



COLORADO

Department of Public
Health & Environment

**CERTIFICATION TO DISCHARGE UNDER
CDPS GENERAL PERMIT COR0900000
STORMWATER ASSOCIATED WITH
MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)**

Certification Number: COR090010

This Certification to Discharge specifically authorizes:

Northglenn City of
to discharge stormwater from portions of their MS4 located in an Urbanized Area

to the waters of the State of Colorado, including, but not limited to:

Unnamed tributary, South Platte River

Issue Date: 6/14/2016

Effective Date: 7/1/2016

Expiration Date: 6/30/2021

This certification under the permit requires that specific actions be performed at designated times. The certification holder is legally obligated to comply with all terms and conditions of the permit.

This certification was approved by:
Lillian Gonzalez, Unit Manager
Permits Section
Water Quality Control Division





Colorado Department
of Public Health
and Environment

CDPS GENERAL PERMIT COR090000
STORMWATER DISCHARGES ASSOCIATED WITH
MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)

AUTHORIZATION TO DISCHARGE UNDER THE

COLORADO DISCHARGE PERMIT SYSTEM

In compliance with the provisions of the Colorado Water Quality Control Act, (25-8-101 et seq., CRS, 1973 as amended) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.; the "Act"), this permit authorizes all discharges from municipal separate storm sewer systems certified under this permit, from those locations specified throughout the State of Colorado to specified waters of the state. Such discharges shall be in accordance with the conditions of this permit.

This permit specifically authorizes the entity listed in the certification to discharge as of the effective dates stated on the certification, in accordance with pollutant restrictions, prohibitions, and reduction requirements and monitoring requirements and other conditions set forth in Parts I, II and III hereof. All discharges authorized herein shall be consistent with the terms and conditions of this permit.

The applicant may demand an adjudicatory hearing within thirty (30) days of the date of issuance of the final permit determination, per the Colorado Discharge Permit System Regulations, 61.7(1). Should the applicant choose to contest any of the pollutant restrictions, prohibitions, and reduction requirements monitoring requirements or other conditions contained herein, the applicant must comply with Section 24-4-104 CRS and the Colorado Discharge Permit System Regulations. Failure to contest any such pollutant restriction, prohibition, and reduction requirement, monitoring requirement, or other condition, constitutes consent to the condition by the Applicant.

This permit and the authorization to discharge shall expire at midnight, **June 30, 2021**.

Modified, Reissued and Signed this 1st day of December 2016

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Janet S. Kieler
Permits Section Manager
Water Quality Control Division

PERMIT ACTION SUMMARY:

Modification 3 - Minor Amendment: Issued December 1, 2016 Effective January 1, 2017

Modification 2 - Minor Amendment: Issued July 26, 2016 Effective September 1, 2016

Modification 1 - Minor Modification: Issued May 16, 2016 Effective July 1, 2016

Originally Issued and Signed: April 15, 2016 Effective: July 1, 2016

MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)

COR090000

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Part I

A. COVERAGE UNDER THIS PERMIT

1. Discharges Authorized Under this Permit

This permit authorizes discharges from the permittee's regulated small municipal separate storm sewer system (MS4) located within the permit area.

Discharges from the MS4 within the permit area that are designed or used to convey stormwater to surface waters of the state are considered part of an MS4 and are authorized by this permit.

a. For the purposes of this permit:

- i. "Discharge" means the discharge of pollutants as defined in section 25-8-103(3) C.R.S.
- ii. "Pollutants" are dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal or agricultural waste as defined in 5 CCR 1002-61.2(76).
- iii. "Discharge of a pollutant" means the introduction or addition of a pollutant into state waters. See 25-8-103(3) C.R.S.
- iv. A "municipal separate storm sewer system" is a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is:
 - (A) Owned or operated by a State, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to state waters;
 - (B) Designed or used for collecting or conveying stormwater. For the purposes of this permit, stormwater conveyances also includes conveyances that are owned or operated by the permittee through agreement, contract, direct ownership, easement, or right-of-way and are for the purpose of managing flood plains, stream banks, and channels for conveyance of stormwater flows in order for the discharges to be authorized by this permit.;
 - (C) Which is not a combined sewer; and
 - (D) Which is not part of a publicly owned treatment works (POTW). See 5 CCR 1002-61.2(62).
- v. "Municipal" refers to a city, town, county, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under section 208 of CWA(1987).
- vi. "Illicit discharges" means any discharges to an MS4 that is not composed entirely of stormwater except discharges specifically authorized by a CDPS or NPDES permit and discharges resulting from emergency fire fighting activities. Permittees should note that there are many types of illicit discharges that in accordance with the permit need to be effectively prohibited. Only the discharges listed in Part.I.2.a.v. can be excluded from being effectively prohibited.
- vii. "Stormwater" is stormwater runoff, snow melt runoff, and surface runoff and drainage.

- viii. "Small municipal separate storm sewer system" means any municipal separate storm sewer that is not defined as a "large" or "medium" municipal separate storm sewer system pursuant to Regulation 61. This term includes publicly-owned systems similar to separate storm sewer systems in municipalities (i.e., non-standard MS4s), including, but not limited to, systems at military bases and large education, hospital or prison complexes, if they are designed for a maximum daily user population (residents and individuals who come there to work or use the MS4's facilities) of at least 1000.

2. Limitations on Coverage

- a. This permit in no way removes or modifies the responsibility for an operator with control of the facility or activity from which the discharge originates to obtain separate CDPS or NPDES permit coverage or report spills when required in accordance with the Colorado Water Quality Control Act, Regulation 5 CCR1002-61. An "operator" is the person or entity who is responsible for the overall operation of the facility or activity from which the associated discharge originates.
- b. Discharges that meet any of the following conditions, at the time of the effective date of the permit authorization, are not eligible for coverage under this permit:
- i. The following are excluded from being part of the MS4: discharges from conveyances for which the flow is irrigation return flow, agricultural stormwater runoff, or a combination thereof; or water that is used for supplying irrigation water to irrigated land. "Irrigation return flow" is tailwater, tile drainage, or surfaced groundwater flow from irrigated land. Irrigation return flow (which includes surface and subsurface water that leaves a crop field following irrigation of that field) and agricultural stormwater runoff do not require NPDES permits, as they are exempted from the Clean Water Act.
 - ii. A permittee has the option to exclude from coverage under this permit portions of the MS4 where the flow is a combination of stormwater and irrigation return flow, and the majority of the flow is irrigation return flow or agricultural stormwater runoff. To exclude these portions of the MS4 from coverage under this permit, the permittee must identify in the permittee's application or a subsequent application supplement the portions of the MS4 for which the flow is a combination of stormwater and irrigation return flow, and the majority of the flow is irrigation return flow or agricultural stormwater runoff. These portions of the MS4 must also be listed in the permit certification issued by the Division.
 - iii. The discharge is to a receiving water designated as outstanding waters, in accordance with Section 31.8(a) of Regulation 31. Outstanding waters is a type of designation. "Outstanding waters" are designated by the Water Quality Control Commission. These permittees must apply for coverage under another general permit or under an individual permit.
 - iv. The discharge is from an MS4 operated by the City and County of Denver, City of Aurora, City of Lakewood, City of Colorado Springs, or Colorado Department of Transportation (large and medium MS4s). These permittees must apply for coverage under another general permit or an individual permit.
 - v. The discharge is from a parcel or area that is not under the jurisdictional authority of the permittee.
 - vi. The discharge is from areas covered by non-standard MS4s unless those lands are included within the permittee's MS4 permit by agreement.
 - vii. The discharge is from an area adjacent to a state water that IS NOT owned or operated by the permittee for the purpose of managing flood plains, stream banks, and channels for conveyance of stormwater flows.

3. Permit Area

This permit covers all areas designated by the Water Quality Control Division (Division) of the Colorado Department of Public Health and Environment within the boundaries of the municipality identified in the certification that are served by, or contribute to, municipal separate storm sewers owned or operated by the municipality that discharge to state waters. The certification issued to

each permittee will specify whether the coverage is for the areas listed in Part I.A.3.a or b and if the coverage includes additional areas designated by the Division.

- a. For the following locales, “permit area” is further defined below:
 - i. Cities: For all cities, including combined cities and counties, required to obtain coverage under this permit, the geographic area of permit coverage will include the entirety of the municipal incorporated boundary.
 - ii. Counties: For all counties required to obtain coverage under this permit, the geographic area of permit coverage is the following:
 - (A) US Census Bureau designated urbanized areas in accordance with the 2010 census; and
 - (B) County Growth Areas: Growth areas will be designated for permit coverage by the Division in accordance with one of the following processes, which will be identified in the permit certification.
 - 1) Growth Areas identified by the permittee: (i.e., map and narrative explanation) in the application or subsequent modification request, and accepted by the Division. The growth areas are the areas that the permittee has identified as projected to meet the US Census Bureau urbanized area criteria prior to 2020.
 - 2) Growth Areas identified by the Division: This process shall apply to permittees that do not submit growth area information to the Division in accordance with Part I.A.3.a.ii(B)(1) or (3), or for which the Division determines that the growth area provided in accordance with Part I.A.3.a.ii(B)(2) is not a reasonable approximation of the area projected to meet the US Census Bureau urbanized area criteria prior to 2020. The Division will designate all area under the jurisdictional control of the permittee that is within 5 linear miles of the 2010 US Census Bureau urbanized area as growth areas.
 - 3) No Growth Area determination: No growth area will be designated where a permittee effectively implements a regulatory mechanism that prohibits growth in excess of 1,000 people/square mile density outside of the US Census Bureau designated urbanized areas in accordance with the 2010 census. The permittee shall provide information identifying the mechanism in its permit application or subsequent modification request and the permittee must maintain the regulatory prohibition identified in the application as a requirement of this permit.
- b. In accordance with Part I.H, compliance with permit requirements shall begin immediately for areas that meet the permit area description through expansion of the municipal boundaries or infrastructure. Areas removed from a permittee’s jurisdiction, such as through annexation or incorporation by a separate municipality, are removed from permit coverage at the time of the transfer of the jurisdiction.

4. County Growth Area Requirements

This permit includes terms and conditions for those portions of the permit area that are identified in the permit certification as growth areas. The terms and conditions in the following parts of the permit **do not** apply to growth areas:

- a. Part I.E.1 (Public Education and Outreach)
- b. Part I.E.2 (Illicit Discharge Detection and Elimination)
- c. Part I.E.5 (Pollution Prevention/Good Housekeeping for Municipal Operations)
- d. Part I.F.6 (Monitoring), unless the Division requires water quality sampling and testing on a case-by-case basis or in response to a TMDL based on the terms and conditions of this permit.
- e. Part III unless a term or condition is specifically identified within that Part as being applicable to growth areas.

5. Application for New and Renewal Applicants

The applicant shall apply for certification under this general permit by submitting an application with the content required by the Division at least 180 days before the anticipated date of required permit coverage.

The application in its entirety shall be submitted to:

Colorado Department of Public Health and Environment
Water Quality Control Division
Permits Section, WQCD-P-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Following review of the application, the Division may request additional information or deny the authorization to discharge under this general permit. If the Division determines that an applicant does not fall under the scope of the general permit, then the information received may be processed for an individual permit. The applicant also may apply for coverage under an alternative general permit. The applicant shall be notified of the Division's determination. The certification may be revoked if during the renewal process, the Division determines that the applicant no longer qualifies for the general permit. The applicant also may be allowed to discharge under the general permit with additional terms and conditions in the amended certification until an individual permit or alternative general permit is issued.

A permittee desiring continued coverage under this general permit must reapply at least 180 days in advance of this permit expiration. If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued and remain in force and effect. Any discharges authorized under this permit will automatically remain covered by this permit if a permittee was authorized to discharge under this permit prior to the expiration date until the earliest of the following:

- a. Authorization for coverage under a reissued permit or a replacement of this permit following the timely and appropriate submittal of a complete application requesting authorization to discharge under the new permit and compliance with the requirements of the application.
- b. The issuance and effect of a permit or permit certification termination issued by the Division.
- c. The issuance or denial of an individual permit for the facility's discharges.
- d. A formal permit decision by the Division not to reissue this general permit, at which time the Division will identify a reasonable time period for covered dischargers to seek coverage under an alternative general permit or an individual permit. Coverage under this permit will cease when coverage under another permit is granted/authorized.
- e. The Division has informed the permittee that they are no longer covered under this permit.

6. Local Agency Authority

Nothing in this permit shall be construed to limit a local government's authority to impose land-use or zoning requirements or other limitations on the activities subject to this permit. This permit does not authorize any injury to person or property or any invasion of personal rights, nor does it authorize the infringement of federal, state, or local laws or regulations.

7. Permit Compliance

A permittee must comply with all the terms and conditions of this permit. Violation of the terms and conditions specified in this permit may be subject to civil and criminal liability pursuant to sections 25-8-601 through 612, C.R.S. Correcting a permit violation does not eliminate the original violation.

B. CONTROL MEASURES

"Control measures" are any best management practice or other method used to prevent or reduce the discharge of pollutants to waters of the state. Control measures include, but are not limited to best

management practices. "Waters of the State" of Colorado (state waters) are any and all surface and subsurface waters which are contained in or flow in or through this state, but not including waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed. This definition can include water courses that are usually dry. For the purposes of this permit, waters of the state do not include subsurface waters. The following requirements apply to all control measures used to achieve the effluent limits in this permit.

1. Good Engineering, Hydrologic and Pollution Control Practices:

Control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices as defined in Part I.J. "Pollution" is man-made or man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

2. Maintenance:

Control measures must be maintained in effective operating condition.

3. Inadequate Control Measures:

Any control measure shall be considered an "inadequate control measure" if it is not designed, implemented, or operating in accordance with the requirements of the permit, including the specific requirements in each program area in Part I.E or requirements for specific permittees in Part III.

4. Control Measure Requiring Routine Maintenance:

Any control measure shall be considered a "control measure requiring routine maintenance" if it is still operating in accordance with its design and the requirements of this permit, but requires maintenance to prevent associated potential for failure during a runoff event.

5. Minimize:

The term "minimize," for purposes of implementing control measures of this permit, means reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practices.

C. PROGRAM DESCRIPTION DOCUMENT (PDD)

1. Records

The permittee must develop and maintain records in the form of a program description document (PDD). PDD information must be maintained to reflect current implementation. The PDD does not need to be submitted or approved by the Division, unless specifically requested by the Division. The PDD must include the following:

- a. **Current Control Measure Implementation and Procedures:** The specific PDD content required by Parts I.D., I.E. and III that describes how the requirements of Parts I.D., I.E. and III are met. Requirements subject to a compliance schedule do not need to be addressed in the PDD until the due date in the compliance schedule in Part I.H.
- b. **Current Documents and Electronic Records:** A list of citations for documents and electronic records used to comply with permit requirements. It is not required that the PDD repeat the information included in the cited documents. The PDD must include the names of the most recent version of the documents, date of the document, and location(s) where the supporting documentation is maintained.
- c. **Current Organizational Chart:** An organizational chart indicating responsibility over applicable departments by the legal contact.

2. Availability:

The PDD must be available to the public at reasonable times during regular business hours and maintained in a format that can be submitted to the Division within 10 business days of a request.

3. Modification:

Information in the PDD may be revised by the permittee at any time. The permittee must modify the PDD as changes occur to ensure that the information is up to date.

D. PUBLIC INVOLVEMENT/PARTICIPATION

1. Public Involvement and Participation Process

The permittee must implement and document a Public Involvement and Participation process that complies with state and local public notice requirements for actions conducted, when applicable, to comply with this permit. The following requirements apply:

- a. The permittee must follow its own public notice requirements to provide opportunities for public involvement that reach a majority of citizens within the permittee's jurisdiction through the notification process.
- b. The permittee must provide a mechanism and processes to allow the public to review and provide input on the control measures. At a minimum, the permittee must provide a statement on the permittee's web site that the PDD is publicly available for review and comment.
- c. The permittee must have the ability to accept and respond (in accordance with permit requirements) to information submitted by the public, including information on illicit discharges or failure to implement or meet control measure requirements associated with applicable construction activities, applicable development sites, or municipal operations.

2. Recordkeeping:

The permittee must maintain the following records for activities to meet the requirements of Part I.D. and Part I.K.2.:

- a. Copies of the documents used to provide public notice and any public comment received as part of the public notice process.
- b. Documentation of the mechanism used to allow the public to provide input.
- c. Records of information submitted by the public in accordance with Part I.D.1.c and any actions the permittee took to address the information.

3. PDD:

- a. A list of citation(s) and location(s) of the written procedures used for the permittee's public notice process.
- b. The web site address containing the statement that the PDD is available for public review.

E. POLLUTANT RESTRICTIONS, PROHIBITIONS, AND REDUCTION REQUIREMENTS AND RECORDKEEPING

Pollutant restrictions, prohibitions, and reduction requirements required by the permit are listed below. All control measures must be implemented before the discharge from the MS4, unless otherwise noted.

Where Part III includes an exclusion from a requirement in Part I.E for a specific MS4, the listed permittee is not responsible for compliance with that requirement. "Exclusion" is a removal of the applicability of a term or condition in this permit based on the given conditions.

Included in this section are requirements for the permittee to develop and maintain records (Recordkeeping and PDD requirements) associated with the terms and conditions of this section.

1. Public Education and Outreach

The permittee must implement a public education program to promote behavior change by the public to reduce pollutants in discharges from the MS4. Education and outreach activities, individually or as a whole, must address the impacts of stormwater discharges on water bodies, the steps the target audience can take to reduce pollutants in stormwater runoff, and water quality impacts associated with illicit discharges and improper disposal of waste.

- a. The following requirements apply:
- i. **Illicit Discharges:** The permittee must provide information to businesses and the general public regarding the permittee's prohibitions of and the water quality impacts associated with illicit discharges as part of the public education program. The permittee may incorporate the education and outreach to meet this requirement into the education and outreach strategies provided in accordance with Part I.E.1.a.ii. The information must include the following:
 - (A) The permittee must determine the targeted businesses that are likely to cause an illicit discharge or improperly dispose of waste. At a minimum, the permittee must identify at least one type of business and a list of those businesses that fit the identified type of business.
 - (B) The permittee must develop and implement at least one education and outreach activity to those businesses identified in Part I.E.1.a.i.(A). Educational materials and activities, individually or as a whole, must describe water quality impacts associated with illicit discharges and the improper disposal of waste, the behaviors of concern, and actions that the business can take to reduce the likelihood of illicit discharges and the improper disposal of waste.
 - ii. **Education and Outreach Activities Table:** Each year, the permittee must implement at least four education and outreach activities (bulleted items) and at least two must be from the Active and Interactive Outreach column. The activities can be the same from year to year or be different each year.

TABLE 1
Education and Outreach Activities Table

Passive Outreach	Active and Interactive Outreach (pick any two bullets each year)
<ul style="list-style-type: none"> • Bus shelter/bench advertisement • Billboard/dasher board advertisement • Vehicle/bus advertisement • Radio/television/movie theatre advertisement • Newspaper advertisement • Distribute educational materials by brochure • Distribute educational materials by fact sheet • Distribute educational material by utility bill insert • Publish article (hard copy or electronic) • Storm drain marking by permittee staff that maintains 25% of permittee maintained inlets. • Stormwater related signage • Web site 	<ul style="list-style-type: none"> • Ongoing advertisement/promotion of a stormwater hotline number or other method to report an illicit discharge • Ongoing advertisement/promotion on how to get more information about the stormwater program • Ongoing social media program • Web site that is interactive or contains stormwater information that includes actions that can be taken to reduce stormwater pollution • Newsletter (hard copy or electronic) • Promotion of existing local stormwater/environmental events or program that help protect water quality • Distribute promotional items or giveaways • Participate in or sponsor a water festival which involves populations that exist within the permit boundary • Participate in or sponsor a waterway clean-up and trash removal event • Participate in or sponsor a service project • Participate in or sponsor a stormwater or environmental presentation • Participate in or sponsor a stormwater or environmental event • Participate in or sponsor community project based programs that investigate watershed health and meet applicable school Science, Technology, Engineering and Math (STEM) standards • Participate in or sponsor a household hazardous waste event • Participate in or sponsor an Adopt-a-Street program • Participate in or sponsor an Adopt-a-Waterway program • Participate in or sponsor an Adopt-a-Storm Drain program • Provide ongoing access to motor vehicle fluids recycling program • Stormwater booth at a community event • Conduct a stormwater survey • Storm drain marking program performed by the public/community • Pet waste stations • Participate in, plan or present stormwater materials to schools • Stormwater demonstration projects that show control measures or other pollutant reduction methods

- iii. Nutrients: As part of their public education program, the permittee must specifically address the reduction of water quality impacts associated with nitrogen and phosphorus in discharges from the MS4. Permittees can meet the requirements of this section through contribution to a collaborative program to evaluate, identify, target, and provide outreach that addresses sources state-wide or within the specific region or watershed that includes the receiving waters impacted by the MS4 permittee’s discharge.
- (A) The permittee must determine the targeted sources (e.g., residential, industrial, agricultural, or commercial) that are contributing to, or have the potential to

contribute, nutrients to the waters receiving the discharge authorized under the MS4 permit.

- (B) The permittee must prioritize which targeted sources are likely to obtain a reduction in nutrient discharges through education. The permittee must distribute educational materials or equivalent outreach to the prioritized targeted sources. Educational materials or equivalent outreach, individually or as a whole, must describe stormwater quality impacts associated with nitrogen and phosphorus in stormwater runoff and illicit discharges, the behaviors of concern, and actions that the target source can take to reduce nutrients. The permittee may incorporate the education and outreach to meet this requirement into the education and outreach strategies provided in accordance with Part I.E.1.a.ii.
- b. Recordkeeping: The permittee must maintain the following records for activities to meet the requirements of Part I.E.1 and Part I.K.2.:
- i. Illicit Discharges: A written list of the targeted business(es) that are likely to cause an illicit discharge or improperly dispose of waste and the education and outreach activity for the targeted business(es).
 - ii. Education and Outreach Activities: A written list of the targeted pollutant sources and/or pollutants, the target audience, and distribution mechanism for each activity and the following:
 - (A) Dates the activities were implemented, including, as applicable, dates of events and the materials that were made available.
 - (B) Documentation of the activities that were provided and/or made available and the dates of distribution. Signs, markers, or equivalent intended to be maintained for the permit term must be described with location information.
 - iii. Nutrients: A written list of the targeted sources that are contributing to, or have the potential to contribute nutrients to stormwater and the education and outreach activity for the targeted sources.
- c. Program Description Document: The permittee must provide a list of the following information:
- i. Illicit Discharges: A list of citation(s) and location(s) of the written procedures used to determine the targeted business(es), the outreach activity(ies) conducted, and the outreach distribution mechanism(s).
 - ii. Education and Outreach Activities: A list of the activities from Table 1 selected for implementation for each calendar year.
 - iii. Nutrients: A list of citation(s) and location(s) of the written procedures used to determine factors considered and the targeted sources, the prioritized targeted sources, the outreach activities conducted, and the outreach distribution mechanisms.

2. Illicit Discharge Detection and Elimination

The permittee must implement a program to effectively prohibit illicit discharges.

a. The following requirements apply:

- i. Storm Sewer System Map: The permittee shall maintain a current map of the location of all MS4 outfalls within the permit area, and the names and location of all state waters that receive discharges from those outfalls. A “municipal separate storm sewer system outfall” (outfall) is a point source, as defined herein, at the point where a municipal separate storm sewer discharges to state waters. A “municipal separate storm sewer system outfall” does not include the point where a municipal separate storm sewer discharges into an open conveyance connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other state waters and are used to convey state waters. A “point source” is any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well,

discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Point source does not include irrigation return flow.

- ii. Regulatory Mechanism: A “regulatory mechanism” is the mechanism that allows the permittee to implement and enforce the requirements of this permit. To the extent allowable under state or local law, the permittee must implement a regulatory mechanism to meet the requirements in Part I.E.2.a. “To the extent allowable under state or local law” is a standard of implementation of permit requirements and refers to the extent that the permittee is not constrained by state or local laws. Local laws that can be legally changed by the permittee to allow implementation of permit requirements do not constitute a barrier to implementation of a permit requirement. The permittee’s regulatory mechanism must:
 - (A) Prohibit illicit discharges into the MS4;
 - (B) Have a procedure to request access to property(ies), as necessary to implement the illicit discharges procedures, to include judicial action; and
 - (C) Provide the permittee the legal ability to cease or require to be ceased and remove, or require and ensure the removal of, and impose penalties for all illicit discharges for the period from when the illicit discharge is identified until removed.
- iii. Regulatory Mechanism Exemptions: An “exemption” is an exemption, waiver, or variance implemented by the permittee for permittee control measures used to meet the effluent limits in this permit. Procedures must be implemented to ensure that any exemptions, waivers, or variances included in the regulatory mechanism are applied in a manner that complies with the terms and conditions of this permit.
- iv. Tracing an Illicit Discharge: The permittee must implement procedures to respond to reports/identification of illicit discharges. The permittee is not expected to actively seek out unreported illicit discharges, but is required to identify and respond to illicit discharges observed during day-to-day normal work activities. The permittee must document and implement procedures, including the tools needed, to trace the source of an illicit discharge when identified within the MS4.
- v. Discharges that can be Excluded from being Effectively Prohibited: The following discharges do not need to be effectively prohibited and the permittee is not required to address the discharges as illicit discharges in accordance with the requirements of this permit. The permittee must list all discharges excluded from being effectively prohibited in their regulatory mechanism as an allowable non stormwater discharge. Any discharges listed below that are not listed in the permittee’s regulatory mechanism must be effectively prohibited.
 - (A) Landscape irrigation
 - (B) Lawn watering
 - (C) Diverted stream flows
 - (D) Irrigation return flow
 - (E) Rising ground waters
 - (F) Uncontaminated groundwater infiltration
 - (G) Uncontaminated pumped groundwater
(Note: Discharges containing groundwater that comes into contact with construction activity is not considered “uncontaminated” due to the potential for sediment content.)
 - (H) Springs
 - (I) Flows from riparian habitats and wetlands

- (J) Water line flushing in accordance with the division's Low Risk Policy Discharge
Guidance: Potable Water
- (K) Discharges from potable water sources in accordance with the Division's *Low Risk Discharge Guidance: Potable Water*.
 - 1) The potable water shall not be used in any additional process. Processes include, but are not limited to, any type of washing, heat exchange, manufacturing, and hydrostatic testing of pipelines not associated with treated water distribution systems.
- (L) Foundation drains
- (M) Air conditioning condensation
- (N) Water from crawl space pumps
- (O) Footing drains
- (P) Individual residential car washing
- (Q) Dechlorinated swimming pool discharges in accordance with the division's *Low Risk Discharge Guidance: Swimming Pools*.
- (R) Water incidental to street sweeping (including associated sidewalks and medians) and that is not associated with construction
- (S) Dye testing in accordance with the manufacturers recommendations
- (T) Stormwater runoff with incidental pollutants
- (U) Discharges resulting from emergency fire fighting activities
- (V) Discharges authorized by a CDPS or NPDES permit
- (W) Agricultural stormwater runoff
- (X) Discharges that are in accordance with the Division's Low Risk Policy guidance documents or other Division policies and guidance documents where the Division has stated that it will not pursue permit coverage or enforcement for specified point source discharges.
- (Y) Other discharges that the permittee will not consider as an illicit discharge and approved by the Division: The permittee may propose discharges in accordance with the requirements below to seek Division approval to allow the permittee to not effectively prohibit the discharges. Upon approval by the Division, the permittee is not required to address the discharges as illicit discharges in accordance with the requirements of this permit. The permittee can still effectively prohibit these discharges if the permittee determines that the discharge is a significant source of pollution. The permittee must complete the following actions for discharges to be authorized by the Division:
 - 1) The permittee must submit a list of the discharges and the basis that the discharges meet one of the following criteria:
 - (a) The discharges, with proper management, are not expected to contain pollutants in concentrations that are toxic or in concentrations that would cause or contribute to a violation of a water quality standard; or
 - (b) The discharges are not eligible for coverage under a CDPS or NPDES general permit and prohibiting the discharges would result in changes to existing practices for the owner or operator of the discharges that are determined by the permittee to be impracticable.
 - 2) For all such discharges identified prior to the effective date of this permit and that will continue to be allowed, the information required by Subsection (1) must be

submitted to the Division for approval in accordance with the compliance schedule in I.H.

- 3) The discharge is not approved until the permittee receives an approval letter from the Division.
 - 4) The Division may deny approval of the discharge in writing. The Division's denial will be based on a determination that the provided information does not demonstrate that the criterion of Part I.E.2.v(Y)(1) has been met.
 - 5) The permittee must public notice the discharges authorized by the Division in accordance with its public notification procedures.
 - 6) The permittee must notify the Division within 30 days and revise its regulatory mechanism and procedures within 180 days if the permittee becomes aware of new information that the discharges authorized using the criterion in Part I.E.2.a.v(Y) no longer meets the criteria of that Part.
- vi. Removing an Illicit Discharge: When an illicit discharge is identified, the permittee must remove or require the removal of the source of the illicit discharge. The permittee must also cease or require the cessation of the illicit discharge. After the illicit discharge has been ceased, the permittee must also minimize surface contamination by removing or requiring the removal of surface residue or other type of pollutant source. The removal requirement can be met by notifying the Division through a written report when CDPS or NPDES general permit coverage is available for a discharge and the discharge is not subject to prohibitions against issuance of a permit in regulation 61.8(1). The permittee must also have written procedures for requiring cleanup from the operator and procedures for cleanup conducted by the permittee, when necessary, to remove materials associated with the illicit discharge.
- vii. Enforcement Response: The permittee must implement appropriate written enforcement procedures and actions to eliminate the source of an illicit discharge when identified/reported, discourage responsible parties from willfully or negligently repeating or continuing illicit discharges, and discourage future illicit discharges from occurring. The written procedures must address mechanisms for enforcement for all illicit discharges from the moment an illicit discharge is identified/reported until it is eliminated. The permittee must escalate enforcement as necessary based on the severity of violation and/or the recalcitrance of the responsible party to ensure that findings of a similar nature are enforced upon consistently. Written enforcement procedures must include informal, formal, and judicial enforcement responses.
- viii. Priority Areas: The permittee must locate priority areas with a higher likelihood of having illicit discharges, including areas with higher likelihood of illicit connections. At a minimum, the priority areas must include areas with a history of past illicit discharges.
- ix. Training: The permittee must train applicable municipal staff to recognize and appropriately respond to illicit discharges observed during typical duties. The permittee must identify those who will be likely to make such observations and provide training to those individuals. The training must address how suspected illicit discharges will be reported/identified, general information for recognizing and responding to illicit discharges observed during typical duties, information on the sources and types of operations or behaviors that can result in an illicit discharge, and information on the location of priority areas.
- b. Recordkeeping: The permittee must maintain the following records for activities to meet the requirements of Part I.E.2 and Part I.K.2:
- i. Storm Sewer System Map: The current map.
 - ii. Regulatory Mechanism: The applicable codes, resolutions, ordinances, and program documents used to meet the permit requirements.

- iii. Regulatory Mechanism Exemptions: The applicable codes, resolutions, ordinances, and program documents used to meet the permit requirements.
- iv. Tracing an Illicit Discharge:
 - (A) The applicable program documents and procedures used to respond to reports/identification of illicit discharges.
 - (B) The permittee must maintain centralized recordkeeping systems of illicit discharge responses conducted by the permittee. Records maintained by other departments can be in different centralized recordkeeping systems. The centralized record keeping system must contain the information in Part 1.E.2.b.vi(A) below or provide a reference to where the information is maintained.
- v. Discharges that could be excluded from being effectively prohibited:
 - (A) Copies of all required submittals to the Division.
 - (B) Copies of the documents used to provide any required public notice and any public comment received as part of the public notice process.
- vi. Removing an Illicit Discharge:
 - (A) The information used by the permittee to identify repeat occurrences from the same responsible party concerning the same type of illicit discharge. The permittee must document and maintain records of each illicit discharge identified by the permittee that includes the following information, or identifies that the information is unknown or not applicable:
 - 1) The date that the illicit discharge was reported to and/or identified by the permittee.
 - 2) The date the permittee responded to the reported/identified illicit discharge.
 - 3) The location of the illicit discharge.
 - 4) Responsible party for the illicit discharge (if identified).
 - 5) A description of the source and nature of the illicit discharge.
 - 6) A description of how the source of the illicit discharge was eliminated/resolved.
 - 7) Documentation of enforcement actions (if applicable).
- vii. Enforcement Response: The applicable codes, resolutions, ordinances, and program documents used to meet the permit requirements.
- viii. Priority Areas: The map and/or list of priority areas.
- ix. Training: Name and department of each individual trained, date of training, the type of training, and a list of topics covered.
- c. PDD: The permittee's PDD must include the following information:
 - i. Storm Sewer System Map: A list of citation(s) and location(s) of the storm sewer system map and procedures for updating the map for new outfalls or expanded permit areas.
 - ii. Regulatory Mechanism: A list of the citation(s) and location(s) of the required elements of the regulatory mechanism, including a list of the associated program documents used to meet the regulatory mechanism requirements.
 - iii. Regulatory Mechanism Exemptions: A list of the citation(s) and location(s) of regulatory mechanism elements that allow for exemptions and the documented procedures that confirm that any exemptions, waivers, and variances comply with the permit.
 - iv. Tracing an Illicit Discharge:

- (A) A list of citation(s) and location(s) of the written procedures for tracing an illicit discharge, including the citation(s) and location(s) of supporting documents.
- (B) Documenting an illicit discharge:
 - 1) A list of citation(s) and location(s) of the record keeping system(s) used to maintain the required information.
 - 2) A list of citation(s) and location(s) of the written procedures used for documenting information on illicit discharge reports, including if applicable, identification of how information is consolidated between separate functional groups within the permittee's organization.
- v. Discharges that could be Excluded from being effectively prohibited: A list of citation(s) and location(s) of the written procedures for excluding discharges from being effectively prohibited and the discharges that have been excluded from being effectively prohibited.
- vi. Removing an Illicit Discharge: A list of citation(s) and location(s) of the written procedures for removing an illicit discharge, including the citation(s) and location(s) of supporting documents.
- vii. Enforcement Response: A list of citation(s) and location(s) of the specific enforcement mechanisms available and written procedures for enforcement response, including the citation(s) and location(s) of supporting documents. The document(s) must detail the types of escalating enforcement responses the permittee will take in response to common violations and time periods within which responses will take place.
- viii. Priority Areas: A list of citation(s) and location(s) of the priority areas.
 - ix. Training: A list of citation(s) and location(s) of the training program and supporting documents.

3. Construction Sites

The permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4 from applicable construction activities.

Applicability: Applicable construction activities must meet the requirements of Part I.E.3.

“Applicable construction activities” include construction activities that result in a land disturbance of greater than or equal to one acre or that is less than one acre, but is part of a larger common plan of development or sale that would disturb, or has disturbed since March 2, 2001, one acre or more, unless excluded below or the disturbed areas have been finally stabilized.

“Construction activity” refers to ground surface disturbing and associated activities (land disturbance), which include, but are not limited to, clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads, staging areas, stockpiling of fill materials, and borrow areas. Activities that include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility are not considered construction activities. Activities to conduct repairs that are not part of regular maintenance and activities that are for replacement are considered construction activities and are not considered routine maintenance. Repaving activities where underlying or surrounding soil is cleared, graded, or excavated as part of the repaving operation are construction activities unless they are an excluded site under Part I.E.4.a.i. Construction activity occurs from initial ground breaking to final stabilization regardless of ownership of the construction activities.

“Land disturbing activity” is any activity that results in a change in the existing land (both vegetative and non-vegetative). Land disturbing activities include, but are not limited to clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads, staging areas, stockpiling of fill materials, and borrow areas. Compaction that is associated with stabilization of structures and road construction must also be considered a land disturbing activity.

A “common plan of development or sale” is a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules, but remain related. The Division has determined that “contiguous” means construction activities located in close proximity to each other (within ¼ mile).

“Final stabilization” is the condition reached when all ground surface disturbing activities at the site have been completed, and for all areas of ground surface disturbing activities a uniform vegetative cover has been established with an individual plant density of at least 70 percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed.

a. The following requirements apply:

i. Exclusions: The following construction activities are not subject to the requirements of this section (1.E.3.)

- (A) Construction Activities with R-Factor Waiver: The permittee may exclude the waived activity from being an applicable construction activity if the Division waives requirements for stormwater discharges associated with a small construction activity in accordance with Regulation 61.3(2)(f)(ii)(B) (the “R-Factor” waiver).
- (B) Activities for County Growth Areas: Permittees that are counties may exclude the following activities from being applicable construction activities when they occur within a county growth area:
 - 1) Construction activities on sites that began as part of a plan of development prior to July 1, 2019, which is the deadline in Part I.H to implement a construction sites program in the county growth areas.
 - 2) Large lot single family development: A land disturbance greater than one acre on a single-family residential lot, or agricultural zoned lands, with an area greater than or equal to 2.5 acres in size and having a total site impervious area that is equal to or less than 10 percent.

A land disturbance greater than one acre on a single-family residential lot, or agricultural zoned lands, with an area greater than or equal to 2.5 acres in size and having a total site impervious area that is equal to or less than 20 percent only when a study specific to the watershed and/or permittee, shows that expected soil and vegetation conditions are suitable for infiltration/filtration of the 100% of the WQCV for a typical site has been conducted and approved by the permittee. “WQCV” is the volume equivalent to the runoff from an 80th percentile storm, meaning that 80 percent of the most frequently occurring storms are fully captured and treated and larger events are partially treated.

“Impervious area” is a developed area with covering or pavement that prevents the land’s natural ability to absorb and infiltrate typical precipitation and irrigation events. Impervious areas include, but are not limited to; roof tops, walkways, patios, driveways, parking lots, storage areas, impervious concrete and asphalt, and any other continuous non-pervious pavement or covering.

Agricultural facilities and structures on agricultural zoned lands. These facilities might still be covered under the state general permit for Stormwater Discharges Associated with Construction Activity.

(C) Activities for Non-Urban Areas

- 1) Facilities associated with oil and gas exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to

be construction activity. These facilities might still be covered under the state general permit for Stormwater Discharges Associated with Construction Activity.

- ii. Regulatory Mechanism: To the extent allowable under state or local law, implement a regulatory mechanism to meet the requirements in Part I.E.3.a., including the following:
 - (A) The ability to implement sanctions against entities responsible for applicable construction activities.
 - (B) Require control measures to be implemented for all applicable construction activities from initial disturbance until final stabilization.
- iii. Regulatory Mechanism Exemptions: Procedures must be implemented to ensure that any exemptions, waivers or variances included in the regulatory mechanism are applied in a manner that complies with the terms and conditions of this permit.
- iv. Control Measure Requirements: The permittee's Construction Sites Program must address selection, installation, implementation, and maintenance of control measures that meet the requirements of Part I.B. Control measures must prevent pollution or degradation of state waters. Control measures must also be appropriate for the specific construction activity, the applicable pollutant sources, and phase of construction. There are a wide variety of structural and non-structural control measures that can be used at applicable construction sites. Control measures must meet the minimum requirements below.
 - (A) Appropriate control measures must be implemented prior to the start of construction activity, must control potential pollutants during each phase of construction, and must be continued through final stabilization. Appropriate structural control measures must be maintained in operational condition.
 - (B) Control measures must be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants, such as but not limited to sediment, construction site waste, trash, discarded building materials, concrete truck washout, chemicals, sanitary waste, and contaminated soils in discharges to the MS4. At a minimum pollutant sources associated with the following activities (if part of the applicable construction activity) must be addressed:
 - 1) Land disturbance and storage of soils
 - 2) Vehicle tracking
 - 3) Loading and unloading operations
 - 4) Outdoor storage of construction site materials, building materials, fertilizers, and chemicals
 - 5) Bulk storage of materials
 - 6) Vehicle and equipment maintenance and fueling
 - 7) Significant dust or particulate generating processes
 - 8) Routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents, and oils
 - 9) Concrete truck/equipment washing, including the concrete truck chute and associated fixtures and equipment
 - 10) Dedicated asphalt and concrete batch plants.
 - 11) Other areas or operations where spills can occur.
 - 12) Other non-stormwater discharges including construction dewatering not covered under the Construction Dewatering Discharges general permit and wash water that may contribute pollutants to the MS4.
- v. Site Plans:

“Site plans” are also known as construction stormwater site plans; sediment and erosion control plans, stormwater pollution prevention plans, drainage reports, drainage plans, and stormwater management plans.

- (A) Renewal Permittees: For the time period between the effective date of this permit and the date by which a renewal permittee meets the conditions in Parts I.E.3.a.v (B) through (C), the renewal permittee must continue to implement requirements for construction site operators to implement appropriate erosion and sediment control as documented in the permittee’s CDPS Stormwater Management Plan Description developed in accordance with the terms and conditions of the previous permit.
 - (B) Site Plan Requirement: The permittee must require operators to develop site plan(s) that locate (if applicable) and identify all structural and non-structural control measures for the applicable construction activities. The site plan(s) must contain installation and implementation specifications or a reference to the document with installation and implementation specifications for all structural control measures. A narrative description of non-structural control measures must be included in the site plan (s).
 - (C) Initial Site Plan Review: The permittee must implement site plan review for all applicable construction activities prior to the start of construction activities. The waiver, however, does not apply to the requirements of Part I.E.3.a.v(A). Initial site plan review shall include the following:
 - 1) Confirmation that the site plan(s) includes appropriate control measures for all stages of construction, including final stabilization.
 - 2) Confirmation that the control measures meet the requirements in Part I.E.3.a.iv.
 - (D) Confirmation that the site plan meets the requirements in Part I.E.3.a.v(A).
- vi. Site Inspection: Documentation of inspections outlined below must be maintained in accordance with recordkeeping requirements in I.E.3.b. The following requirements apply:
- (A) Renewal Permittees: For the time period between the effective date of this permit and the date by which a renewal permittee meets the conditions in Parts I.E.3.a.vi (B) through (E), the renewal permittee must continue to implement procedures for construction site inspections, as documented in the permittee’s CDPS Stormwater Management Plan Description developed in accordance with the terms and conditions of the previous permit.
 - (B) Site Inspection Frequency Exclusion: For any of the following, the permittee is only required to conduct inspections if there are observations or reports of discharges of sediment from disturbed areas:
 - 1) Exclusions
 - (a) Individual Homes in a Residential Subdivision-Finished Home: Inspections are not required for a residential lot that has been conveyed to a homeowner when all of the following criteria have been met:
 - (i) The lot has been sold to the homeowner(s) for private residential use.
 - (ii) The lot has less than one acre of disturbed area.
 - (iii) All construction activity associated with grading the lot and building the home is completed.
 - (iv) A certificate of occupancy (or equivalent) has been issued to the homeowner.
 - (v) The permittee has documented that the lot is subject to this exclusion.
 - (vi) The residential development site must have a permittee-approved site plan and still be inspected by the permittee under the inspection frequencies described in Part I.E.3.a.vi.

- (b) Individual Homes in a Residential Subdivision-Unfinished Home: Inspections are not required for a residential lot with an unfinished home when all of the following criteria have been met:
 - (i) The lot has less than one acre of disturbed area.
 - (ii) The permittee has documented that the lot is subject to this exclusion.
 - (iii) The residential development site must have a permittee-approved site plan and still be inspected by the permittee under the inspection frequencies described in Part I.E.3.a.vi.
 - (c) Winter Conditions: Inspections are not required at sites where construction activities are temporarily halted, snow cover exists over the entire site for an extended period, and melting conditions posing a risk of surface erosion do not exist. This exclusion is applicable only during the period where melting conditions do not exist. The following information must be documented for this exclusion: dates when snow cover occurred, date when construction activities ceased, and date melting conditions began.
- (C) Routine Inspection: A routine inspection must be conducted at least once before final stabilization. Routine inspections do not apply to sites eligible for other inspection frequencies in accordance with this section (Part I.E.3.a.vi).
- 1) Frequency: Conduct at least every 45 days.
 - 2) Scope: The inspection must assess the following:
 - (a) Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.
 - (b) Pollutant sources: Evaluate all pollutant sources, including trash, to determine if an illegal discharge has occurred.
 - (c) Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an illicit discharge has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.
- (D) Reduced Site Inspection: Reduced site inspections must occur at the frequency and include the scope indicated below for each type of site:
- 1) Inactive Site Inspection: Sites where surface ground disturbance activities are completed and are pending growth for final stabilization or for sites where no construction activity has occurred since the last inspection.
 - (a) Frequency: Conduct at least every 90 days.
 - (b) Scope: The inspection must assess the following:
 - (i) Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.
 - (ii) Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an illicit discharge has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.

- 2) Stormwater Management System Administrator's Program Inspection: These inspections are for construction activities operated by a participant in a Division designated Stormwater Management System Administrator's Program in accordance with Article 8 of title 25, Colorado Revised Statutes that has been identified by the Stormwater Management System Administrator to be fully implementing the program and qualified for reduced oversight incentives of the program.
 - (a) Frequency: Conduct at least every 90 days.
 - (b) Scope: The inspection must assess the following:
 - (i) Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.
 - (ii) Pollutant sources: Evaluate all pollutant sources, including trash, to determine if an illicit discharge has occurred.
 - (iii) Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an illicit discharge has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.
- 3) Staff Vacancy: These inspections are allowed to accommodate a staff vacancy or temporary leave due to vacation or illness.
 - (a) Frequency: Conduct at least every 90 days.
 - (b) Scope: The inspection must assess the following:
 - (i) Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.
 - (ii) Pollutant sources: Evaluate all pollutant sources, including trash, to determine if an illicit discharge has occurred.
 - (iii) Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an illicit discharge has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.
- 4) Indicator Inspection: Indicator inspections, such as a drive-by or screening, are conducted to assess sites for indicators of noncompliance and do not fully assess the adequacy of control measures and overall site management. A routine inspection must be conducted at least once at the site with an applicable construction activity before an indicator inspection can be used. In addition, if the indicator inspection indicates a need for a compliance inspection, then another routine inspection must be conducted before the indicator inspection frequency and scope can be used again.

Indicator inspections are a reduced scope inspection that can be used to extend the frequency required of routine inspections up to 90 days when all indicators evaluated determine control measures meet Good Engineering, Hydrologic and Pollution Control Practices as defined in I.B.1. and there is no evidence of discharges to the MS4. Types of Indicator inspections are defined below:

- (a) Frequency: Conduct at least every 14 days. A Routine Inspection must be conducted every 90 days.
 - (b) Scope: Perimeter of the site must be evaluated for indicators of inadequate control measures. The inspection must assess the following:
 - (i) Control measures: Identify failure to implement control measures and inadequate control measures.
 - (ii) Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the applicable construction activities as necessary to determine if an illicit discharge has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.
- (E) Compliance Inspection: A compliance inspection must occur after the permittee documents an illicit discharge or identifies that there is a failure to implement a control measure or an inadequate control measure, unless corrections were made and observed by the inspector during the initial inspection.
 - (a) Frequency: Conduct within at least 14 days from the time the permittee documents an illicit discharge or identifies that there is a failure to implement a control measure or an inadequate control measure, unless corrections were made and observed by the inspector during the initial inspection.
 - (b) Scope: A compliance inspection, or alternative inspection listed below, must identify if corrections have been completed on sites where the permittee has documented an illicit discharge or failure to implement a control measure or an inadequate control measure during the previous inspection. One of the following, that incorporates this required scope, may be performed or required in lieu of a compliance inspection within 14 days of the permittee site inspection identifying that there is a failure to implement a control measure or an inadequate control measure:
 - (i) Routine inspection in accordance with I.E.3.a.vi(C);
 - (ii) Indicator Inspection in accordance with I.E.3.a.vi(D); or
 - (iii) Operator Compliance Inspection: Require the operator to inspect and report that the control measure has been implemented or corrected as necessary to meet the requirements of Part I.E.3. The operator report must include photographs of the new/adequate control measure(s).
- vii. Enforcement Response: Implement appropriate enforcement procedures and actions to meet the requirements of Part I.E.3.
 - (A) The permittee must have processes and sanctions to minimize the occurrence of, and obtain compliance from, chronic and recalcitrant violators of control measure requirements.
 - (B) The permittee must escalate enforcement as necessary based on the severity of violation and/or the recalcitrance of the violator to ensure that findings of a similar nature are enforced upon consistently. Enforcement procedures must include informal, formal, and judicial enforcement responses.
- viii. Training: The permittee must provide information to operators of applicable construction activities as necessary to ensure that each operator is aware of the permittee's applicable requirements, including controlling pollutants such as trash. The training must also include information on trash as pollutant source.

- ix. For Applicable Construction Activities that Overlap Multiple Permit Areas, when a written agreement is in place with a co-regulating MS4 permittee:
 - (A) Control measure requirements may be imposed on the operator in accordance with the requirements of a co-regulating MS4 permittee pursuant to the written agreement.
 - (B) Site plan review/acceptance and site inspection actions may be conducted by a co-regulating MS4 permittee to meet the requirement of the permit.
- b. Recordkeeping: The permittee must maintain the following records for activities to meet the requirements of this Part I.E.3 and Part I.K.2:
 - i. Exclusion: Maintain records for activities covered under Part I.E.3.a.i(A) and Part I.E.3.a.i(B)(1)(2). Records must include the site name, owner name, location, completion date, planned disturbed acreage for the site, and reason for exclusion.
 - ii. Regulatory Mechanism: The applicable codes, resolutions, ordinances, and program documents used to meet the permit requirements.
 - iii. Regulatory Mechanism Exemptions: The applicable codes, resolutions, ordinances, and program documents used to meet the permit requirements.
 - iv. Control Measure Requirements: The applicable codes, resolutions, ordinances, and program documents used to meet the permit requirements.
 - v. Site Plans: Copy of the final site plan reviewed to meet the initial site plan review requirement, and confirmation of the permittee's review and acceptance.
 - vi. Site Inspection:
 - (A) Routine Site Inspection: Maintain inspection records with the following minimum information for all inspections conducted to meet the minimum inspection frequency:
 - 1) Inspection date
 - 2) Name of inspector
 - 3) Site identification
 - 4) Inspection results including the location of any illicit discharges, failure to implement control measures, and inadequate control measures. The inspection results should also list (not locate) any control measures requiring routine maintenance.
 - 5) If the inspection is conducted in lieu of a compliance inspection, identification of any inadequate control measures that have not been resolved from the previous inspection.
 - 6) Type of inspection
 - (B) Reduced Site Inspection: Maintain inspection records with the following minimum information for all inspections conducted to meet the minimum inspection frequency:
 - 1) Inspection date
 - 2) Name of inspector
 - 3) Site identification
 - 4) Inspection results including the location of any illicit discharges, failure to implement control measures, and inadequate control measures. The inspection results should also list (not locate) any control measures requiring routine maintenance.
 - 5) If the inspection is conducted in lieu of a compliance inspection, identification of any inadequate control measures that have not been resolved from the previous inspection.

- 6) Type of inspection
 - (a) Inactive Site
 - (b) Stormwater Management System Administrator
 - (c) Staff Vacancy
 - (d) Indicator Inspection
- (C) Compliance Inspection: Maintain inspection records with the following minimum information for all inspections conducted to meet the minimum inspection frequency:
 - 1) Inspection date
 - 2) Name of inspector
 - 3) Site identification
 - 4) Inspection results including any inadequate control measures that have not been resolved from the previous inspection.
 - 5) Type of inspection
- (D) Operator Compliance Inspection: The report must contain the following:
 - 1) Inspection date
 - 2) Name of the operator inspector
 - 3) Site identification
 - 4) Inspection results including photos of the new or additional control measure to resolve issued from the previous inspection and any inadequate control measures that have not been resolved from the previous inspection.
- vii. Enforcement Response: The applicable codes, resolutions, ordinances and program documents used to meet the permit requirements. Maintain records of the enforcement response.
- viii. Training: The applicable mechanism or program documents used to train construction operators.
- ix. For Applicable Construction Activities that Overlap Multiple Permit Areas: Copies of any written agreements between co-regulating MS4 permittees when required by Part I.E.3.a.ix.
- c. PDD: The permittee must provide a list of the following information:
 - i. Exclusions: A list of citation(s) and location(s) of regulatory mechanism(s) that allow for exclusions and supporting documents used to implement the process.
 - ii. Regulatory Mechanism: A list of the citation(s) and location(s) of the required elements of the regulatory mechanism, including a list of the associated program documents used to meet the regulatory mechanism requirements.
 - iii. Regulatory Mechanism Exemptions: A list of the citation(s) and location(s) of regulatory mechanism elements that allow for exemptions and the documented procedures that confirm that any exemptions, waivers, and variances comply with the permit.
 - iv. Control Measure Requirements: A list of citation(s) and location(s) of applicable documents that demonstrate that the permittee requires operators to meet the requirements in Part I.E.3.a.iv. A list of the citation(s) and location(s) of supporting documents, including any documents that provide control measure design considerations, criteria, or standards.
 - v. Site Plans:
 - (A) A list of citation(s) and location(s) of applicable documents that demonstrate that the permittee requires operators to develop, site plans, including the citation(s) and location(s) of supporting documents.

- (B) A list of citation(s) and location(s) of applicable documents that demonstrate that the permittee conducts initial site plan reviews, including the citation(s) and location(s) of supporting documents.
- vi. Site Inspection: A list of citation(s) and location(s) of applicable documents that demonstrate that the permittee has written procedures for conducting site inspections, including the citation(s) and location(s) of supporting documents that describe the following:
 - (A) The process for determining, implementing, and documenting the inspection frequencies.
 - (B) The process for inspection follow-up, including determining, implementing, and documenting the nature of the follow-up action.
 - (C) The process and tools used for documenting inspections.
- vii. Enforcement Response: A list of citation(s) and location(s) of applicable documents that demonstrate that the permittee has written procedures for enforcement response. The document(s) must detail the types of escalating enforcement responses the permittee will take in response to common violations and time periods within which responses will take place, including as a minimum:
 - (A) Construction commencing without site plan review in accordance with I.E.3.a.v.
 - (B) Control measures not maintained in operational condition at time of permittee inspection, including sites that have temporarily shut down construction activities.
 - (C) Uncorrected finding(s) from previous inspections.
 - (D) Failure to implement a control measure for a pollutant source or inadequate control measure resulting in a discharge of pollutants from the applicable construction site or to the MS4.
- viii. Training: A list of citation(s) and location(s) of the training program and supporting documents.
- ix. For Applicable Construction Activities that Overlap Multiple Permit Areas: A list of citation(s) and location(s) of applicable documents that demonstrate that the permittee meets all permit requirements in Part I.E.3 for construction activities for which the permittee is the owner or operator, if different than procedures for private sites.

4. Post-Construction Stormwater Management in New Development and Redevelopment

The permittee must implement a program to reduce the discharge of pollutants to the MS4 from applicable development sites.

Applicability: Applicable development sites must meet the requirements of Part I.E.4.

“Applicable development sites” are those that result in land disturbance of greater than or equal to one acre, including sites less than one acre that are part of a larger common plan of development or sale, unless excluded below. Applicable development sites include all new development and redevelopment sites for which permanent water quality control measures were required in accordance with an MS4 permit. “New Development” means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision for a site that does not meet the definition of redevelopment. “Redevelopment” includes a site that is already substantially developed with 35% or more of existing imperviousness; with the creation or addition of impervious area (including removal and/or replacement), to include the expansion of a building footprint or addition or replacement of a structure; structural development including construction, replacement of impervious area that is not part of a routine maintenance activity; and land disturbing activities. At a minimum, applicable development sites includes all sites meeting the criteria of the previous MS4

permit for renewal permittees and completed after the date in Part I.H for all (renewal and new) permittees.

a. The following requirements apply:

- i. Excluded Sites: Permittees may exclude the following from the requirements of an applicable development site.
 - (A) “Pavement Management Sites”: Sites, or portions of sites, for the rehabilitation, maintenance, and reconstruction of roadway pavement, which includes roadway resurfacing, mill and overlay, white topping, black topping, curb and gutter replacement, concrete panel replacement, and pothole repair. The purpose of the site must be to provide additional years of service life and optimize service and safety. The site also must be limited to the repair and replacement of pavement in a manner that does not result in an increased impervious area and the infrastructure must not substantially change. The types of sites covered under this exclusion include day-to-day maintenance activities, rehabilitation, and reconstruction of pavement. “Roadways” include roads and bridges that are improved, designed or ordinarily used for vehicular travel and contiguous areas improved, designed or ordinarily used for pedestrian or bicycle traffic, drainage for the roadway, and/or parking along the roadway. Areas primarily used for parking or access to parking are not roadways.
 - (B) Excluded Roadway Redevelopment: Redevelopment sites for existing roadways, when one of the following criteria is met:
 - 1) The site adds less than 1 acre of paved area per mile of roadway to an existing roadway, or
 - 2) The site does not add more than 8.25 feet of paved width at any location to the existing roadway.
 - (C) Excluded Existing Roadway Areas: For redevelopment sites for existing roadways, only the area of the existing roadway is excluded from the requirements of an applicable development site when the site does not increase the width by two times or more, on average, of the original roadway area. The entire site is not excluded from being considered an applicable development site for this exclusion. The area of the site that is part of the added new roadway area is still an applicable development site.
 - (D) Aboveground and Underground Utilities: Activities for installation or maintenance of underground utilities or infrastructure that does not permanently alter the terrain, ground cover, or drainage patterns from those present prior to the construction activity. This exclusion includes, but is not limited to, activities to install, replace, or maintain utilities under roadways or other paved areas that return the surface to the same condition.
 - (E) Large Lot Single Family Sites: A single-family residential lot, or agricultural zoned lands, greater than or equal to 2.5 acres in size per dwelling and having a total lot impervious area of less than 10 percent. A total lot imperviousness greater than 10 percent is allowed when a study specific to the watershed and/or MS4 shows that expected soil and vegetation conditions are suitable for infiltration/filtration of the WQCV for a typical site, and the permittee accepts such study as applicable within its MS4 boundaries. The maximum total lot impervious covered under this exclusion shall be 20 percent.
 - (F) Non-Residential and Non-Commercial Infiltration Conditions: This exclusion does not apply to residential or commercial sites for buildings. This exclusion applies to applicable development sites for which post-development surface conditions do not result in concentrated stormwater flow during the 80th percentile stormwater runoff event. In addition, post-development surface conditions must not be projected to result in a surface water discharge from the 80th percentile stormwater runoff events. Specifically, the 80th percentile event must be infiltrated and not discharged as

concentrated flow. For this exclusion to apply, a study specific to the site, watershed and/or MS4 must be conducted. The study must show rainfall and soil conditions present within the permitted area; must include allowable slopes, surface conditions, and ratios of impervious area to pervious area; and the permittee must accept such study as applicable within its MS4 boundaries.

- (G) Sites with Land Disturbance to Undeveloped Land that will Remain Undeveloped: Permittees may exclude sites with land disturbance to undeveloped land (land with no human-made structures such as buildings or pavement) that will remain undeveloped after the site.
 - (H) Stream Stabilization Sites: Permittees may exclude stream stabilization sites.
 - (I) Trails: Permittees may exclude bike and pedestrian trails. Bike lanes for roadways are not included in this exclusion, unless attached to a roadway that qualifies under another exclusion in this section.
 - (J) Oil and Gas Exploration: Permittees may exclude facilities associated with oil and gas exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be an applicable construction activity.
 - (K) County Growth Areas: Permittees that are counties may exclude the following when they occur within a county growth areas:
 - 1) Construction activities on sites that began as part of a plan of development prior to July 1, 2019, which is the deadline in Part I.H to implement a construction sites program in the county growth areas.
 - 2) Agricultural facilities and structures on agricultural zoned lands (e.g., barn, stables).
 - 3) Residential development site or larger common plans of development for which associated construction activities results in a land disturbance of less than or equal to 10 acres and have a proposed density of less than 1,000 people per square mile.
 - 4) Commercial or industrial development site or larger common plans of development for which associated construction activities results in a land disturbance of less than or equal to 10 acres.
- ii. Regulatory Mechanism: To the extent allowable under state or local law, implement a regulatory mechanism to meet the requirements in Part I.E.4.a., including:
 - (A) Require control measures to be implemented for all applicable development sites.
 - (B) Enforce the conditions of the exclusions above, if applicable.
 - (C) Require the long-term operation and maintenance of control measures.
 - (D) Ensure that mechanisms are in place as necessary to meet this requirement for control measures used to meet the requirements of this permit by an applicable development site in the permit area that are located outside of the jurisdictional control of the permittee.
 - (E) Implement sanctions against entities responsible for applicable development sites and for the long-term operation and maintenance of the control measures.
 - iii. Regulatory Mechanism Exemptions: Procedures must be implemented to ensure that any exclusions, exemptions, waivers, and variances included in the regulatory mechanism are applied in a manner that complies with the terms and conditions of this permit.
 - iv. Control Measure Requirements: The permittee's requirements and oversight for applicable development sites must be implemented to address the selection, installation, implementation, and maintenance of control measures in accordance with requirements in Part I.B. The "base design standard" is the minimum design standard for new development

and redevelopment. The control measures for applicable development sites shall meet one of the following base design standards listed below:

- (A) WQCV Standard: The control measure(s) is designed to provide treatment and/or infiltration of the WQCV and:
- 1) 100% of the applicable development site is captured, except the permittee may exclude up to 20 percent, not to exceed 1 acre, of the applicable development site area when the permittee has determined that it is not practicable to capture runoff from portions of the site that will not drain towards control measures. In addition, the permittee must also determine that the implementation of a separate control measure for that portion of the site is not practicable (e.g., driveway access that drains directly to street).
 - 2) Evaluation of the minimum drain time shall be based on the pollutant removal mechanism and functionality of the control measure implemented. Consideration of drain time shall include maintaining vegetation necessary for operation of the control measure (e.g., wetland vegetation).
- (B) Pollutant Removal Standard: The control measure(s) is designed to treat at a minimum the 80th percentile storm event. The control measure(s) shall be designed to treat stormwater runoff in a manner expected to reduce the event mean concentration of total suspended solids (TSS) to a median value of 30 mg/L or less.
- 1) 100% of the applicable development site is captured, except the permittee may exclude up to 20 percent not to exceed 1 acre of the applicable development site area when the permittee has determined that it is not practicable to capture runoff from portions of the site that will not drain towards control measures. In addition, the permittee must also determine that the implementation of a separate control measure for that portion of the site is not practicable (e.g., driveway access that drains directly to street).
- (C) Runoff Reduction Standard: The control measure(s) is designed to infiltrate into the ground where site geology permits, evaporate, or evapotranspire a quantity of water equal to 60% of what the calculated WQCV would be if all impervious area for the applicable development site discharged without infiltration. This base design standard can be met through practices such as green infrastructure. "Green infrastructure" generally refers to control measures that use vegetation, soils, and natural processes or mimic natural processes to manage stormwater. Green infrastructure can be used in place of or in addition to low impact development principles.
- (D) Applicable Development Site Draining to a Regional WQCV Control Measure: The regional WQCV control measure must be designed to accept the drainage from the applicable development site. Stormwater from the site must not discharge to a water of the state before being discharged to the regional WQCV control measure. The regional WQCV control measure must meet the requirements of the WQCV in Part I.E.4.a.iv(A).
- (E) Applicable Development Site Draining to a Regional WQCV Facility: The regional WQCV facility is designed to accept drainage from the applicable development site. Stormwater from the site may discharge to a water of the state before being discharged to the regional WQCV facility. Before discharging to a water of the state, 20 percent of the total impervious surface of the applicable development site must first drain to a control measure covering an area equal to 10 percent of the total impervious surface of the applicable development site. The control measure must be designed in accordance with a design manual identified by the permittee. In addition, the stream channel between the discharge point of the applicable development site and the regional WQCV facility must be stabilized.

The regional WQCV facility must meet the following requirements:

- 1) The regional WQCV facility must be implemented, functional, and maintained following good engineering, hydrologic and pollution control practices.
- 2) The regional WQCV facility must be designed and maintained for 100% WQCV for its entire drainage area.
- 3) The regional WQCV facility must have capacity to accommodate the drainage from the applicable development site.
- 4) The regional WQCV facility be designed and built to comply with all assumptions for the development activities planned by the permittee within its drainage area, including the imperviousness of its drainage area and the applicable development site.
- 5) Evaluation of the minimum drain time shall be based on the pollutant removal mechanism and functionality of the facility. Consideration of drain time shall include maintaining vegetation necessary for operation of the facility (e.g., wetland vegetation).
- 6) The permittee shall meet the requirements in Parts I.E.4.a.v. and vii. and Part I.E.4.b. for the regional WQCV facility consistent with requirements and actions for control measures.
- 7) The regional WQCV facility must be subject to the permittee's authority consistent with requirements and actions for a Control Measure in accordance with Part I.E.4.a.iv.
- 8) Regional Facilities must be designed and implemented with flood control or water quality as the primary use. Recreational ponds and reservoirs may not be considered Regional Facilities. Water bodies listed by name in surface water quality classifications and standards regulations (5 CCR 1002-32 through 5 CCR 1002-38) may not be considered regional facilities.

(F) Constrained Redevelopment Sites Standard:

- 1) Applicability: The constrained redevelopment sites standard applies to redevelopment sites meeting the following criteria:
 - (a) The applicable redevelopment site is for a site that has greater than 75% impervious area, and
 - (b) The permittee has determined that it is not practicable to meet any of the design standards in Parts I.E.4.a.iv(A), (B), or (C). The permittee's determination shall include an evaluation of the applicable redevelopment sites ability to install a control measure without reducing surface area covered with the structures.
- 2) Constrained Redevelopment Sites Design Standard: The control measure(s) is designed to meet one of the following:
 - (a) Provide treatment of the WQCV for the area captured. The captured area shall be 50% or more of the impervious area of the applicable redevelopment site. Evaluation of the minimum drain time shall be based on the pollutant removal mechanism and functionality of the control measure implemented,
 - (b) The control measure(s) is designed to provide for treatment of the 80th percentile storm event. The control measure(s) shall be designed to treat stormwater runoff in a manner expected to reduce the event mean concentration of total suspended solids (TSS) to a median value of 30 mg/L or less.

A minimum of 50% of the applicable development area including 50% or more of the impervious area of the applicable development area shall drain to the control measure(s). This standard does not require that 100% of the applicable

redevelopment site area be directed to control measure(s) as long as the overall removal goal is met or exceeded (e.g., providing increased removal for a smaller area), or

- (c) Infiltrate, evaporate, or evapotranspire, through practices such as green infrastructure, a quantity of water equal to 30% of what the calculated WQCV would be if all impervious area for the applicable redevelopment site discharged without infiltration.

(G) Previous Permit Term standard:

- 1) Applicability: The previous permit term standard is only applicable to applicable development activities where one of the following criteria are met:
 - (a) The control measure(s) is constructed for the applicable development site prior to July 1, 2019, which is the deadline in Part I.H to implement a post-construction sites program.
 - (b) The control measure(s) for the applicable development site is designed and in review prior July 1, 2019, which is the deadline in Part I.H to implement a post-construction sites program..
 - (c) The control measure(s) for the applicable development site is designed and approved prior to July 1, 2019, which is the deadline in Part I.H to implement a post-construction sites program.
- 2) The previous permit design standard is the design approved by the permittee consistent with the CDPS Stormwater Management Plan Description submitted to the Division in accordance with the requirements of the previous permit.
- 3) Any modifications to the control measure(s) shall be consistent with the CDPS Stormwater Management Plan Description submitted to the Division in accordance with the requirements of the previous permit, or consistent with one of the control measure requirements in I.E.4.a.i(A) through (F).

v. Site Plans

- (A) Site Plan Requirements: Site plans that include control measures for the applicable development sites must include the following:
 - 1) Design details for all structural control measures implemented to meet the requirements of Part I.E.4.
 - 2) A narrative reference for all non-structural control measures for the site, if applicable. "Non-structural control measures" are control measures that not structural control measures, and include, but are not limited to; control measures that prevent or reduce pollutants being introduced to water or that prevent or reduce the generation of runoff or illicit discharges.
 - 3) Documentation of operation and maintenance procedures to ensure the long term observation, maintenance, and operation of the control measures. The documentation shall include frequencies for routine inspections and maintenance activities.
 - 4) Documentation regarding easements or other legal means for access of the control measure sites for operation, maintenance, and inspection of control measures.
- (B) Site Plan Review: The permittee shall implement a site plan review process for applicable development sites. The site plan review shall include the following minimum requirements designed to prevent inadequate control measures from being implemented or modified:
 - 1) Confirmation that control measures meet the requirements of Part I.E.4.

- 2) Confirmation that site plans meet the requirements of Part I.E.4.a.v.
- (C) The permittee must meet the requirements of Part I.E.4.a.v(A) and (B) before approving any modifications to the site plan
- vi. Construction Inspection and Acceptance: The permittee must implement inspection and acceptance procedures to ensure that control measures are installed and implemented in accordance with the site plan and include the following:
 - (A) Confirmation that the completed control measure operates in accordance with the approved site plan.
 - (B) All applicable development sites must have operational permanent water quality control measures at the completion of the site. In the case where permanent water quality control measures are part of future phasing, the permittee must have a mechanism to ensure that all control measures will be implemented, regardless of completion of future phases or site ownership. In such cases, temporary water quality control measures must be implemented as feasible and maintained until removed or modified. All temporary water quality control measure must meet one of the design standards in Part I.E.4.a.iv.

For the purpose of this section, completion of a site or phase shall be determined by the issuance of a certificate of occupancy, use of the completed site area according to the site plan, payment marking the completion of a site control measure, the nature of the selected control measure or equivalent determination of completion as appropriate to the nature of the site.

- vii. Long-Term Operation and Maintenance and Post Acceptance Oversight: The permittee must implement written procedures which include the following minimum requirements to ensure adequate long-term operation and maintenance of control measures to ensure that they are functioning as designed:
 - (A) Procedures to enforce the requirements for the owner or operator to implement and maintain control measures when necessary.
 - (B) Oversight shall include inspections of field conditions and control measures to confirm conformity with the site plan, identify any inadequate control measures, and identify control measures requiring routine maintenance, such as trash removal. All functional elements of control measures shall be inspected at a frequency determined by the permittee. Inspections of each control measure shall occur at least once during the permit term except when inspections for oversight of control measures on individual residential lots serving only the individual lot shall occur as determined by the permittee and may rely on alternative oversight process.
- viii. Enforcement Response: Implement appropriate written enforcement procedures and actions to meet the requirements of Part I.E.4. The permittee must escalate enforcement as necessary based on the severity of violation and/or the recalcitrance of the violator to ensure that findings of a similar nature are enforced upon consistently. The permittee must have processes and sanctions to minimize the occurrence of, and obtain compliance from, chronic and recalcitrant violators of control measure requirements. Written enforcement procedures must include informal, formal, and judicial enforcement responses.
- ix. Tracking: Implement and document procedures and mechanisms to track the location of and adequacy of operation of control measures implemented in accordance with the program.
- x. Training: Train applicable municipal staff to inspect the control measures in accordance with the permittee's procedures in Part I.E.4.a.vi and vii. The permittee must identify those who will be likely to inspect the control measures and provide training to those individuals. The training must also include information on trash and its effects on water quality.

- xi. For Applicable Development Sites that Overlap Multiple Permit Areas co-regulating MS4 permittee), when a written agreement is in place with a co-regulating MS4 permittee the following is required:
 - (A) Control measure requirements may be imposed on the operator in accordance with the requirements of a co-regulating MS4 permittee pursuant to the written agreement. This requirement does not apply to applicable development sites in the permit area of the Colorado Department of Transportation.
 - (B) Site plan review/acceptance and site inspection actions may be conducted by a co-regulating MS4 permittee to meet the requirement of the permit.
- b. Recordkeeping: The permittee must maintain the following records for activities to meet the requirements of Part I.E.4 and Part I.K.2:
 - i. Excluded Sites: Maintain records for activities covered under Part I.E.4.a.i. Records must include the site name, owner name, location, completion date, site acreage, reason for exclusion, and any information required below.
 - (A) Pavement Management Sites - The acreage of the excluded impervious area for rehabilitation and reconstruction of pavement that are not maintenance sites.
 - (B) Excluded Roadway Redevelopment - The acreage of the excluded impervious area.
 - (C) Excluded Existing Roadway Areas for Roadway Redevelopment - The acreage of the excluded impervious area.
 - (D) Non-Residential and Non-Commercial Infiltration Conditions - The acreage of the excluded impervious area.
 - (E) Sites with Land Disturbance to Undeveloped Land that will Remain Undeveloped Redevelopment - The acreage of the excluded impervious area.
 - (F) Stream Stabilization Sites Redevelopment - The acreage of the excluded impervious area.
 - (G) Trails - The acreage of the excluded impervious area.
 - ii. Regulatory Mechanism: The applicable codes, resolutions, ordinances, and program documents used to meet the permit requirements.
 - iii. Regulatory Mechanism Exemptions: The applicable codes, resolutions, ordinances, and program documents used to meet the permit requirements.
 - iv. Control Measure Requirements: The applicable codes, resolutions, ordinances and program documents used to meet the permit requirements, including the procedures to determine which design standard applies to each applicable development site and the design specifications for each design standard (if applicable).
 - v. Site Plans: Copies of final site plans for all applicable development sites.
 - (A) For all sites for which the stormwater runoff going to a regional WQCV control measure or facility is applied: The name and location of the regional WQCV control measure or facility.
 - (B) For all sites for which the constrained redevelopment sites standard is applied: The site plan and the permittee's written determination that it is not practicable to meet any of the other design standards in Parts I.E.4.a.iv(A)(B) or (C). The permittee's written determination shall include an evaluation of the applicable redevelopment sites ability to install a control measure without reducing surface area covered with the structures.
 - (C) For all sites for which the previous permit term standard is applied: Date of the start of the permittee's review process, the permittee's approval of the site plan (if applicable), the control measure implementation, and any modifications to the site plan.

- (D) The applicable documentation for the operation and maintenance procedures that ensure the long-term observation, maintenance, and operation of control measures, including routine inspection frequencies and maintenance activities.
 - (E) The applicable documentation regarding easements or other legal means for access to the control measure for operation, maintenance, and inspection of control measures.
 - vi. Construction Inspection and Acceptance: Maintain records of inspections conducted during construction and the permittee's acceptance of the control measure(s).
 - vii. Post Acceptance Oversight: Maintain inspection records with the following minimum information for all inspections conducted to meet the minimum inspection frequency:
 - (A) Inspection date
 - (B) Name of inspector
 - (C) Control measure identification, including the type of control measure
 - (D) Owner of the control measure
 - (E) Confirmation that the control measure operates in accordance with the approved plan
 - (F) Inspection findings including, when present: inadequate control measures and control measures requiring routine maintenance
 - (G) Confirmation that the control measure is operating as designed or a list of follow up actions
- Permittees only have to keep the inspection records for the once a permit term inspection. Permittees do not have to keep records for inspections conducted more frequently than required by this permit.
- viii. Enforcement Response: Maintain records of the enforcement response.
 - ix. Tracking: Maintain records of the required control measure and regional WQCV control measure and facilities information.
 - x. Training: Name and title of each individual trained, date of training, the type of training, and a list of topics covered.
 - xi. For Applicable Construction Activities that Overlap Multiple Permit Areas: Copies of any written agreements between co-regulating MS4 permittees when required by Part I.E.4.a.xi.
- c. PDD: The permittee must provide a list of the following information:
- i. Excluded Sites: A list of citation(s) and location(s) of regulatory mechanism(s) that allow for exclusions and supporting documents used to implement the process.
 - ii. Regulatory Mechanism: A list of the citation(s) and location(s) of the required elements of the regulatory mechanism, including the section of the regulatory mechanism used for enforcement activities. A list of the associated program documents used to meet the regulatory mechanism requirements.
 - iii. Regulatory Mechanism Exemptions: A list of citation(s) and location(s) of regulatory mechanism elements that allow for exemptions. A list of the documented procedures that confirm that any exemptions, waivers, and variances comply with the permit.
 - iv. Control Measure Requirements: A list of citation(s) and location(s) of applicable documents that demonstrate that the permittee requires operators to meet the requirements in Part I.E.4.v, including any documents that provide control measure design considerations, criteria, or standards.
 - v. Site Plan Requirements:
 - (A) A list of citation(s) and location(s) of applicable documents that demonstrate that the permittee requires operators to develop, maintain, and modify site plans, including the

citation(s) and location(s) of supporting documents.

- (B) A list of citation(s) and location(s) of applicable documents that demonstrate that the permittee conducts initial site plan reviews, including the citation(s) and location(s) of supporting documents.
 - (C) A list of citation(s) and location(s) of applicable documents that demonstrate that the permittee has operation and maintenance procedures that ensure the long-term observation, maintenance, and operation of control measures, including routine inspection frequencies and maintenance activities.
 - (D) A list of citation(s) and location(s) of applicable documents that demonstrate that the permittee has procedures to ensure that structural control measures have easements or other legal means for access to the control measure for operation, maintenance, and inspection of control measures.
- vi. Construction Inspection and Acceptance and Post Acceptance Oversight Site Inspection: A list of citation(s) and location(s) of applicable documents that demonstrate that the permittee has written procedures for inspections, including the citation(s) and location(s) of supporting documents that describe the following:
 - (A) The process and tools used for documenting inspections.
 - (B) The process for inspection follow-up, including determining, implementing, and documenting the nature of the follow-up action.
 - (C) The process for determining, implementing, and documenting Post Acceptance Site Inspection frequencies if different than once a permit term.
 - (D) Procedures for determining ownership through property records, as needed.
 - vii. Enforcement Response: A list of citation(s) and location(s) of applicable documents that demonstrate that the permittee has written procedures for enforcement response. The document(s) must detail the types of escalating enforcement responses the permittee will take in response to common violations and time periods within which responses will take place.
 - viii. Tracking: A list of citation(s) and location(s) of applicable documents that demonstrate that the permittee has written procedures for maintaining the required tracking information.
 - ix. Training: A list of citation(s) and location(s) of the training program and supporting documents.
 - x. For Applicable Construction Activities that Overlap Multiple Permit Areas: A list of citation(s) and location(s) of applicable documents that demonstrate that the permittee meets all permit requirements in Part I.E.4 for applicable development site for which the permittee is the owner or operator, if different than procedures for private sites.

5. Pollution Prevention/Good Housekeeping for Municipal Operations

The permittee must implement a program for Pollution Prevention/Good Housekeeping for facilities and operations that they own, operate, or perform within the permit area. The program must prevent or reduce water quality impacts from pollutants being discharged to the MS4 from municipal facilities and operations. "Applicable municipal operations and facilities" are municipal operations and facilities that *are not* authorized by a separate CDPS or NPDES discharge permit.

a. The following requirements apply:

- i. Control Measure Requirements: The permittee must address the selection, installation, implementation, and maintenance of control measures in accordance with Part I.B. At a minimum, control measures must be adequately designed to prevent or reduce all potential pollutant associated with applicable municipal facilities and operations to prevent or minimize the discharge of pollutants, including trash, to state waters.
- ii. Municipal Facility Runoff Control Measures:

- (A) The permittee shall implement control measures to prevent or reduce potential discharges of pollutants to the MS4 from the applicable municipal facilities listed below. New written procedures shall be developed and implemented for any new applicable municipal facilities prior to associated pollutant sources being present.
 - 1) Vehicle maintenance facilities
 - 2) Asphalt and concrete batch plants which are not already authorized by a separate CDPS or NPDES discharge permit
 - 3) Solid-waste transfer stations where waste and recyclables are briefly held before further transport
 - 4) Outdoor storage yards with exposed stockpiles of materials, including stockpiles of road deicing salt, salt and sand, sand, and rotomill material
- (B) The permittee shall implement the following categories of control measures as necessary to prevent or reduce the pollutant sources present:
 - 1) Preventive maintenance
 - 2) Good housekeeping
 - 3) Spill prevention and response procedures
 - 4) Structural control measures
 - 5) Evaluation of non-stormwater discharges
 - 6) Employee training
- (C) The permittee shall implement written municipal facility inspection procedures, which must at a minimum include the following:
 - 1) An annual visual inspection of each applicable municipal facility.
 - 2) A verification that the written facility procedures and documentation reflect current conditions.
 - 3) Observation of locations and areas where stormwater from municipal facilities are discharged off-site; or discharged to waters of the state, or to a storm sewer system that drains to waters of the state.
 - 4) Observation of facility conditions, including pollutant sources and control measures, to identify inadequate control measure and control measure requiring maintenance.
- iii. **Municipal Operations and Maintenance Procedures:** The permittee shall implement control measures that prevent or reduce discharges for applicable municipal operations that are not covered under Part I.E.5.a.ii(A). New written procedures shall be developed and implemented for any new applicable municipal operations prior to associated pollutant sources being present.
 - (A) At a minimum, implementation of the procedures must prevent or reduce stormwater pollution from the following operations conducted by the permittee:
 - 1) Operation and maintenance of streets, roads, highways
 - 2) Operation and maintenance of municipal parking lots
 - 3) Operations at maintenance and storage yards
 - 4) Operations at maintenance shops with outdoor storage areas
 - 5) Operation and maintenance of snow dumps/snow disposal areas
 - 6) Operation and maintenance of sites used for temporary storage of sweeper tailings or other waste piles
 - 7) Park and open space maintenance

- 8) Building maintenance
 - 9) New construction of municipal facilities
 - 10) Application of pesticides, herbicides, and fertilizers
 - 11) Large outdoor festivals and events
 - 12) Construction activities not subject to the requirements of Part I.E.3
 - 13) Maintenance, replacement, and construction of utilities and the storm system, including operations, such as storage, dewatering, or disposal, associated with removal of sediment, debris, trash, and other pollutant sources from the MS4, including removal of materials, such as trash, from control measures implemented in accordance with Part I.E.4, unless covered by a separate CDPS or NPDES permit.
- iv. Nutrient Source Reductions: The permittee shall implement a municipal operations program that has the ultimate goal of preventing or reducing nitrogen and phosphorus in stormwater runoff associated with the applicable municipal operations and facilities.
- (A) The permittee shall evaluate, identify, and document the municipal operations and facilities that are and/or have the potential to contribute nitrogen and phosphorus to the waters receiving the discharge authorized under this permit (identified municipal operations nutrient sources). The permittee is authorized to meet the requirements of this section through contribution to a collaborative program to evaluate, identify, and target sources state-wide or within the specific region or watershed that includes the receiving waters impacted by the permittee's discharge(s). At a minimum, if the permittee has any operations that use fertilizers, then the permittee shall include the storage and application of fertilizer, including subsequent stormwater or irrigation runoff from areas where fertilizer has been applied, as an identified municipal operations nutrient source if these operations were not covered under Part I.E.5.a.ii and iii.
 - (B) The permittee shall implement control measures that prevent or reduce the nitrogen and phosphorus in stormwater runoff associated with identified municipal operations nutrient sources. The control measures shall be implemented and documented in accordance with Part I.E.5.a.ii, if associated with an applicable municipal facility, or in accordance with Part I.E.5.a.iii., if associated with an applicable municipal operation.
- v. Outdoor bulk storage structures, of more than 55 gallons, for petroleum products and any other liquid chemicals located at applicable municipal facilities must have control measures implemented that provide secondary containment or equivalent protection that contains all spills and prevents any spilled material from entering state waters. For the scenario of a single containment system serving multiple tanks, the containment system must have sufficient capacity to contain 10% of the volume of containers, or the volume of the largest container plus 10%, whichever is greater. Bulk storage on mobile refuelers that are subject to the authority and control of the U.S. Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of EPA, dated November 24, 1971 are not subject to the requirements of Part I.E.5.a.ii(A)(5). Before the implementation of such controls, the permittee shall implement practices, such as spill prevention and response, to prevent or reduce pollutants in runoff associated with bulk storage structures.
- vi. Training: Train applicable municipal staff to implement the Pollution Prevention/Good Housekeeping for Municipal Operations, including training for employees that will conduct inspections in accordance with Part I.E.5.a.ii(C). The permittee must identify those who will be likely to inspect the control measures and provide training to those individuals. The program must inform public employees responsible for operations with the potential to result in an illicit discharge about the permittee's prohibitions against, and potential impacts associated with, illicit discharges from municipal operations. The training must also include information on trash and its effects on water quality.

- b. Recordkeeping: The permittee must maintain the following records for activities to meet the requirements of this section I.E.5 and Part I.K.2:
- i. Municipal Facility Runoff Control Measures: For each applicable municipal facility:
 - (A) Facility identification
 - (B) Description of all pollutant sources
 - (C) Control measures implemented, including installation and implementation specifications and information
 - (D) Staff (position title) responsible for implementation of control measures and associated documentation
 - (E) Description of control measures implemented for bulk storage structures.
 - (F) Maintain inspection records with the following minimum information for all inspections conducted to meet the minimum inspection frequency:
 - 1) Inspection date
 - 2) Name of inspector
 - 3) Applicable facility identification
 - 4) Inspection findings including, when present: inadequate control measures, control measures requiring routine maintenance, and if there was any evidence of polluted discharges from the facility
 - 5) Confirmation and documentation that the control measures are adequate or a list of follow up actions
 - ii. Municipal Operations and Maintenance Procedures: Control measures implemented, including installation and implementation information.
 - iii. Nutrient Source Reductions: Control measures implemented to prevent or reduce nitrogen and phosphorus from municipal operations, including installation and implementation information.
 - iv. Outdoor Bulk Storage: Description of control measures implemented for bulk storage structures, if applicable.
 - v. Training: Name and department of each individual trained, date of training, the type of training, and a list of topics covered.
- c. PDD: The permittee must provide a list of the following information:
- i. Municipal Facility Runoff Control Measures: A list of citations(s) and locations(s) of the following:
 - (A) List of applicable municipal facilities.
 - (B) List of facilities the permittee owns or operates that are subject to separate CDPS or NPDES permit coverage under the state's general stormwater permits for discharges of stormwater associated with industrial activity.
 - (C) Citation(s) and location(s) of supporting documents of the municipal facility runoff control measures, including documents that provide control measure installation and implementation specifications and information, if applicable.
 - (D) Citation(s) and location(s) of supporting documents for inspections, including a list of the written procedures for conducting inspections.
 - ii. Municipal Operations and Maintenance Procedures: A list of citations(s) and locations(s) of the following:
 - (A) List the municipal operations to which this program applies.

- (B) Citation(s) and location(s) of supporting documents, including documents that provide control measure installation and implementation specifications and implementation.
- iii. Nutrient Source Reductions: A list of citations(s) and locations(s) of the method used to evaluate operations and facilities to identify sources of nitrogen and phosphorus discharges from the MS4 that can be controlled through the implementation of control measures.
- iv. Outdoor Bulk Storage: A list of citations(s) and locations(s) of procedures to ensure that this requirement is met.
- v. Training: A list of citation(s) and location(s) of the training program and supporting documents.

F. OTHER TERMS AND CONDITIONS

1. General Limitations

The following limitations shall apply to all discharges covered by this permit:

- a. No chemicals are to be added by the permittee for the purpose of meeting a pollutant restriction, prohibition, or reduction requirement in this permit that have the potential to be present in the permitted discharge, including, but not limited to, chemical additions at any point in the treatment process, unless the permittee provides advance notice to the Division of the planned changes in accordance with Part II.A.2 and the Division confirms that the new or altered discharge is appropriate for coverage under this general permit.
- b. All discharges must comply with the lawful requirements of federal agencies, municipalities, counties, drainage districts, and other local agencies regarding any discharges to storm drain systems, conveyances, or other water courses under their jurisdiction.

2. Releases in Excess of Reportable Quantities

This permit does not relieve the permittee of the reporting requirements of 40 C.F.R. 110, 40 C.F.R. 117 or 40 C.F.R. 302. Any discharge of hazardous material shall be handled in accordance with the Division's Notification Requirements in Part II.

3. Records Availability

All records required under this permit are considered reports that shall be available to the public under Section 308(b) of the CWA. The operator of a facility with discharges covered by this permit shall make their PDD available to members of the public upon request. However, the permittee may claim any portion of a PDD as confidential in accordance with 40 C.F.R. Part 2.

4. Discharges to Waters with Total Maximum Daily Loads (TMDLs)

A "TMDL" is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A water quality standard is a narrative and/or numeric restriction established by the Commission applied to state surface waters to protect one or more beneficial uses of such waters. Whenever only numeric or only narrative standards are intended, the wording shall specifically designate which is intended. See 5 CCR 1002- 31.5(37). A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations. See section 303(d) of the Clean Water Act and 40 C.F.R. 130.2 and 130.7. The Division will do either of the following if a TMDL has been approved for any waterbody into which the permittee discharges, and discharges subject to effluent limits under this permit certification have been assigned a pollutant-specific WLA under the TMDL:

- a. If the Division determines that pollutant restrictions, prohibitions, and reduction requirements in the current permit are adequate to ensure compliance with the WLA, the Division will notify the permittee of the WLA, and amend the permittee's certification if necessary to address additional reporting or documentation requirements to demonstrate compliance with the WLA, or

- b. If the Division determines that the conditions of this permit are not adequate to bring about compliance with the WLA, the Division may modify this permit in accordance with Part II.B.5 or require the permittee to apply for and obtain an individual or alternate general CDPS or NPDES permit, in accordance with Part I.A.2.

5. Implementation by Other Parties

Implementation of one or more of the actions required to comply with a term or condition of this permit, including pollutant restrictions, prohibitions, and reduction requirements, may be shared with another entity or the other entity may fully take over implementation of the action(s). The permittee remains liable for ensuring that all requirements of this permit are complied with, regardless of who implements the action(s). The permittee may rely on another entity for implementation only if:

- a. The other entity agrees to implement the action(s) on the permittee's behalf. Written acceptance of this obligation is required and must be maintained as part of the PDD.
- b. If the other entity conducts oversight of a third party to meet a pollutant restriction, prohibition, or reduction requirement, the entity must be capable of remaining impartial and must be a separate entity than the owner/operator of the activity for which the oversight is targeted.
- c. The other entity must be capable of completing the necessary actions to comply with the relevant pollutant restriction, prohibition, or reduction requirement(s), including but not limited to effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate written quality assurance procedures.
- d. If the permittee uses another party, including a storm water management system administrator, to conduct site inspections on their behalf, then the permittee must develop written procedures to demonstrate and report that the storm water management system administrator program meets the requirements of Part I.E.3.a.vi. and Part I.E.3.b.vi.

6. Monitoring

Monitoring requirements are included in this section, as well as in Part III of the permit for requirements applicable to specific permittees.

Case-by-Case Monitoring: The Division reserves the right to require water quality sampling and testing, on a case-by-case basis. Monitoring may also be required if a stormwater-based TMDL and WLA have been put into place for any waterbody into which the permittee discharges.

7. General Monitoring and Sampling Requirements

The permittee shall comply with the following requirements for all monitoring required by this permit, except for field analysis which may be conducted as part of Part I.E.2. Where field analysis does not involve analytical methods approved under 40 C.F.R. Part 136, the applicant shall document a description of the method used, including the name of the manufacturer of the test method along with the range and accuracy of the test.

- a. Analytical and Sampling Methods for Monitoring
The permittee shall install, calibrate, use and maintain monitoring methods and equipment, including biological and indicated pollutant monitoring methods. All sampling shall be performed by the permittee according to specified methods in 40 C.F.R. Part 136; methods approved by EPA pursuant to 40 C.F.R. Part 136; or methods approved by the Division, in the absence of a method specified in or approved pursuant to 40 C.F.R. Part 136.
- b. The permittee shall establish and maintain records for all monitoring required by Part I.F.6. Those records shall include the following:
 - i. The date, type, exact location, and time of sampling or measurements
 - ii. The individual(s) who performed the sampling or measurements

- iii. The date(s) the analyses were performed
 - iv. The individual(s) or entity who performed the analyses
 - v. The analytical techniques or methods used
 - vi. The results of such analyses
- c. The permittee shall maintain all monitoring information, including the chain of custody forms, all original strip chart recordings for continuous monitoring instrumentation, all calibration and maintenance records, copies of all reports required by this permit and records of all data used to complete the application for this permit in accordance with Part I.K.2. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Division or EPA.

G. PROGRAM REVIEW AND MODIFICATION

1. Annual Program Review

The permittee shall conduct an annual review of the current program areas as necessary for the preparation of the annual report required under Part I.I. This annual review shall include the following:

- a. A review of the compliance status with requirements in Part I.E and III, and compliance schedules in Part I.H.
- b. An assessment of the effectiveness of control measures.
- c. An assessment of any permit modifications that may be needed if compliance with a current term or condition may not be practicable.

H. COMPLIANCE SCHEDULE

Permittees are required to implement their current program in accordance with the previous permit until a new program is implemented in accordance with this permit, including this compliance schedule. Compliance with the terms and conditions of this permit, including Parts I.D and E, shall be required by the effective date of the permit, except as provided below. The dates in the compliance schedule are deemed to be correct where the dates in the compliance schedule and in the text of the permit conflict. The compliance schedule detailed in Table 2, below, includes submittals of plans and implementation of permit conditions.

The permittee shall submit the plans to the Division by the specified date in the case of the required submittal of plans. When applicable, a schedule of dates to accomplish various tasks related to the plans, including implementation shall also be included. Upon approval of a plan(s) by the Division, implementation of all terms and conditions of the plan(s), including but not limited to the compliance schedule, shall be a requirement of this permit.

1. Renewal Permittees

All requirements of the cited section, and all subsections, must be met by the compliance schedule deadline in Table 2.

TABLE 2				
Compliance Schedule - Renewal Permittees				
ICIS Code	Permit Condition	Action	Deliverable	Deadline
PR010	Part I.A.3.a.ii(B)	County growth area maps (Part I.A.3.a.ii(B))	Submit a map of the county growth areas as defined in Part I.A.3.a.ii(B)(1) and (2) or confirmation that Part I.A.3.a.ii(B)(3) applies.	Completed January 1, 2017

PR010	Part I.C.1, and PDD content requirements in Parts I.D and E	Complete PDD (contents must reflect terms and conditions that are in effect, i.e., following the associated compliance schedule deadline)	Notification in annual report Due March 10, 2019	Completed January 1, 2019
PR010	Part I.E.2.a.ii Part I.E.2.a.iii Part I.E.2.a.v (if applicable) Part I.E.3.a.ii Part I.E.3.a.iii Part I.E.4.a.ii Part I.E.4.a.iii	Complete all applicable changes to the regulatory mechanism(s): Ensure requirements are met; revise implementation and documentation if necessary.	Notification in annual report Due March 10, 2020	Completed July 1, 2019
PR010	Part I.E.1.a.i	Illicit Discharges: Begin providing information targeting business(es) and the general public	Notification in annual report Due March 10, 2019	Begin implementation July 1, 2018
PR010	Part I.E.1.a.ii	Education and Outreach Activities: Begin providing annual public education and outreach from Table 1.	Notification in annual report Due March 10, 2019	Begin implementation January 1, 2018
PR010	Part I.E.1.a.iii(A)	Nutrients: Determine targeted sources of nutrients.	Notification and list of targeted sources in annual report Due March 10, 2018	Completed January 1, 2018
PR010	Part I.E.1.a.iii(B)	Nutrients: Begin providing education and outreach to the targeted sources	Notification in annual report Due March 10, 2019	Begin implementation July 1, 2018
PR010	Part I.E.2.a.iv (A) and (B)	Tracing an Illicit Discharge: Ensure requirements are met; revise implementation and documentation if necessary.	Notification in annual report Due March 10, 2018	Completed January 1, 2018
PR010	Part I.E.2.a.vi	Removing an illicit Discharge, Enforcement Response: Ensure requirements are met; revise implementation and documentation if necessary.	Notification in annual report Due March 10, 2018	Completed January 1, 2018
PR010	Part I.E.2.a.viii	Priority Areas: Identify any new priority areas	Notification in annual report Due March 10, 2018	Completed January 1, 2018
PR010	Part I.E.2.b.vi	Removing and Illicit Discharge: Ensure documentation is recorded.	Notification in annual report Due March 10, 2018	Completed January 1, 2018
PR010	Part I.E.3.	Begin implementing the permittee's new construction sites program in the county growth areas.	Notification in annual report Due March 10, 2020	Completed January 1, 2019

PR010	Part I.E.3.a.i	Excluded Activities for County Growth Areas: Ensure requirements are met; revise implementation and documentation if necessary.	Notification in annual report Due March 10, 2020	Completed July 1, 2019
PR010	Part I.E.3.a.iv	Control Measure Requirements: Ensure control measure requirements are met; revise implementation and documentation if necessary.	Notification in annual report Due March 10, 2020	Completed July 1, 2019
PR010	Part I.E.3.a.v (B) through (C)	Site Plans: Ensure requirements are met; revise implementation and documentation if necessary.	Notification in annual report Due March 10, 2020	Completed July 1, 2019
PR010	Part I.E.3.a.vi (B) through (E)	Site Inspection: Ensure requirements are met; revise implementation and documentation if necessary.	Notification in annual report Due March 10, 2020	Completed July 1, 2019
PR010	Part I.E.3.a.vii(B)	Enforcement Response: Ensure requirements are met; revise implementation and documentation if necessary.	Notification in annual report Due March 10, 2020	Completed July 1, 2019
PR010	Part I.E.3.b.vi	Site Inspection: Ensure requirements are met; revise implementation and documentation if necessary, ensure documentation is recorded.	Notification in annual report Due March 10, 2020	Completed July 1, 2019
PR010	Part I.E.4.	Begin implementing the permittee's new post-construction sites program in the county growth areas.	Notification in annual report Due March 10, 2020	Completed January 1, 2019
PR010	Part I.E.4.a.i	Excluded Sites: Ensure requirements are met; revise implementation and documentation if necessary.	Notification in annual report Due March 10, 2020	Completed July 1, 2019
PR010	Part I.E.4.a.iv	Control Measure Requirements: Ensure new control measures meet one of the design standards	Notification in annual report Due March 10, 2020	Completed July 1, 2019
PR010	Part I.E.4.a.v	Site Plans: Ensure requirements are met; revise implementation and documentation if necessary.	Notification in annual report Due March 10, 2020	Completed July 1, 2019
PR010	Parts I.E.4.a.vi and vii	Construction Inspection and Acceptance and Post Acceptance Oversight: Ensure requirements are met; revise implementation and documentation if necessary.	Notification in annual report Due March 10, 2020	Completed July 1, 2019
PR010	Part I.E.4.a.viii	Enforcement Response: Ensure requirements are met; revise implementation and documentation if necessary.	Notification in annual report Due March 10, 2020	Completed July 1, 2019

PR010	Part I.E.5.a.ii	Municipal Facility Runoff Control Measures: Ensure requirements are met; revise implementation and documentation if necessary.	Notification in Annual report Due March 10, 2018	Completed July 1, 2017
PR010	Part I.E.5.a.ii(C)	Municipal Facility Runoff Control Measures: Ensure inspection requirements are met; revise implementation and documentation if necessary.	Notification in annual report Due March 10, 2020	Completed July 1, 2019
PR010	Part I.E.5.a.iv	Nutrient Source Reductions: Ensure requirements are met; revise implementation and documentation if necessary.	Notification in annual report Due March 10, 2021	Completed July 1, 2020
PR010	Part I.E.5.a.v.	Outdoor Bulk Storage	Notification in annual report Due March 10, 2022	Completed July 1, 2021
PR010	Part I.E.5.b.i	Municipal Facility Runoff Control Measures: Ensure documentation is recorded.	Notification in annual report Due March 10, 2020	Completed July 1, 2019

2. New Permittees

New permittees must obtain permit coverage following the effective date of the permit. “New permittees” are permittees not covered under a previous MS4 general permit. The Division may include in the permit certification an alternative compliance schedule deadline from those included in Table 3 for specific compliance schedule deadlines prior to, or within 1 year of, the effective date of the permittee’s certification. Alternative compliance schedules may extend beyond the permit expiration date.

All requirements of the cited section, and all subsections unless specifically excluded, must be met by the compliance schedule deadline in Table 3.

The permit terms for Part I.E.3, Part I.E.4, and Part I.E.5 are subject to the compliance schedule dates in Table 3 and require the implementation of structural control measures that require planning and installation. In addition, Parts I.E.3 and I.E.4 require the permittee to implement regulatory mechanisms to ensure implementation by operators. The permittee must, therefore, complete some necessary actions in advance of the required deadlines to ensure that the required structural control mechanisms for applicable construction activities, applicable municipal facilities, and applicable municipal operations are in place by the corresponding deadlines in the compliance schedule. For applicable development sites, the permittee must ensure that the control measures are in place for all sites completed after the compliance schedule deadline.

ICIS Code	Permit Condition	Action	Deliverable	Deadline
PR010	Part I.C.1 and PDD content requirements in Parts I.D and E	Complete PDD (contents must reflect terms and conditions that are in effect, i.e., following the associated compliance schedule deadline)	Notification in annual report Due March 10, 2018	Completed January 1, 2018
PR010	Part I.D.1	Public Involvement/Participation: Ensure requirements are met	Notification in annual report Due March 10, 2018	Completed January 1, 2018
PR010	Part I.E.1	Public Education and Outreach: Ensure requirements are met	Notification in annual report Due March 10, 2019	Completed July 1, 2018
PR010	Part I.E.2	Illicit Discharge Detection and Elimination: Ensure requirements are met	Notification in annual report Due March 10, 2020	Completed July 1 July 1, 2019
PR010	Part I.E.3	Construction Sites: Ensure requirements are met.	Notification in annual report Due March 10, 2020	Completed July 1, 2019
PR010	Part I.E.4	Post Construction: Ensure requirements are met.	Notification in annual report Due March 10, 2021	Completed July 1, 2020

PR010	Part I.E.5	Municipal Operations: Ensure requirements are met, except for the requirement of Part I.E.5a.iii(C) (Bulk Storage)	Notification in annual report Due March 10, 2021	Completed July 1, 2020
PR010	Part I.E.5.a.v	Outdoor Bulk Storage: Ensure requirements are met	Notification in annual report Due March 10, 2022	Completed July 1, 2021

I. REPORTING REQUIREMENTS

1. Annual Report

The permittee shall prepare an annual system-wide report to be submitted by **March 10** of each year, covering January 1 through December 31 of the previous year. For Renewal permittees, the first report shall include the annual report items from the previous permit for **January 1, 2016 to July 1, 2016**. In addition, for Renewal Permittees, the first report shall include information below on all activities conducted from **July 1, 2016, to December 31, 2016**. For new permittees, the first report may include less than 12 months of information, unless otherwise indicated in the certification. For all permittees, the report must include the following information:

- a. The required certification statement in Part I.K.1.c. and signed by the individual meeting the criteria in Part I.K.1.a.
- b. Identify that the permittee is relying on another entity to satisfy any of the permit obligations (if applicable) if not included in previous reports or permit application.
- c. An update on areas added to or removed from the permit area as a result of annexation or other legal means.
- d. A list of compliance schedule items completed, including the date of completion and any associated information required in Part I.H.
- e. The results of the assessment of the effectiveness of the control measures.
- f. The results of the permit modification assessment and if any parts of this permit need to be modified or a condition of the permit may not be practicable.
- g. Provide the following information for the program elements listed below:
 - i. Public Education and Outreach (Part I.E.1)
 - (A) A list of the education and outreach activities completed in accordance with Part I.E.1.a.i.
 - (B) A list of the education and outreach activities completed in accordance with Part I.E.1.a.ii referencing the activities in Table 1.
 - (C) A list of the education and outreach activities completed in accordance with Part I.E.1.a.iii and the targeted sources.
 - ii. Illicit Discharge Detection and Elimination (Part I.E.2):
 - (A) Provide the total number of unresolved reports/identification of illicit discharges.
 - iii. Construction Sites (Part I.E.3):
 - (A) Provide the total number of applicable construction sites during the year.
 - (B) County permittees only: Provide a list of any construction activities excluded from being applicable construction activities in accordance with Part I.E.3.a.i(B) (1) and (2), and include the recordkeeping information required by Part I.E.3.b.i.

- (C) Provide the number of sites that used the Winter Conditions Exclusion and the dates that the Winter Conditions Exclusion was used.
 - (D) Provide the total number of inspections performed for the types of inspections listed below:
 - 1) Routine Inspections: Inspections of applicable construction activities that meet the inspection scope requirements in Part I.E.3.a.vi(C) and for which documentation is recorded in accordance with in Part I.E.3.b.vi.
 - 2) Reduced Site Inspection: Inspections of applicable construction activities that meet the inspection scope requirements in Part I.E.3.a.vi(D)(1), (2), (3) and (4) for which documentation is recorded in accordance with in Part I.E.3.b.vi.
 - 3) Compliance Inspections: Inspections or operator reporting or other action(s) to assess the control measure has been implemented or corrected) of applicable construction activities that meet the inspection scope requirements in Part I.E.3.a.vi(E) and for which documentation is recorded in accordance with in Part I.E.3.b.vi.
- iv. Post-Construction Stormwater Management in New Development and Redevelopment Program (Part I.E.4):
- (A) Provide the total number of applicable development sites for which control measures were implemented during the reporting period.
 - (B) Excluded Sites: Provide a list of the following sites excluded from being applicable development sites and include the recordkeeping information required by Part I.E.4.b.ii:
 - 1) Sites excluded in accordance with Part I.E.4.a.i(A), except maintenance sites
 - 2) Sites excluded in accordance with Parts I.E.4.a.i(B) and (C)
 - 3) County permittees only: Sites excluded in accordance with Parts I.E.4.a.i(G)(1)
 - (C) Long-Term Operation and Maintenance and Post Acceptance Oversight: Provide the total number of applicable development sites and control measures inspected to ensure compliance with the requirement in Part I.E.4.a.vii.

J. DEFINITIONS

The definitions below are intended strictly for clarification purposes, and may not contain the full legal definition as per regulation. For the purposes of this permit:

1. **Applicable Construction Activity:** Construction activities with land disturbance (surface disturbing and associated activities) of one or more acres, or disturbing less than one acre if that construction activity is part of a larger common plan of development or sale that would disturb, or has disturbed one or more acres, unless excluded in Part I.E.3.a.i. Applicable construction activities include the land disturbing activity and all activities and materials associated with the construction site and located at, or contiguous to, the land disturbing activities.
2. **Base Design Standard:** The minimum design standard for new and redevelopment before applying exclusions or alternative standards.
3. **Best Management Practices:** Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "state surface waters". BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. For the purpose of this permit, the term BMP is used interchangeably with the term control measure, and can include other methods such as the installation, operation, and maintenance of structural controls and treatment devices.
4. **Classified State Water:** A classified state water is a state water with a classification in the Classification and Numeric Standards Regulation for each of the seven river basins in Colorado. Classifications for each segment within the river basin can be found in the numeric and standards table for each basin regulation.
5. **Common Plan of Development or Sale:** A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules, but remain related. The Division has determined that "contiguous" means construction activities located in close proximity to each other (within ¼ mile).
6. **Construction activity:** Refers to ground surface disturbing and associated activities (land disturbance), which include, but are not limited to, clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads, staging areas, stockpiling of fill materials, and borrow areas. Construction does not include routine maintenance to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. Activities to conduct repairs that are not part of regular maintenance or for replacement are construction activities and are not routine maintenance. Repaving activities where underlying and/or surrounding soil is cleared, graded, or excavated as part of the repaving operation are considered construction activities unless they are an excluded site under Part I.E.4.a.i. Construction activity is from initial ground breaking to final stabilization regardless of ownership of the construction activities.
7. **Construction Dewatering:** Discharge of groundwater, surface water, and stormwater that has mixed with the groundwater and/or surface water (i.e. commingled stormwater runoff) that has come into contact with applicable construction activities.
8. **Contiguous:** Within 0.25 miles.
9. **Control Measure:** Any best management practice or other method used to prevent or reduce the discharge of pollutants to waters of the state. Control measures include, but are not limited to best management practices. Control measures can include other methods such as the installation, operation, and maintenance of structure controls and treatment devices.
10. **Control Measure Requiring Routine Maintenance:** Any control measure that is still operating in accordance with its design and the requirements of this permit, but requires maintenance to prevent associated potential for failure during a runoff event. See also Inadequate control measure.
11. **Discharge:** Discharge: The discharge of pollutants as defined in section 25-8-103(3) C.R.S. For the purposes of this permit, discharges do not include land application or discharges to the ground.

12. Discharge of a Pollutant: The introduction or addition of a pollutant into state waters. See 25-8-103(3) C.R.S.
13. Division: The Water Quality Control Division of the Colorado Department of Public Health and Environment.
14. Dry Weather Discharge: A discharge not resulting from surface runoff from stormwater.
15. Effluent Limitation: Any restriction or prohibition established under the Colorado Water Quality Control Act, state regulations, or federal law on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into state waters, including, but not limited to, standards of performance for new sources, toxic effluent standards and schedules of compliance.
16. Exclusion: A removal of the applicability of the terms or conditions in this permit from applying to the given conditions.
17. Exemption: An exemption, waiver, or variance implemented by the permittee for permittee control measures used to meet the effluent limits in this permit.
18. Final Stabilization: The condition reached when all ground surface disturbing activities at the site have been completed, and for all areas of ground surface disturbing activities a uniform vegetative cover has been established with an individual plant density of at least 70 percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed.
19. Good Engineering, Hydrologic and Pollution Control Practices: Methods, procedures, and practices that:
 - a. Are based on basic scientific fact(s).
 - b. Reflect best industry practices and standards.
 - c. Are appropriate for the conditions and pollutant sources.
 - d. Provide appropriate solutions to meet the associated permit requirements, including practice based and numeric effluent limits.
20. Green infrastructure: Generally refers to control measures that use vegetation, soils, and natural processes or mimic natural processes to manage stormwater. Green infrastructure can be used in place of or in addition to low impact development principles.
21. Illicit Discharge: Any discharges to an MS4 that is not composed entirely of stormwater except discharges specifically authorized by a CDPS or NPDES permit and discharges resulting from emergency fire fighting activities. Permittees should note that there are many types of illicit discharges that in accordance with the permit need to be effectively prohibited. Only the discharges listed in Part.I.2.a.v. can be excluded from being effectively prohibited.
22. Impervious Area: Developed areas with covering or pavement that prevents the land's natural ability to absorb and infiltrate typical precipitation and irrigation events. Impervious areas include, but are not limited to; roof tops, walkways, patios, driveways, parking lots, impervious storage areas, impervious concrete and asphalt, and any other continuous watertight pavement or covering.
23. Inadequate Control Measure: Any control measure that is not designed, implemented, or operating in accordance with the requirements of the permit, including the specific requirements in each program area in Part I.E or requirements for specific permittees in Part III, and implemented and maintained to operate in accordance with the design. See also Control measure Requiring Routine Maintenance.
24. Irrigation Return Flow: Tailwater, tile drainage, or surfaced groundwater flow from irrigated land.
25. Land Disturbing Activity: Any activity that results in a change in the existing land surface (both vegetative and non-vegetative). Land disturbing activities include, but are not limited to clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads,

staging areas, stockpiling of fill materials, and borrow areas. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity.

26. Minimize: For purposes of implementing control measures of this permit, means reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practices.
27. MS4: A municipal separate storm sewer system. See municipal separate storm sewer system.
28. Municipality/Municipal: A city, town, county, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under section 208 of CWA(1987).
29. Municipal Separate Storm Sewer System (MS4): A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
 - a. Owned or operated by a State, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to state waters;
 - b. Designed or used for collecting or conveying stormwater;
 - c. Which is not a combined sewer; and
 - d. Which is not part of a Publicly Owned Treatment Works (POTW). See 5 CCR 1002-61.2(62).
30. Municipal Separate Storm Sewer System Outfall (Outfall): A point source, as defined herein, at the point where a municipal separate storm sewer discharges to state waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other state waters and are used to convey state waters.
31. New Development: Land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision for a site that does not meet the definition of redevelopment.
32. New Permittee: Permittee not covered under a previous MS4 general permit.
33. Non-Structural Control Measures: Includes control measures that are not structural control measures, and include, but are not limited to, control measures that prevent or reduce pollutants being introduced to water or that prevent or reduce the generation of runoff or illicit discharges.
34. Operator: The person or entity who is responsible for the overall operation of the facility or activity from which the associated discharge originates.
35. Outstanding Waters: A type of designation. Outstanding waters are designated by the Water Quality Control Commission.
36. Pavement Management Sites: Sites, or portions of sites, for the rehabilitation, maintenance, and reconstruction of pavement, which includes roadway resurfacing, mill and overlay, white topping, black topping, curb and gutter replacement, concrete panel replacement, and pothole repair. The purpose of the site must intend to provide additional years of service life and optimize service and safety. The site also must be limited to the repair and replacement of pavement in a manner that does not result in an increased impervious area and the infrastructure must not substantially change. The types of sites covered under this exclusion include day-to-day maintenance activities, rehabilitation, and reconstruction of pavement.
37. Point Source: Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Point source does not include irrigation return flow. See 5 CCR 102-61.2(75).

38. Pollutant: Dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal or agricultural waste. See 5 CCR 1002-61.2(76).
39. Pollution: Man-made or man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water. See 5 CCR 1002-61.2(77)
40. Redevelopment: Includes a site that is already substantially developed and has 35% or more of existing hard surface coverage, the creation or addition of hard surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of hard surface that is not part of a routine maintenance activity; and land disturbing activities.
41. Regulatory Mechanism: The mechanism that allows the permittee to implement and enforce the requirements of this permit.
42. Renewal Permittee: Permittee that was covered under a previous MS4 general permit.
43. Roadway: Roads and bridges that are improved, designed or ordinarily used for vehicular travel and contiguous areas improved, designed or ordinarily used for pedestrian or bicycle traffic, drainage for the roadway, and/or parking along the roadway. Areas primarily used for parking or access to parking are not included.
44. Site Plan: Also known as construction stormwater site plans, sediment and erosion control plans, stormwater pollution prevention plans, drainage reports, drainage plans, stormwater management plans, drainage and erosion control plans, etc.
45. Small Municipal Separate Storm Sewer System: Any municipal separate storm sewer that is not defined as a "large" or "medium" municipal separate storm sewer system pursuant to Regulation 61. This term includes publicly-owned systems similar to separate storm sewer systems in municipalities (i.e., non-standard MS4s), including, but not limited to, systems at military bases and large education, hospital or prison complexes, if they are designed for a maximum daily user population (residents and individuals who come there to work or use the MS4's facilities) of at least 1,000.
46. Stormwater: Stormwater runoff, snow melt runoff, and surface runoff and drainage. See 5 CCR 1002-61.2(103).
47. Structural Control Measures: Includes control measures that are comprised of facilities and structures that remove pollutants from water or retain, reuse, or provide for infiltration or evaporation of water.
48. To the Extent Allowable under state or Local Law: A standard of implementation of permit requirements and means that to the extent that the permittee is not constrained by state or local laws. Local laws that can be legally changed by the permittee to allow implementation of permit requirements do not constitute a barrier to implementation of a permit requirement.
49. Total Maximum Daily Loads (TMDLs): The sum of the individual wasteload allocations (WLA) for point sources and load allocations (LA) for nonpoint sources and natural background. For the purposes of this permit, a TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes WLAs, LAs, and must include a margin of safety (MOS), and account for seasonal variations. (See section 303(d) of the Clean Water Act and 40 C.F.R. 130.2 and 130.7).
50. Water Quality Capture Volume (WQCV): The volume equivalent to the runoff from an 80th percentile storm, meaning that 80 percent of the most frequently occurring storms are fully captured and treated and larger events are partially treated.
51. Water Quality Standards: Any standard promulgated pursuant to section 25-8-204 C.R.S. For purposes of this permit, water quality standards are a narrative and/or numeric restriction established by the Water Quality Commission applied to state surface waters to protect one or

more beneficial uses of such waters. Whenever only numeric or only narrative standards are intended, the wording shall specifically designate which is intended. See 5 CCR 1002- 31.5(37).

52. Waters of the State of Colorado: Any and all surface waters and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed. This definition can include water courses that are usually dry. Note: this permit is only applicable to applicable discharges to surface waters of the state.

K. GENERAL REQUIREMENTS

1. Signatory Requirements

- a. All reports required for submittal shall be signed and certified for accuracy by the permittee in accordance with the following criteria:
- i. In the case of corporations, by a principal executive officer of at least the level of vice-president or his or her duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the form originates.
 - ii. In the case of a partnership, by a general partner.
 - iii. In the case of a sole proprietorship, by the proprietor.
 - iv. In the case of a municipal, state, or other public facility, by either a principal executive officer, ranking elected official. For purposes of this section, a principal executive officer has responsibility for the overall operation of the facility from which the discharge originates.
 - v. A duly authorized representative of a person described in subsection (i) through (iv), only if all of the following are met:
 - (A) The authorization is made in writing by a person described in subsection (i) through (iv).
 - (B) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).
 - (C) The written authorization is submitted to the Division.
- b. Changes to authorization: If an authorization under paragraph a. of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph a) of this section must be submitted to the Division, before or together with any reports, information, or applications to be signed by an authorized representative.
- c. Certification: Any person signing a document under paragraph a. of this section shall make the following certification:
- "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. "

2. Retention of Records

The permittee shall retain copies of the required recordkeeping and program description documentation and all reports required by this permit and records of all data used to complete the application to be covered by this permit, for a period of at least three years from the date that the specific item is no longer being actively utilized for stormwater management. The period may be extended by request of the Division at any time.

Part II

A. NOTIFICATION REQUIREMENTS

1. Notification to Parties

All notification requirements under this section shall be directed as follows:

- a. Oral Notifications, during normal business hours shall be to:

Water Quality Control Division
Telephone: (303) 692-3500

- b. Written notification shall be to:

Water Quality Control Division
Colorado Department of Public Health and Environment
WQCD-P-B2
4300 Cherry Creek Drive South
Denver, CO 80246-1530

2. Change in Discharge or Wastewater Treatment

The permittee shall notify the Division, in writing, of any planned physical alterations or additions to the permitted facility that could significantly change the nature or increase the quantity of pollutants discharged. Conditions resulting in new or changed discharges of stormwater and other discharges that are not illicit discharges shall not be considered to meet this condition.

3. Special Notifications - Definitions

- a. Bypass: The intentional diversion of waste streams from any portion of a treatment facility.
- b. Severe Property Damage: Substantial physical damage to property at the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. It does not mean economic loss caused by delays in production.
- c. Upset: An exceptional incident in which there is unintentional and temporary noncompliance with permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

4. Noncompliance Notification

- a. If, for any reason, the permittee does not comply with or will be unable to comply with any permit limitations, standards or permit requirements specified in this permit, the permittee shall, at a minimum, provide the Water Quality Control Division with the following information:
- i. A description and cause of noncompliance;
 - ii. The period of noncompliance, including exact dates and times and/or the anticipated time when the permittee will return to compliance; and
 - iii. Steps being taken to reduce, eliminate, and prevent recurrence of the non-complying activity.
- b. The permittee shall report the following instances of noncompliance orally within twenty-four (24) hours from the time the permittee becomes aware of the noncompliance, and shall mail to the Division a written report within five (5) working days after becoming aware of the noncompliance (unless otherwise specified by the Division):

- i. Circumstances leading to any noncompliance which may endanger health or the environment regardless of the cause of the incident;
 - ii. Circumstances leading to any unanticipated bypass which exceeds any effluent limitations in the permit;
 - iii. Circumstances leading to any upset which causes an exceedance of any effluent limitation in the permit;
- c. Unless otherwise indicated in this permit, the permittee shall report instances of non-compliance which are not required to be reported within 24-hours at the time Discharge Monitoring Reports are submitted. The reports shall contain the information listed in subparagraph (a) of this section.

5. Other Notification Requirements

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule in the permit shall be submitted no later than fourteen (14) days following each scheduled date, unless otherwise provided by the Division.

The permittee shall notify the Division, in writing, thirty (30) days in advance of a proposed transfer of permit as provided in Part II.B.3.

The permittee's notification of all anticipated noncompliance does not stay any permit condition.

All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Division as soon as they know or have reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - i. One hundred micrograms per liter (100 µg/l);
 - ii. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol; and one milligram per liter (1.0 mg/l) for antimony;
 - iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 61.4(2)(g).
 - iv. The level established by the Division in accordance with 40 C.F.R. § 122.44(f).
- b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - i. Five hundred micrograms per liter (500 µg/l);
 - ii. One milligram per liter (1 mg/l) for antimony; and
 - iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application
 - iv. The level established by the Division in accordance with 40 C.F.R. § 122.44(f).

6. Bypass Notification

If the permittee knows in advance of the need for a bypass, a notice shall be submitted, at least ten days before the date of the bypass, to the Division. The bypass shall be subject to Division approval and limitations imposed by the Division. Violations of requirements imposed by the Division will constitute a violation of this permit.

7. Upsets

- a. Effect of an Upset: An upset constitutes an affirmative defense to an action brought for noncompliance with permit effluent limitations if the requirements of paragraph (b) of this

section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

- b. Conditions Necessary for a Demonstration of Upset: A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed contemporaneous operating logs, or other relevant evidence that:
 - i. An upset occurred and that the permittee can identify the specific cause(s) of the upset;
 - ii. The facility was being properly maintained at the time;
 - iii. The permittee submitted notice of the upset, if required by and in accordance with Part II.A.4 of this permit; and
 - iv. The permittee complied with any remedial measures required under 40 C.F.R. Section 122.41(d) of the federal regulations or Section 61.8(3)(h) of the Colorado Discharge Permit System Regulations.
- c. Burden of Proof: In any enforcement preceding the permittee seeking to establish the occurrence of an upset has the burden of proof.

8. Discharge Point

Any discharge to the waters of the state from a point source other than specifically authorized by this permit is prohibited.

9. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee as necessary to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance and adequate laboratory and process controls, including appropriate written quality assurance procedures (40 C.F.R. 122.41(e)). This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when necessary to achieve compliance with the conditions of the permit.

10. Minimization of Adverse Impact

The permittee shall take all reasonable steps to minimize or prevent any discharge of sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. As necessary, accelerated or additional monitoring to determine the nature and impact of the non-complying discharge is required.

11. Removed Substances

Solids, sludges, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in accordance with applicable state and federal regulations and in a manner that will prevent the removed pollutant(s) from entering waters of the state.

For all domestic wastewater treatment works, at industrial facilities, the permittee shall dispose of sludge in accordance with all state and federal regulations.

12. Submission of Incorrect or Incomplete Information

Where the permittee failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or report to the Division, the permittee shall promptly submit the relevant information which was not submitted or any additional information needed to correct any erroneous information previously submitted.

13. Bypass

- a. Bypasses are prohibited and the Division may take enforcement action against the permittee for bypass, unless:

- i. The bypass is unavoidable to prevent loss of life, personal injury, or severe property damage;
 - ii. There were no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - iii. Proper notices were submitted in compliance with Part II.A.4.
- b. "Severe property damage" as used in this Subsection means substantial physical damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
 - c. The permittee may allow a bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance or to assure optimal operation. These bypasses are not subject to the provisions of paragraph (a) above.
 - d. The Division may approve an anticipated bypass, after considering adverse effects, if the Division determines that the bypass will meet the conditions specified in paragraph (a) above.

14. Reduction, Loss, or Failure of Treatment Facility

The permittee has the duty to halt or reduce any activity if necessary to maintain compliance with the effluent limitations of the permit. Upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production, control sources of wastewater, or all discharges, until the facility is restored or an alternative method of treatment is provided. This provision also applies to power failures, unless an alternative power source sufficient to operate the wastewater control facilities is provided.

It shall not be a defense for a permittee in an enforcement action that it would be necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

B. PERMITTEE RESPONSIBILITIES

1. Inspections and Right to Entry

The permittee shall allow the Division and/or the authorized representative, upon the presentation of credentials:

- a. To enter upon the permittee's premises where a regulated facility or activity is located or in which any records are required to be kept under the terms and conditions of this permit;
- b. At reasonable times to have access to and copy any records required to be kept under the terms and conditions of this permit and to inspect any monitoring equipment or monitoring method required in the permit; and
- c. To enter upon the permittee's premises in a reasonable manner and at a reasonable time to inspect and/or investigate, any actual, suspected, or potential source of water pollution, or to ascertain compliance or non-compliance with the Colorado Water Quality Control Act or any other applicable state or federal statute or regulation or any order promulgated by the Division. The investigation may include, but is not limited to, the following: sampling of any discharge and/or process waters, the taking of photographs, interviewing of any person having knowledge related to the discharge permit or alleged violation, access to any and all facilities or areas within the permittee's premises that may have any effect on the discharge, permit, or alleged violation. Such entry is also authorized for the purpose of inspecting and copying records required to be kept concerning any effluent source.

- d. The permittee shall provide access to the Division to sample the discharge at a point after the final treatment process but before the discharge mixes with state waters upon presentation of proper credentials.

In the making of such inspections, investigations, and determinations, the Division, insofar as practicable, may designate as its authorized representatives any qualified personnel of the Department of Agriculture. The Division may also request assistance from any other state or local agency or institution.

2. Duty to Provide Information

The permittee shall furnish to the Division, within a reasonable time, any information which the Division may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Division, upon request, copies of records required to be kept by this permit.

3. Transfer of Ownership or Control

- a. Except as provided in paragraph b. of this section, a permit may be transferred by a permittee only if the permit has been modified or revoked and reissued as provided in Section 61.8(8) of the Colorado Discharge Permit System Regulations, to identify the new permittee and to incorporate such other requirements as may be necessary under the federal act.
- b. A permit may be automatically transferred to a new permittee if:
 - i. The current permittee notifies the Division in writing 30 days in advance of the proposed transfer date; and
 - ii. The notice includes a written agreement between the existing and new permittee(s) containing a specific date for transfer of permit responsibility, coverage and liability between them; and
 - iii. The Division does not notify the existing permittee and the proposed new permittee of its intent to modify, or revoke and reissue the permit.
 - iv. Fee requirements of the Colorado Discharge Permit System Regulations, Section 61.15, have been met.

4. Availability of Reports

Except for data determined to be confidential under Section 308 of the federal Clean Water Act and the Colorado Discharge Permit System Regulations 5 CCR 1002-61, Section 61.5(4), all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Division and the Environmental Protection Agency.

The name and address of the permit applicant(s) and permittee(s), permit applications, permits and effluent data shall not be considered confidential. Knowingly making false statements on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the federal Clean Water Act, and Section 25-8-610 C.R.S.

5. Modification, Suspension, Revocation, or Termination of Permits by the Division

The filing of a request by the permittee for a permit modification, revocation and reissuance, termination or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

- a. A permit may be modified, suspended, or terminated in whole or in part during its term for reasons determined by the Division including, but not limited to, the following:
 - i. Violation of any terms or conditions of the permit;
 - ii. Obtaining a permit by misrepresentation or failing to disclose any fact which is material to the granting or denial of a permit or to the establishment of terms or conditions of the permit; or

- iii. Materially false or inaccurate statements or information in the permit application or the permit.
 - iv. A determination that the permitted activity endangers human health or the classified or existing uses of state waters and can only be regulated to acceptable levels by permit modifications or termination.
- b. A permit may be modified in whole or in part for the following causes, provided that such modification complies with the provisions of Section 61.10 of the Colorado Discharge Permit System Regulations:
- i. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.
 - ii. The Division has received new information which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of different permit conditions at the time of issuance. For permits issued to new sources or new dischargers, this cause includes information derived from effluent testing required under Section 61.4(7)(e) of the Colorado Discharge Permit System Regulations. This provision allows a modification of the permit to include conditions that are less stringent than the existing permit only to the extent allowed under Section 61.10 of the Colorado Discharge Permit System Regulations.
 - iii. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:
 - (A) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved water quality standard, or an effluent limitation set forth in 5 CCR 1002-62, § 62 et seq.; and
 - (B) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a Commission action with respect to the water quality standard or effluent limitation on which the permit condition was based; and
 - (C) The permittee requests modification after the notice of final action by which the EPA effluent limitation guideline, water quality standard, or effluent limitation is revised, withdrawn, or modified; or
 - (D) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with this Regulation, within ninety (90) days of judicial remand.
 - iv. The Division determines that good cause exists to modify a permit condition because of events over which the permittee has no control and for which there is no reasonable available remedy.
 - v. The permittee has received a variance.
 - vi. When required to incorporate applicable toxic effluent limitation or standards adopted pursuant to §307(a) of the federal act.
 - vii. When required by the reopener conditions in the permit.
 - viii. As necessary under 40 C.F.R. 403.8(e), to include a compliance schedule for the development of a pretreatment program.
 - ix. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate

- to the permittee under Section 61.8(2) of the Colorado Discharge Permit System Regulations.
- x. To establish a pollutant notification level required in Section 61.8(5) of the Colorado Discharge Permit System Regulations.
 - xi. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions, to the extent allowed in Section 61.10 of the Colorado State Discharge Permit System Regulations.
 - xii. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.
 - xiii. For any other cause provided in Section 61.10 of the Colorado Discharge Permit System Regulations.
- c. At the request of a permittee, the Division may modify or terminate a permit and issue a new permit if the following conditions are met:
- i. The Regional Administrator has been notified of the proposed modification or termination and does not object in writing within thirty (30) days of receipt of notification,
 - ii. The Division finds that the permittee has shown reasonable grounds consistent with the federal and state statutes and regulations for such modifications or termination;
 - iii. Requirements of Section 61.15 of the Colorado Discharge Permit System Regulations have been met, and
 - iv. Requirements of public notice have been met.
- d. Permit modification (except for minor modifications), termination or revocation and reissuance actions shall be subject to the requirements of Sections 61.5(2), 61.5(3), 61.6, 61.7 and 61.15 of the Colorado Discharge Permit System Regulations. The Division shall act on a permit modification request, other than minor modification requests, within 180 days of receipt thereof. Except for minor modifications, the terms of the existing permit govern and are enforceable until the newly issued permit is formally modified or revoked and reissued following public notice.
- e. Upon consent by the permittee, the Division may make minor permit modifications without following the requirements of Sections 61.5(2), 61.5(3), 61.7, and 61.15 of the Colorado Discharge Permit System Regulations. Minor modifications to permits are limited to:
- i. Correcting typographical errors; or
 - ii. Increasing the frequency of monitoring or reporting by the permittee; or
 - iii. Changing an interim date in a schedule of compliance, provided the new date of compliance is not more than 120 days after the date specific in the existing permit and does not interfere with attainment of the final compliance date requirement; or
 - iv. Allowing for a transfer in ownership or operational control of a facility where the Division determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittees has been submitted to the Division; or
 - v. Changing the construction schedule for a discharger which is a new source, but no such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge; or
 - vi. Deleting a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

- f. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term.
- g. The filing of a request by the permittee for a permit modification, revocation and reissuance or termination does not stay any permit condition.
- h. All permit modifications and reissuances are subject to the antibacksliding provisions set forth in 61.10(e) through (g).

6. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under Section 311 (Oil and Hazardous Substance Liability) of the Clean Water Act.

7. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority granted by Section 510 of the Clean Water Act. Nothing in this permit shall be construed to prevent or limit application of any emergency power of the division.

8. Permit Violations

Failure to comply with any terms and/or conditions of this permit shall be a violation of this permit. The discharge of any pollutant identified in this permit more frequently than or at a level in excess of that authorized shall constitute a violation of the permit.

9. Property Rights

The issuance of this permit does not convey any property or water rights in either real or personal property, or stream flows, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

10. Severability

The provisions of this permit are severable. If any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances and the application of the remainder of this permit shall not be affected.

11. Renewal Application

If the permittee desires to continue to discharge, a permit renewal application shall be submitted at least one hundred eighty (180) days before this permit expires. If the permittee anticipates there will be no discharge after the expiration date of this permit, the Division should be promptly notified so that it can terminate the permit in accordance with Part II.B.5.

12. Confidentiality

Any information relating to any secret process, method of manufacture or production, or sales or marketing data which has been declared confidential by the permittee, and which may be acquired, ascertained, or discovered, whether in any sampling investigation, emergency investigation, or otherwise, shall not be publicly disclosed by any member, officer, or employee of the Commission or the Division, but shall be kept confidential. Any person seeking to invoke the protection of this Subsection (12) shall bear the burden of proving its applicability. This section shall never be interpreted as preventing full disclosure of effluent data.

13. Fees

The permittee is required to submit payment of an annual fee as set forth in the 2005 amendments to the Water Quality Control Act. Section 25-8-502 (l) (b), and the Colorado Discharge Permit System Regulations 5 CCR 1002-61, Section 61.15 as amended. Failure to submit the required fee

when due and payable is a violation of the permit and will result in enforcement action pursuant to Section 25-8-60l et. seq., C.R.S. 1973 as amended.

14. Duration of Permit

The duration of a permit shall be for a fixed term and shall not exceed five (5) years. Filing of a timely and complete application shall cause the expired permit to continue in force to the effective date of the new permit. The permit's duration may be extended only through administrative extensions and not through interim modifications.

15. Section 307 Toxics

If a toxic effluent standard or prohibition, including any applicable schedule of compliance specified, is established by regulation pursuant to Section 307 of the federal act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the discharge permit, the Division shall institute proceedings to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

16. Effect of Permit Issuance

- a. The issuance of a permit does not convey any property rights or any exclusive privilege.
- b. The issuance of a permit does not authorize any injury to person or property or any invasion of personal rights, nor does it authorize the infringement of federal, state, or local laws or regulations.
- c. Except for any toxic effluent standard or prohibition imposed under Section 307 of the federal act or any standard for sewage sludge use or disposal under Section 405(d) of the federal act, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Sections 301, 302, 306, 318, 403, and 405(a) and (b) of the federal act. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in Section 61.8(8) of the Colorado Discharge Permit System Regulations.
- d. Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage sludge use or disposal.

Part III

A. REQUIREMENTS APPLICABLE TO THE CITY OF BOULDER AND BOULDER COUNTY MS4S

The requirements of this section are applicable only to discharges from the City of Boulder and Boulder County MS4s that are to Boulder Creek from COSPBO02, from 13th Street to South Boulder Creek.

1. Monitoring Requirements

The permittee shall conduct monitoring as necessary to identify progress towards meeting the WLA in the COSPBO02, from 13th Street to South Boulder Creek *E. coli* TMDL.

2. Reporting Requirements

The permittee shall prepare an annual report to be submitted by March 10 of each year, covering January 1 through December 31 of the previous year (with the exception of the first report as addressed below). The report must include the following information:

- a. For the first annual report only: A description of all control measures planned by the permittee to reduce the discharge of *E. coli* to COSPBO02 from 13th Street to South Boulder Creek, including specific target dates for implementation.
- b. A description of all control measures implemented by the permittee to reduce the discharge of *E. coli* to COSPBO02 from 13th Street to South Boulder Creek. The first annual report shall include information on control measures implemented prior to the effective date of the permit.
- c. An identification of all illicit discharges identified by the permittee determined or suspected by the permittee to contribute to discharges from the MS4 in exceedance of 126 colony forming units (CFU) of bacteria per 100 milliliters of water (the *E. coli* water quality standard). The first annual report shall include information on discharges identified prior to the effective date of the permit.
- d. An indication of if the illicit discharges identified in Subsection c have been eliminated. If the discharge has not been eliminated, a description of any planned control measure that the permittee intends to take to address the discharge must be included.
- e. A description of monitoring activities conducted, or planned, to meet the requirements of Part III.A.1. The first annual report shall include information on monitoring prior to the effective date of the permit conducted to identify progress towards meeting the WLA in the COSPBO02 from 13th Street to South Boulder Creek *E. coli* TMDL. Results included in the TMDL do not need to be addressed.



COLORADO

Department of Public Health & Environment

**COLORADO DISCHARGE PERMIT SYSTEM (CDPS)
FACT SHEET TO PERMIT NUMBER COR090000
GENERAL PERMIT FOR
DISCHARGES FROM
MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)**

Lisa Knerr
April 15, 2016

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A. ACRONYMS

BMP	Best management practice
BPT	Best practicable control technology currently available
CDPS	Colorado Discharge Permit System
CWA	Clean Water Act
DCIAs	Directly connected impervious areas
EPA	United States Environmental Protection Agency
FWPCA	Federal Water Pollution Control Act
ICIS	Integrated compliance information system
LA	Load allocation
MEP	Maximum extent practicable
MFRCP	Municipal facility runoff control plan
MS4	Municipal separate storm sewer system
NPDES	National Pollutant Discharge Elimination System
PDD	Program description document
PGP	Pesticide general permit
SOP	Standard operating procedure
TMDL	Total maximum daily load
WLA	Wasteload allocation



B. FACT SHEET DESCRIPTION

This fact sheet will use the term “previous permit” when referring to the permit in effect from March 10, 2008 to present and “renewal permit” or “permit” will refer to the permit that is replacing the previous permit when issued. The division conducted an extensive stakeholder process that started in November 2012 with a series of meetings to obtain input from permittees and a Pre-Public Notice Meeting on May 6, 2013. In addition, stakeholders were encouraged to submit written input on the issues discussed during the stakeholders meeting or other areas of the permit. The purpose of this stakeholder process was to increase awareness of the renewal process for the general permit, discuss the major areas of review, and obtain input for the development of the first draft of the renewal permit. The first draft of the renewal permit was public noticed on November 1, 2013 and comments were received until January 10, 2014. The division considered more than 1,400 comments received during the first draft permit 71-day public notice period and updated the second draft of the renewal permit accordingly.

The division announced on December 20, 2013 that a second draft of the renewal permit would be developed. The second draft of the renewal permit was public noticed on April 1, 2015 and comments were accepted until June 30, 2015. Appendix A: The Public Notice Comments document summarizes the written comments received on the second draft and the division’s response to the comments. The Public Notice Comments also describes why the division did not incorporate a comment.

This fact sheet’s primary purpose is to provide the rationale for permit terms and conditions and its secondary purpose is to provide permittees with information from helpful documents.

This fact sheet addresses the following statutory and regulatory requirements:

- A “fact sheet” as required by the federal Discharge Permit Regulations 40 C.F.R. §124.8 and 124.56 to “briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit” and to describe the reasons for permit terms and conditions
- A permit “rationale” as required by Colorado Discharge Permit System Regulations, 5 C.C.R. 1002-61 §61.5(2)
- A “preliminary analysis” as required by Colorado Water Quality Control Act, C.R.S. § 25-8-502(3)(b)
- A “statement of basis and purpose” as required by the federal Clean Water Act, 40 C.F.R. 124.7, to “describe the derivation of permit conditions and the reasons.” A “statement of basis and purpose” as required by SB 13-073 and incorporated into Colorado Water Quality Control Act, C.R.S. § 25-8-503.5, “explaining the need for the proposed requirements” and to “present evidence supporting the need for the proposed requirements, including information regarding pollutant potential and available controls, incidents of environmental damage, and permit violations”

C. TYPE OF PERMIT

Master General, NPDES, Municipal Separate Storm Sewer Systems, Second Renewal, statewide. Stormwater Component.

SIC Code: 9511-Air, Water, and Solid Waste Management.



Note: several SIC codes apply to specific municipal activities (sewerage systems 4952, water supply 4941, automotive repair shops 7539, transportation services 4789). Since there is not a clear SIC code for a Municipal Separate Storm Sewer System (MS4), the 9511 code is applied.

This renewal permit is for the master general discharge permit listed below.

Stormwater Discharge Permit Name	Effective Date	Expiration Date
Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems (COR090000)	March 10, 2008	March 9, 2013

D. MS4 PERMITTEES COVERED UNDER THIS PERMIT

As of the effective date of this permit, the cities and towns covered under this permit include Arvada City of, Berthoud Town of, Boulder City of, Brighton City of, Broomfield City & County of, Canon City of, Castle Pines City of, Cherry Hills Village City of, Columbine Valley Town of, Commerce City, Durango City Of, Edgewater City of, Englewood City of, Erie Town of, Evans City of, Federal Heights City of, Firestone Town of, Fruita City of, Fort Collins City of, Fountain City of, Glendale City of, Golden City of, Greeley City of, Grand Junction City of, Lafayette City of, LaSalle Town of, Littleton City of, Longmont City of, Louisville City of, Loveland City of, Manitou Springs City of, Montrose City of, Monument Town of, Northglenn City of, Palisade City of, Palmer Lake Town of, Pueblo City of, Sheridan City of, Steamboat Springs City of, Superior Town of, Thornton City of, Westminster City of, Windsor Town of, and Wheat Ridge City of.

The counties include Adams County, Boulder County, Broomfield County, El Paso County, Jefferson County, Larimer County, Mesa County, Pueblo County (including Pueblo West Metro District), and Weld County.

E. BACKGROUND

This section summarizes factors explaining the need for the proposed requirements and presents evidence supporting the need for the proposed requirements, including information regarding pollutant potential and available controls, incidents of environmental damage, and permit violations.

Stormwater runoff occurs when precipitation from rain or snowmelt flows over the ground. Impervious surfaces like driveways, sidewalks, and streets prevent stormwater from naturally soaking into the ground. Stormwater can pick up debris, trash, chemicals, dirt, and other pollutants and flow into a storm sewer system or directly to a lake, stream, river, or wetland. Anything that enters a storm sewer system is discharged untreated into the waterways used for swimming, fishing, and providing drinking water. Storm sewer systems are designed to drain excess stormwater or snow melt from streets, parking lots, and sidewalks. Storm sewer systems are made up of storm drains, usually cuts in curbs, which flow through underground pipes, and then to a local waterway. Storm sewer systems in Colorado do not flow to sewage treatment plants.

The Nationwide Urban Runoff Program was conducted by U.S. Environmental Protection Agency (EPA) and the report was published in 1983. The report concluded the following:

- *Heavy metals (especially copper, lead, and zinc) are by far the most prevalent priority pollutant constituents found in urban runoff. End-of-pipe concentrations exceed EPA ambient water*



quality criteria and drinking water standards in many instances. Some of the metals are present often enough and in high enough concentrations to be potential threats to beneficial uses.

- *Coliform bacteria are present at high levels in urban runoff and can be expected to exceed EPA water quality criteria during and immediately after storm events in many surface waters, even those providing high degrees of dilution.*
- *Total suspended solids concentrations in urban runoff are fairly high in comparison with treatment plant discharge. Urban runoff control is strongly indicated where water quality problems associated with total suspended solids, including build-up of contaminated sediment, exist.*

Polluted stormwater runoff can have many adverse effects on plants, fish, animals, and people, such as the following:

- Sediment can cloud the water and make it difficult or impossible for aquatic plants to grow. Sediment can also destroy aquatic habitats.
- Excess nutrients can cause algal blooms. When algae die, they sink to the bottom and decompose in a process that removes oxygen from the water. Fish and other aquatic organisms cannot exist in water with low dissolved oxygen levels.
- Bacteria and other pathogens can wash into swimming areas and create health hazards, often making swimming area closures necessary.
- Debris and trash—plastic bags, six-pack rings, bottles, cigarette butts, etc.—washed into water bodies can choke, suffocate, or disable aquatic life like ducks, fish, turtles, and birds.
- Household hazardous wastes like insecticides, pesticides, paint, solvents, used motor oil, and other auto fluids can poison aquatic life. Land animals and people can become sick or die from eating diseased fish or polluted water.
- Polluted stormwater often affects drinking water sources. This, in turn, can effect human health and increase drinking water treatment costs.

In addition, non-stormwater discharges can occur from MS4s and also cause impacts on plants, fish, animals, and people. Non-stormwater discharges are discharges not entirely comprised of stormwater and can be caused by such activities as illegal dumping into the storm drain system or unpermitted discharges from factories.

The Clean Water Act (CWA) establishes the National Pollutant Discharge Elimination System (NPDES), which is a permitting system that regulates point sources of pollution that discharge directly to a state water or a sewage treatment plant. Point sources of pollution are pipes and drains that flow directly to a state water and typically come from industries, some agricultural facilities, and municipalities. Storm sewer systems that discharge to a state water are point sources of pollution and need a permit. The 1987 amendments to the CWA expanded the NPDES program to cover municipal stormwater discharges.

The EPA administers the CWA. Colorado passed the Colorado Water Quality Control Act C.R.S. § 25-8 and was authorized by EPA in 1975 to administer the NPDES program. Requirements in Colorado Discharge Permit System Regulations 5 C.C.R. 1002-61 (Regulation 61), Nutrients Management Control Regulation 5 C.C.R. 1002-85 (Regulation 85), and Regulations Controlling Discharges to Storm Sewers 5 C.C.R. 1002-65 (Regulation 65) are incorporated into this permit. If more than one regulation has a similar requirement, the more stringent requirement from the applicable regulation is incorporated into this permit. Colorado calls the NPDES program the Colorado Discharge Permit System (CDPS). Colorado is authorized to issue both individual and general permits to MS4s through the CDPS regulations.



The Colorado Department of Public Health and Environment, Water Quality Control Division (division) issued the first general permit to small MS4s permittees in 2003 and it was renewed in 2008. The current permit expired on March 9, 2013. Most permits issued by the division expire in 5 years. Generally, regulated small MS4s are those that serve a population of less than 100,000 and that meet the definition of an “urbanized area” as defined by the US Census Bureau. The US Census Bureau defines an urbanized area as an area with 50,000 or more people. Maps of urbanized areas can be found at: <http://www.census.gov/geo/reference/ua/urban-rural-2010.html>. The maps are updated every 10 years and the list of small MS4s that need to be covered under this permit reflects the 2010 census urbanized areas maps. There are 63 small MS4s (cities and counties). If one portion of a city or town is considered an urbanized area, then the entire municipality is considered a small MS4 and the entire city or town is the permitted area. Only portions of counties have permitted areas. Counties do not have to implement this permit outside of the permitted area. Even if a small municipality grows to 100,000 people or more, it will not be considered a medium or large MS4. Large and medium MS4s are covered by individual permits. This general permit is being renewed to continue to provide coverage to small MS4 permittees through a general permit. However, any permittee authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The division may also require any permittee authorized by a general permit to apply for and obtain an individual permit. An example of when an individual permit might be required would be if a Total Maximum Daily Load (TMDL) was developed that identified a wasteload allocation (WLA) for an MS4 permittee that this general permit did not adequately address. In this situation, the division might require the MS4 permittee to apply for an individual permit.

In 2010 and 2011, the division conducted audits of 10 permittees and determined that a variety of changes would have to be made to the current permit. Many of the audit findings that drove changes to the renewal permit are described later in this fact sheet.

The division has issued this general permit to control non-stormwater and polluted stormwater runoff from areas in cities, towns, and counties (permittees), such as construction sites, roads, parking lots, and municipal yards for vehicle maintenance and roadway salt and sand storage. This permit authorizes all discharges from the MS4, not just stormwater. This permit requires small MS4s to develop and run a program to control stormwater discharges to the MS4. This permit does not set *numeric limits* for discharges from stormwater outfalls into state waters. Rather, the permit requires municipalities to implement control measures (which include best management practices or “BMPs”) in six program areas: public education and outreach, public involvement and participation, illicit discharge detection and elimination, construction sites, post-construction stormwater management in new development and redevelopment, and pollution prevention/good housekeeping for municipal operations.

Public Education and Outreach

The public education and outreach program should inform citizens and businesses about stormwater pollution and illicit discharges and the steps that they can take to reduce stormwater pollution, such as properly disposing of trash and applying pesticides and fertilizers so that trash and excess lawn care chemicals do not wash into local waterways during the next rainstorm.

Public Involvement and Participation

Permittees use this program to offer their citizens an opportunity to comment on the permittee’s stormwater program and participate in its implementation, such as a hotline that citizens can call if they see dirt on roadways from construction sites that could wash into a local stream.



Illicit Discharge Detection and Elimination

Illicit discharges can enter a MS4 through the curb and gutter system. Many think that water flowing in curbs and gutters goes to the local sewage treatment plant. This is not typically true in Colorado. Stormwater and all of the pollutants that it picks up in curbs and gutters flows directly to local waterways. Permittees use this program to respond to reports of illicit discharges and clean up potential pollutants such as, used motor oil, grass clippings, leaves, grease from restaurants, and dirty wash water from power washing sidewalks.

Construction Sites

Discharges from construction sites can include pollutants such as sediment, phosphorus, nitrogen, construction chemicals, fuel and oil, and trash and other solid wastes. Permittees use the construction sites program to require construction site operators to install and maintain control measures that control and reduce dirt and other pollutants from leaving a construction site and flowing to local waterways.

Post-Construction Stormwater Management in New Development and Redevelopment

It is less expensive to remove pollutants from stormwater before it enters the MS4 than to treat polluted stormwater after it is discharged to a state water. Construction site operators must install a control measure that will control stormwater pollution from the site after construction is completed. Some control measures slow down fast moving stormwater that can erode stream banks and allow dirt and other pollutants to settle out of the stormwater before discharging the cleaner stormwater into local waterways. Either the property owner or the permittee periodically maintains the control measures and properly disposes of the dirt, trash, and other pollutants collected by the control measure.

Pollution Prevention and Good Housekeeping for Municipal Operations

Most permittees have municipal yards where vehicles and materials, such as roadway salt and sand, are stored. Uncontrolled stormwater flowing off of these municipal yards can pick up dirt, salt, and other chemicals and deposit the pollutants into a local waterway. Permittees use this program to implement procedures to prevent or reduce the exposure of potential pollutants to stormwater. For example, permittees will cover salt and sand piles, have employee training and procedures for the proper operation and maintenance of the MS4, and sweep the yard of any trash and other potential pollutants and control illicit discharges.

Pesticides

The division is also clarifying in this renewal permit that neither the 2006 federal pesticide rule, the Sixth Circuit Court vacatur of that rule, nor the EPA pesticide general permit (PGP) or division PGP have changed in any way the determination of whether certain types of stormwater runoff are required to obtain permit coverage, or under what type of permit coverage discharge is required. This is true whether the runoff contains pesticides or pesticide residues resulting from the application of pesticides. The previous MS4 general permits and this MS4 general permit already authorize the discharge of pesticides in stormwater from the MS4. Non-stormwater discharges from pesticide applications to waters of the state require coverage under a separate PGP.

In this renewal permit, the division made some minor changes to more clearly list pesticides as a pollutant source to be addressed in the control measures implemented to comply with permit requirements. The previous permit includes pesticides in the definition of significant materials. For this renewal, the division removed the definition of significant materials and instead listed pesticides as a specific pollutant source to be addressed in the requirements associated with construction sites and municipal operations. The division also expects that public education and outreach will continue to address pesticides as a pollutant source in stormwater runoff.



F. COMPLIANCE HISTORY

The division conducted several compliance assistance activities to determine compliance with the previous permit. The results from these compliance assistance activities influenced some of the requirements in this renewal permit.

The division conducted compliance assurance activities for approximately 25 of the 56 permittees. Compliance assurance activities included: 10 full program audits, one program audit targeting the construction and post construction programs, and 16 construction site screening inspections. In addition to these field-based compliance assurance activities, the division reviewed file documentation for several permittees. From these activities, the division was able to identify several potential non-compliance issues that appeared to be common across permittees regardless of size of the community or apparent robustness of the permit program. The audit findings influenced many of the requirements in this renewal permit.

Because of the level of resources involved in full program audits for all permittees during the permit term, compared to the division's available resources, the division developed a Targeted Permit Questionnaire. This questionnaire targeted specific program elements that were identified as common findings in the audit reports. The questionnaire was not a full audit. The questions were based on the common findings that were identified during permit audits conducted by the division in 2010 and 2011. The questions were developed to help the permittee determine compliance with the previous permit or submit a notice of non-compliance. The division provided permittees 6 months to complete the questionnaire and make the required program changes. The questionnaire included clarifying language for the permittee to conduct a targeted self-audit from the perspective of a division audit activity. Much of the clarifying language provided in the questionnaire has been expanded and incorporated into the permit renewal.

Information on the findings from the audits and screenings that drove changes to the renewal permit are described in Table 3 in this fact sheet.

G. SCOPE OF THE GENERAL PERMIT

The previous general permit COR090000 expired on March 9, 2013 and has been administratively extended by the division. This renewal permit is needed to continue to provide coverage for these permittees and for any newly-designated permittees.

I. Types of MS4s Covered

Discharges from the following are covered under this renewal permit:

- Regulated small MS4s that are currently covered under the existing COR090000 permit and
- Small MS4s that are required to obtain permit coverage in accordance with Regulation 61.3(2)(f)(v).

II. Types of MS4s Not Covered

- Large and Medium MS4s. These are entities that were designated for permit coverage under the 1990 Phase 1 stormwater rule. These entities are currently covered under individual permits and were not contemplated for coverage under this general permit.



- Federal facilities. The division does not currently have NPDES delegation for federal facilities. MS4s designated by EPA for permit coverage in Colorado are currently covered under individual permits issued by EPA and are not contemplated for coverage under this general permit.
- MS4s located on Indian Lands. It is anticipated that any MS4 located on Indian Lands needing permit coverage would be permitted by EPA or a tribal authority.
- Non-Standard MS4s. Entities other than a city or county (non-standard MS4s) who are covered under the general permit for Stormwater Discharges Associated with Non-Standard Municipal Separate Storm Sewer Systems MS4s (COR070000). In general, these entities are not expected to be covered under this general permit. This separate general permit (COR070000) includes requirements that are more appropriate for most non-standard MS4 permittees. The division, however, may require some non-standard MS4 permittees to obtain coverage under this general permit if they are determined to have roles within their operational area similar to a city or county under section 61.3(2)(v) of Regulation 61.
- Discharges from MS4s covered by an individual permit. This includes any municipality that requests coverage under an individual permit or is notified by the division to apply for and obtain an individual permit.
- Cherry Creek Reservoir Drainage Basin. Small MS4s that are within the Cherry Creek Reservoir drainage basin are covered under a separate general permit (COR080000).

III. Discharge Segments

The division reviewed the applicable stream segments to which current permittees' MS4s discharge and determined the terms and conditions that need to be included in this permit. Stream segments will be identified in the permit certification issued to each permittee under this permit. The receiving water review focused on impairment, including a review of impaired segments for which a TMDL has been completed and impaired segments for which a TMDL has not been completed.

The review of impaired segments for which a TMDL has been completed is intended to identify whether MS4 discharges were assigned WLAs or load allocations (LAs). Specifically, the review included whether discharges from permittees were identified as sources for which either controls were already in place, need to continue, or for which additional controls are appropriate to achieve additional pollutant reduction to attain the water quality standard. The completed TMDLs that were identified for consideration of permit conditions are discussed in the Part III Section of this fact sheet.

H. STATUTORY AND REGULATORY AUTHORITY

This permit is rooted in the federal CWA, 33 U.S.C. 1251 *et seq.*, and the Colorado Water Quality Control Act, 25-8-101 *et seq.*, C.R.S. The federal CWA and regulations are administered by the EPA. The Colorado Water Quality Control Act and its regulations are administered by the division. The Colorado Water Quality Control Act references the federal CWA. To the extent that the Colorado Water Quality Control Act and its implementing regulations are more stringent than the federal rules, those requirements are implemented via the Colorado Discharge Permit System. The division is responsible for developing permits that are consistent with the CWA, federal regulations, the Colorado Water Quality Control Act, and state regulations.

Congress created the NPDES permit program through enactment of the Federal Water Pollution Control Act (FWPCA) Amendments of 1972. This followed a period of previous water quality legislation where



Congress had authorized states to develop water quality standards which were intended to limit discharges of pollutants based on the individual characteristics of waterbodies. The FWPCA Amendments of 1972 introduced the NPDES program including the requirement to include technology based requirements to address a concern about a lack of progress in water quality protection and a lack of enforceability in previous legislation.

The FWPCA Amendments contained four important principles related to the NPDES program as summarized by EPA in its *Water Permitting 101* document:

1. The discharge of pollutants to navigable waters is not a right.
2. A discharge permit is required to use public resources for waste disposal and limits the amount of pollutants that may be discharged.
3. Wastewater must be treated with the best treatment technology economically achievable, regardless of the condition of the receiving water.
4. Effluent limits must be based on treatment technology performance, but more stringent limits may be imposed if the technology-based limits do not prevent violations of water quality standards in the receiving water.

The NPDES permit was created by Congress as the implementation tool for the restriction of the quantity, rate, and concentration of pollutants that the point sources may discharge into water. The division, as the delegated authority for development and issuance of NPDES permit for the state of Colorado, is obligated to develop and issue NPDES permits meet both state and federal statutory and regulatory requirements.

Routine review is an integral aspect of the NPDES program. Congress' expectation is that permits remain current in their ability to incorporate advancements in science and technology, law, and be reflective of current operations resulting in a discharge of pollutants to waters. The division must renew general permits once every 5 years, and must include such conditions in the renewal permit that are necessary to implement statutory and regulatory provisions.

EPA summarizes the major steps for development and issuance of NPDES permits, as required by 40 C.F.R. § 124, as follows: (EPA, Office of Wastewater Management, Water Permitting 101)

1. Receive application from permittee.
2. Review application for completeness and accuracy.
3. Request additional information as necessary.
4. Develop technology-based effluent limits using application data and other sources.
5. Develop water quality-based effluent limits using application data and other sources.
6. Compare water quality-based effluent limits with technology-based effluent limits and choose the more stringent of the two as the effluent limits for the permit.
7. Develop monitoring requirements for each pollutant.
8. Develop special conditions.
9. Develop standard conditions.
10. Consider variances and other applicable regulations.
11. Prepare the fact sheet, summarizing the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit including public notice of the draft permit, and other supporting documentation.
12. Complete the review and issuance process.
13. Issue the final permit.



14. Ensure permit requirements are implemented.

I. DISCUSSION OF KEY REGULATORY TERMS AND CONCEPTS

This section provides a discussion of key regulatory terms and concepts that are unique to MS4 permits.

“Maximum Extent Practicable” (MEP) Standard

33 U.S.C. 1251 *et seq.*, section 402(p)(3)(B), of the CWA requires discharge permits from municipal storm sewers. Section 402(p)(3)(B)(iii) of the CWA states that permits issued to municipalities “shall require controls to reduce the discharge of pollutants to the **maximum extent practicable** [*emphasis added*], including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the state determines appropriate for the control of such pollutants.” In addition, 33 U.S.C. 1251 *et seq.*, section 402 (p)(3)(B) of the CWA states that permits issued to municipalities shall “include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.”

Section 61.8(11)(a)(i) of Regulation 61 states the following:

*At a minimum, the MS4 permit will require that the regulated small MS4 develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from the MS4 to the **maximum extent practicable (MEP)** [*emphasis added*], to protect water quality, and to satisfy the appropriate water quality requirements of the Colorado Water Quality Control Act (25-8-101 *et seq.*, C.R.S.). The stormwater management program must include the minimum control measures described in subsection (ii) of this section, unless the small MS4 applies for a permit under 61.4(3)(c). Implementation of BMPs consistent with the provisions of the stormwater management program required pursuant to this section and the provisions of the permit required pursuant to subsection (ii) constitutes compliance with the standard of reducing pollutants to the MEP.*

Maximum extent practicable is a statutory standard that directs the permitting authority to establish the level of pollutant reductions that all MS4 operators must achieve and is discussed in *40 C.F.R. Parts 9, 122, 123, and 124 National Pollutants Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges; Final Rule; Report to Congress on the Phase II Storm Water Regulations; Notice* (December 8, 1999). This is commonly referred to as the Phase II Final Rule.

The regulatory requirements of the rule Volume 64, number 235, page 68754 of the Phase II Final Rule states that “EPA envisions application of the MEP standard as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards.” The division also envisions application of MEP as an iterative process, consistent with EPA’s discussion in the Phase II Rule. This permitting approach is unique to MS4 discharges and distinct from the direction provided for permitting other sources in the NPDES framework. How the division determines MEP is discussed below.

In determining the level of control to be required for this permit term, the division determined that the level of control should reflect the average of the best existing performance at the time of permit renewal as described further below.

In plain language the division interpreted the term “maximum extent” to mean that that standard was not intended to be the minimum, or the average, or a single maximum, but a maximum that can be



achieved by permittees operating a compliant program. The division has also looked to how the term “practicable” is applied within other parts of the CWA framework, specifically within establishment of technology based controls within the ELG framework. EPA sets Best Practicable Control Technology Currently Available (BPT) for effluent limitations for conventional, toxic, and non-conventional pollutants. 33 U.S.C. 1251 *et seq.*, section 304(b)(1) of the CWA lists the factors that EPA must consider when setting BPT. The standard for BPT is defined by EPA as “the first level of technology-based standards established by the CWA to control pollutants discharges to waters of the U.S.” BPT guidelines are generally based on “the average of the best existing performance by plants within an industrial category or subcategory.” This provides practical guidance to permitting authorities on what to look for in establishing an MEP standard. This approach recognizes that there are municipalities that implement programs that go beyond the MEP standard, and is consistent with the goal of establishing a standard that all municipalities can and must implement. The permitting authority is directed to establish the MEP standard, in recognition that implementation beyond that standard will be feasible and appropriate for some municipalities. Permittees are not tasked with setting MEP. The division sets the requirements that make up MEP.

The routine review process implemented through permit renewal is how permitting authorities are able to iteratively refine the MEP standard through permit requirements. This provides the opportunity to continually adapt to current conditions and control measure feasibility and effectiveness.

How the division Determines MEP

The division has used multiple sources to determine MEP for the various MS4 program areas. The documents are listed in the references section of this fact sheet. The applicable sections of the documents are listed throughout this fact sheet. The most used references are listed below:

- Applicable laws and regulations
- Audits and screenings of municipalities covered under this permit
- Stakeholder input obtained in advance of preparing the permit
- MS4 permits in effect issued by other permitting authorities (states and EPA)
- Published studies (e.g., info on green infrastructure, etc.)

Compliance with MEP will constitute meeting the effluent limitations in accordance with Part I.E (Pollutant Restrictions, Prohibitions, and Reduction Requirements and Recordkeeping), and Part III of the renewal permit as applicable to a specific MS4 permittee. The effluent limitations are established for program areas in Part I.E covering Public Education and Outreach, Illicit Discharge Detection and Elimination, Construction Sites, Post-Construction Stormwater Management in New Development and Redevelopment, and Pollution Prevention/Good Housekeeping for Municipal Operations.

For this permit term, the division has determined that additional provisions are not necessary to result in control of pollutants beyond the MEP standard. The division has included monitoring and reporting conditions for some discharges that have been assigned WLAs in a TMDL determination, and to further characterize certain non-stormwater discharges that are not separately permitted. The permit now includes a process for the division to respond to new information, such as a TMDL, that becomes available during the permit term.

Effluent Limitations

The Colorado Water Quality Control Act C.R.S. § 25-8-503(4) states that “no permit shall be issued which allows a discharge that by itself or in combination with other pollution will result in pollution of the receiving waters in excess of the pollution permitted by an applicable water quality standard unless the permit contains effluent limitations and a schedule of compliance specifying treatment requirements.



Effluent limitations designed to meet water quality standards shall be based on application of appropriate physical, chemical, and biological factors reasonably necessary to achieve the levels of protection required by the standards.”

The EPA develops effluent limitation guidelines (ELGs) based on technology based standards. The ELGs can be downloaded from water.epa.gov/scitech/wastetech/guide/industry.cfm. Technology based standards promulgated as ELGs do not apply to MS4 permits. The EPA, however, has initiated rulemaking to establish performance standards for discharges from newly developed and redeveloped sites, but the rule has been remanded and has not been considered in this renewal permit.

Section 61.2(26) of Regulation 61 defines an effluent limitation as “any restriction or prohibition established under this article or Federal law on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into state waters, including, but not limited to, standards of performance for new sources, toxic effluent standards and schedules of compliance.” The division has defined and considers the management practices, control techniques, and system design and engineering methods to be effluent limitations. The management practices, control techniques, and system design and engineering methods required by this permit are effluent limitations in that they are restrictions or prohibitions on the quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharge from MS4s into state waters. This is consistent with the definition of effluent limitation contained in Regulation 61. For the purpose of this permit, the division has established effluent limitations, and has frequently referred to those as “pollutant restrictions, prohibitions, and reduction requirements” in the permit text.

Numeric Effluent Limitations vs. Practice-Based Effluent Limitations

There are no *numeric* effluent limitations included in this permit. This permit contains *practice-based* effluent limits. Stormwater and non stormwater management requirements are the controls that are used to achieve reduction of pollutants in the stormwater discharges from MS4s in this permit. The division has determined that the terms and conditions in the permit are necessary to ensure the required compliance with the applicable regulations and meet MEP.

The division has clarified that the scope of the permit is limited to authorizing discharges from MS4s. The permit also clarifies the types of discharges that are conveyed and discharged through the MS4 that need to be separately permitted. The permit explicitly states that it does not remove the responsibility for the responsible party of a discharge to obtain separate CDPS or NPDES permit coverage or report spills when required in accordance with the Colorado Water Quality Control Act and Regulation 61. The division does not have the authority to exempt any responsible party for a point source discharge from the requirement to obtain permit coverage or the authority to modify the definitions of point source or discharge. Therefore, the determination in the permit of whether a discharge to the MS4 is an illicit discharge has no bearing on the statutory and regulatory requirements for point source discharge permitting and for reporting unpermitted discharges. The division has intentionally not required permittees to prohibit, detect, and eliminate certain discharges that are covered by the division’s Low Risk Policies. This allows the permittee to focus on discharges that have the greatest potential to cause water quality impacts. This will also promote transparency and consistency between permittees and the division in how these discharges are addressed on a day-to-day basis.

Individual vs. General Permits

This permit is a general permit. Section 61.9(2) of Regulation 61 states that “the division may issue a general permit to cover a category of discharges, except those covered by individual permits, within a



geographic area which shall correspond to existing geographic or political boundaries.” The section also states that general permits shall be written to regulate stormwater point sources. A general permit must set the MEP for all of permittees, regardless of size, number of outfalls, number of active construction sites, number of staff, stormwater budget, etc. The renewal points out the flexibility built into the permit requirements and adds additional flexibilities.

J. Permit Term

Permits are issued for a term of 5 years and can be administratively extended. Upon expiration, the division must reissue the permit to include such conditions in the renewal permit that are necessary to implement state and federal requirements. This comprehensive permit renewal acts on new information resulting from sources including the division’s compliance oversight activities, other state permits, case law, EPA guidance, and further evaluation of statutory and regulatory direction.

K. RATIONALE FOR CHANGES FROM THE PREVIOUS PERMIT

The division substantially revised the framework of the renewal permit. The rationale supporting the changes is primarily covered in each of the sections below, starting with Part I.

There were many concerns between the previous permit and the renewal permit. Some global concerns associated with the previous permit and the renewal and how those issues are addressed in the renewal permit are listed below:

Clarification of the Basis for Determining Permit Terms and Conditions

The division develops permit terms and conditions as directed through federal and state statutes and implementing regulations as summarized below

All NPDES permits are required to contain effluent limitations. In this case of MS4 permits these effluent limitations are derived to meet the MEP standards, and additional requirements can be included as necessary to meet water quality standards, as previously described.

The previous permits were not clear regarding which terms and conditions were intended to reduce pollutants in the discharge, and which terms and conditions were intended to be associated with monitoring, recordkeeping, and reporting.

All NPDES permits are required to contain monitoring requirements under section 61.8(4) of Regulation 61. Federal and state permitting regulations require that at a minimum permits specify monitoring requirements for each pollutant limited in the permit. Permits must specify monitoring equipment, methods, intervals, and frequencies sufficient to yield data which are representative of the monitoring activity and must specify the content of records to be maintained, and records retention requirements. The section 61.8(4) of Regulation 61 establishes a threshold of “reasonableness” in directing the derivation of monitoring and recordkeeping requirements. For development of this permit, the division determined the monitoring and records logically needed to meet the threshold of representative of the monitoring activity, demonstrate that the monitoring was adequately performed, document the conditions surrounding the event and what was observed, and document findings and actions taken, while not including superfluous requirements.

In this case, the monitoring and recordkeeping requirements include the development of documents such as standard operating procedures (SOPs). SOPs are documents that describe how to perform various



operations within the permittee's stormwater program. Policies, standards, processes, and procedures must be written down, approved, and communicated to all concerned. They provide step-by-step instructions and assure consistency, accuracy, and quality.

Recordkeeping allows a permittee to communicate accurately and effectively to staff and construction operators. Recordkeeping enables the permittee, applicable construction site operators, and others participating in the stormwater program to be timely in reporting to the division and the permittee. In addition, recordkeeping helps to minimize errors and allow for a periodic review of the success of the stormwater program. Opportunities for stormwater program improvements can also be identified through the review of records.

The Colorado Water Quality Control Act, and federal Clean Water Act, Colorado Discharge Permit Regulations (5 CCR 61), and federal discharge permit regulations (40 C.F.R. § 122, 124, etc), do not require formal monetized cost benefit analyses for development of permit terms and conditions. Nevertheless, the division will consider cost when selecting the appropriate permit term or condition, and will choose the least costly alternative that meets the requirements for the MS4 permit. The division considered the cost-benefit analysis of the first draft of the renewal permit provided by the Colorado Stormwater Council and adjusted and modified the permit where possible to adhere to the regulations in the most cost effective manner.

Incorporation of Guidance into Permit

The permit was also revised to incorporate the requirements for meeting the MEP standard. During previous permit terms, the division provided a comprehensive guidance document outside of the permit to clarify the intent of the permit and expectations for compliance entitled *Colorado's Phase II Municipal Guide: A Guide to Application Requirements and Program Development for Coverage under Colorado's Phase II Municipal Stormwater Discharge Permit* (October 2001). The division also conducted frequent meetings with stakeholders, sent emails and memos, and developed audit reports. This patchwork of documentation comprised the standards and division interpretations. The division then used submittals, public notice of permittee program description documents, and oversight to review a permittee's controls implemented to reduce the discharge of pollutants to determine compliance with the MEP standard.

This permit includes more extensive permit language because it replaces much of the language previously included in guidance and eliminates the need for submittal, approval, and public notice of program description documents. The overall clarity is expected to increase by consolidating and removing document duplication from referencing multiple documents. While the renewal permit is longer than the previous permit, the overall length of the renewal permit is shorter compared to the previous permit plus guidance under the previous term. This permit also removes the additional process of program description document submittal and review by the division, which resulted in significant workload for both the permittees and the division. These changes also ensure that stakeholders have the opportunity to review and comment on draft language, including language that was previously contained in division guidance documents or permittee program submittals.

Pollutants of Concern

Public comments on the first draft of the renewal permit requested that trash be addressed as a pollutant of concern more clearly in the permit. The division always intended that trash be a pollutant of concern to be addressed through implementation of an MS4 stormwater program, and agreed that the permit could be clearer in this regard. Although no new requirements on trash control have been added



to the permit, trash has been included in the list of pollutants of concern for several existing requirements.

Implementation by Entities other than the Permittee:

Some permittees use other permittees, consultants, or contractors to implement all or portions of their stormwater program. This is allowed and permittees should note Part I.F.5 of the renewal permit.

Consistent Terminology

Where applicable the division used consistent terminology throughout the permit. For example, the term “project” was removed and replaced with the term “site”. While the terms are synonymous, the division felt it was important to use the same term throughout the permit and fact sheet.

From this point forward, the organization of the fact sheet follows the order of the renewal permit to provide clarity to the reader.

I. PART I

A. COVERAGE UNDER THIS PERMIT

1. Discharges Authorized Under this Permit

The discharges eligible for coverage under this permit include those formerly covered under the previous permits. This renewal permit authorizes discharges of stormwater from municipal separate storm sewer systems that meet the designation criteria in Regulation 61.3(2)(f)(v), except facilities that meet the designation criteria in the Regulation 61.3(2)(f)(v)(A)(II) that are permitted with the non-standard MS4 general permit or permittees in the Cherry Creek Basin. Permittees that discharge to the Cherry Creek Reservoir are covered under the COR080000 general permit.

This section was added to the renewal permit to insert important definitions that will be used throughout this section and the permit.

All discharges from the MS4 within the permit area to waters of the state are authorized under this permit. This includes permit coverage for all stormwater discharges and non-stormwater discharges from the MS4. Authorized discharges also include discharges that have separate permit coverage for the discharge to waters of the state from a facility or activity from which the discharge originates.

Permit coverage is required for discharges from MS4s to surface water. However, permit coverage for land application of discharges from an MS4 and discharges from an MS4 to the ground is not expected to be necessary. In addition, section 61.14 of Regulation 61 specifically exempts “any stormwater retention or detention impoundment” from coverage under the ground water discharge provision of the regulation. Discharges to ground water , therefore, are not included in this permit.

Permittees should note that Regulation 61 addresses “illicit discharges” in several sections. The permit uses the definition of illicit discharge from Section 61.2(42) of Regulation 61.

MS4s includes roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains. In addition, MS4s also include systems and



conveyances that are not typical (see 2. Below). Permittees should also note that four criterion must be met in order for a system or conveyance to be considered an MS4. There are many types of conveyances or systems that are not MS4s.

1. The system or conveyance must be owned or operated by the permittee. In other words, the permittee must have jurisdictional control over the system or conveyance. Please see the definition of a permit area since these criteria must also be met. In other words, if the permittee does not own or operate the street or catch basins, then they are not part of the MS4.
2. The area must be designed or used for collecting or conveying stormwater. One conveyance often overlooked by a permittee is a conveyance that is not listed above (i.e., municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains) adjacent to a state water. This unique conveyance that is adjacent to a state water must meet the following requirements in order to be considered an MS4:
 - a. The conveyance must be owned or operated by the permittee (similar to 1. above), but also must be owned or operated by the permittee through an agreement, contract, direct ownership, easement, or right-of-way. If the easement is only for a utility, then it is NOT considered part of the MS4.
 - b. The conveyance must be used to manage flood plains, stream banks, and stream channels. If the conveyance is only used for another purpose, then the conveyance is not part of the MS4.
3. The system or conveyance cannot be part of a combined sewer outfall system. This is uncommon in Colorado.
4. The system or conveyance cannot be part of a publically owned treatment works.

To clarify the topic of areas adjacent to state waters, this permit also provides clarification for what constitutes an MS4. First, a parcel/area must be located within and discharge to the MS4 permit area. Second, the parcel/area must be under the jurisdictional control of the permittee.

Areas that are adjacent to a state water may meet the two above criteria for what constitutes an MS4. For example, some permittees have jurisdictional authority over areas, such as drainage easements or right-of-ways, which are adjacent to a state water and which the permittee maintains. These areas can serve a variety of functions, including collecting and conveying stormwater to the state water. Since an MS4 is a conveyance or system of conveyances that are “designed or used for collecting or conveying stormwater”, these areas/easements/right-of-ways could be included in the permit area. Examples of activities that could be conducted adjacent to state waters include stream bank stabilization activities or managing flood plains. In these examples, if a site is located within the permit boundary AND discharges stormwater onto a stream bank maintained by the permittee, the stream bank WOULD BE included considered part of the MS4. Another example of an activity that would be considered part of the MS4 would be: a site that discharges directly into the stream and transfers ownership of the pipe to the MS4 permittee.

Alternatively, some permittees have no jurisdictional authority, such as drainage easements, easements, or right-of-ways, adjacent to certain state waters. Or, some permittees have an easement or right-of way, but not for the purpose of collection and conveying stormwater to that state water. These areas that are adjacent to state waters WOULD NOT be included in the permit area. An example of an area that would NOT be considered part of the MS4 would



be a site that discharges directly into a stream or on a stream bank through a privately-owned pipe, where the permittee has no jurisdictional authority or drainage easement. Note that in this example, no part of the site, such as the end of a driveway or part of a parking lot, would discharge to the permittee's MS4. If any portion of the site discharges into the permittee's MS4, then the site would be part of the permittee's MS4. Permittees should note that the division could separately permit these types of discharge through section 61.3(2)(a) of Regulation 61 for any site outside of the permittee's permit area.

This section of the renewal permit *does not* address permit area boundaries. Permit boundaries are covered under Part I.A.3 (below).

2. Limitations on Coverage

The division is not including in this permit authorization for point source discharges other than the discharge from the MS4 for which the permittee is the operator of the facility or activity from which the discharge originates. Inclusion of terms and conditions for all additional point source discharge for which the permittee may be the operator was outside the scope of consideration for this permit. For example, this permit does not authorize the permittee to discharge stormwater associated with industrial activity from its own construction activities, even when such discharge is to the permitted MS4. The permittee must obtain separate permit coverage (i.e., obtain a stormwater discharge permit for construction activities) for such discharges.

The division modified this section in the renewal permit to clarify that discharges to a receiving water designated as an "outstanding water" are not eligible for coverage under this permit. The division has determined that a more detailed analysis would be needed to determine if provisions for the control of pollutants beyond those included in this permit would be appropriate. The Water Quality Control Commission has not designated any outstanding waters in an MS4 permit area as of the issuance date of this renewal permit.

The permittee permit area is defined in IX.Part I.A.3 (below). Permittees are only responsible for implementing this permit in their permit area.

This section was expanded from the previous permit to address confusion concerning irrigation ditches. This clarification was added to the permit to address concerns from stakeholders, including those in the Grand Valley, regarding potential future responsibilities for compliance with MS4 permit requirements if large irrigation ditch systems were regulated as MS4s. Those conveyances for which the majority of flow is irrigation return flow and/or supplying irrigation water to irrigated land (i.e., irrigation ditches) that are identified in the permittee's application or subsequent modification as not being part of the MS4 and are listed in the permit certification are excluded from being part of the MS4. The permittee has the flexibility to make a determination on if the conveyance typically has majority of irrigation flow before submitting the information in the application or in a subsequent submittal. This option would result in excluded irrigation ditches being treated consistent with state waters with a classification in a basin regulation (classified waters). The MS4 outfall is moved to the location where the discharges occur into the irrigation ditch, instead of being at the location where the irrigation ditch returns flow to a receiving water.



In addition, section 61.3(1)(c) of Regulation 61 states that “neither the Commission nor the division shall require any permit for animal or agricultural waste on farms and ranches except as many be required by the Federal Act or regulations or be section 25-8-501.1, C.R.S., or the state act which provides that permits shall be required for housed commercial swine feeding operations.” Permittees should be advised that applicable construction activities occurring at farms and ranches are covered under this permit. This coverage does not include facility operation activities like tilling fields.

3. Permit Area

The US Census Bureau mapped 652,443 acres of urbanized area in Colorado in the 2000 census and 819,342 acres in the 2010 census. That is an increase of 166,899 acres or 20.4 percent.

a. This renewal permit does not apply to any areas outside of the permit area.

- i. This section has been simplified in the renewal permit.
- ii. Section 61.3(2)(f)(v)(A)(III)(a) of Regulation 61 states that “the division shall evaluate, at a minimum, any small MS4 located outside of an urbanized area serving a jurisdiction with a population density of at least 1,000 people per square mile and a population of at least 10,000 (based on the latest Decennial Census by the Bureau of the Census), to determine whether or not stormwater discharges from the MS4 result in or have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The evaluation shall use the following elements, at a minimum: discharge to sensitive waters; *high growth or growth potential* [emphasis added]; size of population and population density; contiguity to an urbanized area; and significant contribution of pollutants to state waters. Sensitive waters, for the purposes of this section, are defined as those receiving waters that are classified by the Commission as either Aquatic Life Class 1, a Drinking Water supply, or are on the division's most current 303(d) list (i.e., need a TMDL).”

Permit areas in counties include the urbanized area as determined by the US Census Bureau in the 2010 census, plus the high growth or potential growth area, minus the no growth area. The division has modified the portions of Part I.A.3(b) and Part I.E of the renewal permit that pertain to the application of “Growth Area Requirements.” These requirements have been further expanded to allow for a more proactive and effective approach to water quality protection in areas with high population growth and growth potential. The division stated in the previous permit fact sheet that it intended to review the previous permit boundaries for permittees covered under this general permit to determine if currently unpermitted areas outside of a urbanized area designated by the US Census Bureau meet the designation criteria in Regulation 61.3(2)(f)(iii) and (v). The changes to the permit do not change the process or requirements for designation, which are included in Regulation 61. The growth area requirements shall apply when such designation is based on actual or potential significant contributions of pollutants associated with construction and development to support high population growth or high growth potential. The criteria for designation in the permit are intended to identify when these conditions for potential



significant contributions exist. Counties must submit maps of the growth area and no growth areas or the division has determined that an area 5 miles (within the county's jurisdiction) from the urbanized area shall be the growth area.

The renewal permit contains special requirements or exemptions for these high growth or growth potential areas (see below). The renewal permit requires local control of pollutant sources during the period of significant construction in an area, instead of after an area has already been developed and the water quality impacts from construction associated with the growth may have occurred. The renewal permit allows the permittee to focus on implementation of programs most applicable for areas with growth, but without established populations. The renewal permit also requires the implementation of permanent water quality controls for new development/redevelopment sites to prevent impacts associated with the future population at a time when installation of structural controls is most practicable.

- b. The renewal permit states that the permittee's stormwater program must immediately cover areas annexed or incorporated into the permittee's permit area.

4. County Growth Area Requirements

In accordance with Section 61.3(2)(f)(v)(A)(III)(a) of Regulation 61, the division must evaluate areas outside of the urbanized areas. The division did not include reporting or requirements for activities beyond the designated growth areas. Several The renewal permit requires that the county permittees submit a map of their growth areas or map and rationale of why an area is a no growth area. The division will designate a growth area of 5 linear miles beyond the urbanized area as a buffer area if a county permittee does not submit any growth area information.

5. Application for New and Renewal Applicants

Section 61.8(11)(a)(i) of Regulation 61 states "The initial permit for the regulated small MS4 will specify a time period of up to five (5) years from the date of permit issuance for development and implementation of the program."

The division combined the requirements for new and renewal applicants, and provided additional clarification regarding the process if the division denies the application for coverage under the general permit.

6. Local Agency Authority

Section 61.1(1) of regulation 61 states that "Nothing in these regulations shall be construed to limit a local government's authority to impose land-use or zoning requirements or other limitations on the activities subject to these regulations." This section of the renewal permit has been updated to provide more clarity on local agency authority.

7. Permit Compliance



The division added this section to the renewal permit to clarify conditions that constitute a violation of the permit, such as failure to comply with the terms and conditions of the permit; failure to perform corrective actions, etc.

B. CONTROL MEASURES

Regulation 61.2(9) defines best management practices as “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state waters.” BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.”

The definition of BMP in regulation 61 is the same definition that was used in the previous permit. EPA has been using the term “control measure” in stormwater permits since at least the 2000 multi-sector general permit. The renewal permit uses the term “control measure” to be consistent with the state and EPA definitions.

The division uses the term “control measure” (defined in Part I.B.) instead of “BMP” throughout the renewal permit. This term has a broader range of meaning than BMP since it includes both BMPs and “other methods.” The term “control measure” better describes the range of pollutant reduction practices a permittee may implement. For example, control measures may include the following, not all of which may be encompassed within the definition of BMP:

- Specific pollution prevention practices for minimizing or eliminating the pollutants or constituents of concern in the discharge.
- Specific behavioral practices for minimizing or eliminating the pollutants or constituents of concern in the discharge.
- Narrative requirements to minimize pollutants or constituents of concern in discharges or the discharges themselves.
- Structural controls, not just treatment requirements but treatment in place, such as regional facilities, silt fence, etc.

Consistent with the previous permit, the division does not mandate a specific control measure that a permittee must implement to control pollutant sources. The permittee has the flexibility to select appropriate control measures that when implemented, enable the permittee to meet permit requirements.

Many stakeholders were opposed to the use of the term “control measure”. Permittees are not required to adopt the use of the term and there is no requirement for permittees to adopt the use of the term in their regulatory mechanism, procedures, or other documents. Permittees have the flexibility to use either term, but should take into consideration that the term “control measure” is broader and can include other methods such as the installation, operation, and maintenance of structural controls and treatment devices. Permittees have the flexibility to use either term in SOPs, inspections forms, and other documents.

Control measures required throughout the permit must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices. In many instances, manufacturer’s specifications can be used to determine if



the control measure is selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices.

1. Good Engineering, Hydrologic and Pollution Control Practices

This section of the renewal permit was added to provide additional clarification.

2. Maintenance

Maintenance is an integral part of an effective control measure. In addition, this section of the renewal permit is important to provide additional clarification for the Control Measure Requiring Routine Maintenance section below.

3. Inadequate Control Measures

This renewal permit provides definitions of and the differences between an “inadequate control measure ” and a “control measure requiring routine maintenance.” The division recommends that permittees consider both inadequate control measures and control measures requiring routine maintenance when developing enforcement response procedures. For example, the renewal permit requires the permittee to conduct a compliance inspection (can be conducted by the operator) and inspection follow up when an inadequate control measure has been identified, but not when a control measure requiring routine maintenance has been identified. Permittees have the flexibility to determine the actions necessary after a control measure requiring routine maintenance has been identified during an inspection.

4. Control Measure Requiring Routine Maintenance

Maintenance of temporary control measures at construction sites usually includes the removal of accumulated pollutants and minor structural repairs. The permittee has the flexibility to further define routine maintenance.

5. Minimize

The division uses and defines the term “minimize” to provide the permittee with the level of performance of control measures that should be implemented to achieve effluent limitations.

C. PROGRAM DESCRIPTION DOCUMENT (PDD)

Section 61.8(11)(a)(i) of Regulation 61 states that “the MS4 permit will require that the regulated small MS4 develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Colorado Water Quality Control Act (25-8-101 *et seq.*, C.R.S.).” The division has determined that “develop” requires the permittee to determine which control measures they will implement to meet the requirements of the permit and then develop a written PDD to document their decisions. Permittees must develop a PDD that describes how the permittee will meet all of the requirements in the renewal permit.



The division has substantially modified this section. The previous permit framework required that a PDD be developed that addressed pollutants of concern and required the permittee to develop and implement requirements to meet MEP. The division has changed this framework and has provided the requirements that meet MEP in the renewal permit. The division has relocated the practice-based permit conditions to a new section titled “Pollutant Restrictions, Prohibitions, and Reduction Requirements and Recordkeeping”, addressed in section Part I.E.

The information in the PDD is not the same as information required in the recordkeeping sections of the permit. The recordkeeping sections address written documentation of the activities in the PDD that have been completed.

The PDD is not just a “paperwork exercise”, rather it organizes what control measures will be/are being implemented, determines appropriate funding and staff needs, and trains new staff on all of the different elements of the stormwater program to help with consistency. In addition, the PDD is a publicly-available document that provides transparency to the public. Although records and the PDD’s primary use are for the permittee to develop, implement, and modify (if needed) a successful and legally enforceable program, the division will use both records and the PDD when inspecting or auditing the permittee’s program.

The required elements of the PDD were purposely chosen to allow the PDD to be used as an internal training tool and to provide continuity in the case of permittee staff changes. Program audits indicated that there may be substantial lag time and potential non-compliance when new staff is hired, specifically a stormwater coordinator, because the permittee lacked a complete document to facilitate staff transitions and continued compliance.

The division did not include the requirement that the PDD be organized to mirror the structure of the permit in response to stakeholder input. The permittee has the flexibility to organize the PDD in a way that will be effective for their staff.

1. Records

The PDD must be up-to-date and document the current implementation of each control measure. This will allow for effective and efficient implementation by the permittee, oversight by the division, and meaningful public involvement. Table 3 summarizes the findings from the audit reports. All of the permittees that were audited did not have an up-to-date/current PDD in one or more portions of their stormwater program, so this requirement has been added to the renewal permit.

Permittees have always been required to “document” their stormwater programs. Most audited permittees either kept all original documentation in the PDD or listed citations for documents and electronic records in the PDD. Permittees can develop their PDD using either method. Electronic records include regulatory mechanisms, plans, procedures, intergovernmental agreement, codes, manuals, guidance, etc.

2. Availability

Section 61.8(11)(a)(vii)(B) of Regulation 61 requires that “The permittee must make the records, including a description of the permittee’s stormwater management program,



available to the public at reasonable times during regular business hours (see 61.5(4) for confidentiality provision). (The permittee may assess a reasonable charge for copying. The permittee may require a member of the public to provide advance notice.)”

The PDD is developed and maintained by the permittee and only submitted to the division upon request. This is a substantial change from the previous permit, which required the submittal of the permittee’s PDD. The permit no longer requires the division to review, approve, and provide public notice on the PDDs during the general permit certification process. In addition, permittees had to submit information to the division when they modified the PDD. This change also resulted in the program modification section of the previous permit no longer being applicable and has been removed.

The renewal permit includes a requirement that the PDD be submitted to the division within 10-days of a request. This timeframe recognizes that a document that is intended to reflect current conditions must be updated periodically and may not be immediately available.

3. Modification

Permittee feedback during audits indicated that permittees were reluctant to make changes to their program descriptions submitted to the division under the previous permit because of confusion or concern over the division’s review and approval process. The renewal permit has specific requirements for the PDD and allows the permittee to tailor and modify their selection and implementation of controls as needed. Permittees no longer need division review or approval to modify their PDD. In addition, the renewal permit eliminates the requirement that the PDD receive public notice. Instead, the renewal permit includes all of practice-based effluent limitations and will receive public notice and comment through the permit development process.

D. PUBLIC INVOLVEMENT/PARTICIPATION

Section 61.8(11)(a)(ii)(B) of Regulation 61 states:

Public involvement/participation. The permittee must, at a minimum, comply with state and local public notice requirements when implementing the stormwater management programs required under the permit. Notice of all public hearings should be published in a community publication or newspaper of general circulation, to provide opportunities for public involvement that reach a majority of citizens through the notification process.

Volume 64, number 235, page 68755 of the Phase II Rule gives two benefits of public participation. “*First, early and frequent public involvement can shorten implementation schedules and broaden public support for a program.*” “*Second, public participation is likely to ensure a more successful storm water program by providing valuable expertise and a conduit to other programs and governments.*”

Volume 64, number 235, page 68787 of the Phase II Rule states that:

EPA believes that an educated and actively involved public is essential to a successful municipal storm water program. An educated public increases program compliance from



residents and businesses as they realize their individual and collective responsibility for protecting water resources (e.g., the residents and businesses could be subject to a local ordinance that prohibits dumping used oil down storm sewers). Finally, the program is also more likely to receive public support and participation when the public is actively involved from the program's inception and allowed to participate in the decision making process.

The Public Participation section requires the permittee to actively involve the public in the development and implementation of the stormwater program. This includes a requirement that the permittee set up a process to respond to public complaints of illicit discharges, pollution from construction sites, pollution from municipal yards, etc. On the other hand, the Public Education and Outreach section requires the permittee to educate the public about the impacts of polluted stormwater and the steps that the public can take to reduce stormwater pollution.

The division has moved the Public Involvement/Participation section from the Pollutant Restrictions, Prohibitions, and Reduction Requirements and Recordkeeping section, because these are not practices implemented to minimize the discharge of pollutants to the MS4. A requirement for the permittee to accept and respond to public information that was in the Construction Sites program has also been relocated to consolidate Public Involvement and Participation.

1. Public Involvement and Participation Process

“At a Minimum”

Regulation 61 uses “at a minimum” throughout the regulation to set a minimum standard. Permittees may incorporate additional standards into their program, but the permit outlines the minimum elements that must be met under each requirement to meet MEP.

Volume 64, number 235, page 68755 of the Phase II Rule states that “public involvement is an integral part of the small MS4 stormwater program.” The public has two opportunities to comment—they can comment on the requirements listed in this permit through the division’s public notice process and can comment on a permittee’s specific stormwater program elements, such as the regulatory mechanism and PDD.

- a. The permittee must follow their own public notice procedures (if applicable). In addition, the permittee must follow the public notice requirements required by their state or local regulatory mechanism. For example, many municipalities require a public notice process when updating a code or ordinance. Alternatively, if the permittee does not have a required public notice process when updating a document such as a PDD, then the permittee does not have to implement their public notice procedures. This permit requirement simply requires the permittee to follow their own public notice procedures, when required, when implementing the requirements of this permit.
- b. The first sentence of this requirement has not changed from the previous permit. The division, however, has added the second sentence as a requirement. Although a web page dedicated to the permittee’s stormwater program is not required under this permit, a statement on the permittee’s web site must be provided stating that the PDD is publically available for review and comment..



- c. The public typically calls a permittee for two stormwater-related issues—illicit discharges and pollutants from construction sites, development sites, and municipal operations. This requirement in the renewal permit requires the permittee to be able to address such complaints and concerns from their citizens.

2. Recordkeeping

This is a new section of the permit. This section lists the records that must be maintained under this requirement. Permittees have the flexibility to keep all of the records in one location or database or have different locations and databases for different sections of the permit.

3. PDD

This is a new section of the permit. This section describes the type of information that needs to be in the PDD. As stated above, some permittees might choose to include and maintain all of the original documents in the PDD whereas other permittees might choose to simply list the applicable documents and where they can be found.

E. POLLUTANT RESTRICTIONS, PROHIBITIONS, AND REDUCTION REQUIREMENTS AND RECORDKEEPING

Section 61.2(26) of Regulation 61 states that “an effluent limitation is any restriction or prohibition established under this article or Federal law on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into state waters, including, but not limited to, standards of performance for new sources, toxic effluent standards and schedules of compliance.” In addition, Section 61.8(3)(r) of Regulation 61 requires that “the permit shall include best management practices to control or abate the discharge of pollutants when numeric effluent limitations are infeasible, when the practices are reasonably necessary to achieve effluent limitations and standards, or when authorized under 304(e) of the federal act for control of toxic pollutants and hazardous substances.”

Effluent limitations include “standards of performance”, otherwise known as practice-based effluent limitations. Effluent limitations are typically expressed as practice-based limits or numeric limits. The renewal permit contains practice-based effluent limits and not numeric effluent limits.

One of the division’s responsibilities under section 25-8-202(7)(b)(I) of the Colorado Water Quality Control Act (25-8-202(7)(b)(I)) states that “the division shall be solely responsible for the issuance and enforcement of permits authorizing point source discharges to surface waters of the state affected by such discharges.” The division’s responsibility is to ensure that permittees are implementing the requirements of the permit. Without numeric data, the division is left with ensuring that all practice-based effluent limits and control measures are being met.

The division has relocated the practice-based permit conditions that were previously under the CDPS Stormwater Management Program section to the Pollutant Restrictions, Prohibitions, and Reduction Requirements and Recordkeeping section of the renewal permit. The Pollutant Restrictions, Prohibitions, and Reduction Requirements and Recordkeeping s section of the permit



is intended to provide clarity and transparency in permit requirements and increase efficiency in the implementation of the permittee’s stormwater program. The previous permit required the permittee to develop a program and the division to review and approve the program prior to implementation. This framework was less transparent, resulted in highly variable implementation between permittees, caused uneven economic implications, and was not an efficient use of division staff time. The lack of clarity and transparency in the previous permit also was a cause to many of the findings in the audit reports. The new framework under this renewal permit will define and public notice the effluent limitations that permittees need to meet in order to achieve the MEP. Permittees will now have a greater flexibility to develop and refine PDDs (that still meet the effluent limitations in the renewal permit) and not have to request and receive approval from the division. It should be noted that the “stormwater management program and measurable goals modification” section in the previous permit are no longer needed and have been deleted from the renewal permit. The division will follow the “modification, suspension, revocation, or termination of permits by the division” section of the permit if the requirements in this permit need to be modified.

This section of the renewal permit defines the minimum requirements required to meet the federal and state regulatory requirement to control the discharge of pollutants to the MEP and effectively prohibit non-stormwater discharges. The recordkeeping and PDD sections are provided to identify most of the recordkeeping requirements associated with the effluent limitations in each program area of the permit. The permittee also will need to keep records under other sections of the renewal permit.

The renewal permit also includes a Part III, which contains requirements applicable to specific permittees. This section currently addresses additional requirements for discharges subject to TMDL WLAs.

If a permittee determines that the MEP standards in this general permit are not appropriate, the permittee has the option to apply for an individual permit. It is also possible that, for some permittees, the MEP requirements may need to contain additional flexibility for more effective or efficient practices. In such cases, the permittee may apply for coverage under an individual permit that includes determinations specific to their MS4. However, to allow for a more efficient approach when the renewal permit only needs minor revisions to requirements to address the needs of a community, the permittee may request a modification of this permit in accordance with Part II.B.5 of the renewal permit that identifies the requested permittee-specific terms and conditions. If determined appropriate, the division will modify the renewal permit to include the proposed MS4-specific terms and condition in Part III of the renewal permit, following the required provisions of Regulation 61.10, including public notice and comment. The division remains responsible for ensuring the proposed terms and conditions meet the statutory and regulatory framework and are appropriate for inclusion in a general permit, and may deny such modification request in accordance with the Regulation 61 or require the permittee to apply for an individual permit.

Recordkeeping

The recordkeeping sections clarify what records must be maintained and what information should be in the records. Recordkeeping requirements regarding regulatory mechanisms and regulatory mechanism exemptions include the actual codes, resolutions, ordinances, and program documents that permittees are using to implement the program. Whereas, the PDD is simply a list



or citation of the codes, resolutions, ordinances, and program documents. Recordkeeping must also meet the requirements in Part I.K.2 of the renewal permit. Permittees must keep records to organize their stormwater program, enable their stormwater programs to be legally enforceable, and track that they have met the requirements of the permit.

1. Public Education and Outreach

Section 61.8(11)(a)(ii)(A) of Regulation 61 states the “the permittee must implement a public education program to (I) distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff; and (II) inform businesses and the general public of impacts associated with illegal discharges and improper disposal of waste.”

The division has made extensive changes to this program area to include requirements in the renewal permit that define the expectations for the scope and scale of the education actions implemented by the permittee. This section provides the minimum standards for targeting information to businesses and the general public.. The permit allows for requirements to be met through collaboration, and the division highly recommends that stakeholders pursue options for a statewide education campaign.

The renewal permit describes the minimum elements that must be addressed in the education and outreach activities. These elements include the distribution of educational materials that include information about the impacts of stormwater discharges on water bodies and the steps the public can take to reduce pollutants in stormwater runoff, and inform businesses and the general public of impacts associated with illegal discharges and improper disposal of waste. Permittees can either incorporate all of these elements into each education and outreach activity or through a combination of a variety of activities. Permittees have the flexibility to conduct additional education and outreach activities.

a. The following requirements apply:

- i. **Illicit Discharges:** The renewal permit requires the permittee to identify at least one type of business that is likely to cause an illicit discharge or improperly dispose of waste that would result in pollutants in stormwater runoff. Although Section 61.8(11)(a)(ii)(A) of Regulation 61 states that permittees must inform businesses and the general public about the impacts associated with the “improper disposal of waste”, permittees only have to conduct education and outreach activities concerning the improper disposal of waste that could result in stormwater impacts. The permittee must then develop at least one outreach activity for that type of business identified. The permittee can target more than one type of business, but the renewal permit minimum is one type of business.
- ii. **Education and Outreach Activities Table:** The Education and Outreach Activities Table has been added to the renewal permit to allow permittees the flexibility to implement the activities that permittees determine are the most effective. Providing the activity table in the permit also allows permittees to make changes to their programs without submitting a program modification to the division and public noticing the change. The



level of education and outreach required is consistent with what has been implemented by permittees in the previous permit term. The division has been implementing a process similar to what is identified in this section when reviewing permittee program descriptions for adequacy during previous permit terms. Permittees were unaware of the existence of the table or the ranking system that was used by the division. These requirements are now incorporated into the renewal permit. In addition, the division will no longer review program descriptions prior to issuing the permit certification.

The renewal permit is requiring that the permittee conduct four activities each year and two activities must be from the Active and Interactive Outreach column. In addition, the division noted during the audits that most permittees had two forms of passive outreach and two forms of active and interactive outreach. The most common passive outreach activities were fact sheets and a web site and the most common active and interactive outreach were an illicit discharge hotline and a household hazardous waste event.

- iii. Nutrients: Section 85.5(4)(a) of Regulation 85 states that “the MS4 permittee must develop, document, and implement a public education program to reduce water quality impacts associated with nitrogen and phosphorus in stormwater runoff and illicit discharges and distribute educational materials or equivalent outreach to targeted sources (e.g., residential, industrial, agricultural, or commercial) that are contributing to, or have the potential to contribute, nutrients to the waters receiving the discharge authorized under the MS4 permit.” In addition, section 85.5(4)(a) of Regulation 85 states that “CDPS Permits shall authorize MS4 permittees to meet the requirements of this section through contribution to a collaborative program to evaluate, identify, target and provide outreach that addresses sources state-wide or within the specific region or watershed that includes the receiving waters impacted by the MS4 permittee’s discharge(s).”

The division has added this section to the renewal permit in accordance with the requirements for permittees in Regulation 85. The division includes the phrase from Regulation 85, “education and outreach on stormwater impacts associated with nutrients,” to clarify that outreach is required by the regulation and the renewal permit. “Outreach” is active and requires contact by the permittee and an exchange of education and information. Making information available on a website without further action or outreach is passive education and does not meet the Regulation or the permit requirements. The division expects that the permittee will “reach out” to identified sources and provide information and education. Additionally, the permit includes the phrase “The Permittee must provide public education and outreach...” “Provide” is used in the renewal permit to clarify that permittees can use existing education and outreach materials and are not required to develop new materials. A collaborative education and outreach program is allowed in Regulation 85 and the renewal permit. The division encourages and recommends that permittees collaborate on the nutrient-related requirements in the renewal permit and has provided a timeframe in the compliance schedule that would allow such collaboration.

The division has purposely not provided a minimum list of targeted sources for



permittees to address through education and outreach. The renewal permits include minor additions to what is in the regulation to provide transparent and measurable permit conditions. The division will assess this decision to not include a minimum number of targeted sources over the permit term by reviewing the nutrient education and outreach activities conducted by permittees and any permittee justification for not targeting specific sources. The division may provide minimum standards for targeted sources in a future renewal permit.

The statement of basis (85.15(X)) of Regulation 85 states that the “identification should include types of sources for which a reduction in nutrient discharges are likely to be obtained through education, and *prioritization* [emphasis added] of sources for implementation of the education program.” The renewal permit allows the permittee to prioritize the targeted sources identified and to conduct outreach to those prioritized targeted sources. The permittee does not have to provide outreach to all of the identified targeted sources.

b. Recordkeeping

This is a new section of the permit. This section lists the records that must be maintained under this requirement.

c. PDD

This is a new section of the permit. This section describes the type of information that needs to be in the PDD. As stated above, some permittees might choose to include and maintain all of the original documents in the PDD whereas other permittees might choose to simply list the applicable documents and where they can be found.

2. Illicit Discharge Detection and Elimination (IDDE)

Section 61.8(11)(a)(ii)(C) of Regulation 61 states that “the permittee must develop, implement and enforce a program to detect and eliminate illicit discharges (as defined at 61.2) into the permittee's small MS4.”

Stormwater discharges are different from Illicit discharges. Stormwater discharges include all pollutants that stormwater picks up while flowing to the MS4. Illicit discharges are NOT from precipitation events. Illicit discharges are the addition of pollutants to the MS4 because of anthropogenic activities.

Illicit discharges are an important element of the scope of this permit and of the effluent limitations established. This permitting approach is unique to MS4 discharges and distinct from the approach taken for permitting other sources within the NPDES framework. The division has taken this approach following review of the language provided in the CWA and the legislative history associated with adoption of those provisions. The division has determined that Congress established these unique provisions regarding permitting discharges from MS4s in acknowledgement that: Not all discharges from an MS4 could be anticipated, characterized, and disclosed in a permit application; that not all non-stormwater discharges



from an MS4 could be prohibited or eliminated; and that not all non-stormwater discharges into an MS4 pose significant environmental problems.

The division has interpreted the statutory requirement that the MS4 “effectively prohibit non-stormwater discharges” to be less than an outright prohibition of all non-stormwater discharges. This interpretation is consistent with state and federal regulations which include allowable non-stormwater contributions for MS4 discharges. Therefore, the statutory standard to reduce the discharge of pollutants to the MEP was applied by the division in determining effluent limitations for non-stormwater discharges, included in Part I.E.2 of the renewal permit. Discharges subject to effluent limitations requiring their prohibition, detection, and elimination are referred to in the permit as illicit discharges. Discharges not requiring their prohibition, detection, and elimination are referred to in the permit as being excluded from being considered an illicit discharge.

In developing these permit terms and conditions, the division has further defined categories of discharges and evaluated the extent to which control measures must be implemented to effectively prohibit the discharges:

- **Illicit Discharges:** Non-stormwater discharges for which the permit includes requirements for prohibition, detection, and elimination, unless the discharge to the MS4 is authorized by a separate CDPS or NPDES discharge permit or are discharges resulting from fire fighting activities. These are discharges for which there are established management practices and control techniques.

Discharges excluded from being considered an illicit discharge under the permittee’s IDDE program include the following—illicit discharges and discharges excluded from being considered an illicit discharge under the permittee’s IDDE program.

- **Stormwater discharges.** The permit contains effluent limitations that set the MEP standard to restrict the quantities, rates, and concentrations of pollutants in stormwater discharges, but does not include requirements to prohibit unpermitted discharges for which separate permit coverage is required (i.e., stormwater discharges associated with industrial activity in accordance with Regulation 61).
- **Regulatorily excluded:** Discharges for which prohibition, detection, and elimination is not required because the discharge is exempt from the definition of a point source (i.e., irrigation return flow). This is specifically addressed in the permit because while this discharge is exempt from permit coverage, it is expected to be present in discharges from the MS4, and often commingled with other discharges for which effluent limitations have been established.
- **Impracticability to prohibit:** Discharges for which prohibition, detection, and elimination is not required because this level of control is deemed to be impracticable in most cases (e.g., emergency fire-fighting activities). In this case the division is relying on the discretion provided by Congress to allow the permitting authority to authorize the municipality to convey and discharge those discharges through the MS4.



- Unknown pollutant potential and/or practicability to control: Discharges for which prohibition, detection, and elimination has not been determined to meet the MEP standard. This includes discharges that have not been fully characterized in terms of their extent or pollutant levels. The permit includes a process for adding additional discharges to the exclusion from being considered illicit discharges, including appropriate division review and approval, and public notice procedures.
- Low pollution potential: Discharges for which prohibition, detection, and elimination is not required because control by the permittee is not currently deemed necessary to reduce the discharge of pollutants. In these cases, allowing for these discharges is still expected to result in protection of water quality standards. This includes discharges that meet the division's Low Risk Policy, such as discharges from snow melting and swimming pools.

Discharges from sources that are not considered illicit discharges may still be subject to other effluent limitations in Part I.E or Part III of the renewal permit to restrict or prohibit the quantities, rates, and concentrations of pollutants. Examples include stormwater discharges associated with construction activities, stormwater discharges associated with new development and redevelopment activities, stormwater discharges associated with municipal operations, and stormwater and non-stormwater discharges from target audiences in the public education and outreach program.

Most of this program concerns the permittee's response to reports/identification of illicit discharges in the MS4. Some portions of this program are proactive. For example, some of the general public and businesses will not improperly dispose of waste if the permittee has a regulatory mechanism prohibiting dumping. The division does not expect the permittee to proactively look for illicit discharges in the permit area or in the MS4. The division does, however, expect the permittee to respond to all reports of illicit discharges in the MS4 and identified by employees during their normal day-to-day activities.

When illicit discharges in the permit area but not to the MS4 are reported, the permittee is not required to respond to such reports under this permit. Most likely, other local codes, and federal and state laws and regulations will apply to such instances. Section 25-8-601(2) of the Colorado Water Quality Control Act has requirements for the division to be notified of suspected violations and accidental discharges. The section states the following:

Any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state contrary to the provisions of this article, as soon as he has knowledge thereof, shall notify the division of such discharge. Any person who fails to notify the division as soon as practicable is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

The division has several documents regarding illegal dumping in Colorado. These documents apply to all areas of Colorado, whether inside or outside of the MS4 or permit area.



- *Guidance for Reporting Spills under the Colorado Water Quality Control Act and Colorado Discharge Permits*, CDPHE, March 1, 2008
- *Environmental Spill Reporting* brochure, CDPHE
- *Reporting Environmental Releases in Colorado*, CDPHE, January 2009

a. The following requirements apply:

- i. Storm Sewer Map: Section 61.8(11)(a)(ii)(C)(l)(a) of Regulation 61 states that “the permittee must develop, if not already completed, a storm sewer system map, showing the location of all municipal storm sewer outfalls and the names and location of all state waters that receive discharges from those outfalls.”

The requirements for this section have not changed from the previous permit.

- ii. Regulatory Mechanism: Section 61.8(11)(a)(ii)(C)(l)(b) of Regulation 61 states that “the permittee must to the extent allowable under state or local law, effectively prohibit, through ordinance or other regulatory mechanism, non-stormwater discharges into the storm sewer system, and implement appropriate enforcement procedures and actions.”

The renewal permit has the minimum elements to be addressed in the regulatory mechanism that effectively prohibits an illicit discharge. These minimum elements were identified by the division based upon compliance oversight activities. Twenty percent of the audited permittees allowed for an illicit discharge to continue for a certain timeframe without being considered in violation of the permittee’s rules. This is not in compliance with Regulation 61. Upon discovery, permittees must prohibit non-stormwater discharges and implement appropriate enforcement procedures and actions.

The permittee’s procedures and rules must result in an illicit discharge being subject to potential enforcement procedures for both the original finding of violation, as well as during any provided timeframe to eliminate the illicit discharge. Also, note that the permit does not require, and it is not the division’s intent to imply through this summary, that the enforcement mechanism mandate or limit enforcement options to a per-day-of-violation monetary penalty calculation methodology.

Lastly, a review of permittee regulatory mechanisms also indicated that some regulatory mechanisms limited permittee access to sites with certain permits or zoning. This would have limited the permittee’s ability to respond to potential illicit discharges. Therefore the renewal permit clarifies that they must have a procedure to gain access to properties in the permittee’s jurisdiction, unless restricted by state or local laws outside the permittee’s control.

- iii. Regulatory Mechanism Exemptions: The division added this section to address exceptions to the permittee’s regulatory mechanism. Thirty percent of the audited permittees allowed an exemption, waiver, variance, or another type of discharge that did not have to be considered an illicit discharge. The division understands that



exemptions, waivers and variances are a legal process in the permittee’s code and ordinances and are relied on to address unforeseen circumstances without relying on revisions to regulatory mechanisms. The division has added a new requirement stating that exclusions, exemptions, waivers and variances must be implemented in a manner that comply with the permit. A process to add discharges to the list of discharges that do not need to be considered illicit discharges has been added to the renewal permit. See discussion of Part I.E.2.v. below.

- iv. **Tracing an Illicit Discharge:** Section 61.8(11)(a)(ii)(C)(I)(c) of Regulation 61 states that “the permittee must develop and implement a plan to detect and address non-stormwater discharges, including illicit discharges and illegal dumping, to the system. The plan must include the following three components: procedures for locating priority areas likely to have illicit discharges; *procedures for tracing the source of an illicit discharge* [emphasis added]; and procedures for removing the source of the discharge.”

The division has added new aspects to this existing requirement. The renewal permit includes a minimum standard for tracing an illicit discharge. The previous permit required the permittee to “develop, implement, and document a plan to detect and address non-stormwater discharges...” Some permittees were unclear whether they were required to make special trips outside of normal day-to-day activities to inspect their permit area to look for illicit discharges. The renewal permit states that this is not required. The division encourages permittees to actively look for illicit discharges, but this is not required under the permit. Permittees are, however, required to report and respond to illicit discharges observed during normal day-to-day activities. In addition, Part I.E.2.a.vii requires that applicable municipal staff be trained on recognizing and appropriately responding to illicit discharges observed during typical duties.

This section of the renewal permit also requires the permittee to have tools and written procedures to trace the source of reported illicit discharges. Common tools used for tracing an illicit discharge include storm sewer maps, dye tracers, cameras, and aerial maps. The permittee must select the tools that will be used and then have the tools available to trace an illicit discharge. Common procedures for tracing an illicit discharge include screening through visual inspections, opening manholes, using mobile cameras, using field tests of selected chemical parameters as indicators of discharge sources, and collecting and analyzing water samples.

Before responding to a report of an illicit discharge, the permittee must first determine the following:

- Is the source of the illicit discharge or the spilled material in the MS4? Under this permit, the permittee does not have to respond to reports of illicit discharges outside of the MS4. As stated above, under other federal, state, and local laws, regulations, and codes, permittees must still respond to spills inside the permit area, but not in the MS4.
- Does the permittee consider the spilled material an illicit discharge? Under this permit, the permittee does not have to respond to discharges that are listed in Part I.E.2.a.v. and also listed in the permittee’s ordinance.



- Are any other federal, state, or local law, regulations, or ordinances applicable to this illicit discharge? As stated above, permittees must still respond to spills under other federal, state, and local laws, regulations, and codes.
- v. Discharges that could be Excluded from being Considered an Illicit Discharge: Section 61.8(11)(a)(ii)(C)(II) of Regulation 61 states that “the permittee needs to address the following categories of non-stormwater discharges or flows (i.e., illicit discharges) only if the permittee identifies them as significant contributors of pollutants to the permittee’s small MS4: landscape irrigation, lawn watering, diverted stream flows, irrigation return flow, rising ground waters, uncontaminated ground water infiltration (as defined at 40 C.F.R. § 35.2005(20)), uncontaminated pumped ground water, springs, flows from riparian habitats and wetlands, water line flushing, discharges from potable water sources, foundation drains, air conditioning condensation, water from crawl space pumps, footing drains, individual residential car washing, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-stormwater and need only be addressed where they are identified as significant sources of pollutants to state waters).”

As stated above, not all discharges from an MS4 could be anticipated, characterized, and disclosed in a permit application; that not all non-stormwater discharges from an MS4 could be prohibited or eliminated; and that not all non-stormwater discharges into an MS4 pose significant environmental problems. These types of discharges were called allowable non-stormwater discharges in the previous permit. Although many of the discharges listed in this section could be considered an illicit discharge, it is not MEP for permittees to have to detect and eliminate the discharges listed in this section.

. Permittees have the flexibility to exclude additional discharges from being considered an illicit discharge (see section (Y) In addition, permittees have the flexibility to consider the discharges listed in this section an illicit discharge if they determine that the discharge is a significant contributor of pollutants.

In addition, permittees may either reference each type of discharge in their regulatory mechanism or reference that the discharges are listed in the permit.

Changes were made to the list and process regarding discharges that are excluded from being considered an illicit discharge. These changes were made in response to new information available about specific types of discharges, including their potential pollutant levels and feasibility of control.

(A) *Landscape irrigation*: No changes to this discharge have been made.

(B) *Lawn watering*: No changes to this discharge have been made.

(C) *Diverted stream flows*: No changes to this discharge have been made.



(D) *Irrigation return flow*: No changes to this discharge have been made.

(E) *Rising ground waters*: No changes to this discharge have been made.

(F) *Uncontaminated ground water infiltration*:

- 1) The text from 40 C.F.R. § 35.205(2) has been added to the permit for clarity.

It is important to note that infiltration of stormwater is not considered “uncontaminated ground water infiltration.” For example, stormwater runoff that is captured in structures or infiltrates and then is dewatered still meets the definition of stormwater. Therefore, where the source water for a dewatering activity is composed entirely of stormwater runoff, the requirement for the operator to obtain separate permit coverage is typically based on whether the point source discharge of stormwater is required to have permit coverage in accordance with Regulation 61.3(2) (i.e., is stormwater associated with industrial activities, which includes construction). If an industrial stormwater discharge permit certification is already held by a facility where dewatering is conducted, the dewatering discharge must be consistent with the terms and condition of the industrial stormwater permit.

Likewise, single family residential structure subterranean dewatering is presumed to be in direct response to precipitation events and composed entirely of stormwater (e.g., single family home sump pump discharges). However, some large residential structures such as multi-family complexes with underground parking structures where the dewatering discharge includes uncontaminated groundwater are covered under the COG603000 general permit.

(G) *Uncontaminated pumped groundwater*: The previous permit and section 61.8(a)(ii)(C)(II) of Regulation 61 listed “uncontaminated pumped groundwater.”

Uncontaminated pumped groundwater can also include discharges of pumped groundwater that are not associated with potable water. For example, pumped groundwater may be covered under the *Stormwater Associated with Construction Activity* general permit (COR030000), *Discharges Associated with Subterranean Dewatering or Well Development* general permit (COG603000), the *Construction Dewatering Discharges* general permit (COG070000), or the *Remediation Activities Discharging to Surface Water* general permit (COG315000).

If pumped groundwater is covered under a CDPS permit and is discharged in compliance with the provisions of that permit, the discharge is assumed to be “uncontaminated.” In addition, permittees may submit data, such as groundwater sampling results or data regarding sources of potential contamination, to support a claim that pumped groundwater is “uncontaminated.”

Discharging stormwater comingled with surface and/or groundwater requires coverage under either COR030000 or the *Remediation Activities Discharging to*



Surface Water general permit (COG315000). A dewatering discharge includes groundwater and is, therefore, not composed entirely of stormwater runoff when the discharge is drawn from below a groundwater table, including as a result of seasonal or precipitation-driven increases in the groundwater table elevation. If stormwater is *not* comingled with surface and/or groundwater it may be discharged under the COR030000.

See Foundation Drains, Water from Crawl Space Pumps, and Footing Drains below.

- (H) *Springs*: No changes to this discharge have been made.
- (I) *Flows from riparian habitats and wetlands*: No changes to this discharge have been made.
- (J) *Water line flushing*: The previous permit included “discharges from potable water sources,” and “potable water line flushing.” These sources are now addressed under the low risk guidance for potable water. Water line flushing could include discharges not covered under the potable water low risk guidance, however, the discharges that are not potable have increased pollutant potential and are addressed by the division’s established permitting program for hydrostatic testing of pipelines that results in permit coverage being a practicable approach.
- (K) *Discharges from potable water sources*: The previous permit and section 61.8(11)(a)(II)(C)(II) of Regulation 61 list discharges from potable sources. The renewal permit lists discharges from potable water source with a requirement that the discharge has to meet the division’s Low Risk Discharge Guidance: Potable Water. The previous permit included “discharges from potable water sources,” and “potable water line flushing.” These sources are now addressed under the low risk guidance for potable water. Water line flushing could include discharges not covered under the potable water low risk guidance, however, the discharges that are not potable do have increased pollutant potential and are addressed by the division’s established permitting program for hydrostatic testing of pipelines that results in permit coverage being a practicable approach.
- 1) The *Low Risk Discharge Guidance: Potable Water* lists conditions that must be met and the control measure that must be implemented. For example, the potable water shall not be used in any additional process, such as but not limited to, any type of washing, heat exchange, manufacturing, and hydrostatic testing of pipelines not associated with treated water distribution systems. Discharges of potable water DO NOT include discharges from power washing. Discharges from power washing are covered under the division’s *Low Risk Discharge Guidance: Surface Cosmetic Power Washing Operations to Land*.



- (L) *Foundation drains*: No changes to this discharge have been made. Permittees do not have to respond to reports of discharging foundation drains, (i.e., residential sump pumps) or respond to the discharge from a foundation drain as an illicit discharge under this permit.
- (M) *Air conditioning condensation*: No changes to this discharge have been made.
- (N) *Water from crawl space pumps*: No changes to this discharge have been made. Permittees do not have to respond to reports of discharges of water from crawl space pumps (i.e., residential sump pumps) or respond to the discharge of water from a crawl space pump as an illicit discharge under this permit.
- (O) *Footing drains*: No changes to this discharge have been made. Permittees do not have to respond to reports of discharging footing drains, (i.e., residential sump pumps) or respond to the discharge from a footing drain as an illicit discharge under this permit.
- (P) *Individual residential car washing*: No changes to this discharge have been made.
- (Q) *Dechlorinated swimming pool discharges in accordance with the Division’s Low Risk Discharge Guidance: Swimming Pools*: No changes to this discharge have been made.
- (R) *Water incidental to street sweeping*: No changes to this discharge have been made.
- (S) *Dye testing in accordance with the manufacturers recommendations*: This discharge has been added to this section.
- (T) *Stormwater runoff with incidental pollutants*: This discharge has been added to this section. Section 65.2(3) of Regulation 65 states that “the prohibition in section 65.2(1), above, does not apply to pollutants that are incidentally deposited and are mobilized by waters that only flow as a result of a storm event.” This includes discharges of stormwater for which pollutants may be present. For example, stormwater runoff from surfaces for which anti-icing or deicing materials have been added remains stormwater runoff and is a source that does not have to be considered an illicit discharge. In this regulation the word “incidental” is key, as runoff into the storm sewer of deicer material is liable to happen as a consequence of applying deicer and fits with the definition of “incidental.”
- (U) *Discharges resulting from emergency fire fighting activities*: No changes to this discharge have been made.
- (V) *Discharges authorized by a CDPS or NPDES permit*: No changes to this discharge have been made.
- (W) *Irrigation return flow*: This discharge has been added to this section.



(X) *Discharges that are in accordance with the division’s Low Risk Policy guidance documents and other division policies:*

Although some Low Risk Discharge Guidance policies are listed in other discharges, discharges that are in accordance with the division’s Low Risk Policy guidance documents have been added to the renewal permit. As stated above, the division has intentionally not required permittees to prohibit, detect, and eliminate certain discharges that are covered by the division’s current or future Low Risk Policy guidance documents. This allows the permittee to focus on discharges that have the greatest potential to cause water quality impacts. This will also promote transparency and consistency between permittees and the division in how these discharges are addressed on a day-to-day basis.

The division has developed the Low Risk Policy, WQP-27, to address discharges with the lowest potential risk to water quality and additional permit language to provide a mechanism for the permittee to assess the potential for certain discharges to contain pollutants. Discharges associated with snow melting, swimming pools, potable water, uncontaminated groundwater to land, and surface cosmetic power washing operations to land are currently addressed by guidance under the division’s Low Risk Discharges.

In addition, a provision was added to the permit to allow for the permittee to incorporate new discharges covered by future division’s low risk policy guidance documents into their list of discharges that are not considered illicit discharges. These discharges would be public noticed by the division during the development of new low risk policy guidance documents.

The division’s initial concept was to eliminate this provision because it provides a method for permittees to allow a discharge that is not allowed by state law, is reasonable to prohibit, and/or has the potential to impact water quality. Additionally, the previous permit language lacks transparency since public notice is not required when exempting a discharge from prohibitions. Based on feedback, the division has revised the approach to incorporate requirements to address these concerns. The permit addresses providing for public notice and transparency regarding discharges and limiting allowed discharges to those with low risk of water quality impacts or for which prohibition is not practicable.

In addition, discharges in accordance with other division policies (CW5), such as the Guidance for Discharges Associated with Fire Suppression Systems, also do not have to be effectively prohibited by the permittee.

(Y) *Other discharges that the permittee will not treat as an illicit discharge and approved by the division:* The division has made substantial changes from the process in the previous permit for addressing occasional, incidental non-stormwater discharges. The division has improved transparency regarding these non stormwater discharges and has included more expectations and criteria for making determinations. There was a lack of clarity in division expectations in what non-stormwater discharges must be controlled and what constitutes adequate response



and enforcement expectations. In the previous permit, the permittee could make a determination that a discharge is not reasonably expected to be a significant contributor of pollutants to the MS4. This process has been enhanced.

Thirty percent of audited permittees allowed additional discharges without prohibition, and it was not clear that an assessment of the potential for water quality impacts or the practicability of prohibition had occurred. Additionally, during review of the completed Targeted Permit Questionnaire, the division noted that the permit language and guidance provided in the previous permit was unclear and may have resulted in regulatory mechanisms that did not comply with the permit. For example, many permittees stated that their regulatory mechanism included the list of discharges that are not considered illicit discharges in the permit. However, upon review of the submitted documentation, there is a discrepancy between the discharges in the permit and the regulatory mechanism language. For example, the “residential car washing” discharge in the permit is not the same as “non commercial vehicle washing,” which appeared in some permittee regulatory mechanisms. Additionally, many permittees indicated in the questionnaire that their regulatory mechanism did not allow for or include occasional, incidental non-stormwater discharges. However the submitted code language included examples of occasional, incidental non-stormwater discharges such as: “Water not containing pollutants,” “discharges necessary to protect public health and safety,” and “discharges from ditches.” The permittees did not provide supporting documentation or procedures for allowing these discharges. Some permittees stated in the questionnaire that they have developed a list of occasional, incidental non-stormwater discharges yet did not submit information or documentation that substantiates the occasional, incidental non-stormwater discharges, or stated that the determination is “case by case” without providing any information about the “case by case” decision-making process.

The division has identified that it is not MEP for permittees to detect and eliminate some discharges, in addition to those listed in the permit. Therefore, the renewal permit includes a process for permittees to incorporate new sources into the list of sources that do not have to be effectively prohibited. For discharges with low potential for pollution, the permit includes basic considerations and criteria for the evaluation. The criteria that the discharges with proper management are not expected to contain pollutants in concentrations that are toxic or in concentrations that would cause or contribute to a violation of a water quality standard is consistent with division practices for evaluating sources for coverage under the Low Risk Policy. The division also understands that some discharges may not be practicable to prohibit based on the absence of sufficient permitting options and existing discharge practices. The division understands that permittees have historically accepted certain discharges (e.g., charity car washes, discharges from fire suppression systems) and the division is uncertain about their impact to receiving water quality and their practicability to control. The renewal permit includes an option for discharges to be removed from being effectively prohibited without causing permittees to be in non-compliance over discharges in this category. The renewal permit requires public notification of non-stormwater discharges. The renewal permit provides a process and timeframe for submitting



discharges that are identified both before and after the effective date of this permit. The permit also includes a process for the division to review the new sources. If the division denies the discharge, the permittee may prohibit the discharge, apply for a permit modification, or request a Low Risk Policy determination for a category of discharges not meeting the permit criteria to not be effectively prohibited.

Permittees' legal authority must reflect the types of discharges that will not be detected or eliminated (effectively prohibited) in accordance with their Illicit Discharge Detection and Elimination program. Permittees may at any time determine that any of the discharges listed in this section are a significant source of pollutants and implement their illicit discharge response program. Again, permittees must update their regulatory mechanism to reflect the categories of non-stormwater discharges that will not trigger their illicit discharges response and enforcement program. Adding "and any other discharges that are determined following the procedures in the permit" to the regulatory mechanism would enable the permittee not to have to update their regulatory mechanism every time a new type of discharge is added.

- vi. Removing an Illicit Discharge: Section 61.8(11)(a)(ii)(C)(I)(c) of Regulation 61 states that "the permittee must develop and implement a plan to detect and address non-stormwater discharges, including illicit discharges and illegal dumping, to the system. The plan must include the following three components: procedures for locating priority areas likely to have illicit discharges; procedures for tracing the source of an illicit discharge; and *procedures for removing the source of the discharge* [emphasis added]."

The division has added new aspects to this existing requirement. The renewal permit includes a minimum standard and provides clarity for removing an illicit discharge to ensure that all permittees are meeting a minimum standard for illicit discharge response procedures.

This section of the permit requires the permittee to remove the source of the discharge. The division has clarified that the source of an illicit discharge is the source from which the illicit discharge originates and the spilled material, if feasible. As discussed above, this permit only requires the permittee to respond to illicit discharges in the MS4. The source must be stopped. However, the spilled material itself, if any portion of the source of the illicit discharge or the spilled material are in the MS4, must be cleaned up only if feasible.

The MS4 includes roads with drainage systems, curbs, and gutters. So, if an illicit discharge occurs in a curb and gutter or on a roadway with a drainage system, then the illicit discharge source needs to be removed. In addition, the associated material, both in and out of the MS4 and in the permitted area, needs to be removed, if feasible.

On the other hand, spills and dumped material outside of the MS4 but still in the permitted area do not have to be removed under this program, but need to be



addressed under the division's *Reporting Environmental Releases in Colorado*.

- vii. Enforcement Response: Section 61.8(11)(a)(ii)(C)(I)(b) of Regulation 61 states that “the permittee must to the extent allowable under state or local law, effectively prohibit, through ordinance or other regulatory mechanism, non-stormwater discharges into the storm sewer system, and *implement appropriate enforcement procedures and actions* [emphasis added].” Illicit discharges that are reported to the permittee and/or identified by staff during day-to-day normal work activities must be included in the enforcement response.

As stated above, 30 percent of the audited permittees did not have the legal authority to implement one or more enforcement mechanisms. In other words, their legal authority did not list one or more enforcement mechanisms used by staff. The permittee must determine all of the applicable informal, formal, and judicial enforcement mechanisms that will be used to enforce the IDDE program. The division is also clarifying that similar violations should be responded to in a uniform manner by the permittee and enforcement procedures should be transparent. The renewal permit does not pair violations with required responses. The permit requires that permittees address findings of a similar nature consistently.

Twenty percent of the audited permittees allowed for an illicit discharge to legally continue for a certain time period. This is not in compliance with Regulation 61.8(11)(ii)(C)(I)(b) which states “To the extent allowable under state or local law, effectively prohibit, through ordinance or other regulatory mechanism, non-stormwater discharges into the storm sewer system, and implement appropriate enforcement procedures and actions.” Permittees must prohibit illicit discharges and must have the ability to enforce against them immediately. This gives the permittee enforcement discretion to immediately enforce on a responsible party at any time. Permittees, however, can require the responsible party to immediately remove an illicit discharge and re-inspect at some later time. In addition, if the responsible party does not remove the illicit discharge, then the permittee can legally enforce on the responsible party and potentially assess a penalty starting from the date of the inspection.

- viii. Priority Areas: Section 61.8(11)(a)(ii)(C)(I)(c) of Regulation 61 states that “the permittee must develop and implement a plan to detect and address non-stormwater discharges, including illicit discharges and illegal dumping, to the system. The plan must include the following three components: *procedures for locating priority areas likely to have illicit discharges* [emphasis added]; procedures for tracing the source of an illicit discharge; and procedures for removing the source of the discharge.”

Locating priority areas is an important part of a stormwater program and specifically required by Regulation 61.

The concept of priority areas from the previous permit was incorporated into this section to provide information on the use of this tool. The division has added new aspects to an existing requirement by including a minimum standard to require that areas with a history of illegal dumping or past illicit discharges be determined to be



priority areas. Compliance oversight activities conducted by the division indicated that permittees were inconsistent regarding the priority areas selection.

- ix. Training: Section 61.8(11)(a)(ii)(C) of Regulation 61 states that “the permittee must develop, implement and enforce a program to detect and eliminate illicit discharges (as defined at 61.2) into the permittee's small MS4.”

The division considers training those responsible for the identification and/or response to reports of illicit discharges part of “developing and implementing” an IDDE program.

b. Recordkeeping:

This is a new section of the permit. This section lists the records that must be maintained under this requirement.

Documenting Illicit Discharges and Responses: The division has added requirements for documenting incidents of illicit discharges to clarify the requirements for maintaining records. In addition, it has been required that a centralized recordkeeping of illicit discharge be maintained that allows permittees to identify repeat occurrences and identify priority areas. The second renewal permit allows several centralized recordkeeping systems by different departments, such as police and fire departments. Permittees should effectively communicate with all other departments and entities that respond to illicit discharges in their permit area to ensure that the other departments and entities are responding to the illicit discharges in accordance with this renewal permit.

c. PDD

This is a new section of the permit. This section describes the type of information that needs to be in the PDD. As stated above, some permittees might choose to include and maintain all of the original documents in the PDD whereas other permittees might choose to simply list the applicable documents and where they can be found.

3. Construction Sites

Section 61.8(11)(a)(ii)(D)(I) of Regulation 61 states that “the permittee must develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of pollutants in stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that **would disturb** [emphasis added] one acre or more. If the division waives requirements for stormwater discharges associated with a small construction activity in accordance with 61.3(2)(f)(ii)(B), the permittee is not required to develop, implement, and/or enforce its program to reduce pollutant discharges from such a site.” Permittees should note that the requirement is for construction activities that result in a land disturbance of greater than or equal to one acre. Regulation 61 also uses the terms “would disturb.” Since that section of the Regulation was written in March 2, 2001, construction activities that are part of a larger common plan of development or sale that



disturbed one acre or more following March 2, 2001 and that have not been finally stabilized are covered under the applicable construction site definition.

The division has made substantial changes to this program area to increase transparency of division expectations and clarify that the construction sites program must be proactive in ensuring that pollutants are reduced in any stormwater runoff flowing to the MS4.

Compliance oversight activities conducted by the division indicated that minimum standards were needed in the renewal permit for many reasons. The previous permit allowed the permittee flexibility to establish minimum standards. However, that was not an adequate method to minimize pollutants to the MS4 from construction activities to the MEP because the permit did not provide a minimum standard. Minimum standards varied across permittees, as did the level to which pollutants were being controlled through effective practices. Because permittees could establish their own oversight procedures without set expectations in the permit, the economic burden of oversight varied greatly across permittees. For example, some permittees review all site plans, while others review a percentage or only certain types of site plans and not others. Some permittees inspect construction sites every 14 days and other permittees inspect construction sites 2-3 times a year or less. Compliance oversight activities also indicated that permittees were often not implementing the level of program oversight to which they committed in the 2008 program description documents. In practice, the procedures documented in permittee program description documents were not always followed or there was a discrepancy regarding what the permittee intended in the program description document and what the division interpreted from reviewing the description.

The division also has another general permit entitled Stormwater Discharges Associated with Construction Activity (COR030000), which share some similarities to the requirements in this permit. The requirements for the two permits are different in Regulation 61 and thus there are two different general permits that regulate stormwater on construction sites. Most of the requirements for the division administration of Stormwater Discharges Associated with Construction Activity general permit can be found in 61.4(3)(b) (Application Requirements for Stormwater Discharges Associated with Industrial Activity) and 61.6 (Issued Permits) and requirements for the administration of this permit can be found in 61.4(3)(c) (Application Requirements for Regulated Small Municipal Separate Storm Sewer Discharges) and 61.8(11) (Conditions for Phase II Municipal Stormwater Permits). In addition, other sections of Regulation 61 and other regulations apply to either and/or both general permits.

The current division general permit authorizing Stormwater Discharges Associated with Construction Activities (COR030000) contains minimum standards and the regulated industry and the public has indicated benefits from and preferences for this uniformity. Additionally, construction site operators have expressed to the division that the lack of clear minimum requirements in the MS4 permit creates confusion and an unlevel playing field among construction site operators across jurisdictions, and does not provide a minimum standard. Additionally, the previous permit allowed an economic advantage to permittees that did not implement an effective construction sites program that effectively required control measures for construction pollutant sources. The renewal permit contains minimum standards and creates a more level playing field among permittees and construction site operators.



The renewal permit applies to “applicable construction activities”, which is defined in the permit. Seventy percent of the audited permittees did not review site plans for all applicable construction sites. Some audited permittees had a variance for grading only sites, another audited permittee did not review site plans for public improvement sites, and another did not review sites that were less than one acre but were part of a larger common plan of development or sale of one acre or more. The permittee’s regulatory mechanism and standard operating procedures must ensure that the Construction Sites Program (from site plan review, to site inspection, to enforcement, etc.) will be implemented for *all* (public and private) applicable construction sites. In addition, the definitions for applicable construction activities and construction activity both state that routine maintenance is not considered an applicable construction activity. Permittees should note that maintenance activities regarding construction sites and control measure maintenance are different.

In addition, the renewal permit includes a definition of final stabilization. This definition was established in the division’s March 3, 2013 memo. The following information is from the memo:

When vegetation is used to achieve final stabilization, the 70% vegetation requirement applies to a uniform plant density, which means that all areas of the site that rely on a vegetative cover to achieve stabilization must be uniformly vegetated.

As provided in the bolded text above, the stormwater permit allows the permittee to use alternatives to vegetation to achieve final stabilization. All alternatives to vegetation must meet specific criteria to be considered equivalent to vegetation (see below). Permittees must ensure these criteria are met when planning for final stabilization in the Stormwater Management Plan (SWMP).

- *Stabilization must be permanent: All final stabilization methods, whether the permittee implements vegetation or an alternative to vegetation, must be permanent, and must be designed and implemented as such. Temporary measures, such as erosion control blankets that are designed to be removed or to degrade in place, are not permanent and cannot be used to meet the final stabilization requirements in the permit.*
- *ALL disturbed areas must be stabilized: Final stabilization is achieved at a facility when all disturbed areas are stabilized. Stabilization alternatives must be implemented in all disturbed areas where the permittee will not utilize vegetation to meet the 70% vegetation requirement.*
- *Alternatives must follow good practices: All stabilization practices must be selected, installed and implemented following good engineering, hydrologic and pollution control practices adequate to prevent pollution or degradation of State waters. Typically, industry-accepted criteria manuals that document the appropriate use of practices using selection criteria such as slope and slope length, soil type, flow conditions, pollutant sources, etc., will meet this standard. To help ensure that the alternate stabilization practices meet this standard, the Division recommends that a Licensed Professional Landscape Architect or other appropriately trained specialist design them. Further, the SWMP must include details specifying how any alternative stabilization practices will be installed and implemented in accordance with those good*



practices. For example, if landscape gravel cover is implemented, the permittee must rely on good landscaping design practices and specifications for permanent rock cover, including proper soil preparation, underlayment, slope limitation, etc. in accordance with the industry-accepted criteria used.

Examples of practices that may be considered for alternative stabilization include:

- *Permanent Pavement and Buildings: Permanent impervious areas, including roofed buildings, asphalt, and concrete meet the alternative stabilization criteria as long as they are designed and implemented to minimize erosion and are permanent. Note that when permanent impervious areas are part of the overall site plan and not implemented for the purposes of stabilization, it is not necessary to provide specifications for their use in the SWMP. Temporary coverings such as tarps and shelters with roofs that allow precipitation or runoff to contact underlying soils are not considered permanent stabilization practices.*
- *Hardscape: May be used where the upper soil profile is not exposed and the materials, including underlayment as necessary, are appropriate for slopes and other conditions. Hardscape must be designed to minimize erosion, e.g. must prevent rill erosion. The SWMP must include the design details including the underlayment type and fasteners. An example of an installation that does not meet the criteria of good engineering practices is spreading rock on a site without determining the necessary depth and underlayment to prevent erosion of the underlying soils.*
- *Geogrid: A geosynthetic material mainly used to permanently reinforce soil by interlocking with the soil to improve stabilization. Geosynthetic material must be designed to minimize erosion, e.g. must prevent rill erosion. Applications include base stabilization in areas slow to vegetate, highly erosive soils, steepened slopes, and embankments constructed over weak soils. A wide variety of such materials are available, for example, products such as Turf Reinforcement Mat (TRM), which provides a permanent alternative to hard armor erosion protection, and can withstand prolonged exposure to UV light with negligible degradation.*
- *Xeriscape: Landscape design that minimizes water requirements must be designed and implemented in such a way that area(s) will not have rill or other erosion between plants, including such practices as providing cover with rocks and/or bark.*
- *Compacted and Stabilized Unpaved Driving Surfaces: Includes areas such as stabilized gravel roads and parking areas. Stabilized unpaved surfaces must follow good engineering practices for slopes, preventing concentrated flow, compaction, and surface cover appropriate for traffic, etc. The surface must be designed, graded, compacted and otherwise prepared in such a way as to minimize erosion, e.g. prevent rill erosion.*

The previous permit included procedures for modifying the program description document. These procedures have been deleted from the renewal permit. Instead, renewal permittees are authorized to modify their current program description document until the applicable



date in the compliance schedule renewal permit.

Permittees have a compliance schedule in order to meet the requirements of the renewal permit. Permittees will continue to implement their program developed under the previous permit until the new program developed under the renewal permit is developed in accordance with the compliance schedule. Construction activities started under the previous permit must follow the requirements of the previous permit. Construction activities started under the previous permit include construction activities that have started the permittee's site plan approval or permitting or approval process. Simply adding a development to the land records is *not considered* a construction activity that has been started under the previous permit.

a. The following requirements apply:

i. Exclusions:

- (A) *Construction Activities with R-Factor Waiver*: This requirement is similar in both the previous permit and the renewal permit.
- (B) *Activities for County Growth Areas*: The division has determined that portions of the MS4 program must be implemented in high growth areas. Counties have expressed positive comments on being able to determine said growth areas. The division has determined that some activities can be excluded from obtaining construction permits from the county in the growth area. The division will not allow this exclusion in non-growth areas. That has not been determined to meet the MEP standard.
 - 1) Construction activities on sites that began as part of a plan of development prior to the effective date of this permit: Applicable construction activities in the growth area of a county that have started the site plan (as defined by this permit) review process, started construction, or finished construction under a previous permit and its associated requirements do not have to comply with the requirements in the renewal permit. Applicable construction activities or development that are only delineated on a land use map and have not started the site plan review process, started construction, or finished construction must comply with the requirements in this renewal permit, including the compliance schedule in Part I.H.
 - 2) Large lot single family development: The requirements in this section of the renewal permit do not apply to construction activities for large lot single family development sites in the growth area of a county.
 - 3) Agricultural facilities and structures on agricultural zoned lands: The requirements in this section of the renewal permit do not apply to construction activities for agricultural facilities and structures on agricultural zoned land in the growth area of a county.
 - 4) Facilities associated with oil and gas exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary



to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be “construction activity”: Stormwater discharges associated with construction activities in the growth area of a county directly related to oil and gas exploration, production, processing, and treatment operations or transmission facilities are regulated under the Colorado Discharge Permit System Regulations (5CCR 1002-61), and require coverage under this permit in accordance with that regulation. However, the requirements in this section of the renewal permit do not apply to stormwater discharges associated with these oil and gas related construction activities, to the extent that the references are limited by the federal Energy Policy Act of 2005.

- ii. Regulatory Mechanism: Section 61.8(11)(a)(ii)(D)(II)(a) of Regulation 61 states that the program must include the development and implementation of “an ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state or local law.”

The division has added new aspects to this existing requirement by adding the minimum elements to be addressed in the regulatory mechanism. These minimum elements were identified by the division based on audit findings and reviewing the completed Targeted Permit Questionnaires. For example, some permittees stated that the regulatory mechanism requires pollutant control practices to “be implemented and maintained,” yet the submitted code language for some permittees only requires controls to be maintained, but not implemented. Therefore, according to the example code, the lack of pollutant control practices on a construction site is not automatically considered a violation by the permittee. For others, the submitted language requires erosion and sediment controls and not waste controls. The renewal permit specifies the elements that are required in the regulatory mechanism. Also, the permittee must ensure that their regulatory mechanisms are in compliance with this permit or are changed appropriately.

Permittees are advised that Regulation 61 specifically requires a regulatory mechanism for Illicit Discharges Detection and Elimination program [Section 61.8(11)(a)(ii)(C)(I)(b)] **and** the Construction Sites program [Section 61.8(11)(a)(ii)(D)(II)(a)]. Although the two programs can share the same regulatory mechanism, the permittee must ensure that the regulatory mechanism(s) contains the legal authority for the permittee to conduct all actions associated with the two programs. Some permittees have some actions in other parts of their regulatory mechanism, such as the right of entry. This is allowable, but permittees must document the applicable sections/parts of their regulatory mechanism that allows them the legal authority to conduct all activities under this program.

- iii. Regulatory Mechanism Exemptions: The division added this section to address exceptions to the permittee’s regulatory mechanism. Seventy percent of the audited permittees allowed some sort of exemption, waiver, or variance and therefore did not review site plans for all applicable construction sites. Regulation Section 61.8(11)(a)(ii)(D)(II)(a) does not allow any exemptions, waivers, or variances within the regulatory mechanism. Whether the site is a grading only site or public



improvement site, all applicable construction sites are covered under this renewal permit.

The division understands that exemptions, waivers, and variances are a legal process in the permittee's regulatory mechanism under a variety of programs and are relied on to address unforeseen circumstances without relying on revisions to regulatory mechanisms. However, the division has added clarity that exclusions, exemptions, waivers, and variances cannot be implemented in a manner that violates Regulation 61.

- iv. Control Measure Requirements: Section 61.8(11)(a)(ii)(D)(II) of Regulation 61 states that “the program must be developed and implemented to assure adequate design, implementation, and maintenance of BMPs at construction sites within the MS4 to reduce pollutant discharges and protect water quality.” Section 61.8(11)(a)(ii)(D)(II)(b) of Regulation 61 states that the program must include the development and implementation of “requirements for construction site operators to implement appropriate erosion and sediment control BMPs.” Section 61.8(11)(a)(ii)(D)(II)(c) of Regulation 61 states that the program must include the development and implementation of “requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.”

Volume 64, number 235, page 68758 of the Phase II Rule, EPA states:

Over a short period of time, storm water runoff from construction site activity can contribute more pollutants, including sediment, to a receiving stream than had been deposited over several decades (see section I.B.3). Storm water runoff from construction sites can include pollutants other than sediment, such as phosphorus and nitrogen, pesticides, petroleum derivatives, construction chemicals, and solid wastes that may become mobilized when land surfaces are disturbed.

Seventy percent of the audited permittees had at least one active construction site. For all of the audited permittees with an active construction site, division staff found inadequate control measures at one or more construction sites. In addition, at six of the seven audited permittees with active construction sites, division staff found at least one active construction site with control measures requiring maintenance. Inadequate sediment controls are a primary factor in construction site non-compliance. The division has determined that minimum requirements are needed and has provided minimum requirements for control measures for all construction sites. The previous permit had no minimum requirements for control measures.

Note that this section concerns construction sites and not illicit discharges. Refer to the previous section of the fact sheet for information concerning illicit discharges such as residential sump pumps.

This section has requirements to address the selection, installation, implementation, and maintenance of different types of control measures. The permittee is required to



determine if the control measure is adequate and to develop design manuals and specifications (if applicable to the permittee). Some permittees have developed their own design manuals and specifications for control measures and other permittees allow site plans with design specifications from other approved sources. The renewal permit *does not* prescribe a specific control measure or the exact wording of design specifications. Permittees have the flexibility to ensure that the construction operator selects, installs, implements, and maintains control measures tailored to the specific construction site.

It is important for the permittee to ensure that applicable construction sites have appropriate control measures. Permittees must consider many factors when requiring construction operators to install control measures at an applicable construction site. Appropriate control measures should cover all of the phases of the construction site, treat all sources of pollutants at the construction site, address specific activities at the construction site, and be included on the site plan. Many of these requirements overlap the site plan requirement discussed below.

- (A) Appropriate control measures must be implemented prior to the start of “construction activity” or phase, and continued through final stabilization. This section provides requirements for the timing of control measures. The timing of control measures is important in reducing pollutant discharges and protecting water quality. Permittees must ensure that construction operators select, install, implement, and maintain control measures prior to the start of construction through final stabilization. Some applicable construction sites will be short term and the same control measures might be able to be used (if installed and maintained properly) throughout the project duration. Other, longer term, applicable construction sites will need different control measures during the different phases of the project.
- (B) Control Measures must be selected, designed, installed, implemented, and maintained to provide control for all potential pollutant sources associated with each construction activity to reduce pollutant discharges from the applicable construction site. Permittees should evaluate the applicable construction site’s potential pollutant sources and ensure that the control measures are selected, installed, implemented, and maintained to reduce any discharges of pollutants, such as but not limited to sediment, construction site waste, trash, discarded building materials, concrete truck washout, chemicals, sanitary waste, and contaminated soils. This section lists the minimum activities that must be addressed by control measures. This section does not provide design specifications for control measures. The requirements of this section do not apply to control measures that evaporate, evapotranspire, or infiltrate stormwater. These requirements apply to control measures that reduce pollutant discharges from the site.

In-stream control measures do not comply with this section of the permit. This section of Regulation 61 requires that pollutant discharges be reduced from the construction activities to the MS4. In other words, pollutants must be reduced from discharges from the applicable construction site *before* it is discharged to the MS4.



In-stream facilities reduce pollutants *after* the discharge has entered a water of the state.

- 1) Land disturbance and storage of soils. Suspended sediment is a pollutant of concern for almost all construction sites. Control measures for suspended sediment need to be designed and installed to be appropriate for the expected flow rate, duration, and flow conditions (i.e., sheet or concentrated flow).
 - 2) Vehicle tracking. Control measures must be implemented to minimize sediment being transported from disturbed areas to paved area from vehicle tracking, unless runoff from the paved area does not discharge or is directed to a control measure meeting Part I.E.1.a.iii(C)1), above (disturbed and stored soils).
 - 3) Loading and unloading operations.
 - 4) Outdoor storage of construction site materials, building materials, fertilizers, and chemicals.
 - 5) Bulk storage of materials. Bulk storage for petroleum products and any other chemicals shall have secondary containment or equivalent protection to contain all spills and prevent any spilled materials from entering the MS4.
 - 6) Vehicle and equipment maintenance and fueling.
 - 7) Significant dust or particulate generating processes.
 - 8) Routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents, and oils.
 - 9) Concrete truck/equipment washing, including the concrete truck chute and associated fixtures and equipment. Many applicable construction sites involve the use of concrete. Some sites allow concrete truck, equipment, and tool washout on site and others do not. If concrete washout is determined to be a pollutant of concern, the permittee must ensure that these activities do not result in the contribution of pollutants associated with the washing activity to stormwater runoff. Concrete washout water shall not be discharged to the MS4.
 - 10) Dedicated asphalt and concrete batch plants.
 - 11) Other areas or operations where spills can occur.
 - 12) Other non-stormwater discharges including construction dewatering and wash water that may contribute pollutants to state waters.
- (C) Control measures must be included on the approved site plan. Requirements for site plans are discussed below. Regulation 61 uses the term “site plan,” which is the term used in the renewal permit. For clarity, the division compiled all of the suggested terms into a definition of a site plan.



- v. Site Plans: Section 61.8(11)(a)(ii)(D)(II)(d) of Regulation 61 states that the program must include the development and implementation of “procedures for site plan review which incorporate consideration of potential water quality impacts.”

The previous permit required the permittee to develop, implement, and document procedures for site plan review which incorporated consideration of water quality impacts. The previous permit did not provide any minimum requirements for the contents of a site plan or the permittee’s site plan review process. This caused confusion amongst permittees and as stated above, 70 percent of the audited permittees did not review site plans for all applicable construction sites. Some audited permittees had a variance for grading-only sites, another audited permittee did not review site plans for public improvement sites, and another did not review sites that were less than one acre but were part of a larger common plan of development or sale.

A site plan is a control measure. The primary use of the site plan is by the construction operator. The site plan is a document that the construction operator and its staff can use to budget, purchase, locate, install, and maintain the control measures. The site plan is an important tool for all staff on the construction site and to help reduce pollutant discharges and protect water quality. Site plans can also be a useful tool during oversight or enforcement actions taken by the permittee on the construction operator. The site plan is also an important control measure for the permittee and the division to use during inspections and audits. Permittees do not have to verify that the site plan reflects current conditions during each inspection.

This section also requires that the site plan contain installation and implementation specifications or reference a document with installation and implementation specifications. Permittees have the flexibility to determine which documents with installation and implementation specifications are acceptable.

The division has made substantial changes to this section by clarifying minimum requirements for site plans and the permittee’s site plan review. It should be noted that all applicable construction sites need site plans (also known as stormwater management plans) under the Stormwater Discharges Associated with Construction Activity general permit. This renewal permit does not prescribe the specific contents of a site plan, but only requires that a site plan include the control measures that will be used and installation and implementation specifications for each control measure.

The division identified the lack of clarity as a basic gap in the permit that led to variability in the site plan review process and inadequate site plans being implemented. The lack of a minimum standard allowed an economic discrepancy between permittees and increased the potential for inadequate site plans to be implemented. Permittee feedback during oversight activities indicated that a field inspector may have little recourse to require correction of an inadequate site plan because of the permittee’s internal processes. This renewal language provides a uniform minimum standard. The division has determined that reviewing all site plans is necessary for the permittee to have a program that is designed to prevent inadequate site plans from being implemented.



Some permittees require the same requirements in a site plan/stormwater management plan as the Stormwater Discharges Associated with Construction Activity general permit. Although this is allowable under this permit, permittees that have this requirement in their procedures should be advised that they must ensure that all elements of a site plan/stormwater management plan required under Stormwater Discharges Associated with Construction Activity general permit are present, which contains many more requirements than this renewal permit.

- (A) *Renewal Permittees*: This section of the permit provides clarity to permittees to continue to implement their current PDDs (even if there is no “site plan” requirements or review) until an updated Construction Sites program has been developed in accordance with Part I.H.
- (B) *Site Plan Requirement*: This section has been added to the renewal permit. The previous permit required the permittee to develop, implement, and enforce on a construction sites program that included “site plan review which incorporate consideration of potential water quality impacts.” This section of the renewal permit provides more information on this requirement.
- (C) *Initial Site Plan Review*: Site plan review is not just a paperwork exercise and is required by Regulation 61. As stated above, site plans are an important control measure and it helps the construction operator budget for the control measures that will be needed to comply with this renewal permit and helps the construction operator and staff locate, install, and maintain control measure to protect water quality.

This section of the renewal permit outlines the three items that permittees must include in their site plan review for applicable construction sites.

- vi. **Site Inspection**: Section 61.8(11)(a)(ii)(D)(II)(f) of Regulation 61 states that the program must include the development and implementation of “procedures for *site inspection* [emphasis added] and enforcement of control measures.”

The previous permit simply required that the permittee conduct site inspections and provided no minimum requirements for the inspections. As stated above, seventy percent of the audited permittees had at least one active construction site. Of those permittees with at least one active construction site, division staff found that 100 percent of the permittees had one or more construction sites with inadequate control measures. In addition, at six of the seven audited permittees with active construction sites, division staff found at least one active construction site with control measures requiring maintenance.

A review of the 2012 annual reports comparing the number of active construction sites and “full” inspections indicated that less than 10% of permittees conduct monthly inspections and approximately 25% of permittees currently conduct 9 or more inspections per year. Approximately 50% of permittees conduct inspections less



frequent than quarterly. These numbers are based on all sites, including sites that may be inactive or temporarily stabilized.

Considering the existing rate of inspections and the high rate of inadequate control measures and inadequately maintained control measures at the active construction sites audited, the division added requirements to the site inspection section of the renewal permit.

Construction operators have to conduct site inspections in accordance with their permit coverage under the Stormwater Discharges Associated with Construction Activity general permit. These operator inspections *are not* considered site inspections under this renewal permit. Regulation 61 specifically requires that the permittee conduct site inspections and this permit clarifies the frequency and scope of the inspections.

Permittees should understand that they do not have the legal authority to conduct compliance assurance activities for the Stormwater Discharges Associated with Construction Activity general permit. The division conducts all compliance assurance activities associated with this statewide general permit. The permittee can, however, develop a regulatory mechanism to give them the legal authority and standard operating procedures to implement requirements similar to the Stormwater Discharges Associated with Construction Activity general permit.

Although the renewal permit lists the minimum inspection frequencies, permittees are responsible for reducing pollutant discharges from applicable construction sites to protect water quality. Permittees should note that in some cases, more frequent inspections will be required to ensure that adequate control measures are implemented.

- (A) *Renewal Permittees*: The previous permit did not have specific requirements for site inspections. This section of the permit provides clarity to permittees to continue to implement their current PDDs (even if there is no site inspection frequency established) until an updated Construction Sites program has been developed in accordance with Part I.H.
- (B) *Site Inspection Frequency Exclusion*: This section is a new section to the renewal permit to include several types of sites from the site inspection frequency. Some permittees permit individual homes within a housing development. Permittees will not have to inspect these individual homes if the permittee is inspecting the entire development. Inspection frequency exclusions are also allowed during winter conditions, which likely would only exist in high elevation portions of some permittee's permit area.



- (C) *Routine Inspection*: This section contains the minimum requirements of a routine inspection. The minimum inspection requirements were developed based on the audited permittee results and the division’s experience in inspecting construction sites under the Stormwater Discharges Associated with Construction Activity general permit.

Routine inspections must assess the control measures, the pollutant sources, and the discharge points of the applicable construction site. Regarding discharge points, Section 65.14 of Regulation 65 states that “The Commission affirms that the intent of Regulation 65 is to allow the division to make a finding of violation where a discharge enters a storm sewer inlet or pipe based on the premise that such discharge will reach state waters, either directly or as a result of a subsequent storm or other unrelated flow event.” The permittee should, therefore, inspect the perimeter of the applicable construction sites as well as active stormwater inlets. Most likely, water quality has been or will be affected if there is a discharge of pollutants from a construction site.

- (D) *Reduced Site Inspection*: The renewal permit allows for the inspection frequency to be reduced for inactive sites, sites within the Stormwater Management System Administrator’s Program, staff vacancies, and indicator inspections. Permittees have the flexibility to not allow these reduced site inspections and require routine inspections for all applicable construction sites to reduce the discharge of pollutants and protect water quality.

Construction activity can be halted for a variety of reasons—construction operator company bankruptcy or financing issues, contractor scheduling conflicts, sale of the site from one contractor to another, etc. Most inactive construction sites are not stabilized and still need control measures and inspections. Therefore, the renewal permit includes reduced inspection frequency for sites where construction activity has been halted but not yet finally stabilized.

The permit also includes a reduction in frequency for construction activities operated by a participant in a division designated Stormwater Management System Administrator’s Program to address statutory direction in accordance with Article 8 of title 25, Colorado Revised Statutes, and to recognize the high level of compliance observed by the division at participant sites.

Many permittees have limited staff for the inspection portion of this program and need more flexibility in the inspection frequency. The routine inspection frequency could be difficult to meet due to staff vacancies or temporary leave. The division anticipates that permittees will only use this exclusion once a year.

Indicator inspections are sometime called reconnaissance, drive-by, or screening inspections and if the permittee uses these types of inspections, will not have to conduct routine inspections every 45 days. Instead, the permittee will only have to do routine inspections every 90 days if they also conduct indicator inspections every 14 days.



(E) *Compliance Inspection*: This type of inspection addresses increased inspection frequencies in response to the permittee’s determination of an inadequate control measure during another type of inspection. It should be noted that this inspection frequency does not apply to a permittee determination of a control measure requiring routine maintenance during another type of inspection. This is the only type of inspection that can be conducted by the construction operator and the operator must submit a report, including photographs, to the permittee.

- vii. Enforcement Response: Section 61.8(11)(a)(ii)(D)(II)(f) of Regulation 61 states that the program must include the development and implementation of “procedures for site inspection and *enforcement* [emphasis added] of control measures.”

The division has determined it is practicable and necessary for permittees to develop and implement an enforcement response program that allows escalated responses when necessary. The program must be able to obtain proactive compliance from chronic violators that repeatedly violate the construction sites program requirements. The program must also include sanctions adequate to obtain compliance from recalcitrant violators. All of these elements are essential to effectively requiring that controls be implemented. The previous permit allowed the permittee wide flexibility in developing and implementing procedures for enforcement of control measure. The permittee’s enforcement response processes must convey that construction sites are expected to be in compliance and the permittee cannot allow a site to oscillate in and out of compliance without escalating enforcement.

Seventy percent of the audited permittees allowed construction operators a time period to correct the inadequate control measures and control measures requiring routine maintenance found during inspections without being in violation. This allows a timeframe for the applicable construction site to avoid implementing appropriate erosion and sediment control measure , reducing pollutant discharges, and protecting water quality as required by Regulation 61. The permittee has the flexibility to develop and implement procedures to escalate enforcement when it is determined that corrections to noncompliance are not made in a timely manner. The permittee, however, cannot provide a “grace period” from potential enforcement liability for the time period that it takes to correct inadequate control measures and control measures requiring routine maintenance. For example, the permittee can require the inadequate control measures or control measures requiring routine maintenance to be corrected immediately, and establish enforcement escalation criteria that allow timely returns to compliance to not be escalated to formal enforcement procedures.

Fifty percent of audited permittees allowed construction operators to chronically fail to implement adequate control measures and to fail to maintain control measures over the course of several permittee inspections of the site. For example, one permittee noted slope protection was needed for one portion of the site in 23 inspection reports over a 2 year period. The issue was never escalated. This section of the permit requires permittees to have processes and sanctions to minimize the occurrence of, and obtain compliance from, chronic and recalcitrant violators of control measure requirements.



- (A) The permit does not pair violations with required responses. The renewal permit requires permittees to address findings of a similar nature in a consistent manner. Permittees have the flexibility to determine how each finding or types of findings will be addressed.
 - (B) The renewal permit requires that enforcement procedures include information, formal, and judicial enforcement responses. The permittee has the flexibility to determine the difference in a “finding,” “enforcement action,” and “corrective action” or use other terms.
- viii. Training: Section 61.8(11)(a)(ii)(D)(I) of Regulation 61 states that “the permittee must develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acre.” In addition, section 61.8(11)(a)(ii)(D)(II)(b) of Regulation 61 states that the program must include the development and implementation of “requirements for construction site operators to implement appropriate erosion and sediment control BMPs.”

The division has determined that providing information to construction operators is an important part of a transparent and successful construction sites program. The requirements have not changed from the previous permit. Permittees have flexibility on the format of the training, which can be information on the permittee’s web site, a packet of information given to the construction operator, and/or a pre-construction meeting with permittee staff and the construction operator to explain the permittee’s construction sites program and the construction operator’s responsibilities.

- ix. For Applicable Construction Activities that Overlap Multiple Permit Areas: Section 61.1(1)(c) in Regulation 61 states “Nothing in these regulations shall be construed to limit a local government’s authority to impose land-use or zoning requirements or other limitations on the activities subject to these regulations.”

The division has expressly allowed co-regulating MS4 permittees to enter into an agreement for oversight of sites that overlap multiple permit areas. Stakeholder discussion indicated that sites that occur across multiple jurisdictions are subject to multiple inspection standards and requirements and place an unreasonable burden on construction contractors in meeting different standards and requirements for the same site. The example provided by stakeholders was the FasTracks transit project that passed through multiple permittee jurisdictions. Feedback indicated that the permittees and the construction industry wanted a mechanism in the permit that would allow co-regulating MS4 permittees to enter into agreements that would allow the site to adhere to one set of standards and requirements. The language in the renewal permit is intended to allow such arrangements between co-regulating MS4 permittees for overlapping sites as long as an agreement between the entities is in place for one or more MS4 permittees. The agreement must clearly identify the construction sites standards that will be applicable to the site and that each co-regulating MS4 permittee has the authority to inspect and enforce the selected



standards within its permit area to allow another permittee's construction sites standards to be implemented.

b. Recordkeeping

This is a new section of the permit. This section lists the records that must be maintained under this requirement.

Site Inspection: The division has added requirements for documenting oversight and response for construction activities to clarify the requirements under the previous permit for maintaining records. Minimum standards for inspection documentation have been added to the renewal permit.

The inspection documentation requirements are based on inspection documentation during compliance oversight activities conducted by the division between 2009 and 2012 and as part of the comprehensive overhaul of this program area. Division compliance activities indicated that documentation between different permittees and among staff within the same permittee was highly variable. It was difficult to confirm repeat violations, uncorrected violations, or a return to compliance when inspection forms did not reflect consistent extent of oversight. In some cases, the inspection form structurally allowed gaps in oversight because the form lacked appropriate prompts. For example, control measure categories were left off the form and therefore may not be reviewed by inspection staff, or the form lacked a prompt to indicate the condition of the control measure (adequate, in violation, missing, or in need of maintenance). In some cases, the status of control measures from multiple lots was noted on the same form, which created difficulty in tracking compliance on follow up inspections and was a barrier to enforcement for chronic and recalcitrant violators. The lack of minimum requirements for inspection documentation is a barrier to a compliant construction sites program and potential enforcement.

Permittees do not have to verify that the site conditions match the approved site plan during each inspection. Permittees may, however, choose to verify that the site conditions match the approved site plan during each inspection. Most permittees will need to cite how the site conditions did not match the approved site plan and thus resulted in environmental damage for a legally defensible enforcement action. In the division's enforcement experience, a well documented inspection leads to legally defensible enforcement actions.

c. PDD

This is a new section of the permit. This section describes the type of information that needs to be in the PDD. As stated above, some permittees might choose to include and maintain all of the original documents in the PDD whereas other permittees might choose to simply list the applicable documents and where they can be found.

4. Post-Construction Stormwater Management in New Development and Redevelopment



Section 61.8(11)(a)(ii)(E)(I) of Regulation 61 requires that “the permittee must develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment sites that disturb greater than or equal to one acre, including sites less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts.”

The Post-Construction Stormwater Management in New Development and Redevelopment program requires control measures after construction is completed to prevent or minimize water quality impacts associated with the long-term use of the areas that have undergone new development and redevelopment. Examples of control measures include permanent water quality ponds at housing developments, vegetated swales designed to increase infiltration and remove pollutants from runoff from new roads, minimizing impervious area or encouraging infiltration at new commercial developments, etc.

Eighty percent of audited permittees failed to require post-construction control measures for all or portions of at least one development site of one acre or greater. Note, the previous permit allowed no exemptions to the requirements for a development site. Of those, only 20 percent of those audited permittees had adequate regulatory measures and standard operating procedures and the remaining audited permittees had findings related to an inadequate regulatory mechanism and/or standard operating procedure. Sixty percent of audited permittees had at least one post-construction control measure audited that was inadequate or needed maintenance. Fifty percent of audited permittees had at least one post-construction control measure that was not built in accordance with the approved site plan.

The root cause of the findings was often because the previous permit did not specify minimum standards for this program element and permittees implemented variable standards for post construction control measures. Similarly to the construction sites program, implementing different design standards and standard operating procedures for control measures is not leading to the prevention or minimization of water quality impacts as required by Regulation 61. In addition, inconsistent design standards and standard operating procedures created an uneven economic environment among permittees and property owners or land developers. Permittees that require a robust design standard (e.g., water quality capture volume-WQCV) and require the property owner to bear the cost to implement the design standard are at an economic disadvantage over those that have not required controls, or typically waive the requirements for controls for a variety of sites.

The audit findings have lead the division to make significant changes to this program area in the renewal permit. The renewal permit defines and focuses on controls from applicable development sites instead of a narrow focus on impervious area, and this standard applies to both pervious and impervious areas. In addition, the renewal permit offers the permittee the flexibility to exempt many types of applicable development sites from installing post-construction control measures. In many cases, however, pervious areas will not contribute flow during a water quality capture volume (WQCV) event and therefore not result in additional or expanded controls being needed.



Permittees should understand that this section of the permit reflects the Colorado Discharge Permit System (CDPS) program and not the TMDL program—two entirely different regulations and programs. Although, CDPS permits sometimes implement a TMDL (see Part III of this permit), this section reflects the CDPS program and Regulation 61. Flow is not listed as a pollutant in Part I.J. The permit and Regulation 61, however, are designed to reduce the discharge of pollutants from stormwater runoff.

In addition, permittees should also note that this CDPS permit is independent to water rights administered by the Division of Water Resources. Although the permit allows the retention, reuse, evapotranspiration, and evaporation of stormwater to prevent or minimize pollutants from stormwater, this permit in no way administers the water rights. Some permittees have allowed the retention or reuse of stormwater, but only after acquiring a water right through the Division of Water Resources. Permittees must comply with the Division of Water Resources before approving control measures that retain, reuse, or provide for infiltration, evapotranspiration, or evaporation of water. This process with the Division of Water Resources might require an augmentation plan and associated water right.

a. The following requirements apply:

- i. Excluded Sites: The previous permit did not exclude any types of new development and redevelopment sites from post-construction control measure requirements. The division has added this section in the renewal permit to provide exclusions from coverage in the permittee’s post construction program. Permittees should understand that the allowance of these exclusions for post-construction control measures could result in water quality impacts. Permittees are not required to allow these exclusions.

(A) *Pavement Management Sites*: The renewal permit includes terms and conditions that evolved from extensive discussion with permittees regarding permanent control measures for roadway sites, including pavement management and roadway redevelopment (discussed below). This broad based discussion originated from division compliance oversight activities which noted that several permittees did not consistently include post-construction control measures on roadway sites that involved existing roads. A key aspect of stakeholder concern involved the economics of adding post-construction control measures to address each roadway site because linear sites do not typically have access to land outside of the right-of-way for more cost effective control measures. Stakeholders provided narrative examples of sites where control measures could cost more than, or a substantial portion of, the roadway site and this cost would lead to fewer roadway and related roadway safety sites to be completed.

For example, Douglas County provided a memo to the division on August 30, 2013 titled Permanent Water Quality: 100% Water Quality Capture and Treatment Scenario. The memo “provides a summary of permanent water quality improvements for a hypothetical intersection reconstruction site located in Douglas County. The design and costs included in this memorandum are based solely on the conceptual design that was completed at the request of Douglas County. The conceptual design was completed to develop comparative costs associated with various water quality infrastructure facilities.” At issue is the cost to provide



WQCV from new impervious areas from roadway sites. The conceptual design reviewed two scenarios for treatment. One scenario included treatment of other paved areas that were not part of the site, but were selected based on reduced cost of a similar cover type (pavement). The other scenario designed a treatment system that treated the new impervious roadway. The increased flexibility of trading areas to be treated allowed a much lower cost than a requirement to treat the new impervious area based on the conceptual site. In this renewal permit, a constrained site design standard is intended to provide for flexibility in these scenarios in lieu of specific conditions regarding trading redeveloped areas for existing developed areas. One reason a constrained site design standard was preferred over a trading concept is the difficulty in tracking existing developed areas relative to MS4 permit terms and requirements and variable timelines for when existing developed areas are redeveloped relative to making trading a permit requirement. The division has and continues to encourage permittees to go beyond the MEP standard established in this permit by implementing control measures for currently developed areas.

The division provided information to permittees on this topic via two memos dated March 14, 2011 and January 20, 2012. The January 20, 2012 memo stated that the division acknowledged that the permit lacked clarity regarding the requirements for permanent control measures for roadway redevelopment sites and the memo stated that the division intended to limit oversight of the post construction control measure requirements for the remainder of the permit term. The memo further described the limits of division oversight in this program area. The division has determined that there are site scenarios, which add impervious area to existing roadway, that are reasonable to exclude from the post-construction requirements. The exclusions were developed based on permittee discussion and feedback during the Water Quality Forum-MS4 work group meetings.

Stakeholder input expressed concern regarding activities related to pavement management and a desire for clear definitions of activities that are considered pavement management and will not require post-construction control measures. Stakeholder input also expressed a preference for allowing additional adjacent paved areas without a requirement for a permanent control measure. The division and stakeholders developed a draft framework through the Water Quality Forum-MS4 Issues workgroup. Many permittees are members of the MS4 Issues work group. The division has provided an exclusion of roadway redevelopment in the renewal permit. The exclusion provides a framework for adding impervious area without requiring a permanent water quality control measure. The division also excludes maintenance and pavement management activities by providing a definition of pavement management in the renewal permit.

- (B) *Excluded Roadway Redevelopment:* Bike paths, paved shoulders, and turn lanes were specifically mentioned by stakeholders as sites that do not add capacity to the roadway but increase safety and should be allowed without triggering post-construction control measures. The renewal permit excludes (from post-construction control measures) the addition of 8.25 feet of new impervious area to the width of an existing roadway. This size allows the desired adjacent safety



pavement sites and was determined to add less than one acre of impervious area per mile of roadway. This is intended to mirror the regulatory standard for controls on sites exceeding one acre based on the assumption that the potential for water quality impacts on the receiving water and the practicability of control are reduced when sites are spread out over a long linear area.

- (C) *Excluded Existing Roadway Areas*: The renewal permit also provides an exclusion from implementing post-construction control measures that address existing impervious areas for redevelopment of existing roadways as long as the site does not increase the width of the road by more than two times the original width or more, on average (e.g., two-lane road to a four-lane road). For example, a site that doubles the width of the road requires post-construction control measures for the new impervious area. This applies when a portion of a site is an existing roadway. Only the area of the existing roadway is excluded.

This exclusion is based on a determination that it may not be practicable for certain sites to essentially retrofit the existing portion of a site to be treated by the post-construction control measure. For sites not meeting this exclusion, substantial roadway reconstruction increases opportunities and the practicability for the installation of post-construction control measures.

- (D) *Aboveground and Underground Utilities*: Stakeholder input expressed a preference for excluding aboveground and underground sites (e.g., underground utilities) that do not permanently alter the surface from the permanent water quality control measure requirements. The division has excluded activities for the installation or maintenance of aboveground and underground utilities if the activity does not permanently alter the terrain, ground cover, or drainage patterns of the site when compared to the conditions that existed prior to construction.
- (E) *Large Lot Single Family Sites*: Infiltrating stormwater runoff can be an important tool in preventing or minimizing water quality impacts. Volume 64, number 235, page 68759 of the Phase II Rule states that

Reducing pollutant concentrations in storm water after the discharge enters a storm sewer system is often more expensive and less efficient than preventing or reducing pollutants at the source. Increased human activity associated with development often results in increased pollutant loading from storm water discharges.

In addition, Volume 64, number 235, page 68760 of the Phase II Rule also states

Minimizing directly connected impervious areas (DCIAs) is a drainage strategy that seeks to reduce paved areas and directs storm water runoff to landscaped areas or to structural controls such as grass swales or buffer strips. This strategy can slow the rate of runoff, reduce runoff volumes, attenuate peak flows, and encourage filtering and infiltration of storm water.



Douglas County conducted a study on runoff from large lots in 2012. The study concluded that

Applying the infiltration field test results from the Orth property to large residential lots with imperviousness values up to 19 percent indicated that most, if not all, of the runoff would naturally infiltrate within the limits on the property. An impervious value of 20 percent was selected as a reasonable threshold for residential lots 2.5 acres and larger. Based on the evaluation conducted, the level of water quality treatment via natural infiltration and vegetative filtering on large residential lots with an imperviousness less than 20 percent appears comparable to or better than conventional treatment best management practices such as extended detention basins.

This renewal permit allows the permittee to exclude large-lot single family sites from installing permanent control measure if the lot imperviousness is less than 10 percent. Colorado has varied soil conditions, geology, and vegetation, so the division cannot apply the Douglas County study (20 percent imperviousness) statewide. The renewal permit allows the exclusion of up to a total lot imperviousness of 20 percent when a watershed-specific study shows that expected soil and vegetation conditions are suitable for infiltration/filtration of the WQCV for a typical site of greater than or equal to 2.5 acres. In addition, the permittee must accept the study as applicable within its MS4 boundaries. This exclusion does not apply to commercial or industrial development sites.

- (F) *Non-Residential and Non-Commercial Infiltration Conditions:* As stated above, infiltrating stormwater runoff can be an important tool in preventing or minimizing water quality impacts. Similar to the Large Lot Single Family Sites exclusion, the Infiltration Conditions exclusion is applicable to development sites that use infiltration as the control measure , but does not include residential, commercial, or industrial development. No minimum lot sizes or total lot impervious area thresholds have been established for this exclusion because no studies in Colorado have been submitted to the division. The division foresees this exclusion to be applied to only a few types of development sites with large pervious areas, such as parks, and no areas of concentrated flows. Permittees should note that stream stabilization and trail sites are excluded below.

Similar to the Large Lot Single Family Sites exclusion, this exclusion does not remove the requirement for a permanent control measure. This exclusion is for development sites that do not need additional terms and conditions for oversight due to the nature of the infiltration control measure.

- (G) *Sites with Land Disturbance to Undeveloped Land that will Remain Undeveloped:* This exclusion is similar to the large lot single family site and non-residential and non-commercial infiltration conditions sites in that use infiltration as the control measure.



- (H) *Stream Stabilization Sites*: This exclusion is similar to the large lot single family site and non-residential and non-commercial infiltration conditions sites in that use infiltration as the control measure.
 - (I) *Trails*: This exclusion is similar to the large lot single family site and non-residential and non-commercial infiltration conditions sites in that use infiltration as the control measure.
 - (J) *Oil and Gas Exploration*: Due to the temporary nature of oil and gas exploration activities, permittees can exclude these types of sites from installing permanent control measures. Permittees should note that many oil and gas exploration activities will still need to meet the requirements in the Construction Sites section of the permit.
 - (K) *County Growth Areas*: As stated above, County growth areas are not urbanized areas, but are still in the permit area. This exclusion gives county permittees the flexibility to exclude requiring post-construction control measures for the listed types of applicable development sites in the growth areas only. County permittees must still require post-construction control measures in the urbanized areas of the permit area.
- ii. **Regulatory Mechanism**: Section 61.8(11)(a)(ii)(E)(II)(b) of Regulation 61 requires that “the permittee must use an ordinance or other regulatory mechanism to address post construction runoff from new development and redevelopment sites to the extent allowable under state or local law.”
- Eighty percent of audited permittees had inadequate regulatory mechanisms and/or standard operating procedures. The division has added the minimum elements to be addressed in the regulatory mechanism. Local laws the permittee has authority to change will not be considered constraints.
- All required control measures do not need to be located within the permittee’s permit area. The permit requires mechanisms, such as an intergovernmental agreement (IGA) or memorandum of understanding (MOU), for control measures used to meet the requirements of this permit, but outside the jurisdictional control of the permittee. For example, if stormwater from a development site at the edge of one permittee’s boundary will be treated by a control measure within another permittee’s permit area, an IGA or MOU should be in place to clarify which permittee (or how each permittee) will fund and provide the applicable staff and equipment to perform any necessary maintenance.
- iii. **Regulatory Mechanism Exemptions**: As stated above, 80 percent of audited permittees had inadequate regulatory mechanisms and/or standard operating procedures. Many of the audited permittees had waivers for types of sites, such as sites only involving grading, roadway sites, or public improvement sites. It should be noted that the previous permit did not allow for any exemptions, but the renewal permit allows for many types of exemptions.



The division added this section to address exceptions to the permittee’s regulatory mechanism. The division understands that exemptions, waivers, and variances are often included in the permittee’s code and ordinances can be relied upon to address unforeseen circumstances without relying on revisions to regulatory mechanisms. The division, however, has added clarity that exclusions, exemptions, waivers and variances cannot be implemented in a manner that creates a non-compliance with the renewal permit. In addition, the permittee must ensure that their standard operating procedures comply with the renewal permit.

- iv. Control Measure Requirements: Section 61.8(11)(a)(ii)(E)(II)(a) of Regulation 61 requires that “the permittee must develop and implement strategies which include a combination of structural and/or non-structural BMPs appropriate for the community.”

Eighty percent of audited permittees failed to require permanent control measures at all or portions of at least one development site. The division noted variability in each permittee’s design standard (if they had one) and how the design standard was applied. Several audited permittees stated in their program description document that Urban Drainage and Flood Control District (UDFCD) Volume 3 is used as a design manual. UDFCD Volume 3, however, is a guidance document and permittees were often not clear in their program documentation if the manual was considered optional guidance or if permittees had adopted only certain portion(s) of the manual (e.g., WQCV) as a regulatory standard. A lack of a clear design standards in the permit prevented some permittees from confirming that permanent control measures were included on site plans and that permanent control measures meeting a performance standard were installed. To address this significant and widespread finding, the renewal permit includes design standards for post-construction control measures.

EPA recently published a new document, *Post-Construction Performance Standards and Water Quality-Based Requirements: A Compendium of Permitting Approaches* states

Many states have developed performance and/or design standards to control post-construction stormwater discharges from newly developed and redeveloped sites. MS4 permits in 33 states have conditions implementing numeric performance standards.

In addition, the document also states that

Many states have implemented numeric, retention-based performance standards for newly developed and redeveloped sites. These standards typically require or encourage using infiltration, evapotranspiration, or harvest practices to control a specified volume of stormwater. Volume retention is critical to reduce pollutant loads of all water quality parameters and to reduce erosion of the receiving waterbody. It also provides multiple community benefits by treating stormwater as a resource. Retention-based performance standards have been expressed in various ways. Some retention standards have been expressed as a volume of rainfall, a percentile storm event, or a ground water recharge volume that must be retained.



Permittees identified a preference for the renewal permit to provide flexibility in the design standard that considers variability in site conditions. There are seven base design standards—water quality capture volume standard, pollutant removal standard, runoff reduction standard, applicable development site draining to a regional WQCV control measure, applicable development site draining to a regional WQCV facility, constrained redevelopment sites standard, and prior permit term standard. These options were developed based on review of existing manuals, EPA guidance, permittee discussion, and stakeholder input.

Permittees have the flexibility to require all or a combination of the seven base design standards. Permittees also have the flexibility to prohibit some of the seven standards. Stakeholder input indicated a preference for the division to provide several design standard options, such as redeveloped sites, constrained sites, and regional control measures and facilities. The division recognizes that treatment must be tailored to the land development site and the renewal permit provides several options for post-construction requirements.

(A) *WQCV Standard*: WQCV is the volume equivalent to the runoff from an 80th percentile storm, meaning that 80 percent of the most frequently occurring storms are fully captured and treated and larger events are partially treated. Chapter 3 of Urban Storm Drainage Criteria Manual Volume 3 states that “water quality facilities for the Colorado Front Range are recommended to capture and treat the 80th percentile runoff event.” The 80th percentile rainfall event represents a precipitation amount over 24 hours which 80 percent of all rainfall events for the period of record do not exceed. In other words, the 80th percentile rainfall event is defined as the measured precipitation depth accumulated over a 24-hour period and that is not exceeded in 80 percent of all events in an extended period. UDFCD states in Chapter 2 of Urban Storm Drainage Criteria Manual Volume 3 that capturing and treating precipitation from the 80th percentile event “should remove between 80 and 90%” of the annual TSS [total suspended solids] load, while doubling the capture volume was estimated to increase the removal rate by only 1%-2%.”

Chapter 3 of UDFCD’s Urban Storm Drainage Criteria Manual Volume 3 states that “WQCV is calculated as a function of imperviousness and BMP drain time.” In addition, Chapter 3 states the following:

Figure 3-2, which illustrates the relationship between imperviousness and WQCV for various drain times, is appropriate for use in Colorado’s high plains near the foothills. For other portions of Colorado or United States, the WQCV obtained from this figure can be adjusted using the following relationship.

Chapter 2 of *Urban Storm Drainage Criteria Manual Volume 3* states that “the minimum recommended drain time for a post-construction BMP is 12 hours; however, this minimum value should only be used for BMPs that do not rely fully or partially on sedimentation for pollutant removal.” The division expects that permittees will reference *Urban Storm Drainage Criteria Manual Volume 3* for



equivalent design guidance for the recommended drain times for the specific control measure.

- (B) *Pollutant Removal Standard*: As stated above, sediment is a typical pollutant from a construction site and other pollutants, such as some metals and phosphorus, can adsorb to sediment particles. The renewal permit requires that the control measure treat at a minimum the flow from a 80th percentile storm event. The most common control measures in this category are proprietary control measures. The percentage of sediment removal is typically specified by the manufacturer.
- (C) *Runoff Reduction Standard*: As stated above, Volume 64, number 235, page 68760 of the Phase II Rule states:

Minimizing directly connected impervious areas (DCIAs) is a drainage strategy that seeks to reduce paved areas and directs storm water runoff to landscaped areas or to structural controls such as grass swales or buffer strips. This strategy can slow the rate of runoff, reduce runoff volumes, attenuate peak flows, and encourage filtering and infiltration of storm water.

In addition, as stated above, *Post-Construction Performance Standards and Water Quality-Based Requirements: A Compendium of Permitting Approaches* states:

Many states have implemented numeric, retention-based performance standards for newly developed and redeveloped sites. These standards typically require or encourage using infiltration, evapotranspiration, or harvest practices to control a specified volume of stormwater. Volume retention is critical to reduce pollutant loads of all water quality parameters and to reduce erosion of the receiving waterbody. It also provides multiple community benefits by treating stormwater as a resource.

The U.S. Environmental Protection Agency defines green infrastructure as using “natural hydrologic features to manage water and provide environmental and community benefits.” Green infrastructure refers to stormwater management systems that soak up and store stormwater and can include practices such as minimizing directly connected impervious areas and increasing urban tree canopy.

- (D) *Applicable Development Site Draining to a Regional WQCV Control Measure* : Several permittees have portions of their permit area that drain to a regional WQCV control measure. The regional WQCV control measure can be used as the post-construction control measure for the applicable development site if the site drains directly to the regional WQCV control measure. Specifically, stormwater from the applicable development site cannot discharge to a water of the state before flowing to the regional WQCV control measure. This design standard is for a regional WQCV control measure and not a regional WQCV facility. Regional WQCV control measures are not located in-stream and regional WQCV facilities are located in-stream.

Volume 64, number 235, page 68759 of the Phase II rule states



In today's rule at § 122.34(b)(5), NPDES permits issued to an operator of a regulated small MS4 will require the operator to develop, implement, and enforce a program to address storm water runoff from new development and redevelopment sites that result in land disturbance of greater than or equal to one acre, including sites less than one acre that are part of a larger common plan of development or sale, that discharge into the MS4."

That section also states "If an approach is chosen that primarily focuses on regional or non-structural BMPs, however, then the BMPs may be located away from the actual development site (e.g., a regional water quality pond)." Meaning, the control measure does not have to be on-site at the applicable development site, but can be located between the applicable development site and the discharge to waters of the state. The regional control measure has to be located before/prior to/in front of the discharge to a water of the state. The division interpreted "to the MS4" to mean the same as "from the MS4" in terms of this program.

If the permittee has an applicable development site that will meet this design standard and the WQCV control measure is located outside of the permittee's permit area, then the permittee has to ensure that the other permittee/entity will maintain the regional WQCV control measure. Having a formal agreement concerning the regional WQCV control measure is strongly recommended. In addition, the permittee cannot use this design standard if the regional WQCV control measure does not provide 100 percent WQCV treatment.

- (E) *Applicable Development Site Draining to a Regional WQCV Facility:* Although an in-stream WQCV facility is not a control measure since it is located in the stream, the division recognizes that the facility provides water quality improvements. Regulation 61 requires that construction operators reduce the discharge of pollutants into the MS4. In-stream WQCV facilities treat the stream after the MS4 has discharged into the stream. The regional WQCV facility, therefore, cannot be considered a control measure and cannot alone be considered to meet the requirements of Regulation 61. In recognition of the value of the regional WQCV facilities, the division is reducing the onsite pollutant reduction design standard if the applicable development site is within the drainage area considered when designing the regional WQCV facility.

The division is aware of only three permittees using this design standard and has developed this design standard so that more permittees have the flexibility to incorporate this design standard into their program.

- (F) *Constrained Redevelopment Sites Standard:* This section has been added because the division acknowledges that there are constrained sites under redevelopment and flexibility is needed. It is anticipated that the constrained site standards will be implemented on highly urban or densely developed sites lacking the open area to include post-construction control measures. For this reason, the renewal permit prohibits constrained sites standard to be applied on sites that are less than or



equal to 75% impervious area. This standard does not apply to new applicable development sites.

The permittee has the flexibility to determine the standard operating procedures for determining practicability for this design standard. The procedures developed by the permittee shall be based on the applicable development site's inability to increase pervious surfaces on the site.

Some stakeholders expressed an interest in trading post-construction controls throughout their permit area. This is not approved under this renewal permit. Instead, this permit allows reduced design standards for constrained applicable development sites. One reason a constrained site design standard was preferred over a trading concept is the difficulty in tracking existing developed areas relative to MS4 permit terms and requirements. Another reason is the variable timelines for when existing developed areas are redeveloped relative to making trading a permit requirement. Permittees must demonstrate through an engineering or hydrologic analysis that site constraints do not allow for the redevelopment to meet the WQCV standard, pollutant removal standard, or the runoff reduction standard.

Examples of the types of sites that will use the constrained redevelopment sites standard include significant redevelopment within the urban core, brown fields sites, and redevelopment sites that remove pollutant sources (such as existing surface parking lots) or reduce the need for new impervious surfaces (as compared to conventional or low-density new development) by incorporating higher densities and/or mixed land uses.

(G) *Previous Permit Term Standard:* The prior permit term standard allows for the continuation of the requirements from the previous permit terms. Permittees must ensure the long-term operation and maintenance of controls implemented in accordance with those permits. Permittees are not required to retrofit these existing controls to meet the new standards in the renewal permit. The prior permit term standard is also applicable to sites that have begun the permittee's site plan approval process. Since each permittee has a different site plan approval process, the permittee has the flexibility to document this process and implement this design standard accordingly.

- v. **Site Plans:** Section 61.8(11)(a)(ii)(E)(II)(a) of Regulation 61 requires that “the permittee must develop and implement strategies which include a combination of structural and/or non-structural BMPs appropriate for the community.” In addition, section 61.8(11)(a)(ii)(E)(I) of Regulation 61 requires that “the permittee must develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment sites that disturb greater than or equal to one acre, including sites less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts.”

In addition, 40 percent of the audited permittees that had site plan review requirements failed to follow those requirements. Many had waivers for certain types



of sites (grading and public sites), did not require the operation and maintenance manual as required by their SOP, and others adopted UDFCD's *Urban Storm Drainage Criteria Manual Volume 3* in its entirety, but failed to require the 4-step process in Chapter 1. Lastly, of the development sites that had installed post-construction control measures, 50 percent of the audited permittees had at least one control measure that did not conform to the approved site plan. To address these significant and widespread findings, the renewal permit includes requirements for site plan review. Similar to the Construction Sites Program, the term "site plan" is used in Regulation 61 and in this renewal permit. The other terms used for a "site plan" are included in the definitions section of the renewal permit.

The division has determined that reviewing all site plans is necessary in order for the permittee to ensure that adequate control measures that prevent or minimize water quality impacts are installed. Plan review is a basic oversight step that the permittee must implement to prevent inadequate site plans from being implemented. Additionally, the cost of permanent control measures and difficulty of correcting mistakes after the site is completed and the control measure installed warrant this minimum standard of oversight. The renewal permit includes requirements for site plans and site plan reviews for all applicable development sites.

The division has also added language regarding site plan modifications. This section regarding site plan modifications is different than the site plan requirements in the Construction Sites program. The division understands that approved site plans may change during the course of construction or require modification to the operation and maintenance procedures during long-term operation and maintenance. The renewal permit allows the permittee to create a process for plan modifications and provides the minimum standards of modified plans or portions of plans to meet the same review standard as initial plans. The renewal permit also provides a requirement that plans must be modified before changes are implemented on the ground.

The division has only applied this requirement to newly implemented control measures after the deadline in Part I.H. At this time, the division has made the determination that it is not practicable to develop or modify plans for existing control measures. The division will evaluate the permittees' effectiveness at ensuring the long-term operation and maintenance of existing control measures in the absence of a requirement to modify plans for existing control measures. The division will then reevaluate this determination for the next permit term.

- vi. Construction Inspection and Acceptance: Section 61.8(11)(a)(ii)(E)(II)(a) of Regulation 61 requires that the permittee must "develop and implement strategies which include a combination of structural and/or non-structural BMPs appropriate for the community."

Fifty percent of audited permittees failed to ensure that the installed control measure conformed to the approved site plan. An important part of a successful structural control measure is inspections during construction and the permittee's acceptance that the control measure was built and installed per the approved site plan.



The previous permit required that the permittee develop, implement, and document procedures to determine that the control measures “are being installed according to specifications.” The renewal permit requires that the permittee confirm that the “completed control measure meets the approved site plan in accordance with Part I.E.4.a.v.” The permittee has the flexibility to develop procedures to ensure that this requirement is met using the terms that are applicable to their municipality.

The previous permit required confirmation that control measures had been installed. The permit, however, did not state the timeframe that permanent water quality control measures had to be operational after completion of a site or require an inspection prior to accepting the control measure. The renewal permit requires an inspection to confirm that the control measure was constructed in accordance with the approved site plan. The completed control measures must operate in accordance with the approved site plan.

The division also recognizes that some sites are completed in phases and that the control measure might be completed during a subsequent phase. The previous permit did not prevent or address the potential scenario of the control measure never being constructed or being delayed significantly if the subsequent site phases were abandoned or delayed. This scenario would create the potential for a completed phase of a new or redevelopment site without a control measure to prevent or minimize water quality impacts. The renewal permit allows temporary control measures, but they must still meet the design standards set in this section.

- vii. Long-Term Operation and Maintenance and Post Acceptance Oversight: Section 61.8(11)(a)(ii)(E)(II)(c) of Regulation 61 requires that the permittee must “ensure adequate long-term operation and maintenance of BMPs.”

The previous permit required that the permittee develop, implement, and document procedures to “ensure adequate long-term operation and maintenance” of control measures. Sixty percent of audited permittees had at least one post-construction control measure that was inadequate or needed maintenance. In addition, 80 percent of audited permittees did not install post-construction control measures for all or portions of one or more development site. Thirty percent of the audited permittees with a documented inspection schedule did not follow that schedule. Also, 50 percent of audited permittees had control measures installed that did not conform to the approved plan. Inadequate control measures or control measures needing maintenance do not prevent or minimize water quality impacts. From these audit results, the division determined that this section of the permit needed more clarification.

Although the previous permit required that the permittee develop and implement a long-term operation and maintenance program, the permit did not require field inspection at a minimum frequency nor did it include a minimum standard for inspection oversight. Minimum standards therefore varied across permittees. Some permittees committed to inspecting all permanent water quality control measures yearly, others committed to inspecting 10-20% of the permanent water quality control measures yearly and some permittees inspected the control measures every 5 or 10 years.



The previous permit did not foster a level economic environment among permittees. Because permittees could establish their own oversight procedures and frequency, the economic burden of oversight varied greatly across permittees. Permittees could meet the permit requirements with one inspection during the permit term and permittees that provided a more frequent inspection schedule and robust compliance program were at an economic disadvantage. The renewal permit establishes a minimum inspection frequency of once during the permit term for post-construction control measures, with one exception (discussed below). Permittees have the flexibility to inspect the control measures more often.

Stakeholders were concerned about requiring inspections of post-construction control measures on residential lots. Post-construction control measures on residential lots tend to be vegetative and include infiltration, such as grass buffers and swales. Stakeholders were concerned about the workload to inspect these widespread and numerous controls and expressed that adding an inspection burden on residential controls may reduce the use of these types of source control measures. Stakeholder input preferred allowing the existing land use regulations for inspection and enforcement of residential control measures. The division provided an exclusion from the minimum inspection frequency for post-construction control measures serving an individual residential lot.

All functional elements of control measures in the inspection requirement, include but are not limited to: drainage infrastructure, inlets, outlets, vegetation, filter media, etc. An alternative oversight process or post-construction control measures on an individual residential site includes requiring annual certifications, responding to complaints, or other permittee-determined frequency.

- viii. Enforcement Response: Section 61.8(11)(a)(ii)(E)(II)(c) of Regulation 61 requires that the permittee must “ensure adequate long-term operation and maintenance of BMPs.” Enforcement is an important part of ensuring the long-term operation and maintenance of control measures. The previous permit required that the permittee “develop, implement, and document an enforcement program, which addresses appropriate response to common noncompliance issues, including those associated with both installation (subparagraph (3), above) and long-term operation and maintenance (subparagraph (4), above) of the required control measure.” The previous permit allowed the permittee wide flexibility in developing and implementing procedures for enforcement of control measures.

As stated above, 60 percent of audited permittees had at least one permanent control measure that was inadequate or needed maintenance. The renewal permit adds more clarification to this requirement. Similar to other program areas, the division is not prescribing a specific enforcement response, but is requiring the permittee to develop and document the different types of common violations and the actions that will be taken to ensure that adequate post-control measures are installed, operated, and maintained to ensure that they prevent or minimize water quality impacts.



- ix. Tracking: Section 61.8(11)(a)(ii)(E)(II)(c) of Regulation 61 requires that the permittee must “ensure adequate long-term operation and maintenance of BMPs.” An important part of adequate long-term operation and maintenance is tracking each post-construction control measure. Tracking is especially important if the permittee uses the applicable development site draining to a regional WQCV facility or control measure design standards. These WQCV facilities and control measures must be tracked, inspected, and maintained to ensure that they are still preventing or minimizing water quality impacts as designed.
- x. Training: Section 61.8(11)(a)(ii)(E)(I) of Regulation 61 requires that the permittee must “develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment sites that disturb greater than or equal to one acre, including sites less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts.” Training applicable permittee staff on implementing the applicable sections of the Post-Construction Stormwater Management in New Development and Redevelopment program is an important part of implementing a successful program. Permittees have the flexibility to design a training program tailored to their staff and municipality. Permittees can train applicable staff via one-on-one meetings, their web site, handouts, sending the staff to other helpful trainings, etc.
- xi. For Applicable Development Sites that Overlap Multiple Permit Areas: Section 61.1(1)(c) in Regulation 61 states “Nothing in these regulations shall be construed to limit a local government’s authority to impose land-use or zoning requirements or other limitations on the activities subject to these regulations.”

The division is allowing co-regulating MS4 permittees to enter into an agreement for oversight of sites that overlap multiple permit areas. Stakeholder discussion indicated that sites that occur across multiple jurisdictions are subject to multiple inspection standards and requirements; and place an unreasonable burden on construction contractors in meeting different standards and requirements for the same site. The language in the renewal permit is intended to allow such arrangements between co-regulating MS4 permittees for overlapping sites as long as an agreement between the entities is in place for one or more MS4 permittees to allow another permittee’s construction sites standards to be implemented. The renewal permit does not require any MS4 permittees to enter into such agreement.

Large MS4 permittees (Phase I MS4 permittees) are held to a different MEP standard and do not currently have post-construction exemptions in their permits. Phase I permittees (except CDOT) may not utilize the exemptions from Part I.E.4.a.i unless the applicable development site overlaps the permit area of a Phase II MS4 permittee. For example, the City and County of Denver (a Phase I MS4 permittee) can use the roadway exemption on an applicable development site when the site overlaps the permit area of both the City and County of Denver and a Phase II MS4 permittee. The Colorado Department of Transportation cannot use the roadway exemption to the post construction standards because its permit will have a different post-construction control measure framework.



If the permittee has an applicable development site that will meet the applicable development site draining to a regional WQCV facility or control measure design standards, and the WQCV facility or control measure is located outside of the permittee's permit area, then the permittee has to ensure that the other permittee will maintain the regional facility or control measure. Having a formal agreement concerning the WQCV facility is strongly recommended. In addition, the permittee cannot use it to meet the requirements in this permit if the regional WQCV facility does not meet the design standards in this renewal permit.

b. Recordkeeping:

This is a new section of the permit. This section lists the records that must be maintained under this requirement.

Excluded Sites: The previous permit did not list any exclusions, whereas, this renewal permit lists many types of exclusions that permittees can choose to use. The division has determined that the use of the exclusions must be closely tracked. In order for permittees to make use of the exclusions, they must have the resources to track and report the use of the exclusions. The use of the exclusions could result in a significant amount of developed area being excluded from being treated by control measures that would prevent or minimize water quality impacts. The permittee will need this information to demonstrate compliance to the division, EPA, or the public. The division will also need this information in future permit terms to evaluate the potential for water quality impacts and the practicability of additional requirements. Future options include incorporating requirements for a permittee to implement controls to address discharges for which no controls are in place or anticipated based on redevelopment requirements to reduce pollutant discharges to the MS4 or the removal of one or more exclusions from future renewal permits.

Enforcement Response: The division has added requirements for documenting oversight and response for covered development sites to clarify the requirements under the previous permit for maintaining records. Audited permittees had varied inspection, documentation, and enforcement procedures, which resulted in 60 percent of audited permittees having at least one post-construction control measure that was inadequate or needed maintenance. For example, during oversight, the division noted that some permittees did not have an effective mechanism for noting deficiencies of the post-construction control measures and of following up on deficiencies. Most inspection documentation did not provide prompts to indicate if the post-construction control measure was initially constructed according to the approved plans or if the functional elements of the control measure were operating according to the approved plans. In one specific example, the division noted that the permittee limited the inspection to certain aspects of the control measure and did not note that the inlet to a structure was clogged thereby allowing stormwater to by-pass the structure. The renewal permit provides the minimum inspection documentation requirements in the corresponding recordkeeping section.

c. PDD



This is a new section of the permit. This section describes the type of information that needs to be in the PDD. As stated above, some permittees might choose to include and maintain all of the original documents in the PDD whereas other permittees might choose to simply list the applicable documents and where they can be found.

5. Pollution Prevention/Good Housekeeping for Municipal Operations

The renewal permit separates the requirements into regulated municipal facilities and applicable municipal operations. The renewal permit has different standards for facilities because permittees can develop plans for a municipal facility and facilities have fixed pollutant sources and can sometimes be constrained.

a. The following requirements apply:

- i. Control Measure Requirements: Section 61.8(11)(a)(ii)(F)(I) of Regulation 61 requires that:

The permittee must develop and implement an operation and maintenance program that includes an employee training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. The program must also inform public employees of impacts associated with illegal discharges and improper disposal of waste from municipal operations. The program must prevent and/or reduce stormwater pollution from facilities such as streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by the permittee, and waste transfer stations, and from activities such as park and open space maintenance, fleet and building maintenance, street maintenance, new construction of municipal facilities, and stormwater system maintenance, as applicable.

This requirement provides guidance for control measures implemented under the other parts of this section.

- ii. Municipal Facility Runoff Control Measure : Section 61.8(11)(a)(ii)(F)(I) of Regulation 61 requires that:

The permittee must develop and implement an operation and maintenance program that includes an employee training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. The program must also inform public employees of impacts associated with illegal discharges and improper disposal of waste from municipal operations. The program must prevent and/or reduce stormwater pollution from facilities [emphasis added] such as streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by the permittee, and waste transfer stations, and from activities such as park and open space maintenance, fleet and building maintenance,



street maintenance, new construction of municipal facilities, and stormwater system maintenance, as applicable.

(A) *Control Measures to prevent or reduce potential discharges of pollutants to the MS4 from the applicable municipal facilities:* The previous permit required that permittees “prevent and/or reduce stormwater pollution from facilities such as streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by the permittee, and waste transfer stations, and from activities such as park and open space maintenance, fleet and building maintenance, street maintenance, new construction of municipal facilities, and stormwater system maintenance, as applicable.” Fifty percent of the audited permittees did not have secondary containment for large, primary containers, such as fuel, used fuel, used antifreeze, and liquid deicer (i.e., magnesium chloride). In addition, 80 percent of the audited permittees had a least one finding regarding an uncontrolled pollutant source with the potential to runoff at least one of the municipal yards. These significant findings led the division to revise this section to add new aspects to this existing requirement to provide the minimum requirements for municipal facilities that must be addressed by the permittee. For example, the renewal permit specifically includes, “solid-waste transfer stations where waste and recyclables are briefly held prior to further transport,” whereas the previous permit included “outdoor storage areas” as a general category. This increased specificity is because the division intends for the permittee to examine each facility and ensure that control measures are appropriate for the specific facility. The division determined that the categories in the previous permit were too general and potentially created a scenario where activities would be combined and specific control measures could be overlooked or not documented in SOPs. This section of the permit does not require the permittee to create new municipal facility runoff control plans. Existing SOPs can be used to meet the requirements of this section, and modified if necessary, to address any requirements not previously addressed.

(B) *Categories of control measures as necessary to prevent or reduce the pollutant sources present:* The renewal permit specifies the minimum categories of control measures that must be implemented. This is to provide clarity that the permittee is not limited to certain solutions or management techniques to minimize pollutants.

Municipal facility inspection procedures: The renewal permit includes inspection procedures that are consistent with the current CDPS COR900000 industrial stormwater permit, with the exception of visual inspections. The division determined through compliance oversight activities and review of other permits and permit guidance, that an annual inspection is appropriate for municipal facilities. Minimum inspection procedures have been paired with minimum inspection documentation requirements in the corresponding recordkeeping section. The division considered a quarterly visual observation of stormwater discharges, which is in the COR900000 permit for Industrial Stormwater Discharges and in the Utah General Permit for MS4 discharges. The division decided not to



include quarterly visual inspections in this renewal permit and may review this requirement in future permit terms.

- iii. Municipal Operations and Maintenance Procedures: Section 61.8(11)(a)(ii)(F)(I) of Regulation 61 requires that:

The permittee must develop and implement an operation and maintenance program that includes an employee training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. The program must also inform public employees of impacts associated with illegal discharges and improper disposal of waste from municipal operations. The program must prevent and/or reduce stormwater pollution from facilities such as streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by the permittee, and waste transfer stations, and from activities [emphasis added] such as park and open space maintenance, fleet and building maintenance, street maintenance, new construction of municipal facilities, and stormwater system maintenance, as applicable.

The division has provided additional detail in the permit for this requirement. The division addressed this requirement in the previous permit by requiring a One-time Operating Procedures submittal that included the municipal operations that are now listed in the renewal permit. The renewal permit includes a requirement for control measures to minimize the discharge of pollutants associated with the removal of sediment, debris, trash, and other pollutant sources from the MS4. Operations may be grouped together by type, and procedures may be developed that address each group.

Additionally, the renewal permit includes a new requirement for control measures associated with removal of sediment, debris, trash, and other pollutant sources from the MS4. This requirement specifically originated with feedback to the division from operators seeking guidance on storing and disposing dredged material from post construction structures and the MS4 infrastructure.

- iv. Nutrient Source reductions: Section 61.8(11)(a)(ii)(F)(I) of Regulation 61 requires that:

The permittee must develop and implement an operation and maintenance program that includes an employee training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. The program must also inform public employees of impacts associated with illegal discharges and improper disposal of waste from municipal operations. The program must prevent and/or reduce stormwater pollution from facilities such as streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by the permittee, and waste transfer stations, and from activities such as park and open space maintenance, fleet and building maintenance, street maintenance, new construction of municipal facilities, and stormwater system maintenance, as applicable.



In addition, section 85.5(4)(b) of Regulation 85 requires permittees to:

Develop and implement a municipal operations program that has the ultimate goal of preventing or reducing nitrogen and phosphorus in stormwater runoff associated with the MS4 permittee's operations.

Written procedures for an operation and maintenance program to prevent or reduce nitrogen and phosphorus in stormwater runoff associated with the MS4 permittee's operations shall be developed. The program must specifically list the municipal operations (i.e., activities and facilities) that are impacted by this operation and maintenance program.

CDPS Permits shall authorize MS4 permittees to meet the requirements of this section through contribution to a collaborative program to evaluate, identify, and target sources state-wide or within the specific region or watershed that includes the receiving waters impacted by the MS4 permittees discharge(s).

The division has added this section in accordance with the requirements for permittees in Regulation 85. The renewal permit requires permittees to identify the sources of nutrients. The renewal permit only requires the permittee to identify sources associated with fertilizer, although permittees have the flexibility to evaluate other non-fertilizer sources of nutrients. The division will review sources identified by the permittee and may modify this section in future permit terms as appropriate.

Regulation 85 allows permittees to participate in a collaborative program and apply the program in the permittee's jurisdiction. The division encourages and recommends that permittees collaborate on the nutrient-related requirements in the renewal permit and has provided a timeframe in the compliance schedule that would allow such collaboration.

- v. Bulk Storage: This section includes requirements for outdoor bulk storage structures that are more than 55 gallons. This was not specifically required in the previous permit. The division has determined that requiring bulk storage in the permit is practicable based on the long-term inclusion of this requirement in stormwater discharge permits for industrial activities in Colorado. The division has determined that secondary containment for the outdoor storage of bulk storage structures that are more than 55 gallons of petroleum products and other chemicals is practicable because many of the audited permittees were able to provide secondary containment for petroleum products and other chemicals. In addition, this is an existing requirement in industrial activities in division stormwater discharge permits. Bulk storage is defined in the permit and pertains to the primary source storage (i.e. containment to be drawn from or added to) of material. Bulk fuel storage or "silos" of magnesium chloride is an example of bulk storage. Electrical, operating, or manufacturing equipment, motive power containers, a tank of magnesium chloride on an application truck, and ancillary product piping, are not considered bulk storage.



Fifty percent of the audited permittees did not have secondary containment for large, outdoor, primary containers, such as fuel, used fuel, used antifreeze, and liquid deicer (i.e., magnesium chloride). The failure to implement controls for these pollutant sources was intended by the division to be a violation of the previous permit requirements; however lack of clarity resulted in this condition being prevalent. The containment in direct contact with the bulk material is the primary containment. Secondary containment is the back-up containment to the primary containment. The permit requires secondary containment or equivalent controls that are adequate to contain all spills and to prevent spilled material from entering state waters. Examples of secondary containment or equivalent controls include impervious bermed areas, double walled tanks, storage lockers and buildings with built in containment, discharges to a sump, and structural or non-structural control measures. A compliance schedule was added for the bulk storage requirements. Prior to the due date in the compliance schedule, the permittee remains responsible for complying with previous permit requirements for preventing or reducing pollutants in runoff from bulk storage containers.

- vi. Training: Section 61.8(11)(a)(ii)(F)(I) of Regulation 61 requires that:

The permittee must develop and implement an operation and maintenance program that includes an employee training component [emphasis added] and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. The program must also inform public employees of impacts associated with illegal discharges and improper disposal of waste from municipal operations.

The previous permit required permittees to “develop and implement procedures to provide training to municipal employees as necessary to implement the program under Item 1, above.” Since 80 percent of the audited permittees had at least one finding regarding an uncontrolled pollutant source with the potential for runoff from at least one of the municipal yards, the division has clarified the minimum training requirements in this section. The renewal permit includes a requirement to train employees that will conduct inspections.

b. Recordkeeping

This is a new section of the permit. This section lists the records that must be maintained under this requirement.

Stakeholder input included concern that revised requirements for municipal facility runoff control plans (MFRCP) would require permittees to duplicate previously completed information (e.g., standard operating procedures) into a new plan format. It is not the division’s intent for the permittee to duplicate paperwork. Existing standard operating procedures can be used to meet this permit requirement. Some permittees may need to supplement additional documents to meet the new record keeping requirements.

Note that a record is required of the field condition where stormwater is discharged from the site. The division has added these requirements because the previous permit did not include minimum standards for inspection documentation. The division conducted



oversight activities and noted documentation and follow up variation among permittees that hindered the effectiveness of the Pollution Prevention/Good Housekeeping for Municipal Operation program. The additional clarification and requirements of the municipal operations program warrant this minimum level of information on inspection documentation that is similar to the Illicit Discharge Detection and Elimination, Construction Sites, and Post Construction Stormwater Management in new Development and Redevelopment program areas.

c. PDD

This is a new section of the permit. This section describes the type of information that needs to be in the PDD. As stated above, some permittees might choose to include and maintain all of the original documents in the PDD whereas other permittees might choose to simply list the applicable documents and where they can be found.

F. OTHER TERMS AND CONDITIONS

The conditions for Resources and Special Provisions for Non-Standards MS4s have been deleted. The following identifies changes made from the previous permit.

1. General Limitations

There are minor changes to this section from the previous permit. The prohibition of chemical additions is an important requirement of the permit. For example, chemical flocculants could be added to discharges from construction sites to cause sediment to settle. The chemical additives are considered a pollutant and are prohibited by this permit.

2. Releases in Excess of Reportable Quantities

There are no changes to this section from the previous permit.

3. Records Availability

There are minor changes to this section from the previous permit.

4. Discharges to Waters with Total Maximum Daily Loads (TMDLs)

There are several changes to this section from the previous permit to streamline and clarify the requirements.

5. Implementation by Other Parties

Section 61.8(11)(a)(vi) states that:

A permittee may rely on another entity to satisfy its CDPS permit obligations to implement a minimum control measure , or component thereof, if:

(A) The other entity, in fact, implements the control measure ;

(B) The particular control measure , or component thereof, is at least as stringent as the corresponding CDPS permit requirement; and



(C) The other entity agrees to implement the control measure on behalf of the permittee. In the reports that the permittee submits under subsection (viii)(C) of this section, it must also specify that the permittee relies on another entity to satisfy some of its permit obligations. The permittee remains responsible for compliance with its permit obligations if the other entity fails to implement the control measure (or component thereof).

Permittees may use another entity to implement part or all of the requirements in this permit and must meet the requirements of this section. Using another entity, including a participant in the storm water management system administrator program, does not reduce or transfer the responsibility of meeting all requirements in this permit from the permittee. The permittee is responsible for meeting all requirements in this permit.

A written acceptance between the parties is required and the other entity must be impartial. Most permittees have set procedures for such documents and the permittee must follow their procedures. The permittee has the flexibility to determine the criterion for a written acceptance.

The requirement in 25-8-803(2) of the Colorado Water Quality Control Act cannot be waived or removed. This section of the Colorado Water Quality Control Act allows permittees to be supported by storm water management system administrator program and does not waive the requirements of Part I.F.5. of the permit. In fact, this section of the Colorado Water Quality Control Act requires one further activity in addition to the requirements of Part I.F.5. of the permit—the permittee must implement procedures to demonstrate and report to the division that the administrator’s program is meeting the requirements for third party audits. The division has made this a requirement for all permittees using another party to implement a portion of their entire stormwater program. These procedures must be available upon request from the division.

Section 25-8-803 of the Colorado Water Quality Control Act states:

(1) MS4 permittees may choose to work with any administrator to assist the MS4 permittee in complying with the terms and conditions for the MS4 permittee’s CDPS MS4 permit. An MS4 permittee may utilize all, or portions of, the storm water management system administrator’s program as part of the MS4 permittee’s program for oversight of construction sites to demonstrate compliance with the requirements of the MS4 permittee’s CDPS permit for storm water discharges associated with an MS4.

(2) The division may consider third-party audits conducted pursuant to a stormwater management system administrator’s program to be part of the MS4 permittee’s compliance oversight program required by its CDPS MS4 permit if the MS4 permittee formally utilizes the storm water management system administrator’s program that conducted the audit, and the MS4 permittee implements procedures to demonstrate and report to the division, upon division request, that the administrator’s program is meeting the requirements for third-party audits in section 25-8-802(1) and (3) for participant construction activities located within the jurisdiction of the MS4 permittee.



(3) An MS4 permittee may reduce compliance oversight activities for facilities authorized to discharge under a CDPS storm water construction permit that are operated by participants in a storm water management system administrator's program based on a determination by the MS4 permittee that the participants or participant facilities have a demonstrated record of reduced potential for occurrences of noncompliance and reduced risk of negative impacts on receiving waters. This part 8 does not prohibit or restrict any compliance oversight, including inspections, by an MS4 permittee.

(4) Modification of the MS4 permittee's program is subject to division approval in accordance with the requirements of the applicable CDPS MS4 permit.

(5) An MS4 permittee's use of a storm water management system administrator's program is strictly voluntary, and an MS4 permittee may end its use of the program at any time upon written notice to the administrator.

(6) Nothing in this part 8 grants regulatory authority to a storm water management system administrator or the authority to impose any fine.

(7) Nothing in this part 8 preempts or supersedes any authority of an MS4 permittee or any other local agency.

(8) Nothing in this part 8 removes, reduces or transfers the responsibility for compliance with an MS4 permit from the MS4 permittee.

6. Monitoring

Regulation 61.8(4) states that “any discharge authorized by a discharge permit may be subject to such monitoring, record-keeping, and reporting requirements as may be reasonably required in writing by the division.” It is the division's standard practice to include monitoring requirements for discharges to segments on the 303(d) List of Water-Quality-Limited Segments Requiring TMDLs when the discharge may contribute to the impairment for that segment. This facilitates having information available to characterize loads as part of development of a TMDL. The division has evaluated and included requirements in the renewal permit consistent with this practice, as discussed below.

Following the pre-public notice meeting, the division requested that permittees complete a voluntary survey regarding storm sewer outfall mapping and monitoring. Approximately half of the COR090000 and COR080000 permittees submitted a completed survey. All respondents indicated that the required mapping storm sewer activity was completed. Approximately half of the respondents indicated that they were conducting dry weather outfall screening, which is not required by the previous permit, and did not have an economic barrier from continuing some level of dry weather outfall screening. Additionally, approximately half of the respondents indicated that they know how many outfalls that discharge to segments impaired for *E. coli* and selenium. Permittees identified a range of outfalls from 0 to 193, with approximately half of those respondents having fewer than 30 outfalls that discharge to segments impaired for *E. coli* and selenium. Approximately 25 percent of respondents knew or had an estimate of how many outfalls into segments impaired for *E. coli* and selenium had dry weather flows; and approximately 25 percent of respondents have outfall monitoring data for *E. coli* and/or selenium.



The review of impaired segments for which a TMDL has not been completed led the division to consider additional terms and conditions related to monitoring discharges from MS4s in order to characterize pollutant levels in the discharge for the purpose of generating information to develop TMDLs. The division initially considered including monitoring requirements in the draft permit for *E. coli*, selenium, and arsenic. The division eliminated arsenic from further consideration in this permit term due to uncertainty regarding the statewide standard and in particular the technologically feasible level. The division discussed the concept of monitoring requirements for *E. coli* and selenium extensively in the stakeholder process conducted in advance of preparing draft permit documents. Based on the input received, the division decided to include monitoring option 1 in the renewal permit.

The division considered both wet and dry weather monitoring options and decided to focus on dry weather for this permit term. At this time, pollutants that are known contributors to water quality impairment expected to be contributed primarily through wet weather discharges, such as nutrients, are expected to be characterized through the requirements contained in Regulation 85 and controlled through the practice-based controls in the five program areas of the permit.

The permit includes the language in the previous permit that allows the division the option of addressing monitoring on an individual permittee case-by-case basis. With this requirement, the division may include monitoring in individual permittee certifications as reasonably required.

7. General Monitoring and Sampling Requirements

This section has been added and is paired with the monitoring requirements that have been added in the renewal permit.

G. PROGRAM REVIEW AND MODIFICATION

This section has been substantially edited. The requirements related to division Review of Programs and Reports and Demonstration of Adequacy in the previous permit have been removed and the aspects of program review and approval is now limited to the Annual Program Review conducted by the permittee.

Permittees no longer have to submit any information to the division when they modify their PDD. Permittees can modify their PDD anytime. Permittees must ensure that all modifications comply with all permit requirements. Part I.E.1, 2, and 3 from the previous permit have been removed since they are not applicable to this renewal permit. Minor edits have been made to Part I.E.4 in the previous permit. In this section, permittees had to conduct an analysis or assessment and Part I.1 and Part I.F of the previous permit required permittees to submit an annual report of the analysis or assessment. Annual reporting requirements are in Part I.I of the renewal permit.

H. COMPLIANCE SCHEDULE

Renewal permittees have to implement their current programs until they have developed a new program in compliance with this renewal permit or the compliance schedule deadline, whichever is sooner.



The previous permit did not have a compliance schedule. All newer permits issued by the division list specific dates as the compliance schedule deadline. Compliance schedules are provided in the permit for renewal permittees and new permittees. This replaces the process of relying on guidance, program submittals, and separate public notice when establishing deadlines, consistent with the approach for establishing effluent limitations. Compliance schedule dates are included in a separate table to address different dates for new and renewal permittees.

This section has been added to the renewal permit. The Clean Water Act (40 C.F.R. § 122.34(a)) and Regulation 61.8 (11)(a)(i) require development and implementation of the permittee's CDPS Stormwater Management Program as required by the permit in accordance with the specific date in the compliance schedule tables. Many of the permit requirements are not effective immediately. A compliance schedule consolidates the information regarding the compliance dates for permit requirements.

Compliance dates are not provided in the specific permit section, unless the compliance date is the same for new and renewal permittees. There are different compliance schedules for new and renewal permittees because the due dates are typically different with new permittees receiving more time to complete the permit requirements. This reflects the time for new permittees to become permitted the first year. In many instances, a compliance schedule item for new permittees reflects an expansion of current program requirements and is not a completely new requirement. The compliance schedule only requires notification in the next annual report that a requirement has been completed and does not require the submittal of reports. The renewal permit includes an extra column titled "ICIS Codes" so that compliance elements can be internally coordinated better with the EPA's Integrated Compliance Information System (ICIS) reporting.

I. REPORTING REQUIREMENTS

Section 61.8(11)(a)(vii)(A) of Regulation 61 requires that "the permittee must evaluate program compliance, the appropriateness of its identified BMPs, and progress towards achieving its identified measurable goals. A summary of this evaluation shall be included in the permittee's annual report."

Permittees should note that 25-8-802 in the Water Quality Control Act deals with the Stormwater Management System Administrator Program and not with Phase II MS4 permits in Regulation 61.

Reporting requirements were revised to address new terms and conditions and to include a requirement for an annual certification by the permittee. The division intends to continue to provide an annual report form. The intent of the annual report is to provide a representative summary to the division that allows the division to gain a basic understanding of the permittee's program status and implementation. The annual report also includes requirements to provide basic quantities of certain elements (e.g., number of construction sites and inspections) that allow the division to gain insight on the scope and scale of a program area. The division has attempted to limit the basic reporting items and includes a focus on any exceptions or exclusions implemented by the permittee. For example, the annual report requires the permittee to provide information on the applicable development sites that were excluded from being required to install a post-construction control measure. If the permittee does not implement the mechanisms



in the permit that allows the exclusion, then the permit has a reduced reporting requirement. The annual report items are expected to be reported based on when the program area is required in the compliance schedule. Prior annual reports do not have to include the status of this activity and the updated PDD does not have to be submitted to the division, unless requested.

J. DEFINITIONS

Many definitions have been added to the renewal permit to increase clarity about the intent of terms in the context of the permit and align with new permit language.

K. GENERAL REQUIREMENTS

1. Signatory Requirements

Section 61.4(1) of Regulation 61 lists the signatory requirements. This section has been modified to reflect the requirements in Regulation 61. The previous permit did not include the complete language in Regulation 61, which resulted in unclear expectations regarding the signatory authority and duly authorized representative. Division compliance oversight activities noted that the legal contact or duly authorized representative may not have the proper authority in the organization to sign reports submitted to the division. The duly authorized representative is required to have responsibility for the overall operation of the regulated facility, yet some permittee's organizational chart showed that the legal contact did not have responsibility for the overall operation of the regulated facility. For example, a permittee may have designated the Public Works Director to be the legal contact or duly authorized representative, however, the Public Works Director may not have authority over the Planning Director under whose oversight, construction plans are reviewed and approved. The division expects that in most instances, the legal contact or duly authorized representative will be an elected official or the City/County Manager.

2. Retention of Records

This section has been updated to reflect changes in required recordkeeping and program description documentation. Section 61.8(11)(a)(vii)(B) of Regulation 61 requires that

The permittee must keep records required by the permit for at least three (3) years. The permittee must submit their records to the division only when specifically asked to do so. The permittee must make the records, including a description of the permittee's stormwater management program, available to the public at reasonable times during regular business hours (see 61.5(4) for confidentiality provision). (The permittee may assess a reasonable charge for copying. The permittee may require a member of the public to provide advance notice.)

The renewal permit identifies retention requirements for records in accordance with the Recordkeeping subsection as “the effective period of the permit and three years following.” This retention requirement removes the ambiguity with determining the time for which a record “is no longer being actively utilized for stormwater management,” which was the basis for the overall retention of records requirement in Part I.K.2.

II. PART II



Part II of the permit has been updated with new or revised standard language that is in all permits issued by the division.

A. NOTIFICATION REQUIREMENTS

The Program Modification section was deleted because these procedures are no longer necessary.

Many of these requirements were included in the section entitled Permittee Responsibilities in the previous permit. The renewal permit now contains the following subsections:

1. Notification to Parties: updated contact information for oral and written notification
2. Change in Discharge or Wastewater Treatment: new section
3. Special Notifications Definitions: new section
4. Non-Compliance Notification: updated language
5. Other Notification Requirements: new section
6. Bypass Notification: new section
7. Upsets: no new requirements from pervious permit. Permittees should note that this section of the permit applies to upsets to the permittee's stormwater program. This section does not apply to upsets for individual control measures on construction sites.
8. Discharge Point: new section
9. Proper Operation and Maintenance: updated language
10. Minimization of Adverse Impact: updated language
11. Removed Substances: new section
12. Submission of Incorrect or Incomplete Information: updated language
13. Bypass: new section
14. Reduction, Loss, or Failure of Treatment Facility: new section

B. PERMITTEE RESPONSIBILITIES

Many of these requirements were included in the section entitled Permittee Responsibilities in the previous permit. The renewal permit now contains the following subsections:

1. Inspections and Right to Entry: updated language
2. Duty to Provide Information: no new requirements from pervious permit
3. Transfer of Ownership or Control: new section
4. Availability of Reports: updated language
5. Modification, Suspension, Revocation, or Termination of Permits By the Division: updated language
6. Oil and Hazardous Substance Liability: no new requirements from pervious permit
7. State Laws: no new requirements from pervious permit
8. Permit Violations: new section
9. Property Rights: no new requirements from pervious permit
10. Severability: no new requirements from pervious permit
11. Renewal Application: new section
12. Confidentiality: new section
13. Fees: updated language
14. Duration of Permit: new section
15. Section 307 Toxics: new section



16. Effect of Permit Issuance: new section

III. PART III

Section 61.8(11)(a)(iv) of Regulation 61 requires that “The permittee must comply with any more stringent effluent limitations in the permit, including permit requirements that modify, or are in addition to, the minimum control measures, based on an approved TMDL or equivalent analysis. The division may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.”

This section was added to the renewal permit. The renewal permit contains a Part III for which requirements are applicable to only specific permittees. This section addresses additional requirements applicable to specific permittees and applies to discharges subject to TMDL wasteload allocations.

The division recognizes that the requirements for this general permit may not be appropriate in all cases, based on community specific conditions or that it is possible that the requirements contain additional flexibility for more effective or efficient practices. In such cases, the permittee may apply for coverage under an individual permit that includes determinations specific to their MS4. However, to allow for a more efficient approach when it is identified that the renewal permit only needs minor revisions to requirements to address the needs of a community, the permittee may request a modification of this permit in accordance with Part II.B.5 of the renewal permit that identifies the requested MS4-specific terms and conditions. If determined appropriate, the division will modify the renewal permit to include the proposed MS4-specific terms and condition in Part III of the renewal permit, following the required provisions of Regulation 61.10, including public notice and comment. The division remains responsible for ensuring the proposed terms and conditions meet the statutory and regulatory framework and are appropriate for inclusion in a general permit, and may deny such modification request in accordance with the Regulation 61 or require application for an individual permit.

Impaired Segments

1. COSPB002 Boulder Creek from 13th Street to South Boulder Creek *E. coli* TMDL

MS4 Discharges Under Permits Covered by this Renewal:

- COR090019: City of Boulder
- COR090020: Boulder County

WLAs for *E. coli* cfu/day were assigned to the two MS4s that will be covered under the permit based on urban land use. Discharges from open lands were considered non-point source in this TMDL and assigned LAs. Open lands included the following land use categories: park, urban, other; open space.

Reductions were prioritized for specific outfalls within the jurisdictions of the City of Boulder, the University of Colorado, and the Boulder Valley School District for land within the sub catchment outfall basins.



Specific implementation and monitoring recommendations included the following:

- Education and outreach, specifically a targeted pet waste clean-up program
- Municipal incentives to encourage proper irrigation and landscaping to reduce runoff
- Education of municipal maintenance staff on waste management and ground maintenance as it pertains to bacterial sources
- Stormwater BMP sites
- Structural BMPs such as LIDs
- Education and Outreach
- Infrastructure and Maintenance Upgrades
- Additional Monitoring

Implementation of the TMDL recommendations is underway and continues with the renewal permit. The effluent limitations included in the renewal permit are determined to be consistent with the assumptions and requirements of wasteload allocations. To confirm that the current effluent limitations in the permit are adequate to ensure compliance with the wasteload allocations, additional reporting and monitoring requirements have been included in Part III of the permit for the applicable permittees. If the division determines that the effluent limitations in this permit are not adequate to require compliance with the wasteload allocations, the division will modify this permit in accordance with Part II.B.5 of the renewal permit, or require the permittee to apply for and obtain an individual CDPS permit that includes the necessary effluent limitations.

The permit includes the following effluent limitations applicable to reduction of E coli in discharges from the MS4:

- Public education
- Illicit Discharge Detection and Elimination, including the requirement to remove, or require and ensure the removal, of the source of an illicit discharge, including sewage connections and seepage and overland discharges/dumping, when identified.

2. COSPMS04: Barr Lake and Milton Reservoir, Dissolved Oxygen TMDL and COSPMS04: Barr Lake and Milton Reservoir, pH TMDL

MS4 Discharges Under Permits Covered by this Renewal:

- COR090041: Adams County
- COR080010: Arapahoe County
- COR090013: City of Arvada
- COR090089: City of Brighton
- COR090066: City of Cherry Hills Village
- COR090032: City of Commerce City
- COR080003: Douglas County
- COR090068: City of Edgewater
- COR090056: City of Englewood
- COR090038: Federal Heights
- COR090003: City of Glendale
- COR080004: City of Greenwood Village
- COR090024: Jefferson County
- COR090055: City of Littleton



- COR080016: City of Lone Tree
- COR090082: City of Sheridan
- COR080021: City of Centennial, (Southwest Metro Stormwater Authority)
- COR090034: City of Thornton
- COR090037: Weld County
- COR090015: City of Wheat Ridge

The dissolved oxygen TMDL is an addendum to the pH TMDL and the implementation of the TMDLs will be phased concurrently with an adaptive management approach. The TMDL focuses on a required 20 percent reduction in target load of total phosphorous for MS4 Regulated Areas for both Barr and Milton. Implementation of the TMDL recommendations is underway and continues with the renewal permit. The division's determination is that the effluent limitations in the Post-Construction Stormwater Management in New Development and Redevelopment section of the permit that require control measures be implemented for redevelopment and will result in controls being implemented that are adequate to meet this load reduction. The TMDL also recommends monitoring to implement the adaptive management approach for this TMDL. The division's determination is that the terms and conditions in the permit regarding the Regulation 85 MS4 data report are adequate for this permit term. This determination will be reviewed every permit term and will consider the results from the Regulation 85 routine review to adjust permit requirements as needed to implement the TMDL requirements.

For the Barr-Milton TMDL analysis, the Fact Sheet (IV.b.2) lists several regulated permittees that are partially within the Cherry Creek Basin (Aurora, Arapahoe County, Douglas County, Greenwood Village, Lone Tree, and Centennial/SEMSWA). The fact sheet then notes that the Barr-Milton TMDL requires a 20 percent reduction in target load of total phosphorus for the regulated MS4s. The division then makes a finding that the post-construction effluent limitations in proposed COR090000 will result in meeting this 20 percent reduction goal. The Regulation 85 MS4 data gap report was submitted to the division. The report determined that additional monitoring is not necessary.

The fact sheet, however, did not include an important fact relevant to the Cherry Creek Basin: point source dischargers (including permittees) that are located outside of the Barr-Milton "datashed" are not given a specific wasteload allocation, but are instead included in the background load [(AKA, "Load Allocation", or LA) (Section 4.3 Barr-Milton Watershed TMDL, dated May 2013)]. The entire Cherry Creek Basin, ending at the dam, is outside of the Barr-Milton datashed. In the response to comments section, the division states: "However, there is no permit requirement for the reduction of load allocations, and since the upstream reservoirs of Cherry Creek, Chatfield Reservoir, and Bear Creek Reservoir fall under the Load Allocation, there are no implications for permit-based controls or reductions in the Cherry Creek Basin from the Barr-Milton Watershed TMDL. The division believes that adequate efforts are being made in the Cherry Creek Basin to address phosphorus control (Cherry Creek Reservoir Control Regulation, 5 CCR 1002-72), and does not anticipate any further regulatory requirements beyond what is required by the Cherry Creek Basin Control Regulations. Phosphorus controls required by the Cherry Creek Basin Control Regulation are adequate to control phosphorus downstream, over time." (page 20 of 28, Barr-Milton Watershed TMDL)

Additional future controls, above and beyond Regulation 72 MS4 requirements, cannot be applied to portions of MS4s in the Cherry Creek Basin under the approved Barr-Milton TMDL.



3. COSPUS14: South Platte River Bowles Avenue to Burlington Ditch, *E. coli* TMDL

MS4 Discharges Under Permits Covered by this Renewal:

- COR080010: Arapahoe County
- COR090056: City of Englewood
- COR090055: City of Littleton
- COR090082: City of Sheridan

The TMDL includes density based wasteload allocations for all MS4 discharges to the segment of 126 cfu/100ml *E. coli* Density. For the permittees covered by this permit that discharge into this segment, the division has determined that the effluent limitations in the Illicit Discharge Detection and Elimination program are adequate to meet the wasteload allocation. Monitoring conducted in 2007 for MS4 outfalls for these municipalities did not identify that sources existed that were expected to contribute to exceedance of the wasteload allocation. The requirement of the Illicit Discharge Detection and Elimination program are expected to result in this condition being maintained.

4. COGUUN12: tributaries to the Uncompahgre River, Selenium TMDL, COGUUN4b: Uncompahgre River from LaSalle Road to Confluence Park, Selenium TMDL, and COGUUN4c: Uncompahgre River from Confluence Park to the Gunnison River, Selenium TMDL

MS4 Discharges Under Permits Covered by this Renewal:

- COR090061: City of Montrose

The MS4 discharges were not evaluated or characterized for this TMDL, and the permit does not contain effluent limitations to meet the requirements of these TMDLs.

L. DEFINITIONS

The definitions below are intended strictly for clarification purposes, and may not contain the full legal definition as per regulation. For the purposes of this permit:

1. **Applicable Construction Activity:** Construction activities with land disturbance (surface disturbing and associated activities) of one or more acres, or disturbing less than one acre if that construction activity is part of a larger common plan of development or sale that would disturb, or has disturbed one or more acres, unless excluded in Part I.E.3.a.i. Applicable construction activities include the land disturbing activity and all activities and materials associated with the construction site and located at, or contiguous to, the land disturbing activities.
2. **Base Design Standard:** The minimum design standard for new and redevelopment before applying exclusions or alternative standards.
3. **Best Management Practices:** Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "state surface waters". BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. For the purpose of this permit, the term BMP is used interchangeably with the term control measure, and can include other methods such as the installation, operation, and maintenance of structural controls and treatment devices.



4. **Classified State Water:** A classified state water is a state water with a classification in the Classification and Numeric Standards Regulation for each of the seven river basins in Colorado. Classifications for each segment within the river basin can be found in the numeric and standards table for each basin regulation.
5. **Common Plan of Development or Sale:** A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules, but remain related. The Division has determined that “contiguous” means construction activities located in close proximity to each other (within ¼ mile). Construction activities are considered to be “related” if they share the same development plan, builder or contractor, equipment, storage areas, etc.
6. **Construction activity:** Refers to ground surface disturbing and associated activities (land disturbance), which include, but are not limited to, clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads, staging areas, stockpiling of fill materials, and borrow areas. Construction does not include routine maintenance to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. Activities to conduct repairs that are not part of regular maintenance or for replacement are construction activities and are not routine maintenance. Repaving activities where underlying and/or surrounding soil is cleared, graded, or excavated as part of the repaving operation are considered construction activities unless they are an excluded site under Part I.E.4.a.i. Construction activity is from initial ground breaking to final stabilization regardless of ownership of the construction activities.
7. **Construction Dewatering:** Discharge of groundwater, surface water, and stormwater that has mixed with the groundwater and/or surface water (i.e. commingled stormwater runoff) that has come into contact with applicable construction activities.
8. **Contiguous:** Within 0.25 miles.
9. **Control Measure :** Any best management practice or other method used to prevent or reduce the discharge of pollutants to waters of the state. Control measures include, but are not limited to best management practices. Control measures can include other methods such as the installation, operation, and maintenance of structure controls and treatment devices.
10. **Control Measure Requiring Routine Maintenance:** Any control measure that is still operating in accordance with its design and the requirements of this permit, but requires maintenance to prevent associated potential for failure during a runoff event. See also Inadequate control measure.
11. **Discharge:** Discharge: The discharge of pollutants as defined in section 25-8-103(3) C.R.S. For the purposes of this permit, discharges do not include land application or discharges to the ground.
12. **Discharge of a Pollutant:** The introduction or addition of a pollutant into state waters. See 25-8-103(3) C.R.S.
13. **Division:** The Water Quality Control Division of the Colorado Department of Public Health and Environment.
14. **Dry Weather Discharge:** A discharge not resulting from surface runoff from stormwater.
15. **Effluent Limitation:** Any restriction or prohibition established under the Colorado Water Quality Control Act, state regulations, or federal law on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into state waters, including, but not limited to, standards of performance for new sources, toxic effluent standards and schedules of compliance.



16. **Exclusion:** A removal of the applicability of the terms or conditions in this permit from applying to the given conditions.
17. **Exemption:** An exemption, waiver, or variance implemented by the permittee for permittee control measures used to meet the effluent limits in this permit.
18. **Final Stabilization:** The condition reached when all ground surface disturbing activities at the site have been completed, and for all areas of ground surface disturbing activities a uniform vegetative cover has been established with an individual plant density of at least 70 percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed.
19. **Good Engineering, Hydrologic and Pollution Control Practices:** Methods, procedures, and practices that:
 - a. Are based on basic scientific fact(s).
 - b. Reflect best industry practices and standards.
 - c. Are appropriate for the conditions and pollutant sources.
 - d. Provide appropriate solutions to meet the associated permit requirements, including practice based and numeric effluent limits.
20. **Green infrastructure:** Generally refers to control measures that use vegetation, soils, and natural processes or mimic natural processes to manage stormwater. Green infrastructure can be used in place of or in addition to low impact development principles.
21. **Illicit Discharge:** Any discharges to an MS4 that is not composed entirely of stormwater except discharges specifically authorized by a CDPS or NPDES permit and discharges resulting from emergency fire fighting activities. Permittees should note that there are many types of illicit discharges that in accordance with the permit need to be effectively prohibited. Only the discharges listed in Part.I.2.a.v. can be excluded from being effectively prohibited.
22. **Impervious Area:** Developed areas with covering or pavement that prevents the land's natural ability to absorb and infiltrate typical precipitation and irrigation events. Impervious areas include, but are not limited to; roof tops, walkways, patios, driveways, parking lots, impervious storage areas, impervious concrete and asphalt, and any other continuous watertight pavement or covering.
23. **Inadequate Control Measure:** Any control measure that is not designed, implemented, or operating in accordance with the requirements of the permit, including the specific requirements in each program area in Part I.E or requirements for specific permittees in Part III, and implemented and maintained to operate in accordance with the design. See also Control measure Requiring Routine Maintenance.
24. **Irrigation Return Flow:** Tailwater, tile drainage, or surfaced groundwater flow from irrigated land.
25. **Land Disturbing Activity:** Any activity that results in a change in the existing land surface (both vegetative and non-vegetative). Land disturbing activities include, but are not limited to clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads, staging areas, stockpiling of fill materials, and borrow areas. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity.



26. Minimize: For purposes of implementing control measures of this permit, means reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practices.
27. MS4: A municipal separate storm sewer system. See municipal separate storm sewer system.
28. Municipality/Municipal: A city, town, county, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under section 208 of CWA(1987).
29. Municipal Separate Storm Sewer System (MS4): A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
 - a. Owned or operated by a State, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to state waters;
 - b. Designed or used for collecting or conveying stormwater;
 - c. Which is not a combined sewer; and
 - d. Which is not part of a Publicly Owned Treatment Works (POTW). See 5 CCR 1002-61.2(62).
30. Municipal Separate Storm Sewer System Outfall (Outfall): A point source, as defined herein, at the point where a municipal separate storm sewer discharges to state waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other state waters and are used to convey state waters.
31. New Development: Land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision for a site that does not meet the definition of redevelopment.
32. New Permittee: Permittee not covered under a previous MS4 general permit.
33. Non-Structural Control Measures: Includes control measures that are not structural control measures, and include, but are not limited to, control measures that prevent or reduce pollutants being introduced to water or that prevent or reduce the generation of runoff or illicit discharges.
34. Operator: The person or entity who is responsible for the overall operation of the facility or activity from which the associated discharge originates.
35. Outstanding Waters: A type of designation. Outstanding waters are designated by the Water Quality Control Commission.
36. Pavement Management Sites: Sites, or portions of sites, for the rehabilitation, maintenance, and reconstruction of pavement, which includes roadway resurfacing, mill and overlay, white topping, black topping, curb and gutter replacement, concrete panel replacement, and pothole repair. The purpose of the site must intend to provide additional years of service life and optimize service and safety. The site also must be limited to the repair and replacement of pavement in a manner that does not result in an increased impervious area and the infrastructure must not substantially



change. The types of sites covered under this exclusion include day-to-day maintenance activities, rehabilitation, and reconstruction of pavement.

37. Point Source: Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Point source does not include irrigation return flow. See 5 CCR 102-61.2(75).
38. Pollutant: Dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal or agricultural waste. See 5 CCR 1002-61.2(76).
39. Pollution: Man-made or man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water. See 5 CCR 1002-61.2(77)
40. Redevelopment: Includes a site that is already substantially developed and has 35% or more of existing hard surface coverage, the creation or addition of hard surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of hard surface that is not part of a routine maintenance activity; and land disturbing activities.
41. Regulatory Mechanism: The mechanism that allows the permittee to implement and enforce the requirements of this permit.
42. Renewal Permittee: Permittee that was covered under a previous MS4 general permit.
43. Roadway: Roads and bridges that are improved, designed or ordinarily used for vehicular travel and contiguous areas improved, designed or ordinarily used for pedestrian or bicycle traffic, drainage for the roadway, and/or parking along the roadway. Areas primarily used for parking or access to parking are not included.
44. Site Plan: Also known as construction stormwater site plans, sediment and erosion control plans, stormwater pollution prevention plans, drainage reports, drainage plans, stormwater management plans, drainage and erosion control plans, etc.
45. Small Municipal Separate Storm Sewer System: Any municipal separate storm sewer that is not defined as a "large" or "medium" municipal separate storm sewer system pursuant to Regulation 61. This term includes publicly-owned systems similar to separate storm sewer systems in municipalities (i.e., non-standard MS4s), including, but not limited to, systems at military bases and large education, hospital or prison complexes, if they are designed for a maximum daily user population (residents and individuals who come there to work or use the MS4's facilities) of at least 1,000.
46. Stormwater: Stormwater runoff, snow melt runoff, and surface runoff and drainage. See 5 CCR 1002-61.2(103).
47. Structural Control Measures: Includes control measures that are comprised of facilities and structures that remove pollutants from water or retain, reuse, or provide for infiltration or evaporation of water.
48. To the Extent Allowable under state or Local Law: A standard of implementation of permit requirements and means that to the extent that the permittee is not constrained by state or local



laws. Local laws that can be legally changed by the permittee to allow implementation of permit requirements do not constitute a barrier to implementation of a permit requirement.

49. Total Maximum Daily Loads (TMDLs): The sum of the individual wasteload allocations (WLA) for point sources and load allocations (LA) for nonpoint sources and natural background. For the purposes of this permit, a TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes WLAs, LAs, and must include a margin of safety (MOS), and account for seasonal variations. (See section 303(d) of the Clean Water Act and 40 C.F.R. 130.2 and 130.7).
50. Water Quality Capture Volume (WQCV): The volume equivalent to the runoff from an 80th percentile storm, meaning that 80 percent of the most frequently occurring storms are fully captured and treated and larger events are partially treated.
51. Water Quality Standards: Any standard promulgated pursuant to section 25-8-204 C.R.S. For purposes of this permit, water quality standards are a narrative and/or numeric restriction established by the Water Quality Commission applied to state surface waters to protect one or more beneficial uses of such waters. Whenever only numeric or only narrative standards are intended, the wording shall specifically designate which is intended. See 5 CCR 1002- 31.5(37).
52. Waters of the State of Colorado: Any and all surface waters and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed. This definition can include water courses that are usually dry. Note: this permit is only applicable to applicable discharges to surface waters of the state.

M. REFERENCES

- A. Colorado Department of Public Health and Environment, Water Quality Control division Files, audited permittees.
- B. Colorado Department of Public Health and Environment, Water Quality Control division, stakeholder input following pre public notice meeting, May 6, 2013.
- C. Colorado Department of Public Health and Environment, *Low Risk Discharges Policy (WQP-27)*, Colorado Department of Public Health and Environment, effective June 13, 2003.
 1. Low Risk Discharge Guidance: Potable Water Monitoring Devices, January 8, 2014
 2. Low Risk Discharge Guidance: Potable Water, Revised August 2009
 3. Low Risk Discharge Guidance: Snow Melting, June 2008
 4. Low Risk Discharge Guidance: Surface Cosmetic Power Washing Operations to Land, July 2010
 5. Low Risk Discharge Guidance: Swimming Pools, June 2008
 6. Low Risk Discharge Guidance: Uncontaminated Groundwater to Land, September 2009
- D. Colorado Department of Public Health and Environment, Water Quality Control division, Total Maximum Daily Load for:
 1. COSPBO02: Boulder Creek from North Boulder Creek to South Boulder Creek. E coli



2. COSPMS04: Barr Lake and Milton Reservoir, Dissolved Oxygen
 3. COSPMS04: Barr Lake and Milton Reservoir, pH TMDL
 4. COSPMS04: Barr Lake and Milton Reservoir, Implementation Plan for pH TMDL
 5. COSPUS14: South Platte River Bowles Avenue to Burlington Ditch, E coli TMDL
 6. COGUUN12: tributaries to the Uncompahgre River, Selenium TMDL,
 7. COGUUN4b: Uncompahgre River from LaSalle Road to Confluence Park, Selenium TMDL,
 8. COGUUN4c: Uncompahgre River from Confluence Park to the Gunnison River, Selenium TMDL
- E. Colorado Discharge Permit System Regulations, Regulation 5 CCR 1002- 61, Colorado Department of Public Health and Environment, Water Quality Control Commission, effective September 30, 2009.
- F. Douglas County. 2012. *Douglas County Large Lot Runoff Evaluation—Part 2*. Muller Engineering Company, Inc. Lakewood, Colorado.
- G. Regulations Controlling Discharges to Storm Sewers, Regulation 5 CCR 1002-65, Colorado Department of Public Health and Environment, Water Quality Control Commission, effective May 30, 2008.
- H. Cherry Creek Reservoir Control Regulation, 5 CCCR 1002-72, Colorado Department of Public Health and Environment, Water Quality Control Commission, effective November 30, 2012.
- I. Nutrient Management Control Regulation, Regulation 5 CCR 1002-85, Colorado Department of Public Health and Environment, Water Quality Control Commission, effective September 30, 2012.
- J. state MS4 General Permits. Review of portions of the following permits: Arkansas (2009), California (2013), Kansas (2004), Ohio (2009), New Jersey (2009), New York (2010), Pennsylvania (2002), Texas (2007), Utah (2010), Vermont (2012)
- K. UDFCD. 2010. *Urban Storm Drainage Criteria Manual: Volume 3 - Best Management Practices*. Urban Drainage and Flood Control District, Denver, CO
- L. Urbonas B., J.C.Y. Gou, and L.S. Tucker. 1989 updated 1990. Sizing Capture Volume for Stormwater Quality Enhancement. *Flood Hazard News*. Urban Drainage and Flood Control District, Denver, CO
- M USEPA. 2014. *Post-Construction Performance Standards and Water Quality-Based Requirement: A Compendium of Permitting Approaches*. US Environmental Protection Agency, Washington, DC.
- N USEPA. 2010. *MS4 Permit Improvement Guide*. US Environmental Protection Agency, Washington, DC.
- O USEPA.1999. National Pollutant Discharge Elimination System -Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges; Final Rule. US Environmental Protection Agency, Washington, DC.
- P USEPA. 1983. *Results of the Nationwide Urban Runoff Program*. US Environmental Protection Agency, Washington, DC.
- Q USEPA. unknown. *Water Permitting 101*. US Environmental Protection Agency, Washington, DC.





The most significant areas for which input was received from stakeholders that was directly related to development of the first draft permit are summarized in the Table 2, along with a summary of the resulting permitting approach.

Table 2: Stakeholder Input into Permit		
Subject	Stakeholder Input	Approach for Draft Permit
Effluent Limitations	Stakeholder input indicated a preference to not include effluent limitations in the permit.	The division has included effluent limitations in the permit to provide clarity and transparency in permit requirements and increase efficiency. The previous permit required the permittee to develop a program and division to review and approve the program prior to implementation. This framework was less transparent, resulted in highly variable implementation, did not result in overall compliance with permit conditions, caused uneven economic implications and was not an efficient use of staff time. The division explained to stakeholders that the permit will use the term “effluent limitation” to reflect terms and conditions of the permit that are intended to reduce pollutants in the discharge. This framework also allows the division and permittees to gain efficiencies with the PDD framework and the program modification requirements, which have been deleted from the renewal permit.
Permit Area (County Growth Areas)	Stakeholders indicated a preference for allowing exceptions for traditionally rural character development. This would exclude non-urban character development from inclusion in the construction and post construction requirements. Stakeholder also indicated they preferred for the permit to not address reporting or requirements for activities outside of the Growth Areas.	The division incorporated stakeholder input and the draft renewal permit allows the permittees to develop and submit growth area maps with the permit application. The permit includes exclusions for sites that are not urban character. The division also did not include reporting or requirements for activities outside of the growth areas. The lack of proactive reporting for activities outside of the growth areas will likely result in the need for future information gathering and discussions with permittees to access the accuracy of the growth areas.



PDD requirements	Stakeholders prefer that the permit does not include a requirement for the PDD to be organized according to the permit numbering scheme. Stakeholders preferred a timeframe to provide the PDD to the division, as opposed to an initial division concept that the PDD be “immediately available.”	The required elements of the PDD are based on the division’s determination of a PDD structure and content that would allow the PDD to be a tool for staff training and transitions during staff changes; in addition to a publicly - available document that provides a summary of the permittee’s program. The division did not include the requirement that the PDD be organized to mirror the structure of the permit. The division did not include the requirement that the PDD be “immediately available.” The division has included a 10 day time frame for the PDD to be provided to the division.
Public Education	Stakeholder input included versions of activity tables and minimum standards for the permittee’s webpage. Stakeholder input also included doubt about the effectiveness of a webpage.	The permit includes an activity table that was based on input provided by stakeholders. The division removed the web site requirement in the second draft of the renewal permit, but a web site is not included in table of activities.
Public Education: Nutrients	Stakeholder input indicated preference to not include minimum sources to target for education and outreach. Stakeholder input indicated that the nutrient regulations contained adequate requirements for permittees to identify sources.	The permit does not include minimum sources for permittees to target with education and outreach. The permit does include minor additions to what is in the regulation to provide clear and measurable permit conditions.



<p>Illicit Discharge and Detection: Occasional Incidental Discharges</p>	<p>Stakeholder input indicated a range of responses following the division’s concepts that included eliminating the provision for permittees to exclude additional discharges from being illicit discharges (i.e., occasional incidental discharges). Most stakeholders expressed a desire to keep the concept of occasional incidental discharges.</p>	<p>The division’s initial concept was to eliminate this provision because it provides a method for permittees to allow a discharge that is not allowed by state law, is reasonable to prohibit, and/or has the potential to impact water quality. Additionally, the previous permit language lacks transparency since public notice is not required when exempting a discharge from prohibitions. Based on feedback, the division has revised the approach to incorporate requirements to address these concerns. The draft permit addresses providing for public notice and transparency regarding discharges and limiting allowed discharges to those with low risk of water quality impacts or for which prohibition is not practicable.</p>
<p>Illicit Discharge and Detection: Centralized Recordkeeping</p>	<p>Stakeholder input indicated concern regarding a centralized database of illicit discharges. Stakeholder input indicated that entities outside of permittee control (e.g., volunteer fire department, special district) may be an intake and response group for illicit discharges yet the permittee does not have control over this entity.</p>	<p>The draft permit requires permittee to provide a centralized database of illicit discharge incident reporting. The second draft of the renewal permit allows the permittee the flexibility to have several centralized databases. The requirement is only applicable illicit discharges identified by, or reported to, the permittee. The permit does not include requirements for information reported to entities not under the control of the permittee.</p>
<p>Illicit Discharge and Detection: Enforcement</p>	<p>Stakeholder input indicated a concern regarding a requirement to develop and implement an enforcement response guide or plan that that included requirements for specific responses. Stakeholder input indicated that illicit discharges are unique and the enforcement should be tailored to the situation.</p>	<p>The permit does not pair violations with required responses. The draft permit requires that permittees address findings of a similar nature consistently.</p>



<p>Construction Sites: Control Measure Requirements</p>	<p>Stakeholder input included concern regarding a permit requirement for minimum control measure on construction sites, specifically for requiring a sediment control measure for all disturbed areas. Stakeholders expressed concerns that such a design standard would need to allow for incidents when controls were not necessary.</p>	<p>The division has determined that inadequate sediment control is a primary factor in construction site non-compliance. The division has determined that minimum standards are needed and has provided minimum requirements for control measures for all construction sites. The division incorporated concerns identified by stakeholders in developing the minimum requirements for sediment control measures , which is included in the draft renewal permit.</p>
<p>Construction Sites: Inspections and Documentation</p>	<p>Stakeholder input indicated a preference to maintain flexibility to implement inspection procedures and activities. Stakeholder input included concern regarding an inspection frequency more frequent than monthly with programs managed by limited staff people. Specifically with 14 day inspections, stakeholders were concerned about the ability of one staff inspector to take leave yet retain compliance.</p>	<p>The division has determined that minimum standards were needed in the permit for the construction sites program to require inspections. The division incorporated stakeholder input to include a minimum standard in the permit.</p>
<p>Construction Sites: Overlapping Jurisdictions</p>	<p>Stakeholder input indicated a preference to allow for permittees to rely on a neighboring permittees standards and oversight for sites with overlapping jurisdictions.</p>	<p>The draft permit allows permittees to enter into written agreements to use one permittee’s requirements to regulate in an adjacent jurisdiction on an overlapping site.</p>
<p>Construction Sites: Enforcement Response Plan</p>	<p>Stakeholder input indicated a concern regarding a requirement to develop and implement an enforcement response guide or plan that that included requirements for specific responses. Stakeholder input indicated that construction activities are unique and the enforcement should be tailored to situation.</p>	<p>The permit does not pair violations with required responses. The draft permit requires that permittees to address findings of a similar nature consistently. The permit includes common enforcement responses for the permittee to address.</p>



Post Construction: Excluded sites related to Roadway Development	Stakeholder input expressed a preference for allowing additional adjacent paved areas without requirement for permanent control measure. The Water Quality Forum - MS4 workgroup provided a framework for the exclusion.	The division engaged in extensive discussion with the Water Quality Forum - MS4 workgroup regarding roadway permanent water quality control measure. The division has provided an exclusion of roadway redevelopment in the draft renewal permit. The exclusion provides a framework for adding impervious area without requiring permanent water quality control measure.
Post Construction: Pavement management	Stakeholder input expressed concern regarding activities related to pavement management and a desire for clear definitions of activities that are considered pavement management and will not require post-construction control measure.	The division excludes maintenance and pavement management activities by providing a definition of pavement management in the draft renewal permit.
Post Construction: Underground sites	Stakeholder input expressed a preference for excluding underground sites (e.g., underground utilities) that do not permanently alter the surface from the permanent water quality control measure requirements.	The division has excluded activities for installation or maintenance of underground utilities or infrastructure that does not permanently alter the terrain, ground cover, or drainage patterns from prior to the site.
Post Construction: Regional WQCV Facility	Stakeholder input indicated a preference to allow an alternative design standard when a site drains to regional WQCV facility.	The division has provided alternative treatment standards and requirements when a site drains to regional WQCV facility.
Post Construction: Design Standard and Exclusions	Stakeholder input indicated a preference for the division to provide additional design standard options if 100% WQCV was going to be implemented as a design standard; specifically regarding redeveloped sites, constrained sites and regional control measure.	The division recognizes that treatment must be tailored to the land development site and the draft permit provides several options for post construction requirements.
Post Construction Definition of Redevelopment	Stakeholder input included a recommended concept definition of redevelopment, which stated that redevelopment applies when sites are 35% or more impervious area.	The division's approach for the definition includes existing 35% impervious area as a benchmark to define redevelopment.



<p>Post Construction: Post Acceptance Site Inspection</p>	<p>Stakeholder input included a concern regarding requiring inspections of permanent water quality control measure on residential lots. Permanent control measures on residential lots tend to be vegetative and include infiltration. Stakeholders were concerned about the workload to address distributed controls and expressed that adding an inspection burden on residential controls may reduce the use of these source controls. Stakeholder input preferred allowing the existing land use regulations for inspection and enforcement of residential control measure.</p>	<p>The division provided an exclusion from the minimum inspection frequency for permanent control measure serving an individual residential lot.</p>
<p>Municipal Operation and Good Housekeeping</p>	<p>Stakeholder input included concern that revised requirements for municipal facility runoff control plans (MFRCP) would require permittees to duplicate previously completed information (e.g., standard operating procedures) into a new plan format.</p>	<p>It is not the division’s intent for the permittee to duplicate paperwork. The division has provided language in the draft renewal permit that existing standard operating procedures can be used to meet the permit requirement. Some permittees may need to supplement additional documents to meet the new record keeping requirements.</p>
<p>Municipal Operation and Good Housekeeping: Bulk Storage</p>	<p>Stakeholder input identified concerns that bulk storage may not be practicable.</p>	<p>The division has determined that requiring bulk storage in the permit is practicable based on the long-term inclusion of this requirement in stormwater discharge permits for industrial activities in Colorado.</p>



Monitoring	<p>Stakeholder input expressed concern regarding selenium and E coli monitoring concepts discussed during stakeholder meetings. Stakeholders specifically addressed concern over the potential for MS4s not to be contributing to impairment, the limited solutions for E coli and selenium impairment, and concern over program funds being redirected from other program areas that may be more effective at improving water quality. Stakeholder input included other methods of determining E coli sources. Stakeholder feedback included concerns over costs because some permittees stated that the potential number of outfalls to be monitored was unknown and therefore the cost to implement a monitoring program was unknown.</p>	<p>The division included option 1 on the second draft of the renewal permit.</p>
Monitoring	<p>Stakeholders provided input that irrigation return flows are interconnected with the MS4 system for some permittees.</p>	<p>It is the division’s intent to exclude irrigation season flows from the monitoring requirements. The renewal permit includes a waiver option for permittees to sample outside of a required quarter to avoid the irrigation season. An additional exclusion is included for dry weather flows that are predominantly associated with irrigation return flows or supply.</p>
Coal Tar-Based Asphalt Sealant	<p>Stakeholder input indicated preference for not including requirements regarding coal tar-based asphalt sealant.</p>	<p>The division provided stakeholder information from the United States Geologic Survey regarding coal tar-based asphalt sealant, which contains a high concentration of poly aromatic hydrocarbons (PAHs). Some PAHs are classified as probable carcinogens. The division has determined that the coal tar asphalt sealant is a potential pollutant in urban runoff and/or could limit the ability for maintaining post-construction control measure. However, the draft permit does not included associated requirements.</p>





Table 3: Summary of Audit Findings

NOTE: An "x" denotes that the permittee had the audit finding described.

Finding	Permittee #1 Audit Date: 02/08/2010	Permittee #2 Audit Date: 02/25/2010	Permittee #3 Audit Date: 03/03/2010	Permittee #4 Audit Date: 03/23/2011	Permittee #5 Audit Date: 04/07/2010	Permittee #6 Audit Date: 10/20/2010	Permittee #7 Audit Date: 01/24/2011	Permittee #8 Audit Date: 04/11/2011	Permittee #9 Audit Date: 05/10/2011	Permittee #10 Audit Date: 10/04/2012	Total	Percentage of Auditees with this Specific Finding
General- Program Description Document did not reflect current activities	X	X	X	X	X	X	X	X	X	X	10	100%
IDDE-allowed a timeframe to correct an illicit discharge							X	X			2	20%
IDDE-did not list all enforcement tools that are being used by staff in the regulatory mechanism				X		X			X		3	30%

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IDDE-allowed variances, exemptions, and waivers for certain discharges. This is not allowed for in Regulation 61						X	X		X		3	30%
Construction*-- failed to review all site plans for construction sites that disturb 1 acre or more		X	X		X	X	X		X	X	7	70%
Construction*-- all site plans did not match field conditions	X	X				X		X		X	5	50%
Construction*-- allowed for a timeframe to correct BMP		X	X	X	X	X		X		X	7	70%



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Construction*-- at least one construction site had at least one inadequate BMP	X	X		X	X	X		X		X	7	70%
Construction*-- at least one construction site had at least one BMP that required maintenance		X		X	X	X		X		X	6	60%
Construction*-- allowed for recalcitrant control measure violations				X	X	X		X		X	5	50%
Post- Construction-- not all of the construction site was covered by one or more control measures at one or more construction sites	X	X	X	X	X	X	X			X	2	80%



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Post-Construction--no control measures were installed on at least one site	X		X	X		X	X			X	6	60%
Post-construction--no control measures were installed for at least some of at least one construction site		X			X						2	20%
Post-Construction--did not follow their own SOP for site plan review			X		X			X		X	4	40%
Post-Construction--did not inspect control measures in accordance with their own schedule or did not inspect control measures at all						X		X		X	3	30%



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 Water Quality Control Division
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Post-Construction-- at least one control measure was inadequate or in need of maintenance			X	X	X	X	X			X	6	60%
Post-Construction-- at least one control measures did not conform to the approved site plan			X	X	X	X				X	5	50%
Good housekeeping-- did not develop and maintain written procedures for all of the municipal operations		X					X				2	20%
Good housekeeping-- did not have secondary containment for at least one primary tank of a chemical	X	X		X				X	X		5	50%



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Good housekeeping-- inadequate program to prevent or reduce pollutant runoff from municipal operations	X	X	X	X	X	X	X	X			8	80%
--	---	---	---	---	---	---	---	---	--	--	---	-----

* 30% of permittees did not have any active construction sites.





The first draft of the renewal permit was public noticed on November 1, 2013 and comments were accepted until January 10, 2014. The division announced on December 20, 2013 that a second draft of the renewal permit would be developed. The second draft of the renewal permit was public noticed on April 1, 2015 and comments were accepted until June 30, 2015. The division held five stakeholder meetings during the 60-day public notice period. These were not official public meetings and only written comments submitted to the division are reflected in this document.

This response to comments does not address comments received on the first draft of the general permit. This response to comments only includes comments on and the division's response to the second draft of the general permit. Most comments listed in this document are verbatim.

Comments were received from a number of stakeholders, including the following:

1. 5-2-1 Drainage Authority
2. Adams County
3. Arvada
4. Aurora
5. Canon City
6. Castle Pines
7. Castle Rock
8. City of Boulder
9. Cherry Creek Basin Water Quality Authority
10. Cherry Creek Stewardship Partners
11. Colorado Association of Home Builders
12. Colorado Contractors Association
13. Colorado Stormwater Council
14. Colorado Stormwater Council, Non-Standard Committee
15. City and County of Denver
16. Douglas County
17. Earth Force
18. El Paso County
19. Federal Heights
20. Glendale
21. Golden
22. Greeley
23. Greenwood Village
24. Highland Ranch Metro District
25. Home Builders Association of Metro Denver
26. Housing and Building Association of Colorado Springs
27. Keep it Clean Partnership
28. Lafayette
29. Loveland
30. Northglenn
31. Parker
32. Southeast Metro Stormwater Authority
33. Urban Drainage and Flood Control District
34. Weld County
35. Westminster
36. Xcel Energy





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Comments on the second draft of the COR090000 general permit:

A. GENERAL TOPICS

Comment 1: Remove Appendix A

Colorado Stormwater Council: Please remove Appendix A. Option 2 and 3 are no longer included so Appendix A is no longer an appropriate reference.

Douglas County: Please remove Appendix A. Option 2 and 3 are no longer included so Appendix A is no longer an appropriate reference.

Response 1: Remove Appendix A

This comment has been incorporated into the permit.

Comment 2: General Support of Colorado Stormwater Council's comments

City of Glendale: The City supports the written comments submitted to the Division by the Colorado Stormwater Council (Colorado Stormwater Council) (document titled "Colorado Stormwater Council (Colorado Stormwater Council) Comment Table COR-090000 and COR-080000 CDPS Municipal Separate Storm Sewer System (MS4) Permit- Comment Response to Public Notice"). The City participated in all Colorado Stormwater Council Workgroups to ensure our comments were captured completely and accurately.

There are a number of "high-level" issues in the Colorado Stormwater Council Comments. The City agrees with the Colorado Stormwater Council that these are "high-level" issues that if are not addressed would be of great concern to the City and would potentially mean the City could not comply with the permit that is issued.

City of Federal Heights: The City supports the written comments submitted to the Division by the Colorado Stormwater Council (Colorado Stormwater Council) (document titled "Colorado Stormwater Council (Colorado Stormwater Council) Comment Table COR-090000 and COR-080000 CDPS Municipal Separate Storm Sewer System (MS4) Permit- Comment Response to Public Notice"). The City participated in all Colorado Stormwater Council Workgroups to ensure our comments were captured completely and accurately.

There are a number of "high-level" issues in the Colorado Stormwater Council Comments. The City agrees with the Colorado Stormwater Council that these are "high-level" issues that if are not addressed would be of great concern to the City and would potentially mean the City could not comply with the permit that is issued.

City of Lafayette: The City has also submitted comments through the KICP and supports the detailed comments submitted in writing to the Division by the Colorado Stormwater Council (titled "Colorado Stormwater Council (Colorado Stormwater Council) Comment Table COR-090000 and COR-080000 CDPS Municipal Separate Storm Sewer System (MS4) Permit- Comment Response to Public Notice"). The City participated in each Colorado Stormwater Council permit workgroup and feels our concerns are captured within those comments. The comments submitted by both the KICP and Colorado Stormwater Council reflect our high-level concerns.





City of Aurora: We have been following the renewal process carefully and have participated in several of the Colorado Stormwater Council workgroup. We support the comments submitted by the Colorado Stormwater Council.

City of Canon City: Colorado Stormwater Council: The City of Cañon City is a member of the Colorado Stormwater Council (Colorado Stormwater Council) and as such has provided input to the Colorado Stormwater Council's comments to the draft renewal COR090000 permit. We support the Colorado Stormwater Council's comments. In areas we believe to be very significant, we are re-emphasizing the Colorado Stormwater Council's comments or we have provided additional comments.

El Paso County: Please note that El Paso County staff has worked closely with the Colorado Stormwater Council workgroups in development of comments for the larger stakeholder group. In addition to the comments provided in the attached document we support the comments being provided by the Colorado Stormwater Council.

City of Greeley: With this being said the City of Greeley fully supports the comments being submitted to the Division by the Colorado Stormwater Council and fully supports the proposed recommendations for changes to the permit.

Highlands Ranch Metro District: We support the comments furnished by the Colorado Stormwater Council and the comments furnished by the Non-Standard Committee of Colorado Stormwater Council.

City of Loveland: In consideration of the Division's time we will not reproduce the Colorado Stormwater Council's comments in this letter, however, the City agrees with and supports the detailed comments that were compiled through the workgroups and the City strongly recommends the Division consider and adopt the Colorado Stormwater Council's proposed revisions in their entirety.

City of Arvada: The City of Arvada supports the comments submitted by the Colorado Stormwater Council (Colorado Stormwater Council) that were recently submitted to the Water Quality Control Division of the Colorado Department of Public Health and Environment.

City of Northglenn: We will simply state that we are in full support of and echo the comments and proposed language of the Colorado Stormwater Council Comment Table.

Weld County: Weld County concurs with the detailed comments submitted to the Division by the Colorado Stormwater Council during the second round of public commenting.

City of Westminster: The City of Westminster fully supports and reiterates the comments provided by the Colorado Stormwater Council. We feel all of Colorado Stormwater Council's comments are substantive and merit consideration and response.

Douglas County: Douglas County has actively participated in the Colorado Stormwater Council workgroups during the preparations of these comments. The Colorado Stormwater Council represents 98% of the jurisdictions within the State of Colorado and each jurisdiction has its own program; the deviations from the Colorado Stormwater Council comments are indicative of the potential impacts to the Douglas County GESC/DESC





programs and will benefit those entities that follow or have adopted these programs. We have documented these changes with an “*” within the areas of our proposed changes.

5-2-1 Drainage Authority: The 521 participates with the Colorado Stormwater Council, and agrees with the comments that are being submitted to the CDPHE.

City of Greenwood Village: As several watersheds originate in or surrounding the Village, and Colorado is a headwaters state, the Village appreciates the contribution that water quality provides to quality of life which is integral to the Village. The Village has concern with potential for negative water quality impacts and is an active member the Cherry Creek Basin Water Quality Authority and Colorado Stormwater Council (CCBWQA and Colorado Stormwater Council, respectively).

The Village has also continued cooperation with the Division and with these partnerships, will continue to improve water quality in Colorado. The Village is in support of the comments respectively submitted by the CCBWQA and Colorado Stormwater Council as Village staff participated in the generation of these comments. In the spirit of brevity, this letter will not reiterate these comments. However, this letter provides comment to address the Village's additional concerns and supplements those submitted by the Colorado Stormwater Council and the CCBWQA.

Southeast Metro Stormwater Authority: SEMSWA was also an active participant on the Colorado Stormwater Council (Colorado Stormwater Council) Work Group comment effort and the Cherry Creek Basin Water Quality Authority's Technical Advisory Committee (TAC) review discussions. We will not be reiterating either of those groups' comments unless there is something specific that pertains to how SEMSWA will be implementing our programs in the new permit term. We encourage the Division to consider both the Colorado Stormwater Council and TAC comments and value the amount of effort that went in to those documents by MS4 staff who manage implementation of the permit requirements on a daily basis.

Town of Castle Rock: The Town of Castle Rock is a member of the Colorado Stormwater Council (Colorado Stormwater Council) and the Cherry Creek Basin Water Quality Authority (CCBWQA). We have been an active participant in the response efforts put forth by the Colorado Stormwater Council and the CCBWQA and are in general agreement with formal comments provided by both parties. Included in this response are comments on the Draft Renewal Permit intended to supplement those comments prepared and submitted by the CCBWQA and Colorado Stormwater Council regarding permits COR-0800000 and COR-0900000.

Town of Parker: Through the comment period the Town has actively participated in the Division workgroup sessions, work sessions with the Cherry Creek Basin MS4's and the Cherry Creek Basin Water Quality Authority Technical Advisory Committee (CCBWQA TAC), and work sessions with the Colorado Stormwater Council (Colorado Stormwater Council). The Division will receive comments from both the Cherry Creek Basin Water Quality Authority and the Colorado Stormwater Council. The Town of Parker concurs with both entities as stated below:

- The Town concurs with the CCBWQA TAC comments dated June 11, 2015 as they relate to the COR080000.





City of Castle Pines: The City supports the written comments submitted to the Division by the Colorado Stormwater Council (Colorado Stormwater Council) (document titled "Colorado Stormwater Council (Colorado Stormwater Council) Comment Table COR-090000 and COR- 080000 CDPS Municipal Separate Storm Sewer System (MS4) Permit- Comment Response to Public Notice"). The comments reflect the changes we see as necessary to the COR-080000 permit. The City participated in all esc Workgroups to ensure our comments were captured completely and accurately.

There are a number of "high-level" issues in the Colorado Stormwater Council and CCBWQA Comments. The City agrees that these are "high-level" issues that if are not addressed would be of great concern to the City and would potentially mean the City could not comply with the permit that is issued.

Keep it Clean Partnership: Several KICP members participated in the Colorado Stormwater Council workgroups to compile comments. KICP is in support of the Council's detailed table of comments on draft permit language. We hope the Division considers the detailed comments provided by the Council, as it is an indication of the commitment of the regulated community to having a clear and implementable permit.

Response 2: Support of Colorado Stormwater Council's Comments

The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 3: Support of Changes from the First to the Second Draft of the Permit

City of Lafayette: We would also like to recognize the significant changes from the first draft of the MS4 Permit to the draft we comment on today. It is clear to us that much attention went into considering our comments and the concerns we expressed on the first draft.

Home Builders Association of Metro Denver: We would like to acknowledge that this is a much better permit due to an increase in consistency. We embrace and support an emphasis on compliance assistance and hope the CDPHE is moving toward this goal.

Housing and Building Association of Colorado Springs: We would like to stress the importance of allowing MS4 permit holders the flexibility to define and implement programs that are both practical and applicable within the boundaries of each municipality and acknowledge that this is a much improved permit. The construction industry is also encouraged by the positive direction of the language that was passed in HB 15-1249. The emphasis on compliance assistance is a direct result of the collaboration between CDPHE and the construction industry to develop a program focused on preventing violations of the Colorado Water Quality Control Act.

5-2-1 Drainage Authority: The 521 Drainage Authority (521) would like to thank Colorado Department of Public Health and Environment (CDPHE) for addressing many of our concerns and comments in the first draft of the General Permit for Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems (MS4's) by issuing a second draft of the permit.

City of Canon City: The City of Cañon City would like to thank the Division for taking the time to consider the more than 1,400 comments received during the public notice of the





first draft of the renewal permit. We are appreciative of the Division's consideration of the received comments and pleased to see that many of the comments were addressed.

City of Glendale: The City of Glendale would like to express our gratitude to the Water Quality Control Division (Division) for the consideration of our comments on the second draft MS4 Permit COR-090000. It is apparent to the City that the Division worked hard to incorporate our extensive comments on the last draft issued in 2013.

City of Greeley: We appreciate the Division's response to our previous comments made on the last draft issued in 2013 and recognize the effort by the Division to incorporate the comments into the current draft permit.

City of Lafayette: The City of Lafayette would like to express our gratitude to the Division for your consideration of our comments on the draft MS4 Permit COR-090000 released for public comment on May 1, 2015.

City of Northglenn: We appreciate the Division taking some of our previous comments into consideration and holding additional stakeholder meetings to further discuss this revised draft permit.

El Paso County: Thank you for providing several opportunities to allow input on the draft permit language, gaining clarification on the Division's intent and for accepting and considering the comments made above.

City of Castle Pines: The City of Castle Pines would like to express our gratitude to the Division for the consideration of our comments on the draft MS4 Permit COR-080000. We appreciate the Division's response to our previous comments made on the draft MS4 Permit COR-090000 issued in 2013 and recognize the effort by the Division to incorporate the comments into the current draft permit, COR-080000- specific to the Cherry Creek Basin.

Greenwood Village: Overall, the Village is pleased to see that the division reviewed and considered the Village's comments submitted January 10, 2014 for the first draft of the MS4 phase II permit.

Southeast Metro Stormwater Authority: We appreciate the effort undertaken on the second draft. Thank you for the flexibility that you have provided MS4s to both keep the program implementation aspects that are working and provide opportunities for additional approaches. We certainly do value the time and effort that went in to the preparation of the Fact Sheet and appreciate the care the Division took to provide clarification of the intent behind the requirements.

Town of Castle Rock: The Town of Castle Rock (Town) acknowledges the substantial effort put forth by the Water Quality Control Division (Division) in drafting new permit language and appreciates the continued outreach efforts to stakeholders during this process.

Town of Parker: The Town of Parker would like to thank the Division for the opportunity to comment on the proposed draft permit COR080000. We recognize the effort put forth in developing this document.





Douglas County: We also would like to acknowledge the time and effort by the Division that has been put into this Second Public Notice Version of the Draft Permit and appreciate the opportunity to comment on it. We appreciate the changes to the permit language with this Second Notice is now focused on the regulatory requirements with a Fact Sheet that provides the direction and goals of the Division with respect to implementation of the permit.

Response 3: Support of Changes from the First to the Second Draft of the Permit

The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 4: Reduce Recordkeeping Requirements

City of Aurora: The Fact Sheet includes numerous statements related to recordkeeping. Recordkeeping was one of the key issues about which the division received substantial comments during the first draft of the Phase II permit. This version not only kept nearly all of the requirements of the previous draft, but “added a recordkeeping section to each program area in the renewal permit” (p. 27). Requiring program modifications that are purely administrative do not serve to improve water quality and divert resources to creating more paperwork.

Douglas County: There are several potential cost increases associated with the new permit, particularly with respect to new and extremely detailed, and in some cases duplicative, recordkeeping requirements and the development of the Program Description Document. We believe these additional requirements may lead to the necessity of adding a full-time employee to our staff. We believe the recordkeeping system we have in place would still suffice and that if there are MS4 programs that do not have sufficient systems in place, it would be better if the Division provided compliance assistance in those specific instances. The Program Description Document and the Recordkeeping requirements proposed are cumbersome and are presented in several different locations. These requirements also appear to conflict with one another and seem to be multiple requests for same information within the minimum control measures. We respectfully request the need for this information to be kept separately and to create one comprehensive list of materials the Division would like permit holders to keep, as associated with this permit and the applicable minimum control measure.

Response 4: Reduce Recordkeeping Requirements

Recordkeeping requirements changed from the first to the second drafts of the renewal permit. Some of these changes were intentional recordkeeping reductions based on comments received on the first draft of the renewal permit. Other recordkeeping requirement changes were clarifications to better align the program area requirements to recordkeeping and PDD requirements. Some recordkeeping requirements were further reduced based on comments received on the second draft of the renewal permit as described throughout Attachment A. The division continues to determine that recordkeeping is an important part of practice-based effluent limits. The fact sheet provides the rationale for the recordkeeping requirements that are in the renewal permit.

Comment 5: Add a Basis and Justification of Numeric Criteria

City of Canon City: General Comment: The City of Cañon City requests the Division clarify in the Fact Sheet how the various numeric criteria and limits contained in this section were derived. What is the basis and justification for each to insure they are realistic?



**Response 5: Add a Basis and Justification of Numeric Criteria**

The division has determined that the terms and conditions of the permit are appropriate. Please see the fact sheet for more information on the rationale/statement of basis for specific permit requirements.

Comment 6: Consider Financial Impacts

City of Canon City: Did the Division consider financial impacts to the MS4s in implementing these requirements?

Town of Castle Rock: Although the draft renewal permit acknowledges the consideration of a cost benefit analysis, this factor does not appear to have influenced the decision making process in the new draft.

Response 6: Consider Financial Impacts

These comments have not been incorporated into the permit. Please see the Discussion of Key Regulatory Terms and Concepts section of the fact sheet for more information. In addition, the division considered all of the comments on the first draft of the general permit, including a cost benefit analysis submitted by the Colorado Stormwater Council. No comments were received on the second draft of the general permit regarding what specific permit requirements were cost prohibitive and why. However, the division made changes to several areas of the permit in the second draft of the general permit in response to the comments and cost benefit analysis, including removing the requirement for permittees to review site plans during inspections.

Comment 7: Include a List Guidance Documents in the Fact Sheet

Colorado Stormwater Council: Please include existing guidance language in the fact sheet. Please include a separate list of references on the CDPHE website that can be updated and added to over time. The Division has issued several guidance documents/memos in the past. A discussion in the fact sheet and a reference to the past guidance would be beneficial. A list on the website would allow for updates over time.

Douglas County: Please include existing guidance language in the Fact Sheet. Please include a separate list of references on the CDPHE website that can be updated and added to over time. The Division has issued several guidance documents in the past. A discussion in the Fact Sheet and a reference to the guidance would be beneficial.

Response 7: Include a List Guidance Documents in the Fact Sheet

These comments have been incorporated into the fact sheet.

Comment 8: Add a Resources Section to the Fact Sheet

Colorado Stormwater Council: Please include a list of resources in the fact sheet. Please include a separate list of resources on the CDPHE website that can be updated and added to over time. The fact sheet and the website should be a resource for Stormwater Managers. Consider referencing Red Rocks Community College and the Stormwater Center Trainings.

Douglas County: Please include a list of resources in the in the Fact Sheet. Please include a separate list of references on the CDPHE website that can be updated and added to over





time. The Fact Sheet should be a resource for Stormwater Managers. Consider referencing Red Rocks Community College and the Stormwater Center Trainings.

Response 8: Add a Resources Section to the Fact Sheet

These comments have been incorporated into the fact sheet. Please see the references section of the fact sheet.

Comment 9: Reduce the Use of the Terms “Any” and “All”

City of Aurora: The words “any” and “all” should be used more judiciously and in many cases should be stricken from the permit.

Response 9: Reduce the Use of the Terms “Any” and “All”

The division reviewed the use of the terms and found them to be appropriate. No changes were made to the permit.

Comment 10: Support of Comments Submitted by the Home Builders of Metro Denver and Colorado Springs Housing and Building Association

Colorado Association of Home Builders: CAHB is in full support and agreement with the comments that you will receive from our associated local associations, particularly the Home Builders Association of Metro Denver and the Colorado Springs Housing and Building Association.

Response 10: Support of Comments Submitted by the Home Builders of Metro Denver and Colorado Springs Housing and Building Association

The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 11: Typographical Errors

The City of Cañon City will not be commenting on the numerous grammatical, punctuation and spelling errors contained in the draft permit and fact sheet.

Response 11: Typographical Errors

The division corrected various typographical errors.

Comment 12: Reduce the Length of the Permit

City of Arvada: The Draft General Permit is approximately three times the number of pages contained in the previous permit. The significant added detail in the proposed permit leaves little flexibility for permittees to design programs specific to their jurisdiction. Loss of flexibility, in many cases, can result in a loss of robust programs.

Response 12: Reduce the Length of the Permit

Please see the fact sheet for the rationale/statement of basis/preliminary analysis for the terms and conditions of the permit including a discussion of how the additional detail in the permit eliminates the need for development, review, and approval of a PDD, how significant flexibility is incorporated into the general permit to allow permittees to design programs specific to their jurisdiction, and how a permittee may apply for coverage under an individual permit or for a modification of third general permit to include the proposed MS4 specific terms and condition in Part III of the permit.

Comment 13: Reduce the Specific Program and Recordkeeping Requirements



City of Northglenn: As Colorado is a headwaters state, protecting stormwater and water quality is a priority for Northglenn. At the same time, we have to be cognizant of how we effectively, efficiently, and responsibly utilize our resources. The Colorado Stormwater Council's comments are submitted with the goal of maintaining program flexibility as EPA's definition of MEP intended. The Division has indicated that the objective of the permit is to have requirements that are enforceable. As was commented extensively in the first draft permit, the prescriptive program and recordkeeping requirements to provide this enforceability will create added costs for us without the assurance of improved water quality. Overall, Northglenn is concerned that with the prescriptive permit conditions, there will be a loss in our ability to continue the iterative process of program development into an effective, mature program.

Douglas County: Overall, Douglas County is concerned that with too prescriptive permit conditions, there is a loss in ability to continue the iterative process these mature programs have implemented in the past. Several of our comments are made with the goal of maintaining some program flexibility as EPA's definition of MEP intended. Douglas County feels that adding additional design standards and inspection approaches within the permit will help maintain our ability to continue implementing existing successful programs while providing the Division with enforceable requirements. Support for comments allowing for continued permittee flexibility.

Weld County: It is clear that the permit's intent is to adhere to the maximum extent practicable requirement of the Clean Water Act in addition to the numerous state regulations used in determining permit requirements. However, the previously stated issues raise serious concerns which could be remedied with more flexibility for local governments to implement individualized, dynamic programs since a 'one size fits all' scenario may not prove effective. In light of these issues, the Weld County Board of Commissioners requests that CDPHE site the specific statutory authority for each area of the permit. And, the Board respectfully requests the CDPHE perform the cost-benefit analysis to ensure the most efficient and cost effective manner in which to implement changes to the permit.

Response 13: Reduce the Specific Program and Recordkeeping Requirements

Recordkeeping requirements changed from the first to the second drafts of the renewal permit. Some of these changes were intentional recordkeeping reductions based on comments received on the first draft of the renewal permit. Other recordkeeping requirement changes were clarifications to better align the program area requirements to recordkeeping and PDD requirements. Some recordkeeping requirements were further reduced based on comments received on the second draft of the renewal permit as described throughout Attachment A. The division continues to determine that recordkeeping is an important part of practice-based effluent limits. Please see the fact sheet for more information on the rationale/statement of basis for specific permit requirements and how significant flexibility is incorporated into the general permit to allow permittees to design programs specific to their jurisdiction.

Comment 14: Non-Standard COR070000 Permit

Highlands Ranch Metro District: When the Division begins the process of drafting a new Non-Standard Permit, #COR-070000, we would welcome the opportunity to meet with Division staff to discuss the issues that are important in achieving compliance with the MS4 permit. There are challenges as well as many opportunities in improving water quality





within the framework of a new permit and we would like to be part of the process to work with the Division in developing the new permit.

Response 14: Non-Standard COR070000 Permit

The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 15: Provide More Information on Why Trash is Listed in the Permit

Home Builders Association of Metro Denver: Please explain why there is so much focus on trash. For the most part, trash will contribute little to degradation of water quality. What is the driver here? We understand the importance of trash control and of having it in the permit; however, there appears to be excessive focus on this throughout the permit.

Response 15: Provide More Information on Why Trash is Listed in the Permit

The fact sheet has been updated with additional information.

Comment 16: Support of Stakeholder Meetings During Public Notice

City of Arvada: Thank you for providing us the opportunity to comment on the Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems (MS4s) Draft General Permit, and conducting Stakeholder meetings to assist in our understanding of the Second Public Notice Version of the proposed permit.

City of Canon City: The City of Canon City appreciates the time and effort the Permits Section of the Water Quality Control Division (Division) has expended on the revision of the above mentioned draft renewal permit. We also extend our gratitude for engaging the stakeholders during this process.

City of Glendale: The City would also like to recognize the effort the Division put in to holding stakeholder meetings and answering questions on the draft permit to allow us to formulate our comments. The City believes these efforts will result in a clear permit that protects water quality and allows the City to use its resources wisely.

City of Greeley: Thank you for the opportunity to provide comments on the 2nd draft of the Colorado Discharge permit System Stormwater associated with Phase II Municipal Storm Sewer System (MS4) General Permit, COR090000. Thank you for the new approach within the public process to meet and review the second draft of the MS4 permit. I believe that as the meetings progressed, we were able to get to a point where valuable dialog was occurring and both permittees and the Division were able to understand where each was coming from.

City of Westminster: We appreciate the Division considering previous comments and holding additional stakeholder meetings.

Grand Valley Irrigation and Drainage Suppliers: The Grand Valley Irrigation Providers (GVIP) and the Grand Valley Drainage District (GVDD), want to thank the division, you and the CDPHE staff for continuing to listen to our concerns regarding finalization of general permit for MS4s.

Highlands Ranch Metro District: Thank you for the opportunity to comment on the draft MS4 Standard permit. I was impressed with the process the Division followed in presenting





the new draft. The MS4 Non-Standard may be simpler in some ways but more complex in others so this would be a good process to continue.

Home Builders Association of Metro Denver: We appreciated the very helpful and useful series of public stakeholder meetings specifically geared toward the Phase II portion of the General Permit process. Those meetings provided more opportunities to collaborate and work through practical application thoughts surrounding proposed changes.

Housing and Building Association of Colorado Springs: CSHBA commends the effort that went into the stakeholder process that CDPHE provided over the last several weeks. Through those meetings we were able to discuss practical solutions that support the end goal of the Clean Water Act.

City of Boulder: The City of Boulder (city) appreciates the opportunity to provide comments on the draft Municipal Separate Storm Sewer System (MS4) permit (COR090000), and Fact Sheet, released for public comment on May 1, 2015. The city also appreciates the Colorado Water Quality Control Division (Division) developing and implementing a work group process, which allowed open discussion by the regulated community.

Southeast Metro Stormwater Authority: SEMSWA would like to thank the Division for the open dialogue that occurred at the Work Sessions, the Cherry Creek MS4 group meeting, and the one-on-one meeting we had with Division staff during this second draft permit process. In addition to yourself, your colleagues Lillian Gonzalez, Nathan Moore and Lisa Knerr were also instrumental in allowing SEMSWA to verbalize our mature programs and the Cherry Creek basin approach, and we appreciated the ability to discuss the Division’s expectations of a specific Regulation 72 permit. Understanding Mr. Moore’s compliance perspective for this permit term has also helped us key in on specific areas for our comments.

Town of Parker: We appreciate the process of meeting with the Division to discuss the various topics of the permit through work sessions and believe they were very productive.

Douglas County: Douglas County Staff would like to sincerely thank you and Kendra Kelly for taking the time to meet with us on June 2, 2015. We appreciated the opportunity to review our Grading, Erosion & Sediment Control (GESC) and the Drainage Erosion & Sediment Control (DESC) programs with Kendra and you. Specifically, we appreciated the discussion of the potential impacts to these programs that would result from the proposed permit language.

Response 16: Support of Stakeholder Meetings During Public Notice

The division takes note of this comment. No changes to the permit or fact sheet are necessary.

B. PART I.A. - COVERAGE UNDER THIS PERMIT

1. Discharges Authorized Under this Permit

Comment 1: Include Stormwater Discharges to Ground Water in the Permit





City of Aurora: The definition of “discharge” in the permit is different from the definition in Regulation 61 (p. 17). By excluding ground water from the definition, the result is that the permit in fact prohibits discharges to ground water. Clarification that the division does not intend to require a permit for discharges from an MS4 to the subsurface is requested. In addition, clarification that the storm sewer system map only needs to identify discharges to surface waters is requested.

Response 1: Include Stormwater Discharges to Ground Water in the Permit

The permit does not prohibit discharges to ground water, it just does not cover them. The storm sewer system map only needs to identify discharges to state waters from MS4 outfalls, which, in this permit, does *not* include ground water. The fact sheet and permit have been updated with additional information.

Comment 2: Remove “and Waters of the State” from the Definition of “Discharge”

City of Canon City: Page 16 of the Fact Sheet states: “Permittees should note that the definition of a “discharge” in the permit is different from the definition in Regulation 61. This is because land application of discharges from an MS4 and discharges from an MS4 to the ground (and waters of the state) are not anticipated.” Please remove or clarify “(and waters of the state)” as this is confusing. Does the Division not anticipate that an MS4 would discharge to waters of the state?

Response 2: Remove “and Waters of the State” from the Definition of “Discharge”

See response 1 above.

Comment 3: Remove “Adjacent to Waters of the State”

City of Golden: Discharges authorized under Permit. In describing the “discharges” covered by the draft permit, Section I.A. I. includes the discharges from the MS4 within the permit area, but then adds “[d]ischarges from the permit area adjacent to state waters that are designed or used to convey stormwater to a water of the state are part of an MS4 and authorized by this permit.” The purpose of this additional phrase is unclear. For example, it is unclear on whether this is intended to extend MS4 permit coverage to areas outside of the permit boundary if adjacent to state waters. If so, then this language appears to be unsupported by Regulation 61. It is also unclear what the remaining language of this provision is intended to accomplish. For example, an easement held by the permittee along a stream bank for one purpose, should not impose upon the permittee the responsibility for managing stormwater over which it has no control and that lies outside of its boundaries. The purpose and effect of this language is unclear and should be clarified.

City of Canon City: Nathan Moore explained during the June 25th stakeholder workgroup meeting that the Division was trying to encompass dischargers inadvertently missed by Regulation 61 that are in the MS4 permit boundary but discharge directly to a water of the state (including irrigation channels). This intent is not clearly captured in the second paragraph or Fact Sheet. The City of Cañon City requests the Division remove the second paragraph. Rationale: If an area adjacent to a water of the state is within an MS4’s permit area and is designed or used to convey stormwater to that state water, it is by definition part of the MS4. Management of flood plains and stream banks may or may not be related to the conveyance of stormwater flows and many easements are “prescriptive” in nature; not by deed, but historical in nature. Furthermore, if a residence (as used in Nathan’s explanation) is





discharging stormwater directly to a state water the discharge may not flow over a bank or conveyance or may go through an easement which is not owned or operated by the MS4. An example of this would be roof drains from a residence discharging into an irrigation channel or onto its bank which is the irrigation company's property or easement for maintenance.

City of Arvada: Page 4. Remove paragraph concerning discharges from permit area adjacent to Waters of the State.

Colorado Stormwater Council: Please remove the second paragraph relating to areas adjacent to state waters. Including areas that don't discharge into the MS4 is beyond the scope of the MS4 permit and Regulation 61.

Fact sheet page 16 says: This permit also provides clarification for what constitutes an MS4. Included in the definition of an MS4 are areas owned or operated by a municipality that are adjacent to classified waters of the state and that are designed or used to convey stormwater into the waterway. These areas are often maintained by municipalities through direct ownership, easement, or right-of-way for the purpose of managing flood plains, stream banks, and channels for conveyance of stormwater flows. For example, a discharge from a privately-owned stormwater collection system into and through a municipality's easement along a stream or other waterway would be considered a discharge into the municipality's MS4.

Part I.J.29. of the draft permit defines Municipal Separate Storm Sewer System (MS4): A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- a. Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
- b. Designed or used for collecting or conveying stormwater;
- c. Which is not a combined sewer; and
- d. Which is not part of a Publicly Owned Treatment Works (POTW). See 5 CCR 1002-61.2(62).

"Adjacent to state waters" is not a discharge to the municipality's MS4. Colorado Stormwater Council has concerns that by adding "adjacent to state waters" it changes the definition of a MS4

Douglas County: Please remove the second paragraph relating to areas adjacent to state waters. Including areas that don't discharge into the MS4 is beyond the scope of the MS4 permit and Regulation 61.

Fact Sheet page 16 says: This permit also provides clarification for what constitutes an MS4. Included in the definition of an MS4 are areas owned or operated by a municipality that are adjacent to classified waters of the state and that are designed





or used to convey stormwater into the waterway. These areas are often maintained by municipalities through direct ownership, easement, or right-of-way for the purpose of managing flood plains, stream banks, and channels for conveyance of stormwater flows. For example, a discharge from a privately-owned stormwater collection system into and through a municipality's easement along a stream or other waterway would be considered a discharge into the municipality's MS4.

29. Municipal Separate Storm Sewer System (MS4): A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- a. Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
- b. Designed or used for collecting or conveying stormwater;
- c. Which is not a combined sewer; and
- d. Which is not part of a Publicly Owned Treatment Works (POTW). See 5 CCR 1002-61.2(62).

“Adjacent to state waters” is not a discharge to the municipality's MS4. Douglas County has concerns that by adding “adjacent to state waters” it changes the definition of MS4.

Keep it Clean Partnership: Discharges Authorized Under this Permit

The qualifier of area “adjacent to state waters” seems to overreach the definition of MS4, which is clearly defined in Regulation 61. Comment: MS4 is clearly defined in the permit, and Regulation 61 and does not include areas adjacent to state waters that the permittee owns or operates. Access to these areas for maintenance (as the fact sheet describes: These areas are often maintained by municipalities through direct ownership, easement, or right-of-way for the purpose of managing flood plains, stream banks, and channels for conveyance of stormwater flows.) does not give municipalities the authority to control discharges through these areas. The addition of areas adjacent to state waters seems to change the definition of MS4. Please remove the additional paragraph addressing “adjacent to state waters” from the permit requirements.

City of Glendale: The topics considered “high-level” issues for the City include the following: General: Permit Area- adjacent to state waters.

Response 3: Remove “Adjacent to Waters of the State”

This section of the permit, has been revised for clarity. The division is not redefining or expanding the definition of an MS4. The division is, however, clarifying “(B) Designed or used for collecting or conveying stormwater.” The fact sheet has been updated with further discussion.

Comment 4: Order of Definitions

City of Canon City: Please put the definitions in alphabetical order.



**Response 4: Order of Definitions.**

This comment has not been incorporated into the permit. Definitions are in the order that they are used in that section.

Comment 5: Different Definition of “Discharge of a Pollutant” from Regulation 61

City of Golden: d. Discharges to the ground or to ground water. Section I.A.l .a.i of the draft permit relies on the definition of the term "discharge of pollutants" at C.R.S. 25-8-103(3) to define "discharge" for purposes of the permit, but then excludes "land application and discharges to the ground." Despite this exclusion the permit is replete with references concerning the infiltration of stormwater as a result of control measures. It seems inconsistent to support infiltration of stormwater into the ground - yet exclude discharges to the ground from the permit. Discharges to the ground should be expressly authorized for purpose of infiltration of stormwater to help restore hydrologic conditions.

Response 5: Different Definition of “Discharge of a Pollutant” from Regulation 61

This comment has been incorporated into the permit.

Comment 6: Different Definition of “Municipal Separate Storm Sewer System” and “Municipality” from Regulation 61

City of Canon City: a.iv(A): “Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body...” and a.v. “refers to a state, city, town, borough, county, parish, district, association, or other public body...” The City of Cañon City requests that the definitions of "Municipal Separate Storm Sewer System" from Regulation 61.2(62) and “Municipality” (63) be used to be consistent with current Regulations. Rationale: Regulation 61 specifically discusses the removal of the terms borough and parish from the definition of Municipal. The terms "borough" and "parish" were removed because they are inconsistent with Colorado law. In addition, a.iv. does not match the definition of “Municipality/Municipal” contained in Part I.J.

El Paso County: Definition of “municipality/municipal” inconsistent with same definition in Section J. Delete, use consistent definition in section J.

Response 6: Different Definition of “Municipal Separate Storm Sewer System” and “Municipality” from Regulation 61

This comment has been incorporated into the permit.

Comment 7: Change the Definition of “Stormwater”

Southeast Metro Stormwater Authority: “Stormwater” is defined as stormwater runoff, snow met runoff, and surface runoff and drainage. Including the term “stormwater runoff” is confusing to us. Runoff is limited to overland flows that do not infiltrate or “percolate”. Please consider simplifying the definition to, “Stormwater” is defined as precipitation from rainfall and snowmelt events.

Response 7: Change the Definition of “Stormwater”

This comment has not been incorporated into the permit. The definition of “stormwater” is adopted verbatim from Regulation 61.



**Comment 8: Change the Definition of State Waters**

City of Arvada: In the definition of Waters of the State, include additional language concerning the requirement of a significant nexus to Waters of the State when including water courses that are usually dry, as found in the definition of Waters of the US.

Response 8: Change the Definition of State Waters

This comment has not been incorporated into the permit. The definitions of waters of the state and waters of the US are distinct and the definition in the permit is consistent with. Regulation 61.

2. Limitations on Coverage**Comment 1: Support of Permit Language**

5-2-1 Drainage Authority: We would like to thank you for continuing to include the following items and are in agreement with the following items in the second draft of the permit:

1. The exclusion of conveyances used primarily for irrigation return flow and/or for supplying irrigation water to irrigated land that are identified in the permittee's application or subsequent modification as not being part of the MS4; and that are listed in the permit certification. Please find attached with these comments letters from the irrigation suppliers and irrigation return flow providers, within the permit area, which identifies facilities that will be identified for exclusion in 521's permit modification.

Response 1: Support of Permit Language

The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 2: Irrigation Ditches

City of Boulder: Part I.A.1 Permit Area Coverage - Discharges Authorized Under this Permit (Page 4) and Part 1.A.2 Limitations of Coverage (Page 5) Comment: The city does not own or operate irrigation ditches within the city, even irrigation ditches that receive and carry stormwater from the city's MS4, and the city would have no legal ability to implement the MS4 permit requirements at the ditch outfall to a river or stream. Because such ditches are waters of the state, the city manages the discharges to the ditches as MS4 outfalls. The language in the draft permit regarding irrigation ditches is not consistent with the definition of "municipal separate storm sewer system" in the permit and Regulation 61 and should be revised.

Response 2: Irrigation Ditches

The city is correct in that they manage the discharges to the ditches as MS4 outfalls, because the ditches are waters of the state. The definition of MS4 and municipal have been updated in the permit.

Comment 3: Comment Specific to the Grand Valley Irrigation and Drainage Suppliers

Grand Valley Irrigation and Drainage Suppliers: We understand that the formal process requires the 5-2-1 Drainage Authority (5-2-1), as MS4 permittee, to identify the conveyance systems, which need to include agreements, contracts, direct ownership,





easements, and rights of way (including prescriptive) of GVIP and GVDD to be excluded under COR090000. To assist CDPHE with this process, we attached a copy of our current letter to the 5-2-1 requesting these exclusions.

Response 3: Comment Specific to the Grand Valley Irrigation and Drainage Suppliers

The division takes note of this comment. No changes to the permit or fact sheet are necessary. The applicable permit certification will reflect this comment.

Comment 4: Exempt Activities on State and Federal Lands

Colorado Stormwater Council: Colorado Stormwater Council: Please include an exemption for state and federal lands within the Permit Area section. Such as: For all cities, including combined cities and counties required to obtain coverage under this permit, the geographic area of permit coverage will include the area of the municipal incorporated boundary, but will exclude lands and facilities for which the permittee does not have the legal authority to impose the requirements necessary to comply with this permit, such as state and federal lands and facilities. The permit should include language to specifically indicate that the permittee does not have jurisdictional authority over federal and state owned areas. In order to be regulated under Regulation 61, a permittee must have jurisdictional authority and the property must discharge to the MS4. Both items are required for coverage. The Division has issued guidance regarding jurisdictional authority over state and federal lands in the past. A discussion in the fact sheet and a reference to the guidance would be beneficial.

Keep it Clean Partnership: Issue: Clarification that permittees do not have legal authority over state and federal lands is needed. Comment: Please include language in the permit that acknowledges permittees do not have legal authority to implement the MS4 programs within federal- and state-owned lands.

Douglas County: Please include an exemption for state and federal lands within the Permit Area section, such as: For all cities, including combined cities and counties, required to obtain coverage under this permit, the geographic area of permit coverage will include the area of the municipal incorporated boundary, but will exclude lands and facilities for which the permittee does not have the legal authority to impose the requirements necessary to comply with this permit, such as state and federal lands and facilities. Please include a discussion in the Fact Sheet regarding responsibilities for permit implementation for both standard and non-standard MS4s. The permit should include language to specifically indicate that the permittee does not have jurisdictional authority over federal and state owned areas. In order to be regulated under Regulation 61, a permittee must have jurisdictional authority and the property must discharge to the MS4. Both items are required for coverage. The Division has issued guidance regarding jurisdictional authority over state and federal lands in the past. A discussion in the Fact Sheet would be beneficial.

Weld County: This statement was removed in the second draft because permittees stated that this requirement was unclear. Propose adding a statement that the permittee is not responsible for permit requirements for any area not under its jurisdiction.





City of Glendale: The topics considered “high-level” issues for the City include the following: General: Permit Area coverage.

City of Federal Heights: The topics considered “high-level” issues for the City include the following: General: Permit Area coverage.

Response 4: Exempt Activities on State and Federal Lands

These comments have been incorporated into the permit.

Comment 5: Non-Standard MS4 Permit Boundary

City of Golden: MS4 permit boundaries: The permit area for cities should not be based simply on the "municipal incorporated boundary" as set forth in Section I.A.3 .a.i. Non-standard MS4s, for example, may exist within a municipal boundary and should be specifically excluded from the permit area as they have their own stormwater management responsibilities and liabilities. Numerous provisions in Regulation 61 recognize that each MS4 permit holder has its own separate and distinct stormwater management obligations unless through agreement and/or assignment of a permit one entity takes on the obligations of another. See § 61.8(3)(g) ("the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee as necessary to achieve compliance with the conditions of this permit"); see also, §§ 61.8(3)(d), 61.8(6), 61.4(1)(b). As written, this section would seem to impose the non-standard MS4 permit obligations and associated costs upon a city without agreement. It is further understood that lands subject to a non-standard MS4 permit are not also subject to a standard MS4.

This section should be revised as follows: "For all cities, including combined cities and counties, required to obtain coverage under this permit, the geographic area of permit coverage will include the entirety of the municipal incorporated boundary excluding only lands covered by non-standard MS4s unless those lands are included within the City's MS4 permit by agreement."

Response 5: Non-Standard MS4 Permit Boundary

This comment has been incorporated into the permit.

3. Permit Area

Comment 1: Support of Permit Language

5-2-1 Drainage Authority: We would like to thank you for continuing to include the following items and are in agreement with the following items in the second draft of the permit: 2. County Growth Area- We appreciate being able to submit a map which shows our projected growth areas, based on local growth plans. Also attached with these comments is a proposed map for permit coverage for 521.

Douglas County: The successful collaborative process that occurred between the Division and the Counties to determine county permit boundary expansion areas.

Response 1: Support of Permit Language

The division takes note of this comment. No changes to the permit or fact sheet are necessary.





Comment 2: Regulating County Growth Areas

Weld County: As a predominantly rural county with few areas of truly urban development, Weld County feels this oversteps the Division’s authority to impose regulations on areas outside of officially designated MS4 areas. Weld County does not agree that the permit coverage and requirements should extend outside the U.S. Census-designated urbanized areas based on the 2010 census. Weld County questions by what authority does the Water Quality Division impose regulations on areas not officially designated as urban by the 2010 U.S. Census? Imposition of the proposed MS4 regulations on undeveloped areas represents an unreasonable economic burden on jurisdictions and on private property owners of these non-urban lands. Prediction of population densities for the year 2020 for currently undeveloped areas is speculative, and given the variables in the construction and housing markets, unlikely to be correct.

Response 2: Regulating County Growth Areas

This comment has not been incorporated into the permit. The division is directed to evaluate permitting areas outside urbanized areas and to specifically evaluate high growth and growth potential. The fact sheet provides the rationale for the terms and conditions of the permit for county growth areas.

Comment 3: Permittee Identification of County Growth Areas

Adams County: County Growth Permit Area determination. Please include what population growth indicators need to be taken in consideration to establish the County Growth Area. Is there any specific criteria or trigger that needs to be considered (such as number of building permits, drinking water supply availability, land use designation, etc)?

Response 3: Permittee Identification of County Growth Areas

No changes to the permit are necessary. The county permittee has the flexibility to determine the triggers for identifying the growth areas under Part I.A.3.ii(B)(1).

Comment 4: 5-Mile Growth Area

Adams County: County Growth Permit Area identified by the Division. Please explain on the Fact Sheet the criteria utilized to establish the growth area within 5 linear miles of the 2010 census area.

Response 4: 5-Mile Growth Area

The 5-mile growth area was determined through permitting experience and discussion with permitted MS4s.

4. County Growth Area Requirements

No comments were received on this section of the permit.

5. Application for New and Renewal Applicants

No comments were received on this section of the permit.

6. Local Agency Authority

No comments were received on this section of the permit.





7. Permit Compliance

No comments were received on this section of the permit.

C. PART I.B. - CONTROL MEASURES

Comment 1: Use of the Terms “BMP” and “Control Measure”

City of Canon City: The City of Cañon City understands that we do not need to update regulations, ordinances, SOPs, etc. to change the term “BMP” to “Control Measure”, but it is unclear if the Division will require the use of these specific terms in our SOPs, inspection forms and other documents. We ask the Division to please add some clarification on the use of the specific terms.

Response 1: Use of the Terms “BMP” and “Control Measure”

This comment has been incorporated into the fact sheet.

1. Good Engineering, Hydrologic and Pollution Control Practices

Comment 1: Add “or the Manufacturer’s Specifications”

Colorado Stormwater Council: Please change to the following proposed concept: Control Measures (BMPs) must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic and pollution control practices as defined in Part I.J, or the manufacturer’s specifications, when applicable. The definition in section I.J.19: Good Engineering, Hydrologic and Pollution Control Practices: are methods, procedures, and practices that:

- a. Are based on basic scientific fact(s).
 - b. Reflect best industry practices and standards.
 - c. Are appropriate for the conditions and pollutant sources.
 - d. Provide appropriate solutions to meet the associated permit requirements, including practice based and numeric effluent limits.
- Using “or” instead of “and” accounts for when there is a conflict between practices and specifications.

Douglas County: Please change to the following proposed concept: Control Measures (BMPs) must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic and pollution control practices (as defined in Part I.J), or the manufacturer’s specifications, when applicable. The definition in section I.J. 19: Good Engineering, Hydrologic and Pollution Control Practices: are methods, procedures, and practices that:

- a. Are based on basic scientific fact(s).
- b. Reflect best industry practices and standards.
- c. Are appropriate for the conditions and pollutant sources.
- d. Provide appropriate solutions to meet the associated permit requirements, including practice based and numeric effluent limits.

Using “Or” instead of “and” accounts for when there is a conflict between practices and specifications.

Response 1: Add “or the Manufacturer’s Specifications”





These comments have not been incorporated into the fact sheet. The fact sheet has been updated with additional information on the use of manufacture’s specification.

2. Maintenance

No comments were received on this section of the permit.

3. Inadequate Control Measures

Comment 1: Revise Conflicting Terms

City of Glendale: Part I.B.3 Inadequate Control Measures and Part I.B.4 Control Measure Requiring Routine Maintenance seem to conflict.

Part I.B.3 Inadequate Control Measures:

Any control measure shall be considered an “inadequate control measure” if it is not designed, implemented, or operating in accordance with the requirements of the permit, including the specific requirements in each program area in Part I.E or requirements for specific permittees in Part III, and implemented and maintained to operate in accordance with the design.

Part I.B.4 Control Measure Requiring Routine Maintenance:

Any control measure shall be considered a “control measure requiring routine maintenance” if it is still operating in accordance with its design and the requirements of this permit, but requires maintenance to prevent associated potential for failure during a runoff event.

Please make the following change to clarify the difference between inadequate control measure and a control measure requiring routine maintenance Please also reflect this change in Part I.J.

Part I.B.3 Inadequate Control Measures:

Any control measure shall be considered an “inadequate control measure” if it is not designed, implemented, or operating in accordance with the requirements of the permit, including the specific requirements in each program area in Part I.E or requirements for specific permittees in Part III, ~~and implemented and maintained to operate in accordance with the design.~~

Xcel Energy: Maintenance, Inadequate Control Measure, Control Measure Requiring Routine Maintenance. The second draft better defines the difference between these 3 terms however it still seems confusing to have 3 different terms that could arguably be one in the same.

City of Canon City: Any control measure shall be considered an “inadequate control measure” if it is not designed, implemented, or operating in accordance with the requirements of the permit, including the specific requirements in each program area in Part I.E or requirements for specific permittees in Part III, and implemented and maintained to operate in accordance with the design. The City of Cañon City recommends removing the last part of the sentence “and implemented and maintained to operate in accordance with the design.” Maintenance is covered under 4.



**Response 1: Revise Conflicting Terms**

These comments have been incorporated into the permit.

4. Control Measures Requiring Routine Maintenance**Comment 1: Replace Language**

City of Canon City: Control Measures Requiring Routine Maintenance. An alternative statement such as the following is recommended. “Any control measure shall be considered an ‘inadequate control measure’ if it is not designed, installed, implemented or operating in accordance with the requirements of the permit, including the specific requirements in each program area in Part I.E or requirements for specific permittees in Part III.”

Response 1: Replace Language

The comment has not been incorporated into the permit. The division found that other suggested revisions to the language were more clear and met the same objective.

5. Minimize

No comments were received on this section of the permit.

D. PART I.C. - PROGRAM DESCRIPTION DOCUMENT (PDD)**1. Records****Comment 1: Provide Consistent Terminology**

City of Canon City: City of Canon City: We would recommend a minor correction to the Fact Sheet. On page 21, paragraph 2, the final sentence states “The division has relocated the practice-based permit conditions to a new section titled “effluent limitations”, addressed in section Part I.E.” Part I.E. is now titled “Pollutant Restrictions, Prohibitions, and Reduction Requirements and Recordkeeping”. We would also like to thank the Division for addressing stakeholders’ concerns about the use of the term “effluent limitations” in the first draft of the renewal permit.

Response 1: Provide Consistent Terminology

This comment has been incorporated into the fact sheet.

Comment 2: Recordkeeping Requirements

Douglas County: There are several potential cost increases associated with the new permit, particularly with respect to new and extremely detailed, and in some cases duplicative, recordkeeping requirements and the development of the Program Description Document. We believe these additional requirements may lead to the necessity of adding a full-time employee to our staff. We believe the recordkeeping system we have in place would still suffice and that if there are MS4 programs that do not have sufficient systems in place, it would be better if the Division provided compliance assistance in those specific instances. The Program Description Document and the Recordkeeping requirements proposed are cumbersome and are presented in several different locations. These requirements also appear to conflict with one





another and seem to be multiple requests for same information within the minimum control measures. We respectfully request the need for this information to be kept separately and to create one comprehensive list of materials the Division would like permit holders to keep, as associated with this permit and the applicable minimum control measure.

Response 2: Recordkeeping Requirements

Recordkeeping requirements changed from the first to the second drafts of the renewal permit. Some of these changes were intentional recordkeeping reductions based on comments received on the first draft of the renewal permit. Other recordkeeping requirement changes were clarifications to better align the program area requirements to recordkeeping and PDD requirements. Some recordkeeping requirements were further reduced and/or revised based on comments received on the second draft of the renewal permit. Please see the division's response to the PDD comments throughout Attachment A. The division continues to determine that recordkeeping is an important part of practice-based effluent limits. The fact sheet provides the rationale for the recordkeeping requirements that are in the renewal permit.

Comment 3: Support of Permit Changes

Greenwood Village: C. Program Description Document (PDD Documentation) Comment: The draft MS4 permit provides flexibility for the Village to maintain current implementation of programs so long as it is documented in the PDD. This allows for the Village to revise programs without submittal to the Division for approval. This flexibility enables the Village to focus on successful program measures and modify as necessary without spending time to navigate the chain of command for the Legal Contact to submit a program modification for approval from the division prior to implementation.

City of Canon City: Part I.C. Program Description Document (PDD). The City of Cañon City appreciates the changes made in the second draft of the renewal permit in this section in response to comments received during the public notice period for the first draft of the renewal permit.

Response 3: Support of Permit Changes

The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 4: Develop a Format for the PDD

City of Arvada: Recommend that a format for the Program Description Document (PDD) be developed so adequacy of the permittees PDD is a nonissue.

Response 4: Develop a Format for the PDD

The division takes note of this comment. No changes to the permit or fact sheet are necessary.

2. Availability

No comments were received on this section of the permit.

3. Modification



No comments were received on this section of the permit.

E. PART I.D. - PUBLIC INVOLVEMENT/PARTICIPATION

1. Public Involvement and Participation Process

Comment 1: Consistent Terminology in the Fact Sheet

City of Canon City: Part I.D. Public Involvement/Participation: From the Fact Sheet page 23, final paragraph: “The division has moved the Public Involvement/Participation section from the Effluent Limitation section, as these are not practices implemented to minimize the discharge of pollutants to the MS4. A requirement for the permittee to accept and respond to public information that was in the Construction Sites program has also been relocated to consolidate Public Involvement and Participation.” Part I.E. is now titled “Pollutant Restrictions, Prohibitions, and Reduction Requirements and Recordkeeping”. We would recommend correcting the Fact Sheet to reflect this.

Response 1: Consistent Terminology in the fact sheet

This comment has been incorporated into the fact sheet.

Comment 2: Support of Specific Colorado Stormwater Council Comments

City of Canon City: The City of Cañon City supports the Colorado Stormwater Council’s requests for modifications to the introduction of this section and Part I.E.1.a.ii.

Response 2: Support of specific Colorado Stormwater Council comments

The division takes note of this comment. No changes to the permit or fact sheet are necessary. Please see responses to specific Colorado Stormwater Council comments.

Comment 3: Web Site Link vs. Statement in the Fact Sheet

Colorado Stormwater Council: Please update the fact sheet to be consistent with permit language: The permittee must provide a mechanism and processes to allow the public to review and provide input on the control measures. At a minimum, the permittee must provide a statement on the permittee’s web site that the PDD is publicly available for review and comment. The permit requires a statement on the permittee’s web site but the fact sheet states a link will be provided.

Douglas County: Fact Sheet Page 24: Please update the Fact Sheet to be consistent with permit language: The permittee must provide a mechanism and processes to allow the public to review and provide input on the control measures. At a minimum, the permittee must provide a statement on the permittee’s web site that the PDD is publicly available for review and comment. The permit requires a statement on the permittee’s web site but the Fact Sheet states a link will be provided.

Response 3: Web site link vs. Statement in the Fact Sheet

This comment has been incorporated into the fact sheet.

2. Recordkeeping

Comment 1: Remove Duplicative Requirements





City of Canon City: The City of Cañon City recommends removing “and any comments received” as this is already contained in part a. above.

Response 1: Remove Duplicative Requirements

This comment has been incorporated into the permit.

3. PDD

Comment 1: Databases for Recordkeeping

City of Canon City: c. Records of information submitted by the public in accordance with Part I.D.1.c and any actions the permittee took to address the information. Please clarify in the permit or Fact Sheet that these records can be incorporated into recordkeeping for the appropriate section of Part I.E. The City of Cañon City currently has recordkeeping in place to document reports of illicit discharges and complaints concerning construction activities or municipal operations from the public and the ensuing investigations and actions. The investigation documentation is kept in databases specifically associated with IDDE, construction, post-construction and municipal facilities. To be required to also document this information in a separate database for Part D would be an inefficient use of time and resources.

Response 1: Databases for Recordkeeping

This comment has been incorporated into the fact sheet.

F. PART I.E. - POLLUTANT RESTRICTIONS, PROHIBITIONS, AND REDUCTION REQUIREMENTS AND RECORDKEEPING

Comment 1: Support of Permit Requirements

Southeast Metro Stormwater Authority: Part I.E. Pollutant Restrictions, Prohibitions, and Reduction Requirements and Recordkeeping. Thank you for the additional flexibility you provided in all the program areas. This second draft allows SEMSWA the ability to work more effectively within our existing programs, while sanctioning additional approaches we may find feasible within our service area.

Response 1: Support of Permit Requirements

The division takes note of this comment. No changes to the permit or fact sheet are necessary.

1. Public Education and Outreach

Comment 1: Elements in Each Education and Outreach Activity

Colorado Stormwater Council: Please change the requirement to reflect that the education and outreach materials selected in the table, as a whole or combined, must meet the requirement in 61.8(11)(a)(ii)(A) of Regulation 61. To count toward meeting the permit requirements in the permit, outreach and activities must address all the underlined requirements. For each individual activity to meet all the requirements listed is problematic for permittees as outreach like the 9-foot drinking straw in Cherry Creek, dasher boards, bus advertising, etc give a graphic depiction of polluting waters but do not meet all the requirements listed.





Douglas County: Please change the requirement to reflect that the education and outreach materials selected in the table, as a whole or combined, must meet the requirement in 61.8(11)(a)(ii)(A) of Regulation 61. To count toward meeting the permit requirements in the permit, outreach and activities must address all the underlined requirements. For each individual activity to meet all the requirements listed is problematic for permittees as outreach like the 9-foot drinking straw in Cherry Creek, dasher boards, bus advertising, etc give a graphic depiction of polluting waters but do not meet all the requirements listed.

Southeast Metro Stormwater Authority: 1. Part I.E.1. Public Education and Outreach. SEMSWA understands from our one-on-one meeting and from the Division’s Public Education and Outreach Work Session that the Division intends to revise the existing language to reflect that, as a whole, the education and outreach program needs to meet the requirements as stated in the second draft permit, meaning that not each individual activity listed in Table 1 must meet the three requirements inclusively. With this clarification, SEMSWA will be able to choose items from the table to accomplish the requirements within each calendar year. Please ensure the revised language clearly states that the program as a whole meet the entirety of the requirements, and not each individual activity.

Keep it Clean Partnership: Public Education and Outreach: Criteria for education and outreach strategies are potentially limiting. Comment:

As a whole, the KICP Partners agree that the education and outreach program should encompass all three of these criteria, and though many of our strategies accomplish this, some of our collateral handed out at events does not, on their own, meet all three of the criteria. Please allow the overall education and outreach strategies to meet this requirement but not require each individual ‘activity’ to meet all three criteria.

Response 1: Elements in Each Education and Outreach Activity

These comments have been incorporated into the permit.

a. The following requirements apply

i. Illicit Discharges

Comment 1: Revise Education and Outreach Activities Focused on Businesses

Greenwood Village: Comment: Although it is beneficial to proactively focus education on specific businesses by identifying pollutants of concern and maintain the ability to address the sources determined to be priorities to a specific jurisdiction, would the division provide partnership on a statewide basis for businesses that provide services such as landscape maintenance services, etc.? These businesses have to obtain a license to operate in the State and there is opportunity to educate when the license is issued. However, these businesses may or may not follow through with obtaining a license in each municipality. Thus it may be difficult for the municipality to educate.

Response 1: Revise Education and Outreach Activities Focused on Businesses





This comment has not been incorporated into the permit. Please see the fact sheet for more information on this requirement. At this time, changes to the Division's funding structure would need to be made in order for the Division to consider funding a statewide outreach campaign.

Comment 2: Remove Contact Information for Businesses

Colorado Stormwater Council: Replace the underlined contact information with a list of those businesses that fit the identified type of business. Contact information is inherently implied if some type of contact or outreach is done and does not need to be called out explicitly in the permit. Also the record keeping and PDD sections do not require documentation of the contact information.

Douglas County: Replace the underlined contact information with a list of those businesses that fit the identified type of business. Contact information is inherently implied if some type of contact or outreach is done and does not need to be called out explicitly in the permit. Also the record keeping and PDD sections do not require documentation of the contact information.

City of Canon City: a.i.(A) The permittee must determine the targeted businesses that are likely to cause an illicit discharge or improperly dispose of waste. At a minimum, the permittee must identify at least one type of business and the contact information for the selected business(es). The City of Cañon City requests a modification to the statement to replace the contact information with a list of those businesses that fit the identified type of business. Rationale: Contact information is inherently implied when contact or outreach is done and does not need to be called out explicitly in the permit. The recordkeeping and PDD sections do not require documentation of the contact information. We believe a list of businesses is sufficient.

Response 2: Remove Contact Information for Businesses

These comments have been incorporated into the permit.

ii. Education and Outreach Activities Table**Comment 1: Add Additional Education and Outreach Activities**

Colorado Watershed Assembly: The Colorado Watershed Assembly is host to the Colorado River Watch Program, a hands-on, citizen science effort that provides water quality data to various state agencies including the Colorado Water Quality Control Commission. We feel that River Watch, and other programs such as Community Collaborative Rain, Hail & Snow Network (CoCoRHAS) and Keep It Clean, Neighborhood Environmental Trios (KICNET) are highly valuable and that opportunities such as these should be represented on the list of Active and Interactive Outreach. We hope you will consider adding general language such as: Participate in or sponsor community project based programs that investigate watershed health and meet applicable school Science, Technology, Engineering and Math (STEM) standards.

Earth Force: My comment can be applied across the State's Phase I and Phase II MS4s. I note, in Table 1 "Education and Outreach Activities Table," the two





column headings both denote only "outreach" activities. We would like to see some inclusion and consideration given to actual "education" activities. By education, we mean the facilitation of learning, in particular with young people and professional educators serving them. Through our partnership with Denver Public Works, we have developed a robust education program. Called Keep It Clean Neighborhood Environmental Trios, we work with teachers and students in 15 Colorado schools. More information is available via these Web links:

<http://www.denvergov.org/wastewatermanagement/WastewaterManagement/StormwaterQuality/KeepItCleanProgram/CaseStudyKeepItCleanDenverandEarthForce/tabid/445719/Default.aspx>

http://www.urbanwaterslearningnetwork.org/wpcontent/uploads/2015/02/EarthForceCaseStudy02_02_15.pdf

A possible education activity which would be listed is: Participate and sponsor in school, project based programs that that investigate watershed health and applicable school STEM educational standards.

Response 1: Add Additional Education and Outreach Activities

These comments have been incorporated into the permit.

Comment 2: Implement Four Education and Outreach Activities per Year

Colorado Stormwater Council: Please replace the underlined with the following: The permittee must implement at least four educational and outreach activities (bulleted items) of at least two must be from the active outreach list of items. Permittees would like the flexibility to do more educational and outreach activities from the active outreach column.

Douglas County: Please replace the underlined with the following: The permittee must implement at least four educational and outreach activities (bulleted items) and at least two must be from the active outreach list of items. Douglas County would like the flexibility to do more educational and outreach activities from the active outreach column.

El Paso County: The requirement to implement at least "two" activities from each column each year, is an arbitrary quantity. Permittees should be allowed to do more "active" outreach activities to account for the passive activities

Response 2: Implement Four Education and Outreach Activities per Year

These comments have been incorporated into the permit.

Comment 3: Add Education and Outreach Activities that are not Listed in the Table

Colorado Stormwater Council: Please add the following proposed concept: The permittee may submit Public Education Program elements not listed in the table to seek Division approval if unlisted elements will be used to meet the permit requirement. Permittees would like the ability to submit for approval of alternative elements or methods to add new outreach activities. Permittees envision that with the increase in technology there may be innovative opportunities for outreach.





Douglas County: Please add the following proposed concept: The permittee may submit Public Education Program elements not listed in the table to seek Division approval if unlisted elements will be used to meet the permit requirement. Douglas County would like the ability to submit for approval of alternative elements or methods to add new outreach activities. We envision that with the increase in technology there may be innovative opportunities for outreach.

5-2-1 Drainage Authority: Education and Outreach Activities Table - The 521 recommends that language be included in this part of the permit that would allow permittees to request that CDPHE to approve alternative methods to add to the outreach activities as technology evolves. Outreach, public education, and involvement methods are constantly evolving as technology changes. It's important to have flexibility in the permit to allow education requirements to change at the same pace.

El Paso County: There should also be a provision to allow for an activity not included on the lists to be approved by the Division for use.

Response 3: Add Education and Outreach Activities that are not Listed in the Table

This comment has not been incorporated into the permit. Permittees may apply for a permit modification at any time during the permit term to add any additional education and outreach activities that are not listed in the table.

iii. Nutrients

No comments were received on this section of the permit.

b. Recordkeeping

No comments were received on this section of the permit.

c. Program Description Document

No comments were received on this section of the permit.

2. Illicit Discharge Detection and Elimination

a. The following requirements apply

i. Storm Sewer System Map

No comments were received on this section of the permit.

ii. Regulatory Mechanism

Comment 1: Remove the Word "Maximum"

Colorado Stormwater Council: Please delete the word "maximum."

This could require local governments to add additional enforcement options that they currently do not have, just because they are allowed under State or local law. Regulation 61 includes "to the extent allowable under State or local law"; there is no requirement that this be the maximum extent allowable under State or local law.



**Response 1: Remove the Word “Maximum”**

This comment has been incorporated into the permit.

Comment 2: Revise Property Access

Southeast Metro Stormwater Authority: 2. Part I.E.2.a.ii.B. Regulatory Mechanism. Access to private property is a legal matter. We recommend that this section be revised to note that a procedure must be in place to allow for access, as necessary. For example, some illicit discharge inspections may require access into private properties that may only be granted through permission from the property owner or through a judicial action. A regulatory mechanism can only specify that a process is in place for gaining access, and cannot guarantee access. We recommend revising the section to: Have a procedure that requests access to property(s), as necessary to implement the illicit discharges procedures, to include judicial action.

Remove the requirement that the Regulatory Mechanism must include access to property. Without property owner permission, Search Warrants must be obtained for access to private property.

Response 2: Revise Property Access

These comments have been incorporated into the permit.

Comment 3: Cleaning up an Illicit Discharge

Southeast Metro Stormwater Authority: 3. Part I.E.2.a.ii.C. Regulatory Mechanism. If removing the source of an illicit discharge is intended to mean stopping the discharge from occurring, we have no additional comments on this section. If removing the discharge means cleaning up the discharge, the language should be revised to clarify. We recommend revising the section to read: Provide the permittee the legal authority to cease, or require to be ceased, the discharge, and the legal authority to impose penalties for all illicit discharges for the period from when the illicit discharge is identified until ceased.

Response 3: Cleaning up an Illicit Discharge

This comment has been incorporated into the permit.

iii. Regulatory Mechanism Exemptions

No comments were received on this section of the permit.

iv. Tracing an Illicit Discharge**Comment 1: Tracing and Illicit Discharge**

Colorado Stormwater Council: Please change to the following proposed concept:

The permittee must implement procedures to respond to reports/identification of illicit discharges. The permittee is not expected to actively seek out unreported illicit discharges, but is required to identify and respond to illicit discharges observed during day-to-day normal work activities. The permittee





must implement procedures, including the tools needed, to trace the source of an illicit discharge when identified within the MS4. At a minimum the permittee must have written procedures and tools for tracing the illicit discharge within the MS4. Part of tracing an illicit discharges is identifying the point of entry or outfall. The distinction between procedures and tools for identifying/screening the point of entry or outfall versus tracing the illicit discharge is unclear. Permittees must have tools for tracing and implement procedures for tracing. Details on how to backtrack or identify the potential inlets as a source for an illicit discharge is captured by the requirement to trace illicit discharges. The very definition of the word trace: To go along or follow. To follow the course or trail of- provides enough explanation of the requirement.

Douglas County: Please change to the following proposed concept:

The permittee must implement procedures to respond to reports/identification of illicit discharges. The permittee is not expected to actively seek out unreported illicit discharges, but is required to identify and respond to illicit discharges observed during day-to-day normal work activities. The permittee must implement procedures, including the tools needed, to trace the source of an illicit discharge when identified within the MS4. At a minimum the permittee must have written procedures and tools for tracing the illicit discharge within the MS4. Part of tracing an illicit discharge is identifying the point of entry or outfall. The distinction between procedures and tools for identifying/screening the point of entry or outfall versus tracing the illicit discharge is unclear. Permittees must have tools for tracing and implement procedures for tracing. Details on how to backtrack or identify the potential inlets as a source for an illicit discharge is captured by the requirement to trace illicit discharges. The very definition of the word trace: To go along or follow. To follow the course or trail of - provides enough explanation of the requirement.

City of Canon City: The City of Cañon City proposes the following modification: “Tracing an Illicit Discharge: The permittee must implement procedures to respond to reports/identification of illicit discharges. The permittee is not expected to actively seek out unreported illicit discharges, but is required to identify and respond to illicit discharges observed during day-to-day normal work activities. At a minimum the permittee must have written procedures, including the tools needed, for identifying and tracing the illicit discharge within the MS4.” Rationale: Part of tracing an illicit discharge is identifying the point of entry or outfall. The distinction between procedures and tools for identifying/screening the point of entry or outfall vs tracing the illicit discharge is unclear.

Response 1: Tracing an Illicit Discharge

These comments have been incorporated into the permit.

Comment 2: Centralized Recordkeeping

City of Aurora: Throughout the document, there are many extra descriptive words, resulting in sentences that are often three to four lines long. These added descriptions in most cases do not provide clarity. Simple straightforward





sentences are much easier to understand. An example of extra words, in this case misused, is on p. 15, section E.2.b. iv.(B). “The permittee must maintain centralized recordkeeping systems of illicit discharge responses. . . Records maintained by other departments can be in different centralized recordkeeping systems. The centralized recordkeeping system must contain . . . ” (emphasis added). Striking this unnecessary word would be helpful.

Response 2: Centralized Recordkeeping

This comment has not been incorporated into the permit. The term “centralized recordkeeping system” adds clarity to the requirement.

v. Discharges that can be Excluded from being Effectively Prohibited**Comment 1: Revise Confusing Language**

Southeast Metro Stormwater Authority: 1. Part I.E.2. Illicit Discharge Detection and Elimination. SEMSWA supports the comments that the Colorado Stormwater Council Work Groups prepared, and will not reiterate them here. Of particular concern to SEMSWA, however, is the confusing language (Discharges that can be Excluded from being Effectively Prohibited, for example) that can impact the updating of our regulatory mechanisms, and being able to effectively discuss this with our Board and gain approval. We note that if this is the language that the Division requires to meet Regulation 61, we request additional clarification in the Fact Sheet be provided to assist in presentations to elected officials, as well as staff who manage the program.

City of Aurora: The phrase “excluded from being effectively prohibited” is confusing. Does this mean the discharge is an allowable non-stormwater discharge? Clarification is requested.

Response 1: Revise Confusing Language

These comments have been incorporated into the fact sheet.

Comment 2: Referencing the Permit Rather than the Individual Discharges in Regulatory Mechanisms

Colorado Stormwater Council: Please add clarifying language in the fact sheet for how permittees can include these into their regulatory mechanism. For instance, in their regulatory mechanism permittees can make a reference to the discharges listed in the MS4 permit instead of listing the discharges in the regulatory mechanism. Or if the discharges are listed in the regulatory mechanism, the clarifying language within the permit does not have to be included. There is concern about the frequency that permittees will need to update regulatory mechanisms and the exact language that the Division will require in the regulatory mechanism. If a permittee references the MS4 Permit in their regulatory mechanism, public comment obligations are met through the Division’s public notice process for the permit.

Douglas County: Please add clarifying language in the Fact Sheet for how permittees can include these into their regulatory mechanism. For instance, in their regulatory mechanism, permittees can make a reference to the discharges listed in the MS4 permit instead of listing the discharges in the





regulatory mechanism. Or if the discharges are listed in the regulatory mechanism, the clarifying language within the permit does not have to be included. There is concern about the frequency that permittees will need to update regulatory mechanisms and the exact language that the Division will require in the regulatory mechanism. If a permittee references the MS4 Permit in their regulatory mechanism, public comment obligations are met through the Division's public notice process for the permit.

Response 2: Referencing the Permit Rather than the Individual Discharges in Regulatory Mechanisms

These comments have been incorporated into the fact sheet.

Comment 3: Residential Sump Pumps

City of Canon City: a.v. Discharges that can be Excluded from being Effectively Prohibited: The following discharges do not need to be effectively prohibited and the permittee is not required to address the discharges as illicit discharges in accordance with the requirements of this permit. The permittee must list all discharges excluded from being effectively prohibited in their regulatory mechanism as an allowable non stormwater discharge. Any discharges listed below that are not listed in the permittee's regulatory mechanism must be effectively prohibited.

a.v.(F) Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20))

1) 40 CFR 35.2005(20): Infiltration. Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

And (G) Uncontaminated pumped groundwater

1) For the purposes of this permit, "uncontaminated" groundwater is groundwater that is not expected to contain pollutants in concentrations that are toxic or that would cause or contribute to a violation of a water quality standard.

2) Discharges containing groundwater that comes into contact with construction activity is not considered "uncontaminated" due to the potential for sediment content.

The City of Cañon City requests clarification in the Fact Sheet that residential sump pumps pumping groundwater from basements, crawl spaces, etc., either due to a normally high water table or due a rising water table from precipitation events, are not required to obtain one of the permits referenced in the Fact Sheet discussion.

Rationale: The discussion in the Fact Sheet makes us question if residential sump pumps pumping groundwater from basements, crawl spaces, etc. either due to a normally high water table or due to a rising water table from precipitation events would be required to apply for one of the permits cited in the Fact Sheet. It appears from discussion with Division staff that the





references in the Fact Sheet are for construction sites/activities, not residential sump pumps. The permit is clear, but the Fact Sheet is confusing.

Colorado Stormwater Council: Fact Sheet, Page 34 & 35 Please clarify in the fact sheet that residential sump pumps, pumping groundwater from basements, crawl spaces, etc. either due to a normally high water table or due to a rising water table from precipitation events are not required to obtain one of the permits referenced in the fact sheet. It appears from discussion with Division staff that the references in the fact sheet are for construction sites/activities, not residential sump pumps. The permit is clear, but the fact sheet is confusing. The discussion in the fact sheet brings into question whether residential sump pumps pumping groundwater from basements, crawl spaces, etc. either due to a normally high water table or due to a rising water table from precipitation events would be required to apply for a discharge permit. Additional discussion or modification of the fact sheet is needed to be consistent with the requirements in this permit.

Douglas County: Page 34 & 35: Please clarify in the Fact Sheet that sump pumps are for construction sites/activities, not residential sump pumps. It appears from discussion with Division staff that the references in the Fact Sheet are for construction sites/activities, not residential sump pumps. The permit is clear, but the Fact Sheet is confusing. The discussion in the Fact Sheet brings into question whether residential sump pumps pumping groundwater from basements, crawl spaces, etc. either due to a normally high water table or due to a rising water table from precipitation events would be required to apply for a discharge permit. Additional discussion or modification of the Fact Sheet is needed to be consistent with the requirements in this permit.

Response 3: Residential Sump Pumps

These comments have been incorporated into the fact sheet. The fact sheet was updated to add information concerning residential sump pumps. The fact sheet was not changed to state that certain types of discharges “are not required to obtain one of the permits” since every discharge is unique. Permittees are encouraged to contact division staff to discuss permitting different residential discharges on a case by case basis.

Comment 4: Irrigation Return Flow

Colorado Stormwater Council: Please update to the following proposed concept: Agriculture land management activity wastes from farms and ranches that do not require a CDPS or NPDES permit. All agricultural activities are exempt including tilling fields as indicated in the fact sheet.

Douglas County: Please update to the following proposed concept: Agriculture land management activity wastes from farms and ranches that do not require a CDPS or NPDES permit. All agricultural activities are exempt including tilling fields as indicated in the Fact Sheet.

Keep it Clean Partnership: The language regarding animal or agricultural waste discharge that can be excluded from being effectively prohibited needs to be





consistent with 40 CFR, Regulation 61, the Colorado Water Quality Control Act, and allow for tilling fields. Issue: The language regarding animal or agricultural waste discharge that can be excluded from being effectively prohibited needs to be consistent with 40 CFR, Regulation 61, the Colorado Water Quality Control Act, and allow for the tilling of fields.

Comment: Please change the wording to be consistent.

Weld County: Weld County concurs with the Colorado Stormwater Council comment to clarify the exclusion language of animal waste and waste from agricultural land management activities, such as tilling, are exempt from this permit.

Response 4: Irrigation Return Flow

These comments have been incorporated into the permit.

Comment 5: Low Risk and Other Policies

Colorado Stormwater Council: Please add the following proposed concept: Discharges not required to obtain a CDPS permit, which may include discharges in accordance with Division policies and guidance documents. Category (X) captures the allowable non-stormwater discharges for the Division's Low Risk Policy guidance documents and allows a general category similar to CDPS or NPDES Permits. This general category should be sufficient and would avoid a time consuming process of revisions to regulatory mechanisms and documentation each time a new type of Low Risk Policy guidance document is added or removed. Water-based discharges from fire suppression systems are allowed through policy CW5, similar to the Low Risk Policy CW-27. Both policies have guidance documents for requirements that must be met in order to comply with the policies. It would be more efficient to allow permittees' regulatory mechanisms to refer to general categories of discharges not required to obtain a CDPS permit rather than listing out specific discharges and updating the regulatory mechanism each time a new discharge is added or removed by the Division. The combined category on the Division's website is listed as Discharge without a permit - policies and guidance documents.

Douglas County: Please remove: in accordance with the division's Low Risk Policy Discharge Guidance: Potable Water in (J); in accordance with the Division's Low Risk Discharge Guidance: Potable Water in (K); and in accordance with the division's Low Risk Discharge Guidance: Swimming Pools in (Q). Please add the following proposed concept: Discharges not required to obtain a CDPS permit, which may include discharges in accordance with Division policies and guidance documents. Category (X) captures the allowable non-stormwater discharges for the Division's Low Risk Policy guidance documents and allows a general category similar to CDPS or NPDES Permits. This general category should be sufficient and would avoid a time consuming process of revisions to regulatory mechanisms and documentation each time a new type of Low Risk Policy guidance document is added or removed. Water-based discharges from fire suppression systems are allowed through policy CW5, similar to the Low Risk Policy CW-27. Both policies have guidance documents for requirements that must be met in order to comply with the policies. It would be more efficient to allow permittees' regulatory





mechanisms to refer to general categories of discharges not required to obtain a CDPS permit rather than listing out specific discharges and updating the regulatory mechanism each time a new discharge is added or removed by the Division. The combined category on the Division's website is listed as Discharge without a permit - policies and guidance documents.

City of Canon City: Although Regulation 61 specifically lists these categories the Division has produced "Low Risk Discharge Guidance" documents to further clarify how to address various types of discharges. In the draft permit the Division also includes category (X) Discharges that are in accordance with the Division's Low Risk Policy Guidance documents. Categories (J), (K), and (Q) could be consolidated under (X).

Response 5: Low Risk and Other Policies

These comments have been partially incorporated into the permit. The division has received numerous calls from permittees, citizens, and companies regarding low risk discharges and this permit over the previous permit term. References to current low risk policies within the different types of discharges that the permittee does not have to effectively prohibit will not be removed from the individual types of discharges in the list since it adds clarity for the reader. The part of the comment regarding other policies has been incorporated into the permit.

Comment 6: Add Other Discharges Approved by the Division

Colorado Stormwater Council: Please update to the following proposed concept: If the permittee does not receive a response within 30 days, the discharge is approved by the Division as an allowable non-stormwater discharge. A time frame for a response from the Division is needed to ensure action can be taken by the permittee to allow the discharge in a timely manner. Thirty days is an adequate time frame for the Division to respond to a permittee's request.

Douglas County: Please update to the following proposed concept: If the permittee does not receive a response within 30 days, the discharge is approved by the Division as an allowable non-stormwater discharge. A time frame for a response from the Division is needed to ensure action can be taken by the permittee to allow the discharge in a timely manner. Thirty days is an adequate time frame for the Division to respond to a permittee's request.

City of Canon City: The City of Cañon City requests the Division add a time frame of within 30 days for the Division to respond. Rationale: A time frame for a response from the Division is needed to ensure action can be taken by the permittee to allow the discharge in a timely manner. Without a deadline for the Division to respond to the proposed changes, a permittee could potentially not receive a response. Thirty days seems appropriate.

Response 6: Add Other Discharges Approved by the Division

These comments have not been incorporated into the permit. The division cannot anticipate the types of discharges that will be submitted for approval,





the completeness of the information, and the time that will be needed to evaluate, research, and approve or deny the discharge.

Comment 7: Add Additional Types of Discharges to the Final Permit

5-2-1 Drainage Authority: Discharges excluded from being an Illicit Discharge, should include charity car washes. Currently the charity car washes that occur within the 521 jurisdictional boundaries usually occur at locations that have onsite stormwater quality BMP's, or these sites discharge to a regional stormwater quality basin prior to discharging to State waters. Also the amount of pollutants that are discharged from this activity will not cause exceedances to water quality standards in receiving waters.

City of Boulder: Add: "Temporary chalk applied to paved surfaces for education or art purposes"

Temporary chalk (calcium carbonate) has not been proven to be a significant contributor of pollution to streams. Temporary chalk art may also be used to specifically promote education and outreach related to stormwater which is important to the community, e.g., temporary storm drain markings. A quick search online brings up multiple examples of communities who have used chalk art to promote awareness of storm drains and their connection to adjacent waterbodies; for example, the City of Palm Bay, Florida:

<http://www.palmbayflorida.org/Home/ShowDocument?id=5924>

The inclusion of this discharge that can be excluded from being effectively prohibited would allow another outreach tool that actively engages the community. Locally, a number of cities already have chalk art events that include the temporary use of chalk on streets and sidewalks. Additionally, chalk is used throughout the city for marking races and other events for which it would be reasonably impossible for the city to enforce upon. To go through the permit exclusion process seems burdensome and unwarranted for a practice that is currently widely performed across the Front Range. Including the proposed temporary chalk art exclusion language directly in the permit would be less burdensome for both permittees and Division staff given that the city believes it is apparent that temporary chalk complies with the exclusion submission requirements language in Part 1.E.2.a.v.T.1. which states that "discharges, with proper management, are not expected to contain pollutants in concentrations that are toxic or in concentrations that would cause or contribute to a violation of a water quality standard."

Response 7: Add Additional Types of Discharges to the Final Permit

This comment has not been incorporated into the permit. Permittees may use Part 1.E.2.a.v(Y) to apply to add additional discharges to the list.

Comment 8: Add Non-Emergency Fire Fighting Activities

City of Boulder: Replace (Page 13: "Discharges resulting from emergency fire fighting activities" Change to say: "Discharges resulting from fire fighting activities"

All fire fighting activities are necessary to support the functions of "emergency fire fighting." The term "emergency firefighting" is too restrictive, therefore the city would like the word emergency removed from the permit. This is more





equitable and allows the city to avoid altering code with little additional benefit to stormwater.

City of Canon City: a.v.(U) Discharges resulting from emergency fire fighting activities. The City of Cañon City requests that the term “emergency” be removed. Page 33 of the Fact Sheet quotes Regulation 61 on discharges that can be excluded from being considered an illicit discharge. The Fact Sheet states: “Discharges that could be Excluded from being Considered an Illicit Discharge: Section 61.8(11)(a)(ii)(C)(II) of Regulation 61 states that “the permittee needs to address the following categories of non-stormwater discharges or flows..only if the permittee identifies them as significant contributors of pollutants to the permittee’s small MS4:... (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-stormwater and need only be addressed where they are identified as significant sources of pollutants to state waters).

Rationale: Regulation 61 does not use the word "emergency". Where does the Division identify that only "emergency" fire fighting activities are not significant sources of pollutants to state waters? Since we have the ability to still enforce against excluded discharges if we deem them a significant source of pollution, we have the ability to address non-emergency fire fighting activities if we deem them as such.

Response 8: Add Emergency Fire Fighting Activities

These comments have not been incorporated into the permit. “Emergency firefighting water” was the term used in the previous permit. The intent of the term has not changed. Please see the categories of discharges discussion in the fact sheet. The division has determined that discharges from emergency fire fighting activities are impracticable to prohibit. Some permittees use control measures to address discharges from non-emergency fire fighting activities, such as berming the inlet, pumping the discharge into a truck, and disposing of the discharge at the local publically owned sewage treatment plant.

Comment 9: Remove “Any Animal or agricultural waste on farms and ranches that do not require a CDPS or NPDES permit”

El Paso County: The exclusion for all animal or agricultural waste on farms and ranches is counter productive to the water quality goals of Reg 85. This type of waste is common illicit discharge in counties. Delete (w) in its entirety.

Home Builders Association of Metro Denver: The exclusion for all animal or agriculture waste on farms and ranches is counterproductive to the water quality goals of Regulation 85. This type of waste is common illicit discharge in counties. We recommend deleting (w) in its entirety.

Response 9: Remove “Any Animal or agricultural waste on farms and ranches that do not require a CDPS or NPDES permit”

These comments have not been incorporated into the permit. Please see Response 4 in this section.

Comment 10: Remove Any Discharges that are not Listed in Regulation 61





City of Golden: The list of "Discharges that can be Excluded from being Effectively Prohibited" in Section I.E.2. v. does not match the list of such discharges in Regulation 61.4(3)(C)(ii)(D)(II)(a). For example, Regulation 61 includes "street wash water" where COR09000 lists "water incidental to street sweeping ... " Similarly, Regulation 61 includes discharges from "fire fighting" where the draft permit lists "discharges resulting from emergency fire fighting." Lastly, Regulation 61 includes "water line flushing," but the permit lists "water line flushing in accordance with the division's Low Risk Policy Discharge Guidance: Potable water.

Response 10: Remove Any Discharges that are not Listed in Regulation 61

This comment has not been incorporated into the permit. Section 61.8 of Regulation 61 states that "Terms and conditions consistent with those specified in this regulation, including **but not limited to [emphasis added]**, the terms and conditions specified in sections 61.4(1), 61.8(2), 61.8(3), 61.8(4), 61.8(5), 61.8(6), 61.8(7), 61.8(8), 61.8(9) and 61.8(10), shall be incorporated into the Division's permits, either expressly or by reference to this regulation." The division may add additional terms and conditions in a permit. The language changes in the permit are intentional clarifications of and additions to the language included in Regulation 61. For example, the division intentionally expressed "water incidental to street sweeping" to clarify that this is water incidentally left on a pavement surface from a street sweeping operation and does not include water collected in a street sweeper which is not to allowed to be discharged to the MS4.

Comment 11: Other Discharges

City of Boulder: Illicit Discharge Detection and Elimination (Pages 12-14). As addressed in greater detail in Boulder's January 6, 2014 comments, the proposed permit language requires the permittee to specifically exclude certain discharges that, pursuant to Regulation 61, must be addressed only if the permittee identifies them as significant contributors of pollutants to the permittee's small MS4. The draft permit is inconsistent with the requirements of Regulation 61 and puts the administrative burden on the permittee to specifically exclude these sources or prohibit such discharges. If the language is implemented as currently drafted, Boulder will be required to revise its stormwater program and suffer this unnecessary administrative burden without providing any added water quality benefit. Comment: Temporary chalk art already meets the requirements of the exclusion and is a commonly used education and outreach tool.

Response 11: Other Discharges

This comment has not been incorporated into the permit. As stated in the fact sheet, permittees may at any time determine that any of the discharges listed in this section are a significant source of pollutants and implement their illicit discharge response program.

vi. Removing an Illicit Discharge**Comment 1: Removal of Associated Material from the Illicit Discharge**



Colorado Stormwater Council: Please clarify there are instances where removal of the source and associated material is not practicable. To comply with the draft permit, the removal of small oil leaks from cars parked on the street when identified by staff or citizens would need to be performed or required. Not only is this difficult and costly, but it may be impossible to remove the associated material. The permit language does not acknowledge that education of the vehicle owner may, in fact, be a more effective approach than ensuring the removal of materials associated with the illicit discharge. For example, a minor oil leak from a car would require either staff clean up the oil leak or spend time ensuring the owner of the car properly cleaned up the oil, when it could be addressed through education. In addition, requiring the same level of clean up and documentation for responding to an oil stain could result in field staff ignoring something that currently would be addressed because of the extra administrative work required in oversight of clean up.

Douglas County: Please clarify there are instances where removal of the source and associated material is not practicable. To comply with the draft permit, the removal of small oil leaks from cars parked on the street when identified by staff or citizens would need to be performed or required. Not only is this difficult and costly, but it may be impossible to remove the associated material. The permit language does not acknowledge that education of the vehicle owner may, in fact, be a more effective approach than ensuring the removal of materials associated with the illicit discharge. For example, a minor oil leak from a car would require either staff clean up the oil leak or spend time ensuring the owner of the car properly cleaned up the oil, when it could be addressed through education. In addition, requiring the same level of clean up and documentation for responding to an oil stain could result in field staff ignoring something that currently would be addressed because of the extra administrative work required in oversight of clean up.

Southeast Metro Stormwater Authority: 4. Part I.E.2.a.vi. Removing an Illicit Discharge. As discussed above, the removal of the material associated with an illicit discharge is not always the best means for mitigation. For example, an oil stain in the curb and gutter cannot be practically removed. These should be treated as equivalent to minor residential discharges that are not regulated, other than through an educational process. SEMSWA will address any reported incident of a spilled material using the IDDE program we have established, which will follow a process to determine the nature of the discharge, if in fact it is an illicit discharge, and proceed to mitigation via education and beyond, as necessary. This should get at the issue of repeat instances of improper discharge that is a focus of the IDDE program. We request that removal be modified to mitigation and reference that mitigation should occur, if feasible. We recommend revising the section to read: The permittee must mitigate, or require and ensure the mitigation of, the source, and associated material, if feasible, of an illicit discharge when identified.

City of Canon City: The City of Cañon City requests that the Division clarify that there are instances where cleanup of all the material and removing the source is not practicable. An alternative could be to include a minimum level which





triggers the cleanup. An example would be oil drips from vehicles in parking lots or along the street.

Rationale: To comply with the draft permit, the removal of small oil leaks from cars parked on the street, when identified by staff or citizens, would be required. Not only is this difficult and costly, but it may be impossible to remove the associated source. In addition, requiring the same level of cleanup and documentation for responding to an oil stain potentially results in field workers ignoring something that currently would be addressed because of the extra administrative work required in oversight of cleanup. For example, a minor oil leak from a car would require either staff clean up the oil leak or spend time ensuring the owner of the car properly cleaned up the oil. Currently, this could be addressed through education of the vehicle owner.

City of Golden: Removing an illicit discharge. Section I.E.2.a.vi requires the "permittee [to] remove, or require and ensure the removal of, the source and associated material of an illicit discharge when identified." This requirement fails to acknowledge situations where removal of the material is not practical such as grass clippings and minor oil leaks from cars. In those instances, education and/or a verbal warning should be sufficient action. The permit should be revised to allow for situations and remedies of this type.

Response 1: Removal of Associated Material from the Illicit Discharge

These comments have been incorporated into the permit.

Comment 2: Support of Colorado Stormwater Council's comments

City of Federal Heights: The topics considered "high-level" issues for the City include the following: Illicit Discharge- Removing the source and all associated material.

City of Castle Pines: The topics considered "high-level" issues for the City include the following: Illicit Discharge- Removing the source and all associated material.

City of Glendale: The topics considered "high-level" issues for the City include the following: Illicit Discharge- Removing the source and all associated material.

Response 2: Support of Colorado Stormwater Council's comments

Please see the division's response to the Colorado Stormwater Council's comment.

vii. Enforcement Response

Comment 1: Replace "Stop" vs. "Discourage"

Southeast Metro Stormwater Authority: 5. Part I.E.2.a.vii. Enforcement Response. This section appears to include language to stop responsible parties from willfully or negligently repeating or continuing illicit discharges. No enforcement can ensure the stoppage of future actions, but the enforcement can discourage future discharges. Please replace stop with discourage.



**Response 1: Replace “Stop” vs. “Discourage”**

These comments have been incorporated into the permit.

Comment 2: Confusing Language

City of Aurora: The language to describe program requirements is often confusing. An example of this is on p. 14, section E.2. vii. “Written enforcement procedures must include informal, formal and judicial enforcement responses.” If the permit requires these types of procedures, then they must be defined. What do these levels mean? Is the intent to have effective enforcement? Is so, then that sentence can be deleted since the first sentence says that the permittee must implement “written enforcement procedures”.

Response 2: Confusing Language

This comment has not been incorporated into the permit. The permit requires the permittee to have different types of enforcement. The permittee has the flexibility to define the types of procedures under each type of enforcement.

viii. Priority Areas**Comment 1: Identifying Priority Areas**

Greenwood Village: Comment: Although the Village realizes the division prefers prioritization, the Village will prioritize the MS4 permit area boundary since the Village is not a full service city (served by various sanitary sewer districts). The Village has prioritized areas in the past and has not found patterns or evidence of areas with high likelihood of having illicit discharges or illicit connections. Additionally, historic illicit discharges have indicated that most are a result of automotive fluid leak/spills from motor vehicle accidents or equipment failure, grease trap overflows, construction washout and minimal areas of sanitary sewer overflow, therefore, all areas are a priority and monitored the same. As previously mentioned in the first draft of the MS4 permit comments, the Village has successfully adapted illicit discharge detection and elimination training specific to identify, stop, abate, enforce and report on an illicit discharge and train based on what has been experienced specific to the Village. Although it is good to locate priority areas or target priority issues, we prefer to not dilute the overall message of how to identify an illicit discharge and how to address.

Response 1: Identifying Priority Areas

The division takes note of this comment. No changes to the permit or fact sheet are necessary.

ix. Training

No comments were received on this section of the permit.

x. Industrial Activities**Comment 1: Remove this Requirement**

Colorado Stormwater Council: Please remove this requirement and allow permittees to address these discharges through their own IDDE programs. Please clarify that “industrial activities” does not include construction sites.



**PUBLIC NOTICE COMMENTS**

Oversight of Industrial Facilities is not required or discussed in the Phase II Rule or Regulation 61. MS4 Permittees should have the option to address the discharge through their IDDE Program or to notify the Division. If a permittee notifies the Division, it should constitute removal of the illicit discharge. Many permittees respond to these types of discharges as part of their IDDE programs and resolve them through that process. To add notification requirements to the Division on resolved illicit discharges does not provide added water quality benefit. Within Regulation 61, the Division's oversight of construction sites falls under industrial activity.

Douglas County: Please remove this requirement and allow permittees to address these discharges through their own IDDE programs. Please clarify that "industrial activities" does not include construction sites. Oversight of Industrial Facilities is not required or discussed in the Phase II Rule or Regulation 61. MS4 Permittees should have the option to address the discharge through their IDDE Program or to notify the Division. If a permittee notifies the Division, it should constitute removal of the illicit discharge. Many permittees respond to these types of discharges as part of their IDDE programs and resolve them through that process. To add notification requirements to the Division on resolved illicit discharges does not provide added water quality benefit. Within Regulation 61, the Division's oversight of construction sites falls under industrial activity.

City of Arvada: Remove language that refers to requirements to report Industrial Facilities. A significantly contaminated discharge from any facility would be addressed in our Illicit Discharge Detection and Elimination Program, whether it had a stormwater permit with the State or not.

Weld County: State should have the responsibility for overseeing State-permitted industrial activities, not the local jurisdiction. The permittee will not know if the site is permitted or not, so please remove this language. Please clarify 'contact information'. Also, if the notification requirement remains, and the intent of the Division is to protect water quality, 90 days could potentially cause extreme water quality issues. How does the Division intend to respond to these notifications?

5-2-1 Drainage Authority: Industrial Facilities- The 521 respectfully requests that this section of the permit be removed. MS4 permittees are not responsible for the oversight of industrial facilities. This additional requirements places unnecessary burden on permittees by requiring additional recordkeeping and reporting requirements. The Division is responsible for Illicit Discharges from Industrial Facilities.

City of Canon City: The City of Cañon City respectfully asks the Division to remove this requirement and its associated paperwork. We would prefer the Division address this issue separately by sending the permitted Phase II MS4s a memo or letter asking that we voluntarily notify the Division if and when illicit discharges from permitted or unpermitted industrial activities are found. We understand the Division would like to track this type of data; this could be addressed in the Phase II Annual Reporting requirements such as: "Did the





permittee report any illicit discharges from industrial activities to the Division? For each such report, please list the discharger's name, site address and the date and time it was reported to the Division." Alternatively, the MS4 could choose to address the discharge within their own IDDE program which would then be recorded in the Annual Report to the Division. The City of Cañon City also believes that a reporting time frame of 90 days is too long. In our opinion letting a potential illicit discharge continue without action for that period of time or more (taking into account the potential Division response time) does not provide adequate water quality protection.

Southeast Metro Stormwater Authority: 6. Part 1.E.2.a.x. Industrial Activities. SEMSWA believes that industrial permittee activities that are not under our purview should not be our responsibility to report upon. Further, industrial activities are not within our areas of expertise. Please delete this section accordingly. This comment also applies to the recordkeeping responsibilities associated with this Section, Part 1.E.2.b.ix. SEMSWA wants the option to address the discharge from an Industrial Permit holder within our service area, specifically through our IDDE and/or Public Education and Outreach programs. We would like the opportunity to work with the Permittee on a viable long-term solution to the discharge, specifically through their Standard Operating Procedures.

City of Boulder: If the city is capable of properly addressing issues that arise related to discharges from industrial activities it should be given that opportunity and refer these activities to the state only when further assistance is required.

Response 1: Remove this Requirement

These comments have been incorporated into the permit.

Comment 2: Support of specific Colorado Stormwater Council comments

City of Greeley: The key concerns, which are detailed in Colorado Stormwater Council comments, for the City of Greeley are as follows: Illicit Discharge Detection & Elimination: Referring discharges from industrial activities that may have a negative impact on water quality – make the reporting less onerous on permittees.

Response 2: Support of specific Colorado Stormwater Council comments

Please see the division's response to Colorado Stormwater Council's comments.

Comment 3: Revise this Requirement

Keep it Clean Partnership: The requirement for referring discharges from industrial activities that may have a negative impact on water quality should be referenced in the existing illicit discharge detection and elimination program, instead of being required as a separate program. Issue: The requirement for referring discharges from industrial activities that may have a negative impact on water quality should be referenced in the existing illicit discharge detection and elimination program instead of being required as a separate program.





Comment: KICP Partners already notify CDPHE of discharges from industrial facilities in our jurisdictions if we are unable to resolve the situation locally. Including separate requirements with specific notification and documentation requirements for industrial discharges is unnecessary. Illicit discharges are already captured in our illicit discharge detection and elimination (IDDE) programs. If CDPHE is notified of an illicit discharge from an industrial facility, the recordkeeping requirements for the IDDE program should be sufficient documentation. KICP requests that these requirements be removed from the permit.

El Paso County: Paragraph needs additional clarification this requirement only applies to industrial activities that discharge to the MS4.

City of Aurora: A second example of extra words on page 15, section E.2.a.x. is this sentence, “Information in the notification should include information such as . . .”

City of Boulder: Replace (Page 15): Industrial Activities: The permittee should notify the Division when discharges from CDPS and NPDES permitted and unpermitted industrial activities are identified by the permittee as having a negative water quality impact on the discharge from the MS4 and issues cannot be addressed by the permittee. ~~Information in the notification should include information such as the location of the discharge, water quality concerns, and contact information. The report must be provided to the Division within 90 days after permittee identified the location of the discharge.~~

The city already responds to any discharges which have a negative impact to the city’s MS4. If the city is capable of properly addressing issues that arise it should be given that opportunity and refer these activities to the state only when further assistance is required. Additional information on how the state would like the city to deal with these situations could be placed in the Fact Sheet. Please also remove these requirements from the Recordkeeping and PDD sections.

Response 3: Revise this Requirement

These comments have not been incorporated into the permit. This requirement has been removed—see Response 1.

b. Recordkeeping

Comment 1: Remove Requirements

City of Canon City: 2.b. Recordkeeping ii. Regulatory Mechanism: The applicable codes, resolutions, ordinances and program documents used to meet the permit requirements. And iii. Regulatory Mechanism Exemptions: The applicable codes, resolutions, ordinances, and program documents used to meet the permit requirements. The City of Cañon City requests these two requirements be removed. These requirements are addressed in 2.c. PDD which is more appropriate. Recordkeeping serves to document that required activities such as training, inspections, etc. have been completed.





Response 1: Remove Requirements

This comment has not been incorporated into the permit. The format of the permit is to have a regulatory mechanism section in each applicable section of the permit.

i. Storm Sewer System Map

No comments were received on this section of the permit.

ii. Regulatory Mechanism

Comment 1: Recordkeeping vs. PDD Requirements

Colorado Stormwater Council: Please clarify within the fact sheet, that record keeping requirements for the regulatory mechanism are the actual codes, resolutions, ordinances, and program documents that permittees are using to implement the program. Also clarify permittee's could meet the PDD requirements with a link to the applicable codes, resolutions, ordinances, and program documents.

The difference between recordkeeping and PDD, particularly regarding regulatory mechanism, are not clear.

Douglas County: Please clarify within the Fact Sheet that record keeping requirements for the regulatory mechanism are the actual codes, resolutions, ordinances, and program documents that permittees are using to implement the program. Also clarify permittee's could meet the PDD requirements with a link to the applicable codes, resolutions, ordinances, and program documents. The difference between recordkeeping and PDD, particularly regarding regulatory mechanism, are not clear.

Response1: Recordkeeping vs. PDD Requirements

These comments have been incorporated into the fact sheet.

iii. Regulatory Mechanism Exemptions

No comments were received on this section of the permit.

iv. Tracing an Illicit Discharge

Comment 1: Remove Requirement

City of Canon City: iv. Tracing an Illicit Discharge: (A) The applicable program documents and procedures used to respond to reports/identification of illicit discharges. The City of Cañon City requests this requirement be removed. The requirement is addressed in 2.c. PDD which is more appropriate. Recordkeeping serves to document that required activities such as training, inspections, etc. have been completed.

Response 1: Remove Requirement

This comment has not been incorporated into the permit. Please see the fact sheet for an explanation of the difference between recordkeeping and PDD.

Comment 2: Communicating with Other Municipal Departments





City of Canon City: Fire Departments, Sanitation Districts & police do not (or rarely) respond to "illicit discharges". They respond to accidents where an illicit discharge is secondary, if at all, on their radar. Effectively communicating and tracking illicit discharges handled (if at all) by other departments or districts within our permit area may be very difficult. Additionally, the authority to require other departments or districts within our permit area to share documentation with our Stormwater Program or that illicit discharges be handled per our permit requirements may not be available.

Response 2: Communicating with Other Municipal Departments

This comment has not been incorporated into the permit. Please see the fact sheet for more information on effectively communicating with other departments.

v. Discharges that can be Excluded from being Effectively Prohibited

No comments were received on this section of the permit.

vi. Removing an Illicit Discharge

Comment 1: Change "List" to "Description"

Colorado Stormwater Council: Please change a " list" to a" description of how the incident was eliminated/resolved". A description is a better term than a list for how the source of an illicit discharge was eliminated/resolved.

Douglas County: Please change a " list" to a" description of how the incident was eliminated/resolved". A description is a better term than a list for how the source of an illicit discharge was eliminated/resolved.

City of Canon City: Please change "list" to "description" which is a more appropriate way to describe how an illicit discharge was eliminated or resolved.

Response 1: Change "List" to "Description"

These comments have been incorporated into the permit.

vii. Enforcement Response

Comment 1: Confusing Language

City of Canon City: There is not a recordkeeping requirement for permit requirement a.vii. Enforcement Response. The City of Cañon City is unclear if this is an oversight by the Division. If it is, then Priority Areas should be viii.

Response 1: Confusing Language

This comment has been incorporated into the permit.

viii. Priority Areas

No comments were received on this section of the permit.

ix. Training





Comment 1: Replace “Title” with “Department”

Colorado Stormwater Council: Please remove “title” from the requirement and add “department.” Municipal job titles are often not specific, such as “Maintenance Worker 1” and do not provide valuable information regarding which work groups are being targeted with the training. The term “Department” is more relevant.

Douglas County: Please remove title from the requirement and add department. Municipal job titles are often not specific, such as “Maintenance Worker 1” and do not provide valuable information regarding which work groups are being targeted with the training. The term “Department” is more relevant.

City of Canon City: The City of Cañon City requests that the “title” of each individual be replaced with “department”. Rationale: Municipal job titles are often not specific, such as “Maintenance Worker 1” and do not provide valuable information regarding which work groups are being targeted with the training. “Department” is more relevant information.

Colorado Stormwater Council–Non-Standard Committee: Staff titles are typically not completely descriptive of employee responsibilities. Departments would be better since it may be important for a staff person such as a Contract Administrator in a Public Works Department to understand IDDE but it would not be for a Purchasing Department Contract Administrator.

Response 1: Replace “Title” with “Department”

These comments have been incorporated into the permit.

x. Industrial Activities

Comment 1: Remove this Requirement

Colorado Stormwater Council: Please remove recordkeeping requirements for industrial facilities. This is an illicit discharge and should be documented as such and not require additional recordkeeping and reports. Since MS4 permittees are not responsible for oversight of industrial facilities, nor are they mentioned in the Phase II Rule or Regulation 61, the permit can require notification to the Division without requiring specific procedures and documentation. The Division should be responsible for documenting notifications received. If the illicit discharge from an industrial facility is resolved through the permittee’s IDDE program, recordkeeping should be the same as the IDDE program requirements and not have additional requirements.

Douglas County: Please remove recordkeeping requirements for industrial facilities. This is an illicit discharge and should be documented as such and not require additional recordkeeping and reports. Since MS4 permittees are not responsible for oversight of industrial facilities, nor are they mentioned in the Phase II Rule or Regulation 61, the permit can require notification to the Division without requiring specific procedures and documentation. The Division should be responsible for documenting notifications received. If the illicit discharge from an industrial facility is resolved through the permittees IDDE





program, recordkeeping should be the same as the IDDE program requirements and not have additional requirements.

City of Canon City: ix. Industrial Facilities. Please refer to our comments under Part I.E.2.a.x.

Response 1: Remove this Requirement

These comments have been incorporated into the permit.

c. Program Description Document

i. Storm Sewer System Map

No comments were received on this section of the permit.

ii. Regulatory Mechanism

No comments were received on this section of the permit.

iii. Regulatory Mechanism Exemptions

No comments were received on this section of the permit.

iv. Tracing an Illicit Discharge

No comments were received on this section of the permit.

v. Discharges that can be Excluded from being Effectively Prohibited

Comment 1: Remove Duplicative Requirements in the PDD

Colorado Stormwater Council: Please remove requirement (A). The procedures for tracing an illicit discharge included in (B) already identify the tools that can be used.

Douglas County: Please remove requirement (A). The procedures for tracing an illicit discharge included in (B) already identify the tools that can be used.

City of Canon City: In keeping with our comments for Part I.E.2.a.iv., the City of Cañon City requests this requirement be removed.

Response 1: Remove Duplicative Requirements in the PDD

These comments have been incorporated into the permit.

vi. Removing and Illicit Discharge

Comment 1: Remove Requirements

Colorado Stormwater Council: Please remove requirement vi. The requirements in vi. are duplicative of iv.

Douglas County: Please remove requirement vi. The requirements in vi are duplicative of iv.

City of Canon City: The City of Cañon City requests this requirement be removed as it is duplicative of Part I.E.2.c.iv.



**Response 1: Remove Requirements**

These comments have been incorporated into the permit.

vii. Enforcement Response**Comment 1: Time Periods for Responses**

City of Canon City: The City of Cañon City requests that the portion of the final sentence “and time periods within which responses will take place” be removed. Rationale: The requirement in the permit states: “Enforcement Response: The permittee must implement appropriate written enforcement procedures and actions to eliminate the source of an illicit discharge when identified/reported, stop responsible parties from willfully or negligently repeating or continuing illicit discharges, and discourage future illicit discharges from occurring. The written procedures must address mechanisms for enforcement for all illicit discharges from the moment an illicit discharge is identified/reported until it is eliminated. [Emphasis added.] The permittee must escalate enforcement as necessary based on the severity of violation and/or the recalcitrance of the responsible party to ensure that findings of a similar nature are enforced upon consistently. Written enforcement procedures must include informal, formal, and judicial enforcement responses.” It does not state that a specific amount of time (e.g. number of days) for enforcement.

Response 1: Time Periods for Responses

This comment has not been incorporated into the permit. The requirement does not make the permittee determine the time periods for *enforcement*. The permittee must first determine the time periods within which the *responses* will take place. Then, the permittee’s PDD must document the time periods within which the responses (not enforcement) will take place.

viii. Priority Areas

No comments were received on this section of the permit.

ix. Training

No comments were received on this section of the permit.

x. Industrial Activities**Comment 1: Remove this Requirement**

Colorado Stormwater Council: Please remove PDD requirements for industrial facilities. This is an illicit discharge and should be documented as such and not require additional recordkeeping and reports. Since MS4 permittees are not responsible for oversight of industrial facilities, nor are they mentioned in the Phase II Rule or Regulation 61, the permit can require notification to the Division without requiring specific procedures and documentation. The Division should be responsible for documenting notifications received.

Douglas County: Please remove PDD requirements for industrial facilities. This is an illicit discharge and should be documented as such and not require additional recordkeeping and reports. Since MS4 permittees are not responsible





for oversight of industrial facilities, nor are they mentioned in the Phase II Rule or Regulation 61, the permit can require notification to the Division without requiring specific procedures and documentation. The Division should be responsible for documenting notifications received.

City of Canon City: Please refer to our comments under Part I.E.2.a.x.

Response 1: Remove this Requirement

These responses have been incorporated into the permit.

3. Construction Sites**Comment 1: Support of Specific Colorado Stormwater Council Comments**

City of Canon City: The Colorado Stormwater Council has proposed significant changes to this section [Construction Sites]. As a member of the Colorado Stormwater Council, the City of Cañon City agrees with and supports their recommendations.

City of Castle Pines: The topics considered "high-level" issues for the City include the following: Construction Sites- For projects with disturbances less than once acre that discharge to the Cherry Creek Reservoir drainage basin, the requirements contained in the Cherry Creek Reservoir Control Regulation apply, not the requirements currently outlined in the permit; Construction Inspection, Frequency, and Scope; Adequacy standards;

Response 1: Support of Specific Colorado Stormwater Council Comments

Please see the responses to Colorado Stormwater Council's individual comments.

Comment 2: Division-Operated Construction Sites Program

Colorado Contractors Association: The Department could be the sole authority in an MS4 jurisdiction per an agreement between CDPHE and the MS4. This could be funded by a fee to the construction operators.

Response 2: Division-Operated Construction Sites Program

In 2014 the division hosted a stakeholder process to discuss the clean water fee structure. Feedback received from the construction work group included a recommendation that the division could be the sole authority for construction permitting and compliance oversight, per agreement with a single MS4, or multiple MS4s where a construction project crosses multiple jurisdictions. The division supported the recommendation and it was included on the form used to solicit survey based feedback on fee concepts. Feedback from stakeholders was mixed with some indicating agreement, some indicating disagreement, and some remaining neutral. While a revised fee structure was adopted into statute during the 2015 legislative session, that structure does not include a fee category or structural component that could be used to fund this option. Therefore, the division did not consider this option when developing the permit. The division continues to support the recommendation and if a funding mechanism is put into place in the future, the division would evaluate the permit conditions to determine if changes would be necessary, and if so could make the necessary changes through a permit modification process.

Comment 3: Construction General Permit and the MS4 General Permit

**PUBLIC NOTICE COMMENTS**

Colorado Stormwater Council: Please remove all requirements from the Phase II MS4 permit that mirror the CDPS Construction Activity Permit, for which operational control remain the sole responsibility and liability of the construction site operator. Our comments below reflect this request.

Most of the requirements for the Division's administration of Stormwater Discharges Associated with Construction Activity general permit can be found in 61.4(3)(b) (Application Requirements for Stormwater Discharges Associated with Industrial Activity) and 61.6 (Issued Permits).

Requirements for the Division's administration of this Phase II MS4 permit can be found in 61.4(3)(c) (Application Requirements for Regulated Small Municipal Separate Storm Sewer Discharges) and 61.8(11) (Conditions for Phase II Municipal Stormwater Permits). As expanded upon in the fact sheet, page 43, the requirements for the two permits are different in Regulation 61 and thus there are two different general permits that regulate stormwater on construction sites.

While both the Construction Program and the Phase II MS4 Program involve oversight requirements for construction activities, it is clear in Regulation 61 these are two distinct programs and the two programs should remain separate.

As mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities.

The focus of the MS4 Construction Program is inspection frequency, BMP selection, design, implementation and maintenance, and discharges to the MS4. The focus of the CDPS program involves heavier reliance on self-regulating paperwork for the Division's infrequent inspection and compliance determinations.

MS4s review site plans, perform inspections, and pursue enforcement for discharges to the MS4 from inadequate BMPs. The focus is on field performance, not paperwork. To ensure site plans are updated within 72 hours, for example, may benefit CDPHE inspectors, but does not provide additional tools for the MS4s, and instead serves to actually divert resources from effective oversight.

Douglas County: Please remove all requirements from the Phase II MS4 permit that mirror the CDPS Construction Activity Permit, for which operational control remain the sole responsibility and liability of the construction site operator. Our comments below reflect this request. Most of the requirements for the Division's administration of Stormwater Discharges Associated with Construction Activity general permit can be found in 61.4(3)(b) (Application Requirements for Stormwater Discharges Associated with Industrial Activity) and 61.6 (Issued Permits).

Requirements for the Division's administration of this Phase II MS4 permit can be found in 61.4(3)(c) (Application Requirements for Regulated Small Municipal Separate Storm Sewer Discharges) and 61.8(11) (Conditions for Phase II Municipal Stormwater Permits).





As expanded upon in the Fact Sheet, page 43, the requirements for the two permits are different in Regulation 61 and thus there are two different general permits that regulate stormwater on construction sites.

While both the Construction Program and the Phase II MS4 Program involve oversight requirements for construction activities, it is clear in Regulation 61 these are two distinct programs and the two programs should remain separate.

As mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities.

The focus of MS4 is inspection frequency, BMP selection, design, implementation and maintenance, and discharges to the MS4. The focus of the CDPS program involves heavier reliance on self-regulating paperwork for the Division's infrequent inspection and compliance determinations.

MS4s review site plans, perform inspections and compliance follow-up, and pursue enforcement for discharges to the MS4 from inadequate BMPs. The focus is on field performance, not paperwork. To ensure site plans are updated within 72 hours, for example, may benefit CDPHE inspectors, but does not provide additional tools for the MS4s, and instead serves to actually divert resources from effective oversight.

Xcel Energy: Xcel Energy recommends removing all requirements from the Phase II MS4 permit that mirror the CDPS Construction Activity Permit. Reference Reg 61 as opposed to citing the permit.

Response 3: Construction General Permit and the MS4 General Permit

In general, this comment has not been incorporated into the permit. Many of the same requirements, such as site plans, inspections, and erosion and sediment controls, are listed for both construction operators under the construction general permit and MS4 general permit sections of Regulation 61. Using similar terms and conditions in each permit, which, in turn, are similar to requirements in Regulation 61, helps align the requirements between MS4 permittees and construction contractors. Note that the focus of the similar requirements are different, such as an MS4 permittee does not have to develop a site plan, but has to review the site plans that construction operators create for appropriate erosion sediment controls. In addition, the site inspection frequencies are less than the site inspection frequency for construction operators. Please see the division's response to other specific comments relating to this issue from Colorado Stormwater Council below.

Comment 4: Applicable Construction Activities and Final Stabilization

City of Canon City: From the introduction to this section:

"Applicable construction activities" include construction activities that result in a land disturbance of greater than or equal to one acre or that is less than one acre, but is part of a larger common plan of development or sale that would disturb, or has disturbed since March 2, 2001, one acre or more, unless excluded below or the disturbed areas have been finally stabilized. The Fact Sheet states on Page 42: Regulation 61 also uses the terms "would disturb." Since that section of the





Regulation was written in March 2, 2001, construction activities that are part of a larger common plan of development or sale that disturbed one acre or more following March 2, 2001 and that have not been finally stabilized are covered under the applicable construction site definition. The City of Cañon City recommends including the language from the Fact Sheet which reads “and that have not been finally stabilized” in the permit to clarify that not all land disturbances since 3/2/01 are applicable.

Response 4: Applicable Construction Activities and Final Stabilization

This comment has not been incorporated into the permit. The definition of applicable construction activities already excludes areas that “have been finally stabilized.”

Comment 5: Common Plan of Development or Sale Definition and Remove the Term “Related”

Colorado Stormwater Council: The term “related” doesn’t add clarification and could broaden what an applicable construction activity is beyond the intent of the Regulation. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.

Douglas County: The term “related” doesn’t add clarification and could broaden what an applicable construction activity is beyond the intent of the Regulation. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.

Southeast Metro Stormwater Authority: 1. Part I.E.3. Applicability. Please revise the definition of “common plan of development or sale” to address “contiguous” and “related”. Requiring construction activities to be related if they share a builder, contractor, equipment, or storage areas is excessive and does not equate to a common plan of development. There are many unrelated projects with the same contractor or builder and therefore have common equipment. For example, a permittee that contracts for specific services like landscaping would meet the definition of a common plan of development or sale, which we assume not to be the intended result. Further, development plans may be planning level tools that plat and/or subdivide large areas, but don’t allow for development to occur without further development plan processes. Therefore using development plan may be too ambiguous. There are developments within SEMSWA’s service area consisting of hundreds of acres, developing over decades with different builders, which would loosely meet this definition. We believe the intent of including “common plan” language in the Phase II Rule and Regulation 61 was to address small lots within a subdivision and that any clarifying language included in the permit should reflect that intent. We recommend revising the definition of “common plan of development or sale” to contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules, but remain related. “Contiguous” is defined to mean construction activities located in close proximity to each other. Construction activities are considered to be “related” if they share the same construction level development plan. Projects may be removed from the common plan of development of sale when final stabilization occurs.





Xcel Energy: A “common plan of development or sale” is a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules, but remain related. Consistent with EPA guidance, “contiguous” is interpreted to mean construction activities located in close proximity to each other (within ¼ mile). Construction activities are considered to be “related” if they share the same development plan, builder or contractor, equipment, storage areas, etc. Construction activities are considered to be “related” if they share the same development plan, builder or contractor, equipment, storage areas, etc. It would be helpful if the Division could define what is meant by “same development plan”. For example, Xcel Energy recently had a project that was expanding and existing substation. The expansion was disturbing less than 1 acre, however the MS4 required the project to be permitted because of all the other non-Xcel related development happening around the substation.

Please modify the interpretation of "related" in the permit. The term “related” does not provide adequate clarification. Common ownership in conjunction with common contract more accurately reflects the intent of the regulation.

Response 5: Common Plan of Development or Sale Definition and Remove the Term “Related”

These comments have been partially incorporated into the permit. The word “related” is integral to the definition of a “common plan of development” because construction sites must be both contiguous and related. For example, without the term “related” included in the definition of a “common plan of development,” two unrelated construction projects that are simply located next to each other could be considered a “common plan of development.” The definition of related, however, has been removed from the permit.

Comment 6: Final Stabilization Definition

City of Canon City: “Final stabilization” is the condition reached when all ground surface disturbing activities at the site have been completed, and uniform vegetative cover has been established with an individual plant density of at least 70 percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. The City of Cañon City recommends including a citation for the memorandum from Rik Gay, Permits Section, Water Quality Control Division, dated March 5, 2013, concerning final stabilization requirements for stormwater construction permit termination as a reference for “equivalent permanent, physical erosion reduction methods”.

Response 6: Final Stabilization Definition

This comment has been incorporated into the permit and fact sheet. In addition, additional information has been added to the definition to clarify that the construction operator only has to finally stabilize the disturbed areas. Construction operators do not have to stabilize undisturbed areas of the project. The fact sheet has been updated with information in the 2013 memo.

Comment 7: Discussion of Applicable Construction Activities Definition in the Fact Sheet





El Paso County: Definition of “applicable construction activities” includes the phrase “or has disturbed since March 2, 2001. It’s not clear what are the basis and intent of this date limit? Please clarify, “or has disturbed since May 2, 2001.”

Response 7: Discussion of Applicable Construction Activities Definition in the Fact Sheet

This comment has not been incorporated into the fact sheet. The fact sheet already has a discussion of the reason for this date.

Comment 8: EPA’s NPDES Permits and US ACOE’s Nationwide Permits

El Paso County: Definition of “Construction Activity” defines repair activities as construction, which is inconsistent with the Code of Federal Regulations (33 CFR 330.3). Furthermore, Section 404(f) of the CWA also includes the concept of repair in the definition of maintenance. Section 404 (f)(b) states: “B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;” These activities are exempt from 404 permitting. Repaving activities are also covered under the above CWA definition. Delete all reference to “repair” and “repaving activities” from the definition.

Response 8: EPA’s NPDES Permits and USACE’s Nationwide Permits

This comment has not been incorporated into the permit. As stated in the fact sheet, this permit reflects 40 CFR 122 (NPDES permitting program). This permit does not reflect permitting programs run by the US Army Corps of Engineers (33 CFR 330). 33 CFR 330 “describes the policy and procedures used in the Department of the Army’s nationwide permit program to issue, modify, suspend, or revoke nationwide permits; to identify conditions, limitations, and restrictions on the nationwide permits; and, to identify any procedures, whether required or optional, for authorization by nationwide permits” and does not address NPDES permits. Therefore, the USACE’s definition of “repair” is very different than the division’s definition of “repair.”

Comment 9: Provide more Information on Construction Activity and Maintenance

Home Builders Association of Metro Denver: Under definition of Construction Activity, the Permit indicates that “Construction does not include routine maintenance” We ask that the CDPHE be consistent throughout the document on what construction activity is and outline what maintenance is. This definition goes on to define “Activities to conduct repairs that are not a part of routine maintenance or for replacement are construction activities”. This is a bit misleading and we’d prefer you add a definition for routine maintenance. The need to be clear about routine maintenance is key to meeting the intent of the Permit. For instance, is street sweeping routine maintenance? How about periodic repairs of wattles and silt fence?

Housing & Building Association of Colorado Springs: Under definition of Construction Activities, the Permit indicates that “Construction does not include routine maintenance.” We ask that the CDPHE be consistent throughout the document regarding the definition of construction activity and routine maintenance. The Permit currently defines construction activities as “Activities to conduct repairs that are not a part of routine maintenance or for replacement.” We find this to be liable for misinterpretation and recommend you add a definition for routine





maintenance. The need to be clear about routine maintenance is critical to meeting the intent of the Permit. For instance, is street sweeping considered routine maintenance?

Response 9: Provide more Information on Construction Activity and Maintenance

This comment has been partially incorporated into the permit. The sentence has been revised for clarity and information has been added to the fact sheet. The permit provides information on “maintenance” and the permittee has the flexibility to further define maintenance activities within their permit area. Routine maintenance of a control measure and construction maintenance activities are different. Street sweeping and repairs to wattles and silt fence are maintenance of control measures (see Part I.B.).

Comment 10: Revise Land Disturbing Activity Definition

Home Builders Association of Metro Denver: “Land disturbing activities” should exclude repairs, paved staging, and paved access. We suggest replacing with land disturbing sites.

Housing & Building Association of Colorado Springs: “Land disturbing activities” should exclude repairs, paved staging, and paved access. We suggest replacing with “land disturbing sites.”

Response 10: Revise Land Disturbing Activity Definition

This comment has not been incorporated into the permit. The division has determined that land disturbing activities includes staging areas and access roads. Since projects include many activities, the term “activities” will continue to be used. Note that routine maintenance activities, including some repairs, are not considered construction activities.

Comment 11: Remove Staging Area from the Land Disturbing Activity Definition

Xcel Energy: “Land disturbing activity” is any activity that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads, staging areas, stockpiling of fill materials, and borrow areas. Compaction that is associated with stabilization of structures and road construction must also be considered a land disturbing activity. Need clarification on access road and staging areas on hardscaped surfaces. These areas must be factored into the construction limits but not necessarily in the disturbance limits. This is important due to the triggers associated with disturbance limits and permanent water quality. Several of Xcel Energy’s projects get pulled into the stormwater construction permit due to the staging area which is typically a space that is leased (not owned by Xcel). A paved parking lot used for staging is not creating a disturbance and we would not want to be held liable for permanent water quality of a parking lot that is not being disturbed and furthermore not owned by Xcel Energy.

Response 11: Remove Staging Area from the Land Disturbing Activity Definition

This comment has not been incorporated into the permit. Permittees should note that the construction activity must first disturb land before calculating the acreage to determine if the project should be considered an applicable construction activity. A





staging area on an impervious surface that does not involve land disturbance would not be considered in the acreage calculation for the determination of an applicable construction activity. However, a staging area on an impervious surface that does not involve land disturbance for an applicable construction activity that disturbs more than one acre would still need control measures in a site plan and stormwater management plan. Please see responses to comments in the Post-Construction Stormwater Management in New Development and Redevelopment section.

Comment 12: Consistent Definition of Common Plan of Development or Sale

Colorado Stormwater Council: Please consolidate and/or ensure all definitions are consistent. It is confusing to refer to Common Plan of Development as a facility and Part of a Larger Common Plan of Development as an area.

Douglas County: Please consolidate and/or ensure all definitions are consistent. It is confusing to refer to Common Plan of Development as a facility and Part of a Larger Common Plan of Development as an area.

Xcel Energy: Xcel Energy appreciates the Division noting this clarification on what “contiguous” is interpreted as. This should also be clarified in the renewal of the General Permit for Stormwater Discharges Associated with Construction Activities. Please ensure all definitions/references are consistent. It is confusing to refer to Common Plan of Development as a facility and Part of a Larger Common Plan of Development as an area.

Response 12: Consistent Definition of Common Plan of Development or Sale

These comments have not been incorporated into the permit. A common plan of development or sale is an area and this term is used in the definition of an applicable construction activity.

a. The following requirements apply

Comment 1: Support of Colorado Stormwater Council’s comments

City of Federal Heights: The topics considered “high-level” issues for the City include the following: Construction Sites- Construction inspection, frequency, and scope, Adequacy standards.

City of Glendale: The topics considered “high-level” issues for the City include the following: Construction Sites- Construction inspection, frequency, and scope, Adequacy standards

Response 1: Support of Colorado Stormwater Council’s comments

Please see the division’s response to Colorado Stormwater Council’s comments.

i. Exclusions

Comment 1: Exclude Oil and Gas Activities from Entire Permit Area

Colorado Stormwater Council: Please allow the exclusion for oil and gas to apply to all non-urban areas, not just within counties. Oil and gas exploration occurs/has the potential to occur within non-urbanized areas of cities as well as counties.





City of Arvada: Pages 18 and 27. Remove Oil and Gas exploration from County Growth Area Requirements and allow the exclusion to stand alone.

Weld County: As stated above, the proposed County Growth Areas lie outside of the designated urban areas based on the 2010 U.S. Census. Imposition of MS4 requirements on these non-urban areas is beyond the authority of the Division and represents a significant manpower and financial burden on limited resources. All areas outside of the areas designated urban by the 2010 U.S. Census are non-urban and should therefore have no MS4 requirements.

Xcel Energy: Facilities associated with oil and gas exploration.... Oil and gas exploration occurs/has the potential to occur within non-urbanized areas of cities as well as counties. Consider allowing the exclusion for oil and gas to apply to all non-urban areas, not just within counties.

Response 1: Exclude Oil and Gas Activities from Entire Permit Area

These comments have been incorporated into the permit.

Comment 2: Exclude Repaving Activities

Xcel Energy: Repaving activities where underlying and/or surrounding soil is cleared, graded, or excavated as part of the repaving operation are construction activities unless they are an excluded project under Part I.E.4.a.i. Part 1.e.4.a.i. does not include repaving parking lots.

Response 2: Exclude Repaving Activities

This comment has not been incorporated into the permit. The Construction Sites and Post-Construction Stormwater Management in New Development and Redevelopment are two very different sections of the permit. One section addresses control measures during construction activity and the other section addresses permanent water quality control measures. A type of project exempted under one section of the permit does not mean that the project will be exempted under another section of the permit. Maintenance activities are excluded from both sections of the permit. Therefore, some types of repaving of parking lot activities might be considered an applicable construction activity and permittees are encouraged to contact the division for assistance.

Comment 3: Exclude R-Factor Waiver and Division Waived Projects

Colorado Stormwater Council: Please add an exclusion or broaden this exclusion to include other applicable construction sites in addition to Construction Activities with R-Factor Waiver, when the Division waives requirements to obtain a CDPS permit for stormwater discharges associated with construction activity. If a site is determined by the Division to not require a CDPS General Permit for Stormwater Discharges Associated with Construction Activity, it must be included here as an exclusion.

Response 3: Exclude R-Factor Waiver and Division Waived Projects

This comment has not been incorporated into the permit. Construction activities with R-factor waiver are already excluded (Part I.E. 3.a.i(A)). The division does not “waive” CDPS General Permit for Stormwater Discharges





Associated with Construction Activity coverage. All construction projects that meet the applicability requirements of the general permit must obtain permit coverage. The division assists construction operators in determining if they meet the applicability requirements of the construction general permit.

Comment 4: Confusing Language

El Paso County: First sentence of paragraph is confusing Rewrite as such: "Permittees that are counties may exclude the following activities from being applicable construction activity..."

Response 4: Confusing Language

This comment has been incorporated into the permit.

Comment 5: "Growth" vs. "Non-Urban"

Weld County: Please use consistency (Non-Urban Areas or County Growth Areas)

Response 5: "Growth" vs. "Non-Urban"

This comment has been incorporated into the permit.

Comment 6: Remove 20% Cap for Large Lot Development Exclusion

Colorado Stormwater Council: Please change the requirement to allow for when a lot demonstrates a higher percentage of impervious; remove the cap of 20 percent. Please clarify impervious area refers to proposed, not existing. When a study demonstrates higher infiltration can be achieved, the permit should not limit the opportunity to allow for more than 20% proposed imperviousness.

Douglas County: Please change the requirement to allow for when a lot demonstrates a higher percentage of impervious; remove the cap of 20 percent. Please clarify impervious area refers to proposed, not existing. When a study demonstrates higher infiltration can be achieved, the permit should not limit the opportunity to allow for more than 20% proposed imperviousness.

Weld County: Propose removing the 20% threshold. If a site specific study shows 100% infiltration, then a threshold is arbitrary.

Response 6: Remove 20% Cap for Large Lot Development Exclusion

These comments have not been incorporated into the permit. The division is tasked with setting a clear MEP standard in the permit. The division has only evaluated one study on runoff from large lots development and determined that 20% imperviousness was appropriate. The division has not evaluated any study with more than 20% of impervious surface on the site. Permittees can submit a modification request with a study that evaluates large lot development with more than 20% impervious surface on the site. The division can then evaluate the study and determine if a permit modification is necessary.

ii. Regulatory Mechanism

No comments were received on this section of the permit.



**iii. Regulatory Mechanism Exemptions**

No comments were received on this section of the permit.

iv. Control Measure Requirements**Comment 1: Remove Adequacy Standards**

Keep it Clean Partnership: Adequacy standards are more appropriately incorporated into the General Permit for Stormwater Discharges associated with Construction Activity. Issue: Adequacy Standards are more appropriately incorporated into the General Permit for Stormwater Discharges associated with Construction Activity. I.E.3.a.iv.(C) Control measures must be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants in discharges to the MS4 from the following activities (if part of the applicable construction activity) and must meet the adequacy standards prescribed. Comment: Please remove adequacy standards from the permit. All listed adequacy standards belong in the CDPS General Permit for Stormwater Discharges associated with Construction Activity where implementation will be more effective.

Colorado Stormwater Council: Appropriate control measures must be implemented prior to the start of construction activity, control potential pollutants during each phase of construction and must be maintained in operational condition until final stabilization in accordance with I.B.1 and I.E.3.a.iv.

Please remove language that specifies how to manage sediment. See above for consolidation of corresponding potential pollutant source list that includes sediment.

The intent of this section is accomplished with language already in the permit: I.B.1. Good Engineering, Hydrologic and Pollution Control Practices: Control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices, and the manufacturer's specifications, when applicable.

I.E.3. The permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4 from applicable construction activities.

I.E.3.a.iv. Control Measure Requirements: The permittee's Construction Sites Program must address selection, installation, implementation, and maintenance of control measures that meet the requirements of Part I.B. Control measures must be appropriate for the specific construction activity, the applicable pollutant sources, and phase of construction.

I.E.3.a.iv(C) Control measures must be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants in discharges to the MS4 from the following activities (if part of the applicable construction activity).

In addition, the Division has acknowledged as part of the CDPS Construction Activity Permit comment record, that "permit criteria referencing good engineering, hydrologic and pollution control practices are adequately descriptive and enforceable, and so additional criteria are not necessary." Finally, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum in which to receive appropriate





stakeholder input affecting construction site operators and construction activities.

Please remove language that specifies how to manage sediment. See above for consolidation of corresponding potential pollutant source list that includes sediment. "All flows" is not technically feasible. Inlet Protection is not intended to, nor is it capable of filtering or treating all flows. Inlet protection does not include a retention volume. This requirement implies flows from upgradient, undisturbed areas not associated with the construction activity must be treated or infiltrated. BMPs are not designed to, or are capable of treating all flows. Temporary construction BMPs are often designed for approximately the 2-year event. Storms occur with relative frequency that will overwhelm typical construction BMPs. For example, temporary sediment basin sizing volume per EPA and UDFCD is based on 2-year, 24-hour rainfall. The numeric turbidity standard that was proposed in the Construction ELGs, used a 2-year, 24-hour threshold for waiver of the numeric limits. Acknowledgement that temporary construction BMPs are not intended for large flood events would be appropriate. The adequacy of BMPs is determined based on site specific conditions and is confirmed as required by I.E.3.a.v(C) Initial Site Plan Review

1) Confirmation that the site plan includes appropriate control measures for all stages of construction, including final stabilization.

In addition to plan review, I.E.3.c.v. PDD Site Plans requires citation(s) and location(s) of supporting documents, including any documents that provide control measure design considerations, criteria, or standards.

Until the Division develops design criteria, this type of language should not be included in the permit. In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum in which to receive appropriate stakeholder input affecting construction site operators and construction activities.

Please remove language that specifies how to manage sediment. See above for consolidation of corresponding potential pollutant source list that includes vehicle tracking. Refer to the proposed list of consolidated potential pollutant sources, above.

The adequacy of BMPs is determined based on site specific conditions and is confirmed as required by I.E.3.a.v(C) Initial Site Plan Review

1) Confirmation that the site plan includes appropriate control measures for all stages of construction, including final stabilization.

In addition to plan review, I.E.3.c.v. PDD Site Plans requires citation(s) and location(s) of supporting documents, including any documents that provide control measure design considerations, criteria, or standards.

Until the Division develops design criteria, this type of language should not be included in the permit. In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities.

Douglas County: Please remove the underlined text and change to the following proposed concept: Appropriate control measures must be implemented prior to





the start of construction activity, control potential pollutants during each phase of construction and must be maintained in operational condition until final stabilization in accordance with I.B.1 and I.E.3.a.iv. There are many ways to control pollutants and structural measures should not be singled out here, while other methods are not included. That each structural control measure must be adequately sized for the drainage area ignores a treatment train approach. In addition, temporary construction BMPs are often designed for approximately the 2-year event. Storms occur with relative frequency that will overwhelm typical construction BMPs. For example, temporary sediment basin sizing volume per EPA and UDFCD is based on 2-year, 24-hour rainfall. The numeric turbidity standard that was proposed in the Construction ELGs, used a 2-year, 24-hour threshold for waiver of the numeric limits. Acknowledgement that temporary construction BMPs are not intended for large flood events would be appropriate. Adequate sizing, calculating drainage area, specifying treated flows are all components of design and are accomplished with language already in the permit: I.B.1. Good Engineering, Hydrologic and Pollution Control Practices: Control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices, and the manufacturer’s specifications, when applicable. I.E.3.a.iv. Control Measure Requirements: The permittee’s Construction Sites Program must address selection, installation, implementation, and maintenance of control measures that meet the requirements of Part I.B. Control measures must be appropriate for the specific construction activity, the applicable pollutant sources, and phase of construction. Finally, an upset condition for the MS4 permit would not include issues identified here, such as lack of preventative maintenance. Rather an upset condition for an MS4 permit pertains to whether the program is implemented in accordance with the permit.

Please remove language that specifies how to manage sediment. See above for consolidation of corresponding potential pollutant source list that includes sediment. The intent of this section is accomplished with language already in the permit:

I.B.1. Good Engineering, Hydrologic and Pollution Control Practices: Control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices, and the manufacturer’s specifications, when applicable.

I.E.3. The permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4 from applicable construction activities.

I.E.3.a.iv. Control Measure Requirements: The permittee’s Construction Sites Program must address selection, installation, implementation, and maintenance of control measures that meet the requirements of Part I.B. Control measures must be appropriate for the specific construction activity, the applicable pollutant sources, and phase of construction.

I.E.3.a.iv(C) Control measures must be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants in





discharges to the MS4 from the following activities (if part of the applicable construction activity).

In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum in which to receive appropriate stakeholder input affecting construction site operators and construction activities.

Please remove language that specifies how to manage sediment. See above for consolidation of corresponding potential pollutant source list that includes sediment. "All flows" is not realistic. Vegetative Buffer is not intended to, nor is it necessarily capable of infiltrating all flows. The adequacy of BMPs is determined based on site specific conditions and is confirmed as required by I.E.3.a.v(C) Initial Site Plan Review

1) Confirmation that the site plan includes appropriate control measures for all stages of construction, including final stabilization.

In addition to plan review, I.E.3.c.v. PDD Site Plans requires citation(s) and location(s) of supporting documents, including any documents that provide control measure design considerations, criteria, or standards.

This type of language should not be included in the permit. In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum in which to receive appropriate stakeholder input affecting construction site operators and construction activities.

Please remove language that specifies how to manage sediment. See above for consolidation of corresponding potential pollutant source list that includes vehicle tracking. Refer to the proposed list of consolidated potential pollutant sources, above. The adequacy of BMPs is determined based on site specific conditions and is confirmed as required by I.E.3.a.v(C) Initial Site Plan Review

1) Confirmation that the site plan includes appropriate control measures for all stages of construction, including final stabilization.

In addition to plan review, I.E.3.c.v. PDD Site Plans requires citation(s) and location(s) of supporting documents, including any documents that provide control measure design considerations, criteria, or standards.

This type of language should not be included in the permit. In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities.

Southeast Metro Stormwater Authority: 3. Part I.3.a.iv.A and 3.a.iv.C.1. Control Measures. This section requires control measures be adequately sized for the drainage area to not allow flows to bypass without treatment design for all flows and that Inlet Protection must be designed to filter suspended solids from all flows. Use of the word "all" is an impracticable standard to adhere to and is not consistent with good engineering practices. We recommend that it be deleted.





Part I.3.a.iv.C.1. Control Measures. This section specifies conditions that must be met in order to utilize Inlet Protection and Natural Vegetated Buffers as the only structural control measure. The GESC program uses multiple control measures in a layered manner, so typically a single control measure is not used. However, there may be a linear project or utility boring project where Inlet Protection is relied upon as the sole structural control measure in addition to over-excavation and/or trench spoil placement. The approach the Division is taking with a design standard for Inlet Protection and Vegetative Buffers to control all flows is not practicable, as detailed in the previous comment. Inlet Protection must be allowed to over-top in a heavy precipitation event for safety reasons. This overtopping is not any different than a sediment basin reaching design capacity and overtopping. There is treatment prior to the over-flow in any instance, as both are 'settling' control measures; the treatment is settling sediment behind the control, and the overtopping does not make this any less of an effective control measure while the larger storm event is causing overtopping. We recommend that the Inlet Protection and Natural Vegetated Buffer discussions be removed, and the section be updated to specify when these structural control measures can be used as the only measure.

Xcel Energy: Control measures must be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants in discharges to the MS4 from the following activities (if part of the applicable construction activity) and must meet the adequacy standards prescribed: General comment. Is this the place for setting construction control measure criteria? While Xcel Energy appreciates and utilizes inlet protection and natural vegetative buffers we recommend keeping prescriptions out of the permit as it limits flexibility. What works for one project may not necessarily work for another. This should be part of the General Permit for Stormwater Discharges associated with Construction Activities. This permit is aimed at MS4s and if during the SCP public comment period this criterion is altered where does it leave the MS4 permit. Just reference Reg 61 as opposed to listing out the 12 activities.

Inlet protection, when used without additional sediment control measures, must be designed to either filter suspended solids from all flows or provide the necessary retention volume and time to settle suspended solids for all flows. As stated in the above comment this should be removed from the permit. Xcel Energy often utilizes the open trench as a BMP and placing the spoils upstream of the trench. We also utilize the BMP of placing spoils directly in dump trucks, therefore the criteria for the sole BMP doesn't apply? The language on filtering suspended solids from all flows seems problematic. All flows can be very large and/or can include flows other than those associated with the construction site. Xcel Energy would recommend the following language "typical design flows from the construction site".

Natural vegetative buffer(s) As stated in the above comment this should be removed from the permit. The language on infiltrating all flows seems problematic. All flows can be very large and/or can include flows other than





those associated with the construction site. Xcel Energy would recommend the following language “typical design flows from the construction site”.

El Paso County: Paragraph references the term “adequacy standards,” which is not defined in the permit or Reg 61. Either define adequacy standard for the purposes of this permit or delete the term. Only items 1, 2, 5 and 9 in this section contains language to define what the Division meant by adequacy standards. The text in this section is very restrictive for the MS4 permittees and may be inconsistent with established criteria and or regulatory mechanisms. It appears this section is better suited to be included in the draft Construction Stormwater Permit renewal effort. Suggest deleting entire section and incorporating concepts into the Construction Stormwater General Permit.

Weld County: This language should be removed in order to provide flexibility to allow for site-specific planning and design of control measures. Design criteria already required by control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic and pollution control practices and the manufacturer’s specifications.

Please remove language that specifies how to manage sediment. See above for consolidation of corresponding potential pollutant source list that includes sediment.

The intent of this section is accomplished with language already in the permit: I.B.1. Good Engineering, Hydrologic and Pollution Control Practices: Control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices, and the manufacturer’s specifications, when applicable.

I.E.3. The permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4 from applicable construction activities.

I.E.3.a.iv. Control Measure Requirements: The permittee’s Construction Sites Program must address selection, installation, implementation, and maintenance of control measures that meet the requirements of Part I.B. Control measures must be appropriate for the specific construction activity, the applicable pollutant sources, and phase of construction.

I.E.3.a.iv(C) Control measures must be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants in discharges to the MS4 from the following activities (if part of the applicable construction activity).

In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum in which to receive appropriate stakeholder input affecting construction site operators and construction activities.





5-2-1 Drainage Authority: Control Measures - controlling all flows from natural vegetative buffers is not intended to, nor is it capable on infiltrating all flows. This type of language should not be included in the permit.

City of Golden: Adequacy standards for control measures. Section I.E.3.a.iv(C).l provides specific "adequacy standards" for Inlet Protection and Vegetative Buffers that are highly prescriptive and ignore the flexibility needed to design such systems on a site specific basis. Likewise, these control measures are already governed by the requirements of Sections I.B.l and I, E.3.a.iv that require the use of good engineering practices and site specific considerations. The adequacy standards may not, in all instances, be feasible and do not seem to meet the criteria for using good engineering and site specific considerations. As result these facilities should be based on the use of design criteria and not specific adequacy standards.

Home Builders Association of Metro Denver: Sentence 2 says "...must minimize suspended sediment..." when it should say "suspended solids". Sediment is settled out soils whereas suspended solids are in water form.

Response 1: Remove Adequacy Standards

These comments have been incorporated into the permit.

Comment 2: Support of Specific Colorado Stormwater Council Comments

City of Greeley: The key concerns, which are detailed in Colorado Stormwater Council comments, for the City of Greeley are as follows: Construction Sites: Adequacy standards are more appropriately incorporated into the General Permit for Stormwater Discharges associated with Construction Activity.

Response 2: Support of Specific Colorado Stormwater Council Comments

Please see the division's response to Colorado Stormwater Council's comments.

Comment 3: Remove Language that Would Trigger Water Rights Issues

City of Golden: a. Water Rights Concerns. The draft permit uses the phrase "retain, reuse, or provide for infiltration, evapotranspiration, or evaporation of water" in describing appropriate control measures. Section I.E.J.a.iv(A). Similar language is used in reference to runoff reduction standards, green infrastructure, and structural control measures. See, e.g., Sections I.E.4.a.i(C); I.E.4.a.i.(F)2(c), 1.1.20. This language raises significant water rights concerns given that water rights rarely exist for such stormwater control measures.

First, the proposed language allows for the consumptive use of water in managing stormwater (i.e. evaporation and evapotranspiration). Such depletions of water must, however, be curtailed to the extent the water being depleted causes material injury to water rights. C.R.S. § 37-92-502(2)(a). The alternative is to replace the depletions to senior water users through a plan for augmentation. *Zigan Sand & Gravel v. Cache La Poudre Water Users Ass'n*, 758 P.2d 175, 185 (Colo. 1988). Second, the "reuse" of native water is generally disallowed under water rights. See, e.g. *Burlington Ditch Reservoir and Land Co. v. City of Thornton*, 256 P.3d 645, 663 (Colo. 2011) ("Water native to the stream system is limited to one use in that system and return flows belong to



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the stream system as part of the public's resources, subject to appropriation and administration"). Reuse of native water requires a separate water right from the original use. *Santa Fe Trail Ranches Property Owners Ass'n v. Simpson*, 990 P.2d 46, 54 (Colo. 1999). Third, even the concept of retaining water raises concerns if done without a water right allowing storage of the water. See, *Pueblo West Metropolitan District v. Southeastern Colorado Water Conservancy Dist.*, 689 P.2d 594, 603 (Colo. 1984) (Recognizing that capture and storage of flood water is a beneficial use of water subject to appropriation). Pursuant to Senate Bill 15-212, recently adopted by the General Assembly and signed into law by the Governor on May 29, 2015, a compromise was reached regarding stormwater detention and infiltration facilities in the water rights context. (A copy of Senate Bill 15-212 is attached). In short, a stormwater detention and infiltration facility is only entitled to a presumption of no injury to water rights if it releases or infiltrate at least 97% of all water from a rainfall event that is equal to or less than a 5-year storm within 72 hours, and releases or infiltrates at least 99% of all water from rainfall events larger than 5-year storms within 120 hours. Further, any use of the water by the entity that controls the facility is strictly prohibited under the Bill.

Golden recommends that the permit modify or clarify the language cited above to be consistent with Senate Bill 15-212 for stormwater detention and infiltration facilities, except for instances where such facilities are being operated in priority pursuant to water rights and/or under augmentation plans.

Home Builders Association of Metro Denver: Appropriate Control Measures: The third sentence should say "detain" rather than retain. The definition of "structural control measure" used in this section contains the terms "retain", "reuse", "evapotranspiration", or "evaporation" of water. Requiring these practices in the MS4 permit will result in an additional regulatory burden on permittees in form of Water Rights Law in Colorado.

Douglas County: "...structures that remove pollutant from water or retain, reuse, or provide for infiltration, evapotranspiration, or evaporation of water." This language is not in accordance with CRS: 37-92-602(8), since there is no defined time or rainfall frequency associated with the operation of these structures to accomplish pollutant removal, without the possible need of a costly augmentation plan and associated water right. Please coordinate with the SEO to ensure the permit is written in compliance with water rights and SEO requirements. The use of certain words when combined with the term stormwater, such as retain, reuse, or provide for infiltration, evapotranspiration, or evaporation of water, could be perceived to be associated with augmentation of water rights and beneficial uses of water. This language could impact water rights and could therefore require coordination with the SEO. The use of the terms reuse, retain, evapotranspire, or evaporate could require a water right and associated costly augmentation plan. Evapotranspire is only allowed if within the criteria stated in 37-92-602(8) CRS. One alternative is to remove this language as it describes particular design criteria.



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The term “infiltrate all flows” is not in accordance with CRS: 37-92-602(8) and SEO, since there is no defined time or rainfall frequency associated with the infiltration of all flows. Infiltration must be in accordance with the criteria stated in CRS 37-92-602(8) unless a water right is acquired through costly augmentation planning.

Please coordinate with the SEO to ensure the permit is written in compliance with SB15-212. One alternative is to remove this language as it describes particular design criteria. Specifying design standards that affects water rights could result in requiring a costly augmentation plan and obtaining a water right unless other design standards could be considered.

The word retain would not be in accordance with the State Engineers Office, since it refers to retaining water for an indefinite amount of time and rainfall frequency. Cannot reuse, retain, evapotranspire, or evaporate without a water right. Retaining water must be in accordance with the criteria stated in CRS 37-92-602(8) unless a water right is acquired through costly augmentation planning.

Please coordinate with the SEO to ensure the permit is written in compliance with SB15-212. One alternative is to remove this language as it describes particular design criteria. Specifying design standards that affects water rights could result in requiring a costly augmentation plan and obtaining a water right unless other design standards could be considered.

Douglas County has started the criteria coordination efforts with the Colorado Stormwater Council and the Urban Drainage & Flood Control District with regard to the SEO and recently passed SB15-212, however, criteria coordination efforts have not started yet. We anticipate the development of stormwater drainage criteria that would be in conformance with this legislation and anticipate the opportunity for the permit to be revised in a way that allows for the requirements of SB15-212, identified in CRS: 37-92-602(8).

Douglas County believes coordination on this issue between the Division and the SEO is necessary to effectively and legally implement the requirements of the MS4 permit. In addition, please note that Douglas County agrees with all of the comments regarding this issue as put forth to the Division by the Urban Drainage and Flood Control District.

City of Canon City: a.iv(A) Appropriate control measures must be implemented prior to the start of construction activity, control potential pollutants during each phase of construction, and must be continued through final stabilization. Appropriate structural control measures must be maintained in operational condition. “Structural control measures” include control measures that are comprised of facilities and structures that remove pollutant from water or retain, reuse, or provide for infiltration, evapotranspiration, or evaporation of water. The City of Cañon City recommends the Division remove the word “reuse”. The Administrative Approach for Storm Water Management memo from the Office of the State Engineer, dated May 21, 2011, expressly states in paragraphs three and four that the water from detention areas and infiltration areas may not be diverted for any beneficial use. Additionally Senate Bill 15-212, signed into law on May 29, 2015 states in II(B)(e)(I): Water detained or





released by a storm water detention and infiltration facility or post-wildland fire facility shall not be used for any purpose, including, without limitation, by substitution or exchange, by the entity that owns, operates, or has oversight over the facility or that entity's assignees, and is available for diversion in priority after release or infiltration."

El Paso County: The definition of "structural control measure" used in this section contains the terms, "retain," "reuse," evapotranspiration, or "evaporation" of water. Requiring these practices in the MS4 permit will result in additional regulatory burden on permittees in form of Water Rights Law in Colorado Delete are references to the terms.

Xcel Energy: "Structural control measures" include control measures that are comprised of facilities and structures that remove pollutant from water or retain, reuse, or provide for infiltration, evapotranspiration, or evaporation of water. Does "retain and reuse" cause an issue with water law?

Response 3: Remove Language that Would Trigger Water Rights Issues

These comments have not been incorporated into the permit. The permit is flexible in allowing both detention and retention control measures to achieve compliance with the permit. A retention control measure could meet the requirements of this permit and not violate water rights. Permittees should contact the Division of Water Resources if additional assistance is needed.

Comment 4: Add Information to the Fact Sheet Regarding Water Rights

5-2-1 Drainage Authority: Control Measure Language. Specific language is included in the permit: "Structural control measures include control measures that are comprised of facilities and structures that remove pollutant from water or retain, reuse, or provide for infiltration, evapotranspiration, or evaporation of water." Some of these measures may require water rights, please include language in the permit stating some of these measures may require water rights and it's up to the permittee to obtain the appropriate water rights.

Response 4: Add Information to the Fact Sheet Regarding Water Rights

This comment has been incorporated into the fact sheet.

Comment 5: Appropriate Control Measures

Xcel Energy: Appropriate control measures must be implemented prior to the commencement of covered construction activities.....and must be continued through final stabilization. Not all Control Measures can be physically implemented prior to commencement of "Covered Construction Activities", nor is it always practicable. Linear projects prefer to phase the BMPs (Control Measures) as the project moves along. It is not necessary or practical to install BMPs in areas where construction has not yet started and will not start for quite some time. Construction sequencing on typical box developments such as our substations are usually done in phases (i.e. initial, interim, and final) BMP installation. Xcel Energy would not necessarily install all BMPs upfront nor would we keep all measures in place until final vegetation is completely re-established.



**Response 5: Appropriate Control Measures**

This comment has not been incorporated into the permit. Permittees should note that appropriate control measures need to be installed before construction activity. Permittees have the flexibility to determine which control measure are appropriate for construction operators to install for the specific phase of construction.

Comment 6: Upset Condition

Xcel Energy: Each structural control measure must be adequately sized for the drainage area so as not to allow for flows to bypass without treatment in accordance with the design, unless during an upset incident. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation. In addition, each structural control measure must be appropriate to the type of flow it receives. Adequate sizing, calculating drainage area, specifying treated flows are all components of design and are accomplished with language already in the CDPS Stormwater Construction Permit.

An Upset for a construction project is also defined in the CDPS Stormwater Construction Permit.

Response 6: Upset Condition

The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 7: Combine Potential Pollutant Sources with Construction Site Activities

Colorado Stormwater Council: Please change to the following proposed concept: Control measures must be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants in discharges to the MS4 from applicable construction activities. Potential pollutant sources include, but are not limited to the following: Regulation 61 and Part I.E.3. are clear that the permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4, not state waters from applicable construction activities. There is no need to separate construction sites from activities, as construction activities will always be associated with construction sites. While different construction projects can have different potential pollutant sources, as discussed in the fact sheet, the overall potential pollutants from sites or activities are not unique and do not differ from one another. See additional discussion below regarding potential pollutants from construction sites and from activities.

Please change to the following proposed concept:

Combine potential pollutants listed under construction site and construction activities as follows:

- 1) Sediment
- 2) Vehicle Tracking





- 3) Construction site waste, such as trash, discarded building materials, concrete truck washout, chemicals, and sanitary waste
 - 4) Outdoor storage of construction site materials, building materials, fertilizers, and chemicals
 - 5) Vehicle and equipment maintenance and fueling
 - 6) Concrete truck equipment washing
 - 7) Dedicated asphalt and concrete batch plants
 - 8) Other non-stormwater discharges including construction dewatering and wash water that may contribute pollutants to the MS4
- Please remove I.E.3.a.iv(B)3; I.E.3.a.iv(C)1; I.E.3.a.iv(C)3; I.E.3.a.iv(C)5; I.E.3.a.iv(C)7; I.E.3.a.iv(C)8; I.E.3.a.iv(C)11

Distinguishing potential pollutant sources from sites and activities in two separate lists is confusing and could contribute to non-compliance. The two lists have been consolidated, per the following justification:

- Sediment sufficiently covers contaminated soils, which MS4 would not address differently from sediment, as they are not the regulating agency. It also includes land disturbance and storage of soils, and significant dust or particulate generative processes.
- Loading and unloading is an operation, not a pollutant source; it is ambiguous; it is addressed as either sediment, waste or outdoor storage of materials.
- It is unclear how outdoor storage and bulk storage would be different, thus they are consolidated as outdoor storage.
- Routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents, and oils, are classified in the permit as activities. It is more appropriate under the requirements of this permit to require oversight of the pollutant sources from these activities which are sufficiently addressed by outdoor storage and vehicle and equipment maintenance and fueling.
- Other areas or operations where spills can occur is ambiguous and potential pollutant sources are sufficiently addressed in the proposed list.

Douglas County: Applicable construction activity and construction activity are defined in I.E.3. and twice in I.J. There is no need to separate construction sites from activities, as construction activities will always be associated with construction sites. While different construction projects can have different potential pollutant sources, as discussed in the Fact Sheet, the overall potential pollutants from sites or activities are not unique and do not differ from one another. See additional discussion below regarding potential pollutants from construction sites and from activities.

Please change to the following proposed concept:

Combine potential pollutants listed under construction site and construction activities as follows:

- 1) Sediment
- 2) Vehicle Tracking
- 3) Construction site waste, such as trash, discarded building materials, concrete truck washout, chemicals, and sanitary waste
- 4) Outdoor storage of construction site materials, building materials, fertilizers, and chemicals





- 5) Vehicle and equipment maintenance, fueling
- 6) Dedicated asphalt and concrete batch plants
- 7) Other non-stormwater discharges including construction dewatering and wash water that may contribute pollutants to the MS4
- 8) Other non-stormwater discharges including construction dewatering and wash water that may contribute pollutants to the MS4

Please remove I.E.3.a.iv(B)3; I.E.3.a.iv(C)1; ; I.E.3.a.iv(C)3; ; I.E.3.a.iv(C)5; ; I.E.3.a.iv(C)7; ; I.E.3.a.iv(C)8; ; I.E.3.a.iv(C)11

Distinguishing potential pollutant sources from sites and activities in two separate lists is confusing and could contribute to non-compliance. The two lists have been consolidated, per the following justification:

- Sediment sufficiently covers contaminated soils, which MS4 would not address differently from sediment, as they are not the regulating agency. It also includes land disturbance and storage of soils, and significant dust or particulate generative processes.
- Loading and unloading is an operation, not a pollutant source; it is ambiguous; it is addressed as either sediment, waste or outdoor storage of materials.
- It is unclear how outdoor storage and bulk storage would be different, thus they are consolidated as outdoor storage.
- Routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents, and oils, are classified in the permit as activities. It is more appropriate under the requirements of this permit to require oversight of the pollutant sources from these activities which are sufficiently addressed by outdoor storage and vehicle and equipment maintenance and fueling.
- Other areas or operations where spills can occur is ambiguous and potential pollutant sources are sufficiently addressed in the proposed list.

Response 7: Combine Potential Pollutant Sources with Construction Site Activities

These comments have been partially incorporated into the permit. The list of potential pollutant sources and the list of construction activities have been combined. Most of the items in the lists have not been removed. The division disagrees with the commenters and has determined that control measures for sediment and contaminated soils are different and must be addressed separately in a site plan. Loading and unloading operations are a construction activity and need to remain on the list. In addition, outdoor storage and bulk storage are two different construction activities and must be addressed separately in site plans. Maintenance activities of potential pollutants sources (outdoor storage) and maintenance activities involving potential pollutants (fertilizers) are also two different construction activities and must be addressed separately in site plans. There are many other potential pollutant sources unique to an typical construction site that have not been considered when writing this permit, so this is an important construction activity that must be addressed in site plans.

Comment 8: Remove the Term “All Potential Pollutant Sources”





Douglas County: Please remove the word “all”. Please change to the following proposed concept: Control measures must be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants in discharges to the MS4 from applicable construction activities. Potential pollutant sources include, but are not limited to the following: It is infeasible to expect that any one designer or site operator can think of every pollutant during this and allow for updates to be made in the field as construction progresses. Regulation 61 and Part I.E.3. are clear that the permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4, not state waters from applicable construction activities.

Home Builders Association of Metro Denver: Remove the word “all” potential pollutant sources. Could replace with “all identified”.

Weld County: Please remove this requirement because it is not measurable and implies knowledge of what “can” be spilled and its location. For example, a vehicle “can” have a fluid leak.

Response 8: Remove the Term “All Potential Pollutant Sources”

These comments have not been incorporated into the permit. Although the division agrees that all potential pollutant sources might not be able to be identified months in advance of the start of construction, the division has determined that it *is practicable* for construction operators to “allow for updates to be made in the field as construction progresses.” Site plans are dynamic documents and must be updated by the construction site operator to identify all potential pollutant sources.

Comment 9: Revise “To State Waters” vs. “To the MS4”

Xcel Energy: Control measures must be selected, designed, installed, implemented, and maintained to provide control for all potential pollutant sources associated with the applicable construction site to prevent pollution or degradation of state waters. Recommend changing the language to state “the permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4”, not state waters.

Response 9: Revise “To State Waters” vs. “To the MS4”

This comment has not been incorporated into the permit. This section of the permit has been combined with another section.

Comment 10: Revise List of Potential Pollutant Sources

El Paso County: List of potential pollutants is incomplete and inconsistent with Regulation 61 list of pollutants. Either reference list of pollutants in Reg 61 or list them out consistent with Reg 61.

Xcel Energy: Potential pollutant sources include, but are not limited to the following:

- 1) Sediment
- 2) Construction site waste, such as trash, discarded building materials, concrete truck washout, chemicals and sanitary waste





3) Contaminated soils Why limit the list to these 3 potential pollutant sources. It would be better to just reference Reg 61.

Response 10: Revise List of Potential Pollutant Sources

This comment has not been incorporated into the permit. This section of the permit has been combined with another section.

Comment 11: Remove “and Must Meet the Adequacy Standards Prescribed”

Colorado Stormwater Council: Please remove “and must meet the adequacy standards prescribed:” See above for consolidation of corresponding potential pollutant source list. See below for comments on corresponding adequacy standards for specific pollutant sources. Adequate sizing, calculating drainage area, and specifying treated flows are all components of design and are accomplished with language already in the permit:

I.B.1. Good Engineering, Hydrologic and Pollution Control Practices: Control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices, and the manufacturer’s specifications, when applicable.

I.E.3.a.iv. Control Measure Requirements: The permittee’s Construction Sites Program must address selection, installation, implementation, and maintenance of control measures that meet the requirements of Part I.B. Control measures must be appropriate for the specific construction activity, the applicable pollutant sources, and phase of construction.

In addition, the Division has acknowledged as part of the CDPS Construction Activity Permit comment record, that “permit criteria referencing good engineering, hydrologic and pollution control practices are adequately descriptive and enforceable, and so additional criteria are not necessary.”

Response 11: Remove “and Must Meet the Adequacy Standards Prescribed”

This comment has been incorporated into the permit.

Comment 12: Remove “Bulk Storage of Petroleum Products”

Weld County: Requirements for storage of petroleum products are covered by the Colorado Department of Labor and Employment, Division of Oil & Public Safety, not CDPHE, Water Quality Division. These requirements do not belong in the MS4 permit. The requirement to be compliant with all Federal, State, and Local law adequately covers this need.

Response 12: Remove “Bulk Storage of Petroleum Products”

This comment has not been incorporated into the permit. The division has determined that bulk storage of petroleum products is a potential pollutant source on a construction site and all potential pollutants must be addressed by control measures.

Comment 13: Remove “Dedicated Asphalt and Concrete Batch Plants”

Colorado Stormwater Council: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes dedicated asphalt and concrete batch plants. Refer to proposed list of consolidated potential pollutant sources above.





Douglas County: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes dedicated asphalt and concrete batch plants. Refer to proposed list of consolidated potential pollutant sources above.

Response 13: Remove “Dedicated Asphalt and Concrete Batch Plants”

This comment has not been incorporated into the permit. Dedicated asphalt and concrete batch plants are very different than concrete truck washout.

Comment 14: Remove “Structural”

Colorado Stormwater Council: There are many ways to control pollutants and structural measures should not be singled out here, while other methods are not included. That each structural control measure must be adequately sized for the drainage area ignores a treatment train approach. In addition, temporary construction BMPs are often designed for approximately the 2-year event. Storms occur with relative frequency that will overwhelm typical construction BMPs. For example, temporary sediment basin sizing volume per EPA and UDFCD is based on 2-year, 24-hour rainfall. The numeric turbidity standard that was proposed in the Construction ELGs, used a 2-year, 24-hour threshold for waiver of the numeric limits. Acknowledgement that temporary construction BMPs are not intended for large flood events would be appropriate. Adequate sizing, calculating drainage area, specifying treated flows are all components of design and are accomplished with language already in the permit:

I.B.1. Good Engineering, Hydrologic and Pollution Control Practices: Control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices, and the manufacturer’s specifications, when applicable.

I.E.3.a.iv. Control Measure Requirements: The permittee’s Construction Sites Program must address selection, installation, implementation, and maintenance of control measures that meet the requirements of Part I.B. Control measures must be appropriate for the specific construction activity, the applicable pollutant sources, and phase of construction. In addition, the Division has acknowledged as part of the CDPS Construction Activity Permit comment record, that “permit criteria referencing good engineering, hydrologic and pollution control practices are adequately descriptive and enforceable, and so additional criteria are not necessary.” Finally, an upset condition for the MS4 permit would not include issues identified here, such as lack of preventative maintenance. Rather an upset condition for an MS4 permit pertains to whether the program is implemented in accordance with the permit

Response 14: Remove “Structural”

This comment has been incorporated into the permit.

Comment 15: Remove “Other Areas Where Spills Can Occur”

Colorado Stormwater Council: Please remove. See above for consolidation of corresponding potential pollutant source list. Refer to proposed list of consolidated potential pollutant sources above. Other areas or operations where spills can occur is ambiguous and potential pollutant sources are sufficiently addressed with proposed potential pollutant source list.





Douglas County: Please remove. See above for consolidation of corresponding potential pollutant source list. Refer to proposed list of consolidated potential pollutant sources above. Other areas or operations where spills can occur is ambiguous and potential pollutant sources are sufficiently addressed with proposed potential pollutant source list.

Response 15: Remove “Other Areas Where Spills Can Occur”

These comments have not been incorporated into the permit. The division has determined that control measures must be implemented to control other areas where spills can occur on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 16: Remove “Other Non-Stormwater Discharges Including Construction Dewatering and Wash Water that may Contribute Pollutants to the MS4”

Colorado Stormwater Council: Please remove from this section. See above for consolidation of corresponding potential pollutant source list. Refer to proposed list of consolidated potential pollutant sources above.

Douglas County: Please remove from this section. See above for consolidation of corresponding potential pollutant source list. Refer to proposed list of consolidated potential pollutant sources above.

Response 16: Remove “Other Non-Stormwater Discharges Including Construction Dewatering and Wash Water that may Contribute Pollutants to the MS4”

These comments have not been incorporated into the permit. The division has determined that it is appropriate to provide control measures to control other non-stormwater discharges including construction dewatering and wash water that may contribute pollutants to the MS4 on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 17: Revise Vehicle Tracking Control Requirement

Home Builders Association of Metro Denver: Vehicle tracking (VTC). “Control Measures must be implemented to minimize sediment being transported”. Please provide for alternatives in the Permit such as grass buffers, controls on inlet, or other alternatives to VTC.

Response 17: Revise Vehicle Tracking Control Requirement

This comment has not been incorporated into the permit. This requirement has been revised and the adequacy standards have been removed.

Comment 18: Remove “Loading and Unloading Operations”

Colorado Stormwater Council: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes





sediment, waste or outdoor storage of materials. Refer to proposed list of consolidated potential pollutant sources above.

Douglas County: Please remove. See above for consolidation of corresponding potential pollutant source list that includes sediment, waste or outdoor storage of materials. Refer to proposed list of consolidated potential pollutant sources above.

Response 18: Remove “Loading and Unloading Operations”

These comments have not been incorporated into the permit. The division has determined that control measures must be provided for loading and unloading operations on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 19: Remove “Outdoor Storage of Construction Site Materials, Building Materials, Fertilizers, and Chemicals”

Colorado Stormwater Council: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes sediment, waste or outdoor storage of materials. Refer to proposed list of consolidated potential pollutant sources above.

Douglas County: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes sediment, waste or outdoor storage of materials. Refer to proposed list of consolidated potential pollutant sources above.

Response 19: Remove “Outdoor Storage of Construction Site Materials, Building Materials, Fertilizers, and Chemicals”

These comments have not been incorporated into the permit. The division has determined that control measures must be provided for outdoor storage of construction site materials, building materials, fertilizers, and chemicals on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 20: Remove “Bulk Storage of Materials”

Colorado Stormwater Council: Please remove language that specifies how to manage storage of materials. See above for consolidation of corresponding potential pollutant source list that includes outdoor storage. Refer to proposed list of consolidated potential pollutant sources above. In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities such as secondary containment for bulk storage.

Douglas County: Please remove language that specifies how to manage storage of materials. See above for consolidation of corresponding potential pollutant source list that includes outdoor storage. Refer to proposed list of consolidated potential pollutant sources above. In addition, as mentioned in the





Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities such as secondary containment for bulk storage.

Response 20: Remove “Bulk Storage of Materials”

These comments have not been incorporated into the permit. The division has determined that control measures must be provided for the bulk storage of materials on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 21: Remove “Vehicle and Equipment Maintenance and Fueling”

Colorado Stormwater Council: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes vehicle and equipment maintenance and fueling. Refer to proposed list of consolidated potential pollutant sources above.

Douglas County: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes vehicle and equipment maintenance and fueling. Refer to proposed list of consolidated potential pollutant sources above.

Response 21: Remove “Vehicle and Equipment Maintenance and Fueling”

These comments have not been incorporated into the permit. The division has determined that control measures must be provided for vehicle and equipment maintenance and fueling on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 22: Remove “Significant Dust or Particulate Generating Processes”

Colorado Stormwater Council: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes sediment and construction wastes. Refer to proposed list of consolidated potential pollutant sources above.

Douglas County: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes sediment and construction wastes. Refer to proposed list of consolidated potential pollutant sources above.

Southeast Metro Stormwater Authority: 4. Part I.3.a.iv.C.7. Significant dust or particulate generating processes. This operation is not delineated on a site plan with appropriate control measures identified. We assume that dust is considered by the Division as a contributor to sediment formation on impervious surfaces and any control measure should be scoped to minimize its occurrence. Please revise Part I.3.a.iv.C.7 to clarify that dust mitigation, in general, is not the intent of this section. We assume that the mitigation of dust associated with construction activities as the dust settles is the intent. Dust





that settles will be managed as sediment, and as such this section is unnecessary. Please delete this section.

Response 22: Remove “Significant Dust or Particulate Generating Processes”

These comments have not been incorporated into the permit. The division has determined that control measures must be provided for significant dust or particulate generating processes on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 23: Remove “Routine Maintenance Activities Involving fertilizers, Pesticides, Detergents, Fuels, Solvents, and Oils”

Colorado Stormwater Council: Please remove. See above for consolidation of corresponding potential pollutant source list that includes outdoor storage and vehicle and equipment maintenance and fueling. Refer to proposed list of consolidated potential pollutant sources above.

Douglas County: Please remove. See above for consolidation of corresponding potential pollutant source list that includes outdoor storage and vehicle and equipment maintenance and fueling. Refer to proposed list of consolidated potential pollutant sources above.

Response 23: Remove “Routine Maintenance Activities Involving fertilizers, Pesticides, Detergents, Fuels, Solvents, and Oils”

These comments have not been incorporated into the permit. The division has determined that control measures must be provided for routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents, and oils on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 24: Revise “Concrete Truck/Equipment Washing, Including the Concrete Truck Chute and Associated Fixtures and Equipment”

Colorado Stormwater Council: Please remove language that specifies how to manage concrete washout. See above for consolidation of corresponding potential pollutant source list that includes concrete truck equipment washing. Refer to proposed list of consolidated potential pollutant sources above. The adequacy of BMPs is determined based on site specific conditions and is confirmed as required by I.E.3.a.v(C) Initial Site Plan Review 1) Confirmation that the site plan includes appropriate control measures for all stages of construction, including final stabilization. In addition to plan review, I.E.3.c.v. PDD Site Plans requires citation(s) and location(s) of supporting documents, including any documents that provide control measure design considerations, criteria, or standards. Until the Division develops design criteria, this type of language should not be included in the permit. In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities.





Douglas County: Please remove language that specifies how to manage concrete washout. See above for consolidation of corresponding potential pollutant source list that includes concrete truck equipment washing. Refer to proposed list of consolidated potential pollutant sources above. The adequacy of BMPs is determined based on site specific conditions and is confirmed as required by I.E.3.a.v(C) Initial Site Plan Review 1) Confirmation that the site plan includes appropriate control measures for all stages of construction, including final stabilization. In addition to plan review, I.E.3.c.v. PDD Site Plans requires citation(s) and location(s) of supporting documents, including any documents that provide control measure design considerations, criteria, or standards. This type of language should not be included in the permit. In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities.

Response 24: Revise “Concrete Truck/Equipment Washing, Including the Concrete Truck Chute and Associated Fixtures and Equipment”

These comments have not been incorporated into the permit. This requirement does not prescribe a specific control measure for concrete truck and equipment washing. The division has determined that control measures must be provided for concrete truck/equipment washing, including the concrete truck chute and associated fixtures and equipment on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

v. Site Plans

Comment 1: Remove the Requirement that Site Plans Have to Reflect Current Construction Site Conditions

Colorado Stormwater Council: Please remove the requirement regarding MS4 oversight of revisions to site plans within 72 hours after changes in site conditions. Please change to the following proposed concept:

The permittee must require operators to develop site plans that locate (if applicable) and identify all structural and non-structural control measures for the applicable construction activities. The site plan must contain installation and implementation specifications or a reference to the document with installation and implementation specifications for all structural control measures. A narrative description of non-structural control measures must be included in the site plan.

Deletion of the requirement for oversight of revisions to site plans within 72 hours is consistent with the discussion in the fact sheet that permittees do not have to verify that the site plan reflects current conditions during each inspection. It is also related to the discussion in the fact sheet that the Division does not expect the permittee to proactively look for illicit discharges. As acknowledged in the fact sheet, the site plan can be a tool, but doesn't require proactive oversight. Therefore, the requirement for timely updates to the site plan is the sole responsibility of the site operator and this requirement belongs





in the CDPS Stormwater Discharges Associated with Construction Activity general permit, not in the MS4 permit.

As stated in the Construction working session, if the Division's intent in this requirement is site operator compliance with the CDPS Construction Activity Permit, the Phase II MS4 permit is not the correct place for this requirement. While we appreciate the Division removed the requirement from the first draft to confirm conformity with site plans during inspections, there are still concerns about the implications of non-compliance, given the permit language. If the permit requires the site plan be maintained by the operator to reflect current conditions, but is not intended to be reviewed by the MS4 as discussed in the fact sheet, what is the implication for the MS4 when the operator fails to maintain the site plan, given that the permit, not the fact sheet is enforceable?

Douglas County: Please remove the requirement regarding MS4 oversight of revisions to site plans within 72 hours after changes in site conditions. Please change to the following proposed concept:

The permittee must require operators to develop site plans that locate (if applicable) and identify all structural and non-structural control measures for the applicable construction activities. The site plan must contain installation and implementation specifications or a reference to the document with installation and implementation specifications for all structural control measures. A narrative description of non-structural control measures must be included in the site plan.

Deletion of the requirement for revisions to site plans within 72 hours is consistent with the discussion in the Fact Sheet that permittees do not have to verify that the site plan reflects current conditions during each inspection. It is also related to the discussion in the Fact Sheet that the Division does not expect the permittee to proactively look for illicit discharges. As acknowledged in the Fact Sheet, the site plan can be a tool, but doesn't require proactive oversight. Therefore, the requirement for timely updates to the site plan is the sole responsibility of the site operator and this requirement belongs in the CDPS Stormwater Discharges Associated with Construction Activity general permit, not in the MS4 permit. As stated in the Construction working session, if the Division's intent in this requirement is site operator compliance with the CDPS Construction Activity Permit, the Phase II MS4 permit is not the correct place for this requirement. While we appreciate the Division removed the requirement from the first draft to confirm conformity with site plans during inspections, there are still concerns about the implications of non-compliance, given the permit language. If the permit requires the site plan be maintained by the operator to reflect current conditions, but is not intended to be reviewed by the MS4 as discussed in the Fact Sheet, what is the implication for the MS4 when the operator fails to maintain the site plan, given that the permit, not the fact sheet is enforceable?

City of Arvada: Include in only the CDPHE Construction Permit requirements for site plans to be maintained to reflect current conditions and Stormwater Management Plans (SWMPs) to be updated within 72 hours of changes being made. Although the Fact Sheet maintains the permittee is not required to verify that SWMPs are meeting the 72 hour rule; simply including the





requirement in the draft permit makes it enforceable. These requirements should be removed from the MS4 permit.

Xcel Energy: The Permittee must develop and implement procedures to address modifications to site plans including how minor and major modifications are defined and reviewed. Does the Division have guidance on what is considered a minor and major modification? Or is that something each MS4 will determine for themselves. Construction projects need to be able to modify the SWMP “field fit” without having to go thru the lengthy review of a submittal to the MS4.

Southeast Metro Stormwater Authority: 5. Part I.3.a.v.B. Site Plan Requirements. Revisions completed to the site plan no more than 72 hours after the change is an impracticable amount of time for formal revisions to occur (specifically, in that business hours are not referenced). The plans should be changed as soon as practicable, without a number of hours being specified. We recommend revising the section to read: The permittee should allow revisions to the site plan as soon as practicable.

Response 1: Remove the Requirement that Site Plans Have to Reflect Current Construction Site Conditions

These comments have been incorporated into the permit. Permittees should note that the Construction General Permit has technology-based standards and the division expects those standards to meet water quality standards. The Construction General Permit requires construction operators to update the site plan throughout the construction project. Division staff will be verifying that the site plan reflects the current conditions of the construction project during inspections. Permittees with a Qualifying Local Program must ensure that all requirements in the Construction General Permit are met.

Comment 2: Add an Exclusion for Emergency Projects

Colorado Stormwater Council: Please add an exclusion for site plan requirement, site plan review, and inspections for emergency type projects. This exclusion is not intended to allow work without BMPs, but to allow work to occur without a site plan requirement, site plan review, and inspections. Occasionally, emergency work is necessary to address issues such as flooding. During such instances, the focus is to address life safety issues and it may be necessary to begin land disturbance and/or construction activities immediately and prior to development of a site plan.

Xcel Energy: Initial Site Plan Review: The permittee must implement site plan review for all applicable construction activities prior to the start of construction activities. Consider adding an exclusion for site plan requirement, site plan review, and inspections for emergency type projects. Is this “applicable” pertain to all construction activities subject to CDPS Stormwater Construction permit or would it also include projects that are less if the MS4 requires a GESC Permit for projects disturbing less than 1 acre? For example, some MS4’s permit projects that do not necessarily need a state permit (i.e. 10,000 sq.ft, 50 cubic yards, any size project that has bore pits, etc). Xcel Energy has been able to establish annual permits with some of these MS4s that





have more stringent permitting requirements. Currently the MS4 does not necessarily review site plans for all these projects. Requiring the MS4 to review plans for a cable replacement project that has two bore pits would be a waste of time and resources and delay construction from being able to start. It would be better to require site plan review only for projects subject to the CDPS Stormwater Construction Permit.

Response 2: Add an Exclusion for Emergency Projects

This comment has not been incorporated into the permit. Regulation 61 specifically requires permittees to review site plans. Permittees have the flexibility to set up an expedited site plan review process for emergency projects. Permittees should note that this section of the permit applies to applicable construction sites. Permittees have the flexibility to develop requirements that are more stringent than the permit requirements and require site plan review for smaller projects, such as 10,000 sq.ft, 50 cubic yards, and projects with bore pits.

Comment 3: Allow for More than One Site Plan

Colorado Stormwater Council: Please update the permit to be consistent with the fact sheet language: The permittee has the flexibility to require the construction operator to develop different site plans for each phase of construction, approve one site plan and then modify the site plan as the construction project progresses. The fact sheet states the permittee may approve one site plan and then modify the site plan as the construction project progresses, but the permit states the plan must include appropriate control measures for all stages of construction.

Response 3: Allow for More than One Site Plan

This comment has been incorporated into the permit and fact sheet.

vi. Site Inspection

Comment 1: Operator Inspections

Colorado Stormwater Council: Operator inspections should be considered site inspections, and allowed in accordance with the inspection frequency/scope/recordkeeping proposed concept, below. Language in other MS4 permits allow for the municipal compliance inspector to have the authority to place the burden of demonstrating compliance on the site operator, to the greatest extent possible. Inspections and recordkeeping reflected in the in the inspection frequency/scope/recordkeeping proposal should be allowed to be performed or completed by either the site operator’s inspector or a municipal inspector, as outlined in the proposal. It is unclear how the Division determined “operator inspections are not considered site inspections under this permit” from Regulation 61. In the Construction working session, the Division cited 61.8.11.A.ii.D.ll. which states:

The program must be developed and implemented to assure adequate design, implementation, and maintenance of BMPs at construction sites within the MS4 to reduce pollutant discharges and protect water quality. The program must include the development and implementation of, at a minimum:

(f) Procedures for site inspection and enforcement of control measures.





Douglas County: PAGE 53: Operator inspections should be considered site inspections, and allowed in accordance with the inspection frequency/scope/recordkeeping proposed concept, below. Language in other MS4 permits allow for the municipal compliance inspector to have the authority to place the burden of demonstrating compliance on the site operator, to the greatest extent possible. Inspections and recordkeeping reflected in the in the inspection frequency/scope/recordkeeping proposal should be allowed to be performed or completed by either the site operator's inspector or a municipal inspector, as outlined in the proposal.

It is unclear how the Division determined "operator inspections are not considered site inspections under this permit" from Regulation 61. In the Construction working session, the Division cited 61.8.11.A.ii.D.ll. which states: The program must be developed and implemented to assure adequate design, implementation, and maintenance of BMPs at construction sites within the MS4 to reduce pollutant discharges and protect water quality. The program must include the development and implementation of, at a minimum:

(f) Procedures for site inspection and enforcement of control measures.

Xcel Energy: I still think this is impracticable for MS4's to be able to inspect every construction site within their jurisdiction every 45 days plus have to do follow-up inspections. Operator inspections submitted to the MS4 for review should be considered site inspections. The MS4 could use this as a screening tool to determine what sites are priority areas or are considered high risk that warrant an onsite inspection or more frequent inspections. Sites that have demonstrated good practices or are considered low risk could be looked at less frequently.

Response 1: Operator Inspections

These comments have not been incorporated into the permit. Section 61.8(11)(a)(ii)(D)(II)(f) of Regulation 61 states that the program must include the development and implementation of "procedures for site inspection and enforcement of control measures." The division has determined that site inspections conducted by the construction site operator and only reviewed by the permittee do not constitute a site inspection conducted by the permittee. Permittees must conduct their own site inspections.

Comment 2: Revise the Inspection Frequency

Colorado Stormwater Council: The compounded effect of the draft permit language for inspection frequency, compliance inspection and related recordkeeping, while lacking a low-risk category, continues to make the draft requirements infeasible without significant additional staffing for many MS4s. The site inspection frequency/scope/recordkeeping proposal reflects a proactive program, while at the same time enabling needed flexibility while maintaining minimum standards and a clear expectation of the level of oversight.

The following proposed concept addresses site inspection frequency scope and corresponding recordkeeping and is intended to replace the current draft





permit language, although many elements from the permit language remain in the proposal:

1. Site Inspection

a. Exclusions

1. Homeowner
2. Staff vacancy
3. Winter Conditions

b. Routine Site Inspection

1. Frequency: conduct at least every 45 days
2. Scope: The inspection must assess the following:
 - i. Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.
 - ii. Pollutant sources: evaluate all pollutant sources to determine if an offsite discharge of pollutants has occurred.
 - iii. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.

c. Reduced Site Inspection

Reduced site inspections must occur at a frequency dependent upon the type of site as indicated below in accordance with the scope outlined for each type. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.

1. **Inactive:** sites that surface ground disturbance activities are completed and are pending growth for final stabilization or for sites where no construction activity has occurred since the last inspection.

- i. Frequency: conduct at least every 90 days
- ii. Scope: The inspection must assess the following:
 - a. Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.
 - b. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred.

2. **Residential Subdivision:** residential home construction for which all road construction has been completed and Part I.E.3.a.vi(A) does not apply.

- i. Frequency: conduct at least every 60 days
- ii. Scope: The permittee has the option to utilize a screening inspection to fulfill this requirement. The inspection must assess the following:
 - a. Control measures: Identify failure to implement control measures and inadequate control measures.





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b. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the applicable. construction activities as necessary to determine if an offsite discharge of pollutants has occurred.

3. Stormwater Management Administrator Program

4. Indicator: inspections, such as a drive-by or screening, are conducted to assess sites for indicators of noncompliance and do not fully assess the adequacy of BMPs and overall site management. They are a reduced scope inspection and can be used to extend the frequency required of any inspection type up to 90 days when all indicators evaluated determine control measures meet Good Engineering, Hydrologic and Pollution Control Practices as defined in I.B.1. and there is no evidence of discharges to the MS4. Types of Indicator inspections are defined below:

i. Reconnaissance:

a. Frequency: conduct every 14 days

b. Scope: Perimeter of the site must be evaluated for indicators of inadequate BMPs. The

inspection must assess the following:

1. Control measures: Identify failure to implement control measures and inadequate control measures.

2. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the applicable construction activities as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.

ii. Operator Indicator Inspections: when the required site inspection records completed by, or on behalf of, the site operator and are routinely submitted to the MS4 for review, the MS4 inspection site frequency may be reduced unless the MS4 identifies a failure to implement control measures or inadequate control measures during the reduced frequency inspection.

a. Frequency: conduct at least every 90 days as long as results of MS4 routine inspections assess control measures, pollutant sources and discharge points are maintained in operational condition with only routine maintenance identified. If an inspection indicates inadequate BMPs, failure to implement BMPs, or offsite discharges, a routine inspection frequency must resume.

b. Scope:

1. Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.

2. Pollutant sources: evaluate all pollutant sources to determine if an offsite discharge of pollutants has occurred.

3. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when





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feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.

5. Compliance Inspection:

- i. Frequency: A compliance inspection must occur within 14 days of the permittee documenting an offsite discharge or systematic failures of control measures unless corrections were made and observed by the inspector during the inspection.
- ii. Scope: A compliance inspection must verify corrections have been completed, or are actively being addressed, on sites the permittee documented an offsite discharge or systematic failures of control measures during the previous inspection. One of the following may be performed or required in lieu of a compliance inspection within 14 days of the permittee site inspection identifying that there is a failure to implement a control measure or an inadequate control measure:
 - a. Routine inspection in accordance with I.E.3. (insert permit citation); or
 - b. Reduced Indicator Inspection in accordance with I.E.3. (insert permit citation); or
 - c. Operator Compliance Inspection: Require the operator to inspect and report that the control measure has been implemented or corrected as necessary to meet the requirements of Part I.E.3.

The compounded effect of the draft permit language for inspection frequency, compliance inspection and related recordkeeping, while lacking a low-risk category, continues to make the draft requirements infeasible without significant additional staffing for many MS4s. In addition, some level of flexibility is needed to divert resources temporarily, when necessary, to more focused enforcement and away from lower-risk sites to implement truly effective oversight. The site inspection frequency/scope/recordkeeping proposal reflects a proactive program, while at the same time enabling needed flexibility while maintaining minimum standards and a clear expectation of the level of oversight.

Douglas County: A prescribed inspection frequency in the permit has the potential to limit the effectiveness of the MS4 oversight program. Maintaining some level of flexibility in determining which sites are inspected at what frequency, during which stage of construction, while considering site specific factors as well as compliance history remains a significant concern of MS4s. For example, at times, it may be necessary to divert resources temporarily from low-risk sites to enable more focused enforcement to implement truly effective oversight. The following factors will be impacted with a prescribed inspection frequency:

1. Quantity vs. Quality: Implementing and maintaining a good compliance assurance inspection program is based on multiple components; it is not purely a numbers game. Quality of site inspections will decrease if we are forced into visiting sites on a prescribed frequency. The prescribed frequency is based on



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the false assumption that all sites and site operators are alike. Sites differ greatly in size, topography, soil conditions, proximity to sensitive areas, and general performance of the particular contractor on each site. Why should site operators that have demonstrated a strong understanding of the program be penalized with a required frequency vs. a continued working relationship with them if minor maintenance items should arise?

2. **Random Inspections decrease; Deceptive Site Compliance will Increase:** There is a lot of value in performing purely random quality assurance inspections on permitted sites. When a minimum inspection frequency is prescribed and implemented, the inspection schedules tend to be purely controlled by the last inspection date, and required date of the next inspection. Specifically, this automated type approach over time will mean that site operators will anticipate the inspector's next visit and will monitor this frequency and repair the sites as the inspection date grows closer and not maintain the site continuously. The randomness factor provides a stronger level of compliance and continuous water quality for the program. The prescriptive process noted in the proposed new permit misappropriates any available inspector time away that is necessary for performing random routine inspections.
3. **Lost Flexibility:** The prescribed inspection frequency will result in little or no time being available to focus on known areas of concern and recalcitrant violators. We will be wasting limited time and resources performing frequency required inspections on sites with good compliance history, rather than focusing our time in sensitive areas and with recalcitrant violators which can provide the benefit of changing behavior and improving water quality. Inspectors days will be dictated by frequency inspections vs. driving around and making continuous observations as to how the sites assigned to them are being maintained and stopping to inspect a site, if necessary, due to observed site conditions. A good construction sites inspection program must be dynamic and flexible in order to redirect time and resources when and where they will provide the most benefit.
4. **Lost Compliance Assistance Opportunities:** Douglas County Inspection Staff spends a fair amount of time engaging in compliance assistance for site operators and owners. Douglas County staff spends time on our sites with our operators identifying areas or activities that will benefit from our assistance. We spend time educating site operators and owners performing walk-throughs of their development projects. We engage all parties of the site, including but not limited to the developer, project manager, superintendent, and erosion control companies, associated with the site to point out common deficiencies and identify areas of improvement. These compliance assistance opportunities have shown that once there is an understanding of the expectations, there is an increased level of continued compliance. The requirement of a prescribed





inspection frequency will result in a reduction of time available for compliance assistance activities due to the number of sites that will need to be inspected or followed up on each day.

It is our preference to eliminate the prescribed frequency from the permit altogether. However, as we are uncertain about the Division's willingness to eliminate inspection frequency from the permit, we offer the following alternative language, below.

The following proposed concept addresses site inspection frequency scope and corresponding recordkeeping and is intended to replace the current draft permit language, although many elements from the permit language remain in the proposal:

1. Site Inspection

a. Exclusions

1. Homeowner
2. Staff vacancy
3. Winter Conditions

b. Routine Site Inspection

1. Frequency: conduct at least every 45 days
2. Scope: The inspection must assess the following:
 - i. Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.
 - ii. Pollutant sources: evaluate all pollutant sources to determine if an offsite discharge of pollutants has occurred.
 - iii. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.

c. Reduced Site Inspection

Reduced site inspections must occur at a frequency dependent upon the type of site as indicated below in accordance with the scope outlined for each type. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the applicable construction site.





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1. Inactive: sites that surface ground disturbance activities are completed and are pending growth for final stabilization or for sites where no construction activity has occurred since the last inspection.
 - i. Frequency: conduct at least every 90 days
 - ii. Scope: The inspection must assess the following:
 - a. Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.
 - b. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred.
2. Residential Subdivision: residential home construction for which all road construction has been completed and Part I.E.3.a.vi(A) does not apply.
 - i. Frequency: conduct at least every 60 days
 - ii. Scope: The permittee has the option to utilize a screening inspection to fulfill this requirement. The inspection must assess the following:
 - a. Control measures: Identify failure to implement control measures and inadequate control measures that are visible from the road or other means without conducting a complete routine inspection.
3. Stormwater Management Administrator Program
4. Operator Inspections: when the required site inspection records completed by, or on behalf of, the site operator and are routinely submitted to the MS4 for review, the MS4 inspection site frequency may be reduced unless the MS4 identifies a failure to implement control measures or inadequate control measures during the reduced frequency inspection.
 - a. Frequency: conduct at least every 90 days as long as results of MS4 routine inspections assess control measures, pollutant sources and discharge points are maintained in operational condition with only routine maintenance identified. If an inspection indicates inadequate BMPs, failure to implement BMPs, or offsite discharges, a routine inspection frequency must resume.
 - b. Scope:
 1. Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.
 2. Pollutant sources: evaluate all pollutant sources to determine if an offsite discharge of pollutants has occurred.





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3. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.
5. Compliance Inspection:
- i. Frequency: A compliance inspection must occur within 14 days of the permittee documenting an offsite discharge or systematic failures of control measures unless corrections were made and observed by the inspector during the inspection.
 - ii. Scope: A compliance inspection must verify corrections have been completed on sites the permittee documented an offsite discharge or systematic failures of control measures during the previous inspection. One of the following may be performed or required in lieu of a compliance inspection within 14 days of the permittee site inspection identifying that there is a failure to implement a control measure or an inadequate control measure:
 - a. Routine inspection in accordance with I.E.3. (insert permit citation); or
 - b. Reduced Indicator Inspection in accordance with I.E.3. (insert permit citation); or
 - c. Operator Compliance Inspection: Require the operator to inspect and report that the control measure has been implemented or corrected as necessary to meet the requirements of Part I.E.3.

Finally, it must be emphasized that the option to operate under an alternative approved program is essential. As the final permit is developed, we request the Division discuss this issue with Colorado Stormwater Council & Douglas County if there are any questions or alternatives that might be considered.

The compounded effect of the draft permit language for inspection frequency, compliance inspection and related recordkeeping, while lacking a low-risk category, continues to make the draft requirements infeasible without significant additional staffing for many MS4s. In addition, some level of flexibility is needed to divert resources temporarily, when necessary, to more focused enforcement and away from lower-risk sites to implement truly effective oversight. The site inspection frequency/scope/recordkeeping proposal reflects a proactive program, while at the same time enabling needed





flexibility while maintaining minimum standards and a clear expectation of the level of oversight.

See DC Comments in bold and revision to inspection frequency from Colorado Stormwater Council The compounded effect of the draft permit language for inspection frequency, compliance inspection and related recordkeeping, while lacking a low-risk category, continues to make the draft requirements infeasible without significant additional staffing for many MS4s. In addition, some level of flexibility is needed to divert resources temporarily, when necessary, to more focused enforcement and away from lower-risk sites to implement truly effective oversight. The site inspection frequency/scope/recordkeeping proposal reflects a proactive program, while at the same time enabling needed flexibility while maintaining minimum standards and a clear expectation of the level of oversight.

The proposed construction site inspection frequency is another major concern for Douglas County. We established our program in 2003 (GESC) and updated DESC in 2013 and have made modifications to the program as the 2nd permit term was implemented. We have created minor but effective updates to increase efficiency and consistency to our program as implementation has continued throughout the years. Currently, as of May 2015, we estimate that with the proposed requirement of a minimum of one inspection every 45 days for every site, and once every 14 days for sites that are found to be out of compliance, given that we currently have over 1,000 active construction sites within our permit boundary (including single family homes), we will need to increase our staff by approximately 12 to 15 additional inspectors at an annual cost of about \$1.2 to \$1.6 million dollars. We believe that this is an unintentional consequence of the new permit requirements, but this potential additional cost would not meet the requirements of Governor Hickenlooper's Executive Order D 2011-005.

Response 2: Revise the Inspection Frequency

These comments have been partially been incorporated into the permit. Please see the response to an alternative inspection frequency below. The following response details the changes that were not incorporated into the permit:

- The exclusion for all staff vacancies was not incorporated into the permit. Excluding *all* inspections for a staff vacancy for potentially the entire duration of construction project is not appropriate. The "infeasibility exclusion" has been renamed to "staff vacancy" and moved to the reduced site inspection section.
- The residential subdivision comment for 60-day inspections was not incorporated into the permit. Alternatively, inspections are not required for individual lots in a residential development if the residential development has a permittee-approved site plan and is being inspected under one of the inspection frequencies in the permit.
- Two requirements to the indicator inspections frequency have been added. The requirement is that the permittee must have conducted a routine inspection of the construction site at least once before the permittee switches to the indicator inspection type of inspections. In addition, a routine inspection must be conducted after an indicator





inspection results in a compliance inspection before the indicator inspection can be used again.

- The operator indicator inspection was not incorporated into the permit. These are not permittee inspections, but are permittee report reviews. Regulation 61 specifically requires the permittee to conduct inspections, not just reviews of operator reports.
- The frequency of a compliance inspection does not include “systematic failures of control measures” since this term is unclear. A “systematic failure” would need to be defined. In addition, “or are actively being addressed” was not incorporated into the scope of the inspection. If a control measure is being “actively addressed” 14 days after the offsite discharge or inadequate control measure was observed, then the site has already been out of compliance for 14 days. It is not appropriate to allow the construction site to be out of compliance indefinitely. Also, the operator compliance inspection report must include photographs.

Comment 3: Remove the Inspection Frequency

Colorado Stormwater Council: Please remove the prescribed inspection frequencies. A prescribed inspection frequency in the permit has the potential to limit the effectiveness of the MS4 oversight program. Maintaining some level of flexibility in determining which sites are inspected at what frequency, during which stage of construction, while considering site specific factors as well as compliance history remains a significant concern of MS4s. For example, at times, it may be necessary to divert resources temporarily from low-risk sites to enable more focused enforcement to implement truly effective oversight. It is our preference to eliminate the prescribed frequency from the permit altogether. However, as we are uncertain about the Division’s willingness to eliminate inspection frequency from the permit, we offer the following alternative language, below. Finally, it must be emphasized that the option to operate under an alternative approved program, is essential. As the final permit is developed, we request the Division discuss this issue with Colorado Stormwater Council if there are any questions or alternatives that might be considered.

Town of Castle Rock: The Town requests the removal of construction inspection frequency/scope requirements or providing for alternative equivalent inspection programs that meet the overall intent of the permit terms and conditions.

5-2-1 Drainage Authority: The 521 is requesting different Site Inspection requirements, the proposed language in the inspection frequency portion of the permit is too specific and prescriptive. The 521 current Inspection program is efficient, and an effective. We do not agree in the prescriptive inspection frequency that is proposed in the second draft of the permit, nor do we agree with the documentation requirements. Our current methodology seems to be effective, and we would prefer to maintain our current methods. The 521 inspection model is described below:

- a. Stormwater Pre-con Meeting - A stormwater pre-con meeting occurs before construction starting. The 521 takes this opportunity to talk about site design and BMP’s that will be used during the construction phase.



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b. Initial Construction Inspection - Within 14 days of construction commencing, the 521 completes an inspection to insure all the BMPs are installed per the site design, and are in working order. This inspection follows the requirements of the Routine Inspection identified in draft permit.

c. Indicator Inspection - If the site is deemed in compliance during the Initial Construction Inspection, the site is then monitored by indicator inspections. Indicator Inspections are completed regularly at least every two weeks and often more frequently. If the control measures are being maintained and pollutants are not being discharged from the site, these indicator inspections continue. Inspection paperwork is minimal noting the date and site visited, and if the site is in compliance. If the site is not in compliance then Compliance Inspections or Audits are completed. Requiring these inspections are specific intervals does not allow the flexibility that jurisdictions need to adequately implement our programs.

d. Compliance Inspection and Audits - If during the initial construction inspection or during indicator inspections the inspector observes that the site is not in compliance or chronic issues, the site inspections are escalated to compliance inspections or audits. The compliance inspections review the site plans, control measures, and discharge points. The audits review all site documentation as well the items reviewed during the compliance inspections. Record keeping with these inspections mirror the requirements in the draft permit. Requiring these inspections with certain time frames of the indicator inspections does not allow the flexibility that jurisdictions need to adequately implement our programs.

e. Post Construction and Closeout Inspection - construction during this phase is complete, and a final site inspection is completed. During this site inspection the inspector ensures that final stormwater BMP's are installed.

f. The permit should focus on requiring MS4 to have a program that keeps site in compliance but does not spell out exactly how that must happen. Requirements for types of inspections or levels of inspection are reasonable but specific time lines go above and beyond. Specific time lines also places undue burden on permittees.

City of Aurora: Overall, we find the proposed changes to the construction sites program to be too specific and prescriptive. Our experience in developing a successful program does not support the reasoning of the division that increased inspection frequency which includes a document review means contractors will be compliant. An understanding of the program expectations and an open dialog between permittee and regulator have been found to be much more effective. Therefore, we recommend deleting mandatory inspection frequencies from the permit.

City of Arvada: Remove the 45-day Construction Sites inspection frequency and the 14-day compliance inspection requirement. A robust program is evident without requiring a maximum number of days between inspections.

Weld County: Weld County requests that these requirements be significantly reduced or removed to allow more flexibility to meet site specific needs and conditions. The Division's required inspections represents a burden on limited resources, including increased staffing, inspection vehicles and equipment, and





inspector training. Weld County could potentially have active construction sites in U.S. Census-designated MS4 areas over 50 miles apart. Considerable staff time, and expense would be expended simply getting to active sites. The County should have flexibility to prioritize inspection on sites most likely to discharge based on weather conditions, proven contractor responsiveness, site conditions such as soil type, slopes, and site proximity to waters of the U.S. Weld County requests that the Division identify and appropriate the funding to pay for this prescriptive inspection schedule as intended by Executive Order D 2011-005 prohibiting state agencies from imposing unfunded mandates on local governments. The Division has not provided a Cost/Benefit analysis showing that their specified inspection frequency provides water quality benefits. No case study comparing exceedances with inspection frequency was provided. Each permittee should have the flexibility to create individualized programs which are proven more effective than a 'one size fits all', prescriptive program. The proposed changes in the permit include new requirements involving prescriptive construction site inspections and extensive recordkeeping, both of which will impose substantial financial and manpower burdens on local governments. The proposed requirements have not yet been shown to provide water quality improvements nor proven cost effective by a cost-benefit analysis as required by recent Colorado legislation (Senate Bill 13-073). The draft permit also does not adhere to the intent of Colorado Governor Hickenlooper's Executive Order D 2011-005, prohibiting state agencies from imposing unfunded mandates on local governments. Furthermore, the proposed expansion of MS4 coverage to include County Growth Areas would not only impose substantial burdens on the counties, but is outside of the Division's legal authority to enforce.

Home Builders Association of Metro Denver: We applaud CDPHE for reducing the frequency of routine inspections from 30 to 45 days however; we still strongly believe that the MS4 should dictate the frequency of inspections. Perhaps you could add "...or other frequency of inspection negotiated with and approved by the Agency".

Housing & Building Association of Colorado Springs: We applaud CDPHE for reducing the frequency of routine inspections from 30 to 45 days; however, we still strongly believe that the MS4 agency should dictate the frequency of inspections. Please consider adding "...or other frequency of inspections negotiated with and approved by the Agency."

Response 3: Remove the Inspection Frequency

These comments have not been incorporated into the permit. Please see the fact sheet for more information on the importance of a minimum inspection frequency and the description of a general permit. Please see the division's response to the revisions in the inspection frequency and an alternative inspection frequency in the response to comments.

Comment 4: Support of Colorado Stormwater Council's Comments

Keep it Clean Partnership: Flexibility is needed to allow reduced inspection frequency/scope and/or documentation for lower-risk sites. Issue: Flexibility is needed to allow reduced inspection frequency/scope and/or documentation for





lower-risk sites. Reduced Frequency/Scope Inspection I.E.3.a.vi.(F). Comment: KICP recognizes the need for minimum frequencies, scopes, follow-up inspections. We also believe our mature and fully implemented programs should be continued. To achieve both goals, we believe flexibility must be written into the permit. The compounded effect of the draft permit language for inspection frequency, compliance inspection and related recordkeeping, while lacking a low-risk category, continues to make the draft requirements infeasible without additional costs for some KICP Partners. The site inspection frequency, scope, and corresponding recordkeeping proposed by the Colorado Stormwater Council would adequately address our need to continue implementing existing successful programs.

Response 4: Support of Colorado Stormwater Council's Comments

The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 5: Alternative Inspection Frequencies

Town of Castle Rock: Construction Inspections:

The Town continues to be concerned with the inclusion of minimum construction inspection frequencies and scope requirements as presented in the draft permit. In addition to the comments provided by the Colorado Stormwater Council, the Town requests that allowance be made for permittees to submit alternative inspection programs that meet the overall intent of the permit in this area. Similar to the provisions given in Section I.E.2.a.v.(Y) for allowable discharges, there should be the opportunity for permittees to identify alternative programs that meet or exceed the desired results of the inspection frequency and scope requirements. For instance, the Town has seen positive results through implementation of a random neighborhood audit program on single-family residential construction. In 2013, of the 48 inspections completed, approximately 59% resulted in stop work orders. In 2014, the Town increased the number of sites audited to 281 of which only 13% received stop work orders under the same enforcement escalation policies. Under the new inspection frequency requirements, the Town would be limited in our ability to implement these types of effective programs that target specific priority areas using unique inspection protocols. However, given the necessary flexibility, permittees may work within the general framework as defined in the permit to develop specific and targeted protocols as viable alternatives that continue to meet the overall intent of the permit.

Response 5: Alternative Inspection Frequencies

This comment has not been incorporated into the permit. The permit already allows any permittee to request a permit modification to tailor a specific inspection frequency into Part III of the permit or request an individual permit.

Comment 6: Additional Exclusion or Reduced Inspection Frequency for Low Risk Sites

Weld County: Weld County requests an additional exclusion for sites that pose little to no discharge risk depending on site specific conditions such as soil type, perviousness, slope, surrounding areas, and proximity to waters of the U.S.





El Paso County: Reduced frequency inspections should also include a provision to allow for sites where potential for offsite runoff to impact waters of the state is non-existent (significant distance between site and waters of the state depends on site conditions)

Response 6: Additional Exclusion for Low Risk Sites

This comment has not been incorporated into the permit. The suggested language is unclear. There is no definition of “little” discharge risk or “significant distance” between the site and state waters. Please see the division’s response to the revised inspection frequency with the addition of indicator inspections.

Comment 7: Additional Exclusion for Safety Access Issues

Xcel Energy: Site Inspection Frequency Exclusion Xcel Energy recommends that the Division provide an inspection exclusion for sites with safety access issues (i.e. flood, fire/burn areas, etc). This should also be considered in the renewal of the General Permit for Stormwater Discharges Associated with Construction Activities.

El Paso County: Infeasibility exclusion should also include a safety provision to allow for sites that may not be accessible for inspection due to safety concerns.

Response 7: Additional Exclusion for Safety Access Issues

This comment has not been incorporated into the permit. The suggested language is unclear. There is no definition of how to determine the entire flood or fire/burn area or “not accessible.” Permittees are encouraged to contact the division to discuss inspecting construction sites during emergency situations.

Comment 8: Exclusion for Individual Homes

Home Builders Association of Metro Denver: 3. a. vi. (B) Site Inspection Frequency Exclusion. Some MS4’s still want to enforce on homes that are clearly removed from a permittee’s permit by meeting the conditions as outlined in this section. Please add to the permit or the permit fact sheet clarity so that it is clear that this is meant for the MS4 to enforce onto the homeowner or the HOA for not achieving stabilization of sold and lots with Certificate of Occupancy status.

Response 8: Exclusion for Individual Homes

This comment has not been incorporated into the permit. Under the Construction Sites Program, the permit excludes completed individual homes from the MS4s inspection and enforcement. The completed individual homes, however, are still covered by the permittees illicit discharge detection and elimination.

Comment 9: Update Reference in the Routine Inspection Frequency

Colorado Stormwater Council: Please refer to inspection frequency/scope/recordkeeping proposal for overall proposal. No specific





changes to this section are requested. Please update the citation to Part I.E.3.a.vi. Editorial note, Site Inspection citation is Part I.E.2.a.vi of the permit.

Douglas County: Please refer to inspection frequency/scope/recordkeeping proposal for overall proposal. No specific changes to this section are requested. Please update the citation to Part I.E.3.a.vi.

Response 9: Update Reference in the Routine Inspection Frequency

These comments have been incorporated into the permit.

Comment 10: Require MS4s to Give Notice to Construction Operators

Home Builders Association of Metro Denver: We recommend increasing flexibility to the MS4's. In doing so, CDPHE could dictate to the MS4's to require advanced notice of inspection (24 hours) for efficiency and to avoid unnecessary delays of ensuring that the home builder storm water manager and/or contractor will be at the site during the inspection.

Housing & Building Association of Colorado Springs: We recommend increasing flexibility to the MS4s. In doing so, CDPHE could recommend the MS4 permit holder to give advanced notice of inspection (24 hours) in order to ensure that the home builder and stormwater manager will be at the site during the inspection.

Response 10: Require MS4s to Give Notice to Construction Operators

These comments have not been incorporated into the permit. The permittee has the flexibility to give or not give notice of site inspections.

Comment 11: Require that Permittees Wait to Inspect After a Storm

Home Builders Association of Metro Denver: The timing of the inspection is also critical. We suggest that an inspection planned immediately after a significant runoff event be postponed to give the builder the time to make the necessary adjustments and maintenance of its control measures (BMPs) so that the inspection reflects a normal circumstance rather than an upset (from significant runoff) situation.

Housing & Building Association of Colorado Springs: We suggest that inspections planned immediately after a significant runoff event be postponed to give the builder the time to make the necessary adjustments and maintenance of its control measures (BMPs) so that the inspection reflects a normal circumstance rather than an upset (from significant runoff) situation.

Response 11: Require that Permittees Wait to Inspect After a Storm

This comment has not been incorporated into the permit. The permittee has the flexibility to plan inspections after storms.

Comment 12: Remove the Term "Identify"

Colorado Stormwater Council: Please remove "identify." Please refer to inspection frequency/scope/recordkeeping proposal. An evaluation cannot occur without identification so this is redundant.





Douglas County: Please remove “identify” and “all”. Please refer to inspection frequency/scope/recordkeeping proposal. An evaluation cannot occur without identification so this is redundant.

Response 12: Remove the Term “Identify”

These comments have been incorporated into the permit.

Comment 13: Remove “Trash”

Colorado Stormwater Council: Please remove verbiage specifically calling out trash. “All pollutant sources” is sufficiently inclusive and addresses this pollutant source.

Douglas County: Please remove verbiage specifically calling out trash. “Pollutant sources” is sufficiently inclusive and addresses this pollutant source.

Xcel Energy: Pollutant sources: Identify and evaluate all pollutant sources, including trash, to determine if an offsite discharge of pollutants has occurred. Why is the Division focusing on Trash? Not that trash should be ignored but it seems strange to single it out. Recommend removing trash since the language states “all potential sources” which would include trash.

Response 13: Remove “Trash”

These comments have not been incorporated into the permit. Trash is significant pollutant source on a construction site. In addition, the division received a comment on the first draft of the permit to add more requirements for trash in the permit.

Comment 14: Remove “Construction Dewatering Discharges” and “Concrete Washout Areas”

Colorado Stormwater Council: Please remove verbiage specifically calling out construction dewatering discharges and concrete washout areas. Please refer to inspection frequency/scope/recordkeeping proposal. “All pollutant sources” is sufficiently inclusive and addresses these two pollutant sources. Construction Dewatering is already included in J. Definitions.

Douglas County: Please remove verbiage specifically calling out construction dewatering discharges and concrete washout areas. Please refer to inspection frequency/scope/recordkeeping proposal. “All pollutant sources” is sufficiently inclusive and addresses these two pollutant sources. Construction Dewatering is already included in J. Definitions.

Response 14: Remove “Construction Dewatering Discharges” and “Concrete Washout Areas”

These comments have not been incorporated into the permit. Construction dewatering discharges and concrete washout areas are significant sources of pollutants on a construction site. This requirement, however, has been revised to include only dewatering discharges not covered under the COG070000 general permit.



**Comment 15: Change “to State Waters” to “to the MS4”**

Colorado Stormwater Council: Please change to the following proposed concept: Identify discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site. Regulation 61 and I.E.3. are clear that the permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4, not state waters from applicable construction activities.

Douglas County: Please change to the following proposed concept: Identify discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site. Regulation 61 and I.E.3. are clear that the permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4, not state waters from applicable construction activities.

Response 15: Change “to State Waters” to “to the MS4”

These comments have been incorporated into the permit

Comment 16: Define “Adequate Control Measure”

Home Builders Association of Metro Denver: Please clearly define an adequate control measure. It is our interpretation that this is a measure designed for a specific drainage area or type of activity (i.e. construction). The concern is it could be interpreted as a measure that has been not functioning adequately. We believe that if these measures are routinely identified on inspections and repairs are completed; then the permit is being met.

Response 16: Define “Adequate Control Measure”

This comment has not been incorporated into the permit. Inadequate control measure is defined in Part I.B of the permit. The permittee has the flexibility to determine if a control measure is adequate in the field during a site inspection.

Comment 17: Applicable Construction Activity

Xcel Energy: Routine Inspection at least every 45 days for applicable construction sites. Does “applicable” pertain to all construction activities that are subject to a CDPS Stormwater Construction Permit or would it also include projects that are not? For example, some MS4’s permit projects that do not necessarily need a state permit (i.e. 10,000 sq.ft, 50 cubic yards, any size project that has bore pits, etc). Would the MS4 be required to inspect every site it permits or just sites that are subject to the CDPS Stormwater Construction Permit.



**Response 17: Applicable Construction Activity**

This comment has not been incorporated into the permit. As explained in the fact sheet, the Construction General Permit and this permit are two different general permits on two different permit renewal schedules. Information in one general permit might not be applicable to information in the other general permit. Also, please see the fact sheet for information on the iterative nature of the MEP standard. Please consult the definition of an applicable construction activity in this permit.

vii. Enforcement Response**Comment 1: Define “Chronic Violations/Violators”**

City and County of Denver: Define chronic violations/violators page 19 of the CDPS General Permit Section 3.a.vii.A.1, this comes up in several sections, but this is a good example.

Colorado Association of Home Builders: In achieving the goal of the Clean Water Act, there must be room in the Permit to use common sense alternatives, some designed in the field, to minimize and mitigate impacts from construction. The rules need to have as much flexibility as possible to allow for adherence in situations that don't fit the standard mold. Even when a contractor employs the best design, planning and practices, unforeseen results occur and accidents happen. Therefore, working with our practitioners in identifying solutions and correcting problems should always be preferable to levying fines. In order to maximize the results of the efforts and expenditures of our members as well as CDPHE we ask that consideration is given to provide the most clarity, consistency and predictability in the rules and in the enforcement thereof. We understand that CDPHE must address issues with chronic and recalcitrant operators, however, we also strongly encourage CDPHE to consider the scope of investment, requests for compliance assistance, appropriate intent and the time necessary to address repair and maintenance issues soon after significant storm water events occur as well.

Response 1: Define “Chronic Violations/Violators”

These comments have not been incorporated into the permit. The permittee has the flexibility to develop a standard operating procedure or policy on how to determine a chronic violation or violator.

Comment 2: Define “Routine Maintenance”

Home Builders Association of Metro Denver: We also have concerns that typical routine maintenance items on a construction site (such as BMPs that are not at the time in operational condition due to subcontractor vandalism, but that are routinely inspected and routinely repaired) will be classified as violations with escalation in place. This can put a contractor who routinely repairs and inspects items at an economic disadvantage from one who does not routinely conduct corrective actions; if both have BMPs in disrepair at any given inspection or any given sequential inspections.

This is another example where routine maintenance versus actual construction activity needs to be clearly defined. In this way, the MS4 won't cite a builder





when there is a need for routine maintenance that is scheduled versus an actual construction activity. We'd ask CDPHE to consider and add the following to the definition of routine maintenance; examples of routine maintenance type of activities include, but are not limited to: Street cleaning, Inlet protection maintenance, Wattle maintenance, Silt fence maintenance, Berm maintenance, Straw bale maintenance, Sediment basin maintenance, Water quality pond maintenance, Erosion blanket maintenance, Seeding maintenance, Vegetated buffer maintenance, Vehicle tracking maintenance, Concrete washout maintenance, Gutter bags maintenance, Surface roughening maintenance, Check dam maintenance, Line of disturbance fencing maintenance, Rill maintenance

Response 2: Define "Routine Maintenance"

This comment has not been incorporated into the permit. Control measures requiring routine maintenance is defined in Part I.B of the permit. The permittee has the flexibility to determine if a control measure needs routine maintenance during a site inspection.

viii. Training

No comments were received on this section of the permit.

ix. For Applicable Construction Activities that Overlap Permit Areas of One MS4 Permittee

No comments were received on this section of the permit.

b. Recordkeeping

i. Exclusions

Comment 1: Remove Recordkeeping Requirement for Excluded Construction Activities

Weld County: Weld County concurs with Colorado Stormwater Council comment to remove this recordkeeping requirement. Excluded construction activities should not require documentation. Spending time compiling paperwork for excluded projects is not an efficient use of MS4 resources and does not provide environmental benefit.

Response 1: Remove Recordkeeping Requirement for Excluded Construction Activities

This comment was not incorporated into the permit. The exclusions section is new to the general permit and records of the use of the new exclusions must be maintained by the permittee. The use of these exclusions will be evaluated during the next permit term. Permittees have the flexibility to NOT use the exclusions if the recordkeeping is too burdensome.

ii. Regulatory Mechanism

No comments were received on this section of the permit.

iii. Regulatory Mechanism Exemptions

No comments were received on this section of the permit.

iv. Control Measure Requirements





No comments were received on this section of the permit.

v. Site Plans

No comments were received on this section of the permit.

vi. Site Inspection

Comment 1: Revise the Recordkeeping Requirements

Colorado Stormwater Council:

2. Recordkeeping

a. Site Inspection

1. Routine: Maintain inspection records with the following minimum information for all inspections conducted to meet the minimum inspection frequency:

- i. Inspection date
- ii. Name of inspector
- iii. Project identification
- iv. Inspection results including offsite discharge, failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance
- v. Type of inspection

2. Reduced: Maintain inspection records with the following minimum information for all inspections conducted to meet the minimum inspection frequency:

- i. Inspection date
- ii. Name of inspector
- iii. Project identification
- iv. Type of inspection
 - a. Inactive: control measure routine maintenance, failure or inadequate; discharge points
 - b. Residential: control measure failure or inadequate, discharge points
 - c. Stormwater Management System Administrator: control measure failure or inadequate; discharge points
 - d. Indicator

- 1. Reconnaissance: Evidence of offsite discharges, inadequate control measures
- 2. Operator: control measure routine maintenance, failure or inadequate; discharge points

3. Compliance: Maintain inspection records with the following minimum information for all inspections conducted

- i. Inspection date
- ii. Name of inspector
- iii. Project identification
- iv. Inspection results including any corrections that have not been resolved from the previous inspection
- v. Type of inspection





The compounded effect of the draft permit language for inspection frequency, compliance inspection and related recordkeeping, while lacking a low-risk category, continues to make the draft requirements infeasible without significant additional staffing for many MS4s. The site inspection frequency/scope/recordkeeping proposal reflects a proactive program, while at the same time enabling needed flexibility while maintaining minimum standards and a clear expectation of the level of oversight.

Douglas County: Recordkeeping

a. Site Inspection

1. Routine: Maintain inspection records with the following minimum information for all inspections conducted to meet the minimum inspection frequency:
 - i. Inspection date
 - ii. Name of inspector
 - iii. Project identification
 - iv. Inspection results including offsite discharge, failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance
 - v. Type of inspection
2. Reduced: Maintain inspection records with the following minimum information for all inspections conducted to meet the minimum inspection frequency:
 - i. Inspection date
 - ii. Name of inspector
 - iii. Project identification
 - iv. Type of inspection
 - a. Inactive: control measure routine maintenance, failure or inadequate; discharge points
 - b. Residential: control measure failure or inadequate, discharge points
 - c. Stormwater Management System Administrator: control measure failure or inadequate; discharge points
 - d. Operator: control measure routine maintenance, failure or inadequate; discharge points
3. Compliance: Maintain inspection records with the following minimum information for all inspections conducted
 - i. Inspection date
 - ii. Name of inspector
 - iii. Project identification
 - iv. Inspection results including any corrections that have not been resolved from the previous inspection
 - v. Type of inspection





Response 1: Revise the Recordkeeping Requirements

These comments have been partially incorporated into the permit. The following have not been incorporated into the permit:

- All types of inspections: Did not remove “the location of” inspection results. An important part of inspection recordkeeping is documenting the location of the significant issues, especially offsite discharges, failed control measures, or inadequate control measures, found on the inspection, especially on large sites. The permittee, however, does not have to list the location of control measures needing maintenance.
- Reduced Site Inspection: The inspection results were added as a requirement. These are still site inspections, just conducted less frequently. In addition, staff vacancy has been added to the type of inspection to document why the inspection was conducted less frequently
- Operator Compliance Inspection: Requirements for the report were added.

Comment 2: Remove the Requirement of Documenting the Location of Inadequate Control Measures

Colorado Stormwater Council: Please refer to inspection frequency/scope/recordkeeping proposal. Please remove “location of conditions” Noting the “location of conditions” is a level of detail not needed for assessment of control measures, pollutant sources or discharge points.

Douglas County: Please refer to inspection frequency/scope/recordkeeping proposal. See DC Comments in bold and revision to inspection frequency from Colorado Stormwater Council Please remove “location of conditions” * Noting the “location of conditions” is a level of detail not needed for assessment of control measures, pollutant sources or discharge points.

City of Arvada: Remove the requirement that the location of every best management practice (BMP) that has failed, is inadequate, or needs maintenance must be included on an inspection report. On large sites, this requirement would be overly burdensome.

Response 2: Remove the Requirement of Documenting the Location of Inadequate Control Measures

These comments have not been incorporated into the permit. An important part of inspection recordkeeping is documenting the location of the significant issues, especially offsite discharges, failed control measures, or inadequate control measures, found on the inspection, especially on large sites. The permittee, however, does not have to list the location of control measures needing maintenance.

Comment 3: Remove the Requirement to Document How Previously Unresolved Inspection Findings Were Resolved

Colorado Stormwater Council: Please remove “how the issues were resolved if resolved during inspection. Documentation of “how the issues were resolved” is not relevant to determining if something was resolved or enforcing if something





was not resolved. Please refer to inspection frequency/scope/recordkeeping proposal. The requirements for site inspection recordkeeping will provide necessary documentation to determine if previously unresolved inspection findings were resolved. It is not necessary to add additional documentation to determine this. In addition, reduced documentation is an integral part of reduced inspections. Recordkeeping as required in the draft permit will negate the allowed reduced inspection.

Douglas County: Please remove “how the issues were resolved if resolved during inspection. Documentation of “how the issues were resolved” is not relevant to determining if something was resolved or enforcing if something was not resolved. The requirements for site inspection recordkeeping will provide necessary documentation to determine if previously unresolved inspection findings were resolved. It is not necessary to add additional documentation to determine this. In addition, reduced documentation is an integral part of reduced inspections. Recordkeeping as required in the draft permit will negate the allowed reduced inspection.

City of Arvada: Remove the requirement that each inspection report must include “how previously unresolved inspection findings were resolved.” On large sites, this requirement would be overly burdensome.

Response 3: Remove the Requirement to Document How Previously Unresolved Inspection Findings Were Resolved

These comments were incorporated into the permit.

Comment 4: Remove the Inspection Recordkeeping Requirements for Staff Vacancy

Colorado Stormwater Council: Please remove. The infeasibility exclusion is provided to accommodate staff vacancy. If a staff position is vacant, or staff is on vacation, an inspection would not be completed so tracking the Site Infeasibility Exclusion as an inspection that did not occur as part of the required inspection record does not make sense.

Douglas County: Please remove. The infeasibility exclusion is provided to accommodate staff vacancy. If a staff position is vacant, or staff is on vacation, an inspection would not be completed so tracking the Site Infeasibility Exclusion as an inspection that did not occur as part of the required inspection record does not make sense.

Response 4: Remove the Inspection Recordkeeping Requirements for Staff Vacancy

These comments have been partially incorporated into the permit. There is no exclusion from any and all inspections for a staff vacancy, see above response. Construction sites must still be inspected even if there is a staff vacancy. The permit allows for less frequent inspections due to staff vacancy and those inspections must still be documented.

Comment 5: Revise Operator Compliance Inspection





Colorado Stormwater Council: Please change to the following proposed concept: Require the operator to inspect and report that the control measure has been implemented or corrected as necessary to meet the requirements of Part I.E.3. The operator report must include photographs of the new/adequate control measure. Inspections by Operators are only allowed to fulfill requirements for Reduced Frequency/Scope Compliance Inspections I.E.3.a.vi(G)(2)(b) to verify corrections were made for previously identified failure to implement control measures or inadequate control measures. Therefore, the requirement here must be modified to reflect requirements of I.E.3.a.vi(G)(2)(b). As currently written, the requirement appears to mean operator would be submitting an inspection report, not verifying corrections were made.

Douglas County: Please change to the following proposed concept: Require the operator to inspect and report that the control measure has been implemented or corrected as necessary to meet the requirements of Part I.E.3. The operator report must include photographs of the new/adequate control measure. Inspections by Operators are only allowed to fulfill requirements for Reduced Frequency/Scope Compliance Inspections I.E.3.a.vi(G)(2)(b) to verify corrections were made for previously identified failure to implement control measures or inadequate control measures. Therefore, the requirement here must be modified to reflect requirements of I.E.3.a.vi(G)(2)(b). As currently written, the requirement appears to mean operator would be submitting an inspection report, not verifying corrections were made.

Response 5: Revise Operator Compliance Inspection

These comments have been incorporated into the permit.

Comment 6: Define the Extent of Discharge Points

Xcel Energy: Discharge points: Identify discharge points to state waters, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. How far beyond the limits construction/disturbance are you expecting the MS4 inspectors to go? Some sites may rarely have a surface discharge except in large events.

Response 6: Define the Extent of Discharge Points

This comment has not been incorporated into the permit. The permit now requires that permittees “evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred.” The permittee has the flexibility to determine the area beyond the limits of the construction site “as necessary.”

vii. Enforcement Response

No comments were received on this section of the permit.

viii. Training

Comment 1: Include a Requirement for Recordkeeping for Training Construction Operators

Colorado Stormwater Council: Please change to the following proposed concept: Mechanism or documentation used to inform operators of applicable





construction requirements. This requirement doesn't reflect the Training Requirement I.E.3.a.viii. to provide information to operators of applicable construction activities as necessary to ensure that each operator is aware of the permittee's applicable requirements, including controlling pollutants such as trash.

Douglas County: Please change to the following proposed concept: Mechanism or documentation used to inform operators of applicable construction requirements. This requirement doesn't reflect the Training Requirement I.E.3.a.viii. to provide information to operators of applicable construction activities as necessary to ensure that each operator is aware of the permittee's applicable requirements, including controlling pollutants such as trash.

Response 1: Include a Requirement for Recordkeeping for Training Construction Operators

These comments have been incorporated into the permit.

Comment 2: Trash

Xcel Energy: Training Again, why is the Division focusing on Trash? Not that trash should be ignored but it seems strange to single it out.

Response 2: Trash

Please see the response above concerning trash.

Comment 3: Recordkeeping for Training

Xcel Energy: Training: Name and title of each individual trained, date of training, the type of training and a list of topics covered. How is the MS4 going to track this information if they are utilizing their website or a flyer for training?

Response 3: Recordkeeping for Training

This comment has been incorporated into the permit. See above comment and response.

ix. For Applicable Construction Activities that Overlap Permit Areas of One MS4 Permittee

No comments were received on this section of the permit.

c. Program Description Document

i. Exclusions

No comments were received on this section of the permit.

ii. Regulatory Mechanism

No comments were received on this section of the permit.

iii. Regulatory Mechanism Exemptions

No comments were received on this section of the permit.

iv. Control Measure Requirements

No comments were received on this section of the permit.





- v. **Site Plans**
No comments were received on this section of the permit.

- vi. **Site Inspection**
No comments were received on this section of the permit.

- vii. **Enforcement Response**
 - Comment 1: Define Routine Maintenance**
Housing & Building Association of Colorado Springs: This section is another example where the difference between routine maintenance and construction activity needs to be clearly defined. By defining this, a builder will not be cited by MS4 for construction activity when routine maintenance is scheduled. · Examples of routine maintenance items: Street cleaning, Inlet protection, wattle, silt fence, berm, straw bale, sediment basin, water quality pond, erosion blanket, seeding, vegetated buffer, vehicle tracking, concrete washout, gutter bags, surface roughening, check dam, line of disturbance fencing, rill maintenance.

Response 1: Define Routine Maintenance
This comment has not been incorporated into the permit. Please see Part I.B. for discussion on control measures needing routine maintenance and inadequate control measures. Permittees have the flexibility to further define these terms.

 - Comment 2: Remove Requirements for Site Plan Maintenance**
Colorado Stormwater Council: Please remove the requirement to have enforcement response for site plans not maintained and modified in accordance with the permittee's requirements. As discussed in the fact sheet, there is not an expectation to verify maintenance of the site plan. Since the permittee is not required to verify site plan maintenance, having enforcement procedures is not necessary.

Douglas County: Please remove the requirement to have enforcement response for site plans not maintained and modified in accordance with the permittee's requirements. As discussed in the fact sheet, there is not an expectation to verify maintenance of the site plan. Since the permittee is not required to verify site plan maintenance, having enforcement procedures is not necessary.

 - Response 2: Remove Requirements for Site Plan Maintenance**
These comments have been incorporated into the permit.

- viii. **Training**
No comments were received on this section of the permit.

- ix. **For Applicable Construction Activities that Overlap Permit Areas of One MS4 Permittee**
No comments were received on this section of the permit.





4. Post-Construction Stormwater Management in New Development and Redevelopment

Comment 1: Add Discussion on Stabilization and Larger Common Plan of Development

Colorado Stormwater Council: Please include a discussion in the fact sheet or permit regarding the stabilization of a site and how stabilization changes the larger common plan area for the purposes of the permit requirements. After a lot has been sold, Land Disturbance has occurred and the site has been stabilized, it is no longer part of the Larger Common Plan of Development or Sale and should not be considered for the purposes of post-construction requirements. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.

Douglas County: Please include a discussion in the fact sheet or permit regarding the stabilization of a site and how stabilization changes the larger common plan area for the purposes of the permit requirements. After a lot has been sold, Land Disturbance has occurred and the site has been stabilized, it is no longer part of the Larger Common Plan of Development or Sale and should not be considered for the purposes of post-construction requirements. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.

Response 1: Add Discussion on Stabilization and Larger Common Plan of Development

This comment has not been incorporated into the permit or fact sheet. Stabilization is not related to the requirements of post-construction control measures. If the larger common plan of development or sale disturbs one acre or more, then a post-construction control measure is required. Post construction control measures are required for disturbances of one acre or more regardless of whether portions of the larger common plan of development or sale have been stabilized previous to the current project or not. It should be noted that final stabilization in a larger common plan of development or sale has effects on the requirements in the construction sites program.

Comment 2: Change the Definition of Land Disturbance for Post-Construction

Colorado Stormwater Council: Please change the definition of land disturbance for the purposes of the post construction section of the permit, considering the following proposed concept: “Applicable development projects” are those that result in land disturbance of greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, unless excluded below. For the purpose of post construction, land disturbance is where land disturbing activities change the existing ground cover (vegetative and/or non-vegetative) that results in more than 1000 square feet of imperviousness. At a minimum, projects that do not impact water quality if a control measure is not implemented should not be considered applicable development projects.

Please change the definition of new development, considering the following proposed concept:





“New Development” is a land disturbance that results in the creation of impervious area on a site that was not previously developed, unless excluded below. The current definition of land disturbance is applicable to construction activity, but does not pertain to post construction, for which design standards are based upon the final disposition of the site. The purpose of the post construction program is to address water quality impacts. Projects that do not result in water quality impacts should not be applicable development projects.

Redefining the term land disturbance in the permit allows a logical approach to addressing post construction concerns. A definition of “disturb” should reflect the final site condition. Using this as a trigger for post construction requirements rather than the traditional “disturbance” definition used in construction would allow projects like trails or utility projects that return the land back to its pre-existing condition to be automatically excluded from the requirements. This change in the definition for the purpose of the post construction program also ensures activities that do not actually disturb land are not included in the requirement for post construction controls, such as temporary staging areas and stockpile areas. If an area is not actually disturbed, the opportunity to install a permanent control measure does not exist.

The definition for “New Development” is too broad and may allow for misinterpretation. The definition states that “New Development” means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision on an area that has not been previously developed. The definition, as written, could result in requiring post construction control measures for structural projects, such as a new roof for a structure, with concurrent grading activities over an acre of disturbance, such as re-grading adjacent pervious areas to address drainage issues. Further, a land subdivision with concurrent overlot grading activities with no added imperviousness could result in a requirement for a post construction control measure. We assert that development should be tied to potential impact, or the addition or creation of impervious area, not to structural modifications or land divisions, which is a planning process.

Douglas County: Please change the definition of land disturbance for the purposes of the post construction section of the permit, considering the following proposed concept: “Applicable development projects” are those that result in land disturbance of greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, unless excluded below. For the purpose of post construction, land disturbance is where land disturbing activities change the existing ground cover (vegetative and/or non-vegetative) that results in more than 1000 square feet of imperviousness. At a minimum, projects that do not impact water quality if a control measure is not implemented should not be considered applicable development projects. Please change the definition of new development, considering the following proposed concept: “New Development” is a land disturbance that results in the creation of impervious area on a site that was not previously developed, unless excluded below. The current definition of land disturbance is applicable to construction activity, but does not pertain to post construction, for which design standards are based upon the final disposition of the site. The purpose of the post construction program is to address water quality





impacts. Projects that do not result in water quality impacts should not be applicable development projects. Redefining the term land disturbance in the permit allows a logical approach to addressing post construction concerns. A definition of “disturb” should reflect the final site condition. Using this as a trigger for post construction requirements rather than the traditional “disturbance” definition used in construction would allow projects like trails or utility projects that return the land back to its pre-existing condition to be automatically excluded from the requirements. This change in the definition for the purpose of the post construction program also ensures activities that do not actually disturb land are not included in the requirement for post construction controls, such as temporary staging areas and stockpile areas. If an area is not actually disturbed, the opportunity to install a permanent control measure does not exist. Please provide additional clarification in the fact sheet that the 1000 square feet of new impervious area is in addition to the larger than 1 acre of disturbance requirement within the definition of land disturbance. The definition for “New Development” is too broad and may allow for misinterpretation. The definition states that “New Development” means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision on an area that has not been previously developed. The definition, as written, could result in requiring post construction control measures for structural projects, such as a new roof for a structure, with concurrent grading activities over an acre of disturbance, such as re-grading adjacent pervious areas to address drainage issues. Further, a land subdivision with concurrent overlot grading activities with no added imperviousness could result in a requirement for a post construction control measure. We assert that development should be tied to potential impact, or the addition or creation of impervious area, not to structural modifications or land divisions, which is a planning process.

City of Greeley: The key concerns, which are detailed in CSC comments, for the City of Greeley are as follows: Post-Construction: The trigger for a post-construction BMP requirement should be based on the project's water quality impact versus land disturbance.

Keep it Clean Partnership: The trigger for implementing a post-construction BMP should be based on the project's water quality impact versus land disturbance.

City of Glendale: The topics considered “high-level” issues for the City include the following: Post Construction for New Development and Redevelopment- Automatic exclusions for projects with no water quality impacts, Source reduction design standard, Equivalent area design standard

City of Federal Heights: The topics considered “high-level” issues for the City include the following: Post Construction for New Development and Redevelopment- Automatic exclusions for projects with no water quality impacts, Constrained New Development Sites

Xcel Energy: Applicable Development Projects Xcel Energy recommends that applicable projects be based on what the overall complete impervious area is as opposed to the construction disturbance. You may have many projects that ultimately are disturbing more than 1 acre but may not have any impervious area when complete





or very little impervious area and no impact to water quality. These types of projects should not be held to the same standard as projects that would impact water quality

Southeast Metro Stormwater Authority: Part I.E.4. Applicability. The definition of “Applicable development projects” is those that result in land disturbance of greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, unless excluded below. While we understand the origin of the definition, it fails to address development and redevelopment from an impact perspective. Basing post construction requirements for control measures on land disturbance rather than imperviousness added or the footprint misses tying required treatment to potential impact. If the definition cannot be updated to relate the two, please include additional exemptions, as discussed below that would remove activities potentially resulting in post construction control measures simply based on land disturbance (and a resulting impact during construction only, not post construction). Ideally, the definition for “Applicable development projects” would be revised. Example language might read “Applicable development projects” are those resulting in land disturbance of greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, unless excluded below, with the addition or creation of Impervious Area (including removal and replacement), to include the expansion of a building or replacement of a structure. Routine Maintenance or exterior/interior building remodeling is not included.

Response 2: Change the Definition of Land Disturbance for Post-Construction

These comments have been partially incorporated into the permit. “More than 1,000 people per square mile” has been changed to “less than 1,000 people per square mile.” The division agrees that there are development situations where it is not practicable to implement control measures to reduce the discharge of pollutants to the MS4. The division found that the approach taken in the permit of excluding certain types of projects is a practical way of drafting the permit in a manner that avoids the requirement to implement control measures in certain circumstances. “The division considered the suggested revision for projects with “no water quality impacts” and found that the language is unclear. The division considered the suggested revision that land disturbance be redefined to be more narrow and focus on imperviousness and found that the definition as is remains appropriate in the context of urban new development and redevelopment. The amount of impervious surfaces on the final project is only one factor that would help determine if the site would have any negative water quality impacts and impervious areas in urbanized environments have pollutant potential such as fertilizer runoff, pet waste, and trash, and provide important opportunities to integrate control measures into a development.

The division has significantly expanded and revised the excluded projects through the permit development process based on input and comments received. As new information becomes available additional refinements can be made and projects can be added through the permit modification process and at permit renewal.

Please note that trails (non-residential and non-commercial infiltration projects exclusion) and utility projects (utility exclusion) are already excluded. Please also note that interior building remodeling and maintaining the exterior of a building would





typically not disturb land. Please also note that maintenance activities are not covered under this section of the permit—only new development and redevelopment.

Comment 3: Change the Definition of New Development to Reflect Imperviousness

Southeast Metro Stormwater Authority: Part I.E.4. Applicability. The definition for “New Development” is too broad and may allow for interpretation that we assume to be unintended. The definition states that “New Development” means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision on an area that has not been previously developed. The definition, as written, could result in requiring post construction control measures for structural projects, such as a new roof for a structure, with concurrent grading activities over an acre of disturbance, such as re-grading adjacent pervious areas to address drainage issues without any added impervious area. Further, a land subdivision with concurrent overlot grading activities with no added imperviousness could result in a post construction control measure. Again, we assert that development should be tied to potential impact, or the addition or creation of impervious area that generates stormwater runoff requiring treatment, not to structural modifications or land subdivisions. Please consider updating the definition to reflect the creation of impervious area. Including the phrases structural development, construction or installation of a building or structure, and land subdivision in the definition is too broad. We recommend a definition that is based on impact, such as “New Development” is a land disturbance that results in the creation of impervious area on a site that was not previously developed, unless excluded below.

Town of Castle Rock: The Town requests minimum thresholds for applicability under post-construction based on added impervious area and not just disturbance limits.

In addition to the comments made by the CSC regarding applicable development projects, the Town submits that it would not be practicable for existing developments, nor the MS4 permittee to enforce such a program, to implement post-construction control measures on projects such as landscaping that disturbs greater than one acre but has a minimal net change of impervious area or other projects that do not traditionally require a construction or building permit. The Town therefore requests that a minimum impervious area threshold also be applied to redevelopment.

Response 3: Change the Definition of New Development to Reflect Imperviousness

This comment has not been incorporated into the permit. As stated above, the definition of applicable development projects is based on land disturbance and not imperviousness as outlined in EPA’s Phase II Rule and Regulation 61.

Comment 4: Change the Definition of Redevelopment

Southeast Metro Stormwater Authority: Part I.E.4. Applicability. Please consider including our comments provided above in the “New Development” definition within the “Redevelopment” definition (specifically, references to structural improvements which are not appropriate in the Development section). In addition, there is no threshold for small additions in impervious area. For example, a redevelopment site with concurrent grading activities that includes the addition of a fifty square foot generator foundation would result in post construction control measures. Some consideration should be made for minimal additions in impervious area, either in the





“Redevelopment” definition or as exclusion. We recommend including an exclusion that addresses these minimal additions in impervious area or the addition of a specific design standard that contemplates appropriate treatment for minimal areas like encouraging disconnected impervious area strategies. Please consider updating the definition to “Redevelopment” is land development to sites that are substantially developed with 35% of greater existing imperviousness, with the addition or creation of impervious area (including removal and replacement), to include the expansion of a building or replacement of a structure. Routine Maintenance or exterior/interior building remodeling and replacement of a hard surface that is not part of a routine maintenance activity, is not included.

Response 4: Change the Definition of Redevelopment

This comment has been partially incorporated into the permit. Interior and exterior remodeling of a building typically does not include any land disturbance. In addition, maintenance activities are already excluded from the definition of development and redevelopment. Replacement of a hard surface (such as a building) might be considered redevelopment. The division encourages permittees to discuss particular projects as they come up during the permit term.

a. The following requirements apply**Comment 1: Support of CSC’s comments**

City of Federal Heights: The topics considered “high-level” issues for the City include the following: Post Construction for New Development and Redevelopment-Automatic exclusions for projects with no water quality impacts, Constrained New Development Sites

Response 1: Support of CSC’s comments

Please see the division’s response to CSC’s comments.

i. Excluded Projects**Comment 1: Add an Additional Exclusion for Commercial Development**

Douglas County: Attached please find our comments for COR-090000 Second Public Notice Version, along with the Regional Water Quality Evaluation (including the three previous studies, all of which have been submitted to the Division previously, for a completeness review) by Muller Engineering Company for Douglas County and SEMSWA. We are requesting that this study be reviewed and utilized as the framework for an additional exclusion in regards to post construction BMPs. Also, please note that we have included comments specific to interaction between the Division and the State Engineer’s Office relative to SB15-212.

Douglas County and SEMSWA have retained the professional services of Muller Engineering Company to conduct a study on commercial developments similar to the one submitted and approved for Large Lot Single Family Projects. This study evaluates the relationship of infiltration and the impacts to regional water quality; the evaluation has been titled Regional Water Quality Evaluation by Muller Engineering Company, June 5, 2015. This evaluation has been completed and we have included it as a formal comment (See Post





Construction comments). We are requesting that the Division utilize it as the framework for an additional exclusion for water quality purposes within commercial developments. We are currently reviewing our criteria manuals to evaluate what changes might need to be incorporated to address this study's findings. If the Division is unable to consider this study as a comment that could be incorporated into the permit language prior to permit issuance, we are requesting that the Division allow for intermittent or midterm permit modifications. We feel that the ability to have midterm or intermittent permit modifications is important to encourage continued scientific ingenuity through studies and updated criteria. Allowing permit modifications only at permit renewal times could limit capabilities of our industry that otherwise could demonstrate cost-effective ingenuity.

Response 1: Add an Additional Exclusion for Commercial Development

This comment was not incorporated into the permit. The division reviewed the study and found it to be informative? However the findings have not been formulated into a recommendation for permit language for an additional exclusion. The division can continue to work with Douglas County and SWESEA on the concept. The division agrees that new information is a basis for a permit modification which is an important tool for revising permit requirements during a permit term.

Comment 2: Add Additional Exclusions

Keep it Clean Partnership: There are other project types that should be included in the exclusions. Issue: There are other project types that should be included in the exclusions. Please ensure that the following are included in excluded projects: projects with land disturbance to undeveloped land that will retain the site characteristics that existed prior to disturbance, gravel road, trails, stream restoration, stream bank stabilization, emergency projects, and noise attenuating structures.

Response 2: Add Additional Exclusions

This comment has been partially incorporated into the permit. The following suggestions were not included in the exclusions--gravel roads, emergency projects, and noise attenuating structures. Note that these project types would only be considered applicable development projects if they result in land disturbance of greater than or equal to one acre.

Comment 3: Add an Additional Exclusion for Projects that Add Minimal Impervious Area

Southeast Metro Stormwater Authority: Part I.4.a.i Excluded Projects. Please include an additional exclusion addressing the addition of minimal impervious areas. This comment can be further addressed with the addition of a design standard to address these minimal additions in impervious area (see additional comments below). Please consider including the exemption as follows:
Excluded Impervious Area Additions: Projects that add or create a minimal amount of impervious, when one of the following criteria is met:

a) The project adds less than 1,000 square feet of total imperviousness. This exemption is intended to exclude projects where minimal amounts of





imperviousness is created or added, and where the design and implementation of a control measure is not practicable. An example might be the addition of bus pads (that are part of a larger common plan of development or sale) or a generator pad (that is part of a larger common plan of development or sale), or;

b) The project adds less than 5,000 square feet of impervious area and 60% of what the calculated WQCV for the added or created impervious area infiltrates, evaporates, or evapotranspires, prior to being discharged from the development site. This exemption is intended to exclude projects that cannot meet the Runoff Reduction Standard by infiltrating the entire project imperviousness, but can infiltrate the minimal amount of impervious area that is created or added. An example might be a patio addition where there is opportunity to infiltrate the additional impervious area, but not the entire development (where grading is occurring that exceeds an acre). As this does not exclude treatment for the creation of added area, this proposed language can also be added to Section 4.iv.C, Runoff Reduction Standard. In that case, the proposed language for this Section would read: Runoff Reduction Standard: The control measure(s) is designed to infiltrate into the ground where site geology permits, evaporate, or evapotranspire a quantity of water equal to 60% of what the calculated WQCV would be if all impervious area for the applicable development project discharged without infiltration. If the impervious area for the applicable development is 5,000 square feet or less, the control measure(s) is designed to infiltrate into the ground where site geology permits, evaporate, or evapotranspire a quantity of water equal to 60% of what the calculated WQCV would be for the created or added impervious area for the applicable development project discharged without infiltration. This base design standard can be met through practices such as green infrastructure. “Green infrastructure” generally refers to control measures that use or mimic natural processes to infiltrate, evapotranspire, or reuse stormwater on the site where it is generated. Green infrastructure can be used in place of or in addition to low impact development principles, or;

c) The added or created impervious area is no more than 10% of the development or redevelopment project, not to exceed 5,000 square feet, where the permittee has determined that it is not practicable to capture runoff from the added or created impervious area due to technical constraints or hardships. This exemption is intended to exclude projects that add a minimal amount of imperviousness and may be considered a constrained site. An example project might be the redevelopment of a parking space into a bank kiosk, for a project that is part of a larger common plan of development or sale. The opportunity for control measures would not be practicable. As this exclusion is specific to constrained sites, the proposed language can also be added to Section 4.a.iv.F.4, Constrained Development and Redevelopment Sites (Section heading title revised, as proposed). In this case, the proposed language would read: The added or created impervious area is no more than 10% of the development or redevelopment project, not to exceed 5,000 square feet, where the permittee has determined that it is not practicable to capture runoff from the added or created impervious area due to technical constraints or hardship.





Please note that part b) of the proposed language can be omitted if the comment regarding Non-Residential and Non-Commercial Infiltration (above) is accepted by the Division.

Response 3: Add an Additional Exclusion for Projects that Add Minimal Impervious Area

These comments have not been incorporated into the permit. The division incorporated other comments and excluded stream bank stabilization projects, trails, and projects on undeveloped land that will remain undeveloped after the project. The division has not considered all types of development or redevelopment projects that only add a minimal amount of impervious area. Permittees may submit a permit modification to request this exclusion. In order for the division to evaluate such a modification request it should include sufficient information, such as Douglas County's Residential Large Lot Study, for each specific type of development and redevelopment project within the proposed exclusion. Note that these project types would only be considered applicable development projects if they result in land disturbance of greater than or equal to one acre.

Comment 4: Support for Roadway Maintenance and Large Lot Single Family Projects

Douglas County: The successful collaborative and iterative process to determine reasonable and viable requirements for post-construction water quality BMPs for roadway maintenance and expansion and Large Lot Single Family Projects. We feel the process has resulted in the necessary water quality protection, and helps to bring underperforming MS4 programs into compliance while not penalizing robust programs.

Response 4: Support for Roadway Maintenance and Large Lot Single Family Projects

The division acknowledges this comment. No changes to the permit or fact sheet are necessary.

Comment 5: Add an Additional Exclusion for Unpaved Roadway Construction and Maintenance

Colorado Stormwater Council: Please add Unpaved Roadway Construction and Maintenance to the list of exclusions. There are exclusions for pavement management and existing roadways, but exclusions must also apply to unpaved roads.

Douglas County: Please add Unpaved Roadway Construction and Maintenance to the list of exclusions. There are exclusions for pavement management and existing roadways, but exclusions must also apply to unpaved roads.

Weld County: Weld County concurs with the CSC comment to add Rural Roadway Construction and Maintenance to the list of exclusions. There are exclusions for pavement management and existing roadways, but exclusions must also apply to gravel roads in rural areas. Please refer to rural roadways exclusion in Regulation 72.



**Response 5: Add an Additional Exclusion for Unpaved Roadway Construction and Maintenance**

These comments have not been incorporated into the permit. The original exclusions for roadways included in the previous drafts were developed as a result of previous stakeholder processes which did not address unpaved roadways. Unpaved roadways are sources of pollutants that are appropriately addressed in the permit.

Comment 6: Make the Design Flow Requirement Consistent

El Paso County: Included in this entire section 4 are several references to design flow to be used for the purposes of complying with the section. In some instances the term “80th percentile stormwater runoff event” and in other cases, “2 -year, 1-hour peak run off” flow is used. The two design parameters are not necessarily equivalent. Revise section to include a consistent design flow event. We recommend the use of 2-year, 1-hour flow as the 80th percentile stormwater runoff event (i.e. ≥ 0.6) is based on front range data and may not be applicable to all areas of the state.

Housing and Building Association of Colorado Springs: We encourage CDPHE to use a precipitation event. The 4th sentence refers to the 80th percentile event. Later in the document, reference is made to the 2-year, 1-hour event. We ask that the CDPHE be mindful of which designed event we are trying to meet and be consistent in that language as these two are not necessarily equivalent (though they may be close in some regions). We recommend revising the section to include a consistent design flow event that would be equivalent to or less than the 80 percentile stormwater runoff event. Since this will vary throughout the state, we suggest that these be determined) by the MS4 permit holders.

Home Builders Association of Metro Denver: Non-Residential and Non-Commercial Infiltration Conditions. We encourage CDPHE to use a precipitation event. Specifically in the 4th sentence you refer to the 80th percentile event. Later in the document reference is made to the 2 yr. 1 hour event. We ask that the CDPHE be consistent and mindful of what event we are trying to meet and be consistent. Revise section to include a consistent design flow event. We recommend the use of a 2-year, 1-hour flow as the 80th percentile stormwater runoff event (i.e. > 0.6) that is based on Front Range data and may not be applicable to all areas of the state. As an alternative, we recommend using the precipitation amount (i.e. 6 inches for the Front Range and TBD for the other portions of the state) as the design event since it is much easier to measure precipitation.

5-2-1 Drainage Authority: Also 521 is concerned with the blanket standard on TSS of 30 mg/L in stormwater effluent. The 521 request that pollutant removal technologies be required to remove the expected annual 80% TSS.

Response 6: Make the Design Flow Requirement Consistent



These comments have been partially incorporated into the permit. The 2-year, 1-hour flow has been replaced with the 80th percentile stormwater runoff event.

Comment 7: Add an Additional Exclusion for Projects with Land Disturbance to Undeveloped Land that will Remain Undeveloped Following Disturbance

Colorado Stormwater Council: If land disturbance is not redefined for the purpose of post construction requirements, as proposed above, please add the following proposed concept: Automatic Exclusion: Projects with land disturbance to undeveloped land that will remain undeveloped following disturbance and will be reclaimed. Some projects can be assumed to have no water quality impact and should be considered automatic exclusions with no hydrologic study required to show that the project has no impact. Projects that will remain undeveloped following disturbance can be assumed to have no impact. Although Part I.E.4.a.i.F. Non-Residential and Non-Commercial Infiltration Conditions address sites that will infiltrate stormwater, there are cases where any site, not specific to non-residential or non-commercial, will be disturbed and remain undeveloped following the disturbance. In these cases, a return to the previous condition should be sufficient.

Douglas County: If land disturbance is not redefined for the purpose of post construction requirements, as proposed above, please add the following proposed concept: Automatic Exclusion: Projects with land disturbance to undeveloped land that will remain undeveloped following disturbance and will be reclaimed. Some projects can be assumed to have no water quality impact and should be considered automatic exclusions with no hydrologic study required to show that the project has no impact. Projects that will remain undeveloped following disturbance can be assumed to have no impact. Although Part I.E.4.a.i.F. Non-Residential and Non-Commercial Infiltration Conditions address sites that will infiltrate stormwater, there are cases where any site, not specific to non-residential or non-commercial, will be disturbed and remain undeveloped following the disturbance. In these cases, a return to the previous condition should be sufficient.

Xcel Energy: Excluded projects. There does not seem to be an exclusion for sites that will be restored to pre-construction condition i.e. an area with no increased impervious area or an open dirt field that was used as a staging area (exceeding the 1 acre threshold) but is not paved but returned to the land owner in its pre-existing condition. These types of situations should be excluded with no hydrologic study required to show that the project has no impact.

Response 7: Add an Additional Exclusion for Projects with Land Disturbance to Undeveloped Land that will Remain Undeveloped Following Disturbance
These comments have been incorporated into the permit.

Comment 8: Add an Additional Exclusion for Stream Stabilization Projects

Colorado Stormwater Council: Please add the following proposed concept: Automatic Exclusion: Stream stabilization projects. Some projects can be assumed to have no water quality impact and should be considered automatic





exclusions with no hydrologic study required to show that the project has no impact. Stream stabilization projects may result in impervious areas added via drop structures, for example. There is currently no exclusion for this activity and installing a control measure listed in the permit is not feasible, or necessary.

Douglas County: Please add the following proposed concept: Automatic Exclusion: Stream stabilization projects. Some projects can be assumed to have no water quality impact and should be considered automatic exclusions with no hydrologic study required to show that the project has no impact. Stream stabilization projects may result in impervious areas added via drop structures; for example. There is currently no exclusion for this activity and installing a control measure listed in the permit is not feasible, or necessary.

Xcel Energy: Another exclusion should include stream bank stabilization projects.

Southeast Metro Stormwater Authority: Part I.4.a.i Excluded Projects. Please include an additional exclusion to address stream restoration, reclamation, stabilization, maintenance, and associated projects. Please consider including the exemption as follows: Excluded Channel Projects: Projects with the primary purpose of stabilizing, restoring, or reclaiming a channel, or associated maintenance; constructing flood control or water quality facilities, or associated maintenance.

Response 8: Add an Additional Exclusion for Stream Stabilization Projects
These comments have been incorporated into the permit. Please note that this section of the permit does not apply to maintenance projects, whether planned or emergency.

Comment 9: Add an Additional Exclusion for Trails

Colorado Stormwater Council: Please add the following proposed concept: Automatic Exclusion: Trails. Some projects can be assumed to have no water quality impact and should be considered automatic exclusions with no hydrologic study required to show that the project has no impact. Although Part I.E.4.a.i.F. Non-Residential and Non-Commercial Infiltration Conditions address sites that will infiltrate stormwater, there are cases where a trail may meet this requirement for all but a small portion. Portions that are unable to meet the infiltration exclusion will most likely not meet it because a trail is crossing a creek or is adjacent to a creek within a box culvert, for example. Treating the stormwater from this type of project is infeasible and a trail used by bikes and pedestrians would have a low pollutant loading potential.

Douglas County: Please add the following proposed concept: Automatic Exclusion: Trails Some projects can be assumed to have no water quality impact and should be considered automatic exclusions with no hydrologic study required to show that the project has no impact. Although Part I.E.4.a.i.F. Non-Residential and Non-Commercial Infiltration Conditions address sites that will infiltrate stormwater, there are cases where a trail may meet this requirement for all but a small portion. Portions that are unable to meet the





infiltration exclusion will most likely not meet it because a trail is crossing a creek or is adjacent to a creek within a box culvert, for example. Treating the stormwater from this type of project is infeasible and a trail used by bikes and pedestrians would have a low pollutant loading potential.

Response 9: Add an Additional Exclusion for Trails

These comments have been incorporated into the permit.

Comment 10: Add an Exclusion for Emergency Maintenance of Infrastructure

Colorado Stormwater Council: Automatic Exclusion: Construction Projects required to restore damages to existing infrastructure resulting from a disaster such as a wildfire, flood, tornado, or other occurrence that maintain the original line and grade, hydraulic capacity, or original purpose of the facility. There are times when emergency work is required to restore damaged infrastructure because of a natural disaster. These operations may require changes to the infrastructure to repair, replace in-kind, or for the betterment of the structure, for example. This work occurs without going through a planning process and rarely provides an opportunity to add post construction control measures.

Douglas County: Please add the following proposed concept: Automatic Exclusion: Construction Projects required to restore damages to existing infrastructure resulting from a disaster such as a wildfire, flood, tornado, or other occurrence that maintain the original line and grade, hydraulic capacity, or original purpose of the facility. There are times when emergency work is required to restore damaged infrastructure because of a natural disaster. These operations may require changes to the infrastructure to repair, replace in-kind, or for the betterment of the structure, for example. This work occurs without going through a planning process and rarely provides an opportunity to add post construction control measures.

Xcel Energy: Consider excluding construction projects required to restore damages to existing infrastructure resulting from a disaster such as a wildfire, flood, tornado, or other occurrence that maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

Southeast Metro Stormwater Authority: Part I.4.a.i Excluded Projects. Please include an additional exclusion to address emergency operations. We recommend the language in Regulation 72: Emergency operations related to flood, fire, or other force majeure that maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

Response 10: Add an Exclusion for Emergency Maintenance of Infrastructure

These comments have not been incorporated into the permit. This section of the permit only applies to new development and redevelopment projects, not maintenance projects. This section of the permit does not apply to maintenance projects, whether planned or emergency projects.

Comment 11: Add an Exclusion for Above Ground Utilities

**PUBLIC NOTICE COMMENTS**

Southeast Metro Stormwater Authority: Underground Utilities. Please consider revising the name to Utilities (not limited to underground). We believe that there are overhead utilities that result in a minimal increase in impervious area (such as overhead electric poles) that should be included. This can be addressed with the revision of this exclusion or by the addition of any exclusion that addresses minor increases in impervious area or the addition of a design standard that contemplates appropriate treatment for minimal areas (Previous comment #3). This section also references utilities under roadways or other paved areas that return the surface to the same condition. Please update the section such that any disturbance that returns the ground to its original condition, pervious or impervious, as acceptable. Control Regulation 72 utilizes the following language: land disturbance to undeveloped land that will remain undeveloped following disturbance. Please consider revising this section to read: Utilities: Activities for installation or maintenance of utilities or infrastructure that does not permanently alter the terrain, ground cover, or drainage patterns from those present prior to the project, including land disturbance to undeveloped land that will remain undeveloped following land disturbance. This exclusion includes, but is not limited to, projects to install, replace, or maintain utilities that return the surface to the same condition.

Xcel Energy: Activities for installation or maintenance of underground utilities or infrastructure that does not permanently alter the terrain, ground cover, or drainage patterns from those present prior to the project. This exclusion includes, but is not limited to, projects to install, replace, or maintain utilities under roadways or other paved areas that return the surface to the same condition. Xcel energy appreciates the State including this exclusion for underground utilities and infrastructure. However, Xcel Energy would benefit from a point of clarification for aboveground linear utilities. For example: transmission and distribution line towers/poles could possibly have a foundation that would “permanently alter the terrain, ground cover.” Adding a new cabinet or transformer above grade technically would too. It would be absurd to provide post-construction water quality for every new cabinet or tower foundation. Further relief for liner construction with minimal above-grade appurtenances seems warranted. Aboveground utilities would not include exclusions for substations or gas regulator stations subject to permanent water quality controls.

Xcel Energy also recommends changing the last sentence to read “This exclusion includes, but is not limited to, projects to install, replace, or maintain utilities under roadways or other paved or unpaved areas that return the surface to the same condition.

Weld County: Weld County concurs with CSC proposed concept of including above ground utilities that do not add additional impervious areas.

Response 11: Add an Exclusion for Above Ground Utilities

These comments have been incorporated into the permit.

Comment 12: Remove 20% Cap for Large Lot Development Exclusion



Colorado Stormwater Council: Please change the requirement to allow for when a lot demonstrates a higher percentage of impervious; remove the cap of 20 percent. If a study can prove the expected soil and vegetation conditions are suitable for infiltration/filtration of the WQCV for a typical site, there is no reason to not allow a larger percentage of impervious area.

Douglas County: Please change the requirement to allow for when a lot demonstrates a higher percentage of impervious; remove the cap of 20 percent. If a study can prove the expected soil and vegetation conditions are suitable for infiltration/filtration of the WQCV for a typical site, there is no reason to not allow a larger percentage of impervious area.

Southeast Metro Stormwater Authority: Large Lot Single Family Projects, includes a limitation for maximum lot imperviousness of 20 percent when utilizing a study specific to the watershed. Please consider updating this section to remove reference to a maximum lot imperviousness. This comment can be satisfied by deleting the maximum total lot impervious covered under this exclusion shall be 20 percent and rely on the specific study to determine the maximum.

Weld County: Propose removing the 20% threshold. If a site specific study shows 100% infiltration, then a threshold is arbitrary.

Response 12: Remove 20% Cap for Large Lot Development Exclusion

These comments have not been incorporated into the permit. The division is tasked with setting a clear MEP standard in the permit. The division has only evaluated one study on runoff from large lots development and determined that 20% imperviousness was appropriate. The division has not evaluated any study with more than 20% of impervious surface on the site. Permittees can submit a modification request with a study that evaluates large lot development with more than 20% impervious surface on the site. The division can then evaluate the study and determine if a permit modification is necessary.

Comment 13: Add an Additional Exclusion for Parking Areas

Colorado Stormwater Council: Please remove the qualifier that parking areas or access to parking areas are not considered roadways. The exclusion is for pavement management, not roadways only. Please add the following exclusion conditions to parking and access to parking areas. "Areas primarily used for parking or access to parking can be considered "roadways" so long as the following criteria is met:

- 1) The project is for maintenance purposes and
- 2) does not result in increased impervious area and
- 3) the infrastructure must not substantially change.

Parking lanes on roadways are common and excluding those, while including through lanes and turn lanes, does not make technical sense. Parking or access to parking areas are maintained, rehabilitated, and reconstructed with the common purpose of providing additional years of service life. So long as these projects do not add additional impervious surface area and infrastructure is not changed, these projects are, and should be similarly treated as, "roadways."





By not excluding these projects, a trigger of additional infrastructure to not only capture but convey stormwater flows can significantly increase the scope, cost, and footprint of a typical maintenance project. A higher level of engineering, review, and oversight would also be required sending a typical project with an overall construction length of 3-7 days into a significantly extended time line of months. In addition, parking area requirements are often dictated by local codes. If rehabilitating/repaving/maintaining a parking area requires adding post-construction water quality controls, in many cases this could lead to a reduction in parking spaces, the number of which were originally dictated and approved by the local codes and requirements

Colorado Stormwater Council—Non-Standard Committee: Excluded Projects-Pavement Management- Please remove the qualifier that parking areas or access to parking areas are not considered roadways. The exclusion is for pavement management, not roadways only. Please add the following exclusion conditions to parking and access to parking areas: Areas primarily used for parking or access to parking can be considered "roadways" so long as the following criteria is met:

- 1) The project is for maintenance purposes and
- 2) does not result in increased impervious area and
- 3) the infrastructure must not substantially change.

Since most, if not all non-standards, 1) do have large parking areas at schools, parks or public facilities of some sort requiring significant parking capacity, 2) pavement management of these parking areas is critical to user safety it is important to be able to maintain these areas, and 3) frequently these sites are constrained, it is important to be able to maintain these areas without the additional requirement of adding control measures.

Douglas County: Please remove the qualifier that parking areas or access to parking areas are not considered roadways. The exclusion is for pavement management, not roadways only. Please add the following exclusion conditions to parking and access to parking areas. "Areas primarily used for parking or access to parking can be considered "roadways" so long as the following criteria is met:

- 1) The project is for maintenance purposes and
 - 2) does not result in increased impervious area and
 - 3) the infrastructure must not substantially change. Parking or access to parking areas are maintained, rehabilitated, and reconstructed with the common purpose of providing additional years of service life. So long as these projects do not add additional impervious surface area and infrastructure is not changed, these projects are, and should be similarly treated as, "roadways."
- By not excluding these projects, a trigger of additional infrastructure to not only capture but convey stormwater flows can significantly increase the scope, cost, and footprint of a typical maintenance project. A higher level of engineering, review, and oversight would also be required sending a typical project with an overall construction length of 3-7 days into a significantly extended time line of months. In addition, parking area requirements are often dictated by local codes. If rehabilitating/repaving/maintaining a parking area requires adding post-construction water quality controls, in many cases this





could lead to a reduction in parking spaces, the number of which were originally dictated and approved by the local codes and requirements.

Xcel Energy: “Pavement Management Projects”

Projects, or portions of projects, for the rehabilitation, maintenance, and reconstruction of pavement. Areas primarily used for parking or access to parking are not roadways. "Roadway Management Projects" is a more appropriate heading. It is important to be clear in the difference between "pavement" and "roadways" and how this exclusion applies. For example, areas primarily used for parking are not "roadways," but are they "pavement management projects?" Are parking lot rehabilitation projects excluded or included? Parking area requirements are often dictated by local codes. If rehabilitating/repaving/ maintaining a parking area requires adding post-construction water quality controls, in many cases this could lead to a reduction in parking spaces, the number of which were originally dictated by local codes and requirements. It seems that this exclusion should apply to parking areas if there is not a net increase in impervious area.

The MS4 permit should be very clear on how parking areas are to be treated (or not). This would be best as a separate section of the permit to eliminate confusion between roadways and parking areas.

Southeast Metro Stormwater Authority: Part I.E.4.a.i.A Pavement Management Projects. We appreciate the inclusion of “Pavement Management Projects” as allowed excluded projects. However, the definition for “Roadways” excludes areas used for parking or access to parking. Please consider including all facets of a roadway project, regardless of the intended use. Parking lanes on roadways are common, and excluding those while including through lanes and turn lanes, does not make technical sense. Please delete Areas primarily used for parking or access to parking are not roadways.

Pavement Management Projects. “Pavement Management Projects” do not appear to take into account areas that are used primarily for parking. Pavement management of parking lots with land disturbances greater than an acre is common. The impact of these types of maintenance activities should be no different from “Roadway” maintenance activities. In our experience, it is not feasible to add a post construction control measure for the routine maintenance of a parking lot, and the challenges are often monumental (including if the grading even allows for a structural control measure, availability of a storm sewer to tie into, and meaningfulness of the control measure). The result would be routine maintenance that occurs in several smaller impracticable phases or pavement surfaces that were allowed to further degrade to avoid meeting this requirement. With the deletion of Areas primarily used for parking or access to parking are not roadways, this comment would be satisfied.

Response 13: Add an Additional Exclusion for Parking Areas

These comments have not been incorporated into the permit. Please note that this section of the permit does not apply to parking area maintenance projects. Also note the sentence in the permit related to parking areas not being





roadway. The division believes that additional data and potentially additional public notice/input would be needed to fully evaluate this requested change. Permittees may request a permit modification to add this exclusion. The modification request should include sufficient information for the division to fully evaluate the request, such as Douglas County's Residential Large Lot Study.

Comment 14: Remove the term "Redevelopment" from the Excluded Roadway Redevelopment Exclusion

Southeast Metro Stormwater Authority: Excluded Roadway Redevelopment. We appreciate the inclusion of Excluded Roadway projects. Please consider not referencing these specific projects as "Redevelopment". Since linear projects are so unique, there is potential for the definition of "Redevelopment" to confuse matters related to roadway projects.

Response 14: Remove the term "Redevelopment" from the Excluded Roadway Redevelopment Exclusion

This comment has not been incorporated into the permit. This exclusion is only for redevelopment projects and does not apply to new roadway projects.

Comment 15: Remove References to "Paved Width"

Southeast Metro Stormwater Authority: Excluded Roadway Redevelopment. Sections 1 and 2 reference the addition of paved width. Please consider removing paved width and replacing the term with impervious area or hard surface. This would allow the inclusion of curb and gutter, and other associated roadway improvements.

Response 15: Remove References to "Paved Width"

This comment has not been incorporated into the permit. The division has not evaluated all impervious area or hard surface associated with the roadway for this exclusion. The division believes that additional data and potentially additional public notice/input would be needed to fully evaluate this requested change. Permittees may request a permit modification to add this exclusion. The modification request should include sufficient information for the division to fully evaluate the request, such as Douglas County's Residential Large Lot Study.

Comment 16: How to Determine Paved Area

Xcel Energy: Excluded Roadway Redevelopment. The project does not add more than 8.25 feet of paved width at any location to the existing roadway. Would a 10-foot wide sidewalk, trail or bike path along an existing road be included or excluded? Many standard path widths are greater than 8.25 feet, especially if they are multi-use and/or serve a function for maintenance access.

Response 16: How to Determine Paved Area

This comment has not been incorporated into the permit. Permittees should contact the division for compliance assistance regarding determining the "paved area" of an individual roadway project.



**Comment 17: Add “On Average” to the Excluded Roadway Areas Exclusion**

Colorado Stormwater Council: Please change to the following proposed concept: Excluded Existing Roadway Areas: Redevelopment projects for existing roadways, and only the area of the existing roadway is excluded from the requirements of an applicable development project when the project does not increase the width by two times or more, on average, of the original roadway area. The entire project is not excluded from being considered an applicable development project for this exclusion. The area of the project that is part of the added new roadway area is still an applicable development project. Include “on average” since projects might more than double in a minimal portion of the project area, while far less than doubling for a majority of the project. For example, the addition of an auxiliary lane for a minimal portion of the project area would be greater than double the original width, while the balance of the project is far less than double. Adding “on average” allows the intent of the exclusion to be addressed.

Douglas County: Please change to the following proposed concept: Excluded Existing Roadway Areas: Redevelopment projects for existing roadways, and only the area of the existing roadway is excluded from the requirements of an applicable development project when the project does not increase the width by two times or more, on average, of the original roadway area. The entire project is not excluded from being considered an applicable development project for this exclusion. The area of the project that is part of the added new roadway area is still an applicable development project. Include “on average” since projects might more than double in a minimal portion of the project area, while far less than doubling for a majority of the project. For example, the addition of an auxiliary lane for a minimal portion of the project area would be greater than double the original width, while the balance of the project is far less than double. Adding “on average” allows the intent of the exclusion to be addressed.

Southeast Metro Stormwater Authority: Excluded Existing Roadway. In the Excluded Existing Roadway Areas section, please remove reference to at any location. Specifically, projects might more than double in a minimal portion of the project, while far less than doubling in a majority of the project. Please update the section to read that the area of the existing roadway is excluded from the requirements of an applicable development project when the project does not increase the width by two times or more, on average, of the original roadway area.

Response 17: Add “On Average” to the Excluded Roadway Areas Exclusion

These comments have been incorporated into the permit.

Comment 18: Define Drainage Patterns for Aboveground and Underground Utilities Exemption

City and County of Denver: Define drainage patterns prior to a project in reference to page 23 of the CDPS General Permit Section 4.a.D.

Response 18: Define Drainage Patterns for Aboveground and Underground Utilities Exemption



This comment has not been incorporated into the permit. Permittees have the flexibility to implement the Aboveground and Underground Utilities Exemption.

Comment 19: Add an Additional Exclusion to the Non-Residential and Non-Commercial Infiltration Conditions Exclusion

Colorado Stormwater Council: Please change the sentence that starts with "Specifically," to the following proposed concept: Specifically, the 80th percentile event must be infiltrated and not discharged as concentrated flow. Except, the permittee may exclude up to 20% of the applicable development project area when the permittee has determined that it is not practicable to route impervious areas to pervious areas thus infiltrating portions of the site. In addition, the permittee must also determine that the implementation of a separate control measure for that portion of the site is not practicable. It is not always possible to route all impervious areas to pervious areas for infiltration. For example, in the case of a park with one parking space or a curb return, it would be difficult to route the impervious of the parking spot to the pervious area of the park for infiltration. For this reason, we suggest allowing for a small area that may be directly connected to impervious area.

Douglas County: Please change the sentence that starts with "Specifically," to the following proposed concept: Specifically, the 80th percentile event must be infiltrated and not discharged as concentrated flow. Except, the permittee may exclude up to 10%, not to exceed 1 acre, of the applicable development project area when the permittee has determined that it is not practicable to route impervious areas to pervious areas thus infiltrating portions of the site. In addition, the permittee must also determine that the implementation of a separate control measure for that portion of the site is not practicable. It is not always possible to route all impervious areas to pervious areas for infiltration. For example, in the case of a park with one parking space or a curb return, it would be difficult to route the impervious of the parking spot to the pervious area of the park for infiltration. For this reason, we suggest allowing for a small area that may be directly connected to impervious area.

Xcel Energy: Non-Residential and Non-Commercial Infiltration Conditions: This exclusion applies to applicable development projects for which post-development surface conditions do not result in the occurrence of concentrated stormwater flow during the 80th percentile stormwater runoff event. In addition, post-development surface conditions must not be projected to result in a surface water discharge from the 80th percentile stormwater runoff events. Specifically, the 80th percentile event must be infiltrated before it flows being concentrated before being discharged from the applicable development project. This is a confusing heading title. It is not always possible to route all impervious areas to pervious areas for infiltration. Xcel Energy suggests allowing for a small area that may be directly connected to impervious area.

Response 19: Add an Additional Exclusion to the Non-Residential and Non-Commercial Infiltration Conditions Exclusion

These comments have not been incorporated into the permit. The division found the proposed language of "not practicable" to be unclear.





Comment 20: Include Examples of Bike Paths and Stream Restoration in the Fact Sheet

5-2-1 Drainage Authority: Exclusions for Non-Residential and Non-Commercial Infiltration Conditions- Please include bike paths and stream restoration as examples of the types of projects this portion of the permit is intended for.

Response 20: Include Examples of Bike Paths and Stream Restoration in the Fact Sheet

This comment has not been incorporated into the permit. Exclusions for trails and stream restoration have been added to the list of exclusions in response to comments.

Comment 21: Reword the Non-Residential and Non-Commercial Infiltration Conditions Exclusion

5-2-1 Drainage Authority: The language in this section is also confusing. 521 requests removing the third sentence and just requiring the flows cannot be concentrated during the 80th percentile storm event. Requiring infiltration is not practical for bike paths and stream restoration.

Response 21: Reword the Non-Residential and Non-Commercial Infiltration Conditions Exclusion

This comment has been incorporated into the permit.

Comment 22: Change the Title of the Non-Residential and Non-Commercial Infiltration Conditions Exclusion

Colorado Stormwater Council: Please change the title of this category to Infiltration Conditions. The term Non-Residential and Non-Commercial is confusing. Clarification that it does not apply to residential and commercial sites can be included within the discussion of where the exclusion applies.

Douglas County: Please change the title of this category to Infiltration Conditions. The term Non-Residential and Non-Commercial is confusing. Clarification that it does not apply to residential and commercial sites can be included within the discussion of where the exclusion applies.

Southeast Metro Stormwater Authority: Non-Residential and Non-Commercial Infiltration Conditions. Please revise the section to apply to development and redevelopment sites in general. Limiting this exclusion based on land use type does not make technical sense. If a project meets the infiltration conditions outlined in this section, the exclusion should apply. An example might be the addition of a gazebo at a golf course with concurrent over-lot grading activities greater than one acre. This comment can be addressed by changing the section title to Infiltration Conditions. We believe this section is a significant element in recognizing that there are examples of existing meaningful post construction treatment for small impervious areas, and appreciate its inclusion in the post construction requirements.

Response 22: Change the Title of the Non-Residential and Non-Commercial Infiltration Conditions Exclusion





This comment has not been incorporated into the permit. The division believes that the current title is specific and clear.

Comment 23: Revise the Requirements for the Non-Residential and Non-Commercial Infiltration Conditions Exclusion to be Consistent with the Requirements for Large Lot Single Family Projects

Southeast Metro Stormwater Authority: Non-Residential and Non-Commercial Infiltration Conditions. Please consider revising the documentation requirements to be consistent with Large Lot Single Family Projects. We recommend revising the section to read in part: For this study to apply, a study specific to the site, watershed and/or MS4 shows rainfall and soil conditions present within the permitted area and includes allowable slopes, surface conditions, and ratios of impervious area to pervious area, and the permittee accepts such study as applicable within its MS4 boundaries.

Response 23: Revise the Requirements for the Non-Residential and Non-Commercial Infiltration Conditions Exclusion to be Consistent with the Requirements for Large Lot Single Family Projects

This comment has been incorporated into the permit.

Comment 24: Remove the Exemption for Counties

City of Canon City: County Growth Areas: The City of Cañon City has concerns with the exemptions for counties listed above. Has the Division quantified how these would impact downstream MS4s? The Fact Sheet discusses in many areas how the previous permit created, or could create, economic disadvantages between permittees. These exclusions could create an economic advantage for a county over a small MS4, particularly if the MS4 is downstream of the excluded county development and will be responsible for capturing/treating the potential pollutant load. Additionally, these exclusions seem to be in conflict with the statements made in the Fact Sheet on page 19. Section 4. County Growth Area Requirements, paragraph 3 states: "In accordance with Section 61.3(2)(f)(v)(A)(III)(a) of Regulation 61, the division must evaluate areas outside of the urbanized areas. Many permittees expressed that they would prefer that the renewal permit not extend permit requirements beyond growth areas. In response, the division did not include reporting or requirements for activities beyond the designated growth areas." Part I.E.4.a.i.(G) states that the exclusion is allowed when the listed conditions occur within a county growth area. The Fact Sheet says the division did not include reporting or requirements for activities beyond the designated growth area. These exclusions also appear to conflict with the final statement in the Fact Sheet under 3. Permit Area (page 18): "The renewal permit also requires the implementation of permanent water quality controls for new development/redevelopment projects to prevent impacts associated with the future population at a time when installation of structural controls is most practicable.

Response 24: Remove the Exemption for Counties

This comment has not been incorporated into the permit. Note that this exemption only applies to county growth areas. Permittees should note the difference between permit area, urbanized area, and growth area. For





counties, the permit area includes the urbanized area and growth area. The permit does not apply to any areas outside of the permit area. The division has determined that including some requirements for the growth area of counties is appropriate.

Comment 25: Allow the Oil and Gas Exploration Exemption to Apply Statewide

Colorado Stormwater Council: Please move to indicate applicability to all non-urbanized areas, not just County Growth Areas. Oil and gas exploration exclusion should apply to all non-urbanized areas not just county growth areas.

Douglas County: Please move to indicate applicability to all areas, not just County Growth Areas. Oil and gas exploration exclusion should apply to all non-urbanized areas not just county growth areas.

Response 25: Allow the Oil and Gas Exploration Exemption to Apply Statewide

These comments have been incorporated into the permit.

Comment 26: Revise the Density Requirement for Residential Development under the County Growth Area Exclusion

Colorado Stormwater Council: Please change to the following proposed concept: Residential development project or larger common plans of development for which associated construction activities results in a land disturbance of 10 acres or less and a proposed density of less than 1000 people/square mile. It seems counterintuitive that the standard would require a density of at least "X" people/area unit rather than a density of not more than "X" people/area unit. As written, a 10 acre, 2-4 lot subdivision may not meet the density requirement and, therefore, could not be excluded, but a high density residential project could be excluded.

Douglas County: Please change to the following proposed concept: Residential development project or larger common plans of development for which associated construction activities results in a land disturbance of 10 acres or less and a proposed density of less than 1000 people/square mile. It seems counterintuitive that the standard would require a density of at least "X" people/area unit rather than a density of not more than "X" people/area unit. As written, a 10 acre, 2-4 lot subdivision may not meet the density requirement and, therefore, could not be excluded, but a high density residential project could be excluded.

Response 26: Revise the Density Requirement for Residential Development under the County Growth Area Exclusion

These comments have been partially incorporated into the permit. The word "more" has been changed to "less." The U.S. Census Bureau defines an urbanized area as density of people for a certain area. The U.S. Census Bureau defines an urban area as comprised of "a densely settled core of census tracts and/or census blocks that meet minimum population density requirements, along with adjacent territory containing non-residential urban land uses as well as territory with low population density included to link outlying densely





settled territory with the densely settled core. To qualify as an urban area, the territory identified according to criteria must encompass at least 2,500 people, at least 1,500 of which reside outside institutional group quarters.” The requirement in the permit will continue to reflect the number of people per square mile and not per area unit.

Comment 27: Cost-Benefit Analysis

Town of Castle Rock: Cost Benefit Analysis. The Town appreciates the Division’s willingness to acknowledge the need for considering a cost benefit analysis in the draft permit. However, upon review of the second draft permit and the fact sheet, it appears that cost was only a considered factor in two areas of the permit including sections I.E.4.a.i.A pavement management and I.F.6 monitoring. As stated in the fact sheet, the Division will consider cost when selecting the appropriate permit term or condition, and will choose the least costly alternative that meets the requirement for the MS4 permit. This does not appear to be the case throughout the permit. The Town respectfully requests that additional consideration be given to permit terms and conditions that have significant cost implications and provide clarifying language in the fact sheet where such consideration was given. In particular, the Town has concern with potential costs related to inspection frequencies, inspection scope and general record keeping that have not been demonstrated to have an equivalent water quality benefit.

Response 27: Cost-Benefit Analysis

This comment has been incorporated into the permit. The division considered the cost-benefit analysis submitted on the first draft of the renewal permit. Pavement management is an exclusion in the permit. In addition, the permit reflects monitoring option 3, which requires monitoring to be conducted on an as-needed basis, similar to the previous permit.

Comment 28: Division Authority in Non-Urban Areas

Weld County: The proposed County Growth Areas lie outside of the designated urban areas based on the 2010 Census. Imposition of MS4 requirements on these non-urban areas is beyond the authority of the Division and represents a significant manpower and financial burden on limited resources. All areas outside of the areas designated urban by the 2010 Census are non-urban and should have no MS4 requirements.

Response 28: Division Authority in Non-Urban Areas

This comment has not been incorporated into the permit. The fact sheet provides the rationale for the terms and conditions of the permit for county growth areas.

ii. Regulatory Mechanism

Comment 1: Provide Clarification on Mechanisms for Control Measure outside the Jurisdictional Control of the Permittee

City of Canon City: The City of Cañon City requests the Division clarify this requirement. The Division briefly discussed situations such as having IGAs or MOUs for regional control measures at the stakeholder workgroup meeting on





June 16th. Can the Division expand on this and provide examples of a project which would be in the permit area but are located outside of our jurisdictional control? Please include in the discussion a scenario in which a party will not agree to a IGA or MOU. Moving the discussion from the Fact Sheet on page 67 under Part I.E.4.iv.(D) to this section may be beneficial. From the Fact Sheet: “If the permittee has an applicable development project that will meet this design standard and the WQCV control measure is located outside of the permittee’s permit area, then the permittee has to ensure that the other permittee/entity will maintain the regional WQCV control measure . Having a formal agreement concerning the regional WQCV control measure is strongly recommended.”

Response 1: Provide Clarification on Mechanisms for Control Measure outside the Jurisdictional Control of the Permittee

This comment has been partially incorporated into the fact sheet. An example of this scenario has been added to the fact sheet. A scenario in which a party would not agree to an IGA or MOU was not added to the fact sheet. This scenario is unique and permittees are encouraged to contact the division to discuss these types of scenarios.

Comment 2: Add “If Applicable” to the Requirement Regarding Exclusions

Colorado Stormwater Council: Please change to the following proposed concept: Enforce the conditions of the exclusions above, if applicable. MS4s should be allowed to not use the exclusions if they wish.

Douglas County: Please change to the following proposed concept: Enforce the conditions of the exclusions above, if applicable. MS4s should be allowed to not use the exclusions if they wish.

Response 2: Add “If Applicable” to the Requirement Regarding Exclusions

These comments have been incorporated into the permit.

iii. Regulatory Mechanism Exemptions

No comments were received on this section of the permit.

iv. Control Measure Requirements

Comment 1: Delete any References to “Retain” or “Reuse”

City of Golden: Water Rights Concerns. The draft permit uses the phrase “retain, reuse, or provide for infiltration, evapotranspiration, or evaporation of water” in describing appropriate control measures. Section I.E.J.a.iv(A). Similar language is used in reference to runoff reduction standards, green infrastructure, and structural control measures. See, e.g., Sections I.E.4.a.i(C); I.E.4.a.i.(F)2(c), 1.1.20. This language raises significant water rights concerns given that water rights rarely exist for such stormwater control measures. First, the proposed language allows for the consumptive use of water in managing stormwater (i.e. evaporation and evapotranspiration). Such depletions of water must, however, be curtailed to the extent the water being depleted causes material injury to water rights. C.R.S. § 37-92-502(2)(a). The alternative is to replace the depletions to senior water users through a plan for



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augmentation. *Zigan Sand & Gravel v. Cache La Poudre Water Users Ass'n*, 758 P.2d 175, 185 (Colo. 1988). Second, the "reuse" of native water is generally disallowed under water rights. See, e.g. *Burlington Ditch Reservoir and Land Co. v. City of Thornton*, 256 P.3d 645, 663 (Colo. 2011) ("Water native to the stream system is limited to one use in that system and return flows belong to the stream system as part of the public's resources, subject to appropriation and administration"). Reuse of native water requires a separate water right from the original use. *Santa Fe Trail Ranches Property Owners Ass'n v. Simpson*, 990 P.2d 46, 54 (Colo. 1999). Third, even the concept of retaining water raises concerns if done without a water right allowing storage of the water. See, *Pueblo West Metropolitan District v. Southeastern Colorado Water Conservancy Dist.*, 689 P.2d 594, 603 (Colo. 1984) (Recognizing that capture and storage of flood water is a beneficial use of water subject to appropriation). Pursuant to Senate Bill 15-212, recently adopted by the General Assembly and signed into law by the Governor on May 29, 2015, a compromise was reached regarding stormwater detention and infiltration facilities in the water rights context. (A copy of Senate Bill 15-212 is attached). In short, a stormwater detention and infiltration facility is only entitled to a presumption of no injury to water rights if it releases or infiltrate at least 97% of all water from a rainfall event that is equal to or less than a 5-year storm within 72 hours, and releases or infiltrates at least 99% of all water from rainfall events larger than 5-year storms within 120 hours. Further, any use of the water by the entity that controls the facility is strictly prohibited under the Bill. Golden recommends that the permit modify or clarify the language cited above to be consistent with Senate Bill 15-212 for stormwater detention and infiltration facilities, except for instances where such facilities are being operated in priority pursuant to water rights and/or under augmentation plans.

Douglas County: Any references to water quality control volume (WQCV) within the permit should be in accordance with CRS: 37-92-602(8). The references related to infiltration/filtration could be problematic to water rights, since there is no defined time or rainfall frequency associated with meeting the WQCV requirements. Infiltration must be in accordance with the criteria stated in CRS 37-92-602(8) unless a water right is acquired through costly augmentation planning. Infiltration/filtration is allowed if within the criteria stated in 37-92-602(8) CRS. Please coordinate with the SEO to ensure the permit is written in compliance with SB15-212. One alternative is to remove this language as it describes particular design criteria. Specifying design standards that affects water rights could result in requiring a costly augmentation plan and obtaining a water right unless other design standards could be considered.

Response 1: Delete any References to "Retain" or "Reuse"

These comments have not been incorporated into the permit. The permit is flexible in allowing both detention and retention control measures to achieve compliance with the permit. A retention control measure could meet the requirements of this permit and not violate water rights. Permittees should contact the Division of Water Resources if additional assistance is needed.

Comment 2: Support of specific CSC comments



City of Greeley: The key concerns, which are detailed in CSC comments, for the City of Greeley are as follows: Post-Construction: Pollutant removal design standard should be consistent with the WQCV standard and should be based on rainfall amount for an 80th percentile storm.

Response 2: Support of specific CSC comments

Please see the division's response to CSC's comments on the rainfall amount of the 80th percentile storm.

Comment 3: Revise Constrained Development Sites Design Standard

Colorado Stormwater Council: Please add an additional trigger for constrained development sites to address sites where utilizing minimum setbacks with existing right-of-way, public utility, outfall connection or access configuration prevents the use of the design standards currently available in the permit. Constrained New Development applies to new development where some portion of the project is constrained by grades that, without significant change to native topography, cannot be treated by the proposed control measure(s) to meet the requirements of I.E.4.a.iv(A)-(E)

Douglas County: Please add an additional trigger for constrained development sites to address sites where utilizing minimum setbacks with existing right-of-way, public utility, outfall connection or access configuration prevents the use of the design standards currently available in the permit. Constrained New Development applies to new development where some portion of the project is constrained by grades that, without significant change to native topography, cannot be treated by the proposed control measure(s) to meet the requirements of I.E.4.a.iv(A)-(E)

City of Federal Heights: The topics considered "high-level" issues for the City include the following: Post Construction for New Development and Redevelopment- Automatic exclusions for projects with no water quality impacts, Constrained New Development Sites

Response 3: Revise Constrained Development Sites Design Standard

These comments have not been incorporated into the permit. It is unclear how a permittee would determine "some portion", "constrained", and "significant change to topography." The standard in the second draft of the renewal permit was inadvertently changed from "and" to "or" and the final version of the renewal permit reflects the intent of the first draft and reflects stakeholder's comments. The requirement has been changed to require both criterion to be met for a constrained site. Permittees should note the flexibility in the second criteria that allows the permittee to determine if it is practicable for the site to meet the design standards. There is significant flexibility contained in the permit for design standards and constrained sites. Permittees are encouraged to contact the division to discuss new or unanticipated scenarios as they arise.

Comment 4: Add a Requirement for a Design Standard for Special Projects, Design Standard for Source Reduction, and a Design Standard for Equivalent Area

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Keep it Clean Partnership: There are other projects that should be included in the Constrained Sites Standard, such as infill sites. **Issue:** There are other projects that should be included in the Constrained Sites Standard, such as infill sites. **Comment:** Please include alternatives for constrained new development or a process to get approval from CDPHE for special circumstances.

Colorado Stormwater Council: Please add the following proposed concept: **Source Reduction Standard:** Data to support this design standard is in the process of being gathered. This design standard would apply only to applicable development project that are a municipal project until permittees are able to determine how to track and ensure the source reduction method is implemented. Additional discussion with the Division is requested to allow for a permit modification this design standard is not included at permit issuance.

Douglas County: Please add the following proposed concept: **Source Reduction Standard:** the applicable development project must be a municipal project. Place holder for new design standard.

Home Builders Association of Metro Denver: We believe that a source reduction standard should be added. For instance, street sweeping or other source reduction methods would be acceptable and would be a great Pollution Reduction Standard to add to the permit. The source reduction standard may have to be specified by the MS4 of what would be acceptable or CDPHE could propose other actions that would be acceptable (other than street sweeping).

Housing and Building Association of Colorado Springs: We believe that a source reduction standard should be added. For instance, street sweeping or other source reduction methods would be acceptable would be a great Pollution Reduction Standard to add to the permit. It may have to be specified by the MS4 what would be acceptable or CDPHE could propose other actions that would be acceptable (other than street sweeping).

City of Glendale: The topics considered “high-level” issues for the City include the following: Post Construction for New Development and Redevelopment-Automatic exclusions for projects with no water quality impacts, Source reduction design standard, Equivalent area design standard;

Colorado Stormwater Council: Please allow treatment of equivalent area for development projects. The Douglas County Equivalent Area Study (Memo RE: Permanent Water Quality: 100% Water Quality Capture and Treatment Scenario) shows treating an equivalent area can cost significantly less while providing the same water quality benefit. This is not the same as water quality trading. Additional discussion with the Division is requested to allow for a permit modification if this concept is not included at permit issuance.

Douglas County: Please allow treatment of equivalent area for development projects. The Douglas County Equivalent Area Study (Memo RE: Permanent Water Quality: 100% Water Quality Capture and Treatment Scenario) shows





treating an equivalent area can cost significantly less while providing the same water quality benefit. This is not the same as water quality trading.

City of Arvada: Under Post-Construction Stormwater Management, please allow treatment of equivalent area for development projects.

Southeast Metro Stormwater Authority: Please add the following Design Standard: Source Reduction Standard. This Source Reduction Design Standard would be used to capture street sweeping as an allowed control measure in areas considered to be a Constrained Development or Redevelopment Site. SEMSWA has completed a research analysis to determine that street sweeping is reasonably equivalent to the other pollutant removal design standards in the permit. SEMSWA's goal is to utilize a Source Reduction Standard for additional projects in the future (other than constrained public transportation projects), and hopes this Standard will help set the stage for future permit terms or future permit modifications, if an enhanced street sweeping control measure is determined to be feasible for other applications.

The recommended language for this section reads: Source Reduction Standard: The control measure(s) is designed to remove pollutants utilizing enhanced street sweeping. The control measure shall be designed such that the pollutant removal is found to be relatively equivalent to a Control Measure(s) in Section 4.a.iv.F (1-3)), and at a minimum must meet the following:

The Source Reduction Standard may only be utilized on permittee projects (public projects), specifically roadway and parking lot projects, where the permittee is responsible for the Enhanced Street Sweeping schedule, operations, maintenance and monitoring. Only regenerative air or high efficiency vacuum sweeping can be utilized to meet this Control Measure, and catch basin cleaning must occur in areas where the Enhanced Street Sweeping is utilized. The permittee must develop guidelines for parking considerations, weather conditions, maintenance, speed of equipment operation, monitoring methods for pollutant load reduction measurements, and storage and disposal of street wastes.

1) Enhanced Street Sweeping shall occur at least 20 times per year for the entire project area, with targeted enhanced street sweeping for the reduction of pollutants such as deicing operations material, landscape material, and other common roadway pollutants; or enhanced street sweeping shall occur bi-weekly without a targeted sweeping schedule. The associated inlets for the project area must also be cleaned annually, or as needed based on inspection, at the location where the targeted street sweeping occurs. The intended equivalent pollutant removal for this schedule is comparable to a reduction to the expected median effluent concentration for total suspended solids (TSS) of at least 30 mg/L, or

2) A study specific to the watershed and/or MS4 shows that expected pollutant reduction associated with the Enhanced Street Sweeping schedule and methodology is relatively comparable to a Section 4.a.iv.F (1-3)Control





Measure, and is specific to the project site, where the permittee accepts such study as applicable within its MS4 boundaries.

Response 4: Add a Requirement for a Design Standard for Special Projects, Design Standard for Source Reduction, and a Design Standard for Equivalent Area

These comments have not been incorporated into the permit. Permittees can contact division staff for questions about existing design standards. In addition, permittees can submit a permit modification to revise or add new design standards and the process will include a public notice process.

Comment 5: Remove “Before Applying Exclusions”

Colorado Stormwater Council: Please remove "before applying exclusions." Please clarify what is meant by alternative standards. Stating that design standards should be applied before exclusions, implies that the determination of exclusions follows design. This is not an efficient, or standard way to approach design. Applicability of exclusions should be the first determination, then base design standards are applied. The term “alternative standards” is used, but there is no subsequent information in the section that refers to alternative standards.

Douglas County: Please remove "before applying exclusions." Please clarify what is meant by alternative standards. Stating that design standards should be applied before exclusions, implies that the determination of exclusions follows design. This is not an efficient, or standard way to approach design. Applicability of exclusions should be the first determination, then base design standards are applied. The term “alternative standards” is used, but there is no subsequent information in the section that refers to alternative standards.

Response 5: Remove “Before Applying Exclusions”

These comments have been incorporated into the permit.

Comment 6: Remove the Pollutant Removal Standard

Weld County: This standard is too restrictive given the rural nature of Weld County and the presence of significant amounts of tilled farmland within and adjacent to the U.S. Census-designated MS4 urban areas. Please change the standard to postdevelopment TSS loadings not exceeding the pre-development loadings. Determination of the actual amount of TSS loadings implies a sampling and analysis program to establish values. Weld County also requests that the Division identify and appropriate the funding to pay for this sampling program as intended by Executive Order D 2011-005 prohibiting state agencies from imposing unfunded mandates on local governments.

Response 6: Remove the Pollutant Removal Standard

This comment has not been incorporated into the permit. Permittees have the flexibility to be more stringent than the permit and prohibit certain design standards that would not be applicable to their community.

Comment 7: Replace “Additional” Control Measure(s) Design Standard with “Alternate” Control Measure(s) Design Standard:





Xcel Energy: The permittee's requirements and oversight for applicable development projects must be implemented to address the selection, installation, implementation, and maintenance of control measures in accordance with requirements in Part I.B. The "base design standard" is the minimum design standard for new and redevelopment before applying exclusions or alternative standards. The control measures for applicable development projects shall meet one of the following base design standards listed below. Applicability of exclusions should be the first determination, and then base design standards are applied.

The term "alternative standards" is used, but there is no subsequent information in the section that refers to alternative standards.

Response 7: Replace "Additional" Control Measure(s) Design Standard with "Alternate" Control Measure(s) Design Standard:

These comments have been incorporated into the permit.

Comment 8: Replace the 10% exclusion with 20% and Remove "Not to Exceed One Acre" from the WQCV Standard

Colorado Stormwater Council: Please change to the following proposed concept: 100% of the effective impervious area within the applicable development project is captured, except the permittee may exclude up to 20 percent of the applicable development project area when the permittee has determined that it is not practicable to capture runoff from portions of the site that will not drain towards control measures. Only the developed effective impervious areas need to be treated and captured. Areas that do not contribute runoff or are undeveloped at the completion of the project should not be required to be included in the capture area. For example, a large park within a larger common plan of development should not be included in the required project area to be captured for WQCV treatment. That area may be treated through an alternative design standard such as the Runoff Reduction Standard. After a review of projects by permittees, an allowance of 20% is more practical. Adding the clarifier "not to exceed one acre" does not adequately address the areas that may be excluded on larger projects. A project that disturbs 30 acres may be unable to capture 2 acres (6% of the project) due to many factors such as grades of backyards, access points, etc, for example.

Home Builders Association of Metro Denver: Under 1) it is stated "100% of the applicable development project is captured...exclude up to 10%, not to exceed 1 acre...." The 90% capture is too high in many instances and not practical. Could result in additional grading and land disturbance activities just to get an area to drain. For example, open space could be disturbed to get it to drain and captured. There may be other areas on a site where it is not feasible or appropriate to capture 90%. We suggest language that provides flexibility.

Xcel Energy: WQCV Standard

1) 100% of the applicable development project is captured, except the permittee may exclude up to 10 percent, not to exceed 1 acre, of the





applicable development project area when the permittee has determined that it is not practicable to capture. Consider revising language to say that the WQCV should be sized for 100% of the developed impervious area and must capture runoff from at least 80% of the site. This way, you are not losing WQCV volume by excluding portions of the site, but it is more realistic than capturing 90% and providing the WQCV for that volume. It is important to note that there are some sites where capturing 90% is not realistic.

Xcel Energy understands the concerns with leaving some areas untreated and the shortfalls of “over-detaining” some portions of the site. For many sites capturing 90% may be feasible and it is a good policy, but for sites that are challenging there should be a provision that would allow for lesser capture if it can be shown that the grading and the site work to capture 90% would be infeasible or lead to greater impacts, greater disturbance, or bad drainage. This determination of feasibility should rest with local governments. The division states “100% of applicable development project is captured...” Does this include all areas of the development (parks, open space, pervious areas, etc.) or just impervious areas? Again please consider modifying the applicability to be based on what the overall complete impervious area is as opposed to the construction disturbance which would include areas that are pervious.

Southeast Metro Stormwater Authority: Part I.4.a.iv.A.1 and I.4.a.iv.B.1, WQCV Standard, allow for an exclusion of up to 10% of the treatment area of a development site when the permittee has determined that it is not practicable to capture runoff from portions of the site that will not drain towards control measures. There may be additional technical constraints or hardships or rational for excluding an area for treatment, to include utility conflicts, grading constraints, easement encroachments, access constraints, or offsite grading constraints. This is especially true for redevelopment and development that occurs adjacent to existing development. Further, capping the exclusion to one acre may be too limiting for large development projects. For developments that are several hundred acres, capturing all of the impervious area with the exclusion of one acre is not practicable. Please also note that only the impervious area associated with the development site should be captured. We recommend revising the section to read: 100% of the imperviousness associated with the development project is captured, except the permittee may exclude up to 20 percent, of the applicable development project area when the permittee has determined that it is not practicable to capture runoff due to technical constraint or hardship, to include utility conflicts and grading constraints.

Response 8: Replace the 10% exclusion with 20% and Remove “Not to Exceed One Acre” from the WQCV Standard

These comments have been partially incorporated into the permit. The 10% exclusion has been revised to a 20% exclusion. The division, however, has determined that it is appropriate to limit the acreage that can be excluded from this design standard.

Comment 9: Change the WQCV Standard to Exclude Undeveloped Areas of the Project





Douglas County: Please change to the following proposed concept: 100% of the effective impervious area within the applicable development project is captured, except the permittee may exclude up to 10 percent, not to exceed 1 acre, of the applicable development project area when the permittee has determined that it is not practicable to capture runoff from portions of the site that will not drain towards control measures. Only the developed effective impervious areas need to be treated and captured. Areas that do not contribute runoff or are undeveloped at the completion of the project should not be required to be included in the capture area. For example, a large park within a larger common plan of development should not be included in the required project area to be captured for WQCV treatment. That area may be treated through an alternative design standard such as the Runoff Reduction Standard.

Response 9: Change the WQCV Standard to Exclude Undeveloped Areas of the Project

This comment has not been incorporated into the permit. The WQCV standard allows for 20% of the project to be excluded from the design standard. The division has not evaluated all types of development or redevelopment projects that only add a minimal amount of impervious area. The division believes that there is significant flexibility in the permit including the fact that project types would only be considered applicable development projects if they result in land disturbance of greater than or equal to one acre, there are numerous types of excluded projects, and numerous design standards.

Comment 10: Remove the Drain Time from the Runoff Reduction Standard

Colorado Stormwater Council: Please change to the following proposed concept: Evaluation of the minimum drain time shall be based on the pollutant removal mechanism of the control measure implemented. The drain time is based on the control measure (i.e. pollutant removal mechanism). This is specific to the Control Measure included in design standards and is not necessary to be called out specifically in permit language.

Douglas County: Please change to the following proposed concept: Evaluation of the minimum drain time shall be based on the pollutant removal mechanism of the control measure implemented. The drain time is based on the control measure (i.e. pollutant removal mechanism). This is specific to the Control Measure included in design standards and is not necessary to be called out specifically in permit language.

Southeast Metro Stormwater Authority: Part I.4.a.iv.A.2, Part I.4.a.iv.F.2.a, and Part I.4.a.iv.E.6 specifies a minimum drain time of 12 hours, but also states the evaluation of the minimum drain time shall be based on the pollutant removal mechanism and functionality of the control measure implemented. Consideration of drain time shall include maintaining vegetation necessary for operation of the control measure. Given the requirement that drain time be evaluated based on pollutant removal and functionality of the control measure, the minimum drain time of 12 hours is unnecessary. Please delete: the design drain time of the WQCV shall be a minimum of 12 hours, but





shall be extended as needed to meet the control measure requirements of this permit.

Response 10: Remove the Drain Time from the Runoff Reduction Standard

These comments have been incorporated into the permit.

Comment 11: Replace the “2-Year Storm” with the “80th Percentile Storm Event” in the Pollutant Removal Standard

Colorado Stormwater Council: Please update the treatment design to be based on rainfall amount. Rainfall amount can be easily determined, whereas runoff is difficult to measure and is not always the same for a given amount of rainfall. There is an inconsistency between this requirement and the WQCV standard. The WQCV is based on an 80th percentile storm event, not a 2-year, 1-hour event. The WQCV around the Metropolitan area is approximately 0.60 inches. The 2-year, 1-hour storm in Denver is about 0.85 inches. It would be better to specify the rainfall depth for an 80th percentile storm, consistent with UDFCD criteria, than the 2-year, 1-hour which would exceed the WQCV.

Douglas County: Please update the treatment design to be based on rainfall amount. Rainfall amount can be easily determined, whereas runoff is difficult to measure and is not always the same for a given amount of rainfall. There is an inconsistency between this requirement and the WQCV standard. The WQCV is based on an 80th percentile storm event, not a 2-year, 1-hour event. The WQCV around the Metropolitan area is approximately 0.60 inches. The 2-year, 1-hour storm in Denver is about 0.85 inches. It would be better to specify the rainfall depth for an 80th percentile storm, consistent with UDFCD criteria, than the 2-year, 1-hour which would exceed the WQCV.

5-2-1 Drainage Authority: Also 521 is concerned with the blanket standard on TSS of 30 mg/L in stormwater effluent. The 521 request that pollutant removal technologies be required to remove the expected annual 80% TSS.

Xcel Energy: Pollutant Removal Standard; The control measure(s) is designed to treat at a minimum the 2-year, 1-hour peak runoff flow. The control measure(s) shall be designed to treat to an expected median effluent concentration for total suspended solids (TSS) of 30 mg/L. This is really a good type of standard to have in the permit, but it should be based on rainfall and not runoff. Rainfall is easy to measure compared to runoff, which is not always the same for a given amount of rainfall. There is an inconsistency between this section and the WQCV standard. The WQCV is based on an 80th percentile storm event, not a 2-year, 1-hour event. The WQCV around the Metropolitan area is approximately 0.60 inches. The 2-year, 1-hour storm in Denver is about 0.85 inches. It would be better to specify the rainfall depth for an 80th percentile storm, consistent with UDFCD criteria, than the 2-year, 1-hour which would exceed the WQCV. Consider revising the language that it should be specified that the control measure should be expected to reduce TSS. For example: “The control measure shall be designed to treat stormwater runoff in a manner expected to reduce the event mean concentration (EMC) of total suspended solids (TSS) to a median value of 30 mg/L or less.”





Southeast Metro Stormwater Authority: Pollutant Removal Standard. For consistency with other Design Standards, please update the 2-year, 1 hour peak runoff flow to the 80th percentile runoff event.

Home Builders Association of Metro Denver: In the first sentence, the permit states....to treat at a minimum the 2-year, 1 hour peak flow event”. This is different than what was discussed earlier as the 80th percentile event. Should base the design on a rainfall event or the 80th percentile.

Response 11: Replace the “2-Year Storm” with the “80th Percentile Storm Event” in the Pollutant Removal Standard

These comments have been incorporated into the permit.

Comment 12: Explain Why the Permit has a Sediment Removal Design Standard

City of Canon City: Pollutant Removal Standard: The control measure(s) is designed to treat at a minimum the 2-year, 1-hour peak runoff flow. The control measure(s) shall be designed to treat to an expected median effluent concentration for total suspended solids (TSS) of 30 mg/L. The City of Cañon City supports the CSC recommended language for this requirement. We also request the Division clarify in the Fact Sheet why only TSS is addressed in permit requirements as TSS is only a portion of the pollution spectrum.

Response 12: Explain Why the Permit has a Sediment Removal Design Standard

This comment has been incorporated into the fact sheet.

Comment 13: Add Event Mean Concentration to the Sediment Removal Design Standard

Colorado Stormwater Council: Please change to the following proposed concept: The control measure(s) shall be designed to treat to an expected median effluent concentration for total suspended solids (TSS) of 30 mg/L.” with “The control measure shall be designed to treat stormwater runoff in a manner expected to reduce the event mean concentration (EMC) of total suspended solids (TSS) to a median value of 30 mg/L or less. It should be specified that the control measure should be expected to reduce TSS. Also, a lower EMC should be acceptable.

Douglas County: Please change to the following proposed concept: The control measure shall be designed to treat stormwater runoff in a manner expected to reduce the event mean concentration (EMC) of total suspended solids (TSS) to a median value of 30 mg/L or less.” It should be specified that the control measure should be expected to reduce TSS. Also, a lower EMC should be acceptable.

Response 13: Add Event Mean Concentration to the Sediment Removal Design Standard

These comments have been incorporated into the permit.





Comment 14: State that Actual Sampling is not Required for the Sediment Removal Design Standard

Home Builders Association of Metro Denver: Sentence 2 states, “The control measures shall be designed to treat to an expected median effluent concentration of Total Suspended Solids (TSS) 30 mg/L.” We would like to point out that this is not specified with many of the control measures (BMPs) that are utilized at a site and would be impossible to collaborate. Perhaps adding that the “MS4 can establish approved BMPs or based on the design by a Professional Engineer or other qualified personnel”. This suggestion is to avoid the possibility that actual runoff sampling to verify the 30 mg/L standard is being met would be required to demonstrate compliance; and this possibility would not be viewed positively by the builders. A statement that actual sampling is not required to meet this standard would also be applicable.

Response 14: State that Actual Sampling is not Required for the Sediment Removal Design Standard

This comment has not been incorporated into the permit. Permittees have the flexibility to require construction operators to sample stormwater from the control measures or rely on the manufacture’s specifications.

Comment 15: Replace the 10% exclusion with 20% and Remove “Not to Exceed One Acre” from the Pollutant Removal Standard

Southeast Metro Stormwater Authority: There may be additional technical constraints or hardships or rational for excluding an area for treatment, to include utility conflicts, grading constraints, easement encroachments, access constraints, or offsite grading constraints. This is especially true for redevelopment and development that occurs adjacent to existing development. Further, capping the exclusion to one acre may be too limiting for large development projects. For developments that are several hundred acres, capturing all of the impervious area with the exclusion of one acre is not practicable. Please also note that only the impervious area associated with the development site should be captured. We recommend revising the section to read: 100% of the imperviousness associated with the development project is captured, except the permittee may exclude up to 20 percent, of the applicable development project area when the permittee has determined that it is not practicable to capture runoff due to technical constraint or hardship, to include utility conflicts and grading constraints.

Response 15: Replace the 10% exclusion with 20% and Remove “Not to Exceed One Acre” from the Pollutant Removal Standard

This comment has been partially incorporated into the permit. The 10% exclusion has been revised to a 20% exclusion. The division, however, has determined that it is appropriate to limit the acreage that can be excluded from this design standard.

Comment 16: Water Rights and the Runoff Reduction Standard

5-2-1 Drainage Authority: Runoff Reduction Standard -The runoff reduction standard could infringe upon water law. Please include language in the permit that identifies water rights may be required and the permittee may need to obtain the appropriate water rights.





Douglas County: The statements "...evaporate, or evapotranspire a quantity of water equal to 60% of what the calculated WQCV would be if all impervious area for the applicable development project discharged without infiltration. This base design standard can be met through practices such as green infrastructure. "Green infrastructure" generally refers to control measures that use or mimic natural processes to infiltrate, evapotranspire, or reuse stormwater on the site where it is generated. Green infrastructure can be used in place of or in addition to low impact development principles." may conflict with SB15-212 requirements. Please coordinate with the SEO to ensure the permit is written in compliance with SB15-212. Douglas County supports the use of low impact development techniques; however, some of the practices may not comply with the SEO requirements. One alternative is to remove this language as it describes particular design criteria.

Response 16: Water Rights and the Runoff Reduction Standard

These comments have not been incorporated into the fact sheet. The permit is flexible in allowing both detention and retention control measures to achieve compliance with the permit. A retention control measure could meet the requirements of this permit and not violate water rights. Permittees should contact the Division of Water Resources if additional assistance is needed.

Comment 17: Revise the Definition of Green Infrastructure

Colorado Stormwater Council: Please acknowledge in the Fact Sheet, and update corresponding language in the permit that recognizes that "Green Infrastructure" does not always correspond to infiltration of a percentage of capture volume. Green infrastructure defined by EPA includes practices such as minimizing directly connected impervious areas, urban tree canopy, and land planning practices.

Douglas County: Please acknowledge in the Fact Sheet, and update corresponding language in the permit that recognizes that "Green Infrastructure" does not always correspond to infiltration of a percentage of capture volume. Green infrastructure defined by EPA includes practices such as minimizing directly connected impervious areas, urban tree canopy, and land planning practices.

Response 17: Revise the Definition of Green Infrastructure

These comments have been incorporated into the permit and fact sheet.

Comment 18: Provide the Basis for the Runoff Reduction Standard

Xcel Energy: Runoff Reduction Standard: The control measure(s) is designed to infiltrate into the ground where site geology permits, evaporate, or evapotranspire a quantity of water equal to 60% of what the calculated WQCV would be if all impervious area for the applicable development project discharged without infiltration. Please provide the basis/reasoning for using 60% of the calculated WQCV in the fact sheet or permit rationale.

Response 18: Provide the Basis for the Runoff Reduction Standard



This comment has not been incorporated into the fact sheet. The division has determined that the percentage of infiltration, evaporation or evapotranspiration required in the runoff reduction standard is appropriate. Please see the explanation of the MEP standard in the fact sheet.

Comment 19: Define the Regional WQCV Control Measure and Regional WQCV Facility in the Permit

Xcel Energy: Applicable Development Project Draining to a Regional WQCV Control Measure: Applicable Development Project Draining to a Regional WQCV Facility "Regional WQCV Control Measure" and "Regional WQCV Facility" should be defined and explained in the permit and not just fact sheet.

Response 19: Define the Regional WQCV Control Measure and Regional WQCV Facility in the Permit

This comment has not been incorporated into the permit. Both terms have been defined in the fact sheet.

Comment 20: Remove Duplicate Requirements in the Regional WQCV Facility Design Standard

Colorado Stormwater Council: Please remove: "1) The regional WQCV facility must be installed." Number 1 is duplicative of number 2.

Douglas County: Please remove: "1) The regional WQCV facility must be installed." Number 1 is duplicative of number 2.

Xcel Energy: 1) The regional WQCV facility must be installed. 2) The regional WQCV Facility must be installed, implemented, and maintained following good engineering, hydrologic and pollution control practices. Delete #1.

Response 20: Remove Duplicate Requirements in the Regional WQCV Facility Design Standard

These comments have been incorporated into the permit.

Comment 21: Add a Requirement to the Regional WQCV Facility Design Standard

Douglas County: Also, based on discussions SEMSWA staff have had with Division and EPA staff, we agree with the following comment: We appreciate the inclusion of Section 4.a.iv.E to address the importance of a regional system. We recommend adding the following language: Regional Facilities should be designed and implemented with flood control or water quality as the primary use. Recreational Ponds and Reservoirs may not be considered Regional Facilities.

Response 21: Add a Requirement to the Regional WQCV Facility Design Standard

These comments have been incorporated into the permit.

Comment 22: Remove Examples from the Regional WQCV Facility Design Standard





Southeast Metro Stormwater Authority: Part I.4.a.iv.E. Applicable Development Project Draining to a Regional WQCV Facility. This section includes reference to allowable control measures; specifically, the control measure must be an engineered grass buffer, swale, porous pavement, or porous landscape detention control measure designed in accordance with a design manual identified by the permittee. None of the other Control Measure Requirements include example control measures, and they should not be included in this section. Please delete reference to specific control measures for consistency.

Response 22: Remove Examples from the Regional WQCV Facility Design Standard

This comment has been incorporated into the permit.

Comment 23: Remove the Term “Fully” from the Regional WQCV Facility Design Standard

Southeast Metro Stormwater Authority: Part I.4.a.iv.E, Applicable Development Project Draining to a Regional WQCV Facility. Please note that a channel is typically stabilized to a calculated master plan grade, and is considered to be “stable”, so the term fully stabilized is not typically associated with a stream channel design. Please remove the word “fully” and replace with stabilized to a calculated master planned grade.

Response 23: Remove the Term “Fully” from the Regional WQCV Facility Design Standard

This comment has been incorporated into the permit.

Comment 24: Replace “Installed” with “Functional” in the Regional WQCV Facility Design Standard

Southeast Metro Stormwater Authority: Applicable Development Project Draining to a Regional WQCV Facility. Please change installed in Part I.4.a.iv.E.1 to functional. This modification will allow for the deletion of Part I.4.a.iv.E.2, as functionality assumes that the control measure is implemented and maintained. The recommended revision would revise parts 1) and 2) to read 1) The regional WQCV facility must be functional.

Response 24: Replace “Installed” with “Functional” in the Regional WQCV Facility Design Standard

This comment has been incorporated into the permit.

Comment 25: Remove the Drain Time Requirements from the Regional WQCV Facility Design Standard

Southeast Metro Stormwater Authority: Part I.4.a.iv.A.2, Part I.4.a.iv.F.2.a, and Part I.4.a.iv.E.6 specifies a minimum drain time of 12 hours, but also states the evaluation of the minimum drain time shall be based on the pollutant removal mechanism and functionality of the control measure implemented. Consideration of drain time shall include maintaining vegetation necessary for operation of the control measure. Given the requirement that drain time be evaluated based on pollutant removal and functionality of the control measure, the minimum drain time of 12 hours is unnecessary. Please delete: the design drain time of the WQCV shall be a minimum of 12 hours, but





shall be extended as needed to meet the control measure requirements of this permit.

Response 25: Remove the Drain Time Requirements from the Regional WQCV Facility Design Standard

This comment has been incorporated into the permit.

Comment 26: Update the Citation in the Regional WQCV Facility Design Standard

Colorado Stormwater Council: Please update the citation. Part I.E.4.a.v.ii does not exist.

Douglas County: Please update the citation. Part I.E.4.a.v.ii does not exist.

Xcel Energy: The regional WQCV facility must be subject to the permittee's authority consistent with requirements and actions for a Control Measure in accordance with Part I.E.4.a.v.ii. Part I.E.4.a.v.ii does not exist.

Response 26: Update the Citation in the Regional WQCV Facility Design Standard

These comments have been incorporated into the permit.

Comment 27: Remove the Drain Time Requirements from the Constrained Redevelopment Sites Design Standard

Colorado Stormwater Council: Please change to the following proposed concept: Evaluation of the minimum drain time shall be based on the pollutant removal mechanism of the control measure implemented. The drain time is based on the control measure (i.e. pollutant removal mechanism). This is specific to the control measure included in design standards and is not necessary to be called out specifically in permit language.

Douglas County: Please change to the following proposed concept: Evaluation of the minimum drain time shall be based on the pollutant removal mechanism of the control measure implemented. The drain time is based on the control measure (i.e. pollutant removal mechanism). This is specific to the control measure included in design standards and is not necessary to be called out specifically in permit language.

Southeast Metro Stormwater Authority: Part I.4.a.iv.A.2, Part I.4.a.iv.F.2.a, and Part I.4.a.iv.E.6 specifies a minimum drain time of 12 hours, but also states the evaluation of the minimum drain time shall be based on the pollutant removal mechanism and functionality of the control measure implemented. Consideration of drain time shall include maintaining vegetation necessary for operation of the control measure. Given the requirement that drain time be evaluated based on pollutant removal and functionality of the control measure, the minimum drain time of 12 hours is unnecessary. Please delete: the design drain time of the WQCV shall be a minimum of 12 hours, but shall be extended as needed to meet the control measure requirements of this permit.





Xcel Energy: Drain time of the WQCV shall be a minimum of 12 hours but shall be extended as need to meet the minimum control measure requirements in Part I.B. Evaluation of the minimum drain time shall be based on the pollutant removal mechanism and functionality of the control measure implemented, The drain time is based on the control measure (i.e. pollutant removal mechanism). This is specific to the control measure included in design standards and is not necessary to be called out specifically in permit language.

Response 27: Remove the Drain Time Requirements from the Constrained Redevelopment Sites Design Standard

These comments have been incorporated into the permit.

Comment 28: Replace the “2-Year Storm” with the “80th Percentile Storm Event” in the Constrained Redevelopment Sites Design Standard

Colorado Stormwater Council: Please update the treatment design to be based on rainfall amount. Rainfall amount can be easily determined, whereas runoff is difficult to measure and is not always the same for a given amount of rainfall. There is an inconsistency between this requirement and the WQCV standard. The WQCV is based on an 80th percentile storm event, not a 2-year, 1-hour event. The WQCV around the Metropolitan area is approximately 0.60 inches. The 2-year, 1-hour storm in Denver is about 0.85 inches. It would be better to specify the rainfall depth for an 80th percentile storm, consistent with UDFCD criteria, than the 2-year, 1-hour which would exceed the WQCV.

Douglas County: Please update the treatment design to be based on rainfall amount. Rainfall amount can be easily determined, whereas runoff is difficult to measure and is not always the same for a given amount of rainfall. There is an inconsistency between this requirement and the WQCV standard. The WQCV is based on an 80th percentile storm event, not a 2-year, 1-hour event. The WQCV around the Metropolitan area is approximately 0.60 inches. The 2-year, 1-hour storm in Denver is about 0.85 inches. It would be better to specify the rainfall depth for an 80th percentile storm, consistent with UDFCD criteria, than the 2-year, 1-hour which would exceed the WQCV.

Xcel Energy: Constrained Redevelopment Sites Standard: The control measure(s) is designed to provide for treatment of the 2-year, 1-hour peak runoff flow. The control measure(s) shall be designed to treat to an expected median effluent concentration for total suspended solids (TSS) of 30 mg/L. Again it should be based on rainfall and not runoff. Rainfall is easy to measure compared to runoff, which is not always the same for a given amount of rainfall. There is an inconsistency between this section and the WQCV standard. The WQCV is based on an 80th percentile storm event, not a 2-year, 1-hour event. The WQCV around the Metropolitan area is approximately 0.60 inches. The 2-year, 1-hour storm in Denver is about 0.85 inches. It would be better to specify the rainfall depth for an 80th percentile storm, consistent with UDFCD criteria, than the 2-year, 1-hour which would exceed the WQCV. Consider revising the language that it should be specified that the control measure should be expected to reduce TSS.



**PUBLIC NOTICE COMMENTS**

Southeast Metro Stormwater Authority: Part I.4.a.iv.B and Part I.4.a.iv.F.2.b, Pollutant Removal Standard. For consistency with other Design Standards, please update the 2-year, 1 hour peak runoff flow to the 80th percentile runoff event.

Response 28: Replace the “2-Year Storm” with the “80th Percentile Storm Event” in the Constrained Redevelopment Sites Design Standard

These comments have been incorporated into the permit.

Comment 29: Add Event Mean Concentration to the Constrained Redevelopment Sites Design Standard

Colorado Stormwater Council: Please change to the following proposed concept: The control measure(s) shall be designed to treat to an expected median effluent concentration for total suspended solids (TSS) of 30 mg/L.” with “The control measure shall be designed to treat stormwater runoff in a manner expected to reduce the event mean concentration (EMC) of total suspended solids (TSS) to a median value of 30 mg/L or less. It should be specified that the control measure should be expected to reduce TSS. Also, a lower EMC should be acceptable.

Douglas County: Please change to the following proposed concept: The control measure(s) shall be designed to treat to an expected median effluent concentration for total suspended solids (TSS) of 30 mg/L.” with “The control measure shall be designed to treat stormwater runoff in a manner expected to reduce the event mean concentration (EMC) of total suspended solids (TSS) to a median value of 30 mg/L or less. It should be specified that the control measure should be expected to REDUCE TSS. Also, a lower EMC should be acceptable.

Response 29: Add Event Mean Concentration to the Constrained Redevelopment Sites Design Standard

These comments have been incorporated into the permit.

Comment 30: Reword the Requirement for the Draining Area in the Constrained Redevelopment Sites Design Standard

Colorado Stormwater Council: Please change to the following proposed concept: A minimum of 50% of the applicable development area including 50% or more of the impervious area of the applicable development area shall drain to the control measure(s). The mass of the TSS is a difficult measurement with room for different interpretations. This alternative wording is easier to calculate and implement.

Response 30: Reword the Requirement for the Draining Area in the Constrained Redevelopment Sites Design Standard

These comments have been incorporated into the permit.

Comment 31: State that Actual Sampling is not Required for the Constrained Redevelopment Design Standard

El Paso County: The control measure discussed in the section contains an effluent concentration requirement of 30 mg/l for total suspended solids.





Given the MS4 permit nor Construction Stormwater General Permits contain an effluent or water quality monitoring requirement it's not clear how the Division expects this limit to be achieved and demonstrated. Clarify 30 mg/l is a design goal and no effluent or water quality monitoring are required to achieve this control measure requirement.

Response 31: State that Actual Sampling is not Required for the Constrained Redevelopment Design Standard

This comment has not been incorporated into the permit. Permittees have the flexibility to require construction operators to sample stormwater from the control measures or rely on the manufacturer's specifications.

Comment 32: Provide the Basis for the Constrained Redevelopment Design Standard

Xcel Energy: Infiltrate, evaporate, or evapotranspire, through practices such as green infrastructure, a quantity of water equal to 30% of what the calculated WQCV would be if all impervious for the applicable redevelopment project discharged without infiltration. Please provide basis/reasoning for using 30% of the calculated WQCV? Thirty percent of the WQCV is not a lot of water, even on highly impervious sites.

Response 32: Provide the Basis for the Constrained Redevelopment Design Standard

This comment has not been incorporated into the fact sheet. The division has determined that 30% of the calculated WQCV for green infrastructure practices is the MEP standard. Please see the explanation of the MEP standard in the fact sheet.

Comment 33: Revise the Additional Control Measure(s) Design Standard

Colorado Stormwater Council: Please change to the following proposed concept: Alternative Control Measure(s) Design Standard: When all other standards are determined infeasible, the permittee shall evaluate and require alternative control measures at the constrained applicable redevelopment site for removal of pollutants and/or infiltration of runoff to the extent determined practicable by the permittee. Please remove: At a minimum, alternative controls shall include incorporation of control measures to reduce pollutant discharges to any facility implemented to control the flow rate of stormwater runoff for purposes of drainage or flood control (e.g., adding water quality detention to a flood control pond).

Please change to the following proposed concept:

At a minimum, alternative controls shall include incorporation of green infrastructure practices such as minimizing directly connected impervious areas, urban tree canopy, and land planning practices.

CSC provided this as a comment last time and intended it as an alternative standard, not an additional standard.

The Alternative Control Measure Design Standard encourages a site to implement alternative practices when a Design Standard cannot be met.



**PUBLIC NOTICE COMMENTS**

The last sentence regarding the minimum level of additional controls and the example in parenthesis are not consistent: Adding water quality detention to a flood control facility does not reduce pollutant discharges to the facility, as stated. Instead, it may reduce pollutant discharges from the facility. An existing detention pond on a site and the existing detention pond outlet works or volume may not allow a retrofit for water quality detention.

Douglas County: Please change to the following proposed concept: Alternative Control Measure(s) Design Standard: When all other standards are determined infeasible, the permittee shall evaluate and require alternative control measures at the constrained applicable redevelopment site for removal of pollutants and/or infiltration of runoff to the extent determined practicable by the permittee.

Please remove: At a minimum, alternative controls shall include incorporation of control measures to reduce pollutant discharges to any facility implemented to control the flow rate of stormwater runoff for purposes of drainage or flood control (e.g., adding water quality detention to a flood control pond).

Please change to the following proposed concept:

At a minimum, alternative controls shall include incorporation of green infrastructure practices such as minimizing directly connected impervious areas, urban tree canopy, and land planning practices. CSC provided this as a comment last time and intended as an alternative standard, not an additional standard.

The Alternative Control Measure Design Standard encourages a site to implement alternative practices when a Design Standard cannot be met.

The last sentence regarding the minimum level of additional controls and the example in parenthesis are not consistent: Adding water quality detention to a flood control facility does not reduce pollutant discharges to the facility, as stated. Instead, it may reduce pollutant discharges from the facility. An existing detention pond on a site and the existing detention pond outlet works or volume may not allow a retrofit for water quality detention.

Xcel Energy: Additional Control Measure(s) Design Standard This should be included in Part I.E.4.a.iv.(F)2) as subpart d).

Southeast Metro Stormwater Authority: Additional Control Measure Design Standard. Please update this section to a new section Part I.4.a.iv.F.2.d, Alternative Control Measure(s) Standard. Using Additional Standard is confusing and misrepresents that this standard is in addition to the others listed. This section should be updated to read: Alternative Control Measure(s) Design Standard: The permittee shall evaluate and require alternate control measures at the constrained applicable redevelopment or development site for removal of pollutants or infiltration of runoff to the extent determined practicable by the permittee. At a minimum, additional controls shall include incorporation of control measures to reduce pollutant discharges to any facility implemented to





control the flow rate of stormwater runoff for purposes of drainage or flood control (e.g., adding water quality detention to a flood control pond).

Response 33: Revise the Additional Control Measure(s) Design Standard

These comments have not been incorporated into the permit. This design standard has been removed from the permit. The goal of this design standard was to encourage permittees to require more treatment than the constrained redevelopment sites design standard if the permittee determines that it is feasible.

Comment 34: Include New Development in the Constrained Redevelopment Sites Standard

Southeast Metro Stormwater Authority: Constrained Redevelopment Site Standard. Please update this section to read Constrained Development and Redevelopment Site Standard. It is feasible that Development projects may be constrained by utilities, grades, access, and other factor similar to those of Constrained Redevelopment Sites. This comment can also be addressed by adding an additional section for Constrained Site Standard. The proposed language for the applicability of development projects could read:

Applicability: The constrained development projects standard applies to development projects meeting one of the following criteria: (1) The applicable development project is a development that is not part of a larger common plan of development or sale, where the development project is abutted by existing development and/or right-of-way, utilities, roadways, or similar constraints. This does not apply to development that is adjacent to vacant or open parcels. or (2) The permittee has determined that it is not practicable to meet any of the design standards in Parts I.E.4.a.iv.(A),(B), or (C). The permittee's determination shall include an evaluation of the applicable development projects ability to install a control measure without reducing surface area covered with the structures. We recommend the Design Standards for Constrained Redevelopment Sites and Constrained Development Sites be uniform.

Response 34: Include New Development in the Constrained Redevelopment Sites Standard

This comment has not been incorporated into the permit. The division found that it was not appropriate to include new development in the constrained redevelopment sites standard.

Comment 35: Update the Requirements for the Previous Permit Term Standard

Colorado Stormwater Council: Please change to the following proposed concept: The previous permit term standard is only applicable to applicable development activities where one of the following criteria are met: Only one criterion would apply- the control measure is constructed, it is designed and in review, or it is designed and approved.

Douglas County: Please change to the following proposed concept: The previous permit term standard is only applicable to applicable development activities where one of the following criteria are met: Only one criterion would apply-





the control measure is constructed, it is designed and in review, or it is designed and approved.

Response 35: Update the Requirements for the Previous Permit Term Standard

These comments have been incorporated into the permit.

v. Site Plans

Comment 1: Replace “This Permit” with “Part I.E.4.”

Colorado Stormwater Council: Please clarify design details for all structural control measures implemented to meet the requirements of I.E.4.a.iv this section, not this permit. Site Plans for Post-Construction do not need to include temporary structural control measures used during construction.

Douglas County: Please clarify design details for all structural control measures implemented to meet the requirements of I.E.4.a.iv this section, not this permit. Site Plans for Post-Construction do not need to include control temporary structural control measures used during construction.

Response 1: Replace “This Permit” with “Part I.E.4.”

These comments have been incorporated into the permit.

Comment 2: Add “If Applicable”

Colorado Stormwater Council: Please change to the following proposed concept: A narrative reference for all non-structural control measures for the project, if applicable. All projects may not include non-structural control measures as part of their approval.

Douglas County: Please change to the following proposed concept: A narrative reference for all non-structural control measures for the project, if applicable. All projects may not include non-structural control measures as part of their approval.

Response 2: Add “If Applicable”

These comments have been incorporated into the permit.

Comment 3: Remove the Requirement to Document the Frequency of Routine Inspection and Maintenance

City of Canon City: v.(A)3) Documentation of operation and maintenance procedures to ensure the long term observation, maintenance, and operation of the control measures. The documentation shall include frequencies for routine inspections and maintenance activities. The City of Cañon City requests the final sentence of this requirement be removed. Rationale: A statement on the plans stating that the owner or HOA is responsible for maintenance is sufficient. For Cañon City, plats and agreements stating who is responsible for maintenance are recorded with the County Clerk and Recorder and are noted for record during subdivision hearings with City Council and the Planning Committee. Documenting maintenance frequencies may lead the owner/party responsible for maintenance to believe that maintenance only has to be done





at that frequency (i.e. once or twice a year) when in reality the control measure may need it more often due to storms, etc.

Response 3: Remove the Requirement to Document the Frequency of Routine Inspection and Maintenance

This comment has not been incorporated into the permit. Routine inspection and maintenance is essential to the long term operation and maintenance of a control measure and must be documented. The permittee has the flexibility to require that inspection and maintenance be conducted after storm events or for other reasons, as needed.

Comment 4: Explain the Specific Type of Documentation Needed to Document Access to the Control Measure

Xcel Energy: Documentation regarding easements or other legal means for access of the control measure sites for operation, maintenance, and inspection of control measures. What is the Division looking for in regards to documentation? Are actual recorded easements to be included on the plans? It seems more reasonable that the plans show a representation, in plan view, where permanent easements have been secured. Reception numbers and boundaries could be listed but this would be a lot of information on a transmission line that crosses dozens to hundreds of land owners.

Response 4: Explain the Specific Type of Documentation Needed to Document Access to the Control Measure

This comment has not been incorporated into the permit. Permittees have the flexibility to determine the specific type of documentation needed to comply with this permit requirement.

Comment 5: Add Requirements for both Major and Minor Modifications

Southeast Metro Stormwater Authority: Please note that there are occasions where minor modifications can be addressed in the field, and occasions where major modifications must be addressed through a site plan change. We recommend that the differentiation between major and minor changes be based on if the modification is a design change. For example, a plan set that contains conflicting information between a detail and a plan call-out is not a design issue and may be modified in the field. A major change that requires design modification (including calculation), might be a missing elevation for an emergency overflow. Please update this section to address minor changes. We recommend revising the section to read: The permittee must meet the requirements of Part I.E.4.a.v.(A) and (B) before approving any major design modifications to the site plan.

Response 5: Add Requirements for both Major and Minor Modifications

This comment has not been incorporated into the permit. The permittee has the flexibility to develop procedures for both major and minor modifications that comply with this section of the permit.

vi. Construction Inspection and Acceptance

Comment 1: Replace the Word “Matches” with “Functions”





Southeast Metro Stormwater Authority: Post Construction Oversight. Please consider revising the word matches to functions or "operates in accordance with the approved plan". Functionality should be the intended long term goal of any post construction oversight activity, and this reinforces that concept.

Response 1: Comment 1: Replace the Word "Matches" with "Functions"

This comment has been incorporated into the permit.

vii. Long-Term Operation and Maintenance and Post Acceptance Oversight

Comment 1: Support of the Current Frequency of Permanent Control Measure Inspections

Douglas County: Douglas County staff agrees with the proposed frequency of inspections on post-construction control measures as once within the permit term.

Home Builders Association of Metro Denver: We agree that one post construction inspection of permanent control structures during the term of the permit is applicable. The MS4 could opt for additional inspections if they so choose.

Housing and Building Association of Colorado Springs: We agree that one post construction inspection of permanent control structures during the term of the permit is applicable. The MS4 could opt for additional inspections if they so choose

Response 1: Support of the Current Frequency of Permanent Control Measure Inspections

The division acknowledges this comment. No changes to the permit or fact sheet are necessary.

Comment 2: Replace the "/" with "Or"

Southeast Metro Stormwater Authority: Post Acceptance Oversight. Please consider referring to the owner or operator. The operator of a small site control measure might change frequently, and would be difficult to track.

Response 2: Replace the "/" with "Or"

This comment has been incorporated into the permit.

viii. Enforcement Response

No comments were received on this section of the permit.

ix. Tracking

No comments were received on this section of the permit.

x. Training

No comments were received on this section of the permit.

xi. For Applicable Construction Activities that Overlap Permit Areas of One MS4 Permittee





No comments were received on this section of the permit.

b. Recordkeeping

i. Excluded Projects

Comment 1: Remove All Recordkeeping Requirements for Excluded Projects

Weld County: Please remove the requirement for maintaining records on excluded projects. Compiling this data is burdensome and in some cases infeasible.

City of Boulder: This is a resource intensive recordkeeping task. Requiring recordkeeping for “all” excluded projects would not provide a measureable benefit to water quality. The way the definition reads now, the city would be required to perform recordkeeping for a number of very small paving and roadway projects which does not appear to add benefit to either the state’s understanding of the exemption component or add protection to stormwater. To adjust this burden the state might potentially place a minimum size of project that requires recordkeeping or utilize some other metric to gage effects of exclusions.

Response 1: Remove All Recordkeeping Requirements for Excluded Projects

This comment has not been incorporated into the permit. The current permit does not allow for any exclusions. This is a new section of the renewal permit and the use of the new exclusions must be closely tracked. Please see the division’s comments below concerning the removal of certain recordkeeping requirements.

Comment 2: Remove the Recordkeeping Requirements for Pavement Management Projects

Colorado Stormwater Council: Please remove the requirement to track routine pavement management project. Routine pavement areas are not required to have control measures, as such the impervious area would not be tracked. Projects excluded from the permit requirements should not have additional documentation or reporting requirements. Recordkeeping for Pavement Management is typically in the form of tracking quantities of material, labor and equipment hours, budgets, etc. and not necessarily tracking, for example, the impervious area of a pothole. Compiling paperwork for projects not subject to MS4 Permit requirements is not an efficient use of limited MS4 resources. Projects not subject to the requirements of this permit would not be tracked to show they were not subject to the permit requirements.

Douglas County: Please remove the requirement to track the acreage of the excluded impervious area for any routine pavement management project. Routine pavement areas are not required to have control measures, as such the impervious area would not be tracked. Projects excluded from the permit requirements should not have additional documentation or reporting requirements. Recordkeeping for Pavement Management is typically in the form of tracking quantities of material, labor and equipment hours, budgets, etc. and not necessarily tracking, for example, the impervious area of a





pothole. Compiling paperwork for projects not subject to MS4 Permit requirements is not an efficient use of limited MS4 resources. Projects not subject to the requirements of this permit would not be tracked to show they were not subject to the permit requirements.

Southeast Metro Stormwater Authority: We understand the purpose for tracking projects that truly exclude post construction control measures, but request that the excluded projects that include a level of treatment not be tracked. The burden for tracking some of these exclusions is not practicable, or helpful, and there is potential for some permittees to place effort into meeting this requirement, while others ignore it. Please update Sections A) through D) to read: A) Excluded Roadway Redevelopment, B) Excluded Existing Roadway Areas for Roadway Redevelopment. Pavement Management Projects are not practicable to document because of the frequency and minor nature of the projects (pothole repair, patching, etc.).

City of Boulder: The way the definition reads now, the city would be required to perform extensive recordkeeping for a number of very small paving and roadway projects which does not appear to add benefit to either the state's understanding of the exemption component or the protection to stormwater.

Response 2: Remove the Recordkeeping Requirements for Pavement Management Projects

These comments have been partially incorporated into the permit. This requirement has been updated to only require recordkeeping for rehabilitation and reconstruction of pavement projects that are not maintenance. Recordkeeping requirements for the day-to-day maintenance of pavement have been removed. In regards to the recordkeeping requirements that have been retained the current permit does not allow for any exclusions. This is a new section of the renewal permit and the use of the new exclusions must be closely tracked. Permittees have the flexibility to be more stringent than the permit and not allow the exclusions due to the recordkeeping requirements.

Comment 3: Remove the Recordkeeping Requirements for Non-Residential and Non-Commercial Infiltration Conditions

Colorado Stormwater Council: Please remove the requirement to track the acreage of the excluded impervious area. Runoff from projects meeting the requirement for the Non-Residential and Non-Commercial Infiltration Conditions Standard is treated through infiltration or filtration. These areas are treated and should not have additional documentation or reporting requirements.

Douglas County: Please remove the requirement to track the acreage of the excluded impervious area. Runoff from projects meeting the requirement for the Non-Residential and Non-Commercial Infiltration Conditions Standard is treated through infiltration or filtration. These areas are treated and should not have additional documentation or reporting requirements.





PUBLIC NOTICE COMMENTS

Southeast Metro Stormwater Authority: Please note that Non-Residential and Non-Commercial Infiltration Conditions do not exclude water quality; rather, water quality is provided through infiltration of minor flows.

Response 3: Remove the Recordkeeping Requirements for Non-Residential and Non-Commercial Infiltration Conditions

These comments have not been incorporated into the permit. The current permit does not allow for any exclusions. This is a new section of the renewal permit and the use of the new exclusions must be closely tracked. Permittees have the flexibility to be more stringent than the permit and not allow the exclusions due to the recordkeeping requirements.

ii. Regulatory Mechanism

No comments were received on this section of the permit.

iii. Regulatory Mechanism Exemptions

No comments were received on this section of the permit.

iv. Control Measure Requirements

No comments were received on this section of the permit.

v. Site Plans

Comment 1: Move the Ownership Requirement to the Post Acceptance Oversight Section

Colorado Stormwater Council: Please move this requirement to Post Acceptance Oversight and update to the following proposed concept: Procedures for determining ownership through property records, as needed. Documentation of changes in ownership does not occur on site plans. Documentation would occur within Post Acceptance Oversight.

Douglas County: Please move this requirement to Post Acceptance Oversight and update to the following proposed concept: Procedures for determining ownership through property records, as needed. Documentation of changes in ownership does not occur on site plans. Documentation would occur within Post Acceptance Oversight.

Southeast Metro Stormwater Authority: Requesting applicable documentation regarding change of ownership procedures on site plans is not practicable. There should be a procedure for documenting a change in ownership, perhaps listed in an applicable location in the PDD, but placement on a site plan is not the appropriate location. Please delete Section E and request this documentation in the PDD.

Response 1: Move the Ownership Requirement to the Post Acceptance Oversight Section

These comments have been incorporated into the permit.

Comment 2: Remove the Requirement to Document Easements to the Control Measure





City of Arvada: Remove the requirement to document easements or legal means to access privately held Post-Construction BMPs. This requirement is overly burdensome.

Response 2: Remove the Requirement to Document Easements to the Control Measure

This comment has not been incorporated into the permit. Access is a very important part of ensuring long term operating and maintenance of a control measure. This information must be documented.

vi. Construction Inspection and Acceptance

No comments were received on this section of the permit.

vii. Long-Term Operation and Maintenance and Post Acceptance Oversight

Comment 1: Replace the Word “Matches” with “Functions”

Southeast Metro Stormwater Authority: Post Construction Oversight. Please consider revising the word matches to functions or "operates in accordance with the approved plan". Functionality should be the intended long term goal of any post construction oversight activity, and this reinforces that concept.

Response 1: Comment 1: Replace the Word “Matches” with “Functions”

This comment has been incorporated into the permit.

Comment 2: Remove the Recordkeeping Requirements for Permittees that Inspect Control Measures More Frequently

Southeast Metro Stormwater Authority: Construction Inspection and Acceptance and Post Acceptance Oversight Site Inspection. Please note that the documentation for frequency is necessary only if less than once per permit term. There should not be a higher documentation standard or burden for inspections frequencies greater than the minimum.

Response 2: Remove the Recordkeeping Requirements for Permittees that Inspect Control Measures More Frequently

This comment has been incorporated into the permit.

viii. Enforcement Response

No comments were received on this section of the permit.

ix. Tracking

No comments were received on this section of the permit.

x. Training

No comments were received on this section of the permit.

xi. For Applicable Construction Activities that Overlap Permit Areas of One MS4 Permittee

No comments were received on this section of the permit.

c. Program Description Document





No comments were received on this section of the permit.

5. Pollution Prevention/Good Housekeeping for Municipal Operations

a. The following requirements apply

i. Control Measure Requirements

No comments were received on this section of the permit.

ii. Municipal facility Runoff Control Measures

Comment 1: Clarify that New Procedures Shall be Written

City of Canon City: The City of Cañon City requests the Division modify or clarify if the “new procedures” shall be written procedures as is stated in 5.a.iii.

Response 1: Clarify that New Procedures Shall be Written

This comment has been incorporated into the permit.

Comment 2: Clarify that Dumpsters are not Waste Transfer Stations

Colorado Stormwater Council: Please change to the following proposed concept: Outdoor solid-waste transfer stations operated for the benefit of the public, where waste and recyclables are briefly held before further transport. This does not include those already authorized by a separate CDPS or NPDES Discharge Permit. All municipal buildings have a dumpster where waste and recyclables are briefly held prior to further transport. Without clarification of facilities to which this may apply, a permittee would be required to implement this permit requirement at every municipally owned building.

Douglas County: Please change to the following proposed concept:

Outdoor solid-waste transfer stations operated for the benefit of the public, where waste and recyclables are briefly held before further transport. This does not include those already authorized by a separate CDPS or NPDES Discharge Permit. All municipal buildings have a dumpster where waste and recyclables are briefly held prior to further transport. Without clarification of facilities to which this may apply, a permittee would be required to implement this permit requirement at every municipally-owned building.

City of Canon City: The City of Cañon City requests the Division please clarify the intention is to address solid waste transfer stations and recyclable transfer stations operated for the benefit of the public; not to address dumpsters and recycling containers at municipally-owned facilities. Rationale: Without a clear understanding of the facilities to which this may apply, a permittee cannot be certain proper Control Measures are implemented. For example, all municipal buildings have a dumpster where waste and recyclables are briefly held prior to further transport.

Response 2: Clarify that Dumpsters are not Waste Transfer Stations

These comments have not been incorporated into the permit. Permittees have the flexibility to further define waste transfer stations and a municipal facility.





Dumpsters are typically not considered waste transfer stations. In addition, permittees can exclude discharges specifically authorized by a CDPS or NPDES permits from being effectively prohibited (Part I.2.a.v.) Also, Part I.5. specifically excludes operations and facilities that are not authorized by a separate CDPS or NPDES discharge permit.

Comment 3: Clarify How the Permittee will Verify that the Written Procedures Reflect Current Conditions

City of Canon City: The City of Cañon City requests the Division clarify, either in the permit requirement or in the Fact Sheet, how they envision the permittee perform the requested verification and how it is to be documented.

Response 3: Clarify How the Permittee will Verify that the Written Procedures Reflect Current Conditions

This comment has not been incorporated into the permit. Permittees have the flexibility to determine how the verification will be conducted and documented.

Comment 4: Clarify that the Permit Requirements do not Apply to Facilities with CDPS Permits

5-2-1 Drainage Authority: Solid waste transfer stations - Our municipalities obtain their own state approved permits for those facilities that briefly hold waste and recyclables before transport. These facilities maintain each of their own BMPs to ensure these facilities to not contribute pollutants and are in compliance with their permit. Clarification of the types of facilities is necessary to ensure properly Control measures are implemented. It will also be beneficial for the CDPHE not to enforce these standards on the MS4's since these facilities already obtain and enforce these standards to their own permits.

Response 4: Clarify that the Permit Requirements do not Apply to Facilities with CDPS Permits

This comment has not been incorporated into the permit. Part I.5. specifically excludes operations and facilities that are authorized by a separate CDPS or NPDES discharge permit.

iii. Municipal Operations and Maintenance Procedures

Comment 1: Use Consistent Language in the Requirements

El Paso County: Maintenance is identified in both sections but with inconsistent qualifiers.

Response 1: Use Consistent Language in the Requirements

This comment has not been incorporated into the permit. The comment is not specific and unclear.

Comment 2: Combine MS4 Maintenance, Including Trash Removal and Maintenance, Replacement, and Construction of Utilities and the Storm System

Colorado Stormwater Council: Please combine number 9 and number 14.





PUBLIC NOTICE COMMENTS

To reduce redundancy and provide clarity, this list/terminology used should be consistent with the procedures developed for the One-Time Operating Procedures Report. Item #9 is redundant to Item #14.

Douglas County: Please combine number 9 and number 14. To reduce redundancy and provide clarity, this list/terminology used should be consistent with the procedures developed for the One-Time Operating Procedures Report. Item #9 is redundant to item #14.

El Paso County: Combine 9 and 14 or clarify the distinction between them.

City of Canon City: These requirements appear to be redundant. The City of Cañon City requests clarification on the differences from the Division if these are, indeed, two separate requirements. If they are not different we suggest they be combined into one requirement.

Response 2: Combine MS4 Maintenance, Including Trash Removal and Maintenance, Replacement, and Construction of Utilities and the Storm System

These comments have been incorporated into the permit.

Comment 3: Clarify the Term Maintenance

City of Canon City: (A)8) Building maintenance

The City of Cañon City requests the Division add clarification to this requirement, specifically on how encompassing this requirement is. Does it apply only to indoor maintenance or grounds maintenance or both?

Response 3: Clarify the Term Maintenance

This comment has not been incorporated into the permit. Permittees have the flexibility to define building maintenance.

iv. Nutrient Source Reductions

Comment 1: Add If Applicable

Colorado Stormwater Council: Please add, “if applicable”. A permittee only needs to include the storage and application of fertilizer, including subsequent stormwater or irrigation runoff from areas where fertilizer has been applied, as an identified municipal operations nutrient source, if they store or apply fertilizer.

Response 1: Add If Applicable

This comment has been incorporated into the permit.

v. Bulk Storage

Comment 1: Define a Minimum Size for Bulk Storage Containers

Home Builders Association of Metro Denver: Please define the minimum size of the bulk storage containers. Typically with an SPCC Plan or equivalent, the state or U.S. EPA requires anything larger than a 55 gallon drum.



**PUBLIC NOTICE COMMENTS**

5-2-1 Drainage Authority: Bulk Storage - Currently each of our municipalities obtains and maintains their own SPCC plans for both the State and the EPA. These plans specify these are only bulk storage containers that are larger than 55 gallons. Additionally a specific quantity should be identified.

Housing and Building Association of Colorado Springs: Please define the minimum size of the bulk storage containers. Typically with an SPCC Plan or equivalent, the state or U.S. EPA requires anything larger than a 55-gallon drum.

Response 1: Define a Minimum Size for Bulk Storage Containers

These comments have been incorporated into the permit.

Comment 2: Remove the Requirement for Containing All Spills

City of Aurora: For example, requiring secondary containment or equivalent protection that contains all spills and prevents any spilled material from entering state waters is a nearly unachievable goal.

Response 2: Remove the Requirement for Containing All Spills

This comment has not been incorporated into the permit. See response to comment 1 above.

Comment 3: Support for CSC's comments

City of Federal Heights: The topics considered "high-level" issues for the City include the following: Good Housekeeping- Bulk liquid storage- outside.

City of Glendale: The topics considered "high-level" issues for the City include the following: Good Housekeeping- Bulk liquid storage- outside.

Response 3: Support for CSC's comments

Please see the division's response to CSC's comments, under section iv above, Nutrient Source Reductions.

Comment 4: Define Liquid Chemicals

Home Builders Association of Metro Denver: Also the term "liquid chemicals" needs to be defined. If no definition is provided, then every product used (such as white out, liquid gold, etc.) would have to be included in this section.

Housing and Building Association of Colorado Springs: The term "liquid chemicals" needs to be defined. If no definition is provided, then every product used (such as white-out, liquid gold, etc.) would have to be included in this section.

El Paso County: Additionally a list of "other liquid chemicals" should be included. As written it could be interpreted that water tanks need secondary containment.

Response 4: Define Liquid Chemicals



This comment has not been incorporated into the permit. Permittees have the flexibility to define the term “liquid chemicals.”

Comment 5: Clarify that this Section Applies to Outside Storage of Bulk Materials

Colorado Stormwater Council: The requirement should only apply to bulk liquid storage that is located outdoors where it could have the reasonable potential to be a stormwater pollutant.

Douglas County: The requirement should only apply to bulk liquid storage that is located outdoors where it could have the reasonable potential to be a stormwater pollutant.

El Paso County: As written the primary focus of the paragraph is for spill containment and prevention. However if bulk storage of liquid material is provided for indoors, this should be an acceptable control measure to minimize pollutants in stormwater runoff. Include inside storage as an acceptable control measure to minimize runoff of material in stormwater.

Home Builders Association of Metro Denver: Please include inside storage as an acceptable control measure to minimize runoff of material in stormwater.

5-2-1 Drainage Authority: Clarification in the language should include the requirement only applies to bulk liquid storage that is located outdoors where it has potential to contribute as a stormwater pollutant.

Response 5: Clarify that this Section Applies to Outside Storage of Bulk Materials

These comments have been incorporated into the permit.

Comment 6: Clarify that this Section Only Applies to Municipal Facilities

5-2-1 Drainage Authority: Clarification that this requirement only applies to municipal facilities needs to be included in the requirement.

Response 6: Clarify that this Section Only Applies to Municipal Facilities

This comment has not been incorporated into the permit. Part I.6 only applies to municipal operations and facilities.

Comment 7: Move the Requirements for Bulk Storage to the Municipal Facility Runoff Control Measures

Colorado Stormwater Council: Please include bulk storage as a requirement in I.E.5.a.ii instead of listing it separately. Please clarify that this only applies to bulk liquid storage located at applicable municipal facilities that are stored outdoors and are contained in stationary tanks. Bulk Storage should be included as a Control Measure under a facility, not a separate requirement.

Douglas County: Please include bulk storage as a requirement in I.E.5.a.ii instead of listing it separately. Please clarify that this only applies to bulk liquid storage located at applicable municipal facilities that are stored





outdoors and are contained in stationary tanks. Bulk Storage should be included as a Control Measure under a facility, not a separate requirement.

Response 7: Move the Requirements for Bulk Storage to the Municipal Facility Runoff Control Measures

These comments have not been incorporated into the permit. The outdoor storage of bulk storage containers is an important part of preventing or reducing pollutant runoff from municipal operations. The outdoor storage of bulk materials occurs at/on both municipal facilities and on municipal operations and must remain a separate requirement in the permit.

vi. Training

No comments were received on this section of the permit.

b. Recordkeeping

i. Municipal facility Runoff Control Measures

Comment 1: Define the Term Implementation Specifications

City of Canon City: The City of Cañon City requests the Division provide clarification on the term “specifications”. Specifically what the Division is anticipating for installation and implementation specifications and how this requirement will be met if current installation details (e.g., plans) are not available.

Response 1: Define the Term Implementation Specifications

This comment has not been incorporated into the permit. Permittees have the flexibility to further define the term implementation specifications.

Comment 2: Remove the Recordkeeping Requirements for Bulk Storage Structures

City of Canon City: The City of Cañon City requests that this requirement be removed. Rationale: This requirement is redundant with Part I.E.5.b.iv. Bulk Storage.

Response 2: Remove the Recordkeeping Requirements for Bulk Storage Structures

This comment has not been incorporated into the permit. Bulk storage can occur at both municipal facilities and municipal operations, so the permit has recordkeeping requirements for both.

ii. Municipal Operations and Maintenance Procedures

No comments were received on this section of the permit.

iii. Nutrient Source Reductions

No comments were received on this section of the permit.

iv. Bulk Storage





Comment 1: Add If Applicable

Colorado Stormwater Council: Please add, “if applicable”. Some permittees may not have bulk storage and would not need to include a description of control measures implemented for bulk storage structures

Response 1: Add If Applicable

This comment has been incorporated into the permit.

v. Training

Comment 1: Replace “Title” with “Department”

Colorado Stormwater Council: Please remove “title” from the requirement and add “department.” Municipal job titles are often not specific, such as “Maintenance Worker 1” and do not provide valuable information regarding what work groups are being targeted with training. Documenting “department” provides more relevant information.

Douglas County: Please remove title from the requirement and add department. Municipal job titles are often not specific, such as “Maintenance Worker 1” and do not provide valuable information regarding what work groups are being targeted with training. Documenting “Department” provides more relevant information.

City of Canon City: The City of Cañon City requests that the “title” of each individual be replaced with “department”. Rationale: Municipal job titles are often not specific, such as “Maintenance Worker 1” and do not provide valuable information regarding which work groups are being targeted with the training. “Department” is more relevant information.

Response 1: Replace “Title” with “Department”

These comments have been incorporated into the permit.

c. Program Description Document

i. Municipal facility Runoff Control Measures

Comment 1: Add “If Applicable”

Colorado Stormwater Council: Please add, “if applicable”. Some permittees may not have facilities or specifications and this information would not be necessary to document.

Response 1: Add “If Applicable”

This comment has been incorporated into the permit.

ii. Municipal Operations and Maintenance Procedures

No comments were received on this section of the permit.

iii. Nutrient Source Reductions

No comments were received on this section of the permit.





iv. Bulk Storage

No comments were received on this section of the permit.

v. Training

No comments were received on this section of the permit.

G. PART I.F. - OTHER TERMS AND CONDITIONS

Comment 1: Cost-Benefit Analysis

Town of Castle Rock: Cost Benefit Analysis. The Town appreciates the Division’s willingness to acknowledge the need for considering a cost benefit analysis in the draft permit. However, upon review of the second draft permit and the fact sheet, it appears that cost was only a considered factor in two areas of the permit including sections I.E.4.a.i.A pavement management and I.F.6 monitoring. As stated in the fact sheet, the Division will consider cost when selecting the appropriate permit term or condition, and will choose the least costly alternative that meets the requirement for the MS4 permit. This does not appear to be the case throughout the permit. The Town respectfully requests that additional consideration be given to permit terms and conditions that have significant cost implications and provide clarifying language in the fact sheet where such consideration was given. In particular, the Town has concern with potential costs related to inspection frequencies, inspection scope and general record keeping that have not been demonstrated to have an equivalent water quality benefit.

Response 1: Cost-Benefit Analysis

This comment has been incorporated into the permit. The division considered the cost-benefit analysis submitted on the first draft of the renewal permit. For example, pavement management is an exclusion in the permit. In addition, the permit reflects monitoring option 3, which is that monitoring will be conducted on an as-needed basis, similar to the previous permit.

H. PART I.G. - PROGRAM REVIEW AND MODIFICATION

Comment 1: Swap Part I.G and Part I.H

City of Canon City: Part I.G. Program Review and Modification: General comment: Swapping Part I.G. and Part I.H. Compliance Schedule would create a more logical flow to the permit.

Response 1: Swap Part I.G and Part I.H

This comment has not been incorporated into the permit. Swapping the two sections of the permit does not appear to improve the clarity of the permit.

1. Annual Program review

Comment 1: Clarify How to Assess the Effectiveness of Control Measures

City of Canon City: The City of Cañon City requests the Division clarify what they would like an assessment of the effectiveness of the control measures to be. This may





be a difficult requirement to meet as much of the assessed effectiveness is subjective and not easily quantifiable, particularly in the areas such as Education and Outreach.

Response 1: Clarify How to Assess the Effectiveness of Control Measures

This comment has not been incorporated into the permit. Permittees have the flexibility to determine how to assess the effectiveness of control measures.

Comment 2: Clarify Which Control Measures have to be Assessed

El Paso County: It’s not clear what control measures must be evaluated, those control measures implemented by the MS4 permittee or those used by construction operators.

Response 2: Clarify Which Control Measures have to be Assessed

This comment has not been incorporated into the permit. As stated in the permit, permittees must assess their “current program areas” for the annual report.

I. PART I.H. - COMPLIANCE SCHEDULE

1. Renewal Permittees

Comment 1: Include the Months from the Effective Date of the Permit for the Deadline in Table 2

Colorado Stormwater Council: The Division has indicated all newer permits list specific dates within the compliance schedule. We suggest providing months from the effective date of the permit for ease in understanding the timeframe permittees will need to implement the program requirements.

Douglas County: The Division has indicated all newer permits list specific dates within the compliance schedule. We suggest providing months from the effective date of the permit for ease in understanding the timeframe permittees will need to implement the program requirements.

Response 1: Include the Months from the Effective Date of the Permit for the Deadline in Table 2

These comments have not been incorporated into the permit. Deadlines in permits are expressed as specific dates and not as months from the effective date of the permit. This eliminates the need for translation of the time periods after issuance for implementation. The division updates the dates at the time of permit issuance as needed.

Comment 2: Support of Colorado Stormwater Council’s Comments

Town of Castle Rock: The Town requests adjustment under the compliance schedule to allow for sufficient time to secure budget, resources and regulatory authority to implement permit terms and conditions. The Town concurs with the proposed changes as put forth by the CSC.

Response 2: Support of CSC’s Comments

The division acknowledges this comment. No changes to the permit or fact sheet are necessary.





Comment 3: Compliance Schedule to Identify Irrigation Return Flows

City of Arvada: Page 5. Conveyances for which the majority of flow is irrigation return flow and/or supplying water to irrigated land...must be identified in the permittee's application as not being a part of the MS4. Recommend adding this requirement to the compliance schedule to provide adequate time to define the location of these conveyances

Response 3: Compliance Schedule to Identify Irrigation Return Flows

This comment has been incorporated into the permit.

Comment 4: Change the Deadline for Counties to Develop County Growth Area Maps

Colorado Stormwater Council: County growth area maps. Please allow 6 months from the effective date of the permit. Please schedule a separate meeting with County Stormwater managers to discuss the development of the maps as requested at the MS4 General Permit Renewal Introductory Meeting. The county meeting was requested at the Introductory Meeting and will ensure the requirement is understood.

Douglas County: Part 1.A.3.a.ii(B): County growth area maps. Please allow 6 months from the effective date of the permit. Please schedule a separate meeting with County Stormwater managers to discuss the development of the maps as requested at the MS4 General Permit Renewal Introductory Meeting. The county meeting was requested at the Introductory meeting and will ensure the requirement is understood.

Response 4: Change the Deadline 6 Months for Counties to Develop County Growth Area Maps

These comments have been incorporated into the permit.

Comment 5: Change the Deadline for Changing Regulatory Mechanisms

Colorado Stormwater Council: Complete all applicable changes to the regulatory mechanism(s): Please allow 36 months from the effective date of the permit for the applicable changes to regulatory mechanisms and supporting program documents. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Complete all applicable changes to the regulatory mechanism(s): Please allow 36 months from the effective date of the permit for the applicable changes to regulatory mechanisms and supporting program documents. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 5: Change the Deadline for Changing Regulatory Mechanisms

These comments have been incorporated into the permit.

Comment 6: Change the Deadline for Illicit Discharges: Begin Providing Information Targeting Business(es) and the General Public.



**PUBLIC NOTICE COMMENTS**

Colorado Stormwater Council: Illicit Discharges: Begin providing information targeting business(es) and the general public. Please allow 24 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Illicit Discharges: Begin providing information targeting business(es) and the general public. Please allow 24 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 6: Change the Deadline for Illicit Discharges: Begin Providing Information Targeting Business(es) and the General Public.

These comments have been incorporated into the permit.

Comment 7: Change the Deadline for Nutrients: Begin Providing Education

Colorado Stormwater Council: Nutrients: Begin Providing Education. Please allow 24 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Nutrients: Begin Providing Education. Please allow 24 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 7: Change the Deadline for Nutrients: Begin Providing Education

These comments have been incorporated into the permit.

Comment 8: Change the Deadline for Education and Outreach Activities: Begin providing annual public education and outreach from Table 1

Colorado Stormwater Council: Education and Outreach Activities: Begin providing annual public education and outreach from Table 1. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Education and Outreach Activities: Begin providing annual public education and outreach from Table 1. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.



**Response 8: Change the Deadline for Education and Outreach Activities: Begin providing annual public education and outreach from Table 1**

These comments have been incorporated into the permit.

Comment 9: Change the Deadline for Nutrients: Determine Targeted Sources of Nutrients

Colorado Stormwater Council: Nutrients: Determine Targeted Sources of Nutrients. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Nutrients: Determine Targeted Sources of Nutrients. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 9: Change the Deadline for Nutrients: Determine Targeted Sources of Nutrients

These comments have been incorporated into the permit.

Comment 10: Change the Deadline for Tracing an Illicit Discharge

Colorado Stormwater Council: Tracing an Illicit Discharge: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Tracing an Illicit Discharge: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 10: Change the Deadline for Tracing an Illicit Discharge

These comments have been incorporated into the permit.

Comment 11: Change the Deadline for Priority Areas: Identify Any New Priority Areas

Colorado Stormwater Council: Priority Areas: Identify any new priority areas. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.





Douglas County: Priority Areas: Identify any new priority areas. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 11: Change the Deadline for Priority Areas: Identify Any New Priority Areas

These comments have been incorporated into the permit.

Comment 12: Change the Deadline for Removing an Illicit Discharge: Ensure Documentation is Recorded

Colorado Stormwater Council: Removing and Illicit Discharge: Ensure documentation is recorded. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Removing and Illicit Discharge: Ensure documentation is recorded. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 12: Change the Deadline for Removing an Illicit Discharge: Ensure Documentation is Recorded

These comments have been incorporated into the permit.

Comment 13: Change the Deadline for Removing an illicit Discharge, Enforcement Response

Colorado Stormwater Council: Removing an illicit Discharge, Enforcement Response: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Removing an illicit Discharge, Enforcement Response: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 13: Change the Deadline for Removing an illicit Discharge, Enforcement Response

These comments have been incorporated into the permit.



**Comment 14: Change the Deadline for Industrial Facilities**

Colorado Stormwater Council: Industrial Facilities. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Industrial Facilities. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 14: Change the Deadline for Industrial Facilities

These comments have not been incorporated into the permit. This section has been removed from the permit.

Comment 15: Update the Citation for Priority Areas

Colorado Stormwater Council: Please update the citation to Part I.E.2.a.viii. Editorial note, Priority Areas citation is Part I.E.2.a.viii of the permit.

Douglas County: Please update the citation to Part I.E.2.a.viii. Editorial note, Priority Areas citation is Part I.E.2.a.viii of the permit.

Response 15: Update the Citation for Priority Areas

These comments have been incorporated into the permit.

Comment 16: Remove the Compliance Schedule for Industrial Facilities

Colorado Stormwater Council: Please remove this compliance schedule along with the requirement in the permit. Please refer to the corresponding comment regarding the requirement Editorial note, Industrial Facility citation is Part I.E.2.a.x of the permit.

Douglas County: Please remove this compliance schedule along with the requirement in the permit. Please refer to the corresponding comment regarding the requirement Editorial note, Industrial Facility citation is Part I.E.2.a.x of the permit.

City of Canon City: This permit condition is now Part I.E.2.a.x.

Response 16: Remove the Compliance Schedule for Industrial Facilities

These comments have not been incorporated into the permit. The industrial facilities section of the permit has been removed.

Comment 17: Change the Deadline for Excluded Activities for County Non-Urban Areas

Colorado Stormwater Council: Please allow 6 months from the effective date of the permit. Please schedule a separate meeting with County Stormwater Managers to discuss the development of the maps as requested at the MS4 General Permit Renewal





Introductory Meeting. The county meeting was requested at the Introductory Meeting and will ensure the requirement is understood.

Douglas County: Excluded Activities for County Non-Urban Areas: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 17: Change the Deadline for Excluded Activities for County Non-Urban Areas

These comments have been incorporated into the permit.

Comment 18: Change the Deadline for Control Measure Requirements

Colorado Stormwater Council: Control Measure Requirements: Ensure adequacy standard requirements are met; revise implementation and documentation if necessary and ensure new control measures meet one of the design standards. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Control Measure Requirements: Ensure adequacy standard requirements are met; revise implementation and documentation if necessary and ensure new control measures meet one of the design standards. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 18: Change the Deadline for Control Measure Requirements

These comments have been incorporated into the permit.

Comment 19: Change the Deadline for Site Plans

Colorado Stormwater Council: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Site Plans: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 19: Change the Deadline for Site Plans





These comments have been incorporated into the permit.

Comment 20: Change the Deadline for Site Inspection

Colorado Stormwater Council: Site Inspection: Ensure requirements are met; revise implementation and documentation if necessary and ensure documentation is recorded. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Site Inspection: Ensure requirements are met; revise implementation and documentation if necessary and ensure documentation is recorded. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 20: Change the Deadline for Site Inspection

These comments have been incorporated into the permit.

Comment 21: Change the Deadline for Enforcement Response

Colorado Stormwater Council: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Enforcement Response: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 21: Change the Deadline for Enforcement Response

These comments have been incorporated into the permit.

Comment 22: Change Deadline for Excluded Projects

Colorado Stormwater Council: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Excluded Projects: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is





too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 22: Change Deadline for Excluded Projects

These comments have been incorporated into the permit.

Comment 23: Change the Deadline for Construction Inspection and Acceptance and Post Acceptance Oversight

Colorado Stormwater Council: Construction Inspection and Acceptance and Post Acceptance Oversight: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Construction Inspection and Acceptance and Post Acceptance Oversight: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 23: Change the Deadline for Construction Inspection and Acceptance and Post Acceptance Oversight

These comments have been incorporated into the permit.

Comment 24: Change the Deadline for Bulk Storage

Colorado Stormwater Council: Municipal Facility Runoff Control Measures: Ensure requirements for bulk storage are met; revise implementation and documentation if necessary. Please allow 60 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Municipal Facility Runoff Control Measures: Ensure requirements for bulk storage are met; revise implementation and documentation if necessary. Please allow 60 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 24: Change the Deadline for Bulk Storage

These comments have been incorporated into the permit.

Comment 25: Change the Deadline for Municipal Facility Runoff Control Measures Inspections





Colorado Stormwater Council: Municipal Facility Runoff Control Measures: Ensure inspection requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Municipal Facility Runoff Control Measures: Ensure inspection requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 25: Change the Deadline for Municipal Facility Runoff Control Measures Inspections

These comments have been incorporated into the permit.

Comment 26: Change the Deadline for Municipal Facility Runoff Control Measures Documentation

Colorado Stormwater Council: Municipal Facility Runoff Control Measures: Ensure documentation is recorded. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Municipal Facility Runoff Control Measures: Ensure documentation is recorded. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 26: Change the Deadline for Municipal Facility Runoff Control Measures Documentation

These comments have been incorporated into the permit.

Comment 27: Change the Deadline for Nutrient Source Reduction

Colorado Stormwater Council: Nutrient Source Reductions: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 48 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Nutrient Source Reductions: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 48 months from the effective date of the permit for the applicable changes. The compliance schedule is





too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 27: Change the Deadline for Nutrient Source Reduction

These comments have been incorporated into the permit.

Comment 28: County Designated Growth Areas

Weld County: It is not clear how flexible the State will be with acceptance of county-designated growth areas. Counties should be allowed a comment period after State guidance on determining these areas is provided (tentatively set for mid-July). This requirement poses a substantial economic burden on counties by requiring implementation of construction and post-construction permit requirements on currently non-urban areas with the potential of reaching urbanized status by 2020.

Response 28: County Designated Growth Areas

No response is necessary.

Comment 29: Bulk Storage: Part I.E.5.a.ii(A)(5) is Now Part I.e.5.a.v.

City of Canon City: This permit condition is now Part I.E.5.a.v.

Response 29: Bulk Storage: Part I.E.5.a.ii(A)(5) is Now Part I.e.5.a.v.

This comment has been incorporated into the permit.

2. New Permittees

No comments were received on this section of the permit.

J. PART I.I. - REPORTING REQUIREMENTS

1. Annual Report

Comment 1: Update the Dates for the Annual Report

Colorado Stormwater Council: Please clarify the period for which the annual reporting requirements of this permit apply. The reporting period does not seem to be correct.

Douglas County: Please clarify the period for which the annual reporting requirements of this permit apply. The reporting period does not seem to be correct.

City of Canon City: The City of Cañon City believes this may be a typographical error; the dates should be January 1, 2015, to December 31, 2015.

Response 1: Update the Dates for the Annual Report

These comments have been incorporated into the permit.

a. The required certification statement in Part I.K. 1.c. and signed by the individual meeting the criteria in Part I.K. 1.a.

No comments were received on this section of the permit.





- b. **Identify that the permittee is relying on another entity to satisfy any of the permit obligations (if applicable) if not included in previous reports or permit application.**

No comments were received on this section of the permit.

- c. **An update on areas added to or removed from the permit area as a result of annexation or other legal means.**

No comments were received on this section of the permit.

- d. **A list of compliance schedule items completed, including the date of completion and any associated information required in Part I.H.**

No comments were received on this section of the permit.

- e. **The results of the assessment of the effectiveness of the control measures.**

Comment 1: Clarify How to Report the Assessment of the Effectiveness of the Control Measures

Douglas County: Please clarify that this assessment is a review of the data in preparation for submitting with the annual report. Reporting on the result is different than conducting a review as required in l.g.1.b.

Canon City: The City of Cañon City requests the Division clarify what they would like an assessment of the effectiveness of the control measures to be. This may be a difficult requirement to meet as much of the assessed effectiveness is subjective and not easily quantifiable, particularly in the areas such as Education and Outreach.

Response 1: Clarify How to Report the Assessment of the Effectiveness of the Control Measures

These comments have not been incorporated into the permit. The assessment of the control measures should include more than just a data review. Please see the definition of a control measure in Part I.B. Permittees have the flexibility to determine the effectiveness of the control measures.

- f. **The results of the permit modification assessment and if any parts of this permit need to be modified or a condition of the permit many not be practicable.**

No comments were received on this section of the permit.

- g. Provide the following information for the program elements listed below:

- i. **Public Education and Outreach**

No comments were received on this section of the permit.

- ii. **Illicit Discharge Detection and Elimination**

Comment 1: Clarify the Definition of "Unresolved"

City of Canon City: The City of Cañon City requests the Division clarify "unresolved". The City of Cañon City's procedure when the source of the illicit discharge cannot be determined is to close the case after cleanup with the caveat of continued monitoring of the area for recurrences. In keeping with our comment for Part I.i.g. we recommend adding a Part (B) to this section: "(B)





Provide the total number of enforcement actions for each of the following categories:

- 1) Informal
- 2) Formal
- 3) Judicial"

Response 1: Clarify the Definition of “Unresolved”

This comment has not been incorporated into the permit. Permittees have the flexibility to further define “unresolved.”

iii. Construction Sites

Comment 1: Revise the Requirement for Providing Information for Program Elements

City of Canon City: The City of Cañon City requests the Division modify the above to state: "For the program elements listed below provide the following:"
Rationale: Not all program areas are sites/facilities and/or have enforcement actions or inspections associated with them.

Response 1: Revise the Requirement for Providing Information for Program Elements

This comment has been incorporated into the permit.

Comment 2: Revise the Construction Inspection Requirements

City of Canon City: (C) Provide the total number of inspections performed. The number of inspections must be divided into one of the following two categories, as most appropriate: There are five categories listed, not two.

Response 2: Revise the Construction Inspection Requirements

This comment has been incorporated into the permit.

Comment 3: Remove the Requirement of Reporting on the Dates that the Infeasibility Exclusion was Used

City of Canon City: This citation should be Part I.E.3.a.vi.(C). The City of Cañon City requests that "dates" be removed. The number of days inspections did not occur due to this exclusion should be sufficient.

Response 3: Remove the Requirement of Reporting on the Dates that the Infeasibility Exclusion was Used

This comment has not been incorporated into the permit. This section of the permit has been revised and only the number (not the dates) of staff vacancy inspections is required to be reported.

Comment 4: Revise the Requirement of Reporting Site Inspections

Colorado Stormwater Council: Please change to the following proposed concept:

Provide the total number of inspections performed. The number of inspections must be divided into one of the following categories, as most appropriate (and please update this section with the CSC’s proposed construction inspection frequency and scope):

Routine Site Inspections



**Reduced Site Inspections
Compliance Inspection**

The Winter Conditions and Site Inspection Infeasibility Exclusion are provided as exclusions where inspections cannot occur due to winter conditions, or to accommodate staff vacancy. If a staff position is vacant, or staff is on vacation, an inspection would not be completed so tracking the Site Inspection Infeasibility Exclusion as an inspection that did not occur, does not make sense. Inspections that aren't performed, can't be reported.

Douglas County: Please remove Site Inspection Infeasibility Exclusion from the inspection type categories for Annual Reporting. Please change to the following proposed concept:

Provide the total number of inspections performed. The number of inspections must be divided into one of the following four categories, as most appropriate (and please update this section with the CSC's proposed construction inspection frequency and scope):

1. Routine Site Inspections
2. Reduced Site Inspections
3. Compliance Inspection The Winter Conditions and Site Inspection Infeasibility Exclusion are provided as exclusions where inspections cannot occur due to winter conditions, or to accommodate staff vacancy. If a staff position is vacant, or staff is on vacation, an inspection would not be completed so tracking the Site Inspection Infeasibility Exclusion as an inspection that did not occur, does not make sense. Inspections that aren't performed can't be reported.

City of Canon City: Routine Inspections: Inspections of applicable construction activities that meet the inspection scope requirements in Part I.E.3.a.vi(D) and for which documentation is recorded in accordance with in Part I.E.3.b.vi. This citation should be Part I.E.3.a.vi.(E).

Reduced Frequency/Scope Inspection: Inspections of applicable construction activities that meet the inspection scope requirements in Part I.E.3.a.vi(E) and for which documentation is recorded in accordance with in Part I.E.3.b.vi. This citation should be Part I.E.3.a.vi.(F).

Compliance Inspections: Inspections or operator reporting or other action(s) to assess the control measure has been implemented or corrected) of applicable construction activities that meet the inspection scope requirements in Part I.E.3.a.vi(F) and for which documentation is recorded in accordance with in Part I.E.3.b.vi. This citation should be Part I.E.3.a.vi.(G).

Response 4: Revise the Requirement of Reporting Site Inspections
These comments have been incorporated into the permit.**Comment 5: Remove the Reporting Requirements for the Winter Conditions Exclusion**

City of Canon City: This citation should be Part I.E.3.a.vi.(D). The City of Cañon City requests that this requirement be removed. Rationale: Winter conditions





are an exclusion category of inspections. Inspections are not required when the conditions of this category are met. Please refer to our comments on Part I.E.3.a.vi(D).

Response 5: Remove the Reporting Requirements for the Winter Conditions Exclusion

This comment has not been incorporated into the permit. However, the reporting requirements for the winter conditions exclusion have been revised

Comment 6: Add More Reporting Requirements to the Permit

City of Canon City: Additionally, in keeping with our comment for Part I.I.g., we recommend adding a part 6) to this section: "6) Provide the total number of enforcement actions for each of the following categories:

- 1) Informal
- 2) Formal
- 3) Judicial"

General Comment: There are no reporting requirements for I.E.5. Pollution Prevention/Good Housekeeping for Municipal Operations. This may be an oversight, as there are recordkeeping requirements for this section. If it is the City of Cañon City recommends the Annual Report requirement to be "Provide the total number of inspections performed in accordance with Part I.E.5.a. ii(C)."

Response 6: Add More Reporting Requirements to the Permit

This comment has not been incorporated into the permit. The information is not needed by the division during a typical annual report review.

iv. Post-Construction Stormwater Management in New Development and Redevelopment Program

Comment 1: Remove the Reporting Requirements for Each Design Standard

Colorado Stormwater Council: Please remove the requirement to report on projects based on the design standard used. Projects may apply multiple design standards on a site. Tracking the number of sites with control measures is adequate to demonstrate compliance with the permit conditions.

Douglas County: Please remove the requirement to report on projects based on the design standard used. Projects may apply multiple design standards on a site. Tracking the number of sites with control measures is adequate to demonstrate compliance with the permit conditions.

City of Canon City: iv. Post-Construction Stormwater Management in New Development and Redevelopment Program (Part I.E.4): (C) Control Measure Requirements: Provide the number of applicable development projects that met the following design standards: 1) through 7). The City of Cañon City requests this requirement be removed as projects may apply multiple design standards on a site. Tracking the number of sites with control measures should be adequate to demonstrate compliance with the permit conditions.



**Response 1: Remove the Reporting Requirements for Each Design Standard**

These comments have been incorporated into the permit.

Comment 2: Remove the Reporting Requirement for Pavement Management Exclusion Projects

Colorado Stormwater Council: Please remove the requirement to report on Pavement Management Projects. Pavement Management Projects excluded from the permit requirements should not have additional documentation or reporting requirements since their purpose is in line with the definition of routine maintenance in Regulation 61. Although there may be documentation for Pavement Management Projects, this information is typically documented within a project file, not in a separate database or spreadsheet for reporting. Compiling paperwork for projects not subject to MS4 Permit requirements is not an efficient use of limited MS4 resources. Projects not subject to the requirements of this permit would not be tracked to show they were not subject to the permit requirements.

Douglas County: Please remove the requirement to report the acreage of the excluded impervious area for pavement management. Pavement Management Projects excluded from the permit requirements should not have additional documentation or reporting requirements since their purpose is in line with the definition of routine maintenance in Regulation 61. Although there may be documentation for Pavement Management Projects, this information is typically documented within a project file, not in a separate database or spreadsheet for reporting. Compiling paperwork for projects not subject to MS4 Permit requirements is not an efficient use of limited MS4 resources. Projects not subject to the requirements of this permit would not be tracked to show they were not subject to the permit requirements.

Response 2: Remove the Reporting Requirement for Pavement Management Exclusion Projects

These comments have been partially incorporated into the permit. This requirement has been updated to only require recordkeeping for rehabilitation and reconstruction of pavement. Recordkeeping requirements for the day-to-day maintenance of pavement have been removed. The current permit does not allow for any exclusions. This is a new section of the renewal permit and the use of the new exclusions must be closely tracked, especially for consideration under the next permit term. Permittees have the flexibility to be more stringent than the permit and not allow the exclusions due to the recordkeeping requirements.

Comment 3: Revise the Reporting Requirements for the Source Reduction Standard

Southeast Metro Stormwater Authority: Requirements for reporting on the Source Reduction Standard (as detailed above), should be addressed in the Annual Report by including the number of projects that utilized the Source Reduction Standard. Proposed language might read: Projects that met the design standard in accordance with Part 1.E.4.a.iv(-), Source Reduction. In addition to the number of projects, please include the total pollutant reduction for each project (in pounds).





Response 3: Revise the Reporting Requirements for the Source Reduction Standard

This comment has not been incorporated into the permit. The division found that it was unnecessary to incorporate the suggested source reduction requirement was into the permit.

K. PART I.J. - DEFINITIONS

Comment 1: Inconsistent definitions

Colorado Stormwater Council: Please consolidate and/or ensure all definitions are consistent. It is confusing to refer to Common Plan of Development as a facility and Part of a Larger Common Plan of Development as an area. Please remove the discussion of “related” in the permit. Part of a Larger Common Plan of Development or Sale is defined in three places in the permit.

Douglas County: Please consolidate and/or ensure all definitions are consistent. It is confusing to refer to Common Plan of Development as a facility and Part of a Larger Common Plan of Development as an area. Part of a Larger Common Plan of Development or Sale is defined in three places in the permit.

El Paso County: There are multiple instances of definitions included in the various sections of the permit, in addition to the list of definitions included in Section J. In some cases the same term is defined differently in different areas of the permit. All definitions used in the permit should be consistent.

Home Builders Association of Metro Denver: There are multiple instances of definitions included in the various sections of the permit - in addition to the list of definitions included in Section J. In some cases the same term is defined differently in different areas of the permit. All definitions used in the permit should be consistent.

City of Canon City: If the Division chooses to retain definitions in the body of the permit, please ensure the definition is exactly the same as Part I.J.

City of Aurora: Definitions are also confusing and inconsistent.

Response 1: Inconsistent definitions

These comments have been incorporated into the permit.

Comment 2: Define Chronic and Recalcitrant

Home Builders Association of Metro Denver: Please add a definition with flexibility to the terms chronic and recalcitrant. We are concerned that there will be a large range of definitions used by the MS4’s making compliance more difficult and we would appreciate some consistency with some flexibility.

City of Canon City: Definitions of “chronic” and “recalcitrant”: During the stakeholder meeting concerning Part I.E.3. Construction Sites on June 3, 2015, some attendees asked if the division would clarify or define the terms “chronic” and “recalcitrant”. The Division indicated it would prefer to let the MS4s develop their own definitions. From comments





made by various attendees, it would appear that there could be many different interpretations, and therefore, different standards for these terms among different MS4s. The Division has stated that the intent of the permit is to set clear minimum standards and to address potential economic disparities created by the previous permit. Some attendees expressed concern that the term “chronic” could encompass those operators who make every attempt to perform routine maintenance of their BMPs, but may have minor findings during each inspection. The Division indicated this was not their intent. The City of Cañon City would like to request that the Division provide a basic definition for the terms in order to avoid different standards being implemented by different MS4s. An example for the definitions follows: “Chronic violator”: A habitual violator; one who consistently and willfully violates the program requirements. “Recalcitrant violator”: One who refuses to correct violations of the program requirements, even after citation, thereby necessitating increasing enforcement actions. Or: One who obstinately refuses to correct violations of the program requirements.

City of Golden: A “common plan of development” at Section I.E.3 is defined differently from “Part of a Larger Common Development or Sale” at Section I.J .36, although the phrases appear to be intended to mean the same thing.

Response 2: Define Chronic and Recalcitrant

The division has not incorporated this comment into the permit. The permittees have the flexibility to determine “chronic” and “recalcitrant” and to design their stormwater programs to respond accordingly.

Comment 3: Remove Definitions Repeated in Part I.J.

El Paso County: Paragraph contains definition of “operator.” Delete definition in section J. Paragraph contains definition of “irrigation return flow.” Delete definition in section J. Paragraph contains definition of “control measures” and “waters of the state.” Delete, definition in section J.

Good Engineering, Hydrologic and Pollution Control Practices:

Control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices, and the manufacturer’s specifications, when applicable. “Pollution” is man-made or man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water. The City of Cañon City recommends removing the definition of “pollution” from this section. The definition is already contained in Part I.J. and adds nothing here.

City of Canon City: Inclusion of definitions in the body of the permit text: As all definitions are found in Part I.J., including these in the body of the permit text is not needed. It is recommended that these be removed from the body of the permit text. A reference could be added such as “See Part I.J.(#)”.

City of Arvada: Recommend that definitions be located in one section of the permit to reduce definition inconsistencies and have them easy to locate when needed.

Response 3: Remove Definitions Repeated in Part I.J.

These comments have not been incorporated in the permit. Terms are defined in the text and again in Part I.J.



**Comment 4: Revise the Definitions**

City of Canon City: General Comment: Many of the definitions begin with a repeat of the word and "means" or begin with "means". We recommend these definitions have those words removed. Definitions are the meaning of the word; including "means" is superfluous.

Response 4: Revise the Definitions

This comment has been incorporated into the permit.

Comment 5: Definitions must be Consistent with Regulation 61

City of Golden: There are numerous places through the permit where terms are used differently than in Regulation 61 and in the Colorado Revised Statutes. All terms within the permit should rely upon applicable definitions and conditions established in Regulation 61. It is inappropriate to modify the Regulations through the permit.

Sections I.J .1 "Applicable Construction Activity" differently and more broadly than what is found in Regulation 61 for the type of construction activities that are subject to a Phase II stormwater permit.

Response 5: Definitions must be Consistent with Regulation 61

These comments have been partially incorporated into the permit. Several definitions have been revised to be consistent with Regulation 61. Section 61.8 of Regulation 61 states that "Terms and conditions consistent with those specified in this regulation, including **but not limited to [emphasis added]**, the terms and conditions specified in sections 61.4(1), 61.8(2), 61.8(3), 61.8(4), 61.8(5), 61.8(6), 61.8(7), 61.8(8), 61.8(9) and 61.8(10), shall be incorporated into the Division's permits, either expressly or by reference to this regulation." The division may add additional terms and conditions in a permit. The language changes in the permit are intentional clarifications of and additions to the language included in Regulation 61.

Comment 6: Revise Applicable Construction Activity

Colorado Stormwater Council: Please consolidate and/or ensure all definitions are consistent. Please delete and located at, or contiguous to, the land disturbing activities. It does not provide clarity and, if the Division's definition of contiguous is applied, could imply a much broader scope than Regulation 61 provides. From Regulation 61: Stormwater discharge associated with small construction activity means the discharge of stormwater from construction activities, including clearing, grading, and excavating, that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

Douglas County: Please consolidate and/or ensure all definitions are consistent. Please delete and located at, or contiguous to, the land disturbing activities. It does not provide clarity and, if the Division's definition of contiguous is applied, could imply a much broader scope than Regulation 61 provides. From Regulation 61: Stormwater discharge associated with small construction activity means the discharge of stormwater from construction activities, including clearing, grading, and excavating, that result in land disturbance of equal to or greater than one acre and less than five acres. Small





construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

Response 6: Revise Applicable Construction Activity

These comments have not been incorporated into the permit. Many construction sites have staging areas that are not located on the construction site, but are located contiguous to, the site. The staging area that is contiguous to the construction site must also be included in the calculation of the acreage of the construction activity.

Comment 7: Revise Common Plan of Development or Sale

City of Golden: Further, a "common plan of development" states that activities are "considered to be 'related' if they share the same ... builder or contractor" This definition is too broad, because especially in small communities, completely separate projects might both rely upon the same builder or contractor.

Colorado Stormwater Council: The term "related" doesn't add clarification and could broaden what an applicable construction activity is beyond the intent of the Regulation. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.

Douglas County: Please modify the interpretation of "related" in the permit. The term "related" does not provide adequate clarification. Common ownership in conjunction with common contract more accurately reflects the intent of the regulation.

Response 7: Revise Common Plan of Development or Sale

These comments have not been incorporated into the permit. The division has received numerous questions concerning a common plan of development or sale over the years. The division has developed this definition to clarify a common plan of development or sale.

Comment 8: Revise Construction Activity

Colorado Stormwater Council: Please consolidate and/or ensure all definitions are consistent. From Regulation 61: Stormwater discharge associated with small construction activity means the discharge of stormwater from construction activities, including clearing, grading, and excavating, that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. Please remove "Repaving activities where underlying and/or surrounding soil is cleared, graded, or excavated as part of the repaving operation are typically construction activities unless they are an excluded project under Part I.E.4.a.i." The discussion in Regulation 61 states, "Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility." If repaving activity meets this intent, it is not a construction activity per Regulation 61.





Douglas County: Please consolidate and/or ensure all definitions are consistent. From Regulation 61: Stormwater discharge associated with small construction activity means the discharge of stormwater from construction activities, including clearing, grading, and excavating, that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. Please remove "Repaving activities where underlying and/or surrounding soil is cleared, graded, or excavated as part of the repaving operation are typically construction activities unless they are an excluded project under Part I.E.4.a.i." The discussion in Regulation 61 states, "Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility." If repaving activity meets this intent, it is not a construction activity per Regulation 61.

City of Golden: Sections I.J .6 define "Construction activity" differently and more broadly than what is found in Regulation 61 for the type of construction activities that are subject to a Phase II stormwater permit.

Response 8: Revise Construction Activity

These comments have not been incorporated into the permit. The division has received numerous inquiries regarding the difference between roadway maintenance and construction and the sentence regarding repaving activities in this definition of construction activity clarifies the difference.

Comment 9: Revise Final Stabilization

Colorado Stormwater Council: Please add discussion in the fact sheet about the Division's guidance regarding stabilization and removing areas from larger common plans of development. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.

Douglas County: Please add discussion in the Fact Sheet about the Division's guidance regarding stabilization and removing areas from larger common plans of development. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.

City of Canon City: The City of Cañon City recommends including a citation for the memorandum from Rik Gay, Permits Section, Water Quality Control Division, dated March 5, 2013, concerning final stabilization requirements for stormwater construction permit termination as a reference for "equivalent permanent, physical erosion reduction methods".

Response 9: Revise Final Stabilization



These comments have been incorporated into the fact sheet.

Comment 10: Revise Green Infrastructure

Douglas County: Green infrastructure: Generally refers to control measures that use or mimic natural processes to infiltrate, evapotranspiration, or reuse stormwater on the site where it is generated. Green infrastructure can be used in place of or in addition to low impact development principles." Please coordinate with the SEO to ensure the permit is written in compliance with SB15-212. The Definition of Green infrastructure may impact water rights as written and may need to be revised, since natural processes can be man-made with beneficial uses of water. Douglas County supports the use of low impact development techniques; however, some of the practices may not comply with the SEO requirements. One alternative is to remove this language as it describes particular design criteria. Specifying design standards that affects water rights could result in requiring a costly augmentation plan and obtaining a water right unless other design standards could be considered.

Response 10: Revise Green Infrastructure

This comment has been incorporated into the permit. Please note the division's response regarding SB-15-212 in Part I.E.4.

Comment 11: Revise Illicit Discharge

City of Canon City: Illicit Discharge: means any discharges to an MS4 that is not composed entirely of stormwater except discharges specifically authorized by a CDPS or NPDES permit and discharges resulting from emergency fire fighting activities. Permittees should note that there are many types of illicit discharges that in accordance with the permit need to be effectively prohibited. Only the discharges listed in Part.I.2.a.v. can be excluded from being effectively prohibited. The City of Cañon City recommends the following modification for succinctness: "Any discharge to a municipal separate storm sewer that is not composed entirely of stormwater except discharges that are excluded from being effectively prohibited in accordance with Parts I.E.2.v.(A) through (Y)." Please also refer to our comments in Part I.E.2.v.(U) concerning the term "emergency".

Response 11: Revise Illicit Discharge

This comment has not been incorporated into the permit. Section 61.8 of Regulation 61 states that "Terms and conditions consistent with those specified in this regulation, including but not limited to [emphasis added], the terms and conditions specified in sections 61.4(1), 61.8(2), 61.8(3), 61.8(4), 61.8(5), 61.8(6), 61.8(7), 61.8(8), 61.8(9) and 61.8(10), shall be incorporated into the Division's permits, either expressly or by reference to this regulation." The division, therefore, may add additional terms and conditions in a permit. The division may add additional terms and conditions in a permit. The language changes in the permit are intentional clarifications of and additions to the language included in Regulation 61. For example, the division further clarified the definition of fire fighting activities to include emergency fire fighting activities.

Comment 12: Revise Impervious Areas

Colorado Stormwater Council: Please remove storage area. A storage area may be an area where something is stored, and cannot be assumed to have an impervious cover, such as a storage shed.





Douglas County: Please remove storage area. A storage area may be an area where something is stored, and cannot be assumed to have an impervious cover, such as a storage shed.

Response 12: Revise Impervious Areas

These comments have not been incorporated into the permit. The word “impervious” was added to the definition for clarification.

Comment 13: Revise Land Disturbing Activity

Colorado Stormwater Council: For the purpose of the Construction section of the permit, please reword the definition of Land Disturbing activity. EPA uses the term “earth-disturbing activities, such as the clearing, grading, and excavation of land.”

EPA’s definition from EPA Construction General Permit, Appendix A - Definitions and Acronyms is preferable, as it focuses on actual earth disturbing activities, such as grading and clearing, and not on changes to soil cover, which could be interpreted to imply changes to landscaping.

Douglas County: For the purpose of the Construction section of the permit, please reword the definition of Land Disturbing activity. EPA uses the term “earth-disturbing activities, such as the clearing, grading, and excavation of land.” EPA’s definition from EPA Construction General Permit, Appendix A - Definitions and Acronyms is preferable, as it focuses on actual earth disturbing activities, such as grading and clearing, and not on changes to soil cover, which could be interpreted to imply changes to landscaping.

Response 13: Revise Land Disturbing Activity

These comments have been partially incorporated into the permit. The definition has been revised and “soil cover” and “soil topography” have been removed.

Comment 14: Revise Municipal Separate Storm Sewer System

City of Canon City: The City of Cañon City requests that the definition of "Municipal Separate Storm Sewer System" from Regulation 61.2(62) be used to be consistent with current Regulations. Rationale: Regulation 61 specifically discusses the removal of the terms borough and parish from the definition of Municipal. The terms "borough" and "parish" were removed because they are inconsistent with Colorado law. This was done for #28 Municipality/Municipal.

Response 14: Revise Municipal Separate Storm Sewer System

This comment has been incorporated into the permit.

Comment 15: Remove Part of a Common Plan of Development or Sale

Colorado Stormwater Council: Please consolidate and/or ensure all definitions are consistent. It is confusing to refer to Common Plan of Development as a facility and Part of a Larger Common Plan of Development as an area. Please remove the discussion of “related” in the permit. Part of a Larger Common Plan of Development or Sale is defined in three places in the permit. The term “related” doesn’t add clarification and could broaden what an applicable construction activity is beyond the intent of the Regulation. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.



**Response 15: Remove Part of a Common Plan of Development or Sale**

This comment has been incorporated into the permit. Please see the division's responses regarding common plan of development or sale in Part I.E.4.

Comment 16: Revise Point Source

City of Canon City: Point Source: Means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Point source does not include irrigation return flow. To be consistent with other definitions contained in the section, the reference (5 CCR 1002-61.2(75)) should be cited.

Response 16: Revise Point Source

This comment has been incorporated into the permit.

Comment 17: Revise Pollution

City of Canon City: Pollution: Man-made or man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water. To be consistent with other definitions contained in the section, the reference (5 CCR 1002-61.2(77)) should be cited.

Response 17: Revise Pollution

This comment has been incorporated into the permit.

Comment 18: Remove Program Description Document

City of Canon City: Program Description Document: See Part I.C. The City of Cañon City recommends removing this as it does not actually contain a definition.

Response 18: Remove Program Description Document

This comment has been incorporated into the permit.

Comment 19: Site Plan

City of Aurora: The term "site plan," e.g., is defined on p. 49 and site plan requirements are listed in at least two program sections. The term "site plan", used in Aurora's development process, is generally understood to mean a much more specific document.

Response 19: Site Plan

This comment has not been incorporated into the permit. Permittees should note that this is a general permit and many permittees have coverage under this permit. Many permits call a "site plan" a different term. Please see the definition of a site plan, which was developed to encompass all of the different terms for a "site plan" that commenters provided in their comments on the first draft of the renewal permit.

Comment 20: Revise Structural Control Measures

Douglas County: Structural Control Measures: Includes control measures that are comprised of facilities and structures that remove pollutants from water or retain, reuse, or provide for infiltration or evaporation of water." Please coordinate with the SEO to ensure the permit is written in compliance with SB15-212. The Definition of Structural Control Measures may impact water rights as written and may need to be revised, due to





the use of "retain, reuse, or provide for infiltration or evaporation of water." Douglas County supports the use of low impact development techniques; however, some of the practices may not comply with the SEO requirements. One alternative is to remove this language as it describes particular design criteria.

City of Canon City: Structural Control Measures: Includes control measures that are comprised of facilities and structures that remove pollutants from water or retain, reuse, or provide for infiltration or evaporation of water. The City of Cañon City recommends the Division remove the word "reuse". The Administrative Approach for Storm Water Management memo from the Office of the State Engineer, dated May 21, 2011, expressly states in paragraphs three and four that the water from detention areas and infiltration areas may not be diverted for any beneficial use. Additionally Senate Bill 15-212, signed into law on May 29, 2015 states in II(B)(e)(I): Water detained or released by a storm water detention and infiltration facility or post-wildland fire facility shall not be used for any purpose, including, without limitation, by substitution or exchange, by the entity that owns, operates, or has oversight over the facility or that entity's assignees, and is available for diversion in priority after release or infiltration."

Response 20: Revise Structural Control Measures

These comments have been incorporated into the fact sheet. Please note the division's response regarding SB-15-212.

Comment 21: Revise Water Quality Capture Volume

Douglas County: Water Quality Capture Volume (WQCV): The volume equivalent to the runoff from an 80th percentile storm, meaning that 80 percent of the most frequently occurring storms are fully captured and treated and larger events are partially treated." Please coordinate with the SEO to ensure the permit is written in compliance with SB15-212. The Definition of Water Quality Capture Volume (WQCV) should be revised to read: "The WQCV is equivalent to 80% of runoff-producing storms. A runoff-producing storm is in turn defined as a precipitation event that is 1) separated from precedent and antecedent precipitation events by at least six hours, and 2) measures at least 0.1 inches in depth." Douglas County supports the use of low impact development techniques; however, some of the practices may not comply with the SEO requirements. One alternative is to remove this language as it describes particular design criteria

Response 21: Revise Water Quality Capture Volume

These comments have been incorporated into the fact sheet. Please note the division's response regarding SB-15-212 in Part I.E.4.

L. PART I.K. - GENERAL REQUIREMENTS

No comments were received on this section of the permit.

M. PART II.A. - NOTIFICATION REQUIREMENTS**Comment 1: Define Upset Conditions**

Colorado Stormwater Council: Please add a discussion in the fact sheet on how upset conditions relate to the MS4 permit. An upset condition for MS4s would not include issues identified here, such as lack of preventative maintenance. Rather an upset condition





regarding an MS4 pertains to whether the program is implemented in accordance with the permit. Additional discussion in the fact sheet would be helpful to permittees to determine when an upset condition would apply.

Douglas County: Please add a discussion in the factsheet on the how upset conditions relate to the MS4 permit. An upset condition for MS4s would not include issues identified here, such as lack of preventative maintenance. Rather an upset condition regarding an MS4 pertains to whether the program is implemented in accordance with the permit. Additional discussion in the Fact Sheet would be helpful to permittees to determine when an upset condition would apply.

Response 1: Define Upset Conditions

These comments have been incorporated into the fact sheet.

N. PART II.B. - PERMITTEE RESPONSIBILITIES

No comments were received on this section of the permit.

O. PART III.A. - REQUIREMENTS APPLICABLE TO THE CITY AND COUNTY OF BOULDER AND BOULDER COUNTY MS4S

No comments were received on this section of the permit.





**Colorado Discharge Permit System (CDPS)
 Fact Sheet for Modification 1
 Permit Number COR090000
 MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4S)**

Permit Writer: Lisa Knerr
 May 16, 2016

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I. TYPE OF PERMIT

- A. **Type of Modification:** Modification 1 Minor Modification
- B. **Discharge To:** Surface Water

II. FACILITY INFORMATION

- A. **SIC Code:** 9511-Air, Water, and Solid Waste Management. Several SIC codes apply to specific municipal activities (sewerage systems 4952, water supply 4941, automotive repair shops 7539, transportation services 4789). Note that there is not a clear SIC code for a Municipal Separate Storm Sewer System (MS4), therefore the 9511 code is applied.
- B. **Facility Location:** Various Locations - See Part I.A.3 of the Permit

III. SCOPE OF MODIFICATION REQUEST

The division is initiating this minor modification to correct typographical and clerical errors.

IV. CHANGES MADE AS A RESULT OF THE MODIFICATION

- o Public Education and Outreach, Part I.E.1.a.ii. and Table 1. The division corrected an editorial error by removing “(pick any two bullets each year)” from the Passive Outreach column.
 - Part I.E.1.a.ii states that “Each year, the permittee must implement at least four education and outreach activities (bulleted items) and at least two must be from the Active and Interactive Outreach column.” The requirement *does not* state that two activities from the Passive Outreach column have to be conducted each year. Therefore, the requirement has been removed from Table 1.
- o Illicit Discharge Detection and Elimination, Part I.E.2.a.v(W). The division corrected a typographical error by changing “Irrigation Return Flow” to “Agricultural Stormwater Runoff.”





- The division received public comments that the language included in the second draft permit regarding agricultural waste was unclear in regards to tillage, and that the language should be consistent with other requirements, including federal requirements which exempt agricultural return flow. [See Comment 4 and Response 4 for the referenced section of the permit.] The division agreed with the comment and made a change to the permit, but that change included an editorial error. In the issued version of the permit, the division erroneously included irrigation return flow in item (W), irrigation return flow was already listed in item (D). The division agreed with the comment and corrected this typographical error by replacing item (W) with “agricultural stormwater runoff” as intended for the final permit. Irrigation return flow (which includes surface and subsurface water that leaves a crop field following irrigation of that field) and agricultural stormwater runoff do not require NPDES permits, as they are exempted from the CWA. For example, runoff into engineered conservation measures on a crop field such as grassy swales and other land management structures that direct flow from the crop field is considered either irrigation return flow or agricultural stormwater.
- Construction Sites, Part I.E.3.a.i(B). The division corrected an editorial error in the text regarding when county permittees must implement a construction sites program in the newly-identified county growth areas.
 - Part I.H.1 of the permit requires that permittees implement the exclusions for county growth areas by July 1, 2019. Part I.H of the permit also requires permittees to “implement their current program in accordance with the previous permit until a new program is implemented in accordance with this permit.” The previous permit had no construction site requirements for county growth area. Therefore, counties need to implement their current program (with no construction site requirements in growth areas) until July 1, 2019. An editorial error is being corrected to ensure that the conforming language in this section of the permit matches the requirement contained in the compliance schedule section of the permit.
- Construction Sites, Part I.E.3.a.vi.(E)(b)(ii): The division corrected a typographical error in the reference from I.E.3.vi(D) to I.E.3.a.vi(D).
- Construction Sites, Part I.E.3.a.vi(A). The division corrected a typographical error and changed “(B) through (G)” to “(B) through (E).”
 - There is no (F) and (G).
- Post-Construction Sites, Part I.E.4.a.i(K). The division corrected an editorial error in the text regarding when permittees must implement post-construction sites program in the newly-identified county growth areas.
 - Part I.H.1 of the permit requires that permittees implement the exclusions for county growth areas by July 1, 2019. Part I.H of the permit also requires permittees to “implement their current program in accordance with the previous permit until a new program is implemented in accordance with this permit. The previous permit had no post-construction site requirements for county growth area. Therefore, counties need to implement their current program (with no post-construction site requirements in growth areas) until July 1, 2019. An editorial error is being corrected to ensure that the conforming language in this section of the permit matches the requirement contained in the compliance schedule section of the permit.





- Post-Construction, Part I.E.4.a.iv(G). The division corrected an editorial error in the text regarding when permittees must ensure that the new control measures are being met.
 - Part I.H of the permit requires that the permittee must ensure that the new control measures are being met by July 1, 2019. Part I.H of the permit also requires permittees to “implement their current program in accordance with the previous permit until a new program is implemented in accordance with this permit. The previous permit had no design standards. Therefore, permittees can implement their current post-construction program July 1, 2019. An editorial error is being corrected to ensure that the conforming language in this section of the permit matches the requirement contained in the compliance schedule section of the permit.
- Post Construction Sites, Part , I.E.4.c.iv : The division corrected a typographical error in the reference from I.E.4.v to I.E.4.a.v.
- Post-Construction Part, I.E.4.c.v(D). The division corrected a typographical error by removing the duplicate change of ownership procedures in the PDD requirement.
 - This requirement is already listed in the Part I.E.4.c.vi(D) and has been removed from Part, I.E.4.c.v(D).
- Pollution Prevention/Good Housekeeping for Municipal Operations, Part I.E.5.b.iv.and Part I.E.5.c.iv. The division corrected an omission for consistency.
 - Part I.E.5.a.v has “Outdoor” in front of “Bulk Storage Structures” and the omission of the word “Outdoor” in Part I.E.5.b.iv and Part I.E.5.c.iv has been corrected.
- Compliance Schedule, Part I.H., Part I.A.2.b.i. Updated the Deliverable to “Submit an application supplement that identifies conveyances **in the permit area** for which the majority of flow is **stormwater.**”
 - The permit does not cover conveyances for which the majority of flow is from irrigation return flow. The permit does, however, cover conveyances for which the majority of flow is from stormwater. Those conveyances are part of the MS4 and outfalls from those conveyances and state waters that receive discharges from those outfalls must be mapped under Part I.E.2.a.i.
- Compliance Schedule, Part I.H., Part I.E.1.a.ii. The division corrected a typographical error by modifying the notification date to March 10, 2019 for the begin providing annual public and education outreach from Table 1.
 - This is will be consistent to the other requirements with “begin implementation” to have the reporting 1 year after the implementation has begun.
- Complainece Schedule, Part I.H., Part I.A.3. The division corrected an omission by adding a row to the compliance schedule table for county permittees to begin implementing their construction sites program in growth areas.
- Compliance Schedule, Part I.H., Part I.A.3.a.ii. The divison corrected typographical errors associated with the cross references. Part I.A.3.b.iii(A) and Part I.A.3.b.iii(B) to Part I.A.3.a.ii(B)(1) and (2). Also update Part I.A.3.b.iii(C)to Part I.A.3.a.ii(B)(3).





- Compliance Schedule, Part I.H., Part I.E.3.a.iv(C). The division corrected typographical errors by replacing “adequacy standards” with “control measure requirements” and removing (C).
- Compliance Schedule, Part I.H., Part I.E.3.a.vi (B) through (G). The division corrected a typographical error by modifying the reference from (G) to (E), since F and G are not in the permit.
- Compliance Schedule, Part I.H., Part I.A.4. The division corrected an omission by adding a row to the table for the compliance schedule for county permittees to begin implementing their post-construction sites program in growth areas.





Colorado Discharge Permit System (CDPS)
 Fact Sheet for Modification 2
 Permit Number COR090000
 MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4S)

Permit Writer: Lisa Knerr
 July, 26 2016

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I. TYPE OF PERMIT

- A. Type of Modification: Modification 2: Minor Amendment
- B. Discharge To: Surface Water

II. FACILITY INFORMATION

- A. SIC Code: 9511-Air, Water, and Solid Waste Management. Several SIC codes apply to specific municipal activities (sewerage systems 4952, water supply 4941, automotive repair shops 7539, transportation services 4789). Note that there is not a clear SIC code for a Municipal Separate Storm Sewer System (MS4), therefore the 9511 code is applied.
- B. Facility Location: Various Locations - See Part I.A.3 of the Permit

III. SCOPE OF MODIFICATION REQUEST

On May 12, 2016 the Division received a request for appeal and request for stay from the Weld County Office of Board of Commissioners of the requirement to identify and list conveyances for which the majority of flow is irrigation return flow. The request was in regards to the language in Part I.A.2.b.i of the permit. The division is initiating this minor amendment to clarify that there is no requirement to identify and list conveyances for which the majority of the flow is irrigation return flow. Specifically, the division is clarifying that some conveyances that contain irrigation return flow are excluded from being part of the permitted MS4 because they contain flows that are exempted from the Clean Water Act, and that for other conveyances that are part of the MS4 that contain irrigation return flows the permittee has the option of excluding portions of them from coverage under the permit.

IV. CHANGES MADE AS A RESULT OF THE MODIFICATION

The division modified Part I.A.2.b.i by creating two subsections now contained in Part I.A.2.b.i and Part





I.A.2.b.ii. The remaining subsections have been renumbered.

Part I.A.2.b.i addresses flows that are not eligible for coverage under the permit because they are not subject to permitting. In these circumstances, discharges from the conveyances do not meet the definition of a point source and therefore would not be a conveyance subject to permitting as an MS4. The language was modified to address agricultural stormwater runoff since the federal definition of point source excludes agricultural stormwater runoff. The definition of "irrigation return flow" contained at Regulation 61.2(46) was retained in the paragraph. EPA's description of irrigation return flow and agricultural stormwater runoff, and statement that they are exempt from the Clean Water Act, was added to the paragraph.

Part I.A.2.b.ii addresses combined flows and the option for permittees to exclude portions of the MS4 from permit coverage. The language was modified to make it clear that this applies to "portions of the MS4." In other words that the conveyance must first meet the definition of MS4 before this option of exclusion of permit coverage would be applicable. The division added agricultural stormwater runoff to the description of flows included when determining the "majority" of flow, since the federal definition of point source excludes agricultural stormwater runoff. The division retained the procedural aspects of the paragraph that in order to exclude these portions of the MS4 from permit coverage the permittee must identify the portions of the MS4 for which they are requesting exclusion in their permit application or an application supplement, and the division must list these portions of the MS4 in the permit certification.

The division made a conforming change to Part I.H by removing the compliance schedule for Part I.A.2.b.i. Because the division has clarified that the exclusion now contained at Part I.A.2.b.ii is voluntary, no compliance schedule is necessary. A permittee can provide an application supplement at any time and request that the division exclude portions of the MS4 from permit coverage.

V. PUBLIC NOTICE COMMENTS

The public notice period was from May 23, 2016 to June 23, 2016. No comments were received during the public notice period.





**Colorado Discharge Permit System (CDPS)
 Fact Sheet for Modification 3
 Permit Number COR090000
 MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4s)**

**Permit Writer: Lisa Knerr
 December 1, 2016**

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VI. PUBLIC NOTICE COMMENTS.....	2

I. TYPE OF PERMIT

- A. Type of Modification: Modification 3
- B. Discharge To: Surface Water

II. FACILITY INFORMATION

- A. SIC Code: 9511-Air, Water, and Solid Waste Management. Several SIC codes apply to specific municipal activities (sewerage systems 4952, water supply 4941, automotive repair shops 7539, transportation services 4789). Note that there is not a clear SIC code for a Municipal Separate Storm Sewer System (MS4), therefore the 9511 code is applied.
- B. Facility Location: Various Locations - See Part I.A.3 of the Permit

III. SCOPE OF MODIFICATION REQUEST

This modification includes modifications to clarify various sections of the general permit, as well as minor modifications to correct typographical and clerical errors. The minor modifications are not open for public comment; all other modifications are open for public comment.

IV. CHANGES MADE AS A RESULT OF THE MODIFICATION

- Construction Sites Program, Part I.E.3.a.vi(B). The division has added a site inspection frequency exclusion for individual residential lots with unfinished homes as long as the residential development is still inspected under an inspection frequency.
- Permittees that permit each individual home in a housing development asked whether the permit could be modified to add this flexibility. Permittees had commented on the second draft of the permit that it was burdensome to write an inspection report for each inspection conducted at each residential home site. The division intended to incorporate the change in to the renewal however this revision was missed in development of the final permit. Therefore, through this modification the division added an exclusion from the minimum inspection frequency for individual, residential, unfinished home sites since the overall housing development will still need to be inspected at a frequency outlined in the permit and inspection reports will need to be written.
- Compliance Schedule, Part I.H., Part I.E.3. The division has clarified this requirement by replacing “current construction sites program” with “new construction sites program.”
- It is unnecessary for permittees to implement the current construction sites program at the same time as they would have to implement their new construction sites program in county growth areas. County permittees will



not be required to implement their current programs in the newly-identified county growth areas. County permittees have to identify the county growth areas by January 1, 2017 and implement the new construction sites program by January 1, 2019.

- Compliance Schedule, Part I.H., Part I.E.4. The division has clarified this requirement by replacing “current post-construction sites program” with “new post-construction sites program.”
- It is unnecessary for permittees to implement the current post-construction sites program at the same time as they would have to implement their new post-construction sites program in county growth areas. County permittees will not be required to implement their current programs in the newly-identified county growth areas. County permittees have to identify the county growth areas by January 1, 2017 and implement the new post-construction sites program by January 1, 2019.

V. CHANGES MADE AS A RESULT OF MINOR MODIFICATIONS

- Construction Sites Program, Part I.E.3.a.i(C). The division corrected an editorial error by changing “growth areas” to “non-urban areas”.
- Response 1 on page 59 of Attachment A of the fact sheet indicated that the comments had been incorporated into the permit, but the changes to permit were inadvertently left out. The comments have now been incorporated into the permit.
- Construction Sites Program, Part I.E.3.b.viii. The division corrected an editorial error by removing the record keeping requirement for the name and title of each individual trained, date of training, the type of training, and the list of topics covered.
- Attachment A of the fact sheet indicated that the comments were incorporated into the permit, but the changes to the permit were inadvertently left out. The comments have now been incorporated into the permit. Many permittees educate their construction operators by providing them with a folder of materials or information on their web site, but do not provide a formal training program.
- Construction Sites Program, Part I.E.3.c.viii(A). The division corrected a typographical error and corrected the reference to Part I.E.3.a.v, which is the correct section for site plan review.
- Post-Construction Program, Part I.E.4.a.iv(F)(2)(c). The division corrected a typographical error and added the word “area” after the word “impervious.”
- Post-Construction Program, Part I.E.4.b.vii(C). The division corrected an editorial error by removing “and control measure owner and operator” since the requirement is repeated in Part I.E.4.b.vii(D).
- Reporting Requirements, Part I.I.1.g.iv(B). The division corrected a typographical error by removing the word “in.”

VI. PUBLIC NOTICE COMMENTS

The public notice period was from October 14, 2016 to November 14, 2016. No comments were received during the public notice period.