Colorado WQCD MS4 Newsletter

September 18, 2009

1st Edition

Hello MS4 Group,

Many of you know that I recently started working at CDPHE - WQCD with the Stormwater and Statewide Permitting Unit. We would like to start an informal email "newsletter" to all MS4 permittees. Below is our first attempt. We would like the newsletter to work in both directions, so if there is an item that the MS4 group would like guidance or clarification on, please email me and I will attempt to cover it in a future e newsletter. If you need immediate assistance on a specific item, please continue to call us directly, as we anticipate sending this newsletter to MS4 permittees on some schedule that is between monthly and quarterly. These emails will be sent to the MS4 permit local contacts only. If you are interested in receiving this newsletter and are not the MS4 permit local contact, please ask the MS4 permit contact to forward it to you.

Items covered in this e newsletter:

1. The definition of Construction Activity
2. When do BMPs on construction sites need to be repaired or maintained?
3. Stormwater and Permits staff - new staff, who's who, and who does what
4. Draft low risk guidance document for Discharges from Surface Cosmetic Power Washing Operations to Land

1. The definition of Construction Activity

There has been some confusion among MS4 Permittee staff concerning when an activity meets the definition of "Construction Activity." Specifically, there is a perception among some that construction permits are only required if a structure is being constructed or the site is "going vertical". This is an incomplete definition of construction activities. Construction activity is defined in The CDPS General permit for Stormwater Discharges Associated with Construction Activity (CDPS Construction Permit) as **ground surface disturbing activities, 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 original line and grade, hydraulic capacity, or original purpose of the facility.** The WQCD applies the same definition when determining compliance with MS4 Construction Sites and Post Construction permit requirements.

Therefore the ultimate purpose of the site, or what may or may not be constructed on the site, is not relevant to the CDPS Construction Permit and MS4 permits. We encourage MS4 Permittees to review the definition of Construction Activity in the

discharge permit and reconcile any differences that may exist in your community's codes, ordinances, procedures, and guidance.

2. When do BMPs on construction sites need to be repaired or maintained?

It has come to our attention that some communities are allowing site operators a time frame for repairs or maintenance of construction site BMPs when deficiencies are identified by MS4 permittee staff, or the construction site operators' self-inspections. For example, a community may state during an inspection or provide in the community code or a standard operating procedure that BMPs must be repaired within a certain time frame.

To clarify: The expectation is that permittees proactively manage their sites so that these situations don't occur in the first place--if they do occur, they need to be corrected immediately. The CDPS construction permit requires that BMPs be consistently implemented (Part I.D.2) and where they require maintenance or have failed, addressed "immediately" (covered in Parts I.D.7 and I.D.8 of the CDPS construction permit). The term "immediately" is used in the CDPS Construction Permit to correct non-compliant conditions in the field. In addition, MS4 permits require the permittees to implement a program that requires BMPs at construction sites. Providing a time frame to correct the failed BMP is essentially allowing the site to operate without the BMPs that were identified as needed in the SWMP to reduce the pollutants in stormwater discharges associated with construction activities.

In summary: A permittee must require BMPs be implemented for pollutant sources at construction sites at all times. If your municipal code or guidance authorizes a time frame for construction site operators to correct a construction site BMP, then this is not consistent with the CDPS Construction Permit requirements or the MS4 Permit requirements. However, the permit does allow for flexibility in an MS4 permittees inspection and enforcement procedures. Your program therefore may state that BMPs needing repair or maintenance must be corrected "immediately," but include procedures for MS4 staff to follow up within a certain time frame and conduct enforcement escalation based on a determination of the adequacy of the response.

3. Stormwater and Permits staff - new staff, who's who, and who does what.

There have been several changes in WQCD permitting staff and organization. In addition to my recently joining the WQCD, Lisa Knerr has also just been hired and will be working with stormwater permittees. Stormwater permitting activities at the WQCD are now part of the new Stormwater and Statewide Permitting Unit. This

new unit also includes permitting activities for many process water permits you may be involved with, including all general process water permits, to include construction dewatering, subterranean dewatering, etc. (except domestic waste water), and some industrial and groundwater individual permits. The following is more information on the Unit staff and how we are organized:

The Stormwater and Statewide Permits unit contains three permit functions with Gary Beers as the Unit Manager and Nathan Moore as the work group lead:

MS4 Permits: I (Michelle DeLaria) am the lead and Lisa Knerr will work in both MS4 and in the construction aspects. Kathy Rosow will continue to be involved with MS4 permits. Nathan Moore will remain heavily involved with MS4 permitting.

Construction Sites Permits (including process water and stormwater): Matt Czahor is the lead. Lisa Knerr, Jeremy Torres, Nicole Rolfe and Maura McGovern also work in this part of the permits unit.

Industrial Permitting (including process water and stormwater): Kathy Rosow will lead this element once she transitions out of the Stormwater MS4 function. Maura McGovern and Nicole Rolfe also work in this element. Many of you may know Nicole through her permit writing work for power washing.

Additionally, since the the construction and some industrial permits affect MS4s, communication about these elements will come from me instead of MS4 permittees receiving email from other State staff. This is done so that the MS4 permit contact will know that the information pertains to the MS4 permittee. Item 4, below is an example: Nicole has a draft power washing permit out for public comment.

4. Draft low risk guidance document for Discharges from Surface Cosmetic Power Washing Operations to Land

The WQCD has developed a draft low risk guidance document for Discharges from Surface Cosmetic Power Washing Operations to Land. This draft guidance document is currently at public notice and can be found on the Division's website at: http://www.cdphe.state.co.us/wq/PermitsUnit/publicnotice/publiccomment.html

Written comments are being accepted through September 30, 2009.

Please submit comments to:
CDPHE, WQCD-P-B2
Attn: Nicole Rolfe
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Or email Nicole at nicole.rolfe@state.co.us

Please send comments and questions about this newsletter and the MS4 permit program to Michelle DeLaria:

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