

Bear Creek Watershed Association

Approved BCWA: December 10, 2014

BCWA Policy 35 Membership Entity Termination and Wastewater Discharge Permit Closure



Statement of Basis and Purpose

The Bear Creek Watershed Association (BCWA) is established in the Bear Creek Watershed State Control Regulation (Regulation #74, 5 CCR 1002-74) (Control Regulation). The Colorado Water Quality Control Commission recognizes the Association as a designated Water Quality Management Agency under provisions of the Federal Clean Water Act and the Statewide Water Quality Management Plan. The control regulation as state law clearly defines expectations and requirements of those entities specifically listed in Control Regulation. Until an Association member is removed from the Control Regulation through a formal rulemaking process, that Association member is bound by the Control Regulation to meet all expectations and requirements.

The control regulation defines the Association as:

74.2 DEFINITIONS

“Association” means the Bear Creek Watershed Association formed by intergovernmental agreement and by-laws, and consisting of general purpose governments, Title 32 Districts outside incorporated areas, and permitted industry, corporations, proprietorships, and agencies or other appropriate entities within the Bear Creek Watershed.

"Districts" means all special districts in the Bear Creek Watershed who provide water and/or wastewater service, and operate a treatment facility.

The BCWA membership entities include special districts and all other National Permit Discharge Elimination System (NPDES) permittees (Operational Agencies) as designated by the Colorado Department of Public Health and Environment in the Bear Creek Watershed. Membership entities (*BCWA Policy 16 Membership*) financially support the BCWA through a cost shared service program (*BCWA Policy 33 BCWA Shared Cost Program*).

The Control Regulation identifies the operational wastewater treatment facilities in the watershed (*BCWA Policy 23 – System of Wastewater Treatment Works*). The Control Regulation assigns a total phosphorus wasteload allocation to these permitted dischargers (*BCWA Policy 34 BCWA Phosphorus WLA Purpose*). The Water Quality Control Commission notes in the state of basis and purpose of the control regulation that *allocations of phosphorus or modifications to phosphorus wasteload allocations require a rulemaking hearing by the Commission*. As such, any change to the status of membership entity holding a WQCD discharge permit must be reflected in the Control Regulation.

The Control Regulation is subject to a triennial review, which is used to determine if a rulemaking process is necessary to modify the Control Regulation at the discretion of the WQCC. A rulemaking hearing to change the Control Regulation can take over one-year and requires a specific hearing process. The BCWA as the designated management agency may recommend changes to the Control Regulation and is expected to be a party to a rulemaking hearing involving the Control Regulation. This process requires a financial and time commitment from the BCWA.

The BCWA provides professional consultation and representation throughout the rulemaking hearing process.

Any membership entity that holds a wastewater discharge permit with the Water Quality Control Division may terminate that permit through a formal process with the Division. The termination of a wastewater discharge permit as listed in the Control Regulation will also require a rulemaking hearing before the WQCC to remove such discharge facility from the Control Regulation, including disposition of the assigned total phosphorus allocation.

Even though a designated discharger has relinquished their discharge permit and installed an alternative wastewater treatment system, that discharger is still bound by the Control Regulation until removed from the Control Regulation through a formal rulemaking process. The BCWA as the management agency must make a recommendation on the disposition of the assigned total phosphorus allocation at the triennial review hearing and subsequent rulemaking hearing. The BCWA will relieve a discharger that has terminated a permit from involvement in the rulemaking process as a final shared service benefit for a small final contribution.

Policy Positions

1. Non-option - Any membership entity that terminates their wastewater discharge permit with the Water Quality Control Division and removes their designated wastewater treatment plan (As listed in *BCWA Policy 23 System of WWTF*):
 - a. Must demonstrate to the BCWA that alternative regulatory compliant wastewater service is still being provided to the designated service area.
 - b. Thereby the membership entity relinquishes use of any assigned total phosphorus wasteload allocation as established by the Bear Creek Reservoir Control Regulation at 5 C.C.R. 1002-74, and the BCWA will assign such allocation to the wasteload allocation in the reserve pool.

2. Option 1- Any membership entity that terminates their wastewater discharge permit may opt to be a participant in the BCWA cost shared program and receive monitoring specific benefits and have the BCWA trigger a rulemaking process to remove them from the Control Regulation.
 - a. A membership entity may remain a participant entity in the BCWA shared services program for an annual contribution of \$350.00, whereas this cost share amount will be applied to the approved BCWA in-stream monitoring program to demonstrate any potential affect from the legacy discharge point and relieves the prior membership entity from any additional instream monitoring as requested in 1(b) above. The participant annual contribution can be dropped if the BCWA demonstrates that the alternative wastewater treatment system has no deleterious impact to instream water quality after a minimum of 3-years.
 - b. An annual participant contribution will be deemed sufficient to cover future costs incurred by the BCWA to recommend changes the Control Regulation through a rulemaking process.
 - c. A terminated participant entity must assume all future regulatory water quality duties and responsibilities.

3. Option 2 - Any membership entity that terminates their wastewater discharge permit may terminate involvement as a membership entity and opt out of the shared services program.
 - a. A terminated membership entity must provide necessary assurance to the BCWA that alternative wastewater treatment is not causing water quality degradation within the Bear Creek watershed, as demonstrated by upstream/downstream in-stream water quality monitoring for nitrogen and phosphorus for a 3-year period.
 - b. A membership entity choosing not to be a participant entity may make a final contribution to the BCWA equal to 3-times their prior year contribution.
 - c. This contribution will be deemed sufficient to cover future costs incurred by the BCWA to recommend changes the Control Regulation through a rulemaking process.
 - d. A terminated membership entity must assume all future regulatory water quality duties and responsibilities.