

WATER QUALITY CONTROL DIVISION 2013 Request for Information Report

This document is provided as an update to the 2012 Request for Information (RFI) Report and supplemental information provided on November 1, 2012. The 2012 RFI provided detailed information on the Water Quality Control Division's (Division) authority, responsibilities, workload, and demands. The 2013 RFI provides (A) 2013 Legislative Session Status including the status of the additional resources provided, (B) Federal Funding Reduction Impacts, (C) Flood Response and Recovery Efforts, (D) Potential Cash Funds Modifications and (E) Water Quality Control Commission's Authority to Set Fees.

The Division has identified a shortage of FTE to meet the current service demands. However, this document does not constitute a request for additional FTE or other resources, as it is submitted in compliance with the Legislative request.

A. 2013 Legislative Session Status

Attachment 1 is a status update on the 16 FTE provided by the Joint Budget Committee (JBC) as part of the FY13-14 Budget. All newly authorized FTE are anticipated to be hired by November 30, 2013. These new positions will require orientation and training to become fully functional. It is expected that within 3-12 months of date of hire that these staff positions will be engaged in addressing the service demand shortfalls identified in the 2012 RFI.

A separate 2012 RFI Report for the Implementation of Pesticide Permitting Requirements was also submitted in November 2012. The need to permit discharges associated with pesticide applications evolved from national litigation. The court decision required discharges associated with pesticide applications to have CWA permit coverage beginning October 31, 2011. The Division issued a state permit on November 4, 2011. The permit is a temporary, short-term, two-year permit (through December 31, 2013). Of the 16.0 FTE received in the FY13-14 Budget, the Division received 1.0 FTE to fully fund this effort to determine the size of the potential permit universe and how to issue a final general permit.

HB13-1044 was signed into law by Governor Hickenlooper on May 15, 2013, authorizing the use of graywater in Colorado. This legislation requires that the Division develop a control regulation for adoption by the Colorado Water Quality Control Commission in January 2015. This effort will be an outreach intensive effort relying on stakeholder groups to identify the necessary components of the control regulation. The Division did not receive additional FTE for this legislative requirement.

HB13-1191 was signed into law on May 10, 2013, and created a Nutrient Grant Fund in the State Treasury. Fifteen million dollars was allocated to this fund to assist Phase I domestic wastewater treatment facilities with the costs associated with planning, design, construction, and/or improvements to comply with Control Regulation #85, Nutrients Management Control Regulation. The Division conducted multiple stakeholder meetings to seek input and feedback for an equitable and transparent way for distribution of the funds. The Water Quality Control Commission (Commission) promulgated revisions to Regulation No. 55, Water Quality Improvement Fund, in order to administer the program. On June 1, 2013, the Division submitted a Request for Application to seek eligible applications for funding. The Division received \$19.3 million in requests and funded a total of 21 projects for \$14.7 million. The Division was authorized through the legislation to retain \$300K and 1.0 FTE for administering the fund over a three-year period. As of November 1, 2013, all contracts have been written and are currently out to all awardees for signature.

B. Federal Funding Reduction Impacts

In the spring of 2013, federal awards to the Division were cut by approximately 5.2% across the board as a result of sequestration. The Division experienced a large number of federally funded vacancies during 2013 which offset the impacts of the cut but also slowed completion of EPA Performance Partnership Agreement (PPA) commitments and Division section/unit work plan targets. The Division did not negotiate a formal reduction in effort based on the 2013 cut. However, with the potential of additional cuts for the federal fiscal year 2013-14, the Division is in negotiations with EPA to finalize our 2014 PPA commitments. These commitments will be reduced to reflect what work is not going to be performed due to sequestration.

1. Drinking Water Program Impacts

The Safe Drinking Water Program (SDWP) supports training for drinking water professionals in Colorado so they can strengthen their ability to supply safe drinking water to the public. For the last several years, the SDWP has awarded contracts to training partners that developed and delivered training to water system operators. This training helped protect public health and helped public drinking water systems stay in compliance with often complicated regulations. Preference was given to training projects serving operators and owners of small public drinking water systems in rural Colorado. The source of this funding is set-asides from the federal Drinking Water State Revolving Fund (DWSRF). Unfortunately, this federal set-aside funding has been cut from \$4,298,400 in 2013 to \$4,032,990 in 2014, a reduction of \$265,410. Given the cuts to federal awards to the Division, the SDWP has eliminated many of these contracts, and will eliminate virtually all such contracts in the future. The Division is now offering a reduced scale of training to small water systems with existing staff.

Additionally, the federal cuts will result in the elimination of further funding for university studies concerning the formation of disinfection byproducts in Colorado watersheds affected by wildfire, and applied research on disinfection tank design to provide technical assistance to small systems struggling to comply with disinfection requirements. This research has directly helped about 90 small systems in rural Colorado, and the Division would like to continue offering these services. Without this applied research, small systems will need to hire their own engineering expertise to design their systems.

If current trends continue, significant reductions in federally funded FTE may be required. This would impact all areas of Safe Drinking Water Act implementation in Colorado. This would likely raise the risk of waterborne disease outbreaks in Colorado, (like the salmonella outbreak in Alamosa in 2008) and also increase the risk that the program would not be able to adequately respond to chronic carcinogenic threats like disinfection byproducts.

2. Clean Water Program Impacts

The following programmatic areas have been impacted by the federal budget reduction:

- CWA Section 319 Grant – Nonpoint Source Management. The reduction was \$103,000 for water quality restoration project funds. This resulted in four planning grants or one medium-sized restoration project grant not being issued to local sponsors. This reduction will be maintained in FFY14 or increased proportionately if additional federal funds are not received.
- CWA Section 106 Monitoring Grant – Water Quality Monitoring and Assessment. The reduction was \$15,000 for monitoring and assessment support funds, resulting in cancelation of the aquatic macroinvertebrate stressor study. This reduction will be maintained in FFY14 or increased proportionately if additional federal funds are not received.

- CWA Section 604(b) Grant – Water Quality Planning. The reduction was \$6,000 for support of regional water quality planning efforts. This resulted in less staff support of various planning and management efforts across the state. This reduction will be maintained in FFY14 or increased proportionately if additional federal funds are not received.
- CWA Section 106 Grant – Permitted Facility Inspections. The reduction had direct impacts on the number of facility inspections conducted by the Division. The number of clean water inspections for FFY13 was reduced from 252 to 239. Planned inspections for FFY14 will continue to reflect this reduction of funding, with 190 clean water inspections currently being planned. Additionally, the Division is working on a business process to identify clean water inspection findings that will not be followed up. This will lead to less field-based compliance assistance during clean water inspections.
- Discharge Permit Issuance. Permit development is not funded with federal funds, and therefore sequestration does not have a direct impact on the number of permits being processed. However, activities such as water quality criteria and development, assessment and reporting, and restoration plan development that contribute to permit development are funded with federal funds. Delays or fewer work products from these groups will impact the permit issuance process.

In general, federal fund sequestration will have the greatest impact on the Division's personnel services budget since staff salaries comprise most of the budget. This budget reality leaves staff positions vacant and the budget savings associated with keeping positions open longer, as our primary federal funding deficit management tool. Staff vacancies reduce organizational production and program effectiveness and efficiency across all areas of the Division.

C. Flood Response and Recovery Efforts

The recent flooding events in Colorado have severely impacted significant portions of the water and wastewater infrastructure in the South Platte basin. The Division has teamed with FEMA, the U.S. Army Corps of Engineers, and EPA to conduct preliminary damage assessments at impacted community drinking water and sewage systems. The devastation documented by our teams is extensive and will require significant local, state and federal assistance to rebuild.

Lyons sewage treatment plant



City of Loveland Drinking Water Intake



As of September 26, 2013, Adams, Boulder, Broomfield, Clear Creek, El Paso, Gilpin, Logan, Larimer, Morgan, Washington, and Weld Counties have been declared eligible for FEMA “Public Assistance for Permanent Repair and Replacement of Disaster-damaged Infrastructure.” Many small communities do not have the resources necessary to address their immediate drinking water and wastewater operational and infrastructure replacement needs. Division staff have been dedicated to responding to emergencies (11 boil water orders and 15 wastewater treatment failures). As of September 30, 2013, staff have documented over 2,200 hours to the flood response and recovery. Due to the magnitude of the devastation, the Division anticipates that additional staff resources will be devoted to the recovery efforts, and this will impact service demands requested of the Division.

As of November 1, 2013, FEMA has not released all damage cost estimates from site visits. The estimates available for the drinking water and wastewater infrastructure damage at this time exceed \$170 million. In response to these concerns, the State Infrastructure Recovery Force (IRF) has been established to provide coordination and assistance to municipalities and other governments in reestablishing critical infrastructure. Division staff are actively involved in the IRF.

D. Potential Cash Funds Modifications

1. Drinking Water Cash Fund Modifications

The Drinking Water Cash Fund generates approximately \$500,000 annually. However, if federal funding continues to decline, there will be a need to backfill those resources. Without action the size of the Safe Drinking Water Program with respect to FTE would decline to levels not seen since the early 2000s when the state was not able to keep up regulatory requirements and may not adequately protect public health.

Currently, the Safe Drinking Water Program has approximately 68.0 FTE. Of these, 54.0 are federally funded. The division will be evaluating resource needs going forward based on new federal regulations that must be adopted by early 2015 and implemented by 2016. Program services are primarily oriented to assist small, rural communities. These efforts have already been scaled back in response to federal funding cuts in the Drinking Water State Revolving Fund as noted above.

One option to generate more revenue would be to begin assessing fees for processing drinking water infrastructure treatment facilities design reviews. Such fees have been in place for wastewater infrastructure siting and design reviews since 2007. If the Division was directed to pursue this option, it would work with stakeholders to develop a similar fee structure as that for wastewater treatment. However, this kind of fee for service would only fund approximately 9.2 FTE. Depending on the severity, such fees may not entirely offset further federal funding cuts.

2. Clean Water Cash Fund Modifications

As detailed in the 2012 RFI, the following Clean Water Cash Funds may be considered:

- Public and Private Utilities
- Construction
- Commerce and Industry
- Biosolids
- Pesticides
- Water Quality Certifications

Rationale: These funds would contain fees generated from both fee-for-service work and from annual fees. The composition of the funds is based on the nature in which the Division provides services and the composition of stakeholders with permitting, certification, and compliance obligations in accordance with the Colorado Water Quality Control Act. The Division believes that if revenues and expenditures were tracked by fund, level of services with funds generated over time through fee and level of service refinements would be better aligned.

The first three fund categories are a sector based refinement of three program areas currently included in Fund 120 (process water, stormwater, and reclaimed water), plus Fund 249 (pretreatment). This refinement would allow combining of multiple permit types by type of facilities or site. For example, it combines permit fees collected from construction operators for process water discharges and stormwater discharges into the same fund. This more accurately aligns with the manner in which the Division provides permitting and inspection services. This refinement also combines similar stakeholder groups based on the types of activities they perform. Public and Private Utilities, Construction, and Commerce and Industry categories are projected to comprise approximately 90% of the total Clean Water Cash Fund. While Pretreatment is currently its own fund, it might be advisable to combine with the larger fund for public and private utilities, due to the small amount of the fund, the integrated nature of the services provided for public and private utilities, and alignment of the stakeholder groups.

- Public and Private Utilities Fund. This fund will contain fees collected from entities with Colorado Water Quality Control Act permit and compliance obligations associated with the operation of sewage systems/domestic wastewater treatment works, municipal separate storm sewer systems (MS4s), public water systems/water treatment facilities, and reclaimed water systems. These entities consist primarily of municipalities and special districts, but also include public entities providing services such as rest areas and campgrounds, private entities providing services such as housing (mobile home parks) and recreation (hotels and campground) facilities, and private industrial and commercial entities discharging into a publicly owned treatment works (POTWs).
- Construction Fund. This fund would contain fees collected from construction project owners and operators whose activities are subject to Colorado Water Quality Control Act permit and compliance obligations associated with their projects. This would include entities such as home builders, transportation and utility project owners and contractors, and industries such as oil and gas operators who need to construct an access network of roads and utilities as part of their business enterprise.
- Commerce and Industry Fund. This fund would contain fees collected from entities with Colorado Water Quality Control Act permit and compliance obligations associated with commercial and industrial operations resulting in a permitted discharge to waters of the State. These entities consist primarily of private business enterprises with operations in areas such as mining, oil and gas extraction, electrical power generation, food processing, automobile salvage, and timber harvesting. A small portion of the entities are public, and have a permitted discharge resulting from services such as airport operations and fish rearing operations.
- Biosolids Fund. This fund currently exists (Fund 128) and contains fees collected from entities that apply biosolids for beneficial reuse. It is recommended this fund continue in its

- current form because the biosolids program operates more independently than other program areas. The Commission has been granted the authority to establish fees within this fund for many years, and the framework has been and is expected to continue to be sustainable over time, with periodic refinement of the fee ceiling as defined in section 30-20-110.5 C.R.S. Statute.
- **Pesticides Fund.** A new and separate fund may be advisable for the pesticide program. This is a very new program area applicable to a diverse group of stakeholders that includes both public and private entities. Over time, once the regulatory requirements and permitting universe is better defined, understood, and stabilized, the need for this fund can be revisited.
 - **Water Quality Certifications Fund.** A new and separate fund might be beneficial for water quality certifications. A certification assesses impacts to water quality from various types of water supply and distribution and other construction projects and may require mitigation and post construction monitoring. The Colorado Governor's Office and Legislature have identified additional water storage and distribution projects as a high priority in response to the continuing drought conditions beginning in the early 2000s. There are five known large water development projects (Moffat Tunnel Expansion Project, Windy Gap Firming Project, Reuter Hess Reservoir Expansion, Northern Integrated Supply Project, and Halligan-Seaman Project) that will require certification from the Division in the next two to three years. Other smaller, but equally important, water development projects are also anticipated in the near future.

In 1983 the permit fee structure had 21 categories and 62 subcategories for direct discharges. Very little change has been made to the overall fee structure from 30 years ago. Some new categories and subcategories have been added to accommodate new types of operations permitted and types of general permits. The current permit fee structure has 25 categories and 102 subcategories. No categories/subcategories have been removed and there are many that are currently not in use. Sugar processing, petroleum refining, and oil and gas produced water discharges are examples of industrial sectors that illustrate how the fee structure has not kept pace with changes in the industrial climate in Colorado. There are 5 subcategories of fees each for sugar processing and petroleum refining, and today just one sugar processing facility and one petroleum refining facility are authorized to discharge to waters of the state. The structure for produced water discharges should be revisited.

E. Water Quality Control Commission's Authority to Set Fees

If the legislature were to move fees from statute to the Water Quality Control Commission and grant the Commission authority to establish and adjust fees, within a set ceiling defined by the legislature, the following rule making process would apply. The Commission's rulemaking process is typically preceded by a robust stakeholder process. The Division, as staff to the Commission, typically conducts regular meetings to discuss issues of concern with stakeholders and develop a proposal. Depending on the amount of controversy surrounding a particular proposal, this stakeholder process can last several months up to many years, depending on how much time is needed to engage in thorough discussion and attempt a resolution of issues.

Once a proposal is ready to move forward for a formal rulemaking hearing, the full process takes approximately four months. While there are variations in the process that occur depending on the circumstances, the process is fairly routine. First, a Notice of Rulemaking is published in the Colorado Register. The hearing notice includes a deadline for interested persons to request party status in the hearing. The proponent of the regulatory proposal must submit a prehearing statement to support its proposal. All persons with party status then have an opportunity to file a responsive prehearing statement. There is then an opportunity for rebuttal comments. A prehearing conference is generally scheduled

approximately one month prior to the hearing. There is an effort made to narrow and resolve outstanding issues at the prehearing conference. During the rulemaking hearing, the Division and the parties are asked to provide a summary of their positions and be available for questions from the Commissioners. Following the close of testimony by the Division and the parties, the Commission begins its deliberations to determine what action to take. The Commission's decision is often reflected initially in preliminary final approval of a rule or revisions to a rule, with final action taking place at the Commission's next meeting. This process could be used to work with stakeholders and adjust fees as appropriate. Permitting The Commission to establish fees would allow stakeholders, Division staff, and the Commission to work together to ensure resources are aligned with services.

For detailed information about the Commission's process, please consult the Water Quality Control Commission Public Participation Handbook, which can be found at:

<http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheadername1=Content-Disposition&blobheadername2=Content-Type&blobheadervalue1=inline%3B+filename%3D%22Public+Participation+Handbook.pdf%22&blobheadervalue2=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251880253917&ssbinary=true>
