



# CONFLUENCE

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3rd Quarter - 2009

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## Clean Water Restoration Makes its way to the Senate

One of the most important pieces of proposed legislation is upon us. The **Clean Water Restoration Act** was introduced to Congress in 2008 and is now being re-introduced in the Senate. It will amend the Clean Water Act (CWA) to "clarify the jurisdiction of the United States" and establish the CWA's application to U.S. waters. If the introduced bill goes through it will include in the definition of U.S. waters the following: interstate wetlands, tributaries, territorial seas, intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds. This could have a very large impact on the western arid states; considering some states do not currently view these types of streams as necessary to regulate the same as main waterways are regulated. The current CWA requires "navigable" waters to be regulated. That term alone has created difficulty and contentious interactions which have lead to two major Supreme Court hearings and rulings.

This bill is in response to the two, now famous U.S. Supreme Court decisions, *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers* (531 U.S. 159, 2001) and *Rapanos v. United States* (547 U.S. 715, 2006). The bill blames these decisions for "confusion, permitting delays, increased costs, litigation, and reduced protections for waters of the United States."

The House bill (H.R. 2421) was introduced by Rep. Jim Oberstar (D-Minn.), chair of the House Transportation and Infrastructure Committee, on May 22, 2007. The Senate bill came out on April 2, 2009. It has been introduced by Senator Russell Feingold and even since that time has yet again been marked up with changes. The bill is suppose to more clearly define waterways. Senator Feingold's office states that "rivers, streams and wetlands, which were long protected under the Clean Water Act (CWA) ... are now in jeopardy of losing protections," because of the two Supreme Court decisions. "Every day Congress fails to reaffirm Clean Water Act protections, more and more waters are stripped of their protections, jeopardizing the drinking water of millions of Americans, as well as our nation's wildlife habitats, recreational pursuits, agricultural and industrial uses, and public health," Feingold is quoted in the statement as saying.

### Colorado

Colorado State statutes and regulations currently define "State Waters" as 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 waters in distribution systems, and all waters withdrawn for use until use and treatment have been completed." Wetlands are also defined in Regulation 31; Basic Standards for Colorado. Wetlands are a major piece of the issue going back to the Supreme Court decisions. The big question is "will this new proposed bill affect you and your utility"? Colorado regulations are fairly clear that all waters are regulated. If you are concerned about or interested in this piece of legislation you should take the time to read through it. Make sure you know what it's all about. There is still time to make comments to Congress.



## Procedures for Conducting Assessments for Implementation of Temperature Standards in Discharge Permits

The Colorado Water Quality Control Division has posted their Permit Implementation procedure for the new Temperature Standards adopted into the Basic Standards in 2007. The **implementation** was adopted in July 2008 but probably not everyone throughout the state is aware of its existence. If you are interested in reading the document in its entirety the link to the website is:  
<http://www.cdphe.state.co.us/wq/PermitsUnit/PolicyandGuidance/WQP23TemperatureStandardsImplementation.pdf>.

### Qualitative Assessment

Consistent with the Basic Standards and Methodologies for Surface Waters and the CDPS Regulations, the document describes the process for conducting a water quality assessment for the implementation of temperature standards into a discharge permit.

Prior to conducting the assessment a permit writer determines if temperature is a pollutant of concern for the discharge. This determination is made based on a review of the permit application and evaluation of the known or expected temperature of the discharge. If it is found that temperature is a pollutant of concern a quantitative assessment for temperature will be conducted. The first goal

of the assessment is to determine if a discharge is excluded from a quantitative assessment of the assimilative capacity based on site specific characteristics or the low flow to discharge flow dilution ratio. When it is found the discharge is not excluded from further analysis, the maximum allowable temperature of the effluent that will not cause exceedances of the appropriate water quality standards (assimilative capacity) is calculated.

When the assessment is complete, the permit writer makes a determination of whether the discharge has reasonable potential to cause or contribute to an excursion of the applicable temperature standard consistent with the Division's *Determination of the Requirement to Include Water Quality Standards-Based Limits in CDPS Permits Based on Reasonable Potential: Procedural Guidance* (WQCD, February 2003). If there is reasonable potential, the permit must contain an effluent limit(s) for temperature. Consistent with the CDPS regulations and Division practices, compliance schedules are included for existing discharges as appropriate when a new effluent limit(s), or a limit lower than that in the current permit, cannot be met.

### Exclusions from a Quantitative Assessment

- Effluent Dependent Waters
- Natural Hotsprings

### Quantitative Assessment

Basin specific temperature standards— data review

Temperature data requirements— location, ambient upstream acute and chronic sample timing, acute and chronic sample timing for effluent

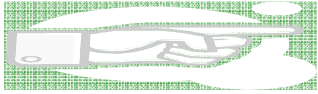
Mixing zone considerations

Antidegradation considerations

Assimilative Capacity calculations

### Alternative Approaches

Recalculation procedure  
Clean Water Act waiver



## CWWUC Calendar

*Stay Tuned In - Stay Informed*

The CWWUC meets the second Wednesday of every month. Most meetings are held at the Littleton/Englewood WWTP, located at 2900 S. Platte River Drive, Englewood, CO. Please visit our web site for a map and driving directions.



**July 8**

Carol Rushin Region VIII EPA Administrator will be bringing the Council an update on what the new Administrations policies, direction and activities will look like for the future. What can utilities expect in the next four years? This is an important meeting.

**August 12**

This month the CWWUC will be scheduling projects to support for the rest of 2009 and into 2010, review various watershed activities and nominate officers for next year. You can start thinking about your nominations now!



**September 9**



The September meeting will once again be held during the annual AWWA/RMWEA annual conference. This year the meeting is being held in Albuquerque, New Mexico. Watch for announcements for the date and time!!



## Upcoming Events

**Colorado Water Quality Forum  
Retreat**

**Beaver Run, Breckenridge,  
Colorado**

**July 20-21, 2009**

**Contact Lisa Carlson for details  
and registration at 303-315-2499**

**2009 RMSAWWA / RMWEA  
Joint Annual Conference  
Albuquerque, New Mexico  
September 13-19, 2009**

**register online @**

[http://www.rmwea.org/rmwea/committees/annual\\_conference/Albuquerque/2009/Albuquerque\\_2009.htm](http://www.rmwea.org/rmwea/committees/annual_conference/Albuquerque/2009/Albuquerque_2009.htm)

**Colorado Water Law Seminar  
sponsored by the Colorado Water  
Congress, October 19-20, 2009,  
1580 Logan Street, Suite 400, go to  
the website for more information**

[http://www.cowatercongress.org/default2.asp?active\\_page\\_id=104](http://www.cowatercongress.org/default2.asp?active_page_id=104)

**Forum Corner**

The Division is currently scaling back the number of workgroups they will be hosting. If you are interested in finding out about the status of a specific workgroup the contacts are listed here. You can call, email or access the website for more current information.

**Agricultural Diversions** –Gary Beers, Facilitator CDPH&E, 303.692.3524, [gary.beers@state.co.us](mailto:gary.beers@state.co.us) or the Coordinator Landon Gates, Colorado Farm Bureau, 303.749.7516, [lgates@colofb.com](mailto:lgates@colofb.com).

**Aquatic Life** –The next meeting is scheduled for August 19, 2009. Contact the Facilitator, Christopher Theel CDPH&E, with any questions. Call Chris at 303.692.3558 or email him at [Christopher.Theel@state.co.us](mailto:Christopher.Theel@state.co.us)

**Nutrient Criteria** –For information on Lakes and Reservoirs contact Jim Saunders, Water Quality Control Division, [Jim.Saunders@state.co.us](mailto:Jim.Saunders@state.co.us) or Mary Fabisiak, City of Westminster, [mfabisiak@ci.westminster.co.us](mailto:mfabisiak@ci.westminster.co.us) 303.430.2400 ext. 2187. For Rivers and Streams contact Blake

Beyea, Water Quality Control Division  
303.692.3656 [Blake.Beyea@state.co.us](mailto:Blake.Beyea@state.co.us) ,Lakes and Reservoirs

**Discharge Permit Implementation**—This workgroup is meeting independently to develop discussion items to address with the Division at the Water Quality Forum Retreat or at another setting. For further information you can contact Christine Johnston, XCEL Energy 720.497.2156 [christine.johnston@xcelenergy.com](mailto:christine.johnston@xcelenergy.com)

**Membrane Treatment**—No new updates. Contact Laurie Rink [lrink@uos.net](mailto:lrink@uos.net) .

**Standards Framework**—The next meeting is scheduled for August 19, 2009. For more information Contact Paul Frohardt of the Water Quality Control Commission at 303.692.3468 [paul.frohardt@state.co.us](mailto:paul.frohardt@state.co.us) or Amy Woodis of the Metro Wastewater Reclamation District who is the Coordinator,303.286.3240 [awoodis@mwr.dst.co.us](mailto:awoodis@mwr.dst.co.us).

**E. Coli**—no new updates. For more details contact either the Chair, Becky Anthony at 303.692.3339 [rebecca.anthony@state.co.us](mailto:rebecca.anthony@state.co.us) or Coordinator James McCarthy at [jim-m@arvada.org](mailto:jim-m@arvada.org)

**TMDL/303(d)**— No new updates. Aimee Konowal is the Chair [aimee.konowal@state.co.us](mailto:aimee.konowal@state.co.us) and Amy Woodis is the Coordinator [awoodis@mwr.dst.co.us](mailto:awoodis@mwr.dst.co.us) For more details go to the CWQF web site or contact one of the two contacts

**Site Application**— The rulemaking hearing for Site Applications is July 13 at 10:00 in the Sabin room at CDPH&E. If you have questions contact Dave Akers, with CDPH&E, Facilitator for the group, at 303.692.3591 [dave.akers@state.co.us](mailto:dave.akers@state.co.us) or Larry Mugler, Coordinator at 303.480.6766 [lmugler@drcog.org](mailto:lmugler@drcog.org)

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