

TARGETED PERMIT QUESTIONNAIRE – Due October 15, 2012
Municipal Separate Storm Sewer Systems (MS4s) Permits COR-090000 and COR-080000

COLORADO DEPT. OF PUBLIC HEALTH & ENVIRONMENT

Water Quality Control Division
WQCD-P-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

This form is intended to be filled out electronically and then printed for the signature and submittal. One original copy (no faxes or e-mails) of the completed Targeted Permit Questionnaire, including attachments as appropriate, must be submitted to the Water Quality Control Division by **October 15, 2012**.

This questionnaire targets specific program elements and is not a full audit. The questions are based on the common findings that were identified during permit audits conducted by the Division in 2010 and 2011. The questions will help the Permittee determine compliance with the current permit. Answering “yes” or “no” to a question does not automatically make the Permittee in or out of compliance. The Permittee must carefully read the Required Action section to determine if a notice of noncompliance must be submitted. The Permittee is also welcome to include any additional information that the Division should consider when determining compliance with the permit. All sections of the form must be filled out. Some sections have a Recommended Action sub-section following the Required Action sub-section, to provide the Permittee with compliance assistance.

The Division will notify specific permittees in writing that they do not have to complete this questionnaire based on the occurrence of a recent **Division audit**. The Division recommends that these previously audited permittees review the information provided in this questionnaire.

The question format includes a Summary of the common finding, examples of compliant and non-compliant programs and the Compliance Goal followed by Questions and the Required Actions. By answering the yes/no questions, the Permittee determines compliance for the specific permit element. If the Permittee cannot certify compliance by the response date of **October 15, 2012**, the Permittee must submit a Non-compliance notification with the Targeted Permit Questionnaire response form.

In accordance with Part II.A.8 of the Permit, all MS4 permittees covered under the above referenced MS4 permits must comply with this requirement and, unless excluded in writing as addressed above, submit the completed self-audit report by **October 15, 2012**. All answers must reflect conditions and compliance status on the date of submittal.

Some of the items in Part 3, Program Area Assessment, include the potential for identification and required reporting of permit noncompliance. The Permittee is strongly encouraged to contact the Division prior to formal submittal of this form if it is unclear to the Permittee why the associated conditions are resulting in a condition of noncompliance or how corrections can be implemented to return to compliance.

PART 1: PERMITTEE INFORMATION

Permittee (Agency name):
Mailing Address:
City and Zip Code:
Permit Certification No: COR –

PART 2: 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."

X _____
Signature of Permittee (legally responsible person) Date Signed

PART 3: PROGRAM AREA ASSESSMENT

A. Illicit Discharge Detection and Elimination:

NOTE: The term "Illicit Discharge" as used in the this section shall be defined in accordance with the responders MS4 permit and shall NOT include those discharges not required to be prohibited by the MS4 Permittee in accordance with Part I.B.3(a)(5) and (6) of the Permit.

1. Regulatory Mechanism for Enforceability

- a. **Summary:** Part I.B.3(a)(2) of the Permit, requires a regulatory mechanism to prohibit illicit discharges into the storm sewer system and the authority to implement appropriate enforcement procedures and actions. The Permittee may provide a timeframe to eliminate an illicit discharge (i.e., the illicit discharge is no longer occurring and therefore has been effectively prohibited); however the timeframe to eliminate an illicit discharge **cannot be a "grace period" from potential enforcement** for the period it takes to eliminate the illicit discharge. For permit compliance purposes, a "timeframe to eliminate" an illicit discharge is the timeframe that is provided in a regulatory mechanism or at the discretion of the Permittee; and "grace period" is when an illicit discharge is identified and the regulatory mechanism **lacks the authority** for the Permittee to conduct enforcement for the occurrence of the illicit discharge if it is eliminated within a "timeframe to eliminate," thereby allowing a time of non-compliance – or a "grace period" from enforcement. The Permittee's procedures and rules must result in an illicit discharge being subject to enforcement procedures for both the original finding of violation, as well as during any provided timeframe to eliminate the illicit discharge.

Alternatively, the Permittee may require that an illicit discharge be eliminated "immediately" or "without delay," and the Permittee clearly informs the owner or operator responsible for the illicit discharge that the illicit discharge is considered an enforceable violation from the moment it is identified to the moment it is corrected. In such case, no timeframe to eliminate has been authorized and no grace period from potential enforcement has occurred.

The Permittee's procedures for enforcement, as required by Part I.B.3(a)(2) of the Permit, must fully address, and be fully enforceable and defensible in court, for all illicit discharges, from the time the Permittee identifies the illicit discharge regardless of if the violation is corrected within a prescribed timeframe.

Note that the Permit does **not** require that the Permittee actually pursue enforcement for all illicit discharges that occur and are eliminated. The Permit requires that the regulatory mechanism provide the Permittee the **legal ability and authority to pursue** enforcement for all illicit discharges that occur even if they are eliminated; in addition to the legal ability and authority to escalate enforcement for illicit discharges that the owner or operator does not eliminate upon initial notification by the Permittee. 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 rely on a per-day-of-violation monetary penalty calculation methodology, as long as all illicit discharges identified by the Permittee are subject to appropriate enforcement procedures and actions mechanisms, regardless of when or if the illicit discharge is eliminated.

b. Examples of compliant regulatory mechanisms:

- An illicit discharge is documented as beginning on April 1st. The inspector provides a notice of violation to the property owner for the illicit discharge and documents that the illicit discharge must be eliminated by April 11th, which is the 10 days stated in the regulatory mechanism. The inspector also documents that even if the illicit discharge is eliminated by April 11th, the property owner is subject to enforcement for the illicit discharge **and** for the days that the illicit discharge occurred from when it was identified to when the illicit discharge was eliminated. The inspector further clarifies that if the illicit discharge is not corrected by April 11th, that the response to the violation may be escalated and the original date of April 1st can be used as the reference date to mark the start of the violation. The Permittee must have the authority to implement appropriate enforcement procedures and actions, even if the correction occurs within the time frame to eliminate the illicit discharge.
- An illicit discharge is documented as beginning on April 1st. The inspector provides a notice of violation to the property owner for the illicit discharge and documents that the illicit discharge must be corrected immediately because the illicit discharge condition is a violation that is enforceable from the original date of violation (April 1st). The Permittee may have target timeframes for follow up (e.g., 1 day, 10 days, 2 weeks) to confirm that the illicit discharge has been eliminated or to escalate the enforcement process. The Permittee must have the authority to implement appropriate enforcement procedures and actions, even if the correction occurs within the target time frames to eliminate the illicit discharge

c. Example of a non-compliant regulatory mechanism:

- An illicit discharge is documented as beginning on April 1st. The permittee informs the owner or operator that the illicit discharge must be eliminated by April 11th. The regulatory mechanism does not allow the permittee to implement appropriate enforcement procedures and actions if the illicit discharge is eliminated prior to April 11th. The regulatory mechanism therefore allows the owner/operator to have an illicit discharge and to continue the illicit discharge until April 11th without enforcement, and therefore permittee has not effectively prohibited that illicit discharge.

d. Information for Counties that rely on the capabilities of C.R.S. 30-28-124.5 to implement permit requirements: C.R.S. 30-28-124.5 does not allow enforcement for findings corrected within 10 days of discovery. This statute does not authorize county rules that would meet the terms of the permit, as discussed above, if implemented as the only mechanism to effectively prohibit an illicit discharge. However, section ~~35~~ 30-15-401(11)(a)(I), C.R.S., provides counties with broad authority to adopt stormwater ordinances that “develop, implement, and *enforce* the stormwater management program *required by the permit.*” Under section ~~35-15-404(11)~~ 30-15-401(11), C.R.S., counties have the authority to adopt ordinances that implement these requirements as well as enforce against and penalize individuals that violate these requirements. To be consistent with MS4 permit terms that are written pursuant to section 61.8(11)(a)(ii), county ordinances must provide the authority to bring enforcement actions and issue penalties upon the discovery of a violation. Therefore, a county relying on C.R.S. 30-28-124.5 must provide additional mechanisms to provide for the authority to prohibit a violation upon discovery, which likely would require the county to adopt new ordinances under C.R.S. ~~35-30-15-401~~, or through an alternative legal mechanism if identified. (*Typos in statute reference C.R.S. 30-15-401 corrected on 6/26/12.*)

e. Compliance Goal: Confirm that the Permittee has a compliant regulatory mechanism that can effectively prohibit all illicit discharges, including those eliminated within a set time period after identification. A Permittee that lacks authority to enforce against identified illicit discharges upon discovery would not be capable of implementing a preventative program to prohibit discharges, and would only have a responsive program.

f. Questions:

Answering 'yes' or 'no' is not automatically associated with compliance or non-compliance.	Mark the response that matches the Permittee's program
1. Does the Permittee's regulatory mechanism prohibit an illicit discharge, as defined in its permit, into the Permittee's MS4?	___ Yes ___ No
2. Does the Permittee's regulatory mechanism used for illicit discharges allow for or require a timeframe to eliminate an illicit discharge? (<i>E.g., the nuisance code is used as the regulatory mechanism and states that an illicit discharge or nuisance violation must be corrected within 10 days, as soon as possible, or similar language.</i>)	___ Yes ___ No
3. If question 2 was answered "Yes": Does the regulatory mechanism allow enforcement for the occurrence of an illicit discharge, even if an illicit discharge is eliminated prior to the end of the timeframe provided in the regulatory mechanism or by the Permittees' program implementation? (<i>I.e., can the enforcement process and potential penalties reference the date that the illicit discharge was identified?</i>) If enforcement can only begin if the illicit discharge is not eliminated within the timeframe to eliminate an illicit discharge provided in the regulatory mechanism or by the Permittees' program implementation, mark "no."	___ Yes ___ No

g. Required Submittal:

If question 1 was answered "yes", the Permittee must provide a citation and a link (if available online) to the pertinent section of the Permittee's regulatory mechanism for prohibiting illicit discharges.

h. Required Action: Check the following that best represents your program status at the time of the October 15, 2012 response date.

- i. ___ Questions 1, 2, and 3 answered "yes." This represents a program that prohibits an illicit discharge into the Permittee's MS4 and considers any illicit discharge an enforceable violation from the date that the illicit discharge was identified. The illicit discharge is an enforceable violation during the time it takes to correct the violation.
- ii. ___ Question 1 answered "yes" and Question 2 answered "no." This represents a program that prohibits an illicit discharge into the Permittee's MS4 and considers any illicit discharge an enforceable violation from the date that the illicit discharge was identified and does not provide a timeframe to eliminate an illicit discharge. ~~The regulatory mechanism clearly states that an illicit discharge must be eliminated immediately or without delay.~~ *The program documentation (e.g., illicit discharge manual, Standard Operating Procedure (SOP), Program Description Document, inspection form) clearly states that an illicit discharge must be eliminated immediately or without delay. (added 5/4/2012)*
- iii. ___ Option i. or ii. cannot be accurately checked, but the Permittee has complied with the permit through implementation of a program not addressed in this questionnaire. If this option is checked, the Permittee must still answer the above questions for this Section, and must attach a detailed explanation of how its program meets the permit requirements addressed in this Section, including attaching: (1) All regulations that prohibit illicit discharges and authorize enforcement with direct reference to those applicable sections; (2) All written procedures that address implementation of enforcement relevant to illicit discharges with direct reference to those applicable sections. A permittee checking this Option **must** contact the Division by phone or email by **July 15, 2012**, prior to submitting this form to discuss this conclusion and ensure that

the proper information is provided to expedite this process and avoid unnecessary compliance correspondence for both parties.

If option i., ii. or iii cannot be accurately checked, then check iv, and follow the instructions.

iv. _____ **Submit a Non-compliance notification and a program modification according to Part II.B.1(a)(1-3) and Part I.E.2(a) of the Permit detailing how the Permittee's program will be modified to match one of the compliant options represented by i. or ii., above.**

i. **Recommended Action:** Review the program documentation (e.g., illicit discharge manual, Standard Operating Procedure (SOP), Program Description Document, inspection form) to determine if there are inconsistencies. For example, the regulatory mechanism requires an illicit discharge to be eliminated in 7 days, but a procedure states that 10 days is the timeframe provided to eliminate an illicit discharge?

2. Regulatory Mechanism Process

a. **Summary:** Part I.B.3(a)(2) of the Permit, requires a regulatory mechanism to prohibit illicit discharges into the storm sewer system and to implement appropriate enforcement procedures and actions. The Division observed during program audits that some permittees have a regulatory mechanism (e.g., code or ordinance language) regarding the enforcement process that does not match the enforcement process detailed in the Permittee's program documents (e.g., Program description document, IDDE manual, SOPs, inspector training documents). To be clear, the Permit does not require that the regulatory mechanism include the exact enforcement steps. However, the Division noted during audits that some ordinances provided exact enforcement steps that must be followed in a specific order (e.g., written notice to the owner/operator, administrative citation, court summons) but the Permittee's internal program documents and/or implementation did not follow the process stated in the ordinance. Other programs listed enforcement tools that may be used by the Permittee to gain compliance.

b. Examples of compliant regulatory mechanisms:

- The regulatory mechanism lists several enforcement tools that CAN BE used when responding to an illicit discharge. The permittee's SOPs for responding to an illicit discharge include the option for issuing a verbal warning if the illicit discharge does not pose any immediate harm to life or the environment.
- The regulatory mechanism states that all responses to an illicit discharge MUST include a written notice of violation to the owner/operator. The permittee's SOPs for responding to an illicit discharge are consistent with the regulatory mechanism and all illicit discharges are responded to with a written notice of violation.

c. Examples of a non-compliant regulatory mechanism:

- **Permittee has procedures in both the regulatory mechanism AND in separate written procedures (e.g., SOPs) that conflict:** The regulatory mechanism states that all responses to an illicit discharge MUST include a written notice of violation to the owner. The permittee's procedure for responding to an illicit discharge allows for issuing a verbal warning without a written notification being issued, therefore the two procedures conflict.
- **Permittee has procedures that are not being followed:** The regulatory mechanism and/or written procedures state that all responses to an illicit discharge MUST include a written notice of violation to the owner. All illicit discharges meeting the conditions in the procedures are NOT responded to with a written notice of violation.

d. **Compliance Goal:** Confirm that enforcement aspect of the regulatory mechanism, program documents, written procedures and implementation do not conflict and are being implemented. Conflicts in procedures could result in lack of enforceability, confusion, and failure to implement procedures.

e. Questions:

Answering ‘yes’ or ‘no’ is not automatically associated with compliance or non-compliance.	Mark the response that matches the Permittee’s program
1. Does the Permittee’s regulatory mechanism specify any exact enforcement process(es) or step(s) that must be followed by the Permittee for violations? E.g., code requires a written notice to the owner/operator, administrative citation, and/or court summons. If yes, answer question 2. If no, skip to question 3	___ Yes ___ No
2. Do the Permittee’s program documents (e.g., Program description document, IDDE manual, SOPs, inspector training documents) include the exact required enforcement process(es) or step(s) specified in the Permittee’s regulatory mechanism?	___ Yes ___ No
3. Are all enforcement process(es) or step(s) in the Permittee’s program documents authorized in the Permittee’s regulatory mechanism? (The Permittee must have the authority to implement all of the enforcement procedures and tools.)	___ Yes ___ No

f. **Required Action: Check the following that best represents your program status at the time of the October 15, 2012 response date:**

- i. ___ Questions 2 was answered yes, or skipped in accordance with the directions, AND Question 3 was answered yes.

If option i. cannot be accurately checked, then check ii. and follow the instructions.

- ii. ___ **Submit a Non-compliance notification and a program modification according to Part II.B.1(a)(1-3) and Part I.E.2(a) of the Permit detailing how the Permittee’s program will be modified to match one of the compliant options represented by i. or ii., above.**

3. **Categories of Non-stormwater discharges**

a. **Summary:** In accordance with the Colorado Water Quality Control Act, consistent with the federal Clean Water Act, requires that no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division. However, 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.

<http://www.cdphe.state.co.us/wq/PermitsUnit/guidanceandpolicynewpage.html>

Part I.B.3(a)(5) of the Permit provides the following categories of non-stormwater discharges that the Permittee must address only if the Permittee identifies them as significant contributors of pollutants to the Permittee’s MS4: landscape irrigation, lawn watering, diverted stream flows, irrigation return flow, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 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 water incidental to street sweeping (including associated sidewalks and medians) and that is not associated with construction. Part I.B.3(a)(6) of the Permit also excludes the Permittee from having to address discharges resulting from emergency fire fighting activities and discharges specifically authorized by a separate CDPS permit.

The Permit allows the Permittee to add other occasional, incidental non-stormwater discharges to this list if the Permittee has determined that additional non-stormwater discharges are not reasonably expected (based on information available to the permittee) to be significant sources of pollutants to the MS4, because of either the

nature of the discharges or conditions the Permittee has established for allowing these discharges to the MS4. The Division has specifically authorized all MS4 permittees to include those discharges covered by guidance under the Low Risk Discharge Policy, WQP-27.

b. Example of a non-compliant regulatory mechanism:

During permit audits, Division staff have noted that the wording and resulting definition of some categories listed in Part I.B.3(a)(5) of the Permit have been altered and other categories of discharges have been added to the permittee’s regulatory mechanism. In many of these cases, the discharges addressed by these modified and new allowances do not meet the standard of not being reasonably expected to be significant sources of pollutants to the MS4 and the permittees have not documented local controls or conditions placed on the discharges, as required by Part I.B.3(a)(5) of the Permit.

Examples of such discharges include:

- Discharges to protect life and property
- Any discharge allowed by the city manager (or designee)
- Discharges from activities conducted by fire department other than emergency fire fighting, or discharges directly listed in I.B.3(a)(5) or covered by a Low Risk Policy guidance

c. Compliance Goal: To determine if the Permittee’s illicit discharges program consistently allows or prohibits those discharges addressed by Part I.B.3(a)(5) of the Permit, Part I.B.3(a)(6) of the Permit, and the Division’s Low Risk Discharges.

Note that the Permittee is not required to authorize all discharges allowed for by the permit and Low Risk Policy guidance; however what is authorized in the Permittees’ regulatory mechanism must be consistent by what is authorized by the Permittees’ procedures and implementation. For example, if the Permittee chooses not to authorize certain discharges, then the Permittee must respond to the unauthorized discharges according to the Permittee’s IDDE program requirements.

d. Questions:

Answering ‘yes’ or ‘no’ is not automatically associated with compliance or non-compliance.	Mark the response that matches the Permittee’s program
1. Does the Permittee’s regulatory mechanism authorize discharges to the MS4 of all of the “allowable non-stormwater discharges” that are directly listed in Parts I.B.3(a)(5) and (6) of the Permit? If the answer is yes, skip to question 3.	___ Yes ___ No
2. If question 1 was answered “No”: For any of the “allowable non-stormwater discharges” that are directly listed in Part I.B.3(a)(5) and (6) of the Permit that are not authorized to be discharged to the MS4 in the Permittee’s regulatory mechanism, does the Permittee’s program documentation and implementation effectively prohibit the discharge(s)? E.g., if the Permittee’s ordinance does not authorize “dechlorinated swimming pool discharges”, is the Permittee’s program documentation and implementation consistent in not allowing this discharge(s)?	___ Yes ___ No
3. Has the Permittee developed a list of occasional incidental non-stormwater discharges, in addition to the list provided in Part I.B.3(a)(5) and (6) of the Permit, which are authorized to discharge to the MS4 and not addressed as an illicit discharge? If the answer is no, skip to question 5. (deleted 5/30/12)	___ Yes ___ No
4. Does the Permittee’s regulatory mechanism authorize discharges to the MS4 of all the discharges addressed in the Division’s Low Risk Policy guidance documents (e.g., Low Risk Discharges of Potable Water)? If the answer is yes, skip to Part e.	___ Yes ___ No
5. If Question 3 4 was answered “No” (changed 5/30/12): For any of the discharges addressed in the Division’s Low Risk Policy that are not authorized to be discharged to the MS4 in the Permittee’s regulatory mechanism, does the Permittee’s program documentation and implementation effectively prohibit the discharge(s)? E.g., If the	___ Yes ___ No

Permittee's ordinance does not exclude discharges of potable water that are in accordance with the Low Risk Policy guidance from prohibitions on illicit discharges, is the Permittee's program documentation and implementation consistent in not allowing the discharge(s)?	
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e. Required Submittals:

1. List as a separate attachment, all non-stormwater discharges for which the Permittee is not effectively prohibiting through regulatory mechanism(s). Provide the exact language used to identify the discharge in the regulatory mechanism(s).
2. Provide the following information as a separate attachment for any discharges that the Permittee's regulatory mechanism does not address as illicit discharges (i.e., are authorized to discharge to the MS4) and that are not specifically listed in Part I.B.3(a)(5) or (6), *or discharged according to the Division's Low Risk Policy guidance documents. (added 6/26/12)*
 - a. Any information used by the Permittee to evaluate or document that the discharge is not a significant source of pollutants to the MS4, because of either the nature of the discharges or conditions the Permittee has established for allowing these discharges to the MS4 (e.g., a charity car wash with appropriate controls on frequency, proximity to sensitive waterbodies, BMPs, etc.).
 - b. All documentation included in the Permittee's program documentation or regulatory mechanism that identifies the local controls or conditions placed on the discharges.

Note that the goal of Part e.2, above, is to collect information on the Permittee's decision making process. The Division is not necessarily collecting all information that may be needed to fully evaluate if any added discharges meet the standard of not being reasonably expected to be significant sources of pollutants to the MS4. Following the Division review of responses provided by Permittees, such evaluation and determination may occur in the future consistent with the third paragraph of Part I.B.3(a)(5) of the Permit or through the public process during permit renewal.

f. Required Actions: Check the following that best represents your program status at the time of the October 15, 2012 response date.

- i. Questions 2 and 5 were either answered "yes", or did not require a response (i.e., the questions were skipped in accordance with the directions).

If option i. cannot be accurately checked, then check ii. and follow the instructions.

- ii. **Submit a Non-compliance notification and a program modification according to Part II.B.1(a)(1-3) and Part I.E.2(a) of the Permit detailing how the Permittee's program will be modified to match the compliant option represented by i., above.**

4. Emergency Fire fighting Discharges

- a. **Summary:** Part I.B.3(a)(6)(i) of the Permit allows discharges from emergency fire fighting activities to be excluded from the prohibitions against non-stormwater discharges. The Division has observed during program audits that permittees may not have the word "emergency" included with firefighting discharges. If not limited to "emergency firefighting" the definition of "firefighting" may include maintenance of fire suppression systems, and training, which may be reasonably expected to be significant sources of pollutants to the MS4.
- b. **Compliance Goal:** Determine if only "emergency" fire fighting discharges are excluded from the prohibitions against non-stormwater discharges and to collect information on any other fire fighting related discharges for Division to fully evaluate if any added discharges meet the standard of not being reasonably expected to be significant sources of pollutants to the MS4.

c. Questions:

	Mark the response that matches the Permittee's program
<p>1. Does the Permittee's regulatory language authorize discharges to the MS4 from firefighting activities that are not from "emergency firefighting?" Note that the exact language used to identify the discharge in the regulatory mechanism(s) must be provided with the Required Submittal in A.3.e.1, and if the authorization is not limited to "emergency firefighting." If the answer is "No," skip the Required Submittal section below and proceed to Part B, Construction Sites Program.</p>	<p>___ Yes ___ No</p>

d. Required Submittal:

If the answer to question 1, above, was yes, the following information must be provided as a separate attachment. Note that this information is in addition to the information required in Part A.3.e.2 of this questionnaire. The Permittee must provide documentation or further study of any category of fire-fighting related discharges that are not directly associated with "emergency firefighting" that provide a reasonable basis for allowing the non-stormwater discharge. The Division will evaluate the information to determine if the discharge must be required to be prohibited, in accordance with the third paragraph of Part I.B.3(a)(5) of the Permit. Specifically, the Permittee must submit information for the discharges that would meet the standard of not being reasonably expected to be significant sources of pollutants to the MS4.

B. Construction Sites Program

1. Waivers, exemptions, exclusions from construction site program requirements

- a. Summary:** Part I.B.4(a)(1) of the Permit requires the Permittee to develop, implement and enforce a program to reduce pollutants in stormwater runoff to the MS4 from construction activities that disturb one or more acres; or less than one acre if part of a larger common plan of development. The Division has observed during program audits that specific construction activities are listed in the Permittee's program documentation (e.g., codes, ordinance, program manuals) as exempt from the Permittee's construction site program. Specific activities have been listed without considering or referencing the area of disturbance. Some activities have been listed with the goal of allowing the applicant to avoid obtaining multiple permits, however the language was not made clear that if a construction activity is exempted from local permit requirements, it is still covered by the Permittee's construction sites program for any site plan, inspection and enforcement requirements.
- b. Projects on State land:** In accordance with the MS4 regulations and permits, if an MS4 permittee does not have the authority under State or local law to require a facility operating on State land to comply with the conditions of its Construction Sites ordinances, then the MS4 permittee is not liable under the permit to do so.
- c. Examples of a compliant program:**
 - The permittee's regulatory mechanism and program documentation includes all construction activities that disturb one or more acres; or less than one acre if part of a larger common plan of development in its Construction sites Program.
 - The permittee's construction sites program requires a review of the construction site's stormwater management plan for single family development and issuance of a local stormwater permit. For types of projects that are not issued a local stormwater permit (e.g., utility work), the permittee implements procedures for compliance assessment and compliance assurance so that all construction activities that disturb one or more acres; or less than one acre if part of a larger common plan of development are in the permittee's Construction Sites Program.
- d. Example of a non-compliant program:**

The permittee's regulatory mechanism correctly states that all construction activities that disturb one or

more acres; or less than one acre if part of a larger common plan of development are covered by its Construction sites Program. However the program documentation (e.g., program manual) or separate sections of the permittee’s rules allows for waivers, exemptions, or exclusions from program requirements for projects such as:

- Utility work
- Driveways
- Single family lots
- Activities exempted by the public works director based on site considerations

Note that no Program Descriptions submitted by permittees during the 2008 MS4 permit renewal process acknowledged the existence of waivers, exemptions or exclusions that have been subsequently found during program audits.

e. Compliance Goal: To have the Permittee confirm the presence or absence of waiver language. If waiver language is included, then the Permittee must have documentation to explain and limit how the waiver can be applied, as necessary to ensure that the waiver will not be applied in a manner that allows a construction site that disturbs one or more acres or less than one acre when part of a larger common plan of development to not be subject to the Permittee’s construction sites program for the required site plan review, inspection and enforcement. Note it is not a violation to have a waiver as long as it is clear that the construction site will receive the required oversight.

f. Questions:

Answering ‘yes’ or ‘no’ is not automatically associated with compliance or non-compliance.	Mark the response that matches the Permittee’s program
<p>1. Are there any waivers, exemptions, exclusions, or similar allowances in program regulations, code, or policies regarding the following elements of the Permittee’s construction sites oversight program for any sites that disturb one or more acres or less than one acre when part of a larger common plan of development (excluding sites that qualify for a R-Factor waiver)?</p> <ul style="list-style-type: none"> • Requirements to implement appropriate erosion and sediment control BMPs • Requirements to implement appropriate waste control BMPs • Compliance assessment procedures • Enforcement procedures 	<p>___ Yes ___ No ___ Yes ___ No ___ Yes ___ No ___ Yes ___ No</p>
<p>2. If any subpart(s) of question 1 were answered “Yes”: Is the program documentation clear or is there supplemental program documentation (e.g., SOP) to define the Permittee’s program implementation for the activity and to clarify that the waivers cannot be applied in a manner that would avoid all BMP requirements and oversight (site inspection and/or enforcement) for any construction sites that disturb one or more acres; or less than one acre if part of a larger common plan of development (excluding sites that qualify for a R-Factor waiver)? E.g., there may be a waiver from local fees and/or permitting, while clearly stating the mechanism and procedures for the required construction site BMP requirements and oversight.</p>	<p>___ Yes ___ No</p>

g. Required Submittal:

1. If the answer to any subpart(s) in Question 1, above, was “yes,” provide as an attachment the specific waiver language, including a reference to where the waiver is located (e.g., cite the section of code or the document).
2. If the answer to Question 2, above, was “yes,” provide the program documentation language that clarifies the waiver implementation, including a reference to where it is located (e.g., cite the section of code or the document).

h. Required Actions: Check the following that best represents your program status at the time of the October 15, 2012 response date.

- i. All subparts of Question 1 were answered “No”
- ii. Any subpart(s) of Question 1 was answered “Yes” and Question 2 was answered “yes”

If option i. or ii. cannot be accurately checked, then check iii. and follow the instructions.

- iii. **Submit a Non-compliance notification and a program modification according to Part II.B.1(a)(1-3) and Part I.E.2(a) of the Permit detailing how the Permittee’s program will be modified to match one of the compliant options represented by i. or ii., above.**

i. Recommended Actions:

- The Division recommends that permittees conduct a word search in program documentation for “waivers”, “exemptions”, and “exclusions” to determine if these potentially non-compliant elements exist.
- Permittees permitted under the COR-080000 general permit are encouraged to review the additional requirements detailed in Part I.B.4(a)(3) of the Permit and compare the requirements to the Permittee’s program documentation and implementation of the construction sites program for Cherry Creek Reservoir Basin discharges.

2. Construction Stages Oversight

a. Summary: Part I.B.4(a)(2)(i)(A) of the Permit requires that the Permittee have the regulatory mechanism to ensure compliance, and follow an oversight process to manage construction site erosion and sediment control for all stages of construction, including individual lot construction regardless of who owns the lot, to final stabilization. The Division observed during program audits and construction site screenings that some permittees are not implementing the construction sites oversight program for all stages of construction. In some jurisdictions, the regulatory mechanism did not clearly state that construction sites oversight is required for sites that disturb one or more acres or less than one acre when part of a larger common plan of development. In some jurisdictions, the regulatory mechanism limited construction sites oversight to the overlot grading and public improvement stages and did not require oversight of individual lots in a subdivision once the lots were sold to builders.

b. Examples of compliant regulatory mechanisms:

- The permittee has one working group and set of rules that covers all construction activities that disturb one or more acres or less than one acre when part of a larger common plan of development from the time activities begin until the site is finally stabilized.
- The permittee has two different departments that manage construction sites—the engineering department manages the public improvements, and the building department manages individual lot construction. Both departments have developed, implemented, and documented procedures for compliance assessment and assurance.
- The permittee’s construction sites program manages the public improvement and development stages of construction; and the illicit discharge detection and elimination program would provide compliance assessment and assurance for lot level construction.

c. Example of a non-compliant regulatory mechanism:

- The permittee has a program for site assessment and assurance for the public improvement and development stage of construction, but has no oversight of the lot-level construction.

d. Compliance Goal: Confirm that the regulatory mechanism and the program documentation clearly require the Permittee to implement an oversight process to manage construction site erosion and sediment control for all stages of construction, including individual lot construction regardless of who owns the lot, to final stabilization.

e. Questions:

	Mark the response that matches the Permittee's program
1. Does the Permittee have the regulatory mechanism and program documentation to implement the construction sites program for all stages of construction from the time activities begin until final stabilization for projects that disturb one or more acres; or less than one acre if part of a larger common plan of development? Oversight can be provided by either the construction sites program or the IDDE program. However the IDDE program implementation must still meet the compliance oversight and assurance requirements for construction activities in Parts I.B.4(a)(2)(ii) and (iii) of the Permit.	___ Yes ___ No
2. Confirm that the following specific activities are covered by the requirements addressed in Question 1:	
a. Site grading	a. ___ Yes ___ No
b. Public improvements	b. ___ Yes ___ No
c. Individual lots (developer owned)	c. ___ Yes ___ No
d. Individual lots (builder owned)	d. ___ Yes ___ No
e. Individual lots (homeowner owned)	e. ___ Yes ___ No
f. Bank/FDIC owned property	f. ___ Yes ___ No

f. Required Action: Check the following that best represents your program status at the time of the October 15, 2012 response date.

- i. ___ Questions 1 and all subparts of Question 2 were answered “yes.”

If option i. cannot be accurately checked, then check ii. and follow the instructions.

- ii. ___ **Submit a Non-compliance notification and a program modification according to Part II.B.1(a)(1-3) and Part I.E.2(a) of the Permit detailing how the Permittee's program will be modified to match the compliant option represented by i. above.**

3. Construction Site Erosion, Sediment and Waste Control requirements

a. Summary: Parts I.B.4(a)(2)(i)(B) and (C) of the Permit require the Permittee develop, implement and document requirements for construction site operators to implement appropriate erosion, sediment and waste control BMPs. The Division has observed during program audits that some permittees have lacked the regulatory mechanism and/or or program documentation to indicate that waste control BMPs were required on construction sites and compliance assurance elements to address pollutant discharges associated with waste.

b. Examples of a compliant program:

- The permittee’s regulatory mechanism states that erosion, sediment and waste control BMPs are required to be documented on site plans and implemented.
- The permittee’s program documentation states that erosion, sediment and waste control BMPs are required to be implemented and the inspection form includes categories of these required BMPs for inspectors to document during compliance assessment activities.

c. Example of a non-compliant program:

- The permittee’s program documentation (regulatory mechanism, program manual, inspection form, approved site plans) provide no, or inadequate, record of waste control BMPs being required on construction sites.

d. Compliance Goal: Confirm that the Permittee has developed, implemented, and documented requirements and compliance assurance for erosion, sediment and waste control BMPs on construction sites.

e. Questions:

	Mark the response that matches the Permittee’s program
1. Does the Permittee’s regulatory mechanism and program documentation clearly require erosion and sediment control BMPs to be implemented on construction sites?	___ Yes ___ No
2. Does the Permittee’s regulatory mechanism and program documentation clearly require waste control BMPs to be implemented on construction sites?	___ Yes ___ No
3. Do the Permittee’s compliance assessment procedures (site plan review and inspection) include sediment and erosion control BMPs?	___ Yes ___ No
4. Do the Permittee’s compliance assessment procedures (site plan review and inspection) include waste control BMPs?	___ Yes ___ No
5. Do the Permittee’s compliance assurance procedures allow processes and sanctions to address noncompliance with sediment and erosion control BMP requirements?	___ Yes ___ No
6. Do the Permittee’s compliance assurance procedures allow processes and sanctions to address noncompliance with waste control BMP requirements?	___ Yes ___ No

f. Required Action: Check the following that best represents your program status at the time of the October 15, 2012 response date.

- i. ___ Questions 1 through 6 were answered “Yes.”

If option i. cannot be accurately checked, then check ii. and follow the instructions.

- ii. ___ **Submit a Non-compliance notification and a program modification according to Part II.B.1(a)(1-3) and Part I.E.2(a) of the Permit detailing how the Permittee’s program will be modified to match one of the compliant options represented by i. above.**

g. Recommended Actions: The Division recommends that the Permittee review program documents (e.g., construction site manual, inspector manual, site plan checklist, inspection form) and training information to confirm that information and procedures are consistent. The Division has often discovered during audits that internal documentation and procedures are not consistent and this has resulted in audit findings. Examples include:

- A construction site program manual may provide a list of the elements or a checklist of items that are required for a site plan submittal; and the permittee does not consistently confirm that the required site plan elements are submitted and reviewed.

- A site inspection frequency is referenced in a manual or SOP, and inspections records indicate that construction sites are not inspected according to the frequency documented in the Program Description.
- Program documentation states that site plans will be reviewed and approved and any changes require approval of the public works engineer. Yet in practice, the site inspector allows changes to the approved plan. The Division recommends differentiating between how major and minor modifications to the approved plan will be approved by the permittee and classify the types of changes that are considered minor and major modifications, such as equivalent or improved BMP changes versus changes in hydrology. The Division recommends that the permittee consider and define the “Approved Site Plan” as the initial plan that is approved by the permittee including changes to the approved plan that are made within the parameters of Minor Modifications. Minor modifications can be defined as BMP substitutions that are equivalent in performance or more suitable to the specific site conditions. Major modifications can consist of changes in hydrology to the approved plan, which require reapproval. This process allows minor modifications to be made during the operation of the site, and avoids an administrative burden for minor site plan modifications.

4. Regulatory Mechanism for Enforceability

- a. **Summary:** Part I.B.4(a)(2) of the Permit requires the Permittee to develop and implement a program to assure adequate design, implementation and maintenance of BMPs at construction sites. The Division observed that construction site operators are often provided a time frame to maintain, repair or modify BMPs (i.e, correct a “BMP violation”). The Permittee may provide a timeframe to correct a BMP violation; and have procedures to further escalate enforcement when it is determined that corrections to noncompliance are not made immediately. However, the timeframe to correct a BMP violation **cannot be a “grace period” from potential enforcement** for the period it takes to correct the deficiency. For permit compliance purposes, a “timeframe” to maintain, repair or modify a BMP is the timeframe that is provided in a regulatory mechanism or at the discretion of the Permittee; and “grace period” is when a BMP violation is identified and the regulatory mechanism **lacks the authority** for the Permittee to conduct enforcement for the occurrence of the BMP violation if corrected within a “timeframe to correct” period, and thereby allowing a time of non-compliance – or a “grace period” from enforcement. The Permittee’s procedures and rules must result in a BMP violation being subject to enforcement procedures for both the original finding of the violation, as well as during any provided timeframe to correct the violation.

Alternatively, the Permittee may require that a BMP violation be corrected “immediately” or “without delay,” and clearly informs the owner or operator responsible for the BMP violation that the BMP violation is considered an enforceable violation from the moment it is identified to the moment it is corrected. In such case, no “timeframe to correct” has been authorized and no “grace period” from potential enforcement has occurred.

Note that the Permit does **not** require that the Permittee actually pursue enforcement for all BMP violations that occur and are corrected. The Permit requires that the regulatory mechanism provide the Permittee the **legal ability and authority to pursue** enforcement for all BMP violations that occur even if they are corrected; in addition to the legal ability and authority to escalate enforcement for BMP violations that the owner or operator does not correct upon initial notification by the Permittee. 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 rely on a per-day-of-violation monetary penalty calculation methodology, as long as all BMP violations identified by the Permittee are subject to procedures for enforcement of control measures, regardless of when or if the BMP violation is eliminated.

b. **Examples of compliant regulatory mechanisms:**

- A construction site BMP violation is documented as beginning on April 1st. The inspector notifies the owner/operator and documents that the BMP violation must be corrected by April 11th, which is the 10 days stated in the regulatory mechanism. The inspector also documents that even if the BMP violation is corrected (e.g., BMP is fixed or installed) by April 11th, the property owner is subject to enforcement for the BMP violation and for the days that the BMP violation occurred from when it was identified to

when the BMP violation was corrected. The inspector further clarifies that if the BMP is not maintained by April 11th, that the response to the violation may be escalated and the original date of April 1st can be used as the reference date to mark the start of the violation. The Permittee must have the authority to implement appropriate enforcement procedures and actions, and can determine if such actions will be pursued in accordance with the permittee’s procedures, even if the correction occurs within the time frame to correct the BMP violation.

- A BMP violation is documented as beginning on April 1st. The inspector provides notification to the owner/operator and documents that the BMP violation must be corrected **immediately** because the BMP violation is enforceable from the original date of violation (April 1st). The Permittee may have target timeframes for follow up (e.g., 1 day, 10 days, 2 weeks) to confirm that the BMP has been maintained or to escalate the enforcement process. The Permittee must have the authority to implement appropriate enforcement procedures and actions, and can determine if such actions will be pursued in accordance with the permittee’s procedures, even if the correction occurs within the target time frames to eliminate the BMP violation.

c. Example of a non-compliant regulatory mechanism:

- A BMP violation is documented as beginning on April 1st. The permittee informs the owner or operator that the BMP must be maintained by April 11th. The regulatory mechanism does not allow the permittee to implement procedures for enforcement of control measures if the BMP violation is corrected prior to April 11th. The regulatory mechanism therefore allows the owner/operator to have a BMP violation and to continue the BMP violation until April 11th without enforcement, and therefore Permittee has not effectively prohibited that BMP violation.

d. Information for Counties that rely on the capabilities of C.R.S. 30-28-124.5 to implement permit requirements:

C.R.S. 30-28-124.5 provides a prohibition from enforcement for findings corrected within 10 days, which does not authorize county rules that would meet the terms of the permit as discussed above if implemented as the only mechanism to effectively prohibit a BMP violation. However, section ~~35~~ 30-15-401(11)(a)(I), C.R.S., provides counties with broad authority to adopt stormwater ordinances that “develop, implement, and *enforce* the stormwater management program *required by the permit.*” Under section ~~35-15-404(11)~~ 30-15-401(11), C.R.S., counties have the authority to adopt ordinances that implement these requirements as well as enforce against and penalize individuals that violate these requirements. To be consistent with MS4 permit terms that are written pursuant to section 61.8(11)(a)(ii), county ordinances must provide the authority to bring enforcement actions and issue penalties upon the discovery of a violation. Therefore, a county relying on C.R.S. 30-28-124.5 must provide additional mechanisms to provide for the authority to prohibit a violation upon discovery, which likely would require the county to adopt new ordinances under C.R.S. ~~35~~ 30-15-401, or through an alternative legal mechanism if identified. (*Typos in statute reference C.R.S. 30-15-401 corrected on 6/26/12.*)

- g. Compliance Goal:** Confirm that the Permittee has a compliant regulatory mechanism that can effectively prohibit all BMP violations, including those corrected within a set time period after identification. A Permittee that lacks authority to enforce against identified BMP violations upon discovery would not be capable of implementing a preventative program to prohibit BMP violations, and would only have a responsive program. **Note that the Division is confirming the capabilities of the regulatory mechanism, not the actual inspection and enforcement implementation.**

h. Questions:

Answering ‘yes’ or ‘no’ is not automatically associated with compliance or non-compliance.	Mark the response that matches the Permittee’s program
1. Does the Permittee’s regulatory mechanism clearly require that construction site BMPs be implemented and maintained in operable condition?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Does the Permittee’s regulatory mechanism used for BMP design, implementation, and	<input type="checkbox"/> Yes <input type="checkbox"/> No

<p>maintenance requirements allow for or require a timeframe to correct the failure to implement or maintain a BMP in operational condition? E.g., <i>a permittee's Stormwater ordinance states that BMP violations are considered nuisances and will be enforced through the Nuisance ordinance; and the Nuisance ordinance states that a nuisance must be corrected within 10 days, as soon as possible, or similar language?</i></p>	
<p>3. If question 2 was answered "Yes": Does the Permittee's regulatory mechanism allow enforcement to occur even if a failure to adequately design, implement, or maintain a BMP in operational condition is corrected prior to the end of the timeframe provided in the regulatory mechanism or by the Permittee's program implementation? (<i>I.e., can enforcement/penalties begin on the date that the Permittee has evidence that the failure to implement or maintain a BMP in operational condition began?</i>) If enforcement can only begin if the BMP violation is not corrected within the timeframe to correct a BMP violation provided in the regulatory mechanism or by the Permittee's program implementation, mark "no."</p>	<p>___ Yes ___ No</p>

i. Required Submittal:

If question 1 was answered "yes", the Permittee must provide a citation and a link (if available online) to the pertinent section of the Permittee's regulatory mechanism that requires construction site BMPs to be implemented and maintained in operable condition.

j. Required Action: Check the following that best represents your program status at the time of the October 15, 2012 response date.

- i. ___ Questions 1, 2 and 3 were answered "Yes."
- ii. ___ Question 1 is answered "yes," question 2 is "No." This represents a program that prohibits a BMP violation and considers any BMP violation an enforceable violation from the date that the BMP violation began and does not provide a timeframe to eliminate a BMP violation. The regulatory mechanism clearly states that BMP violation must be eliminated immediately or without delay.
- iii. Option i. or ii. cannot be accurately checked, but the Permittee has complied with the Permit through implementation of a program not addressed in this questionnaire. If this option is checked, the Permittee must still answer the above questions for this Section, and must attach a detailed explanation of how its program meets the permit requirements addressed in this Section, including attaching: (1) All regulations that prohibit BMP violation and authorize enforcement with direct reference to those applicable sections; (2) All written procedures that address implementation of enforcement relevant to BMP violations with direct reference to those applicable sections. A permittee checking this Option **must** contact the Division by **July 15, 2012** prior to submittal of this form to discuss this conclusion and ensure that the proper information is provided to expedite this process and avoid unnecessary compliance correspondence for both parties.

If option i., ii. or iii. cannot be accurately checked, then check iv. and follow the instructions.

- iv. ___ **Submit a Non-compliance notification and a program modification according to Part II.B.1(a)(1-3) and Part I.E.2(a) of the Permit detailing how the Permittee's program will be modified to match one of the compliant options represented by i., ii. or iii., above.**

C. Post Construction

1. Regulatory Mechanism

- a. **Summary:** Part I.B.5(a) of the Permit requires the Permittee to ensure that controls are in place to prevent or minimize water quality impacts from stormwater runoff from new development and redevelopment projects

that disturb 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, that discharge into the MS4. The Division has observed during permit audits that some permittees do not have the required regulatory mechanism.

b. Example of compliant regulatory mechanisms:

- The permittee’s regulatory mechanism clearly states that new development and redevelopment projects that disturb 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 are required to have permanent water quality BMPs.
- The permittee’s regulatory mechanism requires all new development and redevelopment projects to comply with a design standards manual for stormwater drainage. The referenced design standards manual requires new development and redevelopment projects that disturb 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, are required to have permanent water quality BMPs

c. Examples of non-compliant regulatory mechanisms:

- The permittee requires that a permanent water quality BMP must be maintained by the property owner, however there is no companion requirement to construct the permanent water quality BMP.
- The permittee provides a flow chart based on types of development activities and provides an exclusion from permanent water quality BMPs for redevelopment projects that decrease existing impervious area.

d. Compliance Goal: To confirm that Permittee’s have the required regulatory authority to implement the post construction water quality BMP program.

e. Question:

	Mark the response that matches the Permittee’s program
1. Does the Permittee’s regulatory mechanism clearly convey that permanent water quality BMPs are required for new or redevelopment projects (that disturb 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? <i>Note that the response to this question does not need to address roadway projects described on the Division memo dated 1/20/12.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No

f. Required Submittal

If the answer to Question 1 above was “yes,” provide the regulatory language and reference section in applicable rule addressed in Question 1. If the rule references other sections or manuals which contain the permanent water quality BMP requirements, include the applicable language and references from those documents.

g. Required Action: Check the following that best represents your program status at the time of the October 15, 2012 response date.

- i. Question 1 was answered “Yes.”

If option i. cannot be accurately checked, then check ii. and follow the instructions.

- ii. **Submit a Non-compliance notification and a program modification according to Part II.B.1(a)(1-3) and Part I.E.2(a) of the Permit detailing how the Permittee’s program will be modified to match one of the compliant options represented by i., above.**

2. Water Quality Strategy

a. Summary: Part I.B.5(a)(1) of the Permit requires a strategy for permanent water quality water quality BMPs. A design standard (e.g., UDFCD Volume 3 – Water Quality Capture Volume) is an example of a water quality strategy.

b. Example of a compliant program:

- The permittee’s program manual states that water quality capture volume (WQCV) and structural BMPs from UDFCD Technical Criteria manual have been adopted as a design standard for all development projects.
- The permittee’s program manual states that water quality capture volume and structural BMPs from UDFCD Technical Criteria manual have been adopted as a design standard for new development projects; and states that structural and non structural BMPs will be implemented for redevelopment projects to achieve 80% TSS removal. The permittee’s program documentation includes performance documentation of the nonstructural BMPs details how the permittee determines if the requirements for permanent water quality BMPs have been met.

c. Example of a non-compliant program:

- The permittee’s program manual states that water quality capture volume and structural BMPs from UDFCD Technical Criteria manual have been adopted as a design standard. However redevelopment projects are provided waivers from implementing water quality BMPs designed in accordance UDFCD Volume 3.
- The permittee’s program has not established a design standard or water quality strategy.

d. Compliance Goal: The Division would like to confirm the Permittee’s strategy for permanent water quality water quality BMPs.

e. Question:

	Mark the response that matches the Permittee’s program
1. Does the Permittee’s water quality strategy for permanent water quality BMPs submitted in the Program Description Document include a design standard (e.g., Volume 3 WQCV) for permanent water quality BMPs implemented for all required projects?	<input type="checkbox"/> Yes <input type="checkbox"/> No

f. Required Submittal:

<p>1. Provide the following information as a separate attachment</p> <ul style="list-style-type: none"> a. If the Answer to Question 1, above was “yes,” provide a copy of the design standard addressed by Question 1, or cite a third party design standard(s) (e.g., UDFCD Vol. 3 or CDOT). b. If the Answer to Question 1, above was “no,” provide: <ul style="list-style-type: none"> i. A summary of the water quality strategy for permanent water quality BMPs ii. A discussion of the standard or process for how the Permittee determines if the requirements for permanent water quality BMPs have been met. The discussion must address how this determination is enforceable by the Permittee if it is determined the requirements were not met.
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g. Required Action: Check the following that best represents your program status at the time of the October 15, 2012 response date.

- i. Question 1 was answered “yes.”
- ii. Question 1 was answered “no,” and the supporting documentation required by Required

Submittal 1.b. identifies the strategy and how the strategy is enforceable, as required by Parts I.B.5(a)(1) and (5).

If option i. or ii. cannot be accurately checked, then check iii. and follow the instructions.

iii. _____ Submit a Non-compliance notification and a program modification according to Part II.B.1(a)(1-3) and Part I.E.2(a) of the Permit detailing how the Permittee’s program will be modified to match one of the compliant options represented by i. or ii., above.

3. Waivers, exemptions, exclusions from post-construction site program requirements

a. Summary: Part I.B.5(a) of the Permit requires the Permittee to develop, implement and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb one or more acres; or less than one acre if part of a larger common plan of development. The Division has observed during program audits that specific projects are listed in the Permittee’s program documentation (e.g., codes, ordinance, program manuals) as exempt from the Permittee’s post-construction site program.

b. Projects on State land: In accordance with the MS4 regulations and permits, if an MS4 permittee does not have the authority under State or local law to require a facility operating on State land to comply with the conditions of its New-Development/Redevelopment ordinances, then the MS4 permittee is not liable under the permit to do so

c. Example of a compliant program:

- The permittee’s regulatory mechanism and program documentation states that permanent water quality BMPs designed in accordance with UDFCD Volume 3, or other adopted specifications, are required for projects that disturb one or more acres; or less than one acre if part of a larger common plan of development.

d. Example of a non-compliant program:

- The permittee’s program manual lists activities that are not required to implement permanent water quality BMPs without considering or referencing the area of disturbance. Examples of waivers, exemptions, exclusions include:
 - Single family lots
 - Project exempted by the public works director
 - Projects exempted based on geologic conditions
 - Redevelopment projects that decrease impervious area

Note that no Program Descriptions submitted by permittees during the 2008 MS4 permit renewal process acknowledged the existence of waivers, exemptions or exclusions that have been subsequently found during program audits.

e. Compliance Goal: To have the Permittee confirm the presence or absence of waiver language. If waiver language is included, then the Permittee must have additional documentation to explain how the waiver can be applied and that the waiver will not be applied in a manner that allows a project that disturbs one or more acres or less than one acre when part of a larger common plan of development to avoid implementing a permanent water quality BMP and being part of the Permittee’s post-construction sites program for the required site plan review, inspection and enforcement. Note it is not a violation to have a waiver as long as it is clear that the waiver will not be applied in a manner that will result in failure to implement BMPs, as required by the Permit or meet other Permit conditions.

f. Questions:

Answering ‘yes’ or ‘no’ is not automatically associated with compliance or non-compliance.	Mark the response that matches the Permittee’s program
1. Are there any waivers, exemptions, exclusions, or similar allowances in program	<input type="checkbox"/> Yes <input type="checkbox"/> No

<p>regulations, code, or policies from requirements to implement permanent water quality BMPs? (E.g., redevelopment projects that decrease impervious area are exempt from water quality BMPs.) Note that the response to this question does not need to address roadway projects described on the Division memo dated 1/20/12.</p>	
<p>2. If question 1 was answered “Yes”: Is there program documentation (e.g., in the regulatory mechanism or in separate procedures) to clarify that the waivers cannot be applied in a manner that would avoid implementing water quality BMPs for a new development or redevelopment project that meets the Permittee’s stated water quality standard for any site that disturbs one or more acres; or less than one acre if part of a larger common plan of development?</p>	<p>_____ Yes _____ No</p>

g. Required Submittal:

<p>1. If the answer to Question 1, above, was “yes,” provide as an attachment the specific waiver language, including a reference to where the waiver is located (e.g., cite the section of code or the document).</p> <p>2. If the answer to Question 2, above, was “yes,” provide the program documentation language that clarifies the waiver implementation, including a reference to where it is located (e.g., cite the section of code or the document).</p>

h. Required Action: Check the following that best represents your program status at the time of the October 15, 2012 response date.

- i. _____ Question 1 was answered “no.”
- ii. _____ Question 1 was answered “yes,” and Question 2 was answered “yes.”

If option i. or ii. cannot be accurately checked, then check iii. and follow the instructions.

- iii. _____ **Submit a Non-compliance notification and a program modification according to Part II.B.1(a)(1-3) and Part I.E.2(a) of the Permit detailing how the Permittee’s program will be modified to match one of the compliant options represented by i. or ii. above.**

i. Recommended Action:

- The Division recommends that permittees conduct a word search in program documentation for “waivers”, “exemptions”, and “exclusions” to determine if these potentially non-compliant elements exist. Permittees permitted under the COR-080000 general permit are encouraged to review the additional requirements detailed in part I.B.5.b and compare the requirements to the Permittee’s program documentation and implementation of the post-construction sites program for the part of the Permittee’s MS4 that drains into the Cherry Creek Reservoir Basin. The Permittee is encouraged to contact the Division prior to submittal of this form, if there is uncertain compliance with this element.