MS4 Permit Renewal Meeting

CDPHE: 4300 Cherry Creek Drive S., Denver CO

Room C1E, Building C

January 31, 2013

1-3:30 pm

Topics

- Coal Tar-based Asphalt Sealant
- Construction
- Enforcement Response Procedures
- Municipal operations

Agenda

1 – 1:10 pm	Sign in / Introductions
1:10 – 1:30 pm	Coal Tar-based Asphalt Sealant
1:30 – 2:15 pm	Construction
2:15 – 2:45 pm	Enforcement Response Procedures
2:45 – 3:15 pm	Municipal operations
3:15 – 3:30 pm	Summarize ideas

Meeting attendees are encouraged to familiarize themselves with the Supplemental Information as well the targeted permit questionnaire developed by the Division to understand the specific challenges with the current permit language; and to help brainstorm ideas and solutions during permit renewal meetings.

The goal for all permit elements is to have clear expectations, which establish a basic standard of performance for all permittees that are auditable by the Division.

Dial-in access will be provided to all permittees before the meeting. Please contact Michelle DeLaria at 303.692.3615 or Michelle.DeLaria@state.co.us with any questions.

Supplemental Information*

1. Coal Tar-based Asphalt Sealant

a. Some facts:
   - Coal tar–based asphalt sealant is sold in Colorado
   - Coal tar–based asphalt sealant contains poly aromatic hydrocarbons (PAHs), which are considered probable carcinogens.
   - Asphalt emulsion asphalt sealant is sold in Colorado and contains a much lower content of PAHs
   - Coal tar–based asphalt sealant contains ~70,000 mg of PAHs/kg of sealant
   - Asphalt emulsion asphalt sealant contains ~50 mg of PAHs /kg of sealant
   - Asphalt sealant abrades and does not stay where it is applied.
   - The USGS included Sloan Lake and Cherry Creek Lake in a national sediment study and recorded levels of PAH contamination in lake sediments.
   - Several cities (mostly MN) have banned coal tar and the State of Washington banned coal tar in 2011.
   - The major home improvement retailers do not sell coal tar-based asphalt sealant

b. Goal: The Division is looking for a dialogue about asphalt sealant use in MS4 permitted areas and potentially addressing coal tar in the next MS4 permit.

c. Additional Information:
   - PAH contaminated sediments is considered barrier to proper maintenance of perm BMPs in some areas of the country because concentrations of PAHs have accumulated in detention pond sediment and require dredged sediment to be disposed of as hazardous waste at considerably higher cost (~ 10 times). Please see information from the State of Minnesota: http://www.pca.state.mn.us/index.php/water/water-types-and-programs/stormwater/municipal-stormwater/coal-tar-based-sealcoat-minnesota-local-government-faqs.html
   - Please see the USGS webpage for additional information on coal tar: http://tx.usgs.gov/coring/allthingssealcoat.html

2. Construction

a. Current Challenges/Observations:
   - This program area is submitted for review by permittees because the permit lacks an effluent limit.
   - There were numerous findings in Permittees' Construction sites programs regarding the combined effects of permittees' inspection patterns and enforcement activities that did not result in compliant construction sites.
   - More clear language is needed in the permit to address the gaps in the permit, as discovered during permit audits.

b. Goal: the Division is looking for thoughts and dialogue about having non-numeric effluent limits in the permit for the construction program.

c. Concepts to discuss:
   - Inspection frequency

- Required documentation/checklists
- Requiring structural sediment control for runoff from unstabilized disturbed areas.

3. Enforcement Response Procedures

a. Current Challenges/Observations: Division audits have observed variable and a lack of enforcement for construction sites despite the information provided in the Permittee's Program Description document.

b. Goal: enforcement response procedures that are transparent and complement Permittees' inspection activities to result in compliant construction sites. The Division is looking for dialogue and ideas.

4. Municipal operations

a. Current Challenges/Observations: An observation from the EPA was that our municipal facilities aspects of the permit are weak. The Division has not provided clear effluent limits for all aspects of this program area.

b. Goal: More clear language and non numeric effluent limits to address the following:
   - Required inspections and documentation of major facilities
   - Secondary containment for bulk storage
   - Regulation 85 requirements— *Reg 85.5(4)(b)*

     Pollution Prevention/Good Housekeeping for Municipal Operations associated with nutrients. The permittee must develop and implement a municipal operations program that has the ultimate goal of preventing or reducing nitrogen and phosphorus in stormwater runoff associated with the MS4 permittee's operations.

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

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

*Supplemental Information is intended to provide general concepts and commonly encountered challenges with current permit language. It is not intended to be an exhaustive accumulation and description of all specific elements to be addressed in the permit renewal.

Summary

The summary was compiled after the meeting on 1/31/13. The summary is not a verbatim transcript of the meeting and points of potential agreement have not been included because the meeting goal was to share information to facilitate permit drafting, and not to make decisions or to obtain stakeholder commitments.. Bulleted points may not follow the order of actual discussion.

Effluent Limits:

- The following information was provided during the meeting to explain the Division's use of "effluent limits" in the next MS4 permit:

  40 CFR 122.34

  § 122.34 As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?

  (a) Your NPDES MS4 permit will require at a minimum that you develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. Your storm water management program must include the minimum control measures described in paragraph (b) of this section unless you apply for a permit under §122.26(d). **For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality.** Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this section and the provisions of the permit required pursuant to § 122.33 constitutes compliance with the standard of reducing pollutants to the ''maximum extent practicable.'' Your NPDES permitting authority will specify a time period of up to 5 years from the date of permit issuance for you to develop and implement your program."

  AND

  In the Preamble, II.H.3.a.ii:

  "ii. Water Quality-Based Requirements. Any NPDES permit issued under today's rule must, at a minimum, require the operator to develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from a regulated system to the MEP, to protect water quality, and satisfy the appropriate water quality requirements of the Clean Water Act (see MEP discussion in the following section). Absent evidence to the contrary, EPA presumes that a small MS4 program that implements the six minimum measures in today's rule does not require more stringent limitations to meet water quality standards. Proper implementation of the measures will significantly improve water quality. As discussed further below, however, small MS4 permittees should modify their programs if and when available information indicates that water quality considerations warrant greater attention or prescriptiveness in specific components of the municipal program. **If the program is inadequate to protect water quality, including water quality standards, then the permit will need to be modified to include any more stringent limitations necessary to protect water quality.**

Regardless of the basis for the development of the effluent limitations (whether designed to implement the six minimum measures or more stringent or prescriptive limitations to protect water quality), EPA considers narrative effluent limitations requiring implementation of BMPs to be the most appropriate form of effluent limitations for MS4s. CWA section 402(p)(3)(b)(iii) expresses a preference for narrative rather than numeric effluent limits, for example, by reference to ‘‘management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.’’ 33 U.S.C. 1342(p)(3)(B)(iii)."

Colorado Water Quality Control Commission Regulation 61:

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

Coal Tar-based Asphalt Sealant

- Feedback from the group indicated that they did not believe municipalities are using coal tar-based asphalt sealant on municipal projects and therefore it was not necessary to address coal tar sealant addressed in the next permit. Feedback indicated that most permittees would support a broader discussion on a state-wide ban on coal tar-based asphalt sealant.

Construction

- The Division discussed that challenges from the lack of specific requirements in the current permit and ideas to include more specific requirements regarding site plan review, and site inspection frequency.
- The Division also proposed the concept of permittees choosing one of two inspection programs. One would include an option for lower inspection frequency paired with more rapid escalation of enforcement. The other option would be a more frequent inspection schedule and low enforcement.
- Most permittees did not support having a minimum inspection frequency in the permit and permittees also did not support linking inspection frequency with enforcement.
- The Division is still seeking feedback on the best way to make implementation of an effective construction site program an enforceable permit requirement.

Enforcement Response Procedures

- The Division provided the following concept and goals of an Enforcement response Plan:
    - A written procedure that ensures a uniform enforcement response for comparable violations.
    - ERP should:
        - Ensure that violators return to compliance as quickly as possible.
        - Deter future noncompliance.
        - Penalize violators.

- Permittee response indicated that about half of permittees present have an enforcement SOP.

Municipal operations

- The Division provided the following language from the current Colorado Springs individual MS4 permit regarding Municipal Facility Runoff Control Plans (MFRCPs) and Bulk Storage as an excerpt for the next MS4 general permit :

The permittee shall continue to document and implement Municipal Facility Runoff Control Plans (MFRCPs) for the following permittee-owned and/or operated facilities that do not have independent CDPS Stormwater permits. New MFRCPs shall be developed for any new qualifying facilities. Facilities may be grouped together by type, and one MFRCP may be developed for each group.

- *vehicle maintenance facilities (maintenance includes equipment rehabilitation, mechanical repairs, painting, fueling and lubrication);*

- *asphalt and concrete batch plants which are not already individually permitted;*
- *solid-waste transfer stations;*
- *exposed stockpiles of materials, including stockpiles of road deicing salt, salt and sand, sand, rotomill material.*

MFRCPs shall contain the following:

- *Activity description*
- *Facility site map*
- *Description of potential pollutant sources including an evaluation of that potential.*
- *Stormwater Management Controls. The description of stormwater management controls shall address the following minimum components, including a schedule for implementing such controls:*
    - *Runoff control plan administrator*
    - *Preventive maintenance*
    - *Good housekeeping*
    - *Spill prevention and response procedures*
    - *Best management practices for pollutant sources*
    - *Evaluation for non-stormwater discharges*
    - *Employee training*
- *Inspection procedures*

Facilities with MFRCPs shall be inspected by the permittee at least once each year, after the runoff control plan is completed.

Bulk storage structures for petroleum products and any other chemicals located at facilities with MFRCPs shall have secondary containment or equivalent protection so as to contain all spills and prevent any spilled material from entering State waters. Bulk storage on mobile refuelers that are subject to the authority and control of the U.S. Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of EPA, dated November 24, 1971 are not subject to the requirements of this subsection (e). Where additional structural controls are need to comply with the requirements of this subsection, the controls shall be implemented by ***December 31, 2014****, and notify the Division that this requirement has been met in the following Annual Report, due* ***April 1, 2015****. Prior to implementation of such controls, the permittee shall implement practices, such as spill prevention and response, to prevent or reduce pollutants in runoff associated with bulk storage structures.*

- The Division provided the requirements from Regulation 85.5(4)(B) as the basis for nutrient requirements in the next permit. The complete regulation can be found at http://www.colorado.gov/cs/Satellite/CDPHE-Main/CBON/1251595703337 :
    - *Written procedures for an operation and maintenance program to prevent or reduce nitrogen and phosphorus in stormwater runoff associated with the MS4 permittee's operations shall be developed. The program must specifically list the municipal operations (i.e., activities and facilities) that are impacted by this operation and maintenance program.*
    - *CDPS Permits shall authorize MS4 permittees to meet the requirements of this section through contribution to a collaborative program to evaluate, identify, and target sources state-wide or within the specific region or watershed that includes the receiving waters impacted by the MS4 permittees discharge(s).*