

Second Regular Session
Seventy-second General Assembly
STATE OF Colorado

REDRAFT

6.5.20

Double underlining
denotes changes from
prior draft

DRAFT

LLS NO. 20-1262.01 Thomas Morris x4218

HOUSE BILL

HOUSE SPONSORSHIP

Becker,

SENATE SPONSORSHIP

(None),

BILL TOPIC: "Establish State Dredge & Fill Water Permit Program"

DEADLINES: File by: 6/1/2020

A BILL FOR AN ACT

101 CONCERNING A PERMIT REQUIREMENT FOR THE DISCHARGE OF
102 POLLUTANTS INTO STATE WATERS, AND, IN CONNECTION
103 THEREWITH, ESTABLISHING A STATE DREDGE AND FILL PERMIT
104 PROGRAM TO ADDRESS CHANGES IN FEDERAL LAW.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.Colorado.gov>.)

On June 22, 2020, a new federal rule will take effect that will decrease the jurisdictional scope of water that is considered to be waters of the United States and subject to federal permits for the discharge of

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

dredge or fill material. The bill establishes a state dredge and fill permit program in the department of public health and environment to protect state waters that would otherwise not be covered by the federal dredge and fill permit program. The water quality control commission will adopt rules to govern the new program, including fees. The state dredge and fill permit program is repealed on September 1, 2025, subject to sunset review.

The department may use money in the water quality improvement fund for grants for dredge and fill operations management and associated best practices training. The department shall submit a report by December 31 of each year regarding the fees for the state dredge and fill permit program for review by the senate agriculture and natural resources committee and the house of representatives rural affairs and agriculture committee, or their successor committees.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 25-8-503.6 as
3 follows:

4 **25-8-503.6. Waters of the state protection - dredge and fill**
5 **permits - legislative declaration - fees - rules - repeal. (1) Legislative**
6 **declaration.** THE GENERAL ASSEMBLY HEREBY:

7 (a) FINDS THAT:

8 (I) ON JUNE 22, 2020, A NEW FEDERAL RULE TAKES EFFECT THAT
9 WILL DECREASE THE JURISDICTIONAL SCOPE OF WATER THAT IS
10 CONSIDERED TO BE WATERS OF THE UNITED STATES (WOTUS) AND
11 SUBJECT TO FEDERAL PERMITS FOR THE DISCHARGE OF DREDGE OR FILL
12 MATERIAL. ONCE THE WOTUS RULE, ALSO KNOWN AS THE "NAVIGABLE
13 WATERS PROTECTION RULE", TAKES EFFECT, THE FEDERAL PERMITTING OF
14 THE DISCHARGE OF DREDGE OR FILL MATERIAL FROM CONSTRUCTION
15 PROJECTS INTO STATE WATERS WILL NO LONGER COVER CERTAIN STATE
16 WATERS PROTECTED FROM UNPERMITTED DISCHARGES BY STATE LAW,
17 INCLUDING SECTION 25-8-501;

1 (II) COLORADO DOES NOT CURRENTLY HAVE A STATE DREDGE AND
2 FILL PERMIT PROGRAM AND HAS RELIED ON THE FEDERAL GOVERNMENT
3 FOR THIS SERVICE, BUT WITH THE REVISED NAVIGABLE WATERS
4 PROTECTION RULE, THERE IS INCREASED NEED FOR A STATE PROGRAM;

5 (III) SOME DREDGE OR FILL PROJECTS, SUCH AS FOR FLOOD
6 CONTROL; STREAM RESTORATION; WATER DEVELOPMENT; UNDERGROUND
7 UTILITIES, ROAD, TRANSIT, RAIL, AND HOUSING CONSTRUCTION OR
8 MAINTENANCE; AND OTHER COMMERCIAL PURPOSES, THAT DO NOT
9 RECEIVE A FEDERAL PERMIT BEFORE JUNE 22, 2020, WILL BE PROHIBITED
10 UNDER SECTION 25-8-501 UNLESS COLORADO DEVELOPS ITS OWN DREDGE
11 AND FILL PERMIT PROGRAM;

12 (b) DETERMINES THAT:

13 (I) SUPPORTING COLORADO'S CONSTRUCTION SECTOR IS CRITICAL
14 TO ECONOMIC RECOVERY AND A STRONG COLORADO ECONOMY;

15 (II) DEVELOPING A STATE DREDGE AND FILL PERMIT PROGRAM
16 WILL BENEFIT THE BUSINESSES THAT WISH TO ENGAGE IN DREDGE OR FILL
17 PROJECTS WITHIN COLORADO BECAUSE, WITHOUT A PERMIT PROGRAM,
18 THOSE PROJECTS WILL BE PROHIBITED TO THE DETRIMENT OF COLORADO'S
19 ECONOMY; AND

20 (c) DECLARES THAT:

21 (I) THIS SECTION IS INTENDED TO CLOSE ANY PERMITTING GAP
22 CREATED BY THE NAVIGABLE WATERS PROTECTION RULE TO MAINTAIN THE
23 STATUS QUO IN EFFECT BEFORE JUNE 22, 2020, FOR THE REGULATION OF
24 DISCHARGES OF DREDGE OR FILL MATERIAL;

25 (II) IN FURTHERANCE OF THIS INTENT, THIS SECTION IS INTENDED
26 TO APPLY ONLY TO WATERS THAT WERE CONSIDERED WATERS OF THE
27 UNITED STATES BEFORE JUNE 22, 2020, BUT THAT ARE NO LONGER

1 CONSIDERED WATERS OF THE UNITED STATES UNDER THE NAVIGABLE
2 WATERS PROTECTION RULE:

3 (III) MAINTAINING THE STATUS QUO WILL NOT RESULT IN DREDGE
4 AND FILL PERMITS BEING REQUIRED FOR ALL STATE WATERS BUT WILL
5 PROVIDE SUFFICIENT ENVIRONMENTAL PROTECTION;

6 (IV) ENFORCEMENT OF DREDGE AND FILL PERMITS SHOULD
7 INCORPORATE EXISTING COMPLIANCE ASSISTANCE MODELS UTILIZED BY
8 THE DIVISION; _____

9 (V) THIS SECTION IS NECESSARY TO ADOPT A STATE DREDGE AND
10 FILL PERMIT PROGRAM THAT MAINTAINS THE STATUS QUO IN EFFECT
11 BEFORE JUNE 22, 2020, FOR THE PROTECTION OF STATE WATERS; AND

12 (VI) THE PERMITTING PROGRAM SHOULD INCORPORATE ELEMENTS
13 OF THE FEDERAL 404 NATIONWIDE AND GENERAL PERMIT PROCESS,
14 CREATED BY THE FEDERAL ACT AND CODIFIED AT 33 U.S.C. SEC. 1344,
15 THAT AUTHORIZE PERMIT APPLICANTS TO BE COVERED BY A NATIONWIDE
16 OR GENERAL PERMIT UPON NOTIFYING THE DIVISION OF THE PROPOSED
17 DREDGE OR FILL ACTIVITY AND THEREBY BEING ABLE TO PROCEED WITH
18 THE ACTIVITY WITHIN A SHORT PERIOD OF TIME.

19 (2) **Permit fees.** (a) AFTER THE DIVISION CONDUCTS A
20 STAKEHOLDER PROCESS REGARDING FEES TO BE COLLECTED FOR THE
21 STATE DREDGE AND FILL PERMIT PROGRAM, THE COMMISSION SHALL
22 ADOPT, BY RULE, THE FOLLOWING FEES ON OR BEFORE DECEMBER 1, 2020,
23 IN AN AMOUNT SUFFICIENT TO COVER ONLY THE DEPARTMENT OF PUBLIC
24 HEALTH AND ENVIRONMENT'S DIRECT AND INDIRECT COSTS TO IMPLEMENT
25 THE STATE DREDGE AND FILL PERMIT PROGRAM:

26 (I) A FEE FOR AN APPLICATION FOR A DREDGE AND FILL PERMIT
27 THAT MUST COVER THE COST OF THE DIVISION'S ANALYSIS OF POTENTIAL

1 PERMIT CONDITIONS AND PROCESSING OF THE PERMIT;

2 (II) A FEE FOR DEVELOPING JURISDICTIONAL DETERMINATIONS OF

3 WHETHER A PROPOSED DREDGE OR FILL PROJECT REQUIRES A STATE

4 PERMIT;

5 (III) A FEE FOR STATE WATERS AND WETLAND MITIGATION

6 PROJECT SERVICES SOUGHT BY APPLICANTS; AND

7 (IV) SUCH OTHER FEES THAT THE COMMISSION DETERMINES TO BE

8 APPROPRIATE AND NECESSARY TO ADMINISTER THE STATE DREDGE AND

9 FILL PERMIT PROGRAM.

10 (b) (I) THE DIVISION SHALL COLLECT THE FEES AUTHORIZED BY

11 THIS SUBSECTION (2) AND TRANSFER THE FEES TO THE STATE TREASURER,

12 WHO SHALL CREDIT THEM TO THE CONSTRUCTION SECTOR FUND CREATED

13 IN SECTION 25-8-502 (1.5)(a)(II).

14 (II) THE COMMISSION, BY RULE OR AS OTHERWISE PROVIDED BY

15 LAW, MAY REDUCE THE AMOUNT OF ONE OR MORE OF THE FEES IF

16 NECESSARY PURSUANT TO SECTION 24-75-402 (3) TO REDUCE THE

17 UNCOMMITTED RESERVES OF THE CONSTRUCTION SECTOR FUND CREATED

18 IN SECTION 25-8-502 (1.5)(a)(II). AFTER THE UNCOMMITTED RESERVES OF

19 THE FUND ARE SUFFICIENTLY REDUCED, THE COMMISSION, BY RULE OR AS

20 OTHERWISE PROVIDED BY LAW, MAY INCREASE THE AMOUNT OF ONE OR

21 MORE OF THE FEES AS PROVIDED IN SECTION 24-75-402 (4).

22 (III) SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY, THE

23 DIVISION MAY USE THE CONSTRUCTION SECTOR FUND CREATED IN SECTION

24 25-8-502 (1.5)(a)(II) TO COVER THE DIVISION'S DIRECT AND INDIRECT

25 COSTS TO IMPLEMENT THIS SECTION. < *This is the prior subsection (4).* >

26 (3) **Permit program.** (a) IF AND DURING THE TIME THAT THE

27 FEDERAL NAVIGABLE WATERS PROTECTION RULE IS IN EFFECT IN

1 COLORADO SO THAT THE FEDERAL PERMITTING OF DREDGE AND FILL FROM
2 CONSTRUCTION PROJECTS NO LONGER COVERS CERTAIN STATE WATERS
3 PROTECTED FROM UNPERMITTED DREDGE OR FILL ACTIVITIES BY STATE
4 LAW, THE COMMISSION SHALL PROMULGATE RULES AS NECESSARY TO
5 IMPLEMENT THIS SECTION AND AUTHORIZE THE DIVISION, DURING THE
6 TIME THAT THE FEDERAL NAVIGABLE WATERS PROTECTION RULE IS IN
7 EFFECT IN COLORADO, TO ISSUE PERMITS RELATING TO THE DISCHARGE OF
8 POLLUTANTS CONSISTING OF DREDGE OR FILL MATERIAL INTO STATE
9 WATERS THAT, BEFORE JUNE 22, 2020, WERE CONSIDERED WATERS OF THE
10 UNITED STATES _____ UNDER SECTION 404 OF THE FEDERAL ACT, AS
11 AMENDED, 33 U.S.C. SEC. 1344. IN ADOPTING THE RULES, THE
12 COMMISSION SHALL CONSIDER:

13 (I) THE PROTECTION OF WATERS THAT, BEFORE JUNE 22, 2020,
14 WERE CONSIDERED WATERS OF THE UNITED STATES _____ UNDER SECTION
15 404 OF THE FEDERAL ACT, AS AMENDED, 33 U.S.C. SEC. 1344;

16 (II) WHEN PERMITS WILL BE REQUIRED PURSUANT TO THIS SECTION
17 AND PERMIT EXEMPTIONS AND APPLICATION AND FILING REQUIREMENTS;

18 (III) REQUIREMENTS NECESSARY TO PROVIDE REASONABLE
19 ASSURANCE THAT A PERMITTED PROJECT WILL COMPLY WITH ALL
20 APPLICABLE STATE WATER QUALITY REQUIREMENTS, EITHER AS PROPOSED
21 OR AS CONDITIONED IN THE PERMIT;

22 (IV) THE CONDITIONS NECESSARY TO REGULATE BOTH THE
23 CONSTRUCTION AND OPERATION OF THE PERMITTED ACTIVITY;

24 (V) THE DIRECT AND INDIRECT EFFECTS OF THE PERMITTED
25 ACTIVITY;

26 (VI) AUTHORIZING PERMIT CONDITIONS DESIGNED TO DO ANY OF
27 THE FOLLOWING:

1 (A) REMOVE OR REDUCE AN IMPAIRMENT TO STATE WATERS OR
2 WETLANDS THAT WOULD OTHERWISE RESULT FROM THE PROJECT;

3 (B) IMPROVE THE WATER QUALITY THAT WOULD OTHERWISE
4 RESULT FROM THE PROJECT;

5 (C) REMOVE OR REDUCE THE EFFECT OF A DISCHARGE OF DREDGE
6 OR FILL MATERIAL; AND

7 (D) MITIGATE ANY UNAVOIDABLE LOSSES OF STATE WATERS
8 RESULTING FROM THE PROJECT OR ASSIST IN MEETING STATE WATER
9 QUALITY REQUIREMENTS, INCLUDING PROTECTION OF DOWNSTREAM USES;

10 (VII) THE TERMS AND CONDITIONS REQUIRED FOR PERMITS,
11 NOTICE, AND PUBLIC PARTICIPATION REQUIREMENTS, AND THE DURATION
12 OF THE PERMITS;

13 (VIII) THE DIVISION'S REVIEW OF THE PERMITS, INCLUDING
14 CONSIDERATION OF CURRENT FEDERAL GENERAL PERMITTING PROCESSES
15 THAT ALLOW PERMIT APPLICANTS TO FILE A PERMIT NOTIFICATION AND
16 THEREBY BECOME AUTHORIZED TO PROCEED WITH CONSTRUCTION FOR
17 ROUTINE DREDGE OR FILL PROJECTS AFTER A SPECIFIED PERIOD OF TIME;

18 (IX) MONITORING, RECORDING, AND REPORTING REQUIREMENTS;

19 (X) THE APPROPRIATE DEFINITIONS OF THE TERMS "DREDGE" AND
20 "FILL"; AND

21 (XI) SUCH OTHER REQUIREMENTS THAT ARE AT LEAST AS
22 STRINGENT AS SECTION 404 OF THE FEDERAL ACT, AS AMENDED, 33 U.S.C.
23 SEC. 1344.

24 _____

25 (b) UNTIL THE RULES PROMULGATED BY THE COMMISSION BECOME
26 EFFECTIVE, THE DIVISION MAY ISSUE PERMITS PURSUANT TO SECTION
27 25-8-501 IN ACCORDANCE WITH FEDERAL LAW AND GUIDANCE IN EFFECT

1 AS OF APRIL 20, 2020. UNTIL THE COMMISSION ESTABLISHES FEES IN
2 ACCORDANCE WITH SUBSECTION (2)(a) OF THIS SECTION, THE DIVISION
3 SHALL CHARGE A FEE TO COVER THE DIVISION'S DIRECT AND INDIRECT
4 COSTS TO ISSUE PERMITS PURSUANT TO THIS SECTION. THE DIVISION SHALL
5 PUBLISH THE FEES ON ITS WEBSITE. THE FEES AUTHORIZED UNDER THIS
6 SUBSECTION (3)(b) EXPIRE WHEN THE COMMISSION'S RULE ESTABLISHING
7 FEES BECOMES EFFECTIVE.

8 (c) A PERMIT FROM THE DIVISION IS NOT REQUIRED UNDER THIS
9 SECTION FOR PROJECTS WITH DISCHARGES OF DREDGE OR FILL MATERIAL
10 THAT PROCEED UNDER SECTION 404 OF THE FEDERAL ACT, AS AMENDED,
11 33 U.S.C. SEC. 1344, BASED ON AN APPROVED JURISDICTIONAL
12 DETERMINATION THAT IS NOT EXPIRED AND WAS ISSUED BEFORE JULY 1,
13 2020, PURSUANT TO FEDERAL LAW AND GUIDANCE IN EFFECT BEFORE JUNE
14 22, 2020.

15 (d) WHEN ISSUING A PERMIT FOR A DISCHARGE OF DREDGE OR FILL
16 MATERIAL, WHERE THE APPLICANT HAS AN UNEXPIRED FEDERAL AGENCY
17 JURISDICTIONAL DETERMINATION MADE PURSUANT TO FEDERAL LAW AND
18 GUIDANCE IN EFFECT BEFORE JUNE 22, 2020, THE DIVISION SHALL USE THE
19 FEDERAL JURISDICTIONAL DETERMINATION TO ESTABLISH THE SCOPE OF
20 THE APPLICANT'S PERMIT.

21 (e) NOTHING IN THIS SECTION LIMITS OR EXTINGUISHES A PERSON'S
22 ABILITY TO APPLY FOR AND OBTAIN A PERMIT UNDER SECTION 404 OF THE
23 FEDERAL ACT, AS AMENDED, 33 U.S.C. SEC. 1344, FOR THE DISCHARGE OF
24 DREDGE OR FILL MATERIAL INTO WATERS OF THE UNITED STATES,
25 INCLUSIVE OF STATE WATERS REGULATED UNDER THIS SECTION. A PERMIT
26 ISSUED PURSUANT TO THE FEDERAL ACT FOR THE DISCHARGE OF DREDGE
27 OR FILL MATERIAL INTO STATE WATERS REGULATED UNDER THIS SECTION

1 SHALL BE DEEMED TO BE A TEMPORARY PERMIT ISSUED UNDER THIS
2 SECTION THAT EXPIRES UPON EXPIRATION OF THE FEDERAL PERMIT.

3

4 (4) Repeal. THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1,
5 2025. BEFORE THE REPEAL, THE REGULATION OF THE DISCHARGE OF
6 DREDGE OR FILL MATERIAL INTO STATE WATERS BY THE DEPARTMENT OF
7 PUBLIC HEALTH AND ENVIRONMENT IN ACCORDANCE WITH THIS SECTION
8 IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

9 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **add**
10 (26)(a)(IX) as follows:

11 **24-34-104. General assembly review of regulatory agencies**
12 **and functions for repeal, continuation, or reestablishment - legislative**
13 **declaration - repeal.** (26) (a) The following agencies, functions, or both,
14 are scheduled for repeal on September 1, 2025:

15 (IX) THE REGULATION OF THE DISCHARGE OF DREDGE OR FILL
16 MATERIAL INTO STATE WATERS BY THE DEPARTMENT OF PUBLIC HEALTH
17 AND ENVIRONMENT IN ACCORDANCE WITH SECTION 25-8-503.6.

18 **SECTION 3.** In Colorado Revised Statutes, 25-8-104, **amend** (1)
19 as follows:

20 **25-8-104. Interpretation and construction of water quality**
21 **provisions.** (1) No provision of this ~~article~~ ARTICLE 8 shall be interpreted
22 so as to supersede, abrogate, or impair rights to divert water and apply
23 water to beneficial uses in accordance with ~~the provisions of~~ sections 5
24 and 6 of article XVI of the constitution of the state of Colorado, compacts
25 entered into by the state of Colorado, ~~or the provisions of~~ articles 80 to 93
26 of title 37, ~~C.R.S.~~, or Colorado court determinations with respect to the
27 determination and administration of water rights. Nothing in this ~~article~~

1 ARTICLE 8 shall be construed, enforced, or applied so as to cause or result
2 in material injury to water rights. The general assembly recognizes that
3 this ~~article~~ ARTICLE 8 may lead to dischargers choosing consumptive types
4 of treatment techniques in order to meet water quality requirements.
5 Under such circumstances, the discharger ~~must~~ SHALL comply with all of
6 the applicable provisions of articles 80 to 93 of title 37, ~~C.R.S.~~, and shall
7 ~~be obliged to~~ remedy any material injury to water rights to the extent
8 required under ~~the provisions of~~ articles 80 to 93 of title 37. ~~C.R.S.~~ The
9 question of whether such material injury to water rights exists and the
10 remedy therefor shall be determined by the water court. This section shall
11 not be interpreted so as to prevent the issuance of a permit pursuant to
12 sections 25-8-501 to ~~25-8-503~~ ~~which~~ 25-8-503.6 THAT is necessary to
13 protect public health. Nothing in this ~~article~~ ARTICLE 8 shall be construed
14 to allow the commission or the division to require minimum stream flows
15 or minimum water levels in any lakes or impoundments.

16 **SECTION 4.** In Colorado Revised Statutes, 25-8-502, **amend**
17 (1.5)(a)(II), (1.7)(a)(I) introductory portion, and (1.7)(a)(I)(B) as follows:

18 **25-8-502. Application - definitions - fees - funds created -**
19 **public participation - report - repeal.** (1.5) (a) (II) There is hereby
20 created in the state treasury the construction sector fund, which consists
21 of all annual fees collected for regulated activities associated with the
22 construction sector pursuant to subsection (1.1) of this section; all fees for
23 services performed by the division associated with the construction sector
24 collected pursuant to subsection (1.3) of this section; ~~and~~ all interim fees
25 associated with the construction sector collected pursuant to subsection
26 (1.4) of this section; AND FEES COLLECTED PURSUANT TO SECTION
27 25-8-503.6 (2)(a). The division shall transmit the fees to the state

1 treasurer, who shall credit them to the construction sector fund.

2 (1.7) (a) The department of public health and environment shall
3 report annually to:

4 (I) The senate agriculture and natural resources committee and the
5 house of representatives RURAL AFFAIRS AND agriculture ~~livestock, and~~
6 ~~natural resources~~ committee, or their successor committees, on:

7 (B) The clean water program. The report must include the number
8 of permits processed, the number of applications pending for new and
9 amended permits, the length of time the permits remain in the system
10 prior to issuance, the number of inspections conducted, the number of site
11 application and design reviews completed, the number of enforcement
12 actions taken, the costs associated with each sector specified in
13 subsections (1.1), (1.2), and (1.3) of this section, the number of full-time
14 equivalents assigned to and actively processing permits, the number of
15 full-time equivalents assigned to and actively conducting inspections, the
16 number of full-time equivalents assigned to and actively conducting site
17 application and design reviews, the number of full-time equivalents
18 assigned to and actively conducting enforcement actions, and the number
19 of full-time equivalents assigned to and actively developing rules and
20 standards. The department shall inform the committees regarding all new
21 standards and rules to be proposed within the subsequent year. The
22 department shall submit the report on or before March 31 of each year.
23 Commencing in 2017, the department shall develop baseline information
24 for reporting. Commencing in 2018, the department shall provide
25 information on improvements that have been made in comparison to the
26 baseline information and information on the barriers to making
27 improvements. COMMENCING IN 2021, THE DEPARTMENT SHALL PROVIDE

1 ANALOGOUS INFORMATION TO THAT OTHERWISE REQUIRED BY THIS
2 SUBSECTION (1.7)(a)(I)(B) FOR THE STATE DREDGE AND FILL PERMIT
3 PROGRAM AUTHORIZED BY SECTION 25-8-503.6 AND SHALL PROVIDE A
4 SEPARATE REPORT BY DECEMBER 31 OF EACH YEAR REGARDING THE FEES
5 FOR THE STATE DREDGE AND FILL PERMIT PROGRAM AUTHORIZED BY
6 SECTION 25-8-503.6, WHICH REPORT MUST SUMMARIZE FOR COMMITTEE
7 REVIEW THE DIRECT AND INDIRECT COSTS FOR THE STATE DREDGE AND
8 FILL PERMIT PROGRAM AND FEES ASSESSED TO COVER THESE COSTS.

9 **SECTION 5.** In Colorado Revised Statutes, 25-8-503, **amend** (4)
10 as follows:

11 **25-8-503. Permits - when required and when prohibited -**
12 **variances.** (4) (a) ~~No~~ A permit shall NOT be issued ~~which~~ THAT allows
13 a discharge that by itself or in combination with other pollution will result
14 in pollution of the receiving waters in excess of the pollution permitted
15 by an applicable water quality standard unless:

16 (I) The permit contains effluent limitations and a schedule of
17 compliance specifying treatment requirements; OR

18 (II) FOR A DREDGE AND FILL PERMIT ISSUED PURSUANT TO SECTION
19 25-8-503.6, THE PERMIT CONTAINS ADEQUATE CONDITIONS OR MITIGATION
20 TO PROVIDE REASONABLE ASSURANCE THAT THE PROJECT WILL COMPLY
21 WITH ALL APPLICABLE STATE WATER QUALITY REQUIREMENTS.

22 (b) Effluent limitations designed to meet water quality standards
23 ~~shall~~ MUST be based on application of appropriate physical, chemical, and
24 biological factors reasonably necessary to achieve the levels of protection
25 required by the standards.

26 (c) (I) EXCEPT AS PROVIDED IN SUBSECTION (4)(c)(II) OF THIS
27 SECTION, THE DISCHARGE OF DREDGE OR FILL MATERIAL FROM THE

1 FOLLOWING ACTIVITIES IS NOT PROHIBITED BY OR OTHERWISE SUBJECT TO
2 REGULATION UNDER THIS SECTION:

3 (A) NORMAL FARMING, SILVICULTURE, AND RANCHING ACTIVITIES
4 SUCH AS PLOWING; SEEDING; CULTIVATING; MINOR DRAINAGE;
5 HARVESTING FOR THE PRODUCTION OF FOOD, FIBER, OR FOREST PRODUCTS;
6 AND UPLAND SOIL AND WATER CONSERVATION PRACTICES;

7 (B) MAINTENANCE, INCLUDING EMERGENCY RECONSTRUCTION OF
8 RECENTLY DAMAGED PARTS, OF CURRENTLY SERVICEABLE STRUCTURES
9 SUCH AS DIKES, DAMS, LEVEES, GROINS, RIPRAP, BREAKWATERS,
10 CAUSEWAYS, BRIDGE ABUTMENTS OR APPROACHES, AND TRANSPORTATION
11 STRUCTURES;

12 (C) CONSTRUCTION OR MAINTENANCE OF FARM OR STOCK PONDS
13 OR IRRIGATION DITCHES, OR THE MAINTENANCE OF DRAINAGE DITCHES;

14 (D) CONSTRUCTION OF TEMPORARY SEDIMENTATION BASINS ON A
15 CONSTRUCTION SITE THAT DOES NOT INCLUDE THE PLACEMENT OF FILL
16 MATERIAL INTO STATE WATERS; AND

17 (E) CONSTRUCTION OR MAINTENANCE OF FARM ROADS, FOREST
18 ROADS, OR TEMPORARY ROADS FOR MOVING MINING EQUIPMENT, WHERE
19 THE ROADS ARE CONSTRUCTED AND MAINTAINED, IN ACCORDANCE WITH
20 BEST MANAGEMENT PRACTICES, TO ASSURE THAT FLOW AND CIRCULATION
21 PATTERNS AND CHEMICAL AND BIOLOGICAL CHARACTERISTICS OF STATE
22 WATERS ARE NOT IMPAIRED, THAT THE REACH OF STATE WATERS IS NOT
23 REDUCED, AND THAT ANY ADVERSE EFFECT ON THE AQUATIC
24 ENVIRONMENT WILL BE OTHERWISE MINIMIZED.

25 (II) ANY DISCHARGE OF DREDGE OR FILL MATERIAL INTO STATE
26 WATERS INCIDENTAL TO ANY ACTIVITY HAVING AS ITS PURPOSE BRINGING
27 AN AREA OF STATE WATERS INTO A USE TO WHICH IT WAS NOT PREVIOUSLY

1 SUBJECT, WHERE THE FLOW OR CIRCULATION OF STATE WATERS MAY BE
2 IMPAIRED OR THE REACH OF STATE WATERS MAY BE REDUCED, MUST HAVE
3 A PERMIT ISSUED PURSUANT TO SECTION 25-8-503.6.

4 (d) A PERMIT FROM THE DIVISION IS NOT REQUIRED UNDER THIS
5 SECTION FOR PROJECTS WITH DISCHARGES OF DREDGE OR FILL MATERIAL
6 THAT PROCEED UNDER SECTION 404 OF THE FEDERAL ACT, AS AMENDED,
7 33 U.S.C. SEC. 1344, BASED ON AN APPROVED JURISDICTIONAL
8 DETERMINATION THAT IS NOT EXPIRED AND WAS ISSUED BEFORE JULY 1,
9 2020, PURSUANT TO FEDERAL LAW AND GUIDANCE IN EFFECT BEFORE JUNE
10 22, 2020.

11 **SECTION 6.** In Colorado Revised Statutes, 25-8-608, **amend**
12 (1.7)(a) introductory portion and (1.7)(a)(IV) as follows:

13 **25-8-608. Civil penalties - rules - fund created - temporary**
14 **moratorium on penalties for minor violations - definitions - repeal.**

15 (1.7) (a) The department shall expend ~~moneys~~ MONEY in the water
16 quality improvement fund for the following purposes:

17 (IV) Providing grants for storm water management, ~~training~~
18 DREDGE OR FILL OPERATIONS MANAGEMENT, and ASSOCIATED best
19 practices training to prevent or reduce the pollution of state waters.

20 **SECTION 7. Effective date - applicability.** This act takes effect
21 July 1, 2020, and applies to conduct occurring on or after said date.

22 **SECTION 8. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, or safety.