CORA Document Summary - [Documents requested October 17, 2014]

Colorado’s Water Quality Control Division provided us the below-described documents under the Colorado Open Records Act (CORA). On October 17, 2014, we asked that CWQCD provide the following to us:

[1] Copies of all reports, records, letters, notes, memoranda, permits, and internal and external communications (hereinafter “documents”) mentioning or pertaining to the “administrative continuance” of the Colorado Produced Water Treatment Facilities General Permit (COG-840000) (“General Permit”) issued in response to the General Permit’s scheduled expiration on August 30, 2014.

[2] Copies of all documents pertaining to any certifications to discharge produced water – including but not limited to applications for new certifications, certification renewal applications, and discharge monitoring reports – under the General Permit granted by CDPHE from July 1st, 2014 to October 20th, 2014.

[3] Copies of all documents that address the General Permit’s implementation of the federal Clean Water Act’s beneficial use requirement, 40 C.F.R. part 435.50, including all documents relating to reporting requirements for individual certifications under the General Permit.

[4] Copies of all documents and database files that identify parties who have discharged or are currently authorized to discharge produced water under the General Permit.

We received a total of 15documents. All the documents pertained to either the 1975 or 1995 CWA delegation of National Pollution Discharge Elimination System (NPDES) duties by the EPA to the State of Colorado. The 1975 CWA delegation documents include:

* A letter from EPA to CO approving request that allows CO to issue individual NPDES permits, as long as CO complies with section 402 of Federal Water Pollution Control Act (Document 1)
* A MOA describing the permitting authority of CO as granted by the EPA, as well as the guidelines, policies, and other federal requirements that CO must follow (Document 2)

The 1995 delegation documents describe:

* A request by Colorado for expanded state permitting primacy for Clean Water Act programs which include: 1) federal facilities, 2) pretreatment, and 3) biosolids (Document 4);
* An MOA between EPA and CO describing continued permitting authority of NPDES duties (Document 6);
* An MOA between EPA and CO describing the expansion of Colorado’s permitting authority under the CWA to include the National Pretreatment Program (NPP) (Document 7);
* An MOA between EPA and CO describing the expansion of Colorado’s permitting authority under the CWA to include the National Sludge Management Program (NSMP) (Document 8);
* Various documents detailing permitting procedure, including copies of current waste-treatment and permit-generation programs for specific sets of pollutants and guidelines for implementation of permit enforcement and compliance (Documents 9-15);
* A statement from the CO Attorney General certifying the state’s NPDES, NPP, and NSMP permitting programs, comparisons between the CO statutes and the federal regulations they replace, and the “statutory and regulatory amendments intended to address EPA's concerns, [... and] authorities for the implementation of the State program at federal facilities.” The statement also “updates statutory and regulatory references contained in the [original] 1974 Attorney General's Statement.” (Document 16)

Upon reviewing these documents, we have the following the concerns:

* The fulfillment of the October 17th, 2015 CORA request did not include any documents pertaining to number [4] of our request: “*Copies of all documents and database files that identify parties who have discharged or are currently authorized to discharge produced water under the General Permit.*” Document 16, the statement of the CO Attorney General, specifically details that “The following information is available to the public for inspection and copying: 1) any NPDES permit, permit application, or form; 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.” While it is possible that no such document or database identifying parties who are authorized under the General Permit, it seems unlikely that no such document or list exists. Further CORA requests may be necessary.