



MEMORANDUM

TO: Parties to the November 20-22, 2024 Rulemaking Hearing on the Air Quality Control Commission's Procedural Rules (5 CCR 1001-1)

FROM: Jojo La, Director, Environmental Boards and Commissions,
Administrator for the Air Quality Control Commission;
Commission Staff

DATE: December 3, 2024

SUBJECT: Draft Final Action Documents: Air Quality Control Commission's Procedural Rules (5 CCR 1001-1)

The hearing record for the Air Quality Control Commission's Procedural Rules (5 CCR 1001-1) was closed on November 22, 2024. The Air Quality Control Commission passed the following motion:

Take preliminary final action to adopt revisions to the Procedural Rules along with the Statement of Basis and Purpose (SBAP), as proposed in the Air Pollution Control Division Errata #2 dated November 18, 2024, with the following modifications as discussed during deliberations on November 22, 2024, including:

- Direct the Commission Office to revise the regulatory language and SBAP in accordance with the Commission's directions;
 - The Joint Proposal for Appeal of Hearing Officer Determinations is not adopted.
 - If any objections to Redlines are received within 7 days of submission, the Hearing Officer will make a determination within 7 days of receipt of objection if the Redlines are or are not within scope. All other Redlines are considered to be approved by the Hearing Officer for scope. The Hearing Officer determination is not appealable.
 - Maintain the rest of the Division's original proposal, including ability for the Hearing Officer to refer the objection to the full Commission, but no appeal of Hearing Officer decision to the full Commission.
- Allow Parties to submit final redlines after the Proponent's submission of the final rule proposal, consistent with EDF Rebuttal Slides 5-6;
- Regarding Public Comment time: modify Section IV.H.4 to reflect that default for public comment is 3 minutes, and the hearing officer can amend, consistent with CCG Direct Presentation Slide 27;
- Modify Division proposal, Section V.B.7, to recommend written comment on petition package to be submitted no later than 5 days before Rulemaking Request, but allow record to include written or oral comment provided at any time up through and including the Rulemaking Request;
- Modify Section V.A.1.a to require all proponents, not just the Division, to comply with EJ Act outreach requirements pre-petition;
- Modify Section V.A.1.b to change may to must, to require rulemaking concepts to include preliminary rule language AND update SBAP to note that preliminary language does not have to be perfect or complete, and may change before filing of petition package;
- Modify written comment only rule provision, Section V.B.4, to explicitly allow persons who receive the notification to submit comment on the substantive change;
- Modify Section V.D.1.b to require the Division to assist with preparation of the initial EIA, consistent with CCG Direct Slide 43 and request the Commission Staff to determine whether this language also needs to be referenced in V.D.1.c.;

- Modify order of testimony, Section V.F.3.c. to reflect that the Proponent goes first in rebuttal and then has sur-rebuttal after the conclusion of other rebuttal testimony. The Division, even if not the Proponent, will go last in sur-rebuttal. The Proponent and Division may allocate their own remaining time as between rebuttal and sur-rebuttal - clarify in SBAP that sur-rebuttal is limited to responding to party rebuttal testimony;
- Affirm and make any necessary clarification to ensure that rulemaking record includes public comments at or after Rulemaking Request submitted as part of the proceeding - written comment addressed to Commission, and oral comment at Rulemaking Request or at hearing.
- Modify Errata #2 to reinsert the special procedures that had previously been found in Section V.F.13 and were deleted/omitted from the move to Section VI.I, and request that Staff analyze these sections and compare the regulatory provisions to the statutory requirements referenced therein;
- Modify Section V.B.8 to clarify that Hearing Officer must be a Commissioner;
- Clarify Section V.F.2.e to reflect that Hearing Officer may decide motions;
- Amend title of Section V.D.1 to add references to Redlines;
- Delete sentences in Sections V.D.1.b; V.D.5.c that call out EIA as basis for denial;
- Clarify that references to MS Word should refer more generally to available software;
- Modify Section V.E.2 to strike “if feasible and appropriate” to reflect that Parties must submit their own EIAs unless they evaluate incremental difference from Proponent EIA or include a statement that impacts are covered by Proponent’s EIA;
- Modify Section V.D.2.a.(ii) to remove reference to extension;
- Direct Staff to evaluate Sections V.A.1; V.B.11; V.D.1.a; V.D.2; V.D.2.c.; V.E.2; V.E.3; V.E.5; V.F.4.c; V.H.3; VI.C; VIII.A and the SBAP and to make revisions to ensure cleanup of language;
- Staff work with Hearing Officer to add paragraph(s) to SBAP to reflect:
 - Best practices, such as summary of reasoning for rule adoption, in plain language, for the larger issues;
 - Paragraph about public input received, the importance of this rule, transparent and accessible processes;
- Modifications to the SBAP to conform with these rule changes;
- Make any corrections of typographical and grammatical errors, cross-references;
- Direct the Commission office to send the revised regulatory language and statement of basis and purpose to all parties. Parties will have the opportunity to submit comments to the Commission office. Comments are limited to administrative matters like typographical errors, formatting, and consistency with the Commission’s policy determinations. Comments shall not address any disagreement with the Commission’s policy determinations.

The Commission requests that staff bring a package back to the Commission and anticipates taking final action on the revised regulatory language and Statement of Basis and Purpose at its December meeting.

Attached for your information and review is the final draft redline of the proposed revisions. This document includes revisions from the Air Pollution Control Division’s second Errata and reflects the Commission’s preliminary final approval decisions, along with the final draft of the accompanying Statement of Basis, Specific Statutory Authority, and Purpose as discussed during the Commission’s deliberations (highlighted in yellow).

If you believe that the enclosed documents do not accurately reflect the Commission’s preliminary decisions, **please submit your comments no later than December 10, 2024 at 5:00 p.m. (MT)**. It is the Commission’s intention to take final action on the revised regulatory language and Statement of Basis and Purpose at its December meeting, which begins on December 18, 2025 online via Zoom and at the Colorado Department of Public Health and Environment (4300 Cherry Creek Drive South, Denver, CO 80236).

For any questions or comments, please feel free to contact me at jojo.la@state.co.us or 720-277-9262.