



COLORADO

Department of Public Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

General Permits for Stormwater Discharges Associated with from Municipal Separate Storm Sewer Systems (MS4s), COR080000 and COR090000, Issued April 15, 2016

Frequently Asked Questions

Revised July 13, 2016

The following questions and answers are provided to aid in a general understanding of the permitting requirements in the above referenced general permits. This document is relevant to the permits issued April 15, 2016, effective July 1, 2016, as modified. This Question and Answer document has been developed to provide division guidance on specific questions provided by permittees. The division intends to expand and refine this document in the future as needed.

Note that this document is organized to align with the sections of the general permits. Unless noted, the topics apply to both the COR080000 and the COR090000 permits (the permits).

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1. Part I.A – Coverage under this Permit

a. Agriculture Ditches (added 5/27/16)

QUESTION: Are ditches containing irrigation return flow and/or stormwater from agricultural uses part of the permitted MS4?

ANSWER: It depends. If a ditch located in the permit area meets any one of the three criteria below, it is not part of the MS4. Note that the MS4 may still have outfalls to an excluded ditch, in which case the point of compliance would be the location where the MS4 discharges into the ditch.

Criteria 1: If the MS4 permittee does not own or operate the ditch, it is not part of the permitted MS4. For example, ditches that are privately owned and operated or that are owned and operated by a ditch company are not part of the permitted MS4 (unless the ditch company is also the MS4 permittee or listed on the permit certification, such is the case for a few entities in the Grand Valley). Note that



an MS4 permittee may be a share holder in a ditch company; however that does not make the MS4 permittee the actual owner.

Criteria 2: If the ditch contains only flows that are excluded from permitting by the exemptions for agricultural return flow and/or agricultural stormwater, it is not part of the permitted MS4. The division has developed draft changes to the permit through a permit modification to increase clarity on this issue; see part I.A.2.b.i of the Modification 2 (at public notice 5/20/2016-6/20/2016).

Criteria 3: If the ditch is specifically listed in the permit certification as being excluded from the permitted MS4, it is not part of the permitted MS4. The division has developed draft changes to the permit through a permit modification to increase clarity on this issue; see part I.A.2.b.ii of the Modification 2 (at public notice 5/20/2016-6/20/2016).

Additional Discussion

The references to agricultural stormwater runoff are based on the federal exemption in Section 402(l)(1) of the 1987 amendments to the Clean Water Act. This exemption is implemented, and additional specificity is provided, through federal regulation 40 CFR 122.3(e), which states that the following discharges do not require NPDES permits: "Any introduction of pollutants from non-point-source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations..." EPA further clarifies in the NPDES Storm Water Program: Question and Answer Document - Volume 2, July, 1993, that this exclusion does not apply to activities occurring on agriculture lands that meet the description of any of the 11 categories of industrial activity at 40 CFR 122.26(b) (14) (i)-(xi) (i.e., stormwater associated with industrial activities, including construction activities disturbing one acre or greater, for which a stormwater discharge permit is required). Such activities remain subject to federal NPDES, and Colorado CDPS, permit application requirements.

b. County operated facilities located within incorporated areas (added 5/27/16)

QUESTION: If a county with an MS4 permit owns a facility that is located within an incorporated town/city, does the county have to meet the MS4 permit requirements for that facility?

ANSWER: No. Incorporated areas are outside of the jurisdictional authority of a county, and therefore not within the permit area of that county.

2. Part I.E – Cherry Creek Basin Requirements (COR0800000 permit only)

a. More Stringent Requirement (added 5/27/16)

QUESTION: What is required to meet the permit condition in Part I.E of the COR0800000 permit: "for discharges to the Cherry Creek Reservoir drainage basin, the permit requirement is the more stringent of the specific terms and conditions contained in this permit, and the requirements contained in Regulation 72 that are incorporated by reference."?

ANSWER: The actions taken by the permittee must comply with both requirements, those in regulation 72 and those contained directly in the COR0800000 permit. This may result in the action being above and beyond the terms and condition of one of those requirements (i.e., the less stringent requirement). No scenario has been identified that would result in a conflict where both requirements could not be met. If a permittee does identify a potential conflict, they should contact the division.

3. Part I.E.2 – Illicit Discharge

a. Separate Legal Entities and Illicit Discharges (added 5/27/16)

QUESTION: If a separate legal entity from the MS4 permittee, such as a fire district or the county health department not under the jurisdiction of the permittee's government, identifies and responds

to an illicit discharge to the permittee's MS4, does the MS4 permittee have obligations under the permit?

ANSWER: It depends. The MS4 permittee may have obligations for a discharge that it has been informed of or is aware of.

The requirements to respond to and document illicit discharges in Part I.E.2 of the permit apply to those discharges identified by, or reported to, the permittee. The permit does not include requirements to respond to or document illicit discharges reported to entities not under the control of the permittee for which the permittee is not informed or aware of.

Note that when the permittee becomes aware of an illicit discharge, they become responsible for complying with the terms and conditions of the permit associated with responding to and documenting the discharge. If the city chooses to rely on a separate legal entity (e.g., a fire district) to respond to illicit discharges on the city's behalf, the city or separate legal entity must still comply with the record keeping requirements for that illicit discharge, and ensure that the permit conditions are met, including for removing an illicit discharge, enforcement, etc.

Also, note that if a separate legal entity such as a fire district is creating an illicit discharge through their clean up procedures (e.g., washing spills into storm sewers), and then the permittee would have to respond in accordance with their IDDE program if they were aware of this practice.

Part L.E.2.b of the Fact Sheet (p. 43) states, "Permittees should effectively communicate with all other departments and entities that respond to illicit discharges in their permit area to ensure that the other departments and entities are responding to the illicit discharges in accordance with this renewal permit." Note that this reference is to "entities" that are responding to illicit discharges on behalf of the permittee, and would not apply to a separate legal entity acting independently to respond to a discharge that the permittee was not aware of. See part I.F.5 of the permit, which discusses requirements for implementation by other parties.

4. Part I.E.3 – Construction Sites

a. Reduced Site Inspections –Administrator's Program Inspections (added 7/13/2016)

QUESTION: Part I.E.3.a.vi(D)(2) of the permit allows for a reduced inspection frequency for construction activities operated by a participant in a division designated Stormwater Management System Administrator's Program in accordance with Article 8 of title 25, Colorado Revised Statutes that has been identified by the Stormwater Management System Administrator to be fully implementing the program and qualified for reduced oversight incentives of the program." How does an MS4 permittee identify which construction sites qualify for this reduced inspection schedule?

ANSWER: A list of operators that meet the criteria in Part I.E.3.a.vi(D)(2) for reduced level inspections is posted under the header "Qualified Companies," on this page, maintained by the Association of General Contractors of Colorado: <http://www.agccolorado.org/safety/stormwater.html>

Only construction sites for which the Qualified Company holds a CDPS construction stormwater permit are covered by the Association of General Contractors' Stormwater Management System Administrator's Program and therefore qualify for the reduced level inspection in Part I.E.3.a.vi(D)(2).

Currently, the Association of General Contractors is the only approved Management System Administrator. This program is called the Colorado Stormwater Excellence Program (CSEP).

5. Part I.E.4 – Post-Construction Stormwater Management in New Development and Redevelopment

a. Applicable Development Sites (added 7/13/2016)

QUESTION: How is the area of an “applicable development site” determined for identifying both the resulting land disturbance and for applying the control measure base design standards requirements in Post-Construction Stormwater Management?

ANSWER: The area of land that encompasses the “applicable development site” and the resulting land disturbance are the same and include all areas where land disturbance occurs as a result of the applicable development site activities, unless an area is excluded in Part I.E.4.a.i of the permit.

Areas that do not have land disturbance are not part of the applicable development site. This would include staging and access areas located on existing impervious areas, like a parking lot or road surface, where that impervious area is not disturbed as part of the development activities. Note that staging areas that do disturb land may also be excluded if they meet the exclusion in Part I.E.4.a.i(G) for an area of land disturbance to undeveloped land that will remain undeveloped. Keep in mind that even though a staging area may be excluded from being part of an applicable development site, it would not be excluded from being part of “applicable construction activities” for the purposes of determining compliance with the Construction Sites permit requirements.

It should be noted that “land disturbance” and “land disturbing activities” are two different terms. The land disturbing activities must result in actual land disturbances to be included in the area of the applicable development site.

“Land disturbing activity” is any activity that results in a change in the existing land (both vegetative and non-vegetative). 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.

“Land disturbance” is therefore the changes in the existing land (both vegetative and non-vegetative) that results from the “Land disturbing activity.”

Applicable development sites also include all sites meeting the criteria of the previous MS4 permit for renewal permittees. The intent of this clarification is to ensure the continuity of the program and the ongoing applicability of the long term operation and maintenance requirements to control measures implemented in accordance with the previous permit term.

Additional Discussion

The determination of area as it pertains to the applicable development site is used for two purposes. First, the disturbed area in total acres is evaluated to determine if the one acre threshold is met. Second, the physical area of land of the applicable development site is used to apply the control measure base design standards in Part I.E.4.a.iv that are based on either on the area of land or the quantity of runoff generated from that area.

Part I.E.4 of the permit defines “applicable development sites” as follows:

“Applicable development sites” are those that result in land disturbance of greater than or equal to one acre, including sites less than one acre that are part of a larger common plan of development or sale, unless excluded below. Applicable development sites include all new development and redevelopment sites for which permanent water quality control measures were required in accordance with an MS4 permit. “New Development” means land disturbing activities; structural

development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision for a site that does not meet the definition of redevelopment. "Redevelopment" includes a site that is already substantially developed with 35% or more of existing imperviousness; with the creation or addition of impervious area (including removal and/or replacement), to include the expansion of a building footprint or addition or replacement of a structure; structural development including construction, replacement of impervious area that is not part of a routine maintenance activity; and land disturbing activities. At a minimum, applicable development sites includes all sites meeting the criteria of the previous MS4 permit for renewal permittees and completed after the date in Part I.H for all (renewal and new) permittees."

Based on the definitions cited above and the exclusions in Part I.e.4.a.i of the permit, the area of land that comprises the applicable development site includes all areas meeting the definition of development and/or redevelopment, unless the area is excluded in Part I.E.4.a.i. In addition, Appendix 1 of the Fact Sheet, Part F.4, clarifies that the activities identified in the definitions of new development and redevelopment are intended to only cover those activities that result in land disturbance.

Therefore, only locations where land disturbance occurs as a result of the activities listed in the definitions of new development and redevelopment are included in the area of the applicable development site. Because both of the definitions include the broad category of "land disturbing activities" as one of the listed activities, a simplified way of determining the covered area of land is that it includes all areas where land is disturbed. The additional listed activities in the definitions provide clarity on categories of activities that must be evaluated. The definitions of development are broken down below to list the activities, and include clarification regarding the disturbance of land:

- 1) New Development: For applicable development sites not meeting the definition of redevelopment, the area that comprises in the applicable development site includes all areas of land disturbance where any of the following occur, unless excluded in Part I.E.4.a.i.
 - a. land disturbing activities;
 - b. structural development, including construction or installation of a building or structure, creation of impervious surfaces [that result in land disturbance]; and
 - c. and land subdivision [that result in land disturbance].
- 2) Redevelopment: For applicable development sites meeting the definition of redevelopment, the area of land that comprises the applicable development site includes all areas where any of the following occur, unless excluded in Part I.E.4.a.i:
 - a. the creation or addition of impervious area (including removal and/or replacement), to include the expansion of a building footprint or addition or replacement of a structure [that result in land disturbance];
 - b. structural development including construction, replacement of impervious area that is not part of a routine maintenance activity [that result in land disturbance]; and
 - c. land disturbing activities

6. Part I.H – Compliance Schedule

a. Implementation of CDPS Stormwater Management Plan from Previous Permit Term (added 6/17/16)

QUESTION: What program elements in the CDPS Stormwater Management Plan Description from the previous permit are permittees required to continue implementing under the new permit, can those program elements be changed, and what record keeping is required for any changes?

ANSWER: This answer references two different documents, the CDPS Stormwater Management Plan Description from the previous permit term and the Program Description Document (PDD) required by the new permit. These are two different documentation requirements and it is important to understand the difference in order to understand what is required for program implementation and modification under the new permit.

The **CDPS Stormwater Management Plan Description** was the program description developed under the previous permit term. The CDPS Stormwater Management Plan Description identifies the specific program elements that the permittee was required to implement to comply with the previous permit's requirements, including many of the qualitative and quantitative details that defined the expectations for compliance. The CDPS Stormwater Management Plan Description and modifications to it were required to be reviewed and accepted by the division. The CDPS Stormwater Management Plan Description includes the commitments in the original program description that was due to the division on June 10, 2008, and any modification submitted and accepted by the Division under the previous permit term.

The **Program Description Document (PDD)** is a requirement of the new permit. The PDD will include the documentation describing how the permittee will meet the effluent limits in Part I.E of the new permit. Unlike the CDPS Stormwater Management Plan Description from the previous permit term, the PDD will not contain the actual qualitative and quantitative details that define the expectations for compliance under the new permit. Those details are instead contained in Part I.E of the new permit. The PDD also does not need to be reviewed and accepted by the division, and the permittee will be able to modify it at any time. The permit requires that the PDD be completed by January 1, 2019.

The overall approach of the new permit is that the permit effluent limits identifying requirements for pollutant restrictions, prohibitions, and reduction are included directly in Part I.E of the permit. Information about the permittee's program implementation is documented in a Program Description Document. This approach will eventually replace the need for the CDPS Stormwater Management Plan Description from the previous permit term. However, because many of the requirements in Part I.E of the new permit are subject to the compliance schedule in Part I.H, **the new permit requires that permittees continue to implement the corresponding programs in the CDPS Stormwater Management Plan Description in accordance with the previous permit term until the new permit conditions are met.** Therefore, the CDPS Stormwater Management Plan Description remains relevant until a permittee has complied with all of the compliance schedule items for Part I.E of the permit.

Between July 1, 2016 when the new permit becomes effective and January 1, 2019 when the PDD must be completed, the permit does not require that the permittee document its program implementation, beyond the information required in the Annual Report. However, to help ensure compliance, the division highly recommends that the permittee at a minimum provide documentation as necessary to provide adequate direction to staff.

A more complete answer to the above questions is dependent on which of the following categories the program elements documented in the CDPS Stormwater Management Plan Description, from the previous permit term, falls under:

- A) **Not an Effluent Limit in New Permit:** If the permittee has been implementing a program element in accordance with their CDPS Stormwater Management Plan Description from the previous permit term that is not required to meet any effluent limit in the new permit (i.e. the pollutant restrictions, prohibitions, and reduction requirements in Part I.E) the permittee is not required to continue implementing the program element following July 1, 2016. Because the program element is not required under the new permit, there is no need to notify the division or to document the modification/elimination in the PDD.

EXAMPLE: The new permit does not contain a requirement for the permittee to actively seek out unreported illicit discharges. Therefore, if the permittee had been implementing an outfall screening process under the previous permit for this purpose, they are not required to continue the process under the new permit, nor are they required to document any changes to the practice in the PDD.

- B) **Effluent Limit in New Permit without a Compliance Schedule:** If a required effluent limit in Part I.E of the new permit is not subject to a compliance schedule, then the new requirement is effective July 1, 2016. In this case the permittee can change program elements that were identified in their

CDPS Stormwater Management Plan Description from the previous permit term that they will now implement to meet this new permit requirement. These changes can occur at any time following July 1, 2016. The change is only required to meet the effluent limits in Part I.E of the new permit and does not need to be submitted to the division. Prior to the January 1, 2019 deadline to develop the required PDD content, it is not necessary to document the modification/elimination or the new program implementation information. However, to help ensure compliance, the division highly recommends that the permittee at a minimum provide documentation as necessary to provide adequate direction to staff.

EXAMPLE: A compliance schedule is not provided for Part I.E.2.a.ix (training staff on illicit discharges). So, if a permittee had committed to a certain schedule and method for this training under the previous permit terms CDPS Stormwater Management Plan Description, the permittee can change those practices at any time following July 1, 2016 as long as the new practices comply with the new permit's Part I.E.2.a.ix. No submittal to the division is required.

- C) Effluent Limit in New Permit with a Compliance Schedule: For a required effluent limit in Part I.E of the new permit with a compliance schedule provided in Part I.H, the permittee is not required to comply with that specific effluent limit until the deadline in the compliance schedule. However, Part I.H of the permit states that "permittees are required to implement their current program in accordance with the previous permit until a new program is implemented in accordance with this permit, including this compliance schedule." Therefore, the permittee must identify the corresponding program elements in their CDPS Stormwater Management Plan Description from the previous permit term that are associated with the specific effluent limit, and continue to implement that program element until the effluent limit in Part I.E of the new permit is met.

The new permit does not contain provisions allowing for modification of the CDPS Stormwater Management Plan Description from the previous permit term. Instead, if a permittee wishes to modify its implementation of one of these program elements described in their CDPS Stormwater Management Plan Description, the permittee can do so by meeting the new permit requirement instead. By implementing the new program, the permittee has met the requirement in Part I.H to "implement their current program in accordance with the previous permit until a new program is implemented in accordance with this permit." Consistent with the previous permits requirements, the permittee can still make minor changes to their program implementation at any time that do not involve significant changes that replace or delete a control measure committed to in the CDPS Stormwater Management Plan Description.

In summary, the new permit allows two options for permittees for effluent limits in Part I.E of the new permit subject to a compliance schedule, they can either: 1) implement the corresponding program elements in their CDPS Stormwater Management Plan Description as it existed at the end of the previous permit term up until the compliance schedule deadline; or 2) modify their program now to meet the effluent limits in Part I.E of the new permit.

If a permittee modifies a program element from in their CDPS Stormwater Management Plan Description from the previous permit term to meet the new permit requirements it is not necessary to document those changes in the PDD until January 1, 2019, which is the deadline in the compliance schedule to meet the PDD content requirements. However, to help ensure compliance, the division highly recommends that the permittee at a minimum provide documentation as necessary to provide adequate direction to staff. The permittee does need to report to the division in the following Annual Report that the compliance schedule item was completed.

EXAMPLE: The permittee's CDPS Stormwater Management Plan Description from the previous permit term commits to conducting full inspections of construction activities once every six months and reduced level inspections every 2 weeks. The corresponding effluent limits in the new permit that provides the required inspection frequency are in Part I.E.3.a.vi (B) through (E), and

are subject to a compliance schedule deadline of July 1, 2019. The permittee therefore has two options:

- 1) Continue to meet the commitment in accordance with the CDPS Stormwater Management Plan Description from the previous permit term to conduct inspections of construction activities once every six months and 2 weeks until July 1, 2019. The permittee would still need to change their program to meet the permit requirements by July 1, 2019.
- 2) Modify the inspection frequencies to meet the requirements in Part I.E.3.a.vi (B) through (E). This modification can happen at any time following July 1, 2016. The permittee would document in the following annual report that the compliance schedule deadline had been met. The permittee would not be required to document the new practice until January 1, 2019, the deadline in the compliance schedule to meet the PDD content requirements.