

COLORADO

WATER QUALITY

CONTROL ACT

Revised and reproduced by the Colorado Department of Public Health and Environment
June 2002.

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PART 1

GENERAL PROVISIONS

25-8-101. Short title. This article shall be known and may be cited as the "Colorado Water Quality Control Act".

25-8-102. Legislative declaration. (1) In order to foster the health, welfare, and safety of the inhabitants of the state of Colorado and to facilitate the enjoyment and use of the scenic and natural resources of the state, it is declared to be the policy of this state to prevent injury to beneficial uses made of state waters, to maximize the beneficial uses of water, and to develop waters to which Colorado and its citizens are entitled and, within this context, to achieve the maximum practical degree of water quality in the waters of the state consistent with the welfare of the state. It is further declared that pollution of state waters may constitute a menace to public health and welfare, may create public nuisances, may be harmful to wildlife and aquatic life, and may impair beneficial uses of state waters and that the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states.

(2) It is further declared to be the public policy of this state to conserve state waters and to protect, maintain, and improve, where necessary and reasonable, the quality thereof for public water supplies, for protection and propagation of wildlife and aquatic life, for domestic, agricultural, industrial, and recreational uses, and for other beneficial uses, taking into consideration the requirements of such uses; to provide that no pollutant be released into any state waters without first receiving the treatment or other corrective action necessary to reasonably protect the legitimate and beneficial uses of such waters; to provide for the prevention, abatement, and control of new or existing water pollution; and to cooperate with other states and the federal government in carrying out these objectives.

(3) It is further declared that protection of the quality of state waters and the prevention, abatement, and control of water pollution are matters of statewide concern and affected with a public interest, and the provisions of this article are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

(4) This article and the agencies authorized under this article shall be the final authority in the administration of water pollution prevention, abatement, and control. Notwithstanding any other provision of law, no department or agency of the state, and no municipal corporation, county, or other political subdivision, having jurisdiction over water pollution prevention, abatement, and control, shall issue any authorization for the discharge of pollutants into state waters unless authorized to do so in accordance with this article.

(5) It is further declared that the general assembly intends that this article shall be construed to require the development of a water quality program in which the water quality benefits of the pollution control measures utilized have a reasonable relationship to the economic, environmental, energy, and public health costs and impacts of such measures, and that before any final action is taken, with the exception of any enforcement action, consideration be given to the economic reasonableness of the action. Such consideration shall include evaluation of the benefits derived from achieving the goals of this article and the economic, environmental, public health, and energy impacts to the public and affected persons.

25-8-103. Definitions. As used in this article, 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 groundwater 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, C.R.S., in consultation with the Colorado cooperative extension service and the water quality control division, to prevent or remedy the introduction of agricultural chemicals into groundwater 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 and the water quality control division, to prevent or remedy the introduction of agricultural chemicals into groundwater 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 individual sewage disposal systems as 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".

(8.5) "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 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 which are contained in or flow in or through this state, 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.

25-8-104. Interpretation and construction of water quality provisions. (1) No provision of this article shall be interpreted so as to supersede, abrogate, or impair rights to divert water and apply water to beneficial uses in accordance with the provisions of sections 5 and 6 of article XVI of the constitution of the state of Colorado, compacts entered into by the state of Colorado, or the provisions of articles 80 to 93 of title 37, C.R.S., or Colorado court determinations with respect to the determination and administration of water rights. Nothing in this article shall be construed, enforced, or applied so as to cause or result in material injury to water rights. The general assembly recognizes that this article may lead to dischargers choosing consumptive types of treatment techniques in order to meet water quality requirements. Under such circumstances, the discharger must comply with all of the applicable provisions of articles 80 to 93 of title 37, C.R.S., and shall be obliged to remedy any material injury to water rights to the extent required under the provisions of articles 80 to 93 of title 37, C.R.S. The question of whether such material injury to water rights exists and the remedy therefor shall be determined by the water court. This section shall not be interpreted so as to prevent the issuance of a permit pursuant to sections 25-8-501 to 25-8-503 which is necessary to protect public health. Nothing in this article shall be construed to allow the commission or the division to require minimum stream flows or minimum water levels in any lakes or impoundments.

(2) The following criteria, in addition to those otherwise prescribed by law, shall apply to any policy, rule-making, adjudicatory, administrative, or executive decision of the water quality control commission or to any judicial decision related thereto:

(a) All state waters shall be presumed to be available for beneficial uses under and in accordance with the constitution and laws of the state; and a water right includes the right to divert as defined in section 37-92-103 (7), C.R.S., the waters of the state for application to beneficial uses.

(b) The commission or division shall not require an instream flow for any purpose.

(c) Mixing zones in state waters shall be allowed in accordance with other provisions of this article in calculating the necessary degree of source pollutant control, so long as water rights are not materially injured.

(d) The commission and division shall consult with the state engineer and the water conservation board or their designees before making any decision or adopting any rule or policy which has the potential to cause material injury to water rights.

(e) Underground water may be extracted from state waters in order to treat or remove pollutants from the water extracted; except that any material injury to water rights resulting therefrom shall be remedied as required by law.

(3) The state engineer shall issue well permits pursuant to section 37-90-137 (2), C.R.S., necessary to accomplish the purposes of paragraph (e) of subsection (2) of this section. Well construction shall be in accordance with article 91 of title 37, C.R.S..

25-8-105. Regional wastewater management plans - amendments. (1) (a) Regional wastewater management plans which include plans known for purposes of the federal act as "208 plans" may be developed by designated planning agencies or by the state for nondesignated areas or for statewide purposes.

(b) Before submitting a proposed plan or amendment to the division, the designated planning agency shall hold a hearing on the proposed plan or amendment.

(c) The division shall consider any proposed plan or amendment developed by the state.

(d) Notice of a hearing to be held pursuant to this subsection (1) shall be given by at least one publication in a newspaper of general distribution in the area of the proposed plan, and actual notice shall be given to anyone requesting such notice. Such notice shall advise of the opportunity for interested persons to appear and submit written or oral comments on the proposed plan or amendment. The agency holding the hearing shall receive and consider all comments submitted on the proposed plan or amendment.

(2) Each regional wastewater management plan and each amendment to such a plan must be either developed or reviewed by the division.

(3) (a) The commission, after notice and hearing, shall approve, or reject proposed regional wastewater management plans and amendments thereto. The commission shall approve, conditionally approve, or reject a plan or an amendment developed by a management or planning agency within one hundred eighty days after submittal of the plan or amendment by the management or planning agency to the division. Only those portions of a regional wastewater management plan which are adopted as a regulation by the commission pursuant to section 24-4-103, C.R.S., shall be binding on regulatory decisions, including, but not limited to, site approvals, construction grants, or point or nonpoint source control decisions. Only those plans or portions thereof which are adopted by the commission as regulations shall be binding for purposes of any federal law, regulation, or action.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3), the commission may delegate to the division the authority to approve, conditionally approve, or reject nonrule-making amendments to regional wastewater management plans. If the commission delegates such authority, the division shall give notice of its decision on an amendment to the commission and to anyone who has requested notice of amendments to the affected plan. Notice of such decision shall also be included on the next commission agenda. Upon a request by any affected person, the commission shall review the division's decision. The decision of the division shall be final within forty-five days after agenda notice of the decision has been given unless review is requested by an affected person.

(4) The governor may certify to the federal environmental protection agency a regional wastewater management plan or an amendment thereto which has been approved by the commission or an amendment thereto which has become final after approval by the division. The governor may designate planning agencies for the purposes of the federal act.

25-8-106. Repealed, L. 96, p. 54, section 160, effective August 7, 1996.

PART 2

WATER QUALITY CONTROL COMMISSION

25-8-201. Water quality control commission created. (1) (a) There is hereby created in the department of public health and environment a water quality control commission which shall exercise its powers and perform its duties and functions as if it were transferred to said department by a type 1 transfer. The commission shall consist of nine citizens of the state who shall be appointed by the governor, with the consent of the senate, for terms of three years each; except that, of the members appointed to take office in 1984, one shall be appointed for a one-year term, one shall be appointed for a two-year term, and three shall be appointed for three-year terms. Members of the commission shall be appointed so as to achieve geographical representation and to reflect the various interests in water in the state. At least two members shall reside in that portion of the state which is west of the continental divide.

(b) Only commission members appointed by the governor and serving on July 1, 1981, shall continue to serve the remainder of their terms. On and after July 1, 1981, appointments shall be made in accordance with the provisions of this subsection (1).

(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.

25-8-202. Duties of the commission. (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, in connection therewith, shall:

- (a) Classify state water 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 regulations and adopt priority ranking for the administration of federal and other public source construction loans or grants which the commission or the division administers, which loans or grants 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 provision 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.

(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. The individual employed as technical secretary pursuant to subsection (3) of this section, as that section existed prior to July 1, 1981, shall be employed as the initial administrator under this subsection (4).

(5) Repealed, L. 96, p. 54, section 160, effective August 7, 1996.

(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 mined land reclamation division; the state engineer; the oil and gas conservation commission; and the state agency responsible for activities related to the federal "Resource Conservation and Recovery Act of 1976", 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.

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.

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 organisms 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.

25-8-205. 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) 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.

(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 oil and gas conservation commission, 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 which require agricultural nonpoint source dischargers to utilize treatment techniques which 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 soil 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).

25-8-205.5 Pollution from agricultural chemicals. (1) Legislative declaration. The general assembly hereby declares that the public policy of this state is to protect groundwater 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 groundwater and to provide for the education and training of agricultural chemical applicators and the general public needing groundwater protection, agricultural chemical use, and the use of other agricultural methods.

(2) Definition. For the purpose of this section only, "groundwater" means any subsurface water in a zone of saturation which is or can be brought to the surface of the ground or to surface waters through wells, springs, seeps, or other discharge areas.

(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;

(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 at least 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 groundwater, the commissioner may require, by rule and regulation adopted pursuant to article 4 of title 24, C.R.S., 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 groundwater 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 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 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 persons 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 regulations. 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 paragraph (g) of subsection (3) of this section, the commissioner shall identify agricultural management areas as defined in section 25-8-103 (1.1) and shall conduct monitoring programs to determine:

(a) The presence of any agricultural chemical in groundwater at a level which meets or exceeds any water quality standard applicable under this article or which has a reasonable likelihood of meeting or exceeding any such standards; or

(b) The likelihood that an agricultural chemical will enter the groundwater, based upon the existence of sufficient, valid scientific data which 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 the 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. 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 subsection (3) (h) (VI) of this section shall be transmitted to the state treasurer, who shall credit the same to the groundwater protection fund, which fund is hereby created. All moneys credited to the fund and all interest earned on the investment of moneys in the fund shall be a part of this fund and shall not be transferred or credited to the general fund or to any other fund, except as directed by the general assembly acting by bill. The general assembly shall make annual appropriations from such fund to the department of agriculture to carry out the purposes of this section.

(9) Repealed, L. 96, p. 54, section 160, effective August 7, 1996.

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, hearing, 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.

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; or

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

(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.

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.

25-8-209 Water quality designations. (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) (a) Outstanding waters. 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 water 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. Use-protected waters shall be 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. 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.

PART 3

ADMINISTRATION

25-8-301. Administration of water quality control programs. (1) The department of public health and environment shall administer and enforce the water quality control programs adopted by the commission.

(2) In furtherance of such responsibility of the department, the executive director shall maintain within the division a separate water quality control agency.

(3) The director of said water quality control agency shall be employed pursuant to section 13 of article XII of the state constitution. He shall be a registered professional engineer or have a graduate degree in engineering or other specialty dealing with the problems of pollution and shall also have appropriate practical and administrative experience related to such problems. Such person shall not be the administrator employed pursuant to section 25-8-202 (4).

(4) The division shall act as staff to the commission in commission proceedings other than adjudicatory or appellate proceedings in which the division is a party.

25-8-302. Duties of the division. (1) The division shall: (a) Carry out the enforcement provisions of this article, including the seeking of criminal prosecution of violations and such other judicial relief as may be appropriate;

(b) Administer the permit system as provided in part 5 of this article;

(c) Monitor waste discharges and the state waters as provided in section 25-8-303;

(d) Submit an annual report to the commission as provided in section 25-8-305;

(e) Maintain a mailing list of persons requesting notice of actions by the division or by the commission and notify persons on the list of such actions, for which service the division shall assess a fee to cover the costs thereof;

(f) Review and certify, conditionally certify, or deny requests for certifications under the provisions of section 401 of the federal act and this article, known as "401 certificates". Conditions attached to the division's certification shall only implement rules which the commission has made applicable to 401 certifications. General or nationwide permits under section 404 of the federal act shall be certified for use in Colorado without the imposition of any additional state conditions. Appeals by an affected entity of a final 401 certification decision of the division shall be heard in accordance with section 24-4-105, C.R.S., of the "State Administrative Procedure Act".

(g) Perform such other duties as may lawfully be assigned to it.

25-8-303. Monitoring. (1) The division shall take such samplings as may be necessary to enable it to determine the quality of every reasonably accessible segment of state waters, wherever practical. In sampling such waters the division shall give consideration to characteristics such as those listed in section 25-8-204 (2), but if pollution is suspected the

sampling shall not be limited or restricted by reason of the fact that no water quality standard has been promulgated for the suspected type of pollution.

(2) As to every segment of state waters so sampled, the division shall endeavor to determine the nature and amount of each pollutant, whether a new or different water quality standard is needed, the source of each pollutant, the place where each such pollutant enters the water, and the names and addresses of each person responsible for or in control of each entry.

(3) As to each separate pollution source identified, the division shall:

(a) Determine what control regulations are applicable, if any;

(b) Determine whether the discharge is covered by a permit and whether or not any condition of the permit is being violated;

(c) Determine what further control measures with respect to such pollution source are practicable.

(4) The division shall inform the commission of any unusual problem which creates difficulties in abating pollution.

25-8-304. Monitoring, recording, and reporting. (1) The owner or operator of any facility, process, or activity from which a discharge of pollutants is made into state waters or into any municipal domestic wastewater treatment works shall, according to standard procedures and methods prescribed by the division:

(a) Establish and maintain records;

(b) Make reports;

(c) Install, calibrate, use, and maintain monitoring methods and equipment, including biological and indicator pollutant monitoring methods;

(d) Sample discharges;

(e) Provide additional reasonably available information relating to discharges into domestic wastewater treatment works.

25-8-305. Annual Report. On or before October 1 of each year, the division through the executive director shall report to the commission on the effectiveness of the provision of this article and shall include in such report such recommendations as it may have with respect to any regulatory or legislative changes that may be needed or desired. Such report shall include the then current information that has been obtained pursuant to section 25-8-303 and information concerning the status of the division's implementation of the discharge permit program established in part 5 of this article. The report shall be filed with the house agriculture, livestock, and natural resources committee and the senate agriculture, natural resources, and energy committee.

25-8-306. Authority to enter and inspect premises and records. (1) The division has the power, upon presentation of proper credentials, to enter and inspect at any reasonable time and

in a reasonable manner any property, premise, or place for the purpose of investigating any actual, suspected, or potential source of water pollution, or ascertaining compliance or noncompliance with any control regulation or any order promulgated under this article. Such entry is also authorized for the purpose of inspecting and copying records required to be kept concerning any effluent source.

(2) In the making of such inspections, investigations, and determinations, the division, insofar as practicable, may designate as its authorized representatives any qualified personnel of the department of agriculture. The division may also request assistance from any other state or local agency or institution.

(3) If such entry or inspection is denied or not consented to, the division is empowered to and shall obtain, from the district or county court for the judicial district or county in which such property, premise, or place is located, a warrant to enter and inspect any such property, premise, or place prior to entry and inspection. The district and county courts of the state of Colorado are empowered to issue such warrants upon a proper showing of the need for such entry and inspection.

25-8-307. Emergencies. Whenever the division determines, after investigation, that any person is discharging or causing to be discharged or is about to discharge into any state waters, directly or indirectly, any pollutant which in the opinion of the division constitutes a clear, present, and immediate danger to the health or livelihood of members of the public, the division shall issue its written order to said person that he must immediately cease or prevent the discharge of such pollutant into such waters and thereupon such person shall immediately discontinue such discharge. Concurrently with the issuance of such order, the division may seek a restraining order or injunction pursuant to section 25-8-607.

25-8-308. Additional authority and duties of the division - fee and penalties. (1) In addition to the authority specified elsewhere in this article, the division has the power to:

(a) Conduct or cause to be conducted studies, research, and demonstrations with respect to water pollution and the control, abatement, or prevention thereof, as requested by the commission;

(b) Furnish technical advice and services relating to water pollution problems and control techniques;

(c) Designate one or more persons or agencies in any area of the state as a water quality control authority, as agent of the division, to exercise and perform such powers and duties of the division as may be specified in such designation;

(d) Administer, in compliance with regulations and the priority ranking adopted by the commission, loans and grants from the federal government and from the other public sources;

(e) Advise, consult, cooperate, and enter into agreements with other agencies of the state, the federal government, other states, and interstate agencies, and with groups, political subdivisions, and industries affected by the provisions of this article and the policies of the commission; but any such agreement involving, authorizing, or requiring compliance in this state with any standard or regulation shall not be effective unless or until the commission has

held a hearing with respect to such standard or regulation and has adopted the same in compliance with this article;

(f) Certify, when requested, the existence of any facility, land, building, machinery, equipment, treatment works, or sewage or disposal systems as have been acquired, constructed, or installed in conformity with the purposes of this article;

(g) Take such action in accordance with rules and orders promulgated by the commission as may be necessary to prevent, abate, and control pollution;

(h) Implement a program, in accordance with rules and orders of the commission, for the reuse of reclaimed domestic wastewater for purposes other than drinking.

(2) All fees collected by the division shall be transmitted to the state treasurer for deposit to the credit of the water quality control fund created by section 25-8-502 and shall be subject to appropriation by the general assembly. All fines and penalties for violations of this article shall be transmitted to the state treasurer for deposit to the credit of the general fund.

25-8-309. Study of classification and standard issues. (1) The division shall undertake a study to examine whether the state water quality control program standard-setting and classification process established under this article should be modified to reasonably accommodate the unique attributes of Colorado's water bodies. As part of such study, the division shall review and consider the results of the arid west water quality research project. In completing such study, the division shall take into account the following:

(a) The physical, chemical, flow, and habitat characteristics associated with water bodies, including the ephemeral or effluent-dependent nature of many water bodies;

(b) The potential need for refined designated uses and additional site-specific standards;

(c) The benefit of maintaining the functions of constructed water conveyance and storage facilities;

(d) The nature of the current use attainability analysis process and any necessary adjustments thereto; and

(e) The benefits associated with maintaining downstream ecosystems that are dependent, at least in part, upon the continuation of effluent discharges.

(2) On or before December 1, 2003, the division shall prepare and submit to the general assembly a report that identifies its findings upon the topics identified in subsection (1) of this section and makes any recommendations for changes in state law, rules, or policy that it believes may be necessary to implement any modifications that the study determines are needed.

(3) The division shall inform and seek input from the commission at least once every six months on the study efforts. The study process shall be open to the public, with participation and comment to be solicited from all interested parties.

PART 4

PROCEDURES

25-8-401. Authority and procedures for hearings. (1) The commission or the division may hold public hearings, which shall be held pursuant to and in conformity with article 4 of title 24, C.R.S. 1973, and with this article.

(2) The commission may adopt such rules and regulations governing procedures and hearings before the commission or division as may be necessary to assure that such procedures and hearings will be fair and impartial. Such rules and regulations shall be consistent with the pertinent provisions of article 4 of title 24, C.R.S.

(3) In all proceedings before the commission or the division with respect to any alleged violation of any control regulation, permit, or order, the burden of proof shall be upon the division.

(4) Except for classification and water quality standard-setting proceedings, the commission or the department of public health and environment may designate a hearing officer or an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., subject to appropriations made to the department of public health and environment. When appropriate, the hearing officer may be an employee of the department of public health and environment or a member of or the administrator of the commission.

(5) (a) Any request for a variance with respect to a permit condition shall be made within thirty days after issuance by the division of the final permit. Requests for variances from any other application of a control regulation shall be made within thirty days legal notice by the division of the regulation or prior to operation of any new or expanded facility which would be affected by the control regulations. A variance may also be sought within thirty days of facts becoming available which had not been reasonably available to the applicant prior to that time or upon application to the commission for good cause shown.

(b) The division shall approve or disapprove any variance request and issue its decision within ninety days after receipt of the variance request. Notice of a variance request shall be sent to anyone who has requested such notice and shall be included on the next commission agenda. In the case of a variance being granted prior to the final permit being issued, the division shall publish for public notice and comment the entire draft permit with the variance incorporated therein. In the case of a variance granted after a final permit has been issued, the division shall publish for public notice and comment the variance as a proposed modification to the permit. Within forty-five days of issuance of a variance decision by the division which does not involve discharge permit conditions required by the federal act, the commission on its own motion or on the motion of the division or any interested person may decide to review the variance decision. In such event, a hearing pursuant to section 24-4-105, C.R.S., shall be held, and the commission may affirm, modify, or deny the decision. Variance decisions of the division which involve discharge permit conditions required by the federal act shall be subject to review by an administrative law judge of the department of personnel pursuant to section 24-4-105, C.R.S., as part of any challenge to the conditions of a final discharge permit issued by the division.

25-8-402. Procedures to be followed in classifying state waters and setting standards and control regulations. (1) Prior to the classification of state waters and promulgating any water

quality standard or any control regulation authorized in this article, the commission shall conduct a public hearing thereon as provided in section 24-4-103, C.R.S. Notice of any such hearing shall conform to the requirements of section 24-4-103, C.R.S., but such notice shall be given at least sixty days prior to the hearing and shall include each proposed standard or regulation.

(2) Any person desiring to propose a standard or regulation differing from the standard or regulation proposed by the commission shall file such other written proposal with the commission not less than twenty days prior to the hearing, and, when on file, such proposal shall be open for public inspection.

(3) Witnesses at the hearing shall be subject to cross-examination by or on behalf of the commission, by or on behalf of persons who have proposed standards or regulations pursuant to subsection (2) of this section, and by or on behalf of persons who have obtained party status to the proceeding.

(4) Standards or regulations promulgated pursuant to this section shall take effect as provided in section 24-4-103 (5), C.R.S.

(5) Any emergency rule-making proceedings by the commission shall be conducted pursuant to section 24-4-103 (6), C.R.S., and not pursuant to this section. Any rule adopted pursuant to such proceedings may be effective for a specified period longer than three months, but not later than one year, if the commission determines that such longer period is necessary to complete rule-making pursuant to section 24-4-103, C.R.S., to reconsider the emergency rule.

25-8-403. Administrative reconsideration. During the time permitted for seeking judicial review of any final order or determination of the commission or division, any party directly affected by such order or determination may apply to the commission or division, as appropriate, for a hearing or rehearing with respect to, or reconsideration of, such order or determination. The determination by the commission or division of whether to grant or deny the application for a hearing, rehearing, or reconsideration shall be made within ten days after receipt by the commission or division of such application. Such determination by the commission may be made by telephone or mail or at a meeting, but in any event shall be confirmed at the next meeting of the commission. If the application for a hearing, rehearing, or reconsideration is granted, the order or determination to which such application pertains shall not be considered final for purposes of judicial review, and the commission or the division may affirm, reverse, or modify, in whole or in part, the pertinent order or determination; thereafter such order or determination shall be final and not subject to stay or reconsideration under this section.

25-8-404. Judicial review. (1) Any final rule, order, or determination by the division or the commission, including but not limited to classification of state waters, approval of areawide waste treatment management plans, water quality standards, site approvals, permits, control regulations, enforcement orders, cease and desist orders, and clean-up orders, shall be subject to judicial review in accordance with the provisions of this article and article 4 of title 24, C.R.S. All regulations, orders, and determinations of the commission or division shall be adopted, promulgated, or issued in accordance with the provisions of said article 4 of title 24.

(2) Any proceeding for judicial review of any final order or determination of the commission or division shall be filed in the district court for the district in which the pollution source affected is located.

(3) Any proceeding for judicial review of any final rule, order, or determination of the commission or division shall be filed within thirty days after said rule, order, or determination has become final. Rulemaking determinations shall become final in accordance with the "State Administrative Procedure Act". Quasi-judicial determinations shall become final upon issuance of such determinations to those parties to the proceedings. The period for filing the action for judicial review shall be stayed while any application for a hearing, rehearing, or reconsideration is pending pursuant to section 25-8-403, and the period during which any such application is pending shall extend the time for filing a proceeding for judicial review an equal length of time.

(4) (a) Except with respect to emergency orders issued pursuant to section 25-8-307, any person to whom a cease and desist order, clean-up order, or other order has been issued by the division or commission, or against whom an adverse determination has been made, may petition the district court for a stay of the effectiveness of such order or determination. Such petition shall be filed in the district court in which the pollution source affected is located.

(b) Such petitions may be filed prior to any such order or determination becoming final or during any period in which such order or determination is under judicial review.

(c) Such stay shall be granted by the court if there is probable cause to believe that refusal to grant a stay will cause serious harm to the affected person or any other person, and:

(I) That the alleged violation or activity to which the order or determination pertains will not continue, or if it does continue, any harmful effects on state waters will be alleviated promptly after the cessation of the violation or activity; or

(II) That the refusal to grant a stay would be without sufficient corresponding public benefit.

(5) Any party may move the court to remand the case to the division or the commission in the interests of justice, for the purpose of adducing additional specified and material evidence, and findings thereon; but such party shall show reasonable grounds for the failure to adduce such evidence previously before the division or the commission.

(6) If the court does not stay the effectiveness of an order of the commission or division, the court shall enforce compliance with that order by issuing a temporary restraining order or injunction at the request of the commission or division.

25-8-405. Samples, secret processes. (1) If samples of water or water pollutants are taken for analysis, the person believed to be responsible for any suspected violation or who is or will be subject to any remedial action shall be notified immediately of the collection of the samples and a representative portion of the sample shall be furnished immediately upon request to said person. A representative portion of such sample shall be furnished to any suspected violator whenever any remedial action is taken with respect thereto by the division. A duplicate of every analytical report pertaining to such sample shall also be furnished as soon as practicable to such person. Any request for a sample split shall be made within six months of the notification of the collection of samples.

(2) Any information relating to any secret process, method of manufacture or production, or sales or marketing data which may be acquired, ascertained, or discovered, whether in any

sampling investigation, emergency investigation, or otherwise, shall not be publicly disclosed by any member, officer, or employee of the commission or the division, but shall be kept confidential. Any person seeking to invoke the protection of this subsection (2) shall bear the burden of proving its applicability. This section shall never be interpreted as preventing full disclosure of effluent data.

25-8-406. Administrative stays - renewal permits. If a permittee requests a hearing pursuant to section 24-4-105, C.R.S., challenging final action by the division in regard to any terms and conditions of a renewal permit, said permit shall become effective in its entirety unless a stay is granted pursuant to this section. The division may stay any contested terms and conditions of a permit for good cause shown. The division shall act on any stay request within ten days of receipt thereof. Any stay granted under this section shall expire when a final determination is made after the conclusion of the hearing held pursuant to section 24-4-105, C.R.S. During the period of any such stay, the corresponding terms and conditions of the prior permit shall be in effect. Action by the division granting or denying a stay pursuant to this section shall be final agency action subject to de novo determination pursuant to section 25-8-404.

PART 5

PERMIT SYSTEM

25-8-501. Permits required for discharge of pollutants - administration. (1) No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article. No person covered by this article shall use or dispose of biosolids, except as authorized by regulations that shall 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, C.R.S., except as necessary to be consistent with section 405 of the federal act. Existing authorization for the use or disposal of biosolids shall continue until permits are issued in accordance with this part 5. Each application for a permit duly filed under the federal act shall be deemed to be a permit application filed under this article, and each permit issued pursuant to the federal act shall be deemed to be a temporary permit issued under this article which shall expire upon expiration of the federal permit.

(2) The division shall examine applications for and may issue, suspend, revoke, modify, deny, and otherwise administer permits for the discharge of pollutants into state waters and for the use and disposal of biosolids. Such administration shall be in accordance with the provisions of this article and regulations promulgated by the commission. Until modified pursuant to this article, final permits shall be governed by their existing limitations.

(3) The commission shall promulgate such regulations as may be necessary and proper for the orderly and effective administration of permits for the discharge of pollutants, which regulations shall include, but not be limited to, procedures for the issuance of a variance pursuant to section 25-8-503 (4), and shall also require that, in appropriate circumstances, the effluent limitations contained in a permit shall be adjusted to account for the pollutants contained in the discharger's intake water. Such regulations shall be consistent with the provisions of this article and with federal requirements and shall be in furtherance of the policy contained in section 25-8-102. Such regulations shall establish a permit process that allows permit conditions to remain in effect as long as circumstances dictate those conditions. In order to comply with federal requirements, but not to lessen compliance with federal standards, such permit process may require periodic renewal of permits even where minimal or no changes in the permit conditions are necessary. Renewal shall be required where more than minimal changes in permit conditions are necessary. The regulations may pertain to and implement, among other matters, permit and permit application contents, procedures, requirements, and restrictions with respect to the following:

- (a) Identification and address of the owner and operator of the activity, facility, or process from which the discharge is to be permitted;
- (b) Location and quantity and quality characteristics of the permitted discharge;
- (c) Effluent limitations and conditions for treatment prior to discharge to a publicly owned treatment works;
- (d) Monitoring as well as record-keeping and reporting requirements consistent with standard procedures and methods established by the division;

- (e) Schedules of compliance;
 - (f) Procedures to be followed by division personnel for entering and inspecting premises;
 - (g) Submission of pertinent plans and specifications for the facility, process, or activity which is the source of a waste discharge;
 - (h) Restrictions on transfers of the permit;
 - (i) Procedures to be followed in the event of expansion or modification of the process, facility, or activity from which the discharge occurs or the quality, quantity, or frequency of the discharge;
 - (j) Duration of the permit and renewal procedures using a risk-based approach that limits the amount of work required to renew permits that have minimal or no changes in the permit conditions to streamline the renewal process;
 - (k) Authority of the division to require changes in plans and specifications for control facilities as a condition for the issuance of a permit;
 - (l) Identification of control regulations over which the permit takes precedence and identification of control regulations over which a permit may never take precedence;
 - (m) Notice requirements of any intent to construct, install, or alter any process, facility, or activity that is likely to result in a new or altered discharge;
 - (n) Effectiveness under this article of permit applications submitted to and permits issued by the federal government under the federal act.
- (4) Nothing in any permit shall ever be construed to prevent or limit the application of any emergency power of the division.
- (5) Every permit issued for a domestic wastewater treatment works shall contain such terms and conditions as the division determines to be necessary or desirable to assure continuing compliance with applicable control regulations. Such terms and conditions may require that whenever deemed necessary by the division to assure such compliance the permittee shall:
- (a) Require pretreatment of effluent from industrial, governmental, or commercial facilities, processes, and activities before such effluent is received into the gathering and collection system of the permittee;
 - (b) Prohibit any connection to any municipal permittee's interceptors and collection system that would result in receipt by such municipal permittee of any effluent other than sewage required by law to be received by such permittee;
 - (c) Include specified terms and conditions of its permit in all contracts for receipt by the permittee of any effluent not required to be received by a municipal permittee;

(d) Initiate engineering and financial planning for expansion of the domestic wastewater treatment works whenever throughput and treatment reaches eighty percent of design capacity;

(e) Commence construction of such domestic wastewater treatment works expansion whenever throughput and treatment reaches ninety-five percent of design capacity or, in the case of a municipality, either commence such construction or cease issuance of building permits within such municipality until such construction is commenced; except that building permits may continue to be issued for any construction which would not have the effect of increasing the input of domestic wastewater to the sewage treatment works of the municipality involved. The term "commence construction", as used in this paragraph (e), includes execution of, and commencement of work under, contracts for engineering design, plans, and specifications for erection, building, alteration, remodeling, improvement, or extension of treatment works and commitment to the completion of construction of such treatment works prior to exceeding permit effluent limitations based upon facility design and capacity or execution of a contract for the construction thereof.

(6) Inclusion of the requirements authorized by paragraph (d) of subsection (5) of this section shall be presumed unnecessary to assure compliance upon a showing that the area served by a domestic wastewater treatment works has a stable or declining population; but this provision shall not be construed as preventing periodic review by the division should it be felt that growth is occurring or will occur in the area.

25-8-501.1 Permit required for point source water pollution control - definitions - housed commercial swine feeding operations - legislative declaration. (1) The people of the State of Colorado hereby find, determine, and declare that the advent of large housed commercial swine feeding operations in Colorado has presented new challenges to ensuring that the quality of the state's environment is preserved and protected. As distinguished from more traditional operations that historically have characterized Colorado's livestock industry, large housed swine feeding operations use significant amounts of process water for flushing and disposing of swine waste, commonly store this waste in large impoundments, and dispose of it through land application. The waste storage, handling and disposal by such operations are particularly odorous and offensive. The people further find that it is necessary to ensure that the storage and land application of waste by housed commercial swine feeding operations is done in a responsible manner, so as not to adversely impact Colorado's valuable air, land and water resources.

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

(a) "Agronomic Rate of Application" means the rate of application of nutrients to plants that is necessary to satisfy the plants' nutritional requirements while strictly minimizing the amount of nutrients that run off to surface waters or which pass below the root zone of the plants, as specified by the most current published fertilizer suggestions of the Colorado state university cooperative extension service for the plants, or most closely related plant type, to which the nutrients are applied.

(b) "Housed Commercial Swine Feeding Operation" means a housed swine feeding operation that is capable of housing eight hundred thousand pounds or more of live animal weight of swine at any one time or is deemed a commercial operation under local zoning or land use regulations. Two or more housed swine confined feeding operations shall be considered to comprise a single housed commercial swine feeding operation if they are under

common or affiliated ownership or management, and are adjacent to or utilize a common area or system for manure disposal, are integrated in any way, are located or discharge within the same watershed or into watersheds that are hydrologically connected, or are located on or discharge onto land overlying the same groundwater aquifer.

(c) "Housed Swine Feeding Operations" means the practice of raising swine in buildings, or other enclosed structures wherein swine of any size are fed for forty-five days or longer in any twelve-month period, and crop or forage growth or production is not sustained in the area of confinement.

(d) "Process Wastewater" means any process-generated wastewater used in a housed commercial swine feeding operation, including water used for feeding, flushing, or washing, and any water or precipitation that comes into contact with any manure, urine, or any product used in or resulting from the production of swine.

(3) No persons shall operate, construct, or expand a housed commercial swine feeding operation without first having obtained an individual discharge permit from the division.

(4) On or before March 31, 1999, the commission shall promulgate rules necessary to ensure the issuance and effective administration and enforcement of permits under this section by July 1, 1999. Such rules shall incorporate the preceding subsection (3) and shall, at a minimum, require:

(a) That the owner or operator of a housed commercial swine feeding operation must obtain Division approval of construction, operations and swine waste management plans that, for any land waste application, includes a detailed agronomic analysis. Said plans shall employ the best available waste management practices, provide for remediation of residual soil and groundwater contamination, and ensure that disposal of solid or liquid waste to the soil not exceed agronomic rates of application;

(b) That appropriate setbacks for maintaining water quality be established for land waste application areas and waste impoundments;

(c) That waste impoundments or manure stock piles shall not be located within a one-hundred-year floodplain unless proper flood proofing measures are designed and constructed;

(d) That the owner or operator of the housed commercial swine feeding operation shall provide financial assurances for the final closure of the housed commercial swine feeding operation, the conduct of any necessary postclosure activities, the undertaking of any corrective action made necessary by migration of contaminants from the housed commercial swine feeding operation into the soil and groundwater, or cleanup of any spill or breach;

(e) That the owner or operator of a housed commercial swine feeding operation shall ensure that no solid or liquid waste generated by it shall be applied to land by any person at a rate that exceeds, in amount or duration, the agronomic rate of application; and

(f) That, because waste storage and disposal by housed commercial swine feeding operations pose particular jeopardy for state trust lands, in light of the mandate in the Colorado constitution, article ix, section 10, that state land board trust lands be held in trust and be protected and enhanced to promote long-term productivity and sound stewardship, the

construction, operations and waste management plans approved for housed commercial swine feeding operations on such lands, shall not permit the degradation of the physical attributes or value of any state trust lands.

(5) Any spill or contamination by a housed commercial swine feeding operation shall be reported immediately to the division and the county health department for the county in which the housed commercial swine feeding operation is conducted and, within twenty-four hours after the spill or contamination, a written report shall be filed with the division, and the county health department for the county in which the housed commercial swine feeding operation is conducted.

(6) Housed commercial swine feeding operations shall submit to the division and county health department quarterly, comprehensive monitoring reports and agronomic analyses that demonstrate that the operation has land-applied solid and liquid waste at no greater than agronomic rates. The division shall require the sampling and monitoring of chemical and appropriate biological parameters to protect the quality and existing and future beneficial uses of groundwater including, at a minimum, nitrogen, phosphorus, heavy metals, and salts. At a minimum, the monitoring program shall include quarterly samples, analysis and reporting of the groundwater, soils within the root zone and soils beneath the root zone within each waste application site, and shall also include monitoring to ensure that no excessive seepage occurs from any waste impoundments.

(7) The division shall assess a housed commercial swine feeding operation an annual permit fee, not to exceed 20 cents per animal, based on the operations working capacity to offset direct and indirect costs of the program. As used in this paragraph (a), "working capacity" means the number of swine that the housed commercial swine feeding operation is capable of housing at one time.

(8) The division shall enforce the provisions of this section and shall take immediate enforcement action against any housed commercial swine feeding operation that has exceeded the agronomic rate limit of this section. In addition, any person who may be adversely affected by a housed commercial swine feeding operation may enforce these provisions directly against the operation by filing a civil action in the district court in the county in which the person resides.

(9) These provisions shall not preclude any local government from imposing requirements more restrictive than those contained in this section.

25-8-502. Application - definitions - fees - water quality control fund - public participation.

(1) (a) For the purposes of this section:

(I) "Discharge" means discharge of pollutants as defined in section 25-8-103 (3), and also includes land application.

(II) "Land application" is any discharge being applied to the land for treatment purposes.

(b) (I) Effective July 1, 2002, in addition to the fees assessed pursuant to paragraphs (b.5) and (b.6) of this subsection (1), the only fee the division may assess is an annual fee upon a discharger, and such fee shall be in accordance with the following schedule:

Facility Categories and Subcategories
for Permit Fees

Annual Fees

(A)	Category 01	<u>Sand and gravel and placer mining</u>	
	Subcategory 1	Pit dewatering only	\$ 358
	Subcategory 2	Pit dewatering and/or washwater discharge	\$ 407
	Subcategory 3	Mercury use with discharge impact	\$ 456
	Subcategory 4	Storm water discharge only	\$ 540
(B)	Category 02	<u>Coal mining</u>	
	Subcategory 1	Sedimentation ponds, surface runoff only	\$ 701
	Subcategory 2	Mine water, preparation plant discharge	\$ 945
(C)	<u>Category 03</u>	<u>Hardrock mining</u>	
	Subcategory 1	Mine dewatering from 0 up to 49,999 gallons per day	\$ 816
	Subcategory 2	Mine dewatering from 50,000 up to 999,999 gallons per day	\$ 1,533
	Subcategory 3	Mine dewatering from 1,000,000 gallons per day or over	\$ 2,346
	Subcategory 4	Mine dewatering and milling with no discharge	\$ 2,346
	Subcategory 5	Mine dewatering and milling with discharge	\$ 7,056
	Subcategory 6	No discharge	\$ 816
	Subcategory 7	Milling with discharge from 0 up to 49,999 gallons per day	\$ 2,394
	Subcategory 8	Milling with discharge from 50,000 gallons per day or greater	\$ 4,773
(D)	<u>Category 04</u>	<u>Oil shale</u>	
	Subcategory 1	Sedimentation ponds, surface runoff only	\$ 1,418
	Subcategory 2	Mine water from 0 up to 49,999 gallons per day	\$ 1,533
	Subcategory 3	Mine water from 50,000 up to 999,999 gallons per day	\$ 1,907
	Subcategory 4	Mine water from 1,000,000 gallons per day or over	\$ 1,859
	Subcategory 5	Mine water and process water discharge	\$ 7,056
	Subcategory 6	No discharge	\$ 1,304

(E)	<u>Category 05</u>	<u>Concentrated animal feeding operations (CAFOs)</u>	
	Subcategory 1	General permit: the division shall assess a CAFO an annual permit fee, not to exceed \$250 plus \$0.04 per animal unit, based on the CAFO's peak working capacity	
	Subcategory 2	Individual permit: the division shall assess a CAFO an annual permit fee, not to exceed \$500 plus \$0.08 per animal unit, based on the CAFO's peak working capacity	
(F)	<u>Category 06</u>	<u>Water treatment plants</u>	
	Subcategory 1	Intermittent discharge	\$ 407
	Subcategory 2	Routine discharge	\$ 587
(G)	<u>Category 07</u>	<u>General permits</u>	
	Subcategory 1A	Sand and gravel with process discharge and storm water	\$ 193
	Subcategory 1B	Sand and gravel without process discharge - storm water only	\$ 77
	Subcategory 2	Construction dewatering	\$ 358
	Subcategory 3	[Reserved for future use]	
	Subcategory 4	Placer mining	\$ 371
	Subcategory 5	Coal mining	\$ 556
	Subcategory 6	Water treatment plants - intermittent discharge	\$ 340
	Subcategory 7	Water treatment plants - routine discharge	\$ 510
	Subcategory 8	Oil and gas cleanup	\$ 1,313
	Subcategory 9A	Construction - storm water only; 5 acres or more of disturbed area	\$ 270
	Subcategory 9B	Construction - storm water only; 1 to less than 5 acres of disturbed area - long-term	\$ 270
	Subcategory 9C	Construction - storm water only; 1 to less than 5 acres of disturbed area - short-term one quarter	\$ 68
	Subcategory 9D	Construction - storm water only; 1 to less than 5 acres of disturbed area - short-term two quarters	\$ 135
	Subcategory 9E	Construction - storm water only; 1 to less than 5 acres of disturbed area - short-term three quarters	\$ 203

Subcategory 9F	Construction - storm water only; 1 to less than 5 acres of disturbed area - short-term four quarters	\$ 270
Subcategory 10	Industrial - single municipal industrial - storm water only	\$ 232
Subcategory 12	Active mineral mines less than ten acres - storm water only	\$ 155
Subcategory 13	Active mineral mines - ten acres or larger - storm water only	\$ 463
Subcategory 14	Inactive mineral mines - storm water only	\$ 77
Subcategory 15	Department of transportation - sand and gravel storm water permit	\$5,406
Subcategory 16	Department of transportation - storm water construction discharges from projects for which the department of transportation is the permittee – statewide permit	\$11,662
Subcategory 17	Coal degasification - process water from 0 up to 49,999 gallons per day	\$1,533
Subcategory 18	Coal degasification - process water from 50,000 up to 99,999 gallons per day	\$2,346
Subcategory 19	Coal degasification - process water more than 100,000 gallons per day	\$7,056
Subcategory 20	Storm water municipal greater than 100,000 population	\$5,019
Subcategory 21	Storm water municipal from 50,000 up to 100,000 population	\$2,510
Subcategory 22	Storm water municipal from 10,000 up to 49,999 population	\$1,004
Subcategory 23	Storm water municipal less than 10,000 population	\$ 438
Subcategory 24	Discharges associated with treated water distribution systems less than or equal to 3,300 population	\$ 75
Subcategory 25	Discharges associated with treated water distribution systems from 3,301 up to 9,999 population	\$ 150
Subcategory 26	Discharges associated with treated water distribution systems greater than or equal to 10,000 population	\$ 225

(H)	<u>Category 08</u>	<u>Power plants</u>	
	Subcategory 1	Cooling water only, no discharge	\$ 816
	Subcategory 2	Process water from 0 up to 49,999 gallons per day	\$ 1,533
	Subcategory 3	Process water from 50,000 up to 999,999 gallons per day	\$ 2,346
	Subcategory 4	Process water from 1,000,000 up to 4,999,999 gallons per day	\$ 7,056
	Subcategory 5	Process water from 5,000,000 gallons per day or over	\$ 7,056
(I)	<u>Category 09</u>	<u>Sugar processing</u>	
	Subcategory 1	Cooling water only, no discharge	\$ 863
	Subcategory 2	Process water from 0 up to 49,999 gallons per day	\$ 1,060
	Subcategory 3	Process water from 50,000 up to 999,999 gallons per day	\$ 2,640
	Subcategory 4	Process water from 1,000,000 up to 4,999,999 gallons per day	\$ 7,056
	Subcategory 5	Process water from 5,000,000 gallons per day or over	\$ 7,056
(J)	<u>Category 10</u>	<u>Petroleum refining</u>	
	Subcategory 1	Cooling water only, no discharge	\$ 816
	Subcategory 2	Process water from 0 up to 49,999 gallons per day	\$ 1,826
	Subcategory 3	Process water from 50,000 up to 999,999 gallons per day	\$ 2,346
	Subcategory 4	Process water from 1,000,000 up to 4,999,999 gallons per day	\$ 7,056
	Subcategory 5	Process water from 5,000,000 gallons per day or over	\$ 7,056
(K)	<u>Category 11</u>	<u>Fish hatcheries</u>	\$ 587
	No subcategories at this time		
(L)	<u>Category 12</u>	<u>Manufacturing and other industry</u>	
	Subcategory 1	Cooling water only	\$ 816
	Subcategory 2	Process water from 0 up to 49,999 gallons per day	\$ 1,533
	Subcategory 3	Process water from 50,000 up to 999,999 gallons per day	\$ 2,346
	Subcategory 4	Process water from 1,000,000 up to 4,999,999 gallons per day	\$ 7,056

Subcategory 5	Process water from 5,000,000 up to 19,999,999 gallons per day	\$ 8,671
Subcategory 6	Process water 20,000,000 gallons per day or over	\$14,112
Subcategory 7	No discharge	\$ 1,060
(M) <u>Category 20</u>	<u>Domestic wastewater - lagoons</u>	
Subcategory 1	Sewage from 0 up to 49,999 gallons per day	\$ 375
Subcategory 2	Sewage from 50,000 up to 99,999 gallons per day	\$ 603
Subcategory 3	Sewage from 100,000 up to 499,999 gallons per day	\$ 880
Subcategory 4	Sewage from 500,000 up to 999,999 gallons per day	\$1,515
Subcategory 5	Sewage from 1,000,000 up to 1,999,999 gallons per day	\$ 2,264
Subcategory 6	Sewage 2,000,000 gallons per day or over	\$ 4,612
(N) <u>Category 21</u>	<u>Domestic wastewater - mechanical plants</u>	
Subcategory 1	Sewage from 0 up to 19,999 gallons per day	\$ 441
Subcategory 2	Sewage from 20,000 up to 49,999 gallons per day	\$ 701
Subcategory 3	Sewage from 50,000 up to 99,999 gallons per day	\$ 1,028
Subcategory 4	Sewage from 100,000 up to 499,999 gallons per day	\$ 1,597
Subcategory 5	Sewage from 500,000 up to 999,999 gallons per day	\$ 2,657
Subcategory 6	Sewage from 1,000,000 up to 2,499,999 gallons per day	\$ 4,351
Subcategory 7	Sewage from 2,500,000 up to 9,999,999 gallons per day	\$ 8,148
Subcategory 8	Sewage from 10,000,000 up to 49,999,999 gallons per day	\$ 14,130
Subcategory 9	Sewage from 50,000,000 up to 99,999,999 gallons per day	\$ 16,297
Subcategory 10	Sewage from 100,000,000 gallons per day or over	\$ 17,926
(O) <u>Category 22</u>	<u>Domestic facilities discharging to unclassified waters - general permit</u>	
Subcategory 1	Sewage from 0 up to 49,999 gallons per day	\$ 324
Subcategory 2	Sewage from 50,000 up to 199,999 gallons per day	\$ 571

Subcategory 3	Sewage from 200,000 up to 599,999 gallons per day	\$ 834
Subcategory 4	Sewage from 600,000 up to 999,999 gallons per day	\$ 1,329
(P) <u>Category 23</u>	<u>Municipal storm water permits</u>	
Subcategory 1	Municipalities of 250,000 and over in population	\$ 13,130
Subcategory 2	Municipalities of 100,000 or more, but less than 250,000 in population	\$ 7,723
Subcategory 3	Municipalities of 50,000 or more, but less than 100,000 in population	\$ 3,862
Subcategory 4	Municipalities of 10,000 or more, but less than 50,000 in population	\$ 1,545
Subcategory 5	Statewide permit for department of transportation-owned or -operated municipal separate storm water systems in municipal areas where storm water permits are required	\$5,406
(Q) <u>Category 24</u>	<u>Individual industrial storm water permits.</u> If a storm water permit is integrated into an existing permit for a facility that has other point source discharges, or for facilities that have individual permits with only storm water discharges, the following additional charges shall apply:	
Subcategory 1	Individual industrial - less than ten acres	\$ 364
Subcategory 2	Individual industrial - ten acres or more	\$ 463
Subcategory 3	Individual industrial - storm water only - international airports	\$7,723
(R) <u>Category 25</u>	<u>Permit Amendments.</u> Should a permittee holding a permit issued under any of categories 1 to 24 or 26 to 43 request an amendment to said permit, the following fees shall apply:	
Subcategory 1	Minor amendment - an amount equal to twenty-five percent of the annual fee for the permit being amended, not to exceed	\$ 2,008
Subcategory 2	Major amendment - an amount equal to fifty-five percent of the annual fee for the permit being amended, not to exceed	\$ 4,249

(S)	<u>Category 26</u>	<u>Minimal discharge of industrial or commercial wastewaters - general permit</u>	
	Subcategory 1	Discharge of ninety days' duration or less	\$ 155
	Subcategory 2	Discharge of greater than ninety days' duration	\$ 448
(T)	<u>Category 27</u>	<u>Construction dewatering</u>	
	Subcategory 1	Long-term permit	\$ 358
	Subcategory 2	Short-term one quarter	\$ 89
	Subcategory 3	Short-term two quarters	\$ 178
	Subcategory 4	Short-term three quarters	\$ 267
	Subcategory 5	Short-term four quarters	\$ 358

Note: Gallons per day is based on design capacity of the facility, not flow. This applies to all categories.

(b.5) (l) Effective July 1, 2002, in accordance with the provisions of section 25-8-508, the division may assess an annual fee upon each industrial discharger, as defined in section 25-8-103 (8.5), and upon each publicly owned treatment works, and all such fees shall be in accordance with the following schedule:

	<u>Facility Categories and Subcategories for Permit Fees</u>	<u>Annual Fees</u>	
<u>Category 30</u>	<u>Industrial dischargers subject to categorical effluent standards discharging to publicly owned treatment works with pretreatment programs (not including categorical industries subject to zero discharge standards)</u>		
	Subcategory 1	Less than 10,000 gallons per day	\$ 699
	Subcategory 2	10,000 to 50,000 gallons per day	\$ 1,047
	Subcategory 3	Greater than 50,000 gallons per day	\$ 1,397
	Subcategory 4	Very low flow	\$ 292
<u>Category 31</u>	<u>All other significant industrial dischargers discharging to publicly owned treatment works with pretreatment (including categorical industries subject to zero discharge standards)</u>		
	Subcategory 1	Less than 10,000 gallons per day	\$ 175
	Subcategory 2	10,000 to 50,000 gallons per day	\$ 349
	Subcategory 3	Greater than 50,000 gallons per day	\$ 465
	Subcategory 4	Pit dewatering only	\$ 270

<u>Category 32</u>	<u>Industrial dischargers subject to categorical effluent standards discharging to publicly owned treatment works without pretreatment programs (not including categorical industries subject to zero discharge standards)</u>	
Subcategory 1	Less than 10,000 gallons per day	\$ 815
Subcategory 2	10,000 to 50,000 gallons per day	\$ 1,280
Subcategory 3	Greater than 50,000 gallons per day	\$1,746

<u>Category 33</u>	<u>All other significant industrial dischargers discharging to publicly owned treatment works without pretreatment programs (including categorical industries subject to zero discharge standards)</u>	
Subcategory 1	Less than 10,000 gallons per day	\$ 349
Subcategory 2	10,000 to 50,000 gallons per day	\$ 524
Subcategory 3	Greater than 50,000 gallons per day	\$ 699

<u>Category 34</u>	<u>Domestic wastewater - lagoons</u>	
Subcategory 1	Sewage from 0 up to 49,999 gallons per day	\$ 35
Subcategory 2	Sewage from 50,000 up to 99,999 gallons per day	\$ 46
Subcategory 3	Sewage from 100,000 up to 499,999 gallons per day	\$ 58
Subcategory 4	Sewage from 500,000 up to 999,999 gallons per day	\$ 69
Subcategory 5	Sewage from 1,000,000 up to 2,499,999 gallons per day	\$ 81
Subcategory 6	Sewage from 2,500,000 gallons per day	\$ 94

<u>Category 35</u>	<u>Domestic wastewater - mechanical plants</u>	
Subcategory 1	Sewage from 0 up to 19,999 gallons per day	\$ 23
Subcategory 2	Sewage from 20,000 up to 49,999 gallons per day	\$ 35
Subcategory 3	Sewage from 50,000 up to 99,999 gallons per day	\$ 46
Subcategory 4	Sewage from 100,000 up to 499,999 gallons per day	\$ 58
Subcategory 5	Sewage from 500,000 up to 999,999 gallons per day	\$ 69
Subcategory 6	Sewage from 1,000,000 up to 2,499,999 gallons per day	\$ 81
Subcategory 7	Sewage from 2,500,000 up to 9,999,999 gallons per day	\$ 94
Subcategory 8	Sewage from 10,000,000 up to 49,999,999 gallons per day	\$ 105

Subcategory 9	Sewage from 50,000,000 up to 99,999,999 gallons per day	\$ 117
Subcategory 10	Sewage from 100,000,000 gallons per day or over	\$ 128

Note: Gallons per day is based on design capacity of the facility, not flow. This applies to all categories.

(b.6) In accordance with section 25-8-702, the division may assess a fee for the determination of preliminary effluent limitations upon a domestic wastewater treatment works, as defined at section 25-8-103 (5), pursuant to the site location approval process, and all such fees shall be in accordance with the following schedule. Fees set forth in this schedule shall be increased by an amount equal to seventy-five percent of the applicable fees for each set of preliminary effluent limitations requested by domestic waste water treatment works for discharges to a second or additional receiving water bodies:

<u>Facility Categories and Subcategories for Permit Fees</u>		<u>Annual Fees</u>
<u>Category 40</u>	<u>Preliminary effluent limitations for individual permits</u>	
Subcategory 1	Less than 100,000 gallons per day	\$1,500
Subcategory 2	From 100,000 up to 999,999 gallons per day	\$3,000
Subcategory 3	From 1,000,000 up to 9,999,999 gallons per day	\$4,500
Subcategory 4	10,000,000 or more gallons per day	\$6,000
<u>Category 41</u>	<u>Preliminary effluent limitations for general permits</u>	
	From 0 up to 1,000,000 gallons per day	\$ 750

Note: This group includes preliminary effluent limitations for minor domestic facilities that discharge to: Unclassified waters; class 2 (aquatic life) streams with a zero low flow; or class 2 (aquatic life) streams with a low flow greater than zero.

<u>Category 42</u>	<u>Preliminary effluent limitations for discharges to groundwater</u>	
Subcategory 1	Minor facilities (less than 1,000,000 gallons per day)	\$ 375
Subcategory 2	Major facilities (at least 1,000,000 gallons per day)	\$ 600

Category 43

Review of preliminary effluent limitations for individual permits (professionally prepared by others)

Subcategory 1	Minor facilities (less than 1,000,000 gallons per day)	\$1,125
Subcategory 2	Major facilities (at least 1,000,000 gallons per day)	\$2,250

(c) All fees collected pursuant to paragraphs (b) and (b.6) of this subsection (1) shall be transmitted to the state treasurer, who shall credit the same to the water quality control fund, which fund is hereby created. The moneys in such fund that are collected pursuant to paragraph (b) of this subsection (1) shall be appropriated annually to the department of public health and environment by the general assembly which shall review expenditures of such moneys to assure that they are used only to fund the expenses of the discharge permit system. It is the intent of the general assembly that a portion of the expenses of the discharge permit system be funded from the general fund, reflecting the benefit derived by the general public.

(II) (A) As used in subparagraph (I) of this paragraph (b.5), "categorical effluent standards" means those standards established by the federal environmental protection agency pursuant to section 307 (b) of the federal act.

(B) As used in subparagraph (I) of this paragraph (b.5), "significant industrial dischargers" means those industrial dischargers which meet one or more criteria established by the federal environmental protection agency pursuant to section 307 (b) of the federal act.

(III) All fees collected pursuant to this paragraph (b.5) shall be transmitted to the state treasurer, who shall credit the same to the water quality control fund created in paragraph (c) of this subsection (1). Moneys so collected shall be kept in a separate account in the water quality control fund and shall be annually appropriated by the general assembly to the department of public health and environment for allocation to the division. The general assembly shall review expenditures of such moneys to assure that they are used only to fund the expenses of the industrial pretreatment program. Publicly owned treatment works with approved programs shall each be afforded the opportunity to pay a fee in lieu of an assessment upon indirect dischargers in such publicly owned treatment works' programs.

(c) All fees collected pursuant to paragraph (b) of this subsection (1) shall be transmitted to the state treasurer, who shall credit the same to the water quality control fund, which fund is hereby created. The moneys in such fund which are collected pursuant to paragraph (b) of this subsection (1) shall be appropriated annually to the department of public health and environment by the general assembly which shall review expenditures of such moneys to assure that they are used only to fund the expenses of the discharge permit system. It is the intent of the general assembly that a portion of the expenses of the discharge permit system be funded from the general fund, reflecting the benefit derived by the general public.

(d) Notwithstanding the amount specified for any fee in paragraph (b) or paragraph (b.5) of this subsection (1), the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the

commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402(4), C.R.S.

(2) (a) A complete and accurate application for all discharges shall be filed with the division not less than one hundred eighty days prior to the date proposed for commencing the discharge.

(b) The application shall contain such relevant plans, specifications, water quality data, and other information related to the proposed discharge as the division may reasonably require. Prior to submitting an application for a permit, the applicant may request and, if so requested, the division shall grant a planning meeting with the applicant. At such meeting, the division shall advise the applicant of the applicable permit requirements, including the information, plans, specifications, and data required to be furnished with the permit application.

(c) An applicant shall be advised not more than forty-five days after the receipt of an application by the division if, and in what respects, the application is incomplete. Upon failure of the division to so advise the applicant, the application shall be deemed complete. If additional information is requested by the division within said forty-five day period, the division shall have fifteen days from the date the additional information is submitted to determine whether the additional information which was submitted satisfies the request and to advise the applicant if, and in what respects, the additional information does not satisfy the request. Upon failure of the division to so advise the applicant, the application shall be deemed complete. A decision that an application is not complete shall be considered final agency action upon issuance of such decision to the applicant and shall be subject to judicial review. A petition for review of such decision shall be given priority scheduling by the court.

(3) (a) The division shall evaluate complete permit applications to determine whether the proposed discharge will comply with all applicable federal and state statutory and regulatory requirements.

(b) Public notice of a complete permit application and the division's preliminary analysis thereof shall be given as provided in subsection (4) of this section. Such notice shall advise of the opportunity for interested persons to submit written comments on the permit application and the division's preliminary analysis or to request, for good cause shown, a public meeting on the application and analysis. Such a request shall be made within thirty days of the initial public notice of the permit application and the division's preliminary analysis thereof. If a public meeting is requested and the division, in its discretion and for good cause shown, grants such request, the division shall hold such meeting not more than sixty days after the initial public notice. The division shall provide notice as provided in subsection (4) of this section of the public meeting not less than fifteen days prior to the date of such meeting.

(c) The period for public comment shall close thirty days from the date of notice of the permit application and the division's preliminary analysis thereof; except that, if a public meeting is held on the application and analysis, the period for public comment shall close sixty days from the date of notice of the application.

(4) Public notice of every complete permit application and the division's preliminary analysis thereof shall be circulated in a manner designed to inform interested and potentially interested persons of the application and analysis. Procedures for the circulation of such public notice or a notice regarding a public meeting concerning an application and analysis shall be established by the commission and shall include at least the following:

(a) Notice shall be given by at least one publication in a newspaper of general circulation which is distributed within the geographical areas of the proposed discharge.

(b) Notice shall be mailed to any person or group upon request.

(c) The division shall add the name of any person or group upon request to a mailing list to receive copies of notices for all discharge permit applications within the state or within a certain geographical area.

(d) The division shall also, during the period from the date of the initial public notice of the application and analysis to the close of the public comment period, maintain in the office of the county clerk and recorder of the county in which the proposed discharge, or a part thereof, is to occur a copy of its preliminary analysis and a copy of the permit application with all accompanying data for public inspection.

(5) (a) (I) Except as provided in this subsection (5), if the division has not finally issued or denied a permit within one hundred eighty days after receipt of the permit application, unless this time limit is waived or extended by the applicant or if the division determines at any time after receiving an application that it cannot issue a permit prior to the expiration of an existing permit, the division shall issue a temporary permit or the existing permit shall be extended pursuant to the operation of section 24-4-104, C.R.S.

(II) In the case of each permit application, the deadlines established pursuant to subparagraph (I) of this paragraph (a) shall be extended by:

(A) The number of days which an applicant takes to submit information requested by the division pursuant to paragraph (c) of subsection (2) of this section plus the fifteen days provided for the division to evaluate such additional information; and

(B) Thirty days, if a public meeting is held pursuant to subsection (3) of this section.

(b) All temporary permits shall contain such conditions as are necessary to protect public health and shall not be less restrictive than required by state and federal effluent guidelines unless a schedule of compliance or a variance is set forth therein. A temporary permit shall be issued for a period not to exceed two years and shall expire as provided in the issuance or denial of the final permit. Issuance of a temporary permit shall be final agency action for the purposes of section 24-4-106, C.R.S.

(6) Repealed.

25-8-503. Permits - when required and when prohibited - variances. (1) (a) The division shall issue a permit in accordance with regulations promulgated under this article when the division has determined that the provisions of this article and the federal act and regulations thereunder have been met with respect to both the application and proposed permit.

(b) When necessary for compliance with the federal act for the achievement of technology-based effluent limitations, the division may exercise best professional judgment in establishing effluent limitations on a case-by-case basis for permits as granted pursuant to paragraph (a) of this subsection (1). Technology-based effluent limitations based on best

professional judgment shall be made only for good cause and in the absence of federally promulgated effluent guidelines or effluent limitation regulations promulgated by the commission and shall be subject to review as provided for in paragraph (c) of this subsection (1). Any effluent limitations established according to this paragraph (b) shall be made after considering the availability of appropriate technology, its economic reasonableness, the age of equipment and facilities involved, the process employed, and any increase in water or energy consumption.

(c) Review by a hearing officer or an administrative law judge of the department of personnel of technology-based effluent limitations based on best professional judgment shall be on request of the permit applicant or permittee or any aggrieved person and shall take place in an adjudicatory hearing to be held pursuant to section 24-4-105, C.R.S. The necessity of effluent limitations based on best professional judgment, as well as the reasonableness of the effluent limitation, considering all factors enumerated in paragraph (b) of this subsection (1), must be supported by substantial evidence. If such hearing is requested, it shall be held as part of a hearing requested to challenge the conditions of the permit.

(d) Repealed.

(2) No permit shall be issued which is inconsistent with any duly promulgated and controlling state, regional, or local land use plan or any portion of an approved regional wastewater management plan which has been adopted as a regulation pursuant to this article, unless all other requirements and conditions of this act have been met or will be met pursuant to a schedule of compliance or a variance specifying treatment requirements as determined by the division.

(3) No permit shall be issued which allows a violation of a control regulation unless the waste discharge permit contains effluent limitations and a schedule of compliance or a variance specifying treatment requirements as determined by the division.

(4) No permit shall be issued which allows a discharge that by itself or in combination with other pollution will result in pollution of the receiving waters in excess of the pollution permitted by an applicable water quality standard unless the permit contains effluent limitations and a schedule of compliance specifying treatment requirements. Effluent limitations designed to meet water quality standards shall be based on application of appropriate physical, chemical, and biological factors reasonably necessary to achieve the levels of protection required by the standards.

(5) Activities such as diversion, carriage, and exchange of water from or into streams, lakes, reservoirs, or conveyance structures, or storage of water in or the release of water from lakes, reservoirs, or conveyance structures, in the exercise of water rights shall not be considered to be point source discharges of pollution under this article. Water quality standards may apply to discharges from such activities only if the commission has adopted appropriate control regulations pursuant to section 25-8-205. Nothing in this article shall supersede the provisions of articles 80 to 93 of title 37, C.R.S.

(6) Nothing in subsection (5) of this section shall exempt any point source discharger which generates wastewater effluent from the requirement of obtaining a permit pursuant to this article. All permits for such discharges shall apply at the point where wastewater effluent is released from the control of the discharger. All permits for discharges into ditches or other man-made conveyance structures shall contain such provisions as are necessary for the protection of agricultural, domestic, industrial, and municipal beneficial uses made of the waters

of the ditch or other man-made conveyance structures, which use or uses were decreed and in existence prior to the inception of the discharge.

(7) Repealed.

(8) Where a permit requires treatment to levels necessary to protect water quality standards and beyond levels required by technology-based effluent limitation requirements, the division must determine whether or not any or all of the water-quality-standard-based effluent limitations are reasonably related to the economic, environmental, public health, and energy impact to the public and affected persons, and are in furtherance of the policies set forth in sections 25-8-102 and 25-8-104. The division's determination shall be based upon information available to it including information provided during the public comment period on the draft permit or in response to specific requests for information. Such determinations shall be included as a part of the written record of the issuance of the final permit, whether or not a variance is available under subsection (9) of this section to alter the water quality standard based effluent limitations.

(9) The division may grant a variance from otherwise applicable requirements only to the extent authorized in the federal act or implementing regulations. Variances may be granted for no longer than the duration of the permit. Variances shall be granted or renewed according to the procedure established in section 25-8-401 (5). Any variances granted prior to June 4, 1985, which were validly granted under the provisions then in effect shall be valid according to their original terms.

25-8-504. Agricultural wastes. (1) Neither the commission nor the division shall require any permit for any flow or return flow of irrigation water into state waters except as may be required by the federal act or regulations. The provisions of any permit that are so required shall not be any more stringent than, and shall not contain any condition for monitoring or reporting in excess of, the minimum required by the federal act or regulations.

(2) Neither the commission nor the division shall require any permit for animal or agricultural waste on farms and ranches except as may be required by the federal act or regulations. The provisions of any permit that are so required shall not be any more stringent than, and shall not contain any condition for monitoring or reporting in excess of, the minimum required by the federal act or regulations.

(3) No permit or fee shall ever be required pursuant to this part 5 for the diversion of water from natural surface streams.

(4) Nothing in this section shall be construed to affect the requirement of permits for housed commercial swine feeding operations pursuant to section 25-8-501.1.

25-8-505. Permit conditions concerning publicly owned wastewater treatment works. The division is authorized to impose, as conditions in permits for the discharge of pollutants from publicly owned wastewater treatment works, appropriate measures to establish and insure compliance by industrial users with any system of user charges or industrial cost recovery.

25-8-506. Nuclear and radioactive wastes. (1) It is unlawful for any person to discharge, deposit, or dispose of any radioactive waste underground in liquid, solid, or explosive form unless the division, upon application of the person desiring to undertake such activity and after investigation and hearing, has first found, based upon a preponderance of the evidence, that

there will be no significant pollution resulting therefrom or that the pollution, if any, will be limited to waters in a specified limited area from which there is no significant migration.

(2)(a) In such case the division shall issue a permit for the proposed activity, upon the payment of a fee of one thousand dollars. The division may include in such permit issued under this subsection (2) such reasonable terms and conditions as it may from time to time require to implement this section in a manner consistent with the purposes of this article. The terms or conditions which may be imposed shall include, without limitation, those with respect to duration of use or operation; monitoring; reporting; volume of discharge or disposal; treatment of wastes; and the deposit with the state treasurer of a bond, with or without surety as the division may in its discretion require, or other security, to assure that the permitted activities will be conducted in compliance with the terms and conditions of the permit, and that upon abandonment, cessation, or interruption of the permitted activities or facilities, appropriate measures will be taken to protect the waters of the state. Other than relief from provisions of this article to the extent specified in this subsection (2), no permit issued pursuant to this subsection (2) shall relieve any person of any duty or liability to the state or to any other person existing or arising under any statute or under common law.

(b) Notwithstanding the amount specified for the fee in paragraph (a) of this subsection (2), the commission by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(3) No permit for the discharge, deposit, or disposal of nuclear or radioactive waste underground shall be required in any case where groundwater quality regulation is conducted under article 11 of this title, or under the uranium mill tailings radiation control act of 1978 (P.L. 95-604) or a successor statute, where such regulation is determined by the division to comply with the standard set forth in subsection (1) of this section.

(4) (a) The provisions of this section revise and replace, in part, section 25-8-505 of this article, the "Colorado Water Quality Control Act", as said article existed prior to July 1, 1981. All permits issued pursuant to said section 25-8-505 prior to July 1, 1981, shall be deemed a permit issued pursuant to this section and subject to the standards of subsection (1) of this section unless or until:

(I) Such permitted activities are exempted by the provisions of subsection (3) of this section. In such case, all permits issued pursuant to said section 25-8-505 shall terminate and have no effect whatsoever; or

(II) Such permitted activities are the subject of a new permit issued pursuant to this section.

(b) All applications for permits filed pursuant to said section 25-8-505 pending on July 1, 1981, shall be deemed an application for a permit pursuant to this section and shall be processed, at the option of the applicant, according to regulations in existence prior to July 1, 1981.

25-8-507. Program Repeal. If final federal agency action is taken revoking or withdrawing prior federal approval of all or any part of the state permit program, sections 25-8-203, 25-8-204,

25-8-501, 25-8-502, 25-8-503, and 25-8-505 and regulations adopted to implement such provisions are repealed as of the date of that final federal action.

25-8-508. Industrial pretreatment program - creation - fees. (1) The division shall establish an industrial pretreatment program for the state which is designed to eliminate problems that occur when pollutants from industrial wastewaters are discharged into publicly owned treatment works, including health hazards caused to the public and to workers in sewers and treatment plants, pollution of state waters, interference with the operation of treatment plants or increased expense to dispose of sludges, damage to the pipes and equipment that may occur from pollutants, and the potential for explosion caused by highly volatile wastes. The program shall be adopted by the commission pursuant to section 25-8-205 and shall be adequate to comply with requirements set forth in section 307 (a), (b), and (c) of the federal act.

(2) The division is authorized to require compliance with applicable pretreatment requirements and standards by any domestic wastewater treatment works or by any industrial user of such treatment works. The division may grant a variance from applicable requirements only to the extent authorized in the federal act or implementing regulations.

25-8-509. Permit conditions concerning use and disposal of biosolids. The division is authorized to impose, as conditions to the issuance of permits, requirements, prohibitions, standards, and concentration limitations on the use and disposal of biosolids in accordance with the regulations promulgated by the commission pursuant to section 25-8-205 (1) (e). The requirements, prohibitions, standards, and concentration limitations imposed by the division shall not be more restrictive than the requirements adopted for the 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.

PART 6

VIOLATIONS, REMEDIES, AND PENALTIES

25-8-601. Division to be notified of suspected violations and accidental discharges - penalty. (1) Any person or any agency of the state or federal government may apply to the division to investigate and take action upon any suspected or alleged violation of any provision of this article or of any order, permit, or regulation issued or promulgated under authority of this article.

(2) Any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state contrary to the provisions of this article, as soon as he has knowledge thereof, shall notify the division of such discharge. Any person who fails to notify the division as soon as practicable is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. Notification received pursuant to this subsection (2) or information obtained by the exploitation of such notification shall not be used against any such person in a criminal case except prosecution for perjury, for false swearing, or for failure to comply with a clean-up order issued pursuant to section 25-8-606.

(3) Any penalty collected under this section shall be credited to the general fund.

25-8-602. Notice of alleged violations. (1) Whenever the division has reason to believe that a violation of an order, permit, or control regulation issued or promulgated under authority of this article has occurred, the division shall cause written notice to be served personally or by certified mail, return receipt requested, upon the alleged violator or his agent for service of process. The notice shall state the provision alleged to be violated and the facts alleged to constitute a violation, and it may include the nature of any corrective action proposed to be required.

(2) Each cease and desist and clean-up order issued pursuant to sections 25-8-605 and 25-8-606 shall be accompanied by or have incorporated in it the notice provided for in subsection (1) of this section unless such notice has been given prior to issuance of such cease and desist or clean-up order.

25-8-603. Hearing procedures for alleged violations. (1) In any notice given under section 25-8-602, the division shall require the alleged violator to answer each alleged violation and may require the alleged violator to appear before it for a public hearing to provide such answer. Such hearing shall be held no sooner than fifteen days after service of the notice; except that the division may set an earlier date for hearing if it is requested by the alleged violator.

(2) If the division does not require an alleged violator to appear for a public hearing, the alleged violator may request the division to conduct such a hearing. Such request shall be in writing and shall be filed with the division no later than thirty days after issuance of a notice under section 25-8-602. If such a request is filed, a hearing shall be held within a reasonable time.

(3) If a hearing is held pursuant to the provisions of this section, it shall be public and, if the division deems it practicable, shall be held in any county in which the violation is alleged to have occurred. The division shall permit all parties to respond to the notice served under

section 25-8-602, to present evidence and argument on all issues, and to conduct cross-examination required for full disclosure of the facts.

(4) Hearings held pursuant to this section shall be conducted in accordance with section 24-4-105, C.R.S.

25-8-604. Suspension, modification, and revocation of permit. Upon a finding and determination, after hearing, that a violation of a permit provision has occurred, the division may suspend, modify, or revoke the pertinent permit or take such other action with respect to the violation as may be authorized pursuant to regulations promulgated by the commission.

25-8-605. Cease and desist orders. If the division determines, with or without hearing, that a violation of any provision of this article or of any order, permit, or control regulation issued or promulgated under authority of this article exists, the division may issue a cease and desist order. Such order shall set forth the provision alleged to be violated, the facts alleged to constitute the violation, and the time by which the acts or practices complained of must be terminated.

25-8-606. Clean-up orders. The division may issue orders to any person to clean up any material which he, his employee, or his agent has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters which may pollute them. The division may also request the district attorney to proceed and take appropriate action under section 16-13-305 and sections 16-13-307 to 16-13-315, C.R.S., or section 18-4-511, C.R.S.

25-8-607. Restraining orders and injunctions. (1) The division may request the district attorney for the judicial district with jurisdiction pursuant to subsection (2) of this section or the attorney general to bring, and if so requested it shall be the duty of such district attorney or the attorney general to bring, a suit for a temporary restraining order, preliminary injunction, or permanent injunction to prevent any threatened violation of this article or any order, permit, or control regulation issued or promulgated pursuant to this article which violation poses imminent and substantial endangerment to the beneficial uses of state waters and which cannot be timely prevented by a permit modification or permit enforcement action, or any continued violation of this article, or any order, permit, or control regulation issued or promulgated pursuant to this article. In any suit for a violation of an order, the final findings of the division, after opportunity for a hearing, based upon evidence in the record, shall be prima facie evidence of the facts found in such record.

(2) Suits under this section shall be brought in the district or county court for the district or county in which the violation or threatened violation occurs. Emergencies shall be given precedence over all other matters pending in such court. The institution of such injunction proceeding by the division shall confer upon such court exclusive jurisdiction to determine finally the subject matter of the proceeding; except that the exclusive jurisdiction of the court shall apply only to such injunctive proceeding and shall not preclude assessment of civil penalties or any other enforcement action or sanction authorized by this article.

25-8-608. Civil penalties. (1) Any person who violates any provision of this article, or of any permit issued under this article, or any control regulation promulgated pursuant to this article, or any final cease and desist order or clean-up order shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Any civil penalty collected under this section shall be credited to the general fund.

(2) Upon application of the division, penalties shall be determined by the executive director or his designee and may be collected by the division by action instituted in a court of competent jurisdiction for collection of such penalty. The final decision of the executive director or his designee may be appealed to the commission. A stay of any order of the division pending judicial review shall not relieve any person from any liability under subsection (1) of this section, but the reason for the request for judicial review shall be considered in the determination of the amount of the penalty. In the event that such an action is instituted for the collection of such penalty, the court may consider the appropriateness of the amount of the penalty, if such issue is raised by the party against whom the penalty was assessed.

25-8-609. Criminal pollution - penalties. (1) Any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters or into any domestic wastewater treatment works commits criminal pollution if such discharge is made:

- (a) In violation of any permit issued under this article; or
- (b) In violation of any cease and desist order or clean-up order issued by the division which is final and not stayed by court order; or
- (c) Without a permit, if a permit is required by the provisions of this article for such discharge; or
- (d) Repealed.
- (e) In violation of any pretreatment regulations promulgated by the commission.

(2) Prosecution under paragraphs (a) and (d) of subsection (1) of this section shall be commenced only upon complaint filed by the division.

(3) Any person who commits criminal pollution of state waters shall be fined, for each day the violation occurs, as follows:

- (a) If the violation is committed with criminal negligence or recklessly, as defined in section 18-1-501, C.R.S., the maximum fine shall be twelve thousand five hundred dollars.
- (b) If the violation is committed knowingly or intentionally, as defined in section 18-1-501, C.R.S., the maximum fine shall be twenty-five thousand dollars.
- (c) If two separate offenses under this article occur in two separate occurrences during a period of two years, the maximum fine for the second offense shall be double the amounts specified in paragraph (a) or (b) of this subsection (3), whichever is applicable.
- (d) Any criminal penalty collected under this section shall be credited to the general fund.

25-8-610. Falsification and tampering. (1) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this article or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine

of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

(2) Any penalty collected under this section shall be credited to the general fund.

25-8-611. Proceedings by other parties. (1) The factual or legal basis for proceedings or other actions that result from a violation of any control regulation inure solely to, and shall be for the benefit of the people of, the state generally, and it is not intended by this article, in any way, to create new private rights or to enlarge existing private rights. A determination that water pollution exists or that any standard has been disregarded or violated, whether or not a proceeding or action may be brought by the state, shall not create any presumption of law or finding of fact which shall inure to or be for the benefit of any person other than the state.

(2) A permit issued pursuant to this article may be introduced in any court of law as evidence that the permittee's activity is not a public or private nuisance. Introduction into evidence of such permit and evidence of compliance with the permit conditions shall constitute a prima facie case that the activity to which the permit pertains is not a public or private nuisance.

25-8-612. Remedies cumulative. (1) It is the purpose of this article to provide additional and cumulative remedies to prevent, control, and abate water pollution and protect water quality.

(2) No action pursuant to section 25-8-609 shall bar enforcement of any provision of this article or of any rule or order issued pursuant to this article by any authorized means.

(3) Nothing in this article shall abridge or alter rights of action or remedies existing on or after July 1, 1981, nor shall any provision of this article or anything done by virtue of this article be construed as estopping individuals, cities, towns, counties, cities and counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances.

PART 7

DOMESTIC WASTEWATER TREATMENT WORKS

25-8-701. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Construction" means entering into a contract for the erection or physical placement of materials, equipment, piping, earthwork, or buildings which are to be part of a domestic wastewater treatment works.

(2) "Eligible project" means a project for the planning, design, or construction of domestic wastewater treatment works or of facilities for the discharge of wastewater or backwash water from public water treatment plants which is, in the judgment of the division, necessary for the accomplishment of the state water quality control program, which conforms with applicable rules and regulations of the commission, and which is eligible for federal assistance under provisions of the federal act.

(3) "Federal assistance" means funds available to a municipality, either directly or through allocation by the state, from the federal government as grants for planning, design, or construction of domestic wastewater treatment works, or funds which are used for such planning, design, or construction, under provisions of the federal act.

25-8-702. Approval for commencement of construction. (1) No person shall commence the construction of any domestic wastewater treatment works or the enlargement of the capacity of an existing domestic wastewater treatment works, unless the site location and the design for the construction or expansion have been approved by the division.

(2) In evaluating the suitability of a proposed site location for a domestic wastewater treatment works, the division shall:

(a) Consider the local long-range comprehensive plan for the area as it affects water quality and any approved regional wastewater management plan for the area;

(b) Determine that the plant on the proposed site will be managed to minimize the potential adverse impacts on water quality; and

(c) Encourage the consolidation of wastewater treatment facilities whenever feasible.

(3) Ninety days prior to commencement of construction of an interceptor line, the entity responsible for that line shall notify the planning agency and the division of such construction. This notification shall be accompanied with a certification by the agency receiving the wastewater for treatment that it has or will have the capacity to treat the projected wastewater from that interceptor line in accordance with the treatment agency's site approval and discharge permit. Within thirty days of receipt of notification, the planning agency, or the division, if a planning agency does not exist, shall certify that the proposed interceptor line has the capacity to carry the projected flow. In the event the entity responsible for an interceptor line does not have the said certification from the treatment agency and the planning agency, the entity shall be required to apply for a site location approval prior to commencement of construction.

(4) The decision of the division concerning approval of the site location or design may be appealed to the commission. The commission shall hold a hearing on the site location or design in accordance with the provision of section 24-4-105, C.R.S., and the decision of the commission shall be final administrative action for the purposes of section 24-4-106, C.R.S.

25-8-703. State contracts for construction of domestic wastewater treatment works - repeal. (1)(a) To meet the responsibility of the state with respect to the protection of public health and to assist municipalities and counties, the division, in the name of the state and to the extent of state funds appropriated therefor, may enter into contracts with municipalities with populations of not more than five thousand persons concerning the planning, design, or construction of domestic wastewater treatment works.

(b)(I) To meet the responsibility of the state with respect to the protection of public health and to assist unincorporated areas in counties, the division, in the name of the state and to the extent of state funds appropriated therefor, may enter into contracts with counties on behalf of unincorporated areas existing on January 1, 2001, with high-priority wastewater treatment needs and that serve populations of not more than five thousand persons concerning the planning, design, or construction of domestic wastewater treatment works.

(II) This paragraph (b) is repealed, effective July 1, 2006.

(2) The division shall be the state agency for the administration of funds appropriated for such projects grants and shall contract for grant projects only to the extent state general funds have been appropriated. The division may use not more than five percent of the funds appropriated for such project grants for the administration and management thereof.

(3) Domestic wastewater treatment grants shall be authorized based upon water quality needs and public health related problems. The commission shall promulgate a project categorization system for use in determining the relative priority of proposed domestic wastewater projects. The division shall review applications for state funds and may approve only those applications that are consistent with the project categorization system.

(4) During the review process the division shall seek from the division of local government in the department of local affairs a fiscal analysis of the applicant to determine financial need. Based upon its fiscal analysis, the division of local government shall issue or deny a certificate of financial need. If a certificate of financial need is issued, the division may authorize a state grant percentage contribution to the project in accordance with the recommendation of the division of local government and with the project categorization adopted by the commission.

(5) Any contract entered into pursuant to this section shall include an estimate of the reasonable cost of the project as determined by the division and shall also include, but not be limited to, provisions which set forth that the municipality shall:

(a) Proceed expeditiously and complete the project in accordance with design documents reviewed by the division;

(b) Provide a plan of operation to the division for approval and shall commence operation of the domestic wastewater treatment works on completion of the project;

(c) Not discontinue operation of the domestic wastewater treatment works without prior approval of the division;

(d) Operate and maintain the domestic wastewater treatment works in accordance with the plan of operation;

(e) Provide for the payment of its share of the project.

(6) In connection with each contract concerning an eligible project, the division shall keep accurate records on the project, including, but not limited to, records of the amount of payment by the state and the amount of federal assistance received by the applicant. Such records may establish the basis for application for federal reimbursement of such payments made by the state, and the division is authorized to make such application in appropriate cases.