PUBLIC NOTICE COMMENTS

The first draft of the renewal permit was public noticed on November 1, 2013 and comments were accepted until January 10, 2014. The division announced on December 20, 2013 that a second draft of the renewal permit would be developed. The second draft of the renewal permit was public noticed on April 1, 2015 and comments were accepted until June 30, 2015. The division held five stakeholder meetings during the 60-day public notice period. These were not official public meetings and only written comments submitted to the division are reflected in this document.

This response to comments does not address comments received on the first draft of the general permit. This response to comments only includes comments on and the division's response to the second draft of the general permit. Most comments listed in this document are verbatim.

Comments were received from a number of stakeholders, including the following:

1. 5-2-1 Drainage Authority
2. Adams County
3. Arvada
4. Aurora
5. Canon City
6. Castle Pines
7. Castle Rock
8. City of Boulder
9. Cherry Creek Basin Water Quality Authority
10. Cherry Creek Stewardship Partners
11. Colorado Association of Home Builders
12. Colorado Contractors Association
13. Colorado Stormwater Council
14. Colorado Stormwater Council, Non-Standard Committee
15. City and County of Denver
16. Douglas County
17. Earth Force
18. El Paso County
19. Federal Heights
20. Glendale
21. Golden
22. Greeley
23. Greenwood Village
24. Highland Ranch Metro District
25. Home Builders Association of Metro Denver
26. Housing and Building Association of Colorado Springs
27. Keep it Clean Partnership
28. Lafayette
29. Loveland
30. Northglenn
31. Parker
32. Southeast Metro Stormwater Authority
33. Urban Drainage and Flood Control District
34. Weld County
35. Westminster
36. Xcel Energy

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Comments on the second draft of the COR090000 general permit:

A. GENERAL TOPICS

Comment 1: Remove Appendix A
Colorado Stormwater Council: Please remove Appendix A. Option 2 and 3 are no longer included so Appendix A is no longer an appropriate reference.

Douglas County: Please remove Appendix A. Option 2 and 3 are no longer included so Appendix A is no longer an appropriate reference.

Response 1: Remove Appendix A
This comment has been incorporated into the permit.

Comment 2: General Support of Colorado Stormwater Council's comments
City of Glendale: The City supports the written comments submitted to the Division by the Colorado Stormwater Council (Colorado Stormwater Council) (document titled "Colorado Stormwater Council (Colorado Stormwater Council) Comment Table COR-090000 and COR-080000 CDPS Municipal Separate Storm Sewer System (MS4) Permit- Comment Response to Public Notice"). The City participated in all Colorado Stormwater Council Workgroups to ensure our comments were captured completely and accurately.

There are a number of "high-level" issues in the Colorado Stormwater Council Comments. The City agrees with the Colorado Stormwater Council that these are "high-level" issues that if are not addressed would be of great concern to the City and would potentially mean the City could not comply with the permit that is issued.

City of Federal Heights: The City supports the written comments submitted to the Division by the Colorado Stormwater Council (Colorado Stormwater Council) (document titled "Colorado Stormwater Council (Colorado Stormwater Council) Comment Table COR-090000 and COR-080000 CDPS Municipal Separate Storm Sewer System (MS4) Permit- Comment Response to Public Notice"). The City participated in all Colorado Stormwater Council Workgroups to ensure our comments were captured completely and accurately.

There are a number of "high-level" issues in the Colorado Stormwater Council Comments. The City agrees with the Colorado Stormwater Council that these are "high-level" issues that if are not addressed would be of great concern to the City and would potentially mean the City could not comply with the permit that is issued.

City of Lafayette: The City has also submitted comments through the KICP and supports the detailed comments submitted in writing to the Division by the Colorado Stormwater Council (titled "Colorado Stormwater Council (Colorado Stormwater Council) Comment Table COR-090000 and COR-080000 CDPS Municipal Separate Storm Sewer System (MS4) Permit- Comment Response to Public Notice"). The City participated in each Colorado Stormwater Council permit workgroup and feels our concerns are captured within those comments. The comments submitted by both the KICP and Colorado Stormwater Council reflect our high-level concerns.

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City of Aurora: We have been following the renewal process carefully and have participated in several of the Colorado Stormwater Council workgroup. We support the comments submitted by the Colorado Stormwater Council.

City of Canon City: Colorado Stormwater Council: The City of Cañon City is a member of the Colorado Stormwater Council (Colorado Stormwater Council) and as such has provided input to the Colorado Stormwater Council's comments to the draft renewal COR090000 permit. We support the Colorado Stormwater Council's comments. In areas we believe to be very significant, we are re-emphasizing the Colorado Stormwater Council's comments or we have provided additional comments.

El Paso County: Please note that El Paso County staff has worked closely with the Colorado Stormwater Council workgroups in development of comments for the larger stakeholder group. In addition to the comments provided in the attached document we support the comments being provided by the Colorado Stormwater Council.

City of Greely: With this being said the City of Greeley fully supports the comments being submitted to the Division by the Colorado Stormwater Council and fully supports the proposed recommendations for changes to the permit.

Highlands Ranch Metro District: We support the comments furnished by the Colorado Stormwater Council and the comments furnished by the Non-Standard Committee of Colorado Stormwater Council.

City of Loveland: In consideration of the Division's time we will not reproduce the Colorado Stormwater Council's comments in this letter, however, the City agrees with and supports the detailed comments that were compiled through the workgroups and the City strongly recommends the Division consider and adopt the Colorado Stormwater Council's proposed revisions in their entirety.

City of Arvada: The City of Arvada supports the comments submitted by the Colorado Stormwater Council (Colorado Stormwater Council) that were recently submitted to the Water Quality Control Division of the Colorado Department of Public Health and Environment.

City of Northglenn: We will simply state that we are in full support of and echo the comments and proposed language of the Colorado Stormwater Council Comment Table.

Weld County: Weld County concurs with the detailed comments submitted to the Division by the Colorado Stormwater Council during the second round of public commenting.

City of Westminster: The City of Westminster fully supports and reiterates the comments provided by the Colorado Stormwater Council. We feel all of Colorado Stormwater Council's comments are substantive and merit consideration and response.

Douglas County: Douglas County has actively participated in the Colorado Stormwater Council workgroups during the preparations of these comments. The Colorado Stormwater Council represents 98% of the jurisdictions within the State of Colorado and each jurisdiction has its own program; the deviations from the Colorado Stormwater Council comments are indicative of the potential impacts to the Douglas County GESC/DESC

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programs and will benefit those entities that follow or have adopted these programs. We have documented these changes with an '*' within the areas of our proposed changes.

5-2-1 Drainage Authority: The 521 participates with the Colorado Stormwater Council, and agrees with the comments that are being submitted to the CDPHE.

City of Greenwood Village: As several watersheds originate in or surrounding the Village, and Colorado is a headwaters state, the Village appreciates the contribution that water quality provides to quality of life which is integral to the Village. The Village has concern with potential for negative water quality impacts and is an active member the Cherry Creek Basin Water Quality Authority and Colorado Stormwater Council (CCBWQA and Colorado Stormwater Council, respectively).

The Village has also continued cooperation with the Division and with these partnerships, will continue to improve water quality in Colorado. The Village is in support of the comments respectively submitted by the CCBWQA and Colorado Stormwater Council as Village staff participated in the generation of these comments. In the spirit of brevity, this letter will not reiterate these comments. However, this letter provides comment to address the Village's additional concerns and supplements those submitted by the Colorado Stormwater Council and the CCBWQA.

Southeast Metro Stormwater Authority: SEMSWA was also an active participant on the Colorado Stormwater Council (Colorado Stormwater Council) Work Group comment effort and the Cherry Creek Basin Water Quality Authority's Technical Advisory Committee (TAC) review discussions. We will not be reiterating either of those groups' comments unless there is something specific that pertains to how SEMSWA will be implementing our programs in the new permit term. We encourage the Division to consider both the Colorado Stormwater Council and TAC comments and value the amount of effort that went in to those documents by MS4 staff who manage implementation of the permit requirements on a daily basis.

Town of Castle Rock: The Town of Castle Rock is a member of the Colorado Stormwater Council (Colorado Stormwater Council) and the Cherry Creek Basin Water Quality Authority (CCBWQA). We have been an active participant in the response efforts put forth by the Colorado Stormwater Council and the CCBWQA and are in general agreement with formal comments provided by both parties. Included in this response are comments on the Draft Renewal Permit intended to supplement those comments prepared and submitted by the CCBWQA and Colorado Stormwater Council regarding permits COR-0800000 and COR-0900000.

Town of Parker: Through the comment period the Town has actively participated in the Division workgroup sessions, work sessions with the Cherry Creek Basin MS4' s and the Cherry Creek Basin Water Quality Authority Technical Advisory Committee (CCBWQA TAC), and work sessions with the Colorado Stormwater Council (Colorado Stormwater Council). The Division will receive comments from both the Cherry Creek Basin Water Quality Authority and the Colorado Stormwater Council. The Town of Parker concurs with both entities as stated below:
• The Town concurs with the CCBWQA TAC comments dated June 11, 2015 as they relate to the COR080000.

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City of Castle Pines: The City supports the written comments submitted to the Division by the Colorado Stormwater Council (Colorado Stormwater Council) (document titled "Colorado Stormwater Council (Colorado Stormwater Council) Comment Table COR-090000 and COR- 080000 CDPS Municipal Separate Storm Sewer System (MS4) Permit- Comment Response to Public Notice"). The comments reflect the changes we see as necessary to the COR-080000 permit. The City participated in all esc Workgroups to ensure our comments were captured completely and accurately.

There are a number of "high-level" issues in the Colorado Stormwater Council and CCBWQA Comments. The City agrees that these are "high-level" issues that if are not addressed would be of great concern to the City and would potentially mean the City could not comply with the permit that is issued.

Keep it Clean Partnership: Several KICP members participated in the Colorado Stormwater Council workgroups to compile comments. KICP is in support of the Council's detailed table of comments on draft permit language. We hope the Division considers the detailed comments provided by the Council, as it is an indication of the commitment of the regulated community to having a clear and implementable permit.

Response 2: Support of Colorado Stormwater Council's Comments
The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 3: Support of Changes from the First to the Second Draft of the Permit
City of Lafayette: We would also like to recognize the significant changes from the first draft of the MS4 Permit to the draft we comment on today. It is clear to us that much attention went into considering our comments and the concerns we expressed on the first draft.

Home Builders Association of Metro Denver: We would like to acknowledge that this is a much better permit due to an increase in consistency. We embrace and support an emphasis on compliance assistance and hope the CDPHE is moving toward this goal.

Housing and Building Association of Colorado Springs: We would like to stress the importance of allowing MS4 permit holders the flexibility to define and implement programs that are both practical and applicable within the boundaries of each municipality and acknowledge that this is a much improved permit. The construction industry is also encouraged by the positive direction of the language that was passed in HB 15-1249. The emphasis on compliance assistance is a direct result of the collaboration between CDPHE and the construction industry to develop a program focused on preventing violations of the Colorado Water Quality Control Act.

5-2-1 Drainage Authority: The 521 Drainage Authority (521) would like to thank Colorado Department of Public Health and Environment (CDPHE) for addressing many of our concerns and comments in the first draft of the General Permit for Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems (MS4's) by issuing a second draft of the permit.

City of Canon City: The City of Cañon City would like to thank the Division for taking the time to consider the more than 1,400 comments received during the public notice of the

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first draft of the renewal permit. We are appreciative of the Division's consideration of the received comments and pleased to see that many of the comments were addressed.

City of Glendale: The City of Glendale would like to express our gratitude to the Water Quality Control Division (Division) for the consideration of our comments on the second draft MS4 Permit COR-090000. It is apparent to the City that the Division worked hard to incorporate our extensive comments on the last draft issued in 2013.

City of Greely: We appreciate the Division's response to our previous comments made on the last draft issued in 2013 and recognize the effort by the Division to incorporate the comments into the current draft permit.

City of Lafayette: The City of Lafayette would like to express our gratitude to the Division for your consideration of our comments on the draft MS4 Permit COR-090000 released for public comment on May 1, 2015.

City of Northglenn: We appreciate the Division taking some of our previous comments into consideration and holding additional stakeholder meetings to further discuss this revised draft permit.

El Paso County: Thank you for providing several opportunities to allow input on the draft permit language, gaining clarification on the Division's intent and for accepting and considering the comments made above.

City of Castle Pines: The City of Castle Pines would like to express our gratitude to the Division for the consideration of our comments on the draft MS4 Permit COR-080000. We appreciate the Division's response to our previous comments made on the draft MS4 Permit COR-090000 issued in 2013 and recognize the effort by the Division to incorporate the comments into the current draft permit, COR-080000- specific to the Cherry Creek Basin.

Greenwood Village: Overall, the Village is pleased to see that the division reviewed and considered the Village's comments submitted January 10, 2014 for the first draft of the MS4 phase II permit.

Southeast Metro Stormwater Authority: We appreciate the effort undertaken on the second draft. Thank you for the flexibility that you have provided MS4s to both keep the program implementation aspects that are working and provide opportunities for additional approaches. We certainly do value the time and effort that went in to the preparation of the Fact Sheet and appreciate the care the Division took to provide clarification of the intent behind the requirements.

Town of Castle Rock: The Town of Castle Rock (Town) acknowledges the substantial effort put forth by the Water Quality Control Division (Division) in drafting new permit language and appreciates the continued outreach efforts to stakeholders during this process.

Town of Parker: The Town of Parker would like to thank the Division for the opportunity to comment on the proposed draft permit COR080000. We recognize the effort put forth in developing this document.

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Douglas County: We also would like to acknowledge the time and effort by the Division that has been put into this Second Public Notice Version of the Draft Permit and appreciate the opportunity to comment on it. We appreciate the changes to the permit language with this Second Notice is now focused on the regulatory requirements with a Fact Sheet that provides the direction and goals of the Division with respect to implementation of the permit.

Response 3: Support of Changes from the First to the Second Draft of the Permit
The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 4: Reduce Recordkeeping Requirements
City of Aurora: The Fact Sheet includes numerous statements related to recordkeeping. Recordkeeping was one of the key issues about which the division received substantial comments during the first draft of the Phase II permit. This version not only kept nearly all of the requirements of the previous draft, but "added a recordkeeping section to each program area in the renewal permit" (p. 27). Requiring program modifications that are purely administrative do not serve to improve water quality and divert resources to creating more paperwork.

Douglas County: There are several potential cost increases associated with the new permit, particularly with respect to new and extremely detailed, and in some cases duplicative, recordkeeping requirements and the development of the Program Description Document. We believe these additional requirements may lead to the necessity of adding a full-time employee to our staff. We believe the recordkeeping system we have in place would still suffice and that if there are MS4 programs that do not have sufficient systems in place, it would be better if the Division provided compliance assistance in those specific instances. The Program Description Document and the Recordkeeping requirements proposed are cumbersome and are presented in several different locations. These requirements also appear to conflict with one another and seem to be multiple requests for same information within the minimum control measures. We respectfully request the need for this information to be kept separately and to create one comprehensive list of materials the Division would like permit holders to keep, as associated with this permit and the applicable minimum control measure.

Response 4: Reduce Recordkeeping Requirements
Recordkeeping requirements changed from the first to the second drafts of the renewal permit. Some of these changes were intentional recordkeeping reductions based on comments received on the first draft of the renewal permit. Other recordkeeping requirement changes were clarifications to better align the program area requirements to recordkeeping and PDD requirements. Some recordkeeping requirements were further reduced based on comments received on the second draft of the renewal permit as described throughout Attachment A. The division continues to determine that recordkeeping is an important part of practice-based effluent limits. The fact sheet provides the rationale for the recordkeeping requirements that are in the renewal permit.

Comment 5: Add a Basis and Justification of Numeric Criteria
City of Canon City: General Comment: The City of Cañon City requests the Division clarify in the Fact Sheet how the various numeric criteria and limits contained in this section were derived. What is the basis and justification for each to insure they are realistic?

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Response 5: Add a Basis and Justification of Numeric Criteria
The division has determined that the terms and conditions of the permit are appropriate. Please see the fact sheet for more information on the rationale/statement of basis for specific permit requirements.

Comment 6: Consider Financial Impacts
City of Canon City: Did the Division consider financial impacts to the MS4s in implementing these requirements?

Town of Castle Rock: Although the draft renewal permit acknowledges the consideration of a cost benefit analysis, this factor does not appear to have influenced the decision making process in the new draft.

Response 6: Consider Financial Impacts
These comments have not been incorporated into the permit. Please see the Discussion of Key Regulatory Terms and Concepts section of the fact sheet for more information. In addition, the division considered all of the comments on the first draft of the general permit, including a cost benefit analysis submitted by the Colorado Stormwater Council. No comments were received on the second draft of the general permit regarding what specific permit requirements were cost prohibitive and why. However, the division made changes to several areas of the permit in the second draft of the general permit in response to the comments and cost benefit analysis, including removing the requirement for permittees to review site plans during inspections.

Comment 7: Include a List Guidance Documents in the Fact Sheet
Colorado Stormwater Council: Please include existing guidance language in the fact sheet. Please include a separate list of references on the CDPHE website that can be updated and added to over time. The Division has issued several guidance documents/memos in the past. A discussion in the fact sheet and a reference to the past guidance would be beneficial. A list on the website would allow for updates over time.

Douglas County: Please include existing guidance language in the Fact Sheet. Please include a separate list of references on the CDPHE website that can be updated and added to over time. The Division has issued several guidance documents in the past. A discussion in the Fact Sheet and a reference to the guidance would be beneficial.

Response 7: Include a List Guidance Documents in the Fact Sheet
These comments have been incorporated into the fact sheet.

Comment 8: Add a Resources Section to the Fact Sheet
Colorado Stormwater Council: Please include a list of resources in the fact sheet. Please include a separate list of resources on the CDPHE website that can be updated and added to over time. The fact sheet and the website should be a resource for Stormwater Managers. Consider referencing Red Rocks Community College and the Stormwater Center Trainings.

Douglas County: Please include a list of resources in the in the Fact Sheet. Please include a separate list of references on the CDPHE website that can be updated and added to over

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time. The Fact Sheet should be a resource for Stormwater Managers. Consider referencing Red Rocks Community College and the Stormwater Center Trainings.

Response 8: Add a Resources Section to the Fact Sheet
These comments have been incorporated into the fact sheet. Please see the references section of the fact sheet.

Comment 9: Reduce the Use of the Terms "Any" and "All"
City of Aurora: The words "any" and "all" should be used more judiciously and in many cases should be stricken from the permit.

Response 9: Reduce the Use of the Terms "Any" and "All"
The division reviewed the use of the terms and found them to be appropriate. No changes were made to the permit.

Comment 10: Support of Comments Submitted by the Home Builders of Metro Denver and Colorado Springs Housing and Building Association
Colorado Association of Home Builders: CAHB is in full support and agreement with the comments that you will receive from our associated local associations, particularly the Home Builders Association of Metro Denver and the Colorado Springs Housing and Building Association.

Response 10: Support of Comments Submitted by the Home Builders of Metro Denver and Colorado Springs Housing and Building Association
The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 11: Typographical Errors
The City of Cañon City will not be commenting on the numerous grammatical, punctuation and spelling errors contained in the draft permit and fact sheet.

Response 11: Typographical Errors
The division corrected various typographical errors.

Comment 12: Reduce the Length of the Permit
City of Arvada: The Draft General Permit is approximately three times the number of pages contained in the previous permit. The significant added detail in the proposed permit leaves little flexibility for permittees to design programs specific to their jurisdiction. Loss of flexibility, in many cases, can result in a loss of robust programs.

Response 12: Reduce the Length of the Permit
Please see the fact sheet for the rationale/statement of basis/preliminary analysis for the terms and conditions of the permit including a discussion of how the additional detail in the permit eliminates the need for development, review, and approval of a PDD, how significant flexibility is incorporated into the general permit to allow permittees to design programs specific to their jurisdiction, and how a permittee may apply for coverage under an individual permit or for a modification of third general permit to include the proposed MS4 specific terms and condition in Part III of the permit.

Comment 13: Reduce the Specific Program and Recordkeeping Requirements

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City of Northglenn: As Colorado is a headwaters state, protecting stormwater and water quality is a priority for Northglenn. At the same time, we have to be cognizant of how we effectively, efficiently, and responsibly utilize our resources. The Colorado Stormwater Council's comments are submitted with the goal of maintaining program flexibility as EPA's definition of MEP intended. The Division has indicated that the objective of the permit is to have requirements that are enforceable. As was commented extensively in the first draft permit, the prescriptive program and recordkeeping requirements to provide this enforceability will create added costs for us without the assurance of improved water quality. Overall, Northglenn is concerned that with the prescriptive permit conditions, there will be a loss in our ability to continue the iterative process of program development into an effective, mature program.

Douglas County: Overall, Douglas County is concerned that with too prescriptive permit conditions, there is a loss in ability to continue the iterative process these mature programs have implemented in the past. Several of our comments are made with the goal of maintaining some program flexibility as EPA's definition of MEP intended. Douglas County feels that adding additional design standards and inspection approaches within the permit will help maintain our ability to continue implementing existing successful programs while providing the Division with enforceable requirements. Support for comments allowing for continued permittee flexibility.

Weld County: It is clear that the permit's intent is to adhere to the maximum extent practicable requirement of the Clean Water Act in addition to the numerous state regulations used in determining permit requirements. However, the previously stated issues raise serious concerns which could be remedied with more flexibility for local governments to implement individualized, dynamic programs since a 'one size fits all' scenario may not prove effective. In light of these issues, the Weld County Board of Commissioners requests that CDPHE site the specific statutory authority for each area of the permit. And, the Board respectfully requests the CDPHE perform the cost-benefit analysis to ensure the most efficient and cost effective manner in which to implement changes to the permit.

Response 13: Reduce the Specific Program and Recordkeeping Requirements
Recordkeeping requirements changed from the first to the second drafts of the renewal permit. Some of these changes were intentional recordkeeping reductions based on comments received on the first draft of the renewal permit. Other recordkeeping requirement changes were clarifications to better align the program area requirements to recordkeeping and PDD requirements. Some recordkeeping requirements were further reduced based on comments received on the second draft of the renewal permit as described throughout Attachment A. The division continues to determine that recordkeeping is an important part of practice-based effluent limits. Please see the fact sheet for more information on the rationale/statement of basis for specific permit requirements and how significant flexibility is incorporated into the general permit to allow permittees to design programs specific to their jurisdiction.

Comment 14: Non-Standard COR070000 Permit
Highlands Ranch Metro District: When the Division begins the process of drafting a new Non-Standard Permit, #COR-070000, we would welcome the opportunity to meet with Division staff to discuss the issues that are important in achieving compliance with the MS4 permit. There are challenges as well as many opportunities in improving water quality

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within the framework of a new permit and we would like to be part of the process to work with the Division in developing the new permit.

Response 14: Non-Standard COR070000 Permit
The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 15: Provide More Information on Why Trash is Listed in the Permit
Home Builders Association of Metro Denver: Please explain why there is so much focus on trash. For the most part, trash will contribute little to degradation of water quality. What is the driver here? We understand the importance of trash control and of having it in the permit; however, there appears to be excessive focus on this throughout the permit.

Response 15: Provide More Information on Why Trash is Listed in the Permit
The fact sheet has been updated with additional information.

Comment 16: Support of Stakeholder Meetings During Public Notice
City of Arvada: Thank you for providing us the opportunity to comment on the Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems (MS4s) Draft General Permit, and conducting Stakeholder meetings to assist in our understanding of the Second Public Notice Version of the proposed permit.

City of Canon City: The City of Canon City appreciates the time and effort the Permits Section of the Water Quality Control Division (Division) has expended on the revision of the above mentioned draft renewal permit. We also extend our gratitude for engaging the stakeholders during this process.

City of Glendale: The City would also like to recognize the effort the Division put in to holding stakeholder meetings and answering questions on the draft permit to allow us to formulate our comments. The City believes these efforts will result in a clear permit that protects water quality and allows the City to use its resources wisely.

City of Greely: Thank you for the opportunity to provide comments on the 2nd draft of the Colorado Discharge permit System Stormwater associated with Phase II Municipal Storm Sewer System (MS4) General Permit, COR090000. Thank you for the new approach within the public process to meet and review the second draft of the MS4 permit. I believe that as the meetings progressed, we were able to get to a point where valuable dialog was occurring and both permittees and the Division were able to understand where each was coming from.

City of Westminster: We appreciate the Division considering previous comments and holding additional stakeholder meetings.

Grand Valley Irrigation and Drainage Suppliers: The Grand Valley Irrigation Providers (GVIP) and the Grand Valley Drainage District (GVDD), want to thank the division, you and the CDPHE staff for continuing to listen to our concerns regarding finalization of general permit for MS4s.

Highlands Ranch Metro District: Thank you for the opportunity to comment on the draft MS4 Standard permit. I was impressed with the process the Division followed in presenting

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the new draft. The MS4 Non-Standard may be simpler in some ways but more complex in others so this would be a good process to continue.

Home Builders Association of Metro Denver: We appreciated the very helpful and useful series of public stakeholder meetings specifically geared toward the Phase II portion of the General Permit process. Those meetings provided more opportunities to collaborate and work through practical application thoughts surrounding proposed changes.

Housing and Building Association of Colorado Springs: CSHBA commends the effort that went into the stakeholder process that CDPHE provided over the last several weeks. Through those meetings we were able to discuss practical solutions that support the end goal of the Clean Water Act.

City of Boulder: The City of Boulder (city) appreciates the opportunity to provide comments on the draft Municipal Separate Storm Sewer System (MS4) permit (COR090000), and Fact Sheet, released for public comment on May 1, 2015. The city also appreciates the Colorado Water Quality Control Division (Division) developing and implementing a work group process, which allowed open discussion by the regulated community.

Southeast Metro Stormwater Authority: SEMSWA would like to thank the Division for the open dialogue that occurred at the Work Sessions, the Cherry Creek MS4 group meeting, and the one-on-one meeting we had with Division staff during this second draft permit process. In addition to yourself, your colleagues Lillian Gonzalez, Nathan Moore and Lisa Knerr were also instrumental in allowing SEMSWA to verbalize our mature programs and the Cherry Creek basin approach, and we appreciated the ability to discuss the Division's expectations of a specific Regulation 72 permit. Understanding Mr. Moore's compliance perspective for this permit term has also helped us key in on specific areas for our comments.

Town of Parker: We appreciate the process of meeting with the Division to discuss the various topics of the permit through work sessions and believe they were very productive.

Douglas County: Douglas County Staff would like to sincerely thank you and Kendra Kelly for taking the time to meet with us on June 2, 2015. We appreciated the opportunity to review our Grading, Erosion & Sediment Control (GESC) and the Drainage Erosion & Sediment Control (DESC) programs with Kendra and you. Specifically, we appreciated the discussion of the potential impacts to these programs that would result from the proposed permit language.

Response 16: Support of Stakeholder Meetings During Public Notice
The division takes note of this comment. No changes to the permit or fact sheet are necessary.

B. PART I.A. – COVERAGE UNDER THIS PERMIT

1. Discharges Authorized Under this Permit

Comment 1: Include Stormwater Discharges to Ground Water in the Permit

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City of Aurora: The definition of "discharge" in the permit is different from the definition in Regulation 61 (p. 17). By excluding ground water from the definition, the result is that the permit in fact prohibits discharges to ground water. Clarification that the division does not intend to require a permit for discharges from an MS4 to the subsurface is requested. In addition, clarification that the storm sewer system map only needs to identify discharges to surface waters is requested.

Response 1: Include Stormwater Discharges to Ground Water in the Permit
The permit does not prohibit discharges to ground water, it just does not cover them. The storm sewer system map only needs to identify discharges to state waters from MS4 outfalls, which, in this permit, does *not* include ground water. The fact sheet and permit have been updated with additional information.

Comment 2: Remove "and Waters of the State" from the Definition of "Discharge"
City of Canon City: Page 16 of the Fact Sheet states: "Permittees should note that the definition of a "discharge" in the permit is different from the definition in Regulation 61. This is because land application of discharges from an MS4 and discharges from an MS4 to the ground (and waters of the state) are not anticipated." Please remove or clarify "(and waters of the state)" as this is confusing. Does the Division not anticipate that an MS4 would discharge to waters of the state?

Response 2: Remove "and Waters of the State" from the Definition of "Discharge"
See response 1 above.

Comment 3: Remove "Adjacent to Waters of the State"
City of Golden: Discharges authorized under Permit. In describing the "discharges" covered by the draft permit, Section I.A. I. includes the discharges from the MS4 within the permit area, but then adds "[d]ischarges from the permit area adjacent to state waters that are designed or used to convey stormwater to a water of the state are part of an MS4 and authorized by this permit." The purpose of this additional phrase is unclear. For example, it is unclear on whether this is intended to extend MS4 permit coverage to areas outside of the permit boundary if adjacent to state waters. If so, then this language appears to be unsupported by Regulation 61. It is also unclear what the remaining language of this provision is intended to accomplish. For example, an easement held by the permittee along a stream bank for one purpose, should not impose upon the permittee the responsibility for managing stormwater over which it has no control and that lies outside of its boundaries. The purpose and effect of this language is unclear and should be clarified.

City of Canon City: Nathan Moore explained during the June 25th stakeholder workgroup meeting that the Division was trying to encompass dischargers inadvertently missed by Regulation 61 that are in the MS4 permit boundary but discharge directly to a water of the state (including irrigation channels). This intent is not clearly captured in the second paragraph or Fact Sheet. The City of Cañon City requests the Division remove the second paragraph. Rationale: If an area adjacent to a water of the state is within an MS4's permit area and is designed or used to convey stormwater to that state water, it is by definition part of the MS4. Management of flood plains and stream banks may or may not be related to the conveyance of stormwater flows and many easements are "prescriptive" in nature; not by deed, but historical in nature. Furthermore, if a residence (as used in Nathan's explanation) is

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discharging stormwater directly to a state water the discharge may not flow over a bank or conveyance or may go through an easement which is not owned or operated by the MS4. An example of this would be roof drains from a residence discharging into an irrigation channel or onto its bank which is the irrigation company's property or easement for maintenance.

City of Arvada: Page 4. Remove paragraph concerning discharges from permit area adjacent to Waters of the State.

Colorado Stormwater Council: Please remove the second paragraph relating to areas adjacent to state waters. Including areas that don't discharge into the MS4 is beyond the scope of the MS4 permit and Regulation 61.

Fact sheet page 16 says: This permit also provides clarification for what constitutes an MS4. Included in the definition of an MS4 are areas owned or operated by a municipality that are adjacent to classified waters of the state and that are designed or used to convey stormwater into the waterway. These areas are often maintained by municipalities through direct ownership, easement, or right-of-way for the purpose of managing flood plains, stream banks, and channels for conveyance of stormwater flows. For example, a discharge from a privately-owned stormwater collection system into and through a municipality's easement along a stream or other waterway would be considered a discharge into the municipality's MS4.

Part I.J.29. of the draft permit defines Municipal Separate Storm Sewer System (MS4): A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

a. Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
b. Designed or used for collecting or conveying stormwater;
c. Which is not a combined sewer; and
d. Which is not part of a Publicly Owned Treatment Works (POTW). See 5 CCR 1002-61.2(62).
"Adjacent to state waters" is not a discharge to the municipality's MS4. Colorado Stormwater Council has concerns that by adding "adjacent to state waters" it changes the definition of a MS4

Douglas County: Please remove the second paragraph relating to areas adjacent to state waters. Including areas that don't discharge into the MS4 is beyond the scope of the MS4 permit and Regulation 61.

Fact Sheet page 16 says: This permit also provides clarification for what constitutes an MS4. Included in the definition of an MS4 are areas owned or operated by a municipality that are adjacent to classified waters of the state and that are designed

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or used to convey stormwater into the waterway. These areas are often maintained by municipalities through direct ownership, easement, or right-of-way for the purpose of managing flood plains, stream banks, and channels for conveyance of stormwater flows. For example, a discharge from a privately-owned stormwater collection system into and through a municipality's easement along a stream or other waterway would be considered a discharge into the municipality's MS4.

29. Municipal Separate Storm Sewer System (MS4): A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
a. Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
b. Designed or used for collecting or conveying stormwater;
c. Which is not a combined sewer; and
d. Which is not part of a Publicly Owned Treatment Works (POTW). See 5 CCR 1002-61.2(62).

"Adjacent to state waters" is not a discharge to the municipality's MS4. Douglas County has concerns that by adding "adjacent to state waters" it changes the definition of MS4.

Keep it Clean Partnership: Discharges Authorized Under this Permit
The qualifier of area "adjacent to state waters" seems to overreach the definition of MS4, which is clearly defined in Regulation 61. Comment: MS4 is clearly defined in the permit, and Regulation 61 and does not include areas adjacent to state waters that the permittee owns or operates. Access to these areas for maintenance (as the fact sheet describes: These areas are often maintained by municipalities through direct ownership, easement, or right-of-way for the purpose of managing flood plains, stream banks, and channels for conveyance of stormwater flows.) does not give municipalities the authority to control discharges through these areas. The addition of areas adjacent to state waters seems to change the definition of MS4. Please remove the additional paragraph addressing "adjacent to state waters" from the permit requirements.

City of Glendale: The topics considered "high-level" issues for the City include the following: General: Permit Area- adjacent to state waters.

Response 3: Remove "Adjacent to Waters of the State"
This section of the permit, has been revised for clarity. The division is not redefining or expanding the definition of an MS4. The division is, however, clarifying "(B) Designed or used for collecting or conveying stormwater." The fact sheet has been updated with further discussion.

Comment 4: Order of Definitions
City of Canon City: Please put the definitions in alphabetical order.

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Response 4: Order of Definitions.
This comment has not been incorporated into the permit. Definitions are in the order that they are used in that section.

Comment 5: Different Definition of "Discharge of a Pollutant" from Regulation 61
City of Golden: d. Discharges to the ground or to ground water. Section I.A.l .a.i of the draft permit relies on the definition of the term "discharge of pollutants" at C.R.S. 25-8-103(3) to define "discharge" for purposes of the permit, but then excludes "land application and discharges to the ground." Despite this exclusion the permit is replete with references concerning the infiltration of stormwater as a result of control measures. It seems inconsistent to support infiltration of stormwater into the ground - yet exclude discharges to the ground from the permit. Discharges to the ground should be expressly authorized for purpose of infiltration of stormwater to help restore hydrologic conditions.

Response 5: Different Definition of "Discharge of a Pollutant" from Regulation 61
This comment has been incorporated into the permit.

Comment 6: Different Definition of "Municipal Separate Storm Sewer System" and "Municipality" from Regulation 61
City of Canon City: a.iv(A): "Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body…" and a.v. "refers to a state, city, town, borough, county, parish, district, association, or other public body…" The City of Cañon City requests that the definitions of "Municipal Separate Storm Sewer System" from Regulation 61.2(62) and "Municipality" (63) be used to be consistent with current Regulations. Rationale: Regulation 61 specifically discusses the removal of the terms borough and parish from the definition of Municipal. The terms "borough" and "parish" were removed because they are inconsistent with Colorado law. In addition, a.iv. does not match the definition of "Municipality/Municipal" contained in Part I.J.

El Paso County: Definition of "municipality/municipal" inconsistent with same definition in Section J. Delete, use consistent definition in section J.

Response 6: Different Definition of "Municipal Separate Storm Sewer System" and "Municipality" from Regulation 61
This comment has been incorporated into the permit.

Comment 7: Change the Definition of "Stormwater"
Southeast Metro Stormwater Authority: "Stormwater" is defined as stormwater runoff, snow met runoff, and surface runoff and drainage. Including the term "stormwater runoff" is confusing to us. Runoff is limited to overland flows that do not infiltrate or "percolate". Please consider simplifying the definition to, "Stormwater" is defined as precipitation from rainfall and snowmelt events.

Response 7: Change the Definition of "Stormwater"
This comment has not been incorporated into the permit. The definition of "stormwater" is adopted verbatim from Regulation 61.

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Comment 8: Change the Definition of State Waters
City of Arvada: In the definition of Waters of the State, include additional language concerning the requirement of a significant nexus to Waters of the State when including water courses that are usually dry, as found in the definition of Waters of the US.

Response 8: Change the Definition of State Waters
This comment has not been incorporated into the permit. The definitions of waters of the state and waters of the US are distinct and the definition in the permit is consistent with. Regulation 61.

2. **Limitations on Coverage**

Comment 1: Support of Permit Language
5-2-1 Drainage Authority: We would like to thank you for continuing to include the following items and are in agreement with the following items in the second draft of the permit:
1. The exclusion of conveyances used primarily for irrigation return flow and/or for supplying irrigation water to irrigated land that are identified in the permitee's application or subsequent modification as not being part of the MS4; and that are listed in the permit certification. Please find attached with these comments letters from the irrigation suppliers and irrigation return flow providers, within the permit area, which identifies facilities that will be identified for exclusion in 521's permit modification.

Response 1: Support of Permit Language
The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 2: Irrigation Ditches
City of Boulder: Part I.A.1 Permit Area Coverage - Discharges Authorized Under this Permit (Page 4) and Part 1.A.2 Limitations of Coverage (Page 5) Comment: The city does not own or operate irrigation ditches within the city, even irrigation ditches that receive and carry stormwater from the city's MS4, and the city would have no legal ability to implement the MS4 permit requirements at the ditch outfall to a river or stream. Because such ditches are waters of the state, the city manages the discharges to the ditches as MS4 outfalls. The language in the draft permit regarding irrigation ditches is not consistent with the definition of "municipal separate storm sewer system" in the permit and Regulation 61 and should be revised.

Response 2: Irrigation Ditches
The city is correct in that they manage the discharges to the ditches as MS4 outfalls, because the ditches are waters of the state. The definition of MS4 and municipal have been updated in the permit.

Comment 3: Comment Specific to the Grand Valley Irrigation and Drainage Suppliers
Grand Valley Irrigation and Drainage Suppliers: We understand that the formal process requires the 5-2-1 Drainage Authority (5-2-1), as MS4 permittee, to identify the conveyance systems, which need to include agreements, contracts, direct ownership,

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easements, and rights of way (including prescriptive) of GVIP and GVDD to be excluded under COR090000. To assist CDPHE with this process, we attached a copy of our current letter to the 5-2-1 requesting these exclusions.

Response 3: Comment Specific to the Grand Valley Irrigation and Drainage Suppliers
The division takes note of this comment. No changes to the permit or fact sheet are necessary. The applicable permit certification will reflect this comment.

Comment 4: Exempt Activities on State and Federal Lands
Colorado Stormwater Council: Colorado Stormwater Council: Please include an exemption for state and federal lands within the Permit Area section. Such as:
For all cities, including combined cities and counties required to obtain coverage under this permit, the geographic area of permit coverage will include the area of the municipal incorporated boundary, but will exclude lands and facilities for which the permittee does not have the legal authority to impose the requirements necessary to comply with this permit, such as state and federal lands and facilities. The permit should include language to specifically indicate that the permittee does not have jurisdictional authority over federal and state owned areas. In order to be regulated under Regulation 61, a permittee must have jurisdictional authority and the property must discharge to the MS4. Both items are required for coverage. The Division has issued guidance regarding jurisdictional authority over state and federal lands in the past. A discussion in the fact sheet and a reference to the guidance would be beneficial.

Keep it Clean Partnership: Issue: Clarification that permittees do not have legal authority over state and federal lands is needed. Comment: Please include language in the permit that acknowledges permittees do not have legal authority to implement the MS4 programs within federal- and state-owned lands.

Douglas County: Please include an exemption for state and federal lands within the Permit Area section, such as: For all cities, including combined cities and counties, required to obtain coverage under this permit, the geographic area of permit coverage will include the area of the municipal incorporated boundary, but will exclude lands and facilities for which the permittee does not have the legal authority to impose the requirements necessary to comply with this permit, such as state and federal lands and facilities. Please include a discussion in the Fact Sheet regarding responsibilities for permit implementation for both standard and non-standard MS4s. The permit should include language to specifically indicate that the permittee does not have jurisdictional authority over federal and state owned areas. In order to be regulated under Regulation 61, a permittee must have jurisdictional authority and the property must discharge to the MS4. Both items are required for coverage. The Division has issued guidance regarding jurisdictional authority over state and federal lands in the past. A discussion in the Fact Sheet would be beneficial.

Weld County: This statement was removed in the second draft because permittees stated that this requirement was unclear. Propose adding a statement that the permittee is not responsible for permit requirements for any area not under its jurisdiction.

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City of Glendale: The topics considered “high-level” issues for the City include the following: General: Permit Area coverage.

City of Federal Heights: The topics considered “high-level” issues for the City include the following: General: Permit Area coverage.

Response 4: Exempt Activities on State and Federal Lands
These comments have been incorporated into the permit.

Comment 5: Non-Standard MS4 Permit Boundary
City of Golden: MS4 permit boundaries: The permit area for cities should not be based simply on the "municipal incorporated boundary" as set forth in Section I.A.3 .a.i. Non-standard MS4s, for example, may exist within a municipal boundary and should be specifically excluded from the permit area as they have their own stormwater management responsibilities and liabilities. Numerous provisions in Regulation 61 recognize that each MS4 permit holder has its own separate and distinct stormwater management obligations unless through agreement and/or assignment of a permit one entity takes on the obligations of another. See § 61.8(3)(g) ("the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee as necessary to achieve compliance with the conditions of this permit"); see also, §§ 61.8(3)(d), 61.8(6), 61.4(1)(b). As written, this section would seem to impose the non-standard MS4 permit obligations and associated costs upon a city without agreement. It is further understood that lands subject to a non-standard MS4 permit are not also subject to a standard MS4.

This section should be revised as follows: "For all cities, including combined cities and counties, required to obtain coverage under this permit, the geographic area of permit coverage will include the entirety of the municipal incorporated boundary excluding only lands covered by non-standard MS4s unless those lands are included within the City's MS4 permit by agreement."

Response 5: Non-Standard MS4 Permit Boundary
This comment has been incorporated into the permit.

3. **Permit Area**

Comment 1: Support of Permit Language
5-2-1 Drainage Authority: We would like to thank you for continuing to include the following items and are in agreement with the following items in the second draft of the permit:2. County Growth Area- We appreciate being able to submit a map which shows our projected growth areas, based on local growth plans. Also attached with these comments is a proposed map for permit coverage for 521.

Douglas County: The successful collaborative process that occurred between the Division and the Counties to determine county permit boundary expansion areas.

Response 1: Support of Permit Language
The division takes note of this comment. No changes to the permit or fact sheet are necessary.

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Comment 2: Regulating County Growth Areas
Weld County: As a predominantly rural county with few areas of truly urban development, Weld County feels this oversteps the Division's authority to impose regulations on areas outside of officially designated MS4 areas. Weld County does not agree that the permit coverage and requirements should extend outside the U.S. Census-designated urbanized areas based on the 2010 census. Weld County questions by what authority does the Water Quality Division impose regulations on areas not officially designated as urban by the 2010 U.S. Census? Imposition of the proposed MS4 regulations on undeveloped areas represents an unreasonable economic burden on jurisdictions and on private property owners of these non-urban lands. Prediction of population densities for the year 2020 for currently undeveloped areas is speculative, and given the variables in the construction and housing markets, unlikely to be correct.

Response 2: Regulating County Growth Areas
This comment has not been incorporated into the permit. The division is directed to evaluate permitting areas outside urbanized areas and to specifically evaluate high growth and growth potential. The fact sheet provides the rationale for the terms and conditions of the permit for county growth areas.

Comment 3: Permittee Identification of County Growth Areas
Adams County: County Growth Permit Area determination. Please include what population growth indicators need to be taken in consideration to establish the County Growth Area. Is there any specific criteria or trigger that needs to be considered (such as number of building permits, drinking water supply availability, land use designation, etc)?

Response 3: Permittee Identification of County Growth Areas
No changes to the permit are necessary. The county permittee has the flexibility to determine the triggers for identifying the growth areas under Part I.A.3.ii(B)(1).

Comment 4: 5-Mile Growth Area
Adams County: County Growth Permit Area identified by the Division. Please explain on the Fact Sheet the criteria utilized to establish the growth area within 5 linear miles of the 2010 census area.

Response 4: 5-Mile Growth Area
The 5-mile growth area was determined through permitting experience and discussion with permitted MS4s.

4. **County Growth Area Requirements**
   No comments were received on this section of the permit.

5. **Application for New and Renewal Applicants**
   No comments were received on this section of the permit.

6. **Local Agency Authority**
   No comments were received on this section of the permit.

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7. **Permit Compliance**
   No comments were received on this section of the permit.

C. PART I.B. – CONTROL MEASURES

Comment 1: Use of the Terms "BMP" and "Control Measure"
City of Canon City: The City of Cañon City understands that we do not need to update regulations, ordinances, SOPs, etc. to change the term "BMP" to "Control Measure", but it is unclear if the Division will require the use of these specific terms in our SOPs, inspection forms and other documents. We ask the Division to please add some clarification on the use of the specific terms.

Response 1: Use of the Terms "BMP" and "Control Measure"
This comment has been incorporated into the fact sheet.

1. **Good Engineering, Hydrologic and Pollution Control Practices**

   Comment 1: Add "or the Manufacturer's Specifications"
   Colorado Stormwater Council: Please change to the following proposed concept: Control Measures (BMPs) must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic and pollution control practices as defined in Part I.J, or the manufacturer's specifications, when applicable. The definition in section I.J.19: Good Engineering, Hydrologic and Pollution Control Practices: are methods, procedures, and practices that:
   a. Are based on basic scientific fact(s).
   b. Reflect best industry practices and standards.
   c. Are appropriate for the conditions and pollutant sources.
   d. Provide appropriate solutions to meet the associated permit requirements, including practice based and numeric effluent limits.
   Using "or" instead of "and" accounts for when there is a conflict between practices and specifications.

   Douglas County: Please change to the following proposed concept: Control Measures (BMPs) must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic and pollution control practices (as defined in Part I.J), or the manufacturer's specifications, when applicable. The definition in section I.J. 19: Good Engineering, Hydrologic and Pollution Control Practices: are methods, procedures, and practices that:
   a. Are based on basic scientific fact(s).
   b. Reflect best industry practices and standards.
   c. Are appropriate for the conditions and pollutant sources.
   d. Provide appropriate solutions to meet the associated permit requirements, including practice based and numeric effluent limits.

   Using "Or" instead of "and" accounts for when there is a conflict between practices and specifications.

   Response 1: Add "or the Manufacturer's Specifications"

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These comments have not been incorporated into the fact sheet. The fact sheet has been updated with additional information on the use of manufacture's specification.

2. **Maintenance**
   No comments were received on this section of the permit.

3. **Inadequate Control Measures**

   Comment 1: Revise Conflicting Terms
   City of Glendale: Part I.B.3 Inadequate Control Measures and Part I.B.4 Control Measure Requiring Routine Maintenance seem to conflict.

   Part I.B.3 Inadequate Control Measures:
   Any control measure shall be considered an "inadequate control measure" if it is not designed, implemented, or operating in accordance with the requirements of the permit, including the specific requirements in each program area in Part I.E or requirements for specific permittees in Part III, and implemented and maintained to operate in accordance with the design.

   Part I.B.4 Control Measure Requiring Routine Maintenance:
   Any control measure shall be considered a "control measure requiring routine maintenance" if it is still operating in accordance with its design and the requirements of this permit, but requires maintenance to prevent associated potential for failure during a runoff event.

   Please make the following change to clarify the difference between inadequate control measure and a control measure requiring routine maintenance Please also reflect this change in Part I.J.

   Part I.B.3 Inadequate Control Measures:
   Any control measure shall be considered an "inadequate control measure" if it is not designed, implemented, or operating in accordance with the requirements of the permit, including the specific requirements in each program area in Part I.E or requirements for specific permittees in Part III, ~~and implemented and maintained to operate in accordance with the design.~~

   Xcel Energy: Maintenance, Inadequate Control Measure, Control Measure Requiring Routine Maintenance. The second draft better defines the difference between these 3 terms however it still seems confusing to have 3 different terms that could arguably be one in the same.

   City of Canon City: Any control measure shall be considered an "inadequate control measure" if it is not designed, implemented, or operating in accordance with the requirements of the permit, including the specific requirements in each program area in Part I.E or requirements for specific permittees in Part III, and implemented and maintained to operate in accordance with the design. The City of Cañon City recommends removing the last part of the sentence "and implemented and maintained to operate in accordance with the design." Maintenance is covered under 4.

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Response 1: Revise Conflicting Terms
These comments have been incorporated into the permit.

4. **Control Measures Requiring Routine Maintenance**

Comment 1: Replace Language
City of Canon City: Control Measures Requiring Routine Maintenance. An alternative statement such as the following is recommended. "Any control measure shall be considered an 'inadequate control measure' if it is not designed, installed, implemented or operating in accordance with the requirements of the permit, including the specific requirements in each program area in Part I.E or requirements for specific permittees in Part III."

Response 1: Replace Language
The comment has not been incorporated into the permit. The division found that other suggested revisions to the language were more clear and met the same objective.

5. **Minimize**
No comments were received on this section of the permit.

D. PART I.C. – PROGRAM DESCRIPTION DOCUMENT (PDD)

1. **Records**

Comment 1: Provide Consistent Terminology
City of Canon City: City of Canon City: We would recommend a minor correction to the Fact Sheet. On page 21, paragraph 2, the final sentence states "The division has relocated the practice-based permit conditions to a new section titled "effluent limitations", addressed in section Part I.E." Part I.E. is now titled "Pollutant Restrictions, Prohibitions, and Reduction Requirements and Recordkeeping". We would also like to thank the Division for addressing stakeholders' concerns about the use of the term "effluent limitations" in the first draft of the renewal permit.

Response 1: Provide Consistent Terminology
This comment has been incorporated into the fact sheet.

Comment 2: Recordkeeping Requirements
Douglas County: There are several potential cost increases associated with the new permit, particularly with respect to new and extremely detailed, and in some cases duplicative, recordkeeping requirements and the development of the Program Description Document. We believe these additional requirements may lead to the necessity of adding a full-time employee to our staff. We believe the recordkeeping system we have in place would still suffice and that if there are MS4 programs that do not have sufficient systems in place, it would be better if the Division provided compliance assistance in those specific instances. The Program Description Document and the Recordkeeping requirements proposed are cumbersome and are presented in several different locations. These requirements also appear to conflict with one

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another and seem to be multiple requests for same information within the minimum control measures. We respectfully request the need for this information to be kept separately and to create one comprehensive list of materials the Division would like permit holders to keep, as associated with this permit and the applicable minimum control measure.

Response 2: Recordkeeping Requirements
Recordkeeping requirements changed from the first to the second drafts of the renewal permit. Some of these changes were intentional recordkeeping reductions based on comments received on the first draft of the renewal permit. Other recordkeeping requirement changes were clarifications to better align the program area requirements to recordkeeping and PDD requirements. Some recordkeeping requirements were further reduced and/or revised based on comments received on the second draft of the renewal permit. Please see the division's response to the PDD comments throughout Attachment A. The division continues to determine that recordkeeping is an important part of practice-based effluent limits. The fact sheet provides the rationale for the recordkeeping requirements that are in the renewal permit.

Comment 3: Support of Permit Changes
Greenwood Village: C. Program Description Document (PDD Documentation) Comment: The draft MS4 permit provides flexibility for the Village to maintain current implementation of programs so long as it is documented in the PDD. This allows for the Village to revise programs without submittal to the Division for approval. This flexibility enables the Village to focus on successful program measures and modify as necessary without spending time to navigate the chain of command for the Legal Contact to submit a program modification for approval from the division prior to implementation.

City of Canon City: Part I.C. Program Description Document (PDD). The City of Cañon City appreciates the changes made in the second draft of the renewal permit in this section in response to comments received during the public notice period for the first draft of the renewal permit.

Response 3: Support of Permit Changes
The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 4: Develop a Format for the PDD
City of Arvada: Recommend that a format for the Program Description Document (PDD) be developed so adequacy of the permittees PDD is a nonissue.

Response 4: Develop a Format for the PDD
The division takes note of this comment. No changes to the permit or fact sheet are necessary.

2. **Availability**
   No comments were received on this section of the permit.

3. **Modification**

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No comments were received on this section of the permit.

E. PART I.D. – PUBLIC INVOLVEMENT/PARTICIPATION

1. Public Involvement and Participation Process

Comment 1: Consistent Terminology in the Fact Sheet
City of Canon City: Part I.D. Public Involvement/Participation: From the Fact Sheet page 23, final paragraph: "The division has moved the Public Involvement/Participation section from the Effluent Limitation section, as these are not practices implemented to minimize the discharge of pollutants to the MS4. A requirement for the permittee to accept and respond to public information that was in the Construction Sites program has also been relocated to consolidate Public Involvement and Participation." Part I.E. is now titled "Pollutant Restrictions, Prohibitions, and Reduction Requirements and Recordkeeping". We would recommend correcting the Fact Sheet to reflect this.

Response 1: Consistent Terminology in the fact sheet
This comment has been incorporated into the fact sheet.

Comment 2: Support of Specific Colorado Stormwater Council Comments
City of Canon City: The City of Cañon City supports the Colorado Stormwater Council's requests for modifications to the introduction of this section and Part I.E.1.a.ii.

Response 2: Support of specific Colorado Stormwater Council comments
The division takes note of this comment. No changes to the permit or fact sheet are necessary. Please see responses to specific Colorado Stormwater Council comments.

Comment 3: Web Site Link vs. Statement in the Fact Sheet
Colorado Stormwater Council: Please update the fact sheet to be consistent with permit language: The permittee must provide a mechanism and processes to allow the public to review and provide input on the control measures. At a minimum, the permittee must provide a statement on the permittee's web site that the PDD is publicly available for review and comment. The permit requires a statement on the permittee's web site but the fact sheet states a link will be provided.

Douglas County: Fact Sheet Page 24: Please update the Fact Sheet to be consistent with permit language: The permittee must provide a mechanism and processes to allow the public to review and provide input on the control measures. At a minimum, the permittee must provide a statement on the permittee's web site that the PDD is publicly available for review and comment. The permit requires a statement on the permittee's web site but the Fact Sheet states a link will be provided.

Response 3: Web site link vs. Statement in the Fact Sheet
This comment has been incorporated into the fact sheet.

2. Recordkeeping

Comment 1: Remove Duplicative Requirements

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City of Canon City: The City of Cañon City recommends removing "and any comments received" as this is already contained in part a. above.

Response 1: Remove Duplicative Requirements
This comment has been incorporated into the permit.

3. PDD

Comment 1: Databases for Recordkeeping
City of Canon City: c. Records of information submitted by the public in accordance with Part I.D.1.c and any actions the permittee took to address the information. Please clarify in the permit or Fact Sheet that these records can be incorporated into recordkeeping for the appropriate section of Part I.E. The City of Cañon City currently has recordkeeping in place to document reports of illicit discharges and complaints concerning construction activities or municipal operations from the public and the ensuing investigations and actions. The investigation documentation is kept in databases specifically associated with IDDE, construction, post-construction and municipal facilities. To be required to also document this information in a separate database for Part D would be an inefficient use of time and resources.

Response 1: Databases for Recordkeeping
This comment has been incorporated into the fact sheet.

F. PART I.E. – POLLUTANT RESTRICTIONS, PROHIBITIONS, AND REDUCTION REQUIREMENTS AND RECORDKEEPING

Comment 1: Support of Permit Requirements
Southeast Metro Stormwater Authority: Part I.E. Pollutant Restrictions, Prohibitions, and Reduction Requirements and Recordkeeping. Thank you for the additional flexibility you provided in all the program areas. This second draft allows SEMSWA the ability to work more effectively within our existing programs, while sanctioning additional approaches we may find feasible within our service area.

Response 1: Support of Permit Requirements
The division takes note of this comment. No changes to the permit or fact sheet are necessary.

1. Public Education and Outreach

Comment 1: Elements in Each Education and Outreach Activity
Colorado Stormwater Council: Please change the requirement to reflect that the education and outreach materials selected in the table, as a whole or combined, must meet the requirement in 61.8(11)(a)(ii)(A) of Regulation 61. To count toward meeting the permit requirements in the permit, outreach and activities must address all the underlined requirements. For each individual activity to meet all the requirements listed is problematic for permittees as outreach like the 9-foot drinking straw in Cherry Creek, dasher boards, bus advertising, etc give a graphic depiction of polluting waters but do not meet all the requirements listed.

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Douglas County: Please change the requirement to reflect that the education and outreach materials selected in the table, as a whole or combined, must meet the requirement in 61.8(11)(a)(ii)(A) of Regulation 61. To count toward meeting the permit requirements in the permit, outreach and activities must address all the underlined requirements. For each individual activity to meet all the requirements listed is problematic for permittees as outreach like the 9-foot drinking straw in Cherry Creek, dasher boards, bus advertising, etc give a graphic depiction of polluting waters but do not meet all the requirements listed.

Southeast Metro Stormwater Authority: 1. Part I.E.1. Public Education and Outreach. SEMSWA understands from our one-on-one meeting and from the Division's Public Education and Outreach Work Session that the Division intends to revise the existing language to reflect that, as a whole, the education and outreach program needs to meet the requirements as stated in the second draft permit, meaning that not each individual activity listed in Table 1 must meet the three requirements inclusively. With this clarification, SEMSWA will be able to choose items from the table to accomplish the requirements within each calendar year. Please ensure the revised language clearly states that the program as a whole meet the entirety of the requirements, and not each individual activity.

Keep it Clean Partnership: Public Education and Outreach: Criteria for education and outreach strategies are potentially limiting. Comment:
As a whole, the KICP Partners agree that the education and outreach program should encompass all three of these criteria, and though many of our strategies accomplish this, some of our collateral handed out at events does not, on their own, meet all three of the criteria. Please allow the overall education and outreach strategies to meet this requirement but not require each individual 'activity' to meet all three criteria.

Response 1: Elements in Each Education and Outreach Activity
These comments have been incorporated into the permit.

a. **The following requirements apply**

   i. **Illicit Discharges**

      Comment 1: Revise Education and Outreach Activities Focused on Businesses
      Greenwood Village: Comment: Although it is beneficial to proactively focus education on specific businesses by identifying pollutants of concern and maintain the ability to address the sources determined to be priorities to a specific jurisdiction, would the division provide partnership on a statewide basis for businesses that provide services such as landscape maintenance services, etc.? These businesses have to obtain a license to operate in the State and there is opportunity to educate when the license is issued. However, these businesses may or may not follow through with obtaining a license in each municipality. Thus it may be difficult for the municipality to educate.

      Response 1: Revise Education and Outreach Activities Focused on Businesses

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This comment has not been incorporated into the permit. Please see the fact sheet for more information on this requirement. At this time, changes to the Division's funding structure would need be made in order for the Division to consider funding a statewide outreach campaign.

Comment 2: Remove Contact Information for Businesses
Colorado Stormwater Council: Replace the underlined contact information with a list of those businesses that fit the identified type of business.
Contact information is inherently implied if some type of contact or outreach is done and does not need to be called out explicitly in the permit. Also the record keeping and PDD sections do not require documentation of the contact information.

Douglas County: Replace the underlined contact information with a list of those businesses that fit the identified type of business. Contact information is inherently implied if some type of contact or outreach is done and does not need to be called out explicitly in the permit. Also the record keeping and PDD sections do not require documentation of the contact information.

City of Canon City: a.i.(A) The permittee must determine the targeted businesses that are likely to cause an illicit discharge or improperly dispose of waste. At a minimum, the permittee must identify at least one type of business and the contact information for the selected business(es). The City of Cañon City requests a modification to the statement to replace the contact information with a list of those businesses that fit the identified type of business. Rationale: Contact information is inherently implied when contact or outreach is done and does not need to be called out explicitly in the permit. The recordkeeping and PDD sections do not require documentation of the contact information. We believe a list of businesses is sufficient.

Response 2: Remove Contact Information for Businesses
These comments have been incorporated into the permit.

ii. Education and Outreach Activities Table

Comment 1: Add Additional Education and Outreach Activities
Colorado Watershed Assembly: The Colorado Watershed Assembly is host to the Colorado River Watch Program, a hands-on, citizen science effort that provides water quality data to various state agencies including the Colorado Water Quality Control Commission. We feel that River Watch, and other programs such as Community Collaborative Rain, Hail & Snow Network (CoCoRHaS) and Keep It Clean, Neighborhood Environmental Trios (KICNET) are highly valuable and that opportunities such as these should be represented on the list of Active and Interactive Outreach. We hope you will consider adding general language such as: Participate in or sponsor community project based programs that investigate watershed health and meet applicable school Science, Technology, Engineering and Math (STEM) standards.

Earth Force: My comment can be applied across the State's Phase I and Phase II MS4s. I note, in Table 1 "Education and Outreach Activities Table," the two

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column headings both denote only "outreach" activities. We would like to see some inclusion and consideration given to actual "education" activities. By education, we mean the facilitation of learning, in particular with young people and professional educators serving them. Through our partnership with Denver Public Works, we have developed a robust education program. Called Keep It Clean Neighborhood Environmental Trios, we work with teachers and students in 15 Colorado schools. More information is available via these Wed links:
http://www.denvergov.org/wastewatermanagement/WastewaterManagement/StormwaterQuality/KeepItCleanProgram/CaseStudyKeepItCleanDenverandEarthForce/tabid/445719/Default.aspx
http://www.urbanwaterslearningnetwork.org/wpcontent/uploads/2015/02/EarthForceCaseStudy02_02_15.pdf
A possible education activity which would be listed is: Participate and sponsor in school, project based programs that that investigate watershed health and applicable school STEM educational standards.

Response 1: Add Additional Education and Outreach Activities
These comments have been incorporated into the permit.

Comment 2: Implement Four Education and Outreach Activities per Year
Colorado Stormwater Council: Please replace the underlined with the following: The permittee must implement at least four educational and outreach activities (bulleted items) of at least two must be from the active outreach list of items. Permittees would like the flexibility to do more educational and outreach activities from the active outreach column.

Douglas County: Please replace the underlined with the following: The permittee must implement at least four educational and outreach activities (bulleted items) and at least two must be from the active outreach list of items. Douglas County would like the flexibility to do more educational and outreach activities from the active outreach column.

El Paso County: The requirement to implement at least “two” activities from each column each year, is an arbitrary quantity. Permittees should be allowed to do more “active” outreach activities to account for the passive activities

Response 2: Implement Four Education and Outreach Activities per Year
These comments have been incorporated into the permit.

Comment 3: Add Education and Outreach Activities that are not Listed in the Table
Colorado Stormwater Council: Please add the following proposed concept:
The permittee may submit Public Education Program elements not listed in the table to seek Division approval if unlisted elements will be used to meet the permit requirement. Permittees would like the ability to submit for approval of alternative elements or methods to add new outreach activities. Permittees envision that with the increase in technology there may be innovative opportunities for outreach.

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Douglas County: Please add the following proposed concept: The permittee may submit Public Education Program elements not listed in the table to seek Division approval if unlisted elements will be used to meet the permit requirement. Douglas County would like the ability to submit for approval of alternative elements or methods to add new outreach activities. We envision that with the increase in technology there may be innovative opportunities for outreach.

5-2-1 Drainage Authority: Education and Outreach Activities Table - The 521 recommends that language be included in this part of the permit that would allow permittees to request that CDPHE to approve alternative methods to add to the outreach activities as technology evolves. Outreach, public education, and involvement methods are constantly evolving as technology changes. It's important to have flexibility in the permit to allow education requirements to change at the same pace.

El Paso County: There should also be a provision to allow for an activity not included on the lists to be approved by the Division for use.

Response 3: Add Education and Outreach Activities that are not Listed in the Table
This comment has not been incorporated into the permit. Permittees may apply for a permit modification at any time during the permit term to add any additional education and outreach activities that are not listed in the table.

iii. **Nutrients**
No comments were received on this section of the permit.

b. **Recordkeeping**
No comments were received on this section of the permit.

c. **Program Description Document**
No comments were received on this section of the permit.

2. **Illicit Discharge Detection and Elimination**

a. **The following requirements apply**

i. **Storm Sewer System Map**
No comments were received on this section of the permit.

ii. **Regulatory Mechanism**

Comment 1: Remove the Word "Maximum"
Colorado Stormwater Council: Please delete the word "maximum."
This could require local governments to add additional enforcement options that they currently do not have, just because they are allowed under State or local law. Regulation 61 includes "to the extent allowable under State or local law"; there is no requirement that this be the maximum extent allowable under State or local law.

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Response 1: Remove the Word "Maximum"
This comment has been incorporated into the permit.

Comment 2: Revise Property Access
Southeast Metro Stormwater Authority: 2. Part I.E.2.a.ii.B. Regulatory Mechanism. Access to private property is a legal matter. We recommend that this section be revised to note that a procedure must be in place to allow for access, as necessary. For example, some illicit discharge inspections may require access into private properties that may only be granted through permission from the property owner or through a judicial action. A regulatory mechanism can only specify that a process is in place for gaining access, and cannot guarantee access. We recommend revising the section to: Have a procedure that requests access to property(s), as necessary to implement the illicit discharges procedures, to include judicial action.

Remove the requirement that the Regulatory Mechanism must include access to property. Without property owner permission, Search Warrants must be obtained for access to private property.

Response 2: Revise Property Access
These comments have been incorporated into the permit.

Comment 3: Cleaning up an Illicit Discharge
Southeast Metro Stormwater Authority: 3. Part I.E.2.a.ii.C. Regulatory Mechanism. If removing the source of an illicit discharge is intended to mean stopping the discharge from occurring, we have no additional comments on this section. If removing the discharge means cleaning up the discharge, the language should be revised to clarify. We recommend revising the section to read: Provide the permittee the legal authority to cease, or require to be ceased, the discharge, and the legal authority to impose penalties for all illicit discharges for the period from when the illicit discharge is identified until ceased.

Response 3: Cleaning up an Illicit Discharge
This comment has been incorporated into the permit.

iii. Regulatory Mechanism Exemptions
No comments were received on this section of the permit.

iv. Tracing an Illicit Discharge

Comment 1: Tracing and Illicit Discharge
Colorado Stormwater Council: Please change to the following proposed concept:
The permittee must implement procedures to respond to reports/identification of illicit discharges. The permittee is not expected to actively seek out unreported illicit discharges, but is required to identify and respond to illicit discharges observed during day-to-day normal work activities. The permittee

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must implement procedures, including the tools needed, to trace the source of an illicit discharge when identified within the MS4. At a minimum the permittee must have written procedures and tools for tracing the illicit discharge within the MS4. Part of tracing an illicit discharges is identifying the point of entry or outfall. The distinction between procedures and tools for identifying/screening the point of entry or outfall versus tracing the illicit discharge is unclear. Permittees must have tools for tracing and implement procedures for tracing. Details on how to backtrack or identify the potential inlets as a source for an illicit discharge is captured by the requirement to trace illicit discharges. The very definition of the word trace: To go along or follow. To follow the course or trail of- provides enough explanation of the requirement.

Douglas County: Please change to the following proposed concept:
The permittee must implement procedures to respond to reports/identification of illicit discharges. The permittee is not expected to actively seek out unreported illicit discharges, but is required to identify and respond to illicit discharges observed during day-to-day normal work activities. The permittee must implement procedures, including the tools needed, to trace the source of an illicit discharge when identified within the MS4. At a minimum the permittee must have written procedures and tools for tracing the illicit discharge within the MS4. Part of tracing an illicit discharge is identifying the point of entry or outfall. The distinction between procedures and tools for identifying/screening the point of entry or outfall versus tracing the illicit discharge is unclear. Permittees must have tools for tracing and implement procedures for tracing. Details on how to backtrack or identify the potential inlets as a source for an illicit discharge is captured by the requirement to trace illicit discharges. The very definition of the word trace: To go along or follow. To follow the course or trail of - provides enough explanation of the requirement.

City of Canon City: The City of Cañon City proposes the following modification: “Tracing an Illicit Discharge: The permittee must implement procedures to respond to reports/identification of illicit discharges. The permittee is not expected to actively seek out unreported illicit discharges, but is required to identify and respond to illicit discharges observed during day-to-day normal work activities. At a minimum the permittee must have written procedures, including the tools needed, for identifying and tracing the illicit discharge within the MS4.” Rationale: Part of tracing an illicit discharge is identifying the point of entry or outfall. The distinction between procedures and tools for identifying/screening the point of entry or outfall vs tracing the illicit discharge is unclear.

Response 1: Tracing an Illicit Discharge
These comments have been incorporated into the permit.

Comment 2: Centralized Recordkeeping
City of Aurora: Throughout the document, there are many extra descriptive words, resulting in sentences that are often three to four lines long. These added descriptions in most cases do not provide clarity. Simple straightforward

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sentences are much easier to understand. An example of extra words, in this case misused, is on p. 15, section E.2.b. iv.(B). "The permittee must maintain centralized recordkeeping systems of illicit discharge responses. . . Records maintained by other departments can be in different centralized recordkeeping systems. The centralized recordkeeping system must contain . . . " (emphasis added). Striking this unnecessary word would be helpful.

Response 2: Centralized Recordkeeping
This comment has not been incorporated into the permit. The term "centralized recordkeeping system" adds clarity to the requirement.

v. Discharges that can be Excluded from being Effectively Prohibited

Comment 1: Revise Confusing Language
Southeast Metro Stormwater Authority: 1. Part I.E.2. Illicit Discharge Detection and Elimination. SEMSWA supports the comments that the Colorado Stormwater Council Work Groups prepared, and will not reiterate them here. Of particular concern to SEMSWA, however, is the confusing language (Discharges that can be Excluded from being Effectively Prohibited, for example) that can impact the updating of our regulatory mechanisms, and being able to effectively discuss this with our Board and gain approval. We note that if this is the language that the Division requires to meet Regulation 61, we request additional clarification in the Fact Sheet be provided to assist in presentations to elected officials, as well as staff who manage the program.

City of Aurora: The phrase "excluded from being effectively prohibited" is confusing. Does this mean the discharge is an allowable non-stormwater discharge? Clarification is requested.

Response 1: Revise Confusing Language
These comments have been incorporated into the fact sheet.

Comment 2: Referencing the Permit Rather than the Individual Discharges in Regulatory Mechanisms
Colorado Stormwater Council: Please add clarifying language in the fact sheet for how permittees can include these into their regulatory mechanism. For instance, in their regulatory mechanism permittees can make a reference to the discharges listed in the MS4 permit instead of listing the discharges in the regulatory mechanism. Or if the discharges are listed in the regulatory mechanism, the clarifying language within the permit does not have to be included. There is concern about the frequency that permittees will need to update regulatory mechanisms and the exact language that the Division will require in the regulatory mechanism. If a permittee references the MS4 Permit in their regulatory mechanism, public comment obligations are met through the Division's public notice process for the permit.

Douglas County: Please add clarifying language in the Fact Sheet for how permittees can include these into their regulatory mechanism. For instance, in their regulatory mechanism, permittees can make a reference to the discharges listed in the MS4 permit instead of listing the discharges in the

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regulatory mechanism. Or if the discharges are listed in the regulatory mechanism, the clarifying language within the permit does not have to be included. There is concern about the frequency that permittees will need to update regulatory mechanisms and the exact language that the Division will require in the regulatory mechanism. If a permittee references the MS4 Permit in their regulatory mechanism, public comment obligations are met through the Division's public notice process for the permit.

Response 2: Referencing the Permit Rather than the Individual Discharges in Regulatory Mechanisms
These comments have been incorporated into the fact sheet.

Comment 3: Residential Sump Pumps
City of Canon City: a.v. Discharges that can be Excluded from being Effectively Prohibited: The following discharges do not need to be effectively prohibited and the permittee is not required to address the discharges as illicit discharges in accordance with the requirements of this permit. The permittee must list all discharges excluded from being effectively prohibited in their regulatory mechanism as an allowable non stormwater discharge. Any discharges listed below that are not listed in the permittee's regulatory mechanism must be effectively prohibited.

a.v.(F) Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20)
1) 40 CFR 35.2005(20): Infiltration. Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

And (G) Uncontaminated pumped groundwater
1) For the purposes of this permit, "uncontaminated" groundwater is groundwater that is not expected to contain pollutants in concentrations that are toxic or that would cause or contribute to a violation of a water quality standard.
2) Discharges containing groundwater that comes into contact with construction activity is not considered "uncontaminated" due to the potential for sediment content.

The City of Cañon City requests clarification in the Fact Sheet that residential sump pumps pumping groundwater from basements, crawl spaces, etc., either due to a normally high water table or due a rising water table from precipitation events, are not required to obtain one of the permits referenced in the Fact Sheet discussion.

Rationale: The discussion in the Fact Sheet makes us question if residential sump pumps pumping groundwater from basements, crawl spaces, etc. either due to a normally high water table or due to a rising water table from precipitation events would be required to apply for one of the permits cited in the Fact Sheet. It appears from discussion with Division staff that the

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references in the Fact Sheet are for construction sites/activities, not residential sump pumps. The permit is clear, but the Fact Sheet is confusing.

Colorado Stormwater Council: Fact Sheet, Page 34 & 35 Please clarify in the fact sheet that residential sump pumps, pumping groundwater from basements, crawl spaces, etc. either due to a normally high water table or due to a rising water table from precipitation events are not required to obtain one of the permits referenced in the fact sheet. It appears from discussion with Division staff that the references in the fact sheet are for construction sites/activities, not residential sump pumps. The permit is clear, but the fact sheet is confusing. The discussion in the fact sheet brings into question whether residential sump pumps pumping groundwater from basements, crawl spaces, etc. either due to a normally high water table or due to a rising water table from precipitation events would be required to apply for a discharge permit. Additional discussion or modification of the fact sheet is needed to be consistent with the requirements in this permit.

Douglas County: Page 34 & 35: Please clarify in the Fact Sheet that sump pumps are for construction sites/activities, not residential sump pumps. It appears from discussion with Division staff that the references in the Fact Sheet are for construction sites/activities, not residential sump pumps. The permit is clear, but the Fact Sheet is confusing. The discussion in the Fact Sheet brings into question whether residential sump pumps pumping groundwater from basements, crawl spaces, etc. either due to a normally high water table or due to a rising water table from precipitation events would be required to apply for a discharge permit. Additional discussion or modification of the Fact Sheet is needed to be consistent with the requirements in this permit.

Response 3: Residential Sump Pumps
These comments have been incorporated into the fact sheet. The fact sheet was updated to add information concerning residential sump pumps. The fact sheet was not changed to state that certain types of discharges “are not required to obtain one of the permits” since every discharge is unique. Permittees are encouraged to contact division staff to discuss permitting different residential discharges on a case by case basis.

Comment 4: Irrigation Return Flow
Colorado Stormwater Council: Please update to the following proposed concept: Agriculture land management activity wastes from farms and ranches that do not require a CDPS or NPDES permit. All agricultural activities are exempt including tilling fields as indicated in the fact sheet.

Douglas County: Please update to the following proposed concept: Agriculture land management activity wastes from farms and ranches that do not require a CDPS or NPDES permit. All agricultural activities are exempt including tilling fields as indicated in the Fact Sheet.

Keep it Clean Partnership: The language regarding animal or agricultural waste discharge that can be excluded from being effectively prohibited needs to be

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consistent with 40 CFR, Regulation 61, the Colorado Water Quality Control Act, and allow for tilling fields. Issue: The language regarding animal or agricultural waste discharge that can be excluded from being effectively prohibited needs to be consistent with 40 CFR, Regulation 61, the Colorado Water Quality Control Act, and allow for the tilling of fields.
Comment: Please change the wording to be consistent.

Weld County: Weld County concurs with the Colorado Stormwater Council comment to clarify the exclusion language of animal waste and waste from agricultural land management activities, such as tilling, are exempt from this permit.

Response 4: Irrigation Return Flow
These comments have been incorporated into the permit.

Comment 5: Low Risk and Other Policies
Colorado Stormwater Council: Please add the following proposed concept: Discharges not required to obtain a CDPS permit, which may include discharges in accordance with Division policies and guidance documents. Category (X) captures the allowable non-stormwater discharges for the Division's Low Risk Policy guidance documents and allows a general category similar to CDPS or NPDES Permits. This general category should be sufficient and would avoid a time consuming process of revisions to regulatory mechanisms and documentation each time a new type of Low Risk Policy guidance document is added or removed. Water-based discharges from fire suppression systems are allowed through policy CW5, similar to the Low Risk Policy CW-27. Both policies have guidance documents for requirements that must be met in order to comply with the policies. It would be more efficient to allow permittees' regulatory mechanisms to refer to general categories of discharges not required to obtain a CDPS permit rather than listing out specific discharges and updating the regulatory mechanism each time a new discharge is added or removed by the Division. The combined category on the Division's website is listed as Discharge without a permit - policies and guidance documents.

Douglas County: Please remove: in accordance with the division's Low Risk Policy Discharge Guidance: Potable Water in (J); in accordance with the Division's Low Risk Discharge Guidance: Potable Water in (K); and in accordance with the division's Low Risk Discharge Guidance: Swimming Pools in (Q). Please add the following proposed concept: Discharges not required to obtain a CDPS permit, which may include discharges in accordance with Division policies and guidance documents. Category (X) captures the allowable non-stormwater discharges for the Division's Low Risk Policy guidance documents and allows a general category similar to CDPS or NPDES Permits. This general category should be sufficient and would avoid a time consuming process of revisions to regulatory mechanisms and documentation each time a new type of Low Risk Policy guidance document is added or removed. Water-based discharges from fire suppression systems are allowed through policy CW5, similar to the Low Risk Policy CW-27. Both policies have guidance documents for requirements that must be met in order to comply with the policies. It would be more efficient to allow permittees' regulatory

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mechanisms to refer to general categories of discharges not required to obtain a CDPS permit rather than listing out specific discharges and updating the regulatory mechanism each time a new discharge is added or removed by the Division. The combined category on the Division's website is listed as Discharge without a permit - policies and guidance documents.

City of Canon City: Although Regulation 61 specifically lists these categories the Division has produced "Low Risk Discharge Guidance" documents to further clarify how to address various types of discharges. In the draft permit the Division also includes category (X) Discharges that are in accordance with the Division's Low Risk Policy Guidance documents. Categories (J), (K), and (Q) could be consolidated under (X).

Response 5: Low Risk and Other Policies
These comments have been partially incorporated into the permit. The division has received numerous calls from permittees, citizens, and companies regarding low risk discharges and this permit over the previous permit term. References to current low risk policies within the different types of discharges that the permittee does not have to effectively prohibit will not be removed from the individual types of discharges in the list since it adds clarity for the reader. The part of the comment regarding other policies has been incorporated into the permit.

Comment 6: Add Other Discharges Approved by the Division
Colorado Stormwater Council: Please update to the following proposed concept: If the permittee does not receive a response within 30 days, the discharge is approved by the Division as an allowable non-stormwater discharge. A time frame for a response from the Division is needed to ensure action can be taken by the permittee to allow the discharge in a timely manner. Thirty days is an adequate time frame for the Division to respond to a permittee's request.

Douglas County: Please update to the following proposed concept: If the permittee does not receive a response within 30 days, the discharge is approved by the Division as an allowable non-stormwater discharge.
A time frame for a response from the Division is needed to ensure action can be taken by the permittee to allow the discharge in a timely manner. Thirty days is an adequate time frame for the Division to respond to a permittee's request.

City of Canon City: The City of Cañon City requests the Division add a time frame of within 30 days for the Division to respond. Rationale: A time frame for a response from the Division is needed to ensure action can be taken by the permittee to allow the discharge in a timely manner. Without a deadline for the Division to respond to the proposed changes, a permittee could potentially not receive a response. Thirty days seems appropriate.

Response 6: Add Other Discharges Approved by the Division
These comments have not been incorporated into the permit. The division cannot anticipate the types of discharges that will be submitted for approval,

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the completeness of the information, and the time that will be needed to evaluate, research, and approve or deny the discharge.

Comment 7: Add Additional Types of Discharges to the Final Permit
5-2-1 Drainage Authority: Discharges excluded from being an Illicit Discharge, should include charity car washes. Currently the charity car washes that occur within the 521 jurisdictional boundaries usually occur at locations that have onsite stormwater quality BMP's, or these sites discharge to a regional stormwater quality basin prior to discharging to State waters. Also the amount of pollutants that are discharged from this activity will not cause exceedances to water quality standards in receiving waters.

City of Boulder: Add: "Temporary chalk applied to paved surfaces for education or art purposes"
Temporary chalk (calcium carbonate) has not been proven to be a significant contributor of pollution to streams. Temporary chalk art may also be used to specifically promote education and outreach related to stormwater which is important to the community, e.g., temporary storm drain markings. A quick search online brings up multiple examples of communities who have used chalk art to promote awareness of storm drains and their connection to adjacent waterbodies; for example, the City of Palm Bay, Florida:
http://www.palmbayflorida.org/Home/ShowDocument?id=5924
The inclusion of this discharge that can be excluded from being effectively prohibited would allow another outreach tool that actively engages the community. Locally, a number of cities already have chalk art events that include the temporary use of chalk on streets and sidewalks. Additionally, chalk is used throughout the city for marking races and other events for which it would be reasonably impossible for the city to enforce upon To go through the permit exclusion process seems burdensome and unwarranted for a practice that is currently widely performed across the Front Range. Including the proposed temporary chalk art exclusion language directly in the permit would be less burdensome for both permittees and Division staff given that the city believes it is apparent that temporary chalk complies with the exclusion submission requirements language in Part 1.E.2.a.v.T.1. which states that "discharges, with proper management, are not expected to contain pollutants in concentrations that are toxic or in concentrations that would cause or contribute to a violation of a water quality standard."

Response 7: Add Additional Types of Discharges to the Final Permit
This comment has not been incorporated into the permit. Permittees may use Part I.E.2.a.v(Y) to apply to add additional discharges to the list.

Comment 8: Add Non-Emergency Fire Fighting Activities
City of Boulder: Replace (Page 13: "Discharges resulting from emergency fire fighting activities" Change to say: "Discharges resulting from fire fighting activities"
All fire fighting activities are necessary to support the functions of "emergency fire fighting." The term "emergency firefighting" is too restrictive, therefore the city would like the word emergency removed from the permit. This is more

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equitable and allows the city to avoid altering code with little additional benefit to stormwater.

City of Canon City: a.v.(U) Discharges resulting from emergency fire fighting activities. The City of Cañon City requests that the term “emergency” be removed. Page 33 of the Fact Sheet quotes Regulation 61 on discharges that can be excluded from being considered an illicit discharge. The Fact Sheet states: “Discharges that could be Excluded from being Considered an Illicit Discharge: Section 61.8(11)(a)(ii)(C)(II) of Regulation 61 states that "the permittee needs to address the following categories of non-stormwater discharges or flows..only if the permittee identifies them as significant contributors of pollutants to the permittee's small MS4:...(discharges or flows from fire fighting activities are excluded from the effective prohibition against non-stormwater and need only be addressed where they are identified as significant sources of pollutants to state waters).
Rationale: Regulation 61 does not use the word "emergency". Where does the Division identify that only "emergency" fire fighting activities are not significant sources of pollutants to state waters? Since we have the ability to still enforce against excluded discharges if we deem them a significant source of pollution, we have the ability to address non-emergency fire fighting activities if we deem them as such.

Response 8: Add Emergency Fire Fighting Activities
These comments have not been incorporated into the permit. “Emergency firefighting water” was the term used in the previous permit. The intent of the term has not changed. Please see the categories of discharges discussion in the fact sheet. The division has determined that discharges from emergency fire fighting activities are impracticable to prohibit. Some permittees use control measures to address discharges from non-emergency fire fighting activities, such as berming the inlet, pumping the discharge into a truck, and disposing of the discharge at the local publically owned sewage treatment plant.

Comment 9: Remove “Any Animal or agricultural waste on farms and ranches that do not require a CDPS or NPDES permit”
El Paso County: The exclusion for all animal or agricultural waste on farms and ranches is counter productive to the water quality goals of Reg 85. This type of waste is common illicit discharge in counties. Delete (w) in its entirety.

Home Builders Association of Metro Denver: The exclusion for all animal or agriculture waste on farms and ranches is counterproductive to the water quality goals of Regulation 85. This type of waste is common illicit discharge in counties. We recommend deleting (w) in its entirety.

Response 9: Remove “Any Animal or agricultural waste on farms and ranches that do not require a CDPS or NPDES permit”
These comments have not been incorporated into the permit. Please see Response 4 in this section.

Comment 10: Remove Any Discharges that are not Listed in Regulation 61

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City of Golden: The list of "Discharges that can be Excluded from being Effectively Prohibited" in Section I.E.2. v. does not match the list of such discharges in Regulation 61.4(3)(C)(ii)(D)(II)(a). For example, Regulation 61 includes "street wash water" where COR09000 lists "water incidental to street sweeping ... " Similarly, Regulation 61 includes discharges from "fire fighting" where the draft permit lists "discharges resulting from emergency fire fighting." Lastly, Regulation 61 includes "water line flushing," but the permit lists "water line flushing in accordance with the division's Low Risk Policy Discharge Guidance: Potable water.

Response 10: Remove Any Discharges that are not Listed in Regulation 61
This comment has not been incorporated into the permit. Section 61.8 of Regulation 61 states that "Terms and conditions consistent with those specified in this regulation, including **but not limited to [emphasis added]**, the terms and conditions specified in sections 61.4(1), 61.8(2), 61.8(3), 61.8(4), 61.8(5), 61.8(6), 61.8(7), 61.8(8), 61.8(9) and 61.8(10), shall be incorporated into the Division's permits, either expressly or by reference to this regulation." The division may add additional terms and conditions in a permit. The language changes in the permit are intentional clarifications of and additions to the language included in Regulation 61. For example, the division intentionally expressed "water incidental to street sweeping" to clarify that this is water incidentally left on a pavement surface from a street sweeping operation and does not include water collected in a street sweeper which is not to allowed to be discharged to the MS4.

Comment 11: Other Discharges
City of Boulder: Illicit Discharge Detection and Elimination (Pages 12-14). As addressed in greater detail in Boulder's January 6, 2014 comments, the proposed permit language requires the permittee to specifically exclude certain discharges that, pursuant to Regulation 61, must be addressed only if the permittee identifies them as significant contributors of pollutants to the permittee's small MS4. The draft permit is inconsistent with the requirements of Regulation 61 and puts the administrative burden on the permittee to specifically exclude these sources or prohibit such discharges. If the language is implemented as currently drafted, Boulder will be required to revise its stormwater program and suffer this unnecessary administrative burden without providing any added water quality benefit. Comment: Temporary chalk art already meets the requirements of the exclusion and is a commonly used education and outreach tool.

Response 11: Other Discharges
This comment has not been incorporated into the permit. As stated in the fact sheet, permittees may at any time determine that any of the discharges listed in this section are a significant source of pollutants and implement their illicit discharge response program.

vi. Removing an Illicit Discharge

Comment 1: Removal of Associated Material from the Illicit Discharge

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Colorado Stormwater Council: Please clarify there are instances where removal of the source and associated material is not practicable. To comply with the draft permit, the removal of small oil leaks from cars parked on the street when identified by staff or citizens would need to be performed or required. Not only is this difficult and costly, but it may be impossible to remove the associated material. The permit language does not acknowledge that education of the vehicle owner may, in fact, be a more effective approach than ensuring the removal of materials associated with the illicit discharge. For example, a minor oil leak from a car would require either staff clean up the oil leak or spend time ensuring the owner of the car properly cleaned up the oil, when it could be addressed though education. In addition, requiring the same level of clean up and documentation for responding to an oil stain could result in field staff ignoring something that currently would be addressed because of the extra administrative work required in oversight of clean up.

Douglas County: Please clarify there are instances where removal of the source and associated material is not practicable. To comply with the draft permit, the removal of small oil leaks from cars parked on the street when identified by staff or citizens would need to be performed or required. Not only is this difficult and costly, but it may be impossible to remove the associated material. The permit language does not acknowledge that education of the vehicle owner may, in fact, be a more effective approach than ensuring the removal of materials associated with the illicit discharge. For example, a minor oil leak from a car would require either staff clean up the oil leak or spend time ensuring the owner of the car properly cleaned up the oil, when it could be addressed though education. In addition, requiring the same level of clean up and documentation for responding to an oil stain could result in field staff ignoring something that currently would be addressed because of the extra administrative work required in oversight of clean up.

Southeast Metro Stormwater Authority: 4. Part I.E.2.a.vi. Removing an Illicit Discharge. As discussed above, the removal of the material associated with an illicit discharge is not always the best means for mitigation. For example, an oil stain in the curb and gutter cannot be practically removed. These should be treated as equivalent to minor residential discharges that are not regulated, other than through an educational process. SEMSWA will address any reported incident of a spilled material using the IDDE program we have established, which will follow a process to determine the nature of the discharge, if in fact it is an illicit discharge, and proceed to mitigation via education and beyond, as necessary. This should get at the issue of repeat instances of improper discharge that is a focus of the IDDE program. We request that removal be modified to mitigation and reference that mitigation should occur, if feasible. We recommend revising the section to read: The permittee must mitigate, or require and ensure the mitigation of, the source, and associated material, if feasible, of an illicit discharge when identified.

City of Canon City: The City of Cañon City requests that the Division clarify that there are instances where cleanup of all the material and removing the source is not practicable. An alternative could be to include a minimum level which

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triggers the cleanup. An example would be oil drips from vehicles in parking lots or along the street.
Rationale: To comply with the draft permit, the removal of small oil leaks from cars parked on the street, when identified by staff or citizens, would be required. Not only is this difficult and costly, but it may be impossible to remove the associated source. In addition, requiring the same level of cleanup and documentation for responding to an oil stain potentially results in field workers ignoring something that currently would be addressed because of the extra administrative work required in oversight of cleanup. For example, a minor oil leak from a car would require either staff clean up the oil leak or spend time ensuring the owner of the car properly cleaned up the oil. Currently, this could be addressed though education of the vehicle owner.

City of Golden: Removing an illicit discharge. Section I.E.2.a.vi requires the "permittee [to] remove, or require and ensure the removal of, the source and associated material of an illicit discharge when identified." This requirement fails to acknowledge situations where removal of the material is not practical such as grass clippings and minor oil leaks from cars. In those instances, education and/or a verbal warning should be sufficient action. The permit should be revised to allow for situations and remedies of this type.

Response 1: Removal of Associated Material from the Illicit Discharge
These comments have been incorporated into the permit.

Comment 2: Support of Colorado Stormwater Council's comments
City of Federal Heights: The topics considered "high-level" issues for the City include the following: Illicit Discharge- Removing the source and all associated material.

City of Castle Pines: The topics considered "high-level" issues for the City include the following: Illicit Discharge- Removing the source and all associated material.

City of Glendale: The topics considered "high-level" issues for the City include the following: Illicit Discharge- Removing the source and all associated material.

Response 2: Support of Colorado Stormwater Council's comments
Please see the division's response to the Colorado Stormwater Council's comment.

vii. Enforcement Response

Comment 1: Replace "Stop" vs. "Discourage"
Southeast Metro Stormwater Authority: 5. Part I.E.2.a.vii. Enforcement Response. This section appears to include language to stop responsible parties from willfully or negligently repeating or continuing illicit discharges. No enforcement can ensure the stoppage of future actions, but the enforcement can discourage future discharges. Please replace stop with discourage.

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Response 1: Replace "Stop" vs. "Discourage"
These comments have been incorporated into the permit.

Comment 2: Confusing Language
City of Aurora: The language to describe program requirements is often confusing. An example of this is on p. 14, section E.2. vii. "Written enforcement procedures must include informal, formal and judicial enforcement responses." If the permit requires these types of procedures, then they must be defined. What do these levels mean? Is the intent to have effective enforcement? Is so, then that sentence can be deleted since the first sentence says that the permittee must implement "written enforcement procedures".

Response 2: Confusing Language
This comment has not been incorporated into the permit. The permit requires the permittee to have different types of enforcement. The permittee has the flexibility to define the types of procedures under each type of enforcement.

viii. Priority Areas

Comment 1: Identifying Priority Areas
Greenwood Village: Comment: Although the Village realizes the division prefers prioritization, the Village will prioritize the MS4 permit area boundary since the Village is not a full service city (served by various sanitary sewer districts). The Village has prioritized areas in the past and has not found patterns or evidence of areas with high likelihood of having illicit discharges or illicit connections. Additionally, historic illicit discharges have indicated that most are a result of automotive fluid leak/spills from motor vehicle accidents or equipment failure, grease trap overflows, construction washout and minimal areas of sanitary sewer overflow, therefore, all areas are a priority and monitored the same. As previously mentioned in the first draft of the MS4 permit comments, the Village has successfully adapted illicit discharge detection and elimination training specific to identify, stop, abate, enforce and report on an illicit discharge and train based on what has been experienced specific to the Village. Although it is good to locate priority areas or target priority issues, we prefer to not dilute the overall message of how to identify an illicit discharge and how to address.

Response 1: Identifying Priority Areas
The division takes note of this comment. No changes to the permit or fact sheet are necessary.

ix. Training
No comments were received on this section of the permit.

x. Industrial Activities

Comment 1: Remove this Requirement
Colorado Stormwater Council: Please remove this requirement and allow permittees to address these discharges through their own IDDE programs. Please clarify that "industrial activities" does not include construction sites.

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Oversight of Industrial Facilities is not required or discussed in the Phase II Rule or Regulation 61. MS4 Permittees should have the option to address the discharge through their IDDE Program or to notify the Division. If a permittee notifies the Division, it should constitute removal of the illicit discharge. Many permittees respond to these types of discharges as part of their IDDE programs and resolve them through that process. To add notification requirements to the Division on resolved illicit discharges does not provide added water quality benefit. Within Regulation 61, the Division's oversight of construction sites falls under industrial activity.

Douglas County: Please remove this requirement and allow permittees to address these discharges through their own IDDE programs. Please clarify that "industrial activities" does not include construction sites. Oversight of Industrial Facilities is not required or discussed in the Phase II Rule or Regulation 61. MS4 Permittees should have the option to address the discharge through their IDDE Program or to notify the Division. If a permittee notifies the Division, it should constitute removal of the illicit discharge. Many permittees respond to these types of discharges as part of their IDDE programs and resolve them through that process. To add notification requirements to the Division on resolved illicit discharges does not provide added water quality benefit. Within Regulation 61, the Division's oversight of construction sites falls under industrial activity.

City of Arvada: Remove language that refers to requirements to report Industrial Facilities. A significantly contaminated discharge from any facility would be addressed in our Illicit Discharge Detection and Elimination Program, whether it had a stormwater permit with the State or not.

Weld County: State should have the responsibility for overseeing State-permitted industrial activities, not the local jurisdiction. The permittee will not know if the site is permitted or not, so please remove this language. Please clarify 'contact information'. Also, if the notification requirement remains, and the intent of the Division is to protect water quality, 90 days could potentially cause extreme water quality issues. How does the Division intend to respond to these notifications?

5-2-1 Drainage Authority: Industrial Facilities- The 521 respectfully requests that this section of the permit be removed. MS4 permittees are not responsible for the oversite of industrial facilities. This additional requirements places unnecessary burden on permittees by requiring additional recordkeeping and reporting requirements. The Division is responsible for Illicit Discharges from Industrial Facilities.

City of Canon City: The City of Cañon City respectively asks the Division to remove this requirement and its associated paperwork. We would prefer the Division address this issue separately by sending the permitted Phase II MS4s a memo or letter asking that we voluntarily notify the Division if and when illicit discharges from permitted or unpermitted industrial activities are found. We understand the Division would like to track this type of data; this could be addressed in the Phase II Annual Reporting requirements such as: "Did the

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permittee report any illicit discharges from industrial activities to the Division? For each such report, please list the discharger's name, site address and the date and time it was reported to the Division." Alternatively, the MS4 could choose to address the discharge within their own IDDE program which would then be recorded in the Annual Report to the Division. The City of Cañon City also believes that a reporting time frame of 90 days is too long. In our opinion letting a potential illicit discharge continue without action for that period of time or more (taking into account the potential Division response time) does not provide adequate water quality protection.

Southeast Metro Stormwater Authority: 6. Part 1.E.2.a.x. Industrial Activities. SEMSWA believes that industrial permittee activities that are not under our purview should not be our responsibility to report upon. Further, industrial activities are not within our areas of expertise. Please delete this section accordingly. This comment also applies to the recordkeeping responsibilities associated with this Section, Part 1.E.2.b.ix. SEMSWA wants the option to address the discharge from an Industrial Permit holder within our service area, specifically through our IDDE and/or Public Education and Outreach programs. We would like the opportunity to work with the Permittee on a viable long-term solution to the discharge, specifically through their Standard Operating Procedures.

City of Boulder: If the city is capable of properly addressing issues that arise related to discharges from industrial activities it should be given that opportunity and refer these activities to the state only when further assistance is required.

Response 1: Remove this Requirement
These comments have been incorporated into the permit.

Comment 2: Support of specific Colorado Stormwater Council comments
City of Greeley: The key concerns, which are detailed in Colorado Stormwater Council comments, for the City of Greeley are as follows: Illicit Discharge Detection & Elimination: Referring discharges from industrial activities that may have a negative impact on water quality — make the reporting less onerous on permittees.

Response 2: Support of specific Colorado Stormwater Council comments
Please see the division's response to Colorado Stormwater Council's comments.

Comment 3: Revise this Requirement
Keep it Clean Partnership: The requirement for referring discharges from industrial activities that may have a negative impact on water quality should be referenced in the existing illicit discharge detection and elimination program, instead of being required as a separate program. Issue: The requirement for referring discharges from industrial activities that may have a negative impact on water quality should be referenced in the existing illicit discharge detection and elimination program instead of being required as a separate program.

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Comment: KICP Partners already notify CDPHE of discharges from industrial facilities in our jurisdictions if we are unable to resolve the situation locally. Including separate requirements with specific notification and documentation requirements for industrial discharges is unnecessary. Illicit discharges are already captured in our illicit discharge detection and elimination (IDDE) programs. If CDPHE is notified of an illicit discharge from an industrial facility, the recordkeeping requirements for the IDDE program should be sufficient documentation. KICP requests that these requirements be removed from the permit.

El Paso County: Paragraph needs additional clarification this requirement only applies to industrial activities that discharge to the MS4.

City of Aurora: A second example of extra words on page 15, section E.2.a.x. is this sentence, "Information in the notification should include information such as . . ."

City of Boulder: Replace (Page 15): Industrial Activities: The permittee should notify the Division when discharges from CDPS and NPDES permitted and unpermitted industrial activities are identified by the permittee as having a negative water quality impact on the discharge from the MS4 and issues cannot be addressed by the permittee. ~~Information in the notification should include information such as the location of the discharge, water quality concerns, and contact information. The report must be provided to the Division within 90 days after permittee identified the location of the discharge.~~

The city already responds to any discharges which have a negative impact to the city's MS4. If the city is capable of properly addressing issues that arise it should be given that opportunity and refer these activities to the state only when further assistance is required. Additional information on how the state would like the city to deal with these situations could be placed in the Fact Sheet. Please also remove these requirements from the Recordkeeping and PDD sections.

Response 3: Revise this Requirement
These comments have not been incorporated into the permit. This requirement has been removed—see Response 1.

b. **Recordkeeping**

Comment 1: Remove Requirements
City of Canon City: 2.b. Recordkeeping ii. Regulatory Mechanism: The applicable codes, resolutions, ordinances and program documents used to meet the permit requirements. And iii. Regulatory Mechanism Exemptions: The applicable codes, resolutions, ordinances, and program documents used to meet the permit requirements. The City of Cañon City requests these two requirements be removed. These requirements are addressed in 2.c. PDD which is more appropriate. Recordkeeping serves to document that required activities such as training, inspections, etc. have been completed.

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Response 1: Remove Requirements
This comment has not been incorporated into the permit. The format of the permit is to have a regulatory mechanism section in each applicable section of the permit.

i. **Storm Sewer System Map**
No comments were received on this section of the permit.

ii. **Regulatory Mechanism**

Comment 1: Recordkeeping vs. PDD Requirements
Colorado Stormwater Council: Please clarify within the fact sheet, that record keeping requirements for the regulatory mechanism are the actual codes, resolutions, ordinances, and program documents that permittees are using to implement the program. Also clarify permittee's could meet the PDD requirements with a link to the applicable codes, resolutions, ordinances, and program documents.
The difference between recordkeeping and PDD, particularly regarding regulatory mechanism, are not clear.

Douglas County: Please clarify within the Fact Sheet that record keeping requirements for the regulatory mechanism are the actual codes, resolutions, ordinances, and program documents that permittees are using to implement the program. Also clarify permittee's could meet the PDD requirements with a link to the applicable codes, resolutions, ordinances, and program documents. The difference between recordkeeping and PDD, particularly regarding regulatory mechanism, are not clear.

Response1: Recordkeeping vs. PDD Requirements
These comments have been incorporated into the fact sheet.

iii. **Regulatory Mechanism Exemptions**
No comments were received on this section of the permit.

iv. **Tracing an Illicit Discharge**

Comment 1: Remove Requirement
City of Canon City: iv. Tracing an Illicit Discharge: (A) The applicable program documents and procedures used to respond to reports/identification of illicit discharges. The City of Cañon City requests this requirement be removed. The requirement is addressed in 2.c. PDD which is more appropriate. Recordkeeping serves to document that required activities such as training, inspections, etc. have been completed.

Response 1: Remove Requirement
This comment has not been incorporated into the permit. Please see the fact sheet for an explanation of the difference between recordkeeping and PDD.

Comment 2: Communicating with Other Municipal Departments

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City of Canon City: Fire Departments, Sanitation Districts & police do not (or rarely) respond to "illicit discharges". They respond to accidents where an illicit discharge is secondary, if at all, on their radar. Effectively communicating and tracking illicit discharges handled (if at all) by other departments or districts within our permit area may be very difficult. Additionally, the authority to require other departments or districts within our permit area to share documentation with our Stormwater Program or that illicit discharges be handled per our permit requirements may not be available.

Response 2: Communicating with Other Municipal Departments
This comment has not been incorporated into the permit. Please see the fact sheet for more information on effectively communicating with other departments.

v. Discharges that can be Excluded from being Effectively Prohibited
No comments were received on this section of the permit.

vi. Removing an Illicit Discharge

Comment 1: Change "List" to "Description"
Colorado Stormwater Council: Please change a " list" to a" description of how the incident was eliminated/resolved". A description is a better term than a list for how the source of an illicit discharge was eliminated/resolved.

Douglas County: Please change a " list" to a" description of how the incident was eliminated/resolved". A description is a better term than a list for how the source of an illicit discharge was eliminated/resolved.

City of Canon City: Please change "list" to "description" which is a more appropriate way to describe how an illicit discharge was eliminated or resolved.

Response 1: Change "List" to "Description"
These comments have been incorporated into the permit.

vii. Enforcement Response

Comment 1: Confusing Language
City of Canon City: There is not a recordkeeping requirement for permit requirement a.vii. Enforcement Response. The City of Cañon City is unclear if this is an oversight by the Division. If it is, then Priority Areas should be viii.

Response 1: Confusing Language
This comment has been incorporated into the permit.

viii. Priority Areas
No comments were received on this section of the permit.

ix. Training

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Comment 1: Replace "Title" with "Department"
Colorado Stormwater Council: Please remove "title" from the requirement and add "department." Municipal job titles are often not specific, such as "Maintenance Worker 1" and do not provide valuable information regarding which work groups are being targeted with the training. The term "Department" is more relevant.

Douglas County: Please remove title from the requirement and add department. Municipal job titles are often not specific, such as "Maintenance Worker 1" and do not provide valuable information regarding which work groups are being targeted with the training. The term "Department" is more relevant.

City of Canon City: The City of Cañon City requests that the "title" of each individual be replaced with "department". Rationale: Municipal job titles are often not specific, such as "Maintenance Worker 1" and do not provide valuable information regarding which work groups are being targeted with the training. "Department" is more relevant information.

Colorado Stormwater Council—Non-Standard Committee: Staff titles are typically not completely descriptive of employee responsibilities. Departments would be better since it may be important for a staff person such as a Contract Administrator in a Public Works Department to understand IDDE but it would not be for a Purchasing Department Contract Administrator.

Response 1: Replace "Title" with "Department"
These comments have been incorporated into the permit.

x. Industrial Activities
Comment 1: Remove this Requirement
Colorado Stormwater Council: Please remove recordkeeping requirements for industrial facilities. This is an illicit discharge and should be documented as such and not require additional recordkeeping and reports. Since MS4 permittees are not responsible for oversight of industrial facilities, nor are they mentioned in the Phase II Rule or Regulation 61, the permit can require notification to the Division without requiring specific procedures and documentation. The Division should be responsible for documenting notifications received. If the illicit discharge from an industrial facility is resolved through the permittee's IDDE program, recordkeeping should be the same as the IDDE program requirements and not have additional requirements.

Douglas County: Please remove recordkeeping requirements for industrial facilities. This is an illicit discharge and should be documented as such and not require additional recordkeeping and reports. Since MS4 permittees are not responsible for oversight of industrial facilities, nor are they mentioned in the Phase II Rule or Regulation 61, the permit can require notification to the Division without requiring specific procedures and documentation. The Division should be responsible for documenting notifications received. If the illicit discharge from an industrial facility is resolved through the permittees IDDE

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program, recordkeeping should be the same as the IDDE program requirements and not have additional requirements.

City of Canon City: ix. Industrial Facilities. Please refer to our comments under Part I.E.2.a.x.

Response 1: Remove this Requirement
These comments have been incorporated into the permit.

c. **Program Description Document**

i. **Storm Sewer System Map**
No comments were received on this section of the permit.

ii. **Regulatory Mechanism**
No comments were received on this section of the permit.

iii. **Regulatory Mechanism Exemptions**
No comments were received on this section of the permit.

iv. **Tracing an Illicit Discharge**
No comments were received on this section of the permit.

v. **Discharges that can be Excluded from being Effectively Prohibited**

Comment 1: Remove Duplicative Requirements in the PDD
Colorado Stormwater Council: Please remove requirement (A). The procedures for tracing an illicit discharge included in (B) already identify the tools that can be used.

Douglas County: Please remove requirement (A). The procedures for tracing an illicit discharge included in (B) already identify the tools that can be used.

City of Canon City: In keeping with our comments for Part I.E.2.a.iv., the City of Cañon City requests this requirement be removed.

Response 1: Remove Duplicative Requirements in the PDD
These comments have been incorporated into the permit.

vi. **Removing and Illicit Discharge**

Comment 1: Remove Requirements
Colorado Stormwater Council: Please remove requirement vi. The requirements in vi. are duplicative of iv.

Douglas County: Please remove requirement vi. The requirements in vi are duplicative of iv.

City of Canon City: The City of Cañon City requests this requirement be removed as it is duplicative of Part I.E.2.c.iv.

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Response 1: Remove Requirements
These comments have been incorporated into the permit.

vii. Enforcement Response

Comment 1: Time Periods for Responses
City of Canon City: The City of Cañon City requests that the portion of the final sentence "and time periods within which responses will take place" be removed. Rationale: The requirement in the permit states: "Enforcement Response: The permittee must implement appropriate written enforcement procedures and actions to eliminate the source of an illicit discharge when identified/reported, stop responsible parties from willfully or negligently repeating or continuing illicit discharges, and discourage future illicit discharges from occurring. The written procedures must address mechanisms for enforcement for all illicit discharges from the moment an illicit discharge is identified/reported until it is eliminated. [Emphasis added.] The permittee must escalate enforcement as necessary based on the severity of violation and/or the recalcitrance of the responsible party to ensure that findings of a similar nature are enforced upon consistently. Written enforcement procedures must include informal, formal, and judicial enforcement responses." It does not state that a specific amount of time (e.g. number of days) for enforcement.

Response 1: Time Periods for Responses
This comment has not been incorporated into the permit. The requirement does not make the permittee determine the time periods for *enforcement*. The permittee must first determine the time periods within which the *responses* will take place. Then, the permittee's PDD must document the time periods within which the responses (not enforcement) will take place.

viii. Priority Areas
No comments were received on this section of the permit.

ix. Training
No comments were received on this section of the permit.

x. Industrial Activities

Comment 1: Remove this Requirement
Colorado Stormwater Council: Please remove PDD requirements for industrial facilities. This is an illicit discharge and should be documented as such and not require additional recordkeeping and reports. Since MS4 permittees are not responsible for oversight of industrial facilities, nor are they mentioned in the Phase II Rule or Regulation 61, the permit can require notification to the Division without requiring specific procedures and documentation. The Division should be responsible for documenting notifications received.

Douglas County: Please remove PDD requirements for industrial facilities. This is an illicit discharge and should be documented as such and not require additional recordkeeping and reports. Since MS4 permittees are not responsible

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for oversight of industrial facilities, nor are they mentioned in the Phase II Rule or Regulation 61, the permit can require notification to the Division without requiring specific procedures and documentation. The Division should be responsible for documenting notifications received.

City of Canon City: Please refer to our comments under Part I.E.2.a.x.

Response 1: Remove this Requirement
These responses have been incorporated into the permit.

3. **Construction Sites**

Comment 1: Support of Specific Colorado Stormwater Council Comments
City of Canon City: The Colorado Stormwater Council has proposed significant changes to this section [Construction Sites]. As a member of the Colorado Stormwater Council, the City of Cañon City agrees with and supports their recommendations.

City of Castle Pines: The topics considered "high-level" issues for the City include the following: Construction Sites- For projects with disturbances less than once acre that discharge to the Cherry Creek Reservoir drainage basin, the requirements contained in the Cherry Creek Reservoir Control Regulation apply, not the requirements currently outlined in the permit; Construction Inspection, Frequency, and Scope; Adequacy standards;

Response 1: Support of Specific Colorado Stormwater Council Comments
Please see the responses to Colorado Stormwater Council's individual comments.

Comment 2: Division-Operated Construction Sites Program
Colorado Contractors Association: The Department could be the sole authority in an MS4 jurisdiction per an agreement between CDPHE and the MS4. This could be funded by a fee to the construction operators.

Response 2: Division-Operated Construction Sites Program
In 2014 the division hosted a stakeholder process to discuss the clean water fee structure. Feedback received from the construction work group included a recommendation that the division could be the sole authority for construction permitting and compliance oversight, per agreement with a single MS4, or multiple MS4s where a construction project crosses multiple jurisdictions. The division supported the recommendation and it was included on the form used to solicit survey based feedback on fee concepts. Feedback from stakeholders was mixed with some indicating agreement, some indicating disagreement, and some remaining neutral. While a revised fee structure was adopted into statute during the 2015 legislative session, that structure does not include a fee category or structural component that could be used to fund this option. Therefore, the division did not consider this option when developing the permit. The division continues to support the recommendation and if a funding mechanism is put into place in the future, the division would evaluate the permit conditions to determine if changes would be necessary, and if so could make the necessary changes through a permit modification process.

Comment 3: Construction General Permit and the MS4 General Permit

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Colorado Stormwater Council: Please remove all requirements from the Phase II MS4 permit that mirror the CDPS Construction Activity Permit, for which operational control remain the sole responsibility and liability of the construction site operator. Our comments below reflect this request.

Most of the requirements for the Division's administration of Stormwater Discharges Associated with Construction Activity general permit can be found in 61.4(3)(b) (Application Requirements for Stormwater Discharges Associated with Industrial Activity) and 61.6 (Issued Permits).

Requirements for the Division's administration of this Phase II MS4 permit can be found in 61.4(3)(c) (Application Requirements for Regulated Small Municipal Separate Storm Sewer Discharges) and 61.8(11) (Conditions for Phase II Municipal Stormwater Permits). As expanded upon in the fact sheet, page 43, the requirements for the two permits are different in Regulation 61 and thus there are two different general permits that regulate stormwater on construction sites.

While both the Construction Program and the Phase II MS4 Program involve oversight requirements for construction activities, it is clear in Regulation 61 these are two distinct programs and the two programs should remain separate.

As mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities.

The focus of the MS4 Construction Program is inspection frequency, BMP selection, design, implementation and maintenance, and discharges to the MS4. The focus of the CDPS program involves heavier reliance on self-regulating paperwork for the Division's infrequent inspection and compliance determinations.

MS4s review site plans, perform inspections, and pursue enforcement for discharges to the MS4 from inadequate BMPs. The focus is on field performance, not paperwork. To ensure site plans are updated within 72 hours, for example, may benefit CDPHE inspectors, but does not provide additional tools for the MS4s, and instead serves to actually divert resources from effective oversight.

Douglas County: Please remove all requirements from the Phase II MS4 permit that mirror the CDPS Construction Activity Permit, for which operational control remain the sole responsibility and liability of the construction site operator. Our comments below reflect this request. Most of the requirements for the Division's administration of Stormwater Discharges Associated with Construction Activity general permit can be found in 61.4(3)(b) (Application Requirements for Stormwater Discharges Associated with Industrial Activity) and 61.6 (Issued Permits).

Requirements for the Division's administration of this Phase II MS4 permit can be found in 61.4(3)(c) (Application Requirements for Regulated Small Municipal Separate Storm Sewer Discharges) and 61.8(11) (Conditions for Phase II Municipal Stormwater Permits).

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As expanded upon in the Fact Sheet, page 43, the requirements for the two permits are different in Regulation 61 and thus there are two different general permits that regulate stormwater on construction sites.

While both the Construction Program and the Phase II MS4 Program involve oversight requirements for construction activities, it is clear in Regulation 61 these are two distinct programs and the two programs should remain separate.

As mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities.

The focus of MS4 is inspection frequency, BMP selection, design, implementation and maintenance, and discharges to the MS4. The focus of the CDPS program involves heavier reliance on self-regulating paperwork for the Division's infrequent inspection and compliance determinations.

MS4s review site plans, perform inspections and compliance follow-up, and pursue enforcement for discharges to the MS4 from inadequate BMPs. The focus is on field performance, not paperwork. To ensure site plans are updated within 72 hours, for example, may benefit CDPHE inspectors, but does not provide additional tools for the MS4s, and instead serves to actually divert resources from effective oversight.

Xcel Energy: Xcel Energy recommends removing all requirements from the Phase II MS4 permit that mirror the CDPS Construction Activity Permit. Reference Reg 61 as opposed to citing the permit.

Response 3: Construction General Permit and the MS4 General Permit
In general, this comment has not been incorporated into the permit. Many of the same requirements, such as site plans, inspections, and erosion and sediment controls, are listed for both construction operators under the construction general permit and MS4 general permit sections of Regulation 61. Using similar terms and conditions in each permit, which, in turn, are similar to requirements in Regulation 61, helps align the requirements between MS4 permittees and construction contractors. Note that the focus of the similar requirements are different, such as an MS4 permittee does not have to develop a site plan, but has to review the site plans that construction operators create for appropriate erosion sediment controls. In addition, the site inspection frequencies are less than the site inspection frequency for construction operators. Please see the division's response to other specific comments relating to this issue from Colorado Stormwater Council below.

Comment 4: Applicable Construction Activities and Final Stabilization
City of Canon City: From the introduction to this section:
"Applicable construction activities" include construction activities that result in a land disturbance of greater than or equal to one acre or that is less than one acre, but is part of a larger common plan of development or sale that would disturb, or has disturbed since March 2, 2001, one acre or more, unless excluded below or the disturbed areas have been finally stabilized. The Fact Sheet states on Page 42: Regulation 61 also uses the terms "would disturb." Since that section of the

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Regulation was written in March 2, 2001, construction activities that are part of a larger common plan of development or sale that disturbed one acre or more following March 2, 2001 and that have not been finally stabilized are covered under the applicable construction site definition. The City of Cañon City recommends including the language from the Fact Sheet which reads "and that have not been finally stabilized" in the permit to clarify that not all land disturbances since 3/2/01 are applicable.

Response 4: Applicable Construction Activities and Final Stabilization
This comment has not been incorporated into the permit. The definition of applicable construction activities already excludes areas that "have been finally stabilized."

Comment 5: Common Plan of Development or Sale Definition and Remove the Term "Related"
Colorado Stormwater Council: The term "related" doesn't add clarification and could broaden what an applicable construction activity is beyond the intent of the Regulation. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.

Douglas County: The term "related" doesn't add clarification and could broaden what an applicable construction activity is beyond the intent of the Regulation. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.

Southeast Metro Stormwater Authority: 1. Part I.E.3. Applicability. Please revise the definition of "common plan of development or sale" to address "contiguous" and "related". Requiring construction activities to be related if they share a builder, contractor, equipment, or storage areas is excessive and does not equate to a common plan of development. There are many unrelated projects with the same contractor or builder and therefore have common equipment. For example, a permittee that contracts for specific services like landscaping would meet the definition of a common plan of development or sale, which we assume not to be the intended result. Further, development plans may be planning level tools that plat and/or subdivide large areas, but don't allow for development to occur without further development plan processes. Therefore using development plan may be too ambiguous. There are developments within SEMSWA's service area consisting of hundreds of acres, developing over decades with different builders, which would loosely meet this definition. We believe the intent of including "common plan" language in the Phase II Rule and Regulation 61 was to address small lots within a subdivision and that any clarifying language included in the permit should reflect that intent. We recommend revising the definition of "common plan of development or sale" to contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules, but remain related. "Contiguous" is defined to mean construction activities located in close proximity to each other. Construction activities are considered to be "related" if they share the same construction level development plan. Projects may be removed from the common plan of development of sale when final stabilization occurs.

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Xcel Energy: A “common plan of development or sale” is a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules, but remain related. Consistent with EPA guidance, “contiguous” is interpreted to mean construction activities located in close proximity to each other (within ¼ mile). Construction activities are considered to be “related” if they share the same development plan, builder or contractor, equipment, storage areas, etc. Construction activities are considered to be “related” if they share the same development plan, builder or contractor, equipment, storage areas, etc. It would be helpful if the Division could define what is meant by “same development plan”. For example, Xcel Energy recently had a project that was expanding and existing substation. The expansion was disturbing less than 1 acre, however the MS4 required the project to be permitted because of all the other non-Xcel related development happening around the substation.

Please modify the interpretation of "related" in the permit. The term “related” does not provide adequate clarification. Common ownership in conjunction with common contract more accurately reflects the intent of the regulation.

Response 5: Common Plan of Development or Sale Definition and Remove the Term “Related”
These comments have been partially incorporated into the permit. The word “related” is integral to the definition of a “common plan of development” because construction sites must be both contiguous and related. For example, without the term “related” included in the definition of a “common plan of development,” two unrelated construction projects that are simply located next to each other could be considered a “common plan of development.” The definition of related, however, has been removed from the permit.

Comment 6: Final Stabilization Definition
City of Canon City: “Final stabilization” is the condition reached when all ground surface disturbing activities at the site have been completed, and uniform vegetative cover has been established with an individual plant density of at least 70 percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. The City of Cañon City recommends including a citation for the memorandum from Rik Gay, Permits Section, Water Quality Control Division, dated March 5, 2013, concerning final stabilization requirements for stormwater construction permit termination as a reference for “equivalent permanent, physical erosion reduction methods”.

Response 6: Final Stabilization Definition
This comment has been incorporated into the permit and fact sheet. In addition, additional information has been added to the definition to clarify that the construction operator only has to finally stabilize the disturbed areas. Construction operators do not have to stabilize undisturbed areas of the project. The fact sheet has been updated with information in the 2013 memo.

Comment 7: Discussion of Applicable Construction Activities Definition in the Fact Sheet

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El Paso County: Definition of "applicable construction activities" includes the phrase "or has disturbed since March 2, 2001. It's not clear what are the basis and intent of this date limit? Please clarify, "or has disturbed since May 2, 2001."

Response 7: Discussion of Applicable Construction Activities Definition in the Fact Sheet
This comment has not been incorporated into the fact sheet. The fact sheet already has a discussion of the reason for this date.

Comment 8: EPA's NPDES Permits and US ACOE's Nationwide Permits
El Paso County: Definition of "Construction Activity" defines repair activities as construction, which is inconsistent with the Code of Federal Regulations (33 CFR 330.3). Furthermore, Section 404(f) of the CWA also includes the concept of repair in the definition of maintenance. Section 404 (f)(b) states: "B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;" These activities are exempt from 404 permitting. Repaving activities are also covered under the above CWA definition. Delete all reference to "repair" and "repaving activities" from the definition.

Response 8: EPA's NPDES Permits and USACE's Nationwide Permits
This comment has not been incorporated into the permit. As stated in the fact sheet, this permit reflects 40 CFR 122 (NPDES permitting program). This permit does not reflect permitting programs run by the US Army Corps of Engineers (33 CFR 330). 33 CFR 330 "describes the policy and procedures used in the Department of the Army's nationwide permit program to issue, modify, suspend, or revoke nationwide permits; to identify conditions, limitations, and restrictions on the nationwide permits; and, to identify any procedures, whether required or optional, for authorization by nationwide permits" and does not address NPDES permits. Therefore, the USACE's definition of "repair" is very different than the division's definition of "repair."

Comment 9: Provide more Information on Construction Activity and Maintenance
Home Builders Association of Metro Denver: Under definition of Construction Activity, the Permit indicates that "Construction does not include routine maintenance" We ask that the CDPHE be consistent throughout the document on what construction activity is and outline what maintenance is. This definition goes on to define "Activities to conduct repairs that are not a part of routine maintenance or for replacement are construction activities". This is a bit misleading and we'd prefer you add a definition for routine maintenance. The need to be clear about routine maintenance is key to meeting the intent of the Permit. For instance, is street sweeping routine maintenance? How about periodic repairs of wattles and silt fence?

Housing & Building Association of Colorado Springs: Under definition of Construction Activities, the Permit indicates that "Construction does not include routine maintenance." We ask that the CDPHE be consistent throughout the document regarding the definition of construction activity and routine maintenance. The Permit currently defines construction activities as "Activities to conduct repairs that are not a part of routine maintenance or for replacement." We find this to be liable for misinterpretation and recommend you add a definition for routine

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maintenance. The need to be clear about routine maintenance is critical to meeting the intent of the Permit. For instance, is street sweeping considered routine maintenance?

Response 9: Provide more Information on Construction Activity and Maintenance
This comment has been partially incorporated into the permit. The sentence has been revised for clarity and information has been added to the fact sheet. The permit provides information on "maintenance" and the permittee has the flexibility to further define maintenance activities within their permit area. Routine maintenance of a control measure and construction maintenance activities are different. Street sweeping and repairs to wattles and silt fence are maintenance of control measures (see Part I.B.).

Comment 10: Revise Land Disturbing Activity Definition
Home Builders Association of Metro Denver: "Land disturbing activities" should exclude repairs, paved staging, and paved access. We suggest replacing with land disturbing sites.

Housing & Building Association of Colorado Springs: "Land disturbing activities" should exclude repairs, paved staging, and paved access. We suggest replacing with "land disturbing sites."

Response 10: Revise Land Disturbing Activity Definition
This comment has not been incorporated into the permit. The division has determined that land disturbing activities includes staging areas and access roads. Since projects include many activities, the term "activities" will continue to be used. Note that routine maintenance activities, including some repairs, are not considered construction activities.

Comment 11: Remove Staging Area from the Land Disturbing Activity Definition
Xcel Energy: "Land disturbing activity" is any activity that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads, staging areas, stockpiling of fill materials, and borrow areas. Compaction that is associated with stabilization of structures and road construction must also be considered a land disturbing activity. Need clarification on access road and staging areas on hardscaped surfaces. These areas must be factored into the construction limits but not necessarily in the disturbance limits. This is important due to the triggers associated with disturbance limits and permanent water quality. Several of Xcel Energy's projects get pulled into the stormwater construction permit due to the staging area which is typically a space that is leased (not owned by Xcel). A paved parking lot used for staging is not creating a disturbance and we would not want to be held liable for permanent water quality of a parking lot that is not being disturbed and furthermore not owned by Xcel Energy.

Response 11: Remove Staging Area from the Land Disturbing Activity Definition
This comment has not been incorporated into the permit. Permittees should note that the construction activity must first disturb land before calculating the acreage to determine if the project should be considered an applicable construction activity. A

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staging area on an impervious surface that does not involve land disturbance would not be considered in the acreage calculation for the determination of an applicable construction activity. However, a staging area on an impervious surface that does not involve land disturbance for an applicable construction activity that disturbs more than one acre would still need control measures in a site plan and stormwater management plan. Please see responses to comments in the Post-Construction Stormwater Management in New Development and Redevelopment section.

Comment 12: Consistent Definition of Common Plan of Development or Sale
Colorado Stormwater Council: Please consolidate and/or ensure all definitions are consistent. It is confusing to refer to Common Plan of Development as a facility and Part of a Larger Common Plan of Development as an area.

Douglas County: Please consolidate and/or ensure all definitions are consistent. It is confusing to refer to Common Plan of Development as a facility and Part of a Larger Common Plan of Development as an area.

Xcel Energy: Xcel Energy appreciates the Division noting this clarification on what "contiguous" is interpreted as. This should also be clarified in the renewal of the General Permit for Stormwater Discharges Associated with Construction Activities. Please ensure all definitions/references are consistent. It is confusing to refer to Common Plan of Development as a facility and Part of a Larger Common Plan of Development as an area.

Response 12: Consistent Definition of Common Plan of Development or Sale
These comments have not been incorporated into the permit. A common plan of development or sale is an area and this term is used in the definition of an applicable construction activity.

a. **The following requirements apply**

Comment 1: Support of Colorado Stormwater Council's comments
City of Federal Heights: The topics considered "high-level" issues for the City include the following: Construction Sites- Construction inspection, frequency, and scope, Adequacy standards.

City of Glendale: The topics considered "high-level" issues for the City include the following: Construction Sites- Construction inspection, frequency, and scope, Adequacy standards

Response 1: Support of Colorado Stormwater Council's comments
Please see the division's response to Colorado Stormwater Council's comments.

i. **Exclusions**

Comment 1: Exclude Oil and Gas Activities from Entire Permit Area
Colorado Stormwater Council: Please allow the exclusion for oil and gas to apply to all non-urban areas, not just within counties. Oil and gas exploration occurs/has the potential to occur within non-urbanized areas of cities as well as counties.

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City of Arvada: Pages 18 and 27. Remove Oil and Gas exploration from County Growth Area Requirements and allow the exclusion to stand alone.

Weld County: As stated above, the proposed County Growth Areas lie outside of the designated urban areas based on the 2010 U.S. Census. Imposition of MS4 requirements on these non-urban areas is beyond the authority of the Division and represents a significant manpower and financial burden on limited resources. All areas outside of the areas designated urban by the 2010 U.S. Census are non-urban and should therefore have no MS4 requirements.

Xcel Energy: Facilities associated with oil and gas exploration…. Oil and gas exploration occurs/has the potential to occur within non-urbanized areas of cities as well as counties. Consider allowing the exclusion for oil and gas to apply to all non-urban areas, not just within counties.

Response 1: Exclude Oil and Gas Activities from Entire Permit Area
These comments have been incorporated into the permit.

Comment 2: Exclude Repaving Activities
Xcel Energy: Repaving activities where underlying and/or surrounding soil is cleared, graded, or excavated as part of the repaving operation are construction activities unless they are an excluded project under Part I.E.4.a.i. Part 1.e.4.a.i. does not include repaving parking lots.

Response 2: Exclude Repaving Activities
This comment has not been incorporated into the permit. The Construction Sites and Post-Construction Stormwater Management in New Development and Redevelopment are two very different sections of the permit. One section addresses control measures during construction activity and the other section addresses permanent water quality control measures. A type of project exempted under one section of the permit does not mean that the project will be exempted under another section of the permit. Maintenance activities are excluded from both sections of the permit. Therefore, some types of repaving of parking lot activities might be considered an applicable construction activity and permittees are encouraged to contact the division for assistance.

Comment 3: Exclude R-Factor Waiver and Division Waived Projects
Colorado Stormwater Council: Please add an exclusion or broaden this exclusion to include other applicable construction sites in addition to Construction Activities with R-Factor Waiver, when the Division waives requirements to obtain a CDPS permit for stormwater discharges associated with construction activity. If a site is determined by the Division to not require a CDPS General Permit for Stormwater Discharges Associated with Construction Activity, it must be included here as an exclusion.

Response 3: Exclude R-Factor Waiver and Division Waived Projects
This comment has not been incorporated into the permit. Construction activities with R-factor waiver are already excluded (Part I.E. 3.a.i(A)). The division does not “waive” CDPS General Permit for Stormwater Discharges

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Associated with Construction Activity coverage. All construction projects that meet the applicability requirements of the general permit must obtain permit coverage. The division assists construction operators in determining if they meet the applicability requirements of the construction general permit.

Comment 4: Confusing Language
El Paso County: First sentence of paragraph is confusing Rewrite as such: "Permittees that are counties may exclude the following activities from being applicable construction activity…"

Response 4: Confusing Language
This comment has been incorporated into the permit.

Comment 5: "Growth" vs. "Non-Urban"
Weld County: Please use consistency (Non-Urban Areas or County Growth Areas)

Response 5: "Growth" vs. "Non-Urban"
This comment has been incorporated into the permit.

Comment 6: Remove 20% Cap for Large Lot Development Exclusion
Colorado Stormwater Council: Please change the requirement to allow for when a lot demonstrates a higher percentage of impervious; remove the cap of 20 percent. Please clarify impervious area refers to proposed, not existing. When a study demonstrates higher infiltration can be achieved, the permit should not limit the opportunity to allow for more than 20% proposed imperviousness.

Douglas County: Please change the requirement to allow for when a lot demonstrates a higher percentage of impervious; remove the cap of 20 percent. Please clarify impervious area refers to proposed, not existing. When a study demonstrates higher infiltration can be achieved, the permit should not limit the opportunity to allow for more than 20% proposed imperviousness.

Weld County: Propose removing the 20% threshold. If a site specific study shows 100% infiltration, then a threshold is arbitrary.

Response 6: Remove 20% Cap for Large Lot Development Exclusion
These comments have not been incorporated into the permit. The division is tasked with setting a clear MEP standard in the permit. The division has only evaluated one study on runoff from large lots development and determined that 20% imperviousness was appropriate. The division has not evaluated any study with more than 20% of impervious surface on the site. Permittees can submit a modification request with a study that evaluates large lot development with more than 20% impervious surface on the site. The division can then evaluate the study and determine if a permit modification is necessary.

ii. Regulatory Mechanism
No comments were received on this section of the permit.

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iii. Regulatory Mechanism Exemptions

No comments were received on this section of the permit.

iv. Control Measure Requirements

Comment 1: Remove Adequacy Standards

Keep it Clean Partnership: Adequacy standards are more appropriately incorporated into the General Permit for Stormwater Discharges associated with Construction Activity. Issue: Adequacy Standards are more appropriately incorporated into the General Permit for Stormwater Discharges associated with Construction Activity. I.E.3.a.iv.(C) Control measures must be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants in discharges to the MS4 from the following activities (if part of the applicable construction activity) and must meet the adequacy standards prescribed. Comment: Please remove adequacy standards from the permit. All listed adequacy standards belong in the CDPS General Permit for Stormwater Discharges associated with Construction Activity where implementation will be more effective.

Colorado Stormwater Council: Appropriate control measures must be implemented prior to the start of construction activity, control potential pollutants during each phase of construction and must be maintained in operational condition until final stabilization in accordance with I.B.1 and I.E.3.a.iv.

Please remove language that specifies how to manage sediment. See above for consolidation of corresponding potential pollutant source list that includes sediment.
The intent of this section is accomplished with language already in the permit:
I.B.1. Good Engineering, Hydrologic and Pollution Control Practices: Control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices, and the manufacturer's specifications, when applicable.
I.E.3. The permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4 from applicable construction activities.
I.E.3.a.iv. Control Measure Requirements: The permittee's Construction Sites Program must address selection, installation, implementation, and maintenance of control measures that meet the requirements of Part I.B. Control measures must be appropriate for the specific construction activity, the applicable pollutant sources, and phase of construction.
I.E.3.a.iv(C) Control measures must be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants in discharges to the MS4 from the following activities (if part of the applicable construction activity).
In addition, the Division has acknowledged as part of the CDPS Construction Activity Permit comment record, that "permit criteria referencing good engineering, hydrologic and pollution control practices are adequately descriptive and enforceable, and so additional criteria are not necessary."
Finally, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum in which to receive appropriate

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stakeholder input affecting construction site operators and construction activities.

Please remove language that specifies how to manage sediment.
See above for consolidation of corresponding potential pollutant source list that includes sediment. “All flows" is not technically feasible. Inlet Protection is not intended to, nor is it capable of filtering or treating all flows. Inlet protection does not include a retention volume. This requirement implies flows from upgradient, undisturbed areas not associated with the construction activity must be treated or infiltrated. BMPs are not designed to, or are capable of treating all flows. Temporary construction BMPs are often designed for approximately the 2-year event. Storms occur with relative frequency that will overwhelm typical construction BMPs. For example, temporary sediment basin sizing volume per EPA and UDFCD is based on 2-year, 24-hour rainfall. The numeric turbidity standard that was proposed in the Construction ELGs, used a 2-year, 24-hour threshold for waiver of the numeric limits. Acknowledgement that temporary construction BMPs are not intended for large flood events would be appropriate. The adequacy of BMPs is determined based on site specific conditions and is confirmed as required by I.E.3.a.v(C) Initial Site Plan Review
1) Confirmation that the site plan includes appropriate control measures for all stages of construction, including final stabilization.
In addition to plan review, I.E.3.c.v. PDD Site Plans requires citation(s) and location(s) of supporting documents, including any documents that provide control measure design considerations, criteria, or standards.
Until the Division develops design criteria, this type of language should not be included in the permit. In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum in which to receive appropriate stakeholder input affecting construction site operators and construction activities.

Please remove language that specifies how to manage sediment.
See above for consolidation of corresponding potential pollutant source list that includes vehicle tracking. Refer to the proposed list of consolidated potential pollutant sources, above.
The adequacy of BMPs is determined based on site specific conditions and is confirmed as required by I.E.3.a.v(C) Initial Site Plan Review
1) Confirmation that the site plan includes appropriate control measures for all stages of construction, including final stabilization.
In addition to plan review, I.E.3.c.v. PDD Site Plans requires citation(s) and location(s) of supporting documents, including any documents that provide control measure design considerations, criteria, or standards.
Until the Division develops design criteria, this type of language should not be included in the permit. In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities.

Douglas County: Please remove the underlined text and change to the following proposed concept: Appropriate control measures must be implemented prior to

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the start of construction activity, control potential pollutants during each phase of construction and must be maintained in operational condition until final stabilization in accordance with I.B.1 and I.E.3.a.iv. There are many ways to control pollutants and structural measures should not be singled out here, while other methods are not included. That each structural control measure must be adequately sized for the drainage area ignores a treatment train approach. In addition, temporary construction BMPs are often designed for approximately the 2-year event. Storms occur with relative frequency that will overwhelm typical construction BMPs. For example, temporary sediment basin sizing volume per EPA and UDFCD is based on 2-year, 24-hour rainfall. The numeric turbidity standard that was proposed in the Construction ELGs, used a 2-year, 24-hour threshold for waiver of the numeric limits. Acknowledgement that temporary construction BMPs are not intended for large flood events would be appropriate. Adequate sizing, calculating drainage area, specifying treated flows are all components of design and are accomplished with language already in the permit: I.B.1. Good Engineering, Hydrologic and Pollution Control Practices: Control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices, and the manufacturer's specifications, when applicable. I.E.3.a.iv. Control Measure Requirements: The permittee's Construction Sites Program must address selection, installation, implementation, and maintenance of control measures that meet the requirements of Part I.B. Control measures must be appropriate for the specific construction activity, the applicable pollutant sources, and phase of construction. Finally, an upset condition for the MS4 permit would not include issues identified here, such as lack of preventative maintenance. Rather an upset condition for an MS4 permit pertains to whether the program is implemented in accordance with the permit.

Please remove language that specifies how to manage sediment. See above for consolidation of corresponding potential pollutant source list that includes sediment. The intent of this section is accomplished with language already in the permit:
I.B.1. Good Engineering, Hydrologic and Pollution Control Practices: Control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices, and the manufacturer's specifications, when applicable.

I.E.3. The permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4 from applicable construction activities.

I.E.3.a.iv. Control Measure Requirements: The permittee's Construction Sites Program must address selection, installation, implementation, and maintenance of control measures that meet the requirements of Part I.B. Control measures must be appropriate for the specific construction activity, the applicable pollutant sources, and phase of construction.

I.E.3.a.iv(C) Control measures must be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants in

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discharges to the MS4 from the following activities (if part of the applicable construction activity).

In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum in which to receive appropriate stakeholder input affecting construction site operators and construction activities.

Please remove language that specifies how to manage sediment. See above for consolidation of corresponding potential pollutant source list that includes sediment. “All flows" is not realistic. Vegetative Buffer is not intended to, nor is it necessarily capable of infiltrating all flows. The adequacy of BMPs is determined based on site specific conditions and is confirmed as required by
I.E.3.a.v(C) Initial Site Plan Review
1) Confirmation that the site plan includes appropriate control measures for all stages of construction, including final stabilization.

In addition to plan review, I.E.3.c.v. PDD Site Plans requires citation(s) and location(s) of supporting documents, including any documents that provide control measure design considerations, criteria, or standards.

This type of language should not be included in the permit. In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum in which to receive appropriate stakeholder input affecting construction site operators and construction activities.

Please remove language that specifies how to manage sediment. See above for consolidation of corresponding potential pollutant source list that includes vehicle tracking. Refer to the proposed list of consolidated potential pollutant sources, above. The adequacy of BMPs is determined based on site specific conditions and is confirmed as required by
I.E.3.a.v(C) Initial Site Plan Review
1) Confirmation that the site plan includes appropriate control measures for all stages of construction, including final stabilization.
In addition to plan review, I.E.3.c.v. PDD Site Plans requires citation(s) and location(s) of supporting documents, including any documents that provide control measure design considerations, criteria, or standards.

This type of language should not be included in the permit. In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities.

Southeast Metro Stormwater Authority: 3. Part I.3.a.iv.A and 3.a.iv.C.1. Control Measures. This section requires control measures be adequately sized for the drainage area to not allow flows to bypass without treatment design for all flows and that Inlet Protection must be designed to filter suspended solids from all flows. Use of the word “all” is an impracticable standard to adhere to and is not consistent with good engineering practices. We recommend that it be deleted.

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Part I.3.a.iv.C.1. Control Measures. This section specifies conditions that must be met in order to utilize Inlet Protection and Natural Vegetated Buffers as the only structural control measure. The GESC program uses multiple control measures in a layered manner, so typically a single control measure is not used. However, there may be a linear project or utility boring project where Inlet Protection is relied upon as the sole structural control measure in addition to over-excavation and/or trench spoil placement. The approach the Division is taking with a design standard for Inlet Protection and Vegetative Buffers to control all flows is not practicable, as detailed in the previous comment. Inlet Protection must be allowed to over-top in a heavy precipitation event for safety reasons. This overtopping is not any different than a sediment basin reaching design capacity and overtopping. There is treatment prior to the over-flow in any instance, as both are 'settling' control measures; the treatment is settling sediment behind the control, and the overtopping does not make this any less of an effective control measure while the larger storm event is causing overtopping. We recommend that the Inlet Protection and Natural Vegetated Buffer discussions be removed, and the section be updated to specify when these structural control measures can be used as the only measure.

Xcel Energy: Control measures must be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants in discharges to the MS4 from the following activities (if part of the applicable construction activity) and must meet the adequacy standards prescribed: General comment. Is this the place for setting construction control measure criteria? While Xcel Energy appreciates and utilizes inlet protection and natural vegetative buffers we recommend keeping prescriptions out of the permit as it limits flexibility. What works for one project may not necessarily work for another. This should be part of the General Permit for Stormwater Discharges associated with Construction Activities. This permit is aimed at MS4s and if during the SCP public comment period this criterion is altered where does it leave the MS4 permit. Just reference Reg 61 as opposed to listing out the 12 activities.

Inlet protection, when used without additional sediment control measures, must be designed to either filter suspended solids from all flows or provide the necessary retention volume and time to settle suspended solids for all flows. As stated in the above comment this should be removed from the permit. Xcel Energy often utilizes the open trench as a BMP and placing the spoils upstream of the trench. We also utilize the BMP of placing spoils directly in dump trucks, therefore the criteria for the sole BMP doesn't apply? The language on filtering suspended solids from all flows seems problematic. All flows can be very large and/or can include flows other than those associated with the construction site. Xcel Energy would recommend the following language "typical design flows from the construction site".

Natural vegetative buffer(s) As stated in the above comment this should be removed from the permit. The language on infiltrating all flows seems problematic. All flows can be very large and/or can include flows other than

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those associated with the construction site. Xcel Energy would recommend the following language "typical design flows from the construction site".

El Paso County: Paragraph references the term "adequacy standards," which is not defined in the permit or Reg 61. Either define adequacy standard for the purposes of this permit or delete the term. Only items 1, 2, 5 and 9 in this section contains language to define what the Division meant by adequacy standards. The text in this section is very restrictive for the MS4 permittees and may be inconsistent with established criteria and or regulatory mechanisms. It appears this section is better suited to be included in the draft Construction Stormwater Permit renewal effort. Suggest deleting entire section and incorporating concepts into the Construction Stormwater General Permit.

Weld County: This language should be removed in order to provide flexibility to allow for site-specific planning and design of control measures. Design criteria already required by control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic and pollution control practices and the manufacturer's specifications.

Please remove language that specifies how to manage sediment. See above for consolidation of corresponding potential pollutant source list that includes sediment.

The intent of this section is accomplished with language already in the permit: I.B.1. Good Engineering, Hydrologic and Pollution Control Practices: Control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices, and the manufacturer's specifications, when applicable.

I.E.3. The permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4 from applicable construction activities.

I.E.3.a.iv. Control Measure Requirements: The permittee's Construction Sites Program must address selection, installation, implementation, and maintenance of control measures that meet the requirements of Part I.B. Control measures must be appropriate for the specific construction activity, the applicable pollutant sources, and phase of construction.

I.E.3.a.iv(C) Control measures must be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants in discharges to the MS4 from the following activities (if part of the applicable construction activity).

In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum in which to receive appropriate stakeholder input affecting construction site operators and construction activities.

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5-2-1 Drainage Authority: Control Measures – controlling all flows from natural vegetative buffers is not intended to, nor is it capable on infiltrating all flows. This type of language should not be included in the permit.

City of Golden: Adequacy standards for control measures. Section I.E.3.a.iv(C).l provides specific "adequacy standards" for Inlet Protection and Vegetative Buffers that are highly prescriptive and ignore the flexibility needed to design such systems on a site specific basis. Likewise, these control measures are already governed by the requirements of Sections I.B.l and I, E.3.a.iv that require the use of good engineering practices and site specific considerations. The adequacy standards may not, in all instances, be feasible and do not seem to meet the criteria for using good engineering and site specific considerations. As result these facilities should be based on the use of design criteria and not specific adequacy standards.

Home Builders Association of Metro Denver: Sentence 2 says …must minimize suspended sediment…" when it should say "suspended solids". Sediment is settled out soils whereas suspended solids are in water form.

Response 1: Remove Adequacy Standards
These comments have been incorporated into the permit.

Comment 2: Support of Specific Colorado Stormwater Council Comments
City of Greeley: The key concerns, which are detailed in Colorado Stormwater Council comments, for the City of Greeley are as follows: Construction Sites: Adequacy standards are more appropriately incorporated into the General Permit for Stormwater Discharges associated with Construction Activity.

Response 2: Support of Specific Colorado Stormwater Council Comments
Please see the division's response to Colorado Stormwater Council's comments.

Comment 3: Remove Language that Would Trigger Water Rights Issues
City of Golden: a. Water Rights Concerns. The draft permit uses the phrase "retain, reuse, or provide for infiltration, evapotranspiration, or evaporation of water" in describing appropriate control measures. Section l.E.J.a.iv(A). Similar language is used in reference to runoff reduction standards, green infrastructure, and structural control measures. See, e.g., Sections l.E.4.a.i(C); I.E.4.a.i.(F)2(c), 1.1.20. This language raises significant water rights concerns given that water rights rarely exist for such stormwater control measures.

First, the proposed language allows for the consumptive use of water in managing stormwater (i.e. evaporation and evapotranspiration). Such depletions of water must, however, be curtailed to the extent the water being depleted causes material injury to water rights. C.R.S. § 37-92-502(2)(a). The alternative is to replace the depletions to senior water users through a plan for augmentation. Zigan Sand & Gravel v. Cache La Poudre Water Users Ass'n, 758 P.2d 175, 185 (Colo. 1988). Second, the "reuse" of native water is generally disallowed under water rights. See, e.g. Burlington Ditch Reservoir and Land Co. v. City of Thornton, 256 P.3d 645, 663 (Colo. 2011) ("Water native to the stream system is limited to one use in that system and return flows belong to

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the stream system as part of the public's resources, subject to appropriation and administration"). Reuse of native water requires a separate water right from the original use. Santa Fe Trail Ranches Property Owners Ass'n v. Simpson, 990 P.2d 46, 54 (Colo. 1999). Third, even the concept of retaining water raises concerns if done without a water right allowing storage of the water. See, Pueblo West Metropolitan District v. Southeastern Colorado Water Conservancy Dist., 689 P.2d 594, 603 (Colo. 1984) (Recognizing that capture and storage of flood water is a beneficial use of water subject to appropriation).
Pursuant to Senate Bill 15-212, recently adopted by the General Assembly and signed into law by the Governor on May 29, 2015, a compromise was reached regarding stormwater detention and infiltration facilities in the water rights context. (A copy of Senate Bill 15-212 is attached). In short, a stormwater detention and infiltration facility is only entitled to a presumption of no injury to water rights if it releases or infiltrate at least 97% of all water from a rainfall event that is equal to or less than a 5-year storm within 72 hours, and releases or infiltrates at least 99% of all water from rainfall events larger than 5-year storms within 120 hours. Further, any use of the water by the entity that controls the facility is strictly prohibited under the Bill.

Golden recommends that the permit modify or clarify the language cited above to be consistent with Senate Bill 15-212 for stormwater detention and infiltration facilities, except for instances where such facilities are being operated in priority pursuant to water rights and/or under augmentation plans.

Home Builders Association of Metro Denver: Appropriate Control Measures: The third sentence should say “detain” rather than retain. The definition of “structural control measure” used in this section contains the terms “retain”, “reuse”, evapotranspiration”, or “evaporation” of water. Requiring these practices in the MS4 permit will result in an additional regulatory burden on permittees in form of Water Rights Law in Colorado.

Douglas County: “…structures that remove pollutant from water or retain, reuse, or provide for infiltration, evapotranspiration, or evaporation of water.” This language is not in accordance with CRS: 37-92-602(8), since there is no defined time or rainfall frequency associated with the operation of these structures to accomplish pollutant removal, without the possible need of a costly augmentation plan and associated water right. Please coordinate with the SEO to ensure the permit is written in compliance with water rights and SEO requirements. The use of certain words when combined with the term stormwater, such as retain, reuse, or provide for infiltration, evapotranspiration, or evaporation of water, could be perceived to be associated with augmentation of water rights and beneficial uses of water. This language could impact water rights and could therefore require coordination with the SEO. The use of the terms reuse, retain, evapotranspire, or evaporate could require a water right and associated costly augmentation plan. Evapotranspire is only allowed if within the criteria stated in 37-92-602(8) CRS. One alternative is to remove this language as it describes particular design criteria.

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The term "infiltrate all flows" is not in accordance with CRS: 37-92-602(8) and SEO, since there is no defined time or rainfall frequency associated with the infiltration of all flows. Infiltration must be in accordance with the criteria stated in CRS 37-92-602(8) unless a water right is acquired through costly augmentation planning.
Please coordinate with the SEO to ensure the permit is written in compliance with SB15-212. One alternative is to remove this language as it describes particular design criteria. Specifying design standards that affects water rights could result in requiring a costly augmentation plan and obtaining a water right unless other design standards could be considered.

The word retain would not be in accordance with the State Engineers Office, since it refers to retaining water for an indefinite amount of time and rainfall frequency. Cannot reuse, retain, evapotranspire, or evaporate without a water right. Retaining water must be in accordance with the criteria stated in CRS 37-92-602(8) unless a water right is acquired through costly augmentation planning.
Please coordinate with the SEO to ensure the permit is written in compliance with SB15-212. One alternative is to remove this language as it describes particular design criteria. Specifying design standards that affects water rights could result in requiring a costly augmentation plan and obtaining a water right unless other design standards could be considered.

Douglas County has started the criteria coordination efforts with the Colorado Stormwater Council and the Urban Drainage & Flood Control District with regard to the SEO and recently passed SB15-212, however, criteria coordination efforts have not started yet. We anticipate the development of stormwater drainage criteria that would be in conformance with this legislation and anticipate the opportunity for the permit to be revised in a way that allows for the requirements of SB15-212, identified in CRS: 37-92-602(8).

Douglas County believes coordination on this issue between the Division and the SEO is necessary to effectively and legally implement the requirements of the MS4 permit. In addition, please note that Douglas County agrees with all of the comments regarding this issue as put forth to the Division by the Urban Drainage and Flood Control District.

City of Canon City: a.iv(A) Appropriate control measures must be implemented prior to the start of construction activity, control potential pollutants during each phase of construction, and must be continued through final stabilization. Appropriate structural control measures must be maintained in operational condition. "Structural control measures" include control measures that are comprised of facilities and structures that remove pollutant from water or retain, reuse, or provide for infiltration, evapotranspiration, or evaporation of water. The City of Cañon City recommends the Division remove the word "reuse". The Administrative Approach for Storm Water Management memo from the Office of the State Engineer, dated May 21, 2011, expressly states in paragraphs three and four that the water from detention areas and infiltration areas may not be diverted for any beneficial use. Additionally Senate Bill 15-212, signed into law on May 29, 2015 states in II(B)(e)(I): Water detained or

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released by a storm water detention and infiltration facility or post-wildland fire facility shall not be used for any purpose, including, without limitation, by substitution or exchange, by the entity that owns, operates, or has oversight over the facility or that entity's assignees, and is available for diversion in priority after release or infiltration."

El Paso County: The definition of "structural control measure" used in this section contains the terms, "retain," "reuse," evapotranspiration, or "evaporation" of water. Requiring these practices in the MS4 permit will result in additional regulatory burden on permittees in form of Water Rights Law in Colorado Delete are references to the terms.

Xcel Energy: "Structural control measures" include control measures that are comprised of facilities and structures that remove pollutant from water or retain, reuse, or provide for infiltration, evapotranspiration, or evaporation of water. Does "retain and reuse" cause an issue with water law?

Response 3: Remove Language that Would Trigger Water Rights Issues
These comments have not been incorporated into the permit. The permit is flexible in allowing both detention and retention control measures to achieve compliance with the permit. A retention control measure could meet the requirements of this permit and not violate water rights. Permittees should contact the Division of Water Resources if additional assistance is needed.

Comment 4: Add Information to the Fact Sheet Regarding Water Rights
5-2-1 Drainage Authority: Control Measure Language. Specific language is included in the permit: "Structural control measures include control measures that are comprised of facilities and structures that remove pollutant from water or retain, reuse, or provide for infiltration, evapotranspiration, or evaporation of water." Some of these measures may require water rights, please include language in the permit stating some of these measures may require water rights and it's up to the permittee to obtain the appropriate water rights.

Response 4: Add Information to the Fact Sheet Regarding Water Rights
This comment has been incorporated into the fact sheet.

Comment 5: Appropriate Control Measures
Xcel Energy: Appropriate control measures must be implemented prior to the commencement of covered construction activities……..and must be continued through final stabilization. Not all Control Measures can be physically implemented prior to commencement of "Covered Construction Activities", nor is it always practicable. Linear projects prefer to phase the BMPs (Control Measures) as the project moves along. It is not necessary or practical to install BMPs in areas where construction has not yet started and will not start for quite some time. Construction sequencing on typical box developments such as our substations are usually done in phases (i.e. initial, interim, and final) BMP installation. Xcel Energy would not necessarily install all BMPs upfront nor would we keep all measures in place until final vegetation is completely re-established.

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Response 5: Appropriate Control Measures
This comment has not been incorporated into the permit. Permittees should note that *appropriate* control measures need to be installed before construction activity. Permittees have the flexibility to determine which control measure are appropriate for construction operators to install for the specific phase of construction.

Comment 6: Upset Condition
Xcel Energy: Each structural control measure must be adequately sized for the drainage area so as not to allow for flows to bypass without treatment in accordance with the design, unless during an upset incident. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation. In addition, each structural control measure must be appropriate to the type of flow it receives. Adequate sizing, calculating drainage area, specifying treated flows are all components of design and are accomplished with language already in the CDPS Stormwater Construction Permit.

An Upset for a construction project is also defined in the CDPS Stormwater Construction Permit.

Response 6: Upset Condition
The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 7: Combine Potential Pollutant Sources with Construction Site Activities
Colorado Stormwater Council: Please change to the following proposed concept: Control measures must be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants in discharges to the MS4 from applicable construction activities. Potential pollutant sources include, but are not limited to the following: Regulation 61 and Part I.E.3. are clear that the permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4, not state waters from applicable construction activities. There is no need to separate construction sites from activities, as construction activities will always be associated with construction sites. While different construction projects can have different potential pollutant sources, as discussed in the fact sheet, the overall potential pollutants from sites or activities are not unique and do not differ from one another. See additional discussion below regarding potential pollutants from construction sites and from activities.

Please change to the following proposed concept:
Combine potential pollutants listed under construction site and construction activities as follows:
1) Sediment
2) Vehicle Tracking

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3) Construction site waste, such as trash, discarded building materials, concrete truck washout, chemicals, and sanitary waste
4) Outdoor storage of construction site materials, building materials, fertilizers, and chemicals
5) Vehicle and equipment maintenance and fueling
6) Concrete truck equipment washing
7) Dedicated asphalt and concrete batch plants
8) Other non-stormwater discharges including construction dewatering and wash water that may contribute pollutants to the MS4
Please remove I.E.3.a.iv(B)3; I.E.3.a.iv(C)1; I.E.3.a.iv(C)3; I.E.3.a.iv(C)5; I.E.3.a.iv(C)7; I.E.3.a.iv(C)8; I.E.3.a.iv(C)11

Distinguishing potential pollutant sources from sites and activities in two separate lists is confusing and could contribute to non-compliance. The two lists have been consolidated, per the following justification:
• Sediment sufficiently covers contaminated soils, which MS4 would not address differently from sediment, as they are not the regulating agency. It also includes land disturbance and storage of soils, and significant dust or particulate generative processes.
• Loading and unloading is an operation, not a pollutant source; it is ambiguous; it is addressed as either sediment, waste or outdoor storage of materials.
• It is unclear how outdoor storage and bulk storage would be different, thus they are consolidated as outdoor storage.
• Routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents, and oils, are classified in the permit as activities. It is more appropriate under the requirements of this permit to require oversight of the pollutant sources from these activities which are sufficiently addressed by outdoor storage and vehicle and equipment maintenance and fueling.
• Other areas or operations where spills can occur is ambiguous and potential pollutant sources are sufficiently addressed in the proposed list.

Douglas County: Applicable construction activity and construction activity are defined in I.E.3. and twice in I.J. There is no need to separate construction sites from activities, as construction activities will always be associated with construction sites. While different construction projects can have different potential pollutant sources, as discussed in the Fact Sheet, the overall potential pollutants from sites or activities are not unique and do not differ from one another. See additional discussion below regarding potential pollutants from construction sites and from activities.

Please change to the following proposed concept:
Combine potential pollutants listed under construction site and construction activities as follows:
1) Sediment
2) Vehicle Tracking
3) Construction site waste, such as trash, discarded building materials, concrete truck washout, chemicals, and sanitary waste
4) Outdoor storage of construction site materials, building materials, fertilizers, and chemicals

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5) Vehicle and equipment maintenance, fueling
6) Dedicated asphalt and concrete batch plants
7) Other non-stormwater discharges including construction dewatering and wash water that may contribute pollutants to the MS4
8) Other non-stormwater discharges including construction dewatering and wash water that may contribute pollutants to the MS4

Please remove I.E.3.a.iv(B)3; I.E.3.a.iv(C)1; ; I.E.3.a.iv(C)3; ; I.E.3.a.iv(C)5; ; I.E.3.a.iv(C)7; ; I.E.3.a.iv(C)8; ; I.E.3.a.iv(C)11

Distinguishing potential pollutant sources from sites and activities in two separate lists is confusing and could contribute to non-compliance. The two lists have been consolidated, per the following justification:
• Sediment sufficiently covers contaminated soils, which MS4 would not address differently from sediment, as they are not the regulating agency. It also includes land disturbance and storage of soils, and significant dust or particulate generative processes.
• Loading and unloading is an operation, not a pollutant source; it is ambiguous; it is addressed as either sediment, waste or outdoor storage of materials.
• It is unclear how outdoor storage and bulk storage would be different, thus they are consolidated as outdoor storage.
• Routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents, and oils, are classified in the permit as activities. It is more appropriate under the requirements of this permit to require oversight of the pollutant sources from these activities which are sufficiently addressed by outdoor storage and vehicle and equipment maintenance and fueling.
• Other areas or operations where spills can occur is ambiguous and potential pollutant sources are sufficiently addressed in the proposed list.

Response 7: Combine Potential Pollutant Sources with Construction Site Activities
These comments have been partially incorporated into the permit. The list of potential pollutant sources and the list of construction activities have been combined. Most of the items in the lists have not been removed. The division disagrees with the commenters and has determined that control measures for sediment and contaminated soils are different and must be addressed separately in a site plan. Loading and unloading operations are a construction activity and need to remain on the list. In addition, outdoor storage and bulk storage are two different construction activities and must be addressed separately in site plans. Maintenance activities of potential pollutants sources (outdoor storage) and maintenance activities involving potential pollutants (fertilizers) are also two different construction activities and must be addressed separately in site plans. There are many other potential pollutant sources unique to an typical construction site that have not been considered when writing this permit, so this is an important construction activity that must be addressed in site plans.

Comment 8: Remove the Term “All Potential Pollutant Sources”

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Douglas County: Please remove the word “all”. Please change to the following proposed concept: Control measures must be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants in discharges to the MS4 from applicable construction activities. Potential pollutant sources include, but are not limited to the following: It is infeasible to expect that any one designer or site operator can think of every pollutant during this and allow for updates to be made in the field as construction progresses. Regulation 61 and Part I.E.3. are clear that the permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4, not state waters from applicable construction activities.

Home Builders Association of Metro Denver: Remove the word “all” potential pollutant sources. Could replace with “all identified”.

Weld County: Please remove this requirement because it is not measureable and implies knowledge of what "can" be spilled and its location. For example, a vehicle "can" have a fluid leak.

Response 8: Remove the Term “All Potential Pollutant Sources”
These comments have not been incorporated into the permit. Although the division agrees that all potential pollutant sources might not be able to be identified months in advance of the start of construction, the division has determined that it *is practicable* for construction operators to “allow for updates to be made in the field as construction progresses.” Site plans are dynamic documents and must be updated by the construction site operator to identify all potential pollutant sources.

Comment 9: Revise “To State Waters” vs. “To the MS4”
Xcel Energy: Control measures must be selected, designed, installed, implemented, and maintained to provide control for all potential pollutant sources associated with the applicable construction site to prevent pollution or degradation of state waters. Recommend changing the language to state “the permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4”, not state waters.

Response 9: Revise “To State Waters” vs. “To the MS4”
This comment has not been incorporated into the permit. This section of the permit has been combined with another section.

Comment 10: Revise List of Potential Pollutant Sources
El Paso County: List of potential pollutants is incomplete and inconsistent with Regulation 61 list of pollutants. Either reference list of pollutants in Reg 61 or list them out consistent with Reg 61.

Xcel Energy: Potential pollutant sources include, but are not limited to the following:
1) Sediment
2) Construction site waste, such as trash, discarded building materials, concrete truck washout, chemicals and sanitary waste

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3) Contaminated soils Why limit the list to these 3 potential pollutant sources. It would be better to just reference Reg 61.

Response 10: Revise List of Potential Pollutant Sources
This comment has not been incorporated into the permit. This section of the permit has been combined with another section.

Comment 11: Remove "and Must Meet the Adequacy Standards Prescribed"
Colorado Stormwater Council: Please remove "and must meet the adequacy standards prescribed:" See above for consolidation of corresponding potential pollutant source list. See below for comments on corresponding adequacy standards for specific pollutant sources. Adequate sizing, calculating drainage area, and specifying treated flows are all components of design and are accomplished with language already in the permit:
I.B.1. Good Engineering, Hydrologic and Pollution Control Practices: Control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices, and the manufacturer's specifications, when applicable.
I.E.3.a.iv. Control Measure Requirements: The permittee's Construction Sites Program must address selection, installation, implementation, and maintenance of control measures that meet the requirements of Part I.B. Control measures must be appropriate for the specific construction activity, the applicable pollutant sources, and phase of construction.
In addition, the Division has acknowledged as part of the CDPS Construction Activity Permit comment record, that "permit criteria referencing good engineering, hydrologic and pollution control practices are adequately descriptive and enforceable, and so additional criteria are not necessary."

Response 11: Remove "and Must Meet the Adequacy Standards Prescribed"
This comment has been incorporated into the permit.

Comment 12: Remove "Bulk Storage of Petroleum Products"
Weld County: Requirements for storage of petroleum products are covered by the Colorado Department of Labor and Employment, Division of Oil & Public Safety, not CDPHE, Water Quality Division. These requirements do not belong in the MS4 permit. The requirement to be compliant with all Federal, State, and Local law adequately covers this need.

Response 12: Remove "Bulk Storage of Petroleum Products"
This comment has not been incorporated into the permit. The division has determined that bulk storage of petroleum products is a potential pollutant source on a construction site and all potential pollutants must be addressed by control measures.

Comment 13: Remove "Dedicated Asphalt and Concrete Batch Plants"
Colorado Stormwater Council: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes dedicated asphalt and concrete batch plants. Refer to proposed list of consolidated potential pollutant sources above.

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Douglas County: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes dedicated asphalt and concrete batch plants. Refer to proposed list of consolidated potential pollutant sources above.

Response 13: Remove "Dedicated Asphalt and Concrete Batch Plants"
This comment has not been incorporated into the permit. Dedicated asphalt and concrete batch plants are very different than concrete truck washout.

Comment 14: Remove "Structural"
Colorado Stormwater Council: There are many ways to control pollutants and structural measures should not be singled out here, while other methods are not included. That each structural control measure must be adequately sized for the drainage area ignores a treatment train approach. In addition, temporary construction BMPs are often designed for approximately the 2-year event. Storms occur with relative frequency that will overwhelm typical construction BMPs. For example, temporary sediment basin sizing volume per EPA and UDFCD is based on 2-year, 24-hour rainfall. The numeric turbidity standard that was proposed in the Construction ELGs, used a 2-year, 24-hour threshold for waiver of the numeric limits. Acknowledgement that temporary construction BMPs are not intended for large flood events would be appropriate. Adequate sizing, calculating drainage area, specifying treated flows are all components of design and are accomplished with language already in the permit:
I.B.1. Good Engineering, Hydrologic and Pollution Control Practices: Control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices, and the manufacturer's specifications, when applicable.
I.E.3.a.iv. Control Measure Requirements: The permittee's Construction Sites Program must address selection, installation, implementation, and maintenance of control measures that meet the requirements of Part I.B. Control measures must be appropriate for the specific construction activity, the applicable pollutant sources, and phase of construction. In addition, the Division has acknowledged as part of the CDPS Construction Activity Permit comment record, that "permit criteria referencing good engineering, hydrologic and pollution control practices are adequately descriptive and enforceable, and so additional criteria are not necessary." Finally, an upset condition for the MS4 permit would not include issues identified here, such as lack of preventative maintenance. Rather an upset condition for an MS4 permit pertains to whether the program is implemented in accordance with the permit

Response 14: Remove "Structural"
This comment has been incorporated into the permit.

Comment 15: Remove "Other Areas Where Spills Can Occur"
Colorado Stormwater Council: Please remove. See above for consolidation of corresponding potential pollutant source list. Refer to proposed list of consolidated potential pollutant sources above. Other areas or operations where spills can occur is ambiguous and potential pollutant sources are sufficiently addressed with proposed potential pollutant source list.

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Douglas County: Please remove. See above for consolidation of corresponding potential pollutant source list. Refer to proposed list of consolidated potential pollutant sources above. Other areas or operations where spills can occur is ambiguous and potential pollutant sources are sufficiently addressed with proposed potential pollutant source list.

Response 15: Remove "Other Areas Where Spills Can Occur"
These comments have not been incorporated into the permit. The division has determined that control measures must be implemented to control other areas where spills can occur on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 16: Remove "Other Non-Stormwater Discharges Including Construction Dewatering and Wash Water that may Contribute Pollutants to the MS4"
Colorado Stormwater Council: Please remove from this section. See above for consolidation of corresponding potential pollutant source list. Refer to proposed list of consolidated potential pollutant sources above.

Douglas County: Please remove from this section. See above for consolidation of corresponding potential pollutant source list. Refer to proposed list of consolidated potential pollutant sources above.

Response 16: Remove "Other Non-Stormwater Discharges Including Construction Dewatering and Wash Water that may Contribute Pollutants to the MS4"
These comments have not been incorporated into the permit. The division has determined that it is appropriate to provide control measures to control other non-stormwater discharges including construction dewatering and wash water that may contribute pollutants to the MS4 on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 17: Revise Vehicle Tracking Control Requirement
Home Builders Association of Metro Denver: Vehicle tracking (VTC). "Control Measures must be implemented to minimize sediment being transported". Please provide for alternatives in the Permit such as grass buffers, controls on inlet, or other alternatives to VTC.

Response 17: Revise Vehicle Tracking Control Requirement
This comment has not been incorporated into the permit. This requirement has been revised and the adequacy standards have been removed.

Comment 18: Remove "Loading and Unloading Operations"
Colorado Stormwater Council: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes

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sediment, waste or outdoor storage of materials. Refer to proposed list of consolidated potential pollutant sources above.

Douglas County: Please remove. See above for consolidation of corresponding potential pollutant source list that includes sediment, waste or outdoor storage of materials. Refer to proposed list of consolidated potential pollutant sources above.

Response 18: Remove "Loading and Unloading Operations"
These comments have not been incorporated into the permit. The division has determined that control measures must be provided for loading and unloading operations on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 19: Remove "Outdoor Storage of Construction Site Materials, Building Materials, Fertilizers, and Chemicals"
Colorado Stormwater Council: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes sediment, waste or outdoor storage of materials. Refer to proposed list of consolidated potential pollutant sources above.

Douglas County: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes sediment, waste or outdoor storage of materials. Refer to proposed list of consolidated potential pollutant sources above.

Response 19: Remove "Outdoor Storage of Construction Site Materials, Building Materials, Fertilizers, and Chemicals"
These comments have not been incorporated into the permit. The division has determined that control measures must be provided for outdoor storage of construction site materials, building materials, fertilizers, and chemicals on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 20: Remove "Bulk Storage of Materials"
Colorado Stormwater Council: Please remove language that specifies how to manage storage of materials. See above for consolidation of corresponding potential pollutant source list that includes outdoor storage. Refer to proposed list of consolidated potential pollutant sources above. In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities such as secondary containment for bulk storage.

Douglas County: Please remove language that specifies how to manage storage of materials. See above for consolidation of corresponding potential pollutant source list that includes outdoor storage. Refer to proposed list of consolidated potential pollutant sources above. In addition, as mentioned in the

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Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities such as secondary containment for bulk storage.

Response 20: Remove "Bulk Storage of Materials"
These comments have not been incorporated into the permit. The division has determined that control measures must be provided for the bulk storage of materials on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 21: Remove "Vehicle and Equipment Maintenance and Fueling"
Colorado Stormwater Council: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes vehicle and equipment maintenance and fueling. Refer to proposed list of consolidated potential pollutant sources above.

Douglas County: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes vehicle and equipment maintenance and fueling. Refer to proposed list of consolidated potential pollutant sources above.

Response 21: Remove "Vehicle and Equipment Maintenance and Fueling"
These comments have not been incorporated into the permit. The division has determined that control measures must be provided for vehicle and equipment maintenance and fueling on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 22: Remove "Significant Dust or Particulate Generating Processes"
Colorado Stormwater Council: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes sediment and construction wastes. Refer to proposed list of consolidated potential pollutant sources above.

Douglas County: Please remove from this section. See above for consolidation of corresponding potential pollutant source list that includes sediment and construction wastes. Refer to proposed list of consolidated potential pollutant sources above.

Southeast Metro Stormwater Authority: 4. Part I.3.a.iv.C.7. Significant dust or particulate generating processes. This operation is not delineated on a site plan with appropriate control measures identified. We assume that dust is considered by the Division as a contributor to sediment formation on impervious surfaces and any control measure should be scoped to minimize its occurrence. Please revise Part I.3.a.iv.C.7 to clarify that dust mitigation, in general, is not the intent of this section. We assume that the mitigation of dust associated with construction activities as the dust settles is the intent. Dust

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that settles will be managed as sediment, and as such this section is unnecessary. Please delete this section.

Response 22: Remove "Significant Dust or Particulate Generating Processes"
These comments have not been incorporated into the permit. The division has determined that control measures must be provided for significant dust or particulate generating processes on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 23: Remove "Routine Maintenance Activities Involving fertilizers, Pesticides, Detergents, Fuels, Solvents, and Oils"
Colorado Stormwater Council: Please remove. See above for consolidation of corresponding potential pollutant source list that includes outdoor storage and vehicle and equipment maintenance and fueling. Refer to proposed list of consolidated potential pollutant sources above.

Douglas County: Please remove. See above for consolidation of corresponding potential pollutant source list that includes outdoor storage and vehicle and equipment maintenance and fueling. Refer to proposed list of consolidated potential pollutant sources above.

Response 23: Remove "Routine Maintenance Activities Involving fertilizers, Pesticides, Detergents, Fuels, Solvents, and Oils"
These comments have not been incorporated into the permit. The division has determined that control measures must be provided for routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents, and oils on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

Comment 24: Revise "Concrete Truck/Equipment Washing, Including the Concrete Truck Chute and Associated Fixtures and Equipment"
Colorado Stormwater Council: Please remove language that specifies how to manage concrete washout. See above for consolidation of corresponding potential pollutant source list that includes concrete truck equipment washing. Refer to proposed list of consolidated potential pollutant sources above. The adequacy of BMPs is determined based on site specific conditions and is confirmed as required by I.E.3.a.v(C) Initial Site Plan Review 1) Confirmation that the site plan includes appropriate control measures for all stages of construction, including final stabilization. In addition to plan review, I.E.3.c.v. PDD Site Plans requires citation(s) and location(s) of supporting documents, including any documents that provide control measure design considerations, criteria, or standards. Until the Division develops design criteria, this type of language should not be included in the permit. In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities.

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Douglas County: Please remove language that specifies how to manage concrete washout. See above for consolidation of corresponding potential pollutant source list that includes concrete truck equipment washing. Refer to proposed list of consolidated potential pollutant sources above. The adequacy of BMPs is determined based on site specific conditions and is confirmed as required by I.E.3.a.v(C) Initial Site Plan Review 1) Confirmation that the site plan includes appropriate control measures for all stages of construction, including final stabilization. In addition to plan review, I.E.3.c.v. PDD Site Plans requires citation(s) and location(s) of supporting documents, including any documents that provide control measure design considerations, criteria, or standards. This type of language should not be included in the permit. In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities.

Response 24: Revise "Concrete Truck/Equipment Washing, Including the Concrete Truck Chute and Associated Fixtures and Equipment"
These comments have not been incorporated into the permit. This requirement does not prescribe a specific control measure for concrete truck and equipment washing. The division has determined that control measures must be provided for concrete truck/equipment washing, including the concrete truck chute and associated fixtures and equipment on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.

v. Site Plans

Comment 1: Remove the Requirement that Site Plans Have to Reflect Current Construction Site Conditions
Colorado Stormwater Council: Please remove the requirement regarding MS4 oversight of revisions to site plans within 72 hours after changes in site conditions. Please change to the following proposed concept:
The permittee must require operators to develop site plans that locate (if applicable) and identify all structural and non-structural control measures for the applicable construction activities. The site plan must contain installation and implementation specifications or a reference to the document with installation and implementation specifications for all structural control measures. A narrative description of non-structural control measures must be included in the site plan.

Deletion of the requirement for oversight of revisions to site plans within 72 hours is consistent with the discussion in the fact sheet that permittees do not have to verify that the site plan reflects current conditions during each inspection. It is also related to the discussion in the fact sheet that the Division does not expect the permittee to proactively look for illicit discharges. As acknowledged in the fact sheet, the site plan can be a tool, but doesn't require proactive oversight. Therefore, the requirement for timely updates to the site plan is the sole responsibility of the site operator and this requirement belongs

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in the CDPS Stormwater Discharges Associated with Construction Activity general permit, not in the MS4 permit.
As stated in the Construction working session, if the Division's intent in this requirement is site operator compliance with the CDPS Construction Activity Permit, the Phase II MS4 permit is not the correct place for this requirement. While we appreciate the Division removed the requirement from the first draft to confirm conformity with site plans during inspections, there are still concerns about the implications of non-compliance, given the permit language. If the permit requires the site plan be maintained by the operator to reflect current conditions, but is not intended to be reviewed by the MS4 as discussed in the fact sheet, what is the implication for the MS4 when the operator fails to maintain the site plan, given that the permit, not the fact sheet is enforceable?

Douglas County: Please remove the requirement regarding MS4 oversight of revisions to site plans within 72 hours after changes in site conditions. Please change to the following proposed concept:
The permittee must require operators to develop site plans that locate (if applicable) and identify all structural and non-structural control measures for the applicable construction activities. The site plan must contain installation and implementation specifications or a reference to the document with installation and implementation specifications for all structural control measures. A narrative description of non-structural control measures must be included in the site plan.

Deletion of the requirement for revisions to site plans within 72 hours is consistent with the discussion in the Fact Sheet that permittees do not have to verify that the site plan reflects current conditions during each inspection. It is also related to the discussion in the Fact Sheet that the Division does not expect the permittee to proactively look for illicit discharges. As acknowledged in the Fact Sheet, the site plan can be a tool, but doesn't require proactive oversight. Therefore, the requirement for timely updates to the site plan is the sole responsibility of the site operator and this requirement belongs in the CDPS Stormwater Discharges Associated with Construction Activity general permit, not in the MS4 permit. As stated in the Construction working session, if the Division's intent in this requirement is site operator compliance with the CDPS Construction Activity Permit, the Phase II MS4 permit is not the correct place for this requirement. While we appreciate the Division removed the requirement from the first draft to confirm conformity with site plans during inspections, there are still concerns about the implications of non-compliance, given the permit language. If the permit requires the site plan be maintained by the operator to reflect current conditions, but is not intended to be reviewed by the MS4 as discussed in the Fact Sheet, what is the implication for the MS4 when the operator fails to maintain the site plan, given that the permit, not the fact sheet is enforceable?

City of Arvada: Include in only the CDPHE Construction Permit requirements for site plans to be maintained to reflect current conditions and Stormwater Management Plans (SWMPs) to be updated within 72 hours of changes being made. Although the Fact Sheet maintains the permittee is not required to verify that SWMPs are meeting the 72 hour rule; simply including the

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requirement in the draft permit makes it enforceable. These requirements should be removed from the MS4 permit.

Xcel Energy: The Permittee must develop and implement procedures to address modifications to site plans including how minor and major modifications are defined and reviewed. Does the Division have guidance on what is considered a minor and major modification? Or is that something each MS4 will determine for themselves. Construction projects need to be able to modify the SWMP "field fit" without having to go thru the lengthy review of a submittal to the MS4.

Southeast Metro Stormwater Authority: 5. Part I.3.a.v.B. Site Plan Requirements. Revisions completed to the site plan no more than 72 hours after the change is an impracticable amount of time for formal revisions to occur (specifically, in that business hours are not referenced). The plans should be changed as soon as practicable, without a number of hours being specified. We recommend revising the section to read: The permittee should allow revisions to the site plan as soon as practicable.

Response 1: Remove the Requirement that Site Plans Have to Reflect Current Construction Site Conditions
These comments have been incorporated into the permit. Permittees should note that the Construction General Permit has technology-based standards and the division expects those standards to meet water quality standards. The Construction General Permit requires construction operators to update the site plan throughout the construction project. Division staff will be verifying that the site plan reflects the current conditions of the construction project during inspections. Permittees with a Qualifying Local Program must ensure that all requirements in the Construction General Permit are met.

Comment 2: Add an Exclusion for Emergency Projects
Colorado Stormwater Council: Please add an exclusion for site plan requirement, site plan review, and inspections for emergency type projects. This exclusion is not intended to allow work without BMPs, but to allow work to occur without a site plan requirement, site plan review, and inspections. Occasionally, emergency work is necessary to address issues such as flooding. During such instances, the focus is to address life safety issues and it may be necessary to begin land disturbance and/or construction activities immediately and prior to development of a site plan.

Xcel Energy: Initial Site Plan Review: The permittee must implement site plan review for all applicable construction activities prior to the start of construction activities. Consider adding an exclusion for site plan requirement, site plan review, and inspections for emergency type projects. Is this "applicable" pertain to all construction activities subject to CDPS Stormwater Construction permit or would it also include projects that are less if the MS4 requires a GESC Permit for projects disturbing less than 1 acre? For example, some MS4's permit projects that do not necessarily need a state permit (i.e. 10,000 sq.ft, 50 cubic yards, any size project that has bore pits, etc). Xcel Energy has been able to establish annual permits with some of these MS4s that

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have more stringent permitting requirements. Currently the MS4 does not necessarily review site plans for all these projects. Requiring the MS4 to review plans for a cable replacement project that has two bore pits would be a waste of time and resources and delay construction from being able to start. It would be better to require site plan review only for projects subject to the CDPS Stormwater Construction Permit.

Response 2: Add an Exclusion for Emergency Projects
This comment has not been incorporated into the permit. Regulation 61 specifically requires permittees to review site plans. Permittees have the flexibility to set up an expedited site plan review process for emergency projects. Permittees should note that this section of the permit applies to applicable construction sites. Permittees have the flexibility to develop requirements that are more stringent than the permit requirements and require site plan review for smaller projects, such as 10,000 sq.ft, 50 cubic yards, and projects with bore pits.

Comment 3: Allow for More than One Site Plan
Colorado Stormwater Council: Please update the permit to be consistent with the fact sheet language: The permittee has the flexibility to require the construction operator to develop different site plans for each phase of construction, approve one site plan and then modify the site plan as the construction project progresses. The fact sheet states the permittee may approve one site plan and then modify the site plan as the construction project progresses, but the permit states the plan must include appropriate control measures for all stages of construction.

Response 3: Allow for More than One Site Plan
This comment has been incorporated into the permit and fact sheet.

vi. Site Inspection

Comment 1: Operator Inspections
Colorado Stormwater Council: Operator inspections should be considered site inspections, and allowed in accordance with the inspection frequency/scope/recordkeeping proposed concept, below. Language in other MS4 permits allow for the municipal compliance inspector to have the authority to place the burden of demonstrating compliance on the site operator, to the greatest extent possible. Inspections and recordkeeping reflected in the in the inspection frequency/scope/recordkeeping proposal should be allowed to be performed or completed by either the site operator's inspector or a municipal inspector, as outlined in the proposal. It is unclear how the Division determined "operator inspections are not considered site inspections under this permit" from Regulation 61. In the Construction working session, the Division cited 61.8.11.A.ii.D.ll. which states:
The program must be developed and implemented to assure adequate design, implementation, and maintenance of BMPs at construction sites within the MS4 to reduce pollutant discharges and protect water quality. The program must include the development and implementation of, at a minimum:
(f) Procedures for site inspection and enforcement of control measures.

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Douglas County: PAGE 53: Operator inspections should be considered site inspections, and allowed in accordance with the inspection frequency/scope/recordkeeping proposed concept, below. Language in other MS4 permits allow for the municipal compliance inspector to have the authority to place the burden of demonstrating compliance on the site operator, to the greatest extent possible. Inspections and recordkeeping reflected in the in the inspection frequency/scope/recordkeeping proposal should be allowed to be performed or completed by either the site operator's inspector or a municipal inspector, as outlined in the proposal.

It is unclear how the Division determined "operator inspections are not considered site inspections under this permit" from Regulation 61. In the Construction working session, the Division cited 61.8.11.A.ii.D.ll. which states: The program must be developed and implemented to assure adequate design, implementation, and maintenance of BMPs at construction sites within the MS4 to reduce pollutant discharges and protect water quality. The program must include the development and implementation of, at a minimum:
(f) Procedures for site inspection and enforcement of control measures.

Xcel Energy: I still think this is impracticable for MS4's to be able to inspect every construction site within their jurisdiction every 45 days plus have to do follow-up inspections. Operator inspections submitted to the MS4 for review should be considered site inspections. The MS4 could use this as a screening tool to determine what sites are priority areas or are considered high risk that warrant an onsite inspection or more frequent inspections. Sites that have demonstrated good practices or are considered low risk could be looked at less frequently.

Response 1: Operator Inspections
These comments have not been incorporated into the permit. Section 61.8(11)(a)(ii)(D)(II)(f) of Regulation 61 states that the program must include the development and implementation of "procedures for site inspection and enforcement of control measures." The division has determined that site inspections conducted by the construction site operator and only reviewed by the permittee do not constitute a site inspection conducted by the permittee. Permittees must conduct their own site inspections.

Comment 2: Revise the Inspection Frequency
Colorado Stormwater Council: The compounded effect of the draft permit language for inspection frequency, compliance inspection and related recordkeeping, while lacking a low-risk category, continues to make the draft requirements infeasible without significant additional staffing for many MS4s. The site inspection frequency/scope/recordkeeping proposal reflects a proactive program, while at the same time enabling needed flexibility while maintaining minimum standards and a clear expectation of the level of oversight.

The following proposed concept addresses site inspection frequency scope and corresponding recordkeeping and is intended to replace the current draft

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permit language, although many elements from the permit language remain in the proposal:

1. **Site Inspection**
   a. **Exclusions**
      1. Homeowner
      2. Staff vacancy
      3. Winter Conditions
   b. **Routine Site Inspection**
      1. Frequency: conduct at least every 45 days
      2. Scope: The inspection must assess the following:
         i. Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.
         ii. Pollutant sources: evaluate all pollutant sources to determine if an offsite discharge of pollutants has occurred.
         iii. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.
   c. **Reduced Site Inspection**
      Reduced site inspections must occur at a frequency dependent upon the type of site as indicated below in accordance with the scope outlined for each type. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.
      1. **Inactive**: sites that surface ground disturbance activities are completed and are pending growth for final stabilization or for sites where no construction activity has occurred since the last inspection.
         i. Frequency: conduct at least every 90 days
         ii. Scope: The inspection must assess the following:
            a. Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.
            b. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred.
      2. **Residential Subdivision:** residential home construction for which all road construction has been completed and Part I.E.3.a.vi(A) does not apply.
         i. Frequency: conduct at least every 60 days
         ii. Scope: The permittee has the option to utilize a screening inspection to fulfill this requirement. The inspection must assess the following:
            a. Control measures: Identify failure to implement control measures and inadequate control measures.

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b. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the applicable. construction activities as necessary to determine if an offsite discharge of pollutants has occurred.

3. **Stormwater Management Administrator Program**

4. **Indicator**: inspections, such as a drive-by or screening, are conducted to assess sites for indicators of noncompliance and do not fully assess the adequacy of BMPs and overall site management. They are a reduced scope inspection and can be used to extend the frequency required of any inspection type up to 90 days when all indicators evaluated determine control measures meet Good Engineering, Hydrologic and Pollution Control Practices as defined in I.B.1. and there is no evidence of discharges to the MS4. Types of Indicator inspections are defined below:

i. **Reconnaissance**:

a. Frequency: conduct every 14 days

b. Scope: Perimeter of the site must be evaluated for indicators of inadequate BMPs. The
inspection must assess the following:

1. Control measures: Identify failure to implement control measures and inadequate control measures.

2. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the applicable construction activities as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.

ii. **Operator Indicator Inspections**: when the required site inspection records completed by, or on behalf of, the site operator and are routinely submitted to the MS4 for review, the MS4 inspection site frequency may be reduced unless the MS4 identifies a failure to implement control measures or inadequate control measures during the reduced frequency inspection.

a. Frequency: conduct at least every 90 days as long as results of MS4 routine inspections assess control measures, pollutant sources and discharge points are maintained in operational condition with only routine maintenance identified. If an inspection indicates inadequate BMPs, failure to implement BMPs, or offsite discharges, a routine inspection frequency must resume.

b. Scope:

1. Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.

2. Pollutant sources: evaluate all pollutant sources to determine if an offsite discharge of pollutants has occurred.

3. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when

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feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.

5. **Compliance Inspection**:
   i. Frequency: A compliance inspection must occur within 14 days of the permittee documenting an offsite discharge or systematic failures of control measures unless corrections were made and observed by the inspector during the inspection.
   ii. Scope: A compliance inspection must verify corrections have been completed, or are actively being addressed, on sites the permittee documented an offsite discharge or systematic failures of control measures during the previous inspection. One of the following may be performed or required in lieu of a compliance inspection within 14 days of the permittee site inspection identifying that there is a failure to implement a control measure or an inadequate control measure:
      a. Routine inspection in accordance with I.E.3. (insert permit citation); or
      b. Reduced Indicator Inspection in accordance with I.E.3. (insert permit citation); or
      c. Operator Compliance Inspection: Require the operator to inspect and report that the control measure has been implemented or corrected as necessary to meet the requirements of Part I.E.3.

The compounded effect of the draft permit language for inspection frequency, compliance inspection and related recordkeeping, while lacking a low-risk category, continues to make the draft requirements infeasible without significant additional staffing for many MS4s. In addition, some level of flexibility is needed to divert resources temporarily, when necessary, to more focused enforcement and away from lower-risk sites to implement truly effective oversight. The site inspection frequency/scope/recordkeeping proposal reflects a proactive program, while at the same time enabling needed flexibility while maintaining minimum standards and a clear expectation of the level of oversight.

Douglas County: A prescribed inspection frequency in the permit has the potential to limit the effectiveness of the MS4 oversight program. Maintaining some level of flexibility in determining which sites are inspected at what frequency, during which stage of construction, while considering site specific factors as well as compliance history remains a significant concern of MS4s. For example, at times, it may be necessary to divert resources temporarily from low-risk sites to enable more focused enforcement to implement truly effective oversight. The following factors will be impacted with a prescribed inspection frequency:

1. Quantity vs. Quality: Implementing and maintaining a good compliance assurance inspection program is based on multiple components; it is not purely a numbers game. Quality of site inspections will decrease if we are forced into visiting sites on a prescribed frequency. The prescribed frequency is based on

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the false assumption that all sites and site operators are alike. Sites differ greatly in size, topography, soil conditions, proximity to sensitive areas, and general performance of the particular contractor on each site. Why should site operators that have demonstrated a strong understanding of the program be penalized with a required frequency vs. a continued working relationship with them if minor maintenance items should arise?

2. Random Inspections decrease; Deceptive Site Compliance will Increase: There is a lot of value in performing purely random quality assurance inspections on permitted sites. When a minimum inspection frequency is prescribed and implemented, the inspection schedules tend to be purely controlled by the last inspection date, and required date of the next inspection. Specifically, this automated type approach over time will mean that site operators will anticipate the inspector's next visit and will monitor this frequency and repair the sites as the inspection date grows closer and not maintain the site continuously. The randomness factor provides a stronger level of compliance and continuous water quality for the program. The prescriptive process noted in the proposed new permit misappropriates any available inspector time away that is necessary for performing random routine inspections.

3. Lost Flexibility: The prescribed inspection frequency will result in little or no time being available to focus on known areas of concern and recalcitrant violators. We will be wasting limited time and resources performing frequency required inspections on sites with good compliance history, rather than focusing our time in sensitive areas and with recalcitrant violators which can provide the benefit of changing behavior and improving water quality. Inspectors days will be dictated by frequency inspections vs. driving around and making continuous observations as to how the sites assigned to them are being maintained and stopping to inspect a site, if necessary, due to observed site conditions. A good construction sites inspection program must be dynamic and flexible in order to redirect time and resources when and where they will provide the most benefit.

4. Lost Compliance Assistance Opportunities: Douglas County Inspection Staff spends a fair amount of time engaging in compliance assistance for site operators and owners. Douglas County staff spends time on our sites with our operators identifying areas or activities that will benefit from our assistance. We spend time educating site operators and owners performing walk-throughs of their development projects. We engage all parties of the site, including but not limited to the developer, project manager, superintendent, and erosion control companies, associated with the site to point out common deficiencies and identify areas of improvement. These compliance assistance opportunities have shown that once there is an understanding of the expectations, there is an increased level of continued compliance. The requirement of a prescribed

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inspection frequency will result in a reduction of time available for compliance assistance activities due to the number of sites that will need to be inspected or followed up on each day.

It is our preference to eliminate the prescribed frequency from the permit altogether. However, as we are uncertain about the Division's willingness to eliminate inspection frequency from the permit, we offer the following alternative language, below.

The following proposed concept addresses site inspection frequency scope and corresponding recordkeeping and is intended to replace the current draft permit language, although many elements from the permit language remain in the proposal:

1. Site Inspection
    a. <u>Exclusions</u>
        1. Homeowner
        2. Staff vacancy
        3. Winter Conditions
    b. <u>Routine Site Inspection</u>
        1. Frequency: conduct at least every 45 days
        2. Scope: The inspection must assess the following:
            i. Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.
            ii. Pollutant sources: evaluate all pollutant sources to determine if an offsite discharge of pollutants has occurred.
            iii. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.
    c. <u>Reduced Site Inspection</u>

    Reduced site inspections must occur at a frequency dependent upon the type of site as indicated below in accordance with the scope outlined for each type. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the applicable construction site.

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1. Inactive: sites that surface ground disturbance activities are completed and are pending growth for final stabilization or for sites where no construction activity has occurred since the last inspection.
    i. Frequency: conduct at least every 90 days
    ii. Scope: The inspection must assess the following:
        a. Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.
        b. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred.
2. Residential Subdivision: residential home construction for which all road construction has been completed and Part I.E.3.a.vi(A) does not apply.
    i. Frequency: conduct at least every 60 days
    ii. Scope: The permittee has the option to utilize a screening inspection to fulfill this requirement. The inspection must assess the following:
        a. Control measures: Identify failure to implement control measures and inadequate control measures that are visible from the road or other means without conducting a complete routine inspection.
3. Stormwater Management Administrator Program
4. Operator Inspections: when the required site inspection records completed by, or on behalf of, the site operator and are routinely submitted to the MS4 for review, the MS4 inspection site frequency may be reduced unless the MS4 identifies a failure to implement control measures or inadequate control measures during the reduced frequency inspection.
        a. Frequency: conduct at least every 90 days as long as results of MS4 routine inspections assess control measures, pollutant sources and discharge points are maintained in operational condition with only routine maintenance identified. If an inspection indicates inadequate BMPs, failure to implement BMPs, or offsite discharges, a routine inspection frequency must resume.
        b. Scope:
            1. Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.
            2. Pollutant sources: evaluate all pollutant sources to determine if an offsite discharge of pollutants has occurred.

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3. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.

5. Compliance Inspection:
   i. Frequency: A compliance inspection must occur within 14 days of the permittee documenting an offsite discharge or systematic failures of control measures unless corrections were made and observed by the inspector during the inspection.
   ii. Scope: A compliance inspection must verify corrections have been completed on sites the permittee documented an offsite discharge or systematic failures of control measures during the previous inspection. One of the following may be performed or required in lieu of a compliance inspection within 14 days of the permittee site inspection identifying that there is a failure to implement a control measure or an inadequate control measure:
      a. Routine inspection in accordance with I.E.3. (insert permit citation); or
      b. Reduced Indicator Inspection in accordance with I.E.3. (insert permit citation); or
      c. Operator Compliance Inspection: Require the operator to inspect and report that the control measure has been implemented or corrected as necessary to meet the requirements of Part I.E.3.

Finally, it must be emphasized that the option to operate under an alternative approved program is essential. As the final permit is developed, we request the Division discuss this issue with Colorado Stormwater Council & Douglas County if there are any questions or alternatives that might be considered.

The compounded effect of the draft permit language for inspection frequency, compliance inspection and related recordkeeping, while lacking a low-risk category, continues to make the draft requirements infeasible without significant additional staffing for many MS4s. In addition, some level of flexibility is needed to divert resources temporarily, when necessary, to more focused enforcement and away from lower-risk sites to implement truly effective oversight. The site inspection frequency/scope/recordkeeping proposal reflects a proactive program, while at the same time enabling needed

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flexibility while maintaining minimum standards and a clear expectation of the level of oversight.

See DC Comments in bold and revision to inspection frequency from Colorado Stormwater Council The compounded effect of the draft permit language for inspection frequency, compliance inspection and related recordkeeping, while lacking a low-risk category, continues to make the draft requirements infeasible without significant additional staffing for many MS4s. In addition, some level of flexibility is needed to divert resources temporarily, when necessary, to more focused enforcement and away from lower-risk sites to implement truly effective oversight. The site inspection frequency/scope/recordkeeping proposal reflects a proactive program, while at the same time enabling needed flexibility while maintaining minimum standards and a clear expectation of the level of oversight.

The proposed construction site inspection frequency is another major concern for Douglas County. We established our program in 2003 (GESC) and updated DESC in 2013 and have made modifications to the program as the 2nd permit term was implemented. We have created minor but effective updates to increase efficiency and consistency to our program as implementation has continued throughout the years. Currently, as of May 2015, we estimate that with the proposed requirement of a minimum of one inspection every 45 days for every site, and once every 14 days for sites that are found to be out of compliance, given that we currently have over 1,000 active construction sites within our permit boundary (including single family homes), we will need to increase our staff by approximately 12 to 15 additional inspectors at an annual cost of about $1.2 to $1.6 million dollars. We believe that this is an unintentional consequence of the new permit requirements, but this potential additional cost would not meet the requirements of Governor Hickenlooper's Executive Order D 2011-005.

Response 2: Revise the Inspection Frequency
These comments have been partially been incorporated into the permit. Please see the response to an alternative inspection frequency below. The following response details the changes that were not incorporated into the permit:

- The exclusion for all staff vacancies was not incorporated into the permit. Excluding *all* inspections for a staff vacancy for potentially the entire duration of construction project is not appropriate. The "infeasibility exclusion" has been renamed to "staff vacancy" and moved to the reduced site inspection section.
- The residential subdivision comment for 60-day inspections was not incorporated into the permit. Alternatively, inspections are not required for individual lots in a residential development if the residential development has a permittee-approved site plan and is being inspected under one of the inspection frequencies in the permit.
- Two requirements to the indicator inspections frequency have been added. The requirement is that the permittee must have conducted a routine inspection of the construction site at least once before the permittee switches to the indicator inspection type of inspections. In addition, a routine inspection must be conducted after an indicator

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inspection results in a compliance inspection before the indicator inspection can be used again.

- The operator indicator inspection was not incorporated into the permit. These are not permittee inspections, but are permittee report reviews. Regulation 61 specifically requires the permittee to conduct inspections, not just reviews of operator reports.
- The frequency of a compliance inspection does not include "systematic failures of control measures" since this term is unclear. A "systematic failure" would need to be defined. In addition, "or are actively being addressed" was not incorporated into the scope of the inspection. If a control measure is being "actively addressed" 14 days after the offsite discharge or inadequate control measure was observed, then the site has already been out of compliance for 14 days. It is not appropriate to allow the construction site to be out of compliance indefinitely. Also, the operator compliance inspection report must include photographs.

Comment 3: Remove the Inspection Frequency
Colorado Stormwater Council: Please remove the prescribed inspection frequencies. A prescribed inspection frequency in the permit has the potential to limit the effectiveness of the MS4 oversight program. Maintaining some level of flexibility in determining which sites are inspected at what frequency, during which stage of construction, while considering site specific factors as well as compliance history remains a significant concern of MS4s. For example, at times, it may be necessary to divert resources temporarily from low-risk sites to enable more focused enforcement to implement truly effective oversight. It is our preference to eliminate the prescribed frequency from the permit altogether. However, as we are uncertain about the Division's willingness to eliminate inspection frequency from the permit, we offer the following alternative language, below. Finally, it must be emphasized that the option to operate under an alternative approved program, is essential. As the final permit is developed, we request the Division discuss this issue with Colorado Stormwater Council if there are any questions or alternatives that might be considered.

Town of Castle Rock: The Town requests the removal of construction inspection frequency/scope requirements or providing for alternative equivalent inspection programs that meet the overall intent of the permit terms and conditions.

5-2-1 Drainage Authority: The 521 is requesting different Site Inspection requirements, the proposed language in the inspection frequency portion of the permit is too specific and prescriptive. The 521 current Inspection program is efficient, and an effective. We do not agree in the prescriptive inspection frequency that is proposed in the second draft of the permit, nor do we agree with the documentation requirements. Our current methodology seems to be effective, and we would prefer to maintain our current methods. The 521 inspection model is described below:
a. Stormwater Pre-con Meeting – A stormwater pre-con meeting occurs before construction starting. The 521 takes this opportunity to talk about site design and BMP's that will be used during the construction phase.

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b. Initial Construction Inspection – Within 14 days of construction commencing, the 521 completes an inspection to insure all the BMPs are installed per the site design, and are in working order. This inspection follows the requirements of the Routine Inspection identified in draft permit.
c. Indicator Inspection – If the site is deemed in compliance during the Initial Construction Inspection, the site is then monitored by indicator inspections. Indicator Inspections are completed regularly at least every two weeks and often more frequently. If the control measures are being maintained and pollutants are not being discharged from the site, these indicator inspections continue. Inspection paperwork is minimal noting the date and site visited, and if the site is in compliance. If the site is not in compliance then Compliance Inspections or Audits are completed. Requiring these inspections are specific intervals does not allow the flexibility that jurisdictions need to adequately implement our programs.
d. Compliance Inspection and Audits - If during the initial construction inspection or during indicator inspections the inspector observes that the site is not in compliance or chronic issues, the site inspections are escalated to compliance inspections or audits. The compliance inspections review the site plans, control measures, and discharge points. The audits review all site documentation as well the items reviewed during the compliance inspections. Record keeping with these inspections mirror the requirements in the draft permit. Requiring these inspections with certain time frames of the indicator inspections does not allow the flexibility that jurisdictions need to adequately implement our programs.
e. Post Construction and Closeout Inspection – construction during this phase is complete, and a final site inspection is completed. During this site inspection the inspector ensures that final stormwater BMP's are installed.
f. The permit should focus on requiring MS4 to have a program that keeps site in compliance but does not spell out exactly how that must happen. Requirements for types of inspections or levels of inspection are reasonable but specific time lines go above and beyond. Specific time lines also places undue burden on permittees.

City of Aurora: Overall, we find the proposed changes to the construction sites program to be too specific and prescriptive. Our experience in developing a successful program does not support the reasoning of the division that increased inspection frequency which includes a document review means contractors will be compliant. An understanding of the program expectations and an open dialog between permittee and regulator have been found to be much more effective. Therefore, we recommend deleting mandatory inspection frequencies from the permit.

City of Arvada: Remove the 45-day Construction Sites inspection frequency and the 14-day compliance inspection requirement. A robust program is evident without requiring a maximum number of days between inspections.

Weld County: Weld County requests that these requirements be significantly reduced or removed to allow more flexibility to meet site specific needs and conditions. The Division's required inspections represents a burden on limited resources, including increased staffing, inspection vehicles and equipment, and

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inspector training. Weld County could potentially have active construction sites in U.S. Census-designated MS4 areas over 50 miles apart. Considerable staff time, and expense would be expended simply getting to active sites. The County should have flexibility to prioritize inspection on sites most likely to discharge based on weather conditions, proven contractor responsiveness, site conditions such as soil type, slopes, and site proximity to waters of the U.S. Weld County requests that the Division identify and appropriate the funding to pay for this prescriptive inspection schedule as intended by Executive Order D 2011-005 prohibiting state agencies from imposing unfunded mandates on local governments. The Division has not provided a Cost/Benefit analysis showing that their specified inspection frequency provides water quality benefits. No case study comparing exceedances with inspection frequency was provided. Each permittee should have the flexibility to create individualized programs which are proven more effective than a 'one size fits all', prescriptive program. The proposed changes in the permit include new requirements involving prescriptive construction site inspections and extensive recordkeeping, both of which will impose substantial financial and manpower burdens on local governments. The proposed requirements have not yet been shown to provide water quality improvements nor proven cost effective by a cost-benefit analysis as required by recent Colorado legislation (Senate Bill13-073). The draft permit also does not adhere to the intent of Colorado Governor Hickenlooper's Executive Order D 2011-005, prohibiting state agencies from imposing unfunded mandates on local governments. Furthermore, the proposed expansion of MS4 coverage to include County Growth Areas would not only impose substantial burdens on the counties, but is outside of the Division's legal authority to enforce.

Home Builders Association of Metro Denver: We applaud CDPHE for reducing the frequency of routine inspections from 30 to 45 days however; we still strongly believe that the MS4 should dictate the frequency of inspections. Perhaps you could add "….or other frequency of inspection negotiated with and approved by the Agency".

Housing & Building Association of Colorado Springs: We applaud CDPHE for reducing the frequency of routine inspections from 30 to 45 days; however, we still strongly believe that the MS4 agency should dictate the frequency of inspections. Please consider adding "….or other frequency of inspections negotiated with and approved by the Agency."

Response 3: Remove the Inspection Frequency
These comments have not been incorporated into the permit. Please see the fact sheet for more information on the importance of a minimum inspection frequency and the description of a general permit. Please see the division's response to the revisions in the inspection frequency and an alternative inspection frequency in the response to comments.

Comment 4: Support of Colorado Stormwater Council's Comments
Keep it Clean Partnership: Flexibility is needed to allow reduced inspection frequency/scope and/or documentation for lower-risk sites. Issue: Flexibility is needed to allow reduced inspection frequency/scope and/or documentation for

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lower-risk sites. Reduced Frequency/Scope Inspection I.E.3.a.vi.(F). Comment: KICP recognizes the need for minimum frequencies, scopes, follow-up inspections. We also believe our mature and fully implemented programs should be continued. To achieve both goals, we believe flexibility must be written into the permit. The compounded effect of the draft permit language for inspection frequency, compliance inspection and related recordkeeping, while lacking a low-risk category, continues to make the draft requirements infeasible without additional costs for some KICP Partners. The site inspection frequency, scope, and corresponding recordkeeping proposed by the Colorado Stormwater Council would adequately address our need to continue implementing existing successful programs.

Response 4: Support of Colorado Stormwater Council's Comments
The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 5: Alternative Inspection Frequencies
Town of Castle Rock: Construction Inspections:
The Town continues to be concerned with the inclusion of minimum construction inspection frequencies and scope requirements as presented in the draft permit. In addition to the comments provided by the Colorado Stormwater Council, the Town requests that allowance be made for permittees to submit alternative inspection programs that meet the overall intent of the permit in this area. Similar to the provisions given in Section I.E.2.a.v.(Y) for allowable discharges, there should be the opportunity for permittees to identify alternative programs that meet or exceed the desired results of the inspection frequency and scope requirements. For instance, the Town has seen positive results through implementation of a random neighborhood audit program on single-family residential construction. In 2013, of the 48 inspections completed, approximately 59% resulted in stop work orders. In 2014, the Town increased the number of sites audited to 281 of which only 13% received stop work orders under the same enforcement escalation policies. Under the new inspection frequency requirements, the Town would be limited in our ability to implement these types of effective programs that target specific priority areas using unique inspection protocols. However, given the necessary flexibility, permittees may work within the general framework as defined in the permit to develop specific and targeted protocols as viable alternatives that continue to meet the overall intent of the permit.

Response 5: Alternative Inspection Frequencies
This comment has not been incorporated into the permit. The permit already allows any permittee to request a permit modification to tailor a specific inspection frequency into Part III of the permit or request an individual permit.

Comment 6: Additional Exclusion or Reduced Inspection Frequency for Low Risk Sites
Weld County: Weld County requests an additional exclusion for sites that pose little to no discharge risk depending on site specific conditions such as soil type, perviousness, slope, surrounding areas, and proximity to waters of the U.S.

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El Paso County: Reduced frequency inspections should also include a provision to allow for sites where potential for offsite runoff to impact waters of the state is non-existent (significant distance between site and waters of the state depends on site conditions)

Response 6: Additional Exclusion for Low Risk Sites
This comment has not been incorporated into the permit. The suggested language is unclear. There is no definition of "little" discharge risk or "significant distance" between the site and state waters. Please see the division's response to the revised inspection frequency with the addition of indicator inspections.

Comment 7: Additional Exclusion for Safety Access Issues
Xcel Energy: Site Inspection Frequency Exclusion Xcel Energy recommends that the Division provide an inspection exclusion for sites with safety access issues (i.e. flood, fire/burn areas, etc). This should also be considered in the renewal of the General Permit for Stormwater Discharges Associated with Construction Activities.

El Paso County: Infeasibility exclusion should also include a safety provision to allow for sites that may not be accessible for inspection due to safety concerns.

Response 7: Additional Exclusion for Safety Access Issues
This comment has not been incorporated into the permit. The suggested language is unclear. There is no definition of how to determine the entire flood or fire/burn area or "not accessible." Permittees are encouraged to contact the division to discuss inspecting construction sites during emergency situations.

Comment 8: Exclusion for Individual Homes
Home Builders Association of Metro Denver: 3. a. vi. (B) Site Inspection Frequency Exclusion. Some MS4's still want to enforce on homes that are clearly removed from a permittee's permit by meeting the conditions as outlined in this section. Please add to the permit or the permit fact sheet clarity so that it is clear that this is meant for the MS4 to enforce onto the homeowner or the HOA for not achieving stabilization of sold and lots with Certificate of Occupancy status.

Response 8: Exclusion for Individual Homes
This comment has not been incorporated into the permit. Under the Construction Sites Program, the permit excludes completed individual homes from the MS4s inspection and enforcement. The completed individual homes, however, are still covered by the permittees illicit discharge detection and elimination.

Comment 9: Update Reference in the Routine Inspection Frequency
Colorado Stormwater Council: Please refer to inspection frequency/scope/recordkeeping proposal for overall proposal. No specific

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changes to this section are requested. Please update the citation to Part I.E.3.a.vi. Editorial note, Site Inspection citation is Part I.E.2.a.vi of the permit.

Douglas County: Please refer to inspection frequency/scope/recordkeeping proposal for overall proposal. No specific changes to this section are requested. Please update the citation to Part I.E.3.a.vi.

Response 9: Update Reference in the Routine Inspection Frequency
These comments have been incorporated into the permit.

Comment 10: Require MS4s to Give Notice to Construction Operators
Home Builders Association of Metro Denver: We recommend increasing flexibility to the MS4's. In doing so, CDPHE could dictate to the MS4's to require advanced notice of inspection (24 hours) for efficiency and to avoid unnecessary delays of ensuring that the home builder storm water manager and/or contractor will be at the site during the inspection.

Housing & Building Association of Colorado Springs: We recommend increasing flexibility to the MS4s. In doing so, CDPHE could recommend the MS4 permit holder to give advanced notice of inspection (24 hours) in order to ensure that the home builder and stormwater manager will be at the site during the inspection.

Response 10: Require MS4s to Give Notice to Construction Operators
These comments have not been incorporated into the permit. The permittee has the flexibility to give or not give notice of site inspections.

Comment 11: Require that Permittees Wait to Inspect After a Storm
Home Builders Association of Metro Denver: The timing of the inspection is also critical. We suggest that an inspection planned immediately after a significant runoff event be postponed to give the builder the time to make the necessary adjustments and maintenance of its control measures (BMPs) so that the inspection reflects a normal circumstance rather than an upset (from significant runoff) situation.

Housing & Building Association of Colorado Springs: We suggest that inspections planned immediately after a significant runoff event be postponed to give the builder the time to make the necessary adjustments and maintenance of its control measures (BMPs) so that the inspection reflects a normal circumstance rather than an upset (from significant runoff) situation.

Response 11: Require that Permittees Wait to Inspect After a Storm
This comment has not been incorporated into the permit. The permittee has the flexibility to plan inspections after storms.

Comment 12: Remove the Term "Identify"
Colorado Stormwater Council: Please remove "identify." Please refer to inspection frequency/scope/recordkeeping proposal. An evaluation cannot occur without identification so this is redundant.

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Douglas County: Please remove "identify" and "all". Please refer to inspection frequency/scope/recordkeeping proposal. An evaluation cannot occur without identification so this is redundant.

Response 12: Remove the Term "Identify"
These comments have been incorporated into the permit.

Comment 13: Remove "Trash"
Colorado Stormwater Council: Please remove verbiage specifically calling out trash. "All pollutant sources" is sufficiently inclusive and addresses this pollutant source.

Douglas County: Please remove verbiage specifically calling out trash. "Pollutant sources" is sufficiently inclusive and addresses this pollutant source.

Xcel Energy: Pollutant sources: Identify and evaluate all pollutant sources, including trash, to determine if an offsite discharge of pollutants has occurred. Why is the Division focusing on Trash? Not that trash should be ignored but it seems strange to single it out. Recommend removing trash since the language states "all potential sources" which would include trash.

Response 13: Remove "Trash"
These comments have not been incorporated into the permit. Trash is significant pollutant source on a construction site. In addition, the division received a comment on the first draft of the permit to add more requirements for trash in the permit.

Comment 14: Remove "Construction Dewatering Discharges" and "Concrete Washout Areas"
Colorado Stormwater Council: Please remove verbiage specifically calling out construction dewatering discharges and concrete washout areas. Please refer to inspection frequency/scope/recordkeeping proposal. "All pollutant sources" is sufficiently inclusive and addresses these two pollutant sources. Construction Dewatering is already included in J. Definitions.

Douglas County: Please remove verbiage specifically calling out construction dewatering discharges and concrete washout areas. Please refer to inspection frequency/scope/recordkeeping proposal. "All pollutant sources" is sufficiently inclusive and addresses these two pollutant sources. Construction Dewatering is already included in J. Definitions.

Response 14: Remove "Construction Dewatering Discharges" and "Concrete Washout Areas"
These comments have not been incorporated into the permit. Construction dewatering discharges and concrete washout areas are significant sources of pollutants on a construction site. This requirement, however, has been revised to include only dewatering discharges not covered under the COG070000 general permit.

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Comment 15: Change "to State Waters" to "to the MS4"
Colorado Stormwater Council: Please change to the following proposed concept: Identify discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site. Regulation 61 and I.E.3. are clear that the permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4, not state waters from applicable construction activities.

Douglas County: Please change to the following proposed concept: Identify discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site. Regulation 61 and I.E.3. are clear that the permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4, not state waters from applicable construction activities.

Response 15: Change "to State Waters" to "to the MS4"
These comments have been incorporated into the permit

Comment 16: Define "Adequate Control Measure"
Home Builders Association of Metro Denver: Please clearly define an adequate control measure. It is our interpretation that this is a measure designed for a specific drainage area or type of activity (i.e. construction). The concern is it could be interpreted as a measure that has been not functioning adequately. We believe that if these measures are routinely identified on inspections and repairs are completed; then the permit is being met.

Response 16: Define "Adequate Control Measure"
This comment has not been incorporated into the permit. Inadequate control measure is defined in Part I.B of the permit. The permittee has the flexibility to determine if a control measure is adequate in the field during a site inspection.

Comment 17: Applicable Construction Activity
Xcel Energy: Routine Inspection at least every 45 days for applicable construction sites. Does "applicable" pertain to all construction activities that are subject to a CDPS Stormwater Construction Permit or would it also include projects that are not? For example, some MS4's permit projects that do not necessarily need a state permit (i.e. 10,000 sq.ft, 50 cubic yards, any size project that has bore pits, etc). Would the MS4 be required to inspect every site it permits or just sites that are subject to the CDPS Stormwater Construction Permit.

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Response 17: Applicable Construction Activity
This comment has not been incorporated into the permit. As explained in the fact sheet, the Construction General Permit and this permit are two different general permits on two different permit renewal schedules. Information in one general permit might not be applicable to information in the other general permit. Also, please see the fact sheet for information on the iterative nature of the MEP standard. Please consult the definition of an applicable construction activity in this permit.

vii. Enforcement Response

Comment 1: Define "Chronic Violations/Violators"
City and County of Denver: Define chronic violations/violators page 19 of the CDPS General Permit Section 3.a.vii.A.1, this comes up in several sections, but this is a good example.

Colorado Association of Home Builders: In achieving the goal of the Clean Water Act, there must be room in the Permit to use common sense alternatives, some designed in the field, to minimize and mitigate impacts from construction. The rules need to have as much flexibility as possible to allow for adherence in situations that don't fit the standard mold. Even when a contractor employs the best design, planning and practices, unforeseen results occur and accidents happen. Therefore, working with our practitioners in identifying solutions and correcting problems should always be preferable to levying fines. In order to maximize the results of the efforts and expenditures of our members as well as CDPHE we ask that consideration is given to provide the most clarity, consistency and predictability in the rules and in the enforcement thereof. We understand that CDPHE must address issues with chronic and recalcitrant operators, however, we also strongly encourage CDPHE to consider the scope of investment, requests for compliance assistance, appropriate intent and the time necessary to address repair and maintenance issues soon after significant storm water events occur as well.

Response 1: Define "Chronic Violations/Violators"
These comments have not been incorporated into the permit. The permittee has the flexibility to develop a standard operating procedure or policy on how to determine a chronic violation or violator.

Comment 2: Define "Routine Maintenance"
Home Builders Association of Metro Denver: We also have concerns that typical routine maintenance items on a construction site (such as BMPs that are not at the time in operational condition due to subcontractor vandalism, but that are routinely inspected and routinely repaired) will be classified as violations with escalation in place. This can put a contractor who routinely repairs and inspects items at an economic disadvantage from one who does not routinely conduct corrective actions; if both have BMPs in disrepair at any given inspection or any given sequential inspections.

This is another example where routine maintenance versus actual construction activity needs to be clearly defined. In this way, the MS4 won't cite a builder

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when there is a need for routine maintenance that is scheduled versus an actual construction activity. We'd ask CDPHE to consider and add the following to the definition of routine maintenance; examples of routine maintenance type of activities include, but are not limited to: Street cleaning, Inlet protection maintenance, Wattle maintenance, Silt fence maintenance, Berm maintenance, Straw bale maintenance, Sediment basin maintenance, Water quality pond maintenance, Erosion blanket maintenance, Seeding maintenance, Vegetated buffer maintenance, Vehicle tracking maintenance, Concrete washout maintenance, Gutter bags maintenance, Surface roughening maintenance, Check dam maintenance, Line of disturbance fencing maintenance, Rill maintenance

Response 2: Define "Routine Maintenance"
This comment has not been incorporated into the permit. Control measures requiring routine maintenance is defined in Part I.B of the permit. The permittee has the flexibility to determine if a control measure needs routine maintenance during a site inspection.

viii. Training
No comments were received on this section of the permit.

ix. For Applicable Construction Activities that Overlap Permit Areas of One MS4 Permittee
No comments were received on this section of the permit.

b. **Recordkeeping**

i. Exclusions
Comment 1: Remove Recordkeeping Requirement for Excluded Construction Activities
Weld County: Weld County concurs with Colorado Stormwater Council comment to remove this recordkeeping requirement. Excluded construction activities should not require documentation. Spending time compiling paperwork for excluded projects is not an efficient use of MS4 resources and does not provide environmental benefit.

Response 1: Remove Recordkeeping Requirement for Excluded Construction Activities
This comment was not incorporated into the permit. The exclusions section is new to the general permit and records of the use of the new exclusions must be maintained by the permittee. The use of these exclusions will be evaluated during the next permit term. Permittees have the flexibility to NOT use the exclusions if the recordkeeping is too burdensome.

ii. Regulatory Mechanism
No comments were received on this section of the permit.

iii. Regulatory Mechanism Exemptions
No comments were received on this section of the permit.

iv. Control Measure Requirements

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No comments were received on this section of the permit.

v. Site Plans

No comments were received on this section of the permit.

vi. Site Inspection

Comment 1: Revise the Recordkeeping Requirements

Colorado Stormwater Council:

2. **Recordkeeping**
    - a. Site Inspection
        - 1. Routine: Maintain inspection records with the following minimum information for all inspections conducted to meet the minimum inspection frequency:
            - i. Inspection date
            - ii. Name of inspector
            - iii. Project identification
            - iv. Inspection results including offsite discharge, failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance
            - v. Type of inspection
        - 2. Reduced: Maintain inspection records with the following minimum information for all inspections conducted to meet the minimum inspection frequency:
            - i. Inspection date
            - ii. Name of inspector
            - iii. Project identification
            - iv. Type of inspection
                - a. Inactive: control measure routine maintenance, failure or inadequate; discharge points
                - b. Residential: control measure failure or inadequate, discharge points
                - c. Stormwater Management System Administrator: control measure failure or inadequate; discharge points
                - d. Indicator
                - 1. Reconnaissance: Evidence of offsite discharges, inadequate control measures
                - 2. Operator: control measure routine maintenance, failure or inadequate; discharge points
        - 3. Compliance: Maintain inspection records with the following minimum information for all inspections conducted
            - i. Inspection date
            - ii. Name of inspector
            - iii. Project identification
            - iv. Inspection results including any corrections that have not been resolved from the previous inspection
            - v. Type of inspection

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The compounded effect of the draft permit language for inspection frequency, compliance inspection and related recordkeeping, while lacking a low-risk category, continues to make the draft requirements infeasible without significant additional staffing for many MS4s. The site inspection frequency/scope/recordkeeping proposal reflects a proactive program, while at the same time enabling needed flexibility while maintaining minimum standards and a clear expectation of the level of oversight.

Douglas County: Recordkeeping

a. Site Inspection
    1. Routine: Maintain inspection records with the following minimum information for all inspections conducted to meet the minimum inspection frequency:
        i. Inspection date
        ii. Name of inspector
        iii. Project identification
        iv. Inspection results including offsite discharge, failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance
        v. Type of inspection
    2. Reduced: Maintain inspection records with the following minimum information for all inspections conducted to meet the minimum inspection frequency:
        i. Inspection date
        ii. Name of inspector
        iii. Project identification
        iv. Type of inspection
            a. Inactive: control measure routine maintenance, failure or inadequate; discharge points
            b. Residential: control measure failure or inadequate, discharge points
            c. Stormwater Management System Administrator: control measure failure or inadequate; discharge points
            d. Operator: control measure routine maintenance, failure or inadequate; discharge points
    3. Compliance: Maintain inspection records with the following minimum information for all inspections conducted
        i. Inspection date
        ii. Name of inspector
        iii. Project identification
        iv. Inspection results including any corrections that have not been resolved from the previous inspection
        v. Type of inspection

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Response 1: Revise the Recordkeeping Requirements
These comments have been partially incorporated into the permit. The following have not been incorporated into the permit:

- All types of inspections: Did not remove "the location of" inspection results. An important part of inspection recordkeeping is documenting the location of the significant issues, especially offsite discharges, failed control measures, or inadequate control measures, found on the inspection, especially on large sites. The permittee, however, does not have to list the location of control measures needing maintenance.
- Reduced Site Inspection: The inspection results were added as a requirement. These are still site inspections, just conducted less frequently. In addition, staff vacancy has been added to the type of inspection to document why the inspection was conducted less frequently
- Operator Compliance Inspection: Requirements for the report were added.

Comment 2: Remove the Requirement of Documenting the Location of Inadequate Control Measures
Colorado Stormwater Council: Please refer to inspection frequency/scope/recordkeeping proposal. Please remove "location of conditions" Noting the "location of conditions" is a level of detail not needed for assessment of control measures, pollutant sources or discharge points.

Douglas County: Please refer to inspection frequency/scope/recordkeeping proposal. See DC Comments in bold and revision to inspection frequency from Colorado Stormwater Council Please remove "location of conditions" * Noting the "location of conditions" is a level of detail not needed for assessment of control measures, pollutant sources or discharge points.

City of Arvada: Remove the requirement that the location of every best management practice (BMP) that has failed, is inadequate, or needs maintenance must be included on an inspection report. On large sites, this requirement would be overly burdensome.

Response 2: Remove the Requirement of Documenting the Location of Inadequate Control Measures
These comments have not been incorporated into the permit. An important part of inspection recordkeeping is documenting the location of the significant issues, especially offsite discharges, failed control measures, or inadequate control measures, found on the inspection, especially on large sites. The permittee, however, does not have to list the location of control measures needing maintenance.

Comment 3: Remove the Requirement to Document How Previously Unresolved Inspection Findings Were Resolved
Colorado Stormwater Council: Please remove "how the issues were resolved if resolved during inspection. Documentation of "how the issues were resolved" is not relevant to determining if something was resolved or enforcing if something

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was not resolved. Please refer to inspection frequency/scope/recordkeeping proposal. The requirements for site inspection recordkeeping will provide necessary documentation to determine if previously unresolved inspection findings were resolved. It is not necessary to add additional documentation to determine this. In addition, reduced documentation is an integral part of reduced inspections. Recordkeeping as required in the draft permit will negate the allowed reduced inspection.

Douglas County: Please remove “how the issues were resolved if resolved during inspection. Documentation of "how the issues were resolved” is not relevant to determining if something was resolved or enforcing if something was not resolved. The requirements for site inspection recordkeeping will provide necessary documentation to determine if previously unresolved inspection findings were resolved. It is not necessary to add additional documentation to determine this. In addition, reduced documentation is an integral part of reduced inspections. Recordkeeping as required in the draft permit will negate the allowed reduced inspection.

City of Arvada: Remove the requirement that each inspection report must include “how previously unresolved inspection findings were resolved.” On large sites, this requirement would be overly burdensome.

Response 3: Remove the Requirement to Document How Previously Unresolved Inspection Findings Were Resolved
These comments were incorporated into the permit.

Comment 4: Remove the Inspection Recordkeeping Requirements for Staff Vacancy
Colorado Stormwater Council: Please remove. The infeasibility exclusion is provided to accommodate staff vacancy. If a staff position is vacant, or staff is on vacation, an inspection would not be completed so tracking the Site Infeasibility Exclusion as an inspection that did not occur as part of the required inspection record does not make sense.

Douglas County: Please remove. The infeasibility exclusion is provided to accommodate staff vacancy. If a staff position is vacant, or staff is on vacation, an inspection would not be completed so tracking the Site Infeasibility Exclusion as an inspection that did not occur as part of the required inspection record does not make sense.

Response 4: Remove the Inspection Recordkeeping Requirements for Staff Vacancy
These comments have been partially incorporated into the permit. There is no exclusion from any and all inspections for a staff vacancy, see above response. Construction sites must still be inspected even if there is a staff vacancy. The permit allows for less frequent inspections due to staff vacancy and those inspections must still be documented.

Comment 5: Revise Operator Compliance Inspection

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Colorado Stormwater Council: Please change to the following proposed concept: Require the operator to inspect and report that the control measure has been implemented or corrected as necessary to meet the requirements of Part I.E.3. The operator report must include photographs of the new/adequate control measure. Inspections by Operators are only allowed to fulfill requirements for Reduced Frequency/Scope Compliance Inspections I.E.3.a.vi(G)(2)(b) to verify corrections were made for previously identified failure to implement control measures or inadequate control measures. Therefore, the requirement here must be modified to reflect requirements of I.E.3.a.vi(G)(2)(b). As currently written, the requirement appears to mean operator would be submitting an inspection report, not verifying corrections were made.

Douglas County: Please change to the following proposed concept: Require the operator to inspect and report that the control measure has been implemented or corrected as necessary to meet the requirements of Part I.E.3. The operator report must include photographs of the new/adequate control measure. Inspections by Operators are only allowed to fulfill requirements for Reduced Frequency/Scope Compliance Inspections I.E.3.a.vi(G)(2)(b) to verify corrections were made for previously identified failure to implement control measures or inadequate control measures. Therefore, the requirement here must be modified to reflect requirements of I.E.3.a.vi(G)(2)(b). As currently written, the requirement appears to mean operator would be submitting an inspection report, not verifying corrections were made.

Response 5: Revise Operator Compliance Inspection
These comments have been incorporated into the permit.

Comment 6: Define the Extent of Discharge Points
Xcel Energy: Discharge points: Identify discharge points to state waters, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. How far beyond the limits construction/disturbance are you expecting the MS4 inspectors to go? Some sites may rarely have a surface discharge except in large events.

Response 6: Define the Extent of Discharge Points
This comment has not been incorporated into the permit. The permit now requires that permittees “evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred.” The permittee has the flexibility to determine the area beyond the limits of the construction site “as necessary.”

vii. Enforcement Response
No comments were received on this section of the permit.

viii. Training
Comment 1: Include a Requirement for Recordkeeping for Training Construction Operators
Colorado Stormwater Council: Please change to the following proposed concept: Mechanism or documentation used to inform operators of applicable

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construction requirements. This requirement doesn't reflect the Training Requirement I.E.3.a.viii. to provide information to operators of applicable construction activities as necessary to ensure that each operator is aware of the permittee's applicable requirements, including controlling pollutants such as trash.

Douglas County: Please change to the following proposed concept: Mechanism or documentation used to inform operators of applicable construction requirements. This requirement doesn't reflect the Training Requirement I.E.3.a.viii. to provide information to operators of applicable construction activities as necessary to ensure that each operator is aware of the permittee's applicable requirements, including controlling pollutants such as trash.

Response 1: Include a Requirement for Recordkeeping for Training Construction Operators
These comments have been incorporated into the permit.

Comment 2: Trash
Xcel Energy: Training Again, why is the Division focusing on Trash? Not that trash should be ignored but it seems strange to single it out.

Response 2: Trash
Please see the response above concerning trash.

Comment 3: Recordkeeping for Training
Xcel Energy: Training: Name and title of each individual trained, date of training, the type of training and a list of topics covered. How is the MS4 going to track this information if they are utilizing their website or a flyer for training?

Response 3: Recordkeeping for Training
This comment has been incorporated into the permit. See above comment and response.

ix. **For Applicable Construction Activities that Overlap Permit Areas of One MS4 Permittee**
No comments were received on this section of the permit.

c. **Program Description Document**

i. **Exclusions**
No comments were received on this section of the permit.

ii. **Regulatory Mechanism**
No comments were received on this section of the permit.

iii. **Regulatory Mechanism Exemptions**
No comments were received on this section of the permit.

iv. **Control Measure Requirements**
No comments were received on this section of the permit.

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v. Site Plans
No comments were received on this section of the permit.

vi. Site Inspection
No comments were received on this section of the permit.

vii. Enforcement Response
Comment 1: Define Routine Maintenance
Housing & Building Association of Colorado Springs: This section is another example where the difference between routine maintenance and construction activity needs to be clearly defined. By defining this, a builder will not be cited by MS4 for construction activity when routine maintenance is scheduled. · Examples of routine maintenance items: Street cleaning, Inlet protection, wattle, silt fence, berm, straw bale, sediment basin, water quality pond, erosion blanket, seeding, vegetated buffer, vehicle tracking, concrete washout, gutter bags, surface roughening, check dam, line of disturbance fencing, rill maintenance.

Response 1: Define Routine Maintenance
This comment has not been incorporated into the permit. Please see Part I.B. for discussion on control measures needing routine maintenance and inadequate control measures. Permittees have the flexibility to further define these terms.

Comment 2: Remove Requirements for Site Plan Maintenance
Colorado Stormwater Council: Please remove the requirement to have enforcement response for site plans not maintained and modified in accordance with the permittee's requirements. As discussed in the fact sheet, there is not an expectation to verify maintenance of the site plan. Since the permittee is not required to verify site plan maintenance, having enforcement procedures is not necessary.

Douglas County: Please remove the requirement to have enforcement response for site plans not maintained and modified in accordance with the permittee's requirements. As discussed in the fact sheet, there is not an expectation to verify maintenance of the site plan. Since the permittee is not required to verify site plan maintenance, having enforcement procedures is not necessary.

Response 2: Remove Requirements for Site Plan Maintenance
These comments have been incorporated into the permit.

viii. Training
No comments were received on this section of the permit.

ix. For Applicable Construction Activities that Overlap Permit Areas of One MS4 Permittee
No comments were received on this section of the permit.

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4. **Post-Construction Stormwater Management in New Development and Redevelopment**

Comment 1: Add Discussion on Stabilization and Larger Common Plan of Development
Colorado Stormwater Council: Please include a discussion in the fact sheet or permit regarding the stabilization of a site and how stabilization changes the larger common plan area for the purposes of the permit requirements. After a lot has been sold, Land Disturbance has occurred and the site has been stabilized, it is no longer part of the Larger Common Plan of Development or Sale and should not be considered for the purposes of post-construction requirements. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.

Douglas County: Please include a discussion in the fact sheet or permit regarding the stabilization of a site and how stabilization changes the larger common plan area for the purposes of the permit requirements. After a lot has been sold, Land Disturbance has occurred and the site has been stabilized, it is no longer part of the Larger Common Plan of Development or Sale and should not be considered for the purposes of post-construction requirements. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.

Response 1: Add Discussion on Stabilization and Larger Common Plan of Development
This comment has not been incorporated into the permit or fact sheet. Stabilization is not related to the requirements of post-construction control measures. If the larger common plan of development or sale disturbs one acre or more, then a post-construction control measure is required. Post construction control measures are required for disturbances of one acre or more regardless of whether portions of the larger common plan of development or sale have been stabilized previous to the current project or not. It should be noted that final stabilization in a larger common plan of development or sale has effects on the requirements in the construction sites program.

Comment 2: Change the Definition of Land Disturbance for Post-Construction
Colorado Stormwater Council: Please change the definition of land disturbance for the purposes of the post construction section of the permit, considering the following proposed concept: “Applicable development projects” are those that result in land disturbance of 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, unless excluded below. For the purpose of post construction, land disturbance is where land disturbing activities change the existing ground cover (vegetative and/or non-vegetative) that results in more than 1000 square feet of imperviousness. At a minimum, projects that do not impact water quality if a control measure is not implemented should not be considered applicable development projects.

Please change the definition of new development, considering the following proposed concept:

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"New Development" is a land disturbance that results in the creation of impervious area on a site that was not previously developed, unless excluded below.
The current definition of land disturbance is applicable to construction activity, but does not pertain to post construction, for which design standards are based upon the final disposition of the site. The purpose of the post construction program is to address water quality impacts. Projects that do not result in water quality impacts should not be applicable development projects.

Redefining the term land disturbance in the permit allows a logical approach to addressing post construction concerns. A definition of "disturb" should reflect the final site condition. Using this as a trigger for post construction requirements rather than the traditional "disturbance" definition used in construction would allow projects like trails or utility projects that return the land back to its pre-existing condition to be automatically excluded from the requirements. This change in the definition for the purpose of the post construction program also ensures activities that do not actually disturb land are not included in the requirement for post construction controls, such as temporary staging areas and stockpile areas. If an area is not actually disturbed, the opportunity to install a permanent control measure does not exist.

The definition for "New Development" is too broad and may allow for misinterpretation. The definition states that "New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision on an area that has not been previously developed. The definition, as written, could result in requiring post construction control measures for structural projects, such as a new roof for a structure, with concurrent grading activities over an acre of disturbance, such as re-grading adjacent pervious areas to address drainage issues. Further, a land subdivision with concurrent overlot grading activities with no added imperviousness could result in a requirement for a post construction control measure. We assert that development should be tied to potential impact, or the addition or creation of impervious area, not to structural modifications or land divisions, which is a planning process.

Douglas County: Please change the definition of land disturbance for the purposes of the post construction section of the permit, considering the following proposed concept: "Applicable development projects" are those that result in land disturbance of 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, unless excluded below. For the purpose of post construction, land disturbance is where land disturbing activities change the existing ground cover (vegetative and/or non-vegetative) that results in more than 1000 square feet of imperviousness. At a minimum, projects that do not impact water quality if a control measure is not implemented should not be considered applicable development projects. Please change the definition of new development, considering the following proposed concept: "New Development" is a land disturbance that results in the creation of impervious area on a site that was not previously developed, unless excluded below. The current definition of land disturbance is applicable to construction activity, but does not pertain to post construction, for which design standards are based upon the final disposition of the site. The purpose of the post construction program is to address water quality

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impacts. Projects that do not result in water quality impacts should not be applicable development projects. Redefining the term land disturbance in the permit allows a logical approach to addressing post construction concerns. A definition of “disturb” should reflect the final site condition. Using this as a trigger for post construction requirements rather than the traditional "disturbance" definition used in construction would allow projects like trails or utility projects that return the land back to its pre-existing condition to be automatically excluded from the requirements. This change in the definition for the purpose of the post construction program also ensures activities that do not actually disturb land are not included in the requirement for post construction controls, such as temporary staging areas and stockpile areas. If an area is not actually disturbed, the opportunity to install a permanent control measure does not exist. Please provide additional clarification in the fact sheet that the 1000 square feet of new impervious area is in addition to the larger than 1 acre of disturbance requirement within the definition of land disturbance. The definition for “New Development” is too broad and may allow for misinterpretation. The definition states that “New Development” means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision on an area that has not been previously developed. The definition, as written, could result in requiring post construction control measures for structural projects, such as a new roof for a structure, with concurrent grading activities over an acre of disturbance, such as re-grading adjacent pervious areas to address drainage issues. Further, a land subdivision with concurrent overlot grading activities with no added imperviousness could result in a requirement for a post construction control measure. We assert that development should be tied to potential impact, or the addition or creation of impervious area, not to structural modifications or land divisions, which is a planning process.

City of Greeley: The key concerns, which are detailed in CSC comments, for the City of Greeley are as follows: Post-Construction: The trigger for a post-construction BMP requirement should be based on the project's water quality impact versus land disturbance.

Keep it Clean Partnership: The trigger for implementing a post-construction BMP should be based on the project’s water quality impact versus land disturbance.

City of Glendale: The topics considered “high-level” issues for the City include the following: Post Construction for New Development and Redevelopment- Automatic exclusions for projects with no water quality impacts, Source reduction design standard, Equivalent area design standard

City of Federal Heights: The topics considered “high-level” issues for the City include the following: Post Construction for New Development and Redevelopment- Automatic exclusions for projects with no water quality impacts, Constrained New Development Sites

Xcel Energy: Applicable Development Projects Xcel Energy recommends that applicable projects be based on what the overall complete impervious area is as opposed to the construction disturbance. You may have many projects that ultimately are disturbing more than 1 acre but may not have any impervious area when complete

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or very little impervious area and no impact to water quality. These types of projects should not be held to the same standard as projects that would impact water quality

Southeast Metro Stormwater Authority: Part I.E.4. Applicability. The definition of "Applicable development projects" is those that result in land disturbance of 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, unless excluded below. While we understand the origin of the definition, it fails to address development and redevelopment from an impact perspective. Basing post construction requirements for control measures on land disturbance rather than imperviousness added or the footprint misses tying required treatment to potential impact. If the definition cannot be updated to relate the two, please include additional exemptions, as discussed below that would remove activities potentially resulting in post construction control measures simply based on land disturbance (and a resulting impact during construction only, not post construction). Ideally, the definition for "Applicable development projects" would be revised. Example language might read "Applicable development projects" are those resulting in land disturbance of 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, unless excluded below, with the addition or creation of Impervious Area (including removal and replacement), to include the expansion of a building or replacement of a structure. Routine Maintenance or exterior/interior building remodeling is not included.

Response 2: Change the Definition of Land Disturbance for Post-Construction
These comments have been partially incorporated into the permit. "More than 1,000 people per square mile" has been changed to "less than 1,000 people per square mile." The division agrees that there are development situations where it is not practicable to implement control measures to reduce the discharge of pollutants to the MS4. The division found that the approach taken in the permit of excluding certain types of projects is a practical way of drafting the permit in a manner that avoids the requirement to implement control measures in certain circumstances. "The division considered the suggested revision for projects with "***no*** water quality impacts" and found that the language is unclear. The division considered the suggested revision that land disturbance be redefined to be more narrow and focus on imperviousness and found that the definition as is remains appropriate in the context of urban new development and redevelopment. The amount of impervious surfaces on the final project is only one factor that would help determine if the site would have any negative water quality impacts and impervious areas in urbanized environments have pollutant potential such as fertilizer runoff, pet waste, and trash, and provide important opportunities to integrate control measures into a development.

The division has significantly expanded and revised the excluded projects through the permit development process based on input and comments received. As new information becomes available additional refinements can be made and projects can be added through the permit modification process and at permit renewal.

Please note that trails (non-residential and non-commercial infiltration projects exclusion) and utility projects (utility exclusion) are already excluded. Please also note that interior building remodeling and maintaining the exterior of a building would

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typically not disturb land. Please also note that maintenance activities are not covered under this section of the permit—only new development and redevelopment.

Comment 3: Change the Definition of New Development to Reflect Imperviousness
Southeast Metro Stormwater Authority: Part I.E.4. Applicability. The definition for "New Development" is too broad and may allow for interpretation that we assume to be unintended. The definition states that "New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision on an area that has not been previously developed. The definition, as written, could result in requiring post construction control measures for structural projects, such as a new roof for a structure, with concurrent grading activities over an acre of disturbance, such as re-grading adjacent pervious areas to address drainage issues without any added impervious area. Further, a land subdivision with concurrent overlot grading activities with no added imperviousness could result in a post construction control measure. Again, we assert that development should be tied to potential impact, or the addition or creation of impervious area that generates stormwater runoff requiring treatment, not to structural modifications or land subdivisions. Please consider updating the definition to reflect the creation of impervious area. Including the phrases structural development, construction or installation of a building or structure, and land subdivision in the definition is too broad. We recommend a definition that is based on impact, such as "New Development" is a land disturbance that results in the creation of impervious area on a site that was not previously developed, unless excluded below.

Town of Castle Rock: The Town requests minimum thresholds for applicability under post-construction based on added impervious area and not just disturbance limits.

In addition to the comments made by the CSC regarding applicable development projects, the Town submits that it would not be practicable for existing developments, nor the MS4 permittee to enforce such a program, to implement post-construction control measures on projects such as landscaping that disturbs greater than one acre but has a minimal net change of impervious area or other projects that do not traditionally require a construction or building permit. The Town therefore requests that a minimum impervious area threshold also be applied to redevelopment.

Response 3: Change the Definition of New Development to Reflect Imperviousness
This comment has not been incorporated into the permit. As stated above, the definition of applicable development projects is based on land disturbance and not imperviousness as outlined in EPA's Phase II Rule and Regulation 61.

Comment 4: Change the Definition of Redevelopment
Southeast Metro Stormwater Authority: Part I.E.4. Applicability. Please consider including our comments provided above in the "New Development" definition within the "Redevelopment" definition (specifically, references to structural improvements which are not appropriate in the Development section). In addition, there is no threshold for small additions in impervious area. For example, a redevelopment site with concurrent grading activities that includes the addition of a fifty square foot generator foundation would result in post construction control measures. Some consideration should be made for minimal additions in impervious area, either in the

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"Redevelopment" definition or as exclusion. We recommend including an exclusion that addresses these minimal additions in impervious area or the addition of a specific design standard that contemplates appropriate treatment for minimal areas like encouraging disconnected impervious area strategies. Please consider updating the definition to "Redevelopment" is land development to sites that are substantially developed with 35% of greater existing imperviousness, with the addition or creation of impervious area (including removal and replacement), to include the expansion of a building or replacement of a structure. Routine Maintenance or exterior/interior building remodeling and replacement of a hard surface that is not part of a routine maintenance activity, is not included.

Response 4: Change the Definition of Redevelopment
This comment has been partially incorporated into the permit. Interior and exterior remodeling of a building typically does not include any land disturbance. In addition, maintenance activities are already excluded from the definition of development and redevelopment. Replacement of a hard surface (such as a building) might be considered redevelopment. The division encourages permittees to discuss particular projects as they come up during the permit term.

a. **The following requirements apply**

Comment 1: Support of CSC's comments
City of Federal Heights: The topics considered "high-level" issues for the City include the following: Post Construction for New Development and Redevelopment-Automatic exclusions for projects with no water quality impacts, Constrained New Development Sites

Response 1: Support of CSC's comments
Please see the division's response to CSC's comments.

i. **Excluded Projects**

Comment 1: Add an Additional Exclusion for Commercial Development
Douglas County: Attached please find our comments for COR-090000 Second Public Notice Version, along with the Regional Water Quality Evaluation (including the three previous studies, all of which have been submitted to the Division previously, for a completeness review) by Muller Engineering Company for Douglas County and SEMSWA. We are requesting that this study be reviewed and utilized as the framework for an additional exclusion in regards to post construction BMPs. Also, please note that we have included comments specific to interaction between the Division and the State Engineer's Office relative to SB15-212.

Douglas County and SEMSWA have retained the professional services of Muller Engineering Company to conduct a study on commercial developments similar to the one submitted and approved for Large Lot Single Family Projects. This study evaluates the relationship of infiltration and the impacts to regional water quality; the evaluation has been titled Regional Water Quality Evaluation by Muller Engineering Company, June 5, 2015. This evaluation has been completed and we have included it as a formal comment (See Post

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Construction comments). We are requesting that the Division utilize it as the framework for an additional exclusion for water quality purposes within commercial developments. We are currently reviewing our criteria manuals to evaluate what changes might need to be incorporated to address this study's findings. If the Division is unable to consider this study as a comment that could be incorporated into the permit language prior to permit issuance, we are requesting that the Division allow for intermittent or midterm permit modifications. We feel that the ability to have midterm or intermittent permit modifications is important to encourage continued scientific ingenuity through studies and updated criteria. Allowing permit modifications only at permit renewal times could limit capabilities of our industry that otherwise could demonstrate cost-effective ingenuity.

Response 1: Add an Additional Exclusion for Commercial Development
This comment was not incorporated into the permit. The division reviewed the study and found it to be informative? However the findings have not been formulated into a recommendation for permit language for an additional exclusion. The division can continue to work with Douglas County and SWESEA on the concept. The division agrees that new information is a basis for a permit modification which is an important tool for revising permit requirements during a permit term.

Comment 2: Add Additional Exclusions
Keep it Clean Partnership: There are other project types that should be included in the exclusions. Issue: There are other project types that should be included in the exclusions. Please ensure that the following are included in excluded projects: projects with land disturbance to undeveloped land that will retain the site characteristics that existed prior to disturbance, gravel road, trails, stream restoration, stream bank stabilization, emergency projects, and noise attenuating structures.

Response 2: Add Additional Exclusions
This comment has been partially incorporated into the permit. The following suggestions were not included in the exclusions--gravel roads, emergency projects, and noise attenuating structures. Note that these project types would only be considered applicable development projects if they result in land disturbance of greater than or equal to one acre.

Comment 3: Add an Additional Exclusion for Projects that Add Minimal Impervious Area
Southeast Metro Stormwater Authority: Part I.4.a.i Excluded Projects. Please include an additional exclusion addressing the addition of minimal impervious areas. This comment can be further addressed with the addition of a design standard to address these minimal additions in impervious area (see additional comments below). Please consider including the exemption as follows: Excluded Impervious Area Additions: Projects that add or create a minimal amount of impervious, when one of the following criteria is met:

a) The project adds less than 1,000 square feet of total imperviousness. This exemption is intended to exclude projects where minimal amounts of

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imperviousness is created or added, and where the design and implementation of a control measure is not practicable. An example might be the addition of bus pads (that are part of a larger common plan of development or sale) or a generator pad (that is part of a larger common plan of development or sale), or;

b) The project adds less than 5,000 square feet of impervious area and 60% of what the calculated WQCV for the added or created impervious area infiltrates, evaporates, or evapotranspirates, prior to being discharged from the development site. This exemption is intended to exclude projects that cannot meet the Runoff Reduction Standard by infiltrating the entire project imperviousness, but can infiltrate the minimal amount of impervious area that is created or added. An example might be a patio addition where there is opportunity to infiltrate the additional impervious area, but not the entire development (where grading is occurring that exceeds an acre). As this does not exclude treatment for the creation of added area, this proposed language can also be added to Section 4.iv.C, Runoff Reduction Standard. In that case, the proposed language for this Section would read: Runoff Reduction Standard: The control measure(s) is designed to infiltrate into the ground where site geology permits, evaporate, or evapotranspire a quantity of water equal to 60% of what the calculated WQCV would be if all impervious area for the applicable development project discharged without infiltration. If the impervious area for the applicable development is 5,000 square feet or less, the control measure(s) is designed to infiltrate into the ground where site geology permits, evaporate, or evapotranspire a quantity of water equal to 60% of what the calculated WQCV would be for the created or added impervious area for the applicable development project discharged without infiltration. This base design standard can be met through practices such as green infrastructure. “Green infrastructure” generally refers to control measures that use or mimic natural processes to infiltrate, evapotranspire, or reuse stormwater on the site where it is generated. Green infrastructure can be used in place of or in addition to low impact development principles, or;

c) The added or created impervious area is no more than 10% of the development or redevelopment project, not to exceed 5,000 square feet, where the permittee has determined that it is not practicable to capture runoff from the added or created impervious area due to technical constraints or hardships. This exemption is intended to exclude projects that add a minimal amount of imperviousness and may be considered a constrained site. An example project might be the redevelopment of a parking space into a bank kiosk, for a project that is part of a larger common plan of development or sale. The opportunity for control measures would not be practicable. As this exclusion is specific to constrained sites, the proposed language can also be added to Section 4.a.iv.F.4, Constrained Development and Redevelopment Sites (Section heading title revised, as proposed). In this case, the proposed language would read: The added or created impervious area is no more than 10% of the development or redevelopment project, not to exceed 5,000 square feet, where the permittee has determined that it is not practicable to capture runoff from the added or created impervious area due to technical constraints or hardship.

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Please note that part b) of the proposed language can be omitted if the comment regarding Non-Residential and Non-Commercial Infiltration (above) is accepted by the Division.

Response 3: Add an Additional Exclusion for Projects that Add Minimal Impervious Area
These comments have not been incorporated into the permit. The division incorporated other comments and excluded stream bank stabilization projects, trails, and projects on undeveloped land that will remain undeveloped after the project. The division has not considered all types of development or redevelopment projects that only add a minimal amount of impervious area. Permittees may submit a permit modification to request this exclusion. In order for the division to evaluate such a modification request it should include sufficient information, such as Douglas County's Residential Large Lot Study, for each specific type of development and redevelopment project within the proposed exclusion. Note that these project types would only be considered applicable development projects if they result in land disturbance of greater than or equal to one acre.

Comment 4: Support for Roadway Maintenance and Large Lot Single Family Projects
Douglas County: The successful collaborative and iterative process to determine reasonable and viable requirements for post-construction water quality BMPs for roadway maintenance and expansion and Large Lot Single Family Projects. We feel the process has resulted in the necessary water quality protection, and helps to bring underperforming MS4 programs into compliance while not penalizing robust programs.

Response 4: Support for Roadway Maintenance and Large Lot Single Family Projects
The division acknowledges this comment. No changes to the permit or fact sheet are necessary.

Comment 5: Add an Additional Exclusion for Unpaved Roadway Construction and Maintenance
Colorado Stormwater Council: Please add Unpaved Roadway Construction and Maintenance to the list of exclusions. There are exclusions for pavement management and existing roadways, but exclusions must also apply to unpaved roads.

Douglas County: Please add Unpaved Roadway Construction and Maintenance to the list of exclusions. There are exclusions for pavement management and existing roadways, but exclusions must also apply to unpaved roads.

Weld County: Weld County concurs with the CSC comment to add Rural Roadway Construction and Maintenance to the list of exclusions. There are exclusions for pavement management and existing roadways, but exclusions must also apply to gravel roads in rural areas. Please refer to rural roadways exclusion in Regulation 72.

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Response 5: Add an Additional Exclusion for Unpaved Roadway Construction and Maintenance
These comments have not been incorporated into the permit. The original exclusions for roadways included in the previous drafts were developed as a result of previous stakeholder processes which did not address unpaved roadways. Unpaved roadways are sources of pollutants that are appropriately addressed in the permit.

Comment 6: Make the Design Flow Requirement Consistent
El Paso County: Included in this entire section 4 are several references to design flow to be used for the purposes of complying with the section. In some instances the term "80th percentile stormwater runoff event" and in other cases, "2 –year, 1-hour peak run off" flow is used. The two design parameters are not necessarily equivalent. Revise section to include a consistent design flow event. We recommend the use of 2-year, 1-hour flow as the 80th percentile stormwater runoff event (i.e. ≥0.6") is based on front range data and may not be applicable to all areas of the state.

Housing and Building Association of Colorado Springs: We encourage CDPHE to use a precipitation event. · The 4th sentence refers to the 80th percentile event. Later in the document, reference is made to the 2-year, 1-hour event. We ask that the CDPHE be mindful of which designed event we are trying to meet and be consistent in that language as these two are not necessarily equivalent (though they may be close in some regions). We recommend revising the section to include a consistent design flow event that would be equivalent to or less than the 80 percentile stormwater runoff event. Since this will vary throughout the state, we suggest that these be determined) by the MS4 permit holders.

Home Builders Association of Metro Denver: Non-Residential and Non-Commercial Infiltration Conditions. We encourage CDPHE to use a precipitation event. Specifically in the 4th sentence you refer to the 80th percentile event. Later in the document reference is made to the 2 yr. 1 hour event. We ask that the CDPHE be consistent and mindful of what event we are trying to meet and be consistent. Revise section to include a consistent design flow event. We recommend the use of a 2-year, 1-hour flow as the 80th percentile stormwater runoff event (i.e.>0.6") that is based on Front Range data and may not be applicable to all areas of the state. As an alternative, we recommend using the precipitation amount (i.e. 6 inches for the Front Range and TBD for the other portions of the state) as the design event since it is much easier to measure precipitation.

5-2-1 Drainage Authority: Also 521 is concerned with the blanket standard on TSS of 30 mg/L in stormwater effluent. The 521 request that pollutant removal technologies be required to remove the expected annual 80% TSS.

Response 6: Make the Design Flow Requirement Consistent

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These comments have been partially incorporated into the permit. The 2-year, 1-hour flow has been replaced with the 80th percentile stormwater runoff event.

Comment 7: Add an Additional Exclusion for Projects with Land Disturbance to Undeveloped Land that will Remain Undeveloped Following Disturbance
Colorado Stormwater Council: If land disturbance is not redefined for the purpose of post construction requirements, as proposed above, please add the following proposed concept: Automatic Exclusion: Projects with land disturbance to undeveloped land that will remain undeveloped following disturbance and will be reclaimed. Some projects can be assumed to have no water quality impact and should be considered automatic exclusions with no hydrologic study required to show that the project has no impact. Projects that will remain undeveloped following disturbance can be assumed to have no impact. Although Part I.E.4.a.i.F. Non-Residential and Non-Commercial Infiltration Conditions address sites that will infiltrate stormwater, there are cases where any site, not specific to non-residential or non-commercial, will be disturbed and remain undeveloped following the disturbance. In these cases, a return to the previous condition should be sufficient.

Douglas County: If land disturbance is not redefined for the purpose of post construction requirements, as proposed above, please add the following proposed concept: Automatic Exclusion: Projects with land disturbance to undeveloped land that will remain undeveloped following disturbance and will be reclaimed. Some projects can be assumed to have no water quality impact and should be considered automatic exclusions with no hydrologic study required to show that the project has no impact. Projects that will remain undeveloped following disturbance can be assumed to have no impact. Although Part I.E.4.a.i.F. Non-Residential and Non-Commercial Infiltration Conditions address sites that will infiltrate stormwater, there are cases where any site, not specific to non-residential or non-commercial, will be disturbed and remain undeveloped following the disturbance. In these cases, a return to the previous condition should be sufficient.

Xcel Energy: Excluded projects. There does not seem to be an exclusion for sites that will be restored to pre-construction condition i.e. an area with no increased impervious area or an open dirt field that was used as a staging area (exceeding the 1 acre threshold) but is not paved but returned to the land owner in its pre-existing condition. These types of situations should be excluded with no hydrologic study required to show that the project has no impact.

Response 7: Add an Additional Exclusion for Projects with Land Disturbance to Undeveloped Land that will Remain Undeveloped Following Disturbance
These comments have been incorporated into the permit.

Comment 8: Add an Additional Exclusion for Stream Stabilization Projects
Colorado Stormwater Council: Please add the following proposed concept: Automatic Exclusion: Stream stabilization projects. Some projects can be assumed to have no water quality impact and should be considered automatic

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exclusions with no hydrologic study required to show that the project has no impact. Stream stabilization projects may result in impervious areas added via drop structures, for example. There is currently no exclusion for this activity and installing a control measure listed in the permit is not feasible, or necessary.

Douglas County: Please add the following proposed concept: Automatic Exclusion: Stream stabilization projects. Some projects can be assumed to have no water quality impact and should be considered automatic exclusions with no hydrologic study required to show that the project has no impact. Stream stabilization projects may result in impervious areas added via drop structures; for example. There is currently no exclusion for this activity and installing a control measure listed in the permit is not feasible, or necessary.

Xcel Energy: Another exclusion should include stream bank stabilization projects.

Southeast Metro Stormwater Authority: Part I.4.a.i Excluded Projects. Please include an additional exclusion to address stream restoration, reclamation, stabilization, maintenance, and associated projects. Please consider including the exemption as follows: Excluded Channel Projects: Projects with the primary purpose of stabilizing, restoring, or reclaiming a channel, or associated maintenance; constructing flood control or water quality facilities, or associated maintenance.

Response 8: Add an Additional Exclusion for Stream Stabilization Projects
These comments have been incorporated into the permit. Please note that this section of the permit does not apply to maintenance projects, whether planned or emergency.

Comment 9: Add an Additional Exclusion for Trails
Colorado Stormwater Council: Please add the following proposed concept: Automatic Exclusion: Trails. Some projects can be assumed to have no water quality impact and should be considered automatic exclusions with no hydrologic study required to show that the project has no impact. Although Part I.E.4.a.i.F. Non-Residential and Non-Commercial Infiltration Conditions address sites that will infiltrate stormwater, there are cases where a trail may meet this requirement for all but a small portion. Portions that are unable to meet the infiltration exclusion will most likely not meet it because a trail is crossing a creek or is adjacent to a creek within a box culvert, for example. Treating the stormwater from this type of project is infeasible and a trail used by bikes and pedestrians would have a low pollutant loading potential.

Douglas County: Please add the following proposed concept: Automatic Exclusion: Trails Some projects can be assumed to have no water quality impact and should be considered automatic exclusions with no hydrologic study required to show that the project has no impact. Although Part I.E.4.a.i.F. Non-Residential and Non-Commercial Infiltration Conditions address sites that will infiltrate stormwater, there are cases where a trail may meet this requirement for all but a small portion. Portions that are unable to meet the

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infiltration exclusion will most likely not meet it because a trail is crossing a creek or is adjacent to a creek within a box culvert, for example. Treating the stormwater from this type of project is infeasible and a trail used by bikes and pedestrians would have a low pollutant loading potential.

Response 9: Add an Additional Exclusion for Trails
These comments have been incorporated into the permit.

Comment 10: Add an Exclusion for Emergency Maintenance of Infrastructure
Colorado Stormwater Council: Automatic Exclusion: Construction Projects required to restore damages to existing infrastructure resulting from a disaster such as a wildfire, flood, tornado, or other occurrence that maintain the original line and grade, hydraulic capacity, or original purpose of the facility. There are times when emergency work is required to restore damaged infrastructure because of a natural disaster. These operations may require changes to the infrastructure to repair, replace in-kind, or for the betterment of the structure, for example. This work occurs without going through a planning process and rarely provides an opportunity to add post construction control measures.

Douglas County: Please add the following proposed concept: Automatic Exclusion: Construction Projects required to restore damages to existing infrastructure resulting from a disaster such as a wildfire, flood, tornado, or other occurrence that maintain the original line and grade, hydraulic capacity, or original purpose of the facility. There are times when emergency work is required to restore damaged infrastructure because of a natural disaster. These operations may require changes to the infrastructure to repair, replace in-kind, or for the betterment of the structure, for example. This work occurs without going through a planning process and rarely provides an opportunity to add post construction control measures.

Xcel Energy: Consider excluding construction projects required to restore damages to existing infrastructure resulting from a disaster such as a wildfire, flood, tornado, or other occurrence that maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

Southeast Metro Stormwater Authority: Part I.4.a.i Excluded Projects. Please include an additional exclusion to address emergency operations. We recommend the language in Regulation 72: Emergency operations related to flood, fire, or other force majeure that maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

Response 10: Add an Exclusion for Emergency Maintenance of Infrastructure
These comments have not been incorporated into the permit. This section of the permit only applies to new development and redevelopment projects, not maintenance projects. This section of the permit does not apply to maintenance projects, whether planned or emergency projects.

Comment 11: Add an Exclusion for Above Ground Utilities

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Southeast Metro Stormwater Authority: Underground Utilities. Please consider revising the name to Utilities (not limited to underground). We believe that there are overhead utilities that result in a minimal increase in impervious area (such as overhead electric poles) that should be included. This can be addressed with the revision of this exclusion or by the addition of any exclusion that addresses minor increases in impervious area or the addition of a design standard that contemplates appropriate treatment for minimal areas (Previous comment #3). This section also references utilities under roadways or other paved areas that return the surface to the same condition. Please update the section such that any disturbance that returns the ground to its original condition, pervious or impervious, as acceptable. Control Regulation 72 utilizes the following language: land disturbance to undeveloped land that will remain undeveloped following disturbance. Please consider revising this section to read: Utilities: Activities for installation or maintenance of utilities or infrastructure that does not permanently alter the terrain, ground cover, or drainage patterns from those present prior to the project, including land disturbance to undeveloped land that will remain undeveloped following land disturbance. This exclusion includes, but is not limited to, projects to install, replace, or maintain utilities that return the surface to the same condition.

Xcel Energy: Activities for installation or maintenance of underground utilities or infrastructure that does not permanently alter the terrain, ground cover, or drainage patterns from those present prior to the project. This exclusion includes, but is not limited to, projects to install, replace, or maintain utilities under roadways or other paved areas that return the surface to the same condition. Xcel energy appreciates the State including this exclusion for underground utilities and infrastructure. However, Xcel Energy would benefit from a point of clarification for aboveground linear utilities. For example: transmission and distribution line towers/poles could possibly have a foundation that would "permanently alter the terrain, ground cover." Adding a new cabinet or transformer above grade technically would too. It would be absurd to provide post-construction water quality for every new cabinet or tower foundation. Further relief for liner construction with minimal above-grade appurtenances seems warranted. Aboveground utilities would not include exclusions for substations or gas regulator stations subject to permanent water quality controls.

Xcel Energy also recommends changing the last sentence to read "This exclusion includes, but is not limited to, projects to install, replace, or maintain utilities under roadways or other paved or unpaved areas that return the surface to the same condition.

Weld County: Weld County concurs with CSC proposed concept of including above ground utilities that do not add additional impervious areas.

Response 11: Add an Exclusion for Above Ground Utilities
These comments have been incorporated into the permit.

Comment 12: Remove 20% Cap for Large Lot Development Exclusion

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Colorado Stormwater Council: Please change the requirement to allow for when a lot demonstrates a higher percentage of impervious; remove the cap of 20 percent. If a study can prove the expected soil and vegetation conditions are suitable for infiltration/filtration of the WQCV for a typical site, there is no reason to not allow a larger percentage of impervious area.

Douglas County: Please change the requirement to allow for when a lot demonstrates a higher percentage of impervious; remove the cap of 20 percent. If a study can prove the expected soil and vegetation conditions are suitable for infiltration/filtration of the WQCV for a typical site, there is no reason to not allow al larger percentage of impervious area.

Southeast Metro Stormwater Authority: Large Lot Single Family Projects, includes a limitation for maximum lot imperviousness of 20 percent when utilizing a study specific to the watershed. Please consider updating this section to remove reference to a maximum lot imperviousness. This comment can be satisfied by deleting the maximum total lot impervious covered under this exclusion shall be 20 percent and rely on the specific study to determine the maximum.

Weld County: Propose removing the 20% threshold. If a site specific study shows 100% infiltration, then a threshold is arbitrary.

Response 12: Remove 20% Cap for Large Lot Development Exclusion
These comments have not been incorporated into the permit. The division is tasked with setting a clear MEP standard in the permit. The division has only evaluated one study on runoff from large lots development and determined that 20% imperviousness was appropriate. The division has not evaluated any study with more than 20% of impervious surface on the site. Permittees can submit a modification request with a study that evaluates large lot development with more than 20% impervious surface on the site. The division can then evaluate the study and determine if a permit modification is necessary.

Comment 13: Add an Additional Exclusion for Parking Areas
Colorado Stormwater Council: Please remove the qualifier that parking areas or access to parking areas are not considered roadways. The exclusion is for pavement management, not roadways only. Please add the following exclusion conditions to parking and access to parking areas. “Areas primarily used for parking or access to parking can be considered “roadways” so long as the following criteria is met:
1) The project is for maintenance purposes and
2) does not result in increased impervious area and
3) the infrastructure must not substantially change.
Parking lanes on roadways are common and excluding those, while including through lanes and turn lanes, does not make technical sense. Parking or access to parking areas are maintained, rehabilitated, and reconstructed with the common purpose of providing additional years of service life. So long as these projects do not add additional impervious surface area and infrastructure is not changed, these projects are, and should be similarly treated as, “roadways.”

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By not excluding these projects, a trigger of additional infrastructure to not only capture but convey stormwater flows can significantly increase the scope, cost, and footprint of a typical maintenance project. A higher level of engineering, review, and oversight would also be required sending a typical project with an overall construction length of 3-7 days into a significantly extended time line of months. In addition, parking area requirements are often dictated by local codes. If rehabilitating/repaving/maintaining a parking area requires adding post-construction water quality controls, in many cases this could lead to a reduction in parking spaces, the number of which were originally dictated and approved by the local codes and requirements

Colorado Stormwater Council—Non-Standard Committee: Excluded Projects-Pavement Management- Please remove the qualifier that parking areas or access to parking areas are not considered roadways. The exclusion is for pavement management, not roadways only. Please add the following exclusion conditions to parking and access to parking areas: Areas primarily used for parking or access to parking can be considered "roadways" so long as the following criteria is met:
1) The project is for maintenance purposes and
2) does not result in increased impervious area and
3) the infrastructure must not substantially change.
Since most, if not all non-standards, 1) do have large parking areas at schools, parks or public facilities of some sort requiring significant parking capacity, 2) pavement management of these parking areas is critical to user safety it is important to be able to maintain these areas, and 3) frequently these sites are constrained, it is important to be able to maintain these areas without the additional requirement of adding control measures.

Douglas County: Please remove the qualifier that parking areas or access to parking areas are not considered roadways. The exclusion is for pavement management, not roadways only. Please add the following exclusion conditions to parking and access to parking areas. “Areas primarily used for parking or access to parking can be considered “roadways” so long as the following criteria is met:
1) The project is for maintenance purposes and
2) does not result in increased impervious area and
3) the infrastructure must not substantially change. Parking or access to parking areas are maintained, rehabilitated, and reconstructed with the common purpose of providing additional years of service life. So long as these projects do not add additional impervious surface area and infrastructure is not changed, these projects are, and should be similarly treated as, “roadways.” By not excluding these projects, a trigger of additional infrastructure to not only capture but convey stormwater flows can significantly increase the scope, cost, and footprint of a typical maintenance project. A higher level of engineering, review, and oversight would also be required sending a typical project with an overall construction length of 3-7 days into a significantly extended time line of months. In addition, parking area requirements are often dictated by local codes. If rehabilitating/repaving/maintaining a parking area requires adding post-construction water quality controls, in many cases this

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could lead to a reduction in parking spaces, the number of which were originally dictated and approved by the local codes and requirements.

Xcel Energy: “Pavement Management Projects”
Projects, or portions of projects, for the rehabilitation, maintenance, and reconstruction of pavement. Areas primarily used for parking or access to parking are not roadways. "Roadway Management Projects" is a more appropriate heading. It is important to be clear in the difference between "pavement" and "roadways" and how this exclusion applies. For example, areas primarily used for parking are not "roadways," but are they "pavement management projects?" Are parking lot rehabilitation projects excluded or included? Parking area requirements are often dictated by local codes. If rehabilitating/repaving/ maintaining a parking area requires adding post-construction water quality controls, in many cases this could lead to a reduction in parking spaces, the number of which were originally dictated by local codes and requirements. It seems that this exclusion should apply to parking areas if there is not a net increase in impervious area.

The MS4 permit should be very clear on how parking areas are to be treated (or not). This would be best as a separate section of the permit to eliminate confusion between roadways and parking areas.

Southeast Metro Stormwater Authority: Part I.E.4.a.i.A Pavement Management Projects. We appreciate the inclusion of “Pavement Management Projects” as allowed excluded projects. However, the definition for “Roadways” excludes areas used for parking or access to parking. Please consider including all facets of a roadway project, regardless of the intended use. Parking lanes on roadways are common, and excluding those while including through lanes and turn lanes, does not make technical sense. Please delete Areas primarily used for parking or access to parking are not roadways.

Pavement Management Projects. “Pavement Management Projects” do not appear to take into account areas that are used primarily for parking. Pavement management of parking lots with land disturbances greater than an acre is common. The impact of these types of maintenance activities should be no different from “Roadway” maintenance activities. In our experience, it is not feasible to add a post construction control measure for the routine maintenance of a parking lot, and the challenges are often monumental (including if the grading even allows for a structural control measure, availability of a storm sewer to tie into, and meaningfulness of the control measure). The result would be routine maintenance that occurs in several smaller impracticable phases or pavement surfaces that were allowed to further degrade to avoid meeting this requirement. With the deletion of Areas primarily used for parking or access to parking are not roadways, this comment would be satisfied.

Response 13: Add an Additional Exclusion for Parking Areas
These comments have not been incorporated into the permit. Please note that this section of the permit does not apply to parking area maintenance projects. Also note the sentence in the permit related to parking areas not being

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roadway. The division believes that additional data and potentially additional public notice/input would be needed to fully evaluate this requested change. Permittees may request a permit modification to add this exclusion. The modification request should include sufficient information for the division to fully evaluate the request, such as Douglas County's Residential Large Lot Study.

Comment 14: Remove the term "Redevelopment" from the Excluded Roadway Redevelopment Exclusion
Southeast Metro Stormwater Authority: Excluded Roadway Redevelopment. We appreciate the inclusion of Excluded Roadway projects. Please consider not referencing these specific projects as "Redevelopment". Since linear projects are so unique, there is potential for the definition of "Redevelopment" to confuse matters related to roadway projects.

Response 14: Remove the term "Redevelopment" from the Excluded Roadway Redevelopment Exclusion
This comment has not been incorporated into the permit. This exclusion is only for redevelopment projects and does not apply to new roadway projects.

Comment 15: Remove References to "Paved Width"
Southeast Metro Stormwater Authority: Excluded Roadway Redevelopment. Sections 1 and 2 reference the addition of paved width. Please consider removing paved width and replacing the term with impervious area or hard surface. This would allow the inclusion of curb and gutter, and other associated roadway improvements.

Response 15: Remove References to "Paved Width"
This comment has not been incorporated into the permit. The division has not evaluated all impervious area or hard surface associated with the roadway for this exclusion. The division believes that additional data and potentially additional public notice/input would be needed to fully evaluate this requested change. Permittees may request a permit modification to add this exclusion. The modification request should include sufficient information for the division to fully evaluate the request, such as Douglas County's Residential Large Lot Study.

Comment 16: How to Determine Paved Area
Xcel Energy: Excluded Roadway Redevelopment. The project does not add more than 8.25 feet of paved width at any location to the existing roadway. Would a 10-foot wide sidewalk, trail or bike path along an existing road be included or excluded? Many standard path widths are greater than 8.25 feet, especially if they are multi-use and/or serve a function for maintenance access.

Response 16: How to Determine Paved Area
This comment has not been incorporated into the permit. Permittees should contact the division for compliance assistance regarding determining the "paved area" of an individual roadway project.

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Comment 17: Add "On Average" to the Excluded Roadway Areas Exclusion
Colorado Stormwater Council: Please change to the following proposed concept: Excluded Existing Roadway Areas: Redevelopment projects for existing roadways, and only the area of the existing roadway is excluded from the requirements of an applicable development project when the project does not increase the width by two times or more, on average, of the original roadway area. The entire project is not excluded from being considered an applicable development project for this exclusion. The area of the project that is part of the added new roadway area is still an applicable development project. Include "on average" since projects might more than double in a minimal portion of the project area, while far less than doubling for a majority of the project. For example, the addition of an auxiliary lane for a minimal portion of the project area would be greater than double the original width, while the balance of the project is far less than double. Adding "on average" allows the intent of the exclusion to be addressed.

Douglas County: Please change to the following proposed concept: Excluded Existing Roadway Areas: Redevelopment projects for existing roadways, and only the area of the existing roadway is excluded from the requirements of an applicable development project when the project does not increase the width by two times or more, on average, of the original roadway area. The entire project is not excluded from being considered an applicable development project for this exclusion. The area of the project that is part of the added new roadway area is still an applicable development project. Include "on average" since projects might more than double in a minimal portion of the project area, while far less than doubling for a majority of the project. For example, the addition of an auxiliary lane for a minimal portion of the project area would be greater than double the original width, while the balance of the project is far less than double. Adding "on average" allows the intent of the exclusion to be addressed.

Southeast Metro Stormwater Authority: Excluded Existing Roadway. In the Excluded Existing Roadway Areas section, please remove reference to at any location. Specifically, projects might more than double in a minimal portion of the project, while far less than doubling in a majority of the project. Please update the section to read that the area of the existing roadway is excluded from the requirements of an applicable development project when the project does not increase the width by two times or more, on average, of the original roadway area.

Response 17: Add "On Average" to the Excluded Roadway Areas Exclusion
These comments have been incorporated into the permit.

Comment 18: Define Drainage Patterns for Aboveground and Underground Utilities Exemption
City and County of Denver: Define drainage patterns prior to a project in reference to page 23 of the CDPS General Permit Section 4.a.D.

Response 18: Define Drainage Patterns for Aboveground and Underground Utilities Exemption

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This comment has not been incorporated into the permit. Permittees have the flexibility to implement the Aboveground and Underground Utilities Exemption.

Comment 19: Add an Additional Exclusion to the Non-Residential and Non-Commercial Infiltration Conditions Exclusion
Colorado Stormwater Council: Please change the sentence that starts with "Specifically," to the following proposed concept: Specifically, the 80th percentile event must be infiltrated and not discharged as concentrated flow. Except, the permittee may exclude up to 20% of the applicable development project area when the permittee has determined that it is not practicable to route impervious areas to pervious areas thus infiltrating portions of the site. In addition, the permittee must also determine that the implementation of a separate control measure for that portion of the site is not practicable.
It is not always possible to route all impervious areas to pervious areas for infiltration. For example, in the case of a park with one parking space or a curb return, it would be difficult to route the impervious of the parking spot to the pervious area of the park for infiltration. For this reason, we suggest allowing for a small area that may be directly connected to impervious area.

Douglas County: Please change the sentence that starts with "Specifically," to the following proposed concept: Specifically, the 80th percentile event must be infiltrated and not discharged as concentrated flow. Except, the permittee may exclude up to 10%, not to exceed 1 acre, of the applicable development project area when the permittee has determined that it is not practicable to route impervious areas to pervious areas thus infiltrating portions of the site. In addition, the permittee must also determine that the implementation of a separate control measure for that portion of the site is not practicable. It is not always possible to route all impervious areas to pervious areas for infiltration. For example, in the case of a park with one parking space or a curb return, it would be difficult to route the impervious of the parking spot to the pervious area of the park for infiltration. For this reason, we suggest allowing for a small area that may be directly connected to impervious area.

Xcel Energy: Non-Residential and Non-Commercial Infiltration Conditions: This exclusion applies to applicable development projects for which post-development surface conditions do not result in the occurrence of concentrated stormwater flow during the 80th percentile stormwater runoff event. In addition, post-development surface conditions must not be projected to result in a surface water discharge from the 80th percentile stormwater runoff events. Specifically, the 80th percentile event must be infiltrated before it flows being concentrated before being discharged from the applicable development project. This is a confusing heading title. It is not always possible to route all impervious areas to pervious areas for infiltration. Xcel Energy suggests allowing for a small area that may be directly connected to impervious area.

Response 19: Add an Additional Exclusion to the Non-Residential and Non-Commercial Infiltration Conditions Exclusion
These comments have not been incorporated into the permit. The division found the proposed language of “not practicable” to be unclear.

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Comment 20: Include Examples of Bike Paths and Stream Restoration in the Fact Sheet
5-2-1 Drainage Authority: Exclusions for Non-Residential and Non-Commercial Infiltration Conditions- Please include bike paths and stream restoration as examples of the types of projects this portion of the permit is intended for.

Response 20: Include Examples of Bike Paths and Stream Restoration in the Fact Sheet
This comment has not been incorporated into the permit. Exclusions for trails and stream restoration have been added to the list of exclusions in response to comments.

Comment 21: Reword the Non-Residential and Non-Commercial Infiltration Conditions Exclusion
5-2-1 Drainage Authority: The language in this section is also confusing. 521 requests removing the third sentence and just requiring the flows cannot be concentrated during the 80th percentile storm event. Requiring infiltration is not practical for bike paths and stream restoration.

Response 21: Reword the Non-Residential and Non-Commercial Infiltration Conditions Exclusion
This comment has been incorporated into the permit.

Comment 22: Change the Title of the Non-Residential and Non-Commercial Infiltration Conditions Exclusion
Colorado Stormwater Council: Please change the title of this category to Infiltration Conditions. The term Non-Residential and Non-Commercial is confusing. Clarification that it does not apply to residential and commercial sites can be included within the discussion of where the exclusion applies.

Douglas County: Please change the title of this category to Infiltration Conditions. The term Non-Residential and Non-Commercial is confusing. Clarification that it does not apply to residential and commercial sites can be included within the discussion of where the exclusion applies.

Southeast Metro Stormwater Authority: Non-Residential and Non-Commercial Infiltration Conditions. Please revise the section to apply to development and redevelopment sites in general. Limiting this exclusion based on land use type does not make technical sense. If a project meets the infiltration conditions outlined in this section, the exclusion should apply. An example might be the addition of a gazebo at a golf course with concurrent over-lot grading activities greater than one acre. This comment can be addressed by changing the section title to Infiltration Conditions. We believe this section is a significant element in recognizing that there are examples of existing meaningful post construction treatment for small impervious areas, and appreciate its inclusion in the post construction requirements.

Response 22: Change the Title of the Non-Residential and Non-Commercial Infiltration Conditions Exclusion

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This comment has not been incorporated into the permit. The division believes that the current title is specific and clear.

Comment 23: Revise the Requirements for the Non-Residential and Non-Commercial Infiltration Conditions Exclusion to be Consistent with the Requirements for Large Lot Single Family Projects
Southeast Metro Stormwater Authority: Non-Residential and Non-Commercial Infiltration Conditions. Please consider revising the documentation requirements to be consistent with Large Lot Single Family Projects. We recommend revising the section to read in part: For this study to apply, a study specific to the site, watershed and/or MS4 shows rainfall and soil conditions present within the permitted area and includes allowable slopes, surface conditions, and ratios of impervious area to pervious area, and the permittee accepts such study as applicable within its MS4 boundaries.

Response 23: Revise the Requirements for the Non-Residential and Non-Commercial Infiltration Conditions Exclusion to be Consistent with the Requirements for Large Lot Single Family Projects
This comment has been incorporated into the permit.

Comment 24: Remove the Exemption for Counties
City of Canon City: County Growth Areas: The City of Cañon City has concerns with the exemptions for counties listed above. Has the Division quantified how these would impact downstream MS4s? The Fact Sheet discusses in many areas how the previous permit created, or could create, economic disadvantages between permittees. These exclusions could create an economic advantage for a county over a small MS4, particularly if the MS4 is downstream of the excluded county development and will be responsible for capturing/treating the potential pollutant load. Additionally, these exclusions seem to be in conflict with the statements made in the Fact Sheet on page 19. Section 4. County Growth Area Requirements, paragraph 3 states: "In accordance with Section 61.3(2)(f)(v)(A)(III)(a) of Regulation 61, the division must evaluate areas outside of the urbanized areas. Many permittees expressed that they would prefer that the renewal permit not extend permit requirements beyond growth areas. In response, the division did not include reporting or requirements for activities beyond the designated growth areas."
Part I.E.4.a.i.(G) states that the exclusion is allowed when the listed conditions occur within a county growth area. The Fact Sheet says the division did not include reporting or requirements for activities beyond the designated growth area. These exclusions also appear to conflict with the final statement in the Fact Sheet under 3. Permit Area (page 18): "The renewal permit also requires the implementation of permanent water quality controls for new development/redevelopment projects to prevent impacts associated with the future population at a time when installation of structural controls is most practicable.

Response 24: Remove the Exemption for Counties
This comment has not been incorporated into the permit. Note that this exemption only applies to county growth areas. Permittees should note the difference between permit area, urbanized area, and growth area. For

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counties, the permit area includes the urbanized area and growth area. The permit does not apply to any areas outside of the permit area. The division has determined that including some requirements for the growth area of counties is appropriate.

Comment 25: Allow the Oil and Gas Exploration Exemption to Apply Statewide
Colorado Stormwater Council: Please move to indicate applicability to all non-urbanized areas, not just County Growth Areas. Oil and gas exploration exclusion should apply to all non-urbanized areas not just county growth areas.

Douglas County: Please move to indicate applicability to all areas, not just County Growth Areas. Oil and gas exploration exclusion should apply to all non-urbanized areas not just county growth areas.

Response 25: Allow the Oil and Gas Exploration Exemption to Apply Statewide
These comments have been incorporated into the permit.

Comment 26: Revise the Density Requirement for Residential Development under the County Growth Area Exclusion
Colorado Stormwater Council: Please change to the following proposed concept: Residential development project or larger common plans of development for which associated construction activities results in a land disturbance of 10 acres or less and a proposed density of less than 1000 people/square mile. It seems counterintuitive that the standard would require a density of at least “X” people/area unit rather than a density of not more than “X” people/area unit. As written, a 10 acre, 2-4 lot subdivision may not meet the density requirement and, therefore, could not be excluded, but a high density residential project could be excluded.

Douglas County: Please change to the following proposed concept: Residential development project or larger common plans of development for which associated construction activities results in a land disturbance of 10 acres or less and a proposed density of less than 1000 people/square mile. It seems counterintuitive that the standard would require a density of at least “X” people/area unit rather than a density of not more than “X” people/area unit. As written, a 10 acre, 2-4 lot subdivision may not meet the density requirement and, therefore, could not be excluded, but a high density residential project could be excluded.

Response 26: Revise the Density Requirement for Residential Development under the County Growth Area Exclusion
These comments have been partially incorporated into the permit. The word “more” has been changed to “less.” The U.S. Census Bureau defines an urbanized area as density of people for a certain area. The U.S Census Bureau defines an urban area as comprised of “a densely settled core of census tracts and/or census blocks that meet minimum population density requirements, along with adjacent territory containing non-residential urban land uses as well as territory with low population density included to link outlying densely

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settled territory with the densely settled core. To qualify as an urban area, the territory identified according to criteria must encompass at least 2,500 people, at least 1,500 of which reside outside institutional group quarters." The requirement in the permit will continue to reflect the number of people per square mile and not per area unit.

Comment 27: Cost-Benefit Analysis
Town of Castle Rock: Cost Benefit Analysis. The Town appreciates the Division's willingness to acknowledge the need for considering a cost benefit analysis in the draft permit. However, upon review of the second draft permit and the fact sheet, it appears that cost was only a considered factor in two areas of the permit including sections I.E.4.a.i.A pavement management and I.F.6 monitoring. As stated in the fact sheet, the Division will consider cost when selecting the appropriate permit term or condition, and will choose the least costly alternative that meets the requirement for the MS4 permit. This does not appear to be the case throughout the permit. The Town respectfully requests that additional consideration be given to permit terms and conditions that have significant cost implications and provide clarifying language in the fact sheet where such consideration was given. In particular, the Town has concern with potential costs related to inspection frequencies, inspection scope and general record keeping that have not been demonstrated to have an equivalent water quality benefit.

Response 27: Cost-Benefit Analysis
This comment has been incorporated into the permit. The division considered the cost-benefit analysis submitted on the first draft of the renewal permit. Pavement management is an exclusion in the permit. In addition, the permit reflects monitoring option 3, which requires monitoring to be conducted on an as-needed basis, similar to the previous permit.

Comment 28: Division Authority in Non-Urban Areas
Weld County: The proposed County Growth Areas lie outside of the designated urban areas based on the 2010 Census. Imposition of MS4 requirements on these non-urban areas is beyond the authority of the Division and represents a significant manpower and financial burden on limited resources. All areas outside of the areas designated urban by the 2010 Census are non-urban and should have no MS4 requirements.

Response 28: Division Authority in Non-Urban Areas
This comment has not been incorporated into the permit. The fact sheet provides the rationale for the terms and conditions of the permit for county growth areas.

ii. Regulatory Mechanism

Comment 1: Provide Clarification on Mechanisms for Control Measure outside the Jurisdictional Control of the Permittee
City of Canon City: The City of Cañon City requests the Division clarify this requirement. The Division briefly discussed situations such as having IGAs or MOUs for regional control measures at the stakeholder workgroup meeting on

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June 16th. Can the Division expand on this and provide examples of a project which would be in the permit area but are located outside of our jurisdictional control? Please include in the discussion a scenario in which a party will not agree to a IGA or MOU. Moving the discussion from the Fact Sheet on page 67 under Part I.E.4.iv.(D) to this section may be beneficial. From the Fact Sheet: "If the permittee has an applicable development project that will meet this design standard and the WQCV control measure is located outside of the permittee's permit area, then the permittee has to ensure that the other permittee/entity will maintain the regional WQCV control measure . Having a formal agreement concerning the regional WQCV control measure is strongly recommended."

Response 1: Provide Clarification on Mechanisms for Control Measure outside the Jurisdictional Control of the Permittee
This comment has been partially incorporated into the fact sheet. An example of this scenario has been added to the fact sheet. A scenario in which a party would not agree to an IGA or MOU was not added to the fact sheet. This scenario is unique and permittees are encouraged to contact the division to discuss these types of scenarios.

Comment 2: Add "If Applicable" to the Requirement Regarding Exclusions
Colorado Stormwater Council: Please change to the following proposed concept: Enforce the conditions of the exclusions above, if applicable. MS4s should be allowed to not use the exclusions if they wish.

Douglas County: Please change to the following proposed concept: Enforce the conditions of the exclusions above, if applicable. MS4s should be allowed to not use the exclusions if they wish.

Response 2: Add "If Applicable" to the Requirement Regarding Exclusions
These comments have been incorporated into the permit.

iii. Regulatory Mechanism Exemptions
No comments were received on this section of the permit.

iv. Control Measure Requirements

Comment 1: Delete any References to "Retain" or "Reuse"
City of Golden: Water Rights Concerns. The draft permit uses the phrase "retain, reuse, or provide for infiltration, evapotranspiration, or evaporation of water" in describing appropriate control measures. Section l.E.J.a.iv(A). Similar language is used in reference to runoff reduction standards, green infrastructure, and structural control measures. See, e.g., Sections l.E.4.a.i(C); I.E.4.a.i.(F)2(c), 1.1.20. This language raises significant water rights concerns given that water rights rarely exist for such stormwater control measures. First, the proposed language allows for the consumptive use of water in managing stormwater (i.e. evaporation and evapotranspiration). Such depletions of water must, however, be curtailed to the extent the water being depleted causes material injury to water rights. C.R.S. § 37-92-502(2)(a). The alternative is to replace the depletions to senior water users through a plan for

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augmentation. Zigan Sand & Gravel v. Cache La Poudre Water Users Ass'n, 758 P.2d 175, 185 (Colo. 1988). Second, the "reuse" of native water is generally disallowed under water rights. See, e.g. Burlington Ditch Reservoir and Land Co. v. City of Thornton, 256 P.3d 645, 663 (Colo. 2011) ("Water native to the stream system is limited to one use in that system and return flows belong to the stream system as part of the public's resources, subject to appropriation and administration"). Reuse of native water requires a separate water right from the original use. Santa Fe Trail Ranches Property Owners Ass'n v. Simpson, 990 P.2d 46, 54 (Colo. 1999). Third, even the concept of retaining water raises concerns if done without a water right allowing storage of the water. See, Pueblo West Metropolitan District v. Southeastern Colorado Water Conservancy Dist., 689 P.2d 594, 603 (Colo. 1984) (Recognizing that capture and storage of flood water is a beneficial use of water subject to appropriation).
Pursuant to Senate Bill 15-212, recently adopted by the General Assembly and signed into law by the Governor on May 29, 2015, a compromise was reached regarding stormwater detention and infiltration facilities in the water rights context. (A copy of Senate Bill 15-212 is attached). In short, a stormwater detention and infiltration facility is only entitled to a presumption of no injury to water rights if it releases or infiltrate at least 97% of all water from a rainfall event that is equal to or less than a 5-year storm within 72 hours, and releases or infiltrates at least 99% of all water from rainfall events larger than 5-year storms within 120 hours. Further, any use of the water by the entity that controls the facility is strictly prohibited under the Bill.
Golden recommends that the permit modify or clarify the language cited above to be consistent with Senate Bill 15-212 for stormwater detention and infiltration facilities, except for instances where such facilities are being operated in priority pursuant to water rights and/or under augmentation plans.

Douglas County: Any references to water quality control volume (WQCV) within the permit should be in accordance with CRS: 37-92-602(8). The references related to infiltration/filtration could be problematic to water rights, since there is no defined time or rainfall frequency associated with meeting the WQCV requirements. Infiltration must be in accordance with the criteria stated in CRS 37-92-602(8) unless a water right is acquired through costly augmentation planning. Infiltration/filtration is allowed if within the criteria stated in 37-92-602(8) CRS. Please coordinate with the SEO to ensure the permit is written in compliance with SB15-212. One alternative is to remove this language as it describes particular design criteria. Specifying design standards that affects water rights could result in requiring a costly augmentation plan and obtaining a water right unless other design standards could be considered.

Response 1: Delete any References to “Retain” or “Reuse”
These comments have not been incorporated into the permit. The permit is flexible in allowing both detention and retention control measures to achieve compliance with the permit. A retention control measure could meet the requirements of this permit and not violate water rights. Permittees should contact the Division of Water Resources if additional assistance is needed.

Comment 2: Support of specific CSC comments

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City of Greeley: The key concerns, which are detailed in CSC comments, for the City of Greeley are as follows: Post-Construction: Pollutant removal design standard should be consistent with the WQCV standard and should be based on rainfall amount for an 80th percentile storm.

Response 2: Support of specific CSC comments
Please see the division's response to CSC's comments on the rainfall amount of the 80th percentile storm.

Comment 3: Revise Constrained Development Sites Design Standard
Colorado Stormwater Council: Please add an additional trigger for constrained development sites to address sites where utilizing minimum setbacks with existing right-of-way, public utility, outfall connection or access configuration prevents the use of the design standards currently available in the permit. Constrained New Development applies to new development where some portion of the project is constrained by grades that, without significant change to native topography, cannot be treated by the proposed control measure(s) to meet the requirements of I.E.4.a.iv(A)-(E)

Douglas County: Please add an additional trigger for constrained development sites to address sites where utilizing minimum setbacks with existing right-of-way, public utility, outfall connection or access configuration prevents the use of the design standards currently available in the permit. Constrained New Development applies to new development where some portion of the project is constrained by grades that, without significant change to native topography, cannot be treated by the proposed control measure(s) to meet the requirements of I.E.4.a.iv(A)-(E)

City of Federal Heights: The topics considered "high-level" issues for the City include the following: Post Construction for New Development and Redevelopment- Automatic exclusions for projects with no water quality impacts, Constrained New Development Sites

Response 3: Revise Constrained Development Sites Design Standard
These comments have not been incorporated into the permit. It is unclear how a permittee would determine "some portion", "constrained", and "significant change to topography." The standard in the second draft of the renewal permit was inadvertently changed from "and" to "or" and the final version of the renewal permit reflects the intent of the first draft and reflects stakeholder's comments. The requirement has been changed to require both criterion to be met for a constrained site. Permittees should note the flexibility in the second criteria that allows the permittee to determine if it is practicable for the site to meet the design standards. There is significant flexibility contained in the permit for design standards and constrained sites. Permittees are encouraged to contact the division to discuss new or unanticipated scenarios as they arise.

Comment 4: Add a Requirement for a Design Standard for Special Projects, Design Standard for Source Reduction, and a Design Standard for Equivalent Area

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Keep it Clean Partnership: There are other projects that should be included in the Constrained Sites Standard, such as infill sites. Issue: There are other projects that should be included in the Constrained Sites Standard, such as infill sites. Comment: Please include alternatives for constrained new development or a process to get approval from CDPHE for special circumstances.

Colorado Stormwater Council: Please add the following proposed concept: Source Reduction Standard: Data to support this design standard is in the process of being gathered. This design standard would apply only to applicable development project that are a municipal project until permittees are able to determine how to track and ensure the source reduction method is implemented. Additional discussion with the Division is requested to allow for a permit modification this design standard is not included at permit issuance.

Douglas County: Please add the following proposed concept: Source Reduction Standard: the applicable development project must be a municipal project. Place holder for new design standard.

Home Builders Association of Metro Denver: We believe that a source reduction standard should be added. For instance, street sweeping or other source reduction methods would be acceptable and would be a great Pollution Reduction Standard to add to the permit. The source reduction standard may have to be specified by the MS4 of what would be acceptable or CDPHE could propose other actions that would be acceptable (other than street sweeping).

Housing and Building Association of Colorado Springs: We believe that a source reduction standard should be added. For instance, street sweeping or other source reduction methods would be acceptable would be a great Pollution Reduction Standard to add to the permit. It may have to be specified by the MS4 what would be acceptable or CDPHE could propose other actions that would be acceptable (other than street sweeping).

City of Glendale: The topics considered “high-level” issues for the City include the following: Post Construction for New Development and Redevelopment- Automatic exclusions for projects with no water quality impacts, Source reduction design standard, Equivalent area design standard;

Colorado Stormwater Council: Please allow treatment of equivalent area for development projects. The Douglas County Equivalent Area Study (Memo RE: Permanent Water Quality: 100% Water Quality Capture and Treatment Scenario) shows treating an equivalent area can cost significantly less while providing the same water quality benefit. This is not the same as water quality trading. Additional discussion with the Division is requested to allow for a permit modification if this concept is not included at permit issuance.

Douglas County: Please allow treatment of equivalent area for development projects. The Douglas County Equivalent Area Study (Memo RE: Permanent Water Quality: 100% Water Quality Capture and Treatment Scenario) shows

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treating an equivalent area can cost significantly less while providing the same water quality benefit. This is not the same as water quality trading.

City of Arvada: Under Post-Construction Stormwater Management, please allow treatment of equivalent area for development projects.

Southeast Metro Stormwater Authority: Please add the following Design Standard: Source Reduction Standard. This Source Reduction Design Standard would be used to capture street sweeping as an allowed control measure in areas considered to be a Constrained Development or Redevelopment Site. SEMSWA has completed a research analysis to determine that street sweeping is reasonably equivalent to the other pollutant removal design standards in the permit. SEMSWA's goal is to utilize a Source Reduction Standard for additional projects in the future (other than constrained public transportation projects), and hopes this Standard will help set the stage for future permit terms or future permit modifications, if an enhanced street sweeping control measure is determined to be feasible for other applications.

The recommended language for this section reads: Source Reduction Standard: The control measure(s) is designed to remove pollutants utilizing enhanced street sweeping. The control measure shall be designed such that the pollutant removal is found to be relatively equivalent to a Control Measure(s) in Section 4.a.iv.F (1-3)), and at a minimum must meet the following:

The Source Reduction Standard may only be utilized on permittee projects (public projects), specifically roadway and parking lot projects, where the permittee is responsible for the Enhanced Street Sweeping schedule, operations, maintenance and monitoring. Only regenerative air or high efficiency vacuum sweeping can be utilized to meet this Control Measure, and catch basin cleaning must occur in areas where the Enhanced Street Sweeping is utilized. The permittee must develop guidelines for parking considerations, weather conditions, maintenance, speed of equipment operation, monitoring methods for pollutant load reduction measurements, and storage and disposal of street wastes.

1) Enhanced Street Sweeping shall occur at least 20 times per year for the entire project area, with targeted enhanced street sweeping for the reduction of pollutants such as deicing operations material, landscape material, and other common roadway pollutants; or enhanced street sweeping shall occur bi-weekly without a targeted sweeping schedule. The associated inlets for the project area must also be cleaned annually, or as needed based on inspection, at the location where the targeted street sweeping occurs. The intended equivalent pollutant removal for this schedule is comparable to a reduction to the expected median effluent concentration for total suspended solids (TSS) of at least 30 mg/L, or

2) A study specific to the watershed and/or MS4 shows that expected pollutant reduction associated with the Enhanced Street Sweeping schedule and methodology is relatively comparable to a Section 4.a.iv.F (1-3)Control

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Measure, and is specific to the project site, where the permittee accepts such study as applicable within its MS4 boundaries.

Response 4: Add a Requirement for a Design Standard for Special Projects, Design Standard for Source Reduction, and a Design Standard for Equivalent Area
These comments have not been incorporated into the permit. Permittees can contact division staff for questions about existing design standards. In addition, permittees can submit a permit modification to revise or add new design standards and the process will include a public notice process.

Comment 5: Remove "Before Applying Exclusions"
Colorado Stormwater Council: Please remove "before applying exclusions." Please clarify what is meant by alternative standards. Stating that design standards should be applied before exclusions, implies that the determination of exclusions follows design. This is not an efficient, or standard way to approach design. Applicability of exclusions should be the first determination, then base design standards are applied. The term "alternative standards" is used, but there is no subsequent information in the section that refers to alternative standards.

Douglas County: Please remove "before applying exclusions." Please clarify what is meant by alternative standards. Stating that design standards should be applied before exclusions, implies that the determination of exclusions follows design. This is not an efficient, or standard way to approach design. Applicability of exclusions should be the first determination, then base design standards are applied. The term "alternative standards" is used, but there is no subsequent information in the section that refers to alternative standards.

Response 5: Remove "Before Applying Exclusions"
These comments have been incorporated into the permit.

Comment 6: Remove the Pollutant Removal Standard
Weld County: This standard is too restrictive given the rural nature of Weld County and the presence of significant amounts of tilled farmland within and adjacent to the U.S. Census-designated MS4 urban areas. Please change the standard to postdevelopment TSS loadings not exceeding the pre-development loadings. Determination of the actual amount of TSS loadings implies a sampling and analysis program to establish values. Weld County also requests that the Division identify and appropriate the funding to pay for this sampling program as intended by Executive Order D 2011-005 prohibiting state agencies from imposing unfunded mandates on local governments.

Response 6: Remove the Pollutant Removal Standard
This comment has not been incorporated into the permit. Permittees have the flexibility to be more stringent than the permit and prohibit certain design standards that would not be applicable to their community.

Comment 7: Replace "Additional" Control Measure(s) Design Standard with "Alternate" Control Measure(s) Design Standard:

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Xcel Energy: The permittee's requirements and oversight for applicable development projects must be implemented to address the selection, installation, implementation, and maintenance of control measures in accordance with requirements in Part I.B. The "base design standard" is the minimum design standard for new and redevelopment before applying exclusions or alternative standards. The control measures for applicable development projects shall meet one of the following base design standards listed below. Applicability of exclusions should be the first determination, and then base design standards are applied.

The term "alternative standards" is used, but there is no subsequent information in the section that refers to alternative standards.

Response 7: Replace "Additional" Control Measure(s) Design Standard with "Alternate" Control Measure(s) Design Standard:
These comments have been incorporated into the permit.

Comment 8: Replace the 10% exclusion with 20% and Remove "Not to Exceed One Acre" from the WQCV Standard
Colorado Stormwater Council: Please change to the following proposed concept: 100% of the effective impervious area within the applicable development project is captured, except the permittee may exclude up to 20 percent of the applicable development project area when the permittee has determined that it is not practicable to capture runoff from portions of the site that will not drain towards control measures. Only the developed effective impervious areas need to be treated and captured. Areas that do not contribute runoff or are undeveloped at the completion of the project should not be required to be included in the capture area. For example, a large park within a larger common plan of development should not be included in the required project area to be captured for WQCV treatment. That area may be treated through an alternative design standard such as the Runoff Reduction Standard. After a review of projects by permittees, an allowance of 20% is more practical. Adding the clarifier "not to exceed one acre" does not adequately address the areas that may be excluded on larger projects. A project that disturbs 30 acres may be unable to capture 2 acres (6% of the project) due to many factors such as grades of backyards, access points, etc, for example.

Home Builders Association of Metro Denver: Under 1) it is stated "100% of the applicable development project is captured…exclude up to 10%, not to exceed 1 acre…." The 90% capture is too high in many instances and not practical. Could result in additional grading and land disturbance activities just to get an area to drain. For example, open space could be disturbed to get it to drain and captured. There may be other areas on a site where it is not feasible or appropriate to capture 90%. We suggest language that provides flexibility.

Xcel Energy: WQCV Standard
1) 100% of the applicable development project is captured, except the permittee may exclude up to 10 percent, not to exceed 1 acre, of the

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applicable development project area when the permittee has determined that it is not practicable to capture. Consider revising language to say that the WQCV should be sized for 100% of the developed impervious area and must capture runoff from at least 80% of the site. This way, you are not losing WQCV volume by excluding portions of the site, but it is more realistic than capturing 90% and providing the WQCV for that volume. It is important to note that there are some sites where capturing 90% is not realistic.

Xcel Energy understands the concerns with leaving some areas untreated and the shortfalls of "over-detaining" some portions of the site. For many sites capturing 90% may be feasible and it is a good policy, but for sites that are challenging there should be a provision that would allow for lesser capture if it can be shown that the grading and the site work to capture 90% would be infeasible or lead to greater impacts, greater disturbance, or bad drainage. This determination of feasibility should rest with local governments. The division states "100% of applicable development project is captured…" Does this include all areas of the development (parks, open space, pervious areas, etc.) or just impervious areas? Again please consider modifying the applicability to be based on what the overall complete impervious area is as opposed to the construction disturbance which would include areas that are pervious.

Southeast Metro Stormwater Authority: Part I.4.a.iv.A.1 and I.4.a.iv.B.1, WQCV Standard, allow for an exclusion of up to 10% of the treatment area of a development site when the permittee has determined that it is not practicable to capture runoff from portions of the site that will not drain towards control measures. There may be additional technical constraints or hardships or rational for excluding an area for treatment, to include utility conflicts, grading constraints, easement encroachments, access constraints, or offsite grading constraints. This is especially true for redevelopment and development that occurs adjacent to existing development. Further, capping the exclusion to one acre may be too limiting for large development projects. For developments that are several hundred acres, capturing all of the impervious area with the exclusion of one acre is not practicable. Please also note that only the impervious area associated with the development site should be captured. We recommend revising the section to read: 100% of the imperviousness associated with the development project is captured, except the permittee may exclude up to 20 percent, of the applicable development project area when the permittee has determined that it is not practicable to capture runoff due to technical constraint or hardship, to include utility conflicts and grading constraints.

Response 8: Replace the 10% exclusion with 20% and Remove "Not to Exceed One Acre" from the WQCV Standard
These comments have been partially incorporated into the permit. The 10% exclusion has been revised to a 20% exclusion. The division, however, has determined that it is appropriate to limit the acreage that can be excluded from this design standard.

Comment 9: Change the WQCV Standard to Exclude Undeveloped Areas of the Project

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Douglas County: Please change to the following proposed concept:
100% of the effective impervious area within the applicable development project is captured, except the permittee may exclude up to 10 percent, not to exceed 1 acre, of the applicable development project area when the permittee has determined that it is not practicable to capture runoff from portions of the site that will not drain towards control measures. Only the developed effective impervious areas need to be treated and captured. Areas that do not contribute runoff or are undeveloped at the completion of the project should not be required to be included in the capture area. For example, a large park within a larger common plan of development should not be included in the required project area to be captured for WQCV treatment. That area may be treated through an alternative design standard such as the Runoff Reduction Standard.

Response 9: Change the WQCV Standard to Exclude Undeveloped Areas of the Project
This comment has not been incorporated into the permit. The WQCV standard allows for 20% of the project to be excluded from the design standard. The division has not evaluated all types of development or redevelopment projects that only add a minimal amount of impervious area. The division believes that there is significant flexibility in the permit including the fact that project types would only be considered applicable development projects if they result in land disturbance of greater than or equal to one acre, there are numerous types of excluded projects, and numerous design standards.

Comment 10: Remove the Drain Time from the Runoff Reduction Standard
Colorado Stormwater Council: Please change to the following proposed concept: Evaluation of the minimum drain time shall be based on the pollutant removal mechanism of the control measure implemented. The drain time is based on the control measure (i.e. pollutant removal mechanism). This is specific to the Control Measure included in design standards and is not necessary to be called out specifically in permit language.

Douglas County: Please change to the following proposed concept: Evaluation of the minimum drain time shall be based on the pollutant removal mechanism of the control measure implemented. The drain time is based on the control measure (i.e. pollutant removal mechanism). This is specific to the Control Measure included in design standards and is not necessary to be called out specifically in permit language.

Southeast Metro Stormwater Authority: Part I.4.a.iv.A.2, Part I.4.a.iv.F.2.a, and Part I.4.a.iv.E.6 specifies a minimum drain time of 12 hours, but also states the evaluation of the minimum drain time shall be based on the pollutant removal mechanism and functionality of the control measure implemented. Consideration of drain time shall include maintaining vegetation necessary for operation of the control measure. Given the requirement that drain time be evaluated based on pollutant removal and functionality of the control measure, the minimum drain time of 12 hours is unnecessary. Please delete: the design drain time of the WQCV shall be a minimum of 12 hours, but

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shall be extended as needed to meet the control measure requirements of this permit.

Response 10: Remove the Drain Time from the Runoff Reduction Standard
These comments have been incorporated into the permit.

Comment 11: Replace the "2-Year Storm" with the "80th Percentile Storm Event" in the Pollutant Removal Standard
Colorado Stormwater Council: Please update the treatment design to be based on rainfall amount. Rainfall amount can be easily determined, whereas runoff is difficult to measure and is not always the same for a given amount of rainfall. There is an inconsistency between this requirement and the WQCV standard. The WQCV is based on an 80th percentile storm event, not a 2-year, 1-hour event. The WQCV around the Metropolitan area is approximately 0.60 inches. The 2-year, 1-hour storm in Denver is about 0.85 inches. It would be better to specify the rainfall depth for an 80th percentile storm, consistent with UDFCD criteria, than the 2-year, 1-hour which would exceed the WQCV.

Douglas County: Please update the treatment design to be based on rainfall amount. Rainfall amount can be easily determined, whereas runoff is difficult to measure and is not always the same for a given amount of rainfall. There is an inconsistency between this requirement and the WQCV standard. The WQCV is based on an 80th percentile storm event, not a 2-year, 1-hour event. The WQCV around the Metropolitan area is approximately 0.60 inches. The 2-year, 1-hour storm in Denver is about 0.85 inches. It would be better to specify the rainfall depth for an 80th percentile storm, consistent with UDFCD criteria, than the 2-year, 1-hour which would exceed the WQCV.

5-2-1 Drainage Authority: Also 521 is concerned with the blanket standard on TSS of 30 mg/L in stormwater effluent. The 521 request that pollutant removal technologies be required to remove the expected annual 80% TSS.

Xcel Energy: Pollutant Removal Standard; The control measure(s) is designed to treat at a minimum the 2-year, 1-hour peak runoff flow. The control measure(s) shall be designed to treat to an expected median effluent concentration for total suspended solids (TSS) of 30 mg/L. This is really a good type of standard to have in the permit, but it should be based on rainfall and not runoff. Rainfall is easy to measure compared to runoff, which is not always the same for a given amount of rainfall. There is an inconsistency between this section and the WQCV standard. The WQCV is based on an 80th percentile storm event, not a 2-year, 1-hour event. The WQCV around the Metropolitan area is approximately 0.60 inches. The 2-year, 1-hour storm in Denver is about 0.85 inches. It would be better to specify the rainfall depth for an 80th percentile storm, consistent with UDFCD criteria, than the 2-year, 1-hour which would exceed the WQCV. Consider revising the language that it should be specified that the control measure should be expected to reduce TSS. For example: "The control measure shall be designed to treat stormwater runoff in a manner expected to reduce the event mean concentration (EMC) of total suspended solids (TSS) to a median value of 30 mg/L or less."

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Southeast Metro Stormwater Authority: Pollutant Removal Standard. For consistency with other Design Standards, please update the 2-year, 1 hour peak runoff flow to the 80th percentile runoff event.

Home Builders Association of Metro Denver: In the first sentence, the permit states….to treat at a minimum the 2-year, 1 hour peak flow event". This is different than what was discussed earlier as the 80th percentile event. Should base the design on a rainfall event or the 80th percentile.

Response 11: Replace the "2-Year Storm" with the "80th Percentile Storm Event" in the Pollutant Removal Standard
These comments have been incorporated into the permit.

Comment 12: Explain Why the Permit has a Sediment Removal Design Standard
City of Canon City: Pollutant Removal Standard: The control measure(s) is designed to treat at a minimum the 2-year, 1-hour peak runoff flow. The control measure(s) shall be designed to treat to an expected median effluent concentration for total suspended solids (TSS) of 30 mg/L. The City of Cañon City supports the CSC recommended language for this requirement. We also request the Division clarify in the Fact Sheet why only TSS is addressed in permit requirements as TSS is only a portion of the pollution spectrum.

Response 12: Explain Why the Permit has a Sediment Removal Design Standard
This comment has been incorporated into the fact sheet.

Comment 13: Add Event Mean Concentration to the Sediment Removal Design Standard
Colorado Stormwater Council: Please change to the following proposed concept: The control measure(s) shall be designed to treat to an expected median effluent concentration for total suspended solids (TSS) of 30 mg/L." with "The control measure shall be designed to treat stormwater runoff in a manner expected to reduce the event mean concentration (EMC) of total suspended solids (TSS) to a median value of 30 mg/L or less. It should be specified that the control measure should be expected to reduce TSS. Also, a lower EMC should be acceptable.

Douglas County: Please change to the following proposed concept: The control measure shall be designed to treat stormwater runoff in a manner expected to reduce the event mean concentration (EMC) of total suspended solids (TSS) to a median value of 30 mg/L or less." It should be specified that the control measure should be expected to reduce TSS. Also, a lower EMC should be acceptable.

Response 13: Add Event Mean Concentration to the Sediment Removal Design Standard
These comments have been incorporated into the permit.

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Comment 14: State that Actual Sampling is not Required for the Sediment Removal Design Standard
Home Builders Association of Metro Denver: Sentence 2 states, "The control measures shall be designed to treat to an expected median effluent concentration of Total Suspended Solids (TSS) 30 mg/L." We would like to point out that this is not specified with many of the control measures (BMPs) that are utilized at a site and would be impossible to collaborate. Perhaps adding that the "MS4 can establish approved BMPs or based on the design by a Professional Engineer or other qualified personnel". This suggestion is to avoid the possibility that actual runoff sampling to verify the 30 mg/L standard is being met would be required to demonstrate compliance; and this possibility would not be viewed positively by the builders. A statement that actual sampling is not required to meet this standard would also be applicable.

Response 14: State that Actual Sampling is not Required for the Sediment Removal Design Standard
This comment has not been incorporated into the permit. Permittees have the flexibility to require construction operators to sample stormwater from the control measures or rely on the manufacture's specifications.

Comment 15: Replace the 10% exclusion with 20% and Remove "Not to Exceed One Acre" from the Pollutant Removal Standard
Southeast Metro Stormwater Authority: There may be additional technical constraints or hardships or rational for excluding an area for treatment, to include utility conflicts, grading constraints, easement encroachments, access constraints, or offsite grading constraints. This is especially true for redevelopment and development that occurs adjacent to existing development. Further, capping the exclusion to one acre may be too limiting for large development projects. For developments that are several hundred acres, capturing all of the impervious area with the exclusion of one acre is not practicable. Please also note that only the impervious area associated with the development site should be captured. We recommend revising the section to read: 100% of the imperviousness associated with the development project is captured, except the permittee may exclude up to 20 percent, of the applicable development project area when the permittee has determined that it is not practicable to capture runoff due to technical constraint or hardship, to include utility conflicts and grading constraints.

Response 15: Replace the 10% exclusion with 20% and Remove "Not to Exceed One Acre" from the Pollutant Removal Standard
This comment has been partially incorporated into the permit. The 10% exclusion has been revised to a 20% exclusion. The division, however, has determined that it is appropriate to limit the acreage that can be excluded from this design standard.

Comment 16: Water Rights and the Runoff Reduction Standard
5-2-1 Drainage Authority: Runoff Reduction Standard -The runoff reduction standard could infringe upon water law. Please include language in the permit that identifies water rights may be required and the permittee may need to obtain the appropriate water rights.

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Douglas County: The statements "…evaporate, or evapotranspire a quantity of water equal to 60% of what the calculated WQCV would be if all impervious area for the applicable development project discharged without infiltration. This base design standard can be met through practices such as green infrastructure. “Green infrastructure” generally refers to control measures that use or mimic natural processes to infiltrate, evapotranspire, or reuse stormwater on the site where it is generated. Green infrastructure can be used in place of or in addition to low impact development principles." may conflict with SB15-212 requirements. Please coordinate with the SEO to ensure the permit is written in compliance with SB15-212. Douglas County supports the use of low impact development techniques; however, some of the practices may not comply with the SEO requirements. One alternative is to remove this language as it describes particular design criteria.

Response 16: Water Rights and the Runoff Reduction Standard
These comments have not been incorporated into the fact sheet. The permit is flexible in allowing both detention and retention control measures to achieve compliance with the permit. A retention control measure could meet the requirements of this permit and not violate water rights. Permittees should contact the Division of Water Resources if additional assistance is needed.

Comment 17: Revise the Definition of Green Infrastructure
Colorado Stormwater Council: Please acknowledge in the Fact Sheet, and update corresponding language in the permit that recognizes that “Green Infrastructure” does not always correspond to infiltration of a percentage of capture volume. Green infrastructure defined by EPA includes practices such as minimizing directly connected impervious areas, urban tree canopy, and land planning practices.

Douglas County: Please acknowledge in the Fact Sheet, and update corresponding language in the permit that recognizes that “Green Infrastructure” does not always correspond to infiltration of a percentage of capture volume. Green infrastructure defined by EPA includes practices such as minimizing directly connected impervious areas, urban tree canopy, and land planning practices.

Response 17: Revise the Definition of Green Infrastructure
These comments have been incorporated into the permit and fact sheet.

Comment 18: Provide the Basis for the Runoff Reduction Standard
Xcel Energy: Runoff Reduction Standard: The control measure(s) is designed to infiltrate into the ground where site geology permits, evaporate, or evapotranspire a quantity of water equal to 60% of what the calculated WQCV would be if all impervious area for the applicable development project discharged without infiltration. Please provide the basis/reasoning for using 60% of the calculated WQCV in the fact sheet or permit rationale.

Response 18: Provide the Basis for the Runoff Reduction Standard

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This comment has not been incorporated into the fact sheet. The division has determined that the percentage of infiltration, evaporation or evapotranspiration required in the runoff reduction standard is appropriate. Please see the explanation of the MEP standard in the fact sheet.

Comment 19: Define the Regional WQCV Control Measure and Regional WQCV Facility in the Permit
Xcel Energy: Applicable Development Project Draining to a Regional WQCV Control Measure: Applicable Development Project Draining to a Regional WQCV Facility "Regional WQCV Control Measure" and "Regional WQCV Facility" should be defined and explained in the permit and not just fact sheet.

Response 19: Define the Regional WQCV Control Measure and Regional WQCV Facility in the Permit
This comment has not been incorporated into the permit. Both terms have been defined in the fact sheet.

Comment 20: Remove Duplicate Requirements in the Regional WQCV Facility Design Standard
Colorado Stormwater Council: Please remove: "1) The regional WQCV facility must be installed." Number 1 is duplicative of number 2.

Douglas County: Please remove: "1) The regional WQCV facility must be installed." Number 1 is duplicative of number 2.

Xcel Energy: 1) The regional WQCV facility must be installed. 2) The regional WQCV Facility must be installed, implemented, and maintained following good engineering, hydrologic and pollution control practices. Delete #1.

Response 20: Remove Duplicate Requirements in the Regional WQCV Facility Design Standard
These comments have been incorporated into the permit.

Comment 21: Add a Requirement to the Regional WQCV Facility Design Standard
Douglas County: Also, based on discussions SEMSWA staff have had with Division and EPA staff, we agree with the following comment: We appreciate the inclusion of Section 4.a.iv.E to address the importance of a regional system. We recommend adding the following language: Regional Facilities should be designed and implemented with flood control or water quality as the primary use. Recreational Ponds and Reservoirs may not be considered Regional Facilities.

Response 21: Add a Requirement to the Regional WQCV Facility Design Standard
These comments have been incorporated into the permit.

Comment 22: Remove Examples from the Regional WQCV Facility Design Standard

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Southeast Metro Stormwater Authority: Part I.4.a.iv.E. Applicable Development Project Draining to a Regional WQCV Facility. This section includes reference to allowable control measures; specifically, the control measure must be an engineered grass buffer, swale, porous pavement, or porous landscape detention control measure designed in accordance with a design manual identified by the permittee. None of the other Control Measure Requirements include example control measures, and they should not be included in this section. Please delete reference to specific control measures for consistency.

Response 22: Remove Examples from the Regional WQCV Facility Design Standard
This comment has been incorporated into the permit.

Comment 23: Remove the Term "Fully" from the Regional WQCV Facility Design Standard
Southeast Metro Stormwater Authority: Part I.4.a.iv.E, Applicable Development Project Draining to a Regional WQCV Facility. Please note that a channel is typically stabilized to a calculated master plan grade, and is considered to be "stable", so the term fully stabilized is not typically associated with a stream channel design. Please remove the word "fully" and replace with stabilized to a calculated master planned grade.

Response 23: Remove the Term "Fully" from the Regional WQCV Facility Design Standard
This comment has been incorporated into the permit.

Comment 24: Replace "Installed" with "Functional" in the Regional WQCV Facility Design Standard
Southeast Metro Stormwater Authority: Applicable Development Project Draining to a Regional WQCV Facility. Please change installed in Part I.4.a.iv.E.1 to functional. This modification will allow for the deletion of Part I.4.a.iv.E.2, as functionality assumes that the control measure is implemented and maintained. The recommended revision would revise parts 1) and 2) to read 1) The regional WQCV facility must be functional.

Response 24: Replace "Installed" with "Functional" in the Regional WQCV Facility Design Standard
This comment has been incorporated into the permit.

Comment 25: Remove the Drain Time Requirements from the Regional WQCV Facility Design Standard
Southeast Metro Stormwater Authority: Part I.4.a.iv.A.2, Part I.4.a.iv.F.2.a, and Part I.4.a.iv.E.6 specifies a minimum drain time of 12 hours, but also states the evaluation of the minimum drain time shall be based on the pollutant removal mechanism and functionality of the control measure implemented. Consideration of drain time shall include maintaining vegetation necessary for operation of the control measure. Given the requirement that drain time be evaluated based on pollutant removal and functionality of the control measure, the minimum drain time of 12 hours is unnecessary. Please delete: the design drain time of the WQCV shall be a minimum of 12 hours, but

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shall be extended as needed to meet the control measure requirements of this permit.

Response 25: Remove the Drain Time Requirements from the Regional WQCV Facility Design Standard
This comment has been incorporated into the permit.

Comment 26: Update the Citation in the Regional WQCV Facility Design Standard
Colorado Stormwater Council: Please update the citation. Part I.E.4.a.v.ii does not exist.

Douglas County: Please update the citation. Part I.E.4.a.v.ii does not exist.

Xcel Energy: The regional WQCV facility must be subject to the permittee's authority consistent with requirements and actions for a Control Measure in accordance with Part I.E.4.a.v.ii. Part I.E.4.a.v.ii does not exist.

Response 26: Update the Citation in the Regional WQCV Facility Design Standard
These comments have been incorporated into the permit.

Comment 27: Remove the Drain Time Requirements from the Constrained Redevelopment Sites Design Standard
Colorado Stormwater Council: Please change to the following proposed concept: Evaluation of the minimum drain time shall be based on the pollutant removal mechanism of the control measure implemented. The drain time is based on the control measure (i.e. pollutant removal mechanism). This is specific to the control measure included in design standards and is not necessary to be called out specifically in permit language.

Douglas County: Please change to the following proposed concept: Evaluation of the minimum drain time shall be based on the pollutant removal mechanism of the control measure implemented. The drain time is based on the control measure (i.e. pollutant removal mechanism). This is specific to the control measure included in design standards and is not necessary to be called out specifically in permit language.

Southeast Metro Stormwater Authority: Part I.4.a.iv.A.2, Part I.4.a.iv.F.2.a, and Part I.4.a.iv.E.6 specifies a minimum drain time of 12 hours, but also states the evaluation of the minimum drain time shall be based on the pollutant removal mechanism and functionality of the control measure implemented. Consideration of drain time shall include maintaining vegetation necessary for operation of the control measure. Given the requirement that drain time be evaluated based on pollutant removal and functionality of the control measure, the minimum drain time of 12 hours is unnecessary. Please delete: the design drain time of the WQCV shall be a minimum of 12 hours, but shall be extended as needed to meet the control measure requirements of this permit.

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Xcel Energy: Drain time of the WQCV shall be a minimum of 12 hours but shall be extended as need to meet the minimum control measure requirements in Part I.B. Evaluation of the minimum drain time shall be based on the pollutant removal mechanism and functionality of the control measure implemented, The drain time is based on the control measure (i.e. pollutant removal mechanism). This is specific to the control measure included in design standards and is not necessary to be called out specifically in permit language.

Response 27: Remove the Drain Time Requirements from the Constrained Redevelopment Sites Design Standard
These comments have been incorporated into the permit.

Comment 28: Replace the "2-Year Storm" with the "80th Percentile Storm Event" in the Constrained Redevelopment Sites Design Standard
Colorado Stormwater Council: Please update the treatment design to be based on rainfall amount. Rainfall amount can be easily determined, whereas runoff is difficult to measure and is not always the same for a given amount of rainfall. There is an inconsistency between this requirement and the WQCV standard. The WQCV is based on an 80th percentile storm event, not a 2-year, 1-hour event. The WQCV around the Metropolitan area is approximately 0.60 inches. The 2-year, 1-hour storm in Denver is about 0.85 inches. It would be better to specify the rainfall depth for an 80th percentile storm, consistent with UDFCD criteria, than the 2-year, 1-hour which would exceed the WQCV.

Douglas County: Please update the treatment design to be based on rainfall amount. Rainfall amount can be easily determined, whereas runoff is difficult to measure and is not always the same for a given amount of rainfall. There is an inconsistency between this requirement and the WQCV standard. The WQCV is based on an 80th percentile storm event, not a 2-year, 1-hour event. The WQCV around the Metropolitan area is approximately 0.60 inches. The 2-year, 1-hour storm in Denver is about 0.85 inches. It would be better to specify the rainfall depth for an 80th percentile storm, consistent with UDFCD criteria, than the 2-year, 1-hour which would exceed the WQCV.

Xcel Energy: Constrained Redevelopment Sites Standard: The control measure(s) is designed to provide for treatment of the 2-year, 1-hour peak runoff flow. The control measure(s) shall be designed to treat to an expected median effluent concentration for total suspended solids (TSS) of 30 mg/L. Again it should be based on rainfall and not runoff. Rainfall is easy to measure compared to runoff, which is not always the same for a given amount of rainfall. There is an inconsistency between this section and the WQCV standard. The WQCV is based on an 80th percentile storm event, not a 2-year, 1-hour event. The WQCV around the Metropolitan area is approximately 0.60 inches. The 2-year, 1-hour storm in Denver is about 0.85 inches. It would be better to specify the rainfall depth for an 80th percentile storm, consistent with UDFCD criteria, than the 2-year, 1-hour which would exceed the WQCV. Consider revising the language that it should be specified that the control measure should be expected to reduce TSS.

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Southeast Metro Stormwater Authority: Part I.4.a.iv.B and Part I.4.a.iv.F.2.b, Pollutant Removal Standard. For consistency with other Design Standards, please update the 2-year, 1 hour peak runoff flow to the 80th percentile runoff event.

Response 28: Replace the "2-Year Storm" with the "80th Percentile Storm Event" in the Constrained Redevelopment Sites Design Standard
These comments have been incorporated into the permit.

Comment 29: Add Event Mean Concentration to the Constrained Redevelopment Sites Design Standard
Colorado Stormwater Council: Please change to the following proposed concept: The control measure(s) shall be designed to treat to an expected median effluent concentration for total suspended solids (TSS) of 30 mg/L." with "The control measure shall be designed to treat stormwater runoff in a manner expected to reduce the event mean concentration (EMC) of total suspended solids (TSS) to a median value of 30 mg/L or less. It should be specified that the control measure should be expected to reduce TSS. Also, a lower EMC should be acceptable.

Douglas County: Please change to the following proposed concept: The control measure(s) shall be designed to treat to an expected median effluent concentration for total suspended solids (TSS) of 30 mg/L." with "The control measure shall be designed to treat stormwater runoff in a manner expected to reduce the event mean concentration (EMC) of total suspended solids (TSS) to a median value of 30 mg/L or less. It should be specified that the control measure should be expected to REDUCE TSS. Also, a lower EMC should be acceptable.

Response 29: Add Event Mean Concentration to the Constrained Redevelopment Sites Design Standard
These comments have been incorporated into the permit.

Comment 30: Reword the Requirement for the Draining Area in the Constrained Redevelopment Sites Design Standard
Colorado Stormwater Council: Please change to the following proposed concept: A minimum of 50% of the applicable development area including 50% or more of the impervious area of the applicable development area shall drain to the control measure(s). The mass of the TSS is a difficult measurement with room for different interpretations. This alternative wording is easier to calculate and implement.

Response 30: Reword the Requirement for the Draining Area in the Constrained Redevelopment Sites Design Standard
These comments have been incorporated into the permit.

Comment 31: State that Actual Sampling is not Required for the Constrained Redevelopment Design Standard
El Paso County: The control measure discussed in the section contains an effluent concentration requirement of 30 mg/l for total suspended solids.

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Given the MS4 permit nor Construction Stormwater General Permits contain a effluent or water quality monitoring requirement its not clear how the Division expects this limit to be achieved and demonstrated. Clarify 30 mg/l is a design goal and no effluent or water quality monitoring are required to achieve this control measure requirement.

Response 31: State that Actual Sampling is not Required for the Constrained Redevelopment Design Standard
This comment has not been incorporated into the permit. Permittees have the flexibility to require construction operators to sample stormwater from the control measures or rely on the manufacture's specifications.

Comment 32: Provide the Basis for the Constrained Redevelopment Design Standard
Xcel Energy: Infiltrate, evaporate, or evapotranspirate, through practices such as green infrastructure, a quantity of water equal to 30% of what the calculated WQCV would be if all impervious for the applicable redevelopment project discharged without infiltration. Please provide basis/reasoning for using 30% of the calculated WQCV? Thirty percent of the WQCV is not a lot of water, even on highly impervious sites.

Response 32: Provide the Basis for the Constrained Redevelopment Design Standard
This comment has not been incorporated into the fact sheet. The division has determined that 30% of the calculated WQCV for green infrastructure practices is the MEP standard. Please see the explanation of the MEP standard in the fact sheet.

Comment 33: Revise the Additional Control Measure(s) Design Standard
Colorado Stormwater Council: Please change to the following proposed concept: Alternative Control Measure(s) Design Standard: When all other standards are determined infeasible, the permittee shall evaluate and require alternative control measures at the constrained applicable redevelopment site for removal of pollutants and/or infiltration of runoff to the extent determined practicable by the permittee. Please remove: At a minimum, alternative controls shall include incorporation of control measures to reduce pollutant discharges to any facility implemented to control the flow rate of stormwater runoff for purposes of drainage or flood control (e.g., adding water quality detention to a flood control pond).

Please change to the following proposed concept:
At a minimum, alternative controls shall include incorporation of green infrastructure practices such as minimizing directly connected impervious areas, urban tree canopy, and land planning practices.
CSC provided this as a comment last time and intended it as an alternative standard, not an additional standard.

The Alternative Control Measure Design Standard encourages a site to implement alternative practices when a Design Standard cannot be met.

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The last sentence regarding the minimum level of additional controls and the example in parenthesis are not consistent: Adding water quality detention to a flood control facility does not reduce pollutant discharges to the facility, as stated. Instead, it may reduce pollutant discharges from the facility. An existing detention pond on a site and the existing detention pond outlet works or volume may not allow a retrofit for water quality detention.

Douglas County: Please change to the following proposed concept: Alternative Control Measure(s) Design Standard: When all other standards are determined infeasible, the permittee shall evaluate and require alternative control measures at the constrained applicable redevelopment site for removal of pollutants and/or infiltration of runoff to the extent determined practicable by the permittee.

Please remove: At a minimum, alternative controls shall include incorporation of control measures to reduce pollutant discharges to any facility implemented to control the flow rate of stormwater runoff for purposes of drainage or flood control (e.g., adding water quality detention to a flood control pond).

Please change to the following proposed concept:
At a minimum, alternative controls shall include incorporation of green infrastructure practices such as minimizing directly connected impervious areas, urban tree canopy, and land planning practices. CSC provided this as a comment last time and intended as an alternative standard, not an additional standard.

The Alternative Control Measure Design Standard encourages a site to implement alternative practices when a Design Standard cannot be met.

The last sentence regarding the minimum level of additional controls and the example in parenthesis are not consistent: Adding water quality detention to a flood control facility does not reduce pollutant discharges to the facility, as stated. Instead, it may reduce pollutant discharges from the facility. An existing detention pond on a site and the existing detention pond outlet works or volume may not allow a retrofit for water quality detention.

Xcel Energy: Additional Control Measure(s) Design Standard This should be included in Part I.E.4.a.iv.(F)2) as subpart d).

Southeast Metro Stormwater Authority: Additional Control Measure Design Standard. Please update this section to a new section Part I.4.a.iv.F.2.d, Alternative Control Measure(s) Standard. Using Additional Standard is confusing and misrepresents that this standard is in addition to the others listed. This section should be updated to read: Alternative Control Measure(s) Design Standard: The permittee shall evaluate and require alternate control measures at the constrained applicable redevelopment or development site for removal of pollutants or infiltration of runoff to the extent determined practicable by the permittee. At a minimum, additional controls shall include incorporation of control measures to reduce pollutant discharges to any facility implemented to

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control the flow rate of stormwater runoff for purposes of drainage or flood control (e.g., adding water quality detention to a flood control pond).

Response 33: Revise the Additional Control Measure(s) Design Standard
These comments have not been incorporated into the permit. This design standard has been removed from the permit. The goal of this design standard was to encourage permittees to require more treatment than the constrained redevelopment sites design standard if the permittee determines that it is feasible.

Comment 34: Include New Development in the Constrained Redevelopment Sites Standard
Southeast Metro Stormwater Authority: Constrained Redevelopment Site Standard. Please update this section to read Constrained Development and Redevelopment Site Standard. It is feasible that Development projects may be constrained by utilities, grades, access, and other factor similar to those of Constrained Redevelopment Sites. This comment can also be addressed by adding an additional section for Constrained Site Standard. The proposed language for the applicability of development projects could read:
Applicability: The constrained development projects standard applies to development projects meeting one of the following criteria: (1) The applicable development project is a development that is not part of a larger common plan of development or sale, where the development project is abutted by existing development and/or right-of-way, utilities, roadways, or similar constraints. This does not apply to development that is adjacent to vacant or open parcels. or (2) The permittee has determined that it is not practicable to meet any of the design standards in Parts I.E.4.a.iv.(A),(B), or (C). The permittee's determination shall include an evaluation of the applicable development projects ability to install a control measure without reducing surface area covered with the structures. We recommend the Design Standards for Constrained Redevelopment Sites and Constrained Development Sites be uniform.

Response 34: Include New Development in the Constrained Redevelopment Sites Standard
This comment has not been incorporated into the permit. The division found that it was not appropriate to include new development in the constrained redevelopment sites standard.

Comment 35: Update the Requirements for the Previous Permit Term Standard
Colorado Stormwater Council: Please change to the following proposed concept: The previous permit term standard is only applicable to applicable development activities where one of the following criteria are met:
Only one criterion would apply- the control measure is constructed, it is designed and in review, or it is designed and approved.

Douglas County: Please change to the following proposed concept: The previous permit term standard is only applicable to applicable development activities where one of the following criteria are met: Only one criterion would apply-

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the control measure is constructed, it is designed and in review, or it is designed and approved.

Response 35: Update the Requirements for the Previous Permit Term Standard
These comments have been incorporated into the permit.

v. Site Plans

Comment 1: Replace "This Permit" with "Part I.E.4."
Colorado Stormwater Council: Please clarify design details for all structural control measures implemented to meet the requirements of I.E.4.a.iv this section, not this permit. Site Plans for Post-Construction do not need to include temporary structural control measures used during construction.

Douglas County: Please clarify design details for all structural control measures implemented to meet the requirements of I.E.4.a.iv this section, not this permit. Site Plans for Post-Construction do not need to include control temporary structural control measures used during construction.

Response 1: Replace "This Permit" with "Part I.E.4."
These comments have been incorporated into the permit.

Comment 2: Add "If Applicable"
Colorado Stormwater Council: Please change to the following proposed concept: A narrative reference for all non-structural control measures for the project, if applicable. All projects may not include non-structural control measures as part of their approval.

Douglas County: Please change to the following proposed concept: A narrative reference for all non-structural control measures for the project, if applicable. All projects may not include non-structural control measures as part of their approval.

Response 2: Add "If Applicable"
These comments have been incorporated into the permit.

Comment 3: Remove the Requirement to Document the Frequency of Routine Inspection and Maintenance
City of Canon City: v.(A)3) Documentation of operation and maintenance procedures to ensure the long term observation, maintenance, and operation of the control measures. The documentation shall include frequencies for routine inspections and maintenance activities. The City of Cañon City requests the final sentence of this requirement be removed. Rationale: A statement on the plans stating that the owner or HOA is responsible for maintenance is sufficient. For Cañon City, plats and agreements stating who is responsible for maintenance are recorded with the County Clerk and Recorder and are noted for record during subdivision hearings with City Council and the Planning Committee. Documenting maintenance frequencies may lead the owner/party responsible for maintenance to believe that maintenance only has to be done

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at that frequency (i.e. once or twice a year) when in reality the control measure may need it more often due to storms, etc.

Response 3: Remove the Requirement to Document the Frequency of Routine Inspection and Maintenance
This comment has not been incorporated into the permit. Routine inspection and maintenance is essential to the long term operation and maintenance of a control measure and must be documented. The permittee has the flexibility to require that inspection and maintenance be conducted after storm events or for other reasons, as needed.

Comment 4: Explain the Specific Type of Documentation Needed to Document Access to the Control Measure
Xcel Energy: Documentation regarding easements or other legal means for access of the control measure sites for operation, maintenance, and inspection of control measures. What is the Division looking for in regards to documentation? Are actual recorded easements to be included on the plans? It seems more reasonable that the plans show a representation, in plan view, where permanent easements have been secured. Reception numbers and boundaries could be listed but this would be a lot of information on a transmission line that crosses dozens to hundreds of land owners.

Response 4: Explain the Specific Type of Documentation Needed to Document Access to the Control Measure
This comment has not been incorporated into the permit. Permittees have the flexibility to determine the specific type of documentation needed to comply with this permit requirement.

Comment 5: Add Requirements for both Major and Minor Modifications
Southeast Metro Stormwater Authority: Please note that there are occasions where minor modifications can be addressed in the field, and occasions where major modifications must be addressed through a site plan change. We recommend that the differentiation between major and minor changes be based on if the modification is a design change. For example, a plan set that contains conflicting information between a detail and a plan call-out is not a design issue and may be modified in the field. A major change that requires design modification (including calculation), might be a missing elevation for an emergency overflow. Please update this section to address minor changes. We recommend revising the section to read: The permittee must meet the requirements of Part I.E.4.a.v.(A) and (B) before approving any major design modifications to the site plan.

Response 5: Add Requirements for both Major and Minor Modifications
This comment has not been incorporated into the permit. The permittee has the flexibility to develop procedures for both major and minor modifications that comply with this section of the permit.

vi. Construction Inspection and Acceptance

Comment 1: Replace the Word "Matches" with "Functions"

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Southeast Metro Stormwater Authority: Post Construction Oversight. Please consider revising the word matches to functions or "operates in accordance with the approved plan". Functionality should be the intended long term goal of any post construction oversight activity, and this reinforces that concept.

Response 1: Comment 1: Replace the Word "Matches" with "Functions"
This comment has been incorporated into the permit.

vii. Long-Term Operation and Maintenance and Post Acceptance Oversight

Comment 1: Support of the Current Frequency of Permanent Control Measure Inspections
Douglas County: Douglas County staff agrees with the proposed frequency of inspections on post-construction control measures as once within the permit term.

Home Builders Association of Metro Denver: We agree that one post construction inspection of permanent control structures during the term of the permit is applicable. The MS4 could opt for additional inspections if they so choose.

Housing and Building Association of Colorado Springs: We agree that one post construction inspection of permanent control structures during the term of the permit is applicable. The MS4 could opt for additional inspections if they so choose

Response 1: Support of the Current Frequency of Permanent Control Measure Inspections
The division acknowledges this comment. No changes to the permit or fact sheet are necessary.

Comment 2: Replace the "/" with "Or"
Southeast Metro Stormwater Authority: Post Acceptance Oversight. Please consider referring to the owner or operator. The operator of a small site control measure might change frequently, and would be difficult to track.

Response 2: Replace the "/" with "Or"
This comment has been incorporated into the permit.

viii. Enforcement Response
No comments were received on this section of the permit.

ix. Tracking
No comments were received on this section of the permit.

x. Training
No comments were received on this section of the permit.

xi. For Applicable Construction Activities that Overlap Permit Areas of One MS4 Permittee

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No comments were received on this section of the permit.

b. **Recordkeeping**

i. **Excluded Projects**

Comment 1: Remove All Recordkeeping Requirements for Excluded Projects
Weld County: Please remove the requirement for maintaining records on excluded projects. Compiling this data is burdensome and in some cases infeasible.

City of Boulder: This is a resource intensive recordkeeping task. Requiring recordkeeping for "all" excluded projects would not provide a measureable benefit to water quality. The way the definition reads now, the city would be required to perform recordkeeping for a number of very small paving and roadway projects which does not appear to add benefit to either the state's understanding of the exemption component or add protection to stormwater. To adjust this burden the state might potentially place a minimum size of project that requires recordkeeping or utilize some other metric to gage effects of exclusions.

Response 1: Remove All Recordkeeping Requirements for Excluded Projects
This comment has not been incorporated into the permit. The current permit does not allow for any exclusions. This is a new section of the renewal permit and the use of the new exclusions must be closely tracked. Please see the division's comments below concerning the removal of certain recordkeeping requirements.

Comment 2: Remove the Recordkeeping Requirements for Pavement Management Projects
Colorado Stormwater Council: Please remove the requirement to track routine pavement management project. Routine pavement areas are not required to have control measures, as such the impervious area would not be tracked. Projects excluded from the permit requirements should not have additional documentation or reporting requirements. Recordkeeping for Pavement Management is typically in the form of tracking quantities of material, labor and equipment hours, budgets, etc. and not necessarily tracking, for example, the impervious area of a pothole. Compiling paperwork for projects not subject to MS4 Permit requirements is not an efficient use of limited MS4 resources. Projects not subject to the requirements of this permit would not be tracked to show they were not subject to the permit requirements.

Douglas County: Please remove the requirement to track the acreage of the excluded impervious area for any routine pavement management project. Routine pavement areas are not required to have control measures, as such the impervious area would not be tracked. Projects excluded from the permit requirements should not have additional documentation or reporting requirements. Recordkeeping for Pavement Management is typically in the form of tracking quantities of material, labor and equipment hours, budgets, etc. and not necessarily tracking, for example, the impervious area of a

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pothole. Compiling paperwork for projects not subject to MS4 Permit requirements is not an efficient use of limited MS4 resources. Projects not subject to the requirements of this permit would not be tracked to show they were not subject to the permit requirements.

Southeast Metro Stormwater Authority: We understand the purpose for tracking projects that truly exclude post construction control measures, but request that the excluded projects that include a level of treatment not be tracked. The burden for tracking some of these exclusions is not practicable, or helpful, and there is potential for some permittees to place effort into meeting this requirement, while others ignore it. Please update Sections A) through D) to read: A) Excluded Roadway Redevelopment, B) Excluded Existing Roadway Areas for Roadway Redevelopment. Pavement Management Projects are not practicable to document because of the frequency and minor nature of the projects (pothole repair, patching, etc.).

City of Boulder: The way the definition reads now, the city would be required to perform extensive recordkeeping for a number of very small paving and roadway projects which does not appear to add benefit to either the state's understanding of the exemption component or the protection to stormwater.

Response 2: Remove the Recordkeeping Requirements for Pavement Management Projects
These comments have been partially incorporated into the permit. This requirement has been updated to only require recordkeeping for rehabilitation and reconstruction of pavement projects that are not maintenance. Recordkeeping requirements for the day-to-day maintenance of pavement have been removed. In regards to the recordkeeping requirements that have been retained the current permit does not allow for any exclusions. This is a new section of the renewal permit and the use of the new exclusions must be closely tracked. Permittees have the flexibility to be more stringent than the permit and not allow the exclusions due to the recordkeeping requirements.

Comment 3: Remove the Recordkeeping Requirements for Non-Residential and Non-Commercial Infiltration Conditions
Colorado Stormwater Council: Please remove the requirement to track the acreage of the excluded impervious area. Runoff from projects meeting the requirement for the Non-Residential and Non-Commercial Infiltration Conditions Standard is treated through infiltration or filtration. These areas are treated and should not have additional documentation or reporting requirements.

Douglas County: Please remove the requirement to track the acreage of the excluded impervious area. Runoff from projects meeting the requirement for the Non-Residential and Non-Commercial Infiltration Conditions Standard is treated through infiltration or filtration. These areas are treated and should not have additional documentation or reporting requirements.

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Southeast Metro Stormwater Authority: Please note that Non-Residential and Non-Commercial Infiltration Conditions do not exclude water quality; rather, water quality is provided through infiltration of minor flows.

Response 3: Remove the Recordkeeping Requirements for Non-Residential and Non-Commercial Infiltration Conditions
These comments have not been incorporated into the permit. The current permit does not allow for any exclusions. This is a new section of the renewal permit and the use of the new exclusions must be closely tracked. Permittees have the flexibility to be more stringent than the permit and not allow the exclusions due to the recordkeeping requirements.

ii. Regulatory Mechanism
No comments were received on this section of the permit.

iii. Regulatory Mechanism Exemptions
No comments were received on this section of the permit.

iv. Control Measure Requirements
No comments were received on this section of the permit.

v. Site Plans
Comment 1: Move the Ownership Requirement to the Post Acceptance Oversight Section
Colorado Stormwater Council: Please move this requirement to Post Acceptance Oversight and update to the following proposed concept: Procedures for determining ownership through property records, as needed. Documentation of changes in ownership does not occur on site plans. Documentation would occur within Post Acceptance Oversight.

Douglas County: Please move this requirement to Post Acceptance Oversight and update to the following proposed concept: Procedures for determining ownership through property records, as needed. Documentation of changes in ownership does not occur on site plans. Documentation would occur within Post Acceptance Oversight.

Southeast Metro Stormwater Authority: Requesting applicable documentation regarding change of ownership procedures on site plans is not practicable. There should be a procedure for documenting a change in ownership, perhaps listed in an applicable location in the PDD, but placement on a site plan is not the appropriate location. Please delete Section E and request this documentation in the PDD.

Response 1: Move the Ownership Requirement to the Post Acceptance Oversight Section
These comments have been incorporated into the permit.

Comment 2: Remove the Requirement to Document Easements to the Control Measure

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City of Arvada: Remove the requirement to document easements or legal means to access privately held Post-Construction BMPs. This requirement is overly burdensome.

Response 2: Remove the Requirement to Document Easements to the Control Measure
This comment has not been incorporated into the permit. Access is a very important part of ensuring long term operating and maintenance of a control measure. This information must be documented.

vi. **Construction Inspection and Acceptance**
No comments were received on this section of the permit.

vii. **Long-Term Operation and Maintenance and Post Acceptance Oversight**

Comment 1: Replace the Word "Matches" with "Functions"
Southeast Metro Stormwater Authority: Post Construction Oversight. Please consider revising the word matches to functions or "operates in accordance with the approved plan". Functionality should be the intended long term goal of any post construction oversight activity, and this reinforces that concept.

Response 1: Comment 1: Replace the Word "Matches" with "Functions"
This comment has been incorporated into the permit.

Comment 2: Remove the Recordkeeping Requirements for Permittees that Inspect Control Measures More Frequently
Southeast Metro Stormwater Authority: Construction Inspection and Acceptance and Post Acceptance Oversight Site Inspection. Please note that the documentation for frequency is necessary only if less than once per permit term. There should not be a higher documentation standard or burden for inspections frequencies greater than the minimum.

Response 2: Remove the Recordkeeping Requirements for Permittees that Inspect Control Measures More Frequently
This comment has been incorporated into the permit.

viii. **Enforcement Response**
No comments were received on this section of the permit.

ix. **Tracking**
No comments were received on this section of the permit.

x. **Training**
No comments were received on this section of the permit.

xi. **For Applicable Construction Activities that Overlap Permit Areas of One MS4 Permittee**
No comments were received on this section of the permit.

c. **Program Description Document**

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No comments were received on this section of the permit.

5. Pollution Prevention/Good Housekeeping for Municipal Operations

a. **The following requirements apply**

i. Control Measure Requirements
No comments were received on this section of the permit.

ii. Municipal facility Runoff Control Measures

Comment 1: Clarify that New Procedures Shall be Written
City of Canon City: The City of Cañon City requests the Division modify or clarify if the "new procedures" shall be written procedures as is stated in 5.a.iii.

Response 1: Clarify that New Procedures Shall be Written
This comment has been incorporated into the permit.

Comment 2: Clarify that Dumpsters are not Waste Transfer Stations
Colorado Stormwater Council: Please change to the following proposed concept: Outdoor solid-waste transfer stations operated for the benefit of the public, where waste and recyclables are briefly held before further transport. This does not include those already authorized by a separate CDPS or NPDES Discharge Permit. All municipal buildings have a dumpster where waste and recyclables are briefly held prior to further transport. Without clarification of facilities to which this may apply, a permittee would be required to implement this permit requirement at every municipally owned building.

Douglas County: Please change to the following proposed concept:
Outdoor solid-waste transfer stations operated for the benefit of the public, where waste and recyclables are briefly held before further transport. This does not include those already authorized by a separate CDPS or NPDES Discharge Permit. All municipal buildings have a dumpster where waste and recyclables are briefly held prior to further transport. Without clarification of facilities to which this may apply, a permittee would be required to implement this permit requirement at every municipally-owned building.

City of Canon City: The City of Cañon City requests the Division please clarify the intention is to address solid waste transfer stations and recyclable transfer stations operated for the benefit of the public; not to address dumpsters and recycling containers at municipally-owned facilities. Rationale: Without a clear understanding of the facilities to which this may apply, a permittee cannot be certain proper Control Measures are implemented. For example, all municipal buildings have a dumpster where waste and recyclables are briefly held prior to further transport.

Response 2: Clarify that Dumpsters are not Waste Transfer Stations
These comments have not been incorporated into the permit. Permittees have the flexibility to further define waste transfer stations and a municipal facility.

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Dumpsters are typically not considered waste transfer stations. In addition, permittees can exclude discharges specifically authorized by a CDPS or NPDES permits from being effectively prohibited (Part I.2.a.v.) Also, Part I.5. specifically excludes operations and facilities that are not authorized by a separate CDPS or NPDES discharge permit.

Comment 3: Clarify How the Permittee will Verify that the Written Procedures Reflect Current Conditions
City of Canon City: The City of Cañon City requests the Division clarify, either in the permit requirement or in the Fact Sheet, how they envision the permittee perform the requested verification and how it is to be documented.

Response 3: Clarify How the Permittee will Verify that the Written Procedures Reflect Current Conditions
This comment has not been incorporated into the permit. Permittees have the flexibility to determine how the verification will be conducted and documented.

Comment 4: Clarify that the Permit Requirements do not Apply to Facilities with CDPS Permits
5-2-1 Drainage Authority: Solid waste transfer stations - Our municipalities obtain their own state approved permits for those facilities that briefly hold waste and recyclables before transport. These facilities maintain each of their own BMPs to ensure these facilities to not contribute pollutants and are in compliance with their permit. Clarification of the types of facilities is necessary to ensure properly Control measures are implemented. It will also be beneficial for the CDPHE not to enforce these standards on the MS4's since these facilities already obtain and enforce these standards to their own permits.

Response 4: Clarify that the Permit Requirements do not Apply to Facilities with CDPS Permits
This comment has not been incorporated into the permit. Part I.5. specifically excludes operations and facilities that are authorized by a separate CDPS or NPDES discharge permit.

iii. Municipal Operations and Maintenance Procedures

Comment 1: Use Consistent Language in the Requirements
El Paso County: Maintenance is identified in both sections but with inconsistent qualifiers.

Response 1: Use Consistent Language in the Requirements
This comment has not been incorporated into the permit. The comment is not specific and unclear.

Comment 2: Combine MS4 Maintenance, Including Trash Removal and Maintenance, Replacement, and Construction of Utilities and the Storm System
Colorado Stormwater Council: Please combine number 9 and number 14.

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To reduce redundancy and provide clarity, this list/terminology used should be consistent with the procedures developed for the One-Time Operating Procedures Report. Item #9 is redundant to Item #14.

Douglas County: Please combine number 9 and number 14. To reduce redundancy and provide clarity, this list/terminology used should be consistent with the procedures developed for the One-Time Operating Procedures Report. Item #9 is redundant to item #14.

El Paso County: Combine 9 and 14 or clarify the distinction between them.

City of Canon City: These requirements appear to be redundant. The City of Cañon City requests clarification on the differences from the Division if these are, indeed, two separate requirements. If they are not different we suggest they be combined into one requirement.

Response 2: Combine MS4 Maintenance, Including Trash Removal and Maintenance, Replacement, and Construction of Utilities and the Storm System
These comments have been incorporated into the permit.

Comment 3: Clarify the Term Maintenance
City of Canon City: (A)8) Building maintenance
The City of Cañon City requests the Division add clarification to this requirement, specifically on how encompassing this requirement is. Does it apply only to indoor maintenance or grounds maintenance or both?

Response 3: Clarify the Term Maintenance
This comment has not been incorporated into the permit. Permittees have the flexibility to define building maintenance.

iv. Nutrient Source Reductions

Comment 1: Add If Applicable
Colorado Stormwater Council: Please add, “if applicable”. A permittee only needs to include the storage and application of fertilizer, including subsequent stormwater or irrigation runoff from areas where fertilizer has been applied, as an identified municipal operations nutrient source, if they store or apply fertilizer.

Response 1: Add If Applicable
This comment has been incorporated into the permit.

v. Bulk Storage

Comment 1: Define a Minimum Size for Bulk Storage Containers
Home Builders Association of Metro Denver: Please define the minimum size of the bulk storage containers. Typically with an SPCC Plan or equivalent, the state or U.S. EPA requires anything larger than a 55 gallon drum.

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5-2-1 Drainage Authority: Bulk Storage – Currently each of our municipalities obtains and maintains their own SPCC plans for both the State and the EPA. These plans specify these are only bulk storage containers that are larger than 55 gallons. Additionally a specific quantity should be identified.

Housing and Building Association of Colorado Springs: Please define the minimum size of the bulk storage containers. Typically with an SPCC Plan or equivalent, the state or U.S. EPA requires anything larger than a 55-gallon drum.

Response 1: Define a Minimum Size for Bulk Storage Containers
These comments have been incorporated into the permit.

Comment 2: Remove the Requirement for Containing All Spills
City of Aurora: For example, requiring secondary containment or equivalent protection that contains all spills and prevents any spilled material from entering state waters is a nearly unachievable goal.

Response 2: Remove the Requirement for Containing All Spills
This comment has not been incorporated into the permit. See response to comment 1 above.

Comment 3: Support for CSC's comments
City of Federal Heights: The topics considered "high-level" issues for the City include the following: Good Housekeeping- Bulk liquid storage- outside.

City of Glendale: The topics considered "high-level" issues for the City include the following: Good Housekeeping- Bulk liquid storage- outside.

Response 3: Support for CSC's comments
Please see the division's response to CSC's comments, under section iv above, Nutrient Source Reductions.

Comment 4: Define Liquid Chemicals
Home Builders Association of Metro Denver: Also the term "liquid chemicals" needs to be defined. If no definition is provided, then every product used (such as white out, liquid gold, etc.) would have to be included in this section.

Housing and Building Association of Colorado Springs: The term "liquid chemicals" needs to be defined. If no definition is provided, then every product used (such as white-out, liquid gold, etc.) would have to be included in this section.

El Paso County: Additionally a list of "other liquid chemicals" should be included. As written it could be interpreted that water tanks need secondary containment.

Response 4: Define Liquid Chemicals

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This comment has not been incorporated into the permit. Permittees have the flexibility to define the term "liquid chemicals."

Comment 5: Clarify that this Section Applies to Outside Storage of Bulk Materials
Colorado Stormwater Council: The requirement should only apply to bulk liquid storage that is located outdoors where it could have the reasonable potential to be a stormwater pollutant.

Douglas County: The requirement should only apply to bulk liquid storage that is located outdoors where it could have the reasonable potential to be a stormwater pollutant.

El Paso County: As written the primary focus of the paragraph is for spill containment and prevention. However if bulk storage of liquid material is provided for indoors, this should be an acceptable control measure to minimize pollutants in stormwater runoff. Include inside storage as an acceptable control measure to minimize runoff of material in stormwater.

Home Builders Association of Metro Denver: Please include inside storage as an acceptable control measure to minimize runoff of material in stormwater.

5-2-1 Drainage Authority: Clarification in the language should include the requirement only applies to bulk liquid storage that is located outdoors where is has potential to contribute as a stormwater pollutant.

Response 5: Clarify that this Section Applies to Outside Storage of Bulk Materials
These comments have been incorporated into the permit.

Comment 6: Clarify that this Section Only Applies to Municipal Facilities
5-2-1 Drainage Authority: Clarification that this requirement only applies to municipal facilities needs to be included in the requirement.

Response 6: Clarify that this Section Only Applies to Municipal Facilities
This comment has not been incorporated into the permit. Part I.6 only applies to municipal operations and facilities.

Comment 7: Move the Requirements for Bulk Storage to the Municipal Facility Runoff Control Measures
Colorado Stormwater Council: Please include bulk storage as a requirement in I.E.5.a.ii instead of listing it separately. Please clarify that this only applies to bulk liquid storage located at applicable municipal facilities that are stored outdoors and are contained in stationary tanks. Bulk Storage should be included as a Control Measure under a facility, not a separate requirement.

Douglas County: Please include bulk storage as a requirement in I.E.5.a.ii instead of listing it separately. Please clarify that this only applies to bulk liquid storage located at applicable municipal facilities that are stored

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outdoors and are contained in stationary tanks. Bulk Storage should be included as a Control Measure under a facility, not a separate requirement.

Response 7: Move the Requirements for Bulk Storage to the Municipal Facility Runoff Control Measures
These comments have not been incorporated into the permit. The outdoor storage of bulk storage containers is an important part of preventing or reducing pollutant runoff from municipal operations. The outdoor storage of bulk materials occurs at/on both municipal facilities and on municipal operations and must remain a separate requirement in the permit.

vi. Training
No comments were received on this section of the permit.

b. **Recordkeeping**

i. Municipal facility Runoff Control Measures

Comment 1: Define the Term Implementation Specifications
City of Canon City: The City of Cañon City requests the Division provide clarification on the term "specifications". Specifically what the Division is anticipating for installation and implementation specifications and how this requirement will be met if current installation details (e.g., plans) are not available.

Response 1: Define the Term Implementation Specifications
This comment has not been incorporated into the permit. Permittees have the flexibility to further define the term implementation specifications.

Comment 2: Remove the Recordkeeping Requirements for Bulk Storage Structures
City of Canon City: The City of Cañon City requests that this requirement be removed. Rationale: This requirement is redundant with Part I.E.5.b.iv. Bulk Storage.

Response 2: Remove the Recordkeeping Requirements for Bulk Storage Structures
This comment has not been incorporated into the permit. Bulk storage can occur at both municipal facilities and municipal operations, so the permit has recordkeeping requirements for both.

ii. Municipal Operations and Maintenance Procedures
No comments were received on this section of the permit.

iii. Nutrient Source Reductions
No comments were received on this section of the permit.

iv. Bulk Storage

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Comment 1: Add If Applicable
Colorado Stormwater Council: Please add, "if applicable".
Some permittees may not have bulk storage and would not need to include a description of control measures implemented for bulk storage structures

Response 1: Add If Applicable
This comment has been incorporated into the permit.

v. Training

Comment 1: Replace "Title" with "Department"
Colorado Stormwater Council: Please remove "title" from the requirement and add "department." Municipal job titles are often not specific, such as "Maintenance Worker 1" and do not provide valuable information regarding what work groups are being targeted with training. Documenting "department" provides more relevant information.

Douglas County: Please remove title from the requirement and add department. Municipal job titles are often not specific, such as "Maintenance Worker 1" and do not provide valuable information regarding what work groups are being targeted with training. Documenting "Department" provides more relevant information.

City of Canon City: The City of Cañon City requests that the "title" of each individual be replaced with "department". Rationale: Municipal job titles are often not specific, such as "Maintenance Worker 1" and do not provide valuable information regarding which work groups are being targeted with the training. "Department" is more relevant information.

Response 1: Replace "Title" with "Department"
These comments have been incorporated into the permit.

c. **Program Description Document**

i. Municipal facility Runoff Control Measures

Comment 1: Add "If Applicable"
Colorado Stormwater Council: Please add, "if applicable". Some permittees may not have facilities or specifications and this information would not be necessary to document.

Response 1: Add "If Applicable"
This comment has been incorporated into the permit.

ii. Municipal Operations and Maintenance Procedures
No comments were received on this section of the permit.

iii. Nutrient Source Reductions
No comments were received on this section of the permit.

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iv. **Bulk Storage**
No comments were received on this section of the permit.

v. **Training**
No comments were received on this section of the permit.

G. PART I.F. - OTHER TERMS AND CONDITIONS

Comment 1: Cost-Benefit Analysis
Town of Castle Rock: Cost Benefit Analysis. The Town appreciates the Division's willingness to acknowledge the need for considering a cost benefit analysis in the draft permit. However, upon review of the second draft permit and the fact sheet, it appears that cost was only a considered factor in two areas of the permit including sections I.E.4.a.i.A pavement management and I.F.6 monitoring. As stated in the fact sheet, the Division will consider cost when selecting the appropriate permit term or condition, and will choose the least costly alternative that meets the requirement for the MS4 permit. This does not appear to be the case throughout the permit. The Town respectfully requests that additional consideration be given to permit terms and conditions that have significant cost implications and provide clarifying language in the fact sheet where such consideration was given. In particular, the Town has concern with potential costs related to inspection frequencies, inspection scope and general record keeping that have not been demonstrated to have an equivalent water quality benefit.

Response 1: Cost-Benefit Analysis
This comment has been incorporated into the permit. The division considered the cost-benefit analysis submitted on the first draft of the renewal permit. For example, pavement management is an exclusion in the permit. In addition, the permit reflects monitoring option 3, which is that monitoring will be conducted on an as-needed basis, similar to the previous permit.

H. PART I.G. – PROGRAM REVIEW AND MODIFICATION

Comment 1: Swap Part I.G and Part I.H
City of Canon City: Part I.G. Program Review and Modification: General comment: Swapping Part I.G. and Part I.H. Compliance Schedule would create a more logical flow to the permit.

Response 1: Swap Part I.G and Part I.H
This comment has not been incorporated into the permit. Swapping the two sections of the permit does not appear to improve the clarity of the permit.

1. **Annual Program review**

Comment 1: Clarify How to Assess the Effectiveness of Control Measures
City of Canon City: The City of Cañon City requests the Division clarify what they would like an assessment of the effectiveness of the control measures to be. This may

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be a difficult requirement to meet as much of the assessed effectiveness is subjective and not easily quantifiable, particularly in the areas such as Education and Outreach.

Response 1: Clarify How to Assess the Effectiveness of Control Measures
This comment has not been incorporated into the permit. Permittees have the flexibility to determine how to assess the effectiveness of control measures.

Comment 2: Clarify Which Control Measures have to be Assessed
El Paso County: It's not clear what control measures must be evaluated, those control measures implemented by the MS4 permittee or those used by construction operators.

Response 2: Clarify Which Control Measures have to be Assessed
This comment has not been incorporated into the permit. As stated in the permit, permittees must assess their "current program areas" for the annual report.

I. PART I.H. – COMPLIANCE SCHEDULE

1. Renewal Permittees

Comment 1: Include the Months from the Effective Date of the Permit for the Deadline in Table 2
Colorado Stormwater Council: The Division has indicated all newer permits list specific dates within the compliance schedule. We suggest providing months from the effective date of the permit for ease in understanding the timeframe permittees will need to implement the program requirements.

Douglas County: The Division has indicated all newer permits list specific dates within the compliance schedule. We suggest providing months from the effective date of the permit for ease in understanding the timeframe permittees will need to implement the program requirements.

Response 1: Include the Months from the Effective Date of the Permit for the Deadline in Table 2
These comments have not been incorporated into the permit. Deadlines in permits are expressed as specific dates and not as months from the effective date of the permit. This eliminates the need for translation of the time periods after issuance for implementation. The division updates the dates at the time of permit issuance as needed.

Comment 2: Support of Colorado Stormwater Council's Comments
Town of Castle Rock: The Town requests adjustment under the compliance schedule to allow for sufficient time to secure budget, resources and regulatory authority to implement permit terms and conditions. The Town concurs with the proposed changes as put forth by the CSC.

Response 2: Support of CSC's Comments
The division acknowledges this comment. No changes to the permit or fact sheet are necessary.

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Comment 3: Compliance Schedule to Identify Irrigation Return Flows
City of Arvada: Page 5. Conveyances for which the majority of flow is irrigation return flow and/or supplying water to irrigated land…must be identified in the permittee's application as not being a part of the MS4. Recommend adding this requirement to the compliance schedule to provide adequate time to define the location of these conveyances

Response 3: Compliance Schedule to Identify Irrigation Return Flows
This comment has been incorporated into the permit.

Comment 4: Change the Deadline for Counties to Develop County Growth Area Maps
Colorado Stormwater Council: County growth area maps. Please allow 6 months from the effective date of the permit. Please schedule a separate meeting with County Stormwater managers to discuss the development of the maps as requested at the MS4 General Permit Renewal Introductory Meeting. The county meeting was requested at the Introductory Meeting and will ensure the requirement is understood.

Douglas County: Part I.A.3.a.ii(B): County growth area maps. Please allow 6 months from the effective date of the permit. Please schedule a separate meeting with County Stormwater managers to discuss the development of the maps as requested at the MS4 General Permit Renewal Introductory Meeting. The county meeting was requested at the Introductory meeting and will ensure the requirement is understood.

Response 4: Change the Deadline 6 Months for Counties to Develop County Growth Area Maps
These comments have been incorporated into the permit.

Comment 5: Change the Deadline for Changing Regulatory Mechanisms
Colorado Stormwater Council: Complete all applicable changes to the regulatory mechanism(s): Please allow 36 months from the effective date of the permit for the applicable changes to regulatory mechanisms and supporting program documents. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Complete all applicable changes to the regulatory mechanism(s): Please allow 36 months from the effective date of the permit for the applicable changes to regulatory mechanisms and supporting program documents. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 5: Change the Deadline for Changing Regulatory Mechanisms
These comments have been incorporated into the permit.

Comment 6: Change the Deadline for Illicit Discharges: Begin Providing Information Targeting Business(es) and the General Public.

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Colorado Stormwater Council: Illicit Discharges: Begin providing information targeting business(es) and the general public. Please allow 24 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Illicit Discharges: Begin providing information targeting business(es) and the general public. Please allow 24 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 6: Change the Deadline for Illicit Discharges: Begin Providing Information Targeting Business(es) and the General Public.
These comments have been incorporated into the permit.

Comment 7: Change the Deadline for Nutrients: Begin Providing Education
Colorado Stormwater Council: Nutrients: Begin Providing Education. Please allow 24 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Nutrients: Begin Providing Education. Please allow 24 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 7: Change the Deadline for Nutrients: Begin Providing Education
These comments have been incorporated into the permit.

Comment 8: Change the Deadline for Education and Outreach Activities: Begin providing annual public education and outreach from Table 1
Colorado Stormwater Council: Education and Outreach Activities: Begin providing annual public education and outreach from Table 1. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Education and Outreach Activities: Begin providing annual public education and outreach from Table 1. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

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Response 8: Change the Deadline for Education and Outreach Activities: Begin providing annual public education and outreach from Table 1
These comments have been incorporated into the permit.

Comment 9: Change the Deadline for Nutrients: Determine Targeted Sources of Nutrients
Colorado Stormwater Council: Nutrients: Determine Targeted Sources of Nutrients. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Nutrients: Determine Targeted Sources of Nutrients. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 9: Change the Deadline for Nutrients: Determine Targeted Sources of Nutrients
These comments have been incorporated into the permit.

Comment 10: Change the Deadline for Tracing an Illicit Discharge
Colorado Stormwater Council: Tracing an Illicit Discharge: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Tracing an Illicit Discharge: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 10: Change the Deadline for Tracing an Illicit Discharge
These comments have been incorporated into the permit.

Comment 11: Change the Deadline for Priority Areas: Identify Any New Priority Areas
Colorado Stormwater Council: Priority Areas: Identify any new priority areas. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

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Douglas County: Priority Areas: Identify any new priority areas. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 11: Change the Deadline for Priority Areas: Identify Any New Priority Areas
These comments have been incorporated into the permit.

Comment 12: Change the Deadline for Removing an Illicit Discharge: Ensure Documentation is Recorded
Colorado Stormwater Council: Removing and Illicit Discharge: Ensure documentation is recorded. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Removing and Illicit Discharge: Ensure documentation is recorded. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 12: Change the Deadline for Removing an Illicit Discharge: Ensure Documentation is Recorded
These comments have been incorporated into the permit.

Comment 13: Change the Deadline for Removing an illicit Discharge, Enforcement Response
Colorado Stormwater Council: Removing an illicit Discharge, Enforcement Response: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Removing an illicit Discharge, Enforcement Response: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 13: Change the Deadline for Removing an illicit Discharge, Enforcement Response
These comments have been incorporated into the permit.

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Comment 14: Change the Deadline for Industrial Facilities
Colorado Stormwater Council: Industrial Facilities. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Industrial Facilities. Please allow 18 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 14: Change the Deadline for Industrial Facilities
These comments have not been incorporated into the permit. This section has been removed from the permit.

Comment 15: Update the Citation for Priority Areas
Colorado Stormwater Council: Please update the citation to Part I.E.2.a.viii. Editorial note, Priority Areas citation is Part I.E.2.a.viii of the permit.

Douglas County: Please update the citation to Part I.E.2.a.viii. Editorial note, Priority Areas citation is Part I.E.2.a.viii of the permit.

Response 15: Update the Citation for Priority Areas
These comments have been incorporated into the permit.

Comment 16: Remove the Compliance Schedule for Industrial Facilities
Colorado Stormwater Council: Please remove this compliance schedule along with the requirement in the permit. Please refer to the corresponding comment regarding the requirement Editorial note, Industrial Facility citation is Part I.E.2.a.x of the permit.

Douglas County: Please remove this compliance schedule along with the requirement in the permit. Please refer to the corresponding comment regarding the requirement Editorial note, Industrial Facility citation is Part I.E.2.a.x of the permit.

City of Canon City: This permit condition is now Part I.E.2.a.x.

Response 16: Remove the Compliance Schedule for Industrial Facilities
These comments have not been incorporated into the permit. The industrial facilities section of the permit has been removed.

Comment 17: Change the Deadline for Excluded Activities for County Non-Urban Areas
Colorado Stormwater Council: Please allow 6 months from the effective date of the permit. Please schedule a separate meeting with County Stormwater Managers to discuss the development of the maps as requested at the MS4 General Permit Renewal

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Introductory Meeting. The county meeting was requested at the Introductory Meeting and will ensure the requirement is understood.

Douglas County: Excluded Activities for County Non-Urban Areas: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 17: Change the Deadline for Excluded Activities for County Non-Urban Areas
These comments have been incorporated into the permit.

Comment 18: Change the Deadline for Control Measure Requirements
Colorado Stormwater Council: Control Measure Requirements: Ensure adequacy standard requirements are met; revise implementation and documentation if necessary and ensure new control measures meet one of the design standards. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Control Measure Requirements: Ensure adequacy standard requirements are met; revise implementation and documentation if necessary and ensure new control measures meet one of the design standards. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 18: Change the Deadline for Control Measure Requirements
These comments have been incorporated into the permit.

Comment 19: Change the Deadline for Site Plans
Colorado Stormwater Council: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Site Plans: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 19: Change the Deadline for Site Plans

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These comments have been incorporated into the permit.

Comment 20: Change the Deadline for Site Inspection
Colorado Stormwater Council: Site Inspection: Ensure requirements are met; revise implementation and documentation if necessary and ensure documentation is recorded. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Site Inspection: Ensure requirements are met; revise implementation and documentation if necessary and ensure documentation is recorded. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 20: Change the Deadline for Site Inspection
These comments have been incorporated into the permit.

Comment 21: Change the Deadline for Enforcement Response
Colorado Stormwater Council: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Enforcement Response: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 21: Change the Deadline for Enforcement Response
These comments have been incorporated into the permit.

Comment 22: Change Deadline for Excluded Projects
Colorado Stormwater Council: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Excluded Projects: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is

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too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 22: Change Deadline for Excluded Projects
These comments have been incorporated into the permit.

Comment 23: Change the Deadline for Construction Inspection and Acceptance and Post Acceptance Oversight
Colorado Stormwater Council: Construction Inspection and Acceptance and Post Acceptance Oversight: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Construction Inspection and Acceptance and Post Acceptance Oversight: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 23: Change the Deadline for Construction Inspection and Acceptance and Post Acceptance Oversight
These comments have been incorporated into the permit.

Comment 24: Change the Deadline for Bulk Storage
Colorado Stormwater Council: Municipal Facility Runoff Control Measures: Ensure requirements for bulk storage are met; revise implementation and documentation if necessary. Please allow 60 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Municipal Facility Runoff Control Measures: Ensure requirements for bulk storage are met; revise implementation and documentation if necessary. Please allow 60 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 24: Change the Deadline for Bulk Storage
These comments have been incorporated into the permit.

Comment 25: Change the Deadline for Municipal Facility Runoff Control Measures Inspections

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Colorado Stormwater Council: Municipal Facility Runoff Control Measures: Ensure inspection requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Municipal Facility Runoff Control Measures: Ensure inspection requirements are met; revise implementation and documentation if necessary. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 25: Change the Deadline for Municipal Facility Runoff Control Measures Inspections
These comments have been incorporated into the permit.

Comment 26: Change the Deadline for Municipal Facility Runoff Control Measures Documentation
Colorado Stormwater Council: Municipal Facility Runoff Control Measures: Ensure documentation is recorded. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Municipal Facility Runoff Control Measures: Ensure documentation is recorded. Please allow 36 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 26: Change the Deadline for Municipal Facility Runoff Control Measures Documentation
These comments have been incorporated into the permit.

Comment 27: Change the Deadline for Nutrient Source Reduction
Colorado Stormwater Council: Nutrient Source Reductions: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 48 months from the effective date of the permit for the applicable changes. The compliance schedule is too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Douglas County: Nutrient Source Reductions: Ensure requirements are met; revise implementation and documentation if necessary. Please allow 48 months from the effective date of the permit for the applicable changes. The compliance schedule is

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too tight to enable program adjustments, changes to documents and ordinances requiring public notice requirements, and modifications to tracking systems to incorporate new requirements into existing, mature programs.

Response 27: Change the Deadline for Nutrient Source Reduction
These comments have been incorporated into the permit.

Comment 28: County Designated Growth Areas
Weld County: It is not clear how flexible the State will be with acceptance of county-designated growth areas. Counties should be allowed a comment period after State guidance on determining these areas is provided (tentatively set for mid-July). This requirement poses a substantial economic burden on counties by requiring implementation of construction and post-construction permit requirements on currently non-urban areas with the potential of reaching urbanized status by 2020.

Response 28: County Designated Growth Areas
No response is necessary.

Comment 29: Bulk Storage: Part I.E.5.a.ii(A)(5) is Now Part I.e.5.a.v.
City of Canon City: This permit condition is now Part I.E.5.a.v.

Response 29: Bulk Storage: Part I.E.5.a.ii(A)(5) is Now Part I.e.5.a.v.
This comment has been incorporated into the permit.

2. **New Permittees**
No comments were received on this section of the permit.

J. PART I.I. – REPORTING REQUIREMENTS

1. **Annual Report**
Comment 1: Update the Dates for the Annual Report
Colorado Stormwater Council: Please clarify the period for which the annual reporting requirements of this permit apply. The reporting period does not seem to be correct.

Douglas County: Please clarify the period for which the annual reporting requirements of this permit apply. The reporting period does not seem to be correct.

City of Canon City: The City of Cañon City believes this may be a typographical error; the dates should be January 1, 2015, to December 31, 2015.

Response 1: Update the Dates for the Annual Report
These comments have been incorporated into the permit.

a. **The required certification statement in Part I.K.1.c. and signed by the individual meeting the criteria in Part I.K.1.a.**
No comments were received on this section of the permit.

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b. **Identify that the permittee is relying on another entity to satisfy any of the permit obligations (if applicable) if not included in previous reports or permit application.**
No comments were received on this section of the permit.

c. **An update on areas added to or removed from the permit area as a result of annexation or other legal means.**
No comments were received on this section of the permit.

d. **A list of compliance schedule items completed, including the date of completion and any associated information required in Part I.H.**
No comments were received on this section of the permit.

e. **The results of the assessment of the effectiveness of the control measures.**

Comment 1: Clarify How to Report the Assessment of the Effectiveness of the Control Measures
Douglas County: Please clarify that this assessment is a review of the data in preparation for submitting with the annual report. Reporting on the result is different than conducting a review as required in I.g.1.b.

Canon City: The City of Cañon City requests the Division clarify what they would like an assessment of the effectiveness of the control measures to be. This may be a difficult requirement to meet as much of the assessed effectiveness is subjective and not easily quantifiable, particularly in the areas such as Education and Outreach.

Response 1: Clarify How to Report the Assessment of the Effectiveness of the Control Measures
These comments have not been incorporated into the permit. The assessment of the control measures should include more than just a data review. Please see the definition of a control measure in Part I.B. Permittees have the flexibility to determine the effectiveness of the control measures.

f. **The results of the permit modification assessment and if any parts of this permit need to be modified or a condition of the permit many not be practicable.**
No comments were received on this section of the permit.

g. Provide the following information for the program elements listed below:
   i. **Public Education and Outreach**
   No comments were received on this section of the permit.

   ii. **Illicit Discharge Detection and Elimination**
   Comment 1: Clarify the Definition of "Unresolved"
   City of Canon City: The City of Cañon City requests the Division clarify "unresolved". The City of Cañon City's procedure when the source of the illicit discharge cannot be determined is to close the case after cleanup with the caveat of continued monitoring of the area for recurrences. In keeping with our comment for Part I.I.g. we recommend adding a Part (B) to this section: "(B)

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Provide the total number of enforcement actions for each of the following categories:
1) Informal
2) Formal
3) Judicial"

Response 1: Clarify the Definition of "Unresolved"
This comment has not been incorporated into the permit. Permittees have the flexibility to further define "unresolved."

iii. Construction Sites

Comment 1: Revise the Requirement for Providing Information for Program Elements
City of Canon City: The City of Cañon City requests the Division modify the above to state: "For the program elements listed below provide the following:" Rationale: Not all program areas are sites/facilities and/or have enforcement actions or inspections associated with them.

Response 1: Revise the Requirement for Providing Information for Program Elements
This comment has been incorporated into the permit.

Comment 2: Revise the Construction Inspection Requirements
City of Canon City: (C) Provide the total number of inspections performed. The number of inspections must be divided into one of the following two categories, as most appropriate: There are five categories listed, not two.

Response 2: Revise the Construction Inspection Requirements
This comment has been incorporated into the permit.

Comment 3: Remove the Requirement of Reporting on the Dates that the Infeasibility Exclusion was Used
City of Canon City: This citation should be Part I.E.3.a.vi.(C). The City of Cañon City requests that "dates" be removed. The number of days inspections did not occur due to this exclusion should be sufficient.

Response 3: Remove the Requirement of Reporting on the Dates that the Infeasibility Exclusion was Used
This comment has not been incorporated into the permit. This section of the permit has been revised and only the number (not the dates) of staff vacancy inspections is required to be reported.

Comment 4: Revise the Requirement of Reporting Site Inspections
Colorado Stormwater Council: Please change to the following proposed concept:
Provide the total number of inspections performed. The number of inspections must be divided into one of the following categories, as most appropriate (and please update this section with the CSC's proposed construction inspection frequency and scope):
Routine Site Inspections

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Reduced Site Inspections
Compliance Inspection

The Winter Conditions and Site Inspection Infeasibility Exclusion are provided as exclusions where inspections cannot occur due to winter conditions, or to accommodate staff vacancy. If a staff position is vacant, or staff is on vacation, an inspection would not be completed so tracking the Site Inspection Infeasibility Exclusion as an inspection that did not occur, does not make sense. Inspections that aren't performed, can't be reported.

Douglas County: Please remove Site Inspection Infeasibility Exclusion from the inspection type categories for Annual Reporting. Please change to the following proposed concept:
Provide the total number of inspections performed. The number of inspections must be divided into one of the following four categories, as most appropriate (and please update this section with the CSC's proposed construction inspection frequency and scope):
1. Routine Site Inspections
2. Reduced Site Inspections
3. Compliance Inspection The Winter Conditions and Site Inspection Infeasibility Exclusion are provided as exclusions where inspections cannot occur due to winter conditions, or to accommodate staff vacancy. If a staff position is vacant, or staff is on vacation, an inspection would not be completed so tracking the Site Inspection Infeasibility Exclusion as an inspection that did not occur, does not make sense. Inspections that aren't performed can't be reported.

City of Canon City: Routine Inspections: Inspections of applicable construction activities that meet the inspection scope requirements in Part I.E.3.a.vi(D) and for which documentation is recorded in accordance with in Part I.E.3.b.vi. This citation should be Part I.E.3.a.vi.(E).

Reduced Frequency/Scope Inspection: Inspections of applicable construction activities that meet the inspection scope requirements in Part I.E.3.a.vi(E) and for which documentation is recorded in accordance with in Part I.E.3.b.vi. This citation should be Part I.E.3.a.vi.(F).

Compliance Inspections: Inspections or operator reporting or other action(s) to assess the control measure has been implemented or corrected) of applicable construction activities that meet the inspection scope requirements in Part I.E.3.a.vi(F) and for which documentation is recorded in accordance with in Part I.E.3.b.vi. This citation should be Part I.E.3.a.vi.(G).

Response 4: Revise the Requirement of Reporting Site Inspections
These comments have been incorporated into the permit.

Comment 5: Remove the Reporting Requirements for the Winter Conditions Exclusion
City of Canon City: This citation should be Part I.E.3.a.vi.(D). The City of Cañon City requests that this requirement be removed. Rationale: Winter conditions

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are an exclusion category of inspections. Inspections are not required when the conditions of this category are met. Please refer to our comments on Part I.E.3.a.vi(D).

Response 5: Remove the Reporting Requirements for the Winter Conditions Exclusion
This comment has not been incorporated into the permit. However, the reporting requirements for the winter conditions exclusion have been revised

Comment 6: Add More Reporting Requirements to the Permit
City of Canon City: Additionally, in keeping with our comment for Part I.I.g., we recommend adding a part 6) to this section: "6) Provide the total number of enforcement actions for each of the following categories:
1) Informal
2) Formal
3) Judicial"

General Comment: There are no reporting requirements for I.E.5. Pollution Prevention/Good Housekeeping for Municipal Operations. This may be an oversight, as there are recordkeeping requirements for this section. If it is the City of Cañon City recommends the Annual Report requirement to be "Provide the total number of inspections performed in accordance with Part I.E.5.a. ii(C)."

Response 6: Add More Reporting Requirements to the Permit
This comment has not been incorporated into the permit. The information is not needed by the division during a typical annual report review.

iv. Post-Construction Stormwater Management in New Development and Redevelopment Program

Comment 1: Remove the Reporting Requirements for Each Design Standard
Colorado Stormwater Council: Please remove the requirement to report on projects based on the design standard used. Projects may apply multiple design standards on a site. Tracking the number of sites with control measures is adequate to demonstrate compliance with the permit conditions.

Douglas County: Please remove the requirement to report on projects based on the design standard used. Projects may apply multiple design standards on a site. Tracking the number of sites with control measures is adequate to demonstrate compliance with the permit conditions.

City of Canon City: iv. Post-Construction Stormwater Management in New Development and Redevelopment Program (Part I.E.4): (C) Control Measure Requirements: Provide the number of applicable development projects that met the following design standards: 1) through 7). The City of Cañon City requests this requirement be removed as projects may apply multiple design standards on a site. Tracking the number of sites with control measures should be adequate to demonstrate compliance with the permit conditions.

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Response 1: Remove the Reporting Requirements for Each Design Standard
These comments have been incorporated into the permit.

Comment 2: Remove the Reporting Requirement for Pavement Management Exclusion Projects
Colorado Stormwater Council: Please remove the requirement to report on Pavement Management Projects. Pavement Management Projects excluded from the permit requirements should not have additional documentation or reporting requirements since their purpose is in line with the definition of routine maintenance in Regulation 61. Although there may be documentation for Pavement Management Projects, this information is typically documented within a project file, not in a separate database or spreadsheet for reporting. Compiling paperwork for projects not subject to MS4 Permit requirements is not an efficient use of limited MS4 resources. Projects not subject to the requirements of this permit would not be tracked to show they were not subject to the permit requirements.

Douglas County: Please remove the requirement to report the acreage of the excluded impervious area for pavement management. Pavement Management Projects excluded from the permit requirements should not have additional documentation or reporting requirements since their purpose is in line with the definition of routine maintenance in Regulation 61. Although there may be documentation for Pavement Management Projects, this information is typically documented within a project file, not in a separate database or spreadsheet for reporting. Compiling paperwork for projects not subject to MS4 Permit requirements is not an efficient use of limited MS4 resources. Projects not subject to the requirements of this permit would not be tracked to show they were not subject to the permit requirements.

Response 2: Remove the Reporting Requirement for Pavement Management Exclusion Projects
These comments have been partially incorporated into the permit. This requirement has been updated to only require recordkeeping for rehabilitation and reconstruction of pavement. Recordkeeping requirements for the day-to-day maintenance of pavement have been removed. The current permit does not allow for any exclusions. This is a new section of the renewal permit and the use of the new exclusions must be closely tracked, especially for consideration under the next permit term. Permittees have the flexibility to be more stringent than the permit and not allow the exclusions due to the recordkeeping requirements.

Comment 3: Revise the Reporting Requirements for the Source Reduction Standard
Southeast Metro Stormwater Authority: Requirements for reporting on the Source Reduction Standard (as detailed above), should be addressed in the Annual Report by including the number of projects that utilized the Source Reduction Standard. Proposed language might read: Projects that met the design standard in accordance with Part 1.E.4.a.iv(-), Source Reduction. In addition to the number of projects, please include the total pollutant reduction for each project (in pounds).

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Response 3: Revise the Reporting Requirements for the Source Reduction Standard
This comment has not been incorporated into the permit. The division found that it was unnecessary to incorporate the suggested source reduction requirement was into the permit.

K. PART I.J. – DEFINITIONS

Comment 1: Inconsistent definitions
Colorado Stormwater Council: Please consolidate and/or ensure all definitions are consistent. It is confusing to refer to Common Plan of Development as a facility and Part of a Larger Common Plan of Development as an area. Please remove the discussion of "related" in the permit. Part of a Larger Common Plan of Development or Sale is defined in three places in the permit.

Douglas County: Please consolidate and/or ensure all definitions are consistent. It is confusing to refer to Common Plan of Development as a facility and Part of a Larger Common Plan of Development as an area. Part of a Larger Common Plan of Development or Sale is defined in three places in the permit.

El Paso County: There are multiple instances of definitions included in the various sections of the permit, in addition to the list of definitions included in Section J. In some cases the same term is defined differently in different areas of the permit. All definitions used in the permit should be consistent.

Home Builders Association of Metro Denver: There are multiple instances of definitions included in the various sections of the permit - in addition to the list of definitions included in Section J. In some cases the same term is defined differently in different areas of the permit. All definitions used in the permit should be consistent.

City of Canon City: If the Division chooses to retain definitions in the body of the permit, please ensure the definition is exactly the same as Part I.J.

City of Aurora: Definitions are also confusing and inconsistent.

Response 1: Inconsistent definitions
These comments have been incorporated into the permit.

Comment 2: Define Chronic and Recalcitrant
Home Builders Association of Metro Denver: Please add a definition with flexibility to the terms chronic and recalcitrant. We are concerned that there will be a large range of definitions used by the MS4's making compliance more difficult and we would appreciate some consistency with some flexibility.

City of Canon City: Definitions of "chronic" and "recalcitrant": During the stakeholder meeting concerning Part I.E.3. Construction Sites on June 3, 2015, some attendees asked if the division would clarify or define the terms "chronic" and "recalcitrant". The Division indicated it would prefer to let the MS4s develop their own definitions. From comments

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made by various attendees, it would appear that there could be many different interpretations, and therefore, different standards for these terms among different MS4s. The Division has stated that the intent of the permit is to set clear minimum standards and to address potential economic disparities created by the previous permit. Some attendees expressed concern that the term "chronic" could encompass those operators who make every attempt to perform routine maintenance of their BMPs, but may have minor findings during each inspection. The Division indicated this was not their intent. The City of Cañon City would like to request that the Division provide a basic definition for the terms in order to avoid different standards being implemented by different MS4s. An example for the definitions follows: "Chronic violator": A habitual violator; one who consistently and willfully violates the program requirements. "Recalcitrant violator": One who refuses to correct violations of the program requirements, even after citation, thereby necessitating increasing enforcement actions. Or: One who obstinately refuses to correct violations of the program requirements.

City of Golden: A "common plan of development" at Section I.E.3 is defined differently from "Part of a Larger Common Development or Sale" at Section I.J .36, although the phrases appear to be intended to mean the same thing.

Response 2: Define Chronic and Recalcitrant
The division has not incorporated this comment into the permit. The permittees have the flexibility to determine "chronic" and "recalcitrant" and to design their stormwater programs to respond accordingly.

Comment 3: Remove Definitions Repeated in Part I.J.
El Paso County: Paragraph contains definition of "operator." Delete definition in section J. Paragraph contains definition of "irrigation return flow." Delete definition in section J. Paragraph contains definition of "control measures" and "waters of the state." Delete, definition in section J.

Good Engineering, Hydrologic and Pollution Control Practices:
Control measures must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices, and the manufacturer's specifications, when applicable. "Pollution" is man-made or man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water. The City of Cañon City recommends removing the definition of "pollution" from this section. The definition is already contained in Part I.J. and adds nothing here.

City of Canon City: Inclusion of definitions in the body of the permit text: As all definitions are found in Part I.J., including these in the body of the permit text is not needed. It is recommended that these be removed from the body of the permit text. A reference could be added such as "See Part I.J.(#)".

City of Arvada: Recommend that definitions be located in one section of the permit to reduce definition inconsistencies and have them easy to locate when needed.

Response 3: Remove Definitions Repeated in Part I.J.
These comments have not been incorporated in the permit. Terms are defined in the text and again in Part I.J.

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Comment 4: Revise the Definitions
City of Canon City: General Comment: Many of the definitions begin with a repeat of the word and "means" or begin with "means". We recommend these definitions have those words removed. Definitions are the meaning of the word; including "means" is superfluous.

Response 4: Revise the Definitions
This comment has been incorporated into the permit.

Comment 5: Definitions must be Consistent with Regulation 61
City of Golden: There are numerous places through the permit where terms are used differently than in Regulation 61 and in the Colorado Revised Statutes. All terms within the permit should rely upon applicable definitions and conditions established in Regulation 61. It is inappropriate to modify the Regulations through the permit.

Sections I.J .1 "Applicable Construction Activity" differently and more broadly than what is found in Regulation 61 for the type of construction activities that are subject to a Phase II stormwater permit.

Response 5: Definitions must be Consistent with Regulation 61
These comments have been partially incorporated into the permit. Several definitions have been revised to be consistent with Regulation 61. Section 61.8 of Regulation 61 states that "Terms and conditions consistent with those specified in this regulation, including **but not limited to [emphasis added]**, the terms and conditions specified in sections 61.4(1), 61.8(2), 61.8(3), 61.8(4), 61.8(5), 61.8(6), 61.8(7), 61.8(8), 61.8(9) and 61.8(10), shall be incorporated into the Division's permits, either expressly or by reference to this regulation." The division may add additional terms and conditions in a permit. The language changes in the permit are intentional clarifications of and additions to the language included in Regulation 61.

Comment 6: Revise Applicable Construction Activity
Colorado Stormwater Council: Please consolidate and/or ensure all definitions are consistent. Please delete and located at, or contiguous to, the land disturbing activities. It does not provide clarity and, if the Division's definition of contiguous is applied, could imply a much broader scope than Regulation 61 provides. From Regulation 61: Stormwater discharge associated with small construction activity means the discharge of stormwater from construction activities, including clearing, grading, and excavating, that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

Douglas County: Please consolidate and/or ensure all definitions are consistent. Please delete and located at, or contiguous to, the land disturbing activities. It does not provide clarity and, if the Division's definition of contiguous is applied, could imply a much broader scope than Regulation 61 provides. From Regulation 61: Stormwater discharge associated with small construction activity means the discharge of stormwater from construction activities, including clearing, grading, and excavating, that result in land disturbance of equal to or greater than one acre and less than five acres. Small

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construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

Response 6: Revise Applicable Construction Activity
These comments have not been incorporated into the permit. Many construction sites have staging areas that are not located on the construction site, but are located contiguous to, the site. The staging area that is contiguous to the construction site must also be included in the calculation of the acreage of the construction activity.

Comment 7: Revise Common Plan of Development or Sale
City of Golden: Further, a "common plan of development" states that activities are "considered to be 'related' if they share the same ... builder or contractor . ... " This definition is too broad, because especially in small communities, completely separate projects might both rely upon the same builder or contractor.

Colorado Stormwater Council: The term “related” doesn’t add clarification and could broaden what an applicable construction activity is beyond the intent of the Regulation. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.

Douglas County: Please modify the interpretation of "related" in the permit. The term “related” does not provide adequate clarification. Common ownership in conjunction with common contract more accurately reflects the intent of the regulation.

Response 7: Revise Common Plan of Development or Sale
These comments have not been incorporated into the permit. The division has received numerous questions concerning a common plan of development or sale over the years. The division has developed this definition to clarify a common plan of development or sale.

Comment 8: Revise Construction Activity
Colorado Stormwater Council: Please consolidate and/or ensure all definitions are consistent. From Regulation 61: Stormwater discharge associated with small construction activity means the discharge of stormwater from construction activities, including clearing, grading, and excavating, that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. Please remove "Repaving activities where underlying and/or surrounding soil is cleared, graded, or excavated as part of the repaving operation are typically construction activities unless they are an excluded project under Part I.E.4.a.i." The discussion in Regulation 61 states, "Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility." If repaving activity meets this intent, it is not a construction activity per Regulation 61.

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Douglas County: Please consolidate and/or ensure all definitions are consistent. From Regulation 61: Stormwater discharge associated with small construction activity means the discharge of stormwater from construction activities, including clearing, grading, and excavating, that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. Please remove "Repaving activities where underlying and/or surrounding soil is cleared, graded, or excavated as part of the repaving operation are typically construction activities unless they are an excluded project under Part I.E.4.a.i." The discussion in Regulation 61 states, "Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility." If repaving activity meets this intent, it is not a construction activity per Regulation 61.

City of Golden: Sections I.J .6 define "Construction activity" differently and more broadly than what is found in Regulation 61 for the type of construction activities that are subject to a Phase II stormwater permit.

Response 8: Revise Construction Activity
These comments have not been incorporated into the permit. The division has received numerous inquiries regarding the difference between roadway maintenance and construction and the sentence regarding repaving activities in this definition of construction activity clarifies the difference.

Comment 9: Revise Final Stabilization
Colorado Stormwater Council: Please add discussion in the fact sheet about the Division's guidance regarding stabilization and removing areas from larger common plans of development. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.

Douglas County: Please add discussion in the Fact Sheet about the Division's guidance regarding stabilization and removing areas from larger common plans of development. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.

City of Canon City: The City of Cañon City recommends including a citation for the memorandum from Rik Gay, Permits Section, Water Quality Control Division, dated March 5, 2013, concerning final stabilization requirements for stormwater construction permit termination as a reference for "equivalent permanent, physical erosion reduction methods".

Response 9: Revise Final Stabilization

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These comments have been incorporated into the fact sheet.

Comment 10: Revise Green Infrastructure
Douglas County: Green infrastructure: Generally refers to control measures that use or mimic natural processes to infiltrate, evapotranspiration, or reuse stormwater on the site where it is generated. Green infrastructure can be used in place of or in addition to low impact development principles." Please coordinate with the SEO to ensure the permit is written in compliance with SB15-212. The Definition of Green infrastructure may impact water rights as written and may need to be revised, since natural processes can be man-made with beneficial uses of water. Douglas County supports the use of low impact development techniques; however, some of the practices may not comply with the SEO requirements. One alternative is to remove this language as it describes particular design criteria. Specifying design standards that affects water rights could result in requiring a costly augmentation plan and obtaining a water right unless other design standards could be considered.

Response 10: Revise Green Infrastructure
This comment has been incorporated into the permit. Please note the division's response regarding SB-15-212 in Part I.E.4.

Comment 11: Revise Illicit Discharge
City of Canon City: Illicit Discharge: means any discharges to an MS4 that is not composed entirely of stormwater except discharges specifically authorized by a CDPS or NPDES permit and discharges resulting from emergency fire fighting activities. Permittees should note that there are many types of illicit discharges that in accordance with the permit need to be effectively prohibited. Only the discharges listed in Part.I.2.a.v. can be excluded from being effectively prohibited. The City of Cañon City recommends the following modification for succinctness: "Any discharge to a municipal separate storm sewer that is not composed entirely of stormwater except discharges that are excluded from being effectively prohibited in accordance with Parts I.E.2.v.(A) through (Y)." Please also refer to our comments in Part I.E.2.v.(U) concerning the term "emergency".

Response 11: Revise Illicit Discharge
This comment has not been incorporated into the permit. Section 61.8 of Regulation 61 states that "Terms and conditions consistent with those specified in this regulation, including **but not limited to [emphasis added]**, the terms and conditions specified in sections 61.4(1), 61.8(2), 61.8(3), 61.8(4), 61.8(5), 61.8(6), 61.8(7), 61.8(8), 61.8(9) and 61.8(10), shall be incorporated into the Division's permits, either expressly or by reference to this regulation." The division, therefore, may add additional terms and conditions in a permit. The division may add additional terms and conditions in a permit. The language changes in the permit are intentional clarifications of and additions to the language included in Regulation 61. For example, the division further clarified the definition of fire fighting activities to include emergency fire fighting activities.

Comment 12: Revise Impervious Areas
Colorado Stormwater Council: Please remove storage area. A storage area may be an area where something is stored, and cannot be assumed to have an impervious cover, such as a storage shed.

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Douglas County: Please remove storage area. A storage area may be an area where something is stored, and cannot be assumed to have an impervious cover, such as a storage shed.

Response 12: Revise Impervious Areas
These comments have not been incorporated into the permit. The word "impervious" was added to the definition for clarification.

Comment 13: Revise Land Disturbing Activity
Colorado Stormwater Council: For the purpose of the Construction section of the permit, please reword the definition of Land Disturbing activity. EPA uses the term "earth-disturbing activities, such as the clearing, grading, and excavation of land."
EPA's definition from EPA Construction General Permit, Appendix A – Definitions and Acronyms is preferable, as it focuses on actual earth disturbing activities, such as grading and clearing, and not on changes to soil cover, which could be interpreted to imply changes to landscaping.

Douglas County: For the purpose of the Construction section of the permit, please reword the definition of Land Disturbing activity. EPA uses the term "earth-disturbing activities, such as the clearing, grading, and excavation of land." EPA's definition from EPA Construction General Permit, Appendix A – Definitions and Acronyms is preferable, as it focuses on actual earth disturbing activities, such as grading and clearing, and not on changes to soil cover, which could be interpreted to imply changes to landscaping.

Response 13: Revise Land Disturbing Activity
These comments have been partially incorporated into the permit. The definition has been revised and "soil cover" and "soil topography" have been removed.

Comment 14: Revise Municipal Separate Storm Sewer System
City of Canon City: The City of Cañon City requests that the definition of "Municipal Separate Storm Sewer System" from Regulation 61.2(62) be used to be consistent with current Regulations. Rationale: Regulation 61 specifically discusses the removal of the terms borough and parish from the definition of Municipal. The terms "borough" and "parish" were removed because they are inconsistent with Colorado law. This was done for #28 Municipality/Municipal.

Response 14: Revise Municipal Separate Storm Sewer System
This comment has been incorporated into the permit.

Comment 15: Remove Part of a Common Plan of Development or Sale
Colorado Stormwater Council: Please consolidate and/or ensure all definitions are consistent. It is confusing to refer to Common Plan of Development as a facility and Part of a Larger Common Plan of Development as an area. Please remove the discussion of "related" in the permit. Part of a Larger Common Plan of Development or Sale is defined in three places in the permit. The term "related" doesn't add clarification and could broaden what an applicable construction activity is beyond the intent of the Regulation. The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial.

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Response 15: Remove Part of a Common Plan of Development or Sale
This comment has been incorporated into the permit. Please see the division's responses regarding common plan of development or sale in Part I.E.4.

Comment 16: Revise Point Source
City of Canon City: Point Source: Means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Point source does not include irrigation return flow. To be consistent with other definitions contained in the section, the reference (5 CCR 1002-61.2(75)) should be cited.

Response 16: Revise Point Source
This comment has been incorporated into the permit.

Comment 17: Revise Pollution
City of Canon City: Pollution: Man-made or man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water. To be consistent with other definitions contained in the section, the reference (5 CCR 1002-61.2(77)) should be cited.

Response 17: Revise Pollution
This comment has been incorporated into the permit.

Comment 18: Remove Program Description Document
City of Canon City: Program Description Document: See Part I.C. The City of Cañon City recommends removing this as it does not actually contain a definition.

Response 18: Remove Program Description Document
This comment has been incorporated into the permit.

Comment 19: Site Plan
City of Aurora: The term "site plan," e.g., is defined on p. 49 and site plan requirements are listed in at least two program sections. The term "site plan", used in Aurora's development process, is generally understood to mean a much more specific document.

Response 19: Site Plan
This comment has not been incorporated into the permit. Permittees should note that this is a general permit and many permittees have coverage under this permit. Many permits call a "site plan" a different term. Please see the definition of a site plan, which was developed to encompass all of the different terms for a "site plan" that commenters provided in their comments on the first draft of the renewal permit.

Comment 20: Revise Structural Control Measures
Douglas County: Structural Control Measures: Includes control measures that are comprised of facilities and structures that remove pollutants from water or retain, reuse, or provide for infiltration or evaporation of water." Please coordinate with the SEO to ensure the permit is written in compliance with SB15-212. The Definition of Structural Control Measures may impact water rights as written and may need to be revised, due to

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the use of "retain, reuse, or provide for infiltration or evaporation of water." Douglas County supports the use of low impact development techniques; however, some of the practices may not comply with the SEO requirements. One alternative is to remove this language as it describes particular design criteria.

City of Canon City: Structural Control Measures: Includes control measures that are comprised of facilities and structures that remove pollutants from water or retain, reuse, or provide for infiltration or evaporation of water. The City of Cañon City recommends the Division remove the word "reuse". The Administrative Approach for Storm Water Management memo from the Office of the State Engineer, dated May 21, 2011, expressly states in paragraphs three and four that the water from detention areas and infiltration areas may not be diverted for any beneficial use. Additionally Senate Bill 15-212, signed into law on May 29, 2015 states in II(B)(e)(I): Water detained or released by a storm water detention and infiltration facility or post-wildland fire facility shall not be used for any purpose, including, without limitation, by substitution or exchange, by the entity that owns, operates, or has oversight over the facility or that entity's assignees, and is available for diversion in priority after release or infiltration."

Response 20: Revise Structural Control Measures
These comments have been incorporated into the fact sheet. Please note the division's response regarding SB-15-212.

Comment 21: Revise Water Quality Capture Volume
Douglas County: Water Quality Capture Volume (WQCV): The volume equivalent to the runoff from an 80th percentile storm, meaning that 80 percent of the most frequently occurring storms are fully captured and treated and larger events are partially treated." Please coordinate with the SEO to ensure the permit is written in compliance with SB15-212. The Definition of Water Quality Capture Volume (WQCV) should be revised to read: "The WQCV is equivalent to 80% of runoff-producing storms. A runoff-producing storm is in turn defined as a precipitation event that is 1) separated from precedent and antecedent precipitation events by at least six hours, and 2) measures at least 0.1 inches in depth." Douglas County supports the use of low impact development techniques; however, some of the practices may not comply with the SEO requirements. One alternative is to remove this language as it describes particular design criteria

Response 21: Revise Water Quality Capture Volume
These comments have been incorporated into the fact sheet. Please note the division's response regarding SB-15-212 in Part I.E.4.

L. PART I.K. – GENERAL REQUIREMENTS

No comments were received on this section of the permit.

M. PART II.A. – NOTIFICATION REQUIREMENTS

Comment 1: Define Upset Conditions
Colorado Stormwater Council: Please add a discussion in the fact sheet on how upset conditions relate to the MS4 permit. An upset condition for MS4s would not include issues identified here, such as lack of preventative maintenance. Rather an upset condition

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regarding an MS4 pertains to whether the program is implemented in accordance with the permit. Additional discussion in the fact sheet would be helpful to permittees to determine when an upset condition would apply.

Douglas County: Please add a discussion in the factsheet on the how upset conditions relate to the MS4 permit. An upset condition for MS4s would not include issues identified here, such as lack of preventative maintenance. Rather an upset condition regarding an MS4 pertains to whether the program is implemented in accordance with the permit. Additional discussion in the Fact Sheet would be helpful to permittees to determine when an upset condition would apply.

Response 1: Define Upset Conditions
These comments have been incorporated into the fact sheet.

N. PART II.B. – PERMITTEE RESPONSIBILITIES

No comments were received on this section of the permit.

O. PART III.A. – REQUIREMENTS APPLICABLE TO THE CITY AND COUNTY OF BOULDER AND BOULDER COUNTY MS4S

No comments were received on this section of the permit.

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