

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 13-0108	Date: February 1, 2013
Prime Sponsor(s): Sen. Brophy Rep. Sonnenberg	Bill Status: Senate SVMA Fiscal Analyst: Alex Schatz (303-866-4375)

TITLE: CONCERNING A REQUIREMENT THAT THE DIVISION OF ADMINISTRATION OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT FOLLOW RULE-MAKING PROCEDURES WHEN PROPOSING CHANGES TO GENERAL PERMITS RELATED TO WATER QUALITY CONTROL.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue		
State Expenditures		
General Fund *	\$87,778**	\$99,636
FTE Position Change	0.9 FTE**	1.1 FTE
Effective Date: August 7, 2013, if the General Assembly adjourns on May 8, 2013, as scheduled, and no referendum petition is filed.		
Appropriation Summary for FY 2013-2014: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

* 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.
 ** Of this amount, \$37,080 and 0.2 FTE are reappropriated to the Department of Law in FY 2013-14.

Summary of Legislation

This bill, recommended by the **Water Resources Review Committee**, requires the Water Quality Control Division (WQCD) in the Colorado Department of Public Health and Environment (CDPHE) to follow rulemaking procedures in the State Administrative Procedures Act (APA) when changing the requirement for certain permitted water discharges. When the WQCD proposes new or amended requirements that must be met by dischargers authorized under a Category 7 general permit, the WQCD must provide certain information in advance of a formal rulemaking hearing, including:

- a statement of basis and purpose;
- supporting evidence; and
- a cost-benefit study.

Background

Facilities that contribute pollutants to waters of the state are regulated through the Colorado Discharge Permit System (CDPS), administered by the WQCD. Certain types of discharges, typically from sources with predictable characteristics and well-established best management practices, are eligible for regulation under a general permit. Most general permits under the CDPS are included in "Category 7" of the statutory fee table (Section 25-8-502 (1)(b)(I)(G), C.R.S.). The WQCD currently manages discharges under 13 active Category 7 general permits. General permits are renewed on a 5-year cycle, with routine review at the time of renewal of all terms and conditions applicable to operators under the permit.

State Expenditures

The bill increases state expenditures in FY 2013-14 by \$87,778 and 0.9 FTE, and in FY 2014-15 by \$99,636 and 1.1 FTE. Each year, the bill affects the CDPHE and the Department of Law by requiring 3 formal rulemakings related to CDPS permits. The bill may also affect other state agencies, as described below. Table 1 summarizes cost increases in the CDPHE and Department of Law.

Cost Components	FY 2013-14	FY 2014-15
Personal Services	45,422	\$61,701
FTE (including 0.2 FTE for Dept. of Law)	0.9	1.1
Operating Expenses and Capital Outlay	5,276	855
Legal Services (480 hrs. * \$77.25/hr.)	37,080	37,080
TOTAL	\$87,778	\$99,636

CDPHE. Based on the 13 Category 7 general permits currently administered through the CDPS program, the 5-year routine renewal cycle will affect an average of 2.6 permits each fiscal year. Rulemaking is likely with each permit renewal in the foreseeable future, based on the comprehensive scope of routine review, coupled with the WQCD's recent prioritized attention to the terms and conditions of various Category 7 permits.

The CDPS program also occasionally involves new general permits or modification of existing general permits outside the standard 5-year renewal cycle. The bill is assumed to apply to 0.4 permits, on average, each fiscal year (or 1 rulemaking every 2-1/2 years) due to issuance of a new general permit or a permit modification outside of the renewal cycle.

Additional rulemakings increase workload for various staff in the WQCD. Tasks required for each rulemaking include prehearing statements, compilation of evidence, assessing and responding to input by parties, cost-benefit analysis, formal notices, and final action following the hearing. Collectively, the bill increases CDPHE workload by 600 hours, or 0.3 FTE, at a blended cost of \$20,852 for each rulemaking. Assuming 3 new rulemakings per year, the bill increases costs in the CDPHE by \$62,556 and 0.9 FTE.

Department of Law. Each rulemaking affecting CDPS permit requirements will consume an average 160 hours of legal services. Under the bill, state expenditures in the Department of Law will increase by \$37,080 and 0.2 FTE each fiscal year. State expenditures to cover the Department of Law's increased costs are reappropriated from the CDPHE.

Other state agencies. Various state agencies, such as the Department of Transportation (CDOT), hold CDPS permits, though the fiscal note has not found any specific agency permitted under a Category 7 general permit. To the extent that state agencies hold an affected permit, an extended procedure to modify permit requirements will delay costs associated with new paperwork at the same time it extends administrative costs for permit processing. These effects on permit holder state agencies are assumed to be minimal and offsetting.

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.

Table 2. Expenditures Not Included Under SB 13-073*		
Cost Components	FY 2013-14	FY 2014-15
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$4,714	\$6,065
Supplemental Employee Retirement Payments	\$2,788	4,206
TOTAL	\$7,502	\$10,271

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

Local Government Impact

As permittees under the CDPS, local governments may experience minimal fiscal effects under the bill. The bill potentially affects cities, towns, counties, and special districts that operate a construction materials site (e.g., sand and gravel extraction), manufacture asphalt or concrete, or otherwise operate a facility under a Category 7 general permit. As discussed above in the 'State Expenditures - Other state agencies' section, variation in the amount of paperwork and length of the CDPS permitting process may vary for permit holders, with minimal, offsetting effects on the expenditures of affected agencies.

State Appropriations

The Department of Public Health and Environment requires a General Fund appropriation of \$87,778 and 0.7 FTE for FY 2013-14. Of this amount, \$37,080 is reappropriated to the Department of Law, and 0.2 FTE.

The fiscal note assumes that General Fund will be appropriated for the one-time costs of CDPHE in FY 2013-14. 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.

Departmental Differences

The fiscal note assumes that 3 new rulemakings will be required in each fiscal year, while the **CDPHE estimates total costs of \$92,456 and 1.2 FTE in FY 2013-14** based on 4.6 rulemakings each year, consisting of 2.6 rulemakings at renewal, 1 rulemaking for a new general permit, and 1 rulemaking for an out-of-cycle permit modification. The **Department of Law estimates total costs of \$77,250 and 0.6 FTE in FY 2013-14**, with 5 rulemakings each year based on the vagueness of permit language, and assuming that each rulemaking will be appealed. For the following reasons, 3 rulemakings per year is a valid estimate for the CDPHE and the Department of Law:

- The trigger for rulemaking is "new or amended permit requirements for dischargers to meet to obtain or maintain authorization for discharges under the permit." According to CDPHE, out-of-cycle permit modifications typically "maintain or enhance the ability of facilities to obtain coverage under a general permit." **One rulemaking each year is not warranted to address out-of-cycle modifications, which do not typically trigger rulemaking under the bill.**
- Actions to introduce new general permits occur, on average, less than annually, and the required rulemaking for a new permit may be offset by the expiration or lack of significant activity upon renewal of other Category 7 general permits. **Substantially less than 1 rulemaking per year is adequate to address new permits.**
- The CDPHE has devoted significant resources, within its existing appropriations, to address changes to permit requirements. Though no formal rulemaking has been required under current law, the CDPHE's current efforts duplicate certain tasks required for a formal rulemaking.
- As acknowledged by the Department of Law, appeals of rulemakings are rare, and the fiscal note does not estimate the likelihood of litigation.

Technical Note

The introduced bill requires the WQCD to engage in rulemaking activities. The WQCD does not generally possess rulemaking authority, with the Water Quality Control Commission (WQCC) performing rulemaking functions for most water quality regulation in the state. Regardless of the WQCD's ability to engage in rulemaking, the bill may conflict with provisions of Colorado water

quality law that reserve to the WQCC authority over CDPS permit requirements. Accordingly, the fiscal note assumes that the bill will be implemented by either the WQCD under its own authority, or by the WQCD as supporting staff for the WQCC.

Departments Contacted

Law
Agriculture
Municipalities
Transportation

Public Health and Environment
Natural Resources
Personnel and Administration

Local Affairs
Counties
Corrections