

  
*Colorado Legislative Council Staff Fiscal Note*  
**STATE**  
**FISCAL IMPACT**

**Drafting Number:** LLS 12-0565  
**Prime Sponsor(s):** Sen. Grantham  
 Rep. Becker

**Date:** February 7, 2012  
**Bill Status:** Senate Agriculture  
**Fiscal Analyst:** Alex Schatz (303-866-4375)

**TITLE:** CONCERNING TIMELY ISSUANCE OF ENVIRONMENTAL CONTROL PERMITS.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
<b>State Revenue</b>		
<b>State Expenditures</b>		
General Fund*	\$1,031,216	\$654,410
Cash Funds		
Stationary Sources Control Fund	196,901	83,291
<b>FTE Position Change</b>	16.8 FTE	10.8 FTE
<b>Effective Date:</b> August 8, 2012, if the General Assembly adjourns on May 9, 2012, as scheduled, and no referendum petition is filed.		
<b>Appropriation Summary for FY 2012-2013:</b> See State Appropriations section.		
<b>Local Government Impact:</b> None.		

\* *The fiscal note assumes General Fund will be appropriated for the purposes of implementing the bill, rather than cash funds from the Water Quality Control Fund. See discussion in the State Appropriations section.*

**Summary of Legislation**

Under current law, renewable operating permits for air emissions must be approved or denied by the Air Pollution Control Division (APCD) of the Colorado Department of Public Health and Environment (CDPHE) within 18 months after receipt of a complete application. For water quality permits in the Colorado Discharge Permit System (CDPS), administered by the Water Quality Control Division (WQCD) of CDPHE, an application must be approved or denied within 180 days (6 months) of receipt of the application. However, the deadline for CDPS permit action may be extended for specified reasons, including correspondence regarding completeness of the application and the undertaking of public meetings to receive input from interested persons.

The bill requires the APCD and WQCD to take final action on air emissions permits and CDPS permits within 12 months after an application is deemed complete.

## **Background**

***Permitting backlog.*** There is presently a backlog of permit reviews in both the APCD and the WQCD. The fiscal note assumes that the bill requires all backlogged permits to be processed within 12 months of its effective date.

Based on funding levels drawn from current statutory fees, the existing personal services budget for WQCD is insufficient to keep up with the annual workload for water quality permits. The personal services budget for APCD is also established at a level that has resulted in a backlog of overdue Title V (industrial source) air permits. If it is determined that this bill applies only prospectively, or that current personal services budgets for CDPHE environmental divisions will be addressed through other means, this fiscal note will be revised to reflect no impact related to the current permit backlog.

***Water Quality Control Division funding.*** The Water Quality Control Division (WQCD) is responsible for various regulatory programs related to water quality, including safe drinking water, pollutant discharge permitting, and watershed monitoring. WQCD activities are supported in part through the Water Quality Control Fund, which consists of revenue from fees set by law for Colorado Discharge Permit System (CDPS) permits. Current permit fees are insufficient to support demands on the Water Quality Control Fund due to workload in the WQCD, including the requisite level of effort to meet present state and federal requirements.

***Colorado water quality regulation and the U.S. Environmental Protection Agency (EPA).*** State water quality regulations are enacted and administered in place of direct regulation of water quality by the EPA. Under its own Clean Water Act authority, the EPA monitors the state program and has entered into an annually-renewed work-sharing agreement with the state. Should the state fail to uphold sufficient water quality standards, the EPA may reassert its authority to administer stormwater permitting and other programs within the purview of the Clean Water Act.

***Air Pollution Control Division funding.*** Air emissions permitting functions in the APCD are supported by the Stationary Sources Control Fund. Based on current budget projections, fee revenue to the Stationary Sources Control Fund is sufficient for permitting programs in the APCD.

***Colorado air pollution regulation and the U.S. EPA.*** The state of Colorado, through CDPHE, is a delegated permitting authority under the federal Clean Air Act and its amendments. Many industrial sources of air emissions in Colorado are in nonattainment areas relative to federal air quality standards, requiring labor-intensive modeling and review prior to issuance of an air permit. For Title V air permits, federal regulations provide that a state permitting authority "take final action on each permit application (including a request for permit modification or renewal) within 18 months, or such lesser time approved by the [EPA] Administrator, after receiving a complete application."

**State Expenditures**

**Expediting the air and water quality permit process and eliminating the backlog of permit application will increase costs on CDPHE by \$1,228,117 and 16.8 FTE in FY 2012-13 and \$737,701 and 10.8 FTE in FY 2013-14.**

The fiscal note assumes that General Fund will be appropriated for the costs of the WQCD. Implementation of the bill fits within the allowable uses of the Water Quality Control Fund (WQCF), and the General Assembly may accordingly elect to appropriate moneys to CDPHE from the fund for the purposes of this bill. However, the WQCF is supported by fixed fee revenue and may not be able to sustain additional appropriations due to projected insolvency.

Table 1 summarizes costs to the APCD and WQCD in FY 2012-13 and FY 2013-14.

<b>Table 1. Expenditures by CDPHE Under SB 12-132</b>		
<b>Cost Components</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>
<i><u>Air Pollution Control Division</u></i>		
Personal Services	\$182,768	\$82,246
<i>FTE</i>	2.5	1.1
Operating Expenses and Capital Outlay	14,133	1,045
<i><u>Water Quality Control Division</u></i>		
Personal Services	950,378	645,195
<i>FTE</i>	14.3	9.7
Operating Expenses and Capital Outlay	80,838	9,215
<b><u>TOTAL</u></b>	<b><u>\$1,228,117</u></b>	<b><u>\$737,701</u></b>

For APCD, expedited review of Title V renewable operating permits will require \$196,901 cash funds and 2.5 FTE in FY 2012-13, including work to address the current permitting backlog. To address the Title V permit backlog, APCD has increased workload costs of \$83,291 and 1.1 FTE in FY 2013-14. Maintaining Title V air permits in compliance with the bill will require \$55,590 and 0.8 FTE in FY 2014-15 and future fiscal years.

Timely review of WQCD permits will require additional personal services. WQCD staff reviews a variety of CDPS permit types, including individual and general permits from construction, industrial discharge, municipal storm sewers, and other point sources of discharge water. Implementing an absolute deadline for permit action at 12 months after receipt of a complete CDPS application will increase workload in the WQCD to address its existing backlog, and thereafter to address all renewals and new applications within 12 months of finding a complete application. In FY 2012-13, the WQCD will require \$1,031,216 General Fund and 14.3 FTE. In FY 2013-14,

CDPS-related provisions of the bill will drive \$654,410 and 9.7 FTE in costs to the WQCD. In FY 2014-15 and future fiscal years, the WQCD will incur costs of \$444,140 and 6.6 FTE. See the discussion in the State Appropriations section, below, regarding the availability of cash funds for new permitting workload in the WQCD.

This fiscal note assumes the number of air and water quality applications and renewals will remain at current levels. The fiscal note also assumes that CDPHE will adjust its practices to comply with the bill immediately after its effective date, and further assumes that faster processing of applications does not conflict with current state administrative rules or federal law. State administrative regulations may be adjusted to reflect timelines from the bill in conjunction with other periodic rulemaking; however, if this bill conflicts with any current state or federal rule, this may drive additional costs, including bill-specific rulemaking and the involvement of CDPHE legal counsel from the Department of Law.

**Expenditures Not Included**

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 2.

<b>Table 2. Expenditures Not Included Under SB 12-132*</b>		
<b>Cost Components</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$103,437	\$66,493
Supplemental Employee Retirement Payments	60,414	44,650
Indirect Costs	243,626	156,400
<b>TOTAL</b>	<b>\$407,477</b>	<b>\$267,543</b>

*\*More information is available at: <http://colorado.gov/fiscalnotes>*

**State Appropriations**

For FY 2012-13, the Department of Public Health and Environment requires a General Fund appropriation of \$1,031,216 and 13.8 FTE, and a cash fund appropriation of \$196,901 and 3.0 FTE from the Stationary Sources Control Fund.

**Departments Contacted**

Public Health and Environment                      Natural Resources                      Law