

**Changes to Processes identified in the
Report to the General Assembly of the State of Colorado
in accordance with Colorado House Bill 12-1119**

6/1/2016

In 2012, the Water Quality Control Division met with construction industry stakeholders and other interested parties to develop a more responsive streamlined process to improve compliance, reduce violations, and provide timely enforcement. The results of the stakeholder process were documented in a report to the General Assembly of the State of Colorado in accordance with Colorado House Bill 12-1119 (the HB 12-1119 report). The HB 12-1119 report is available on the divisions' Construction Sector compliance assistance web page, located here:

<https://www.colorado.gov/pacific/cdphe/clean-water-construction-compliance-assistance-and-guidance>

The HB 12-1119 report includes a comprehensive summary of specific solutions for which the division planned to implement, as well as additional recommended solutions that could not be implemented at that time with available resources. The planned solutions were implemented by the division in 2013.

Enacted in 2015, HB 15-1249 provided additional resources to the division and facilitated the development of a new compliance assurance model which allows for implementation of a subset of the additional recommended solutions in the HB12-1119 report. Implementation of the additional solutions, which began in 2016, has required some modifications to specific processes outlined in the HB 12-1119 report that are no longer applicable given the new compliance assurance model.

This document outlines those additional recommended solutions from HB 12-1119 report that are being implemented by the division because of the new compliance strategy driven by HB 15-1249, and changes to those solutions previously implemented in the HB 12-1119 report necessitated by the new compliance strategy.

1) Implementation of a new Compliance Assurance Model in response to HB 15-1249

**a) HB 12-1119 Report, Part 5.c – Implantation of, and Revisions to, the Compliance Assurance Model
Communication of Compliance Determination and Enforcement Case Status Process**

As stated in the Legislative Declaration in HB 15-1249, the bill provided for additional resources for the division to implement the recommended solutions from the H.B. 12-1119 report, and to create a compliance assurance model as defined during the division 2014 stakeholder process review of fees for water quality discharge permits. The recommended solutions for this new compliance assurance model are included in Part 5.c of the HB 12-1119 report. The 2014 stakeholder process outlined the scope of what would be implemented, and did not include all elements of Part 5.c. This section summarizes the revisions to the proposed compliance assurance model in Part 5.c that the division has begun implementing in 2016.

The following list identifies those elements of the new compliance assurance model identified in the HB 12-1119 report, and the specific scope for implementation by the division starting in 2016 as identified in the 2014 stakeholder process:

- i) **HB 11-1119 Report Element:** “Conduct follow-up inspections for all findings that identify systemic failure to implement control measures at construction sites. Conduct additional inspections for owners and operators with systemic or chronic violations to encourage proactive compliance, identify root causes for noncompliance, and better target enforcement actions on systemic and chronic violators.”

Revised Scope for Implementation: This element is included in the new compliance assurance model. The division has increased follow-up inspections to meet this intent, including performing additional

inspection of the facility, operator, and/or owner identified as having systemic failure to implement control measures at construction sites.

- ii) **HB 11-1119 Report Element:** “Increase inspection frequency to allow for identification of acute violations and to facilitate targeting of entities with chronic and recalcitrant violations.”

Revised Scope for Implementation: This element is included in the new compliance assurance model. The division will increase inspection frequency to meet EPA oversight objectives for annual inspection rates by the division.

- iii) **HB 11-1119 Report Element:** “Provide a full review and response to the inspected entity’s written response to the division inspection findings.”

Revised Scope for Implementation: This element is not fully addressed in the new compliance assurance model. The division does review all, and provides a response to a subset of, the inspected entity’s written response to the division inspection findings, as identified in Part 5.a.v of the HB 11-1119 report. The division will continue to implement this solution. However, further expansion of this process to include a division response to all of the inspected entity’s written response was not identified as a desired service during the 2014 stakeholder process, and was not included in the fiscal note for HB 15-1249.

2) Summary of Changes to Previously Implemented Solutions from HB 12-1119 Report Necessitated by the new Compliance Assurance Model resulting from HB 15-1249

a) HB 12-1119 Report, Parts 5.a.i and ii – Revisions Communication Pre-Inspection and at the Time of Inspection

The new compliance assurance model includes some reconnaissance level inspections that are conducted without accessing the site or providing communication with site representatives. These inspections would be conducted from public right-of-way to identify basic conditions to allow for further targeting of compliance oversight and to identify potentially unpermitted construction sites. These inspections would not include communication with site representatives unless follow-up oversight was scheduled or if significant alleged violations were identified requiring a response or for which potential enforcement may occur.

b) HB 12-1119 Report, Part 5.a.iv – Revisions to the Communication of Compliance Determination and Enforcement Case Status Process

The division will continue to implement solutions to provide written communication to Construction Sector regulated entities if, after evaluation, it is found that inspection findings do not meet established criteria for formal enforcement. However, the specifics of the process in the HB 12-1119 report required revising to be appropriate and implementable based on the compliance assurance model implemented by the division to meet the intent of HB 15-1249. Specifically, the processes identified in Table 5.a.1 do not account for the division making compliance response determinations based on multiple inspections as included in the division’s compliance strategy implemented to meet the HB 15-1249 goals. The following table identifies the division’s communication strategy under the new model. The significant changes are that some time goals will now be based on the date of a final inspection for which a compliance response determination is made, and that some interim deadlines will be removed to minimize the need for duplicative communication.

Revised Communication Process for Compliance Determinations

Time-Goals	Activity	Communicated Information	Summary of Changes from HB 12-1119 report
At Inspection	Inspection Closing Conference and Field Report	Identification of alleged findings from the inspection and the nature of corrective actions for all inspections conducted on-site.	This objective is not applicable to off-site reconnaissance inspection discussed above in Part 2.a

45-days from inspection	Inspection Report/ Compliance Advisory	<p>Alleged violations. Communicate either the division's determination that established criteria for a formal enforcement response have been met, and/or the division's intent and timeline to conduct additional oversight to allow for this determination. A description of the enforcement process.</p>	<p>This objective is not applicable to off-site reconnaissance inspection discussed above in Part 2.a that does not include identification of alleged violations.</p> <p>When the new compliance assurance model identifies the need for additional follow-up oversight prior to making a determination regarding established criteria for a formal enforcement response, the division will identify this intent and timeline.</p>
360-days from <u>final</u> Inspection	Notice of Violation	Issuance of a Notice of Violation	<p>Applicable where multiple inspections occur prior to the division making a final determination regarding formal enforcement, this time goal applies from the date of the final inspection that allows for this determination. Note that the entity will still receive communication, as addressed in the row above, for any inspection conducted prior to this final determination.</p> <p>HB 15-1249 directed the division not to use any of the additional resources for enforcement. Although the division still intends to strive to complete this action within 180-days, a time-goal of 360 days is being provided to address the increased complexity of enforcement resulting from the new compliance assurance model which will target chronic and recalcitrant violators and may include multiple inspections.</p>