

**FILE**

Rudolph

# COLORADO

## FEDERAL CLEAN WATER ACT

### PROGRAM DELEGATION AGREEMENTS



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Colorado Department  
of Public Health  
and Environment

WATER QUALITY CONTROL DIVISION

SEPTEMBER 1995

# STATE OF COLORADO

Roy Romer, Governor  
Patti Shwayder, Acting Executive Director

*Dedicated to protecting and improving the health and environment of the people of Colorado*

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Denver, Colorado 80220-3716  
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Colorado Department  
of Public Health  
and Environment

October 10, 1995

Mr. Robert Burm  
U.S. EPA  
999 18th Street - Suite 500  
Denver, CO 80202-2466

RE: Delegation Package

Dear Mr. Burm

By this letter the Division is transferring 1 original (light blue cover) plus 9 copies of the Colorado - Federal Clean Water Act Program Delegation Agreements. These documents were hand delivered today and are to be considered a formal submittal for consideration pursuant to the provisions of 40 CFR Part 123.

Should there be any questions on these items, please consider me the primary contact for the delegation package.

Sincerely,

Robert J. Shukle, Chief  
Permits & Enforcement Section  
WATER QUALITY CONTROL DIVISION

By my signature here I attest to receipt of the described documents on October 10, 1995.

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# STATE OF COLORADO

## EXECUTIVE CHAMBERS

136 State Capitol  
Denver, Colorado 80203-1792  
Phone (303) 866-2471



Roy Romer  
Governor

September 28, 1995

Mr. William P. Yellowtail, Regional Administrator  
U. S. Environmental Protection Agency  
Region VIII  
999 18th Street - Suite 500  
Denver, Colorado 80202-2466

RE: Colorado NPDES Program Delegation

Dear Mr. Yellowtail:

The State of Colorado was originally granted primacy for the National Pollutant Discharge Elimination System (NPDES) program on March 27, 1975. Undercover of this letter I am submitting a revised delegation package that, in part, represents the current State NPDES program. At this time however, the State of Colorado also seeks State primacy for Clean Water Act programs which include: 1) federal facilities, 2) pretreatment, and 3) biosolids.

In accordance with the provisions of 40 CFR 123.21, the State of Colorado has prepared the following documents:

1. Memoranda of Agreement between the State of Colorado, Department of Public Health and Environment and the U. S. Environmental Protection Agency, Region VIII, for the above identified program.
2. Descriptions of the state programs as they are presently being implemented and will continue following delegation.
3. A statement by Gale Norton, Attorney General, State of Colorado, which attests to the adequacy of the state statutory and regulatory authority for participating in the Federal Clean Water Act programs.
4. A copy of the State of Colorado Water Quality Control Act, Chapter 25, Article 9.

Mr. William P. Yellowtail, Regional Administrator  
U. S. Environmental Protection Agency  
September 28, 1995  
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5. A copy of the State of Colorado Regulations for:

- . State Administrative Procedures Act, (C.R.S. 24-4-101)
- . Colorado Public (Open) Records Act, (C.R.S. 24-72-201)
- . Permit Regulations for the State Discharge System, 6.1.0 (5 CCR 1002-2)
- . Regulations for Effluent Limitations, 10.1.0 (5CCR 1002-3)
- . Basic Standards and Methodologies for Surface Water, 3.1.0 (5 CCR 1002-8)
- . Pretreatment Regulations, 4.3.0 (5 CCR 1002-20).
- . Biosolids Regulations, 4.9.0 (5 CCR 1002-19).
- . Procedural Rules, 2.1.0 (5 CCR 1002-1)
- . Beneficial Use of Water Treatment Sludge & Fees Applicable to the Beneficial Use of Sludges, (5 CCR 1003-7)

6. A copy of additional support information:

- . Enforcement Management System - May 1, 1993
- . CDPS Permit Applications

In addition, I wish to assure you that I will make every effort to make any required changes or additions to the state laws and regulations that will be necessary for continued participation in these Clean Water Act programs.

I am very pleased with the level of cooperation that has developed between our water programs over the past 20 years and look forward to ever increasing cooperation between our agencies for the future on the Clean Water Act programs.

Sincerely Yours,



Roy Romer  
Governor

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  11. ~~Enforcement Management System - May 1, 1993.~~
  12. ~~CDPS Permit Applications~~





# NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

## MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION VIII

### Section I. General

This Memorandum of Agreement (hereafter "Agreement" or "MOA") establishes policies, responsibilities and procedures pursuant to 40 CFR Part 123 and defines the manner in which the National Pollutant Discharge Elimination System (NPDES) will be administered by the State of Colorado, Department of Public Health & Environment, Water Quality Control Division (hereinafter "Division") and reviewed by Region VIII of the United States Environmental Protection Agency (hereinafter "EPA"). This MOA replaces the Memorandum of Agreement between EPA and the Division approved March 27, 1975.

The State Director and the Regional Administrator hereby agree to maintain a high level of cooperation and coordination in a partnership to assure successful and effective administration of NPDES. If requested by either party, meetings between the State and EPA will be scheduled at reasonable intervals to review specific operating procedures, resolve problems, or discuss material concerns involving the administration of the State's permit program.

In this partnership, EPA will provide to the Division on a continuing basis, technical and other assistance on permit matters as requested. The Division has primary responsibility for implementing the NPDES program for Colorado. The Division will administer the NPDES program in accordance with section 402 of the Federal Clean Water Act (CWA), 33 U.S.C. Sec.1251 et. seq. (hereinafter CWA), applicable State legal authority, the requirements of 40 CFR Parts 122-125 and any other applicable Federal regulations, and the annual State 106 work plan. The Division has the primary responsibility to establish State NPDES program priorities which are consistent with national NPDES goals and objectives.

The strategies and priorities for issuance, compliance monitoring and enforcement of permits, as established in this MOA, may be set forth in more detail in the annual State 106 work plan, the State Enforcement Management System (EMS) and the State/EPA Enforcement Agreement signed by the Division and the Regional Administrator of EPA Region VIII. This MOA, the State 106 work plan, the State/EPA Enforcement Agreement and any other State/EPA agreement(s) regarding the NPDES program shall be consistent. However, the basic requirements of this MOA shall override any other State/EPA agreement(s) as required by 40 CFR Sec. 123.34(c).

### Section II. Program Responsibilities

#### A. Division Responsibilities

In accordance with the priorities and procedures established in this Agreement and the annual State 106 work plan, the Division will:

1. Develop and maintain, to the maximum extent possible, the legal authority (including State regulations) and the resources required to carry out all aspects of the NPDES program.

2. Process in a timely manner and propose to issue, reissue, or modify all NPDES permits. Permit applications by major dischargers shall normally receive first priority in all NPDES activities, depending on water quality and public health considerations.

3. Comprehensively evaluate and assess compliance with schedules, effluent limitations and other conditions in permits as outlined in section IV of this Agreement.

4. Maintain a vigorous enforcement program by taking timely and appropriate actions in accordance with the CWA, and as outlined in Section IV of this Agreement, the Enforcement Management System, and any State/EPA Enforcement MOUs which include the permit program.

5. Maintain an adequate public file at the central office (which must be easily accessible to EPA for audit purposes) for each permittee. Such files must, at a minimum include copies of:

Permit Application;

Issued Permit;

Public Notice and Rationale (when prepared);

Discharge Monitoring Reports;

All Inspection Reports;

All Enforcement Actions; and

Other pertinent information and correspondence.

6. Maintain an effective program to carry out the Pretreatment Program and Biosolids Program responsibilities outlined in Section V of this Agreement;

7. Cooperate with EPA in the administration of the NPDES program in accordance with EPA program policies and guidance.

8. The Division will submit to the Regional Administrator the information described in section VI of this Agreement, the annual State 106 work plan and applicable portions of 40 CFR Part 123. Additionally, upon request by the Regional Administrator, the Division shall submit specific information and allow access to files necessary for evaluating Division administration of the NPDES program.

9. The Division intends all portions of this MOA to apply to federal facilities without limitation, except as provided in this paragraph and paragraphs Part II.B.7 and Part III.L. Upon approval of the Colorado program and transmittal of data as described in Part II.B.7 below, the Division will assume full NPDES program responsibility for all active permits which are current and not administratively extended. For those permits administratively extended, the Division will assume responsibility once a renewal permit is issued, effective and all permit appeals resolved.

#### B. EPA Responsibilities

1. EPA commits to funding the Division to the maximum extent possible to support its NPDES activities.

2. EPA will provide technical support and assistance to the Division in the following areas:

-Interpretations of Effluent Limitation Guidelines (ELG) regulations.



-Development of technology-based effluent requirements and related "best management practices," which include the use of "best professional judgement."

-General technical assistance in processing permit applications.

3. EPA will ensure that the Division is kept fully informed and up to date concerning:

EPA contractor reports; draft and final EPA development documents; and draft, proposed and final ELG regulations for various industry categories.

Draft and final settlement agreements between EPA and litigants which concern the interpretation or modification of ELG regulations for various industry categories.

Draft, proposed, and final versions of EPA regulations, technical guidance, policy and procedures which pertain to implementation of the NPDES program and water quality planning program.

4. EPA will provide the Division with the opportunity for meaningful involvement in program development activities and program initiatives. EPA will keep the Division informed of development of NPDES program policy statements, strategies and related guidance, and provide for input by the Division when appropriate.

5. As outlined in section VII of this Agreement, EPA will oversee the administration of NPDES on a continuous basis for consistency with the CWA, this Agreement, the annual State 106 work plan, and all applicable federal regulations and policies. EPA will, as a part of its assessment, consider among other things, review of permits, reports, and enforcement actions submitted by the Division and may also consider comments from a permittee, the public, and federal and local agencies concerning the Division's administration of NPDES. Any such comments considered by EPA will be brought to the attention of the Division by written correspondence if the commenting party has not previously communicated this comment to the Division. Any information obtained or used by the Division under the NPDES program shall be available to EPA upon request without restriction. If the information has been submitted to the Division under a claim of confidentiality, the Division shall inform EPA of that claim. Claims of confidentiality will be treated in accordance with 40 CFR Part 2, Subpart B; and 40 CFR 122.7.

6. In order to assure that the Division is kept fully informed and up to date concerning approved state water quality standards to be used in drafting permits, EPA will notify the Division in writing of the approval of any revised or new standards within 60 days of the date of submission of such standard to EPA and of the disapproval of any revised or new standards within 90 days of the date of submission of such standard to EPA, in accordance with the provisions of section 303(c)(3) of the CWA. These time frames may be extended under circumstances which warrant it, such as consultation with the U.S. Fish & Wildlife Service.

7. Relative to federal facilities, within 30 days of approval of the Colorado program EPA shall transmit to the Division a list of all federal facilities that have NPDES permits which are effective and not administratively extended. NPDES program responsibility for the identified facilities shall at this point transfer to the Division. At such future time as additional permits are made current and all permit appeals resolved, EPA shall transfer future program responsibility to the Division in the fashion described in this paragraph. In the event that EPA has not issued all permits within one year of the date of EPA signature to this document, the Division may request that authority to issue the remaining permits be transferred to the Division and EPA shall transfer such authority.



### Section III. Permit Review and Issuance

The Division is responsible for expeditiously drafting, providing public notice for, issuing, modifying, reissuing, and terminating permits in accordance with section VI below, 40 CFR Parts 122-125 and any other applicable regulations.

#### A. Receipt of New Permit Applications by the Division

The Division will enter into EPA's National Permit Compliance System (PCS) WENDB and other data elements in accordance with the 1985 PCS policy statement and subsequent updates to that policy as transmitted by EPA to the Division.

#### B. Permit Reissuance

All expiring NPDES permits shall be reissued on or before their date of expiration. If such timely reissuance is not possible, the Division will notify EPA of the reason for delay, upon request. In no event will permits, administratively continued beyond an expiration date, be modified or revised.

#### C. EPA Review of Draft Permits and Permit Modifications

1. Unless otherwise waived, EPA will review all draft permits. At the time of issuance of public notice, the Division shall send the EPA one copy of the public notice, the draft permit, and the rationale (fact sheet) for each facility. If the permit is for a possible new source under CWA section 306, the submittal shall include limitations for the appropriate new source/new discharger category. EPA shall have 30 days to comment upon, object to, make recommendations or request extension of the comment period with respect to the draft permit. The time for EPA review shall be extended to 90 days upon written request of EPA. EPA will send to the Division written agreement, comments, or objections to each draft permit, including a statement of the reasons for the comments or objections and the sections of the CWA or regulations which support them. In the event EPA files a "general objection" to a draft permit, it shall have 90 days from receipt of the draft permit to supply the specific grounds for objection, and the terms and conditions which should be included in the permit. If the initial permit information supplied by the Division is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, EPA may file an "interim objection" under 40 CFR 123.44(d) and request the Division to transmit the complete record (or portion thereof) of the Division permit proceedings. The full period for EPA review shall recommence upon receipt of the requested information.

2. If (a) the proposed final permit does not differ from the draft permit defined in the public notice, (b) EPA has not objected to the draft permit, and (c) significant public comments have not been made, the Division may issue the permit without further review by EPA. In those cases where public comment on a draft permit is received, response to comments prepared pursuant to 40 CFR 124.17 will be developed and presented in the rationale. When in the judgement of the Division, a final issued permit would be less stringent than the draft public notice permit, such permit shall be re-public noticed. Where the final issued permit differs from the public notice permit, EPA shall retain veto authority, based upon the revisions, and this veto provision in no way limits or restricts normal veto authority.

3. In the event the Regional Administrator objects to a permit under either paragraph c(1) or (2), above, the Regional Administrator shall so notify the Division in writing as to the reasons for the objection and the actions necessary to eliminate the objection. EPA's objections must be based on one or more of the criteria identified in 40 CFR 123.44. The Division has the right to a public hearing on the objection. If EPA's concerns are not satisfied within ninety (90) days of the notice of objection (or thirty (30) days following a public hearing on the objection), exclusive authority to issue the permit vests in EPA.



D. Waiver of Permit Review by EPA

1. EPA may waive the right to comment on, or object to, the sufficiency of permit applications, draft permits, proposed final permits, and final (issued) permits for all discharges or proposed discharges with the exceptions of the categories described below:

- a. Discharges which may affect the waters of another State;
- b. Discharges proposed to be regulated by general permits;
- c. Discharges from publicly owned treatment works with a daily average discharge exceeding one million gallons per day;
- d. Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day;
- e. Discharges from any major discharger;
- f. Discharges from any discharger within any of the industrial categories listed in Appendix A to 40 CFR Part 122;
- g. Discharges from any other source with a daily average discharge exceeding 0.5 million gallons per day, except, discharges of non-process w

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right of EPA to petition the Division for review of permits because of violation of Federal, State or local laws, rules, regulations, or effluent guidelines.

Martha Rudolph -

NOV - 9 1995  
These pages replaces the existing pages 546 in the NPDES-MOA. We have changed the language under item 5 E. for USFWS. Please toss the old page.

Thanks

Bob Shukle

E. U.S. Fish & Wildlife Service

The Division will annually meet with the U.S. Fish & Wildlife Service (USFWS) to review the list of expiring permits and identify those which USFWS wishes to review, relative to protection of federal trust resources including threatened and endangered species and migratory birds. Also, a copy of all monthly public notice sheets will be provided to the USFWS from which they may request copies of the individual draft permits for review. A copy of the draft public notice permits, identified either in the annual review or selected from the monthly public notice sheet, will be timely provided to the USFWS. USFWS agrees to provide comment within the established 30 day public notice period, but should special circumstances warrant additional review time, additional time may be requested from the Division. If either CDPHE, EPA, or USFWS determines that any discharges authorized by a permit may adversely affect federally listed and or proposed threatened or endangered species or migratory birds, the CDPHE will work with the EPA and USFWS to eliminate the adverse effect. If any adverse effect



cannot be eliminated to the satisfaction of the EPA and USFWS, EPA will formally object to the permit, and following reversion of the permit to EPA under the formal objection process, EPA will request consultation with the USFWS (per Section 7 of the Endangered Species Act.)

#### F. Public Participation

1. Permit applications, public notice draft permits, public notices, and fact sheets or statement of basis will be made available to any party upon request upon payment of applicable state duplicating fees.

2. The Division will prepare and distribute copies of all public notices and fact sheets in accordance with 40 CFR 124.8 and 124.10 unless otherwise waived by the specific organization.

3. All individual and general NPDES permits shall be public noticed in a daily or weekly newspaper within the area affected by the activity, in accordance with 40 CFR 124.10(c)(2)(i).

4. The Division will provide 30 days public notice for any formal public hearing, in accordance with 124.10(b)(2). For any public meetings held the Division will provide public notice in accordance with section 6.6.3(1) & (2) of the Regulations for the State Discharge Permit System.

5. The Division will consider and appropriately condition final permits for comments received from government agencies as required by 40 CFR 124.59.

6. The Division will public notice 316 variances for thermal discharges as required by 40 CFR 124.57(a).

#### G. Issuance of Permits or Notice of Intent to Deny

1. If the final determination is to issue the permit, the final permit will be forwarded to the permit applicant, along with a transmittal letter notifying the applicant that the permit is being issued. Copies of issued permits will be forwarded to EPA in accordance with the schedule contained in section V of this Agreement.

2. If the final determination is to deny the permit, notice of intent to deny shall be given to EPA and to the applicant in accordance with NPDES regulations.

3. In accordance with 40 CFR 124.17, at the time of final permit issuance, any provisions that have been changed from those proposed in the public notice version will be identified and the basis for the change specified. Such information will be as an addendum to the permit rationale, and thus available to the permittee and public.

4. In accordance with 40 CFR 122.44(m), for a privately owned treatment works, conditions expressly applicable to a user will be identified in a permit for which the user is a limited co-permittee or in a permit for which the user is the sole permittee. The Division will make the determination of permit type based upon site specific circumstances.

#### H. Termination, Modification, Revocation and Reissuance of Permits

Except as waived in paragraph D. 2 above, the Division shall notify EPA through issuance of public notice whenever it intends to terminate an issued NPDES permit. In addition, the Division shall transmit to EPA a copy of any permit which it proposes to modify or revoke and reissue with the proposed changes clearly identified. The procedure set forth in paragraphs C.1 and 2 above shall be followed with respect to modifications by the Division of any issued permit and, for purposes of this agreement, each permit proposed to be modified shall be deemed to be a newly proposed draft permit, except for minor modifications as described in 40 CFR 122.63.



#### I. Administrative or Court Action

If the terms of any permit, including any permit for which review has been waived pursuant to paragraph D above, are affected in any manner by administrative or court action, the Division shall immediately transmit a copy of the permit, with changes identified, to the Regional Administrator and shall allow 30 days for EPA to make written objections to the changed permit pursuant to section 402(d)(2) of the CWA.

#### J. Major Discharger List

There shall be included as a part of the annual State 106 work plan a "major dischargers" list, which shall include those dischargers defined by EPA as major dischargers based on a point rating worksheet or applicable definitions plus any additional dischargers that, in the opinion of EPA, have a high potential for violation of water quality standards.

#### K. Variances

The Division shall conduct an initial review of all requests for fundamentally different factors variances, for variances under sec. 301(c), (g), (i), (k), and 316(a) of the CWA, and for modifications to federal effluent limitations established under section 302 of the CWA.

1. With regard sec. 301(i) and (k) and 316(a) variances, the Division may deny or approve the request. A copy of the determination shall be sent to the requester and EPA.

2. With regard to FDF's and 301(c) and (g) variances, and sec. 302 modifications, the Division may determine to deny the request, and such determination shall be forwarded to the requestor and EPA. If the Division determines that factors do exist that may warrant such a variance, the request and recommendation for approval shall be sent to EPA. If EPA denies a variance request, the Division shall so notify the requestor. If EPA approves a variance request, the Division will prepare a draft permit factoring in the variance.

#### L. Evidentiary Hearings (Federal Facilities Programs Only)

1. EPA will retain responsibility over permit appeals or requests for modification which are pending at the time of program approval or permit appeals that arise as a result of renewal permit issuance described in Part II.B.7 of this Agreement.

2. The Division will provide EPA with a copy of all precedent setting settlements and administrative decisions which impact the Division's ability to implement the NPDES program in accordance with the federal requirements.

#### M. Supplemental Monitoring

As required by 40 CFR 122.21(k)(5)(vi), no later than two years after the commencement of discharge from a proposed facility, the Division will require the permittee to complete and submit Items V and VI of NPDES application Form 2c. Such supplemental data for Item V shall only be that which has not been previously submitted.

#### N. Analytical Procedures

1. Sampling and analytical procedures required in a permit will be in accordance with the most current version of 40 CFR Part 136. Where state regulations are not consistent with the most current version of 40 CFR Part 136, the Division may use authority pursuant to Section 6.9.4 to specify the current version of Part 136 as the Division approved method.



2. 40 CFR 122.45(c) requires that permit effluent limitations for metals be expressed as total recoverable metals, as defined in 40 CFR Part 136. Colorado regulations, based upon extensive technical input, have adopted a water quality standards system that is based upon dissolved metals as the instream standard with potentially dissolved metals limited in permits. Based upon 1) similarity of analytical procedures and results for total recoverable and potentially dissolved metals, and 2) the conservative conversion of dissolved water quality standards to potentially dissolved effluent limitation, EPA concurs that Colorado is imposing permit limitations that are as stringent or more stringent than required by federal regulation.

#### O. Records Retention

The Division will specify in all permits issued for domestic wastewater treatment plants that that records shall be retained consistent with 40 CFR 503 requirements of 5 years or more, as apposed to the 3 year requirements for CDPS permit data.

### Section IV. Enforcement

The Division agrees to maintain a vigorous enforcement program, including a compliance assessment of dischargers and to take timely and appropriate enforcement actions where such action is warranted, consistent with the State EMS. Discharges endangering public health shall receive immediate and paramount attention.

#### A. Compliance Monitoring

The Division shall operate a timely and effective compliance monitoring program under the Permit Compliance System (PCS), consistent with the PCS Policy Statement and annual State 106 workplans for the purpose of determining compliance with permit conditions. For purposes of this MOA, the term "compliance monitoring" includes all activities taken by the Division to assure full compliance with NPDES program requirements. The Division's monitoring program shall consist of two main activities:

1. Compliance Review - The Division shall conduct timely and substantive reviews and keep complete records of all written material relating to the compliance status of NPDES permits, including Compliance Schedule Reports, Discharge Monitoring Reports, Compliance Inspection Reports, and any other reports that a permittee may be required to submit under the terms and conditions of a NPDES permit, or enforcement actions.

The Division shall operate a system to determine if:

- The self monitoring reports required by permit regulations are submitted;
- Compliance schedule provisions are met;
- The submitted reports are complete and accurate; and
- The permit conditions are met.

The Division and EPA shall have periodic enforcement conferences, either in person or by telephone, to decide priorities for initiating enforcement actions.

The Division shall initiate appropriate enforcement actions whenever required performance is not achieved or when reports are not received. In the case of violation by a major discharger the Division shall initiate an appropriate enforcement action within 30 days of the date such report was or should have been received by the State. Priorities for reviewing these reports and for initiating enforcement actions will be specified in procedures developed by the Division.



2. Compliance Inspection - The Division shall conduct field activities to determine the status of compliance with permit requirements including sampling and non-sampling inspections. Inspection procedures will be in accordance with EPA's NPDES Compliance Evaluation Inspection Manual, issued September 1994. For purposes of this MOA, the term compliance inspections includes evaluation inspections, performance audits, sample inspections, toxic inspections, diagnostic inspections, reconnaissance inspections and biomonitoring inspections. Where the results of the inspection(s) indicate that the discharger is in violation, the Division shall initiate appropriate action within time frames specified in the Enforcement Response Guide.

The Division and EPA will develop an Annual Inspection Plan of major permittees to be the subject of compliance inspections, pursuant to a neutral inspection scheme. The Division or EPA shall conduct compliance inspections of all of the major permittees on at least an annual basis. The Inspection Plan may be modified with the concurrence of both parties. The Division and EPA shall also furnish each other with an estimate of the number of other compliance inspections to be performed during the year. The Division will give EPA adequate notice and opportunity to participate in its inspection activities.

EPA or the Division may determine that additional compliance inspections are necessary to assess permit compliance. If EPA makes a determination that additional compliance inspections are necessary, it shall notify the Division and may request the Division to conduct these inspections. EPA retains the right to perform compliance inspections of any permittee at any time, but will give adequate notice to the Division in advance of an inspection to give it an opportunity to participate and will otherwise keep the Division informed of its plans and results.

The Division shall also be responsible for entering all inspection data into PCS and preparing a list of all noncomplying major permittees in accordance with the regulations at 40 CFR 123.45.

#### B. Action Against Violators

The Division is responsible for taking timely and appropriate enforcement action against persons in violation of, compliance schedules, effluent limitations, reporting requirements, other permit conditions, and other NPDES Program requirements. This includes violations detected by State or federal surveys.

The Division shall maintain procedures for receiving and ensuring proper consideration of information submitted by the public and by EPA about violations. If EPA determines that the Division has not initiated timely and appropriate enforcement action against a violator, EPA may proceed with any or all of the enforcement options available under section 309 of the CWA after notice to and consultation with the Division. Prior to proceeding with a formal enforcement action, EPA shall give the Division 30 days to initiate such enforcement action. This notification shall be made through a written Notice Of Violation. Such notifications shall not be required when EPA is exercising its emergency power under section 504 of the CWA or when EPA is the control authority.

The Division understands, supports and agrees to employ the spirit of the EPA Penalty Policy as established in the Memoranda of the Assistant Administrator for Enforcement, (February 11, 1986) or an equivalent approved State penalty policy. EPA will supply the Division a copy of these memoranda and any subsequent additions or revisions thereto.

The Division shall immediately notify the Emergency Response Center by telephone, or otherwise of any situation posing a substantial endangerment to health, welfare, or the environment resulting from the actual or threatened direct or indirect discharge of pollutants into waters of the State.

## Section V. Pretreatment and Biosolids

### A. General

The Agreement for the National Pretreatment program pursuant to section 307, and 402(b) of the CWA and National Biosolids program pursuant to section 503 of the CWA are by addendum to this Agreement.

## Section VI. Reporting and Transmittal of Information

A. The Division will submit the following to EPA:

<u>Item</u>	<u>Description</u>	<u>Frequency of Submission</u>
1.	A Copy of all permit applications except those for which EPA has waived receipt	Within 5 days of receipt
2.	Copies of draft NPDES permits and permit modifications including fact sheets for permits listed in Section III.D.1 a,b,c,e, and h	When placed on public notice
	Copies of all other NPDES permits and permit modifications including fact sheets	Upon request
3.	Copies of all public notices, except those for which EPA has waived review.	As issued
4.	A copy of all issued, proposed and modified NPDES permits.	As issued
5.	Copies of all permit applications and public notices for which EPA has waived review.	Upon request
6.	A copy of settlements and decisions in permit appeals.	As issued
7.	A list of major facilities scheduled for compliance inspections.	With submission of the annual work plan
8.	Proposed revisions to the scheduled compliance inspections.	As needed
9.	Copies of all compliance inspection reports, report forms, data, and transmittal letters to major permittees.	Within 90 days of inspection
10.	Copies of all compliance inspection reports and data transmittal letters to all other permittees.	As requested



<u>Item</u>	<u>Description</u>	<u>Frequency of Submission</u>
11.	For major dischargers, a quarterly noncompliance report as specified in 40 CFR 123.45(a) and further qualified in EPA Guidance;	Quarterly, as specified in 40 CFR 123.45(c)
12.	For minor dischargers, an annual noncompliance report as specified in 40 CFR 123.45(c), until such time as all minor DMR data and schedules are entered into PCS.	Within 60 days of the end of the calendar year as specified in 40 CFR 123.45(d)(2)
13.	Copies of all enforcement actions against NPDES violators (including letters, notices of violation, administrative orders, initial determinations, and referrals to the Attorney General).	As issued
14.	Copies of non-compliance notification from major permittees.	Within 10 days of receipt

B. EPA shall transmit the following information to the State:

<u>Item</u>	<u>Description</u>	<u>Frequency of Submission</u>
1.	A list of compliance inspections EPA intends to conduct jointly with the state as part of its oversight role;	Annually
2.	Proposed revisions to the schedule of compliance inspections;	As needed
3.	Copies of all EPA compliance inspection reports and data;	Within 90 days of inspection
4.	Copies of all EPA enforcement actions against NPDES violators (including notice of violation, and administrative orders).	As performed
5.	A review of the State administration of the NPDES Permit Program based on State reports, meetings with State officials, and file audits.	As performed

C. The State shall transmit a copy of every issued NPDES permit to each affected State no later than 30 days after its issuance.

#### Section VII. Program Review

A. To fulfill its responsibility for assuring the NPDES program requirements are met, EPA shall:

1. Review the information submitted by the Division;



2. Meet with State officials from time to time to discuss and observe the data handling, permit processing, and enforcement procedures, including both manual and ADP processes ;

3. Examine the files and documents at the Division regarding selected facilities to determine: a) whether permits are processed and issued consistent with federal requirements; b) whether the Division is able to discover permit violations when they occur; c) whether Division reviews are timely; and d) whether Division selection and implementation of enforcement actions is appropriate and effective. EPA shall notify the Division in advance of any examination under this paragraph so that appropriate State officials may be available to discuss individual circumstances and problems . EPA need not reveal to the Division in advance the files and documents to be examined. A copy or the examination report shall be transmitted to the State when available;

4. Review, from time to time, the legal authority upon which the State's program is based, including State statutes and regulations;

5. When appropriate, hold public hearings on the Division's NPDES program; and

6. Review the Division public participation policies, practices, and procedures.

B. Prior to taking any action to propose or effect any substantial amendment, recision, or repeal of any statute, regulations, directive, or form which has been approved by EPA; and prior to the adoption of any new statute, regulation, directive or form, the Division shall notify the Regional Administrator and shall transmit the text of any such change or new form to the Regional Administrator.

C. If an amendment, recision, or repeal of any statute, regulations, directive, or form described in paragraph (B) above shall occur for any reason, including action by the Colorado legislature or a court, the Division shall within 10 days of such event, notify the Regional Administrator and shall transmit a copy of the text of such revision to the Regional Administrator.

D. Prior to the approval of any test method other than those specified as required for NPDES permitting, the Division shall obtain the approval of the Regional Administrator.

E. The Division shall seek such legislation, adopt such regulations, provide Attorney General opinions, and take such further actions which may be necessary to preserve and maintain any compliance with NPDES Program requirements.

F. According to the 1994 Environmental Self-Evaluation Law, environmental self-evaluations receive the protection of that law only if they are performed during the period beginning on the effective date of the Act (June 1, 1994) and June 30, 1999. The EPA and the Division shall work together to evaluate the impact of the Environmental Audit Self-Evaluation Law on the programs covered by this MOA and its addenda and the effectiveness of EPA's role, as defined in Section II., Item 5.

#### Section VIII. Independent EPA Powers

Nothing in this MOA shall be construed to limit the authority of EPA to take action pursuant to Sections 308, 309, 311, 402, 504, or other sections of the CWA.

#### Section IX. Computations of Time

A. In computing any period of time prescribed by this MOA the day from which the designated period to time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which case the period extends until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time is less than seven

days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.

B. For the purpose of EPA review of permit applications, draft or proposed permits, permit modifications, or other documents where time limits are established by federal regulation or by agreement in this memorandum and its addenda, the period for review shall not commence until received by EPA. However, EPA will attempt to provide comment within the published public notice time frame and will timely advise the Division when comments will be submitted after the published public notice date.

#### Section X. Miscellaneous Items

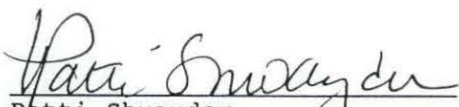
The Division will have two years to make statutory changes necessary to conform with federal program changes. The Division will not be required to update its applicable regulations more often than once per year in order to comply with EPA NPDES, pretreatment, and sludge (biosolids) regulations promulgated subsequent to the effective date of this Agreement.

#### Section XI. Modification

This MOA shall take effect immediately upon approval by the Regional Administrator. Either the Division Director or EPA may initiate action to modify this MOA at any time. If EPA or the Administrator of EPA determines that any modification to the MOA initiated by the Division does not conform to the requirements of sec. 402(b) of the CWA, or to the requirements of 40 CFR Parts 122-125 or any other applicable Federal regulation, as amended, the Regional Administrator or Administrator of EPA shall notify the Division in writing of any proposed revision, or modifications which must be in this agreement. Any proposed amendments or revisions must be put in writing and signed by the Division Director and the Regional Administrator, with the prior concurrence of the Director, EPA Office of Water Enforcement and Permits and EPA Associate General Counsel for Water.

In witness whereof, the parties execute this agreement.

FOR STATE AGENCY:

  
Patti Shwayder  
Acting Executive Director  
Colorado Department of Public Health & Environment

9-15-95  
(Date)

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

\_\_\_\_\_  
William P. Yellowtail  
Regional Administrator  
Region VIII

\_\_\_\_\_  
(Date)





## NATIONAL PRETREATMENT PROGRAM

ADDENDUM TO THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
MEMORANDUM OF AGREEMENT  
BETWEEN THE  
STATE OF COLORADO  
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII

### Section I. General

The Memorandum of Agreement (MOA) between the Colorado Department of Public Health and Environment, Water Quality Control Division (Division) and the Regional Administrator of the United States Environmental Protection Agency (EPA) approved on March 27, 1975 is hereby modified to define Division and EPA responsibilities for the establishment, implementation, and enforcement of the National Pretreatment Program pursuant to §§ 307 and 402(b) of the Clean Water Act (CWA) as follows. All provisions of the Memorandum of Agreement to which this document is an addendum shall apply except where specifically superseded herein.

### Section II. Policies

The Division has the primary responsibility for implementation of the National Pretreatment Program in Colorado and will administer the National Pretreatment Program in accordance with § 402 of the CWA, U.S.C. § 1251 *et. seq.*, applicable State legal authority, applicable Federal regulations, the Division EPA workplan (SEA), the Colorado Industrial Pretreatment Program Description, this MOA, and any other State/EPA agreements regarding the Industrial Pretreatment Program. All agreements shall be consistent, however, with the basic requirements of this MOA which shall take precedent over any other agreements per the requirements of 40 CFR § 123.24.

### Section III. Program Implementation Responsibilities

#### A. Division Responsibilities

The Division has primary responsibility for ensuring:

1. Application and enforcement of any Pretreatment Standard or Requirement established by the Administrator in accordance with §§ 307(b) and (c) of the Act, approved local limitations, and State standards;
2. Application and enforcement of prohibited discharges and categorical standards and requirements (40 CFR §§ 403.5 and 403.6);
3. Incorporation of National Pretreatment Standards and Requirements, as appropriate, into the Colorado Pretreatment Regulations, 4.3.0 (5 CCR 1002-20);
4. Incorporation of Publicly Owned Treatment Works (POTW) pretreatment program conditions in Colorado Discharge Permit System (CDPS) permits issued to POTWs as required in 40 CFR § 403.8 and as provided at § 402(b)(8) of the Act;
5. Identification of POTWs requiring local pretreatment program delegation;



6. Incorporation of requirements for development and implementation of local limitations in Colorado Discharge Permit System (CDPS) permits issued to POTWs with approved local programs as set forth at 40 CFR § 403.5 and as provided at § 402(b)(8) of the Act, and, as appropriate, in CDPS permits or Cease and Desist Orders issued to POTWs without approved local programs pursuant to § 4.9.11.D(2) of the Colorado Pretreatment Regulations;
7. Review and approval or denial of POTW pretreatment program submittals in accordance with the procedures set forth at 40 CFR §§ 403.8, 403.9, 403.11 and 403.18 except that no POTW pretreatment program shall be approved if EPA objects to program approval per the provisions of 40 CFR § 403.11;
8. Publication of all pretreatment program approvals and substantial program modifications in a daily or weekly newspaper of general circulation within the area affected by the activity in accordance with the requirements of 40 CFR § 403.11;
9. Inspection, surveillance and monitoring procedures, including operation of a timely and effective compliance monitoring program under the Permits Compliance System (PCS), consistent with the PCS Policy Statement and Division/EPA workplan, which will determine, independent of information supplied by the POTW, compliance or non-compliance by the POTW with pretreatment conditions incorporated into the POTW permit, and oversight of POTW pretreatment programs to verify that Pretreatment Standards and Requirements are enforced in accordance with 40 CFR §§ 403.8, 403.11 and 403.12;
10. Submittal of modifications of all approved POTW pretreatment programs, as such modifications are determined by EPA or the Division to be necessary to ensure consistency with the Colorado Pretreatment Regulations, Section 4.3.13.D, within eighteen months of delegation of the Pretreatment Program, by EPA, to the State;
11. Incorporation of applicable Pretreatment Standards including prohibited discharges and categorical standards and requirements, local limitations, State standards and industrial monitoring and reporting requirements set forth at 40 CFR § 403.12 into Notices of Discharge Requirements issued to Significant Industrial Users not regulated by POTW pretreatment programs;
12. Inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the industrial user whether the industrial user is in compliance with applicable Pretreatment Standards, monitoring, and reporting requirements;
13. Enforcement action, in a timely and effective manner, against persons in violation of Pretreatment Requirements and Standards. This includes violations detected by State or Federal inspection, monitoring or surveillance activities.

The Division shall maintain procedures for receiving and ensuring proper consideration of information submitted by the public and by EPA about violations. If EPA determines that the Division has not initiated timely and appropriate enforcement action against a violator, EPA may proceed with any or all of the enforcement options available under § 309 of the Act after notice to and consultation with the Division. Prior to proceeding with a formal enforcement action, EPA shall give the Division 30 days to initiate such enforcement action. This notification shall be made through a written Notice of Violation. Such notifications shall not be required when EPA is exercising its emergency power under § 504 of the Act.



The Division understands, supports, and agrees to employ the spirit of the EPA Civil Penalty Policy as established in the Memoranda of the Assistant Administrator for Enforcement, (February 11, 1986), or any revisions thereto, and Guidance on Penalty Calculations for POTW Failure to Implement and Approved Pretreatment Program as established in the Memoranda of the Director of Water Enforcement and Permits, (December 22, 1988), or any revisions thereto, or an equivalent approved State penalty policy. EPA will supply the Division with a copy of these memoranda and any subsequent additions or revisions thereto;

14. Review and certification of requests from industries or POTWs for industrial subcategory determinations in accordance with those procedures established at 40 CFR § 403.6 (a). The Division shall forward a copy of its decision to EPA. EPA may modify the Division's Category Determination within 60 days of EPA's receipt thereof. All final determinations shall be provided to the POTW and to the Industrial User;
15. Removal Credits are not currently allowed under the Colorado Pretreatment Regulations nor is it the State's intent that Removal Credits be allowed at some future time. However, should the Pretreatment Regulations be amended to incorporate provisions allowing Removal Credits, the Division shall review POTW submittals for revised discharge limits for industries who are or may be subject in the future to categorical pretreatment standards. Procedures for review of removal credit submittals shall comply with all applicable requirements and procedures identified at 40 CFR §§ 403.7, 403.9 and 403.11;
16. The Division shall review requests for Fundamentally Different Factor (FDF) Variances in accordance with those procedures established at 40 CFR § 403.13. The Division may make an initial finding on any FDF Variance requests, and in cases where the Division supports the variance, submit its findings together with the request and supporting information to EPA for final review. Alternately, the Division may forward a request without recommendation. The Division shall not approve or in any way implement any FDF Variance without the written approval of the EPA. The Division may deny requests for FDF variances without EPA review;
17. To the extent that funds are available, the Division will ensure that the Pretreatment Coordinator or designee attend and represent the Division at the Annual Region VIII Pretreatment Conference.

#### B. EPA Responsibilities

EPA is responsible for assuring that the Pretreatment Program is consistent with all requirements of this MOA, the Division/EPA workplan, and applicable sections of 40 CFR Part 403. EPA responsibilities shall include the following:

1. Provision of technical assistance to the Division concerning program implementation issues such as Fundamentally Different Factor (FDF) variances or Category Determinations;



2. EPA may perform annual Pretreatment Program audits to identify major program deficiencies and appropriate remedial actions. Pretreatment Program audits incorporate comprehensive review of all phases of the Pretreatment Program including, but not limited to, statutory authority, regulatory requirements and program resources. Pretreatment Program audits will take place at the offices of the Division at such times as are mutually agreed by EPA and the Division. EPA will prepare and transmit to the Division a report summarizing the results of the Pretreatment program audit which identifies any deficiencies noted as a result of the audit and any associated remedies;
3. EPA may perform quarterly review of annual commitments in the Division/EPA workplan to evaluate progress and to resolve program implementation issues. Quarterly reviews will incorporate:
  - (i) Review of any information transmitted from the Division to assure that all the requirements of this MOA are met;
  - (ii) Review of data handling, permit processing, compliance monitoring, and enforcement procedures, including both manual and automated data processing; and
  - (iii) Examination of selected Division files to determine consistency of Pretreatment Program implementation with federal requirements. File reviews are intended to address propriety, timeliness and efficacy of enforcement actions.
4. EPA may conduct oversight inspections to evaluate the Division compliance inspection program as mutually agreed in the annual SEA. Additionally, EPA may determine that pretreatment inspections or monitoring beyond those performed by the Division are necessary or appropriate. EPA shall notify the Division of such determination. EPA may request the State to conduct such inspections or monitoring, request joint inspection or monitoring or, should the State decline, EPA may perform the inspection or monitoring alone without State participation. Should the State choose not to conduct additional inspections or monitoring EPA will fully inform the State of such inspections or monitoring. EPA shall provide the State with notification of his intent to inspect or monitor a POTW or industry a minimum of thirty (30) days prior to such inspection except when circumstances, such as incipient endangerment of public health or environmental damage, or potential criminal wrongdoing preclude such notice. When inspection or monitoring is conducted solely by the EPA a copy of any inspection reports or sampling results will be forwarded to the Division as soon as practicable;
5. EPA will perform ongoing review of State pretreatment compliance and enforcement actions. Such review may result in direct EPA enforcement actions, upon closure of the State action, where indicated. Any such action will conform with the procedures specified at section III.12 of this agreement as set forth previously;
6. EPA may at any time review the Pretreatment Program's public participation policies, practices, and procedures;



#### Section IV. Reporting and Transmittal of Information

The Division shall provide the following information to EPA:

1. Copies of all inspection reports prepared by the Division as part of the Pretreatment Program to the NPDES Branch, ATTN: Pretreatment Coordinator. Each report will be reviewed by the Division to determine what, if any, enforcement action shall be initiated. All Division inspections will be entered into the Pretreatment Permit and Enforcement Tracking System (PPETS) database of the Permits Compliance System (PCS).
2. Within thirty (30) days of receipt of a submittal to the Division of any reports required as part of federal or State Pretreatment Regulations, copies of the same will be sent to EPA for their information if they have not already received one from the entity in question. Such reports include, but are not limited to, POTW Annual Pretreatment Reports, Baseline Monitoring Reports, and 90 Day Compliance Reports.
3. The Division will enter all appropriate PPETS data into the PCS system.
4. When a public notice, as required in the Pretreatment Regulations, is issued the Division will transmit a copy of the public notice to the NPDES Branch, ATTN: Pretreatment Coordinator. The public notice will be accompanied by a copy of the submittal being noticed.
5. Upon request, copies of notices received from POTWs reporting a change in discharge from the POTW due to introduction of pollutants from an Industrial User or Users.

EPA will provide the following information to the Division:

1. Upon approval of the State of Colorado's Pretreatment Program the EPA shall transmit to the Division all data relevant to Colorado concerning the Pretreatment Program which has not already been transmitted to the Division.
2. Upon approval of the State of Colorado's Pretreatment Program, the EPA will provide the Division with a listing of those industries which are located in Colorado and have been directly regulated by EPA as the Control Authority. In addition, the EPA will provide the Division with a summary of the compliance status of these industries. Prior to transmittal of Control Authority status for these industries to the State, EPA will complete any enforcement activities against these industries open at the time of program approval.
3. Upon approval of the State of Colorado's Pretreatment Program, the EPA will provide the Division with a listing of those POTWs which are located in Colorado and have been directly regulated by EPA as the Approval Authority. In addition, the EPA will provide the Division with a summary of the compliance status of these POTWs. Prior to transmittal of Approval Authority status for these POTWs to the State, EPA will complete any enforcement activities against these POTWs open at the time of program approval.
4. The Regional Administrator shall provide to the Division copies of all court decisions or actions, or settlement agreements affecting the Pretreatment Program, copies of proposed and final federal regulatory changes, federal policy statements and federal guidance documents.



#### Section V. Program Revision

Either party to this MOA may initiate program revision when necessitated by changes to Federal or State statute. Procedures for program revision shall comply with the provisions set forth at 40 CFR § 123.63.

#### Section VI. Miscellaneous

The Division and EPA will communicate, through the Division/EPA workplan, commitments and priorities for program implementation including commitments for inspection of POTWs and industrial users. The Division/EPA workplan will contain, at a minimum, the following:

1. A list of permits to be issued by the Division to POTWs and Industrial Users subject to pretreatment requirements; and
2. A list of POTWs and Industrial Users to be audited or inspected.

#### Section VII. Other Provisions

Nothing in this agreement is intended to affect any Pretreatment Requirement, including any standards or prohibitions established by State or local law, as long as the State or local requirements are not less stringent than any set forth in the National Pretreatment Program, or other requirements or prohibitions established under the Act or Federal regulations.

Nothing in this Amendment shall be construed to limit the authority of the EPA to take action pursuant to §§ 204, 208, 301, 307, 308, 309, 311, 402, 404, 405, 501, or other sections of the Act (33 U.S.C. § 1251 et seq).

#### Section VIII. Approval and Effective Date of Agreement

This Memorandum of Agreement shall take effect upon approval by the Administrator of the Environmental Protection Agency.

In witness thereof, the parties execute this agreement.

FOR STATE:



Patti Shwayder  
Acting Executive Director  
Colorado Department of Public Health & Environment

9-15-95

(Date)

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

\_\_\_\_\_  
William Yellowtail  
Regional Administrator  
Region VIII

\_\_\_\_\_  
(Date)

## NATIONAL SLUDGE PROGRAM

ADDENDUM TO THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
MEMORANDUM OF AGREEMENT  
BETWEEN THE  
STATE OF COLORADO  
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII

### Section I. General

This Memorandum of Agreement (hereafter "Agreement" or "MOA") establishes policies, responsibilities and procedures pursuant to 40 CFR Part 123 and defines the manner in which applicable land application requirements of the National Sludge Management Program at 40 CFR Part 503 will be administered through the Colorado Biosolids Management Program. All provisions of the Memorandum of Agreement to which this document is an addendum shall apply except where specifically superseded herein.

The State Director and the Regional Administrator hereby agree to maintain a high level of cooperation and coordination in a partnership to assure successful and effective administration of the Biosolids Management Program. If requested by either party, meetings between the State and United States Environmental Protection Agency (hereafter "EPA") will be scheduled at reasonable intervals to review specific operating procedures, resolve problems, or discuss the administration of the Colorado Biosolids Management Program.

In this partnership, EPA will provide to the Colorado Department of Public Health and Environment, Water Quality Control Division (hereafter "Division"), on a continuing basis, technical and other assistance on permit matters as requested. The Division has primary responsibility for implementing the Biosolids Management Program in accordance with Section 405 of the Federal Clean Water Act, 33 U.S.C. Section 1251 *et. seq.* (hereafter "CWA"), applicable State legal authority, State Biosolids Regulation 4.9.0, the requirements of 40 CFR Parts 501 and 503, and any other applicable Federal regulations.

The strategies and priorities for issuance, compliance monitoring, and enforcement of permits, as established in this MOA, may be set forth in more detail in the Division/EPA workplan and the State/EPA Enforcement Agreement signed by the Division and the Regional Administrator of EPA Region VIII. This MOA, the Division/EPA workplan, the State/EPA Enforcement Agreement, and any other State/EPA agreement(s) regarding the Biosolids Management Program should be consistent. However, the basic requirements of this MOA shall override any other State/EPA agreement(s) as required by 40 CFR Section 123.34(c).

The Division and EPA will negotiate priorities for implementation of the Biosolids Management Program and inspection of Treatment Works Treating Domestic Sewage (hereafter "TWTDS") and other biosolids users and disposers. A prioritized listing of permits to be issued and facilities to be inspected shall be incorporated into the Division/EPA workplan. Noncompliance by either party with any term contained herein may be considered grounds for rescission of this Agreement.



## Section II. Program Implementation Responsibilities

### A. Division Responsibilities

In accordance with the priorities and procedures established in this Agreement and the Division/EPA workplan, the Division will:

1. Apply appropriate land application requirements established by the Administrator on accordance with Section 402 of the CWA and the Colorado Biosolids Regulation, 4.9.0 to any TWTDS.
2. Develop and maintain, to the maximum extent possible, the legal authority, including incorporation of appropriate federal land application requirements at 40 CFR Part 503 into the Colorado Biosolids Regulation, 4.9.0 required to carry out all aspects of the Biosolids Management Program.
3. Develop and maintain, to the maximum extent possible, the resources required to carry out all aspects of the Biosolids Management Program.
4. Incorporate federal land application requirements at 40 CFR Part 503 in Colorado Discharge Permit System (hereafter "CDPS") permits issued to TWTDS as required in 40 CFR Section 122.41, and incorporation of additional requirements specific to the Colorado Biosolids Regulation, 4.9.0 into Notices of Authorization for the Use and Distribution of Biosolids (hereafter "NOA"). The Division will process, reissue or modify all such CDPS permits and NOAs within the normal permitting cycle. Incorporation of biosolids requirements into CDPS permits or NOAs occurs as the instruments are issued or reissued. Alternately, the CDPS permit may be amended at any time at the request of the permittee. NOAs may also be unilaterally reopened by the Division at any time.
5. The Division will notify the appropriate permitting authorities in instances when it is aware that bulk biosolids prepared in Colorado are to be land applied in a jurisdiction outside of Colorado.
6. Comprehensively evaluate and assess compliance with schedules, limitations, and other conditions in CDPS permits and NOAs.
7. Maintain a vigorous enforcement program by taking timely and appropriate actions in accordance with the CWA, State statutes, regulations, and Enforcement Management System.
8. Maintain an adequate public file, accessible to EPA, at the appropriate regional or central office, for each permittee. At a minimum, such files must include copies of:
  - i) CDPS Permit application and NOA applications ("Letters of Intent for the Use and Distribution of Biosolids" or "LOIs");
  - ii) Issued CDPS Permit and NOAs;
  - iii) CDPS public notice and rationale;
  - iv) All self monitoring data;
  - v) All inspection reports;
  - vi) All enforcement actions; and
  - vii) Other pertinent information and correspondence.



9. Cooperate with EPA in the administration of the Colorado Biosolids Management Program in accordance with EPA program policies and guidance.
10. Submit to the Regional Administrator the information described in section V of this Agreement, the Division/EPA workplan and in applicable portions of 40 CFR Part 123. Additionally, upon request by the Regional Administrator, the Division shall submit specific information and allow continuing access to all documents necessary for evaluating Division administration of those elements of the National Sludge Management Program which are incorporated into the Colorado Biosolids Management Program.

#### B. EPA Responsibilities

EPA is responsible for assuring that the Colorado Biosolids Management Program is consistent with all requirements of this MOA, the Division/EPA workplan, and applicable sections of 40 CFR Part 503. EPA responsibilities shall include the following:

1. EPA will provide technical support and assistance to the Water Quality Control Division including, but not limited to the following:
  - i) EPA regulations, technical guidance, policies, and procedures which pertain to implementation of the National Sludge Management Program;
  - ii) Interpretations of regulations at 40 CFR Part 123 relating to National Sludge Management Program requirements and regulations at 40 CFR Part 503 relating to biosolids use and disposal requirements, and any other applicable Federal regulations;
  - iii) EPA contractor reports; EPA development documents; and regulations relating to biosolids use and disposal practices;
  - iv) Settlement agreements between EPA and litigants which concern the interpretation or modification of regulations related to biosolids use and disposal practices.
2. EPA will provide the Division with the opportunity for meaningful involvement in program development activities and program initiatives. EPA will keep the Division informed of development of National Sludge Management Program policy statements, strategies, and related guidance, and provide for input by the Division when appropriate.
3. EPA will oversee the administration of the State Biosolids Management Program on a continuous basis for consistency with the CWA, this Agreement, the Division/EPA work plan, and all applicable Federal regulations and policies. As a part of its assessment, EPA will review permits, reports, and enforcement actions submitted by the Division. EPA may also consider comments from permittees, the public, and Federal and local agencies concerning the Division's administration of its Biosolids Management Program. Any such comments considered by EPA will be brought to the attention of the Division by written correspondence, if the commenting party has not previously communicated this comment to the Division. Any information obtained or used by the Division under the Biosolids Management Program shall be available to EPA upon request, without restriction. If the information has been submitted to the Division under a claim of confidentiality, the Division shall inform EPA of that claim. Claims of confidentiality will be treated in accordance with 40 CFR Part 2, Subpart B; and 40 CFR Section 122.7.



4. Upon approval of the MOA, EPA will promptly deliver to the Division all pending permit applications on which no final action has been taken. Other information pertinent to program operation such as support files, monitoring reports, and any previously issued permits should be transferred to the Division along with permit applications. EPA shall deliver the above information within sixty (60) days of approval of this MOA.
5. EPA issued Sludge-Only Permits currently in effect shall remain in effect after approval of the Colorado Biosolids Management Program until such time as either the facility's CDPS permits is opened for re-issuance, or, in those cases where the facility is a TWTDS which has not previously been issued a CDPS Permit, until the EPA issued Sludge-Only Permit is reopened or reissued by the Division. EPA shall transfer duties of permit administration to the Division within sixty (60) days of approval of this MOA. All information in EPA's possession which is pertinent to program operation should accompany those permits to the Division.
6. A permit applicant or permittee shall be given thirty (30) days notice of any prospective transfer of administrative program duties from EPA to the State Program Director.

### Section III. CDPS Permit Review and Issuance

The Division is responsible for expeditiously drafting, providing public notice for, issuing, modifying, reissuing, and terminating CDPS permits in accordance with 40 CFR Parts 122-125, 503 and any other applicable regulations. Except as otherwise agreed below, provisions for administration of CDPS Permits are addressed in Section III. Permit Review and Issuance of the National Pollutant Elimination System Memorandum of Agreement between the State of Colorado, Department of Public Health and Environment and the United States Environmental Protection Agency Region VIII of which this Agreement is an addendum.

#### A. Content of Permits and NOAs

Pursuant to the Colorado Regulations for the State Discharge Permit System, 6.9.7(5), all appropriate federal land application requirements at 40 CFR Part 503 will be incorporated into CDPS permits issued to TWTDS as required in 40 CFR Section 122.41. Requirements specific to the Colorado Biosolids Regulation, 4.9.0 will be incorporated into NOAs. The section of the Colorado Biosolids Management Program: Program Description entitled "Description of the Permit Development Process" identifies the federal and state regulatory requirements which are incorporated into CDPS permits and NOAs respectively. Both CDPS permits and NOAs will incorporate a requirement that any person who prepares biosolids shall ensure that the applicable requirements of the federal regulations at 40 CFR 503 and the Colorado Biosolids Regulation, 4.9.0 are met when the biosolids are applied to agricultural land, or used for reclamation of disturbed land, and a requirement that the record retention requirements at 40 CFR Section 503.17 and the Colorado Biosolids Regulation, 4.9.17 be met.



#### B. EPA Review of Draft Permits and Permit Modifications

Unless otherwise waived, EPA will review all draft permits. EPA will always review all Class I permits. At the time of issuance of the public notice, the Water Quality Control Division shall send the EPA one copy of the public notice, the draft permit, and the fact sheet for each facility. In the case of a Class I facility, the permit application must also be submitted for review. Procedures for EPA review shall be as specified in Section III. Permit Review and Issuance, C. EPA Review of Draft Permits and Permit Modifications of the National Pollutant Elimination System Memorandum of Agreement between the State of Colorado, Department of Public Health and Environment and the United States Environmental Protection Agency Region VIII.

#### C. General Permits

The Division may develop and issue biosolids use and disposal general permits. After identifying those users or disposers appropriately regulated by a general permit, the Division will collect sufficient biosolids data to draft a general permit. Procedures for EPA review shall be as specified in Section III. Permit Review and Issuance, C. EPA Review of Draft Permits and Permit Modifications of the National Pollutant Elimination System Memorandum of Agreement between the State of Colorado, Department of Public Health and Environment and the United States Environmental Protection Agency Region VIII except as otherwise noted:

1. EPA shall have up to thirty (30) days to comment upon, object to, or make recommendations with respect to the draft permit. The time for EPA review shall be extended up to ninety (90) days upon request of EPA. EPA will send to the Division written agreement, comments, or objections to each draft permit, including a statement of the reasons for the comments or objections and the sections of the CWA, regulations, or guidelines which support them. A copy of all comments will also be sent to the permit applicant. In the event EPA files a "general objection" to a draft permit, it shall have ninety (90) days from receipt of the draft permit to supply the specific grounds for objection, and the terms and conditions which should be included in the permit. If the initial permit information supplied by the Division is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, EPA may file an "interim objection" under 40 CFR 123.44(d) and request the Division to transmit the complete record (or portion thereof) of the Division permit proceedings. The full period for EPA review shall recommence upon receipt of the requested information. If the Division issues a general permit for biosolids use or disposal, the Office of Water Enforcement and Permits may conduct the permit review on the Region's behalf per 40 CFR 123.44(a)(2).
2. In the event the Regional Administrator objects to a permit under paragraph 1 above, the Regional Administrator shall so notify the Division in writing as to the reasons for the objection and the actions necessary to eliminate the objection. EPA's objections must be based on one or more of the criteria identified in 40 CFR 123.44(c). The Division has the right to a public hearing on the objection. If EPA's concerns are not satisfied within ninety (90) days of the notice of objection (or within thirty (30) days of the Regional Administrator's decision following a public hearing on the objection), exclusive authority to issue the permit vests in EPA. No permit will be issued over the written objection of EPA.



#### D. Notices of Authorization for the Use and Distribution of Biosolids

The Division will also administer NOAs in order to implement additional State regulatory criteria and standards which are not required pursuant to 40 CFR Part 503. Any federal regulatory requirements incorporated into the NOAs will also be incorporated into CDPS permits. Therefore, Division administration of NOAs shall not be subject to the provisions of this agreement.

#### E. Waiver of Permit Review by EPA

1. At this time, EPA waives the right to comment on, or object to, the sufficiency of permit applications, draft permits, proposed final permits, and final (issued) permits, with the exception of the categories described below:
  - i) Class I Biosolids Management facilities as defined in 40 CFR 501.2, and as identified in the Division/EPA workplan, or;
  - ii) Biosolids use and disposal practices which may affect another state, or;
  - iii) Biosolids use and disposal practices which may affect public health and the environment from adverse effects that may occur from toxic pollutants in the biosolids.
2. With respect to modifications or revocations and reissuances of permits, EPA waives the right to review any permit for which either the right to review the original permit was waived (unless the modification would put the permit into one of the categories in paragraph D.1 above) or the modification qualifies as minor as defined in 40 CFR 122.63.
3. EPA reserves the right to terminate the waivers in paragraphs D.1 and D.2 above, in whole or in part, at any time. Any such termination shall be made in writing to the Division.
4. The foregoing waiver shall not be construed to authorize the issuance of permits which do not comply with applicable provisions of Federal laws, regulations, or guidelines, nor to relinquish the right of EPA to petition the Division for review of any action or inaction because of violation of Federal laws, regulations, or guidelines.

#### F. Public Participation

All Class I biosolids permits shall be public noticed in a daily or weekly newspaper within the area affected by the activity, in accordance with 40 CFR 501.15(d)(5)(B).

#### G. Coordinated Issuance of Permits

If a facility must be permitted by both the Division and EPA under different programs, the Division and EPA may agree to consolidate processing of permits. The Division and EPA may coordinate the expiration dates of new and existing permits so that processing of renewal applications may be consolidated. All permits issued jointly by the Division and the EPA shall be drafted by the EPA. After the draft permit has been completed, the State shall receive the draft permit, permit application, fact sheet, and any additional correspondence within seven (7) days of completion and shall have thirty (30) days from receipt to review and comment, in writing, on the draft version. Prior to issuance, mutual agreement on the conditions and requirements of the permit will be required by both agencies. TWTDS which will be subject to joint permit issuance shall be identified in the Division/EPA work plan.

#### H. Class I Biosolids Management Facilities List

There shall be included as a part of the Division/EPA workplan a list of Class I Biosolids Management Facilities as defined in 40 CFR Section 501.2.

### Section IV. Enforcement

The Division agrees to maintain a vigorous enforcement program (including a compliance assessment of biosolids users and disposers) and to take timely and appropriate enforcement actions where warranted. Biosolids use and disposal practices endangering public health shall receive immediate and paramount attention. Except as otherwise agreed below, provisions for enforcement of CDPS Permit conditions are addressed in Section IV. Enforcement of the National Pollutant Elimination System Memorandum of Agreement between the State of Colorado, Department of Public Health and Environment and the United States Environmental Protection Agency Region VIII of which this Agreement is an addendum.

#### A. Compliance Monitoring

The Division shall operate a timely and effective compliance monitoring program, including an automatic data processing (ADP) and/or manual tracking system, to determine compliance with permit conditions. For purposes of this MOA, the term "compliance monitoring" includes all activities taken by the Division to assure full compliance with the Biosolids Management Program requirements. The Division's monitoring program shall consist of two main activities:

1. Compliance Review - The Division shall conduct timely and substantive reviews and shall keep complete records of all written materials relating to the compliance status of permittees, including: compliance schedule reports, discharge monitoring reports (if applicable), compliance inspection reports, and any other reports that permittees may be required to submit under the terms and conditions of a NPDES permit, NOA, Cease and Desist Order, Clean Up Order or court order.

The Division shall operate a system to determine if:

- i) Self-monitoring reports required by permit or by the Colorado Biosolids Regulation, 4.9.0 are submitted;
- ii) Submitted reports are complete and accurate; and
- iii) Permit conditions and any other applicable requirements are met.



The Division and EPA shall have periodic enforcement conferences to decide priorities for initiating enforcement actions and to coordinate enforcement activities.

The Division shall initiate appropriate enforcement actions whenever required performance is not achieved or when reports are not received. In the case of violation by a Class I facility, the Division shall initiate an appropriate enforcement action within thirty (30) days of the date such report was or should have been received by the Division. Priorities for reviewing these reports and for initiating enforcement actions will be specified in procedures set out in the program description.

2. Compliance Inspection - The Division shall conduct field activities, including sampling and non-sampling inspections, to determine the status of compliance with permit requirements. Inspection procedures will be in accordance with Division procedures for compliance monitoring and evaluations pursuant to 40 CFR Section 123.26. For purposes of this MOA, the term compliance inspections includes, but is not limited to, evaluation inspections, sample inspections, biosolids sampling, and other environmental sampling.

The Division and the Regional Administrator will develop an Annual Inspection Plan of permittees subject to State compliance inspections, pursuant to a neutral inspection scheme. The Division or EPA shall conduct compliance inspections of all Class I permittees at least annually. The Inspection Plan may be modified with the concurrence of both parties. The Division and EPA shall also furnish each other with an estimate of the number of other compliance inspections to be performed during the year. The Division will give EPA adequate notice and opportunity to participate in its inspection activities.

EPA or the Division may determine that additional compliance inspections are necessary to assess permit compliance. If EPA makes a determination that additional compliance inspections are necessary, it shall notify the Division and may request it to conduct these inspections. EPA retains the right to perform compliance inspections of any permittee at any time, but will provide adequate notice to the Division to give it an opportunity to participate. EPA will otherwise keep the Division informed of its plans and results.

The Division shall also be responsible for entering all inspection data into the PCS and preparing a list of all noncomplying Class I permittees in accordance with the regulations at 40 CFR Section 501.21.

Reports on compliance inspections shall be available for review by the Division or the Regional Administrator, as appropriate, within thirty (30) days of the date of inspection. The Division shall review each report to determine what, if any, enforcement action shall be initiated. Where the results of the inspection(s) indicate that the permittee is in violation, the Division shall initiate timely and appropriate enforcement action or make a decision in writing not to take any action. Priorities for the review of these inspection reports and for initiating enforcement action will be specified in procedures set out in the program description.

3. Information Requests - Whenever either party requests information concerning a specific permittee and the requested information is available from the files, that information will be provided within seven days.



## B. Action Against Violators

The Division is responsible for taking timely and appropriate enforcement actions against persons in violation of any biosolids use or disposal practice requirements, compliance schedules, limitations, reporting requirements, and other permit conditions, including violations detected by State or Federal surveys. The State will notify EPA of all impending enforcement actions. EPA reserves the right to take timely and appropriate enforcement action in the first instance when warranted (e.g., in interstate disputes).

The Colorado Biosolids Regulation, 4.9.0, and therefore the federal regulatory requirements incorporated into the Colorado Biosolids Regulation, 4.9.0, are enforceable independently of the incorporation of any such regulatory requirements into CDPS permits or NOAs.

The Division shall immediately notify the Emergency Response Center by telephone, or otherwise, of any situation posing a substantial endangerment to health, welfare, or the environment resulting from any actual or threatened, direct or indirect, biosolids use or disposal practice.

## Section V. Reporting and Transmittal of Information

Except as otherwise agreed below, provisions for reporting and transmittal of information are addressed in Section VI. Reporting and Transmittal of Information of the National Pollutant Elimination System Memorandum of Agreement between the State of Colorado, Department of Public Health and Environment and the United States Environmental Protection Agency Region VIII of which this Agreement is an addendum.

A. The Division will submit the following to EPA:

<u>Item</u>	<u>Description</u>	<u>Frequency of Submission</u>
1.	A copy of all permit applications submitted for a Class I biosolids management facility (except those for which EPA has waived review).	Within five (5) days of receipt
2.	Copies of all draft CDPS Permits CDPS Permit modifications, including fact sheets for a Class I biosolids management facility (except those for which EPA has waived review).	When placed on public notice
3.	A copy of all public notices for a Class I biosolids management facility (except those for which EPA has waived review).	As issued
4.	A copy of all proposed and modified CDPS Permits for a Class I biosolids management facility.	As issued
5.	A copy of all Notices of Authorization issued to a Class I biosolids management facility.	As issued
6.	A copy of all permit applications and public notices for which EPA has waived review.	Upon request



<u>Item</u>	<u>Description</u>	<u>Frequency of Submission</u>
7.	A copy of settlements and decisions in permit appeals.	As issued
8.	A list of Class I facilities scheduled for compliance inspections, and a list of all other facilities scheduled for compliance inspections.	Annually
9.	Proposed revisions to the scheduled compliance inspections.	As needed
10.	A list of compliance inspections performed during the previous quarter.	Quarterly
11.	Copies of all compliance inspection reports, report forms, data, and transmittal letters to Class I permittees.	Within thirty (30) days of inspection
12.	Copies of all compliance inspection reports and data transmittal letters to all other permittees.	As requested
13.	For Class I permittees, a quarterly noncompliance report as specified in 40 CFR 123.45(a).	Quarterly, as specified in 40 CFR 123.45(a)
14.	For other permittees, an annual report as specified in 40 CFR 123.45(c) which indicates the status of the Biosolids Management Program, updates the inventory of biosolids generators and disposal facilities, and reports on incidents of noncompliance.	Within sixty (60) days of the end of the calendar year as specified in 40 CFR 123.45(c)
15.	Copies of all enforcement actions against permit violators (including letters, notices of violation, administrative orders, initial determinations, and referrals to the Attorney General).	As issued
16.	Copies of correspondence pertaining to administration of the Biosolids Management Program.	As issued or received
17.	Copies of all notifications of noncompliance required to be reported pursuant to 40 CFR 501.21(a) and 501.14(b)(12)(iv).	Within thirty (30) days of incident
18.	Any other pertinent information requested by EPA.	Within seven (7) days of request

B. EPA shall transmit the following information to the State:

<u>Item</u>	<u>Description</u>	<u>Frequency of Submission</u>
1.	A list of compliance inspections EPA intends to conduct jointly with the State.	Annually
2.	Proposed revisions to the schedule of compliance inspections.	As needed
3.	Copies of all EPA compliance inspection reports and data.	Within thirty (30) days of inspection
4.	Copies of all EPA enforcement actions against permit violators (including notice of violation, and administrative orders).	As performed
5.	A review of the State administration of the Biosolids Management Program based on State reports, meetings with State officials, and file audits.	As performed

#### Section VI. Program Review

Except as otherwise agreed below, EPA shall fulfill its responsibility for assuring the National Sludge Management Program requirements are met pursuant to the program review provisions set forth in Section VII. Program Review of the National Pollutant Elimination System Memorandum of Agreement between the State of Colorado, Department of Public Health and Environment and the United States Environmental Protection Agency Region VIII of which this Agreement is an addendum.

A. Prior to the approval of any test method other than those specified for biosolids use and disposal in 40 CFR Parts 136 and 503, the Division shall obtain the approval of the Regional Administrator.

#### Section VII. Independent EPA Powers

Nothing in this MOA shall be construed to limit the authority of EPA to take action pursuant to sections 308, 309, 405, 504, or other sections of the CWA, or to limit its oversight responsibility with respect to Biosolids Management Program administration. This MOA is for the administrative convenience of EPA, and does not confer any rights on violators.

#### Section VIII. Computations of Time

A. In computing any period of time prescribed by this MOA, the day on which the designated period of time begins shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which case the period extends until the end of the next day which is not a Saturday, Sunday, or a legal holiday. When the period of time is less than seven (7) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.



#### Section IX. Modification

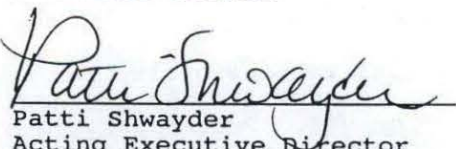
This MOA shall take effect immediately upon approval by the Administrator. Either the Division or EPA may initiate action to modify this MOA at any time. If the Administrator determines that any modification to the MOA initiated by the Division does not conform to the requirements of section 402(b) or 405 of the CWA, the requirements of 40 CFR Parts 122-125 or to any other applicable Federal regulation, as amended, the Administrator shall notify the Division in writing of any proposed revision, or modifications which must be in this agreement. Any proposed amendments or revisions must be in writing and signed by the State Director and the Regional Administrator, with the prior concurrence of the Director, EPA Office of Water Enforcement and Permits and EPA Associate General Counsel for Water. In no event may any State/EPA agreement override this Memorandum of Agreement.

#### Section X. Incorporation by Reference

Wherever a State is required to adopt Federal standards or requirements, it may do so by incorporation by reference. Unless permissible under State law, States will not prospectively incorporate un-promulgated regulations by reference.

In witness whereof, the parties execute this agreement.

FOR STATE AGENCY:

  
Patti Shwayder

Acting Executive Director

Colorado Department of Public Health & Environment

7-20-95  
(Date)

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

\_\_\_\_\_  
William P. Yellowtail  
Regional Administrator  
Region VIII

\_\_\_\_\_  
(Date)

**COLORADO DISCHARGE PERMIT SYSTEM**

**PROGRAM DESCRIPTION**

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
WATER QUALITY CONTROL DIVISION  
MARCH 1, 1995



## ORGANIZATION AND STRUCTURE

### A. Department of Public Health and Environment

The lead agency for the NPDES programs in Colorado is the Department of Public Health and Environment (CDPHE). The Department is responsible for administering several environmental regulatory programs. The Department is headed by the Executive Director who reports to the Governor of the State of Colorado.

### B. Office of Environment

Within CDPHE, the Office of Environment (OE) administers all of the regulatory programs for environmental protection. Divisions within OE consist of Radiation Control, Air Pollution Control, Hazardous Materials & Waste Management, Consumers Protection and Water Quality Control.

### C. Water Quality Control Division

The Water Quality Control Division (Division) broadly has responsibility for administering and enforcing the water quality control programs and the public water supply programs in Colorado. Authorities for the water quality programs are primarily derived from The Colorado Water Quality Control Act (CWQCA).

One of the programs being administered by the Division is the federal NPDES program. The Division was originally delegated responsibility for this program by the United States Environmental Protection Agency (EPA) on March 27, 1975. The original delegation was for the point source program only, and did not include federal facilities, pretreatment and biosolids. Since delegation, the Division has administered the point source program in Colorado and this program description is to reflect the current program and legislation, both of which have changed substantially. The Colorado program is referred to as the Colorado Discharge Permit System (CDPS) and is in part cash funded by annual permit fees that are established in the CWQCA.

Other program functions that are being addressed in this overall submittal are federal facilities, pretreatment and biosolids. The latter to programs will be addressed as an addendum to the point source package.

### D. Water Quality Control Commission

The Water Quality Control Commission (Commission) is created by the CWQCA and consists of 9 citizens who are appointed by the Governor, with the consent of the senate. Appointment is for a three year term, with additional terms possible.

The broad duty of the Commission is to "develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state...". The Commission accomplishes this duty by the adoption of control programs in the form of regulations which are administered and enforced by the Division. Relative to enforcement, the Commission serves as the first level of appeal relative for penalties that have been imposed for violation of the CWQCA and subsequently adopted regulations.

## II. PERMIT APPLICATION REVIEW AND ISSUANCE PROCEDURES

Figures 1, 2, and 3 show the flow charts for processing of 1) individual permits, including federal facilities 2) wastewater general permit certifications and 3) stormwater general permit certifications. Attached to the back of the program description are copies of 11 permit applications that are presently used by the Division.



PERMIT APPLICATION REVIEW AND  
ISSUANCE PROCEDURES

STEP	DESCRIPTION - INDIVIDUAL PERMITS
1	Application is received and logged into PCS and routed to the permit drafter. A copy of the application is sent to EPA. Tracking of each permit from application to issuance is accomplished outside PCS in a spread sheet database.
2	The drafter reviews the application for completeness. If the application is incomplete the process advances to step 2a and if the application is complete the process advances to step 3. The statutory time frame for completeness review is 45 days but our program imposed time frame is 30 days.
2a	If the application is incomplete, the additional information is requested. The applicant is notified that the application review is suspended pending receipt of the additional information.
2b, 2c	Once additional information is received the Division has 15 days to conduct a completeness review and advise the permitted of any continuing deficiencies. Steps 2a through 2c may be repeated.
3	<p>Drafting of the permit is performed with a target date of 60 days from the date of a complete application. Permit conditions are determine based upon consideration of all applicable requirements and regulations. Input from all programs (pretreatment, biosolids, stormwater, ground water) occurs during this stage. The draft document must be approved by the respective program supervisors and the section chief before it is acceptable for public notice.</p> <p>If the Division finds substantive reason to deny a permit, the public notice document will be a rationale documenting the technical and legal basis for permit denial.</p>
4	The draft permit is public noticed for a 30 day period. During this period interested persons may submit written comment or request a public meeting.
5	During public notice, if a public meeting is requested the Division will hold such a meeting if there is a significant degree of public interest. If written comments are submitted they will be timely considered.
5a	If a public meeting is requested, by statute it must be held within 60 days of the date of public notice. Such a meeting is informal and provides the public the opportunity to orally express views on the draft permit.
6	Any issues raised during a public meeting or as public comment are considered by the Division. Each issue is addressed in the permit rationale with the Division justification for changing or maintaining the permit requirements specified.
7	Based upon a consideration of changes to the permit from that which was public noticed, a determination is made whether to re-notice the permit. The significance of any changes in the permit along with the level of interest in the permit are considered when making the re-notice determination.



STEP	DESCRIPTION - INDIVIDUAL PERMITS
8	<p>Following proper consideration of public notice and public meeting comments, the permit is again reviewed and approved by the program supervisor and the section chief. At this time the permit is signed by the Division director or his designee and the permit is issued. During the first 30 days following issuance, affected or aggrieved persons may demand an adjudicatory hearing on the final permit. Such hearing are conducted before an administrative law judge with the decision appealable to the Division of Administration of the CDPHE initially and to court thereafter.</p> <p>In the case of a permit denial, the Division action will be finalized at this point and the permittee may demand an adjudicatory hearing as noted above.</p>
9	Final issued permit is coded into PCS, the EPA national data base for NPDES permits, with pre-printed Discharge Monitoring Reports (DMRs) generated for the permittee.

STEP	DESCRIPTION - WASTEWATER GENERAL PERMIT CERTIFICATIONS
1	Application is received and logged into PCS and routed to the permit drafter. A copy of the application is sent to EPA. Tracking of each permit from application to issuance is accomplished outside PCS in a spread sheet database. The statutory timing for issuance of certifications is 30 days.
2	The drafter reviews the application for completeness. If the application is incomplete the process advances to step 2a and if the application is complete the process advances to step 3.
2a	If the application is incomplete, the additional information is requested. The applicant is notified that the application review is suspended pending receipt of the additional information.
2b, 2c	Once additional information is received the Division has 5 days to conduct a completeness review and advise the permittee of any continuing deficiencies. Steps 2a through 2c may be repeated.
3	The permit drafter completes the draft certification, target time of 10 days. Following completion of the draft certification, the document is reviewed and approved by the unit chief. Industrial permits at this point are routed for issuance, given the large number of certifications, while domestic certifications require section chief approval prior to issuance.
4	Approved certifications are processed by the clerical unit and issued with an immediate effective date for new and an appropriately determined date for renewals or conversions from existing individual permits. Issued certifications are routed through the data services unit for timely generation of pre-printed DMRs.

STEP	DESCRIPTION - STORMWATER GENERAL PERMIT CERTIFICATIONS
1	Application is received, logged into a ledger and routed to the program staff for processing. The statutory timing for issuance of certifications is 30 days. There are 5 general stormwater permits that are designed to cover all industrial activities. The following steps apply to all the permit types with the exception that the time frame for construction permits is compressed to 10 days. Applications are typically processed in batches for efficiency.
2	The application is reviewed for completeness. If the application is incomplete the process advances to step 2a and if the application is complete the process advances to step 3. A determination is made at this point if the entity is properly categorized.
2a	If the application is incomplete, the additional information is requested. The applicant is notified that the application review is suspended pending receipt of the additional information.
2b, 2c	Once additional information is received the Division has 5 days to conduct a completeness review and advise the permitted of any continuing deficiencies. Steps 2a through 2c may be repeated.
3	Once the application is complete it is routed to the Data Services Unit for entry of the data into the SWIM and KLEROS data bases. SWIM is a Dbase data base used for generating certifications and all other program functions except billing, which is performed by KLEROS. The SWIM data base is designed to automatically print the appropriate certification based upon data input to the system.
4	The draft certification is review for accuracy and if problems are noted they are corrected. The final certifications are routed to the Clerical Unit for mailing and file setup.



Figure 1  
Individual Permit  
Flow Chart

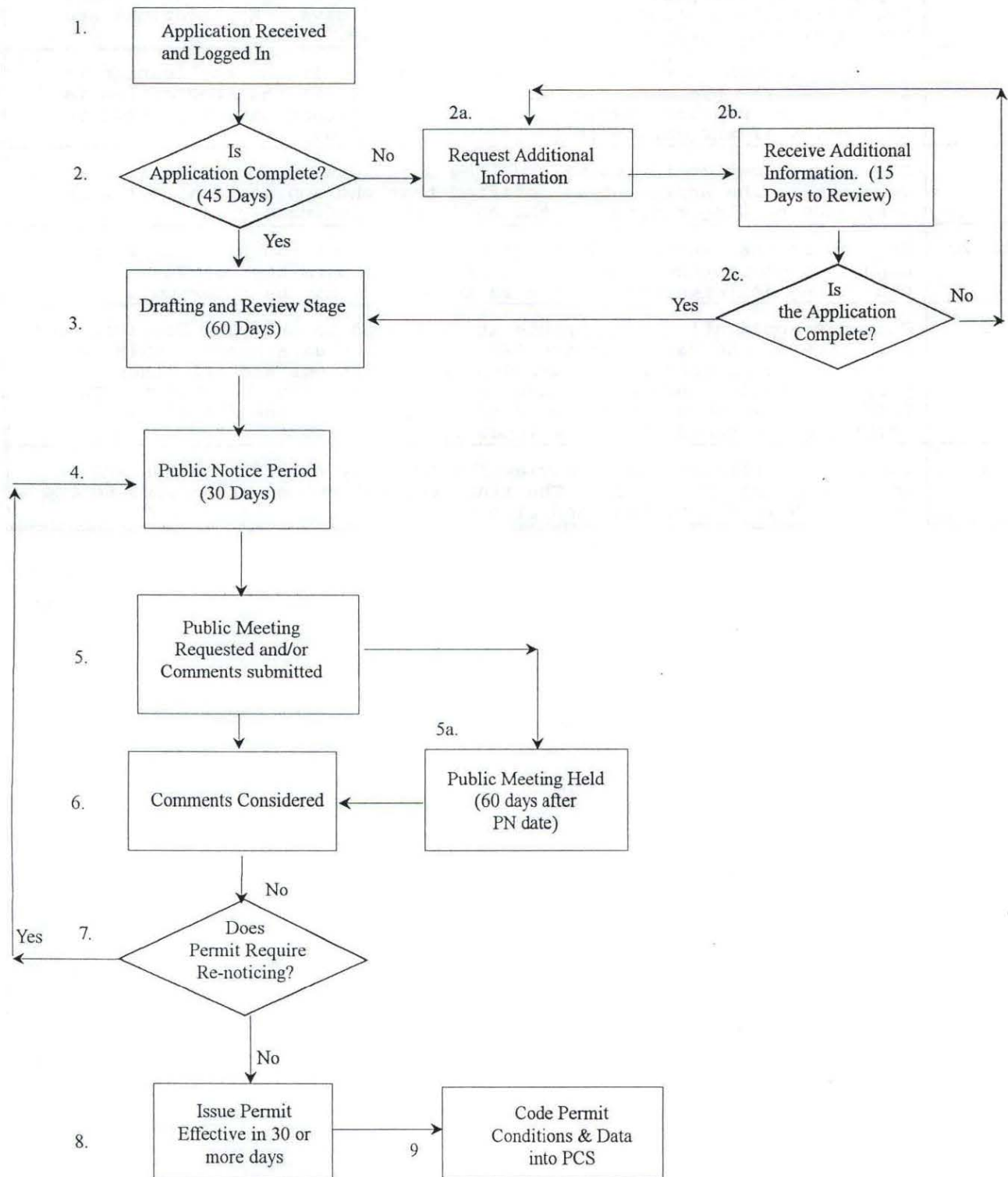


Figure 2  
Wastewater General Permit Certification  
Flow Chart

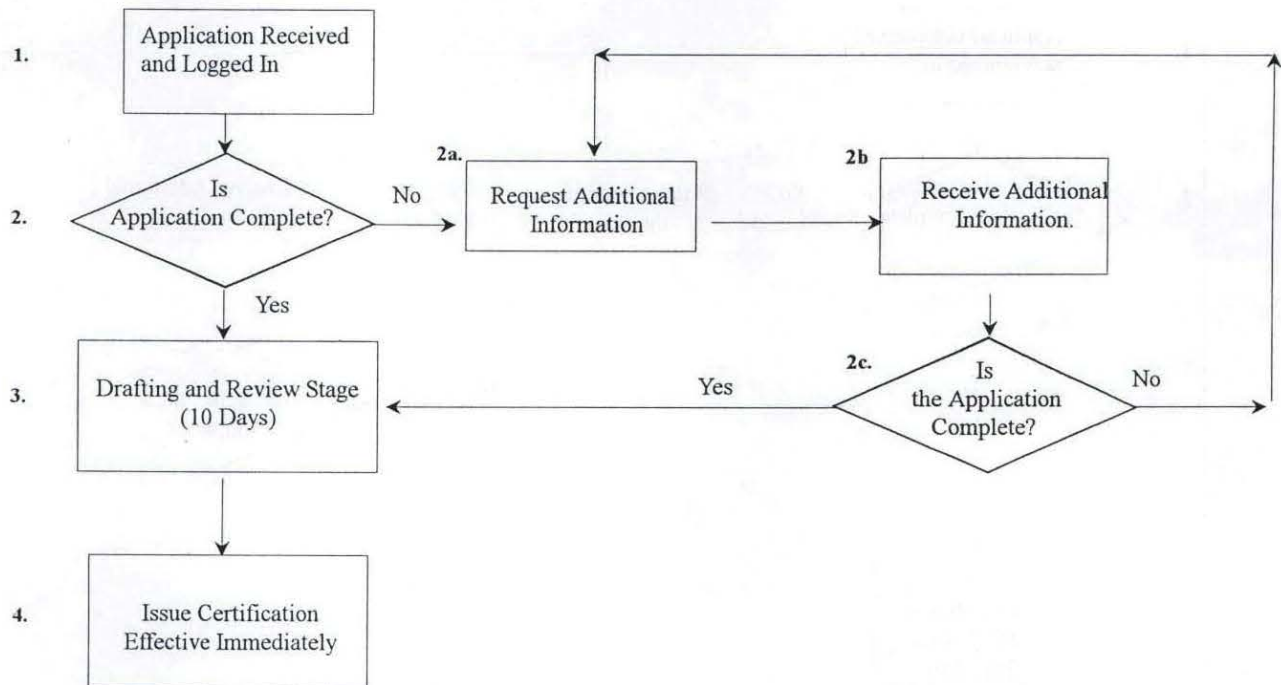
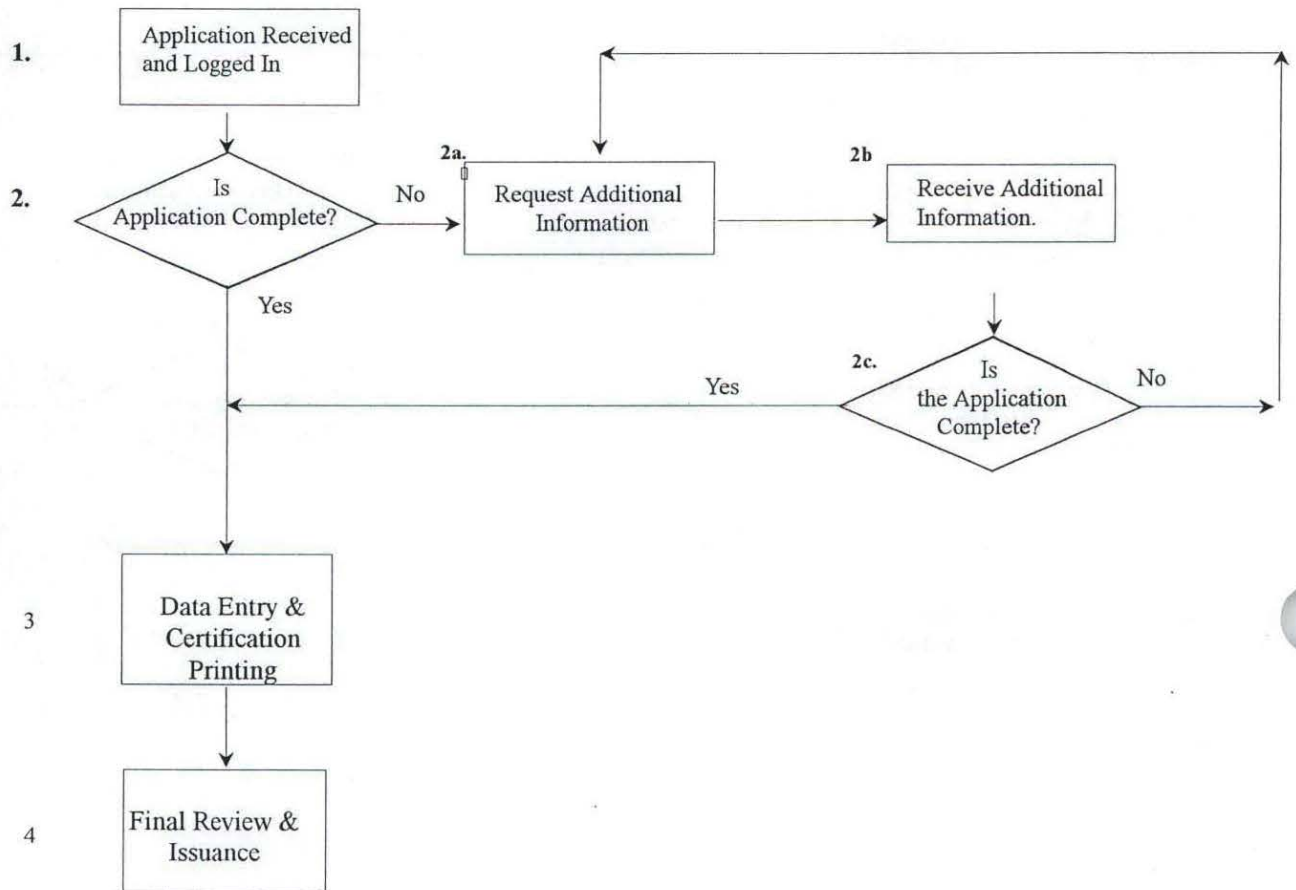




Figure 3  
Stormwater General Permit Certification  
Flow Chart



### III. COMPLIANCE EVALUATION

#### Introduction

Compliance evaluation focuses on inspections, the systematic review of DMRs plus the review of other required reports and data to determine compliance status with permit conditions. Compliance information for the process water program is maintained within EPA's computerized Permit Compliance System (PCS), while stormwater information is maintained in a PC-based database (SWIM) with billing information presently retained in the Department KLEROS database. Enhancement of the SWIM or KLEROS system over time will be necessary to accommodate program advancement. In order to help prioritize work for the Field Support staff, an annual inspection plan is developed by the state and coordinated with EPA.

Inspections conducted by the Division consist of Compliance Sampling Inspection (CSI), Compliance Evaluation Inspection (CEI), Composite Performance Evaluation (CPE) or Diagnostic Inspection (DI), Performance Audit Inspections (PAI) and general inspections on complaints. Reconnaissance Inspection (RI), Toxic Sampling Inspections (XSI) and Compliance Biomonitoring Inspections (CBI) are described below as future options but are not at this time conducted. The respective inspection types are described as follows:

#### Compliance Evaluation Inspection (CEI)

A CEI is a nonsampling inspection designed to verify permittee compliance with applicable permit self-monitoring requirements and compliance schedules. This inspection involves record reviews, visual observations, and evaluations of the treatment facilities, effluents, receiving waters, etc. Data gained during an inspection may lead to a CSI or a more indepth CPE being scheduled for the facility in the future.

#### Compliance Sampling Inspection (CSI)

During the CSI, representative samples of a permittee's influent and/or effluent are collected. Analytical results are used to 1) verify the permittee's self monitoring program and reports, 2) determine the quality and quantity of effluents, 3) develop permits, and 4) obtain evidence for enforcement proceedings. In addition to the above tasks, a CSI may incorporate many of the same objectives and tasks as in a CEI.

CSI inspections are conducted at many EPA major facilities annually and at selected minor facilities suspected of being in non-compliance.

#### Composite Performance Evaluation (CPE)

The CPE, also referred to as a Diagnostic Inspection (DI), is primarily use for domestic facilities and contains the elements of a CEI but additionally looks at the solids balance across the plant and facility funding. Because of the significant time and resource requirement for inspections of this type there are typically only about 10 a year conducted. CPE inspections are typically reserved for those facilities where enforcement is likely because of effluent violations and where operation and maintenance, rather than construction needs, is suspected as the primary problem.

#### Performance Audit Inspection (PAI)

The PAI is used to evaluate the permittee's self-monitoring program, in depth. The PAI will look at sample collection, flow measurement, sample preservation, handling, laboratory analysis, data work-up and reporting.

Because of the specialized nature of these inspections, the maximum number of these inspections conducted annually is typically less than 5. Candidates for these inspections may be identified through the annual DMR/QA program conducted by EPA.



### General Inspections for Complaints

When complaints are received which may relate to possible unpermitted discharges, unpermitted stormwater activities or spills, a field inspection is frequently required. Such inspections are typically to make a quick assessment for illegal activities. Where appropriate, documentation for enforcement purposes will result. Such documentation may be in the form of sampling, pictures and written reports.

### Compliance Biomonitoring Inspections

This inspection includes the same objectives and tasks as a CSI. A CBI reviews a permittee's toxicity bioassay techniques and records maintenance to evaluate compliance with the biomonitoring terms of the CDPS permit and to determine whether the permittee's effluent is toxic. The CBI also includes the collection of effluent samples by the inspector to conduct acute and chronic toxicity testing to evaluate the biological effect of a permittee's effluent discharge(s) on test organisms.

### Reconnaissance Inspection (RI)

The RI is used to obtain a preliminary overview of a permittee's compliance program. The inspector performs a brief visual inspection of the permittee's treatment facility, effluent, and receiving waters. The RI uses the inspector's experience and judgement to summarize quickly any potential compliance problems. The objective of the RI is to expand inspection coverage without increasing inspection resources. The RI is the briefest and least resource intensive of all inspections.

### Toxics Sampling Inspection (XSI)

The XSI has the same objective as a conventional CSI. However, it places increased emphasis on toxic substances regulated by the CDPS permit. The XSI covers priority pollutants other than heavy metals, phenols, and cyanide, which are typically included in a CSI (if regulated by the CDPS permit). An XSI uses more resources than a CSI because highly sophisticated techniques are required to sample and analyze toxic pollutants. An XSI may also evaluate raw materials, process operations, and treatment facilities to identify toxic substances requiring controls.

## C. Compliance Evaluation and Administrative Enforcement Process

The compliance evaluation procedure shown in figure 4 begins with receipt of the DMR by the Permits & Enforcement Section (PE). The identified steps represent the normal approach for processing a DMR. Given the Division's years of experience in implementing the program, most non-compliance is addressed without formal enforcement action. Where formal action is deemed necessary, the majority of formal actions are developed by Division staff whose specific responsibility is enforcement. This specialization allows the Division to conserve Attorney General (AG) time commitments to those situations where it is deemed to be truly needed.

All administrative enforcement actions in the form of a Notice of Violation (NOV) are signed by the Division Director. A boilerplate document has been developed for NOVs and for most actions it is simply a matter of inserting the pertinent facts. Where special conditions exist, the action is crafted site specifically and AG assistance may be requested to assure that the action as cited is legally supportable. More recently with the emphasis on multi-media, enforcement actions are being coordinated with other regulatory agencies at increasing frequency.



The Division has a very close working relationship with the AG staff. To conserve the limited legal resources routine matters, such as NOV development, are typically developed without AG input. AG involvement in enforcement actions is frequently determined by the presence or absence of legal council for the permittee. Once formal action has been taken, an AG representative will typically be involved in any meeting with the entity until a responsible determination can be made that resolution of the action can be resolved without litigation. Subsequent meeting will only involve AG representation where specifically determined to be necessary.

The DMR evaluation process for compliance and enforcement is presented in Figure 5 and described below:

1. The permittee submits the DMR to the Division where it is date stamped received and logged in. Unsigned DMRs are returned for signature and data for incomplete DMRs is gained through various means such as a phone call, letter or returned DMR.
- 2a. The data is entered to PCS.
- 2b. Monthly printouts of violations are generated.
3. DMRs are screened for violations primarily by checking violations listed in the monthly violations report for obvious errors. Attachments to the DMR such as explanatory correspondence or WET reports will also be reviewed.
- 4a. If no violations are noted, the DMR is filed (Step 4b). If apparent violations are noted, the process moves to step 5.
5. All apparent violations are investigated to determine the extent and cause of the problem. Information is gained through phone calls, letters, meetings, etc.
6. Once the extent and cause of the violation are ascertained, the Division determines the appropriate course of action. First time violations typically receive no more than a warning (Step 6b) but repeat violations of significant magnitude will likely result in formal enforcement and collection of a monetary penalty. Appropriate enforcement response will be determined using the Division's Enforcement Management System (EMS), see Attachment 11. For EPA majors the Division uses the national criteria which tracks significant non-compliance (SNC). At such time as an EPA major permittee enters SNC, the Division will initiate appropriate enforcement action which typically is issuance of a Notice of Violation.
7. For extreme single violations, such as result in a fish kill, or significant repeat violations a Notice of Violation (NOV) and Cease and Desist Order (CDO) will frequently be issued.
8. Once a NOV/CDO is issued it is common for the permittee to request a hearing to preserve their legal rights. Prior to the action proceeding to hearing, a meeting is typically held to see if the enforcement action is being satisfied and if a negotiated settlement can be reached (Steps 8b and 8c). Such settlements typically include compliance schedules, supplemental environmental project/pollution prevention projects and penalty amounts. 95% of all enforcement actions are resolved through settlement agreements. Per statute, collected penalties are sent to the State General Fund.
9. In the event that it is not possible to negotiate a settlement, where timely requested, the matters will be set for hearing. In these cases the Attorney Generals Office will take the lead once this point has been reached, though they will also have been involved earlier in the process.



D. Criminal Enforcement Procedures

Colorado statute has provisions for criminal pollution of state waters and for falsification and tampering. When such conditions appear to exist, the Division will compile the available information and refer the matter to the District Attorney or the State Attorney General. Once referred, the Division will assist as resources and capabilities allow.

IV. FEDERAL FACILITIES

The state will assume responsibility for issuing permits to all Federal facilities, except for those federal facilities which are presently operating under administratively extended permits. Once EPA has issued current permits for the remaining facilities and all permit appeals are resolved, the Division will also assume future permitting responsibility for those facilities.

The Colorado Water Quality Control Act defines "person" as including "federal agency"; therefore, Colorado has authority to regulate federal facilities within the state's jurisdiction in accordance with Section 313 of the Clean Water Act.

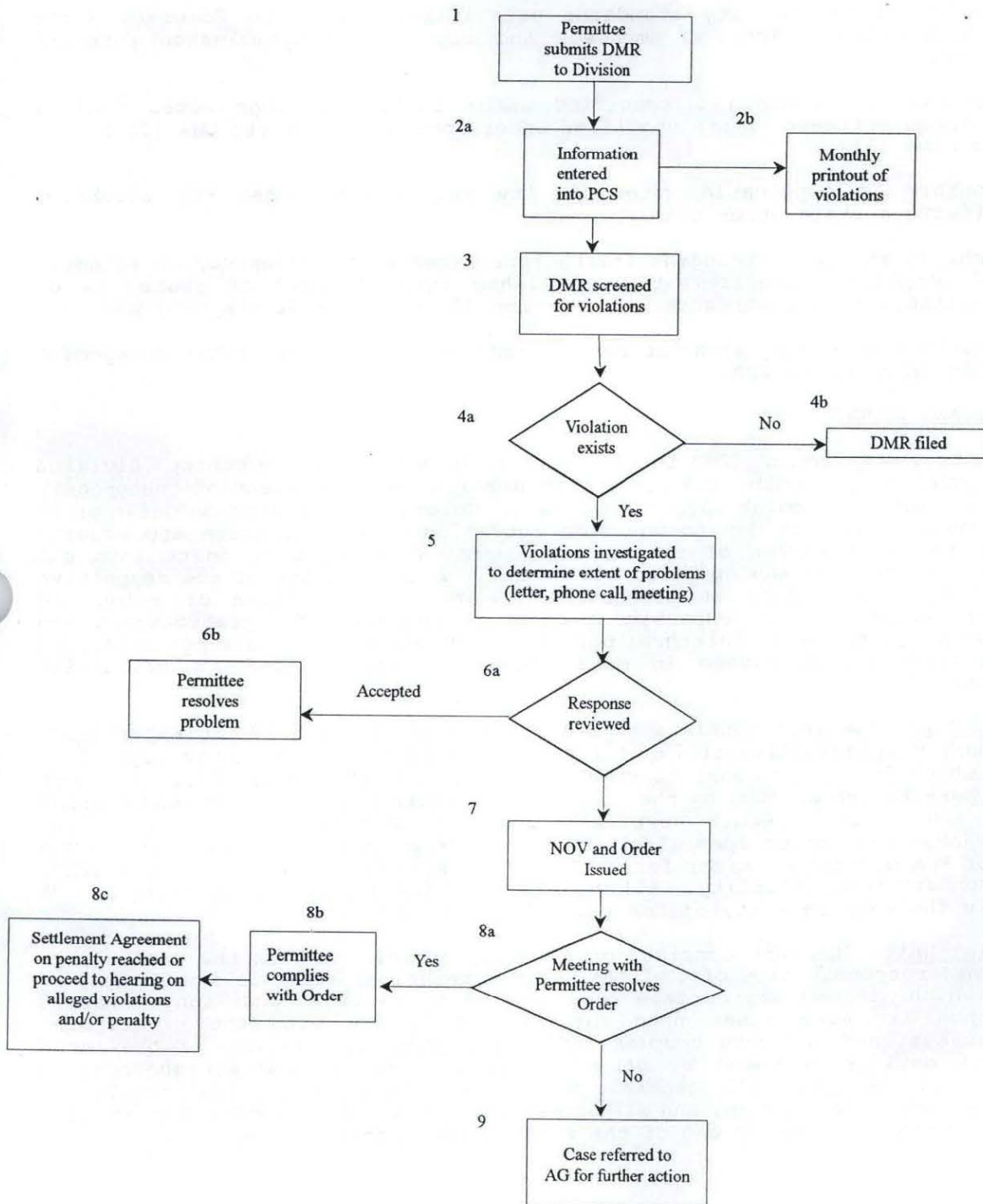
All provisions of the state program are intended to apply to federal facilities and no special processes or procedures are deemed necessary at this time.

V. GENERAL PERMITS

The Division has had general permit authority for many years and continues to expand the usage of general permits. The actual permit development process basically consists of document drafting followed by a 30 day public notice. Once comments are received and given appropriate consideration, a final permit is issued. Once the general permit is issued, permit applications are received and are processed as shown in Figure 3 and if applicable the entity is certified to operate under a specified general permit.

The Division presently has 14 general permits in use. For the process water program about 35% of the 1050 permits are general permits and about 98% of the stormwater permits are general permits. At the time of a process water permit renewal, if a stormwater general permit certification exists for the entity, both the process water and stormwater provisions are incorporated into one site specific individual permit.

**Figure 4**  
**DMR Compliance/Enforcement Procedure**  
**Flow Chart**





VI. COLORADO CONTINUING PLANNING PROCESS AND ISSUANCE OF WATER QUALITY BASED PERMITS

The state has a continuing planning process in accordance with Section 303(e) of the CWA in order to ensure that water quality considerations are incorporated into permits. Requirements in addition to or more stringent than EPA's effluent limitation guidelines or standards will be included when necessary to:

1. Achieve water quality standards established under the Colorado Water Quality Control Act, as amended, and regulations promulgated pursuant thereto;
2. Achieve or maintain a specified water quality through water quality related effluent limits specified under Section 302 of the CWA (33 U.S.C. Section 1312).
3. Conform to applicable water quality requirements when the discharge affects a state other than Colorado.
4. Achieve any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with Section 301(b)(1)(c) of the CWA; and
5. Ensure consistency with the requirements of any Colorado Water Management Plan approved by EPA.

VII. STAFFING AND BUDGET

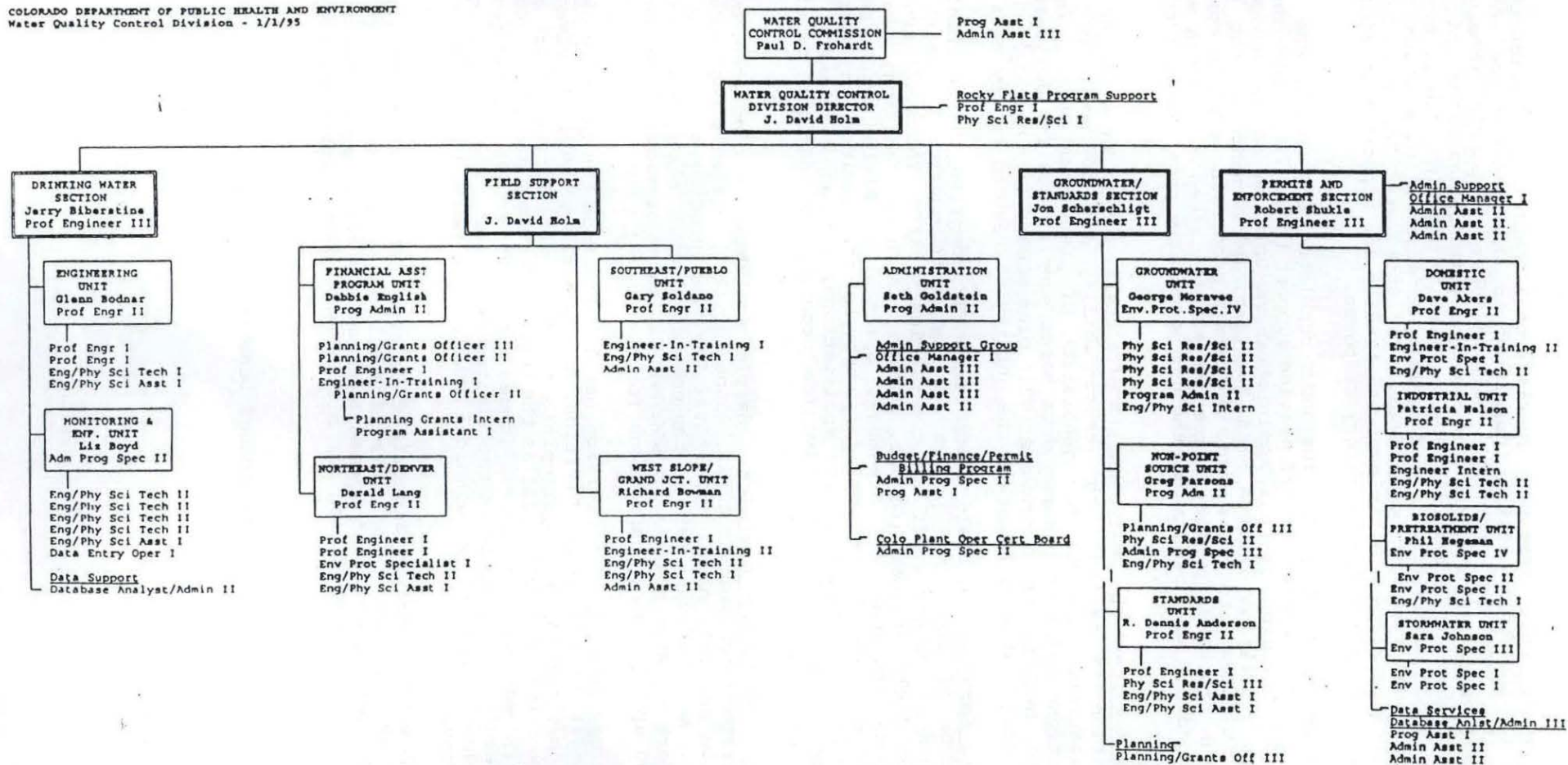
The Permits & Enforcement (PE) Section within the Water Quality Control Division has the primary responsibility for implementation and management of the process water and stormwater point source programs in Colorado. The Section Chief of PE is responsible for the day to day administration of the programs and reports directly to the Director of the WQCD. Figure 5 presents in chart form the structure of the WQCD and specific job titles. A description of the respective units of the PE Section is presented here for clarification of roles and responsibilities of the respective program positions. The pretreatment and biosolids programs are in integral part of the PE Section, but are not described here as they are discussed in more detail in their respective delegation documents.

Domestic Unit The unit consists of a 5 staff, one of which is the supervisor. The primary responsibility of 3 of the program technical staff is development of permits which impose appropriate requirements given site conditions. The more complex permits are drafted by the higher level engineers while the less complex permits and general permit certifications are primarily developed by the Environmental Protection Specialist position. Compliance tracking, such as DMR review of EPA designated minor facilities, is assigned to the 3 technical staff as a secondary responsibility. All enforcement plus compliance tracking of EPA majors is the responsibility of the remaining unit position.

Industrial Unit The unit consists of 6 staff, one of which is the supervisor. The primary responsibility of 4 of the program technical staff is development of permits which impose appropriate requirements given site conditions. Permit assignments are made based upon facility complexity with the engineering positions assigned the more complex individual permits. Because of the large number of entities covered by general permits, one of the non-engineering positions is assigned all general permit certifications. All compliance tracking, such as DMR review, and all enforcement action development and tracking is the responsibility of by one of the Professional Engineer I positions.

Figure 5

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
Water Quality Control Division - 1/1/95





Stormwater Unit The unit consists of 3 staff, one of which is the supervisor. 98% of the 2300 entities permitted in this program are covered by general permits. The two technical positions share responsibilities in certification development, incorporating stormwater permit conditions into a process water permit when both are applicable, compliance tracking, public assistance and field inspection activities. Enforcement responsibilities for the near term will remain with the unit supervisor. The Stormwater Unit maintains routine field inspection responsibilities, with funding for support from Field Services staff limited 0.09 FTE for emergency response.

Administrative Support The unit consists of 4 staff, one of which is the supervisor. The unit staff provide support to all PE programs as well as support to the Division central Administrative Unit on an as needed basis. Basic responsibilities include mail handling, maintenance of the central division permit files, and all aspects of permit processing such as application log in, status tracking, public notice and permit issuance. Though some specific job assignments have been made, the unit generally provides full coverage even when not at full staff.

Data Services The unit consists of 4 staff, one of which is the supervisor. One position is assigned the responsibility for coding permit conditions and limitations into PCS for generation of preprinted DMRs. The remaining two positions maintain program data bases such as PCS for Domestic and Industrial Units, SWIM for the Stormwater Unit plus KLEROS and the Alpha list for billing. The unit must also maintain the ability to respond to new data base needs.

Field Services A field staff of 16 FTE comprise the sampling and inspection portion of the state program. The staff consist of eight engineers, six technical support staff and two clerical staff. The staff are divided between three field offices (Denver, Pueblo and Grand Junction) plus two satellite offices (Durango and Steamboat Springs). Field staff have a range of responsibility which includes, but is not limited to domestic plans and specification reviews, site applications, citizen complaints, spill response, general support for all Division programs in addition to the sampling and inspection responsibilities.

State Laboratory Division Sample analysis is conducted by staff of the Laboratory Division of CDPHE. Annually the Division's negotiate a contract for sample analysis based upon total Division program projections for the coming year. A significant part of the projection will relate to ambient monitoring for support of water quality standards. Estimates of sample type and number are made based upon planned inspections for the coming year.

Attorney General The Division has 3.3 FTE from the Attorney General's Office. As legal council to the Division, AG staff are actively involved in enforcement actions, developing legal opinions and in rulemaking hearings before the WQCC. The workload is substantial as the regulated community and the public have become highly educated on water issues and are active participants in various proceedings. To conserve the limited legal resources routine legal matters are frequently handled by technical staff, such as in drafting routine enforcement actions.

Interaction with other Division staff is routine where there is a need to provide assistance as in; conducting field inspections, responding to citizen inquiries, enforcement, determination of stream low flows, general assistance on development of permit conditions, coordination for billing and general administrative issues.

#### SALARIES & BENEFITS

Salaries are actual costs with fringe benefits ranging from 12% to 25% of the base salary.



#### INDIRECT COSTS

Indirect costs are estimated to be 21.1% of salaries for onsite staff and 14.4% for offsite staff. These costs include department administration, fiscal, legal, clerical support; copying and printing charges, telephone, central services, postage and computer services.

#### TRAVEL & FTE

The legislature annually makes an appropriation for travel and FTE spending authority for program operation. Presently, separate annual appropriations are made for the wastewater and stormwater programs. Travel in large part for the wastewater staff is limited to special inspections which are directly related to permit drafting. Cash funding for the wastewater programs is also largely used for travel for staff training and meeting with permittees and the public. Field staff conduct the majority of travel for site inspections and sampling for the wastewater programs.

#### FUNDING

Funding sources for the programs in PE include Permits Cash, Federal 106, 106 match and Permits General Fund. Permits Cash fees for CDPS permits, process water and stormwater, are established by the the state legislature and are identified in Colorado Water Quality Control Act.

#### FY 1996

Several funding sources exist for programs within the PE Section and annual appropriations are made by the legislature for the respective programs. Therefore until the annual appropriations are made and evaluated, a true projection of FTE and funding cannot be made. Thus the FTE projections for FY 1996 will likely be subject to some level of change.



<b>CDPS PROCESS WATER PROGRAM BUDGET</b>		
	<b>FY 1995</b>	<b>FY 1996</b>
Salary & Benefits	934,036	962,191
Travel	10,716	10,716
Operating		
Advertising (Public Notices)	5,575	5,575
Data Processing, hardware & software	8,092	8,092
Field Supplies, Sampling Equipment	1,200	1,200
Office Supplies	3,204	3,204
Equipment Maintenance	250	250
Training	1000	1000
Vehicle	0	0
Indirect	270,339	270,339
Lab	45,000	45,000
<b>Appropriation</b>	<b>1,313,739</b>	<b>?</b>
<b>Unencumbered Balance</b>	<b>34,327</b>	<b>?</b>
<b>Billing for FY</b>	<b>861,539</b>	<b>861,539</b>

<b>CDPS PROCESS WATER SALARY &amp; BENEFITS</b>			
<b>POSITION</b>	<b>FTE</b>	<b>FY 1995</b>	<b>FY 1996</b>
Section Chief (Professional Engineer III)	.05	4,310	4,469
Unit Leader (Professional Engineer II)	2.0	148,490	151,764
(Blair, Holmer, Horstmann) (Professional Engineer I)	3.0	193,867	198,968
(Torrez, Young) (Env. Protection Specialist I)	2.0	106,564	106,564
(Kimble, Sullivan) (Engineer-In-Training)	2.0	98,051	102,223
(Bigot) (Database Analyst/Admin III)	1.0	40,930	50,412
(Simpson, Trujillo, Casey, Jones) (Admin Asst II)	4.0	129,132	133,059
(Biberstine) (Office Manager I)	1.0	43,921	45,075
(Boyce, Kubic, Griffith, Watson) (Eng/Phy Sc. Tech II)	2.54	116,611	116,611
(Knope) (Engineer Intern)	.35	16,805	17,991
(Moreno) (Admin. Program Specialist II)	.60	25,411	25,411
(Taubman) (Eng/Phy Sc. Asst I)	.40	9,644	9,644



<b>CDPS STORMWATER PROGRAM BUDGET</b>		
	<b>FY 1995</b>	<b>FY 1996</b>
Salary & Benefits	292,161	314,520
Travel	4,200	4,200
Operating		
Advertising (Public Notices)	1,200	1,200
Data Processing, hardware & software	1,900	1,900
Field Supplies, Sampling Equipment	1,000	1,000
Office Supplies	2,200	2,200
Equipment Maintenance	900	900
Training	1,500	1,500
Vehicle	0	0
Indirect	64,279	69,817
Lab	1,000	5,000
<b>Appropriation</b>	<b>423,388</b>	<b>?</b>
<b>Unencumbered Balance</b>	<b>59,859</b>	<b>?</b>
<b>Billing for FY</b>	<b>261,800</b>	<b>261,800</b>

CDPS STORMWATER SALARY & BENEFITS			
POSITION	FTE	FY 1995	FY 1996
Section Chief (Professional Engineer III)	.88	75,859	78,669
Unit Leader (Environ. Prot, Spec. III)	1.0	57,171	62,839
(Dolan, Beley) (Env. Protection Specialist )	1.0	90,186	100,402
(Pottratz) (Admin Asst II)	1.0	25,526	27,362
(Schmidt) (Program Asst. I)	1.0	30,465	30,465
(Montgomery) (Admin Asst III)	0.3	7,330	9,018
(field) (Prof. Engr. I)	0.09	5,624	5,765





**COLORADO INDUSTRIAL PRETREATMENT PROGRAM**

**PROGRAM DESCRIPTION**

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
WATER QUALITY CONTROL DIVISION  
MARCH 8, 1995





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## COLORADO INDUSTRIAL PRETREATMENT PROGRAM

### Current Pretreatment Program Status

The Colorado Pretreatment Regulations became effective on July 1, 1990. State program implementation activities are coordinated with EPA Region VIII on an annual basis. This program description addresses administration and implementation of the fully delegated Pretreatment Program.

### Administration of the Pretreatment Program

The Water Quality Control Division Director is responsible for the overall administration of the Pretreatment Program. Specific duties include the final approval of policy and procedures regarding administration and enforcement, approval or denial of local Publicly Owned Treatment Works' (POTW) pretreatment programs, recommendation of approval or denial of Fundamentally Different Factor (FDF) variances, and final state decisions on category determination.

Program operations are housed in the Permits and Enforcement Section, Biosolids Management/Industrial Pretreatment Unit. This structure facilitates coordination with the domestic permitting and Permit Compliance System (PCS) components of the state permitting program resulting in efficient program implementation. Program staff may coordinate activities with other Division staff as necessary to facilitate program operation. For example, pretreatment fee billing is coordinated with the Division's administrative staff; inspections and sampling activities will occasionally involve Field Support staff.

### Implementation of the State's Pretreatment Program

The State's Pretreatment Program requires local pretreatment program development of those POTWs which fulfill the criteria identified below. Significant Industrial Users not discharging to those facilities with approved local programs are regulated directly by the State. Significant Industrial Users are notified of applicable categorical discharge standards, prohibited discharge standards, Pretreatment Requirements, and local limits via a permit equivalent instrument, the Notice of Discharge Requirements.

### Procedures for Identification of POTWs subject to Pretreatment Requirements

Currently there are 26 POTWs which have Pretreatment Programs approved by EPA, or, most recently, jointly approved by EPA and the State. Local programs approved by EPA prior to the effective date of the Colorado Pretreatment Regulations are considered to be approved by the State per the Colorado Pretreatment Regulations. Several additional programs are under development. The Division may require additional POTWs to develop and implement local pretreatment programs. Program development is required upon consideration of the following criteria:



The design flow of the POTW. Any POTW, or combination of POTWs operated by the same authority, with a design flow equal to or greater than 5 million gallons per day (MGD) which receive from Industrial Users pollutants which could pass-through or interfere with the operation of the POTW or have Industrial Users subject to pretreatment standards shall be required to develop a program. POTWs with design flows of less than 5 MGD may be required to develop a program based upon an evaluation of the following criteria.

The number and type of Industrial Users discharging into the POTW. Communities with a large industrial base may be required to develop programs. POTWs with relatively few users may be required to develop a program based on the percentage of the POTW's hydraulic or organic loading contributed by the users. Alternately, the Division may opt to require development of local limits by the POTW which would then be incorporated into the Notices of Discharge Requirements issued by the Division to the users.

Instances of pass-through or interference. A POTW whose industrial user contributions cause the facility to violate CDPS/NPDES discharge permit limitations or applicable stream standards may be required to develop and implement a local pretreatment program. Additionally, the presence of smaller users whose discharge has the potential to pass-through or interfere with the operation of the POTW may trigger program development requirements, particularly if those industries are subject to categorical discharge standards. Instances in which industrial user discharge(s) results in a deterioration of biosolid quality and thereby limits the ability of a POTW to use or dispose of its biosolids may similarly trigger program development requirements. Again, the Division may require local limit development in lieu of development and implementation of a local program.

The ability of a POTW to control its industrial dischargers. A POTW's ability to effectively control discharges from its industrial users is also considered in evaluating the need to require development of a local program. If the community is incapable of assuring that contributing industries do not cause instances of interference or pass-through, the Division may require development of a local pretreatment program.

Upon a determination that POTW development of a local pretreatment program is necessary, a compliance schedule for program development is formulated by Pretreatment Program staff and incorporated into the POTW's CDPS permit. Alternately, if the Division's determination is based upon instances of effluent or biosolids violations due to pass-through or interference, the Division may stipulate a program development compliance schedule as part of a Notice of Violation and Cease and Desist Order. Development and issuance of such orders are the responsibility of the Pretreatment Program staff. The mechanism by which the compliance schedule is imposed, and the duration of the schedule is specific to the POTW. Any such compliance schedule is limited to no more than one year.



### Pretreatment Program Development and Review

A POTW is required to develop a local program which complies with federal pretreatment requirements at 40 CFR § 403.8(f) including development of local limits as set forth at 40 CFR § 403.5. Conformance with the EPA Region VIII local limit development strategy will be required until such time as the Division opts to develop a specific State strategy.

Preliminary Division review to determine conformity with POTW program requirements is completed within 60 days per 40 CFR § 403.9. Should preliminary review indicate the submittal to be deficient, the POTW and any person who has requested individual notice is provided written notice of the deficiency. The written notice may identify suggested modifications to the submittal and may identify a timeframe for supplemental submittal.

Upon a Division finding that the submittal is complete, a 30 day public notice is issued. The procedure for the public notice period is the same as used for public notice of CDPS permits. The period for comment may be extended at the discretion of the Director. The POTW, any affected state, any interested state or federal agency, person or group of persons, may request a public hearing with respect to the submission within the public notice period. A public hearing will be convened should the POTW request, or should the Director determine that there is sufficient public interest to warrant a hearing.

Based upon the Division's determination that the submittal satisfies POTW program element requirements, and upon consideration of comments received during the public comment process, the Director shall approve or deny the submission after the conclusion of the public comment period. This timeframe may be extended up to an additional 90 days if a public hearing is convened, but in no case may the evaluation extend beyond 180 days from the date of public notice. No submittal shall be approved should written objection be provided by EPA. Notification of denial may identify suggested modifications and may allow additional time for modification to the submittal. Approval or denial shall be published in the same manner as the initial public notice.



Upon approval of a POTW pretreatment program the POTW's CDPS permit is amended to incorporate program implementation requirements as enforceable permit conditions. Boilerplate CDPS language is developed by Pretreatment Program staff in coordination with the Domestic CDPS Unit. Pretreatment Program staff is responsible for review and approval of all CDPS permits containing local program implementation requirements. POTW program modifications which are submitted subsequent to initial program approval must receive Division approval. The Division is the approval authority referred to in the Colorado Industrial Pretreatment Regulations at section 4.9.3.E(4). Local program modifications may be initiated by either the Division or by the POTW. Proposed modifications will be submitted by the POTW and reviewed by the Division to determine whether the changes are substantial or non-substantial in nature. Non-substantial modifications are deemed to be approved upon the determination that they are, in fact, non-substantial and the Division has not otherwise objected to the modification. Substantial modifications are subject to the same public notice and review procedures specified for new program submittals.

#### Oversight of Approved Pretreatment Programs

Upon POTW program approval, adequacy of program implementation is subject to ongoing evaluation. POTW program oversight is accomplished through several mechanisms. Influent, effluent and biosolids monitoring to assure that toxics are not passing through the POTW, interfering with plant performance or concentrating in plant residuals. Appropriate monitoring requirements and effluent and biosolids limitations are stipulated by the CDPS permit. Additionally, whole effluent toxicity testing is required of all POTWs with pretreatment programs. Monitoring results are evaluated to determine, in part, the effectiveness of a POTW's program implementation.

The Division also performs periodic inspections of the POTW pretreatment program. These include both pretreatment program audits (PPAs) and pretreatment compliance inspections (PCIs). Both PPAs and PCIs will be performed by Pretreatment Program staff. The number of PCIs and PPAs are identified in the Division/EPA workplan.

The PPA provides a comprehensive review of the POTW pretreatment program. Elements of the PPA include:

- Legal authority with particular emphasis on modifications necessary to maintain continuing compliance with evolving State and federal requirements;

- Review of the POTW monitoring and inspection procedures so as to assure determination of industrial user compliance status independent of information supplied by the industrial user;

- Review of POTW control mechanism development and content to assure adequate implementation of categorical discharge standards, prohibited discharge standards and local limits;

Evaluation of the industrial waste survey results to assure POTW knowledge of industrial user status is maintained;

Inspection of POTW data management system to ensure accurate and timely evaluation of industrial user compliance status;

Review of POTW Enforcement Response Plans and enforcement activities to ensure appropriate and equitable response to Industrial User violations;

Review of POTW public participation procedures;

Evaluation of adequacy of POTW program resources.

The PPA, on average, takes approximately two days and includes an interview of personnel involved with the pretreatment program, a review of the POTW's pretreatment files and industrial user visits. The initial PPA is performed the first year after local program approval. Subsequent PPAs will be performed at least once per five years. More frequent PPAs may be performed when circumstances warrant.

The Division will typically perform annual PCIs on those POTW pretreatment programs which have not been audited within the inspection year. More frequent PCIs may be performed for those POTW programs which are identified as deficient. Conversely, in instances where a POTW program has demonstrated a consistently high level of program implementation the PCI may be performed on a biennial basis. The Division/EPA workplan will identify the annual Division commitment for both PPAs and PCIs. POTWs selected for PPAs and PCIs within a given inspection year will be identified in the annual inspection plan.

PCIs are similar to audits, but are more limited in scope. These inspections include interviews of personnel involved in the POTW pretreatment program and review of POTW Industrial User files. Industry inspections may also be included but are not a required element of the PCI. Elements of the PCI include:

Review of any POTW program modifications which have been implemented;

Evaluation of any instances of pass-through or interference;

Review of Industrial User control mechanism status;

Review of POTW monitoring and inspection activities;

Review of POTW enforcement activities;

Evaluation of POTW data management system.



The results of both PPAs and PCIs are reported to the POTW as expeditiously as possible after completion of the inspection. The inspection report specifies both required and recommended changes to address any program deficiencies which are identified during the inspection process. The PPA and the PCI, in combination with influent, effluent monitoring, whole effluent toxicity testing, and biosolids monitoring provide much of the information necessary to determine the compliance of a POTW with pretreatment program implementation requirements. The Division may also at any time perform oversight inspections of any POTW regulated Industrial Users in order to ascertain the adequacy of the local program.

Failure by the POTW to implement required corrective action(s) identified during inspection activities and specified in the inspection report will result in issuance of an Notice of Violation and Cease and Desist Order. Issuance of any such order is the responsibility of the Pretreatment Unit unless the order also addresses CDPS permit violations not related to pretreatment. Should a combination of violations of that nature arise, the Pretreatment Unit and the Domestic Unit will coordinate the enforcement action. A civil penalty will typically be sought from a POTW whenever a Notice of Violation and Cease and Desist Order is issued. EPA retains at all times the ability to initiate direct enforcement action as appropriate.

POTWs are required to submit annual reports summarizing the status of key program elements. Review of the annual pretreatment reports is the responsibility of the . Data extracted from the annual reports are coded by the Industrial Pretreatment Program staff and is entered into PCS. Annual reports are used to track overall compliance rates among approved local programs, to identify program deficiencies which are then evaluated in greater detail during PCIs or PPAs, and to update the State's fee system database. Failure to submit an annual report by a POTW may result in enforcement action.

### POTWs without Approved Programs

POTW's without approved pretreatment programs are responsible for compliance with limited pretreatment related conditions of the CDPS permit. The primary responsibility of these communities is to inform the State of any Significant Industrial User, or other non-domestic contributor whose wastewater contains a toxic pollutant as defined under Section 307(a) of the CWA, discharging to the POTW, or any substantial change in the levels of pollutants discharged by those users. CDPS permit boilerplate language will be developed to define "substantial" change. These requirements are incorporated into all domestic CDPS permits. Should a POTW fail to notify the Division of the connection of a new Significant Industrial User, or a substantial change in the discharge of an existing one, the POTW may be subject to enforcement action. Additionally, the Division's District Engineers may identify new industries when performing other inspections. As new industries are identified, or as notification of changed industrial discharges are received, the potential impacts of the industrial discharge upon the POTW or the receiving stream are evaluated. Should the magnitude of any such impact be significant, the facility's CDPS permit will be amended. Such amendment may include additional effluent limitations, monitoring requirements, or a requirement for local limits development.

### Industries

Division will periodically update its Industrial Waste Survey (IWS) to identify industrial users potentially subject to Industrial Pretreatment Program requirements which are discharging to non-delegated POTWs. IWSs performed in 1989 and 1993-94 included the following steps: (1) Surveys are sent by the Division to POTWs without local program approval. Survey forms are accompanied by a listing of industrial processes which could be subject to program requirements; (2) Industrial users which are identified as potential Significant Industrial Users during step 1 are contacted directly with a more detailed questionnaire; (3) Industrial user questionnaires are reviewed to target users for inspection; and, (4) Industries determined to be Significant Industrial Users are entered into the SIU tracking database. This process will repeat so that every POTW without an approved program will be surveyed at least every five years.

The Division will determine if industries identified through the IWS process are significant and, if so, whether subject to categorical discharge standards. The criteria for SIU designation to address applicability of categorical discharge standards, volume and strength of the industry's average daily process wastewater discharge, the percentage of the POTW's average dry weather hydraulic or organic capacity represented by the industry's process discharge, and whether the industry's discharge has reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Requirement or Standard.



At the time of application for Pretreatment Program authority there are 315 industries which have been designated as Significant Industrial Users discharging process wastewaters to POTWs in Colorado. Of these 303 discharge to POTWs with approved programs. An additional 12 significant industries which discharge to POTWs without approved local programs are regulated directly via State issued Notices of Discharge Requirements. Preparation and issuance of industrial user control mechanisms is the responsibility of the Pretreatment Unit. Pretreatment staff is also responsible for periodic inspection and compliance monitoring of industries regulated directly by the State.

Industries that are identified through survey procedures are inspected to determine their potential status as categorical or otherwise significant users. Upon a determination that the user is subject to categorical discharge standards, submittal of the Baseline Monitoring Report (BMR) is required. The BMR is utilized as the basis for determining monitoring and reporting requirements and for establishing equivalent limitations. If the industry has not completed a BMR and the deadline for submission is past, the industry is notified by registered mail that they are in violation of State and Federal regulations and potentially subject to enforcement action. The industry is given 30 days to submit the report. If it is not received the Division will issue a Notice of Violation and Cease and Desist Order and impose a penalty. If the deadline for submission of a BMR is not past, the industry will be notified of the need to submit a BMR by the required date. If a BMR is not submitted by the deadline, the Division will take appropriate enforcement action as described previously.

Upon receipt, the BMR is reviewed for completeness by the Division. If incomplete, the BMR will be returned to the industry with a timeframe for completion and resubmittal specified. BMR review addresses industry categorization, application of appropriate categorical standards for compliance determination, supporting calculations and monitoring data.

The Division may perform an additional inspection of the industry or perform sampling of the industry's discharge in order to verify the accuracy of information contained in the BMR. Upon a determination that the BMR is complete and accurate, the Division will issue the industry a Notice of Discharge Requirements. The contents of the Notice includes identification of limited discharge parameters, sampling frequencies, sample types and sample locations for limited parameters, reporting frequencies, any equivalent limitations and the production and flow data used to calculate equivalent limits, any required compliance schedules, and other requirements as defined in the Pretreatment Regulations. Effluent limits are based upon applicable categorical discharge standards, prohibited discharge standards, and any local limits. Local limit development by the receiving POTW may be required as appropriate. New industries are required to monitor effluent quality and report the results of such monitoring from the onset of discharge.



Industries identified through industrial waste survey procedures which are not subject to categorical discharge standards but otherwise meet the criteria for consideration as "significant" per 40 CFR § 403.3(t) are required to submit a discharge questionnaire in lieu of a BMR. Again, the Division may inspect the industry or perform sampling of the industry's discharge in order to verify the accuracy of information contained in the questionnaire. Upon a determination that the information submitted is complete and accurate, the Division will notify the industry of such via a Notice of Discharge Requirements. The contents of the Notice are similar to the contents of the Notice issued to Categorical Industries. The most substantive difference between the two control mechanisms is that those issued to significant industrial users which are not subject to categorical discharge standards will contain discharge limitations based solely upon prohibited discharge standards and local limits.

Industrial self-monitoring results are reviewed by the Pretreatment Unit for violations of pretreatment standards. A manual tracking system, similar to that currently used for tracking CDPS self-monitoring data is used. The Division will automate the tracking systems as data management requirements dictate. Violations noted in review of self-monitoring reports trigger a letter notifying the industry and POTW of the violation and requiring development and implementation of those measures necessary to prevent recurrence. Amendments to the State's Enforcement Management System will identify specific enforcement responses to violations noted in self-monitoring reports.

On-going compliance of industries regulated directly by the State is accomplished through periodic inspection and discharge monitoring of those industries. Each industrial user subject to a State-issued Notice of Discharge Requirements is inspected on an annual basis. Compliance sampling will be initiated during the State's 1995 fiscal year and will typically be performed in conjunction with the annual inspection. Compliance sampling will be performed at least annually for each industry subject to direct regulation by the State. In addition the Division will maintain the capability of sampling industries on a demand basis for enforcement purposes as is done for direct discharges. The Pretreatment Unit is responsible for performing monitoring of these industries.

Enforcement alternatives for noncompliance with pretreatment standards and/or requirements are those outlined in Part 6 of the Water Quality Control Act. The State's Enforcement Management System incorporates a framework of escalating responses to incidents of Industrial User non-compliance. The Division has the authority to take enforcement actions including issuance of administrative Notices of Violations, Cease and Desist Orders, and Clean-Up Orders. The Division may also initiate, through a District Attorney or the Attorney General's Office, a court action seeking a restraining order or injunction for failure to comply with a Cease and Desist Order or Clean-Up Order. Violators of the Pretreatment Regulations are subject to civil penalties of up to \$10,000 per day of violation. Criminal penalties of up to \$25,000 per day may also be imposed.



### Fundamentally Different Factor Variances

The Pretreatment Regulations contain the Fundamentally Different Factor (FDF) variance and Category Determinations. The FDF reviews and Category Determinations are performed by the Pretreatment Program staff. The Colorado Water Quality Control Act empowers the Division to grant variances from applicable pretreatment requirements only to the extent that any such variance is authorized in the federal act or in federal implementing regulations.

A FDF variance request is first reviewed for completeness. If the request is incomplete the applicant will be notified of any deficiency and allowed no more than 30 days to submit the missing data. Failure to supply the needed information will result in a denial of the request.

The Division will publish a public notice of the receipt of a complete FDF variance request. The Division will then analyze the request based on its merits and the criteria outlined in the regulations. Following the public notice period the Pretreatment Unit will evaluate the request and a decision will be made to either deny the request or to recommend approval of the variance to EPA. Such a decision will begin with a recommendation from the Biosolids Management/Industrial Pretreatment Unit and follow standard Division procedures. A Division finding is then prepared discussing the decision and is sent to the applicant, POTW, industry (if other than the applicant) and EPA. At this point, if the recommendation is to approve such a request, the variance is forwarded to EPA for the final decision (the State does not have authority for final approval of FDF variances).

### Category Determinations

Another option available to the industry, as well as POTWs, is a category determination. Such a request must be made by the POTW or industry within 60 days after promulgation of a new category or prior to commencement of a discharge for a new source. The determination involves the evaluation of a specific category or subcategory to determine if the industry in question is included under it. The Pretreatment Unit is responsible for the technical evaluation of the request. Such an evaluation will include a review of the regulations in question, a review of the development documents for the category, and an inspection of the industry. A decision on the determination request will begin with a recommendation from the Pretreatment Program Group and follow standard Division procedures. A copy of the determination will be sent to EPA at which time they will have sixty (60) days to modify the determination as necessary. If no action is taken by EPA, the decision becomes final and the industry and POTW are notified of the decision by the Division. The decision can be appealed to the EPA Regional Administrator.



## STAFFING AND FUNDING

Primary responsibility for pretreatment program implementation resides with the Biosolids Management/Industrial Pretreatment Unit within the Permits and Enforcement Section. At the present level of program implementation a total of 1.52 FTE are required (1.60 FTE are currently appropriated). Upon delegation of full program authority an additional 1.0 FTE will be added to the program staff. Current and future program staffing levels are as follows:

Permits and Enforcement Section Chief. This position oversees the domestic and industrial CDPS units as well as the Biosolids/Pretreatment Unit. The Section Chief provides general administrative oversight, assuring coordination among the units responsible for NPDES delegated functions. This position also oversees units providing data management and clerical support to the pretreatment program. At present the pretreatment program funds two percent of the Section Chief position. The Section Chief reports directly to the Director of the Water Quality Control Division.

Biosolids Management/Industrial Pretreatment Unit Leader. This position provides overall program management. This position is responsible for delegation of the program workload, administrative functions connected with the program, coordination with EPA program policy development, coordination with other state and federal programs, regulation development and training. This position may also perform the functions listed under the State's Environmental Protection Specialist position description as necessary. The Biosolids Management/Industrial Pretreatment Unit Leader position reports to the Section Chief. This position currently represents 0.5 FTE allocated to the Industrial Pretreatment Program and 0.5 FTE allocated to the Biosolids Management Program.

Industrial Pretreatment Coordinator. This position is dedicated entirely to the pretreatment program (1.0 FTE). Responsibilities include a lead role in performance of pretreatment compliance inspections and audits, industrial inspections and compliance sampling, review of various industry and POTW submittals, preparation of Notices of Discharge Requirements, and, when necessary, preparation of documentation for enforcement actions against POTWs and industries. This position currently maintains the program database and coordinates billing activities with the Division's Administrative Unit. This position also acts as a technical resource to industries, POTWs, various state and local agencies, and to the public. The Environmental Protection Specialist position is supervised by the Biosolids Management/Industrial Pretreatment Unit Leader.

Industrial Pretreatment Specialist. This position will be established upon federal program delegation and will represent a full 1.0 FTE. Responsibilities will include assisting the former position in performance of many of the tasks identified for that position including assisting with pretreatment compliance inspections and audits, industrial inspections and compliance sampling, review of various industry and POTW submittals, and preparation of Notices of Discharge Requirements. This position will also report to the Biosolids Management/Industrial Pretreatment Unit Leader.



As of the date of application for Pretreatment Program authority clerical and data services support is required on an intermittent basis only. Long term data management needs and resources as related to PCS maintenance and integration with the State KLEROS (fee billing) database are currently under review. Resources are available to support clerical/data entry needs as required.

The Division funds several staff attorney positions at the Attorney General's Office totaling 3.3 FTE. The Attorney General's Office provides legal support with respect to rulemaking proceedings, enforcement actions, permit negotiations, and a variety of other functions. The Department allocates Attorney General staff time back to the respective Divisions, largely based upon the prior year's demonstrated need. The Division does not anticipate federal program delegation resulting in an immediate need for a significant amount of additional legal support.

The Colorado Industrial Pretreatment Program is funded through a system of fees assessed both to POTWs which receive process wastewaters from regulated industries and to those industries themselves. Revenue and budget figures for the State 1994 and 1995 fiscal years are itemized below. Projected FY 1996 figures are also included. At the present time the program is operating with a surplus of roughly \$15,000. Additionally, the program's FY 1995 budget included an unencumbered balance of some \$10,401. The addition of 1.0 FTE upon program delegation will require some \$33,000 in salary, benefits and indirect costs. The positions will be funded in largest part from the \$25,400 made up of surplus and unencumbered funds. The remainder will be redirected from operating and travel budgets. It is anticipated that amendment of the the pretreatment program fee system provisions in the Colorado Water Quality Control Act will be sought during the 1996 legislative session so as to increase fees as necessary to provide additional revenue.

<b>INDUSTRIAL PRETREATMENT PROGRAM BUDGET</b>		
	<b>FY 1995</b>	<b>FY 1996</b>
<b>Salary &amp; Benefits</b>	87,162	117,863
<b>Travel</b>	10,000	6,000
<b>Operating</b>		
Advertising (Public Notices)	1,000	2,000
Data Processing, hardware & software	2,000	2,000
Field Supplies, Sampling Equipment	3,874	2,500
Office Supplies	4,824	2,500
Equipment Maintenance	2,000	1,000
Training	1,000	1,000
Vehicle	4,512	4,512
<b>Indirect</b>	25,631	30,049
<b>Lab</b>	5,100	3,000
<b>Appropriation</b>	149,369	?
<b>Unencumbered Balance</b>	10,401	?
<b>Billing for FY</b>	159,770	159,770

<b>SALARY &amp; BENEFITS</b>		
<b>POSITION</b>	<b>FY 1995</b>	<b>FY 1996</b>
Section Chief (Professional Engineer III)	1,724 (.02)	2,986 (.05)
IPP Administrator (Env Protection Spec IV)	32,665 (0.5)	35,167 (0.5)
IPP Lead Worker (Env Protection Spec II)	52,773 (1.0)	56,266 (1.0)
IPP Specialist (Env Protection Spec I)		23,444 (1.0)

\* projected FTE shown in parentheses





**COLORADO BIOSOLIDS MANAGEMENT PROGRAM**

**PROGRAM DESCRIPTION**

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
WATER QUALITY CONTROL DIVISION  
MARCH 9, 1995





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## **COLORADO BIOSOLIDS MANAGEMENT PROGRAM**

### **PROGRAM DESCRIPTION**

#### **Introduction**

Pursuant to requirements established in 40 Code of Federal Regulations (CFR) Section 123.22, the State of Colorado ("State") has prepared this program description in support of its submission to receive approval from the U.S. Environmental Protection Agency ("EPA") to administer the land application portion of the Federal sewage sludge management program developed under section 405 of the Clean Water Act (33 U.S.C. §§1251 *et seq.*). This program description sets out information regarding the State regulatory entities that will be responsible for program administration and elaborates on procedures for implementing and enforcing Federal sewage sludge management requirements through State law, regulations, and policy. Each element of a sewage sludge management program description required under 40 CFR is addressed in detail in the following sections.

#### **Description of State Program Scope, Structure, and Implementation Procedures**

The State has in place a comprehensive regulatory program to implement and enforce regulatory requirements in a manner consistent with Federal program requirements in 40 CFR Part 123. This section offers an overview of the State program addressing all Federal program approval requirements.

#### **Program Scope**

The State is seeking partial program approval to administer the land application portion of the Federal sewage sludge program. The Colorado Department of Public Health and Environment (CDPHE) initially received NPDES program delegation in 1975. Substantial modifications to the existing program, referred to as the Colorado Discharge Permit System (CDPS) program, have occurred since delegation first occurred, necessitating revision of the State's CDPS program description. This Biosolids Management Program description is an addendum to the CDPS program re-submittal. To avoid redundancy, references to the CDPS program description are made within this document.

It should be noted that the State's enabling legislation references the terms "biosolids" and "beneficial use" in lieu of the terms "sewage sludge" and "land application". This terminology appears in the Colorado Water Quality Control Act (WQCA), Solid Wastes Disposal Sites and Facilities Act (SWDSFA) and in the State's Biosolids Regulation 4.9.0 and Regulations pertaining to the Beneficial Use of Water Treatment Sludge and Fees Applicable to the Beneficial Use of Sludges 5CCR 1003-7. Therefore, the terms "biosolids" and "beneficial use" are incorporated into this document as appropriate.



The specific statutory authority for the State's Biosolids Management Program is found at sections 25-8-205 and -501 of the WQCA. The WQCA authorizes the Regulations for State Discharge Permit System, 6.1.0 and the Biosolids Regulation, 4.9.0. In combination, these provide the regulatory framework for the Biosolids Management Program. Additional authority exists to regulate biosolids from waste treatment plants as a fertilizer product under general State health statutes at Section 25-1-107, C.R.S. and as a solid waste under the SWDSFA (30-20-101). Prior to 1993 the State's program operated entirely under the latter two authorities. However, the 1993 amendments to the WQCA enable the beneficial use of biosolids to be regulated under the WQCA. This shift allows access to the full range of administrative remedies available to the CDPS Program under the WQCA. Therefore, the State's Biosolids Management Program is now administered primarily under the authority provided under the WQCA. The sole programmatic component that remains under SWDSFA authority is the fee system through which the program is funded.

Although the State is not seeking approval to implement the portions of the Federal program governing sewage sludge surface disposal, sewage sludge incineration, sewage sludge disposal to Municipal Solid Waste Landfills (MSWLFs), or septage use or disposal, the State will continue to regulate these biosolid disposal practices under the State programs that have been established. Surface disposal and disposal of biosolids at MSWLFs will be regulated by the Solid Waste and Incident Management Section of the Hazardous Materials and Waste Management Division pursuant to SWDSFA authority. Biosolids disposal by incineration, although not known to currently be practiced in Colorado, would be regulated by the Stationary Sources Section of the Air Pollution Control Division pursuant to the Colorado Air Quality Control Act (APCA). The State does not include septage as part of the definition of biosolids. The land application of septage disposal is regulated under the State's Individual Sewage Disposal Systems (ISDS) Act.

Conditions placed on the land application of biosolids for beneficial use are contained in the Biosolids Regulation, 4.9.0. The Biosolids Regulation incorporates all applicable Federal requirements placed upon the land application of biosolids for beneficial use, as well as additional requirements which are specific to the State regulation. These regulations prohibit the distribution or land application of biosolids without CDPHE authorization given through the issuance of a Notice of Authorization for the Use and Distribution of Biosolids (Notice of Authorization). The Notice of Authorization may be issued either for a facility which produces a Class A product which will be distributed to the public, or on a site specific basis for application sites which receive a Class B product. The Notice of Authorization incorporates Part 503 equivalent requirements as well as any additional State requirements which are applicable. The Biosolids Regulation and the Regulations for State Discharge Permit System also identify the procedures by which appropriate conditions for the distribution and use of biosolids are incorporated into CDPS permits. Such conditions include all applicable State requirements which are equivalent to the Part 503 requirements.



Each entity that would receive a NPDES permit under the Federal sludge management program will be issued a CDPS permit that contains the Part 503 equivalent requirements. CDPS permits will be issued to all generators and preparers of biosolids that would be considered a Treatment Works Treating Domestic Sewage (TWTDS), specifically: publicly owned treatment works generating biosolids, privately owned treatment works generating biosolids, federally owned treatment works generating biosolids (upon approval of the State's amended NPDES delegation package which will address federal facilities), commercial or contract composting operations (or other commercial biosolids treatment facilities, i.e. heat driers or pelletizers, pH treatment, or other technologies, should such facilities be developed), and commercial or contract biosolids applicators that receives and applies biosolids from one or more generator(s). This determination is made on a case-by-case basis depending upon the contractual obligations between the parties. Equivalent conditions are applied to all TWTDS, regardless of their status as Class I facilities or otherwise.

Although the specific conditions on the quality, treatment, storage, and beneficial use of biosolids established in the Biosolids Regulation will be implemented through CDPS permits and/or Notices of Authorization, the requirements in the Biosolids Regulation may also be directly enforced without a permit, pursuant to section 4.9.3. Additionally, pursuant to section 4.9.10.G, a Notice of Authorization or CDPS permit does not act as a shield to protect the permittee from complying with new requirements if the Biosolids Regulation is amended in the future. Compliance with new requirements would be mandatory even if a permit, not containing those requirements, was in effect.

#### **Program Organization and Administrative Structure**

Primary responsibility for Biosolids Management Program implementation resides with the Biosolids Management/Industrial Pretreatment Unit within the Permits and Enforcement Section of the Water Quality Control Division. Additional permitting support is provided by the Domestic CDPS Permit Unit, inspection support from the West Slope Grand Junction Unit, and the formal enforcement support from the Attorney General's office.

#### **Program Resources**

Described below are the resources dedicated to the administration of the biosolids management program.

#### **Staff Description**

At the present level of program implementation, a total of 2.72 FTE are required (3.0 FTE are currently appropriated). The current level of staffing is appropriate. Current program staffing levels are as follows:



Permits and Enforcement Section Chief. This position is classified at the Professional Engineer III level and oversees the Municipal, Industrial and Stormwater CDPS Permit Units as well as the Biosolids Management/Industrial Pretreatment Unit. The Section Chief provides general administrative oversight, assuring coordination among the units responsible for NPDES delegated functions. This position also oversees the units providing data management and clerical support to the Biosolids program. At present, the Biosolids Management Program funds 0.02 FTE of the Section Chief position. This level of support is expected to increase to 0.05 FTE for the State 1996 fiscal year (July 1 through June 30). The Section Chief reports directly to the Director of the Water Quality Control Division.

Biosolids Management Program Administrator. This position provides overall program management and is classified at the Environmental Protection Specialist IV level. This position is responsible for delegation of the program workload, administrative functions connected with the program, coordination with EPA program policy development, coordination with other state and federal programs, regulation development and training. This position may also perform the functions listed under the Environmental Protection Specialist position as necessary, including compliance inspections. The Biosolids Management Program Administrator position reports to the Section Chief. This position currently represents 0.5 FTE.

Program Lead Worker. This position is dedicated entirely to the Biosolids program (1.0 FTE) and is classified at the Environmental Protection Specialist II level. Current and future responsibilities include review of Letters of Intent and CDPS Permit applications, preparation of Notices of Authorization and preparation of the biosolids requirements in CDPS permits, and performing biosolids compliance inspections for facilities holding CDPS permits and/or Notices of Authorization. This position also develops programming to support the program database and will coordinate billing activities with the Division's administrative staff when revised billing procedures are instituted. This position also acts as a technical resource to POTWs, industries, commercial haulers, farmers, various state and local agencies, and to the public. The Lead Worker position is supervised by the Biosolids Management Program Administrator.

Field Inspector. This position is currently classified at the Engineering/Physical Sciences Technician I level and, until recently, was largely dedicated to the oversight of the New York City sludge application program ongoing in Lamar, Colorado. That project was discontinued in October of 1994, prompting re-evaluation of the position's job description. Currently, the responsibilities of this position have been modified to include review of annual reports and to provide biosolids compliance inspection capability for facilities holding CDPS permits and/or Notices of Authorization in southern Colorado. This position will be periodically re-evaluated to determine whether it will remain at the full 1.0 FTE level. This individual is currently located in Pueblo, Colorado. This position is supervised by the Biosolids Management Program Administrator.

Field Support - Western Slope Office. Currently, funding is provided for an aggregate 0.2 FTE located in the Grand Junction office. This funding supports, in part, four field positions which perform biosolids compliance inspections for facilities holding CDPS permits and/or Notices of Authorization in western Colorado. The four field support staff are under the direct supervision of the western slope Field Support Unit. The current level of funding is periodically re-evaluated and could be reduced, with the transfer of ongoing inspection activities to the Biosolids Management Program lead worker and/or inspector positions. A base level of funding will be maintained to support West Slope Office activities in response to complaints or incidents of non-compliance.

Program clerical and data services support is, at present, required on an intermittent basis only. Long term data management needs as related to PCS maintenance and ultimately the integration with the State KLEROS (fee billing) database are currently under review. Resources are available to support clerical/data entry support as required.

The Department funds several staff attorney positions at the Attorney General's Office which provide legal support with respect to rulemaking proceedings, enforcement actions, permit negotiations, and a variety of other functions. The Department allocates Attorney General staff time back to the respective Divisions, largely based upon the prior year's demonstrated need. The Division does not anticipate federal program delegation resulting in an immediate need for significant additional legal support.

#### Itemized Estimate of Costs

The following table presents an itemized estimate of costs which will be required to administer the biosolids program. The second table provides detailed salary and benefit estimates.



Biosolids Program Budget		FY 1995	FY 1996
Costs	Salary & Benefits	140,615	119,395
	Travel	4,174	4,174
	Operating		
	Data Processing, hardware and software	600	600
	Field Supplies, Sampling Equipment	0	0
	Office Supplies	1,223	1,223
	Equipment Maintenance	400	400
	Training	250	250
	Vehicle	3,775	3,775
	Indirect	30,852	26,400
	Lab	0	3,000
Funds	Appropriation	189,923	?
	Billing for FY		?
	Unencumbered Balance	12,208	?

Salary & Benefits		
Position	FY 1995	FY 1996
Section Chief (Professional Engineer III)	2,586 (.03)	4,471 (.05)
Biosolids Program Administrator (Env Protection Spec IV)	32,665 (0.5)	35,167 (0.5)
Lead Worker (Env Protection Spec II)	52,339 (1.0)	56,049 (1.0)
Inspector (Eng/Physical Sci Tech I)	37,862 (1.0)	19,835 (0.5)
Unit Leader Western Slope Office (Professional Engineer II)	15,163 (0.2)	3,873 (.05)

\* projected FTE shown in parentheses

### **Estimate of Funding**

The Biosolids Management Program is funded through a system of fees assessed to TWTDS and other permitted entities. The fee system is authorized through the Colorado Solids Waste Disposal Sites and Facilities Act, 30-20-101 C.R.S. The regulation implementing the fee system is the Beneficial Use of Water Treatment Sludge and Fees Applicable to the Beneficial Use of Sludges, (5CCR 1003-7, 15.B.1). The State 1995 fiscal year appropriation is identified in the above table as well as projected revenues for FY 1995 and 1996 and appropriation for the FY 1995. Projected FY 1996 figures are also included.

### **Description of Permitting Program**

The CDPS permit program and its procedures will be used to permit those TWTDS that would be permitted under the Federal sewage sludge management program. CDPS permits will be issued to all generators and, dependent upon contractual arrangements, commercial preparers and commercial appliers of biosolids. However, because the State also imposes requirements beyond those established by the Federal program in 40 CFR Part 503, CDPHE will also issue Notices of Authorization to generators, commercial preparers, and commercial appliers. The CDPS permit will contain the Part 503 requirements while the Notices of Authorization will contain appropriate State-equivalent Part 503 requirements and any additional State requirements. Incorporation of Part 503 requirements into the CDPS permit assures that federal public notification requirements are addressed via the CDPS permit issuance procedure.

The CDPS permits issued to publicly, privately, or, upon EPA acceptance of the State's amended NPDES delegation package, federally owned wastewater treatment plants that generate and prepare biosolids, commercial preparers, and commercial appliers, will include the appropriate State-equivalent Part 503 requirements contained in the Biosolids Regulation. These facilities may also receive a separate Notice(s) of Authorization (alternately the Notice of Authorization may be issued to a commercial applier under contract to the generator). Thus preparers of biosolids typically receive two enforceable documents: the CDPS permit and the Notice of Authorization. A Notice of Authorization would not be issued to a TWTDS that is not considered a preparer of biosolids for beneficial use or distribution. For example, a complete retention wastewater treatment lagoon would not be issued a Notice of Authorization until it proposes to remove and use or dispose of the biosolids that have accumulated in the lagoon.

Facilities generating a Grade I, Class A, biosolid are issued a Notice of Authorization addressing biosolids quality and processing characteristics. Distribution or use of that biosolid does not require Notices of Authorization to be issued to every applier or site where the biosolids would be used. For the beneficial use of Grade II biosolids, individual Notices of Authorization for each beneficial use site are issued to the applier. In most cases, the State will consider the preparer to be the applier, even where the preparer has contracted with a separate entity to conduct the actual biosolids application. However, the actual applier may be issued a Notice of Authorization in instances where the applier is a separate entity from the preparer and accepts biosolids from one or more preparer. This determination is made on a case-by-case basis depending upon the contractual obligations of the parties.



Staff in the Biosolids Management Program is wholly responsible for the issuance of Notices of Authorizations. Issuance of CDPS permits which contains biosolids requirements is the responsibility of either the Domestic or Industrial CDPS Permit Unit, however, development of permit language addressing biosolids use and disposal is accomplished in coordination with the Biosolids Management Program staff. The administrative procedures involved in implementing the biosolids permitting program involve the following:

Administrative Procedure	Regulatory Citation
For a CDPS permit ( <u>Regulations for the State Discharge Permit System</u> , 6.1.0):	
• Permit application (submission by applicant, requirements for and contents of)	Section 6.5.1
• Permit application review (receipt and review by Unit staff)	Section 6.6.1
• Permit development (draft permit, fact sheet)	Section 6.6.2
• Public notice	Sections 6.6.2(5), (6), (7), (8) Sections 6.6.3; 6.6.4
• Final permit issuance (effective date, expiration date, administrative procedure for transmittal to permittee, etc.)	Section 6.7.0
• Permit appeal procedures	Sections 6.8.0 and 6.8.1
• Permit renewal	Sections 6.5.1(2),(4); 6.6.1; 6.7.0(5);6.8.0(4)(b); 6.8.1; 6.11.0
• Permit modification procedures	Sections 6.9.8; 6.11.0
• Permit termination procedures	Sections 6.9.8(1),(3),(4),(7)

Administrative Procedure	Regulatory Citation
For a Notice of Authorization (Biosolids Regulation 4.9.0):	
• Letter of Intent (submission by applicant, requirements for and contents of)	Section 4.9.10.A
• Receipt and review of Letter of Intent by Unit staff	Section 4.9.10.B
• Notices of Authorization development and issuance	Sections 4.9.10.C,E,F,G,H
• Appeal procedures	Section 4.9.10.D
• Renewal (not necessary unless conditioned to identify expiration date)	Section 4.9.10.A
• Modification, revocation, termination	Section 4.9.10.E(2)

The CDPS permitting procedures are those that the CDPHE has been implementing as part of its NPDES approved program. These procedures are listed in section II of the CDPS Program Description. Procedures regarding application, development, issuance and administrative procedures, and public notices for CDPS permits and Notices of Authorizations are presented in the following sections. For consistency, descriptions of CDPS permitting processes precede descriptions for Notices of Authorization.



## Permit Application Requirements

### CDPS Permits

A TWTDS can submit a permit application for either the issuance or renewal of a CDPS permit, which may include terms and conditions for compliance with the Biosolids Regulation. In such a case, permit application requirements shall follow those procedures as specified in Section 6.5.0 of the Regulations for State Discharge Permit System and as described in section II.A of the CDPS Program Description. The following table lists those elements relating to the use and distribution of biosolids which must be presented as part of the permit application.

Applications for CDPS permits must contain the following biosolids information:	
•	Activities conducted by applicant that require it to obtain a permit
•	Name, mailing address, and location of facility
•	Operator's name, address, phone, ownership status
•	Whether facility is located on Indian lands
•	Listing of all permits or construction approvals received or applied for
•	Topographic map
•	Available biosolids monitoring data
•	Description of biosolids use and disposal practices
•	Beneficial use site information
•	Annual sewage sludge production volume
•	Information to determine appropriate standards for permitting under 503
•	Any other information deemed necessary

### Notices of Authorizations

Section 4.9.10 of the Biosolids Regulation requires persons intending to use or distribute biosolids to submit a Letter of Intent for the Use and Distribution of Biosolids (hereafter, "Letter of Intent") to the Division and the local health authority. The Letter of Intent must be submitted prior to the initial use or distribution of biosolids. Although all Letters of Intent must contain specific information regarding the planned operating procedures, three variations of the Letter of Intent are available depending upon the type of use and distribution option planned. The Biosolids Regulation establishes Letter of Intent content requirements for: 1) Unrestricted Use (lawn and home garden); 2) Restricted Use (bagged or containerized biosolids), and; 3) Projects or Programs Involving Application of Biosolids to Agricultural Land or for Reclamation of Disturbed Land.

Letters of Intent require information to be provided which will enable the State to determine the applicant's ability to comply with all requirements as established within the federal program. The following tables list the requirements depending upon the use option employed.

Letters of Intent for the Unrestricted Use of Biosolids must contain the following:	
•	Facility information including facility name, address, legal contact, phone number
•	Information demonstrating compliance with metals content criteria for Grade I biosolids
•	Information demonstrating compliance with pathogen destruction criteria for Class A biosolids
•	Information demonstrating compliance with one or more vector attraction reduction alternatives listed in 4.9.12.C(4) - (10)
•	A facility operating plan describing the distribution or marketing of biosolids to the public
•	Any other information deemed necessary by the Division to evaluate potential human health and water quality impacts by the proposed use

Letters of Intent for the Restricted Use of Biosolids must contain the following:	
•	Facility information including facility name, address, legal contact, phone number
•	Information demonstrating compliance with, at a minimum, metals content criteria for Grade II biosolids
•	Information demonstrating compliance with pathogen destruction criteria for Class A biosolids
•	Information demonstrating compliance with one or more vector attraction reduction alternatives listed in 4.9.12.C(4) - (10)
•	A facility operating plan describing the distribution or marketing of biosolids to the public
•	Copies of labelling, information sheets, cautions or instructions for use required pursuant to section 4.9.14 of the <u>Biosolids Regulation</u> which will accompany biosolids distributed to the public
•	Any other information deemed necessary by the Division to evaluate potential human health and water quality impacts by the proposed use

For Unrestricted and Restricted Use options, Letters of Intent must only be submitted one time so long as the facility operating plan describing the distribution or marketing of biosolids to the public remains substantially unchanged. However, the Notice of Authorization may be conditioned to specify an expiration date and requirements for re-submittal of the Letter of Intent.



Letters of Intent for the Use and Distribution of Biosolids which are submitted for Projects or Programs Involving Application of Biosolids to Agricultural Land or for Reclamation of Disturbed Land must contain the following:

- Facility information including facility name, address, legal contact, phone number
- Site owner and operator information including the name, address, legal contact and phone number
- Documentation that the site owner, or the legal owner's representative has been provided a copy of the Biosolids Regulation and has agreed to comply with the requirements and to allow access to the site to perform monitoring and analysis required by section 4.9.16. Documentation shall consist of one of two certification statements depending upon past site use
- If biosolids have previously been applied to a site, historic loadings of restricted metals must be quantified and submitted
- Contractor information for the contractor(s) whose responsibilities include the transport, storage, treatment, or application of biosolids to the site, or monitoring of the biosolids or any characteristics of the site including soils, vegetation, groundwater, or surface water
- Information demonstrating compliance with, at a minimum, metals content criteria for Grade II biosolids
- Information demonstrating compliance with pathogen destruction criteria for Class B biosolids
- Information demonstrating compliance with one or more vector attraction reduction alternatives
- The quarter section(s), section(s), range(s), and township(s) in which site is located, and a street address or latitude and longitude
- A USGS 7.5 or 15 minute map indicating the boundaries of the site
- The results of soil monitoring, if applicable
- Soil Conservation Service maps demonstrating compliance with soil depth criteria, if applicable
- The results of groundwater depth evaluations, if applicable
- A site operating plan describing the application of biosolids to the site, the crop(s) cultivated, applicable site access restrictions, and if on-site storage of biosolids is anticipated
- Other information as deemed by the Division as appropriate to evaluate potential human health and water quality impact of the proposed use.

For the latter use option, a Letter of Intent must be submitted for each application site. Re-submittal is required for an expansion of the site boundaries or when a Notice of Authorization issued for a specific TWTDS is modified to reflect additions and/or deletions to the listed generator(s). Additionally, re-submittal of the Letter of Intent may be required when the existing Notice of Authorization no longer addresses the current operating practice. Letters of Intent which are submitted for the re-issuance of existing Notices of Authorization (issued under the Domestic Sewage Sludge Regulations which pre-date the current Biosolids Regulation and incorporated only those federal requirements which preceded the Part 503 regulation) are required to be submitted no less than 90 days prior to the expiration of the existing Notice of Authorization.

### **Description of Permit Development Process**

#### **CDPS Permits**

The Division incorporates into CDPS permits any terms and conditions as are required by the federal program and any other requirements deemed by the Division as necessary to obtain and maintain compliance with the requirements of the Biosolids Regulation. These terms and conditions are incorporated into the standard CDPS boilerplate which is used to develop the CDPS permit. CDPS permits issued to all Class I TWTDS and to any other major facilities explicitly contain the items referenced in the following table. Minor permittees which are not identified as Class I TWTDS incorporate the following requirements via incorporation of the Biosolids Regulation by reference.

The CDPS permit boilerplate contains the following terms and conditions related to biosolids:	
•	Pollutant limitations applicable to both Grade I and Grade II biosolids
•	Pathogens limitations applicable to both Class A and Class B biosolids
•	Site restrictions associated with Class B biosolids
•	Vector attraction reductions requirements for both Class A and Class B biosolids
•	Requirements for representative sampling
•	Requirements for correct analytical methodology
•	Recordkeeping and reporting requirements, including 5 year record retention requirements
•	Statement of preparer liability for compliance with all applicable state and federal regulatory requirements
•	Requirement for notification of change in biosolids treatment system or use/disposal practice
•	Management practices for Grade II biosolids



Boilerplate CDPS language is developed by Biosolids Management Program staff in coordination with the Domestic and Industrial CDPS Permit staffs to ensure that all of the listed terms and conditions are properly placed into the CDPS permit. The direct incorporation of these terms and conditions into the CDPS boilerplate provides adequate assurance that biosolids requirements are contained in all applicable CDPS permits and that applicable federal requirements concerning public notification are met.

Additionally, section 4.9.11 of the Biosolids Regulation states that CDPS permits may contain any of the provisions for Notices of Authorizations listed in 4.9.10.E excluding those identified in 4.9.10.E(4) and (5). The provisions listed in 4.9.10.E(4), regarding soils monitoring, and 4.9.10.E(5), regarding other monitoring requirements such as vegetation, subsurface soil, groundwater, and surface water monitoring, are supplemental State requirements (which have no corresponding federal requirement) which may be included in Notices of Authorization as the Division determines to be appropriate.

#### **Notices of Authorizations**

Upon receipt of a Letter of Intent, an applicant is notified within thirty (30) working days if, and in what respects, the Letter of Intent is incomplete. Upon written agreement of the applicant, the review period may be extended to such duration as mutually agreed by the applicant and the Division. If the Letter of Intent is deemed complete, comprehensive review of the Letter of Intent is initiated.

The Division will either issue or deny the Notice of Authorization within thirty (30) working days of its determination that the Letter of Intent is complete. The applicant is notified in writing upon denial of the Notice of Authorization and the reason(s) for such action are explained. Notices of Authorization contain the following:

As pursuant to 4.9.10.E, all Notices of Authorization shall contain the following:

- |   |
|---|
| • Issuance date   |
| • Terms for modification, revocation, or termination  |
| • Biosolids monitoring requirements   |
| • Soils monitoring requirements, if applicable  |
| • Other monitoring requirements, such as vegetation, subsurface soil, groundwater, and surface water monitoring, as determined by the division to be applicable |
| • Grazing and cropping restrictions, if applicable  |
| • Reporting and recordkeeping requirements, including 5 year record retention requirements  |
| • Requirement for notification of change in biosolids treatment system or use/disposal practice   |
| • Labeling requirements, if applicable  |
| • Public access restrictions, if applicable   |
| • A statement of preparer liability for compliance with all applicable state and federal regulatory requirements  |
| • A statement of applicable civil and criminal penalties  |

Applicable requirements of the Biosolids Regulation are incorporated into the Notice of Authorization by reference. State equivalent Part 503 requirements are therefore integrated into the Notice of Authorization and may therefore be enforced via either the Notice of Authorization or the CDPS permit.

#### **Permit Issuance and Administrative Procedures**

##### **CDPS Permits**

When biosolids terms and conditions are incorporated into a CDPS permit issued to a TWTDS, administration of the permit is subject to the applicable provisions of the Regulations for the State Discharge Permit System, 6.1.0. CDPS issuance is addressed in detail in section II of the CDPS Program Description. The Division may issue a CDPS permit or amend a previously issued permit for the purpose of specifying a schedule directing the permittee to achieve compliance with any provision of the Biosolids Regulation.



### Notices of Authorizations

TWTDS are not allowed to use or distribute biosolids for use, or cause biosolids to be used for any beneficial use, unless a Notice of Authorization has been issued by the Division to the TWTDS for such use and distribution. No person shall apply Grade II biosolids to agricultural land or for reclamation of disturbed land unless Notices of Authorization have been issued by the Division for such application to each site.

Notices of Authorization may be issued by the Division for a specified time period or for an indefinite period. Notices of Authorization to Apply Domestic Sewage Sludge which have been issued by the Division under the pre-503 Domestic Sewage Sludge Regulations are allowed to remain in effect until five years after the date of issuance. At that time they are considered to be expired. Regardless of the status of a Notice of Authorization to Apply Domestic Sewage Sludge, the requirements of the Biosolids Regulation remain independently enforceable. Thus, there exists a mechanism by which compliance with appropriate Part 503 requirements is assured. Notices of Authorization for the Use and Distribution of Biosolids may be issued for the sites which have previously received Notices of Authorization to Apply Domestic Sewage Sludge in accordance with the conditions and procedures as described in this program description.

Within thirty (30) days of the issuance or denial of a Notice of Authorization, the applicant or any other person potentially adversely affected or aggrieved by the Division issuance or denial may submit a request to the Director of the Water Quality Control Division for an adjudicatory hearing. Any such adjudicatory hearing must be conducted pursuant to the requirements of the Colorado WQCA, the Procedural Regulations for all Proceedings before the Water Quality Control Commission and the Water Quality Control Division, and the State Administrative Procedures Act (APA).

### Public Notice Requirements

#### CDPS Permits

When terms and conditions necessary to maintain compliance with the Biosolids Regulation are incorporated within an CDPS permit, the Public Notice requirements are as identified in Section 6.6.2. of the Regulations for the State Discharge Permit System and as described in section II.A of the NPDES Program Description. Because the CDPS permit contains all applicable Part 503 standards, federal requirements for public noticing of federal biosolids management criteria are satisfied.

### Notices of Authorizations

Although not specifically required in the Biosolids Regulation, limited public notification occurs during the Notice of Authorization process. Upon receipt of the Letter of Intent, notification and the opportunity to comment is provided to the appropriate Board of County Commissioners, local health agency, local Soil Conservation Service office or district, and in certain drainages, the local water quality basin authority. State statutory authority exists allowing counties to require locally issued "use by special review" permits. A number of counties exercise this authority and have implemented local permitting processes.

Public notice of the Notice of Authorization is not necessary to satisfy federal public participation requirements. All applicable federal Part 503 standards are incorporated into the CDPS permit. Federal public participation requirements are satisfied via public notice of the CDPS permit.

#### **Issuance of CDPS Permits and Notices of Authorization for Out-of-State Biosolids**

The Division has the authority incorporate provisions which reflect the requirements of 40 CFR Part 503 into either CDPS permits or into NOAs. The Biosolids Regulation applies to any person treating, manipulating, or applying biosolids to land for beneficial purposes (4.9.3.B), and requires that an NOA be issued for such use (4.9.10.H). Additionally, the Biosolids Regulation requires that the Division incorporate into CDPS permits any terms and conditions as are required by the federal program to be public noticed and are deemed as necessary to obtain and maintain compliance with the regulation. Any person applying biosolids which are generated out-of-state and which do not meet both Grade I metal concentration limits and Class A pathogen destruction requirements will be required to obtain both a CDPS permit and NOA(s) addressing the intended beneficial use. Public notice procedures for the CDPS permit will be those applicable provisions of the Regulations for the State Discharge Permit System, 6.1.0.

#### **Description of Public Participation Procedures**

Procedures for receiving information submitted by the public and procedures for public meetings are located in section 6.6.0 through 6.6.4 of the Regulations for the State Discharge Permit System and are further discussed in section II.A of the NPDES Program Description.

The Division may choose to convene a public meeting on a case-by-case basis for issues raised by complaints from citizens or during either CDPS permitting or approval of a Notice of Authorization procedure. Such public meetings have been performed numerous times in the past.



### Identification of TWTDS and State Procedures to Maintain Comprehensive Inventory of Facilities

A comprehensive biosolids inventory system is currently housed on a dedicated personal computer. The title of each major component of the database and its purpose is included below:

Content and Purpose of Comprehensive Biosolids Inventory System	
Individual File	Purpose
<ul style="list-style-type: none"><li>• Letter of Intent (LOI) Tracking Data File</li></ul>	To track and maintain information on the status of Letter of Intent review process, the issuance or denial of Notices of Authorization.
<ul style="list-style-type: none"><li>• Site ID Master List File</li></ul>	To maintain a master list of all sites, corresponding site ID numbers, and status of the site regarding current approval or denial.
<ul style="list-style-type: none"><li>• Fee Payment Data File</li></ul>	To store and track data related to the required fee payment.
<ul style="list-style-type: none"><li>• Producer Inventory File</li></ul>	To track basic inventory type information for each domestic biosolids producing facility.
<ul style="list-style-type: none"><li>• Site Inventory File</li></ul>	To track basic inventory information for each site that has been approved and is being used for land application.
<ul style="list-style-type: none"><li>• Biosolids Quality Data File</li></ul>	To store and track data related to biosolids quality from every producer of domestic biosolids.
<ul style="list-style-type: none"><li>• Soil Quality Data File</li></ul>	To store and track data related to soil quality from every site on which biosolids have been applied.
<ul style="list-style-type: none"><li>• Plant Tissue Quality File</li></ul>	To store and track data related to plant tissue quality from every site on which biosolids have been applied.
<ul style="list-style-type: none"><li>• Self-Monitoring Report File</li></ul>	To store and track information related to the actual amounts, time periods, and methods of biosolids application at each approved site.

Basic facility information has been compiled through surveys of the biosolids treatment and use or disposal practices of all CDPS permitted domestic facilities. The most recent survey was completed in coordination with EPA's Region VIII office and developed current information for all Class I and Class II facilities in Colorado. That inventory is attached to this delegation package. Facility information is continually updated through review of discharge permit applications, Letters of Intent, and annual reports. New facilities are added to the database as they are identified through the permit application process. The database is modified with current information on an ongoing basis.

Although the listed database currently fulfills the needs of the program, modifications and/or replacement of the current database may be undertaken as the program evolves. In any such event, the Division will continue to maintain an active inventory at all times.

### **Compliance Evaluation Program**

The Biosolids Management Unit is responsible for implementing all aspects of and conducting all activities of the compliance evaluation program. The Biosolids Unit staff is assisted by the Field Support Section staff and the Permits and Enforcement Section's administrative and clerical staff. On-going compliance of TWTDSs is monitored through periodic inspection of the facilities and application sites, and collection and analysis of biosolids, site soils, and, in some instances, plant tissue, surface water and groundwater samples. Compliance monitoring is also accomplished through review and tracking of annual reports, compliance schedule reports, and noncompliance reports.

The Compliance Evaluation Program consists of:	
•	Receipt and review of periodic reports required from permittees
•	Receipt and review of any noncompliance notices or reports from permittees
•	Receipt and review of any public complaints
•	Conducting both routine and non-routine compliance inspections
•	Conducting compliance investigations in response to public complaints, a permittee's compliance or noncompliance report, or the Division's reports (i.e., inspection reports)
•	Identification of any noncompliance
•	Identification of any significant noncompliance
•	Generation of noncompliance status reports



### **Program Procedures for Receipt, Evaluation, Retention, and Investigation of Permittee Self Monitoring Reports**

All reports from permittees, including annual reports, discharge monitoring reports, compliance schedule reports, and any other reports that permittees may be required to submit under the terms and conditions of a biosolids use or disposal permit, approved program, or court order, are date stamped by the administrative staff and then forwarded to Biosolids Management Program staff for review. Annual reports, discharge monitoring reports, and compliance schedule reports are logged into the program database and/or into PCS as appropriate. Submittal of annual reports, DMRs and compliance schedule reports are tracked to assure submittal occurs in a timely manner. These reports are then assigned to Biosolids Management Program staff for detailed review. Inspection reports are handled in a similar manner. The permittee is notified in writing of any deficiency or instance of noncompliance noted in the review process as well as failure to submit any report in a required timeframe. Dependant upon the nature of the deficiency or violation, inspection or formal enforcement action may follow.

Any verbal communication with permittees is handled directly by the Biosolids Management Program staff. For example, a permittee's telephone call regarding a notice of noncompliance would be received by the Biosolids staff or directed by the administrative staff to the Biosolids staff. Verbal communication is documented, if significant, via written memoranda to the permittee's file. Documentation of citizen complaints is handled in a similar manner.

The Division maintains a comprehensive filing system which houses individual CDPS permit files. Notices of Authorization are also housed in this filing system. Responsibility for file maintenance is assigned to Division clerical staff.

Review of self monitoring reports is an integral part of identifying potential violations and is the first step in instituting potential enforcement activities. Much of the information contained in the listed reports is either compared against existing information contained within the computerized inventory system or is entered directly into the system. The functions listed above are completed by cooperation between the Biosolids Management Program staff and the Division's administrative and clerical staff. Primarily, all compliance issues related to Notices of Authorization and technical requirements of CDPS permits are performed by the Biosolids Unit staff while reporting related issues are performed by the Division's administrative and clerical staff.

### **Description of Inspection Procedures**

The Division conducts sampling and nonsampling compliance inspections to determine the status of compliance with CDPS permit and/or Notice of Authorization requirements. Inspection procedures are in accordance with State procedures for compliance monitoring and evaluations pursuant to 40 CFR 123.26, and incorporate procedures identified in the EPA Region VIII Sludge Management Handbook, September, 1991, and in Chapter 10 of the NPDES Compliance Inspection Manual - Interim Final, September 1994. The compliance inspection may include, but is not limited to, evaluation inspections, biosolids sampling, soil sampling, plant tissue sampling and surface and groundwater sampling.



### Inspection of TWTDS

Annual inspections are performed for any TWTDS identified as a Class I facility in the annual State/EPA Agreement (SEA). These inspections are performed by the Biosolids Management Program staff. Inspection involves evaluation of biosolids treatment and handling practices and records as necessary to determine the facility's level of compliance. At present, compliance evaluation utilizes primarily those procedures and checklists identified in Chapter 10 of the NPDES Compliance Inspection Manual - Interim Final, September 1994. Additional inspection materials will be evaluated and incorporated into the Division's inspection protocols as they become available.

### Application Site Inspections

Application site inspections are performed on an as needed basis. A target number of site inspections is identified in the SEA. Inspection priority is typically based upon concerns identified during the Letter of Intent review process, compliance history of the applicant, or citizen complaints or concerns. At present, application site inspections utilize a Division checklist which is specific for those requirements which are unique to the Biosolids Regulation in combination with those procedures and checklists identified Chapter 10 of the NPDES Compliance Inspection Manual - Interim Final, September 1994. An updated site inspection checklist which incorporates both the state and federal checklists is under development. Additional inspection materials will be evaluated and incorporated into the Division's inspection protocols as they become available.

Compliance Inspections will be performed at the following frequencies:
<ul style="list-style-type: none"><li>• All Class I facilities will be inspected annually as per the Memorandum of Agreement between EPA Region VIII and the Division</li><li>• Class II facilities will be inspected when deemed necessary by the Division to determine compliance with their CDPS permit and/or Notice of Authorization</li></ul>
Additionally, Compliance Inspections may occur for any of the following reasons:
<ul style="list-style-type: none"><li>• A facility may be inspected more often on a case-by-case basis due to citizen complaints</li><li>• A facility may be inspected if EPA Region VIII has asked the State to conduct such an inspection</li><li>• A facility may be inspected if the Division determines that the potential to adversely impact public health and the environment exists</li><li>• The Division may inspect a facility to determine compliance with applicable CDPS permit or Notice of Authorization requirements</li><li>• A facility may be inspected at the request of the facility</li></ul>



Inspections are conducted by the Biosolids Unit staff and by the Field Support Unit staff located in Grand Junction. Scheduling of inspections is random and facilities are given limited advance notification of the pending inspections. If circumstances exist which require little or no notification, the Division initiates the inspection in such a manner. During the inspection, compliance is determined for all requirements of the applicable permit. As part of the inspection process, the beneficial use site(s), loading and unloading area, and storage site may also be inspected to determine compliance with applicable requirements.

#### **Description of Compliance Sampling**

Although the Division does not intend to conduct compliance sampling at all TWTDSs holding CDPS permits and/or Notices of Authorization, the following table lists variables which may influence the viability of collecting biosolids samples.

Variables which may influence whether compliance sampling is performed:
• Availability, quality and quantity of existing data for the facility
• History of compliance as reported in annual reports, previous inspections, and citizens complaints
• Type of treatment used and relative use frequency statewide (i.e. is it a well used and documented treatment)
• Characteristics of the beneficial use site including cropping cycles
• Potential to adversely impact public health and the environment
• Remaining laboratory budget with consideration to other scheduled sampling events
• Sampling deemed necessary by the Division to determine compliance with applicable CDPS permit or Notice of Authorization requirements

CDPHE maintains a fully functioning laboratory which is available to analyze any biosolids samples collected. An open account is maintained with the State laboratory. The state laboratory provides adequate chain-of-custody documentation for all sampling activities. Additionally, the Division may utilize commercial laboratories for specialized analytical needs or for special studies. In these instances chain-of-custody procedures vary dependant upon the nature of and the circumstances surrounding the sampling event.

Statutory authority to conduct compliance sampling is provided in section 6.9.3(3) of the Regulations for the State Discharge Permit System.

### **Enforcement Procedures and Authorities**

Biosolids Management Program enforcement procedures parallel those that the Division has been implementing as part of its NPDES approved program and as described in sections III.C and III.D of the NPDES Program Description. Violations of any biosolids use or disposal practice requirements, compliance schedules, limitations, reporting requirements, and other biosolids related CDPS permit or Notice of Authorization conditions, including violations detected by a State or Federal inspection may be subject to enforcement action by the Division pursuant to Part 6 of the WQCA. Additionally, section 4.9.8 of the Colorado Biosolids Regulation allows enforcement against violations of the regulation even in the absence of a CDPS permit or Notice of Authorization.

The WQCA authorizes administrative actions by the Division including issuance of Notices of Violation, Cease and Desist Orders, Clean-up Orders, and suspension, modification, or revocation of the CDPS permit or Notice of Authorization. Issuance of any such order is the responsibility of the Biosolids Management Unit when issued in response to violations of the Biosolids Regulation, 4.9.0, violations of a Notice of Authorization, or violations of a CDPS permit (unless the order also addresses CDPS permit violations not related to biosolids; should a combination of violations of that nature arise, the Biosolids Management Unit and the Domestic Unit will coordinate the enforcement action). A civil penalty will typically be sought from a POTW whenever a Notice of Violation and Cease and Desist Order is issued.

### **Description of Enforcement Process**

The Division has prepared an Enforcement Management System (EMS) document which describes the step-by-step process for evaluating potential violations, identifying suitable enforcement actions for varying degrees of violations, and policies on escalating enforcement. The EMS has focused on CDPS permit related violations in the past and is currently undergoing revision to identify enforcement actions which will be undertaken in instances of noncompliance related to biosolids use and disposal. Until the EMS has been revised the Division will conduct any enforcement activities in broad conformance with this paragraph and with the existing EMS. EPA retains at all times the ability to initiate direct enforcement action as appropriate.

The Division shall initiate appropriate enforcement actions whenever required performance is not achieved, after reviewing inspection reports or when required reports are not received. In the case of violation by a Class I facility, or where the results of the inspection(s) indicate that the permittee is in violation, the Division shall initiate an appropriate enforcement action within 30 days of such a determination or make a decision in writing not to take any action. Priorities for reviewing these reports and for initiating enforcement actions will be specified in procedures set out in the Enforcement Management System document.



### Formal Enforcement Authorities

As stated above, Part 6 of WQCA, specifically parts 25-8-601 through 25-8-607, provide a description of the enforcement process detailing such activities as notice of alleged violations, hearing procedures for alleged violations, suspension, revocation, and modification of permit, cease and desist orders, clean-up orders, and restraining orders and injunctions. The Division may also initiate, through a District Attorney or the Attorney General's Office, a court action seeking a restraining order or injunction for failure to comply with a Cease and Desist Order or Clean-Up Order. Parts 25-8-608 through 25-8-612 provide a description of civil penalties, criminal pollution of state waters - penalties, falsification and tampering, proceedings by other parties. Violators of the Biosolids Regulation are subject to civil penalties of up to \$10,000 per day of violation. Criminal penalties of up to \$25,000 per day may also be imposed. All enforcement actions pursuant to the WQCA shall be taken by the Permits and Enforcement Section of the Water Quality Control Division.

ATTACHMENT A - PRELIMINARY INVENTORY OF TWTDS





PRELIMINARY INVENTORY OF TWTDS





**USERS' MANUAL**  
**FOR**  
**BIOSOLIDS APPLICATION**

Prepared for:

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Region VIII  
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Prepared by:

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999 18th Street  
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April 1994



## 1.0 INSTALLATION

The following conventions will be used in this manual:

*{ }* - user-chosen name  
*< >* - key to press  
 - characters to enter or keys to press

To install the application:

Edit the Config.sys file located in the root directory (typically the C: drive) and modify the statement "FILES=..." to "FILES=99".

Create a directory on the hard drive.

e.g., C:\> MD {biosolid} <enter>

Copy the six database files and the executable file (stored on one diskette) to the newly created directory. A total of seven files should be copied.

e.g., C:\> CD {biosolid} <enter>  
C:\BIOSOLID\> COPY A:\*. \* <enter>

To activate the application:

At the hard drive prompt and within the newly created directory, type the executable file name and press <enter>.

e.g., C:\BIOSOLID\> BIOSOLID <enter>

Invoking the application presents an introductory screen. The introductory screen is displayed for 7 seconds; in order to advance to the next screen without waiting, just press <enter>.

**NOTE:** When first installed, the program generates seven additional index files from the seven database files contained on the diskette. These files are identifiable by the suffix ".NTX". If the application is being invoked for the first time after installation, or for some reason the index files have been unintentionally erased by a user, the introductory screen will continue to be displayed until the index files have been created. Even on a slow computer, this process takes less than five minutes. If for any reason the index files have been damaged or erased, an error message will be displayed that indicates a "file corruption has occurred". In this case, if present, erase all of the ".NTX" files from the directory and activate the application as instructed above. By doing so a new set of clean index files will be created and the application will continue.

## 2.0 MAIN MENU

After the introductory screen, the Biosolids Main Menu is displayed. As indicated on the bottom of the screen, highlighting the desired option and pressing <enter> will activate that operation. A message prompt is displayed on the bottom of the screen describing the function of each option as it is highlighted.

BIOSOLIDS  
MAIN MENU

SEARCH  
ADD TO BIOSOLIDS DATABASE  
PRINT MENU  
QUESTIONS/ALTERNATIVES/METHODS  
MAINTENANCE  
EXIT PROGRAM

Locate and edit/delete/undelete/print records

Highlight option & <Enter> / Enter 1st character

### 2.1 Menu Options

The following is a brief description of all the options available on the Biosolids Main Menu:

**Search** - By highlighting this option and pressing <enter>, the first of seven Search Screens is displayed. The user can build a search criteria by entering information in the fields of interest on one or all of the seven screens. Detailed information regarding building searches is provided in Section 4.0.

**Add to Biosolids Database** - This option presents the first of seven Add Screens. These screens are to be used when entering information for a new permit#. Additional information pertinent to data addition is provided in Section 3.0.

**Print Menu** - This option presents the Print Menu which contains seven print formats. In addition to accessing this menu through the Main Menu, the Print Menu can also be accessed through the Query screen within the Search Menu. Additional information regarding the Print Menu is provided in Section 5.0.

**Questions/Alternatives/Methods** - This option displays the first of ten screens which contain general facility questions, sludge treatment and final disposal questions, Class A and B pathogen reduction alternative questions, and vector attraction reduction method questions. The questions can be written per the user's request and are then available for use in the inspection reports which are generated within the Print Menu.

**Maintenance** - By selecting this option, the application removes all the records that have been marked for deletion within the databases as well as updates the index files.

**Exit Program** - Terminates the application and returns the user to the operating system.



## 2.2 Function Keys

The following is a brief description of the function keys available within the Biosolids Application:

**<ESC>-Escape** - This key is available throughout this application to assist in exiting the prompt or the screen to return to the Main Menu.

**<F1>-Help** - This key is available throughout this application and provides the user with helpful tips on adding, editing, and deleting records, and designing search criteria.

**<F3>-Editing Keys** - This key is available throughout the application, except for the Query Screen, and presents a screen containing all the keys needed to edit and navigate the screens in this application. The available keys are as follows:

### Navigational Keys

<b>&lt;ESC&gt;</b>	Command Line or abandon operation
<b>&lt;Home&gt;</b>	Beginning of field
<b>&lt;Down Arrow&gt;</b>	Next field (can also use Ctrl-M or <enter>)
<b>&lt;Up Arrow&gt;</b>	Previous field (can also use Ctrl-E)
<b>&lt;Ctrl-Home&gt;</b>	Beginning of first field on Screen

### Editing Keys

<b>&lt;Ctrl-T&gt;</b>	Delete word to the right
<b>&lt;Ctrl-Y&gt;</b>	Delete from cursor position to end of field
<b>&lt;Ctrl-U&gt;</b>	Restore current field to original value
<b>&lt;Delete&gt;</b>	Delete current character (can also use space bar)

**<F2>-Save** - This key saves the displayed data to the appropriate database. This key is provided only in the first Add Screen, because the data is automatically saved in all the other Add Screens. Also, the key is available in all the Data Screens for saving any modifications.

**<F4>-Print Menu** - This key accesses the Print Menu when the user is in the Query screen contained within the Search Menu. This key routes the user to the Print Menu.

**<PgDn>-Command Line** - This key displays the command line on the bottom of the screen in order for the user to choose the next operation by entering the appropriate character or pressing the desired function key. Different options are presented within the Command line for different screens.

**CDPS PERMIT BOILERPLATES**





## BIOSOLIDS BOILERPLATE - MAJORS

### A. TERMS AND CONDITIONS

#### 9. Biosolids Limitations and Management Requirements (Continued)

In accordance with the Water Quality Control Commission Biosolids Regulations, Section 4.9.11., and the State Discharge Permit System Regulations, Section 6.9.3.(17), biosolids generated by this facility to be used for land application for beneficial use shall comply with the limitations on the following page.

##### a) Pollutant Limitations

(i) Biosolids which are to be land applied to agricultural land, forest land, a public contact site or a reclamation site shall meet either:

- (1) The daily maximum pollutant concentrations **and** the cumulative pollutant loading limits identified in the following table; **or**
- (2) The daily maximum pollutant concentrations **and** the monthly average pollutant concentrations identified in the following table.

Pollutant	Pollutant Concentration (mg/Kg dry weight basis)		Cumulative Pollutant Loading Limits (kg/Ha)
	Daily Maximum	Monthly Average	
Total Arsenic	75	41	41
Total Cadmium	85	39	39
Total Chromium	3000	1200	3000
Total Copper	4300	1500	1500
Total Lead	840	300	300
Total Mercury	57	17	17
Total Molybdenum	75	-	-
Total Nickel	420	420	420
Total Selenium	100	32	36
Total Zinc	7,500	2,800	2,800

(ii) Biosolids to be sold or given away in a bag or similar enclosure for application to the land for other than lawn or home garden use shall meet either:

- (1) The daily maximum pollutant concentrations **and** the annual pollutant loading limits identified in the table in Part I.A.9.a) (iii), below; **or**
- (2) The daily maximum pollutant concentrations **and** the monthly average pollutant concentrations identified in the table in Part I.A.9.a) (iii), below.

(iii) Biosolids to be applied to a lawn or home garden shall meet the monthly average pollutant concentrations identified in the table on the following page.



A. TERMS AND CONDITIONS

9. Biosolids Limitations and Management Requirements

a) Pollutant Limitations (Continued)

Pollutant	Pollutant Concentration (mg/Kg dry weight basis)		Annual Loading (Kg/Ha within 365 day period)
	Daily Maximum	Monthly Average	
Total Arsenic	75	41	2.0
Total Cadmium	85	39	1.9
Total Chromium	3000	1200	150
Total Copper	4300	1500	75
Total Lead	840	300	15
Total Mercury	57	17	0.85
Total Molybdenum	75	-	-
Total Nickel	420	420	21
Total Selenium	100	100	5.0
Total Zinc	7,500	2,800	140

b) Pathogen Limitations

If the biosolids are to be land applied to agricultural land, forest land, a public contact site or a reclamation site, the biosolids shall meet either Class A or Class B (including the site restrictions) criteria identified in the following two tables. If the biosolids are to be sold or given away in a bag or similar enclosure for application to land or for use on a lawn or home garden, the biosolids shall meet Class A criteria as described in the following table. Compliance with either Class A or Class B fecal coliform or salmonella requirements as listed in the following two tables shall be determined based upon the geometric mean of seven individual biosolids samples collected over a two week period.

(i) Class A Pathogen Requirements

Fecal Coliform and Salmonella Limits		Process Requirements (One of the following) :
Fecal Coliforms shall be < 1000 MPN/gram of total solids OR Salmonella shall be < 3 MPN/4 grams of total solids	AND	<ol style="list-style-type: none"> <li>Composting using either the within-vessel or static aerated pile composting method, the temperature of the sludge is maintained at 55°C or higher for three days. OR</li> <li>Composting using the windrow method, the temperature of the sludge is maintained at 55°C or higher for 15 days or longer, with a minimum of 5 turnings of the pile during those 15 days.</li> </ol>

TERMS AND CONDITIONS

9. Biosolids Limitations and Management Requirements

b) Pathogen Limitations (Continued)

(ii) Class B Pathogen Requirements

Fecal Coliform Limit		Process Requirements:
Fecal Coliforms shall be < 2,000,000 MPN or CFU/gram of total solids	OR	Aerobic digestion for 40 days at 20°C to 60 days at 15°C. Anaerobic digestion for 15 days within 35°C-50°C to 20 days at 20°C

(iii) Site Restrictions

If the biosolids are **Class B** with respect to pathogens, the permittee shall comply with all of the site restrictions listed below:

- (1) Food crops with harvested parts that touch the biosolids/soil mixture and are totally above the land surface shall not be harvested for 14 months after application.
- (2) Food crops with harvested parts below the land surface shall not be harvested for 20 months after application if the biosolids remain on the land surface for four months or more prior to incorporation into the soil.
- (3) Food crops with harvested parts below the land surface shall not be harvested for 38 months after application if the biosolids remain on the land surface for less than four months prior to incorporation into the soil.
- (4) Other food crops and feed crops shall not be harvested from the land for 30 days after application.
- (5) Animals shall not be allowed to graze on the land for 30 days after application.
- (6) Turf grown on land where biosolids are applied shall not be harvested for one year after application if the harvested turf is placed on either land with a high potential for public exposure or a lawn.
- (7) Public access to land with a high potential for public exposure shall be restricted for one year after application.
- (8) Public access to land with a low potential for public exposure shall be restricted for 30 days after application.

c) Vector Attraction Reduction Limitations

If the biosolids are to be land applied to agricultural land, forest land, a public contact site or a reclamation site, the biosolids shall meet any one of the alternatives listed on the following page.

If the biosolids are to be sold or given away in a bag or similar enclosure for application to land or for use on a lawn or home garden, the biosolids shall meet one of the three alternatives (i) through (iii) listed on the following page.



A. TERMS AND CONDITIONS

9. Biosolids Limitations and Management Requirements

c) Vector Attraction Reduction Limitations (Continued)

- (i) The mass of volatile solids in the biosolids shall be reduced by a minimum of 38 percent prior to land application. Alternately, if aerobically digested biosolids cannot meet the 38 percent volatile solids reduction requirement, a portion of the previously digested biosolids (with a percent solids content of 2 percent or less) shall be digested aerobically in the laboratory in a bench-scale unit for an additional 30 days at a temperature between 20 and 22°C. At the end of the 30 days, the volatile solids content shall have been reduced by no more than 15 additional percent.
- (ii) The specific oxygen uptake rate (SOUR) for the biosolids treated in an aerobic process shall be equal to or less than 1.5 mg of oxygen/hour/gram of total solids at a temperature of 20°C.
- (iii) The biosolids shall be treated in an aerobic process for 14 days or longer with a temperature remaining above 40°C. The average temperature shall be greater than 45°C.
- (iv) The biosolids shall be injected below the surface of the land and no significant amount of biosolids shall be present on the land surface within one hour after the biosolids are injected. If the biosolids meet the Class A pathogen requirements (Part I.A.9.b)(i)), the biosolids shall be injected below the land surface within 8 hours after the biosolids are discharged from the pathogen reduction process.
- (v) Biosolids applied to the land surface shall be incorporated into the soil within 6 hours after application to the land. Biosolids that are incorporated into the soil and which meet the Class A pathogen requirements (Part I.A.9.b)(i)) shall be applied to or placed on the land within 8 hours after being discharged from the pathogen treatment process.

d) Biosolids Management Practices

- (i) If the biosolids or material derived from biosolids meet the pollutant concentration limits in Part I.A.9.a), the Class A pathogen reduction limits in Part I.A.9.b) and one of the first four vector attraction reduction alternatives in Part I.A.9.c), the following management practices are not required unless requested by the Division through permit modification procedures under Part II.B.8.e) of this permit.

The permittee shall operate and maintain the land application site operations in accordance with the following requirements:

- (1) The permittee shall provide to the Division and to EPA within 90 days of the issuance of this permit a land application plan. At a minimum, the plan is to include the components listed in section 2.3 of the latest version of the EPA Region VIII Biosolids Management Handbook.
- (2) Application of biosolids shall be conducted in a manner that will not contaminate the groundwater underlying the sites. Biosolids shall not be applied to any site area with standing water or where the annual high groundwater level is less than five feet without written permission of the Division.



TERMS AND CONDITIONS

9. Biosolids Limitations and Management Requirements

d) Biosolids Management Practices

(i) (Continued)

- (3) Application of biosolids shall be conducted in a manner that will not cause a violation of any receiving water quality standard from discharges of surface runoff from the land application sites. Biosolids shall not be applied to land 10 meters or less from waters of the U.S. (as defined in 40 CFR 122.2).
- (4) Application of biosolids shall be conducted in a manner that does not exceed the agronomic rate for available nitrogen of the crops grown on the site. The treatment plant shall provide written notification to the applier of the biosolids, if not the same, of the concentration of total nitrogen (as N on a dry weight basis) in the biosolids. Written permission from the Division is required to exceed the agronomic rate.
- (5) Application of biosolids to frozen, ice-covered, or snow covered sites where the slope of the site exceeds five percent is prohibited.
- (6) No person shall apply sludge for beneficial use to frozen, ice-covered, or snow-covered land where the slope of such land is greater than three percent and is less than or equal to five percent unless one of the following requirements is met:
  - A. a vegetated buffer strip of at least 50 feet is provided between the application area and the site boundary; or,
  - B. Division approval has been obtained based upon a plan demonstrating adequate runoff containment measures.
- (7) The biosolids or the application of the biosolids shall not cause or contribute to the harm of a threatened or endangered species or result in the destruction or adverse modification of critical habitat of a threatened or endangered species after application.
- (8) For biosolids that are sold or given away, either a label shall be affixed to the bag or similar enclosure or an information sheet shall be provided to the person who receives the biosolids. The label or information sheet shall contain:
  - A. The name and address of the person who prepared the biosolids for sale or give away for application to the land.
  - B. A statement that prohibits the application of the biosolids to the land except in accordance with the instructions on the label or information sheet.
  - C. When biosolids which are sold or given away do not meet the monthly average pollutant concentrations in Part I.A.9.a., the annual whole biosolids application rate for biosolids which do not cause the annual pollutant loading rates in Part I.A.9.a. to be exceeded.



A. TERMS AND CONDITIONS

9. Biosolids Limitations and Management Requirements

d) Biosolids Management Practices (Continued)

(9) Biosolids subject to the cumulative pollutant loading rates in Part I.A.9.a) shall not be applied to agricultural land, forest, a public contact site, or a reclamation site if any of the cumulative pollutant loading rates in Part I.A.9.a) have been reached.

(10) If the permittee applies the sludge, it shall provide the owner or lease holder of the land on which the biosolids are applied notice and necessary information to comply with the requirements in this permit.

(ii) Special Conditions on Biosolids Storage

Permanent storage of biosolids is prohibited. Biosolids shall not be temporarily stored for more than two years. Written permission to store biosolids for more than two years must be obtained from the Division. Storage of biosolids for more than two years will be allowed only if it is determined that significant treatment is occurring.

(iii) Change in Biosolids Treatment System or Use/Disposal Practice

The permittee must inform the Division and the EPA at least 180 days prior to any significant change in the biosolids generation and handling processes at the plant and any major change in use/disposal practices. This includes, but is not limited to, the addition or removal of biosolids treatment units (e.g., digesters, drying beds, etc.) and/or any other change which would require a major modification of the permit (e.g., changing from land application to surface disposal). For any biosolids that are landfilled, the requirements in section 2.12 of the latest version of the Region VIII Biosolids Management Handbook should be followed.

# MONITORING REQUIREMENTS

## 4. Biosolids (Sludge) Parameters

- a) Regardless of the method of disposal, the permittee shall monitor biosolids quality and quantity as follows. Results of monitoring shall be included in the Annual Report (see Part I, Section D.3).

<u>Biosolids Parameter</u>	<u>Frequency i/</u>	<u>Sample Type f/</u>
Total Solids, % dry weight	Monthly	Biosolids Composite
Volatile Solids, % of Total Solids	Monthly	Biosolids Composite
Volume of Biosolids Disposed of, gals./day	Continuous	Calculated
Dry Weight of Biosolids Disposed of, lbs./day	Continuous	Calculated

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following locations: 1) For all parameters, samples shall be taken after digestion and/or dewatering (or other stabilization processes) but prior to transport or disposal. All samples shall be representative of the sludge stream being sampled.

- b) If land application is practiced the permittee shall monitor biosolids quality and quantity as follows. Results of monitoring shall be included in the Annual Biosolids Report (see Part I, Section D.3).

- (i) Upon the effective date of this permit, all chemical pollutants, pathogens and applicable vector attraction reduction requirements shall be monitored per the following schedule.

ANNUAL BIOSOLIDS PRODUCTION (dry tons)	FREQUENCY
less than 319	once per year
320 to less than 1,650	once per quarter
1,651 to less than 16,500	once per two months
16,500 and greater	monthly

- (ii) If this facility does not collect samples on a regular basis because sampling occurs from long-term treatment piles, compost piles, drying beds, etc. a sampling and analysis plan is to be prepared and submitted to the Division and to EPA within 90 days of issuance of this permit. If, when the permit is issued the permittee was not sampling in this manner but a change in process necessitates this form of sampling, then the plan must be submitted 30 days before the change occurs. This plan is to detail how representative samples are to be obtained and should include elements presented in Section 2.13 of the latest version of the EPA Region VIII Biosolids Management Handbook. The number of samples collected will be at least as many as those that would be collected annually as required from the amount of sludge produced (i.e. six for this facility).

## c) Representative Sampling

Samples and measurements collected in accordance with Part I.B.4.b)(i) of this permit, above, shall be collected at locations representative of the quality of biosolids generated at the treatment works and immediately prior to land application.



## B. MONITORING REQUIREMENTS

### 4. Biosolids Parameters (Continued)

#### d) Analytical and Sampling Methods for Monitoring

Sample collection, preservation and analysis shall be performed in a manner consistent with the requirements of the Biosolids Regulations, 4.9.0 (SCCR 1002-19) and/or other criteria specified in this permit. Metals analyses are to be performed using method SW 846 with samples prepared in accordance with method 3050. The methods are also described in the latest version of the EPA Region VIII Biosolids Management Handbook.

#### e) Records

Biosolids which are Class A with respect to pathogens and which meet the monthly pollutant concentration limits identified in Part I.A.9.a) shall comply with the recordkeeping requirements identified in sections 4.e)(i)(1) through 4.e)(i)(3), below. If the biosolids are Class B with respect to pathogens, or if any pollutant limited in Part I.A.9.a) increases to the point where the biosolids no longer meet the monthly average pollutant concentration limits in Part I.A.9.a), the permittee shall comply with all of the recordkeeping requirements identified below:

(i) The permittee is required to keep the following information for at least 5 years:

- (1) Concentration of each pollutant in Part I.A.9.a);
- (2) A description of how the pathogen reduction requirements in Part I.A.9.b) were met;
- (3) A description of how the vector attraction reduction requirements in Part I.A.9.c) were met;
- (4) A description of how the management practices in Part I.A.9.e) were met (if necessary);
- (5) A description of how the site restrictions in Part I.A.9.b) were met (if necessary); and
- (6) The following certification statement:

"I certify under the penalty of law, that the pathogen requirements in Part I.A.9.a), one of the vector attraction reduction alternatives in Part I.A.9.b), the management practices in Part I.A.9.e) (if necessary) and the site restrictions in Part I.A.9.b) (if necessary) have been met. This determination has been made under my direction and supervision in accordance with the system designed to assure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements, the vector attraction reduction requirements, the management practices and the site restrictions have been met. I am aware that there are significant penalties for false certification including the possibility of imprisonment."

- (ii) Records of monitoring information shall include the: 1) date, exact place, and time of sampling or measurements and the initials or name(s) of the individual(s) who performed the sampling or measurements; 2) date(s) and times analyses were performed; 3) initials or name(s) of individual(s) who performed the analyses; 4) references and written procedures, when available, for the analytical techniques or methods used; and 5) results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

B. MONITORING REQUIREMENTS

4. Biosolids Parameters

e) Records (Continued)

(iii) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit and records of all data used to complete the application for this permit for the life of the permit. Data collected on site, copies of Biosolids Report forms, and a copy of this permit must be maintained on site during the duration of activity at the permitted location.

f) If biosolids from the treatment facilities are being disposed of at a solid waste disposal site, the following requirements also apply.

The discharge of solid waste to land for disposal is regulated by the Colorado Solid Wastes Disposal Sites and Facilities Act (30-20, Part 1 CRS 1973). The Act requires that either a Certificate of Designation be issued by the appropriate board of county commissioners for any disposal site located within an unincorporated portion of a county, or that approval be granted by the appropriate governing body of an incorporated portion of a county for any disposal site located within that incorporated area. Sewage sludge (biosolids) is considered by definition [30-20-101(6)] to be a solid waste.

Section 30-20-102(6) provides an exemption from the Certificate of Designation requirement for sewage sludge (biosolids) which is used in a beneficial manner and is designated as meeting all applicable regulations of the Department. The application of sludge to land as a soil conditioner/fertilizer, which is subject to the Water Quality Control Commission Biosolids Regulation, qualifies for such an exemption.





## BIOSOLIDS BOILERPLATE - MINOR MECHANICALS

### A. TERMS AND CONDITIONS

#### 4. FACILITIES OPERATION

The permittee shall at all times ... Any biosolids produced at the wastewater treatment facility shall be disposed of in accordance with State and Federal regulations. Disposal of biosolids in a landfill is subject to federal solid waste regulations at 40 CFR Part 257 and the Colorado Regulations pertaining to Solid Waste Disposal Sites and Facilities, 6 CCR 1007-2. Surface disposal (monofill or land application for disposal) is subject to federal sludge regulations at 40 CFR Part 503 and the Colorado Regulations pertaining to Solid Waste Disposal Sites and Facilities. Land application of biosolids for beneficial use including agricultural use, reclamation and public distribution or sale is subject to the Colorado Biosolids Regulation, 4.9.0 (5 CCR 1002-19). It is the responsibility of the permittee to determine which of the regulations are applicable to their mode of operation. The Colorado Biosolids Regulation contains monitoring, reporting and management requirements not specified in this permit. Compliance with the Colorado Biosolids Regulation is an enforceable requirement of this permit. In the event that contract services are utilized for land application of biosolids for beneficial use, the permittee shall ensure compliance with applicable provisions of the Colorado Biosolids Regulation.

### B. MONITORING REQUIREMENTS

#### 4. Biosolids Parameters

If at any time during the term of this permit biosolids are removed from the wastewater treatment facility for use or disposal, the permittee shall monitor the following parameters. Results of monitoring shall be included in the Annual Report (see Part I, Section D.3). Land application of biosolids for beneficial use is subject to the requirements of the Colorado Biosolids Regulation, 4.9.0 (5 CCR 1002-19). Additional monitoring, reporting and management requirements are specified in the Colorado Biosolids Regulation. Compliance with the Colorado Biosolids Regulation is an enforceable requirement of this permit.

<u>Biosolids Parameter</u>	<u>Measurement Frequency e/</u>	<u>Sample Type f/</u>
Total Solids, % dry weight	annually	biosolids composite
Volatile Solids, % of total solids	annually	biosolids composite
Volume of biosolids to use/disposal	per haul day	calculated
Dry weight of biosolids to use/disposal	per haul day	calculated

Samples taken in compliance with the monitoring requirements specified above shall be taken after the biosolids have been digested and/or dewatered (or otherwise stabilized) but prior to transport or disposal. All samples shall be representative of the biosolids stream being sampled.

#### FOOTNOTES

- (vi) A "biosolids composite" sample is a representative sample of biosolids from a wastewater treatment process unit, storage unit, or stabilization process unit. The sample shall consist of a minimum of three grab samples of 500 milliliters each taken at the start, middle and end of a pumping cycle, or if discharge is continuous or of a cyclical nature, grab samples of 250 milliliters each shall be taken four times during a twenty-four hour period and combined. Composited samples of dewatered or composted biosolids shall consist of a minimum of four grab samples of 0.5 kilograms each taken four times during a twenty-four hour period and combined.



## C. ADDITIONAL MONITORING REQUIREMENTS

### 4. Records

...all data used to complete the application for this permit. The results of monitoring required pursuant to the Colorado Biosolids Regulation, 4.9.0 (5 CCR 1002-19) shall be retained for a period of five years with the exception that records of cumulative metal additions to land application sites must be retained for the life of the site. This period of retention shall be extended...

## D. REPORTING

### 3. Annual Report

i) A report of biosolids handling operations during the past year, including the final use or disposal of the biosolids. The following items shall be presented in the report:

- (i) Total volume and mass of biosolids handled and used or disposed of (see Part I, Section B - Monitoring Requirements);
- (ii) Location(s) and method(s) (e.g., land application, citizen giveaway, etc.) of use or disposal;
- (iii) A summary of monitoring results for biosolids stability, quality and physical characteristics prior to final use or disposal (see Part I, Section B - Monitoring Requirements);
- (iv) If disposal is by landfilling, an identification of the name(s), owner(s), and operator(s) of landfill and verification that the facility(s) is certified under State and Federal regulations.

If the permittee's biosolids use practices are subject to the requirements of the Colorado Biosolids Regulation, 4.9.9 (5 CCR 1002-19) the permittee is subject to the reporting requirements specified in those regulations and need not resubmit the information required at D.3 i) (iii) above. However, the permittee must include in the annual report a reference to the document which already supplied the information, including the date of submittal.

Permit, Part II

### 4. Removed Substances

...

For all domestic wastewater treatment works, the permittee shall dispose of biosolids in accordance with State and Federal regulations as specified in Part I, Section A Facility Operation.

## VI. TERMS AND CONDITIONS OF PERMIT

### B. Monitoring

#### 2) Biosolids Monitoring

- a) Biosolids Disposal: Municipalities which practice any methods of biosolids use or disposal, including beneficial use, landfilling, or any combination of use/disposal methods, are required to perform the analyses shown in Table VI-4. Refer to the permit for the location of biosolids sampling points. The results of these analyses and a description of biosolids use/disposal practices are to be included in the annual report.

Table VI-4 - Monitoring Requirements

Biosolids Parameter	Measurement Frequency	Sample Type
Total Solids, % dry weight	annually	biosolids composite
Volatile Solids, % of total solids	annually	biosolids composite
Volume of biosolids to use/disposal	per haul day	calculated
Dry weight of biosolids to use/disposal	per haul day	calculated

Regulation of biosolids use/disposal: The discharge of solid waste to land for disposal is regulated by the Colorado Regulations pertaining to Solid Wastes Disposal Sites and Facilities, 6 CCR 1007-2, and the Colorado Biosolids Regulation, 4.9.0 (5 CCR 1002-19). The Colorado Regulations pertaining to Solid Waste Disposal Sites and Facilities requires that a Certificate of Designation be obtained from the appropriate board of county commissioners for any site to which solid waste is discharged. Sewage sludge (biosolids) is defined as a solid waste.

Section 1.4.4 of the Colorado Regulations pertaining to Solid Waste Disposal Sites and Facilities provides an exemption from the Certificate of Designation requirement for sewage sludge (biosolids) which is used in a beneficial manner and is designated as meeting all applicable regulations of the Department. The Colorado Biosolids Regulation contain the requirements applicable to beneficial land application. Requirements of the Colorado Biosolids Regulation are in addition to the monitoring requirements noted in 2(a) and are enforceable requirements of the permit.





## BIOSOLIDS BOILERPLATE - MINOR LAGOONS

### A. TERMS AND CONDITIONS

#### 4. FACILITIES OPERATION

The permittee shall at all times ... Any biosolids produced at the wastewater treatment facility shall be disposed of in accordance with State and Federal regulations. Disposal of biosolids in a landfill is subject to federal solid waste regulations at 40 CFR Part 257 and the Colorado Regulations pertaining to Solid Waste Disposal Sites and Facilities, (6 CCR 1007-2). Surface disposal (monofill or land application for disposal) is subject to federal sludge regulations at 40 CFR Part 503 and the Colorado Regulations pertaining to Solid Waste Disposal Sites and Facilities. Land application of biosolids for beneficial use including agricultural use, reclamation and public distribution or sale is subject to the Colorado Biosolids Regulation, 4.9.0 (5 CCR 1002-19). It is the responsibility of the permittee to determine which of the regulations are applicable to their mode of operation. The Colorado Biosolids Regulation contains monitoring, reporting and management requirements not specified in this permit. Compliance with the Colorado Biosolids Regulation is an enforceable requirement of this permit. In the event that contract services are utilized for land application of biosolids for beneficial use, the permittee shall ensure compliance with applicable provisions of the Colorado Biosolids Regulation.

### B. MONITORING REQUIREMENTS

#### 4. Biosolids Parameters

If at any time during the term of this permit biosolids are removed from the wastewater treatment facility for use or disposal, the permittee shall monitor the following parameters. Results of monitoring shall be included in the Annual Report (see Part I, Section D.3). Land application of biosolids for beneficial use is subject to the requirements of the Colorado Biosolids Regulation, 4.9.0 (5 CCR 1002-19). Additional monitoring, reporting and management requirements are specified in the Colorado Biosolids Regulation. Compliance with the Colorado Biosolids Regulation is an enforceable requirement of this permit.

<u>Biosolids Parameter</u>	<u>Measurement Frequency e/</u>	<u>Sample Type f/</u>
Total Solids, % dry weight	per haul event	grab
Volatile Solids, % of total solids	per haul event	grab
Volume of biosolids to use/disposal	per haul day	calculated
Dry weight of biosolids to use/disposal	per haul day	calculated

Samples taken in compliance with the monitoring requirements specified above shall be taken after the biosolids have been digested and/or dewatered (or otherwise stabilized) but prior to transport or disposal. All samples shall be representative of the biosolids stream being sampled.

### C. ADDITIONAL MONITORING REQUIREMENTS

#### 4. Records

...all data used to complete the application for this permit. The results of monitoring required pursuant to the Colorado Biosolids Regulation, 4.9.0 (5 CCR 1002-19) shall be retained for a period of five years with the exception that records of cumulative metal additions to land application sites must be retained for the life of the site. This period of retention shall be extended...



## D. REPORTING

### 3. Annual Report

i) A report of biosolids handling operations during the past year, including the final use or disposal of the biosolids. The following items shall be presented in the report:

- (i) Total volume and mass of biosolids handled and used or disposed of (see Part I, Section B - Monitoring Requirements);
- (ii) Location(s) and method(s) (e.g., land application, citizen giveaway, etc.) of use or disposal;
- (iii) A summary of monitoring results for biosolids stability, quality and physical characteristics prior to final use or disposal (see Part I, Section B - Monitoring Requirements);
- (iv) If disposal is by landfilling, an identification of the name(s), owner(s), and operator(s) of landfill and verification that the facility(s) is certified under State and Federal regulations.

If the permittee's biosolids use practices are subject to the requirements of the Colorado Biosolids Regulation, 4.9.0 (5 CCR 1002-19) the permittee is subject to the reporting requirements specified in those regulations and need not resubmit the information required at D.3 i) (iii) above. However, the permittee must include in the annual report a reference to the document which already supplied the information, including the date of submittal.

Permit, Part II

### 4. Removed Substances

...

For all domestic wastewater treatment works, the permittee shall dispose of biosolids in accordance with State and Federal regulations as specified in Part I, Section A Facilities Operation.

## Rationale

### VI. TERMS AND CONDITIONS OF PERMIT

#### B. Monitoring

##### Biosolids Monitoring

Biosolids Disposal: Municipalities which practice any methods of biosolids use or disposal, including beneficial use, landfilling, or any combination of use/disposal methods, are required to perform the analyses shown in Table VI-4. Refer to the permit for the location of biosolids sampling points. The results of these analyses and a description of biosolids use/disposal practices are to be included in the annual report.

Table VI-4 - Monitoring Requirements

Biosolids Parameter	Measurement Frequency	Sample Type
Total Solids, % dry weight	per haul event	grab
Volatile Solids, % of total solids	per haul event	grab
Volume of biosolids to use/disposal	per haul day	calculated
Dry weight of biosolids to use/disposal	per haul day	calculated

Regulation of biosolids use/disposal: The discharge of solid waste to land for disposal is regulated by the Colorado Regulations pertaining to Solid Wastes Disposal Sites and Facilities, 6 CCR 1007-2, and the Colorado Biosolids Regulation, 4.9.0 (5 CCR 1002-19). The Colorado Regulations pertaining to Solid Waste Disposal Sites and Facilities require that a Certificate of Designation be obtained from the appropriate board of county commissioners for any site to which solid waste is discharged. Sewage sludge (biosolids) is defined as a solid waste.

Section 1.4.4 of the Colorado Regulations pertaining to Solid Waste Disposal Sites and Facilities provides an exemption from the Certificate of Designation requirement for sewage sludge (biosolids) which is used in a beneficial manner and is designated as meeting all applicable regulations of the Department. The Colorado Biosolids Regulation contain the requirements applicable to beneficial land application. Requirements of the Colorado Biosolids Regulation are in addition to the monitoring requirements noted in 2(a) and are enforceable requirements of the permit.



The first part of the report deals with the general situation of the country and the progress of the work during the year. It is followed by a detailed account of the work done in each of the various departments and sections of the organization.

The second part of the report deals with the financial position of the organization and the results of the work done during the year. It is followed by a detailed account of the work done in each of the various departments and sections of the organization.

The third part of the report deals with the personnel and the results of the work done during the year. It is followed by a detailed account of the work done in each of the various departments and sections of the organization.

The fourth part of the report deals with the general situation of the country and the progress of the work during the year. It is followed by a detailed account of the work done in each of the various departments and sections of the organization.

**NOTICE OF AUTHORIZATION BOILERPLATES**





# STATE OF COLORADO

Roy Romer, Governor  
Patti Shwayder, Acting Executive Director

*Dedicated to protecting and improving the health and environment of the people of Colorado*

4300 Cherry Creek Dr. S.  
Denver, Colorado 80222-1530  
Phone (303) 692-2000

Laboratory Building  
4210 E. 11th Avenue  
Denver, Colorado 80220-3716  
(303) 691-4700



Colorado Department  
of Public Health  
and Environment

<DATE>

<NAME>

<ADDRESS>

**RE: Notice of Authorization for the Use and Distribution of Biosolids  
<UNRESTRICTED DISTRIBUTION AND USE>; CDPH&E BMP #0000**

Dear ,

Enclosed please find the Notice of Authorization for the Use and Distribution of Biosolids (the Notice) for the biosolids distribution program. The Notice authorizes the distribution of Grade I, Class A biosolids produced by the facility for unrestricted use. Use or distribution of biosolids generated at the facility which do not comply with Grade I constituent concentration limits or Class A pathogen destruction criteria is not a privilege or right granted pursuant to the Notice. Use or distribution of any such biosolids requires issuance of a separate Notice of Authorization for the Use and Distribution of Biosolids specific to such use and distribution.

This Notice contains references to a number of monitoring and reporting requirements which are contained in the Colorado Biosolids Regulation, (5 CCR 1002-19, 4.9.0). The permittee, , is responsible for the identification of and compliance with any applicable criteria contained in the regulations. Specific conditions applicable to the distribution of biosolids for unrestricted use are identified at section 4.9.14 of the regulation. Additional requirements may also be specified in the Special Conditions section of the Notice. Please review the document carefully.

Fee payment, in the amount of two dollars and forty cents per dry ton for biosolids which are distributed are required per the Colorado Regulations pertaining to Beneficial Use of Water Treatment Sludge and Fees Applicable to the Beneficial Use of Sludges (5CCR 1003-7, 15.B.1).

Should any questions arise please feel free to contact either myself at (303) 692-3598 or Ms. Lori Tucker at (303) 692-3613.

Sincerely,

Phil Hegeman, Program Manager  
Biosolids Management Program  
Permits and Enforcement Section  
WATER QUALITY CONTROL DIVISION



# STATE OF TEXAS



OFFICE OF THE  
COMMISSIONER OF  
THE GENERAL LAND OFFICE

TO THE HONORABLE  
COMMISSIONER OF THE  
GENERAL LAND OFFICE  
AT DALLAS, TEXAS

SIR:

I have the honor to acknowledge the receipt of your letter of the 10th inst., in relation to the above and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

Very respectfully,  
Yours obedient servant,  
J. M. [Signature]

TO THE HONORABLE  
COMMISSIONER OF THE  
GENERAL LAND OFFICE  
AT DALLAS, TEXAS

SIR:

I have the honor to acknowledge the receipt of your letter of the 10th inst., in relation to the above and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

Very respectfully,  
Yours obedient servant,  
J. M. [Signature]

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Yours obedient servant,  
J. M. [Signature]

Very respectfully,  
Yours obedient servant,  
J. M. [Signature]

Very respectfully,  
Yours obedient servant,  
J. M. [Signature]

**NOTICE OF AUTHORIZATION FOR  
THE USE AND DISTRIBUTION OF BIOSOLIDS**

Part I  
Page 1 of 5  
CDPH&E BMP #0000

**PURSUANT**

to the provisions of the Colorado Water Quality Control Act, Section 25-8-501 C.R.S., (1989 Repl. Vol. 11A and 1993 Supp.) and the Colorado Biosolids Regulation (5CCR 1002-19, 4.9.0), this Notice of Authorization For The Use and Distribution of Biosolids authorizes the distribution of biosolids produced by the <PERMITTEE> biosolids facility for unrestricted use.

**DISTRIBUTION**

of biosolids shall be performed in accordance with applicable criteria of the Biosolids Regulation, (5 CCR 1002-19, 4.9.0) unless a variance has been issued by the Colorado Department of Public Health and Environment, Water Quality Control Division in compliance with the requirements of 5 CCR 1002-19, Section 4.9.6. The permittee is responsible for the identification of and compliance with any applicable criteria contained in the Biosolids Regulation (5CCR 1002-19, 4.9.0).

**MONITORING**

shall be performed for the parameters identified and at the frequencies specified per the Biosolids Regulation (5CCR 1002-19, Sections 4.9.16.A and B). Additional monitoring requirements may be specified in Part II, Special Conditions, of this Notice of Authorization for the Use and Distribution of Biosolids.

**REPORT SUBMITTAL**

shall be made to the Colorado Department of Public Health and Environment per the requirements of the Biosolids Regulation, (5 CCR 1002-19, 4.9.17 B).

**SPECIAL CONDITIONS**

are attached, as deemed by the Colorado Department of Public Health and Environment, Water Quality Control Division to be necessary to assure compliance with applicable criteria of the Biosolids Regulation, (5 CCR 1002-19, 4.9.0).

**RIGHT OF ENTRY**

to any transfer station, storage facilities or stockpile, or application site by an authorized representative of the Colorado Department of Public Health and Environment, Water Quality Control Division, is authorized by the Colorado Water Quality Control Act, Section 25-8-306, C.R.S. (1989 Repl. Vol. 11A) for performance of whatever site inspection, monitoring and sample collection is deemed to be necessary to assure compliance with the criteria contained in the Biosolids Regulation, (5 CCR 1002-19, 4.9.0).



<PERMITTEE>  
Public Use and Distribution  
County

PART I  
Page 2 of 5  
CDPH&E BMP #0000

### NON COMPLIANCE

with the conditions of this Notice of Authorization for the Use and Distribution of Biosolids may result an initiation of enforcement action by the Colorado Department of Public Health and Environment, Water Quality Control Division pursuant to Part 6 of the Colorado Water Quality Control Act, Section 25-8-601-612, C.R.S (1989 and 1993 Supp). Action may include revocation of this Notice of Authorization for the Use and Distribution of Biosolids, and imposition of administrative penalties.

### TERMS AND CONDITIONS

contained in this Notice of Authorization for the Use and Distribution of Biosolids are subject to revision, addition or deletion based on any change in operation, biosolids quality or criteria contained in the Biosolids Regulation (5 CCR 1002-19, 4.9.0).

### AUTHORIZATION

by the Colorado Department of Public Health and Environment, Water Quality Control Division does not relieve the **Environmental Group Services, Inc.** of compliance with applicable regulations of any other state, federal or local agency having jurisdiction.

**NOTICE OF AUTHORIZATION FOR THE USE AND DISTRIBUTION OF BIOSOLIDS ISSUED THIS TH**  
**DAY OF** , 1995

---

Robert J. Shukle, Chief  
Permits and Enforcement  
WATER QUALITY CONTROL DIVISION

<PERMITTEE>  
<SITE NAME>  
<LEGAL DESCRIPTION>  
County

PART II  
Page 3 of 5  
CDPH&E BMP #0000

## **SPECIAL CONDITIONS**

### **II.A**

#### **Biosolids Monitoring**

Biosolids monitoring requirements are specified in Section 4.9.16.A of the Biosolids Regulation (5 CCR 1002-19, 4.9.0). Division records indicate that <PERMITTEE's> annual biosolids production is approximately dry tons. As such, biosolids monitoring is required on a basis. The frequencies of analysis specified above are subject to change should the facility's biosolids production level change.

Compliance with class B fecal coliform criteria, if that option is chosen, shall be determined based upon the geometric mean of seven individual samples collected within each month.

### **II.B**

#### **Variances**

This Notice does not incorporate or authorize any variance from applicable requirements of the Regulation.





# STATE OF COLORADO

Roy Romer, Governor  
Patti Shwayder, Acting Executive Director

*Dedicated to protecting and improving the health and environment of the people of Colorado*

4300 Cherry Creek Dr. S.  
Denver, Colorado 80222-1530  
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4210 E. 11th Avenue  
Denver, Colorado 80220-3716  
(303) 691-4700



Colorado Department  
of Public Health  
and Environment

<DATE>

<NAME>

<ADDRESS>

**RE: Notice of Authorization for the Use and Distribution of Biosolids**  
**<RESTRICTED USE> SITE NAME; CDPH&E BMP #0000**  
**LEGAL DESCRIPTION**  
**COUNTY**

Dear ,

Enclosed please find the Notice of Authorization for the Use and Distribution of Biosolids for the above referenced site. The Notice of Authorization for the Use and Distribution of Biosolids contain references to a number of monitoring and reporting requirements which are contained in the Colorado Biosolids Regulation, (5 CCR 1002-19, 4.9.0). As permittee, the <PERMITTEE NAME> is responsible for the identification of and compliance with any applicable criteria contained in the regulations. Additional requirements may also be specified in the Special Conditions section of the Notice of Authorization for the Use and Distribution of Biosolids. Please review the document carefully.

Pursuant to Sections 4.9.16.B of the Biosolids Regulation, (5 CCR 1002-19, 4.9.0), site soil fertility analyses are required on a per application basis. Soils analysis for metals and physical characteristics are required once every five years. Parameters required for soils monitoring requirements as well as methods for collection of soil samples are specified in Section 4.9.16. B of the Biosolids Regulation (5 CCR 1002-19, 4.9.0).

Please note that Section 4.9.15.G(1) of the Biosolids Regulation limits the biosolids application rate such that the agronomic nitrogen demand is not exceeded. It is the permittee's responsibility to determine the biosolids application rate based upon appropriate biosolids and soil monitoring data and the crop under cultivation.

Fee payment, in the amount of two dollars and forty cents per dry ton for sludge applied to the site is required per the Beneficial Use of Water Treatment Sludge and Fees Applicable to the Beneficial Use of Sludges (5CCR 1003-7, 15.B.1).

The generation of nuisance odors as a result of sludge application is subject to the provisions of Regulation Two of the Air Pollution Control Commission (5CCR 1001-4, 1973). Violations of applicable air quality standards are subject to enforcement as provided pursuant to Section 25-7-115 the Air Pollution Control Act, 1970.

Should any questions arise please feel free to contact either myself at (303) 692-3598 or Ms. Lori Tucker at (303) 692-3613.

Sincerely,

Phil Hegeman, Program Manager  
Biosolids Management Program  
Permits and Enforcement Section  
WATER QUALITY CONTROL DIVISION



CONFIDENTIAL



SECRET

The following information is being furnished to you for your information and use only. It is not to be distributed outside your organization.

This information is being furnished to you for your information and use only. It is not to be distributed outside your organization.

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**NOTICE OF AUTHORIZATION FOR  
THE USE AND DISTRIBUTION OF BIOSOLIDS**

Part I  
Page 1 of 5  
CDPH&E BMP #0000

**PURSUANT**

to the provisions of the Colorado Water Quality Control Act, Section 25-8-501 C.R.S., (1989 Repl. Vol. 11A and 1993 Supp.) and the Colorado Biosolids Regulation (5CCR 1002-19, 4.9.0), this Notice of Authorization For The Use and Distribution of Biosolids authorizes <PERMITTEE> to land apply biosolids for beneficial purposes to the property described below:

Site; Colorado Department of Public Health and Environment, Biosolids Management Program Notice ID #0000; located in Section 00, Township 0 South, Range 00 West; County; as shown on attachment.

**APPLICATION**

shall be performed in accordance with applicable criteria of the Biosolids Regulation, (5 CCR 1002-19, 4.9.0). The permittee shall determine the biosolids application rate based upon appropriate biosolids and soils monitoring data and upon the crop under cultivation. In no instance shall biosolids be applied to land such that the nitrogen application exceeds the agronomic rate for the crop or vegetation cultivated, unless a variance has been issued by the Colorado Department of Public Health and Environment, Water Quality Control Division in compliance with the requirements of 5 CCR 1002-19, Section 4.9.6. The permittee is responsible for the identification of and compliance with any applicable criteria contained in the Biosolids Regulation (5CCR 1002-19, 4.9.0). Application of biosolids shall not exceed the cumulative application limits for any parameter identified in 5CCR 1002-19, Section 4.9.15, Table 3.

**SHORT TERM STORAGE**

of biosolids may be undertaken in accordance with the requirements of the Biosolids Regulation, (5CCR 1002-19, 4.9.13.F). Storage of biosolids of less than fourteen percent solids content or storage of any biosolids for a period of greater than fourteen days must be approved by the Colorado Department of Public Health and Environment, Water Quality Control Division as specified in Part II, Special Conditions, of this Notice of Authorization for the Use and Distribution of Biosolids.

**MONITORING**

shall be performed for the parameters identified and at the frequencies specified per the Biosolids Regulation (5CCR 1002-19, Sections 4.9.16.A and B). Additional monitoring requirements may be specified in Part II, Special Conditions, of this Notice of Authorization for the Use and Distribution of Biosolids.

**REPORT SUBMITTAL**

shall be made to the Colorado Department of Public Health and Environment per the requirements of the Biosolids Regulation, (5 CCR 1002-19, 4.9.17 B).



<PERMITTEE>  
<SITE NAME>  
<LEGAL DESCRIPTION>  
County

PART I  
Page 2 of 5  
CDPH&E BMP #0000

### **SPECIAL CONDITIONS**

are attached, as deemed by the Colorado Department of Public Health and Environment, Water Quality Control Division to be necessary to assure compliance with applicable criteria of the Biosolids Regulation, (5 CCR 1002-19, 4.9.0).

### **RIGHT OF ENTRY**

to any transfer station, storage facilities or stockpile, or application site by an authorized representative of the Colorado Department of Public Health and Environment, Water Quality Control Division, is authorized by the Colorado Water Quality Control Act, Section 25-8-306, C.R.S. (1989 Repl. Vol. 11A) for performance of whatever site inspection, monitoring and sample collection is deemed to be necessary to assure compliance with the criteria contained in the Biosolids Regulation, (5 CCR 1002-19, 4.9.0).

### **NON COMPLIANCE**

with the conditions of this Notice of Authorization for the Use and Distribution of Biosolids may result an initiation of enforcement action by the Colorado Department of Public Health and Environment, Water Quality Control Division pursuant to Part 6 of the Colorado Water Quality Control Act, Section 25-8-601-612, C.R.S (1989 and 1993 Supp). Action may include revocation of this Notice of Authorization for the Use and Distribution of Biosolids, and imposition of administrative penalties.

### **TERMS AND CONDITIONS**

contained in this Notice of Authorization for the Use and Distribution of Biosolids are subject to revision, addition or deletion based on any change in operation, biosolids quality or criteria contained in the Biosolids Regulation (5 CCR 1002-19, 4.9.0).

### **AUTHORIZATION**

by the Colorado Department of Public Health and Environment, Water Quality Control Division does not relieve the <PERMITTEE> of compliance with applicable regulations of any other state, federal or local agency having jurisdiction.

**NOTICE OF AUTHORIZATION FOR THE USE AND DISTRIBUTION OF BIOSOLIDS ISSUED THIS TH  
DAY OF , 1995**

---

Robert J. Shukle, Chief  
Permits and Enforcement  
WATER QUALITY CONTROL DIVISION

## SPECIAL CONDITIONS

### II.A

#### Biosolids Quality

All biosolids which are applied to land or distributed for public use by <PERMITTEE> pursuant to this Notice of Authorization for the Use and Distribution of Biosolids (the Notice), shall conform with applicable quality criteria specified in the Colorado Biosolids Regulation (5CCR 1002-19, 4.9.0). Specifically, the biosolids shall comply with the maximum allowable constituent concentration limits for Grade I biosolids as set forth at section 4.9.12.A of the Regulation, with appropriate pathogen destruction requirements for Class A biosolids as set forth at section 4.9.12.B of the Regulation, and with appropriate vector attraction reduction criteria as set forth at section 4.9.12.C of the Regulation. Analytical data submitted with the Letter of Intent for the Use and Distribution of Biosolids (the Letter of Intent) indicates conformance of the product with Class I maximum constituent limitations for 19 of 23 monthly average data sets representing the period from February, 1993 through December, 1994. Documentation of consistent compliance with pathogen destruction requirements (sections 4.9.12.B(7)(a) and (b)(ii)) and vector attraction reduction requirements (sections 4.9.12.C(3) and (9)) for that period was included in the Letter of Intent. Use or distribution of biosolids which do not meet Grade I requirements will require issuance of a Notice of Authorization for the Use and Distribution of Biosolids which specifically addresses such use.

### II.B

#### Biosolids Monitoring

Biosolids monitoring requirements are specified in Section 4.9.16.A of the Biosolids Regulation, (5 CCR 1002-19, 4.9.0). Annual reports submitted by the <PERMITTEE> indicate that the <PERMITTEE's> annual biosolids production is approximately **dry tons**. As such, biosolids monitoring is required on a **basis**. The frequencies of analysis specified above are subject to change should the facility's biosolids production level change.

### II.C

#### Changes in Operation

The <PERMITTEE> shall provide to the Division written notification of any changes in operation which may result in the invalidation of any information submitted in the Letter, or in biosolids monitoring requirements imposed upon the <PERMITTEE>, no less than 30 days prior to the implementation of such changes.

### II.D

#### Variances

This Notice does not incorporate or authorize any variance from applicable requirements of the Regulation.



<PERMITTEE>  
<SITE NAME>  
<LEGAL DESCRIPTION>  
County

Part III  
Page 4 of 4  
CDPH&E BMP #0000

#### APPLICATION SITE LOCATION

Site boundaries not to scale. Approved application area indicated cross-hatching. Localized areas within the site which may be unacceptable due to slopes or other site-specific conditions are not shown. Avoidance of any such area is required.

LETTER OF INTENT APPLICATION FORMS





LETTER OF INTENT  
FOR THE USE AND DISTRIBUTION OF BIOSOLIDS  
FOR APPLICATION TO AGRICULTURAL LAND  
OR FOR RECLAMATION OF LAND

Colorado Department of Health  
Water Quality Control Division  
Permits and Enforcement Section  
Biosolids Management Program  
4300 Cherry Creek Drive  
Denver, CO 80222-1530

DATE RECEIVED \_\_\_\_\_

CDH BMP ID # \_\_\_\_\_  
PRODUCER ID # \_\_\_\_\_

DO NOT WRITE ABOVE THIS LINE

A. GENERAL

1. Applicant

Facility Name \_\_\_\_\_

Contact Person \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone (    ) \_\_\_\_\_ - \_\_\_\_\_

2. Site Owner

Owner Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone (    ) \_\_\_\_\_ - \_\_\_\_\_

3. Legal Contact (If NOT Owner)

Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone (    ) \_\_\_\_\_ - \_\_\_\_\_

4. Contractor (If Used)

Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone (    ) \_\_\_\_\_ - \_\_\_\_\_



LETTER OF INTENT

CDH BMP ID #: \_\_\_\_\_  
CDH Producer ID #: \_\_\_\_\_

Laboratory ID Code: \_\_\_\_\_

Do not write above this line

**B. SITE INFORMATION**

1. Site Location [Section, Township, Range] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. County: \_\_\_\_\_

3. Crops:

4. Irrigated or Dryland:

5. Acreage

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Total: \_\_\_\_\_

6. Biosolids Application Method:

\_\_\_\_\_ Surface Application, No Incorporation

\_\_\_\_\_ Surface With Incorporation Within \_\_\_\_\_ Hours

\_\_\_\_\_ Subsurface Injection

7. Application Frequency:

\_\_\_\_\_ One Time Application

\_\_\_\_\_ Annual Application

\_\_\_\_\_ Periodic Application at < 1 Year intervals

8. Initial Application Rate: \_\_\_\_\_

**C. CERTIFICATION [Attach appropriate certification information as required]:**

\_\_\_\_\_ New site (Certification provided per Section 4.9.10.A(3)(c)(i)(A) of Biosolids Regulation)

\_\_\_\_\_ Site has previously received biosolids (Certification provided per Section 4.9.10.A(3)(c)(i)(B) and metals loading to site documented per Section 4.9.10.A(3)(d) of the Biosolids Regulation.



# LETTER OF INTENT

CDH BMP ID #: \_\_\_\_\_  
CDH Producer ID #: \_\_\_\_\_

Laboratory ID Code: \_\_\_\_\_

Do not write above this line

## D. BIOSOLIDS ANALYSIS REPORTING FORM

Laboratory: \_\_\_\_\_

Dates of sample (mm/dd/yy): \_\_\_\_/\_\_\_\_/\_\_\_\_ (if individual sample)

Dates of sample (mm/dd/yy): \_\_\_\_/\_\_\_\_/\_\_\_\_, \_\_\_\_/\_\_\_\_/\_\_\_\_, \_\_\_\_/\_\_\_\_/\_\_\_\_, \_\_\_\_/\_\_\_\_/\_\_\_\_

(if average of multiple samples, all samples must be collected within same calendar month)

TABLE 7. BIOSOLIDS ANALYSES AND REPORTING UNITS

PARAMETER S	UNITS	VALUES	PARAMETERS	UNITS	VALUES
total solids	percent		volatile solids	percent of total solids	
pH	standard units		organic nitrogens as N	percent dry weight	
total phosphorus	percent dry weight		total ammonia as N	percent dry weight	
total potassium	percent dry weight		nitrate as N	percent dry weight	
total arsenic	mg/kg dry weight		total mercury	mg/kg dry weight	
total cadmium	mg/kg dry weight		total molybdenum	mg/kg dry weight	
total chromium	mg/kg dry weight		total nickel	mg/kg dry weight	
total copper	mg/kg dry weight		total selenium	mg/kg dry weight	
total lead	mg/kg dry weight		total zinc	mg/kg dry weight	

Laboratory: \_\_\_\_\_

Dates of sample (mm/dd/yy): \_\_\_\_/\_\_\_\_/\_\_\_\_ (if individual sample)

Dates of sample (mm/dd/yy): \_\_\_\_/\_\_\_\_/\_\_\_\_, \_\_\_\_/\_\_\_\_/\_\_\_\_, \_\_\_\_/\_\_\_\_/\_\_\_\_, \_\_\_\_/\_\_\_\_/\_\_\_\_

(if average of multiple samples, all samples must be collected within same calendar month)

TABLE 7. BIOSOLIDS ANALYSES AND REPORTING UNITS

PARAMETERS	UNITS	VALUES	PARAMETERS	UNITS	VALUES
total solids	percent		volatile solids	percent of total solids	
pH	standard units		organic nitrogens as N	percent dry weight	
total phosphorus	percent dry weight		total ammonia as N	percent dry weight	
total potassium	percent dry weight		nitrate as N	percent dry weight	
total arsenic	mg/kg dry weight		total mercury	mg/kg dry weight	
total cadmium	mg/kg dry weight		total molybdenum	mg/kg dry weight	
total chromium	mg/kg dry weight		total nickel	mg/kg dry weight	
total copper	mg/kg dry weight		total selenium	mg/kg dry weight	
total lead	mg/kg dry weight		total zinc	mg/kg dry weight	



LETTER OF INTENT

CDH BMP ID #: \_\_\_\_\_  
CDH Producer ID #: \_\_\_\_\_

Laboratory ID Code: \_\_\_\_\_

Do not write above this line

**E. PATHOGEN DESTRUCTION CRITERIA**

(Skip to Section F if biosolids are Class A, otherwise complete either item 1 or 2)

**1. Fecal Coliform Monitoring Results:**

Laboratory	Sample Date	Result: MPN or CFU (circle one)
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____

Geometric Mean \_\_\_\_\_

**2. Identify the PSRP method utilized:**

- A. \_\_\_\_\_ Aerobic Digestion
- B. \_\_\_\_\_ Air Drying
- C. \_\_\_\_\_ Anaerobic Digestion
- D. \_\_\_\_\_ Composting
- E. \_\_\_\_\_ Lime Stabilization
- F. \_\_\_\_\_ Other



## LETTER OF INTENT

CDH BMP ID #: \_\_\_\_\_  
CDH Producer ID #: \_\_\_\_\_ Laboratory ID Code: \_\_\_\_\_

Do not write above this line

### F. PATHOGEN DESTRUCTION CRITERIA

(Skip if Biosolids are Class B, otherwise complete either items 1 and 3, or 2 and 3)

#### 1. Fecal Coliform Monitoring Results:

Laboratory	Sample Date	Result	(MPN)
_____	____/____/____	_____	_____
_____	____/____/____	_____	_____
_____	____/____/____	_____	_____
_____	____/____/____	_____	_____
_____	____/____/____	_____	_____
_____	____/____/____	_____	_____
_____	____/____/____	_____	_____
_____	____/____/____	_____	_____

Geometric Mean \_\_\_\_\_

#### 2. Salmonella Monitoring Results:

Laboratory	Sample Date	Result	(MPN)
_____	____/____/____	_____	_____
_____	____/____/____	_____	_____
_____	____/____/____	_____	_____
_____	____/____/____	_____	_____
_____	____/____/____	_____	_____
_____	____/____/____	_____	_____
_____	____/____/____	_____	_____
_____	____/____/____	_____	_____

#### 3. Identify the alternative demonstration(s) for Class A pathogen reduction utilized by the applicant

1. Heat treatment (4.9.12.B(3)) \_\_\_\_\_
2. Alkaline Addition (4.9.12.B(4)) \_\_\_\_\_
3. Enteric Virus and Ascaris Ova Monitoring (4.9.12.B(5) or (6)) \_\_\_\_\_
4. PFRP (4.9.12.B(7)) \_\_\_\_\_



## LETTER OF INTENT

CDH BMP ID #: \_\_\_\_\_  
CDH Producer ID #: \_\_\_\_\_

Laboratory ID Code: \_\_\_\_\_

Do not write above this line

### D. VECTOR ATTRACTION REDUCTION CRITERIA

(Identify the vector attraction reduction criteria documenting compliance)

1. Volatile Solids Reduction (4.9.12.C(3)) \_\_\_\_\_ %
2. Bench scale anaerobic digestion (4.9.12.C(94)) \_\_\_\_\_ %
3. Bench scale aerobic digestion (4.9.12.C(5)) \_\_\_\_\_ %
4. Specific oxygen uptake rate (4.9.12.C(6)) \_\_\_\_\_ %
5. Aerobic processing MCRT > 14 days /  
T > 40°C; xT > 45°C (4.9.12.C(7)) \_\_\_\_\_ %
6. Alkaline addition (4.9.12.C(8)) \_\_\_\_\_ %
7. No primary solids, solids content  $\geq$   
75% prior to mixing (4.9.12.C(9)) \_\_\_\_\_ %
8. Primary solids, solids content  $\geq$   
90% prior to mixing (4.9.12.C(10)) \_\_\_\_\_ %
9. Subsurface injection (4.9.12.C(ii)) \_\_\_\_\_ %
10. Surface application  
and incorporation (4.9.12.C(12)) \_\_\_\_\_ %



## LETTER OF INTENT

CDH BMP ID #: \_\_\_\_\_  
 CDH Producer ID #: \_\_\_\_\_ Laboratory ID Code: \_\_\_\_\_

Do not write above this line

### G. SOILS ANALYSIS REPORTING FORM

Laboratory: \_\_\_\_\_ Date of sample(mm/dd/yy): \_\_\_\_/\_\_\_\_/\_\_\_\_

SOILS FERTILITY ANALYSES AND REPORTING UNITS					
PARAMETERS	UNITS	VALUES	PARAMETERS	UNITS	VALUES
pH	standard units		conductivity	mmhos/cm	
ammonium as N	mg/kg		organic matter	percent	
nitrate as N	mg/kg		available phosphorus	ppm extract	
total phosphorus	mg/kg				

Laboratory: \_\_\_\_\_ Date of sample(mm/dd/yy): \_\_\_\_/\_\_\_\_/\_\_\_\_

SOILS METALS AND PHYSICAL CHARACTERISTICS REPORTING UNITS					
PARAMETERS	UNITS	VALUES	PARAMETERS	UNITS	VALUES
arsenic	mg/kg soil		mercury	mg/kg soil	
cadmium	mg/kg soil		molybdenum	mg/kg soil	
chromium	mg/kg soil		nickel	mg/kg soil	
copper	mg/kg soil		selenium	mg/kg soil	
lead	mg/kg soil		zinc	mg/kg soil	

### H. ATTACHMENTS

1. \_\_\_\_\_ Site Map (USGS 7.5 or 15 Minute Quad.)
2. \_\_\_\_\_ SCS Soils Map
3. \_\_\_\_\_ Documentation of Depth to Groundwater
4. \_\_\_\_\_ Biosolids Storage Plan
5. \_\_\_\_\_ Variance Request



U.S. ANALYTICAL REPORTING

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LETTER OF INTENT  
FOR THE USE AND DISTRIBUTION OF BIOSOLIDS  
FOR UNRESTRICTED (LAWN AND HOME GARDEN) OR  
BAGGED OR CONTAINERIZED BIOSOLIDS FOR RESTRICTED USE

Colorado Department of Health  
Water Quality Control Division  
Permits and Enforcement Section  
Biosolids Management Program  
4300 Cherry Creek Drive  
Denver, CO 80222-1530

DATE RECEIVED \_\_\_\_\_

CDH BMP ID # \_\_\_\_\_

PRODUCER ID # \_\_\_\_\_

DO NOT WRITE ABOVE THIS LINE

A. FACILITY INFORMATION

1. Applicant

Facility Name \_\_\_\_\_

Contact Person \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone (    ) \_\_\_\_\_ - \_\_\_\_\_



# LETTER OF INTENT

CDH BMP ID #: \_\_\_\_\_  
CDH Producer ID #: \_\_\_\_\_

Laboratory ID Code: \_\_\_\_\_

Do not write above this line

## B. BIOSOLIDS ANALYSIS REPORTING FORM

Laboratory: \_\_\_\_\_

Date of sample(mm/dd/yy): \_\_\_\_/\_\_\_\_/\_\_\_\_ (if individual sample)

Dates of sample (mm/dd/yy): \_\_\_\_/\_\_\_\_/\_\_\_\_, \_\_\_\_/\_\_\_\_/\_\_\_\_, \_\_\_\_/\_\_\_\_/\_\_\_\_, \_\_\_\_/\_\_\_\_/\_\_\_\_

(if average of multiple samples, all samples must be collected within same calendar month)

BIOSOLIDS ANALYSES AND REPORTING UNITS					
PARAMETERS	UNITS	VALUES	PARAMETERS	UNITS	VALUES
total solids	percent		volatile solids	percent of total solids	
pH	standard units		organic nitrogens as N	percent dry weight	
total phosphorus	percent dry weight		total ammonia as N	percent dry weight	
total potassium	percent dry weight		nitrate as N	percent dry weight	
total arsenic	mg/kg dry weight		total mercury	mg/kg dry weight	
total cadmium	mg/kg dry weight		total molybdenum	mg/kg dry weight	
total chromium	mg/kg dry weight		total nickel	mg/kg dry weight	
total copper	mg/kg dry weight		total selenium	mg/kg dry weight	
total lead	mg/kg dry weight		total zinc	mg/kg dry weight	

Laboratory: \_\_\_\_\_

Date of sample(mm/dd/yy): \_\_\_\_/\_\_\_\_/\_\_\_\_ (if individual sample)

Dates of sample (mm/dd/yy): \_\_\_\_/\_\_\_\_/\_\_\_\_, \_\_\_\_/\_\_\_\_/\_\_\_\_, \_\_\_\_/\_\_\_\_/\_\_\_\_, \_\_\_\_/\_\_\_\_/\_\_\_\_

(if average of multiple samples, all samples must be collected within same calendar month)

BIOSOLIDS ANALYSES AND REPORTING UNITS					
PARAMETERS	UNITS	VALUES	PARAMETERS	UNITS	VALUES
total solids	percent		volatile solids	percent of total solids	
pH	standard units		organic nitrogens as N	percent dry weight	
total phosphorus	percent dry weight		total ammonia as N	percent dry weight	
total potassium	percent dry weight		nitrate as N	percent dry weight	
total arsenic	mg/kg dry weight		total mercury	mg/kg dry weight	
total cadmium	mg/kg dry weight		total molybdenum	mg/kg dry weight	
total chromium	mg/kg dry weight		total nickel	mg/kg dry weight	
total copper	mg/kg dry weight		total selenium	mg/kg dry weight	
total lead	mg/kg dry weight		total zinc	mg/kg dry weight	

## LETTER OF INTENT

CDH BMP ID #: \_\_\_\_\_  
CDH Producer ID #: \_\_\_\_\_

Laboratory ID Code: \_\_\_\_\_

Do not write above this line

### C. PATHOGEN DESTRUCTION CRITERIA (Complete item 1 or 2 below)

#### 1. Fecal Coliform Monitoring Results:

Laboratory	Sample Date	Result
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____
Geometric Mean		_____

#### 2. Salmonella Monitoring Results:

Laboratory	Sample Date	Result
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____
_____	____/____/____	_____

#### 3. Identify the alternative demonstration(s) for Class A pathogen reduction utilized by the applicant:

1. Heat treatment (4.9.12.B(3)) \_\_\_\_\_
2. Alkaline Addition (4.9.12.B(4)) \_\_\_\_\_
3. Enteric Virus and Ascaris Ova Monitoring (4.9.12.B(5) or (6)) \_\_\_\_\_
4. PFRP (4.9.12.B(7)) \_\_\_\_\_



## LETTER OF INTENT

CDH BMP ID #: \_\_\_\_\_  
CDH Producer ID #: \_\_\_\_\_

Laboratory ID Code: \_\_\_\_\_

Do not write above this line

### D. VECTOR ATTRACTION REDUCTION CRITERIA

(Identify the vector attraction reduction criteria documenting compliance)

1. Volatile Solids Reduction (4.9.12.C(3)) \_\_\_\_\_ %
2. Bench scale anaerobic digestion (4.9.12.C(4)) \_\_\_\_\_ %
3. Bench scale aerobic digestion (4.9.12.C(5)) \_\_\_\_\_ %
4. Specific oxygen uptake rate (4.9.12.C(6)) \_\_\_\_\_ %
5. Aerobic processing MCRT > 14 days /  
T > 40°C; xT > 45°C (4.9.12.C(7)) \_\_\_\_\_ %
6. Alkaline addition (4.9.12.C(8)) \_\_\_\_\_ %
7. No primary solids, solids content  $\geq$   
75% prior to mixing (4.9.12.C(9)) \_\_\_\_\_ %
8. Primary solids, solids content  $\geq$   
90% prior to mixing (4.9.12.C(10)) \_\_\_\_\_ %

### E. FACILITY OPERATING PLAN

Attach a process description and monitoring results as required per appropriate sections of Biosolids Regulations referenced in Section C., Pathogen Destruction Criteria and D., Vector Attraction Reduction Criteria of this application. The facility operating plan should also include copies of any labelling, information sheets, written cautions or written instructions for use required per Section 4.9.14.A(2) of 4.9.14.B(2) of the Biosolids Regulations.



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Attorney General

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**ATTORNEY GENERAL'S STATEMENT**  
**STATE OF COLORADO**  
**NPDES PROGRAM**

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## I. INTRODUCTION

Colorado obtained delegation of the NPDES permit program in 1975. An Attorney General's Statement, dated December 16, 1974, was submitted to EPA as part of Colorado's original delegation request. This Attorney General's Statement was developed to address the following developments since the original State program delegation:

1. In 1989, EPA identified a number of deficiencies in the State's statutory and regulatory authorities to implement the State program. Colorado disagrees with EPA's assessment but has significantly amended its statutes and regulations to address EPA's concerns. This Attorney General's Statement incorporates the amended statutory and regulatory authority in support of the State program.
2. Colorado seeks delegation over federal facilities. This Attorney General's Statement certifies that the State has the required authority to implement the State program at federal facilities.
3. The federal NPDES permit program has been expanded since original delegation. The federal program currently includes regulation of certain stormwater discharges and two new programs: the pretreatment program and the biosolids management program. Colorado has adopted new statutory and regulatory authorities to enable State regulation of stormwater discharges and implementation of the new programs. This Attorney General's Statement certifies that, with the additional authorities, the State has the required authority to regulate stormwater discharges and to implement the new pretreatment program and a partial biosolids management program.

This Attorney General's Statement is divided in five parts. This introduction is Part I. Part II describes the references to statutes and regulations and other pertinent references used throughout the Attorney General's Statement. Part III certifies the basic State program, including statutory and regulatory amendments intended to address EPA's concerns, recently adopted stormwater regulations, and authorities for the implementation of the State program at federal facilities. In addition, Part III updates statutory and regulatory references contained in the December 16, 1974 Attorney General's Statement. Part IV certifies the State's pretreatment program. Part V certifies the State's biosolids management program. Part VI provides a summary conclusion.

## II. STATUTORY, REGULATORY AND OTHER REFERENCES

Colorado's relevant statutory authorities are contained in the Colorado Revised Statutes ("C.R.S."), and include the following:

**Colorado Water Quality Control Act ("CWQCA")**, C.R.S. §§ 25-8-101 through 25-8-703, Attachment 1

**State Administrative Procedure Act ("State APA")**, C.R.S. §§ 24-4-101 through 24-4-108, Attachment 2

**Colorado Public (Open) Records Act**, C.R.S. §§ 24-72-201 through 24-72-206 ("Open Records Act"), Attachment 3

Colorado's relevant regulations are contained in the Colorado Code of Regulations ("CCR"), Volume 5. In particular, the following regulations are relevant to the State program:

**Regulations for the State Discharge Permit Program**, 5 CCR 1002-2 ("Discharge Permit Regulations"), Attachment 4

**Regulations for Effluent Limitations**, 5 CCR 1002-3 ("State Effluent Limitations Regulation"), Attachment 5

**The Basic Standards and Methodologies for Surface Water**, 5 CCR 1002-8 ("Basic Standards"), Attachment 6

**Pretreatment Regulations**, 5 CCR 1002-20 ("Pretreatment Regulations"), Attachment 7

**Biosolids Regulation**, 5 CCR 1002-19 ("Biosolids Regulations"), Attachment 8

**Procedural Rules**, 5 CCR 1002-1 ("Procedural Rules"), Attachment 9



These regulations have been adopted pursuant to the rule-making procedures of the State APA and the Procedural Rules. The authorities for adopting these regulations appear at C.R.S. §§ 25-8-202, 25-8-203, 25-8-204 and 25-8-205.

Other references used throughout this Attorney General's Statement are as follows: "Commission" refers to the Water Quality Control Commission, created pursuant to C.R.S. § 25-8-201; "Department" refers to the Colorado Department of Public Health and Environment, created pursuant to C.R.S. § 25-1-102; "Division" refers to the Division of Administration, which is charged with the administration of the State program pursuant to C.R.S. § 25-8-301(2).

### III. BASIC PROGRAM CERTIFICATION

I hereby certify, pursuant to Section 402(b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251, et seq.), that in my opinion the laws of the State of Colorado provide adequate authority to carry out the program set forth in the "Description of Colorado Discharge Permit System Program" submitted by the Colorado Department of Public Health and Environment with this Attorney General's Statement. The specific authorities provided below are contained in lawfully enacted or promulgated statutes or regulations in full force and effect on the date of this Statement. These authorities include the following:

#### 1. Authority to Issue Permits.

##### a. Existing and new point sources.

State law provides authority to issue permits for the discharge of pollutants by existing and new point sources, including federal facilities, to waters of the United States to the same extent as required under the permit program administered by the U.S. Environmental Protection Agency ("EPA") pursuant to Section 402 of the Clean Water Act, as amended, 33 U.S.C. § 1251, et seq. (hereinafter "the CWA" or "the Act").

##### State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-103, 25-8-501, 25-8-502, 25-8-503, 25-8-505, and 25-8-506; Discharge Permit Regulations, in particular, § 6.3.0 and §§ 6.4.0 through 6.4.5.

##### Remarks of the Attorney General:

State law prohibits the discharge by any person of any pollutant into any State water from a point source, unless a permit is

first obtained from the Division for such discharge. See C.R.S. § 25-8-501(1). The Division is authorized to issue permits for such discharges, but only after it has determined that all State and federal requirements have been met with respect to both the permit application and the proposed discharge. See C.R.S. §§ 25-8-501(2), 25-8-502(3)(a) and 25-8-503(1).<sup>1</sup>

The scope of the State's permit program is at least as broad as the scope of the federal program, as demonstrated by the State definition of "person", "discharge of pollutants", "point source", "pollutant", and "state waters", contained in C.R.S. § 25-8-103.

The State definition of "person" includes individuals, corporations, partnerships, associations, states or political subdivisions of the State, federal agencies, State agencies, municipalities, commissions, and interstate bodies. See C.R.S. § 25-8-103(13). Such definition is at least as broad as the federal definition. Unlike the federal definition, the State definition does not specifically include State and federal employees; however, such employees are covered under the State definition either as individuals or as agents of the State or federal agency that employs them. The inclusion of "federal agency" in this definition provides the Division with the requisite State authority to implement the State program at federal facilities.

"Discharge of pollutants" is defined as the introduction or addition of a pollutant into State waters. See C.R.S. § 25-8-103(3). The State definition is sufficiently broad to encompass the introduction or addition of a pollutant through a point source, including surface runoff (other than irrigation return flow) collected and channelled by man and discharges through pipes, sewers, or other conveyances that do not lead to a treatment works.

The State definition of "point source" is virtually identical to and at least as broad as the federal definition. See C.R.S. § 25-8-103(14).

The State definition of "pollutant" does not specifically include "filter backwash" or "munitions", which are included in the federal definition. See C.R.S. § 25-8-103(15). However, both filter backwash and munitions are otherwise covered under the State definition. Filter backwash is part of industrial and municipal

---

<sup>1</sup> State law also provides for the issuance of "temporary" permits to new facilities when the Division has failed to issue a permit within 180 days. See C.R.S. § 25-8-502(5). Such permits must also comply with all minimum federal requirements, including federal requirements for public notice and comment, and public hearing requirements. See C.R.S. § 25-8-503(1).



waste, included in the State definition. Munitions would be discharged into State waters either as garbage or trash, or as wrecked or discarded equipment. Such discharges would, therefore, be covered under the State definition. The State does not intend to regulate radioactive materials that are regulated under the Atomic Energy Act of 1954, unless otherwise authorized by law. 42 U.S.C. 2011, et. seq.

Finally, the State definition of "state waters" includes any and all surface and subsurface waters which are contained in or flow in or through this State, but does not include waters in sewage systems, waters in treatment works or disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed. See C.R.S. § 25-8-103(19). The State definition is broader than the corresponding federal definition of "waters of the United States" in that it includes groundwater as well as surface water. The State's broad definition of State waters encompasses wetlands. The term "wetlands" is specifically defined in the Basic Standards, § 3.1.5. Colorado has adopted standards and classifications for wetlands. See Basic Standards §§3.1.7, 3.1.11 and 3.1.13.

State law specifically exempts certain discharges from the permit requirement. However, these exemptions are consistent with the federal act, regulations, and binding federal case law. For example, C.R.S. § 25-8-504(1) provides that no permit may be required for irrigation flows or irrigation return flows, except as required by the federal act or regulations. See 40 CFR § 122.3(e) and (f). C.R.S. § 25-8-504(2) provides that no permit may be required for animal or agricultural waste on farms and ranches, except, again, to the extent required by the federal act or regulations. C.R.S. § 25-8-503(5) provides that certain activities, involving the movement of raw water in the exercise of water rights are not to be considered point source discharges of pollution. However, C.R.S. § 25-8-503(6) specifically disqualifies dischargers of wastewater from the protection of the exemption in C.R.S. § 25-8-503(5). Read together, C.R.S. § 25-8-503(5) and (6) are consistent with the federal act (CWA §§ 101(g) and 510), and with the District of Columbia Circuit Court decision in National Wildlife Federation v. Gorsuch, 693 F.2d 156 (D.C. Cir. 1982). Moreover, while these water rights activities are not required to obtain a permit under the State program, they may be regulated by the Commission pursuant to C.R.S. § 25-8-205. See § 25-8-503(5).

The provisions of the CWQCA and Discharge Permit Regulations specified above provide adequate State authority to issue permits to the same extent as required under the federal permit program.

**b. Disposal into wells.**

State law provides authority to adjust effluent limitations to account for reduced pollutant loadings to surface waters where wastewater is discharged into wells, POTWs or is land applied.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-103(19), 25-8-205(2)(g), and 25-8-506;  
Discharge Permit Regulations, § 6.9.2(11).

Remarks of the Attorney General:

The State's statutory authority in this regard has remained largely unchanged since the original delegation. The Discharge Permit Regulations have been amended to incorporate the federal requirements for discharges into wells by reference. See § 6.9.2(11).

**2. Authority to Deny Permits in Certain Cases.**

State law provides authority to ensure that no permit will be issued in any case where:

- a. The permit would authorize the discharge of a radiological, chemical, or biological warfare agent or high-level radioactive waste;
- b. The permit would, in the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation of any waters of the United States;
- c. The permit is objected to in writing by the Administrator of EPA, or his designee, pursuant to any right to object provided to the Administrator under Section 402(d) of the CWA;
- d. The permit would authorize a discharge from a point source which is in conflict with a plan approved under Section 208(b) of the CWA; or
- e. The issuance of the permit would otherwise be inconsistent with the CWA or regulations promulgated thereunder.



State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-202(6), 25-8-501(3), 25-8-502(3)(a), 25-8-503(1)(a), 25-8-503(2); Discharge Permit Regulations, § 6.9.1.

Remarks of the Attorney General:

The CWQCA requires the Commission to maintain a State permit program that is not in conflict with the provisions of the federal Act, see C.R.S. § 25-8-202(6), and to promulgate permit regulations that are consistent with federal requirements, see C.R.S. § 25-8-501(3).

Pursuant to these statutory directives, the Commission has adopted § 6.9.1 of the Discharge Permit Regulations, which contains the same prohibitions found in the federal act and regulations cited above. For example, § 6.9.1(6) prohibits the issuance of permits authorizing discharges of warfare agents or high-level radioactive waste. Sections 6.9.1(2)(a) and 6.9.1(2)(b) prohibit issuance of a permit over the EPA's objection and the Secretary of the Army's objection, respectively. Section 6.9.1(3) prohibits issuance of permits that are inconsistent with a CWA § 208 plan, except that such permits may be issued if the requirements of such plans are incorporated in a schedule of compliance or variances, consistent with the federal act, are granted. See C.R.S. § 25-8-503(9). Finally, § 6.9.1(1), like C.R.S. § 25-8-503(1), makes permit issuance contingent on compliance with all federal requirements. Therefore, State law provides adequate authority to deny permits under the same circumstances required under federal law.

**3. Authority to Apply Federal Standards and Requirements to Direct Discharges.**

**a. Effluent standards and limitations and water quality standards.**

State law provides authority to apply in terms and conditions of issued permits applicable Federal effluent standards and limitations and water quality standards promulgated or effective under the CWA, including:

- 1) Effluent limitations pursuant to Section 301;
- 2) Water quality related effluent limitations pursuant to Section 302;
- 3) National standards of performance pursuant to Section 306;

- 4) Toxic and pretreatment effluent standards pursuant to Section 307;
- 5) Ocean discharge criteria pursuant to Section 403.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-202(6), 25-8-205, 25-8-501(3) and (5), 25-8-502(3)(a), 25-8-503(1), (2) and (4); Discharge Permit Regulations, §§ 6.9.2, 6.9.3 and 6.9.7; State Effluent Limitations; and Basic Standards, § 3.1.14.

Remarks of the Attorney General:

The provisions of C.R.S. §§ 25-8-202(6), 25-8-501(3), 25-8-502(3)(a), and 25-8-503(1) provide the State's general statutory authority to include terms and conditions in State permits which will ensure compliance with federal standards and effluent limitations. In addition, specific statutory authority for effluent limitations under CWA § 301 is found in C.R.S. § 25-8-503(1)(b) and 25-8-503(4). Specific statutory authority for water quality related effluent limitations under CWA § 302 is found in § C.R.S. §§ 25-8-205(1)(a) and 25-8-503(4). For CWA § 306 standards, specific State statutory authority is found in C.R.S. §§ 25-8-205(1)(b) and 25-8-503(1)(b). Finally, specific statutory authority for CWA § 307 toxic and pretreatment standards is provided in C.R.S. §§ 25-8-205, 25-8-501(3) and 25-8-501(5).

In addition to the specific statutory authorities outlined above, the Commission has adopted regulations which require the Division to include in its permits terms and conditions that ensure compliance with federal standards and effluent limitations. Most of the pertinent provisions are contained in §§ 6.9.2 and 6.9.3 of the Discharge Permit Regulations. Section 6.9.2(1) requires inclusion of technology-based effluent limitations under CWA § 301, CWA § 306, and CWA § 307, including categorical industry standards, secondary treatment standards (adopted in the State Effluent Limitations regulation and incorporated by reference), and federal standards under 40 C.F.R. Parts 125 and 129.

Section 6.9.2(2) authorizes inclusion of water-quality-standard-based effluent limitations, consistent with CWA § 301, CWA § 302, and CWA § 307, including those necessary to meet applicable water quality standards adopted by other affected states. Additional provisions pertaining to water-quality-standard-based effluent limitations are contained in § 6.9.2(3) (for multiple dischargers), and 6.9.3(13) (toxic pollutant discharges regulated under CWA § 307) of the permit regulations, and in § 3.1.14 of the Basic Standards. State water-quality-standard-based effluent limitations for metals may be derived from the "potentially dissolved oxygen" method in lieu of the "total recoverable" method. However, such metals effluent limitations must be at least as



stringent as total recoverable limitations, as required by 40 C.F.R. § 122.45(c). See Discharge Permit Regulations, §§ 6.9.2(2)(g) and 3.1.14 (7); C.R.S. § 25-8-503(1).

Consequently, the laws of Colorado provide adequate authority to issue permits which apply and ensure compliance with CWA §§ 301, 302, 306, and 307. The ocean discharge criteria of CWA § 403 does not apply to Colorado because Colorado borders no ocean. Therefore, no State authority is necessary to ensure compliance with the CWA § 403 criteria.

**b. Effluent limitations requirements of Sections 301 and 307 of the CWA.**

In the absence of formally promulgated effluent standards and limitations under sections 301(b) and 307 of the CWA, State law provides authority to apply in terms and conditions of issued permits effluent limitations to achieve the purposes of these sections of the CWA using the permitting authority's best professional judgment (BPJ). Such limitations may be based upon an assessment of technology and processes as required under the CWA with respect to individual point sources, and include authority to apply;

- 1) to existing point sources, other than publicly owned treatment works, effluent limitations based on application of the best practicable control technology currently available or the best available technology economically achievable;
- 2) to publicly owned treatment works, effluent limitations based upon the application of secondary treatment; and
- 3) to any point source, as appropriate, effluent standards or prohibitions designed to prohibit the discharge of toxic pollutants in toxic amounts or to require pretreatment of pollutants which interfere with, pass through, or otherwise are incompatible with the operation of publicly owned treatment works.

State law also authorizes the Division to include in every permit issued such terms and conditions as it determines to be necessary to ensure compliance with the CWQCA and the CWA. Such conditions would include "any more stringent limitation, ... established pursuant to any State law or regulations, ... or any other Federal law or regulation...." CWA § 301(b)(1)(C).

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-202(6), 25-8-204, 25-8-205, 25-8-501(3), 25-8-503(1), 25-8-503(2); 25-8-503(4) Discharge Permit Regulations, §§ 6.9.2, 6.9.3 and 6.9.7; State Effluent Limitations; Basic Standards, §§ 3.1.11 and 3.1.14.

Remarks of the Attorney General:

In the absence of federally promulgated effluent guidelines or effluent limitations, C.R.S. § 25-8-503(1)(b) authorizes the Division to establish technology-based effluent limitations based on best professional judgment. The statutory provision applies, whether the discharger is a publicly-owned treatment works ("POTWs") or any other point source discharger. In addition, the Commission has the authority to adopt control regulations establishing technology-based standards or conditions applicable to POTWs and other point source dischargers, whether or not federal guidelines or standards have been adopted.<sup>2</sup> See C.R.S. § 25-8-205. The Commission's State Effluent Limitations regulations, adopted pursuant to C.R.S. § 25-8-205, establish State secondary treatment requirements applicable to POTWs.

C.R.S. § 25-8-205(1)(d) provides the Commission with specific authority to adopt toxic effluent standards and pretreatment standards for pollutants which interfere with, pass through, or are otherwise incompatible with treatment works. This authority applies whether or not federal toxic or pretreatment standards have been adopted.

In addition, pursuant to C.R.S. § 25-8-204, the Commission has the authority to adopt water quality based standards, including toxic standards, whether or not federal criteria or standards have been adopted. Pursuant to this authority, the Commission has adopted a narrative standard for surface waters, including wetlands, which requires that such waters be free from toxic substances in amounts that are toxic to humans, animals, plants or

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<sup>2</sup> Control regulations are State regulations of general applicability (i.e., they are not limited to point source discharges). They are self-implementing regulations (i.e., can be enforced without having to be incorporated into a permit) and are often used to regulate areas which are beyond the scope of the federal permit program, such as groundwater discharges and non-point source pollution. However, minimum federal requirements may be adopted as control regulations (e.g., pretreatment requirements). To the extent minimum federal requirements are so adopted, the CWQCA requirements of consistency with the federal act and implementing regulations apply.



aquatic life. See Basic Standards, § 3.1.11. Under the Discharge Permit Regulations, § 6.9.2(2), permits issued by the Division must contain effluent limitations, standards or prohibitions that ensure compliance with the "free from toxics" standard.

Consequently, the State has adequate authority to apply effluent limitation requirements under CWA §§ 301 and 307, in the absence of federally promulgated standards and limitations.

The Discharge Permit Regulations, § 6.9.3(6), authorizes the Division to include in any permit, terms and conditions the Division determines to be necessary to comply with state regulations, the CWQA and the CWA. The Division, therefore, has the authority to require "any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedule of compliance, established pursuant to any State law or regulations, ... or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this Act." CAA § 301(b)(1)(C).

**c. Schedules of compliance.**

State law provides authority to set and revise schedules of compliance in issued permits which require the achievement of applicable effluent standards and limitations within the shortest reasonable time consistent with the requirements of the CWA. This includes authority to set interim compliance dates in permits which are enforceable without otherwise showing a violation of an effluent limitation or harm to water quality.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-103(18), 25-8-501(3)(e), 25-8-503(3) and (4); Discharge Permit Regulations, § 6.9.3; Basic Standards, § 3.1.14.

Remarks of the Attorney General:

The Division's authority to set schedules of compliance is set forth in detail in § 6.9.3(14) of the Discharge Permit Regulations. This provision implements C.R.S. § 25-8-501(3)(e) which delegates to the Commission the authority to adopt rules requiring inclusion of schedules of compliance, as defined in C.R.S. § 25-8-103(18), in permits. As required by C.R.S. § 25-8-501(3), the schedule of compliance provisions of § 6.9.3(14) are consistent with federal requirements, including EPA's regulations.

**d. Variances:**

State law provides authority for the State to review and act upon variances from applicable effluent limitations. To the extent that the State will consider variances, the State provisions are at least as stringent as federal requirements. State law does not allow any variances or adjustments to permit limitations not authorized under federal law.

State law also provides authority for the State to review and act upon variances from applicable control regulations. Any such variances must be consistent with the purposes of the CWQCA, including compliance with water quality standards adopted to protect beneficial uses.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-503(9), 25-8-205(6), 25-8-204, 25-8-203; Discharge Permit Regulations, § 6.13.0; Procedural Regulations, § 2.1.9.

Remarks of the Attorney General:

State law allows the Division to grant variances from otherwise applicable permit requirements. However, such variances may be granted "only to the extent authorized in the federal act or implementing regulations." C.R.S. § 25-8-503(9). This limitation applies to variances from any permit requirement.<sup>3</sup> State law also allows the Division to grant variances from control regulations so long as such variances are consistent with the purposes of the CWQCA, including the protection of beneficial uses through compliance with water quality standards. The procedure for granting variances, including time limits in making the variance request, public notice and opportunity for hearing requirements, and other procedural requirements are set forth in C.R.S. § 25-8-4-01, § 6.13.0 of the Discharge Permit Regulations, and § 2.1.9 of the Procedural Rules.

**4. Authority to Limit Permit Duration.**

State law provides authority to limit the duration of permits to a fixed term not exceeding five years. State law provides for the automatic continuance of expired permits if the

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<sup>3</sup> Variances from control regulations may be granted by the Division in compliance with State law. See C.R.S. § 25-8-205(6). However, to the extent the control regulation also addresses minimum federal requirements, variances from the control regulation may be granted only if consistent with the federal act or implementing regulations. See C.R.S. § 25-8-503(9).



permittee files a timely and complete application for a new permit. The existing terms and conditions of the permit are to continue in full force and effect, without modification, until the new permit is issued.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-501(3)(j), 25-8-502(5)(a)(I) and 24-4-104; Discharge Permit Regulations, § 6.9.3(15).

Remarks of the Attorney General:

C.R.S. § 25-8-501(3)(j) specifically provides that the duration of a permit may not exceed 5 years. C.R.S. § 25-8-502(5)(a)(I) and C.R.S. § 24-4-104 provide the statutory authority for the automatic continuance of expired permits. Section 6.9.3(15) of the Discharge Permit Regulations specifically provides that "[t]he filing of a timely and complete application shall cause the expired permit to continue in force to the effective date of the new permit."

**5. Authority for Entry, Inspection, and Sampling; and Applying Monitoring, Recording, and Reporting Requirements to Direct Dischargers.**

State law provides authority to:

- a. Require any permit holder or industrial user of a publicly owned treatment works to:
  - 1) establish and maintain specified records;
  - 2) make reports;
  - 3) install, calibrate, use, and maintain monitoring equipment or methods (including where appropriate, biological monitoring methods);
  - 4) take samples of effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as may be prescribed); and
  - 5) provide such other information as may reasonably be provided.
- b. Enable an authorized representative of the State, upon presentation of such credentials as are necessary, to:
  - 1) have a right of entry, to, upon, or through any premises of a permittee or of an industrial user of a publicly-owned treatment works in which premises

an effluent source is located or in which any records are maintained;

- 2) at reasonable times have access to and copy any records required to be maintained;
- 3) inspect any monitoring equipment or method which is required; and
- 4) have access to and sample any discharge of pollutants to State waters or to publicly owned treatment works resulting from the activities or operations of the permittee or industrial user.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-304, 25-8-306, 25-8-405, 25-8-501(3); Discharge Permit Regulations, §§ 6.9.3 and 6.9.4.

Remarks of the Attorney General:

C.R.S. § 25-8-304 imposes upon dischargers, monitoring, recording and reporting requirements which are virtually identical to the federal requirements specified above. The requirements of C.R.S. 25-8-304 apply to owners or operators of facilities, processes or activities which either discharge directly into State waters, or discharge into domestic wastewater treatment works.<sup>4</sup> In addition, pursuant to C.R.S. § 25-8-501(3), the Commission has adopted specific monitoring, recording and reporting requirements, applicable to all permittees, which are consistent with both the federal act and EPA's regulations. See Discharge Permit Regulations, § 6.9.4. These permit requirements must be incorporated by the Division into its permits. See § 6.9.0. C.R.S. § 25-8-304 and the Discharge Permit Regulations provide adequate State authority to comply with federal monitoring, recording and reporting requirements.

The State's statutory authority to enter and inspect premises, equipment and other property, and documents, is specified in C.R.S. § 25-8-306. That section provides agents of the Division with the power to enter and inspect any property, premise or place to investigate any potential, suspected, or actual source of water pollution. Industrial users' facilities, POTWs, and discharge point areas are sources of pollution and, therefore, may be entered and inspected by the Division pursuant to this provision. Property which may be inspected by the Division includes, but is not limited to, monitoring and sampling equipment. C.R.S. § 25-8-306(1)

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<sup>4</sup> "Domestic wastewater treatment works", as defined in the CWQCA, includes but is not limited to POTWs. See C.R.S. § 25-8-103(5).



specifically authorizes the Division to inspect and copy records kept by the discharger.

C.R.S. §§ 25-8-308(1)(g) and 25-8-501(3) provide additional statutory authority to meet minimum federal entry and inspection requirements. The Commission has adopted such requirements in § 6.9.3(3) and 6.9.4 of the Discharge Permit Regulations.

**6. Authority to Require Notice of Introduction of Pollutants into Publicly Owned Treatment Works and Compliance with Section 204(b).**

This requirement is addressed in Part IV of this Attorney General's Statement (Pretreatment Program).

**7. Authority to Issue Notices, Transmit Data, and Provide Opportunity for Public Hearings.**

State law provides authority to comply with requirements of the CWA and EPA's regulations at 40 C.F.R. Part 123, to:

- a. notify the public, affected States, and appropriate governmental agencies of proposed actions concerning the issuance of permits;
- b. transmit such documents and data to and from the U.S. Environmental Protection Agency and to other appropriate governmental agencies as may be necessary; and
- c. provide an opportunity for public hearing, with adequate notice thereof, prior to ruling on applications for permits.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-502(3) and (4), 25-8-403 and 25-8-501(3); Discharge Permit Regulations, §§ 6.6.2, 6.6.3, 6.7.0 and 6.8.0; Procedural Rules, § 2.1.4.

Remarks of the Attorney General:

Specific statutory authority to require public notice of permit applications, to transmit data, and to provide an opportunity for public hearings is found in C.R.S. §§ 25-8-502(3) and (4), 25-8-501(3) and 25-8-403. The State's statutory authority is consistent with the requirements of the CWA.

The State's more detailed notice, data transmittal, and hearing requirements are specified in regulation. The State procedures for notice and data transmission to and from EPA are

further specified in the Memorandum of Agreement ("MOA") submitted by the State with this Attorney General's Statement.<sup>5</sup>

Section 6.6.2 of the Discharge Permit Regulations specifies requirements for public notice of permit applications and draft permits. Included are requirements for specific notice to other states whose waters may be affected by the issuance of a proposed permit (§ 6.6.2(5)(b)), and to other appropriate government agencies, such as the Army Corps of Engineers and the EPA (§ 6.6.2(5)(d)). Section 6.6.2 also specifies the minimum information which must be included in a draft permit for public review. See § 6.6.2(2).

Section 6.6.3 of the Discharge Permit Regulations specifies requirements for public hearings on draft permits, including requirements for public notice of such hearings. Such hearings may be requested by the applicant, any affected State, any affected interstate agency, EPA, or any interested person, agency or group. See § 6.6.3(1).

Section 6.7.0 of the Discharge Permit Regulations specifies the procedure for exchange of information with EPA and for EPA's review of the Division's proposed permits. See § 6.7.0(1). The State procedure for such exchange and review is further specified in the State MOA.

Finally, once the permit has been issued, the State regulations provide an opportunity for a formal administrative hearing under the State APA. See § 6.8.0. Such hearings may be requested by the applicant or "any other person, affected or aggrieved by the Division's final determination" on the permit. See § 6.8.0(1).

As the enumerated statutory and regulatory authorities indicate, the State has adequate authority to require compliance with notice, data transmittal, and opportunity for public hearing requirements to the extent set forth in the CWA and EPA's regulations.

#### **8. Authority to Provide Public Access to Information.**

State law provides authority to make information available to the public, consistent with the requirements of the CWA and the Guidelines, including the following:

a. The following information is available to the public for inspection and copying:

1) any NPDES permit, permit application, or form;

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<sup>5</sup> The Division's authority to enter into binding agreements such as the State MOA is set forth in C.R.S. § 25-8-401(1)(e).



2) any public comments, testimony, or other documentation concerning a permit application; and

3) any information obtained pursuant to any monitoring, recording, reporting, or sampling requirements, or as a result of sampling, or other investigatory activities of the State.

- b. The State may hold confidential any information (except effluent data, permits, and permit applications) shown by any person to be information which, if made public, would divulge methods or processes entitled to protection as trade secrets of such person.

State Statutory and Regulatory Authority:

C.R.S. §§ 24-72-201 through 24-72-206; C.R.S. §§ 25-8-202(i), 25-8-302(g), 25-8-405 and 25-8-501(3); Discharge Permit Regulations, § 6.6.4.

Remarks of the Attorney General:

The State's authority to make information available to the public is contained, for the most part, in the State Open Records Act, at C.R.S. §§ 24-72-201 through 24-72-206. The State's Open Records Act requires all State agencies, including the Division, to make public records available for inspection and copying. These requirements are consistent with the outlined federal requirements.

In addition, pursuant to C.R.S. §§ 25-8-202(1)(i) and 25-8-501(3), the Commission has adopted public access and inspection requirements specifically applicable to records associated with the State permit program. These requirements are set forth in § 6.6.4 of the Discharge Permit Regulations and are at least as broad as the federal requirements outlined above.

C.R.S. § 25-8-405(2) and § 6.6.4(2) require the Division to keep certain information relating to secret processes, methods of manufacture or production or sales and marketing data confidential. Consistent with federal requirements, permit applications, permits and effluent data cannot be claimed to be confidential, and the burden of proving that any other information is secret and should be kept confidential is the proponent's.

9. **Authority to Terminate or Modify Permits.**

State law provides authority to terminate or modify permits for cause including, but not limited to, the following:

- a. violation of any condition of the permit (including, but not limited to, conditions concerning monitoring, entry, and inspection);
- b. obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or
- c. change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-501(2), 25-8-501(3) and 25-8-604; Discharge Permit Regulations, § 6.9.8.

Remarks of the Attorney General:

C.R.S. § 25-8-604 authorizes the Division to suspend, modify or revoke a permit for violation of its terms. C.R.S. § 25-8-501(2) authorizes the Division to suspend, revoke or modify permits for other causes, in accordance with the provisions of the CWQCA and regulations adopted by the Commission.

Pursuant to C.R.S. § 25-8-501(3), the Commission adopted § 6.9.8 of the Discharge Permit Regulations, which specifies the circumstances under which a permit may be modified, suspended or terminated by the Division. The circumstances specified in § 6.9.8 include those circumstances for termination or modification required by federal law as outlined above. In addition, State law provides for anti-backsliding provisions upon permit modification, which provisions are consistent with the provisions of the CWA § 402(o) and CWA § 303(d)(4). State law also provides that proceedings for the revocation, suspension, annulment, limitation, or modification of a permit may be commenced by the Division, or by the filing with the Division of a written complaint by a third party. C.R.S. §§ 24-4-104(5), 25-8-601.

Therefore, State law provides sufficient authority to terminate or modify permits as required by federal law.



10. Authority to Enforce the Permit and the Permit Program.

State law provides authority to:

a. Abate violations of:

- 1) requirements to obtain permits;
- 2) terms and conditions of issued permits;
- 3) effluent standards and limitations and water quality standards (including toxic effluent standards and pretreatment standards applicable to dischargers into publicly owned treatment works); and
- 4) requirements for recording, reporting, monitoring, entry, inspection, and sampling.

b. Apply sanctions to enforce violations described in paragraph (a) above, including the following:

- 1) injunctive relief, without the necessity of a prior revocation of the permit;
- 2) civil penalties;
- 3) criminal fines for willful or negligent violations; and
- 4) criminal fines against persons who knowingly make any false statements, representation or certification in any forms, notice, report, or other document required by the terms or conditions of any permit or otherwise required by the State as part of a recording, reporting, or monitoring requirement.

c. Apply maximum civil and criminal penalties and fines which are comparable to the maximum amounts recoverable under Section 309 of the CWA or which represent an actual and substantial economic deterrent to the actions for which they are assessed or levied. Each day of continuing violation is a separate offense for which civil and criminal penalties and fines may be obtained.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-307, 25-8-403, 25-8-602, 25-8-603, 25-8-604, 25-8-605, 25-8-606, 25-8-607, 25-8-608, 25-8-609, 25-8-610, 25-8-612; Discharge Permit Regulations, § 6.9.0.

Remarks of the Attorney General:

State law authorizes the Division to take enforcement action against any person that is in violation of the CWQCA. See C.R.S. §§ 25-8-605, 25-8-607, 25-8-608, and 25-8-609. Discharges of pollutants into State waters from a point source without a permit are prohibited under the CWQCA. See C.R.S. § 25-8-501(1). Therefore, discharges without a permit are subject to enforcement under the provisions specified above.

The CWQCA also authorizes the Division to take enforcement action against any person that is in violation of any term or condition of a permit or of any control regulation. See C.R.S. §§ 25-8-602, 25-8-604, 25-8-605, 25-8-607, 25-8-608 and 25-8-609; Discharge Permit Regulations, § 6.9.0. Pretreatment requirements are adopted as control regulations. See C.R.S. § 25-8-205. Therefore, industrial dischargers into POTWs are subject to enforcement for violation of pretreatment requirements under the statutory authority specified above.

The Division is authorized to bring administrative action against alleged violators, including issuance of notices of violation (C.R.S. § 25-8-602); suspension, modification or revocation of permits (C.R.S. § 25-8-604); and issuance of cease and desist orders (C.R.S. § 25-8-605), clean up orders (C.R.S. § 25-8-606), and emergency orders (C.R.S. § 25-8-307). Cease-and-desist orders, clean-up orders and emergency orders may become effective immediately upon issuance, without a hearing.

In addition, injunctive relief is available to the State for violations of the CWQCA, control regulations, or any permit or order issued by the Division. See C.R.S. § 25-8-607(1). Injunctive relief is also available to prevent threatened violations that endanger the public health or livelihood, or the beneficial uses of State waters. See C.R.S. §§ 25-8-307 and 25-8-607(1). State law does not require the revocation of a permit before injunctive relief is sought by the State.

Civil penalties may be sought by the State for violations of any provision of the CWQCA, permits, control regulations, or final Division orders. See C.R.S. § 25-8-608(1). Criminal action may be brought by the State for falsification of documents and for tampering with monitoring devices or methods. See C.R.S. § 25-8-610. Criminal action may also be brought by the State for reckless, knowing, intentional or criminally negligent violations. See C.R.S. § 25-8-609.

The administrative, injunctive, civil and criminal remedies specified in the CWQCA are not exclusive of each other but are cumulative. See C.R.S. § 25-8-612.



The maximum civil penalty authorized under State law is ten-thousand dollars (\$10,000) per violation per day for each day during which a violation occurs. See C.R.S. § 25-8-608(1). The maximum authorized criminal penalty for falsification and tampering is a ten-thousand dollars (\$10,000) fine and imprisonment for six months in county jail. See § 25-8-610. The maximum authorized criminal fine for criminally negligent or reckless violations is twelve-thousand five hundred dollars (\$12,500) for the first offense, and twenty-five thousand dollars (\$25,000) for a second, separate violation within a two-year period. See C.R.S. § 25-8-609(3)(a) and (c). The maximum criminal fine for knowing or intentional violations is twenty-five thousand dollars (\$25,000) for the first offense and fifty-thousand dollars (\$50,000) for a second separate violation within a two-year period. See C.R.S. § 25-8-609(3)(b) and (c). Like civil penalties, criminal fines may be assessed for each day the violation occurs. See C.R.S. § 25-8-609(3). The civil penalty and criminal fine amounts authorized under State law represent an actual and substantial economic deterrent which is comparable to the deterrent represented by the sanctions specified in the CWA § 309.

Consequently, State law provides adequate authority to abate violations of permits or the State permit program and to apply sanctions in a manner compatible with the requirements of federal law.

In addition, State law provides affected citizens with an opportunity to formally participate in the State's enforcement process as required by federal law. Intervention as of right in administrative actions is provided in C.R.S. § 25-8-403 and in C.R.S. 24-4-105(1)(c). See also C.R.S. § 25-8-603(1). C.R.C.P. 24(a) authorizes intervention as of right in civil matters in certain circumstances. In addition, State law provides for citizen participation in enforcement as specified in 40 C.F.R. § 123.27(d)(2). Pursuant to C.R.S. § 25-8-601, any person may request the Division's investigation and action upon suspected or alleged violations. The Division must take enforcement action whenever it has reason to believe that such violations have taken place. See C.R.S. § 25-8-602(1). Notice of enforcement actions must be circulated by the Division. See C.R.S. § 25-8-302(1)(e); Procedural Rules, § 2.1.4(C)(2). Finally, as provided in the State MOA, the State will not oppose permissive intervention, as provided in C.R.C.P. 24(b).

State law provides that any person adversely affected or aggrieved by the final Division action regarding the permit approval or denial may obtain judicial review of such action. C.R.S. §§ 25-8-404(1), 24-4-106(4).



**11. Conflict of Interest: State Board Membership.**

No State board or body which has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal, includes (or will include, at the time of approval of the State permit program), as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit. No State law requires representation on the State board or body which has or shares authority to issue permits of any person who would violate the conflict of interest provision contained in Section 304(h)(2) of the CWA.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-103, 25-8-202(1)(k), 25-8-202(7)(b), 25-8-301, 25-8-302, 25-8-501(2), 25-1-102, 25-1-106, 25-1-109; Discharge Permit Regulations, § 6.17.0.

Remarks of the Attorney General:

State law vests the authority to issue permits authorizing the discharge of pollutants from point sources into State waters on the Division. See C.R.S. § 25-8-501(2), 25-8-302((1)(b)). The Division's authority in this regard is exclusive. See C.R.S. § 25-8-202(7)(b). The Division, as defined in the CWQCA, is the Division of Administration of the Department of Public Health and the Environment. See C.R.S. § 25-8-103(4). The Discharge Permit Regulations specifically provide that the Director of the Division shall not receive, nor have received in the previous two years, a significant portion of his or her income, directly or indirectly, from permit holders or permit applicants. See § 6.17.0

Hearings to adjudicate permit terms and conditions may be held before the Department, a hearing officer appointed by the Department or an administrative law judge. See C.R.S. § 25-8-401(4). Appeal of the Division's permit determinations may not be heard by the Commission. See C.R.S. § 25-8-202(1)(k).

Given the structure of the State program under the CWQCA, State law complies with the conflict of interest provision contained in CWA § 304(h)(2).

**12. Incorporation by Reference.**

State law provides authority to incorporate federal legal authority by reference. The incorporation by reference is proper and enforceable under State law and encompasses all of EPA's NPDES regulations which are applicable to State NPDES



programs. State law does not permit the prospective incorporation of federal law.

State Statutory and Regulatory Authority:

C.R.S. § 24-4-103(12.5); Discharge Permit Regulations, § 6.2.2

Remarks of the Attorney General:

Subject to specific conditions, the State APA authorizes the incorporation by reference of federal rules, codes, or standards that are either published in full in the federal register or code of federal regulations, or properly incorporated by reference in the federal register or code of federal regulations as part of a final rule. See C.R.S. § 24-4-103(12.5). Prospective incorporation by reference is not authorized by State law. See C.R.S. § 24-4-103(12.5)(c); Discharge Permit Regulations, § 6.2.2.

**13. Authority to Issue General Permits.**

State law provides authority to issue and enforce general permits in accordance with the federal general permits regulation at 40 C.F.R. 122.28.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-501(2) and 25-8-501(3); Discharge Permit Regulations, § 6.10.2

Remarks of the Attorney General:

The CWQCA authorizes the Division to issue and enforce permits, and the Commission to adopt regulations for permit issuance that are consistent with federal requirements. See C.R.S. §§ 25-8-501(2) and 25-8-501(3). The Discharge Permit Regulations provide for the issuance of general permits under circumstances which are allowed under the federal program. See § 6.10.2. Section 6.10.2 also specifies administration requirements that are consistent with the federal requirements, including the Division's authority to require (by citizen request or by the Division's own determination) an individual permit based on changed circumstances, see § 6.10.2(c).

**14. Authority to Issue Permits for Stormwater Discharges.**

State law authorizes the Division to require permits for stormwater discharges to the extent required by federal law. In 1993, the Commission adopted amendments to its Discharge Permit Regulations which generally define stormwater discharges as point sources which require a permit. See § 6.4.2(1). Consistent with

federal law, an exemption is provided for non-contact stormwater discharges from mining and oil and gas operations. See § 6.4.2(3)

Section 6.4.2(5) requires permits for stormwater discharges "associated with industrial activity" and discharges from "large or medium municipal separate storm sewer systems." See § 6.4.2(5)(b) and (f). These terms are defined so as to cover the same stormwater discharges for which a permit is currently required under federal law (i.e., "Phase I" stormwater discharges). See §§ 6.3.0 and 6.4.2(5). Stormwater discharges which are already subject to a permit and stormwater discharges which are a significant source of pollutants into State water also require permits under the Commission's regulations. See § 6.4.2(5)(g).

Section 6.5.3 of the Discharge Permit Regulations sets forth minimum application requirements for stormwater discharge permits which are consistent with the Clean Water Act and EPA's regulations, at 40 C.F.R. § 122.26. Other requirements specifically applicable to stormwater discharges are specified throughout the Discharge Permit Regulations. See, e.g., § 6.9.4(14) and (15) (special reporting requirements for stormwater discharges). Finally, § 6.10.2 authorizes the Division to issue general permits for stormwater discharges and specifies the circumstances under which an individual permit must be required. See § 6.10.2(1)(a) and (c).

Consequently, the State program provides adequate authority to issue and enforce permits for the discharge of stormwater consistent with federal requirements set forth in the Clean Water Act and EPA regulations.

## 15. Permit Application and Permit Compliance Requirements.

State law requires that all persons in possession of a valid State permit for the discharge of pollutants from point sources into the State's surface waters be required to:

1. Comply with application requirements which are consistent with the requirements of 40 C.F.R. Part 122, Subpart B and Part 124, Subpart A. See Discharge Permit Regulations, § 6.5.0. Under State law, owners or operators of facilities, processes or activities resulting in a discharge must apply for the permit, and if the facility, process or activity is owned by one person but operated by another, both the owner and the operator must apply for a permit. See § 6.5.1(2);
2. Comply with permit terms, conditions, and requirements that are consistent with those requirements specified in 40 C.F.R. Part 122, Subparts B, C, and D. This includes



compliance with conditions required under 40 C.F.R. § 122.43 and 122.44(d)(5). See §§ 6.9.0 and 6.9.2(2).

#### IV. PRETREATMENT PROGRAM

Pursuant to the requirements of 40 C.F.R. § 403.10(g)(1), and for purposes of application for State pretreatment program approval, I hereby certify that, in my opinion, the laws of the State of Colorado provide adequate authority to carry out the minimum requirements for a State pretreatment program to the extent indicated below. These minimum requirements are identified in 40 C.F.R. § 403.10(f). The specific authorities provided are contained in lawfully enacted or promulgated statutes or regulations and are in full force and effect on the date of this Statement. These authorities include the following:

##### 1. Authority to Apply Categorical Pretreatment Standards for Industrial Users.

State law provides authority to apply to industrial users of publicly owned treatment works ("POTWs"), pretreatment effluent standards and limitations promulgated under CWA § 307(b) and (c), including the general prohibition against pass through and interference, prohibitive discharge standards under 40 C.F.R. 403.5 and local limitations developed by the POTW.

##### State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-205 and 25-8-508; Pretreatment Regulations, § 4.3.0.

##### Remarks of the Attorney General:

The CWQCA requires the Commission to adopt, and the Division to implement, an "industrial pretreatment program" that is "adequate to comply with requirements set forth in section 307(a), (b) and (c) of the federal act." See C.R.S. § 25-8-508(1). C.R.S. § 25-8-205 authorizes the Commission to adopt pretreatment requirements, prohibitions and standards. See C.R.S. § 25-8-205(1)(b), (c) and (d). Pursuant to the statutory mandate of C.R.S. § 25-8-508 and its authority under C.R.S. § 25-8-205, the Commission has adopted the State Pretreatment Regulations.

The Pretreatment Regulations specify, among others, general and specific prohibitions against the introduction of pollutants into POTWs. See § 4.3.11. These prohibitions are consistent with federal prohibitions contained in 40 C.F.R. § 403.5. National categorical pretreatment standards adopted by EPA are incorporated into the Pretreatment Regulations by reference. See 4.3.14 through

4.3.51. In addition, POTWs are required to develop local limits under specific circumstances. See § 4.3.11.D. These local limits are considered pretreatment standards for purposes of CWA § 307(d), if properly adopted pursuant to § 4.3.11.D. See § 4.3.11.E.

The Division has the authority to require compliance with the pretreatment standards and requirements, including prohibitions, adopted by the Commission and with local limits adopted by POTWs. C.R.S. § 25-8-508(2) authorizes the Division to "require compliance with applicable pretreatment requirements and standards by any domestic wastewater treatment works or by any industrial user of such treatment works".<sup>6</sup> Local limits adopted by a POTW become "applicable" pretreatment requirements and standards with which an industrial user must comply. See § 4.3.11.E. Therefore, the Division has the authority to require compliance with local limits imposed by a POTW. See §§ 4.3.11.A and 4.3.57.

Where an industrial user discharges to a POTW that is not required to develop and implement a pretreatment program, the Division has the authority to apply applicable pretreatment standards and limitations directly to the industrial user. See §§ 4.3.4 and 4.3.12.

Consequently, State law provides adequate authority to require compliance with pretreatment standards and requirements under CWA § 307(a), (b) and (c), including prohibitions and local limits.

## **2. Authority to Apply Pretreatment Requirements in Permits for Publicly Owned Treatment Works.**

State law provides authority to apply in terms and conditions of permits issued to publicly owned treatment works the applicable requirements of section 402(b)(8) of the CWA as amended and 40 C.F.R. 403 including:

- (a) A compliance schedule for the development of a POTW pretreatment program as required by 40 C.F.R. 403.8(d);
- (b) The elements of an approved POTW pretreatment program as required by 40 C.F.R. 403.8(c);
- (c) A modification clause requiring that the publicly owned treatment works' permit be modified or alternatively revoked and reissued after the effective date for approval of the State pretreatment program to incorporate into the POTW's permit an approved POTW pretreatment program or a compliance schedule for developing a POTW

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<sup>6</sup> "Domestic wastewater treatment works," as defined the C.R.S. § 25-8-103(5), include, but are not limited to, POTWs.



pretreatment program in accordance with the requirements of 40 C.F.R. 403.10(d);

- (d) Prohibitive Discharge limitations applicable to industrial users as required by 40 C.F.R. 403.5; and

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-205(1)(b) and (d), 25-8-302(1)(b), 25-8-501(5) and 25-8-508; Pretreatment Regulations, §§ 4.3.4 and 4.3.9.D; and Discharge Permit Regulations, §§ 6.9.3 and 6.9.7.

Remarks of the Attorney General:

C.R.S. § 25-8-501(5) requires the Division to include in permits issued to domestic wastewater treatment works, any term and condition which is necessary to comply with any control regulation. The State's Pretreatment Regulations are adopted as control regulations.

Section 4.3.9.D of the Pretreatment Regulations requires the Division to "incorporate pretreatment program conditions as enforceable permit conditions" into permits issued to POTWs. See § 4.3.9.D.(1); and § 4.3.4. See also § 6.9.7 of the Discharge Permit Regulations. If the POTW does not have an approved pretreatment program, the Division has the authority to impose a compliance schedule for the development of one. See §§ 4.3.9.A and 4.3.9.D.(2) and (3); § 6.9.3(14). Once a POTW receives approval of a pretreatment program or a compliance schedule to develop such program, the Division has the authority to reopen and modify the POTW's permit to incorporate the POTW's pretreatment program conditions or a schedule of compliance, whichever applies. See § 6.9.8(2)(h).

Pretreatment program conditions which must be included in permits issued to POTWs by the Division pursuant to § 4.3.9.D, include general and specific prohibitions against certain discharges, which are specified in § 4.3.11. See § 4.3.9.D.(2)(b); see also § 6.9.7(4). The prohibitions contained in § 4.3.11 are consistent with the requirements of 40 C.F.R. § 403.5.

The Commission has not adopted provisions allowing for removal credits issued to POTWs. Removal credit authority is not mandatory under federal requirements. Therefore, demonstration of percentages of removal by POTWs, consistent with 40 C.F.R. § 403.7, is not necessary or required by State law.

3. **Authority to Require Information Regarding the Introduction of Pollutants into Publicly Owned Treatment Works and Compliance with Section 204(b).**

State law provides authority to:

a. require in permits issued to publicly owned treatment works conditions requiring the permittee to:

- (1) Give notice to the State permitting agency of new introductions into such works of pollutants from any source which would be a new source as defined in section 306 of the CWA if such source were discharging pollutants directly to State waters;
- (2) Give the State notice of new introductions of pollutants into such works from a source which would be a point source subject to section 301 if it were discharging such pollutants directly to State waters;
- (3) Give the State notice of a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit; and
- (4) Identify in terms of character and volume of pollutants any significant source introducing pollutants subject to pretreatment standards under section 307(b) of the CWA as amended.

b. compliance by industrial users with CWA requirements concerning user charges and construction costs.

State Statutory and Regulatory Authority:

C.R.S. § 25-8-508(1), Discharge Permit Regulations, § 6.9.7; Pretreatment Regulations, § 4.3.9.E.

Remarks of the Attorney General:

Section 6.9.7(3) requires POTWs to notify the Division of new introductions of pollutants into the POTW from indirect dischargers which would be subject to CWA § 301 or CWA § 306 if they were to discharge directly into State waters. See § 6.9.7(3)(a). A "new" introduction is defined as the introduction of any pollutant for which there is no effluent limitation or monitoring requirement in the POTW's permit.



Section 6.9.7(3) also requires POTWs to notify the Division of "[a]ny substantial change in the volume or character" of the pollutants being introduced into the POTW by a source introducing pollutants at the time of issuance of the permit. See § 6.9.7(3)(b). A "substantial change" is defined as a level of change which has a reasonable probability of affecting the permittee's ability to comply with its permit conditions or to cause an exceedence of water quality standards of the receiving stream.

All notifications required by § 6.9.7(3), as specified above, must identify the quality and quantity of the effluent being introduced into the POTW and any anticipated impact of the change in the quality and quantity of the discharge from the POTW. See § 6.9.7(3)(c). In addition, POTWs must have the ability to identify and locate all possible industrial users that may be subject to the POTW's pretreatment program, and to identify the character and volume of pollutants contributed by each. See § 4.3.9.E.(2)(a) and (b). Such requirements are incorporated into the POTW's permit, as provided by § 4.3.4.

Consequently, the State has sufficient and adequate authority to impose upon POTWs, notification requirements which are consistent with federal law, as specified above.

In addition, State law authorizes the Division to impose permit conditions which require compliance by industrial users with CWA requirements concerning user charges and construction costs. See C.R.S. § 25-8-505; § 6.9.3(20).

#### **4. Authority to Make Determinations on Requests for Pretreatment Program Approval and Removal Allowances.**

State law provides authority to review, approve, or deny:

- a. Requests for POTW pretreatment program approval in accordance with the requirements of 40 C.F.R. 403.8(f) and 403.11; and
- b. Requests for authority to reflect removals achieved by the publicly owned treatment works in accordance with the requirements of 40 C.F.R. 403.7, 403.10(f)(1) and 403.11.

#### State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-205 and 25-8-508; Pretreatment Regulations, § 4.3.9.

Remarks of the Attorney General:

Adopted pursuant to C.R.S. §§ 25-8-205 and 25-8-508, the Pretreatment Regulations authorize the Division to review and approve or deny POTW's requests for POTW pretreatment program approval. See § 4.3.9.G.(3). Minimum requirements for program submission, consistent with 40 C.F.R. § 403.9, are specified in § 4.3.9.F. Criteria for approval of POTW pretreatment programs, consistent with 40 C.F.R. 403.8(f), are set forth in §§ 4.3.9.E and 4.3.9.G. Finally, procedural requirements for program submission and program approval or denial, including public notice and comment requirements, are specified in § 4.3.9.G. These procedural requirements are consistent with the requirements set forth in 40 C.F.R. § 403.11.

Procedures for a POTW's request for authority to reflect removals achieved by the POTW are specified in § 4.3.9.G.(1). However, as further discussed below, the Division is not authorized to issue or approve issuance of removal credits at this time.

**5. Authority to Make Initial Determinations on Categorization of Industrial Users and Requests for Fundamentally Different Factors Variances.**

State law provides authority to:

- a. Make a determination as to whether or not an industrial user falls within a particular industrial subcategory in accordance with the requirements of 40 C.F.R. 403.6; and
- b. Deny and/or recommend approval of requests for Fundamentally Different Factors variances for industrial users as required by 40 C.F.R. 403.10(f)(1) and 403.13.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-205(1)(b) and (d), 25-8-501(5)(a), and 25-8-508; Pretreatment Regulations, § 4.3.12.

Remarks of the Attorney General:

Section 4.3.12 of the Pretreatment Regulations authorizes the Division to make determinations regarding the industrial subcategories under which and industrial user falls, and specifies the process by which such determinations must be made. See § 4.3.12.A. In addition, § 4.3.12 specifies the procedures and criteria for Fundamental Different Factors variance requests, consistent with 40 C.F.R. § 403.13. See § 4.3.12.B. The Division has the authority to deny or recommend EPA's approval of industrial users' requests for such variances; however, consistent with 40 C.F.R.



§ 403.10(f)(1)(vi), the Division has no authority to approve such variances.

**6. Authority to Apply Recording, Reporting and Monitoring Requirements.**

State law provides authority to:

a. Require any industrial user of a publicly owned treatment works to:

- (1) submit the report required by 40 C.F.R. 403.12(b) which:
  - (a) Sets forth basic information about the industrial user (e.g., process, flow);
  - (b) Identifies the characteristics and amount of the waste discharged by the industrial user to the POTW; and
  - (c) Proposes a schedule by which any technology and/or operation and maintenance practices required to meet pretreatment standards will be installed;
- (2) Submit the reports required by 40 C.F.R. 403.12(c) which account for the industrial user's progress in installing any required pretreatment or operation and maintenance practices;
- (3) Submit the report required by 40 C.F.R. 403.12(d) following the final compliance date for the applicable pretreatment and standard;
- (4) Submit periodic reports on continued compliance with applicable pretreatment standards as required by 40 C.F.R. 403.12(e);
- (5) Submit any other reports required under the NPDES or pretreatment regulations or under State law.

b. Require POTWs subject to the requirements to 40 C.F.R. 403.8(a) to:

- (1) Report on progress in developing an approvable POTW pretreatment program as required by 40 C.F.R. 403.12(k); and
- (2) Submit any other reports required under the NPDES or pretreatment regulations or under State law.

c. Require POTWs subject to the requirements of 40 C.F.R. 403.8(a) and all industrial users subject to pretreatment standards to:

- (1) Establish and maintain records as required by 40 C.F.R. 403.12(o);
- (2) Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate biological monitoring methods) necessary to determine continued compliance with pretreatment standards and requirements;
- (3) Take samples of effluents (in accordance with specified methods at such locations, at such intervals, and in such manner as may be prescribed); and
- (4) Provide other information as may reasonably be required.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-205(1)(b) and (d), 25-8-304, and 25-8-508; Pretreatment Regulations, §§ 4.3.10 and 4.3.13; and Discharge Permit Regulations, § 6.9.4.

Remarks of the Attorney General:

Adopted pursuant to C.R.S. §§ 25-8-205 and 25-8-508, the Pretreatment Regulations impose reporting, record-keeping, sampling, monitoring and other requirements upon industrial users and POTWs, which requirements are consistent with the requirements of 40 C.F.R. 403.12.

Reporting requirements for industrial users are specified in § 4.3.13 of the Pretreatment Regulations. Industrial users are required to submit reports to the "Control Authority." As defined, the Control Authority is a POTW with an approved pretreatment program or, in the absence of an approved program, the Division. See § 4.3.7.F.

Required reports include reports consistent with the requirements of 40 C.F.R. § 403.12(b), see § 4.3.13.A; progress reports, consistent with the requirements of 40 C.F.R. § 403.12(c), see § 4.3.13.B; final compliance reports, consistent with the requirements of 40 C.F.R. 403.12(d), see § 4.3.13.C; and periodic reports on continued compliance, consistent with the requirements of 40 C.F.R. § 403.12(e), see § 4.3.13.D.(1)(a), (b), (c) and (d).

Section 4.3.13.D authorizes the POTW or the Division to require industrial users to submit other pertinent reports which may be required under the NPDES or pretreatment regulations or



other State law. See § 4.3.13.D.(2), (3), (6), (7), (8) and (9); § 4.3.13.E; and § 4.3.13.F. Other reasonably available information relating to discharges into the POTW may be requested by the Division or the POTW on a case-by-case basis. See C.R.S. § 25-8-304(1)(e).

State law also imposes reporting requirements on POTWs that are required to develop a pretreatment program under 40 C.F.R. 403.8(a). These POTWs must submit to the Division reports on the progress of development of an approvable pretreatment program, see § 4.3.9.D.(3); annual reports, see § 4.3.10.A; and other reports which the Division may reasonably require, including requirements concerning the installation, use and maintenance of monitoring equipment or methods, see § 6.9.4.

POTWs that must develop their own program and industrial users are required by State law to establish and maintain records, consistent with 40 C.F.R. § 403.12(o). See § 4.3.10.D (for POTWs) and § 4.3.13.G (for industrial users).

C.R.S. § 25-8-304(c) requires dischargers into State waters, including POTWs, and dischargers into POTWs, to "install, calibrate, use and maintain monitoring methods and equipment, including biological and indicator pollutant monitoring methods." These requirements are set forth in permits issued by the Division. See § 6.9.4(2) and § 6.9.0.

POTWs are also required to sample their effluent according to methods, locations and frequencies prescribed by the Division. See C.R.S. § 25-8-304(d); Discharge Permit Regulations, § 6.9.4. Industrial users must sample their effluent according to methods, locations and frequencies prescribed by the Division or the POTW, whichever is the control authority. See C.R.S. § 25-8-304(d); Pretreatment Regulations, § 4.3.13.A.(2)(e), § 4.3.13.D(1), (5) and (7), and § 4.3.13.H.

Finally, State law provides broad authority to obtain other information which may be reasonably required by the Division or the POTW. See C.R.S. § 25-8-304(e); C.R.S. § 25-8-204(7) (authorizing the POTW to request a hearing to investigate the source of pollution causing exceedences of water quality standards); Discharge Permit Regulations, § 6.9.4(1).

## **7. Authority to Apply entry, Inspection and Sampling Requirements.**

State law provides authority to enable authorized representatives of the State, and POTWs with approved pretreatment programs, upon presentation of such credentials as are necessary, to:

- (1) Have a right of entry to, upon, or through any premises of a POTW or of an industrial user of a POTW in which premises an effluent source is located or in which any records are maintained;
- (2) At reasonable times have access to and copy any records required to be maintained;
- (3) Inspect any monitoring equipment or method which is required; and
- (4) Have access to and sample any discharge of pollutants to State waters or to a POTW resulting from the activities or operation of the POTW or industrial user.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-306, 25-8-405, 25-8-501(3); Discharge Permit Regulations, § 6.9.4; Pretreatment Regulations, § 4.3.9.D.

Remarks of the Attorney General:

The Division's authority to enter, inspect and sample is discussed in Part III, Paragraph 5. As stated therein, State law provides the Division with adequate authority, consistent with federal requirements, to enter and inspect the premises of a POTW or an industrial user, to inspect their records and equipment, and to take samples from their discharges into State waters or, in the case of the industrial discharger, into the POTW. See C.R.S. §§ 25-8-306, 25-8-308(1)(g), and 25-8-405; Discharge Permit Regulations, §§ 6.9.3(3), 6.9.3(6), and 6.9.4(7); Pretreatment Regulations, § 4.3.13.H.

The federal regulation, at 40 C.F.R. § 403.10(f)(1), does not require the State Attorney General to certify that individual POTWs or POTWs generally have the authority to carry out inspection, surveillance and monitoring procedures. However, these matters are included in the model "Attorney General's Statement" and so are addressed herein.

Section 4.3.9 of the Pretreatment Regulations requires POTWs that develop a pretreatment program to obtain enforceable legal authority to carry out the minimum requirements of the program, including the authority to carry out necessary inspection, surveillance and monitoring of industrial users. See § 4.3.9.E.(1)(f). General authority for POTWs to carry out inspection, surveillance and monitoring procedures is found in C.R.S. §§ 31-1-1001 and 1006, 31-15-401, and 31-16-101(2). These authorities enable entities governing POTWs (e.g., municipalities and special districts), to authorize POTWs to apply the requirements of § 4.3.9.E of the Pretreatment Regulations. In order for the Division to approve a POTW's pretreatment program, the City



attorney or comparable official must certify the adequacy of the entity's authority to carry out such pretreatment program. See § 4.3.9.F.(2) This Attorney General's certification does not extend to the sufficiency of local authorities for individual POTWs.

**8. Authority to Issue Notices, Transmit Data, and Provide Opportunity for Public Hearings and Public Access to Information.**

State law provides authority to comply with the requirements of 40 C.F.R. 403.11 to:

- a. Notify the public, affected States, and appropriate governmental agencies of:
  - (1) requests for POTW pretreatment program approval or for removal credit allowances; and
  - (2) approval of POTW pretreatment programs or POTW removal credit authority;
- b. Transmit such documents and data to and from the United States Environmental Protection Agency and to other appropriate governmental agencies as may be necessary;
- c. Provide an opportunity for public hearing, with adequate notice thereof, prior to ruling on applications for POTW pretreatment program approval or removal credits; and
- d. Ensure that requests for POTW pretreatment program approval and all comments received pertaining to these requests for program approval are available to the public for inspection and copying.

State law provides authority to make information available to the public, consistent with the requirements of the CWA and General Pretreatment Regulations, including any information obtained pursuant to any monitoring, reporting, or sampling requirements or as a result of sampling or other investigatory activities of the State. The State may hold confidential any information (except effluent data) shown by any person to be information which, if made public, would divulge methods or processes entitled to protection as trade secrets of such person.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-205, 25-8-508; C.R.S. §§ 24-72-201 through 206; Pretreatment Regulations, § 4.3.9.G.

### Remarks of the Attorney General:

The State Pretreatment Regulations provide specific authority for public participation and data exchange associated with the approval of a POTW's pretreatment program. See § 4.3.9.G. The State's provisions in this regard are virtually identical to the federal provisions at 40 C.F.R. § 403.11 and are, therefore, consistent with federal requirements. See § 4.3.9.G.(2)(a) (public notice of POTW's approval request); § 4.3.9.G.(2)(b) (opportunity to for a hearing and hearing notice requirements); § 4.3.9.G.(4) (no approval upon EPA's written objection); § 4.3.9.G.(5) (notice of final Division decision); and § 4.3.9.G.(6) (public access to submission and comments for inspection and copying).

State authority for public access to documents and information, including information obtained through monitoring, reporting, and sampling requirements or through independent investigatory activities of the State, is found in the State's Open Records Act, C.R.S. §§ 24-72-201 through 24-72-206. See also § 4.3.13.I. As a general rule, such information is available to the public. However, to the extent the information relates to a "secret process, method of manufacture or production, or sales or marketing data", the information is deemed confidential and not available to the public, under State law. See C.R.S. § 25-8-405(2); § 4.3.13.I, § 4.3.9.E.(1)(j). The burden to establish the confidentiality of the information is its proponent's. See C.R.S. § 25-8-405(2).

### **9. Authority to Enforce Against Violations of Pretreatment Standards and Requirements.**

State law provides authority to:

a. Enforce against violations by industrial users and POTWs of:

- (1) Permit requirements;
- (2) National categorical pretreatment standards, including the general prohibition against pass through and interference;
- (3) Prohibitive discharge limitations developed in accordance with 40 C.F.R. 403.5;
- (4) Local limits developed by the POTW;
- (5) Requirement for recording, reporting, monitoring, entry, inspection and sampling;



b. Enforce against violations described in paragraph (a) above using enforcement mechanisms which include the following:

- (1) Injunctive relief;
- (2) Civil and criminal penalties and fines which are comparable to the maximum penalties and amounts recoverable under section 309 of the CWA or which represent an actual and substantial economic deterrent to the actions for which they are assessed or levied.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-302(1)(a), 25-8-508(2), 25-8-307, 25-8-602 through 25-8-610, and 25-8-612; Discharge Permit Regulations, § 6.9.0; Pretreatment Regulations, §§ 4.3.4, 4.3.6 and 4.3.11.G.

Remarks of the Attorney General:

Part III, Paragraph 10, above, describes the Division's enforcement authorities under State law. The Division's authority includes the authority to take enforcement action against industrial users and POTWs for violation of permit conditions, control regulations (including pretreatment requirements), provisions of the CWQCA, and orders issued by the Division. See C.R.S. §§ 25-8-602 through 610.

POTWs with approved pretreatment programs are primarily responsible for the enforcement of pretreatment standards and requirements applicable to industrial users. See §§ 4.3.4 and 4.3.11.G. The minimum enforcement authority required for approval of a pretreatment program is specified in § 4.3.9.E of the Pretreatment Regulations. Generally, authority for a POTW to enforce such pretreatment standards and requirements includes C.R.S. §§ 31-16-101(2), 31-1-1001(1)(c), and 31-1-1006(5). See also C.R.S. § 13-10-113(7) (municipal courts may provide relief pursuant to the CWA). The cited authorities enable the entities governing POTWs (e.g., municipalities and special districts) to authorize POTWs to apply the requirements of § 4.3.9.E. To obtain approval of a pretreatment program, the City attorney or other appropriate city official must certify that such enforcement authority has been obtained. See § 4.3.9.F.(2). This Attorney General certification does not extend to the sufficiency of local authorities applicable to individual POTWs.

The Division is responsible for enforcement against industrial users that discharge into a POTW without an approved program, or a POTW with an approved program that fails to take proper enforcement action. See §§ 4.3.4, 4.3.11.A and 4.3.11.G. The Division's

authority includes the authority to enforce local limits developed by a POTW directly against an industrial user, where the POTW has not taken appropriate enforcement action. See §§ 4.3.11.A and 4.3.11.G.

The Division's authority to seek injunctive relief, civil penalties and criminal fines are discussed in Part III, Paragraph 10 of this Attorney General's Statement. POTWs seeking to obtain pretreatment program approval must demonstrate their legal authority to seek injunctive relief for violations of pretreatment standards and requirements. See § 4.3.9.E.(1)(g) and (h). In addition, these POTWs must demonstrate legal authority to seek civil penalties and criminal fines of at least \$ 1,000 per day for each violation. See § 4.3.9.E.(1)(g) and (h). Absent such authority, the POTW's pretreatment program may not be approved and the Division remains the enforcing agency.

Consequently, State law provides sufficient and adequate authority for enforcement of pretreatment requirements consistent with federal law as specified above.

#### 10. Incorporation by Reference.

##### Remarks of the Attorney General:

See Part III, Paragraph 12.

### V. BIOSOLIDS MANAGEMENT PROGRAM

The federal sewage sludge management program developed by EPA pursuant to CWA § 405 regulates the use or disposal of sewage sludge through various practices, including land application, surface disposal, and incineration. See 40 C.F.R. § 503. Colorado seeks partial program approval to administer the land application portion of the federal sewage sludge management program. At this time, Colorado does not seek delegation of federal authority to regulate surface disposal and incineration practices. In addition, Colorado does not intend to regulate the land application of domestic septage under this program. This Attorney General's Statement does not address or certify the State's legal authority to implement sewage sludge management practices other than land application of biosolids, as specified below.

Pursuant to the requirements of 40 C.F.R. § 123.23, and for purposes of application for partial program approval as specified below, I hereby certify that, in my opinion, the laws of the State of Colorado provide adequate authority to carry out the program set forth in the "Colorado Biosolids Management Program Description" submitted by the Department with this Attorney General's Statement. The specific authorities provided are contained in lawfully enacted



or promulgated statutes or regulations in full force and effect on the date of this Statement. These authorities include the following:

**1. Authority to Regulate Sewage Sludge Management Generally**

State law provides the authority to regulate treatment works treating domestic sewage ("TWTDS") which generate or treat sewage sludge to be land applied and persons that land apply sewage sludge.<sup>7</sup> [40 C.F.R. §§ 122.1(b)(3), 122.1(d)(2), 122.1(g)(6) and 122.41(a)(1).]

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-205(1)(e), 25-8-501(1) and (2), and 25-8-509; Biosolids Regulations.

Remarks of the Attorney General:

The CWQCA prohibits the use or disposal of biosolids except as authorized by regulation.<sup>8</sup> See C.R.S. § 25-8-501(1). The Commission has the authority under the CWQCA to adopt control regulations imposing standards, prohibitions, requirements and limitations on the use or disposal of biosolids. See C.R.S. § 25-8-205(1)(e). Pursuant to its statutory authority, the Commission has adopted the State's Biosolids Regulations, which regulate the land application of biosolids and associated practices. See § 4.9.2.

The Biosolids Regulations apply to all domestic wastewater treatment works that generate biosolids when such biosolids are withdrawn for beneficial use. See § 4.9.3.A. Domestic wastewater treatment works are systems designed to receive two thousand gallons of domestic wastewater per day or more. See C.R.S. § 25-8-103(5). The regulations also apply to any person, other than a domestic wastewater treatment works, "treating, manipulating or applying biosolids to land for beneficial use." See § 4.9.3.B.

TWTDS are specifically required to comply with the Biosolids Regulations. See § 4.9.10.H and § 4.9.11. TWTDS are defined as follows:

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<sup>7</sup> Colorado's enabling legislation and implementing regulations use the term "biosolids" in lieu of the term "sewage sludge". Therefore, the term "biosolids" is incorporated into this document as appropriate.

<sup>8</sup> The CWQCA provides, however, that existing use and disposal practice authorizations (i.e., under other State law), shall continue in place until such time as the Division issues permits for these activities pursuant to C.R.S. § 25-8-501 through 509.

"Treatment Works Treating Domestic Sewage" means a domestic wastewater treatment works or other sludge or biosolids handling facility, regardless of ownership, used in the storage, treatment, recycling or reclamation of domestic sewage or land application of biosolids.

See § 4.9.9.II. The definition of TWTDS includes facilities that are not otherwise included in the scope of the regulations, as that scope is defined in § 4.9.3. For example, domestic wastewater treatment works that treat biosolids generated by others are not covered under § 4.9.3 but are required to comply with the Biosolids Regulations pursuant to §§ 4.9.10.H and 4.9.11. It is my understanding that the Division will request the Commission to resolve this inconsistency by expanding the scope of applicability as set forth in § 4.9.3.

The term "biosolids" is defined in the CWQCA as follows:

"Biosolids" means the accumulated residual product resulting from a domestic wastewater treatment works or other domestic sources. "Biosolids" does not include grit or screenings from a wastewater treatment works or commercial and industrial septage or individual sewage disposal systems as regulated by article 10 of this title.

C.R.S. § 25-8-103(1.4). The term is also defined in the State's Biosolids Regulations. See § 4.9.9.K. As defined in the regulations, "biosolids" includes residual product from domestic wastewater treatment works, but not from "other domestic sources" (i.e., sources that receive less than two thousand gallons of domestic wastewater per day). This is consistent with the State's intent, as expressed in the "Colorado Biosolids Management Program Description", to exclude domestic septage land application regulation from the scope of the delegated program.

The Biosolids Regulations specify prohibitions, standards, concentration limitations, and other requirements for the use of biosolids for land application purposes. See § 4.9.10 through § 4.9.17. As more fully described in paragraph 3, below, these requirements are consistent with the requirements set forth in 40 C.F.R. § 503 pertaining to land application practices. As described in paragraph 5, below, such requirements may be implemented through permits issued by the Division or may be directly enforced without the need of a permit.



## 2. Authority to Issue Permits to TWTDS.

State law provides the authority to issue permits to TWTDS, including Federally owned or operated TWTDS, that generate or treat biosolids to be land applied. [40 C.F.R. § 122.1(b)(3)], including the authority to:

- a. Require permit application information [40 C.F.R. § 122.21];
- b. Require certification of permit applications and reports by authorized individuals [40 C.F.R. § 122.22];
- c. Impose pertinent permit conditions for the beneficial use of biosolids through land application, including:
  - (1) Standard conditions equivalent to those set forth in 40 C.F.R. § 122.41(a) through (n);
  - (2) Case-by-case conditions [40 C.F.R. § 122.43(a) and (b); 40 C.F.R. § 122.44(b)(2) and (c)];
  - (3) Reopener clause [40 C.F.R. § 122.44(c)(4)];
  - (4) Statement of permit duration not to exceed five (5) years [40 C.F.R. § 122.44(h) and 40 C.F.R. § 122.46];
  - (5) Compliance schedules and conditions [40 C.F.R. § 122.47(a)]; and
  - (6) Monitoring and reporting requirements [40 C.F.R. § 122.48];
- d. Provide public notice and the opportunity for public participation prior to action on a permit, consistent with 40 C.F.R. Part 124; and
- e. Modify, transfer, revoke and reissue, and terminate permits for cause [40 C.F.R. §§ 122.61, 122.62, 122.63, and 122.64].

In addition, the state has the authority to require preparers to comply with all applicable federal requirements, including 40 CFR Part 503, through permit terms and conditions. State law provides that biosolids originating from outside of Colorado will be subject to the same requirements (Notice of Authorization and permit terms and conditions) as biosolids originating inside Colorado.

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-103(13), 25-8-501(1), 25-8-501(2), and 25-8-509; Biosolids Regulations, §§ 4.9.3, 4.9.10(E), (H), 4.9.11; Discharge Permit Regulations.

Remarks of the Attorney General:

The CWA and EPA's regulations allow a State to choose whether to administer its delegated sewage sludge program as a component of the State's delegated discharge permit program, or as an independent activity. Colorado has elected to implement the minimum federal requirements of the program as a component of the State discharge permit program described in Part III, above. However, as further described in paragraph 5, below, the provisions of the Biosolids Regulations are independently enforceable.

The CWQCA authorizes the Division to "issue, suspend, revoke, modify, deny, and otherwise administer permits for . . . the use and disposal of biosolids." See C.R.S. § 25-8-501(2). The Division may issue permits to any "person" covered by the CWQCA, including, by definition, federal agencies. See C.R.S. § 25-8-103(13). Section 4.9.11 of the Biosolids Regulations specifically authorizes the Division to require any TWTDS to apply for a permit.

Permits required under § 4.9.11 of the Biosolids Regulations must be administered by the Division in accordance with the Discharge Permit Regulations. See § 4.9.11. Therefore, the Discharge Permit Regulations provide a substantial portion of the authority specified in subparagraphs (a) through (e), above. For example, § 6.5.1 provides the authority to require most of the permit application information required under 40 C.F.R. § 122.21(c)(2), 122.21(f) and 122.21(p). Signatory and certification requirements are specified in § 6.5.1(5). Applicable standard conditions, consistent with those required in 40 C.F.R. §§ 122.41, 122.44, 122.47 and 122.48, are specified in §§ 6.9.0, 6.9.3, 6.9.4, 6.9.5, 6.9.6 and 6.9.8. Permit conditions determined by the Division to be necessary to ensure compliance with the CWQA and the CWA, in addition to those specifically identified in § 6.9.3, including requiring preparers to comply with all applicable requirements of 40 CFR Part 503, are authorized to be included in permits. §§ 6.9.3(2), (6), (12), 6.9.7(5). The Division also has the authority to require that the terms and conditions of a Notice of Authorization for the Use and Distribution of Biosolids be incorporated into a permit. Thus, the Division has the authority to require that the holder of a Notice of Authorization, through permit terms and conditions, comply with all federal requirements, including 40 CFR Part 503. State law provides that biosolids originating outside Colorado will be subject to the same requirements (Notice of Authorization, permit terms and conditions) as biosolids that originate within Colorado. §§ 6.9.3, 6.9.10(E),



(H). Sections 6.6.2, 6.6.3 and 6.7.0 specify the Division's authority to provide public notice and the opportunity for public participation consistent with 40 C.F.R. Part 124. Sections 6.9.6 and 6.9.8 specifies the Division's authority to modify, transfer, revoke and reissue, and terminate permits for cause, consistent with 40 C.F.R. §§ 122.61, 122.62, 122.63, and 122.64.

In addition to the standard requirements applicable to all permittees, the Division has the authority to include in permits issued to TWTDS, prohibitions, standards, requirements and limitations specified in the Biosolids Regulations. See C.R.S. § 25-8-509. The Biosolids Regulations contain both minimum federal requirements and independent State requirements. Only those prohibitions, standards, requirements and limitations that are minimum federal requirements must be incorporated by the Division into discharge permits. See § 4.9.11. State requirements are administered through notices of authorization, independently of the federal program.

The cited provisions of the CWQCA, the Discharge Permit Regulations and the Biosolids Regulations provide the requisite State authority to issue permits to TWTDS.

### 3. Authority to Impose Land Application Standards

State law provides the authority to impose standards, prohibitions, requirements and limitations applicable to the land application of biosolids, including the authority to:

- a. Prohibit land application except in compliance with Part 503 standards [40 C.F.R. § 503.3(b)];
- b. Impose additional or more stringent standards when necessary to protect public health and the environment [40 C.F.R. § 503.5(a)];
- c. Exclude application of standards to sludge generated by industrial facilities, sewage sludge with high PCB concentration, grit and screenings, and commercial and industrial septage [40 C.F.R. § 503.6];
- d. Impose prohibitions and conditions applicable to land appliers consistent with 40 C.F.R. § 503.12 [40 C.F.R. § 503.12(a) through (j)];
- e. Impose prohibitions and conditions on any person that prepares biosolids for land application [40 C.F.R. § 503.12];
- f. Impose limits on the pollutant content of biosolids to be land applied [40 C.F.R. § 503.13];

- g. Impose management practices and limitations on land application of bulk biosolids [40 C.F.R. § 503.14];
- h. Impose operational standards, including site restrictions, pathogen requirements, and vector attraction reduction requirements [40 C.F.R. § 503.15];
- i. Impose pathogen requirements for classes of biosolids [40 C.F.R. § 503.32];
- j. Impose site restrictions on land application of biosolids [40 C.F.R. § 503.32(b)(5)]; and
- k. Impose vector attraction reduction requirements [40 C.F.R. § 503.33(b)].

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-205(1)(e), 25-8-501(1), and 25-8-509; Biosolids Regulations.

Remarks of the Attorney General:

Land application of biosolids is prohibited except in compliance with the Biosolids Regulations. See C.R.S. §§ 25-8-501(1) and 25-8-205(1)(e). The standards, prohibitions, requirements and limitations specified in paragraph 3(a) through (k), above, are set forth in the State's Biosolids Regulations. More stringent requirements may be adopted by the Commission and implemented by the Division if necessary to be consistent with CWA § 405. See C.R.S. § 25-8-205(1)(e).

The requirements set forth in the Biosolids Regulations apply only to the extent land application is for "beneficial use" and the materials involved meet the definition of "biosolids." See § 4.9.3. Industrial sewage sludge and commercial sewage sludge are specifically excluded from the definition of biosolids. See § 4.9.9.K. Distribution and land application of biosolids with high PCB concentration are specifically prohibited. See § 4.9.14.A.(1) and B.(1), and § 4.9.15.A. Sewage sludge containing hazardous waste is not expressly excluded from the scope of the Biosolids Regulations. It is my understanding that the Division will request the Commission to incorporate such express exclusion.

Notification requirements applicable to those who prepare biosolids in bulk are specified in § 4.9.14. In addition, § 4.9.10.A. authorizes the Division to require preparers to provide additional notification consistent with federal requirements. See e.g., § 4.9.10.A.(3).(c) and (o). The Biosolids Regulations do not expressly hold preparers responsible for compliance with applicable land application requirements. Nor do the regulations expressly require notification to the proper permitting authorities of



another state, where biosolids prepared in Colorado are to be applied in another state. It is my understanding that the Division will request the Commission to amend the Biosolids Regulations to incorporate provisions to this effect.

Limitations on the content of pollutants in biosolids to be land applied, consistent with the limits set forth in 40 C.F.R. § 503.13, are specified in §§ 4.9.12, 4.9.14 and 4.9.15 of the Biosolids Regulations.

Section 4.9.14 specifies management practices which are generally consistent with 40 C.F.R. § 503.14. An exception to this general consistency is the minimum distance required between a land application site and a dry stream bed. Federal regulations prohibit land application of bulk sewage sludge within ten (10) meters (i.e., 30 feet) of any U.S. waters. See 40 C.F.R. § 503.14(c). State requirements prohibit land application within 50 feet of most state waters, but only twenty (20) feet from dry stream beds (which are also considered "U.S. waters"). See § 4.9.15.B(2)(d). It is my understanding that the Division will request the Commission to increase such distance requirement to 30 feet, to be consistent with federal requirements. Section 4.9.15 specifies site and operational standards consistent with 40 C.F.R. § 503.15. Pathogen limitations and requirements applicable to Class A and Class B biosolids, consistent with 40 C.F.R. § 503.32, are specified in § 4.9.12.B. Site restrictions consistent with 40 C.F.R. § 503.32(b)(5) are specified in § 4.9.15.H and I. Finally, § 4.9.12.C. of the Biosolids Regulations specifies vector attraction reduction requirements which are consistent with the applicable provisions of 40 C.F.R. § 503.33.

#### 4. Authority to Conduct Compliance Monitoring Activities

State law provides the authority to:

- a. Enter and inspect premises used for generation and/or land application of biosolids for beneficial use [40 C.F.R. 123.26(c)];
- b. Take representative samples of biosolids to determine their quality and to determine compliance with applicable standards [40 C.F.R. § 123.26(a) through (d)]; and
- c. Require self-monitoring and reporting on biosolids use and quality [40 C.F.R. §§ 122.48 and 123.25(a)(19)].

#### State Statutory and Regulatory Authority:

C.R.S. § 25-8-306; Discharge Permit Regulations, §§ 6.9.3, 6.9.4, and 6.9.5; Biosolids Regulations, §§ 4.9.10, 4.9.11, 4.9.16, and 4.9.17.

Remarks of the Attorney General:

The State's authority to enter and inspect premises is extensively discussed in Part III, paragraph 5. State law provides the Division with broad authority to inspect land application sites and any other property or premise involved in the generation and/or use of biosolids for beneficial use, and to obtain any information, including biosolids samples, necessary to determine compliance with the standards set forth in the Biosolids Regulations. See C.R.S. § 25-8-306. It should be noted that, pursuant to C.R.S. § 25-8-306, the Division may enter and inspect a facility subject to the Biosolids Regulations, whether or not the facility is subject to a permit or permit requirement.

The Biosolids Regulations specify sampling, recording and reporting requirements applicable to persons who prepare and/or apply biosolids to beneficial use. See §§ 4.9.10, 4.9.16 and 4.9.17. Monitoring and analysis requirements are specified in § 4.9.16. Table 6 of that section specifies the frequency of monitoring required, based on the quantity of biosolids prepared or to be land applied. When compared to the federal requirements, the State monitoring frequency requirements appear to be less stringent, in that it takes a larger quantity of biosolids to trigger increased monitoring. Compare 40 C.F.R. § 503.16(a)(1), Table 1 with § 4.9.16, Table 6. However, it is my understanding that the monitoring frequencies set forth in Table 6 of the State's regulations are intended to be based on a different measurement system (i.e., "short tons") which, when translated into the measurement system used in the federal regulations (i.e., "metric tons"), results in a monitoring frequency schedule that is at least as stringent as the federal requirement.

The State's recording and reporting requirements are generally consistent with the federal requirements set forth in 40 C.F.R. §§ 503.17(a) and 503.18(a). An exception to this general consistency is the absence of a State certification requirement applicable to those who prepare biosolids for land application but do not themselves land apply it. Compare 40 C.F.R. § 503.17(a) with § 4.9.17.C. It is my understanding that the Division will propose to the Commission an amendment of the Biosolids Regulations which requires preparer certification under such circumstances.

**5. Authority to Enforce the State Biosolids Management Program**

State law provides authority to:

- a. Abate violations of Biosolids Management Program requirements [40 C.F.R. § 123.27(a)(1)];



- b. Seek civil penalties in the amount of up to \$10,000 per day for violations of Biosolids Management Program requirements [40 C.F.R. § 123.27(a)(3)];
- c. Seek temporary and permanent injunctive relief for violations of the Biosolids Management Program requirements [40 C.F.R. § 123.27(a)(1) and (2)];
- d. Seek criminal fines in the amount of up to \$25,000 per day for certain violations of the Biosolids Management Program requirements [40 C.F.R. § 123.27(a)(3)];
- e. Take such action as necessary to abate situations which present or could present an imminent and substantial danger to the public health or water quality [40 C.F.R. § 123.27(a)(1)].

State Statutory and Regulatory Authority:

C.R.S. §§ 25-8-307, 25-8-602 through 25-8-612; Biosolids Regulations, § 4.9.8.

Remarks of the Attorney General:

The Division's enforcement authority is extensively discussed in Part III, paragraph 10, above. In addition, since the Biosolids Regulations have been adopted as control regulations, see § 4.9.1, the Division may enforce their requirements whether or not such requirements are incorporated in a permit. See C.R.S. §§ 25-8-307 and 25-8-603 through 25-8-612; see also § 4.9.8.

**6. Authority to Provide Public Access to Information**

State law provides the authority to grant public access to information regarding land application of biosolids and related activities [40 C.F.R. § 123.25(a)(3)].

State Statutory and Regulatory Authority:

C.R.S. §§ 24-72-201 through 24-72-206; Discharge Permit Regulations, § 6.6.4.

Remarks of the Attorney General:

The State's authority to provide public access to information is extensively discussed in Part III, paragraph 8, above.


7. Conflict of Interest

The State's authority to prevent conflicts of interest is extensively discussed in Part III, paragraph 11, above.

VI. SUMMARY CONCLUSION

THEREFORE, I conclude that the laws of the State of Colorado provide adequate authority to carry out the program set forth in the "Description of Colorado Discharge Permit System Program", the "Colorado Industrial Pretreatment Program Description", and the "Colorado Biosolids Management Program Description" submitted with this Attorney General's Statement.

Signed this 11<sup>th</sup> day of August 1995 at Denver, Colorado.

  
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Gale A. Norton  
Attorney General  
State of Colorado



