

ANALYSIS OF COLORADO
DEPARTMENT OF HEALTH'S
ADMINISTRATION OF THE
NPDES PROGRAM

April 23, 1979

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DEPARTMENT OF HEALTH'S
ADMINISTRATION OF THE
NPDES PROGRAM

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April 23, 1979

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ANALYSIS OF COLORADO DOH ADMINISTRATION OF THE NPDES PERMIT PROGRAM
INTRODUCTION

Background

On October 18, 1972, Congress passed the Federal Water Pollution Control Act Amendments of 1972, (33 USC §§ 1251-1376, Supp. 1973; hereinafter the "Act"). This legislation established the National Pollutant Discharge Elimination System (NPDES) permit program, under which the Administrator of the U. S. Environmental Protection Agency (EPA) may issue permits which control the discharge of pollutants into navigable waters from municipal, industrial, and agricultural point sources.

Section 402(b) of the Act provides that the Governor of a State desiring to administer the NPDES program for discharge into navigable waters within its jurisdiction may submit to the Administrator of the EPA a full and complete description of the program it intends to administer, including a statement from the State Attorney General that the laws of the State provide adequate authority to carry out the described program. The criteria to be satisfied by a State wishing to administer the NPDES program are found in regulations at 40 C.F.R. Part 124. The Administrator is required to approve each such submitted program unless the program does not meet the requirements of § 402(b) and EPA's guidelines which include adequacy of State resources. Among other authorities, the State must have: (1) adequate authority to issue permits which comply with all pertinent requirements of the Act; (2) adequate authority, including civil and criminal penalties, to abate violations of permits; and (3) authority to insure that the Administrator, the public, any other affected State, and other affected agencies are

given notice of each permit application as well as the opportunity for a public hearing prior to final action on each permit application.

On December 27, 1974, Region VIII EPA received a formal request from the Governor of Colorado to operate the NPDES Permit Program. Following a detailed review by the Region, a public hearing on the application was held in Denver, Colorado. After consideration of public and Regional comments, the Administrator of EPA, on March 27, 1975, granted the Colorado Department of Health (CDOH) authority to operate the NPDES permit program. The Administrator's approval letter stressed that Colorado's program must at all times be conducted in accordance with Section 402 of the Act, all guidelines promulgated pursuant to Section 304(h)(2) of the Act and the Memorandum of Agreement and; in addition, that with the transfer of authority Colorado was responsible for taking enforcement actions for violations of all State-issued permits.

The application submitted by the Governor is comprised of 10 sections. The first section covers program description and details how the Colorado Department of Health (CDOH) will administer the NPDES program. It includes a description of the CDOH organization, permit procedures, resources devoted to the permit program, State regulations and authority, the Colorado Water Quality Control Act, the Colorado Water Quality Standards, and the Memorandum of Agreement. Also included is the Attorney General's Statement which certifies that Colorado has sufficient legal authority and satisfactory regulations to administer the NPDES program and that no person issuing NPDES permits is subject to a conflict of interest as defined by Federal regulations.

Purpose

The Act requires that any State NPDES permit program shall at all

times be administered in accordance with Section 402(b) and the applicable guidelines. Whenever the Administrator determines after public hearing that a State is not administering a program in accordance with these requirements, he is required to so notify the State and, if appropriate corrective action is not taken within a reasonable period (not to exceed ninety days), the Administrator is required to withdraw approval of the program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State and made public, the reasons, in writing, for withdrawal. The purpose of this analysis is to assist in determining whether the Colorado Department of Health has administered the NPDES permit program consistent with the requirements of the Act.

The analysis was agreed to by top management of the Region VIII EPA and Colorado Department of Health at the Fiscal Year 1978 mid-year program review session held June 7, 1978. A plan for carrying out the analysis was developed and, on June 23, 1978, EPA and Water Quality Control Division agreed to initiate the analysis. A copy of the plan appears as Attachment A.

Organization

The report is divided according to the major activities that comprise any NPDES program and is supplemented with management and resource analyses. An analysis of Colorado's permit issuance performance is included in the first chapter. Permit issuance functions, by definition, include receipt and review of applications, the analyses and application of State and Federal standards to each specific discharger, public participation activities related to proposed decisions, and finally, issuance or reissuance of permits according to a priority system. The adjudication of contested

issues of fact is also part of the permit issuance function. Compliance assurance and enforcement are documented in the second major chapter of the report. Compliance assurance functions, the second major area in an NPDES permit program, includes the maintenance of a source inventory, the review of Discharge Monitoring Reports submitted by permittees, pre-enforcement evaluations related to effluent and compliance date violations, and enforcement evaluations recommending specific responses to permittees.

The third major area of activity necessary to carry out the NPDES program flows from the compliance assurance functions identified above. Documentation of facts, analyses of specific violations within the context of a response matrix, and the issuance of Warning Letters, Administrative Orders, Notices of Violation, or referrals to the Attorney General are major segments of enforcement area. The most resource-intensive aspect involves the follow-up needed to bring enforcement cases to successful completion. Of necessity this function requires close coordination between technical and legal personnel.

A discussion of management issues related to all aspects of the NPDES program, that is, permit issuance, compliance assurance, and enforcement, makes up the third major chapter. Lastly, a specific analysis of Colorado's NPDES program needs in terms of number of staff required to effectively implement the NPDES program completes the report.

FINDINGS

Communications with the Water Quality Control Division staff and coordination on the varied aspects of the National Pollutant Discharge Elimination System permit program form the basis for a substantial portion of EPA's knowledge of the WQCD's policies, practices and program operations. File reviews and a number of staff interviews were undertaken during the summer of 1978 to supplement personal knowledge and, to the degree possible, document programmatic and managerial issues that serve as barriers to effective implementation of the NPDES program. The findings set forth below can be substantiated in the text of this report and the attachments appended thereto.

For the period of review, March 27, 1975, to October 1, 1978, the EPA finds:

1. The Water Quality Control Division (WQCD) did not, during seventy percent of the time, meet the performance goal related to permit issuance identified in the Memorandum of Agreement. During only four of thirteen quarters did the WQCD meet the 30 permits per month goal.

2. Chronologies of events listed as "Policy Issues" and "Program Operations" depict a continuous failure to effectively administer the NPDES program. The State's permit program has been in need of strong, day-to-day management. Lack of program accountability, high staff turnover, the need for organization and training of personnel, and the lack of adequate numbers of compliance and enforcement personnel have plagued program operations.

3. The WQCD's approach to compliance and enforcement and their lack of management system results in an inefficient use of limited resources.

4. The WQCD has indiscriminately extended final compliance dates of permittees, using methods beyond the boundaries stipulated in the Clean Water Act.

5. With respect to the issuance of Administrative Orders, the EPA issued and resolved 25 percent of such actions taken in the State. For civil penalty assessments and referrals, EPA has been responsible for nearly one half of all successful enforcement actions taken in the State.

6. After more than three years into the program, the need for improved communication and coordination -- for a true partnership -- between the WQCD and the Attorney General's Office, remains unmet.

7. The adjudicatory hearing process has proved to be a slow, cumbersome, resource-intensive, in essence -- unworkable -- portion of the WQCD's permit program.

8. Even though the major dischargers (136 of 950 industries and municipalities) contribute an overwhelming percentage of the pollution load discharged to State waters, the WQCD strategy is directed largely at minor dischargers.

9. A number of major program issues, brought to the WQCD's attention during the FY-77 and FY-78 Section 106 mid-year review sessions, have yet to be acted upon.

10. Based upon the application of a national workload model, modified to fit Region VIII experience, EPA finds that the WQCD has adequate permit issuance staff, but needs an additional nine workyears of effort, largely for the compliance assurance and water enforcement functions, to meet NPDES program requirements.

11. An audit of about ten percent of the NPDES files found major deficiencies. The filing system is in great need of attention.

12. The role of the Water Quality Control Commission in approving/denying each individual civil penalty raises questions of propriety and conflict of interest when viewed in light of 40 CFR 123.83.

2
§124.94

RECOMMENDATIONS

PERMIT ISSUANCE

Background

When the NPDES program was delegated to the State of Colorado on March 27, 1975, there were approximately thirty original applications, including one major industrial, that required draft permits. On that date there were no expiring permits so that the total number of permits that remained to be issued consisted of about thirty permits out of a total of 556 permits.

The program requirements have increased since March 1975. The number of dischargers requiring permits increased from 556 in March 1975 to 950 on October 1, 1978, about a 70 percent increase. Of that increase, the number of major municipal and major industrial permits has fluctuated somewhat but, on the balance, remained relatively constant at about 150. As of October 1, 1978, there were 136 major industrial and major municipal dischargers in the State.

Program Goal

The performance goal stipulated in the Memorandum of Agreement^{1/} requires the State to issue thirty (30) permits per month. The commitment is as follows:

"The Director, or his designee, in the administration of the NPDES permit program on behalf of the State, shall use his best efforts to attain the performance goals which

^{1/} Memorandum of Agreement between State of Colorado Department of Health and U.S. Environmental Protection Agency, Region VIII, setting forth policies and expectations for delegation of the National Pollutant Discharge Elimination System (NPDES), dated December 24, 1974. Page 10

have been set pursuant to Section 106 of the Act, and to conform to the Environmental Protection Agency's permit issuance strategy aimed at the issuance of permits to all substantial dischargers by December 31, 1974.

To this end, the Division will issue at least thirty (30) permits per month for the first six (6) months of calendar year 1975, or until all permits are issued, but will have prepared draft permits for all point source discharges covered by the Act by June 30, 1975."

Analysis of Results

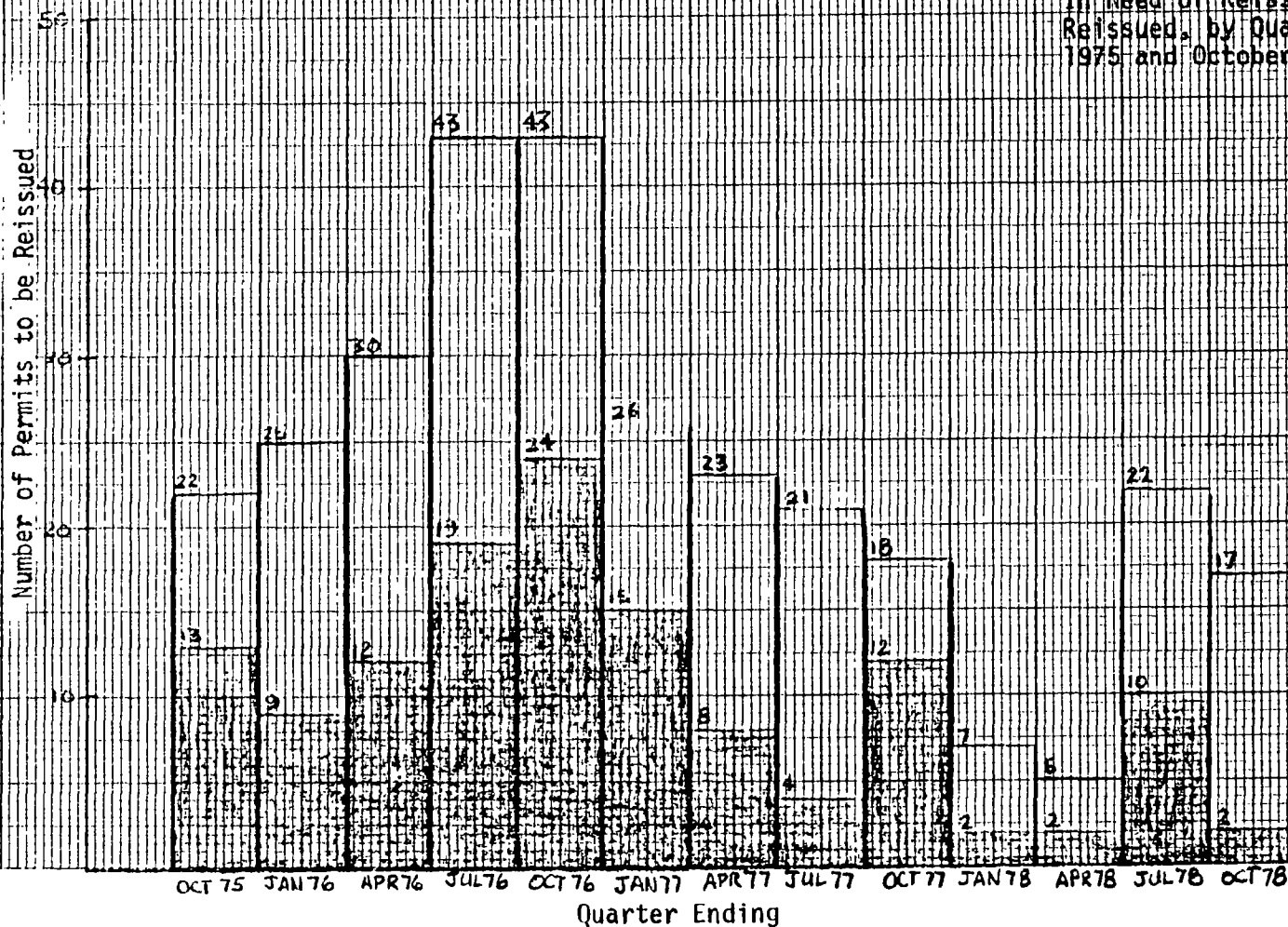
Figures 1 and 2 show the trend in permit issuance and reissuance for the major permits and minor permits, respectively. The thirteen quarters preceding October 1, 1978, are depicted.

Table 1 reduces the accomplishments graphically displayed on the Figures 1 and 2 to number of permits issued per quarter and per month. The Water Quality Control Division (WQCD) met the performance goal of issuing 30 permits per month during the quarters ending July and October, 1976, and January and April, 1977, when permit issuance reached between 34 and 60 permits per month. On the other hand, the WQCD did not meet its performance goal during seventy percent (9 of 13 quarters) of the time. Furthermore, a significant trend in not meeting program goals has developed since April, 1977. Table 1 and Figures 1 and 2 depict a dramatic failure in meeting expectations. For the 18 months between April, 1977 and October 1978, permit issuance has declined from thirty-five (35) to six (6) permits issued per month. Most importantly the average number of major permits issued was less than two (2) per month, for the last seven quarters shown at Table 1. Fortunately, the rate of expiration of major permits also declined during this period or an even wider gap representing expired permits would have occurred.

MAJORS

Number of Permits Actually
Reissued

FIGURE 1 - Comparison of Number of Major Permits
In Need of Reissuance With Actual Number
Reissued, by Quarter, Between July 1,
1975 and October 1, 1978.



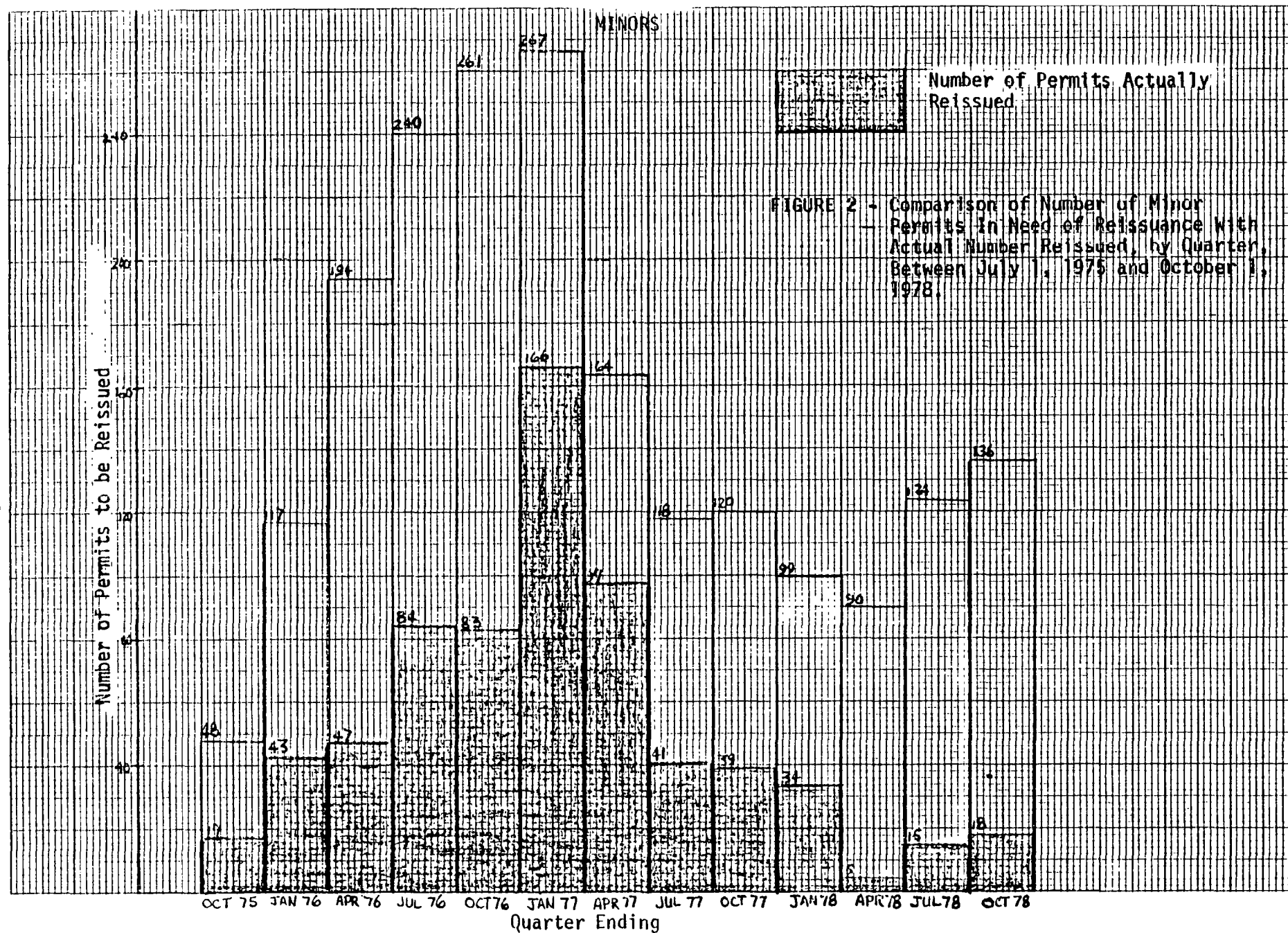


TABLE 1

Permits Issued By Water Quality Control Division

Quarter Ending	No. of Major Permits	No. of Minor Permits	Total/ Permits Quarter	Total/ Permits Month
Oct '75	13	17	30	10
Jan '76	9	43	52	17
Apr '76	12	47	59	20
Jul '76	19	84	103	34
Oct '76	24	83	107	36
Jan '77	15	166	181	60
Apr '77	8	97	105	35
Jul '77	4	41	45	15
Oct '77	4 ^{1/}	39	43	15
Jan '78	2	34	36	12
Apr '78	2	5	7	2
Jul '78	10	15	25	8
Oct '78	2	18	20	6

^{1/} 12 major permits were actually issued, 8 of which were developed by the EPA Regional Office at the State's request.

A comparison of the work to be accomplished (permits in need of issuance or reissuance) against the actual work done shown in Figures 1 and 2 clearly shows that the continuous backlog of major and minor permits would in essence have been cleared if the productivity during the October 1976 through April 1977 period could have been maintained. Lack of appropriate performance has led to unenforceable requirements, confusion for permittees, the issuance of "temporary permits" or administrative extensions under the Administration Procedures Act and other vagaries. For example, during the period from January 1, 1978 to November 6, 1978, the WQCD issued public notices of its intent to issue seventy-three (73) administrative extensions for permits which had expired. The use of administrative extensions began about one year after assumption of NPDES program and has been part of Colorado's program ever since.

The use of administrative extensions places severe limitations on the incorporation and enforcement permit effluent limitations and do not provide opportunities to incorporate revised water quality standards. Administrative extensions at best only maintain the status-quo.

In Table 2 the percent of unissued major and minor permits is given for each quarter. Using an average of 136 major permits, the analysis shows the unissued rate varied from two (2) percent to

TABLE 2

Percent of Unissued Major and Minor Permits

Quarter Ending	<u>Major Permits</u>		<u>Minor Permits</u>	
	Number of Major Permits Not Issued	Percent ^{1/} Not Issued	Number of Minor Permits Not Issued	Percent Not Issued
Oct '75		7	31	6
Jan '76	16	12	74	14
Apr '76	18	13	147	27
Jul '76	24	18	156	29
Oct '76	19	14	178	33
Jan '77	11	8	101	19
Apr '77	15	11	67	12
Jul '77	17	13	77	14
Oct '77	6	4	81	15
Jan '78	5	4	65	12
Apr '78	3	2	85	16
Jul '78	12	9	109	20
Oct '78	15	11	118	22
Average		10%		18%

^{1/} Based upon average of 136 major dischargers.

eighteen (18) percent, with an average of ten (10) percent for the period of analysis. Using an average of 537 minor permits for the period of record, the unissued rate has varied from six (6) to thirty-three (33) percent. The average rate for the period was eighteen (18) percent. Therefore, the Water Quality Control Division maintained an issuance rate of ninety (90) percent of the major permits and eighty-two (82) percent of the minor permits. As noted earlier, 1977-78 represented a period of low expiration rates of major permits; otherwise the unissued percentage would have been significantly higher during the last eighteen months.

COMPLIANCE AND ENFORCEMENT

This chapter describes the State of Colorado's compliance and enforcement programs as carried out by the Water Quality Control Division and the issues related thereto, identifies the Federal enforcement actions, highlights the role of the Water Quality Control Commission in enforcement matters and summarizes the status of compliance of major dischargers with the July 1, 1977 Clean Water Act requirements.

The only way to truly determine effluent compliance with an NPDES permit is to measure the quantity of pollutants in a treated wastewater discharge. Water quality monitoring data for point source dischargers (NPDES permittees) is normally generated by EPA, the State, and, most frequently, by the source itself. Resource restrictions on States and the EPA severely limit the amount of information generated by the regulatory agencies. Thus, self-monitoring information that is submitted by the permittee, in reports called Discharge Monitoring Reports, becomes a most valuable tool in establishing a viable compliance and enforcement program.

Analysis of Compliance Program

The following program documentation was developed from EPA staff knowledge and updated through interviews with State staff during summer of 1978. Although there has been no written statement on compliance monitoring until just recently (refer to September 2, 1978, memorandum, Attachment B), the following represents the Water Quality Control Division's (WQCD) standard operating procedures over the last three years.

1. Discharge Monitoring - Because the WQCD feels that the quality assurance of permittee-generated data is questionable and that its direct use against a source is an unethical practice, the WQCD has determined and uses discharge monitoring report (DMR) results solely as a tracking device. When effluent violations are uncovered through DMR review, the WQCD normally sends the permittee a form letter to provide the permittee notice of violation or, in extreme cases of noncompliance, the WQCD schedules "Compliance Monitoring" as defined below.
2. Compliance Monitoring - The WQCD's routine sampling program is referred to as "Compliance Monitoring." Normally a single sampler is sent to collect a single grab or composite sample. Despite a Colorado regulation which requires that a split sample be offered to the permittee before a sample can be considered admissible evidence for enforcement, the sampler, in practice, secures the sample without a witness being present or without making any attempt to locate a representative of the discharger to accept the split sample. No additional compliance review, such as inspection of flow measuring devices or review of the source's sampling and reporting procedures are conducted during the WQCD's "compliance monitoring."

The sampling program is carried out as part of the State's stream sampling program. The purpose of "compliance sampling" appears to be that of generating areawide exposure by sampling each source, regardless of size, effluent quality, compliance history, or receiving stream each few months.

3. Enforcement Monitoring - When the WQCD is considering either issuing a Cease and Desist Order or assessing a civil penalty, it schedules "Enforcement Monitoring." "Enforcement Monitoring" is defined as three separate samples (generally composites) taken in separate weeks, over a thirty day period, regardless of the sampling requirements set forth by the permit. An enforcement sample can also consist of three samples taken on three separate days during a seven-day period. Efforts are made to split the samples with the source at this point. However, no additional compliance reviews are normally made.

Compliance monitoring outputs are by definition high when compared to other States, while enforcement monitoring is low for a program of this size. It follows that the largest portion of the WQCD's monitoring resources are allocated to "compliance monitoring" and the total use of this information serves, as a general rule, only to locate potential violators, a function that could be accomplished more effectively and with less manpower by the WQCD's review of Discharge Monitoring Reports.

As previously indicated the WQCD does not use permittee-developed monitoring results to support enforcement efforts. It is not known whether this is due to legal limitations and policy developed by the Attorney General's Office. See Chronology I, Items P and T for repeated requests to the WQCD to review this policy. In those few cases where "compliance monitoring" is scheduled from DMR reviews, the compliance monitoring data is not available for enforcement support since samples are not split with the permittee. Consequently, additional effort, in the form of "enforcement monitoring" must then be undertaken. Again, this enforcement scheme proves to be an unduly resource intensive approach.

In addition to this obstacle, the State's policy of requiring "enforcement sampling" prior to issuing a Cease and Desist Order causes significant time delays in taking of the action. Such delays are unnecessary - in view of the DMR data and compliance monitoring information which should be utilized to support the "Findings of Fact" required for issuance of Cease and Desist Orders.

Compliance Schedule Implementation

The Clean Water Act required publicly-owned treatment works to meet secondary treatment levels and industrial sources to meet best practical treatment control technology requirements by July 1, 1977. Additionally, where State water quality standards call for more stringent requirements, the more stringent criteria were to have also been met by that same date.

Prior to July 1, 1977, in those cases where permittees did not have adequate treatment facilities in place to meet the requirements mentioned above, enforceable compliance schedules outlining the specific action items and time frames were placed in NPDES permits. Except as allowed by Section 301(i) of the Clean Water Act for publicly-owned treatment works, any schedule which extended compliance after July 1, 1977, could only be allowed through the enforcement mechanisms described in the Clean Water Act.

The file reviews and interviews carried out during the summer of 1978 showed that the Water Quality Control Division has indiscriminately extended compliance schedules outside the boundaries required by the Clean Water Act. In so doing the WQCD has manipulated the final compliance date of permittees by approving, through issuance of standard form letters, repeated one-, two-, and three-month delays requested by permittees.

The confusion caused by this schedule approval method has, in some cases, hampered the ability of the WQCD and even the EPA to take the necessary enforcement actions. It appears the WQCD has not recognized its legal responsibilities in administering the compliance schedule aspects of the NPDES program.

Based upon experience, we have found that the WQCD tends to approve almost all schedule extension requests without any meaningful evaluation of the justification for additional time. Not only are numerous extensions unjustified, but also the means of providing the extensions are not by enforcement mechanisms called for by the Clean Water Act. The WQCD's mishandling of compliance schedules is a practice most visible to the public it serves and, most assuredly, undermines the credibility of the State's regulatory program.

Analysis of Enforcement Program

A comprehensive list of enforcement actions is summarized in Table 3. Because the WQCD makes no particular distinction between major and minor dischargers for compliance reporting purposes, the information presented in Table 3 relates to all known permit enforcement actions taken since NPDES delegation in March, 1975.

A general scan of Table 3 indicates no obvious trends in the amount of activity. Further, there is no significant increase in activity immediately after July 1, 1977, the compliance date mandated by the Clean Water Act. Emphasis on the use of warning letters is reasonable inasmuch as actions are elevated through the application of an enforcement matrix.

TABLE 3
List of Enforcement Actions
State of Colorado ^{1/}
(Includes Major & Minor Dischargers)

Quarter Ending	Warning Letters		Enforcement Conferences	Administrative Orders	Commission Penalties
	Self- Monitoring Violation	Compliance Monitoring Violations			
July 1975	40	16	3	0	0
Oct 1975	224	21	2	4	0
Jan 1976	1	0	1	10	0
Apr 1976	18	94	10	5	2
July 1976	11	27	13	2	2
Oct 1976	10	74	9	7	0
Jan 1977	12	29	10	11	1
Apr 1977	84	0	5	20	2
Jul 1977	5	32	6	8	1
Oct 1977	33	0	0	8	0
*Jan 1978	22	24	0	2	1
*Apr 1978	51	13	2	4	1
*Jul 1978	44	9	8	18	3
*Oct 1978	38	22	6	26	1
Total	593	361	75	125	13
Average/ Quarter	42	26	5	9	1

^{1/} All information extracted from WQCD's own monthly summaries except periods identified with asterisk. Information for that period taken from November 15, 1978, letter to EPA from WQCD. See Attachment C.

Warning Letters - Form letters sent to permittees calling attention to effluent violations found through review of either self-monitoring reports or compliance monitoring sampling conducted by the WQCD.

Enforcement Conferences - Meetings conducted by the WQCD with permittees with respect to effluent violations to determine future enforcement action.

Administrative Orders - Cease and Desist Orders issued by the Department of Health.

Commission Penalty - Approval of civil penalty previously negotiated by the Attorney General's Office and the WQCD.

Table 3 shows that the WQCD in conjunction with the Attorney General's Office sent 68 warning letters, held 5 conferences, issued 9 administrative orders and was successful in receiving Water Quality Control Commission approval of one civil penalty, during an average quarter. For the period of record, Table 3 shows that 82% of the actions for effluent violations were warning letters, 6% were enforcement conferences, 11% were administrative orders, and 1% of the actions resulted in penalty assessments. Reading left to right, each action described in Table 3 is successively more resource intensive and requires a comparable increase in expertise on the part of the responsible personnel.

While a distinction between major and minor dischargers was not available for the period, the third quarter of FY 78 (quarter ending July 1, 1978) may illustrate the typical pattern of major/minor activity by the WQCD. During this productive quarter, 18 administrative orders were issued, 4 (22%) to major dischargers and 14 (78%) to minor dischargers. Of the 8 enforcement conferences, 4 were minors, and 4 were majors. The three penalties were assessed against minor dischargers.

Major permittees constitute 18% of the permit holders in Colorado but, as a group, contribute approximately 85% of the State's polluttional load. Therefore, more time and effort should be directed toward violations of major permits than is currently the practice. Since each individual action takes a minimum amount of time, effort and coordination regardless of size of the discharger, enforcement actions against violations of minor dischargers indicates an apparent imbalance of effort in the State's strategy of minimizing pollution. A method for establishing priorities for violation follow up must be developed.

The erratic pattern of the enforcement outputs over time might easily be equated with changes in personnel and policy in the WQCD and the Attorney General's Office. In 1975, as the State program got underway, EPA provided a substantial degree of supportive effort, both in compliance and permit issuance. In January, 1976, the State made some effort to shift discharge monitoring report review functions to the clerical staff. EPA again provided much training support during this transition. (See Chronology II in the Management Issues Chapter.) A new Assistant Attorney General was assigned to handle the WQCD's cases during that year. In 1977, the responsibilities for discharge monitoring report reviews and follow-up were transferred to an engineering technician (para-professional); later, the duties related to the scheduling of enforcement conferences were also added. The upswing in the issuance of administrative orders during the last two quarters of the analysis (44 of the 125, or about one-third of administrative orders were issued during these two quarters), could, in part, be due to the assignment of a more aggressive Assistant Attorney General to the Water Quality Control Division. Observation over the past 3 - 4 years discloses that the Attorney General's Office is not involved as counsel to the WQCD, and provides legal advice on permit/compliance issues only when so requested. Oftentimes the Attorney General is not even aware of a violation due to failure of the WQCD to so advise. The relationship of the WQCD and Attorney General should be a partnership. It is not.

Federal Enforcement Actions

The Regional Office of the EPA was directly responsible for many of the enforcement activities in Colorado in spite of program delegation. EPA issued 114 Notices of Violation (as called for in Section 309(a)(1)), 31 Administrative Orders, and referred 12 cases to the U.S. Attorney for

civil penalty during the period between March 1975 and October 1, 1978. An average of eleven enforcement actions per quarter, or a total of 157, were taken by the EPA. Federal action was necessary to fill the void created by the lack of State pursuit. EPA often responded to requests for assistance from the State.

Comparisons of State enforcement actions summarized in Table 3 and EPA actions listed in Table 4 are illustrative. For example, EPA issued and resolved violations in 31 Administrative Orders while the WQCD issued 125, showing a 25 percent partnership by EPA. A distinction is noteworthy here. State-issued orders were to major and minor dischargers as described in the preceding section, while EPA actions were taken almost exclusively against violations by major dischargers, often constituting more complex endeavors. Civil penalty assessments and referrals may be a more representative index of EPA's role after NPDES program delegation. Of the 25 cases that have resulted in penalties, twelve (48%) were resolved directly by EPA, while thirteen (52%) were taken by the Water Quality Control Division, and in six of these cases EPA provided considerable support. Thus, in spite of NPDES program assumption, Federal enforcement was present and felt as often as State enforcement during the fourteen quarter period of record.

Analysis of Civil Penalties

Under the Colorado Water Quality Control Act, anyone who violates a condition of an NPDES permit or a condition of a Cease and Desist Order issued pursuant to the Act is subject to civil penalties of up to \$10,000 per day of violation. Section 25-8-608(2) provides for the assessment of civil penalties by the State Water Quality Control Commission.

TABLE 4
FEDERAL ENFORCEMENT ACTIONS
IN COLORADO SINCE NPDES DELEGATION ^{1/}

	<u>FY 75</u>	<u>FY 76</u>	<u>FY 77</u> ^{2/}	<u>FY 78</u> ^{3/}	<u>TOTAL</u>
NOTICES OF VIOLATIONS	7	22	55	30	114
ADMINISTRATIVE ORDERS	4	11	7	9	31
REFERRALS TO U. S. ATTORNEY	1	6	1	4	12
TOTAL	<u>12</u>	<u>39</u>	<u>63</u>	<u>43</u>	<u>157</u>

^{1/} As of October 1, 1978

^{2/} Fiscal Year includes 5 quarters.

^{3/} Does not include three Administrative Orders to Federal facilities.

In early 1976 the Commission requested the development of civil penalty guidelines. On May 4, 1976, the Commission officially adopted a guideline that had been developed by a committee consisting of Division and Commission members and an EPA attorney. The guidance sets forth a simple matrix relating the size of the establishment and the degree of the offense to a range of penalties.

To-date, the Commission has deliberated on thirteen penalty situations and, in most cases, approved the WQCD's negotiated amounts but with a stipulation that a portion or all of the penalty be suspended. The penalties collected to-date have ranged from about \$200 to \$15,000, with four exceeding \$1,000. The \$15,000 penalty was collected on a major environmental incident (toxic discharge, fish kill, interstate effect); the Commission approved a penalty of \$40,000 but suspended \$25,000 of it. When penalties are suspended it is normal WQCD practice to make provisions for forfeiture should violations reoccur. In one case the City of Sterling, having had its penalty suspended for major violations, continuously violated its stipulated condition. When the WQCD attempted to collect the forfeiture of \$2,500, the Commission refused to approve of the action and allowed the flagrant violation of the Colorado Water Quality Control Act to continue. The role of the Commission in acting upon individual penalties raises serious questions when viewed in light of legislative history of the Clean Water Act that is formulated in 40 CFR 123.83.

Compliance Status of Major Dischargers

The status of compliance of major dischargers with the July 1, 1977, requirements of the Clean Water Act is summarized in Table 5. No effort was made to determine the compliance status of minor dischargers.

TABLE 5
STATE OF COLORADO
STATUS OF COMPLIANCE WITH JULY 1, 1977,
REQUIREMENTS AS OF 10/1/78

	<u>Number of Majors</u>	<u>Number Out</u>	<u>Percentage Out</u>	<u>Number In</u>	<u>Percentage In</u>
Industrial	61	16	26%	45	74%
Municipal	<u>75</u>	<u>45</u>	<u>60</u>	<u>30</u>	<u>40%</u>
Total	136	61	45%	75	55%

As of October 1, 1978, fifty-six of the major industrial dischargers had completed construction of facilities necessary to meet the July 1, 1977, requirements. This represents 90 percent of the sixty-one major industrial dischargers in the State. However, due to operation and maintenance problems and design deficiencies discovered after start-up, the actual percentage of major industrial dischargers meeting the July 1, 1977, requirements is more on the order of 74 percent, as shown in Table 5. On the national level, eighty five percent of all major industrial dischargers met the Clean Water Act requirements.

Even though about 70 percent of the major municipalities have wastewater treatment facilities in place to meet secondary treatment requirements, overall major municipal compliance is actually 40 percent. Nationally, forty (40) percent of the major municipalities are reported to have met secondary treatment levels. And, as mentioned above, operation and maintenance problems, design deficiencies, and the lack of water quality standards based effluent limitations in some permits, (NH_3 , Cl_2 , etc.) account for the thirty percent (from seventy to forty percent) decrease in municipal compliance with the July 1, 1977, Clean Water Act requirements. The State of Colorado's construction grant funding policy related to advanced wastewater treatment which removes "Front Range" communities as recipients of funding for water quality standards related purposes, shows little promise of granting any relief. Therefore, it is expected that the actual compliance rate will not substantially improve during the next few years. Additionally, municipalities as a rule, demonstrate very erratic process control which gives rise to numerous short-term permit violations. In this latter case, the Water Quality

Control Division should use its enforcement mechanism to minimize permit violations attributable to poor O&M rather than hope for additional capital construction in order to achieve higher compliance levels.

PROGRAM MANAGEMENT ISSUES

Included as part of this chapter are two Chronologies that summarize major events which have transpired since the assumption of the NPDES program by the Colorado Department of Health (CDOH) on March 27, 1975. The Chronologies are divided into "Policy Issues" and "Program Operations". In the first Chronology, which also included the assistance provided to CDOH, summaries of letters transmitted between the EPA Regional Office to the Water Quality Control Division (WQCD) of the CDOH are highlighted. Equally important, major training sessions held for the purpose of strengthening the Colorado program are also listed. In the second Chronology termed "II. Chronology of Program Operations and Assistance Provided", many individual training sessions that have been provided by EPA personnel and other direct forms of assistance will provide the reader with an accurate picture of the EPA-WQCD relationships.

Missing from both Chronologies are the on-going communications between the WQCD and the Regional EPA Office on a variety of program matters. Some of the important items include the assistance provided on individual permits on a day-to-day basis, the bi-monthly meetings held between EPA, WQCD, and the Attorney General's Office for the purpose of coordinating and following up on enforcement actions, the regional meetings set-up for States related to NPDES regulations, policies and water enforcement actions that provide the States with direct face-to-face contact with EPA Headquarters personnel.

The Water Quality Control Division staff and the EPA staff have been communicating at all organizational levels. While Federal requirements change, the Chronologies also point out that there should be no surprises related to

what is needed to operate a successful NPDES program. Lastly the reader will note the numerous occasions of direct program assistance that EPA provided the WQCD during the period of analysis, March 27, 1975 to October 1, 1978.

Highlights from the Chronologies follow and are referred to and identified by Roman Numerals and letters. In the description of issues that follow, Chronologies were supplemented by the results of interviews of State staff taken during the program review sessions. Twelve major topics are described.

Program Responsibility

The lack of a clearly delineated and understood organization of the WQCD runs through both Chronologies. The organizational structure given in Colorado's NPDES program submittal appears as Attachment D of this report. The responsibility for the "Waste Discharge Permit Program" is listed under the Monitoring and Enforcement Section. A major difference existed between the organization on paper and the day-to-day working of the WQCD. To EPA's knowledge, no written functional statement of duties was available to the following individuals who served in Acting capacity as Chief, Monitoring and Enforcement Section for the approximate periods given: Mr. Bill Heller, March 1975 to September 1975; Mr. Arden Wallum, September 1975 to February 1976; and Mr. Paul Williamson, February 1976 to August 1977. Furthermore, the quasi delegation of responsibility for permit issuance from an Acting Chief, Monitoring and Enforcement Section, to an Acting NPDES engineer was never understood by either the EPA staff or the W CD's Acting NPDES engineer.

During this period a letter from the EPA Regional Administrator to Mr. Robert Seik that asks a number of questions regarding NPDES responsibility can best be described as "Who is in charge?" In a reply dated September 1976, WQCD indicates that a Team Leader is not named, re-organization is still underway and generally there still remains unsatisfactory resolution. Refer to Chronology I, items H and J and Attachments E and F p. 65. It appears that an organization was finally approved and put in place with accountable people during August of 1977, nearly two and one-half years after program assumption. The organizational structure currently in place, with appropriate individuals assigned, which has been operating since August 1977 is given as Attachment G. The responsibility for the permit issuance, compliance assurance, and technical support for water quality enforcement functions is with Mr. Fred Matter.

NPDES Staff Turnover

Many engineers were trained -- partially by EPA staff -- and then left the WQCD Permit Program during the period from March 1975 to August 1977. They are:

Mr. Rick Moore
Mr. Boyd Hanson
Mr. Bill Heller
Mr. Joe Virgona
Mr. Dick Bowman
Mr. Larry Quinn
Mr. Don Carlson
Mr. Bill Early
Mr. Paul Williamson

As related to EPA, factors attributable to the high turnover rate were lack of authority and accountability in permit issuance matters, dissatisfaction over the lack of support by management, and the level of administrative (para-professional) duties engineers were required to carry out.

Need for Para-professional Staff

With regard to the latter situation, EPA has stressed the need to staff the organization with para-professionals. In June 1976 the WQCD was provided a briefing of the benefits to be derived from staffing the NPDES permit program with para-professionals. Position Descriptions were provided as was an assessment of how they could best support the WQCD program and, as a supplementary benefit, release the engineering staff to do the work they were hired and paid to do. See Chronology I, items D, G, H, P and R p. 44. In the "Chronology of Program Operations and Assistance Provided," numerous efforts were made by EPA to train a continuous flow of personnel to handle Public Notices, review discharge monitoring reports, develop and maintain compliance schedules and quarterly non-compliance reports, and other para-professional duties. Refer to Chronology II, items C, E, H, L, M, O, P, Z and X.

Lack of Staff Orientation and Training

A theme that is not included in either Chronology but was highlighted in interviews was the lack of training given new WPCD staff by the State. It was reported that when new personnel enter duty with the WPCD in permit-water enforcement capacities, there is little or no training for the tasks to be completed, identification of their day-to-day priorities and how their duties fit in with the rest of the staff. The number of training sessions provided by EPA appears to verify the comments made. As required by the Memorandum of Agreement between the Regional EPA Office and the State of Colorado, considerable training was provided the WQCD permit staff. At least 20 significant training sessions have been held by EPA which are

identified in Chronology I and II p. 44. Regional meetings pertaining to program changes are not included.

Lack of Compliance and Enforcement Personnel

The chapter that follows in this report identifies the resources available to the WQCD since program assumption, provides an analysis of needs, and suggests an appropriate number of personnel necessary to operate the NPDES program. (See "NPDES Program Resources.") It goes without saying that the NPDES program was delegated to Colorado in spite of the availability of too few personnel. Not only was the program delegated with too few permit issuance personnel, there were no personnel assigned to permit compliance or technical and para-professional water enforcement functions. The Colorado program submittal provides the following description of "Funding and Manpower".

"During FY-75, the Water Quality Control Division will have 43.5 man-years of effort at its disposal to further water quality in the State. It is anticipated that eight man-years will be required to administer the Colorado Permit Discharge Elimination System program. Of these, four man-years are engineers who are presently employed; three man-years are clerk-typists of whom one is presently employed; and one man-year attorney time spent totally on enforcement."

As the pressure to meet the most basic compliance and enforcement needs increased, the personnel assigned to permit issuance were apparently divided between permit issuance and compliance needs. That condition, to a much lesser degree, continues to exist today.

Chronologies I and II are replete with requests to the State to bolster the NPDES - water enforcement program. As early as December 1975, the EPA Regional Administrator notified the State of the need for two additional personnel to meet critical needs (Chronology I, item B).

Additional communication pushed for relief in this area (See Chronology I, Items H and L).

Mining Permit Needs

The need for specific mining expertise is needed in the State NPDES program, both in the permit issuance and water enforcement areas. There are 80 mining and/or milling permits in the State of Colorado. The State has assigned sanitary engineers to address NPDES mining problems. While the WQCD has an industrial expert on its staff, he has seldomly been called upon to assist with major mining permits or enforcement cases. Because of the lack of focus in mining, EPA provided direct permit writing assistance on major and controversial mining/milling permits during the period covered by this analysis, and, when enforcement actions were developed and settlements negotiated, EPA played a direct role in evaluating the feasibility of alternative solutions, developing the compliance schedules, etc. On the more routine permits the WQCD staff drafted mining permits, negotiated compliance schedules as called for in the Memorandum of Agreement. A stronger role by the WQCD in the mining area continues to be a basic program necessity. EPA doubts that the WQCD is adequately prepared for the mining "boom" that has developed.

Permit Issuance - Compliance Coordination

Coordination within the permit issuance - water compliance sphere of activities has suffered as a result of the high turnover, lack of State day-by-day training and clearly enunciated procedures. The following example related to an American Metals Climax (AMAX) (CO-00230) adjudicatory hearing request is self-explanatory.

- May 13, 1977 - AMAX requests Adjudicatory hearing; letter also called attention to 3 minor errors in the permit.
- May 23, 1977 - WQCD sends letter correcting minor errors and also calling attention to a discharge from one of the treatment ponds.
- June 14, 1977 - WQCD sends delinquent self-monitoring letter to AMAX.
- July 22, 1977 - AMAX answers the self-monitoring question and also reiterates that the Company has applied for an Adjudicatory hearing on 5-13-77.
- September 28, 1977 - WQCD letter to AMAX requests an up-to-date compliance schedule.
- October 4, 1977 - WQCD sends violation letter for zinc to AMAX.
- October 21, 1977 - AMAX answers the zinc violation letter and states that an adjudicatory hearing has been requested on the zinc limitation, therefore, limitation was not in effect.
- April 24, 1978 - AMAX transmits self-monitoring results and calls the WQCD's attention to the adjudicatory hearing request.
- June 23, 1978 - AMAX requests permit renewal and advises WQCD that the Adjudicatory hearing matters could be dealt with during the permit renewal procedures.
- September 20, 1978 - WQCD sends non-compliance letter to AMAX regarding zinc limitation.
- October 5, 1978 - AMAX replies to 9/20/78 letter reiterating again, the adjudicatory hearing request for the zinc limitation.

Administration of Adjudicatory Hearings

The administration of the State's adjudicatory hearings has been a slow, cumbersome, resource-intensive portion of their program. The nature of the procedure that requires the State to "consider all issues of fact and law ^{1/}" at the hearings appears to have been a constraint. Instead of narrowing the issues to be adjudicated to those of fact, and requiring the Attorney General's Office to resolve issues of law independent of the adjudicatory hearing process, the existing procedures, according to our understanding, require the State, through the Pre-Hearing Conference, Discovery Proceedings, and the Conduct of the Hearing, to develop the record on legal matters that could otherwise be resolved in a much less resource consumptive fashion. Further, it appears that the WQCD cannot deny even the most spurious adjudicatory hearing requests.

WQCD - Attorney General Coordination

Another factor that has delayed the effective administration of the adjudication process has been the apparent lack of coordinated decision-making. Does the Water Quality Control Division (WQCD) have responsibility to initiate the State's response to any adjudicatory hearing request? If so, are its responsibilities limited to the development of technical support data and analysis? At what point does the lead responsibility shift to the Attorney General's Office? What are the continuing responsibilities of the WQCD once the adjudication process has been initiated? What appeal does the WQCD and A. G.'s Office have over scheduling of hearings by the Department of Administration? To the best of our knowledge

^{1/} Section 6.1.7, Regulations for the State Discharge Permit System.

a mutually-agreed upon working agreement has never been developed between the WQCD and the A.G.'s Office on adjudication or enforcement matters.

There are several examples of the lack of coordinated and timely execution of the adjudicatory hearing process. Included are the CF&I Steel (CO-0000621), Standard Metals (CO-0027529) and American Metals Climax (AMAX) (CO-0000230) request. The Standard Metals (Sunnyside Mine) request, which is still pending, is described below.

During the spring of 1976, while the WQCD was drafting the Sunnyside Mine permit, Standard Metals indicated that they intended to request a hearing based on the fact that the receiving water was of poorer quality than the proposed effluent limitations. Upon permit issuance a hearing was requested. After several meetings with the State and Standard Metals, EPA recommended to the WQCD that a hearing be held as soon as possible because the July 1, 1977 mandatory date had passed and Standard Metals was not in compliance with Best Practicable Treatment (BPT). Due to the nature of the State's Adjudicatory Hearing Procedure and lack of effective program administration, the hearing was not scheduled until the Fall of 1978, over a year after the request. On October 26, 1978, less than three weeks before the hearing date, the hearing officer granted Standard Metals a postponement of the hearing until June 1979. Thus the adjudicatory hearing on the Standard Metals permit is scheduled to begin more than two years after the hearing was requested, and during this entire period the permittee is without a compliance schedule to meet Best Practicable Treatment levels that should have been achieved by July 1, 1977.

Status of Recent Issues

A number of major program issues were raised during the 1977 and the 1978 mid-year review sessions that were held between EPA and WQCD managers. The lack of staff, confusion over re-organization, ineffective use of and coordination with existing staff, need for improved coordination with the Attorney General's Office, need for enforcement training for the State's technical people were problems discussed during the April 1977 meeting. (Refer to Chronology I, item L.) Comments pertinent to the 1978 Section 106 plan are of the same tenor. (See Chronology I, item P.) And, during June, 1978, at a mid-year review session between top management personnel from both EPA and the Colorado Department of Health, specific issues in permit issuance, compliance monitoring, use of district engineer personnel, compliance monitoring strategy, use of DMRs in enforcement matters, and the need to train personnel were discussed at some length. (Refer to Chronology I., item T) At that meeting the WQCD committed to re-issuing all expired permits by October 1, 1978, of re-vamping its compliance sampling procedures to insure that the results would meet enforcement objectives, of reviewing their policy of not using discharge monitoring report results as enforcement documentation, and of training the appropriate enforcement personnel to meet the Attorney General's need in water quality enforcement matters. It was also at that session that the need for this program review was agreed to by both agencies.

The status of permit issuance is highlighted in a previous chapter as is the use of the administrative extension of permits. The WQCD did not meet its FY 78 permit reissuance goal promised during the mid-year evaluation conference. At this time the State has yet to change the policy of not using the results of their compliance sampling in enforcement matters.

And, as substantiated in interviews, EPA knows of no training by the State, of their district engineers or Denver Office personnel, on the basics of case documentation, chain of custody procedures, and other enforcement program matters needed to make effective use of staff time. It could not be determined during program review sessions whether discharge monitoring reports were now used as documentation in at least limited enforcement actions, such as Cease and Desist Order and Notices of Violation.

Enforcement Management System

The Enforcement Management System (EMS) is a formal guideline developed by the Environmental Protection Agency to insure fairness and national consistency in the enforcement of NPDES permits. Each EPA Regional Office has, with minor adjustments, adopted the system. States that issue permits were also requested to apply the policies, priorities and procedures enumerated in the Enforcement Management System or, to develop an adaptation of them. The Enforcement Management System consists of:

- A. Source Inventory
- B. Information Control
- C. Internal Management Control
- D. Pre-enforcement Evaluation
- E. Enforcement Evaluation
- F. Formal Legal Action and Follow-up
- G. Compliance Inspections

The absence of a formally established enforcement matrix for example makes justification of any specific action most difficult. An enforcement matrix is found in element E. above. And without clearly understood enforcement priorities, staff proceed in all directions and too often are mis-directed resulting in failure to achieve the desired end. Priority setting is also included in the EMS.

Due to a lack of attention to the Enforcement Management System by the WQCD staff, the EPA specifically adapted the EMS to the Colorado program and informally transmitted the results in the form of a six-page memorandum to the Chief, Monitoring and Enforcement Section during April 1977. See Attachment H, p. 75. Even with this head start there is no evidence that the WQCD ever adopted any system of formal policies, priorities and procedures that would comprise an Enforcement Management System.

NPDES Files Management

EPA personnel audited about 10% of the major municipal and major industrial permit files, and the following observations were made.

1. Thirty percent of the files checked did not have the originally signed permit or even a copy of the issued permit. Findings indicate that two sets of files have been developed in an attempt to minimize loss of original permits;
2. The files audited were not very efficiently organized, that is, one must search through every piece of correspondence and documentation to find the application and/or the permits;
3. Certified cards acknowledging receipt of issued permits were not found with the permit;
4. Public notice information did not have any legal affidavit showing that public notices had been published in the newspapers;
5. Discharge monitoring reports were not scrutinized for reporting errors;
6. There was no explanation or indication of follow-up in the files where DMRs are missing;

7. Follow-up notations to resolve controversies generated by permittees could not be found;
8. The state apparently allows several reporting periods of violation before commencing enforcement inquiries.
9. The file folders are constructed of extremely flimsy material and state funds are not available to obtain sturdier and more useful folders.

Summaries of file audits make up Attachment I, p. 81 to this report. In summary, the NPDES and discharge monitoring report files at the WQCD Office are in great need of attention and can use major improvements.

Chronologies of events referred to in this Chapter follow.

NPDES-Water Enforcement Program

I. Chronology of Policy Issues and Assistance Provided

- A. March 27, 1975 Assumption of NPDES permit program.
- B. December 4, 1975 Letter from John A. Green, EPA Regional Administrator to Dr. Edward Dreyfus, Executive Director, Colorado Department of Health, identifying lack of performance by State staff and the need of two additional people to fill the most pressing needs.
- C. May 27, 1976 Letter from John A. Green, EPA Regional Administrator to Dr. Edward Dreyfus, Executive Director, Colorado Department of Health, calling attention to State's practice of extending permits for indefinite periods of time, and granting major modifications to Denver Metro permit without any public participation effort, both in violation of FWPCA.
- D. June 8, 1976 Meeting with Frank Rozich in which Roger Frenette outlined the benefits to be derived of staffing his NPDES program with para-professionals. Three position descriptions provided for follow-up.
- E. June 21, 1976 Letter from Robert Siek, Assistant Director, Colorado Department of Health to Mr. John A. Green, EPA Regional Administrator, replying to May 27, 1976 letter. Includes six-page analysis of Colorado's staffing needs. Letter identifies major problems in administration of program, the need for staff, request for staff that was turned down by State Budget Office, and requesting assistance.
- F. June 28-29, 1976 Meeting with six state permit engineers, Attorney-General's Office representatives and EPA staff held at Quality Inn, Denver. Purpose: to provide States with first-hand view of differing approaches (from other States) and practices of permit issuance, follow-up and enforcement. Technical-legal interface and emerging policies were highlighted. States were requested to develop legal-technical work practice and priorities where needed, or to streamline them.
- G. July 16, 1976 Workshop held between six Colorado Permit Staff members (technical and clerical personnel), and EPA permit staff for the purpose of providing EPA's approach to administering the permit program. Office practices,

administrative procedures, work flow, communication needs, and data management aspects were discussed at some length. Handouts of the above, dealing with permit issuance, compliance assurance and water enforcement were provided the Colorado staff. State was requested to develop a standard operating procedure.

H. August 19, 1976

Letter from John A. Green, EPA Regional Administrator, to Mr. Robert Siek, Assistant Director, Colorado Department of Health summarizing changes made by Colorado, meetings held, and suggesting several staffing needs.

J. September 8, 1976

Letter from Robert Siek, Assistant Director, Colorado Department of Health to John A Green, replying to organizational issues raised in August 19, 1976 letter. Team leader not named, reorganization still underway, staff involved in other programs (404, energy, etc.), that is, unsatisfactory resolution.

K. March 3, 1977

EPA staff met with and interviewed several Colorado staff permit members to identify current operations, and determine how the implementation of a data management system could assist in organizing the State's administrative tasks. Responses from Colorado staff were very negative, and managers were not aware of benefits to be derived. (Because key individual's transfer was imminent, decision was made not to pursue our effort at this time).

L. April 15, 1977

Mid year review follow-up meeting by seven EPA staff members. Lack of staff, confusion over reorganization, ineffective use of existing staff, poor coordination with Attorney-General's Office, need for enforcement training by State's technical people, were problems discussed and promises made by State to address in remaining year.

M. May 16, 1977

Roger Frenette provided Paul Williamson with listing of suggested priorities for reissuing all permits in Colorado.

N. June 17, 1977

Letter from Roger Frenette to Mr. Frank Rozich assisted State by providing examples of kinds and sizes of permit fees used by other States operating the NPDES program in U. S. Attachments furnished.

O. August 11, 1977

Meeting with Fred Matter and staff with Ken Alkema, Roger Frenette and other EPA staff on effects of reorganization, who in State will do what, chain of command, the need to gear staff to meet Section 106 program commitments, enforcement policies, Attorney-General Office's role, need for paraprofessionals.

P. August 26, 1977

Letter from John A. Green, Regional Administrator, to Mr. Frank Rozich transmitting comments on draft Section 106 plan. Enforcement Division identified strong disagreements with State policy of not using DMRs, the wasteful and inefficient use of resources, action needed to eliminate delays in water enforcement actions and training of technical people that is necessary. Note: The words in the Section 106 Plan were changed, but no changes were apparent in actual practice.

Q. November 21, 1977

Letter from Alan Merson, EPA Regional Administrator to Dr. Anthony J. Robbins, Executive Director, Colorado Department of Health, advising of \$94,000 supplemental grant and program areas that should be considered (includes permits compliance and enforcement) and \$20,000 to be transferred to Attorney-General's Office for water enforcement.

R. December 7, 1977

Letter and attachment from Roger Frenette to Mr. Frank Rozich reminding him of funding received, need to support compliance and enforcement programs, and noting that 24 enforcement actions are pending and delays ever increasing.

S. May 5, 1978

Letter from Alan Merson, EPA Regional Administrator, to Dr. Anthony Robbins, Executive Director, Colorado Department of Health, advising of two Section 106 grant amendments and concerns over lack of State performance in the permit-water enforcement program.

T. June 7, 1978

Mid-year review meeting between EPA and Colorado Department of Health top management teams. Continuing permit/enforcement problems highlighted: 60 permits issued between October 77 and March 31, 1978 with 159 permits remaining to be issued by October 1, 1978; problems with use of continuous administrative permit extensions discussed; state met compliance monitoring commitment but results cannot be used for enforcement purposes; state district personnel not knowledgeable of Attorney General's Office basic requirements for case documentation; state does not use information from Discharge Monitoring Reports to file enforcement actions. State commits to getting all expired permits out by October 1, 1978; of revamping compliance sampling procedures (splitting samples with permittee) to ensure meaningful use of results; of reviewing policy of not using Discharge Monitoring Reports as enforcement documentation; and training appropriate personnel to meet Attorney General's needs in water enforcement matters.

State and EPA management teams agree to the need to initiate a detailed program review within following

two weeks. Roger Frenette to meet with Frank Rozich with draft outline.

U. June 23, 1978

EPA (Frenette, Alkema and Burm) meet with Colorado Division of Water Quality personnel (Rozich, Matter and Wallum) to discuss program review plan and agree to ground rules.

V. October 26, 1978

Colorado Adjudicatory Hearing Officer recommendations made on this date regarding CF&I Steel Corporation. EPA, during prior 16 months, provided \$9,500 to the State for expert testimony, coordinated technical review by steel expert, and provided staff assistance and testimony at adjudicatory hearing sessions.

NPDES-WATER ENFORCEMENT PROGRAM
II. Chronology of Program Operations and Assistance Provided

Delegation of NPDES Program - March 27, 1975

1975

- A. Notified State by phone that insufficient training was given to people in NPDES program. Suggested personnel from EPA spend some time at Health Department to train and go over some problems.
- B. First visit to Health Department - Train Mary Corn concerning receipt of new apps, PN, issuances, reissuances, tracking of facility data, etc.
- C. Notified State of inconsistencies concerning assigning application numbers and inactivating permits if a self-monitoring report was submitted reading no discharge.

January, 1976

- D. Dessie Brewer trained by Barbara Hanson concerning self-monitoring regulations and effluent violations.
- E. Arden Wallum, who handled compliance schedule events, trained by Cathy Ruggiero.
- F. State was notified of inconsistencies regarding the sending of delinquent self-monitoring letters to facilities who do not have permits issued or whose permits have been inactivated.
- G. Barbara Hanson visits State Health to try to help Dessie Brewer on self-monitoring problems and the tracking of effluent violations.
- H. State is notified of inconsistencies in the tracking and approval of compliance schedules. Cathy Ruggiero visits State office and assists Arden in trying to clear up the problem.
- J. Computer listings are submitted to State to try and help them track permits and applications. This is also to help them track permits in need of drafting. Tess Matassoni visits Health Department to explain how the system works. Computer listings are mailed on a monthly basis.
- K. Compliance Section of EPA tries to convince State that the preprinted DMR reports should be utilized by Health Department for minors. Preprinted DMR's will cut down on engineers and administrative help in reviewing for effluent violations. State opts to use own forms.

- K. State is notified that paraprofessionals are needed to take administrative work off engineer and technical personnel's hands.
- M. State is notified that amendments must go to public notice. If significant changes are made in the permit, the State would just make the change without notifying EPA for consultation or give public a chance to comment.
- N. Larry Quinn and Barbara Quinn, the second and third persons to handle compliance schedule events and the quarterly non-compliance report are trained by Cathy Ruggiero. Compliance schedule computer listings are provided to aid the State in tracking schedule date violations. Inconsistencies and improper correspondence problems and solutions are discussed.

January, 1977

- O. Judi Dukat takes over the handling of new apps, PN, issuances and tracking of facility data, etc.
- P. Judi Dukat is trained by Tess Matassoni regarding above and how the computer system works.
- Q. State is notified that the assigning of NPDES numbers are to be assigned from listing that EPA supplies them with. State continues to make up NPDES numbers.
- R. EPA is notified that certain files have been misplaced and the State would like copies of pertinent data pertaining to these files be sent to the Health Department.
- S. EPA personnel participate in conference with State personnel concerning engineers' and clericals' scope of duties.
- T. State is notified that compliance schedule events and DMR tracking is inconsistent.
- U. Paul Williamson, Judy Dukat and Karen are trained by Cathy Ruggiero to handle compliance schedule events and the quarterly non-compliance report. Inconsistencies and incorrect correspondence problems and solutions are again discussed. Paul and Judy were trained at our office and Karen was trained at the State office.
- V. State Health Department begins extending expiring permits instead of drafting renewals.

1978

- X. State notified of inconsistencies regarding criteria used to identify majors.
- Y. EPA notified that State wishes to utilize our DMR preprinted forms. Employee sent to EPA for training. EPA notified in two weeks employee has left. Another will be sent for training.
- Z. Technician is assigned at Health Department. Now too many people are handling the same duties. Personnel from Health Department complain that they do not have delineation of duties explained to them when they come on board.
- AA. During this year Paul Williamson is reassigned and Arden Wallum takes over. State is notified of responsibility to review and concur on Federal permits issued by EPA. State remains confused on this issue.
- BB. Judi Dukat notified EPA of her quitting. New person takes over tracking of permits. This person will also handle compliance schedules.
- CC. More inconsistencies regarding files, compliance schedules and the quarterly non-compliance report.
- DD. State requests EPA lend assistance in sending of 301(i) compliance extension letters to municipalities in Colorado.
- EE. EPA notifies 150 municipalities of opportunity to apply for Section 301(i) extension, sends out reminders, answers calls and letters and provides State with list of 131 municipalities who applied.

NPDES PROGRAM RESOURCES

Past and Present Program Support

At the time of Colorado's request for the NPDES authority on December 27, 1974, State personnel identified a need for eight workyears of effort to adequately staff the NPDES program. Six of the eight employees were on board, and EPA agreed to supply the State with clerical aid until Colorado could obtain funding to hire the other two clerk-typists. Additionally, one workyear of effort (legal) was allocated for enforcement and 10.5 workyears were allocated for compliance (sampling) and O&M efforts. The funding at that time was \$106,848 for permits; \$34,205 for enforcement; and no allocation for compliance assurance. This resulted in a total of about nine workyears of effort and \$141,053 funding for permit issuance, compliance assurance, and enforcement. Compliance and ambient sampling and O&M functions were allocated \$153,082.

The FY-78 Section 106 grant application identifies nine workyears allocated for permits, two workyears for enforcement, and 5.1 workyears in compliance assurance and O&M (sampling is not included). The funding for these programs is \$166,233 for permits; \$33,667 for enforcement and \$94,879 for compliance assurance and O&M. The total for these programs in FY-78 is therefore, 14.0 workyears of effort and \$259,900 funding.^{1/}

Thus, the allocation of resources for permit issuance, compliance assurance and enforcement increased from about nine workyears in FY-75 to 14.0 workyears in FY-78, a 50 percent program growth. Likewise, funding allocated to these functions has grown from \$141,053 in FY-75 to \$259,900 in FY-78, an eighty percent increase.

^{1/} Assumes that of 5.1 workyears allocated to compliance assurance and O&M, 3.0 workyears and \$57,000 are for compliance assurance purposes.

When Colorado requested the NPDES program, there were 556 NPDES permit applications in the State. There are now 950 applications--a 70 percent increase.

Analysis of Program Resource Needs

The Headquarters Office of EPA developed national workload models for key activities of the NPDES program (see Table 6). These productivity measures reflect average Regional requirements based upon seven years of experience. While some variation may occur among the States, these models can serve as a guide for determining the number of staff needed to operate and maintain an NPDES program.

The productivity measures include all the time needed for any required permit effort, including supervision. On the basis of these measures, it is estimated that the following workyears of effort would be needed in FY-79 to administer an effective NPDES program in the State of Colorado.

The Permit Issuance Needs are computed below.

<u>Permit Issuance Needs</u>		<u>Workdays</u>	<u>Workyears</u> ^{1/}
1. Reissue/modify major permits			
Average - $\frac{136 \text{ major permits}}{3 \text{ year permits}} = 45 \times 15 \text{ days}$		675	3.1
2. Reissue/modify minor permits			
Average = $\frac{814 \text{ minor permits}}{5 \text{ year permits}} = 158 \times 4 \text{ days}$		632	2.9
3. Conduct and settle adjudicatory hearings			
3 x 200 days		<u>600</u>	<u>2.7</u>
Total		1907	8.7

Based on the national workload model, Colorado would require 8.7 work-years of effort to effectively issue and reissue all of the major and minor permits in the State.

^{1/} 220 workdays = 1 workyear

TABLE 6
EPA Workload Model
National Productivity Indices

Permit Issuance

1. Reissue/modify major permits	15 days/permit
2. Reissue/modify minor permits	4 days/permit
3. Conduct and settle adjudicatory hearings	200 days total
for major permits	150 days to conduct
	50 days to settle
	<u>200</u> days total

Compliance Assurance

1. Maintenance of source inventory	.37 years/1000 DMR's
2. Pre-enforcement Evaluation	.18 years/1000 DMR's
3. Enforcement Evaluation (including compliance schedule functions)	.11 years/1000 DMR's .66/1000 DMRs
4. Preparation of Non-Compliance Reports	.08 year/QNCR

Enforcement

1. Administrative Orders and Notices of Violation	3 years/100 actions
2. Municipal Referrals to State Attorney General (Legal and Technical)	1 year/case
3. Industrial Referrals to State Attorney General (Legal and Technical)	1.25 years/case

The Compliance Assurance Needs are computed below.

<u>Compliance Assurance Needs</u>		<u>Workyears</u>
1. Maintenance of Source Inventory		
Major Self-Monitoring Reports		
136 x 12 months = 1642 x .37 years/1000		.6
Minor Self-Monitoring Reports		
790 x 8 months = 6320 x .37 years/1000		2.3
(Reviewed on the average every 1 1/2 mos.)		
2. Pre-enforcement Evaluation		
Major Self-Monitoring Reports		
136 x 12 months = 1642 x .18 years/1000		.3
Minor Self-Monitoring Reports		
790 x 8 months = 6320 x .18 years/1000		1.1
3. Enforcement Evaluation		
Major Self-Monitoring Reports		
136 x 12 = 1642 x .11 years/1000		.2
Minor Self-Monitoring Reports		
790 x 8 months = 6320 x .11 years/1000		.7
4. Prepare Quarterly Noncompliance Reports .08 year x 4		.3
Total		5.5

Based on the workload model, the Water Quality Control Division would require 5.5 workyears in compliance assurance to carry out this portion of the NPDES program.

Enforcement Needs

Taking a point in time of October 1, 1978, Colorado had 16 major industrials and 45 major municipals out of compliance. We believe the national workload model indices are too high based on Region VIII experience. National workload indices assume that each enforcement action is litigated. Region VIII experience shows that few actions are actually

litigated and because of this, only 0.56 workyears per case have been needed by the EPA Regional Office for the mix of municipal and industrial cases. Therefore, using the above violations as an average, we have calculated the following resource requirements based on our Regional workload indices of 0.56 workyears per case and not the 1.25 or 1.0 work-years per case given in Table 6. The major violations are subdivided into 48 Administrative Orders and 13 referrals, a proportion extracted from Colorado experience during the period of this analysis. The manpower needs for enforcement of the Clean Water Act are computed below.

1. Administrative Orders and Notices of Violation	
.03 years/action x 48 cases	1.4
2. Referrals to State Attorney General and	
technical follow-ups to completion.	
.56 workyears x 13 cases	7.3
<hr/>	
Total	8.7

Using national workload indices adapted to Regional experiences, the analysis points to the need for 8.7 workyears of technical and legal effort to successfully address and follow through major NPDES enforcement actions.

Summary

Table 7 provides a summary of the WQCD's current workforce allocation and a comparison with program requirements developed from workload models.

TABLE 7
Resource Summary
(in workyears)

	FY-78 Allocation	Program Requirements	Hard Needs
Permit Issuance	9.0	8.7	-
Compliance Assurance	3.0 <u>1/</u>	5.5	2.5
Water Enforcement <u>2/</u>	2.0	8.7	6.7
Total NPDES Program	14.0	22.9	8.9

1/ Assumes that of the 5.1 workyears allocated to compliance and O&M, 3.0 are of compliance assurance nature.

2/ These activities include all functions.

This analysis indicates that 22.9 workyears of para-professional, professional and legal effort would be required to carry out an effective NPDES program. Supervision and clerical needs are included therein. It appears there are adequate number of resources for permit issuance if managed correctly and allowed to place 100 percent of their time in permit issuance; however, hard needs of 2.5 and 6.7 workyears are needed in the compliance assurance and enforcement areas, respectively. Those two areas are not funded at sufficient levels to ensure compliance with requirements of the Clean Water Act. The analysis shows that overwhelming needs are in the water enforcement area. Findings given in preceding chapters of this report verify these results.

ATTACHMENTS

STATE OF COLORADO

ATTACHMENT A

NPDES PROGRAM REVIEW

PROPOSED PLAN

<u>ACTIVITY</u>	<u>DESCRIPTION</u>	<u>EPA STAFF PARTICIPANT</u>	<u>STATE CONTACT / PARTICIPANT</u>
Organizational conference	Reach understanding of program	Frenette, Burm, Alkema	F. Rozich F. Matter Arden Wallum
File Review	Review 10% of major municipal and 10% of major industrial permit files.	T. Matassoni	
File Review	Review discharge monitoring report files and water enforcement files for adequacy of documentation, etc.	B. Hanson	
Interview	With secretarial and technical staff members. Trace flow of correspondence, controls, tracking, priority setting, delegations of authority	Matassoni & Burm	Karen Young Richard Summer
Interview	With secretarial and paraprofessional staff members. Logging of DMR, tracking of violations, State response, follow-up action, use of state monitoring, etc. (Compare with EMS guidelines.)	Hanson, Fischer	Betty Simmons Stan Mays Desi Brewer
Interview	With secretarial, technician, and technical staff members. Compliance schedule activity, flow of correspondence, tracking of violations, coordination with construction grants and Attorney General's office, quarterly noncompliance report.	Ruggiero, Alkema	Betty Simmons Dick Summers Karen Young Arden Wallum

ATTACHMENT A

<u>ACTIVITY</u>	<u>DESCRIPTION</u>	<u>EPA STAFF PARTICIPANT</u>	<u>STATE CONTACT/PARTICIPANT</u>
Policy Discussion	With Attorney General's office representative. Agreements with Dept. of Health; service provided; unmet needs, etc.	Frenette Lepley Alkema Burm	Frank Rozich Sharon Metcalf Fred Matter Arden Wallum Betty Simmons
Policy Discussion	With Division Director, Deputy Director, on implementation of CWA, technical and legal policies of Permit Program, Monitoring, Compliance, and Enforcement.		
Exit Conference	Discussion of tentative findings		

NOTE: Sessions will be scheduled in such a way as to minimize disruptions to State Office. EPA will contact Mr. Fred Matter to schedule all visitations at State Office. Mr. Matter will be responsible for arranging for a meeting room.

ATTACHMENT B

COLORADO DEPARTMENT OF HEALTH - 4210 East 11th Avenue - Denver, CO. 80220
Water Quality Control Division
File Copy
Transmittal I.O.C.

William Auberle

9/2/78

Frank J. Rozich

Memo August 18, 1978 -
Self-Monitoring/Enforcement

The policy of the Water Quality Control Division has always been to utilize the self-monitoring reports as a tool of enforcement. The self-monitoring reports are routinely checked and if they indicate a violation of the discharge permit limits, one of four actions are taken.

If the permit violation is minor such as chlorine and/or fecal coliform limits, the D.E. is asked to work with the entity and correct the violation. If the permit violation is more than a minor violation but not significant, the entity is generally contacted by letter pointing out the violation and asking for response as to cause and correction.

At times, depending on the situation and D.E.'s recommendations, the entity is asked to come in for a meeting where they are presented with the facts of the violation and asked to come up with a compliance schedule which, if satisfactory, is then adhered to, probably with an order.

If the permit violation is significant enforcement samples are generally collected immediately, depending somewhat on what the district engineer says.

The self-monitoring reports are, therefore, used as a means to trigger action of some kind to gain compliance with permit conditions.

The Division has always been confident in using the self-monitoring as we do in getting compliance.

By admission, EPA does very little if anything on enforcement on minor permit holders. Our effort is on compliance of all permits regardless of class. We have 143 major permit holders and 730 minor permit holders.

If we were to issue an NOV and Cease and Desist on every permit violation that we were able to document, using self-monitoring as the basis for such action, we would need at least one more professional FTE, at least one more full time clerical person and probably one more FTE at the Attorney General's office. A prediction of the impact, if this number of violations went before the Commission, is not easy but one could be assured that it would be heavy.

As you know, the Commission has been reluctant to set meaningful fines against municipalities. A good example is the Sterling case. If the past is a guide, this increased volume of enforcement actions against all violators, in our opinion, would have a negative reaction with the Commission.

Prepared by: If you like, I and Auberle Approved by: the staff would be responsible
Date: discuss this further with you. Date: _____
Executive Director: W. J. Rozich Signed: _____ Date Mailed: _____
Returned unsigned: _____ Date: _____



ATTACHMENT C

COLORADO DEPARTMENT OF HEALTH

4210 EAST 11TH AVENUE • DENVER, COLORADO 80220 • PHONE 388-6111

Anthony Robbins, M.D., M.P.A. Executive Director

November 15, 1978

Ref: 8E-PC

Mr. Roger E. Frenette, Chief
Permits Administration and Compliance Branch
Enforcement Division
Environmental Protection Agency
1860 Lincoln Street
Denver, CO 80295

RE: Colorado NPDES Program Review

Dear Roger:

In response to your letter of October 24, 1978, requesting additional information on the outputs and policies of the Colorado NPDES permit program, I am enclosing tabulations by quarters in FY 78 of your items a. through e. listed under number 1.

Number 2 - I am enclosing a copy of the Colorado Water Quality Control Commission's Guidelines for Assessment of Civil Penalties for Violation of Permits, adopted May 4, 1976.

Number 3 - Copy of an IOC from Frank J. Rozich to William Auberle, relative to Self-Monitoring/Enforcement.

I trust that this give you the necessary additional information; however, should more be desired or should you have any questions, please call me.

Very truly yours,

WATER QUALITY CONTROL DIVISION

Fred Matter, P.E., Chief
Monitoring & Enforcement Section

FM:ef

Enclosures

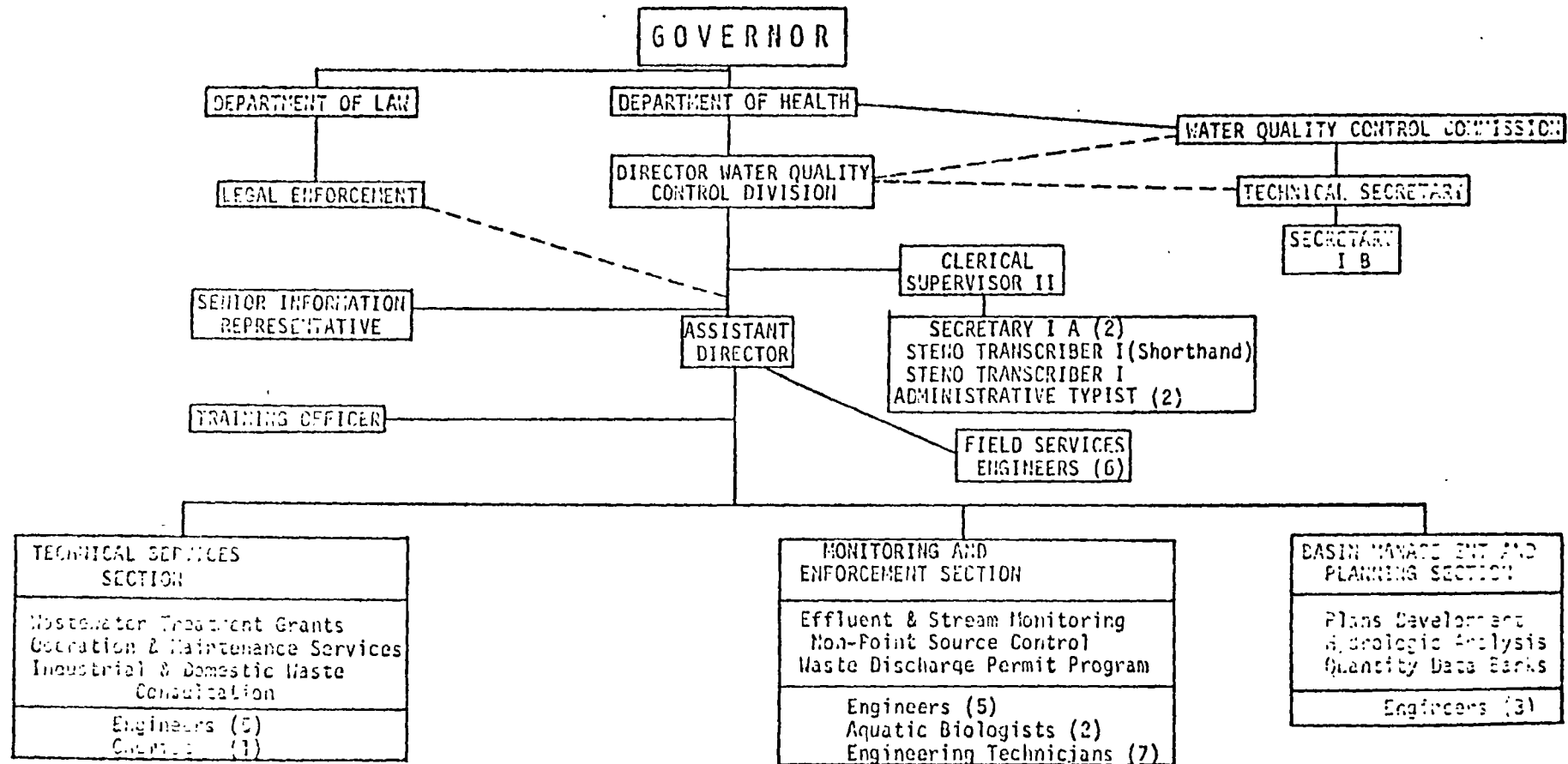
OCTOBER 1977 - SEPTEMBER 1978

FY - 78

a.	<u>Self-Monitoring Violation</u>	<u>Number</u>
	October - December 1977	22
	January - March 1978	51
	April - June	44
	July - September	38
b.	<u>Compliance/Enforcement Monitoring</u>	
	October - December 1977	24
	January - March 1978	13
	April - June	9
	July - September	22
c.	<u>Enforcement Conferences Conducted</u>	
	October - December 1977	0
	January - March 1978	2
	April - June	8
	July - September	6
d.	<u>Notices of Violation and Administrative (Cease and Desist Orders) Issued</u>	
	October - December 1977	2
	January - March 1978	4
	April - June	18
	July - September	26

October 1977 - September 1978 (FY - 78, continued)

e.	<u>Penalty Actions approved by the Water Quality Control Commission</u>	<u>Number</u>
	October - December 1977	1
	January - March 1978	1
	April - June	3
	July - September	1



ENVIRONMENTAL PROTECTION AGENCY

ATTACHMENT E

AUG 19 1976

Ref: 8E-PC

Mr. Robert D. Siek
Assistant Director
Department of Health
Environmental Health
4210 E. 11th Avenue
Denver, Colorado 80220-

Dear Mr. Siek:

Thank you for your letter of June 21, 1976, responding to current issues involved in Colorado's administration of the NPDES permit program. During the interim, several meetings have been held between our respective staffs as well as with the Attorney General's office. The extension of permits by letter has since been terminated and the elimination of effluent limitations from permits without public participation has also been changed. The definition of what constitutes a "significant change" in a permit condition, thereby requiring public participation, has also been clarified.

We understand the resource problems that the administration of the permit program carries and strongly endorse your strategy of setting expiration dates which result in a more uniform administrative workload.

Changes in work assignments as well as the restructuring of the permit program workload are well underway. Your staff report clearly lays out the basic manpower requirements of the Section 402 permit program. The staff level indicated is well justified, according to our experiences. We have the following suggestions and comments:

1. A team leader is needed who can manage and drive the program on a day-to-day basis.
2. Administrative functions should, to the maximum degree possible, be separated from the technical, professional duties and the positions filled accordingly.
3. It appears that NPDES personnel are being employed in too many other areas such as Section 404, energy studies, etc., to maintain a cohesive NPDES operation.
4. Neither this office nor the three other States in the Region who operate the permit program have experience in using administrative

personnel to carry out both para-professional tasks and typing/secretarial duties. The functions are separated. This does not imply that your approach will not work, however.

5. With the large number of permits your office must handle, we recommend the use of a full-time file clerk. Because of the "paper blizzard" associated with the NPDES program, we have found that the benefits derived by the office far outweigh the costs.

We have questions regarding responsibilities in the permit program and would appreciate a response to the attached questions. Your help here will also help improve coordination between our respective offices.

We will be happy to assist in training new personnel and in providing continued assistance in suggesting organizational arrangements and ~~administrative procedures.~~

Sincerely yours,

ORIGINAL SIGNED BY
JOHN A. GREEN

John A. Green
Regional Administrator

Enclosure

Who is responsible for the Colorado Permit Program?

- . This involves establishing goals, priorities and technical requirements for processing and issuing permits and monitoring permit reports on a day-to-day basis;
- . Programming work for Permit Team Members;
- . Directing total permit program operation;
- . Developing administrative procedures and organizing personnel for smooth work flow and the handling of exceptions;
- . Setting and changing policy and assuring consistency in permit issuance;
- . Receiving and processing all permit applications;
- . Conducting on-site inspections of permit facilities;
- . Coordinating all permit aspects with EPA and State Offices;
- . Initiating, directing, and coordinating effluent monitoring efforts and inspections of permit facilities;
- . Reviewing discharge monitoring reports, comparing with State sampling results, and recommending investigations;
- . Reviewing and approving/disapproving compliance schedules;
- . Initiating and coordinating enforcement investigations with Attorney.

If the above mentioned functions are shared by more than one individual, what is the relationship between the permit issuance and compliance assurance efforts? Who is responsible for permit issuance? Who is responsible for compliance assurance?

What is the relationship between compliance assurance and the enforcement function? Who is responsible for initiating enforcement actions and providing the technical support?

Who is responsible for reviewing both the discharge monitoring reports and State effluent monitoring results? Does this person also recommend enforcement actions? Who adjusts the State effluent monitoring strategy to reflect discharge monitoring results and the review of State effluent monitoring?

What role do the District Engineers play in permit issuance? In Compliance Monitoring? In enforcement investigations? Will they perform added permit functions in the future?



ATTACHMENT F

COLORADO DEPARTMENT OF HEALTH

4210 E. 11TH AVENUE

DENVER 80220

PHONE 388-6111

ANTHONY ROBBINS, M.D., M.P.A. EXECUTIVE DIRECTOR

RECEIVED

September 8, 1976

SEP 15 1976

ENFORCEMENT DIVISION
LOG NUMBER:

6029

Mr. John A. Green, Regional Administrator
U.S. Environmental Protection Agency, Region VIII
1860 Lincoln St.
Denver, CO 80203

RE: 8E - PC

Dear Mr. Green:

Your letter of August 19, 1976 has been received. The suggestions included in this letter are appreciated. Answers to your specific numbered questions are given below:

1. The permits section is still undergoing a certain amount of reorganization at this time. A team leader will be named shortly.
2. Similarly, we are in the process of separating and identifying the administrative and technical functions. Enclosed is a rough draft of administrative assignments.
3. Due to other commitments, such as Section 404, Section 316(b), energy studies, an estimated 40% or less of available time can be allotted to the Section 402 program. A large portion of this time is required for the drafting of permits, with very little time available for compliance, self-monitoring, and enforcement actions.
5. We are in the process of "purging" and combining the permit files with the Division files. At the present, one secretary is solely responsible for filing.

Reference your questions on the attached sheet, the following answers are submitted:

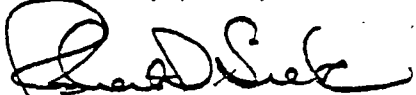
1. At the present, Paul Williamson is Acting Chief, Monitoring and Enforcement. Permits are part of this section. Due to the wide range of responsibilities, the items listed under this question are not handled precisely as listed nor by one particular individual.

Page 2

RE: 8E - PC (Continued)

2. Similarly, the above applies to the questions regarding permit issuance, compliance assurance and enforcement actions.
3. The present role of the District Engineers in permit issuance is at the present, relatively minor. It is hoped, that, at some future period, the District Engineers will be more actively involved not only in permit issuance, but also in compliance assurance and enforcement actions.
4. ~~Reference~~ the question on monitoring discharge reports and state effluent results, we are planning a new approach to both self-monitoring review and scheduling of effluent monitoring. Briefly, we plan to utilize the data from the routine stream sampling program comparison with trends based on the historical data, and self-monitoring data, to schedule point discharge monitoring. All samples will be collected and handled routinely as legal samples. This approach should provide a closer relationship of sampling with water quality goals.

Very truly yours,



Robert D. Siek
Assistant Director, Department of Health
Environmental Health

RDS/vs

PERMIT PROGRAM CLERICAL PERSONNEL DUTIES

Dessie Brewer, Administrative Clerk Typist A

Self Monitoring (all aspects)
Special Projects
Typing as assigned
Serves as backup for others as required
Answers procedural and administrative questions concerning her assigned duties.

Mary Corn, Secretary IA

Has full responsibility for the detail work connected with permit issuance commencing with a review of the first typed draft of permits to ascertain clerical errors, (material with errors is to be returned to the Clerical Supervisor for handling), and on through timely issuance of the final permit. Any problems encountered during this process are to be brought to the attention of the Clerical Supervisor or the Section Chief. During the permit issuance process, will make the appropriate entries in the various status logs so the status of any particular permit will be readily apparent and information available for required reporting and/or inquiries. Answers procedural and administrative questions concerning her assigned duties. Typing as assigned. Handles special projects. ~~Handles special projects.~~ Assists with telephone. Serves as backup for others as required.

Judith Dukat, Administrative Clerk Typist A

Prepares reports as necessary, (weekly, monthly, annually).
Coordinates transfer of permit information between EPA and the State.
New and Renewal Applications
Permit Fees.
Logs in drafted permits prior to their being typed, (forwards to Supervisor).
Compliance reports and associated detail work.
Answers procedural and administrative questions concerning her assigned duties.
Assists with telephone.
Special Projects. Typing as assigned.
Serves as backup for others as required.

Vera Snyder, Administrative Clerk Typist A

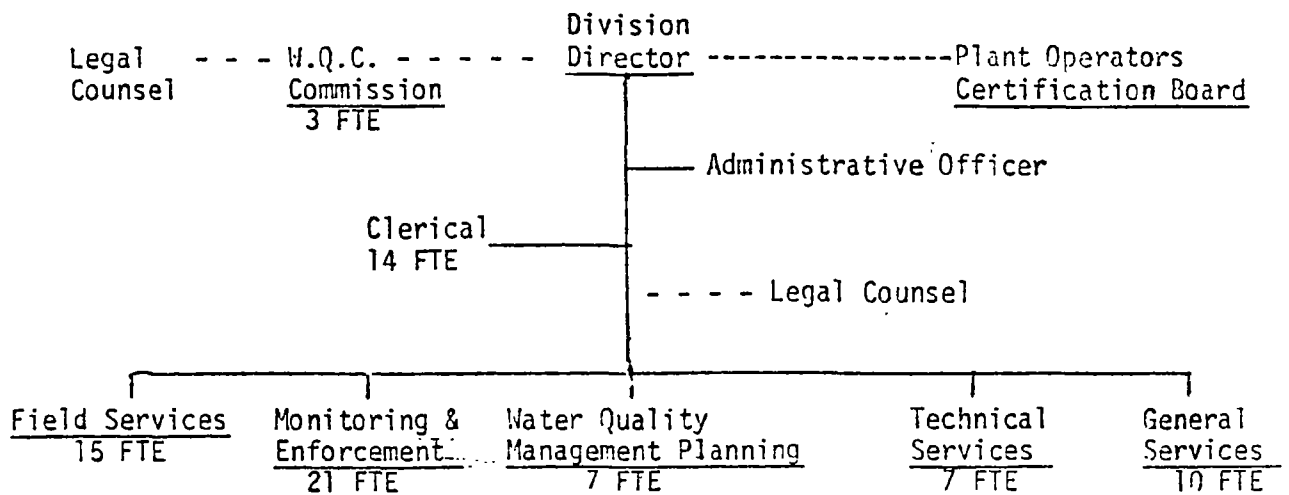
Typing duties as assigned.
Xeroxing
Special Projects
Serves as backup for others as required.
Other assignments to be developed as program knowledge increases.

Karen Young, Administrative Clerk Typist A

Typing duties as assigned.
Filing
Maintains record of livestock operations not requiring discharge permits.
Serves as backup for others as required.
Other assignments to be developed as program knowledge increases.

Note: The above assignments will be followed until further notice. Additional and/or expanded duties are being considered for the clerical staff in order that the permit engineers may devote more of their time to the technical aspects of the program.

ORGANIZATION AND DUTIES OF WATER QUALITY CONTROL DIVISION



Field Services: 10 Districts - 5 district offices + La Junta; rest handled out of Denver

1. Division represented in the field
2. Wastewater treatment plant inspections
3. Site location evaluations
4. Drinking water facilities
 - community
 - non-community
5. Solid waste sites inspection
6. Investigate spills in their area
7. Provide input to other sections on enforcement actions, permits, construction grants, collect samples when necessary, operator training, recommendations on planning and enforcement.
8. Review plans and specifications of non-construction grant projects.
9. Review O&M Manuals

Monitoring and Enforcement: 3 district offices - permits; 3 district offices - sampling

1. Collect & analyze samples
 - stream - 124 stations, 28 primary
 - effluents - surveillance and enforcement
 - special studies - field lab, etc.
2. Hold pre-enforcement conferences
3. Issue Notice of Violation and Cease and Desist Orders
4. Issue Clean-up Orders
5. Enforcement conferences with attorneys
6. Adjudicatory hearings
7. Court actions
8. Received fines to Commission
9. Review self-monitoring data and issue notices
10. Issue and re-issue NPDES permits
11. Drafting of regulations - Water Quality Standards, Groundwater Regulations
12. Review Federal and other states' regulations & comment on same
13. Provide information as requested

Water Quality Management Planning

1. Continuing planning process
2. Establish waste load allocations for stream segments
3. 208 point source plans for non-designated areas of the state;
state wide Mining BMP & Construction BMP
4. Establish facility plan boundaries
5. Review 201 facility plans for population projections and levels
of treatment required
6. NPDES permit reviews and comments
7. Site application reviews and comments
8. EIS reviews
9. A-95 reviews
10. Subdivision reviews
11. Subsurface disposal permits issued
12. Subsurface disposal self-monitoring reports reviewed
13. Pits, ponds, and lagoons inventory
14. Review Federal and state regulations and comment on same
15. Stream classification recommendations
16. Provide information as requested

Technical Services

1. Process Federal grant applications
2. Process Federal grant increases
3. O & M Manuals reviewed
4. Plans and specifications reviewed - domestic and industrial
5. Process State grant applications
6. State O & M Manuals reviewed
7. Spill reports compiled
8. Manpower training
9. Drafting of regulations either individually or on committee
10. Review Federal and state regulations and comment on same
11. Provide information as requested
12. Work towards assuming more of the Federal construction grant
program; presently performing 3 functions - Plans & Specifications,
Change Orders, & Plan of Operations. Plan to take over 24 of 28
functions. Hope to begin takeover on Jan. 1.

General Services

1. Review and approval of plans and specifications for public water
supplies
2. Review and approval of plans and specifications for other supplies
3. Review of P&S for swimming pools
4. Review of self-monitoring data for bacteria and turbidity
5. Review of self-monitoring data for inorganic & organic chemicals
and radioactivity
6. Notify violators - phone and letter
7. Review requests for waivers
8. Issue waivers
9. Manpower training (water operators)
10. 404 permit certification
11. ISDS reports received
12. ISDS regulations reviewed
13. Assist with plumbing examination
14. Review and comment on Federal regulations

Division as a whole

1. Annual report to Commission
2. State/EPA Agreement
3. Biennial report to Congress - 305(b)
4. Annual budget
5. Training of Water & Wastewater Operators
6. Operator certification
7. Serve on various committees
8. Propose regulations
9. Testify at legislative committee meetings
10. Participate in workshops as needed

ATTACHMENT H

ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: Suggestions to Assist in the Development of a More Effective Permit Program

Realizing the state of flux which currently exists at the Colorado Department of Health, implementation of some NPDES guidances may not be feasible at this time. However, when positions relative to the projected reorganization are made known, an opportunity for restructuring the in-house operations will be afforded.

Program administration requires a broad general knowledge of the law, the political situation, budget and personnel management. An administrator's duties involve a perspective not compatible with direct interaction with NPDES permittees in enforcement proceedings. In his capacity as administrator, the director of a program cannot keep in tune with the technical requirements of the program, maintain any semblance of awareness of a particular permittee's compliance record and current status, nor take the time to be properly updated for each enforcement issue. Colorado's political situation in itself, requires a check and balance situation where the administrator is isolated from programs conflicting in circumstance, e.g., Construction grant funding lacking in the mist of NPDES permit noncompliance or technical assistance failings leading to the necessity for enforcement.

The structure most desirable for NPDES program administration is first to isolate the authorities for programs of potential conflict. This isolation means granting the authority as well as the responsibility for managing each program to a lower line chief, yet allows for some input from the administrator and for final concurrence. The structure certainly does exist to a degree at the Colorado Department of Health, yet the compactness of the Water Quality Control Division management matrix does not fit this described model. The following organization should be evaluated as an alternative for implementation by Colorado:

DIRECTOR

CHIEF, ENFORCEMENT

CHIEF, ASSISTANCE PROGRAMS

**PERMITS
ISSUANCE**

**COMPLIANCE,
PERMITS**

GRANTS

**OPERATOR
CERTIFICATION**

**TECHNICAL
ASSISTANCE**

CONCURRENCES

SYMBOL								
SURNAME								
DATE								

The primary concern here is enforcement. Permits need to be properly issued before they can be enforced, but need to be enforced once issued. The credibility of any regulatory program is dependent on the uniformity that it possesses, and even if cutbacks due to lack of resources is necessitated, uniformity over a narrower range is needed. The Enforcement Management System (EMS) recognizes the need for enforcement consistency, the resource limitations often imposed, and a process for working within the program constraints. Major aspects of EMS are:

1. Source Inventory

- a. Name, location, permit number.
- b. Effluent limitations, compliance dates.
- c. Compliance record, construction progress.

The development and maintenance of the inventory is a clerical function requiring routine updating for the basic types of information. Automated systems are available for storing of this information, but as with all inventory information, it is necessary that only one group be clearly responsible for its maintenance.

2. Information Control - Tracking

- a. Compliance schedules.
- b. Construction grant information.
- c. Discharge Monitoring Reports.(DMR).
- d. Compliance inspection reports.

3. Information Control - Response

- a. Reports from State Agencies.
- b. Reports from Federal Agencies.
- c. Citizens complaints.
- d. Adjudicatory information.
- e. Noncompliance reports (including DMRs).
- f. Modification and variance requests.

Tracking of reports as listed in item 2 to insure their submittal and item 3 to insure adequate timely responses to those of item 3 is an essential program function which is basically that of clerical personnel.

Again, automation can assist in the proper integration of the material, but responsibility for the reports control must be clearly identified.

4. Internal Management Control

This consists of insuring the proper utilization of those reports of items 2 and 3 and integrating those reports for:

- a. Establishing an enforcement record for each source.
- b. Establish models for evaluation of the Agency's activities in meeting the program objectives.

5. Pre-enforcement Evaluation

This process is the screening of the available data to distinguish sources that are in obvious compliance from those which may be in noncompliance. The functions can be performed by para-professional or administrative staff members checking for:

- a. Report submittals.
- b. Completeness of Discharge Monitoring Reports.
- c. Any deviation of reported discharge data beyond the permit limits.
- d. Utilization of the Technical Review Criteria of Attachment II of the EMS Guide to establish significant violations in the case where limited resources constrain the degree of follow-up.

The staff member responsible for the screening, should utilize a violation and follow-up summary similar to Attachment III of the EMS guide to record:

- a. The violation indicated by the DMR.
- b. The action taken on the violation.
 - 1. No further action
 - 2. Telephone call
 - 3. Standard form letter
 - 4. Referral to professional staff.

6. Enforcement Evaluation

Utilizing the information which filters up from the pre-enforcement evaluation, the technical staff would make a determination of the appropriate course of enforcement action. Guidances should be established to aid in determining the proper action to insure a consistent and credible program. In cases resulting in referrals to the legal staff, the technical people should maintain awareness as to both the technical and legal issues.

7. Compliance Inspections

Compliance inspections are an important means for establishing the compliance status of a source. The actual scope of the source inspection may vary, but all sampling inspections should be done in accordance with those procedures necessary in establishing a violation, i.e., correct sampling types, split samples, chain of custody, etc. For cases requiring samples over a period of several days in order to establish a violation, self-monitoring can be utilized in conjunction with the Agency's compliance monitoring. The compliance monitoring would substantiate the validity of the source generated data.

To keep afloat in the tide of information available in the NPDES program, an Agency must be systematic. Information is available for a reasonable, logical approach to compliance analysis, and to waste the data available through discharge monitoring reports not only wastes a valuable resource but also taxes, unnecessarily, the compliance monitoring system.

As Colorado has presently six district offices and a proposed expansion, it is essential that centralization for the enforcement decisions is evaluated. The district engineers serve as information sources and in assistance programs, but too much dependency on the D.E.'s for enforcement matters serves only to muddle tracking procedures and lend itself to an inconsistent program. The main office should not only serve as a focal point for program objectives, but also needs to be a clearing-house for enforcement activities, with quality input from the various information sources.

Staff levels in the Denver office need to be sufficient for adequate review of the materials and tracking. The following levels are recommended as a minimum staffing for compliance purposes only:

2 Staff Engineers

1 1/2 Para-professionals- one designated review of discharge monitoring reports for completeness, initial follow-up, referral to staff engineers for further action--1/2 designated for compliance schedules tracking and processing.

3 Clerical - the clerical duties should include discharge monitoring report pre-screening and tracking, typing, telephone, and other clerical functions. In addition, a specific individual should be assigned responsibility for maintaining the files.

In summary, the needs for a good Enforcement Management System are not purely technical, but do, infact, rest heavily on the clerical functions of inventory, tracking and screening. This frees those individuals of a technical background to function in their desired area, undaunted by the activities necessary to the program for which they fail to perform adequately because of their over qualifications.

ENVIRONMENTAL PROTECTION AGENCY

SUMMARY

1. Overall organizational structure which supports program needs.
2. Use of all compliance related information. Since self-monitoring is the largest single source of compliance information, its proper use is essential to any compliance program.
3. Permit violations and follow-up must be tracked.
4. Adequate clerical, para-professional and engineering support must be available.
5. Procedures for information flow must be established.
6. One organization unit must be responsible for: (1) identifying permit violations, (2) tracking responses to violations, (3) coordinating all appropriate input to violations and (4) assuring compliance after violation occurs.
7. Communications levels between technical and legal staff must be open.
8. Files must be maintained in a centralized location with a specific individual designated responsible for their maintenance.

CONCURRENCES							
SYMBOL	▶						
SURNAME	▶						
DATE	▶						

EPA FORM 1320-1

NOTES ON
FILE AUDITS AND INTERVIEWS

Eleven permit files were selected, and each file was audited. The eleven files audited were Mid Continental Coal and Coke, Great Western Sugar at Loveland, Evans Sanitation, Stanley Aviation, Upper Thompson, Georgetown, Colorado Ute, Public Service at Arapahoe, Table Mesa, Harold Blitt, and DM & H Cattle.

The audit was rather difficult to perform because of the lack of organization of correspondence and reports in the files. Correspondence and reports are not being consistently filed in chronological order. This appeared to be a basic problem with all eleven files audited. Because of the lack of organization it was hard to determine whether certain correspondence was missing, misfiled, or just not generated. Therefore, there appeared to be no continuity when follow-up did occur.

Regarding State follow-up of effluent violations reported on the Discharge Monitoring Reports (DMR's), the State does not appear to be acting on any effluent violations unless prompted by a Notice of Violation from EPA.

The files audited also seem to indicate very poor follow-up for delinquent self-monitoring reports and incorrect sample types. An example of poor follow-up for delinquent DMR's is Georgetown Valley where it appears it took the State a year to obtain DMR's from the facility. No telephone contact appeared to be made regarding delinquent reports, only letters were sent. An example of incorrect sample type is Public Service at Arapahoe. Public Service has been indicating that pH was being sampled by a composite sample since January of 1977. No letter in the file was found for correcting this improper procedure.

Specifics are attached regarding problems encountered with Mid Continental Coal and Coke, Evans Sanitation District, Stanley Aviation, and Georgetown Valley.

Mid-Continental Coal and Coke
CO-0000396

For this facility, there were three separate files. According to the labels, each file was to contain self-monitoring reports and correspondence for the years specified on the label. However, there was evidence that the self-monitoring reports (DMR) were not filed in the proper file, e.g., '76 file contained '75 DMR's in addition to the '76 DMR's. DMR's were also filed loosely on top of all correspondence. The only DMR that appeared missing was for the second quarter of 1977. It appears that no delinquent letter was sent for this reporting period. The only violation reported by the facility was for TSS during the first quarter of 1977. A letter of violation was sent to City by the State on July 5, 1977. However, the State's letter was sent due to prompting by EPA with an NOV to the State on June 20, 1977. The City did reply on July 26, 1977. No record was in the file regarding whether the reply was adequate. The reply appears adequate to me.

Evans Sanitation
CO-0020508

The DMR's for this facility from January through September 1977 were filed in no order whatsoever. There was also no DMR for October of 1977. The DMR's for 1976 were filed in between April 1977 and February 1977 DMR's. BOD₅ violations were noted for November 1977, January 1978, and April 1978 DMR's. The September 1977 DMR reflected a violation of the Cl₂ limit of .2 mg/l which was effective July 1, 1977. The February 1978 DMR contained no BOD, no TSS, and no FC data. The only follow-up correspondence for effluent violations in the file was a letter dated April 29, 1977, regarding Cl₂ violations in the compliance monitoring sample of March 16, 1977 (Note: the limit of .2 mg/l for Cl₂ was not effective until July 1, 1977). No further follow-up correspondence for DMR violations was in the file.

Stanley Aviation
CO-00001864

The DMR's for this facility, specifically October 1977, November 1977, and January 1978, were received in the State office anywhere from two to three months late. I could find no delinquent letters in the file. The DMR's for 1977 and 1978 were not consistently filed in chronological order. There were many effluent violations (TSS plus heavy metals) starting as far back as August 1977. The only enforcement related correspondence that I could find was a letter dated September 23, 1977, asking whether the Company has hooked up to Aurora or not and a memo regarding a meeting with the Company on March 21, 1978. The memo indicated the Company was to submit a compliance schedule within

two weeks. The schedule, if approved, was to be adopted as part of a State NOV. The Company, during the interim was to attempt to keep levels of contaminants low and address their methods by letter. No further enforcement related correspondence (by State or Company) was seen in the file after this memo.

I asked if they had an enforcement file for this permittee. I was told by Betty Simmons that there was none. She indicated that if there was an enforcement file, all copies of correspondence in the enforcement file should be in the permit file.

Georgetown
CO-0027961

The only DMR's in this permit file were for the last half of 1977 and the first quarter of 1978. The State sent delinquent letters starting back in July of 1976. It seems that the State just kept sending delinquent letters after delinquent letters with no telephone contact (at least there was no indication of telephone contacts). Taking a year and a half to get a major permittee to submit reports appears to be stretching it a bit. No enforcement related letter appeared in the file other than the letter dated October 5, 1977, which was generated due to violations found in State compliance monitoring. EPA issued the State an NOV for BOD, TSS, and Oil and Grease on November 29, 1977. The State did not reply to this NOV until March 7, 1978.

— The following is a summary of the conclusions reached following the file audit conducted at the Colorado Health Department:

a) In general the files that were audited were not found to be very efficiently organized. Whatever you may be looking for (e.g., permit, application, etc.,) you must search the entire file to find it.

b) From what I could determine, the files are to be kept in chronological order. In most of the files checked this is not followed consistently. You will find 1978 correspondence with 1973 correspondence. Also, in four files I found loose material floating in the files.

c) In one case, the Colorado Ute Electric Association, CO-0000523, I found data pertaining to the Colorado Ute Electric Association, CO-0000043 file.

d) In three of the ten files checked I did not find a copy of the issued permit. In one other file, the permit was found with correspondence filed between the permit pages (Upper Thompson Sanitation District).

— e) In all cases, the certified receipt cards acknowledging receipt of the issued permits were not found near the permit. In two cases the certified card was not found at all. The Evans Sanitation District had a specific problem in that the certified receipt card was never returned to the Colorado Health Department. Follow-up by this Agency (phone memo) confirmed the permit had indeed been received. There was nothing in the Colorado Health Department file to confirm receipt of the permit. How does the Health Department know if the permit was ever received and also when the permit becomes effective?

f) The Mid-Continent Coal & Coke Company had an amendment issued on December 15, 1977. It consisted of changing pages one, three and five of the permit. These changes were incorporated in EPA's file but not in the Colorado Health Department file. There is a copy of the transmittal letter but not of the amended pages. How does the Colorado Health Department keep track of amendments? From what I could tell, they can't.

g) While looking through the compliance schedule section, I noticed that the approved schedule is not stamped so there is no quick way of establishing if the compliance schedule was approved unless you read the entire correspondence section.

h) It was brought up that two (2) separate files exist for each permitted facility. One is considered the correspondence file and contains a copy of the permit, application, and Summary of Rationale, as well as all the correspondence that has been received for each facility. The other file is considered the permit file and contains the original permit, application and Summary of Rationale and can be found in Arden Wallum's office. When asked the purpose of dual files, the reason was given that too many original permits had been lost so this was used as a safeguard. If people from outside the Health Department request to see the files, they are shown the correspondence files.

i) The question was asked as to why the Department had such flimsy file folders and why they were set up where you had to go through the entire file to find anything specific. The answer given was that the hard cover files like those used by EPA were too expensive to obtain.

Reviewed Colorado's NPDES files to determine the effectiveness of the compliance-assurance activity. The following files were scanned for violations and follow-up:

- 1) City of Longmont - CO-0026671
- 2) South Lakewood Sanitation District - CO-0020028
- 3) Greeley Sand & Gravel - CO-0001376
- 4) A.T. & S.F. Railroad - CO-0000558
- 5) Cortez - CO-0027880

As in any random population sampling, observation made may not truly be indicative of the functionality of the program. However, several points continually were evidenced:

- 1) Files are not well organized.
 - a) Permits are commingled with correspondence.
 - b) Correspondence is not uniformly chronologically arranged.
 - c) State's monitoring results are not separated from correspondence package.
 - d) Identical letters exist in file.
 - e) No identification on DMR sheets to correlate follow-up activity.
- 2) Discharge Monitoring Reports.
 - a) Reports are not scrutinized for reporting format errors.
 - b) Reports are not uniformly dated when received.
 - c) No explanation or indication of follow-up exists in files where DMR's are missing.
- 3) Follow-up.
 - a) When a response to a form letter is received, State generally makes no further efforts to resolve a controversy generated by the permittee response, e.g., South Lakewood Sanitation District's 12/28/77 letter indicating subsequent sample showed no violation; Longmont's 12/22/77 letter indicating

violations will continue for approximately one year (no other action by State in response). Cortez letter of 9/28/77 not responding to questions asked in State's 8/3/77 letter.

- b) State allows several reporting periods of violation before commencing enforcement inquiries, and often not before an EPA NOV is issued.
- c) No inter-section (Permits-Grants) communications are evident in file to explain some of the rationale for allowing bypasses. e.g., Longmont indicated several periods of bypass would be required during a construction phase, this was neither verified, conditioned through permit authorization, followed-up, etc. A State enforcement sample showing ten times the effluent limit was never reacted to because it was "assumed" they were bypassing.

A few conclusions that might be drawn from this brief file review are:

- 1) Technical involvement in follow-up does not appear to be of a very high caliber at any point. Follow-up of violations appears to be of relatively low priority.
- 2) DMR review practices need to be refined and a response matrix developed as it is apparent that the review of DMR's varies in frequency and thoroughness as well as the follow-up being quite arbitrarily determined.
- 3) No chain of true responsibility can be identified in the State's communications as District Engineers, Permits Engineers, Compliance Technicians, Surveillance Engineers, and the Permits Chief all send letters under their own signatures for overlapping areas of responsibility to common recipients.

Feedback is one of the basic principles of a good management system and without such feedback, morale will surely be depressed. Section and Divisional staff meetings are a formal feedback system. Fred Matter's first section meeting was September 28, 1978, and his intent is to have such meetings every three to six months. Division meetings are held semi-annually. Normally all directives to staff are from I.O.C. (internal office correspondence). Virtually no opportunities exist to sit down and discuss directives as a group or for staffers to uniformly discuss policy positions.

There is no office policy on who must sign certain types of letters although Fred Matter initials all correspondence. As a result, significant letters have been signed by Staff engineers.

There was evidence of reluctance in using the District Engineers as a compliance information source. Based upon actual participation, the District Engineers have a non-regulatory orientation. They have volunteered very little compliance information and have attended few enforcement meetings to which they were invited. Further, District Engineers have contributed nothing to the drafting of permits.

One staff member's last State sponsored training was prior to 1965. If this is indicative of the professional development opportunities provided through the State, it is no wonder that the NPDES Enforcement Program itself has been stagnant. Occasionally, supervisory personnel will be allowed to take advantage of regional training opportunities, but certainly the Division does not appear to be pushing professional development.

Some staff also expressed concern about the crowded working conditions. Personnel cannot do a very effective job if everyone is crowded together.

Staff members expressed concern regarding the lack of orientation personnel receive in the Water Quality Control Division. New personnel are expected to pick up where the departing people have left off with no direction or written procedures to follow.

The Water Quality Control Division has not had a full complement of clerical help since December 1977 which has resulted in the permits back-up. Since all clerical help must be obtained through the clerical supervisor, there can be day-to-day changes in priorities that result in backlogs of work.

A staff member is assigned as a part-time file clerk. Since he also types and assists with DMRs, the files are still a mess. There is no back-up system utilized if the file clerk is gone for an extended period of time.