

RATIONALE

**STORMWATER DISCHARGES ASSOCIATED WITH
NON-STANDARD MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)**

GENERAL PERMIT IN COLORADO
COLORADO DISCHARGE PERMIT NUMBER COR-070000

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I. INTRODUCTION

*This is a municipal stormwater discharge permit which authorizes the discharge of stormwater from regulated small municipal separate storm sewer systems (MS4s) that are not cities or counties (i.e., Non-Standard MS4s). The permit also authorizes the discharges or flows from emergency fire fighting activities. The permit does **not** authorize any additional non-stormwater discharges, such as: process wastewater, stormwater discharges that are mixed with process wastewater, or stormwater associated with industrial activity, as defined in Regulation 61.2(e)(ii)*

The permit is intended to authorize the discharge of stormwater even as jurisdictional boundaries change through the life of the permit. This rationale will explain the background of the Stormwater program, which entities are covered under this permit, how to apply for coverage under this permit, and what the permit requirements are.

II. DIFFERENCES FROM PHASE II MS4 PERMITS COR-090000 AND COR-080000

Non-Standard MS4s for which this permit is intended to provide permit coverage were previously covered under the statewide MS4 general permit, COR-090000, and the Cherry Creek Drainage Basin MS4 general permit, COR-080000. There have been several changes to the language in this permit from that in COR-090000 and COR-080000 to provide more appropriate requirements for Non-Standard MS4s. The most significant changes are summarized below:

A. CDPS Stormwater Management Program Requirements (Part I.B of the Permit)

Permittees with Non-Standard MS4s covered under this permit differ significantly from cities and counties, because the majority of potential sources of illicit discharges and stormwater pollution to their MS4s are associated with activities under the direct operational control of the permittee. Therefore, the requirements of the six CDPS Stormwater Management Program minimum measures are focused primarily on activities conducted by, or under contract to, the permittee. The one program area that significantly differs from this is Public Education and Outreach on Stormwater Impacts.

II. DIFFERENCES FROM PHASE II MS4 PERMITS COR-090000 AND COR-080000 (cont.)

The following is a summary of the differences in this permit and COR-090000/080000, for each of the six minimum measures.

1. Public Education and Outreach on Stormwater Impacts

The overall focus of this program area, to educate the general public on potential sources of pollution to the MS4, does not differ significantly from COR-090000/080000. The language however has been revised to be more appropriate to the populations and activities existing at facilities operated by Non-Standard MS4s.

2. Public Involvement/Participation

The requirement to provide public notice of ordinances has been removed from this permit. Non-standard MS4s covered under this permit are not required to pass ordinances, as discussed below (see subsections (3), (4), and (5), below). The requirement to allow for public comment on the permittee's program remains

3. Illicit Discharge Detection and Elimination

The requirements to pass and enforce an ordinance are not included in this permit. Non-Standard MS4s covered under this permit may rely on the authority of the appropriate city or county. Because most activities that could result in an illicit discharge would be conducted by the permittee or their contractor, the requirements in this permit focus on preventing/removing discharges from those sources.

4. Construction Sites

Nonstandard permittees covered under this permit typically own or operate facilities and activities that discharge to their MS4s, and therefore would typically be the owners or operators of construction activities occurring in those areas. For areas not under the ownership or control of the permittee, a city or county would have full authority over any construction activities. Therefore, the requirements of this section are limited to controlling sources under the ownership or operational control of the permittee.

5. Post-Construction Stormwater Management in New Development and Redevelopment

For the reasons discussed in subsection (4), above, the requirements of this section are limited to controlling sources under the ownership or operational control of the permittee.

6. Pollution Prevention/Good Housekeeping for Permittee's Operations

The requirements for this program area do not differ significantly from those in COR-090000/080000.

B. Cherry Creek Drainage Basin Requirements (COR-080000)

The Cherry Creek Reservoir Control Regulation (5 CCR 1002-72) includes requirements for those parts of an MS4 that drain into the Cherry Creek Reservoir drainage basin. The Cherry Creek MS4 Permit, COR-080000 includes specific CDPS Stormwater Management Program requirements to address the requirements in the regulations. As discussed below, the conditions of this permit are adequate to require compliance with the regulatory requirements, and therefore additional specific conditions for discharges in the Cherry Creek Reservoir Drainage Basin are not included.

- 1. Public Education and Outreach (Part I.B.1):** The Creek Reservoir Control Regulation requires implementation of an education program to address sources determined to have a significant potential to contribute phosphorus and nitrogen loads to State waters in the Cherry Creek Reservoir drainage basin. Such sources for Non-Standard MS4s are expected to be associated with the permittee's own activities and facilities. The provisions for Pollution Prevention/Good Housekeeping for Permittee's Operations (Part I.B.6 of the permit) already require education of the permittee's staff and contractors to cover all stormwater pollutant sources, which includes those that can contribute phosphorus and nitrogen. Therefore, additional specific Public Education and Outreach permit requirements to address the provisions of the Creek Reservoir Control Regulation are not required.

II. DIFFERENCES FROM PHASE II MS4 PERMITS COR-090000 AND COR-080000 (cont.)

2. Construction Site (Part I.B.4) and Post-Construction Stormwater Management in New Development and Redevelopment (I.B.5): *The Creek Reservoir Control Regulation requires implementation of construction and new-development/redevelopment programs to minimize phosphorus and nitrogen loads to State waters in the Cherry Creek Reservoir drainage basin. The Division has determined that coverage and oversight of a CDPS Stormwater Management Program that is required to meet these additional requirements is not appropriate under this. Therefore, for areas draining to the Cherry Creek Reservoir drainage basin, Non-Standard MS4s within the Cherry Creek Reservoir drainage basin have two options:*
 - i) *Comply with the requirements of Option 1 in Parts I.B.4 and I.B.5 of the permit for all areas discharging to the Cherry Creek Reservoir Drainage Basin. These requirements direct the permittee to comply with the construction and new development/redevelopment program of the appropriate city or county. Cities and counties are already required to address the specific provisions of the Creek Reservoir Control Regulation in their programs for all areas where a Non-Standard MS4 would discharge to the Cherry Creek Reservoir drainage basin. Therefore, compliance with such a city or county program would also result in the permittee's compliance with the Creek Reservoir Control Regulation provisions. –OR–*
 - ii) *Obtain coverage under the CDPS General Permit Stormwater Discharges Associated with Cherry Creek Reservoir Drainage Basin Municipal Separate Storm Sewer Systems (COR-080000). This separate general permit includes specific requirements for compliance with the Creek Reservoir Control Regulation's construction and new development/redevelopment provisions.*

C. Annual Report Requirements (Part I.F of the Permit)

The Annual Report requirements differ from those required in COR-090000/080000, so as to be consistent with the different activities and pollutant sources addressed by the CDPS Stormwater Management Program in this permit.

III. BACKGROUND

The Environmental Protection Agency (EPA) requires that discharges from regulated small municipal separate storm sewer systems (MS4s) must be covered under the National Pollutant Discharge Elimination System (NPDES) program. (Note: The Colorado program is referred to as the Colorado Discharge Permit System, or CDPS, instead of NPDES). The Water Quality Control Division ("the Division") has stormwater regulations (5CCR 1002-61) in place. These regulations require specific MS4s to obtain a CDPS permit for such discharges. Regulated small MS4s include publicly owned storm sewer systems operated by entities that are not cities and counties, such as those owned and/or operated by public school districts, hospitals, correctional institutions, parks, drainage districts, and other special districts.

A. Permit Requirements

The narrative requirements in the permit are for permittees to reduce the discharge of pollutants from their MS4 to the maximum extent practicable, to protect water quality standards, and to satisfy the appropriate water quality requirements of the Colorado Water Quality Control Act (25-8-101 et seq., C.R.S.) and the Colorado Discharge Permit Regulations (61.0) through the development and implementation of a CDPS Stormwater Management Program. Implementation of the CDPS Stormwater Management Program involves implementation of a suite of Best Management Practices (BMPs) to reduce the discharge of pollutants from the MS4. "Maximum extent practicable" (MEP) is the standard that establishes the level of pollutant reductions that operators of regulated MS4s must achieve through implementation of BMPs included in their CDPS Stormwater Management Program.

The Division has made a determination that discharges from MS4s authorized by this permit have the reasonable potential to result in exceedance of a Water Quality Standard. The Division has also determined that the practice-based effluent limits in the permit (i.e., to implement a CDPS Stormwater Management Program) are adequate to prevent exceedance of Water Quality Standards resulting from discharges authorized by this permit. If additional information becomes available that indicates that this permit is not protective of Water Quality Standards, modifications of the permit requirements to be protective of those standards shall occur in accordance with Part I.D.5 or II.C of the permit, or alternative permit coverage may be required in accordance with Part II.E.1. Requirements to protect water quality standards may exceed those set by the MEP standard discussed above. Likewise, implementation of the CDPS Stormwater Management Program to the MEP may result in reduction of pollutants in excess of that necessary to prevent exceedance of water quality standards.

III. BACKGROUND (cont.)

Implementation of a CDPS Stormwater Management Program in accordance with Part I.B and I.C of the permit will constitute compliance with MEP. The management program must include program areas covering Public Education and Outreach, Public Involvement/ Participation, Illicit Discharge Detection and Elimination, Construction Site Stormwater Runoff Control, Post-Construction Stormwater Management in New Development and Redevelopment, and Pollution Prevention/Good Housekeeping for Municipal Operations.

The Division has intentionally not provided a precise definition of MEP, in order to allow maximum flexibility in MS4 permitting. MS4s need the flexibility to optimize reductions in stormwater pollutants on a location-by-location basis. The pollutant reductions that represent MEP may be different for each small MS4, given the unique local concerns that may exist and the different possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six program areas through an evaluative process. The Division may evaluate permittees' proposed stormwater BMPs to determine if reduction of pollutants to the MEP can be achieved with the identified BMPs (see Part I.E of the permit).

Based on EPA's discussion in the preamble of the federal Phase II regulation, the Division envisions application of the MEP standard as an iterative process. The standard of MEP should continually adapt to current conditions and BMP effectiveness, and must strive to protect water quality and satisfy the appropriate water quality requirements of the Colorado Water Quality Control Act (25-8-101 et seq., C.R.S.) and the Colorado Discharge Permit Regulations (61.0). Successive iterations of the mix of BMPs will be driven by this objective. If, after implementing the six program areas (see Section V.A of the rationale), there is still water quality impairment associated with discharges from the MS4, the permittee will need to expand or better tailor its BMPs within the scope of the six program areas, as per the standard of MEP. This process may involve more than one permit term.

B. Violations/Penalties

Dischargers of stormwater from regulated small MS4s, as defined in the Colorado Discharge Permit Regulations (61.0) who do not obtain coverage under this or other Colorado general permits, or under an individual CDPS permit, will be in violation of the Colorado Water Quality Control Act, 25-8-101. For facilities covered under a CDPS permit, failure to comply with any CDPS permit requirement constitutes a violation. Civil penalties for violations of the Act or CDPS permit requirements may be up to \$10,000 per day. Criminal pollution of State waters is punishable by fines of up to \$25,000/day.

IV. APPLICATION AND CERTIFICATION

Certification under this permit may be issued to both New Applicants who previously have not been issued a CDPS permit for discharges from their MS4, and to Renewal Permittees previously authorized under such a permit, including those covered under COR-090000 and COR-080000. As discussed below, separate requirements for certification under this permit apply to New Applicants and Renewal Permittees:

A. New Applicants

For New Applicants, certification under the permit requires submittal of an application. Upon receipt of all required information, the Division may allow or disallow coverage under the general permit. Within 180 days of Division notification, the operator of the MS4 shall submit an application form as provided by the Division. (The Division retains the right to grant permission for a later date upon good cause shown.) Refer to Part I.A.6.b of the permit for a description of what must be included in an application for coverage under this permit. If this general permit is applicable, then a certification will be developed and the applicant will be certified under this general permit.

B. Renewal Permittees

The requirements in this permit for submittal of an application in Part I.A.6 of the permit do not apply to renewal permittees. Application for coverage under this permit for Renewal Permittee occurs through submittal of a renewal application in accordance with the requirements of their previous MS4 permit. Submittal of program descriptions and Measurable Goals for the CDPS Stormwater Management Program is required by Part I.A.7.b of the permit. Because the majority of program development occurred during the previous permit term, most Renewal Permittees will be focused on program implementation and modifications during this permit term, and have fewer, or no, Measurable Goals. However, changes and Measurable Goals may still be needed to address new permit requirements or changes to a permittee's CDPS Stormwater Management Program.

V. TERMS AND CONDITIONS OF PERMIT

Every permit issued as part of the Colorado Discharge Permit System is required to contain terms and conditions that the Division determines to be necessary to ensure compliance with applicable control regulations and the State and Federal Clean Water Acts (Colorado Water Quality Control Act 25-8-503 (4)).

There are no numeric effluent limitations included in this permit. Stormwater management requirements are the controls that are used in place of numeric limits to achieve reduction of pollutants in the stormwater discharges from small MS4s. The Division has determined that the terms and conditions discussed below are necessary to ensure the required compliance.

A. CDPS Stormwater Management Program Requirements:

The permittee must develop, implement, and enforce a CDPS Stormwater Management Program designed to reduce the discharge of pollutants from their MS4 to the maximum extent practicable (MEP), to protect water quality standards, and to satisfy the appropriate water quality requirements of the Colorado Water Quality Control Act (25-8-101 et seq., C.R.S.) and the Colorado Discharge Permit Regulations (61.0). Implementation of a CDPS Stormwater Management Program, as described below, and the other requirements in this permit constitutes compliance with the standard of reducing pollutants to the MEP to protect water quality standards.

The CDPS Stormwater Management Program is made up of six program areas (see below). The permittee must provide a description of the program areas and accompanying Measurable Goals (See Section V.B, below). The description must be detailed enough for the Division to determine the permittee's general strategy for complying with each of the required elements of the six program areas. The described programs must meet the MEP standard, as discussed in Section III.A, above. The permittees are required to implement the programs exactly as described. The permit does **not** authorize permittees to modify or reduce the scope or scale of implementation of a program based solely on a determination by the permittee that full implementation is not necessary to meet the MEP standard. Any modification or removal of program must be done in accordance with Part I.E of the permit (see Section V.E of the rationale, below) and requires submittal to, and in most cases approval by, the Division.

As new or revised programs are developed during the permit term, the permittee must document details of the various components of the CDPS Stormwater Management Program. Program elements used to meet the requirements of the CDPS Stormwater Management Program areas, as described in Parts I.B.1-6 of the permit, must be included in the record as they are implemented. For Renewal Permittees, the majority of programs required by this permit should already be implemented and documented, thus requiring only those new or revised program elements to be addressed by new documentation.

1. Public Education and Outreach on Stormwater Impacts (Part I.B.1 of the Permit)

The permittee must develop, document, and implement a program to provide public education and outreach on stormwater impacts to the general public and to tenant businesses of the permittee. The program must be developed with the goal of promoting actual behavior change on the part of the general public and tenants to reduce the discharge of pollutants from the MS4.

2. Public Involvement/Participation (Part I.B.2 of the Permit)

The permittee must provide a mechanism and processes to provide input on the CDPS Stormwater Management Program.

3. Illicit Discharge Detection and Elimination (Part I.B.3 of the Permit)

The permittee must develop, document, and implement a program, including staff training, to minimize the occurrence of, and to respond to illicit discharges at its facilities. This program area also requires the permittee to develop and maintain an up-to-date storm sewer system map for its permitted facilities.

4. Construction Sites (Part I.B.4 of the Permit)

The permittee must develop, document, and implement a program to reduce pollutant discharges and water quality impacts resulting from its own construction activities that disturb greater than or equal to one acre (or are part of a larger common plan of development disturbing one acre or greater). Note that a separate CDPS general stormwater construction permits must also be obtained from the Division for such activities.

V. TERMS AND CONDITIONS OF PERMIT (cont.)

Two options are included in the permit for compliance with this program area. A permittee is required to choose, and comply with, one of the two options. **Option 1** requires that the permittee ensure compliance at its construction sites with the requirements of a city or county's program for construction sites. **Option 2** includes more extensive requirements for a permittee to develop their own program, including criteria for BMPs, plan review, site inspection, enforcement, etc. The Division expects most Non-Standard MS4s will be able to use Option 1.

5. Post-Construction Stormwater Management in New Development and Redevelopment (Part I.B.5 of the permit)

This program area addresses implementation, operation, and maintenance of control measures after construction is completed, to control pollution sources associated with the long-term use of areas that have undergone new development and redevelopment. The permittee must ensure that controls are in place when it develops new facilities, or redevelops its existing facilities, if the activity results in a land disturbance of greater than or equal to one acre (or is part of a larger common plan of development). The permittee must also implement a program for the long term operation and maintenance of the controls.

Similar to the Construction Sites program discussed in subsection 4, above, two options are included in the permit for compliance with this program area. A permittee is required to choose, and comply with, one of the two options. **Option 1** requires that the permittee ensure compliance with a city or county's program for design, installation, and long term operation and maintenance of permanent water quality controls. **Option 2** includes more extensive requirements for a permittee to develop their own program, including criteria for permanent water quality control design and implementation, plan review, site inspection, maintenance criteria, etc. The Division expects most Non-Standard MS4s will be able to use Option 1.

6. Pollution Prevention/Good Housekeeping for Municipal Operations

The permittee must develop and implement an operation and maintenance program, including an employee training component, that has the ultimate goal of preventing or reducing pollutant runoff from its own operations, including those performed under contract.

B. CDPS Stormwater Management Program Implementation Schedule and Measurable Goals

The Clean Water Act (40 CFR 122.34(a)) and the Colorado Discharge Permit Regulations (61.8 (11)(a)(i)) require full development and implementation of the permittee's CDPS Stormwater Management Program as required by the permit within the permit term

For **New Applicants**, in most cases, this will require full development and implementation of the CDPS Stormwater Management Program within five years of the date of permit issuance (March 9, 2013). The CDPS Stormwater Management Program must be developed and implement at a relatively steady rate over the permit term. That is, it is not acceptable to delay the majority of the work involved in program development and implementation until near the end of the permit term.

For **Renewal Permittees**, a specific deadline of December 31, 2009 is included for those new permit conditions that may require additional programs to be developed and implemented.

Measurable Goals are milestones in the development and implementation of the CDPS Stormwater Management Program areas. Measurable Goals are only needed for those elements that, during the permit term, will either be implemented as new programs, modified, or are one-time events (e.g., one-time educational brochure distribution or water festival). Programs elements that are fully implemented, are not scheduled to be modified, and are on-going or annually scheduled only need to be described in the CDPS Stormwater Management Program description, and do not require Measurable Goals. Measurable Goals must be continued until each program area has been fully developed.

Measurable Goals for each of the program areas must include, as appropriate, the year by which the permittee will undertake required actions, including interim milestones and the frequency of the action. Measurable Goals shall be set for December 31 of the year for which the action will be completed.

V. TERMS AND CONDITIONS OF PERMIT (cont.)

- C. **CDPS Stormwater Management Program – Implementation by Other Parties:** Implementation of one or more of the program area elements may be shared with another entity, or the other entity may fully take over implementation of the element(s). The permittee remains liable for ensuring that all requirements of this permit are complied with, regardless of who implements the element(s). This responsibility includes, but is not limited to, protecting State waters, submittal of Annual Reports, other reporting requirements, and program review and updates.
- D. **Monitoring:** Sampling and testing of stormwater for specific parameters is not required on a routine basis under this permit. However, the Division reserves the right to require sampling and testing, on a case-by-case basis.

If a stormwater-based TMDL and WLA have been put into place for any waterbody into which the permittee discharges, monitoring may also be required for discharges affecting that waterbody (see Section V.F of the rationale below).

- E. **CDPS Stormwater Management Program and Measurable Goals Modification:** In most cases, the CDPS Stormwater Management Program will be modified and have additional BMPs added during the permit term. When the permittee is further developing their CDPS Stormwater Management Program, following the strategy outlined at the time of application, or when the permittee adds additional components, controls, or requirements to the CDPS Stormwater Management Program and/or Measurable Goals, it is not necessary to notify the Division, beyond the requirements discussed for the Annual Report (Section V.H of the rationale). However, the permittee must submit to the Division for review a summary of any significant changes that involve replacing or deleting an ineffective or unfeasible BMP specifically identified in the CDPS Stormwater Management Program or a Measurable Goal, prior to implementation. This includes changes to BMPs that have been proposed in the application/Annual Reports but not yet implemented. Instructions for submitting changes to the Division are included in Part I.E.2.a of the permit.

1. **Determining Which Changes Need to be Submitted:**

Minor changes to program elements do not need to be submitted to the Division for review. In general, if the permittee is making a change that will significantly alter their CDPS Stormwater Management Program or Measurable Goals from information submitted to the Division in their application or Annual Report (or in information requested by the Division on these submittals), the change must be submitted. Changes to information not already supplied to the Division (i.e., program specifics) do not need to be submitted.

2. **Determining the Scope of the Information Submitted:**

The permittee must submit a general description of the new program element or Measurable Goal containing a roughly equivalent level of detail as the original description provided in the application. That is, the permittee must provide a general description detailed enough for the Division to determine the permittee's general strategy for complying with the CDPS Stormwater Management Program area element that the BMP or Measurable Goal is associated with. In addition, the permittee must provide an analysis of why the replacement BMP/Goal is expected to achieve the goals of the original BMP/Goal, and an implementation schedule for the changes.

- F. **TMDLs and Permit Requirements:** The permit includes additional requirements that apply if a Total Maximum Daily Load (TMDL) has been approved for any waterbody into which the permittee discharges (Part I.D.5. of the permit). In general, these requirements do not, in themselves, dictate additional measures that must be taken by the permittee. Instead, the permit requires the permittee to comply with any requirements included in a TMDL that address stormwater discharges covered in the permit. New requirements affecting the permittee's discharges could be in the form of additional narrative requirements for implementation of BMPs, or in the form of a Waste Load Allocation (WLA) that prescribes a specific quantitative limit for pollution from a specific source.

The permittee may maintain coverage under the general permit provided they comply with the applicable requirements outlined above. The Division reserves the right to require individual or alternate general permit coverage.

- G. **Annual Program Review:** The permittee shall conduct an annual review of the current program areas as necessary for preparation of the Annual Report required under Part I.F. of the permit. Permittees should include an overall assessment of their programs to determine if they are fully implementing their CDPS Stormwater Management Program in accordance with the deadlines in their Measurable Goals. Permittees are also advised to include an assessment of the appropriateness of the identified BMPs and progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP (See Part I.E.4 of the permit.)

V. TERMS AND CONDITIONS OF PERMIT (cont.)

H. Annual Report: The permittee is required to submit their program area descriptions in their CDPS Stormwater Management description. After that, in general, program updates will be provided in the permittee's Annual Report. The permittee shall prepare an Annual Report to be submitted by March 10 of each year, covering January 1 through December 31 of the previous year. The Division will provide an Annual Report form. (See Part I.F of the permit).

If a permittee chooses Option 2, to develop their own Construction and/or Post Construction Programs (see Sections V.A(4) and (5) of the rationale), additional specific details must be included in the Annual Report to quantifying its implementation of the Construction, and Post Construction Programs. Refer to Part I.F.6(a) and (b) of the permit.

J. Annual Fees: All permittees are required to pay the annual permit administration fee, as described in the Colorado Water Quality Control Act. (See Part II.E.3 of the permit.)

K. Duration of Permit: The general permit may not exceed five years in duration. In this case, the expiration date is set for March 9, 2013. The permittee's authority to discharge under this permit is approved until the expiration date of the general permit. The permittee must apply for recertification under the general permit at least 180 days prior to its expiration date.

Nathan Moore
December 18, 2007

VI. RESPONSE AND CHANGES AFTER PUBLIC NOTICE

Several written comments were received during the public notice period. Comments and changes to the permit are addressed below, except for minor change and comments that were made for the sake of clarification. Changes to the permit and rationale based on comments and additional internal review are discussed in subsection A, below. Response to comments for which changes were not made are addressed in subsection B, below.

A. Permit Changes After Public Notice

1. **Comment:** A comment was received recommending that the application requirements for renewal permittees not include a separate requirement to address all modifications, revisions, additions, or deletions of program areas described in the application and submittals provided in accordance with the previous MS4 general permit.

Response: This requirement in the public notice version of the permit was unclear and overly burdensome. The requirement was removed from the permit and replaced with Part I.A.7(b)(3)(i), requiring permittees to summarize changes to ordinances and long-term/ongoing processes previously implemented. The intent is to simplify the Division's review process since many program elements have already been reviewed, while not placing a significant burden on the renewal applicant to develop extensive application language.

2. **Comment:** A comment was received recommending that the language in Part I.B.1 of the permit, requiring public education, be clarified to indicate that the education address pollution of stormwater, not just pollution.

Response: Language was added to Part I.B.1 to indicate that the public education activities must address both stormwater pollution and illicit discharges.

3. **Comment:** A comment was received recommending that an exclusion be included in the Construction Sites program for sites qualifying for an R-Factor waiver (in accordance with regulation 61.3(2)(f)(ii)(B)).

Response: The exclusion was added to Part I.B.4, to be consistent with the intent of the R-Factor waiver and other CDPS general permits for MS4s (COR-080000 and 090000).

4. **Comment:** A comment was received recommending that, for the purposes of this permit, the definition of Waters of the State of Colorado (State Waters) in the permit exclude a water course that is part of an MS4. The intent of the comment was to consider discharges to storm sewers that were then removed as not having reached State Waters.

VI. RESPONSE AND CHANGES AFTER PUBLIC NOTICE (cont.)

Response: State Waters are defined within Colorado statute and regulations. Therefore, to remain consistent, the definition of State Waters in Part I.G.17 of the permit has not been significantly changed. A small modification has been made to the clarification included in the definition so as to indicate that dry conveyances can be defined as State Waters, but are not exclusively defined as such. In addition, since this permit only authorizes and regulates surface discharges, for the purposes of this permit, subsurface waters are not included in the definition.

B. Response to Additional Comments

1. *Comment: A comment was received stating that the separate requirements for “New Applicants” and “Renewal Permittees” in the permit are confusing.*

Response: The majority of requirements that are different for “New Applicants” and “Renewal Permittees” are contained in separate sections of the permit. The following table addresses the sections of the permit containing differing conditions for the two permittee types.

Permit Requirement	Section with language for “New Applicants”	Section with language for “Renewal Permittees”
<i>Requirement to submit an application</i>	<i>Part I.A.6</i>	<i>n/a – renewal application requirements for coverage under this permit were included in the MS4 General Permit for which the permittee was previously covered</i>
<i>Requirement to submit a CDPS Stormwater Management Program description</i>	<i>Part I.A.6</i>	<i>Part I.A.7</i>
<i>Implementation schedule for the CDPS Stormwater Management Program</i>	<i>Part I.C.1</i>	<i>Part I.C.2</i>

Some minor additional requirements for Annual Report submittal are also included in Part I.F of the permit, and are clearly identified as applying to either “New Applicants” or “Renewal Permittees”

2. *Comment: A comment was received suggesting that discharges listed in Part I.B.3 of the permit, that may not be considered as “illicit discharges”, be added to Part I.A.2 as authorized discharges under this permit.*

Response: The permit does not authorize the discharges in Part I.B.3 of the permit that are conditionally excluded from being defined as an illicit discharge. The Division has determined that it is not appropriate to authorize additional non-stormwater discharges under this permit. In addition, the Division has determined that sufficient information is not available at this time to justify covering sources such as those in question under stormwater general permits that rely on BMPs instead of numeric effluent limits for protection of water quality.

The permit only removes those discharges listed as not being illicit discharges from the requirement for MS4 permittees to address them when implementing their Illicit Discharge Detection and Elimination Programs. If a separate entity was the operator of a discharge included in the section, the MS4 permittee would not be required to take measures to eliminate the discharge. However, the operator of the discharge is still required to obtain any necessary CDPS discharge permits prior to discharging from the sources listed.

3. *Comment: A comment was received stating that the specific requirements for implementing elements of the Construction Sites program in Part I.B.4(a)(2) and (3) of the permit are redundant, since a local program being complied with would already require those measures.*

VI. RESPONSE AND CHANGES AFTER PUBLIC NOTICE (cont.)

Response: Although a local program would already require the measures in these permit sections, they are critical measures for ensuring adequate management of construction sites to protect State waters. Regardless of whether the permittee or the city and/or county implements the program, the permittee is responsible for ensuring that plans/documents are submitted and that contractors comply with the local requirements. Therefore, the requirement was included in the permit to allow oversight by the Division to ensure adequate implementation by the permittee.

4. *Comment: The required program that was previously labeled as the "Construction Site Stormwater Runoff Control Program" was changed to the "Construction Sites Program" in this renewal permit. A comment was received that the name and the requirements of the program should be revised to focus only on stormwater pollution. The comment stated that this change would be consistent with the intent of the regulations. The CDPS Stormwater Management Program requirements in the Colorado Discharge Permit System Regulation 61, Part 61.8(11)(D)(i), clearly cover sources of potential discharges to an MS4 that are in addition to stormwater, including the requirement to prevent illicit discharges. Specifically, Part 61.8(11)(D)(i) of the regulation requires that permittees develop and implement a program to assure adequate design, implementation, and maintenance of BMPs at construction sites to "reduce pollutant discharges and protect water quality." The requirement is in no way limited to only stormwater discharges. Because nonstormwater discharges, including wash water and construction dewatering, are potential sources of pollutants, the permittee must require BMPs, as necessary, to reduce the discharge of pollutants associated with those non-stormwater sources. The name of the program in the permit was changed to the Construction Sites Program to further clarify this existing regulatory requirement and intent that the CDPS Stormwater Management address potential discharges to MS4s from both stormwater and nonstormwater sources.*
5. *Comment: A comment was received recommending that the language in Part I.D.5 of the permit that allows for amendment of a permit certification to address a TMDL be removed. The comment recommended only including the allowance for modification of the permit itself.*

Response: The Division does not agree with this approach. It is the Division's responsibility to implement waste load allocations included in a TMDL. Including a process in the permit to amend a certification to incorporate requirements to address a Waste Load Allocation allows the Division to address discharges from a specific permittee under a general permit without amending the permit for all permittees or issuing an individual permit.

6. *Comment: Comments were received requesting clarification of the requirement in Part I.D.6 (requirements for Implementation by Other Parties) that written acceptance be obtained from third-parties that are being relied on to implement a control measure. Specifically, would a written agreement be required if a non-standard MS4 permittee chose to follow city and/or county program(s) for the Construction Sites and Post-Construction programs, in accordance with Parts I.B.4(a) and I.B.5(a) of the permits?*

Response: As per Parts I.B.4(a) and I.B.5(a) of the permit, a written agreement is not required for a non-standard MS4 permittee that plans to comply with a city or county's Construction Sites and Post-Construction program. A written agreement is only required by Part I.D.6 if the city or county is implementing measures that the permit requires the non-standard MS4 permittee to ensure are performed. Parts I.B.4(a) and I.B.5(a) require a non-standard MS4 permittee to implement procedures to comply with a city and/or county program, but do not require the permittee to ensure that the programs are implemented adequately by the city and/or county. (The Division will provide oversight of cities and counties' program implementation separately.)

7. *Comment: A comment was received suggesting that the discussion of Reasonable Potential in Section III.A of the rationale was inappropriate for this permit, since numeric effluent limits were not included.*

Response: The permit applies practice-based effluent limits instead of numeric effluent limits. Reasonable Potential analysis is required for all permitted discharges, including those for which practice-based effluent limits are applied in place of numeric effluent limits.

Nathan Moore
February 7, 2008