



CACI COLORADO ASSOCIATION
OF COMMERCE & INDUSTRY

June 30, 2016

Patrick Pfaltzgraff, Division Director
Water Quality Control Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

RE: Clean Water Program Permit Fee Structure Stakeholder Process, June 30th Feedback

Dear Director Patrick Pfaltzgraff,

The Colorado Association of Commerce & Industry (CACI) is the State Chamber of Commerce, representing hundreds of businesses of all sizes and industries across the state, as well as trade associations, economic development organizations, and local chambers of commerce. On behalf of our members, CACI has been participating in the Water Quality Control Division's (WQCD) Clean Water Program (CWP) Fee Structure Stakeholder Process.

Due to the nature of this issue and the structure of the online feedback survey, CACI feels it is necessary to communicate the following priorities and concerns of CACI and our impacted members regarding this process and potential changes to the Clean Water Program's permit fee structure:

1. CACI welcomes the WQCD "Policy Recommendation" that "fees remain in statute," as presented by WQCD leadership at the initial May 18th stakeholder meeting of this process (*see, [Slide 20, Clean Water Fee Bill Stakeholder Meeting Presentation, May 18, 2016](#)*). CACI continues to prioritize keeping the CWP's specific permit fee amounts defined in statute. This has long been the position of CACI's membership and CACI has consistently communicated this position throughout the three-plus years of stakeholder processes focused on potential changes to the program's permit fee structures and amounts.

Retaining fees in state statute provides regulated permittees certainty over time regarding the permit fee amounts that they are required to pay. Retaining statutory fee amounts also requires that the legislature openly debates critical policy changes associated with future changes to the CWP's permit fee structure, including but not limited to the fee amounts, appropriate levels of General Fund support for the CWP, the WQCD's accounting and transparency practices regarding program revenues and expenditures, and the WQCD's reporting to stakeholders and the legislature regarding the efficiency and performance of the Division in administering the CWP. CACI believes it is critical that regulated permittees responsible for paying permit fees have the opportunity to engage CDPHE, WQCD, industry stakeholder across the CWP's sectors, and legislators when proposals regarding potential changes to the CWP permit fee structure or fee amounts are being developed or advanced.

Recent and relevant legislative efforts surrounding HB-15-1249 and HB-16-1413, and the resulting increased levels of data collection, transparency, and reporting regarding WQCD's accounting of program revenues and expenses by CWP sector offer clear examples of the importance of open discussion and stakeholder dialogue that includes the regulated permittee community, the WQCD staff, and the legislature. CACI applauds the WQCD's efforts to respond to the statutory directives regarding data collection, transparency and reporting in both HB-15-1249 and HB-16-1413. The reporting of sector-by-sector CWP revenues and expenditures by fund type (General Fund, cash fund, and federal fund), and WQCD's work to communicate this data to stakeholders has been essential to the ongoing and productive discussions regarding potential changes to the CWP permit fee structure or fee amounts.

2. CACI does not oppose permit fee increases as a matter of principle, and remains open to considering permit fee structure proposals that include permit fee increases commensurate with justifiable funding needs necessary to maintain CWP operations. CACI also believes that within a statutory permit fee structure, the existing budgetary process and supplemental request processes provide adequate opportunity to the WQCD to submit needed General Fund adjustments on an annual or biannual basis to respond to marginal fluctuations in cash fund or federal fund revenues. Assuming that General Fund support for the CWP is maintained at current levels or adjusts up or down with cash fund revenues per an agreed upon target "Cash Fund-General Fund Revenue Ratio," and that the WQCD works with the regulated permittees across the CWP sectors to gain consensus support for the target revenue ratios and corresponding fee adjustments needed to address the existing operational deficit the Division now faces, CACI believes that the annual budget and supplemental processes provide the WQCD with meaningful opportunities to address future marginal fluctuations in CWP revenues.

3. General Fund appropriations dedicated to supporting the CWP should be maintained, if not increased, alongside potentially significant increases to CWP permit fee amounts. CACI also believes that state statute should set a statutory minimum annual General Fund appropriation for the CWP, set to FY-2016-2017 levels or higher.

The Colorado legislature should not take Colorado's clean water resources for granted, nor should the legislature seek to increasingly shift the cost burden of the CWP's administration onto the regulated permittee community. Clean water is essential to all aspects of life, commerce and industry throughout the State of Colorado. Clean water resources are also a principal element of the pristine natural environment that underlies Colorado's identity and culture, as well as our state's status as a national and international tourism destination for outdoor enthusiasts. Accordingly, the benefit of clean water resources to Colorado's general health, wellness, and environment is shared broadly throughout the state without limitation.

Furthermore, General Funds are not a "subsidy," and General Fund support for the CWP is in no way an undue corporate subsidy. General Funds are comprised of tax revenues collected from general state constituencies for the purpose of supporting programs and initiatives that preserve and augment public good throughout the state. Without question the CWP is such a program, as all Colorado citizens, all elements of Colorado's economy, and the preservation of Colorado's pristine environment depend directly upon the protection of our state's clean water resources. Accordingly, the Colorado legislature should recognize both the importance of Colorado's clean water resources and the shared benefit of these resources to all Coloradans by maintaining or increasing General Fund support for the CWP.

4. Every three (3) to five (5) years, the legislature, in coordination with the WQCD and the regulated CWP permittee stakeholders, should review the impact that changes to the CWP permit fee structure and fee amounts have generated on the CWP operations and stakeholders. Regular reviews on a three-year or five-year cycle will allow all vested stakeholders to analyze the impact that existing statutory policy is having on CWP operations, revenues and expenditures, and any specific policy goals defined in statute. Regular reviews will also provide the WQCD and regulated stakeholders a statutorily defined opportunity to work with the legislature to develop and advance new policy proposals to ensure that the statutory permit fee structure accurately reflects the operational realities of the CWP and the needs of CWP permittee stakeholders.

5. CACI believes that at least one year in advance of the initial statutorily required legislative review of the CWP permit fee structure, the legislature should act to require the following two actions: 1) a full audit of the CWP by the legislative Audit Committee, and 2) a Lean program performance review of the CWP to determine the effectiveness of the WQCD in administering the CWP and the degree to which the WQCD implements best practices aimed at achieving efficiencies in the permit application review and permit renewal processes. The WQCD should collaborate with the regulated community to identify best practices that are currently being utilized by similar regulatory programs in other states and or other regulatory permitting programs administered by CDPHE, and to identify the key considerations that should be addressed in the Lean performance review of the CWP's administration.

6. Regulated permittees that pay CWP permit fees should not bear the cost burden of "concerned citizen" challenges to CWP permit applications. Simply stated, any individual or entity that challenges a pending permit application during the public notice and comment period of the public permit review process so as to create increased workload demands on WQCD's CWP permitting staff should be subject to permit fees or "permit challenge" fees commensurate with the level of service that their permit application challenge generates. At best, the challenging party should be directly responsible for fees commensurate with the workload increase resulting from their permit challenge. At the very least, unfunded workload increases unrelated to the WQCD's review of pending permit applications exist as yet another reason that General Fund support for the CWP should be maintained or increased, as common sense and fairness dictate that neither an operator nor the broader regulated permittee community should be forced to bear the administrative cost burden associated with responding to permit challenges that are directly adverse to the interests of regulated operators.

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The following questions have been raised during CACI's internal stakeholder meetings focused on generating feedback regarding the WQCD "starting scenario" by June 30:

Regarding the current and future funding levels needed to support CWP operations:

Can the WQCD identify the specific amounts of total revenue and sector-by-sector revenue support that it projects it will require to operate the CWP:

- To maintain the current level of services?
- To maintain the current level of services throughout the next 3 or 5 years?

- To maintain the current level of services throughout the next 3 or 5 years and build the 16.5% revenue reserve?
- To maintain the current level of services throughout the next 3 or 5 years and achieve specifically identified policy goals?

***CACI believes that a clearer understanding of the funding levels required by the WQCD to administer the CWP and achieve specific policy goals - in the coming year and over time - is critical to ongoing discussions regarding how to amend the existing CWP permit fee structure and fee amounts. A precise understanding of WQCD's current and future funding needs – by revenue type – for CWP administration in total and by CWP sector will have a direct impact on efforts to calculate the revenue levels by revenue source needed to fund each sector. In effect, beginning with a precise understanding of the current and future funding levels required by the WQCD to administer the CWP will allow stakeholders to “work backward” from those amounts to understand what impact various “revenue ratios” could be utilized to achieve the defined funding needs, and what impact those ratios will have on each CWP sector's permit fee structure and fee amounts.

Regarding Federal Funds & the Interactive Clean Water Fee Tool:

How are federal funds accounted for by this tool?

Colorado's FY-2016-2017 budget includes spending authority for \$1,001,155 in Federal Funds across the six CWP sectors, including \$242,066 for the Commerce & Industry Sector and \$488,247 for the Public & Private Utilities Sector. Federal funds amount to approximately 16% of the total budgeted spending authority for the CWP, approximately 14.6% of the total budgeted spending authority for the C&I sector, and approximately 19% of the total budgeted spending authority for the P&PU sector. If nearly 16% of the total budget for the CWP is simply unaccounted for in the functionality of the interactive fee tool, it is impossible for stakeholders to gain an accurate understanding of the potential impact that different general fund and cash fund ratios for each CWP sector will generate on the fee amounts paid by each sector. The tool's failure to account for the fact that neither the Pesticides Sector or the Water Quality Certification Sector receive any General Funds further complicates the accuracy of the tool in helping stakeholders understand the impact of potential policy changes.

How does the WQCD plan to expressly account for federal revenue and expenditure levels and the impact that federal revenue and expenditure levels will have on the CWP's General Fund and Cash Fund revenue needs by CWP sector?

Are significant changes to the revenue sources used to fund operations for the Pesticides Sector or the Water Quality Certification Sector likely to occur?

At this point, neither of these sectors receive any General Fund support, and are primarily cash funded or supported by federal funds due to the nature of each sectors' operations. If a revenue ratio were to be applied to these sectors, as is being considered for the other CWP sectors, then the allocation of General Fund revenues to these sectors will have the effect of decreasing General Funds available to support the other four sectors. Therefore,

this would again increase the pressure to increase cash fund revenues from the remaining four sectors.

If CWP “fees remain in statute” is maintained as a WQCD policy recommendation and underlying assumption for this stakeholder process, is it necessary to also legislate revenue ratio requirements into statute? If such ratios were legislated into statute, how would these revenue ratios interact with permit fee amounts specifically defined in statute? And if revenue ratios were inserted into statute, what processes and timelines – legislative, budgetary, and regulatory – would be required to adjust permit fees and General Fund levels, and what entities would be directly involved in this process? What role would CWP permittee stakeholders play in this process?

Finally, CACI believes that it is important that the next steps of this stakeholder process work to clearly identify total revenue levels the WQCD requires to maintain CWP operations and or achieve additional specifically defined policy goals, and to also expressly identify what the appropriate General Fund, cash fund, and federal fund revenue target goals must be in order for each CWP sector to maintain CWP operations over time. While CACI is not prepared at this point in time to propose specific target levels of revenues to be achieved by revenue category (General Fund, cash fund, federal fund) within either the Commerce & Industry Sector or the Public & Private Utilities Sector, CACI believes that to the greatest extent possible, this process should seek to equitably balance the cost and revenue burdens across the various revenue categories, except where the existing structure and or express policy goals of a specific CWP sector dictate otherwise.

Thank you in advance for WQCD’s consideration of CACI’s comments regarding this pressing matter. If you have questions or concerns regarding this comment submission, please contact CACI Director of Government Affairs, Daniel O’Connell at 303-866-9622 or doconnell@cochamber.com.

Thank you,

A handwritten signature in blue ink, appearing to read "Daniel O'Connell".

Daniel O’Connell

CC: Karin McGowan, Deputy Executive Director, CDPHE
Michael Nicoletti, Legislative Liaison, CDPHE

