

**MEMORANDUM OF AGREEMENT
FOR THE IMPLEMENTATION OF SB 181 AMENDMENTS
TO THE COLORADO WATER QUALITY CONTROL ACT (25-8-101, et seq.)**

This MEMORANDUM OF AGREEMENT (MOA) is entered into this 31st day of July 2008 by and between the Water Quality Control Commission (WQCC), Water Quality Control Division (WQCD), and the Hazardous Materials and Waste Management Division (HMWMD).

Section 1. BACKGROUND

Subsection 25-8-202(7) of the 1989 amendments to the Colorado Water Quality Control Act (SB 181) restates and clarifies existing law, and provides a procedure for coordination between state agencies vested with responsibilities to implement programs to protect the quality of state waters. Key among the provisions is the requirement that the Water Quality Control Commission (WQCC) and the Water Quality Control Division (WQCD) recognize the water quality responsibilities of the following entities, referred to in the subsection as the “implementing agencies”: the Division of Reclamation, Mining, and Safety; 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. Currently, there are two such agencies, the Division of Oil and Public Safety located in the Colorado Department of Labor and Employment and the Hazardous Material and Waste Management Division located in the Colorado Department of Public Health and Environment (CDPHE).

The WQCC is to remain solely responsible for the adoption of water quality standards and classifications for state waters. Each implementing agency is to apply water quality standards and classifications for the protection of ground water as adopted by the WQCC through their own programs after consultation with the WQCC and the WQCD. The WQCD remains solely responsible for the issuance and enforcement of permits for point source discharges into state surface waters. The implementing agencies are to specify applicable points of compliance for ground water discharges. The points of compliance are to be adopted in a manner that is consistent with WQCC Regulation No. 41 through public rulemaking following consultation with the WQCC and the WQCD.

By requiring the implementing agencies to apply ground water quality standards and classifications established by the WQCC, the legislature has attempted to clarify the primary regulatory authorities responsible for assuring uniform water quality protection for all waters of the state.

In acknowledging the water quality responsibilities of the implementing agencies cited in the act, the amendments further specify that the WQCC and the WQCD shall not require permits for, or otherwise regulate, activities subject to the jurisdiction of the implementing agencies unless the WQCC finds, pursuant to section 25-8-202(7)(b)(II), and after notice and public hearing, that such regulation is necessary to assure compliance with the federal Clean Water Act, the water quality control requirements contained in the Colorado water rights statutes, or water quality classifications and standards; to protect present and future beneficial uses of water; to avoid the imposition of a disproportionate burden on other dischargers, or classes of dischargers; or in the event an implementing agency fails to provide reasonable assurance that compliance has been obtained through its own programs.

In the event the WQCC must take regulatory action to ensure compliance, WQCC action shall be undertaken solely through the adoption of control regulations under section 25-8-205, or through the permit regulations under section 25-8-501. The WQCD may enforce such control regulations.

Section 2. PURPOSE

This agreement is being entered into by the WQCD and the HMWMD to recognize the responsibilities of each agency for protecting water quality within the State of Colorado; and to provide procedures for communications, exchange of information and resolution of problems as necessary to carry out the provisions of Senate Bill 181.

Section 3. AUTHORITY

The principal authority for this agreement is contained in the Water Quality Control Act, section 25-8-101 et seq., C.R.S. (1989) as amended by S.B. 181, the Colorado Hazardous Waste Act, section 25-15-101 et seq., C.R.S. (1989), and the Colorado Solid Waste Act section 30-20-100.5 et seq., C.R.S. (1963).

Section 4. DEFINITIONS

- 4.1 “Designated Official” means a person representing one of the parties to this agreement appointed to implement this agreement and to negotiate on behalf of that party. The designated official for the HMWMD shall be the Director of the HMWMD; the designated official of the WQCC shall be its Administrator; and the designated official for the WQCD shall be the Director of the WQCD.
- 4.2 “Implementing Agency” means any of the state agencies referred to in section 25-8-202(7), C.R.S. whose water quality responsibilities the WQCC and the WQCD are to recognize. For purposes of this agreement, the implementing agency is the State agency responsible for solid and hazardous waste activities related to the federal “Resource Conservation And Recovery Act of 1976” as amended, and related state programs. Currently, this is the Hazardous Materials and Waste Management Division of the CDPHE.
- 4.3 “Point(s) of Compliance” means one or more points or locations at which compliance with applicable groundwater standards must be achieved.

Section 5. RESPONSIBILITIES

The responsibilities of the Water Quality Control Commission (WQCC), the Water Quality Control Division (WQCD), and the Hazardous Materials and Waste Management Division (HMWMD), as they relate to the mandates of SB 181, are presented below. Nothing in this MOA is intended to grant additional authority to the parties or to curtail their jurisdiction to fulfill their statutory responsibilities, including jurisdiction to maintain a program consistent with the requirements of the federal Resource Conservation and Recovery Act of 1976, as amended.

5.1 Hazardous Materials and Waste Management Division:

- a. The HMWMD shall recognize that the WQCC is solely responsible for the adoption of water quality standards and classifications for state waters in accordance with section 25-8-202(7).
- b. The HMWMD shall recognize that the WQCD is solely responsible for issuance and enforcement of permits authorizing all point source discharges to surface waters of the state as well as enforcing any control or permit regulation adopted by the WQCC under section 25-8-202(7)(b)(III).
- c. The HMWMD has been designated an implementing agency through the provisions of Senate Bill 181. As such, the HMWMD is responsible for implementing ground water standards and classifications for discharges, other than point source discharges to surface water, through its own regulatory programs after consultation with the WQCC and the WQCD. However, the HMWMD has independent authority to establish concentration limits, including concentration limits more stringent than would be required to protect standards adopted by the WQCC, and points of compliance for hazardous constituents associated with the treatment, storage, or disposal of hazardous wastes. The HMWMD also has independent authority regarding the management and clean-up activities for solid and hazardous wastes.
- d. The HMWMD is responsible for adopting applicable points of compliance for statewide and site-specific standards and classifications for discharges into state ground waters in accordance with criteria established through rulemaking after public hearing and consultation with the WQCC and the WQCD. Such points of compliance shall be established so as to protect present and future beneficial uses of ground water.
- e. Prior to providing the HMWMD a written notice that circumstances exist which may result in a basis for WQCC action in accordance with section 25-8-202(7)(b)(II)(A), (B) or (C), the WQCC or WQCD, as appropriate, shall informally consult with the HMWMD to appraise them of their concerns. In the event that informal consultation does not resolve the concerns of the WQCC and/or WQCD, a written notice shall be provided to the HMWMD identifying that circumstances exist which may result in a basis for WQCC action in accordance with section 25-8-202(7)(b)(II)(A), (B) or (C). In such event, the HMWMD shall respond, in writing, to the notice within 15 working days. The HMWMD, through its designated official, will continue to meet informally with the designated officials of the WQCC and the WQCD through one or more meetings to attempt to resolve the concern.
- f. In the event that the HMWMD receives notification from the WQCC of its intent to publish a Notice of Public Hearing to consider the adoption of control regulations or permit regulations for one or more of the water quality responsibilities currently within the jurisdiction of the HMWMD, the HMWMD shall respond to such notification within thirty days. The response from the HMWMD will either provide information to the WQCC that demonstrates that there is no basis for WQCC action in accordance with section 25-8-202(7)(b)(II)(A), (B), and (C) or, if such a basis may exist, identify the action(s), if any, to be undertaken by HMWMD to address the situation.

- g. Prior to the adoption of any water quality related regulation recommended by the HMWMD, the HMWMD shall notify the WQCC and WQCD, and allow their participation in any stakeholder committee meetings or hearings where such proposals are to be discussed.
- h. The HMWMD shall provide to the WQCC and the WQCD an annual written report that describes how its programs are assuring compliance with ground water quality standards and classifications for activities subject to HMWMD jurisdiction, including identification of any relevant proposed or existing regulations. The annual update will include an annual summary of the activities and concerns of the HMWMD relative to the implementation of standards and classifications.
- i. The Solid Waste Program within the HMWMD will regulate facilities that are discharging wastewaters into surface impoundments and associated pipelines or other engineered units, even those designed for purposeful seepage (e.g. no liner or a seeping liner). These facilities are or resemble the fixed solid waste facilities currently regulated through Certificates of Designation (CDs). Using this approach, the Solid Waste Program can ensure protection of human health and the environment at these facilities through engineered design and operation. This includes wastewater impoundments at drinking water treatment facilities.
- j. The Solid Waste Program within HMWMD will regulate facilities that are undergoing some type of Solid Waste Program-approved remedial action or cleanup of contamination.
- k. The Solid Waste Program within HMWMD will coordinate extensively and as necessary with the WQCD to ensure efficient and effective regulatory control of facilities discharging wastewaters meeting the definition of "solid waste."

5.2 Water Quality Control Division:

- a. The WQCD shall recognize the water quality responsibilities of the HMWMD and its designation as an implementing agency in accordance with section 25-8-202(7).
- b. The WQCD shall be solely responsible for the issuance and enforcement of permits authorizing point source discharges into surface waters of the State. See sections 25-8-501, 503 and 504, C.R.S. (1989).
- c. The WQCD shall not require permits for, or otherwise regulate, activities subject to the jurisdiction of the HMWMD unless such regulation is promulgated by the WQCC as provided under sections 5.3. e. and f., below.
- d. In the event that the WQCD has reason to believe that circumstances exist which may result in a basis for WQCC action in accordance with section 25-8-202(7)(b)(II)(A), (B) or (C), the designated official from the WQCD shall notify the Director of the HMWMD, in writing, of such circumstances. The notice shall specify the circumstances that may result in a basis for WQCC action and provide an explanation of the basis for the WQCD's concern(s), including any supporting documentation. Copies of this correspondence shall be forwarded to the WQCC. The designated official of the WQCD will attempt to resolve the concern(s) informally with the designated officials of the WQCC and the HMWMD through one or more

meetings. All reasonable efforts will be made, at the agency level, to resolve the concern(s) identified.

- e. In the event that the WQCD determines that the circumstances identified in accordance with subsection (d) above cannot be remedied through informal discussions at the agency level, it shall so notify the WQCC.
- f. The WQCD will regulate fixed and non-fixed/transient facilities that are discharging pollutants to state waters through land application of wastewaters for activities such as irrigation, dust-suppression, cement wash-out, semi-permanent cement plants, and power washing. Discharges from these types of facilities are uncontained and protection of water quality is determined either through meeting water quality standards prior to discharge (land disposal) or meeting discharge standards at monitoring wells at the point of compliance (land treatment).
- g. The WQCD will coordinate extensively and as necessary with the Solid Waste Program within HMWMD to ensure efficient and effective regulatory control of facilities discharging wastewaters meeting the definition of "solid waste."

5.3 Water Quality Control Commission:

- a. The WQCC shall recognize the water quality responsibilities of the HMWMD and its designation as an implementing agency in accordance with section 25-8-202(7).
- b. The WQCC shall be solely responsible for adoption of water quality standards and classifications for all state waters. However, the WQCC shall recognize the independent authority of the HMWMD to establish concentration limits including more stringent concentration limits, and points of compliance for hazardous constituents associated with the treatment, storage, or disposal of hazardous wastes. The WQCC also recognizes the independent authority of the HMWMD regarding the management and clean-up activities related to solid and hazardous wastes.
- c. In adopting water quality standards and classifications for state waters other than surface waters, the WQCC shall not specify points of compliance applicable to discharges regulated by the HMWMD. Such points of compliance shall be adopted by the HMWMD in accordance with criteria established through rulemaking as provided under Section 5.1.d of this agreement.
- d. In the event that the WQCC has reason to believe that circumstances exist which may result in a basis for WQCC action in accordance with section 25-8-202(7)(b)(II)(A), (B) or (C). it shall proceed in the following manner:
 - i. Unless the WQCD has previously provided such notice as specified under paragraph 5.2(d) of this memorandum, the WQCC, or its designated official, shall notify the Director of the HMWMD, in writing of such circumstances. A copy of such notice shall be provided to the WQCD. This notice shall specify the circumstances which may result in a basis for WQCC action and provide an explanation of the basis of the WQCC's concern(s), including supporting documentation.
 - ii. The designated official of the WQCC shall meet with the designated officials

of the HMWMD and the WQCD to attempt to resolve the concern(s) informally. All reasonable efforts will be made to resolve the concern(s) at the agency level. As necessary, any such resolution shall be presented to the full WQCC for its approval.

- iii. If the HMWMD, designated official of the WQCC and the WQCD are unable to reach agreement regarding the implementation of water quality responsibilities as outlined in section 25-8-207(7)(a), the Director of Environmental Programs of the Department of Public Health and Environment will address the issues in dispute, after consultation with the Attorney General's Office and, if possible, recommend a resolution to the WQCD, the WQCC and the HMWMD for their consideration.
- e. In the event that the WQCC determines that the circumstances identified in accordance with subsection (d) above cannot be remedied through informal discussions it shall notify the HMWMD of its intent to publish a Notice of Public Hearing to consider the adoption of control regulations or permit regulations for the activities subject to the jurisdiction of the HMWMD which are the subject of concern. Such notification to the HMWMD shall precede the publication of the WQCC's Notice of a Public Hearing by no less than forty-five (45) days, unless the WQCC determines that an emergency rulemaking must be initiated to assure compliance with the Colorado Water Quality Control Act. In such event, the WQCC shall give the HMWMD as much advance notice as possible. If the WQCC receives information from the HMWMD pursuant to section 5.1(f), the WQCC shall not proceed with the publication of the Notice of Public Hearing unless the WQCC has determined that the proposed rulemaking is still necessary after it has reviewed the information at the next WQCC public meeting.
- f. The WQCC shall adopt appropriate control regulations or permit regulations to address one or more of the water quality responsibilities within the jurisdiction of the HMWMD only if it makes a written finding, after public hearing that:
 - i. Such regulation is necessary to assure compliance with the provisions of Articles 80 to 93 of Title 37, C.R.S. or water quality standards and classifications adopted for state waters, to protect present and future beneficial uses of water; or
 - ii. 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
 - iii. The HMWMD fails to provide a reasonable assurance that compliance with standards and classifications has been obtained through its own programs.
- g. Nothing in this MOA is intended to grant additional authority to the parties or to curtail their jurisdiction to fulfill their statutory responsibilities, including jurisdiction to maintain a program consistent with the requirements of the federal Resource Conservation and Recovery Act of 1976, as amended.
- h. The WQCC shall provide to the HMWMD rulemaking and informational hearing notices and agendas and allow participation in formal proceedings addressing the establishment of standards and classifications, or any other matter which could have

an impact on HMWMD operations, and informal proceedings in which the HMWMD has expressed an interest.

- i. The WQCC shall schedule a presentation by the HMWMD to discuss the annual report prepared and submitted by the HMWMD at a regular public meeting, and shall provide the public with notice and an opportunity to comment on such report.

Section 6. SPECIAL PROVISIONS

6.1 Access to Records:

Each agency shall, to the extent allowed by law, make available to the other, information within its possession. Requests for information shall not impose an unreasonable resource burden on either agency.

6.2 Effect on Prior Agreement:

When executed, this agreement shall supercede any prior agreement regarding the implementation of S.B. 181 whether written or implied.

6.3 Effective Date and Termination:

This agreement shall become effective on the date of execution by the last signatory party. It may be amended upon the mutual agreement of the WQCC, the WQCD and the HMWMD, or it may be terminated upon 30 days written notice to the other parties by the WQCC, the WQCD or the HMWMD.

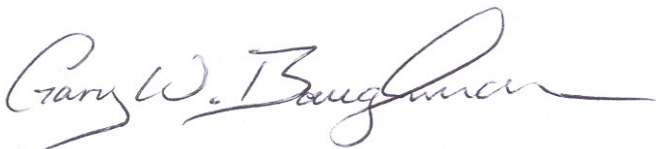
Section 7. APPROVALS



Chairman
Water Quality Control Commission

July 31, 2008

Date



Director
Hazardous Materials & Waste Management Division

July 29, 2008

Date

A handwritten signature in black ink, appearing to read "Steve H. King", written over a horizontal line.

Director
Water Quality Control Division

July 7, 2008
Date

Date: July, 2008