

**Schedule 13
Change Request for FY 2010-11 Budget Request Cycle**

Decision Item FY 2010-11 Base Reduction Item FY 2010-11 Supplemental FY 2009-10 Budget Amendment FY 2010-11

Request Title: Water Quality Control Division Water Quality Control Fund
 Department: Department of Public Health and Environment Dept. Approval by: *[Signature]* Date: 10/10/09
 Priority Number: DI-1 OSPB Approval: *[Signature]* Date: 10-13-09

	Fund	1	2	3	4	5	6	7	8	9	10
		Prior-Year Actual FY 2008-09	Appropriation FY 2009-10	Supplemental Request FY 2009-10	Total Revised Request FY 2009-10	Base Request FY 2010-11	Decision/ Base Reduction FY 2010-11	November 1 Request FY 2010-11	Budget Amendment FY 2010-11	Total Revised Request FY 2010-11	Change from Base (Column 6) FY 2011-12
Total of All Line Items	Total	4,524,022	3,685,051	0	3,685,051	3,742,466	199,032	3,941,498	0	3,941,498	199,032
	FTE	44.2	44.5	0.0	44.5	44.5	0.0	44.5	0.0	44.5	0.0
	GF	241,635	195,620	0	195,620	199,073	0	199,073	0	199,073	0
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	3,190,527	3,056,455	0	3,056,455	3,110,417	199,032	3,309,449	0	3,309,449	199,032
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	1,091,860	432,976	0	432,976	432,976	0	432,976	0	432,976	0
(6) Water Quality Control Division, (C) Permitting and Compliance Assurance, Personal Services	Total	4,524,022	3,685,051	0	3,685,051	3,742,466	199,032	3,941,498	0	3,941,498	199,032
	FTE	44.2	44.5	0.0	44.5	44.5	0.0	44.5	0.0	44.5	0.0
	GF	241,635	195,620	0	195,620	199,073	0	199,073	0	199,073	0
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	3,190,527	3,056,455	0	3,056,455	3,110,417	199,032	3,309,449	0	3,309,449	199,032
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	1,091,860	432,976	0	432,976	432,976	0	432,976	0	432,976	0

Non-Line Item Request: None
 Letternote Revised Text: a Of these amounts, \$2,527,184 \$2,726,216 shall be from the Water Quality Control Fund created in Section 25-8-502 (1) (c), C.R.S., \$173,252 shall be from the Biosolids Management Program Fund created in Section 30-20-110.5 (3), C.R.S., \$146,088 shall be from fees collected by the Industrial Pretreatment Program established in Section 25-8-508, C.R.S., and \$305,074 shall be from various sources of cash funds.

Cash or Federal Fund Name and CFRS Fund Number: Fund 120, Water Quality Control Fund
 Reappropriated Funds Source, by Department and Line Item Name: N/A
 Approval by OIT? Yes: No: N/A:
 Schedule 13s from Affected Departments: N/A

OSPB Common Policy for FTE Requests

Fiscal Year(s) of Request	Title	FTE and Operating Costs									GRAND TOTAL		
		FY 10-11	FY 11-12	FY 12-13	FY 10-11	FY 11-12	FY 12-13	FY 10-11	FY 11-12	FY 12-13	FY 10-11	FY 11-12	FY 12-13
PERSONAL SERVICES													
Number of PERSONS / class title													
Number of months working in FY 10-11, 11-12, & 12-13													
Number months paid in FY 10-11, 11-12, & 12-13													
Calculated FTE per classification		3.0	3.0	3.0	0.0	0.0	0.0	0.0	0.0	0.0	3.0	3.0	3.0
Annual base salary		\$178,344	\$178,344	\$178,344	\$0	\$0	\$0	\$0	\$0	\$0	\$178,344	\$178,344	\$178,344
Salary		\$178,344	\$178,344	\$178,344	\$0	\$0	\$0	\$0	\$0	\$0	\$178,344	\$178,344	\$178,344
PERA	10.15%	\$18,102	\$18,102	\$18,102	\$0	\$0	\$0	\$0	\$0	\$0	\$18,102	\$18,102	\$18,102
Medicare	1.45%	\$2,586	\$2,586	\$2,586	\$0	\$0	\$0	\$0	\$0	\$0	\$2,586	\$2,586	\$2,586
Subtotal Personal Services at Division Level		\$199,032	\$199,032	\$199,032	\$0	\$0	\$0	\$0	\$0	\$0	\$199,032	\$199,032	\$199,032
OPERATING EXPENSES													
Supplies @ \$500/\$500 ²	\$900	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Computer @ \$900/\$0	\$900	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Office Suite Software @ \$330/\$0	\$330	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Office Equipment @ \$3,440/\$0 (includes cubicle and chair)	\$3,440	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Telephone Base @ \$450/\$450 ²	\$450	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Subtotal Operating Expenses		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
GRAND TOTAL ALL COSTS		\$199,032	\$199,032	\$199,032	\$0	\$0	\$0	\$0	\$0	\$0	\$199,032	\$199,032	\$199,032

1 - Initial year full salary is 11 months to account for Pay Date Shift if General Fund employee.

2 - The \$450 for Telephone Base and \$500 for Supplies will carry over each year as an acceptable expense. Items are prorated for partial FTE.

3 - Other non-routine expenses such as Fleet, Leased space, or a laptop must be separately defended and calculated. Please provide documentation to justify these requested costs. Agencies must work with DPA or the Governor's Office of IT when requesting Fleet, MNT, GGCC, or other centralized items administered by this Department.

4 - Computer contract hours should be estimated at \$100 /hour for a Project Manager. Other costs could include \$86/hour for an IT Business Analyst, \$74/hour for a Programmer and \$65 for a Network Administrator. Legal fees should be \$75.38 (blended attorney and paralegal services estimate charged by Dept. of Law). Exceptions will only be given if sufficient justification is provided. Mileage reimbursement rates are outlined below:

Mileage Reimbursement	
2-wheel drive (90% of IRS rate (set at \$0.55 in 2009))	\$0.50
4-wheel drive (93% of IRS rate (set at \$0.55 in 2009))	\$0.53
nautical mileage	\$0.40

CHANGE REQUEST for FY 2010-11 BUDGET REQUEST CYCLE

Department:	Public Health and Environment
Priority Number:	DI-1
Change Request Title:	Water Quality Control Division Water Quality Control Fund

SELECT ONE (click on box):

- Decision Item FY 2010-11
- Base Reduction Item FY 2010-11
- Supplemental Request FY 2009-10
- Budget Request Amendment FY 2010-11

SELECT ONE (click on box):

Supplemental or Budget Request Amendment Criterion:

- Not a Supplemental or Budget Request Amendment
- An emergency
- A technical error which has a substantial effect on the operation of the program
- New data resulting in substantial changes in funding needs
- Unforeseen contingency such as a significant workload change

Short Summary of Request:

The Water Quality Control Division requests an increase in cash spending authority of \$199,032 from the Water Quality Control Fund (Fund 120) to provide sufficient spending authority for 3.0 authorized FTE for whom there is not sufficient spending authority. The division anticipates existing cash revenues and reserves from permit fees will support this additional spending authority without the need for a fee increase through FY 2014-15. Receipt of this spending authority will help to reduce a backlog of water permit approvals, improve service to water providers, and protect water quality.

Background and Appropriation History:

In 1975 the Environmental Protection Agency (EPA) delegated authority to the Colorado Department of Public Health and Environment (CDPHE) for the federally mandated National Pollutant Discharge Elimination Program (NPDES) under the federal Clean Water Act. The federal NPDES program is implemented by the Water Quality Control Division through the Colorado Discharge Permit Program. To retain delegation the department must maintain sufficient authorities and resources to administer the minimum requirements under the NPDES program, and it must obtain additional authority and resources that may be needed to implement new program elements adopted by the EPA

and incorporated into the state program by the Water Quality Control Commission. The department frequently identifies, analyzes and reports the need for additional resources, such as those indicated in the Senate Bill 03-276 Report, Footnote 109 Report and most recently the Request for Information 55 and 53 Reports¹. The division is not requesting all of the resources identified in prior reports, however, this decision item is prioritizing the positions that are most needed with the funding that is currently available.

General Description of Request:

The division administers and enforces the state's water quality programs to ensure that the quality of all surface and ground water is protected, maintained, and, as appropriate, improved for beneficial uses, including aquatic life, public water supplies, recreational uses and agricultural uses. Entities such as municipal and industrial wastewater treatment plants, mines, oil and gas production facilities and construction sites, are required to obtain a permit prior to discharging into state waters. Permits are issued for five-year terms and they include conditions such as effluent limits to protect water quality standards or best management practices to ensure that water quality is suitable for the beneficial uses. New water quality standards or other requirements adopted by the Water Quality Control Commission to better protect and enhance the state's water quality are incorporated into new or renewed permits. The division reviews and processes permit applications, drafts and issues permits, oversees compliance, and, when appropriate, takes enforcement actions for violations of permit conditions or other water quality program requirements. New dischargers may not operate until their final discharge permit is issued. Dischargers with existing permits are authorized to continue to discharge under the terms of their expiring permit so long as they have timely applied for a new permit. The division's goal is to process all permit applications and to issue a final permit no later than 180 days after the receipt of a new application for a new permit, or for the renewal of an existing permit, within 180 days after the date the existing permit expires. Permits not issued within these timeframes are considered part of the permit system "backlog."

¹ **Request for Information Text:** Department of Public Health and Environment, Water Quality Control Division – The Department is requested to submit a report on the Water Quality Control Division. This report is requested to include a summary of the Division's current and anticipated workload, including the impact of existing and proposed federal and state program requirements, as well as the associated funding and staffing needs. This report is requested to include information on the upcoming fiscal year and out-years. The Department is requested to submit this report to the Joint Budget Committee by November 1, of the following year.

The division protects the state's surface waters largely through the implementation of the National Pollutant Discharge Elimination System (NPDES) permitting program delegated by the EPA to CDPHE. To retain delegation of the NPDES program, the state must maintain the authority to administer and enforce the minimum federal requirements for delegation; it must meet minimum federal requirements for the administration and enforcement of the NPDES program; and it must secure the resources necessary to ensure the appropriate levels of program administration and enforcement.

The additional spending authority in this request is needed in order for the division to meet the obligations of its delegated NPDES program authority from the EPA; to protect public health and the environment; and to timely respond to new or expanded municipal and industrial growth requirements. These obligations include issuing discharge permits in a timely manner, reducing the backlog of permits, providing compliance assurance, and reporting required data in EPA's Integrated Compliance Information System (ICIS) Clean Water Database.

EPA set a limit for the division's permit backlog at 10 percent. As of July 1, 2009, the division's permit backlog was approximately 17 percent, which equates to 250 permits in the queue for processing. Without additional staff support, this backlog will continue to grow, harming water quality, preventing industry and local governments from expanding and jeopardizing the division's ability to meet EPA standards. Continued failure to meet requirements could eventually lead to intervention from the EPA. If the backlog is not addressed, the division risks losing some or all of the approximately \$2.2 million in federal water quality control funding. The division estimates that 16.0 FTE are required to limit and reduce current backlog growth, address data compliance requirements, and amend applicable water permits with updated standards.

This request is only seeking additional spending authority to enable the division to fill 3.0 existing FTE. The need for additional spending authority is an issue which has been evolving over the last several years. The personal services costs associated with division decisions, such as hiring FTEs above the minimum due to the higher level of decision

making required has resulted in insufficient spending authority which has meant that the positions have not been filled. This inability to fill the positions has contributed to the growth of the backlog.

Despite the significant needs, the division's request is conservative due to awareness of the need to maintain fund balance in the Water Quality Control Fund. If this request is authorized, and other factors such as permit volumes remain steady, the fund will remain solvent until FY 2014-15.

Future legislative fee increases will be necessary to obtain the additional 13.0 FTE and to maintain the existing FTE beyond FY 2014-15. The department hopes to begin discussions with the water community on the need for increased fees. These discussions will include the determination of appropriate fee levels as well as appropriate timing for legislation. In the meantime, the department can improve its efforts to comply with federal and state laws by filling all its existing authorized FTE which will enable the division to make some progress toward reducing the permit backlog and demonstrate good faith compliance efforts to the EPA. These 3.0 FTE are Environmental Protection Specialists. Workload and hours required for the unit's activities is summarized in the chart below. Details for the calculations are included within the Assumptions for Calculation section.

Category	Total Hours Annually	Total FTE Needed	Current FTE working in Program	FTE Shortfall
Permits	32,668	15.7	6.2	9.5
Compliance	5,457	2.7	1.0	1.8
Data Management	13,045	6.3	1.5	4.8
Total	51,170	24.7	8.7	16.0

Consequences if Not Funded:

Discharge permits issued by the Water Quality Control Division impact a wide range of business, health, and environmental concerns within the state. Failure to process permits or to provide adequate oversight can lead to discharges that pollute surface and ground

water, harming fish and other wildlife, and contaminating recreational and agricultural water. Additionally, failure to process permits in a timely manner can negatively impact dischargers such as municipal governments and industries. For example, new permits must be issued to municipalities for expanded waste water systems based on population growth. If the municipality has had significant population growth, but cannot get a timely updated permit, it may violate its discharge limits. This can lead to fines and lost tax revenue as well as opening the municipality up to legal action. See the chart below for permit delay consequences on other permittees.

Type of Discharger	Typical Reason for Permit or Permit Amendment	Consequence of Delay in Permit
Municipal (Wastewater)	Increase in the number of residences or commercial wastewater dischargers (i.e. new homes or business sites).	A delay in permit issuance will cause a delay in expansion of homes or businesses, which may have a tax revenue impact for expanding municipalities.
Industrial	Growth of product line requires additional discharge	Frequently, product line expansion has a related increase in discharge needs. If a discharge permit is delayed, a product line introduction may also be delayed. If this occurs frequently, industry may choose to locate elsewhere.
Construction	Ground water discharged from construction site to allow subsurface (basement) construction.	Delay in permit issuance or certification may delay construction, which in turn may result in lost revenue for developers, municipalities and ultimately the state.

Calculations for Request:

Summary of Request FY 2010-11	Total Funds	Cash Funds	FTE
Total Request	\$199,032	\$199,032	0.0
(6) Water Quality Control Division, (C) Permitting and Compliance Assurance, Personal Services (Spending authority for 3.0 existing FTE)	\$199,032	\$199,032	0.0

Summary of Request FY 2011-12	Total Funds	Cash Funds	FTE
Total Request	\$199,032	\$199,032	0.0
(6) Water Quality Control Division, (C) Permitting and Compliance Assurance, Personal Services (Spending authority for 3.0 existing FTE)	\$199,032	\$199,032	0.0

Cash Funds Projections:

Cash Fund Name	Cash Fund #	FY 2008-09 Expenditures Estimate	FY 2008-09 End of Year Cash Balance Estimate	FY 2009-10 End of Year Cash Balance Estimate	FY 2010-11 End of Year Cash Balance Estimate	FY 2011-12 End of Year Cash Balance Estimate
Water Quality Control Fund	120	\$4,638,496	\$1,459,086	\$1,839,512	\$1,749,678	\$1,467,348

Assumptions for Calculations:

Timely Issuance of Permits and reduction of backlog

- 3.0 FTE will be hired at the EPS II level.
- Activities will be broken out as follows:
 - Write permits for new facilities, renewal permits and permit amendments (80% of time)
 - Develop compliance schedule and site specific permit conditions (15% of time)
 - Develop requirements for permits (5% of time)

Permit Related Workload

Category		Description	Total Number of Cases Reviewed or Recorded Every 5 Years	Hours per Review	Total Hours Over 5 Years to Complete Actions	Total FTE Needed (Total Hours divided by 2080 hrs/yr divided by 5 yrs)	Current FTE working in Program	FTE Shortfall
Permits	Individual	Permits specifically tailored to an individual activity/site requiring detailed analysis and a public process.	429	240	102,960	9.9	4.3	5.6
	Amendments	An amendment to a current permit to change limits, revise a schedule of compliance, etc. Can be very simple to somewhat complex	536	60	32,160	3.1	0.7	2.4
	General	A permit issued to authorized discharge from a large class of activities that meet certain criteria.	29	300	8,700	0.8	0.5	0.3
	Certifications	An activity (discharger) is certified that it meets the criteria to be authorized to discharge under the general permit.	1,220	16	19,520	1.9	0.7	1.2
PERMIT TOTAL					163,340	15.7	6.2	9.5
Compliance						2.7	1.0	1.8
Data Management						6.3	1.5	4.8
OVERALL TOTAL						24.7	8.65	16.0

Cost Item	Rate	FTE	FY 2010-11	FY 2011-12
Program Appropriation Line Costs:				
Salary EPS II	\$59,448	3.0	\$178,344	\$178,344
PER	10.15%	3.0	\$18,102	\$18,102
Medicare	1.45%	3.0	\$2,586	\$2,586
Subtotal Program Line Costs			\$199,032	\$199,032

Impact on Other Government Agencies: This request will not have an impact on any other government agency

Cost Benefit Analysis: Timely issuance and revision of permits within the Water Quality Control Program have an impact on a wide range of business, health, and environmental concerns within Colorado. The permits issued under the program require those discharging into surface water or ground water, such as industry and municipalities, to comply with water quality standards. These standards are established to protect the health of Colorado’s citizens and environment. If existing permits are not amended in a timely manner, discharges will not be held to those standards that are critical to the health of the state. This will have a large impact on Colorado’s aquatic life, agriculture, tourism, and citizens.

In addition, without the additional spending authority requested in this decision item, the division will be unable to meet EPA mandates thus risking public health and bringing more EPA oversight. Failing to reduce the permit backlog to meet EPA mandates could result in the loss of \$2.2 million in Performance Partnership Grant money for the water quality program. Although it is unlikely, EPA could ultimately revoke the Division’s delegation of the national permitting program. Removal of delegated authority would likely result in significant problems for Colorado industries and municipalities. EPA would be slower to issue permits and would impose a general approach with more requirements. Impacts would include delayed implementation of new infrastructure and lost revenue due to delays in authorization to discharge from expanded manufacturing or other industrial activities or from municipal facilities.

Implementation Schedule:

Task	Month/Year
FTE Hired	July 2010
Achieve Backlog Target of 14.5%	June 2011

Statutory and Federal Authority:

Citation for Clean Water Act: 33 USC 1251 (FWPCA 101 through 1387 (FWPCA 607). 25-8-302. CRS (2009) Duties of division
(1) The division shall
(a) Carry out the enforcement provisions of this article, including the seeking of criminal prosecution of violations and such other judicial relief as may be appropriate;
(b) Administer the permit system as provided in part 5 of this article;
(f) Review and certify, conditionally certify, or deny requests for certifications under the provisions of section 401 of the federal act and this article, known as "401 certificates". Conditions attached to the division's certification shall only implement rules which the commission has made applicable to 401 certifications. General or nationwide permits under section 404 of the federal act shall be certified for use in Colorado without the imposition of any additional state conditions. Appeals by an affected entity of a final 401 certification decision of the division shall be heard in accordance with section 24-4-105, C.R.S., of the "State Administrative Procedure Act

Performance Measures:

Performance Measure	Outcome	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
		Actual	Actual	Approp.	Request
Percent of final compliance deadlines met in enforcement actions for numeric effluent violations.	Benchmark	NA	NA	85%	90%
	Actual	New Measure	New Measure		