three-hundredths of an acre of unavoidable impacts to streams.

(II) Compensatory mitigation must compensate for all functions of state waters that will be lost as a result of the authorized activity. Compensatory mitigation may be accomplished through the purchase of mitigation bank credits, an in-lieu fee program, or permittee-responsible mitigation.

(d) Preconstruction notifications. The division shall utilize the existing structure of preconstruction notifications in the nationwide and regional permits issued by the United States Army corps of engineers, including general authorizations for categories of activities that do not require preconstruction notification. Where preconstruction notification is required by a general authorization before the commencement of an activity, the project proponent must provide at least thirty calendar days of preconstruction notice to the division unless a shorter notice is allowed under the terms of the applicable general authorization. After providing such preconstruction notification, the project proponent may commence the activity if:

(I) The division issues to the project proponent a notice of authorization in writing that the project proponent may commence the activity; or

(II) Forty-five calendar days elapse without the division providing the project proponent a notice of written objection to the activity or providing a notice that the division has determined the notification is incomplete, the activity does not meet the criteria for the category of activities covered by the general authorization, or the activity will not comply with all applicable federal and state statutory and regulatory requirements. A notice of written objection provided to a project proponent by the division must state the basis of the division's objections with specificity, is subject to direct judicial review under section 25-8-404, and is



not subject to administrative reconsideration under section 25-8-403.

(e) Notices of authorization. The division may issue notices of authorization, where appropriate, to memorialize coverage under a general authorization. The division may include conditions in notices of authorization, on a case-by-case basis, to clarify the terms and conditions of a general authorization or to ensure that the activity will have only minimal individual and cumulative adverse impacts on state waters.

(f) Administrative guidance. The division may establish guidance to assist in administering the dredge and fill discharge authorization program. Additionally, the division may rely upon relevant guidance from the federal environmental protection agency and the United States Army corps of engineers, including technical guidance and environmental analyses under the federal "National Environmental Policy Act of 1969", 42 U.S.C. sec. 4231 et seq., as amended, in administering the program, to the extent such guidance is consistent with this section and the commission's rules.

(g) Western slope staff. The division may, to the extent resources allow, establish one or more staff positions in the western slope region of the state to assist with dredge and fill program administration in that geographic area.

(6) Transition - repeal.

(a) Until the rules promulgated by the commission pursuant to subsection (4) of this section become effective and the division issues general authorizations under the rules:

(I) Notwithstanding subsection (8)(a) of this section, Clean Water Policy 17 continues in effect until January 1, 2025;

(II) For activities that do not qualify for enforcement discretion under Clean Water Policy 17 because the activities would require compensatory mitigation, and for activities that proceed under a federal nationwide or regional permit pursuant to subsection (5)(b)(II) of this section and that require compensatory mitigation, the division may issue temporary authorizations for the discharge of dredged or fill material into state waters:



(A) Where any required compensatory mitigation is associated only with streams and not wetlands and would result in net increases in the functions and services of state waters; or

(B) Where the applicant shows proof of purchase of mitigation bank credits that meet or exceed the compensatory mitigation requirements that would have been applicable under the federal nationwide or regional permit; and

(III) Temporary authorizations must include conditions necessary to protect the public health and the environment and to meet the intent of this section. The division may issue a temporary authorization for a period not to exceed two years, and a temporary authorization expires as provided in the issuance or denial of the final notice of authorization. The final notice of authorization must include such terms and conditions, including those for compensatory mitigation, as are necessary to address discharges that occurred under the temporary authorization.

(b) This subsection (6) is repealed, effective September 1, 2026.

(7) Relationship to section 25-8-104. The rules promulgated pursuant to this section are subject to, and do not amend or limit, the restrictions described in section 25-8-104.

(8) Applicability and scope of dredge and fill discharge authorization program - prohibitions on discharge without an authorization - definitions.

(a) Except when conducting an exempted activity described in subsection (8)(b) of this section or when discharging into an excluded type of water described in subsection (8)(d) of this section, a person shall not discharge dredged or fill material into state waters without first obtaining coverage under a general authorization or an individual authorization for the discharge.

(b) The following activities are exempt from the requirements of this section and do not require a discharge authorization:

(I) Activities in receipt of an active section 404 permit that was issued prior to May 25, 2023;



(II) Activities in receipt of an approved jurisdictional determination issued by the United States Army corps of engineers prior to May 25, 2023, finding that the state waters into which the proposed discharge of dredged or fill material will occur are not waters of the United States unless there has been a significant hydrological change since the determination was issued;

(III) Activities in receipt of an active section 404 permit that was issued on or after May 25, 2023, except to the extent that the project area of the section 404 permit involves a discharge of dredged or fill material into state waters that have been determined by the United States Army corps of engineers to not be waters of the United States under the Section 404 permit and are not otherwise excluded under this section;

(IV) Activities associated with a project for which the project proponent applied for an individual section 404 permit prior to May 25, 2023;

(V) Normal farming, silviculture, and ranching activities, such as plowing; seeding; cultivating; minor drainage; application of on-farm chemicals; harvesting for the production of food, fiber, and forest products; or upland soil and water conservation practices. As used in this subsection (8)(b)(V), "upland soil and water conservation practices" means any discharge of dredged or fill material into state waters incidental to soil and water conservation practices for the purpose of improving, maintaining, or restoring uplands, including rangeland management practices, erosion control practices, and vegetation management practices.

(VI) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures, such as dikes, dams, Levees, lagoons, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance also includes minor deviations in a structure's configuration or filled area to accommodate changes in materials, construction techniques, regulatory requirements, or construction codes or safety standards.

(VII) Construction or maintenance of farm ponds, stock ponds, farm lagoons, springs, recharge facilities located in uplands, and



irrigation ditches or acequias, or maintenance of a drainage ditch, roadside ditch, or a ditch or canal conveying wastewater or water. Construction of new work or to extend, expand, or relocate an irrigation ditch or acequia for municipal or industrial purposes is not an exempt activity. As used in this subsection (8)(b)(VII):

(A) "Construction" includes new work and work that results in an extension or expansion of an existing structure, and the construction of irrigation ditches or acequias includes activities such as placement of new control structures, ditch relocation, ditch conversion into pipe, and lining, which means placing impervious material such as concrete, clay, or geotextile within the flow perimeter of an open canal, lateral, or ditch with the intent of reducing seepage losses and improving conveyance efficiency. All new lining of ditches, in instances where the ditch has not previously been lined, is considered construction.

(B) "Irrigation ditch or acequia" includes a human-made feature or a maintained natural feature if use of the maintained natural feature existed on January 1, 2024, and an upland swale that moves or conveys water to an ultimate irrigation use or place of use, or moves or conveys irrigation water, also known as "runoff", away from irrigated lands. "Irrigation ditch or acequia" may include a distribution system or its parts, including human-made canals, laterals, ditches, siphons, pumps, headgates, wing walls, weirs, diversion structures, pipes, pump systems, return structures, and such other facilities appurtenant to and functionally related to irrigation ditches. If a ditch carries water that is used for irrigation, irrigation return flows or return flow obligations, aquifer recharge, aquifer or stream augmentation or replacement, or precipitation or snowmelt that moves from an irrigated field either to or away from an area subject to being irrigated, that ditch is considered an irrigation ditch and not a drainage ditch.

(C) "Maintenance" means maintenance pertaining to a human-made structure, such as a farm pond, stock pond, or maintained spring, or a maintained natural feature conveying water for irrigation or wildlife purpose if use of



the maintained natural feature existed as of January 1, 2024; maintenance pertaining to a drainage ditch, a roadside ditch, or a ditch or canal conveying wastewater or water for irrigation or for municipal purposes, domestic purposes, industrial purposes, commercial purposes, augmentation, recharge, wildlife, recreation, compact compliance, or any other purpose; and maintenance pertaining to repairs to an existing structure or feature to keep it in its existing state or proper condition or to preserve it from failure or decline. Such maintenance includes excavation of accumulated sediments back to original contours; reshaping of side-slopes; bank stabilization to prevent erosion where reasonably necessary using best management practices and, for maintenance of drainage ditches, materials that are compatible with existing bank materials; armoring, lining, and piping for the purpose of repairing a previously armored, lined, or piped section of a ditch so long as all work occurs within the footprint of the previous work; and replacement of existing control structures where the original function is not changed and original approximate capacity is not increased.

(VIII) Construction of temporary sedimentation basins on a construction site, which construction does not include placement of fill material into state waters;

(IX) Construction or maintenance of farm roads or forest roads or temporary roads for moving wildfire and post-fire mitigation equipment and related materials or mining equipment where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the state waters are not impaired, that the reach of the state waters is not reduced, and that any adverse impacts on the state waters will be otherwise minimized;

(X) Activities for the purpose of providing emergency response to, preventative mitigation of, or recovery from damage caused by a fire, a flood, or other natural disaster so long as the activity is conducted in a manner that minimizes the loss of state waters to the extent practicable and in accordance with best management



practices that do not interfere with efforts to address the underlying emergency;

(XI) Maintenance of water reuse facilities, wastewater reclamation facilities, water management facilities, water treatment facilities, or wastewater water treatment facilities. Such maintenance includes reconstruction due to recent damage or maintenance of currently serviceable structures, such as pumps, control systems, weirs, gates, clarifiers, solids handling, filters, sedimentation basins, treatment ponds and lagoons, and related features, which maintenance activities keep the facility in its existing state or proper condition to preserve it from failure or decline.

(XII) Maintenance activities in off-channel reservoirs that do not directly affect a connected natural stream. Such maintenance includes emergency reconstruction due to recent damage; maintenance of currently serviceable structures such as spillways, outlet structures, gates, pumps, and control systems; and reshaping of side slopes, bank stabilization, or dredging, which maintenance activities keep an off-channel reservoir in its existing state or proper condition and to preserve it from failure or decline.

(XIII) Wildlife habitat management activities, including seeding, cultivating, minor drainage, vegetation management, irrigating, water management, and maintenance of ditches, dikes, embankments, impoundments, water control features, and other water conveyance features that are human-made or maintained or that occur naturally to support wildlife habitat. "Wildlife habitat management" means activities that occur on land managed primarily for wetland or riparian habitats to support wetland and riparian species and does not include activities that are incidental to land used for residential, industrial, or commercial purposes.

(c) Recapture provision - rules. Consistent with section 404 (f)(2) of the federal act, any discharge of dredged or fill material into state waters incidental to any activity that brings an area of the state waters into a use to which it was not previously subject, where the flow or circulation of state waters may be impaired or where the reach of such waters may be reduced, is not included within the exempted activities described in



subsection (8)(b) of this section. The commission may further clarify the effect of this subsection (8)(c) through rule-making.

(d) Excluded types of waters - definitions. Notwithstanding the definition of "state waters" provided in section 25-8-103 (19), an authorization is not required for the discharge of dredged or fill material into the following types of waters, and such a discharge is not otherwise prohibited or regulated under this section:

- (I) All portions of ditches and canals that are excavated on upland and that convey water or wastewater;
- (II) Storm water control features that are constructed to convey, treat, or store storm water and that are created in upland;
- (III) Artificially irrigated areas that would revert to uplands if irrigation ceased;
- (IV) Artificial lakes, lagoons, or ponds that are created entirely by excavating or diking upland to collect and retain water and that are used exclusively for stock watering, irrigation, settling basins, or rice growing;
- (V) Wetlands that are adjacent to a ditch or canal and supported by water in the adjacent ditch or canal;
- (VI) Recharge facilities, including ponds, included in uplands for the purpose of facilitating recharge of aquifers or streams;
- (VII) Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating or diking upland to retain water for primarily aesthetic reasons;
- (VIII) Water-filled depressions created in uplands incidental to mining or construction activity and pits excavated in uplands for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting water feature is state waters;
- (IX) Swales and erosional features, such as gullies, small washes, and rills, that do not contain wetlands or an ordinary high watermark;



(X) Groundwater. As used in this subsection (8)(d)(X), "Groundwater" means subsurface waters in a zone of saturation that are or can be brought to the surface of the ground or to surface waters through wells, springs, seeps, or other discharge areas. "Groundwater" does not include wetlands.

(XI) Prior converted cropland. As used in this subsection (8)(d)(XI), "Prior converted cropland" means any area that, prior to December 23, 1985, was drained or otherwise manipulated for agricultural purposes, which includes land use that makes the production of an agricultural product possible, including grazing and haying. Cropland that is left idle or fallow for conservation or agricultural purposes for any period of time remains in agricultural use and, if the cropland otherwise qualifies under this subsection (8)(d)(XI), is prior converted cropland. The commission and the division shall recognize designations of prior converted cropland made by the United States secretary of agriculture. An area is no longer considered prior converted cropland if the area is abandoned and has reverted to wetlands. Abandonment occurs when prior converted cropland is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. The division shall determine whether prior converted cropland has been abandoned, subject to appeal to the commission.

(9) for the 2024-25 state fiscal year and for each state fiscal year thereafter, if the total number of authorizations issued pursuant to subsection (5) of this section exceeds or is projected by the department of public health and environment to exceed one hundred ten authorizations, the department of public health and environment shall seek a supplemental appropriation from the general assembly to pay the costs of processing the authorizations and to ensure that authorizations are processed in a timely manner.

CO Rev. Stat § 25-8-205.3. [Effective Until 1/1/2026] Exemption from control regulations for graywater research – definition.

(1) Subject to the conditions set forth in subsection (2) of this section, a water utility, an institution of higher education in Colorado, or a public or private entity that a water utility or an institution of higher education in Colorado contracts with to conduct graywater research on the utility's or institution's behalf may collect, treat, and use graywater in a manner that departs from the requirements of the commission's control regulations, as promulgated



pursuant to section 25-8-205 (1)(g), for the purpose of conducting scientific research on the collection, treatment, and use of graywater.

(2) A person collecting, treating, or using graywater pursuant to this section:

(a) Shall collect and use the graywater in accordance with the terms and conditions of the decrees, contracts, and well permits applicable to the use of the source water rights or source water and any return flows;

(b) Shall utilize a graywater treatment works system that incorporates a secondary water supply, such as a municipal water supply, to provide an alternative source of water if any portion of the system does not function properly; however, this subsection (2)(b) does not apply to scientific research involving the use of graywater exclusively for irrigation purposes;

(c) May collect, treat, and use the graywater in an area that is not within the jurisdiction of any city, city and county, or county that has adopted an ordinance or resolution authorizing graywater use pursuant to section 25-8-205 (1)(g)(II);

(d) May use the graywater for a nonpotable beneficial use including irrigation or toilet flushing if such use is tied to the purpose of the person's scientific research;

(e) Must comply with 45 CFR 46 and other applicable statutes and regulations for scientific research involving human exposure to graywater; and

(f) On an annual basis, shall report to the water resources and agriculture review committee, created in section 37-98-102, the results of periodic monitoring of the project conducted to assess:

(I) The functioning of the graywater treatment works system used to collect graywater; and

(II) For scientific research involving human exposure, the project's continued compliance with the requirements of the federal department of health and human services' regulations concerning the protection of human research subjects, codified in 45 CFR 46.



(3) Only an institution of higher education or a person contracting with an institution of higher education may collect, treat, and use graywater for research involving human exposure.

(4) As used in this section, "scientific research involving human exposure" means a research study in which:

(a) Empirical data is collected and analyzed about collection, treatment, or use of graywater; and

(b) Humans participate as subjects in the study.

CO Rev. Stat § 25-8-205.3. [Effective 1/1/2026] Exemption from control regulations for graywater research – definition.

(1) Subject to the conditions set forth in subsection (2) of this section, a water utility, an institution of higher education in Colorado, or a public or private entity that a water utility or an institution of higher education in Colorado contracts with to conduct graywater research on the utility's or institution's behalf may collect, treat, and use graywater in a manner that departs from the requirements of the commission's control regulations, as promulgated pursuant to section 25-8-205 (1)(g), for the purpose of conducting scientific research on the collection, treatment, and use of graywater.

(2) A person collecting, treating, or using graywater pursuant to this section:

(a) Shall collect and use the graywater in accordance with the terms and conditions of the decrees, contracts, and well permits applicable to the use of the source water rights or source water and any return flows;

(b) Shall utilize a graywater treatment works system that incorporates a secondary water supply, such as a municipal water supply, to provide an alternative source of water if any portion of the system does not function properly; however, this subsection (2)(b) does not apply to scientific research involving the use of graywater exclusively for irrigation purposes;

(c) [Repealed by 2024 Amendment.]

(d) May use the graywater for a nonpotable beneficial use including irrigation or toilet flushing if such use is tied to the purpose of the person's scientific research;



(e) Must comply with 45 CFR 46 and other applicable statutes and regulations for scientific research involving human exposure to graywater; and

(f) On an annual basis, shall report to the water resources and agriculture review committee, created in section 37-98-102, the results of periodic monitoring of the project conducted to assess:

(I) The functioning of the graywater treatment works system used to collect graywater; and

(II) For scientific research involving human exposure, the project's continued compliance with the requirements of the federal department of health and human services' regulations concerning the protection of human research subjects, codified in 45 CFR 46.

(3) Only an institution of higher education or a person contracting with an institution of higher education may collect, treat, and use graywater for research involving human exposure.

(4) As used in this section, "scientific research involving human exposure" means a research study in which:

(a) Empirical data is collected and analyzed about collection, treatment, or use of graywater; and

(b) Humans participate as subjects in the study.

CO Rev. Stat § 25-8-205.4. [Effective 1/1/2026] Statewide authorization of graywater use – local government notice required to opt out.

(1) Except as provided in subsection (2) of this section, a person may install graywater treatment works and use graywater in accordance with section 25-8-205 (1)(g) and rules adopted pursuant to section 25-8-205 (1)(g).

(2)

(a) A board of county commissioners or governing body of a municipality may adopt a resolution or an ordinance pursuant to section 30-11-107 (1)(kk) or 31-15-601 (1)(m):



(I) Prohibiting the installation of graywater treatment works and the use of all graywater in the county or municipality; or

(II) Prohibiting one or more categories of graywater use that the commission establishes in rules adopted pursuant to section 25-8-205 (1)(g).

(b) A board of county commissioners or governing body of a municipality that adopts a resolution or an ordinance pursuant to subsection (2)(a) of this section shall notify the division that the board of county commissioners or governing body of a municipality prohibits the use of all graywater or prohibits certain categories of graywater use in the county or municipality.

(c) A board of county commissioners or governing body of a municipality that has not prohibited the installation of graywater treatment works pursuant to subsection (2)(a)(I) of this section, prior to installation of any graywater treatment works, continues to be responsible for adopting building codes that prevent graywater from entering a potable water system and for reporting to the local water utility the planned installation of graywater systems that require backflow prevention cross-connection control devices under the commission's rules for the purpose of surveying and tracking such devices. For each location within a local government's jurisdiction at which graywater treatment works have been installed, the building department of the local government shall provide the address of the location to each water utility serving that location.

(3) A board of county commissioners or governing body of a municipality that sends a notice pursuant to subsection (2)(b) of this section may subsequently adopt a resolution pursuant to section 30-11-107 (1)(kk) or an ordinance pursuant to section 31-15-601 (1)(m) to authorize the installation of graywater treatment works and the use of graywater or to authorize categories of graywater use previously prohibited. A board or governing body that subsequently authorizes the use of graywater pursuant to this subsection (3) shall promptly notify the division of the subsequent authorization.

(4) Unless a board of county commissioners or governing body of a municipality adopts a resolution or an ordinance to the contrary, a person may install indoor graywater treatment works pursuant to subsection (1) of this section only in new construction projects.



(5) Nothing in this section requires the public disclosure of confidential information related to water rights, water supply, or water facilities.

CO Rev. Stat § 25-8-205.5. Pollution from agricultural chemicals – rules.

(1) Legislative declaration. The general assembly hereby declares that the public policy of this state is to protect state waters and the environment from impairment or degradation due to the improper use of agricultural chemicals while allowing for their proper and correct use, in particular, to provide for the management of agricultural chemicals to prevent, minimize, and mitigate their presence in state waters and to provide for the education and training of agricultural chemical applicators and the general public regarding the protection of state waters, agricultural chemical use, and the use of other agricultural methods.

(2) Repealed.

(3) Powers and duties of the commissioner of agriculture.

(a) The commissioner of agriculture shall identify agricultural management areas in the state.

(b) The commissioner shall promulgate rules for the following:

(I) Facilities for the storage of pesticides in bulk, except for facilities storing pesticides used for water treatment at public water systems, which are systems used to provide the public with piped water for human consumption, and domestic wastewater treatment works;

(II) Mixing and loading areas where any of the following are handled in any one-year period:

(A) Five hundred gallons or more, in the aggregate, of formulated product or combination of formulated products of liquid pesticides;

(B) Three thousand pounds or more, in the aggregate, of formulated product or combination of formulated products of dry pesticides;



(C) One thousand five hundred pounds or more, in the aggregate, of active ingredients of pesticides;

(III) Storage facilities where any liquid fertilizer is stored in any container or series of interconnected containers having a capacity greater than five thousand gallons;

(IV) Storage facilities where fifty-five thousand pounds or more, in the aggregate, of formulated product or combination of formulated products of bulk dry fertilizer are stored;

(V) Mixing and loading areas at any storage facility subject to the provisions of this section.

(b.1) No rule promulgated pursuant to paragraph (b) of this subsection (3) shall apply to any field mixing and loading of agricultural chemicals.

(b.2) Every rule promulgated pursuant to paragraph (b) of this subsection (3) shall include a three-year phase-in period after promulgation of the rule for persons subject to the rule.

(b.3) Pursuant to paragraph (h) of this subsection (3), the commissioner is authorized to enforce rules promulgated pursuant to paragraph (b) of this subsection (3).

(c) The commissioner may, in his discretion, develop best management practices for any other activity relating to the use of any agricultural chemical.

(d) If the commissioner determines that the use of best management practices is ineffective or insufficient to prevent or mitigate the pollution of state waters, the commissioner may require, by rule adopted pursuant to article 4 of title 24, the use of agricultural management plans.

(e) The commissioner is authorized to adopt, pursuant to article 4 of title 24, C.R.S., any other reasonable rules and regulations for the administration and implementation of this section.

(f) The commissioner is authorized to enter into an agreement with the Colorado cooperative extension service to provide training and education as specified in subsection (4) of this section.



(g) The commissioner shall perform the monitoring specified in subsection (5) of this section. The commissioner shall enter into an agreement with the department of public health and environment to assist in the identification of agricultural management areas and to perform analysis, interpretation, and reporting of state waters monitoring data supplied by the commissioner.

(h) With respect to any rule or regulation adopted pursuant to paragraph (b) of this subsection (3) only, the commissioner shall have the following investigation and enforcement powers:

(I) At any reasonable time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant:

(A) To all areas, buildings, yards, warehouses, and storage facilities in which any agricultural chemicals are kept, stored, handled, processed, or transported; and

(B) To all records, if any, required to be kept and to make copies of such records.

(II) The commissioner shall have full authority to administer oaths and take statements, to issue administrative subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(III) Any complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection, except as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on any such person subject to a rule or regulation adopted pursuant to paragraph (b) of this subsection (3).



(IV)

(A) Whenever the commissioner has reasonable cause to believe that a violation of any rule or regulation adopted pursuant to paragraph (b) of this subsection (3) has occurred and immediate enforcement is deemed necessary, he may issue a cease-and-desist order, which may require any person to cease violating any such rule or regulation. Such cease-and-desist order shall set forth the rule or regulation alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions be ceased forthwith.

(B) At any time after the date of the service of the order to cease and desist, the person may request a hearing on the question of whether or not such violation has occurred. Such hearing shall be concluded in not more than ten days after such request, excluding Saturdays, Sundays, and any legal holidays, and shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.

(C) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours, the commissioner may bring a suit for a temporary restraining order and injunctive relief to prevent any further or continued violation of such order.

(D) No stay of a cease-and-desist order shall be issued before a hearing thereon involving both parties.

(E) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

(V) Whenever the commissioner possesses evidence satisfactory to him that any person has engaged in or is about to engage in any act or practice constituting a violation of any rule or regulation adopted pursuant to paragraph (b) of this subsection (3), he may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with the rule or regulation. In any such action, the commissioner shall not be required to plead or prove



irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

(VI)

(A) Any person who violates any rule or regulation adopted pursuant to paragraph (b) of this subsection (3) is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation. Each day the violation occurs shall constitute a separate violation.

(B) No civil penalty may be imposed unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(C) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(D) Before imposing any civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

(4) Training and education. The Colorado cooperative extension service, acting in cooperation with the commissioner of agriculture and pursuant to any contract authorized in paragraph (f) of subsection (3) of this section, shall disseminate information and provide training regarding agricultural management areas, best management practices, and agricultural management plans.

(5) Monitoring. Pursuant to the commissioner's duties as set forth in any contract authorized in subsection (3)(g) of this section, the commissioner shall identify agricultural management areas and shall conduct monitoring programs to determine:

(a) The presence of any agricultural chemical in state waters at a level that meets or exceeds any water quality standard applicable under this



article 8 or that has a reasonable likelihood of meeting or exceeding any such standard; or

(b) The likelihood that an agricultural chemical will enter the state waters, based upon the existence of sufficient, valid scientific data that reasonably predict the behavior of a particular agricultural chemical in the soil.

(6) Reporting of monitoring results - regulation.

(a) If the division determines that any agricultural chemical exists at a level which meets or exceeds any water quality standard or which has a reasonable likelihood of meeting or exceeding any such standard, it shall so notify the commissioner of agriculture and shall provide him with any written reports it deems necessary or desirable to define the extent of such occurrence. When the commissioner has been notified of such an occurrence related to an agricultural chemical which is registered as a pesticide, he shall take reasonable steps to notify the registrant of any such pesticide. When the commissioner has been notified of such an occurrence related to any other agricultural chemical, he shall take reasonable steps to notify the distributors of such chemical in the area affected by such occurrence.

(b) Unless such occurrence is determined by the commissioner of agriculture and the water quality control commission to require a control regulation as set forth in paragraph (c) of this subsection (6), the commissioner of agriculture may promulgate rules and regulations regarding the use of any agricultural chemical giving rise to the occurrence.

(c) If continued monitoring reveals that rules and regulations adopted by the commissioner pursuant to this section are not preventing or mitigating the presence of the subject agricultural chemical to the extent necessary, the commissioner of agriculture and the water quality control commission shall confer and determine whether an amendment to such rules and regulations may be sufficient to prevent or mitigate the occurrence to the extent necessary. Only if the commissioner of agriculture and the water quality control commission determine that such rules and regulations have been or will be insufficient to meet the requirements of state law or the federal act shall the occurrence be referred to the water quality control commission for the promulgation of a control regulation. In the event that the commissioner of agriculture



and the water quality control commission fail to agree on such a determination, the authority of the water quality control commission shall be final.

(7) Promulgation of control regulations.

(a) With respect to the regulation of pollutants from agricultural chemicals, the water quality control commission is authorized to promulgate control regulations only when:

(I) Any occurrence has been referred to the commission pursuant to subsection (6) of this section; or

(II) Incentive, grant, and cooperative programs are determined by the water quality control commission to be inadequate as set forth in section 25-8-205(5).

(b) Any such control regulations shall be promulgated in consultation with the commissioner of agriculture.

(8) Groundwater protection fund - transfer of moneys to the plant health, pest control, and environmental protection cash fund - fees. The fees as specified and collected pursuant to sections 35-9-118(3)(a) and 35-12-106(1), C.R.S., and any civil fines imposed pursuant to subparagraph (VI) of paragraph (h) of subsection (3) of this section shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3, C.R.S. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the groundwater protection fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

(9) Repealed.

CO Rev. Stat § 25-8-205.7. Control regulations for reuse of reclaimed domestic wastewater – food crops – definitions – rules.

(1) As used in this section, unless the context otherwise requires:

(a) "Category 1 standard" means a water quality standard for reclaimed domestic wastewater:



(I) Requiring, at a minimum, that the water has received secondary treatment with disinfection; and

(II) For which, at the point of compliance, the water meets the E. coli and total suspended solids standards promulgated by the commission for category 1 water.

(b) "Category 2 standard" means a water quality standard for reclaimed domestic wastewater:

(I) Requiring, at a minimum, that the water has received secondary treatment with filtration and disinfection; and

(II) For which, at the point of compliance, the water meets the E. coli and turbidity standards promulgated by the commission for category 2 water.

(c) "Category 3 standard" means a water quality standard for reclaimed domestic wastewater:

(I) Requiring, at a minimum, that the water has received secondary treatment with filtration and disinfection; and

(II) For which, at the point of compliance, the water meets the E. coli and turbidity standards promulgated by the commission for category 3 water.

(d) "E. coli" means the Escherichia coli bacteria that are found in the environment, foods, and intestines of people and animals.

(e)

(I) "Food crop" means a crop produced for direct human consumption or a tree that produces nuts or fruit intended for direct human consumption.

(II) "Food crop" does not include a crop produced for animal consumption only; except that a crop produced where lactating dairy animals forage is a food crop.

(f) "Point of compliance" means a point, as identified by the person that treats the water, in the reclaimed domestic wastewater treatment



process or the reclaimed domestic wastewater transportation process, that occurs after all treatment has been completed but before dilution and blending of the water has occurred.

(2) Reclaimed domestic wastewater may be used as follows:

(a) In compliance with the category 1 standard, for:

- (I) Evaporative industrial processes;
- (II) Nonevaporative industrial processes;
- (III) Nondischarging construction and road maintenance;
- (IV) Landscape irrigation at sites with restricted access;
- (V) Zoo operations;
- (VI) Nonfood crops; and
- (VII) Silviculture;

(b) In compliance with the category 2 standard, for:

- (I) All of the uses for which reclaimed domestic wastewater may be used in compliance with the category 1 standard;
- (II) Washwater applications;
- (III) Landscape irrigation at sites without restricted access;
- (IV) Commercial laundries;
- (V) Automated vehicle washing;
- (VI) Manual, nonpublic vehicle washing;
- (VII) Nonresidential fire protection; and
- (VIII) If used in accordance with subsection (4) of this section, irrigation of food crops for commercial use;



(c) In compliance with the category 3 standard, for:

(I) All of the uses for which reclaimed domestic wastewater may be used in compliance with the category 1 standard and the category 2 standard;

(II) Landscape irrigation at sites that are controlled by residents;

(III) Residential fire protection; and

(IV) If used in accordance with subsection (3) of this section, irrigation of food crops for noncommercial use.

(3) All reclaimed domestic wastewater systems must be compliant with and installed in accordance with article 155 of title 12 and any rules promulgated pursuant to that article.

(4) In addition to complying with the category 2 standard pursuant to subsection (2)(b)(VIII) of this section or the category 3 standard pursuant to subsection (2)(c)(IV) of this section and regardless of whether the use is for food crops produced for commercial use or noncommercial use, reclaimed domestic wastewater may be used for irrigation of food crops only if the use meets the water quality standards for commercial crops set forth in the federal "FDA Food Safety Modernization Act", Pub.L. 111-353, as amended. In promulgating rules for the category 2 and category 3 standards at the point of compliance for use of reclaimed domestic wastewater for irrigation of food crops, the commission shall not promulgate any rule that is more stringent than the relevant standards set forth in the federal "FDA Food Safety Modernization Act", Pub.L. 111-353, as amended.

(5)

(a) On or before December 31, 2019, the commission may promulgate rules in accordance with this section.

(b) In promulgating rules in accordance with this section, the commission:

(I) May create new categories of water quality standards beyond the three categories set forth in this section; and



(II) May recategorize any of the uses set forth in subsection (2) of this section to a less stringent category of water quality standard.

(c) The commission, by rule, may authorize additional uses of reclaimed domestic wastewater for any of the categories of water quality standards set forth in subsection (2) of this section or may create a new category of water quality standard for one or more additional uses of reclaimed domestic wastewater.

(d) The commission may promulgate rules more stringent than the standards and categories set forth in subsection (2) of this section only if the commission:

(I) Determines that the standards and categories set forth in subsection (2) of this section are not protective of public health; and

(II) Identifies:

(A) A documented incident of microbial disease that the commission determines has a reasonable potential to affect public health and for which the commission has identified as likely originating from reclaimed domestic wastewater; or

(B) A peer-reviewed published article that identifies a potential public health risk posed by the use of reclaimed domestic wastewater under the standards established in subsection (2) of this section.

(6) Following a public stakeholders process, the water quality control division may develop policy, guidance, or best management practices that are consistent with this section, as the division deems necessary to implement this section.

(7) In addition to the relief available under section 25-8-205 (6), the division may grant a user of reclaimed domestic wastewater a variance from the water quality standards set forth in subsection (2) of this section or established by rule by the commission pursuant to subsection (5) of this section if the user demonstrates to the division's satisfaction that the proposed usage of reclaimed domestic wastewater will sufficiently protect public health and the environment.



(8) Use of reclaimed domestic wastewater is allowed only in accordance with the terms and conditions of the decrees, contracts, and well permits applicable to the use of the source water rights or source water and any return flows therefrom.

CO Rev. Stat § 25-8-205.8. Control regulations for reuse of reclaimed domestic wastewater – toilet flushing – definitions – rules.

(1) As used in this section, unless the context otherwise requires:

(a) "Category 1 standard" means a water quality standard for reclaimed domestic wastewater:

(I) Requiring, at a minimum, that the water has received secondary treatment with disinfection; and

(II) For which, at the point of compliance, the water meets the E. coli and total suspended solids standards promulgated by the commission for category 1 water.

(b) "Category 2 standard" means a water quality standard for reclaimed domestic wastewater:

(I) Requiring, at a minimum, that the water has received secondary treatment with filtration and disinfection; and

(II) For which, at the point of compliance, the water meets the E. coli and turbidity standards promulgated by the commission for category 2 water.

(c) "Category 3 standard" means a water quality standard for reclaimed domestic wastewater:

(I) Requiring, at a minimum, that the water has received secondary treatment with filtration and disinfection; and

(II) For which, at the point of compliance, the water meets the E. coli and turbidity standards promulgated by the commission for category 3 water.

(d) "E. coli" means the Escherichia coli bacteria that are found in the environment, foods, and intestines of people and animals.



(e)

(I) "Food crop" means a crop produced for direct human consumption or a tree that produces nuts or fruit intended for direct human consumption.

(II) "Food crop" does not include a crop produced for animal consumption only; except that a crop produced where lactating dairy animals forage is a food crop.

(f) "Point of compliance" means, except as provided in subsection (1.5) of this section, a point, as identified by the person that treats the water, in the reclaimed domestic wastewater treatment process or the reclaimed domestic wastewater transportation process, that occurs after all treatment has been completed but before dilution and blending of the water has occurred.

(1.5) With regard to reclaimed domestic wastewater used for indoor nonpotable uses within a building where the general public can access the plumbing fixtures that are used to deliver the reclaimed domestic wastewater, the commission may promulgate rules to require a point of compliance for disinfection residual, which rules must:

(a) Be based on a determination that the additional point of compliance would protect public health; and

(b) Establish a point of compliance for disinfection residual at a single location between where reclaimed domestic wastewater is delivered to the occupied premises and before the water is distributed for use in the occupied premises.

(2) Reclaimed domestic wastewater may be used as follows:

(a) In compliance with the category 1 standard, for:

(I) Evaporative industrial processes;

(II) Nonevaporative industrial processes;

(III) Nondischarging construction and road maintenance;

(IV) Landscape irrigation at sites with restricted access;



(V) Zoo operations;

(VI) Irrigation of crops that are not food crops; and

(VII) Silviculture;

(b) In compliance with the category 2 standard, for:

(I) All of the uses for which reclaimed domestic wastewater may be used in compliance with the category 1 standard;

(II) Washwater applications;

(III) Landscape irrigation at sites without restricted access;

(IV) Commercial laundries;

(V) Automated vehicle washing;

(VI) Manual, nonpublic vehicle washing; and

(VII) Nonresidential fire protection;

(c) In compliance with the category 3 standard, for:

(I) All of the uses for which reclaimed domestic wastewater may be used in compliance with the category 1 standard and the category 2 standard;

(II) Landscape irrigation at sites that are controlled by residents;

(III) Residential fire protection; and

(IV) Toilet and urinal flushing in:

(A) Multifamily residential structures, only if the toilet and urinal installations are conducted in accordance with article 155 of title 12 and rules promulgated pursuant to that article. Any toilet or urinal installation must conform to article 155 of title 12 and rules promulgated pursuant to that article.



(B) Nonresidential structures, only if the toilet and urinal installations are conducted in accordance with article 155 of title 12 and rules promulgated pursuant to that article. Any toilet or urinal installation must conform to article 155 of title 12 and rules promulgated pursuant to that article.

(3)

(a)

(I) On or before December 31, 2019, and except as provided in subsection (3)(a)(II) of this section, the commission may promulgate rules in accordance with this section.

(II) Notwithstanding subsection (3)(a)(I) of this section, the state plumbing board shall promulgate rules governing the installation and inspection of toilet and urinal systems and structures for which reclaimed domestic wastewater is used pursuant to subsection (2)(c)(IV) of this section.

(b) In promulgating rules in accordance with this section, the commission:

(I) May create new categories of water quality standards beyond the three categories set forth in this section; and

(II) May recategorize any of the uses set forth in subsection (2) of this section to a less stringent category of water quality standard.

(c) The commission, by rule, may authorize additional uses of reclaimed domestic wastewater for any of the categories of water quality standards set forth in subsection (2) of this section or may create a new category of water quality standard for one or more additional uses of reclaimed domestic wastewater.

(d) The commission may promulgate rules more stringent than the standards and categories set forth in subsection (2) of this section only if the commission:

(I) Determines that the standards and categories set forth in subsection (2) of this section are not protective of public health; and



(II) Identifies:

(A) A documented incident of microbial disease that the commission determines has a reasonable potential to affect public health and for which the commission has identified as likely originating from reclaimed domestic wastewater; or

(B) A peer-reviewed published article that identifies a potential public health risk posed by the use of reclaimed domestic wastewater under the standards established in subsection (2) of this section.

(4) Following a public stakeholders process, the water quality control division may develop policy, guidance, or best management practices that are consistent with this section, as the division deems necessary to implement this section.

(5) In addition to the relief available under section 25-8-205(6), the division may grant a user of reclaimed domestic wastewater a variance from the water quality standards set forth in subsection (2) of this section or established by rule by the commission pursuant to subsection (3) of this section if the user demonstrates to the division's satisfaction that the proposed usage of reclaimed domestic wastewater will sufficiently protect public health and the environment.

(6) Use of reclaimed domestic wastewater is allowed only in accordance with the terms and conditions of the decrees, contracts, and well permits applicable to the use of the source water rights or source water and any return flows therefrom.

CO Rev. Stat § 25-8-205.9. Control regulations for reuse of reclaimed domestic wastewater – industrial hemp – definition – rules.

(1) As used in this section, unless the context otherwise requires:

(a) "Category 1 standard" means a water quality standard for reclaimed domestic wastewater:

(I) Requiring, at a minimum, that the water has received secondary treatment with disinfection; and



(II) For which, at the point of compliance, the water meets the E. coli and total suspended solids standards promulgated by the commission for category 1 water.

(b) "Category 2 standard" means a water quality standard for reclaimed domestic wastewater:

(I) Requiring, at a minimum, that the water has received secondary treatment with filtration and disinfection; and

(II) For which, at the point of compliance, the water meets the E. coli and turbidity standards promulgated by the commission for category 2 water.

(c) "Category 3 standard" means a water quality standard for reclaimed domestic wastewater:

(I) Requiring, at a minimum, that the water has received secondary treatment with filtration and disinfection; and

(II) For which, at the point of compliance, the water meets the E. coli and turbidity standards promulgated by the commission for category 3 water.

(d) "E. coli" means the Escherichia coli bacteria that are found in the environment, foods, and intestines of people and animals.

(e)

(I) "Food crop" means a crop produced for direct human consumption or a tree that produces nuts or fruit intended for direct human consumption.

(II) "Food crop" does not include a crop produced for animal consumption only; except that a crop produced where lactating dairy animals forage is a food crop.

(f) "Industrial hemp" has the same meaning as set forth in section 35-61-101(7).

(g) "Point of compliance" means a point, as identified by the person that treats the water, in the reclaimed domestic wastewater treatment



process or the reclaimed domestic wastewater transportation process, that occurs after all treatment has been completed but before dilution and blending of the water has occurred.

(2) Reclaimed domestic wastewater may be used as follows:

(a) In compliance with the category 1 standard, for:

- (I) Evaporative industrial processes;
- (II) Nonevaporative industrial processes;
- (III) Nondischarging construction and road maintenance;
- (IV) Landscape irrigation at sites with restricted access;
- (V) Zoo operations;
- (VI) When not used as a food crop, irrigation of industrial hemp or another crop; and
- (VII) Silviculture;

(b) In compliance with the category 2 standard, for:

- (I) All of the uses for which reclaimed domestic wastewater may be used in compliance with the category 1 standard;
- (II) Washwater applications;
- (III) Landscape irrigation at sites without restricted access;
- (IV) Commercial laundries;
- (V) Automated vehicle washing;
- (VI) Manual, nonpublic vehicle washing; and
- (VII) Nonresidential fire protection;

(c) In compliance with the category 3 standard, for:



(I) All of the uses for which reclaimed domestic wastewater may be used in compliance with the category 1 standard and the category 2 standard;

(II) Landscape irrigation at sites that are controlled by residents;
and

(III) Residential fire protection.

(3) All reclaimed domestic wastewater systems must be compliant with and installed in accordance with article 155 of title 12 and any rules promulgated pursuant to that article.

(4)

(a) On or before December 31, 2019, the commission may promulgate rules in accordance with this section.

(b) In promulgating rules in accordance with this section, the commission:

(I) May create new categories of water quality standards beyond the three categories set forth in this section; and

(II) May recategorize any of the uses set forth in subsection (2) of this section to a less stringent category of water quality standard.

(c) The commission, by rule, may authorize additional uses of reclaimed domestic wastewater for any of the categories of water quality standards set forth in subsection (2) of this section or may create a new category of water quality standard for one or more additional uses of reclaimed domestic wastewater.

(d) The commission may promulgate rules more stringent than the standards and categories set forth in subsection (2) of this section only if the commission:

(I) Determines that the standards and categories set forth in subsection (2) of this section are not protective of public health;
and

(II) Identifies:



(A) A documented incident of microbial disease that the commission determines has a reasonable potential to affect public health and for which the commission has identified as likely originating from reclaimed domestic wastewater; or

(B) A peer-reviewed published article that identifies a potential public health risk posed by the use of reclaimed domestic wastewater under the standards established in subsection (2) of this section.

(5) Following a public stakeholders process, the water quality control division may develop policy, guidance, or best management practices that are consistent with this section, as the division deems necessary to implement this section.

(6) In addition to the relief available under section 25-8-205(6), the division may grant a user of reclaimed domestic wastewater a variance from the water quality standards set forth in subsection (2) of this section or established by rule by the commission pursuant to subsection (4) of this section if the user demonstrates to the division's satisfaction that the proposed usage of reclaimed domestic wastewater will sufficiently protect public health and the environment.

(7) Use of reclaimed domestic wastewater is allowed only in accordance with the terms and conditions of the decrees, contracts, and well permits applicable to the use of the source water rights or source water and any return flows therefrom.

CO Rev. Stat § 25-8-206. Prior acts validated.

(1) All acts, hearings, orders, rules, regulations, and standards adopted by the water pollution control commission as constituted and empowered by the laws of this state prior to July 6, 1973, which were valid prior to said date, shall be deemed and held to be legal and valid in all respects, as though issued by the commission under the authority of this article, and no provision of this article shall be construed to repeal or in any way invalidate any actions, orders, rules, regulations, or water quality standards adopted by said commission prior to said date.

(2) All acts, hearings, orders, rules, regulations, and standards adopted by the water quality control commission as constituted and empowered by the laws of



this state prior to July 1, 1981, which were valid prior to said date, shall be deemed and held to be legal and valid in all respects, as though issued by the commission under the authority of this article, and no provision of this article shall be construed to repeal or in any way invalidate any actions, orders, rules, regulations, or water quality standards adopted by said commission prior to said date.

(3) All acts, orders, and rules adopted by the state board of health under the authority of part 2 of article 1.5 of this title, part 1 of article 10 of this title, and section 30-20-110.5, C.R.S., prior to July 1, 2006, that were valid prior to said date and not otherwise subject to judicial review shall, to the extent that they are not inconsistent with said provisions, be deemed and held to be legal and valid in all respects, as though issued by the commission under the authority of such provisions of law. No provision of this article shall be construed to validate any actions, orders, or rules that were not valid when adopted by the board of health prior to such date.

CO Rev. Stat § 25-8-207. Review of classifications and standards.

(1) The commission, upon petition or upon its own motion, shall review, pursuant to section 24-4-103, C.R.S., any classification, standard, designation, or regulation adopted pursuant to sections 25-8-203, 25-8-204, and 25-8-209 for consistency with this subsection (1) and consistency with the policies set forth in sections 25-8-102 and 25-8-104. Rule-making hearings on petitions filed under this subsection (1) shall be held expeditiously with respect to such classifications, standards, designations, or regulations adopted prior to July 1, 1992. The commission shall make a finding of inconsistency where:

(a) Use classifications and water quality standards for aquatic life are more stringent than is necessary to protect fish life, shellfish life, and wildlife in water body segments which are reasonably capable of sustaining such fish life, shellfish life, and wildlife from the standpoint of physical, streambed, flow, habitat, climatic, and other pertinent characteristics;

(b) Any use classifications or water quality standards were adopted based upon material assumptions that were in error or no longer apply; or

(c) Any designation does not conform with the provisions of section 25-8-209.



(2) Where the commission determines that an inconsistency exists, it shall declare the inconsistent classifications or standards void ab initio and shall simultaneously establish appropriate classifications or standards.

CO Rev. Stat § 25-8-208. Emergency rule-making.

In addition to all other powers of the commission, the commission, pursuant to section 24-4-103(6), C.R.S., shall have the authority to conduct emergency rule-making for the purpose of adopting an interim standard to apply for a specified period of time in place of an existing water quality standard. The commission shall hold emergency rule-making hearings to consider the adoption of such an interim standard whenever it finds, in its discretion, that the petitioner requesting such rule-making has established exigent circumstances which warrant the emergency action.

CO Rev. Stat § 25-8-209. Water quality designations – rules.

(1) The commission may adopt the following water quality designations:

- (a) Outstanding waters;
- (b) Use-protected waters.

(2) The commission shall promulgate criteria governing the designations provided in subsection (1) of this section. Such criteria shall be consistent with the provisions of this section and sections 25-8-102 and 25-8-104.

(3) Outstanding waters.

(a) Outstanding waters shall be maintained and protected at their existing quality. Segments shall not be designated as outstanding waters unless the commission determines that:

(I) The quality of the waters is better than necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water based upon water quality standards for indicator parameters identified by the commission in the criteria promulgated under the provisions of subsection (2) of this section;

(II) The waters constitute an outstanding natural resource; and



(III) Protection of such resource requires protection in addition to that provided by the combination of water quality classifications and standards and the protection afforded reviewable waters under the provisions of subsection (5) of this section.

(b) All waters that were designated as high quality 1 by the commission prior to July 1, 1992, are hereby designated as outstanding waters.

(4) Use-protected waters.

(a) Use-protected waters are those waters with existing quality that is not better than necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water.

(b) The commission shall utilize the criteria promulgated by rule pursuant to subsection (2) of this section in designating waters as use-protected.

(c) The quality of waters designated as use-protected may be altered if that quality provided for in applicable water quality classifications and standards is maintained.

(5) Reviewable waters. Waters that are not designated as outstanding waters or use-protected waters shall be referred to as reviewable waters. The existing quality of reviewable waters shall be maintained and protected unless it is determined that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located, which shall include all areas directly impacted by the proposed activity. Notwithstanding any other provisions of this subsection (5), that quality which is provided for in applicable water quality classifications and standards shall be maintained for reviewable waters.

(6) Water quality designations and reviewable waters provisions shall not be utilized by the commission or by any other state, federal, or local agency in a manner that is contrary to the provisions of section 25-8-104.

CO Rev. Stat § 25-8-510. Fees established administratively – rules – shareholding requirement – phase-in period – clean water cash fund – creation – repeal.

(1)



(a) On or before October 31, 2025, the commission shall establish the following fees by rule:

(I) Drinking water fees assessed on public water systems pursuant to section 25-1.5-209 (1), as that section existed prior to its repeal on July 1, 2026;

(II) Commerce and industry sector permitting fees assessed pursuant to section 25-8-502 (1.1)(b), as that section existed prior to its repeal on July 1, 2026;

(III) Construction sector permitting fees assessed pursuant to section 25-8-502 (1.1)(c), as that section existed prior to its repeal on July 1, 2026;

(IV) Pesticide sector permitting fees assessed pursuant to section 25-8-502 (1.1)(d), as that section existed prior to its repeal on July 1, 2026;

(V) Public and private utilities sector permitting fees pursuant to section 25-8-502 (1.1)(e), as that section existed prior to its repeal on July 1, 2026;

(VI) Municipal separate storm sewer system sector permitting fees pursuant to section 25-8-502 (1.1)(f), as that section existed prior to its repeal on July 1, 2026;

(VII) Review fees assessed pursuant to section 25-8-502 (1.2) for requests for certification under section 401 of the federal act, as that section existed prior to its repeal on July 1, 2026;

(VIII) Preliminary effluent limitation determination fees assessed pursuant to section 25-8-502 (1.3)(b), as that section existed prior to its repeal on July 1, 2026;

(IX) Wastewater site application and design review fees assessed pursuant to section 25-8-502 (1.3)(c), as that section existed prior to its repeal on July 1, 2026;

(X) On-site wastewater treatment system fees assessed pursuant to section 25-10-107 (3), including rules establishing the percentage of the on-site wastewater treatment system fees



collected that a county may retain to cover the county's administrative costs, as that section existed prior to its repeal on July 1, 2026; and

(XI) Biosolids management program fees assessed pursuant to section 30-20-110.5 (1), as that section existed prior to its repeal on July 1, 2026.

(b) The commission shall set the fees and periodically adjust the fees, and the general assembly may, by bill, annually adjust the fees, in an amount sufficient to cover the division's direct and indirect costs associated with administering and implementing the federal act, the federal "Safe Drinking Water Act", 42 U.S.C. sec. 300f et seq., section 25-1-114.1, part 2 of article 1.5 of this title 25, this article 8, and the "On-site Wastewater Treatment Systems Act", article 10 of this title 25.

(c)

(I) The fee-setting rules adopted pursuant to subsection (1)(a) of this section must become effective on or before January 1, 2026. If the commission adopts rules authorizing the division to phase in the fee-setting rules, the division may require permit applicants, permit holders, and public water systems to pay fees as set by the fee-setting rules instead of the fees set forth in statute before July 1, 2026.

(II) If the commission establishes a process for the division's phase in of the fee-setting rules pursuant to subsection (1)(c)(I) of this section, the commission's rules must establish a process for the division's phase in of the fee-setting rules. The process established by rule must include notice to permit applicants, permit holders, and public water systems regarding the process, including requirements to post the process on the division's website and engage in community outreach regarding the process.

(III) This subsection (1)(c) is repealed, effective September 1, 2027.

(d) On or before December 31, 2025, the commission shall establish by rule the authorization fees for the dredge and fill program, as defined in section 25-8-205.1 (3). The division shall transmit the fees collected pursuant to the commission's fee-setting rules adopted under this



subsection (1)(d) to the state treasurer, who shall credit the fees to the clean water cash fund created in subsection (4) of this section.

(2)

(a) Before the commission adopts the fee-setting rules pursuant to subsection (1)(a) of this section or adopts any subsequent adjustments to the fees, and in accordance with section 25-8-502 (1.5)(c)(I)(B), the department of public health and environment shall conduct outreach to obtain stakeholder input regarding the total funding for the division, including federal money, money from the general fund, and all cash fees.

(b) Through the stakeholder process, the department of public health and environment shall identify the fee revenue needed for evaluation of the feasibility of treatment methods required to meet water quality standards and other regulations adopted or proposed for adoption, including the funding needed:

(I) To support the development of variances;

(II) To improve permit issuance processes to increase efficiency and facilitate the timely issuance of new permits;

(III) For renewal permits, permit modifications, and reducing permit backlog; and

(IV) For the preparation of cost-benefit analyses and regulatory analyses when required pursuant to section 24-4-103 (2.5) or (4.5) of the "State Administrative Procedure Act".

(c) In conducting stakeholder outreach, the department of public health and environment shall discuss with stakeholders the options for setting a cap on the amount of fee increases.

(d) Through the stakeholder process, the department of public health and environment shall seek input from:

(I) Owners and operators of regulated drinking water systems;

(II) Permit holders;

(III) County representatives;



(IV) Representatives of other local governments;

(V) Conservation groups;

(VI) Environmental justice groups; and

(VII) Community members, including members of disproportionately impacted communities as defined in section 24-4-109 (2)(b)(II).

(e) The department of public health and environment shall conduct outreach to and engagement of disproportionately impacted communities pursuant to this subsection (2) in accordance with section 24-4-109 (3).

(3)

(a)

(I) Upon the effective date of the rules adopted pursuant to subsection (1)(a) of this section and until June 30, 2026, the division shall transmit:

(A) The fees collected pursuant to the commission's fee-setting rules adopted under subsections (1)(a)(II) to (1)(a)(XI) of this section to the state treasurer, who shall credit the fees as directed by the division, either to the clean water cash fund created in subsection (4) of this section or to the statutory fund into which such fees were transmitted before May 17, 2023; and

(B) The fees collected pursuant to the commission's fee-setting rules adopted under subsection (1)(a)(I) of this section to the state treasurer, who shall credit the fees to the drinking water cash fund created in section 25-1.5-209 (2).

(II) This subsection (3)(a) is repealed, effective September 1, 2026.

(b) On and after July 1, 2026, the division shall transmit:



(I) The fees collected pursuant to the commission's fee-setting rules adopted under subsections (1)(a)(II) to (1)(a)(XI) of this section to the state treasurer, who shall credit the fees to the clean water cash fund created in subsection (4) of this section; and

(II) The fees collected pursuant to the commission's fee-setting rules adopted under subsection (1)(a)(I) of this section to the state treasurer, who shall credit the fees to the drinking water cash fund created in section 25-1.5-209 (2).

(4)

(a) The clean water cash fund is created in the state treasury. The fund consists of:

(I) Fees collected pursuant to the commission's fee-setting rules adopted pursuant to subsections (1)(a)(II) to (1)(a)(XI) of this section;

(I.5) Money that the general assembly transfers to the fund pursuant to subsection (4)(d) of this section;

(II) Any other money that the general assembly may appropriate or transfer to the fund; and

(III) Any federal funds credited to the fund.

(b) The state treasurer shall credit all interest and income derived from the deposit and investment of money in the clean water cash fund to the fund.

(c) The general assembly shall annually appropriate money from the sources specified in subsections (1)(a)(I) and (1)(a)(II) of this section in the clean water cash fund to the department for use by the division for the division's administration and implementation of the federal act and this article 8.

(d) for the 2026-27 state fiscal year and for each state fiscal year thereafter, the state treasurer shall transfer two hundred forty-eight thousand three hundred four dollars from the general fund to the clean water cash fund.



