

QUALIFYING LOCAL PROGRAMS FOR SMALL CONSTRUCTION SITES - APPLICATION GUIDANCE

6/02

A Qualifying Local Program is a way for a municipality to reduce the regulatory burden upon operators of small construction sites within their jurisdiction. The municipality's construction program essentially replaces the State's program for these 1-5 acre construction sites. Applying for Qualifying Local Program status is an option for municipalities, not a requirement.

A. Introduction

The goal of Colorado's Stormwater Program is to reduce the amount of pollutants entering streams, rivers, lakes, and wetlands as a result of runoff from residential, commercial and industrial areas. The State regulation (5 CCR 1002-61) covers discharges from specific types of industries including construction sites, and storm sewer systems for certain municipalities. In Colorado, the program is under the Colorado Department of Public Health & Environment, Water Quality Control Division (the Division). The Colorado program is referred to as the Colorado Discharge Permit System, or CDPS.

A permit is required in order to discharge stormwater from any construction activity that disturbs at least 1 acre of land (or is part of a larger common plan of development or sale that will disturb at least 1 acre). The requirements vary somewhat depending on if the project or plan of development will disturb less than 5 acres (Small Construction Site) or 5 acres or more (Large Construction Site). (Refer to the Stormwater Fact Sheet for Construction for more information on permitting requirements, available at <http://www.cdphe.state.co.us/wq/PermitsUnit/wqcdpmt.html>)

The Division may designate a local municipality's construction stormwater quality control program as a Qualifying Local Program for Small Construction Sites. This means that the local program's requirements are at least as stringent as the State's program. If the municipality has a State-approved program, the owner or operator of a Small Construction Site (at least 1 acre and less than 5 acres of disturbance) is automatically covered under the State's Stormwater General Permit for Construction Activities, and so is not required to submit an application to the Division for permit coverage. (A municipality may also go beyond the State's requirement when developing a Qualifying Local Program. This would include providing similar oversight for construction sites 5 acres or greater, although this would not exempt the operator of such a site from State permitting requirements.) The application requirements are included in Appendix A.

The local program must have been formally designated by the Division to qualify. Most municipalities have some type of local program and may require permits and fees. However, simply having a program in place does not necessarily mean that it is a qualifying program and that a State permit is not required.

The municipality's program must be fully established and operating before application is made to the Division. The application for Qualifying Local Program status is a commitment to carry out the program as described. Thus, all segments of the program should have been operating for at least 3-6 months, so that any technical or programmatic difficulties have been overcome. Also, the municipality's program must be applied throughout the municipality's entire jurisdiction.

The Division reserves the right to revoke approval of a Qualifying Local Program if the municipality fails to administer the program as approved, or fails to provide adequate protection to State waters. In addition, at any point after the initial approval, the Division may require that the municipality require additional measures from operators to remain consistent with changes in State permits and/or

regulations, including TMDLs (Total Maximum Daily Loads). The Division reserves the right to review a municipality's program to ensure that it continues to qualify for Division approval.

Approval Expiration - Division approval of a Qualifying Local Program will expire when the Stormwater General Permit for Construction Activities expires on June 30, 2007. Any municipality desiring to continue Division approval of their program must reapply by March 31, 2007. The Division will determine if the program may continue as an approved Qualifying Local Program.

R-Factor Waiver - Some small construction sites may qualify for the State's R-Factor Waiver, which excludes the site from needing coverage under the State's construction stormwater general permit. The municipality may elect to also grant the waiver if it has been approved by the Division, or may require all small construction sites to go through the municipal program.

Phase II Municipalities - For municipalities required to obtain permit coverage for their storm sewer system under Phase II, their municipal permit will also require the development of a construction program. The main difference between the Phase II municipal permit construction program and a Qualifying Local Program is that the Qualifying Local Program requires the development and submittal of a Stormwater Management Plan by construction site operators. The Phase II municipal permit does require submittal of a stormwater control site plan, but the plan requirements are not as specific. The other difference is the set of general limitations as listed in sections C.v and C.vi, below. A Phase II municipal permit construction program that is expanded to include these additional requirements will meet the intent of the Qualifying Local Program, and may apply to the Division for program approval.

B. Definitions

For the purposes of this guidance document:

1. **Best management practices (BMPs):** schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, waste disposal, or drainage from material storage.
2. **Final stabilization:** when all soil disturbing activities at the site have been completed, and uniform vegetative cover has been established with a density of at least 70 percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. The Division considers establishment of a vegetative cover capable of providing erosion control equivalent to pre-existing conditions at the site to be final stabilization. Municipalities may apply a more stringent definition.
3. **Operator:** the individual who has day-to-day supervision and control of activities occurring at the construction site. This can be the owner, the developer, the general contractor or the agent of one of these parties, in some circumstances. It is possible that at different phases of a construction project, different types of parties will satisfy the definition of 'operator' and that the responsibility for compliance with the municipality's program, and the pertinent portions of the State permit (see Part D, below) will be transferred as the roles change.
4. **Stormwater Management Plan:** a site-specific plan that includes site descriptions, descriptions of appropriate control measures, copies of approved local requirements, maintenance procedures, inspection procedures, and identification of non-stormwater discharges. The term is used to refer to the plan requirements under both the State general permit and the municipality's program.

C. Requirements of a Qualifying Local Program

A Qualifying Local Program must include requirements that are at least as strict as those in the State CDPS general permit for stormwater associated with construction activity (COR-030000). The following requirements for construction activities requiring permit coverage by the State Discharge Permit System Regulations (5 CCR 1002-61) must be included in the program. (Text in *bold italics* is cited from the regulation.)

i) ***Requirements for construction site operators to implement appropriate erosion and sediment control best management practices.***

Best Management Practices (BMPs) include schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs can also include treatment requirements and operating procedures.

The following specific items must be required of the operator by the municipality, and addressed in the operator's stormwater management plan (see sections iii and iv, below):

- a) Construction BMPs: In each case where stormwater pollution potential exists, appropriate preventive measures (that is, BMPs) must be implemented before and during construction activities. In addition to the actual construction and ground disturbance activities, the following types of activities must be evaluated for the reasonable potential for contributing pollutants to runoff: loading and unloading operations; outdoor storage activities; vehicle and equipment maintenance and fueling; significant dust or particulate generating processes; and on-site waste disposal practices.

Based on an assessment of the potential of various sources at the site to contribute pollutants to stormwater, the stormwater management plan should include a description of reasonable and appropriate control measures that will be implemented at the site.

- b) Final Stabilization: The implementation of measures used to achieve final stabilization of disturbed areas.

Final stabilization is reached when all soil disturbing activities at the site have been completed, and uniform vegetative cover has been established with a density of at least 70 percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed.

For purposes of this requirement, establishment of a vegetative cover capable of providing erosion control equivalent to pre-existing conditions at the site can be considered final stabilization. The municipality may, after consultation with the operator and upon good cause, amend the final stabilization criteria for specific operations.

Measures to control pollutants in stormwater discharges that will occur after construction operations have been completed must also be addressed by the operator. However, the Qualifying Local Program does not need to provide follow-up or enforcement of any post-construction BMPs. (If the municipality is covered by the State's MS4 permit, such follow-up is a requirement, but it would still not be a part of the Qualifying Local Program.)

c) Site Inspections: At a minimum, the municipality must require the operator to do the following:

- 1) Active Sites - For sites where construction has not been completed, the operator shall make a thorough inspection of their stormwater management system at least every 14 days and after any precipitation or snowmelt event that causes surface erosion.
 - A) The construction site perimeter, disturbed areas and areas used for material storage that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the stormwater management plan shall be observed to ensure that they are operating correctly.
 - B) Based on the results of the inspection, the description of potential pollutant sources, and the pollution prevention and control measures that are identified in the site's stormwater management plan shall be revised and modified as appropriate as soon as practicable after such inspection. Modifications to control measures shall be implemented in a timely manner, but in no case more than 7 calendar days after the inspection.
 - C) The operator shall keep a record of inspections. Uncontrolled releases of mud or muddy water or measurable quantities of sediment found off the site shall be recorded with a brief explanation as to the measures taken to prevent future releases, as well as any measures taken to clean up the sediment that has left the site. This record shall be made available to the municipality upon request.
- 2) Completed Sites - For sites where all construction activities are completed but final stabilization has not been achieved due to a vegetative cover that has been planted but has not become established, the operator shall make a thorough inspection of their stormwater management system at least once every month. When site conditions make this schedule impractical, operators may petition the municipality to grant an alternate inspection schedule. These inspections must be conducted in accordance with sections A and B, above.
- 3) Winter Conditions - Inspections, as described above in 1) and 2), do not need to be required at sites where snow cover exists over the entire site for an extended period, and melting conditions do not exist. This exemption is applicable only during the period where melting conditions do not exist. Regular inspections, as described above, are required at all other times.

ii) ***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.***

Except as discussed below, all discharges authorized by the Qualifying Local Program shall be composed entirely of stormwater. Discharges of material other than stormwater must be addressed in a separate CDPS permit issued by the Division for that discharge.

Discharges from the following sources that are combined with stormwater discharges associated with construction activity may be authorized, provided that the non-stormwater component of the discharge is identified in the plan required by part iii below: fire fighting activities; landscape irrigation return flow; and springs.

Discharging materials other than stormwater or those listed above is also a violation of the State Water Quality Control Act, the CDPS General Permit, and the Qualifying Local Program.

- iii) ***Requirements for construction site operators to develop and implement a stormwater management plan. (A stormwater management plan includes site descriptions, descriptions of appropriate control measures, copies of approved local requirements, maintenance procedures, inspection procedures, and identification of non-stormwater discharges).***

The plan must be prepared in accordance with good engineering, hydrologic and pollution control practices. The municipality does not have to require the plan to be prepared by a registered engineer or other registered professional, although they may if so desired.

The operator must be required to amend the plan whenever there is a significant change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the State, or if the stormwater management plan proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity.

- iv) ***Requirements to submit a site plan (i.e., stormwater management plan) for review that incorporates consideration of potential water quality impacts:***

The plan must be submitted to the municipality prior to commencement of construction. The extent of what is submitted and reviewed may be determined by the municipality but must be adequate to determine if adequate BMPs are being planned and implemented.

- a) **Stormwater Management Plan Submittal Upon Request:** In addition to submittal to the municipality, the operator must submit a copy of the stormwater management plan to the Division and EPA upon request.

All stormwater management plans required under the Qualifying Local Program are considered reports that shall be available to the public under Section 308(b) of the CWA. The owner or operator of a facility with stormwater discharges covered by a Qualifying Local Program shall make plans available to members of the public upon request. However, the owner or operator may claim any portion of a stormwater management plan as confidential in accordance with 40 CFR Part 2.

- v) **The following general limitations are required under the CDPS general permit, and also must be required by the Qualifying Local Program:**

- a) Stormwater discharges from construction activities shall not cause or threaten to cause pollution, contamination or degradation of State waters.
- b) Concrete wash water shall not be discharged to state waters or to storm sewer systems.
- c) Bulk storage structures for petroleum products and other chemicals shall have adequate protection so as to contain all spills and prevent any spilled material from entering State waters.
- d) No chemicals are to be added to the discharge unless permission for the use of a specific chemical is granted **by the Division**. In granting the use of such chemicals, special conditions and monitoring may be addressed by separate letter.

- e) All wastes composed of building materials must be removed from the site for disposal in licensed disposal facilities. No building material wastes or unused building materials shall be buried, dumped, or discharged at the site.
 - f) Off-site vehicle tracking of sediments shall be minimized.
 - g) All dischargers must comply with the lawful requirements of municipalities, counties, drainage districts and other local agencies regarding any discharges of stormwater to storm drain systems or other water courses under their jurisdiction, including applicable requirements in municipal stormwater management programs developed to comply with CDPS permits. Dischargers must comply with local stormwater management requirements, policies or guidelines including erosion and sediment control.
- vi) **In addition, the Division requires the following from a Qualifying Local Program in order for the municipality to maintain approval:**
- a) Notification of any operator of a Small Construction Site within the municipality's jurisdiction of the requirements of the municipality's program and the CDPS general permit (see Part D below).
 - b) Development and implementation of a program to track construction site location and operator contact information for all active construction sites covered by the program.

D. Requirements under the CDPS General Permit

As discussed in Part A, if a small construction site is within the jurisdiction of a Qualifying Local Program, the operator of the construction activity is automatically covered under the CDPS general permit for stormwater associated with small construction activity (COR-030000), without the submittal of an application to the Division. The operator also is not required to submit an inactivation notice or payment of an annual fee to the Division. However, the Division reserves the right to require any owner or operator within the jurisdiction of a Qualifying Local Program to apply for and obtain coverage under the full requirements of this permit.

The following sections of the CDPS general permit apply to sites covered by a Qualifying Local Program:

- i) I.A.1, I.A.2, and I.A.3: Authorization to discharge and discussion of coverage under the permit.
- ii) I.C.1: General limitations that must be met and are also required under the Qualifying Local Program (see Part C.v above).
- iii) I.C.2, I.C.3: Prohibition of non-stormwater discharges unless addressed in a separate CDPS permit and requirements related to releases of reportable quantities.
- iv) Part II (except for Parts II.A.1, II.B.3, II.B.8, and II.B10): Specifically includes, but is not limited to, provisions applicable in the case of noncompliance with permit requirement, and requirements to provide information and access.

APPENDIX A
QUALIFYING LOCAL PROGRAM –
APPLICATION REQUIREMENTS

Please print or type. All items must be completed accurately and in their entirety or the application will be deemed incomplete and processing of the permit will not begin until all information is received. An original signature of the applicant is **required**.

1. **Name and address of the applicant:**

Agency Name _____

Mailing Address _____

City, State and Zip Code _____

County _____

Phone Number (____) _____ Who is applying? Owner Operator

Entity Type: State County City/Town Other: _____

Program Contact (responsible for program implementation) _____

Title _____ Phone Number (____) _____

Email address (program contact) _____

Email address (legally responsible person) _____

2. **Program Description.**

Attach a detailed description of how the municipality meets each of the elements outlined in Section C, Requirements of a Qualifying Local Program. The actual codes, ordinances, regulations, etc. that are employed may be attached (with applicable sections highlighted), or, if they are too lengthy, include a summary and the appropriate citations to the documents.

3. **Qualifying Local Program Certification**

The application must be signed to be considered complete. In all cases, it shall be signed as follows: in the case of a municipal, state, or other public agency, by either a principal executive officer, ranking elected official, or other duly authorized employee.

"I certify under penalty of law that a complete Construction Management Program, as described in the attachments to this application, is in effect for my agency. The program areas were prepared with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the program, or those persons directly responsible for gathering the information, the information on the Construction Management Program is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for falsely certifying the elements of said Program, including the possibility of fine and imprisonment for knowing violations."

Signature of Applicant (legally responsible person)

Date Signed

Name (printed)

Title