



STATE OF COLORADO

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL DIVISION

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

**Efforts to develop a more streamlined process for
preventing violations and enforcing regulations and
permits for stormwater discharges association with
construction activities**

11/30/2012 - Final Report

Contents

Commonly Used Terms and Acronyms in this Report	2
1. Executive Summary	3
2. Statutory Requirement From HB12-1119:	5
3. Stakeholder Process Summary	6
4. Summary of Current Division Program	7
5. Summary of Issues, Recommendations, and Proposed Solutions	20
a. Communication to Increase Transparency	21
i. Pre-Inspection Notification	21
ii. Communication and Documentation of Inspection Findings at Time of Inspection	22
iii. Communication and Guidance for Expedited Settlement Offers	23
iv. Communication of Compliance Determination and Enforcement Case Status	24
v. Incomplete Responses to Inspection Findings	27
b. Clarification of Compliance Expectations and Assistance	29
i. Compliance Assistance on Identifying and Achieving Compliance	29
ii. Site-Specific Compliance Determinations	30
iii. Site Owner Commitment	31
c. Compliance Assurance Model	32
d. Expediting Compliance Processes	35
e. Conflicting Requirements and Compliance Determinations	37
6. Summary of Next Steps	42

Commonly Used Term and Acronyms in this Report

Best Management Practice: Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. Best Management Practices also include treatment requirements, operating procedures, pollution prevention, and practices to control site runoff, spillage or leaks, waste disposal, or drainage from material storage.

Colorado Water Quality Control Act: C.R.S. § 25-8-101 et seq. The Colorado Statutes for development and implementation of the Colorado Discharge Permit System, including permitting and regulation for Construction Stormwater discharges.

Colorado Discharge Permit System (CDPS) Regulations: 5 C.C.R. 1002-61. The Colorado Water Quality Control Commission regulations for implementation of Colorado discharge program, in accordance with the Colorado Water Quality Control Act.

Construction Stormwater: Stormwater discharges from construction activity that disturbs at least 1 acre of land or is part of a larger common plan of development or sale that will disturb at least 1 acre.

Construction Stormwater Permit: The permit issued to authorize discharges of Construction Stormwater.

Division: The Colorado Water Quality Control Division

Enforcement Response Guide (ERG): Enforcement Response Guide for Stormwater Requirements. The Division internal guidance for determining the appropriate level of action to be taken in response to identified violations, based upon the assessment of case-specific facts.

Environmental Leadership Program: The Environmental Leadership Program is a statewide environmental recognition and reward program administered by the Colorado Department of Public Health and Environment's Division of Environmental Health and Sustainability. The Program offers benefits and incentives to members that voluntarily go beyond compliance with state and federal regulations and are committed to continual environmental improvement.

Environmental Management System: A defined system of procedures, training, and methods to monitor an organization's impact on the environment and evaluate ways to minimize negative impacts on the environment.

Municipal Separate Storm Sewer System (MS4): A publicly owned stormwater collection system required to obtain permit coverage for stormwater discharges. Fully defined in the Colorado Discharge Permit System Regulations, 5 C.C.R 1002-61.

Municipal Separate Storm Sewer System Permit (MS4 Permit): The permit issued to authorize discharges from an MS4.

National Pollutant Discharge System (NPDES): The federal permitting program under the Clean Water Act which regulates all discharges to surface water.

Stormwater Administrator Program: A program implemented by a non-profit entity that has been designated by the Division in accordance with C.R.S. 25-8-801 through 25-8-803. A Stormwater Administrator Program implements a standardized compliance assistance and assurance program that contains processes, procedures, and associated training for participants that, when fully implemented by the program participants, would result in full compliance with the requirements of the Construction Stormwater permit.

Stormwater Civil Penalty Policy: The Division's Stormwater Civil Penalty Policy (January 25, 2007) that establishes the guidelines which the Division uses as its basis for developing civil penalty amounts.

Stormwater Management Plan (SWMP): Documentation required of a Construction Stormwater Permittee that identifies potential sources of pollution and describes the best management practices to be used to reduce the pollutants in stormwater discharges.

1. **Executive Summary**

The Water Quality Control Division (the Division) in the Colorado Department of Public Health and Environment is tasked with administering water quality control programs to protect waters of the state through delegated authority by both the Colorado Water Quality Control Act and the federal Clean Water Act (on behalf of EPA). In this role, the Division provides education, compliance assistance, permits, inspections and enforcement to promote prevention, control and abatement of water pollution.

There is a natural tension between the Division in its regulatory role and those in the regulated community. But in recent years, as the types of activities that are required to be permitted have expanded and resources to provide assistance and oversight have declined, that tension has increased. Stormwater construction permits are an example of the Division's struggle to balance resources to provide appropriate oversight and enforcement with compliance assistance and customer service.

Per HB12-1119, the Division has been meeting since June (a total of 10 meetings) with stakeholders in the construction industry and other interested parties to develop a more responsive, streamlined process to improve compliance, reduce violations and provide timely enforcement. The attached report includes the results of this collaborative effort, including actions to develop more streamlined and responsive processes and recommendations for moving forward.

a. **Issue One: Communication**

Stakeholders expressed interest in a more transparent process including advanced notice for inspections (where feasible), clear inspection exit documentation including a description of the potential violations observed, clarity regarding the expedited settlement agreement process and options, and clarification whether enforcement actions would be taken by the Division after an inspection.

There was also concern from the stakeholder community that the time between inspection to closure (this could include an enforcement action or no action) is too long. In some cases, the communication about a notice of violation may come after construction has been completed at a site and sub-contractors have been released. This makes it difficult for permittees to seek reimbursement of penalties from other potentially responsible entities.

In addition, stakeholders indicated that communication from the Division regarding their compliance status was unclear. When responding to violations, stakeholders want the Division to clarify whether actions identified to correct the violations are seen as adequate to "stop the clock" on penalties that can accrue until compliance is demonstrated.

The Division will implement the following recommendations for improvement:

- Enhance the pre-inspection notification process
- Provide written documentation of preliminary inspection findings at the end of an inspection
- Provide more clear correspondence regarding the expedited settlement agreement process and options that are available
- Provide an inspection report within 45 days of inspection outlining whether the inspection findings meet established criteria for enforcement, return to compliance expectations, and the enforcement process including timelines and future actions
- Take actions, including Lean process improvements, to streamline the inspection and enforcement process from start to finish, with a goal of 180 days until closure, 360 days maximum where cases may be more complicated
- Acknowledge in a timely manner and in writing that a violator has documented a return to compliance in its response to inspection findings or if additional corrective action or information is needed

b. Issue Two: Consistency and Flexibility

The number of active construction permits varies seasonally and annually and has ranged between 3,000 and 5,000 sites during the last 5 years in Colorado. About 50 percent of these sites are overseen and inspected by individual cities and counties in accordance with Municipal Separate Storm Sewer System (MS4) permits issued by the Division. While the Division is responsible for compliance at all sites in Colorado, it does not target MS4 permitted areas in which the responsible city or county is successfully implementing an oversight program. In addition, the Environmental Protection Agency (EPA) also conducts independent oversight of construction sites in Colorado, to support national initiatives or when EPA determines that Colorado is not providing adequate oversight rates. The existence of multiple oversight entities, along with varying available resources at city, county and state levels can lead to issues of consistency and flexibility in compliance monitoring and enforcement.

Training and compliance assistance is one way to minimize violations and increase compliance. Stakeholders are supportive of compliance and training opportunities that result in better site conditions and reduced violations.

Construction site operators pointed out that there may be variation between MS4 permittees, the Division, and EPA in interpreting whether the permit holder is meeting all requirements. And, in some cases, there is overlapping local jurisdiction over a permit site, such as for highway projects. Construction industry stakeholders expressed frustration over a lack of consistency between MS4 permittees, and between MS4 permittees and the Division. MS4 permittees were concerned about maintaining flexibility to establish their own stormwater programs that are tailored to their unique circumstances.

The Division will implement the following recommendations for improvement:

- Continue to use targeted compliance assistance and ensure appropriate training opportunities exist; support and reward successful Environmental Management Systems
- Continue to work with MS4 permittees and the construction industry to resolve issues around consistency in inspections, the need for calibration in compliance determinations, flexibility in enforcement, and jurisdictional overlap

c. Issue Three: Compliance and Enforcement

The Division permits, inspects and enforces 3,000 to 5,000 stormwater construction sites with approximately 4 FTE. In the past several years, inspection rates have been less than 3 percent of total permits. Due to limited resources, the Division has had to “triage” its activities, including prioritizing issuing permits over conducting compliance monitoring activities and basing inspections mostly on a complaint driven basis.

The result has been twofold. First, the Division lacks resources to do more assistance-based site visits that provide opportunities for compliance before a successive inspection. Second, it means that enforcement action is one of the few remaining tools left for the Division to use to promote compliance. There was general agreement that some element of enforcement is necessary, both for protection of the environment and to promote a level playing field between “bad actors” and “good actors.” There was some disagreement regarding whether all cases that result in enforcement were against “bad actors.” A view expressed by the regulated community was that there are operators who receive enforcement actions and penalties who made a good faith effort to comply but fell short of the compliance expectation because of lack of knowledge about compliance expectations, and/or disagreement on those expectations.

There was general agreement that an alternate compliance model was preferable. A different model, could increase oversight to help the Division attain the national goal of 8 percent, include multiple site inspections for an operator or owner, and the ability to conduct follow up inspections to confirm compliance. This approach could provide more individual assistance, consideration for first time violators, a focus on repeat offenders, and facilitate proactive compliance. An alternate compliance model could also provide a better understanding of violations related to “bad actors”, provide more opportunities for correction before enforcement, and allow for more flexibility in how enforcement action is used.

Developing and implementing such an approach would require more resources potentially supported through a fee increase, and as such the parties agreed more discussion was necessary.

Stakeholders also identified enforcement issues that arise when the owner of the construction site is not the permit holder. There may be less incentive for an owner to properly fund compliance activities if the contractor is the construction stormwater permittee rather than the project owner. Again, there was a lot of discussion about this issue and general agreement to discuss this matter further during the permit renewal process.

The Division will continue to discuss with stakeholders the following options:

- Consider increased resources to provide more on-site compliance assistance activities by the Division to improve compliance and relationships
- Continue to explore how compliance might be improved if permits were tied to ownership
- Continue conversations about what resources might be supported by stakeholders to create an enforcement model geared toward individual compliance assistance and repeat violators

The Division believes that the targeted collaboration with the construction industry, MS4 permittees, and other interested parties over the last six months has resulted in an enhanced understanding by all participants of the issues the industry experiences with the Division’s Construction Stormwater inspection and enforcement process, as well as the challenges faced by the Division. Through these numerous discussions, the participants were able to identify many improvements to processes that the Division will begin to implement over the next several months. Because of the lack of sufficient resources, the Division will need to implement these recommendations by shifting resources which will result in the reduction or elimination of other core services, such as Construction Stormwater inspections. Unfortunately, some of the recommendations cannot be implemented without additional resources. The Division values the work accomplished by this group and intends to continue to work with stakeholders to address issues that are still unresolved and to address issues as they arise.

2. **Statutory Requirement From HB12-1119:**

During the 2012 legislative session, the General Assembly of the State of Colorado enacted House Bill 12-1119 (HB 12-1119) which included the following requirement:

“The Division shall collaborate with the construction industry and other interested persons to develop more responsive and streamlined processes for preventing violations of provisions of this article and of permits issued under this article and for enforcing such provisions when violations occur. No later than **December 1, 2012**, the Division shall submit to the general assembly a written report that includes the results of the collaboration, the actions it plans to take to develop more streamlined and responsive processes, and any legislative recommendations that it may have.”

The stakeholder process discussed below in Part 3, and this final report, were developed to meet this

requirement.

3. Stakeholder Process Summary

The Division initiated a stakeholder process with a public meeting on June 13, 2012. The first HB-1119 work group meeting was announced through direct correspondence with industry groups that participated in legislative hearings associated with HB 12-1119 (Colorado Contractors Association, Association of General Contractors, and Colorado Rock Products Association) and other relevant industry groups, including the Home Builders Association and the Colorado Stormwater Council (representing MS4 permittees). In addition, broader distribution was made to include other interested stakeholders via the Colorado Water Quality Forum and posting information on the Division’s web site

Representatives from the Colorado Contractors Association and Association of General Contractors, representing construction site operators were in attendance at all of the HB-1119 workgroup meetings. In addition, representatives of individual MS4 permittees and the MS4 permittee industry group (the Colorado Stormwater Council) were present for all but one of the meetings. CDOT and the EPA also participated in all meetings. Representatives from other industry groups and entities also participated in work group meetings. Table 3-1, below, includes a list of entities that participated in the process and Table 3-2 includes a list of the meeting conducted. Written information and comment was also provided by participants, distributed to stakeholders, and integrated into the discussions at the meetings.

A draft of Part 5 of the final report, which included the summary of issues and the proposed solutions discussed, was distributed on October 25, 2012 and comments were received from participants, both in writing and at the meetings on November 1, 2012 and November 16, 2012.

Table 3-1: Participating Entities

<ul style="list-style-type: none">• Association of General Contractors of Colorado• Aquaterra Environmental Solutions• Arapahoe County• Black Hills Corp• Colorado Association Of Commerce and Industry• Colorado Association of Home Builders• Colorado Contractors Association• Colorado Department of Transportation• Colorado Department of Public Health and the Environment• City & County of Denver• City of Glendale	<ul style="list-style-type: none">• City of Golden• Colorado Ready Mixed Concrete Association / Colorado Stone, Sand and Gravel Association• Douglas County• Environmental Protection Agency• International Highway Construction• Ryley Carlock• Southeast Metro Stormwater Authority• Stormwater Risk Management• Tri-State G & T• City of Westminster• Colorado Stormwater Council• Xcel Energy
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TABLE 3-2: Dates and Summary of Meeting Topics

Date	Agenda Summary
6/13/2012	Introduction to process and identification of general concerns and desired outcomes
7/24/2012	Discussion of Divisions current program, including review of information quantifying how long certain process have taken, numbers of inspections, numbers of enforcement actions, penalty amounts, and Division resources.
8/9/2012	Discussion of specific issues/concerns
9/18/2012	Continued discussion of specific issues/concerns
9/21/2012	Continued discussion of specific issues/concerns, begin more formalized identification of proposed solutions
10/1/2012	Continued identification of proposed solutions and discussion or pros and cons of various proposals
10/18/2012	Continued discussion or pros and cons of various proposals
11/1/2012	Discussion of the Draft Part 5 of Report
11/16/2012	Continued discussion of the Draft Part 5 of Report, identification of proposed modifications
11/29/2012	Discussion of report final draft, discussion of implementation of report recommendations

4. Summary of Current Division Program

a. Federal and State Statute and Regulation

In 1972, the United States Congress adopted what is now known as the Clean Water Act, which established the basic structure for regulating the discharge of pollutants through issuance of discharge permits. In 1973, the Colorado Water Quality Control Act was completely rewritten (and renamed), to bring it into compliance with the new federal law. The Colorado Water Quality Control Act established the Colorado Water Quality Control Commission as responsible for developing the specific framework for an effective program for water pollution control and water quality protection. The permitting framework established by the Water Quality Control Commission is known in Colorado as the Colorado Discharge Permit System (CDPS) and it largely incorporates the federal permitting framework established as the National Pollutant Discharge Elimination System (NPDES). The Colorado Discharge Permit System Regulations (5 CCR 1002-61) incorporate the requirements for discharge permitting in Colorado.

The Water Quality Control Division is the agency responsible for administering the water quality control programs included in the Colorado Water Quality Control Act and adopted by the Water Quality Control Commission. In support of the adoption of the Colorado Water Quality Control Act, the Colorado General Assembly declared that protection of the quality of state waters and the prevention, abatement, and control of water pollution are matters of statewide concern and affected with a public interest. As such the Colorado General Assembly enacted state powers to enter and inspect property and seek remedies to prevent, control, and abate water pollution. The Division is responsible for carrying out these enforcement provisions for the purpose of providing public relief and remedies as may be appropriate.

The nationwide NPDES program employs a process for EPA to delegate implementation of the permitting regulations and programs to States. Colorado is a delegated state, and therefore has assumed the permitting program from the federal government (with the exception of Indian land and federal facilities located in Colorado). Under the delegation framework, EPA retains independent authority to inspect and pursue enforcement for violations of state issued permits. EPA also has authority to intervene in the state permitting process if the state fails to issue permits in compliance with the federal Clean Water Act. The delegation framework is further outlined in the delegation

agreement (*Memorandum of Agreement between the State of Colorado Department of Health and the United States Environmental Protection Agency, Region VIII, March 20, 1975*) and enforcement agreement (*Enforcement Agreement between the U.S. Environmental Protection Agency, Region VIII and Colorado Department of Health for the Colorado Water Quality Control Program, September 10, 1986*).

As part of the delegation agreement between EPA and the State of Colorado, the two agencies maintain the Colorado Environmental Performance Partnership Agreement (CEPPA). The CEPPA is an agreement that identifies and explains the environmental priorities and goals in the State of Colorado, and the working relationship between CDPHE and the EPA. The CEPPA identifies procedures and goals for oversight and enforcement associated with Construction Stormwater discharges, including oversight rates and commitments for the Division to implement enforcement actions in accordance with established Division procedures and policies.

The 1987 amendments to the Clean Water Act (CWA) clarified requirements for the permitting of the discharge of stormwater associated with industrial activities, which includes construction activities. As required under the Clean Water Act amendments of 1987, the U.S. Environmental Protection Agency (EPA) established a framework for permitting municipal and industrial stormwater discharges through modifications to the NPDES permitting regulations. In 1992, the Colorado Discharge Permit System Regulations were amended to incorporate the federal Phase I stormwater regulation, including the requirement that persons responsible for stormwater discharges from large construction activities that disturb five acres or greater or are part of a larger common plan of development consisting of at least five acres are to apply for CDPS discharge permit coverage as a point source discharge. In 2001, the Colorado Discharge Permit System Regulations were amended again to incorporate the federal Phase II stormwater regulations. The Phase II regulation changed the permitting requirement to cover activities and common plans of development that disturb one acre or greater. These regulations are intended to require that discharges from regulated construction activities are controlled as necessary to prevent the discharges of pollutants in order to protect the beneficial uses of the surface waters receiving the discharge.

In addition to addressing requirements for discharges of stormwater from construction activities that disturb one acre or greater (Construction Stormwater discharges), the Phase I and II stormwater regulations, as incorporated into the Colorado Discharge Permit System Regulations, also include requirements for permitting of discharges of stormwater from cities, counties, and other publicly operated stormwater collection systems. These regulated collection systems are referred to as Municipal Separate Storm Sewer Systems (MS4s). Regulated MS4s include those systems serving populations exceeding 100,000 or greater, systems in a census designated urbanized area, or systems otherwise designated by the Division, which includes several city systems serving populations greater than 10,000 and those in the Cherry Creek Reservoir watershed. The regulations require MS4 permits to include requirements for the implementation of programs to reduce pollution in discharges from the collection system. Included in the requirements is the development, implementation, and enforcement of a program by the MS4 permittee to reduce pollutants in discharges from construction activities that also require a CDPS Construction Stormwater permit (i.e., that disturbs at least 1 acre of land or is part of a larger common plan of development or sale that will disturb at least 1 acre).

b. Environment/Health Goals

Construction activities produce many different kinds of pollutants which may cause stormwater contamination problems. The main pollutant of concern at construction sites is sediment. Grading activities remove grass, rocks, pavement and other protective ground covers, resulting in the exposure of underlying soil to the elements. The soil is then easily picked up by wind and/or washed away by rain or snowmelt. Sediment runoff rates from construction sites are typically 10 to 20 times greater than those from agricultural lands, and 1,000 to 2,000 times greater than those from forest lands. During a

short period of time, construction activity can contribute more sediment to streams than would normally be deposited over several decades, causing physical, chemical, and biological harm to our State's waters. The added sediment chokes the river channel and covers the areas where fish spawn, aquatic insects live, and aquatic plants grow.

Excess sediment can cause a number of other problems for water bodies, such as increased difficulty in filtering drinking water, and clouding the waters, which can kill plants growing in the river and suffocate fish. A number of pollutants, such as metals (phosphorous and nitrogen), are absorbed onto sediment particles and also are a source of pollution associated with sediment discharged from construction sites. Nutrients can stimulate aquatic growth that causes additional impacts on a water bodies uses.

In addition, construction activities often require the use of toxic or hazardous materials such as fuel, fertilizers, pesticides and herbicides, and building materials such as asphalt, sealants and concrete, which may also pollute stormwater. These materials can be harmful to humans, plants and aquatic life.

c. Permit and Requirements

i. General Permit Coverage for Construction Stormwater

In Colorado, permit coverage for construction activities stormwater discharges is available under the CDPS General Permit for Stormwater Associated with Construction Activities (the Construction Stormwater Permit). A general permit is a discharge permit that covers multiple facilities instead of being drafted and issued for a single facility. General permits offer a streamlined and cost-effective option for permitting stormwater discharges associated with construction activity because the large number of facilities requiring coverage can be covered under a single permit.

The procedures and requirements for issuance and renewal of CDPS permits, including general permits, are established in the Colorado Water Quality Control Act. Permits are developed and issued in accordance with the requirements of the Colorado Discharge Permit System Regulations. Colorado statutes establish a public process for issuance and renewal of permits that includes procedures for public notice and appeal. Permits are renewed every five years, unless administratively extended by the Division, which may occur depending on resources and other factors. The current Division Construction Stormwater permit has been administratively extended since June 30, 2012. The Division currently anticipates renewing the permit in 2014.

Permit coverage for construction activities stormwater discharges from a specific facility could be obtained under an individual permit drafted specifically for that facility, however the time and effort necessary for applying for, developing, and issuing an individual permit makes this option undesirable and the Division has never received a request for such coverage.

ii. Construction Stormwater Permit Conditions

Permits authorizing discharges of pollutants from point sources to waters of the state include the following key provisions: effluent limitations, monitoring requirements, reporting obligations, and the duty to properly operate and maintain water quality control measures. Permits authorizing the discharge of pollutants in stormwater leaving construction sites include narrative, or practice based effluent limitations. This framework incorporates adaptive management techniques that employ a plan-do-check-revise process.

1. Practice-Based Effluent Limits

The Construction General Permit does not impose numeric effluent limits or require submission of effluent monitoring data in the permit application or in the permit itself.

The Construction General permit instead imposes practice-based effluent limitations for stormwater discharges through the requirement to implement pollutant control measures referred to as best management practices. The use of practice-based effluent limitations in place of, or in combination with, numeric effluent limits is well established in Colorado and nationwide for stormwater discharges.

2. Stormwater Management Plan

The Construction Stormwater Permit also requires that a Stormwater Management Plan (SWMP) be developed and maintained that includes installation and implementation details for the best management practices. The SWMP must be developed by the permittee prior to commencement of construction. The SWMP identifies control measure for potential sources of pollution (including sediment) which may reasonably be expected to affect the quality of stormwater discharges associated with construction activity from the specific facility. This process allows for flexibility to address the pollutant potential from a specific site with the practices most appropriate for use at that site. The SWMP shall include the following general items:

- a. Site Description,
- b. Site Map,
- c. Stormwater Management Control Measures,
- d. Long-term Stormwater Management, and
- e. Inspection and Maintenance

The Division has a guidance document available on preparing a SWMP and this is available on the Division's website.

3. Monitoring Requirements

The Construction Stormwater Permit requires monitoring through on-site inspection, conducted by the site operator, to visually observe pollutant sources, the condition of water quality control measures, and discharges leaving the site.

4. Reporting Requirements.

The Construction Stormwater Permit requires that routine records be maintained on site and be provided upon request or upon notification of site-inspection. The permit also requires reporting of adverse incidents, such as situations that pose an imminent threat to public health and the environment.

5. Annual Fee

The permittee is required to submit payment of an annual fee as set forth in the Water Quality Control Act. The annual fee is currently set at \$245 per permitted site and is independent of the size of the construction activity. There is not a separate application fee or a fee for other types of permit actions in addition to issuance, including permit modification, transfer, or termination.

6. Stabilization and Inactivation

Construction Stormwater Permit coverage is generally required until a site has been finally stabilized. Final stabilization is 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. When a site has been finally stabilized in accordance with the SWMP, the permittee is required to submit an Inactivation Notice and permit coverage is terminated. The permit also includes provisions for transferring coverage to other

entities based on changes of operational control.

7. Qualifying Local Programs

State and Federal regulations authorize the Division to approve a local government agency as a “Qualifying Local Program”. This allows the processing and tracking of permit applications and some notification, including inactivation, to occur locally. The Qualifying Local Program is limited to small construction activities, which are those that disturb less than 5 acres. This process allows for streamlining of the process by reducing the need for submittal and permit fees to the Division in cases where a local program has identical requirements and also is communicating the Division’s requirements to the permittees. A Qualifying Local Program is not delegated authority for permitting or compliance oversight, and a construction site operator covered by the program is still permitted (via automatic authorization) under the Division Construction Stormwater Permit, inspection process, and enforcement process. Currently there are two approved Qualifying Local Program in Colorado, the cities of Golden and Lakewood.

iii. MS4 Permit Conditions

MS4 permitting is implemented in Colorado by both individual and general permits. Although permit conditions vary, the Construction Stormwater requirements are relatively consistent. MS4 permits are issued to cities and counties, and also to “nonstandard MS4s.” A nonstandard MS4 is an entity other than a city and a county that operates a publicly owned stormwater collection system, and include, but are not limited to, systems operated by public schools, universities, and special districts. MS4 permit conditions associated with stormwater construction for cities and counties differ from those for nonstandard MS4 permittees, in that cities and counties are required to provide oversight of Construction Stormwater activities by third-parties within their jurisdiction. For the purpose of this report, the focus is therefore on MS4 permits for cities and counties due to the potential for overlap with the Division’s oversight and enforcement for the same third party entities.

State and Federal regulations and MS4 permits provide for intentional overlap of oversight responsibility to address Construction Stormwater activities when the activity is conducted within a permitted MS4 area. The Division addresses this overlap within its compliance oversight strategy discussed in Section 4.e, below.

MS4 permits require the MS4 permittee to develop, implement, and enforce a program to reduce pollutants in stormwater construction discharges. As part of the program, the local MS4 must have a program that requires stormwater controls, procedures for site plan review, procedures for site inspections, and procedures for enforcement.

d. Compliance Assistance

i. Division Compliance Assistance

The Division conducts a variety of activities and maintains guidance materials to provide information to regulated entities to assist in the comprehension of compliance expectations and to promote compliance. The guidance is focused on defining compliance expectations and providing information and tools to promote compliance. Assistance for site-specific best management practices selection and design is typically not provided; instead information is provided to allow the operator to understand and make these determinations. Identifying and designing appropriate best management practices to control stormwater pollution is a formal design and documentation process that removes subjectivity in identifying the proper implementation of best management practices. Industry accepted best management practices

have technical criteria for their design and implementation that are available in manuals referenced by the Division in written guidance or from local jurisdictions.

In addition to the specific assistance mechanisms discussed below, Division staff provides one-on-one assistance to operators and owners via phone, email, meetings, during compliance inspections, and as part of training courses and seminars.

1. **Written Guidance:** The Division has developed documents to help identify permitting requirements that are available through the Division’s web page at www.coloradowaterpermits.com. The most significant compliance assistance document is detailed guidance on the development and implementation of a stormwater management plan for compliance with the Construction Stormwater Permit. Although the Division does not have a specific design manual, references to other supporting technical manuals is included in the Division’s guidance.
2. **Training:** The Division participates in a variety of courses and seminars to provide assistance to construction site operators. Topics include construction inspection procedures, construction dewatering, construction in waterways, technical training on best management practices, and providing general information on the Division program. The following Table 4.d-1 identifies the number of course and presentations provided by the Division over the last five years. Note that the reduction in courses and estimated attendance between 2009 and 2010 represents a reduction and refocusing of Division resources on the inspector training courses that provides more advanced information, but to a smaller audience. To allow for this reallocation of resources, the Division reduced participation in classes on basic requirements and best management practice implementation, however these classes have continued to be provided at community colleges and by industry without direct Division participation.

TABLE 4.d-1: Division Compliance Assistance

	10/2008-9/2009	10/2008-9/2009	10/2009-9/2010	10/2010 – 9/2011	10/2011 - 9/2012
Division Provided Courses and Presentations	42	39	29	13	5
Estimated Attendance	1119	1111	707	572	163

A priority for the Division in providing training for Construction Stormwater compliance is training on determining field compliance with the permit conditions. The Division partners with the Rocky Mountain Education Center at Red Rocks Community College, and with a variety of local government partners, to provide a two day class that includes field inspections. The class is targeted at construction site operators, consultants, and local government regulators including MS4 permittees. The course is offered approximately 10 times per year and has trained approximately 1200 individuals since first offered in 2007.

In addition to the course and seminars in which the Division participates, extensive additional opportunities exist in Colorado. The Colorado Department of Transportation, local governments, and a variety of industry groups host classes and seminars that provide compliance assistance.

HB 11-1026 authorized the Division to provide grants to nonprofits (including industry trade groups) and government agencies for stormwater management training and best practices training to prevent or reduce the pollution of State waters. The first round of grants was executed in November, 2012 and included a total of \$64,868 in grants provided to construction sector industry groups for training targeted specifically at stormwater associated with construction. Consistent with the allocation in the bill, the Division will continue to make up to \$50,000 in grants available for stormwater training that may increase availability and quality of compliance assistance for Construction Stormwater.

3. **Administrator Programs:** House Bill 11-1026 also allocated Division resources to support Stormwater Administrator Programs that implement tools based on Environmental Management Systems to provide compliance process and tools that address many root causes of noncompliance. The program is based around participants implementing standardized processes for compliance, including training and third party audits. The Division provides oversight to ensure the continued consistency with EPA and Division compliance expectations and to facilitate the expansion of the program. The Division approved the first Stormwater Administrator Program, implemented by the Associated General Contractors of Colorado, on October 31, 2012.

e. **Summary of Current Division Oversight Program**

Compliance monitoring inspections are conducted for the purpose of ascertaining compliance or non-compliance with water quality requirements, including permit conditions. For Construction Stormwater in particular, inspections are a single point-in-time tool for making compliance determinations. Inspections typically involve both a field based component, such as observing the appropriateness and effectiveness of control measures in the field, and a non-field based component, such as a records review to evaluate other elements of adaptive management including site planning, on-going implementation, and corrective action.

The following provides a summary of the steps and process used currently by the Division for compliance oversight for Construction Stormwater. The described process does not include the planned and proposed revision identified in Part 5 of this report.

The Division provides oversight for compliance using two approaches; direct Division Inspection oversight is used for construction activities conducted outside of MS4 permitted areas, while a combination of direct oversight and MS4 permit oversight is used for those activities within MS4 permitted areas.

i. **Construction Activities inside of MS4s**

Approximately 50% of permitted construction sites are located within permitted MS4 areas. As discussed in Part 4.c.iii above, MS4 permits issued to cities and counties include requirements for the MS4 permittee to implement a program for oversight and to reduce the discharge of pollutants for Construction Stormwater discharges within their permitted area. Although MS4 permits do not require that the MS4 permittee implement a program that is consistent with the requirements of the Division's Construction Stormwater permit, the overall required results of controlling the discharge of pollutants to protect the receiving water are comparable. For that reason, Stormwater Construction discharges within the jurisdiction of an MS4 permittee implementing a program in compliance with the requirements of its MS4 permit should not require Division oversight to meet the overall goals of the program. Therefore, the Division only conducts direct oversight for stormwater construction in MS4 permitted areas when the MS4 permittee is currently in its first permit term and has not fully implemented a construction sites

program, or the Division determines the activity poses an immediate threat to the environment or human health. Based on Division staff judgment, the threat will not be remedied in a timely manner by the applicable MS4 permittee's program. As part of the Division's overall process for permit compliance oversight for MS4 permittees, the Division assesses the development, implementation, and enforcement of construction site oversight by MS4s to help determine if the MS4 permittee is in compliance with the requirements associated with Construction Stormwater, and if the MS4 permittee has the capacity to control stormwater pollution from construction activities. Compliance assessment for MS4s is conducted using a combination of auditing, reporting, and construction site screenings. Construction site screening includes brief evaluation of construction site conditions for multiple sites within an MS4 permitted area, consisting of observations made at, or near, the site. The screening provides a general indication of the potential for MS4 permittee noncompliance. This information does not constitute actual evidence of noncompliance, but is used for further targeting of oversight activities and determinations of the need for direct Division oversight for stormwater construction.

ii. **Inspection Planning and Complaints**

Direct oversight for Construction Stormwater is conducted by the Division either in response to public complaints or as targeted inspections by the Division.

Responding to public complaints is the Division's highest priority for Construction Stormwater oversight. The Division evaluates and conducts inspections for complaints that identify potential for noncompliance. Prioritizing complaints allows the Division to better target potentially noncompliant sites and provides an essential service to the citizens of Colorado. When a complaint is received that is identified as being within an MS4 permitted area, the Division will refer the complaint to the MS4 permittee for response unless the Division has identified that the MS4 permittee has the potential of not addressing the immediate threats from the site, as discussed in subsection ii, above. The Division reviews the MS4 response to further evaluate if continued concerns exist regarding control of discharges associated with the activity and if additional oversight may be necessary.

Additional targeted inspections are planned and conducted with an overall goal of providing statewide oversight and compliance for all construction sectors. This may include targeting geographical areas and sectors based on previous oversight and compliance rates.

iii. **Construction Stormwater Inspections**

Construction site inspections follow the same process regardless of whether the inspection is in response to a complaint received by the Division or if the site was identified for inspection as part of the Division's planned annual inspection program. In addition, if direct oversight is determined to be warranted in an MS4 permitted area, the same procedure is used and the MS4 permittee is also contacted and invited to attend the inspection.

The following steps are part of the inspections process:

1. **Pre-Inspection**

The Division contacts the permittee contact, or a contact for the suspected site operator for unpermitted sites, with date and time of inspection and information on inspection process and request that appropriate site contacts be available. The Division identifies the materials required for review and requests that a copy of the SWMP be provided. The Division can conduct inspections without notification if a contact cannot be reached, such as when violations are observed while the inspector is already in the field,

but this is uncommon. In such cases, Division would contact facility representatives at the site if possible, or conduct the inspection from public right-of-way.

Prior to the inspection, the inspector will review relevant information, such as the application, previous inspection or other compliance information. If possible, notice of the inspection is provided 24-48 hours in advance by phone.

2. Inspection

The site inspection includes multiple steps:

- a. Opening Conference that establishes the inspection objective to evaluate and document compliance with the regulations and the Construction Stormwater permit. The Division inspector discusses that the inspection is a one point in time and place inspection.
- b. Records Review, including self-inspection records and the SWMP.
- c. Field Review of the entire permitted site, including potential pollutant sources, best management practices, and discharge locations. Photographs documenting potential noncompliance are taken.
- d. Closing Conference

The closing conference is a key part of the inspection and is conducted immediately following the inspection except for the uncommon occurrence of a Division inspection where site contacts are not present. The Division inspector identifies all findings identified during the inspection and answers questions regarding permit requirements and compliance expectations, including the need to address any potential permit noncompliance immediately. Occasionally, observations made during an inspection require additional evaluation by the Division inspector prior to finalizing a finding. In such cases the issue is identified and the Division inspector follows up with the site contact as soon as determinations have been made. The Division inspector also explains the post-inspection activities and timeline, including the inspection report format and content, the required permittee response, and the Division review of inspection report findings and process for determining whether a finding meets established criteria for formal enforcement.

3. Inspection Report

For all inspections, the Division provides an inspection report to the legal contact for the inspected entity and to the MS4 permittee if the activity was within an MS4 permitted area. The Divisions time-goal for providing the report is 30 calendar days, with target of not exceeding 45 calendar days. The inspection report contains:

- a. Findings and potential violations including the relevant permit and regulatory citations for the potential violations.
- b. Photos documenting findings
- c. Identification of potential future enforcement and liabilities, including statutory references.
- d. Required response from the inspected entity if applicable.

The Division only requires a written response for inspections where there is a potential that the finding will meet established criteria for Division enforcement action.

4. Inspected Entity Response

Where a response is required from the inspected entity, the inspection report provides a deadline that is typically 14 days from receipt of the report. The response is required to address the actions, including relevant dates, taken by the inspected entity to address

the findings in the inspection report. The Division typically does not provide a written reply to the inspected entity unless a Notice of Violation is issued, in which case any continued noncompliance is identified in the Notice of Violation.

f. Summary of Current Division Enforcement Process

The Division's processes for pursuing an enforcement action to address noncompliance of state law and regulation is summarized below. The described process does not include the planned and proposed revisions identified in Part 5 of this report.

i. Division Decision Making

Following an inspection or the review of other compliance information, the Division analyzes its findings against established enforcement escalation criteria. The Division's enforcement escalation criteria, as well as compliance monitoring and general enforcement procedures, are documented in the Division's *Enforcement Management System (May 1, 1993)*. The procedures and escalation criteria are established to aid the Division in accurately assessing and correcting non-compliance problems in an efficient and consistent manner.

1. Enforcement Response Guide (ERG)

Subsequent to the development of the Division's current Construction Stormwater inspection process, the Division amended its *Enforcement Management System* to include specific procedures for evaluating and responding to significant Construction Stormwater violations. Table 4 of the *Enforcement Management System* was revised in 2004 to include a specific "Enforcement Response Guide for Stormwater Requirements." The Division developed the Enforcement Response Guide to serve as a reference in determining the appropriate level of action to be taken in response to identified violations, based upon the assessment of case-specific facts. The Enforcement Response Guide was also developed for the purpose of communicating to the public the types and circumstances of violations that the Division considers to warrant a formal enforcement response, as well as to communicate the Division's time control goals for providing the indicated response.

The findings from a specific stormwater inspection event are compared against the circumstances listed in the Enforcement Response Guide to assist the Division in determining whether the violations warrant a formal enforcement response, and to ensure the enforcement response is made in a regularized and consistent manner across all potential cases. If a formal enforcement response is warranted, the Division's current time control goal is to issue a formal enforcement action within 180 days from the violations being identified. Depending on availability of Division resources, not all inspections with findings meeting the ERG result in further enforcement response.

2. Enforcement Actions

When inspection findings meet the criteria for formal enforcement in the Division's *Enforcement Management System*, the Division initiates a formal enforcement action. Enforcement actions may follow a variety of processes, including administrative enforcement, civil actions, or criminal actions. The majority of Division enforcement actions follow the administrative enforcement process. Formal civil or criminal enforcement is uncommon and is very case-specific and is therefore is not summarized in this document.

When administrative enforcement is pursued, the Division typically follows one of two processes. The first process utilizes multiple administrative enforcement mechanisms

and is described in subsection a below, and the second results in a more streamlined approach utilizing an Expedited Settlement Agreement (ESA).

a. Administrative Enforcement – Multiple Step Process

The following administrative enforcement mechanisms are part of the Division's more robust and traditional administrative enforcement process. The summary below also addresses the overall process.

i. Notices of Violation (NOV):

Typically the initial step in the Division's traditional enforcement process, the NOV states the provisions alleged to be violated, the facts that constitute the violations, and the nature of any required corrective actions. The NOV requires the recipient to answer each alleged violation and provides the recipient with the opportunity for a public hearing. *(See §25-8-602, C.R.S.)*

At the time of receipt of an NOV (as well as a Cease and Desist Order, and/or Clean-up Order), the recipient is notified that it may be subject to civil penalties.

ii. Cease and Desist Orders:

Accompanying most NOVs, the Cease and Desist Order requires the recipient to stop the violations alleged in the NOV, and sets forth the time by which the acts or practices must be terminated. As with NOVs, Cease and Desist Orders are sent by certified mail to the alleged violator or its registered agent. *(See §25-8-605, C.R.S.)*

iii. Clean-up Orders:

The Division may issue a Clean-up Order when any material is accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters. *(See §25-8-606, C.R.S.)* If a Clean-up Order is issued, it will accompany the original NOV.

iv. Penalty Mechanism (Compliance Order on Consent and/or Order for Civil Penalty):

The final step in the Division's traditional enforcement process is the resolution of civil penalties, as applicable on a case by case basis. Pursuant to §25-8-608, C.R.S., violations of the Water Quality Control Act or of any permit issued under the Act shall be subject to civil penalty of not more than \$10,000 per day for each day during which such violation occurs. In order to recover any economic benefit realized by an owner/operator as a result of its violations, and to deter future non-compliance both by the violator and the regulated community as a whole, the Division generally seeks a civil penalty in all cases where a formal enforcement action is issued. Penalties for stormwater construction violations are determined in accordance with the Division's *Stormwater Civil Penalty Policy (January 25, 2007)*.

The Division offers the settlement of civil penalties through Compliance Orders on Consent in all cases where an entity desires to resolve its violations outside of a unilateral penalty process. If settlement is reached, public notice of the Compliance Order on Consent is published

in the Denver Post in accordance with the Division’s *Public Notification on Administrative Enforcement Actions* Policy. In cases that cannot be resolved through settlement, or to trigger the effective dates of Compliance Orders on Consent, the Division issues Orders for Civil Penalty. (See §25-8-608, C.R.S.)

b. Expedited Settlement Agreements (ESAs)

In 2007, the Division developed and instituted an expedited settlement process for resolving select stormwater compliance issues. Expedited settlements are intended to supplement, not replace, the traditional administrative enforcement options. An Expedited Settlement Agreement is part of a streamlined enforcement process that results in significantly lower penalties, less administrative time, and eliminates the need for protracted settlement negotiations. Construction entities who meet certain criteria (e.g., disturbing 50 acres or less, no evidence of significant environmental impacts, owner/operator is not a repeat violator) can be eligible for an ESA.

Upon the identification of violations that meet the criteria for formal enforcement pursuant to the Division’s Enforcement Response Guide, an entity who is ESA-eligible is offered the opportunity to resolve the identified violations through an ESA. If the owner/operator desires to resolve the violations quickly, the owner/operator can choose to sign the ESA and return it to the Division within 30 calendar days. As a condition of settlement, the owner/operator must ensure it has corrected all violations within 30 days of receipt of the ESA. Upon payment of the administrative penalty documented in the ESA, the cited violations are resolved and the case is closed. If an owner/operator decides not to sign and return the ESA and/or pay the penalty, the Division may pursue its more traditional enforcement options described in subsection a, above.

g. Implementation Information and Statistics for Current Process (Oversight and Enforcement)

i. Oversight and Enforcement Rates

Table 4.g-1 provides the number of construction site inspections and the percent of inspection meeting the Division’s established criteria for enforcement included in the Enforcement Response Guide (ERG). Information is provided for inspections conducted after October 2009. Prior to October 2009 the Division implemented a significantly different compliance process relying on contracted inspections.

The number of total inspections has decreased over 50 percent each of the last two years due to limited resources. A significant percentage of inspections are in response to citizen complaints, which often identify sites with significant noncompliance. As the total number of inspections has decreased, a higher percentage of inspections has been targeted at sites with higher potential for significant violations and resulted in enforcement.

TABLE 4.g-1: Oversight and Enforcement Rates

	10/2009-9/2010	10/2010 – 9/2011	10/2011 - present
Inspections Conducted	99	43	19
Finding met ERG	9	7	2
Percent	9%	16%	11%

ii. **Inspection Report Timing**

The Division’s inspection process includes time goals for issuance of an inspection report within 30 calendar days of the inspection, with a target of not exceeding 45 calendar days. However, due to a variety of factors, including resources, conflicting work requirements, and post-inspection communication with the inspected entity, the Division has previously missed these goals in the past, as detailed in Table 4.g-2.

TABLE 4.g-2: Oversight and Enforcement Rates

Time Period	Median Days to Issue Report	Percent Issued within 45 days	Percent Issued within 60 days
Past 3 Inspection Years (10/2009 – 5/2012)	27	78%	96%
Previous Inspection Year Only (6/2011 – 5/2012)	23	96%	97%

iii. **Enforcement Action Timing**

As discussed above, the Division’s time control goal for issuing a formal enforcement action for Construction Stormwater violations is 180 days from the time the violations are identified, as documented in the Division’s Enforcement Response Guide. The average time period from a Division oversight inspection to the issuance of a Notice of Violation or notification of an ESA offer during the past three inspection years is listed in Table 4.g-3 below, as well as the average time period from inspection to settlement:

TABLE 4.g-3: Average # of Days from Inspection to Notification of Formal Enforcement/Settlement

	10/2009 – 9/2010	10/2010 – 9/2011	10/2011 – 9/2012
Inspection to NOV/ESA offer	163 days	134 days	91 days
Inspection to Settlement *	276 days	309 days	168 days

* The Division encourages settlement of all cases; however, because settlement is a collaborative process, the Division does not retain unilateral control of the timing of settlements.

Table 4.g-3 addresses timelines from October 2009 because this period most accurately reflects current Division procedures. Prior to October 2009, the Division was processing enforcement actions that resulted from inspection findings identified by contracted inspections. These contracted inspections resulted in a greatly increased number of total inspections for which the Division lacked resources to process in accordance with its time goals. From October 2008 to September, 2009, due to limited resources and a backlog of inspections that warranted a formal enforcement response, an average of 459 days passed from inspection to notification of formal enforcement, and 682 days from inspection to settlement. Prior years ranged from 144 days (2004) to 441 days (2002) from inspection to formal enforcement, and 531 days (2008) to 868 days (2005) from inspection to settlement.

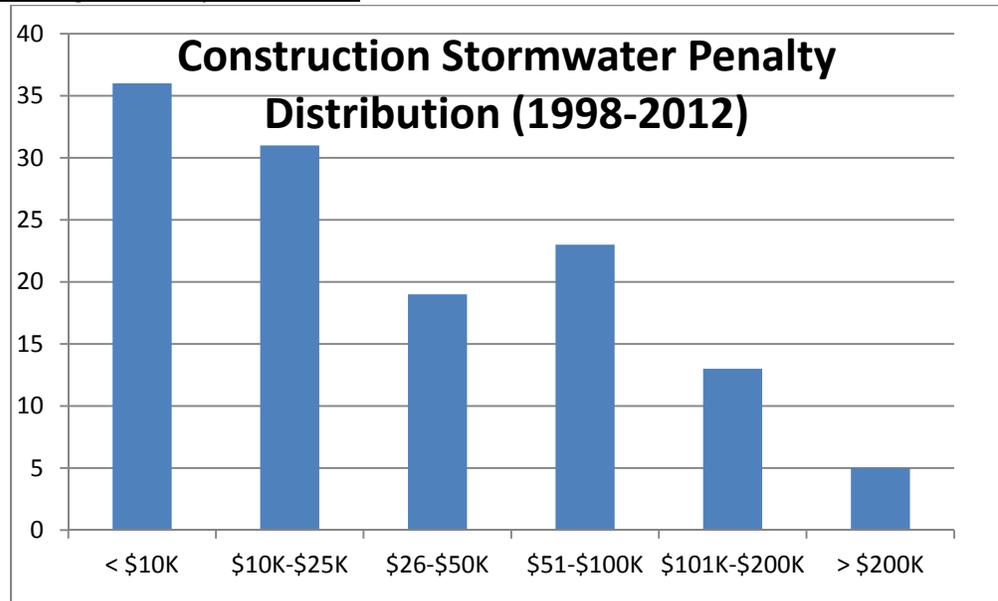
iv. Penalties

An analysis of Construction Stormwater penalties issued from October 2009 through September 2012 is provided in Table 4.g-4, below. Graph 4.g-1, below, provides information on the general distribution of the magnitude of penalties issued since 1998.

TABLE 4.g-4: Construction Stormwater Penalties (Oct 2009 – Sep 2012)

	10/2009 – 9/2010	10/2010 – 9/2011	10/2011 – 9/2012
# of Penalty Actions	7	3	1
Median Penalty	\$7,500	\$6,000	\$6,000
Maximum Penalty	\$26,849	\$28,125	\$6,000
Minimum Penalty	\$6,000	\$4,875	\$6,000

GRAPH 4.g-1: Penalty Distribution



The Division has reviewed the magnitude of penalties associated with Construction Stormwater versus penalties issued for violations associated with other Colorado Discharge Permit System permits for domestic and industrial discharges. The magnitude is generally consistent. A summary is included in Table 4.g-5, below.

TABLE 4.g-5: Construction Stormwater Penalties vs. Other Wastewater Penalties (1998-2012)

	Construction Stormwater	Domestic Wastewater	Industrial Wastewater
Total # of Penalty Actions	127	64	31
Median Penalty	\$21,750	\$22,143	\$14,450
Average Penalty	\$53,112	\$42,280	\$37,629

5. **Summary of Issues, Recommendations, and Proposed Solutions**

As discussed in Part 3, Summary of Stakeholder Process, several meetings and opportunities for written feedback occurred to fulfill the requirements of HG-1119 to collaborate with the construction industry and other interested parties. These opportunities resulted in a number of issues and proposed solutions being presented. The following subsection includes what the Division believes to be a comprehensive summary of the issues and

concerns raised during this stakeholder process. Also included are the solution options presented for which at least a minimal degree of discussion occurred and interest was apparent and those specific solutions for which the Division is planning on and/or recommending implementing.

The *planned* solutions in the subsections below that are identified as having “Implementation Achievable with Current Resources,” address many of the issues identified by stakeholders. Implementation of revisions for these solutions will begin following submittal of this report on December 1, 2012, and time-goals are provided to identify the planned date of implementation. Some of these modifications add steps to the compliance monitoring and enforcement process. **As such these new steps have a resource demand that would be met through reductions of other services, specifically the number of inspections the Division can conduct.**

The Division has identified some additional *recommended* solutions that cannot be implemented with the current resources available. Those recommended solutions identified as having “Implementation Requiring Additional Resources and Legislative Action prior to Division Implementation” would necessitate additional resources be made available to the Division through legislative action. The following recommendations include the identification of the estimates of the resources needed to provide for the solution identified by the stakeholder process. The actual resources needs would be more accurately determined and supported through the fiscal note process if legislative action was contemplated.

a. Communication to Increase Transparency

i. Pre-Inspection Notification

1. Issues

The Division’s current inspection procedures include an advance notification by phone to permittees and to operators of unpermitted construction activities when they can be identified. The time goal for notification is 24 to 48 hours prior to the inspection. Oral notification includes identification of the purpose of the inspection, the process, identification of requested materials, and recommendations on who should be present.

Construction site operators identified that advance notification is preferred over unannounced inspections. The Division identified construction site operators not having all necessary information available at the time of inspection as a waiting step that adds time to the compliance process.

2. Planned Solution - Implementation Achievable with Current Resources

The Division will implement a new pre-inspection written notification process. The Division will continue to provide advance notice of inspections to the permittee, and the site owner or operator if the site is not permitted, as standard practice. Exceptions will continue to be made to address specific circumstance such as the need to address immediate threats to human health or the environment, findings that are identified during an inspection for a separate adjacent site, and for unpermitted sites where a contact cannot be established in advance. For all inspections conducted following March 31, 2013 the Division will provide either written notification at least 24 hours prior to the inspection to both the legal contact and site contact identified in the permit application (and to an identified site contact for unpermitted sites), or provide written information to a site contact at the beginning of the inspection in the uncommon incidence of an unannounced inspection.

The written notification will include the following:

- a. A notification of the information that is required to be provided or made available for review at the time of the inspections.
- b. A summary of the inspection process, how to prepare for the inspection, and who should be available.
- c. A recommendation that the inspected entity have appropriate representatives present to understand any findings and to be prepared to correct any potential noncompliance immediately instead of following receipt of full inspection report from the Division.
- d. A copy of the Division's inspection checklist that will be used to determine compliance or non-compliance.
- e. A notification of legal authority and potential liabilities.

Note that implementation of this solution, although achievable with current Division resources, will require on-going reallocation of resources from other Division activities.

ii. **Communication and Documentation of Inspection Findings at Time of Inspection**

1. **Issues**

The Division's current inspection procedures include a closing conference where findings are communicated when known. On occasion, some potential findings require additional review following inspection, in which case the Division inspector identifies this need and follows up with site contacts, usually via a phone call, at a later date to relay the additional findings. Division staff strongly recommends that site contacts take notes during the closing conference.

Construction site operators identified that the lack of written documentation immediately at the time of inspection was an issue. Reasons provided included:

- legal contacts may not be provided information on the findings;
- potential for a finding not to be addressed if a complete written list is not provided;
- operators may not understand that findings that are provided orally during closing conferences constitute a potential violation with potential for liabilities if not documented at time of inspection; and
- written evidence of findings may be needed in interactions with subcontractors, owners, and other involved entities.

2. **Planned Solutions - Implementation Achievable with Current Resources**

- a. The Division will continue its practice of providing an inspection closing conference.
- b. The Division will add a step to provide written documentation of preliminary inspection findings at the inspection closing conference. The preliminary findings will also be mailed to the legal contact identified on the permit (if permitted) as soon as feasible following the inspection (typically with 24 to 48 hours). The Division currently offers a closing conference following all inspections, at which inspection findings are discussed, requirements to address potential noncompliance are identified, and guidance on the next steps in the process is provided, all orally. The addition of the step to provide something in

writing will require both the development of new written materials and for the Division to obtain new tools, which may include portable computers, printers, and software development. Full implementation of the revised procedures will begin for all inspections conducted following June, 2013.

At full implementation the written documentation will include the following:

- i. All preliminary findings identified during the inspection.
- ii. Reiteration of information in the pre-inspection notification that any potential noncompliance is required to be corrected immediately, instead of following receipt of full inspection report from the Division.
- iii. A notification of potential findings requiring additional evaluation and determination by the Division, and a timeline and process for the Division to provide additional information. Although it is not common for additional evaluation to be needed following an inspection, issues such as complex design evaluation, activities being conducted in waterways with potential for Federal Corp of Engineers overlap, and new technologies may necessitate additional time prior to documentation of the finding.
- iv. A summary of the post-inspection process and timelines for further communication and enforcement determinations.
- v. Procedures to request and obtain copies of photos taken during the inspection.
- vi. A notification of legal authority and potential liabilities.

During an interim period, between March 31, 2013 and June 30, 2013, the Division will provide information listed above in writing with the exception of site specific finding/potential finding which will continue to be provided orally until new tools can be developed for in-field transmittal of findings.

Note that this solution, although achievable with current Division resources, will require reallocation of resources from other Division activities.

- c. The Division will continue its practice of providing a written inspection report. The inspection report provides a more comprehensive description of the findings than will be provided in the provided documentation of findings at the inspection. The time goal for all inspection reports will continue to be 45 days following the date of inspection.

iii. **Communication and Guidance for Expedited Settlement Offers**

1. **Issues**

The Division currently implements a process for offering and entering into Expedited Settlement Agreements (“ESAs”) for violations. The ESA is a streamlined enforcement process that results in significantly lower penalties, less administrative time, and eliminates the need for protracted settlement negotiations. The purpose of expedited settlements is to supplement, not replace, traditional administrative and judicial enforcement actions administered by the Division. Compliance findings that meet certain criteria (e.g., construction site is 50 acres or less, no significant environmental impacts, operator not a repeat violator, etc.) can be ESA-eligible. An owner/operator with this level of compliance finding that receives an ESA offer may resolve the cited violations quickly by signing and returning the ESA. The ESA offer time period is limited to within 30 days of its receipt in order for the process to be expedited. If an

owner/operator chooses not to accept the ESA and/or pay the penalty, traditional enforcement options are applicable as a response to the compliance determination (e.g., Notice of Violation/Cease and Desist Order and penalties in accordance with the Division's Stormwater Civil Penalty Policy).

Penalties offered through the ESA process are non-negotiable, as ESA penalties are the lowest amount appropriate based on the identified violations. As part of the ESA process the Division considers new information when provided regarding the validity of the findings.

Construction site operators identified that some recipients of ESAs have expressed confusion about the process and a lack of understanding of options to discuss or dispute the factual claims of the findings.

2. Planned Solutions - Implementation Achievable with Current Resources

The Division will revise its Expedited Settlement Agreement cover letter to more clearly explain the purpose of the expedited settlement process and why the inspected entity is being offered an Expedited Settlement Agreement. Additionally, revisions will be made to more clearly outline the available opportunities for discussing the violations and/or submitting additional information regarding findings.

iv. Communication of Compliance Determination and Enforcement Case Status

1. Issues

The Division's current process is to identify orally during inspections and in writing in inspection reports that inspection findings could result in a formal enforcement action that may include the assessment of penalties. The Division has not provided additional written communication if after evaluation it is found that inspection findings do not meet established criteria for formal enforcement, including potentially seeking monetary penalties.

2. Planned Solutions - Implementation Achievable with Current Resources

The Division will implement a new decision making and communication process for Construction Stormwater permittees and operators of sites without permits (the inspected entity) following Division compliance monitoring inspections. The written communication will include documentation of the Division's compliance determination, including whether the findings do or do not meet established criteria for a formal enforcement response. The Division is recommending that this procedure be implemented for all inspections conducted following March 31, 2013.

Proactive communication from the Division was identified as one of the desired outcomes of the stakeholder process. The need was identified for enhanced communication in the following key areas: the Division's compliance determination, including whether the inspection findings do or do not meet established criteria for a formal enforcement response, a description of the enforcement process, or what to expect in terms of future actions and timelines, and whether enforcement actions will be issued. The solution proposed by the Division will meet this desired outcome with a time-goal for providing the inspection report, with the documented determination on whether findings meet established criteria for formal enforcement, within 45 days of the date of the inspection. To meet this time goal, the Division will expedite the evaluation of inspection finding and additional relevant information to make

determinations within 45 days of the inspection whether the findings meet established criteria for formal enforcement. The process also includes set timeframes for follow-up communication to keep the construction operator informed of the status of the enforcement case and the Division's ability to issue formal enforcement actions. In addition, the Division will enhance communication regarding how new information can be considered during the compliance process, and in particular how that can affect final compliance determinations associated with inspection findings.

Specifically, the Division will implement the following new communication tools:

- a. Compliance Determination: Do the findings meet or not meet established criteria for a formal enforcement response. The Division has a time-goal of 45 days following an inspection to provide an inspection report to the inspected entity that details the findings, including draft alleged violations. Included with the inspection report, the Division will provide a compliance determination of whether the findings do or do not meet established criteria for a formal enforcement response. Specifically, for determinations that the findings do not meet the criteria for a formal enforcement response, the Division will state that no enforcement action is currently pending and that these findings could be included in a future enforcement response if new information, including new or ongoing violations, is later discovered. Compliance determinations will be made consistent with the Division's Enforcement Response Guide (see Part 4.f.i.1). For inspections for which the Division has made a determination that the findings meet established criteria for a formal enforcement response, the notification will include:
 - i. Identification of the compliance determination.
 - ii. A description of the enforcement process and potential outcomes.
 - iii. Timelines for further Division actions and communication with the construction operator, as discussed below.
 - iv. A request for the construction operator to respond to all findings. (See Part 5.a.v, below, for information on revision to the Division review and response to the entity's response).

If, due to case-specific circumstances the Division is unable to meet the 45-day time goal for providing the above information, the Division will contact the inspected entity within 45 days to discuss the specific situation and provide available information on the status and process.

- b. Notice of Violation or Identification of Enforcement Case Status: The Division will continue to implement its current time-goal of providing formal Notice of Violation to inspected entities within 180 days of the inspection. The communication identified in step 1 above will result in pre-notification to all recipients of a Notice of Violation that a formal enforcement action is pending.

The following Table 5.a-1 summarizes written communication following inspection, as discussed above:

TABLE 5.a-1: Revised Communication Process for Compliance Determinations

Time-Goals from Inspection (days)	Activity	Communicated Information
At Inspection	Inspection Closing Conference and Field Report	Identification of draft findings from the inspection and the nature of corrective actions as further discussed in Part 5.a.ii, above
45-days from inspection	Inspection Report/Compliance Advisory	Detailed information on all draft alleged violations, the Division’s determination of whether established criteria for a formal enforcement response have been or have not been met, and a description of the enforcement process
180-days from Inspection	Notice of Violation, or Enforcement Case Status	The Division goal will be to provide either a formal Notice of Violation, or notification that that enforcement case status remains pending and that the Division will provide additional information within 90-days

For entities notified in the inspection report/Compliance Advisory that inspection findings meet established criteria for a formal enforcement, the process provided above sets a time-goal for providing a Notice of Violation within 180-days of an inspection that the Division intends to strive to meet or exceed for the majority of cases. However, circumstances could result in a final Notice of Violation not being issued within the 180-day time goal. In such cases, the Division intends to provide clear written communication to the inspected entity as outlined further below. The communication will identify the status of the formal enforcement action. To ensure that the construction operator is provided with an update regarding their case status in situations where a Notice of Violation has not been issued within the 180-day time goal, the Division will provide written notice, no later than 180 days from the date of the inspection, that the enforcement case status remains pending. Included in the notice will be communication that within an additional 90 days (270 days following inspection), further Division actions will be completed or there will be additional communication with the inspected entity. The Division will by this time provide either the formal Notice of Violation or provide an additional notification that a formal enforcement action is still pending. For inspected entities that receive a second notification of pending Division enforcement action, the Division will provide a final written notification within an additional 90 days (360 days following inspection). The Division will by this time either issue the formal Notice of Violation or provide notice that the case has been closed based on current findings and that these findings could be included in a future enforcement response if new information, including new or ongoing violations, is later discovered. If the Division is deferring the case based on inadequate resources, the inspected owner and/or operator may be included in the Division inspection plan for future compliance oversight.

Note that this solution, although achievable with current Division resources, will require reallocation of resources from other Division activities.

3. **Additional Solutions Discussed**

The following alternative proposals were presented during the stakeholder process and are not being recommended by the Division:

- a. The Division could provide written information within a set time period following a compliance determination instead of setting the time goal based on the date of the inspection. The Division is not recommending this approach. Using time goals following the inspection is expected to provide more clear expectations to the regulated community while simplifying tracking and processing by the Division. Participants in the stakeholder process expressed general agreement with this determination.
- b. Instead of the Division sending the inspected entity a letter documenting the compliance determination, the Division could communicate in inspection reports that if nothing was received by the entity within a specific timeframe that the findings did not meet established criteria for formal enforcement. The Division is not recommending this approach. Participants in the stakeholder process expressed a preference for a letter to be sent communicating the compliance determination.
- c. The Division could only send letters when determinations are made that findings do not meet established criteria for formal enforcement. An entity not receiving a letter would therefore know that the findings met the criteria for formal enforcement. The Division is not recommending this approach. Participants in the stakeholder process expressed a preference for a letter to be sent communicating the compliance determination.

v. **Incomplete Responses to Inspection Findings**

1. **Issues**

The Division requires a written response be provided for inspections where findings meet established criteria for formal enforcement and when the Division has determined that the requirement to respond will significantly increase the potential for a return to compliance. Due to the need to prioritize available Division resources, the Division does not require a response to all inspection reports.

In most cases, the Division does not provide a separate written determination back to the inspected entity regarding the adequacy of the response in terms of completeness (have all inspection findings been addressed) and the compliance status (has the site returned to compliance). Such information is currently provided in a subsequent Notice of Violation for cases where the findings meet established criteria for formal enforcement and enforcement actions are issued. The Division's current time goal for issuing the Notice of Violation is 180-days following the inspection.

The main concern communicated by construction operator stakeholders is that the inspected entity may be unable to confirm that response efforts have been satisfactory to document a return to compliance and thus have "stopped the clock" on accumulating daily civil penalties liability for ongoing noncompliance. More timely written responses from the Division back to the inspected entity could increase the potential for noncompliance being timely corrected.

2. **Planned Solutions - Implementation Achievable with Current Resources**

For inspections where the findings meet established criteria for a formal enforcement response, the Division will continue to request that the inspected entity implement

corrective action and respond to the Division to document that those steps have been taken. This step is key to determining when the operator has returned to compliance, and has stopped the clock in regards to accruing penalty liability. The Division is recommending two options to revise the process for post-inspection review and response associated with the inspected entity's resolution of potential noncompliance.

The Division will revise its procedure to provide a written response, with a time-goal of 30 days following the receipt of an inspected entity's response to inspection findings. This will replace the current process of addressing the initial response at the time of issuance of the Notice of Violation, which has a time-goal of 180 days following the inspection. The Division's response will identify if, based on the information provided, all inspection findings have been addressed and whether there is or is not evidence of continuing noncompliance and potential for continued penalty liability for ongoing violations. If the findings have not been adequately addressed, the Division response will provide notification of the continued noncompliance and the need for corrective action. Only one Division review and response will be provided in advance of the issuance of a Notice of Violation. In addition, the Division will revise current procedures to limit the request for written responses to only those sites for which it has been determined that, based on the findings from the inspection, criteria for formal enforcement have been met. The result will be a decrease in the ability for the Division to require responses from inspected entities for some additional inspections that do not have findings that meet established criteria for a formal enforcement response, but for which additional correspondence may increase compliance. However, this reprioritization is necessary given current Division resources to allow for the Division to provide written responses back to the inspected entity based on the review of the inspections finding response.

The Division will implement these revised review and response procedures for all inspections conducted following March 31, 2013. Although the Division has identified that these revisions can be made with current resources, it should be noted that reprioritization of resources and reduction in other services would be necessary. The Division is therefore recommending that an alternative option that was supported by stakeholders be considered, as addressed in subsection 3, below. Implementation of the additional option in subsection 3 would be dependent on allocation of additional resources to the Division to provide a more robust and expedited post-inspection process that provides more information to inspected entities and facilitates meeting requested time-goals.

3. **Recommended Solutions - Implementation Requiring Additional Resources and Legislative Action prior to Division Implementation**

The Division could implement a more robust program that would more fully meet the request by stakeholders to confirm a return to compliance, as well as be more proactive in addressing the potential for ongoing non-compliance and threats to human health and the environment. Such a program would include Division review and response to all written responses to inspection findings, and would necessitate additional correspondence when the inspected entities initial response was incomplete. It would also include the ability to conduct follow-up inspections to confirm a return to compliance based on observed field conditions.

The revised compliance assurance model identified in Part 5.c would meet this need, as well as provide the additional benefits discussed in that section.

b. Clarification of Compliance Expectations and Assistance

i. Compliance Assistance on Identifying and Achieving Compliance

1. Issues

As discussed in the summary of the Division's current program, in Part 4.d, several resources exist for obtaining guidance and training associated with Construction Stormwater in Colorado. In general, participants in the stakeholder process did not identify that there is a lack of available classroom training or written guidance in Colorado. However, it was identified as an issue that some operators and owners were not seeking and obtaining the training they needed to fully comply with rules and to control the discharge of pollutants from construction sites.

In addition, failure by construction site operators to implement adequate processes and controls to control stormwater pollution can often be traced back to specific root causes beyond lack of technical knowledge and resources. Regulatory compliance can be a strategic decision made by executives in a company. Many construction executives lack a comprehensive understanding of the requirements or what is necessary for their company to comply. Minimal inspection and enforcement frequency sends the message that compliance is a lower priority. Most current compliance assistance tools do not target these types of root cause issues. Stakeholders in the process also identified that there is a lack of market-based incentives to promote better compliance. A highly competitive construction market and the low frequency of inspections and enforcement by the Division may actually promote non-compliance by making noncompliance more economical than compliance.

2. Planned Solutions - Implementation Achievable with Current Resources

Colorado House Bill 11-1026 authorized the Division to provide grants for stormwater management training and best practices training to prevent or reduce the pollution of State waters. The first round of grants was executed in 2012 and the Division will continue to make up to \$50,000 in grants available for stormwater training annually. These grants are expected to increase availability and quality of compliance assistance for Construction Stormwater. House Bill 11-1026 also specifically allocated current Division resources to facilitate Stormwater Administrator Programs that implement tools based on Environmental Management Systems to address many root causes of noncompliance. On October 31, 2012 the Division approved the first Stormwater Administrator Program, administered by the Associated General Contractors of Colorado, and will continue to support and help expand the availability and effectiveness of the program, and seek opportunities to facilitate the development of new programs.

The Division will also continue to prioritize targeted compliance assistance for the construction sector to provide tools and build capacity for operators and owners to understand and be able to comply with permit requirements. Among other efforts, the Division will continue to support and help teach courses on inspecting and assessing construction sites for compliance with permit requirements and maintain detailed guidance on Stormwater Management Plan Requirements.

The Division will also continue to promote Environmental Management Systems that address root causes of noncompliance. Colorado's existing Environmental Leadership

Program offers benefits and incentives to members that voluntarily go beyond compliance with state and federal regulations and are committed to continual environmental improvement, including implementation of Environmental Management Systems. In addition, the Division's Stormwater Civil Penalty Policy provides mitigation of penalties for companies that develop and implement regularized and comprehensive environmental compliance programs, including Environmental Management Systems, as well as those that provide voluntary and complete disclosure of violations. The Division coordinates with the Environmental Leadership Program to implement the Environmental Management System portion of the policy.

3. Additional Solutions Discussed

Several options were discussed during the stakeholder process, however there was not a consensus regarding whether the Division should implement additional measures to address this issue. It was discussed during the stakeholder process that the Division should continue to identify during inspections and other interactions with the regulated communities when it believes that additional training is warranted. The Division will continue to seek opportunities to encourage and collaborate with industry to help ensure that needed training is developed and made available.

Options for requiring training or requiring a type of operator certification were considered during the stakeholder process. It was discussed that such a program may be complex and costly for the Division to administer and may not significantly increase compliance. Some participants identified that instead of requiring specific training, that it was preferable to try to improve the overall program more robustly to result in incentives for operators to want/need to be trained.

ii. Site-Specific Compliance Determinations

1. Issues

Although related to the issues associated with compliance assistance in Part 5.b.i, above, a specific issue was identified related to the need for site-specific compliance determinations without the potential for enforcement. Participants identified that they believed that some permit holders incorrectly believe that they have a firm grasp on what is expected for compliance and that enforcement would not promote compliance for these entities. In addition, it was identified that some permit holders want advice from the Division to address site-specific conditions that are more complex to ensure that the selected approach would be compliant.

The Division currently receives and responds to many compliance assistance questions, but does not offer in the field review outside of compliance monitoring inspections. The Division participates in construction site inspector training classes, which educate operators and consultants on how to assess a site for compliance consistent with the Division approach, as discussed in the summary of the current Division program in Part 4.d. However, some participants in the stakeholder process identified that using construction staff or consultants to determine compliance was not adequate.

2. Recommended Solutions - Implementation Requiring Additional Resources and Legislative Action prior to Division Implementation

It was proposed during the stakeholder process that the Division should provide on-site compliance assistance consultations that include an assessment of the site's compliance with permit requirements. The proposal was for the on-site consultations to be outside

of the Division's standard inspection and enforcement process, and therefore findings would not be subject to a formal enforcement response. Stakeholders proposed that the inspection consultation could be a fee-for service, and structured to provide the additional Division resources needed to provide this service.

It was suggested that implementation could rely on Division staff performing inspections or by implementing a certification program for the Division to approve private industry inspectors and provide for ongoing assessment of the certified inspectors. Either of these additional processes would require additional allocation of resources to the Division to perform the increased activities. Private industry currently is providing on-site compliance assessments outside of the Division's compliance assurance process. Participants in the stakeholder process identified that an independent consultant not operating under a Division certification framework may not be able to provide the same level of service as Division staff or Division-certified private inspectors. For example, concerns included that private consultants may not provide consistent determinations as the Division, may provide direction that exceeds what is required, and that if an owner or operator hears it from the Division it is taken more seriously. In addition, the Stormwater Administrator program created by HB 11-1026 provides a framework and allocates current resources to Division involvement in a voluntary compliance program incorporating on-site consultations by private consultants. However, the Stormwater Administrator program provides for a different service requiring company-wide and ongoing involvement instead on one-time site assessments.

The Division is not specifically recommending or opposing this proposal. Instead the Division is seeking legislative direction regarding this proposal.

iii. **Site Owner Commitment**

1. **Issues**

Under the Water Quality Control Act and implementing regulations, both the owner and operator must apply for permits as co-permittees, unless the Division waives the requirement for owners. In all cases the operator must be the permit holder. In some industries the owner and operator is the same person, however this is often not the case for construction sites. Currently, in the Construction Stormwater general permit only the operator is required to apply, and this can be the owner, the developer, the general contractor or the agent of one of these parties. For most sites in Colorado, the owner is not currently a permittee. During the stakeholder process this was raised as a potential root cause for variable levels of compliance throughout the industry and a cause for creating inequities during the bidding process. It was described that when the owner is not a permittee, they may require the contractor to obtain the permit and be responsible for all aspects of permit compliance. In other cases, the owner may develop a stormwater management plan, incorporate it into the contract documents, and then require the contractor to implement the day-to-day compliance responsibilities. An issue that was raised is situations where deficiencies with the plan are identified and situations where changes need to be made to the plan and controls on site. More specifically, it was discussed that some project owners may not want to pay for changes in the stormwater management plan and controls, exposing the permit holding contractor to liability including civil penalties, but not the project owner. The owner may also accept bids from contractors that do not include adequate costs for stormwater permit compliance, therefore discouraging such compliance and giving a competitive advantage to contractors who willingly or naively fail to include adequate

compliance costs in bids and may subsequently operate out of compliance. It was generally agreed upon by participants in the stakeholder process that when it is the contractor who obtains the permit, the owner is likely to not be as engaged or concerned with permit compliance, which in some situations is contributing to non-compliance.

2. **Planned Solutions - Implementation Achievable with Current Resources**

Issues associated with how the lack of real or perceived liability for owners for noncompliance was discussed extensively during the stakeholder process. However, there was no clear consensus on a solution or if State requirements or oversight was even the proper avenue for a solution. The Division is committed to ongoing dialogue on this issue with the regulated community and specifically will reevaluate the topic during the public process associated with the Construction Stormwater Permit renewal, currently scheduled for 2014. Ideas discussed in this stakeholder process will be further evaluated, including requiring owners to obtain separate or dual permit coverage for their sites and requiring that applications identify the project owner. It was also discussed that more time should be spent evaluating EPA's recent renewal of the national general permit and other state permits to further inform the discussion.

3. **Additional Solutions Discussed**

A proposal that was identified during the process, but was not discussed in detail, is to develop guidance about the specific liabilities that a project owner has under state statute. Contractors could proactively provide this information to owners and clients and educate them about their potential liability before contracts are signed. The Division is open to further discussion on this concept with industry trade groups or representatives, including the potential to develop or assist in the development such guidance.

c. **Compliance Assurance Model**

i. **Issues**

The Division's current resource allocation has resulted in a 1-2% annual oversight rate of permitted sites, which limits the Division's ability to implement a variety of compliance monitoring and enforcement models. Several issues were discussed during the stakeholder process associated with the Division's current compliance model of point-in-time compliance assessment and are listed below:

1. The strategy of focusing on point-in-time violations may result in enforcement against companies with first-time violations that would potentially return to compliance through alternative strategies. Providing additional follow-up inspection or compliance assistance may be adequate to result in compliance for a subset of entities that are currently being subject to formal enforcement and monetary penalties. Some participants in the stakeholder process expressed an opinion that companies that are currently being required to pay penalties may have been under the impression that they were fully in compliance.
2. The Division's current Enforcement Response Guide establishes criteria for a formal enforcement response for only a limited subset of findings, as discussed in the summary of the Division's current enforcement process in Part 4.f. "Minor violations" without documented environmental impact, such as deficiencies in Stormwater Management Plans without corresponding failure to implement controls, or non-systemic failure to

implement best management practices not resulting in high potential for environmental impacts, do not currently result in a Division enforcement response.

3. Noncompliance may often be a more profitable condition for owners and operators than compliance. There is a lack of market-based incentives to promote better compliance and current oversight rates and penalty magnitudes do not provide a cost-risk driver for compliance. Penalties or other cost of noncompliance must be high enough to prevent noncompliance from being a negligible “cost of doing business.” This condition could result in a competitive advantage for noncompliant operators and owners.
4. Some participants from the contracting community expressed concerns that some current penalties are out of line with the severity of violations, especially for first time violators making a sincere, though perhaps insufficient, effort towards compliance.
5. Formal enforcement may have a negative impact on a company beyond the monetary penalty. This issue was raised in response to discussion of providing smaller “ticket” type penalties for violations instead of more substantial penalties for more systemic violations.
6. Statutory or process changes discussed during the stakeholder process could limit the Division's ability to implement an EPA delegated program (see Part 4.a for further discussion of EPA delegation) that meets all of the legal requirements and could hinder timely and appropriate enforcement. This could result in increased EPA involvement, oversight, and enforcement associated with Construction Stormwater in Colorado. EPA's authority to enforce violations without pre-notification would remain unaffected by any Colorado statutory or process changes.
7. If the Division modified its compliance process to focus on repeat violations, how would the Division track owners or operators to address name changes, changes in company principles, and limited liability companies? A modified compliance model could give a competitive advantage to companies that the Division could not track for multiple distinct construction activities.

ii. **Recommended Solutions - Implementation Requiring Additional Resources and Legislative Action prior to Division Implementation**

Many participants in the stakeholder process expressed a strong interest in the Division developing and implementing an alternative compliance assurance model that both allows for improved targeting of enforcement resources on chronic and recalcitrant violators while encouraging and facilitating proactive compliance. The Division also recommends this solution. The development of a compliance program that employs further measurement and interaction with the regulated community necessitates a higher level of resources to conduct these activities. Identifying systemic and chronic violations of statute, regulations, and permits is constrained when repeat observation is not achievable. The Division's current resource allocation has resulted in the ability for the Division to perform an average of 54 inspections annually over the last 3 years. The capacity to perform inspections limits the ability to implement the compliance model recommended by stakeholders.

Stakeholders recognized that requiring and reviewing responses to the Division's inspection finding, follow-up inspections, targeting resources, and identifying and documenting chronic and recalcitrant violators (in addition to acute single violations) would help meet the vision included in the House Bill 12-1119 of developing a more responsive process. In addition, the ability of the Division to more robustly assess and document an entity's compliance and to conduct additional follow-up actions would likely limit the Division's need to rely on monetary penalties as a compliance option and, conversely, would likely increase the capacity of the entity to obtain and maintain sustainable compliance. However, without overall increases in the number of initial

inspections that would result in an increased oversight rate for construction activities State-wide, these modifications alone would likely not result in an overall increase in environmental protection and permit compliance. Still, the Division recommends this approach to meet the other objectives of the stakeholder process. This recommended solution also addresses issues identified in Part 5.a.v to address incomplete responses to inspection finding.

Specifically, the Division recommends increasing Division inspection capacity to meet the following goals:

1. Provide a full review and response to the inspected entity's written response to the Division inspection findings.
2. Conduct follow-up inspections for all findings that identify systemic failure to implement control measures at construction sites. Conduct additional inspections for owners and operators with systemic or chronic violations to encourage proactive compliance, identify root causes for noncompliance, and better target enforcement actions on systemic and chronic violators.
3. Increase inspection frequency to allow for identification of acute violations and to facilitate targeting of entities with chronic and recalcitrant violations.

The staffing needs to meet this target would vary depending on the frequency of inspections targeted, but could range from approximately 2 FTE for additional follow-up inspection and response review but only incremental increase in targeted inspection, to 5 or more FTE to allow for meeting EPA oversight targets of 5% to 10% annual inspection rate, including the identified follow-up activities for the increased inspections. Increasing the oversight to meet EPA goals would be expected to increase the overall compliance with permit conditions and environmental protection. Because the compliance strategy would be based on returning to compliance and better targeting enforcement, additional enforcement resources would not be needed to implement this strategy.

Although this proposed solution addresses the issues identified above in subsection i, it would not address issues associated with timeliness of specific enforcement actions for finding that meet established criteria for formal enforcement, which are addressed in Part 5.a.v, below.

iii. **Additional Solutions Discussed**

Additional solutions were also discussed that are not captured in the Division's above recommended solution. The following alternative proposals were presented during the stakeholder process and are not being recommended as solutions by the Division:

1. The option to cease further inspections and enforcement in Colorado was discussed. This option was not supported by any participants and did not result in further discussion.
2. It was proposed that if additional resources were not obtained by the Division to revise the compliance framework, as discussed in subsection ii above, the Division should not continue to seek penalties for violations that are punitive as a method of discouraging noncompliance or "scaring" entities. Information on the Division's penalties for violation of Construction Stormwater requirements is provided in Part 4.g.iv above. Based on the Division's experience with oversight and penalty discussions, the current penalty magnitudes are not excessive given the overall project budgets and economic benefits associated with noncompliance. Reducing monetary penalties would be expected to result in reduced disincentive for noncompliance and further amplify the potential of unfair competitive advantage for noncomplying operators. The Division has addressed a large number of planned process changes in this report that will be implemented with the Division's current recourses to address issues and concerns

raised during the stakeholder process. However, in the absence of resources to provide additional oversight and follow-up of construction activities, the Division is not proposing modification of the current penalty policy that would reduce the regulatory driver for compliance.

3. The Division could require staff or management from inspected entities to complete required training in lieu of monetary penalties. This option did generate significant discussion and could be incorporated in some manner into the overall compliance framework revisions addressed in the Division's recommendations. However, as a standalone practice, the Division and several participants expressed concerns that training is currently available and entities interested in achieving compliance are already availing themselves of the training, and that this process would not provide necessary incentives to result in proactive or sustainable compliance. In addition, concerns were expressed about the overall effectiveness of mandated training in driving behavior change.

d. Expediting Compliance Processes

i. Issues

A general concern was expressed by several participants that the Division's current timeline for issuance of Notice of Violations and the beginning of the penalty negotiation process takes too much time. The solutions identified in Part 5.a.iv address some of these concerns by increasing and expediting communication to the inspected entity on the Division's compliance determinations. However, a general desire was expressed for a further expedited process, and avoidance of previously longer time frames that occurred for inspections conducted between approximately 2007 and 2009. A recommended time-goal for issuance of Notices of Violation within 90-days was proposed by several participants.

EPA's statute of limitation for enforcing against Construction Stormwater violations, including those that occur in Colorado, is five years. A concern was identified that if the Division limited enforcement in such a way that imposed a statute of limitations that differed from EPA's, that this would conflict with the enforcement and delegation agreements between the Division and EPA. The result could be additional EPA enforcement actions in Colorado or EPA's reconsideration of the agreements.

No specific recommendations were provided regarding actions following the Notice of Violations, such as settlement on penalties. It was generally acknowledged by participants in the stakeholder process that penalty determinations and negotiations are highly variable and case specific, and therefore no new time goals were recommended.

ii. Planned Solutions - Implementation Achievable with Current Resources

The Division conducted a LEAN event on October 15 through 19, 2012 to facilitate identification of process revisions as part of the stakeholder process. LEAN is an approach to facilitate process revisions and refinement in order to maximize customer value while minimizing waste. The revisions identified in the process that were focused on increasing customer satisfaction and meeting the directive of HB 12-1119 are primarily incorporated into the other recommended and planned actions in this report. The majority of the planned revisions identified in this report will necessitate that at least some additional resources be allocated to develop and implement these revisions. The LEAN process facilitated the identification of several efficiencies to at least partially offset the time commitments needed to implement the other process revisions, and to help the Division maintain current time goals while increasing communication and transparency. It should be noted that addressing the issues identified in

this report, while further expediting Division actions and reducing the overall timeline, would require additional allocation of resources as identified in the next subsection, iii, addressing Recommended Solutions.

The following is a summary of specific efficiencies that were identified by the LEAN process and are expected to be realized as the Division implements the resulting action plan:

1. Reducing the number of approvals required in the process.
2. Reducing the number of handoffs occurring during the process.
3. Several opportunities were identified to move decision making tasks to earlier in the process to reduce overproduction and rework.

iii. **Recommended Solutions - Implementation Requiring Additional Resources and Legislative Action prior to Division Implementation**

The Division fully supports further reducing time goals for enforcement action. Stakeholders have expressed interest in a 90-day time goal for issuance of Notice of Violations. The Division cannot meet the proposed goal of 90 days for issuance of Notice of Violations with current resources.

Issuance of formal enforcement actions as expeditiously as possible is in the interest of both the Division and regulated entities and would help facilitate overall compliance and protection of human health and the environment. The Division identified process modifications within the constraints of current Division resources in Part 5.a.iv to increase communication with inspected entities to address several issues identified during the stakeholder process. However, allocation of additional resources to the Division is necessary to provide a more robust and expedited post-inspection process that provides increased information to inspected entities and facilitates meeting requested time-goals.

Specifically, the Division recommends increasing Division capacity to respond to inspected entities' submittals and process enforcement actions to meet the following goals:

1. In addition to providing a response to an inspected entity's initial response to inspection findings (see planned solution in Part 5.a.v), the Division will review and respond to subsequent submittals and re-inspect construction sites as necessary to identify a return to compliance. This will help reduce the potential for ongoing violations and threats to human health and the environment, as well as stop the potential for accruing penalty liabilities for permittees for ongoing violations.
2. For entities with inspection findings that do not meet the Division Enforcement Response Guide but for which it is identified that additional follow up would likely increase the potential for corrections, the Division will restore the Division process of requesting responses to inspections finding. This process facilitates a return to compliance, protection of human health and environment, and provides compliance assistance to reduce potential for future violation.
3. Increase resources for post-inspection communication and processing of enforcement actions to reduce both the number of enforcement cases that must be deferred due to resource deficits and the time-goal for issuance of Notices of Violation.
4. Identify a process and time-goal, with input from stakeholders that is both expeditious and allows for a fair and robust post construction process for consideration of additional information.

The staffing needs to meet this target is expected to be approximately 2 to 4 FTE, but would be more accurately determined and supported through the fiscal note process if legislative action was contemplated.

e. Conflicting Requirements and Compliance Determinations for Design and Implementation of Controls

i. Issues

Extensive discussion during the stakeholder process focused on perceived, potential, and actual inconsistent requirements and determinations of compliance among different entities providing oversight for control of stormwater pollution from construction activities. The discussion focused on MS4 Permittees, the Division, and the EPA. The Colorado Department of Transportation (CDOT), which is an MS4 permittee, was also specifically highlighted in conversations because it frequently conducts construction activities within the jurisdictional boundaries of other MS4 permittees, which can result in inspections being conducted by both CDOT and the overlapping MS4 permittee. Additional local and federal government entities that are not covered by Division-issued MS4 permits may impose requirements for Construction Stormwater, however these entities were not identified specifically in discussion. Many of the solutions discussed would be applicable to these other entities as well.

The terms and conditions of the Division's Construction Stormwater Permit and MS4 permits rely on **adaptive management techniques that employ a plan-do-check-revise process** and as such are not prescriptive regarding what specific controls must be implemented at a particular construction site. Oversight of these types of permit conditions can be challenging for Division, MS4 permittees, and construction site operators. The Division's Construction Stormwater Permit requires that pollution controls at the site be selected, installed, implemented, and maintained following good engineering, hydrologic and pollution control practices ("best management practices"). Likewise, MS4 permittees and CDOT have requirements to assure adequate design, implementation, and maintenance of control measures. The controls implemented for specific construction activities require site-specific planning, design, and implementation that therefore necessitate site-specific evaluation to determine adequacy and permit compliance.

The Division's Construction Stormwater Permit allows for flexibility and allows the permittee to implement industry-accepted standards for best management practice selection that are appropriate for the conditions and pollutant sources present at the site. The Division compliance oversight process is consistent with this determination, and relies on industry accepted manuals and design standards to assess adequacy of controls. While design standards contain implementation specifications (e.g., limitations on slope and drainage area, criteria for correct installation), some site-specific design and implementation decisions must be made.

Several specific issues were discussed during the stakeholder process associated with consistent requirements and compliance determinations, and are listed below:

1. Lack of clarity on the applicability of various requirements and what constitutes compliance with all applicable jurisdictions due to overlapping authority between MS4 permittees, specifically special districts, CDOT, and neighboring cities and/or counties. A set process does not exist to determine applicable requirements.
2. Construction site operators report receiving mixed messages from different inspectors about whether best management practice selection and installation is adequate or inadequate. Participants indicated that at least one contractor had been told by MS4 permittee inspection staff that it was in compliance, only to receive a subsequent inspection that resulted in an enforcement action and civil penalty from the Division.

Inconsistent messages from the Division and MS4 permittee inspectors create confusion and make compliance more difficult to attain.

3. A participant raised concerns that there was inconsistency between what has been said by an inspector during a site inspection and what is received in inspection report or enforcement order.
4. Representatives from MS4 permittees expressed concerns that changes resulting from the stakeholder process could negatively impact MS4 permittees' ability to implement and enforce construction site stormwater runoff programs under local authority. Specific concerns were expressed that requiring consistent processes could limit the ability to provide assistance, decrease operating flexibility, and increase costs to municipalities.
5. The Division is currently not projected to complete a full oversight evaluation of all MS4 permittees' program development until 2020. Only minimal ongoing evaluation to evaluate the program's implementation is occurring now. The Division has identified noncompliance with MS4 permit requirements for several MS4 permittees that includes failure to require, conduct oversight, or properly evaluate the implementation of control measures at construction sites. This condition may result in operators assuming that the lack of identification of noncompliance with an MS4 permittee's requirements is an indication that the site is in compliance with the requirements of the Division's Construction Stormwater Permit.
6. The Division has ongoing communication with EPA to help facilitate consistent interpretation of requirements. However, the Division cannot dictate to the EPA how it implements its construction oversight and enforcement processes.

ii. **Planned Solutions - Implementation Achievable with Current Resources**

1. **Addressing Conflicting Requirements or Interpretations between Different MS4 Permittees (including CDOT)**

It was identified that continued dialogue was needed between stakeholders to better identify specific issues and solutions regarding conflicts between MS4 permittees. A general interest was expressed by stakeholders to identify solutions to both minimize conflicts and for addressing conflicts when they arise. Although the Division would be a key stakeholder in these discussions, many of the solutions will likely focus on local government and CDOT processes. Specific areas for further discussion for construction activities subject to requirements from multiple MS4 permittees include:

- a. Identifying lead agencies for setting design and compliance expectations.
- b. Evaluating MS4 permit requirements to clarify responsibilities and liabilities for MS4 permittees.
- c. Increasing clarity and efficiency of communication to construction site operators to define which agencies' requirements are applicable for projects.
- d. Identify options for mediating conflicts.
- e. Evaluating best management practice design requirements.
- f. Identifying opportunities and processes for ongoing communication and training to help facilitate consistency in compliance determinations between inspectors. Examples include sector specific conferences and meetings to discuss proper design and implementation of controls.

The current Colorado Water Quality Forum was identified as the venue for this continued discussion. The Colorado Water Quality Forum was created in 1992 to provide opportunities for ongoing informal dialogue among diverse parties representing a broad range of stakeholder interest in water quality management. An MS4 issues

workgroup was started under the Colorado Water Quality Forum in 2012 in order to discuss issues such as those identified above. Topics associated with conflicting stormwater construction requirements and compliance interpretations between different MS4 permittees will be included on upcoming agendas for this workgroup, and the meeting will be publicly advertised on the forum's web page (<http://www.cwqf.org/>) and distributed to the HB 12-1119 stakeholder group. The Colorado Water Quality Forum has an annual meeting to evaluate workgroups and determine workgroup and tasks for the upcoming year. The progress of the MS4 workgroup, and next steps, will be evaluated at this meeting in July or August, 2013.

2. Evaluation of Permit Requirements to Reduce the Need for Interpretation:

There was a consensus during the stakeholder process that both the Construction Stormwater Permit and the MS4 permits should continue to contain flexibility to allow for site-specific planning and design of control measures. In general, fundamental changes to the program or permit requirements were not recommended, and no specific changes to the Division permit requirements were proposed. However, during the public process associated with the Construction Stormwater Permit renewal currently planned for 2014, and for renewals of the various MS4 permits, the Division and stakeholders will further evaluate the permit conditions and seek opportunities to better clarify compliance expectations.

3. Addressing Conflicting Requirements or Interpretations between Division and MS4 Permittees

As discussed in Part 4.a (Federal and State Statute and Regulation) and 4.c.iii (MS4 Permit Conditions), State and Federal regulations provide for intentional overlap of oversight responsibility to address pollution from stormwater runoff associated with construction activities when the activity is conducted within a permitted MS4. The Division has developed a compliance strategy that is documented and implemented through its annual inspection plan designed to minimize duplication of effort between the local government MS4 permittees and the Division. The strategy narrows direct Division oversight of construction sites within MS4 permitted areas to situations when evidence indicates that the MS4 permittee lacks adequate capacity to obtain compliance with requirements to control potential pollution sources and protect receiving waters. Therefore, the majority of oversight inspections for construction sites are conducted outside of MS4 permitted areas, while a combination of minimal direct oversight and oversight of the MS4 permittee's compliance with the MS4 permit is used for those sites located within MS4 permitted areas. In addition, the Division participates in training for Construction Stormwater inspections that is offered to MS4 permittees to help improved consistency in the inspection processes and compliance determinations. The Division will continue this overall strategy, and will implement the following refinements for construction site oversight in MS4 permitted areas based on solutions proposed during the stakeholder process. These revised processes will be implemented for all construction site inspections conducted following March 31, 2013.

- a. The Division will revise its processes to include consideration of MS4 permittee compliance monitoring findings when determining enforcement response in accordance with the Division's Enforcement Response Guide. The Division will continue its current process of inviting MS4 permittee representatives when conducting Construction Stormwater inspection within an MS4 permitted area.
- b. For Stormwater Construction permitted discharges in an MS4 permitted area, the Division will revise its process for evaluating Stormwater Construction

inspection findings for failure to implement a best management practice in accordance with good engineering, hydrologic and pollution control practices. The Division will not consider such an inspection finding as a violation of the Construction Stormwater Permit if: 1) the design standards and implementation specifications for the best management practice were officially adopted by the MS4 permittee and reviewed and accepted for implementation at the construction site; 2) The best management practice was documented in the SWMP in accordance with the Stormwater Construction Permit requirements, and 3) the control measures was implemented and maintained in accordance with documented design standards and implementation specifications and as appropriate for site conditions.

In addition to these refinements that are planned for implementation by the Division, the discussion of recommended solutions in subsection iii below includes additional recommendations to increase oversight of, and coordination with, MS4 permittees to address those conflicts associated with MS4 permit noncompliance and minimize incidents when direct Division oversight is necessary.

iii. **Recommended Solutions - Implementation Requiring Additional Resources and Legislative Action prior to Division Implementation**

1. **Increased MS4 Oversight/Education**

The Division identified refinements to its current process in the planned solutions in subsection ii, above, for coordinating with MS4 permittees using current resources. However, the planned solutions above do not address an additional cause for conflicts associated with MS4 permit noncompliance. Several participants in the stakeholder process identified a desire to have the Division increase the overall amount of resources allocated to providing assistance and oversight of MS4s in order to decrease the occurrences of MS4 permittee's failure to assure adequate design, implementation, and maintenance of water quality controls for construction activities. The Division has conducted full compliance oversight, including program development and implementation audits, for only a few of the MS4 permittees in Colorado. Compliance with MS4 permit conditions vary. The Division has identified noncompliance with MS4 permittee conditions including not requiring control measures, not inspecting or not indentifying inadequate control measures during inspections, and not addressing and requiring corrections when inadequate control measures are identified. However, the Division has also identified MS4 permittees that were implementing mature and well developed construction site programs in general compliance with the MS4 permit requirements.

Additional oversight would result in more consistency and address those MS4 permittees that may not be properly evaluating the adequacy of Construction Stormwater controls. Increased MS4 permit compliance rates would further reduce the need for direct Division oversight of construction activities in MS4 permitted areas. The additional Division oversight of MS4 permit compliance would require additional allocation of resources to the Division to perform the increased activities.

Specifically, the Division recommends increasing its capacity to provide the following mediation, facilitation, and assistance functions:

- a. Review MS4 permittee control measure design standards as necessary to assess consistency with good engineering, hydrologic and pollution control practices.

- b. Provide increased compliance assistance and coordination to help ensure MS4 permittees have staff adequately trained to evaluate and determine adequacy of control measure implementation at construction sites. Specifically, perform assistance inspections with MS4 staff, coordinate training and coordination meetings, and provide technical resources to answer site-specific questions.
- c. Implement an oversight program for MS4 permits that results in compliance oversight occurring with a frequency of every 5 years.

The staffing needs to meet this target is expected to be approximately 2.4 FTE to meet the one in five year oversight rate (this resource need was also identified in the Division's Request for Information report submitted to the Joint Budget Committee) and an additional approximately 1 FTE to provide additional assistance and on-going design standards review. Resource needs would be more accurately determined and supported through the fiscal note process if legislative action was contemplated.

2. Increased Construction Site Inspections to Reduce EPA Involvement

EPA performs the majority of inspections for Construction Stormwater in Colorado as a result of the agency's determination that the Division currently lacks resources to perform adequate compliance oversight on its own and that the current oversight rate does not meet EPA's annual oversight goals of 5% for sites under five acres and 10% for sites five acres or greater. It is expected that if the Division increases oversight of construction sites to meet these goals, the EPA would significantly reduce its construction site oversight in Colorado reducing the potential for conflicts associated with an additional entity performing oversight. The Division has identified 3.1 FTE to meet these oversight goals, as provided in Division's Request for Information report submitted to the Joint Budget Committee.

iv. Additional Solutions Discussed

1. Minimization and Mediation of Local Agency/Operator/Owner Conflicts:

The potential for the Division providing mediation and facilitating coordination between MS4 permittees to help address conflicting requirements and encourage clear and consistent requirements for construction site operators was discussed. However, an MS4 permittee representative proposed that the Division is not the proper entity and is not equipped to provide this service. Participants in the stakeholder process instead identified that ongoing discussion through the Colorado Water Quality Forum was needed as addressed in subsection 5.e.ii.3, above. Therefore, the Division is not recommending that the Division obtain additional resources to provide mediation associated with conflicting MS4 requirements.

2. Statewide Design Manual

One concept that was discussed at length during the stakeholder process was the development of a State design manual that would either include specifically required best management practices or guidance on design expectations. Several stakeholders expressed that such a manual would simplify the process of identifying appropriate design standards. However, it was acknowledged that this solution would not significantly impact compliance since several accepted manuals are currently available and that inadequacy of design standards in these manuals has not been identified as a cause for noncompliance. In addition, the challenges and resources to develop and maintain a state-wide manual would be costly and challenging for the Division and participating stakeholders. It would also be difficult to incorporate state-wide best

management practice standards appropriate for all industry sectors. MS4 permittee representatives generally opposed the concept based on concerns about restrictions on local flexibility, efficiency, effectiveness, and innovation. Instead, participants identified that additional discussion through the Colorado Water Quality Forum, as discussed in part 5.e.ii.3, above, should occur to discuss design standards and potential conflicts.

The development of a statewide manual is not recommended by the Division.

3. Expansion of Qualifying Local Program Applicability and Approvals

As discussed in Part 4.c.ii.7, the Division currently has approved two cities to operate Qualifying Local Programs for the purpose of processing applications, inactivation, and other administrative requirements of the regulations and Construction Stormwater permit. The current regulations limit the applicability to construction activities less than 5 acres. It was discussed during the stakeholder process that revising regulations to expand Qualifying Local Program applicability to all construction activities requiring Construction Stormwater permits, and increasing outreach to potentially interested MS4 permittees, could encourage an expansion of the current number of approved programs and covered construction sites. It is currently unclear if federal regulations would allow for inclusion of Construction Stormwater activities of 5 acres or greater. There was not a recommendation from the stakeholder group to further evaluate and proceed with this item at the current time. However, the Division remains open for the discussion, which may occur in the future through either the Water Quality Forum, during triennial review of the regulation, or during the permit renewal process.

6. Summary of Next Steps

Part 5 of the report summarizes the next steps for the recommendations in this report. Included in the recommendations are those for which the Division has identified as *planned* solutions and those identified as *recommended* solutions, see Table 6-1 for a summary. For all *planned* solutions, implementation of the identified revisions will begin following submittal of this report on December 1, 2012, and time-goals are provided in Part 5 to identify the planned date of completion. Solutions identified as *recommended* cannot be implemented with the current resources available to the Division and would therefore necessitate additional resources be made available. Because the additional resources would potentially supported through a fee increase, additional stakeholder discussions would be needed if members of the General Assembly expressed an interest in pursuing actions to support these recommendations.

Also included in Part 5 of the report are several issues and potential revisions that were identified during the stakeholder process as requiring additional dialogue prior to generating recommended actions. These potential revisions are identified and discussed further in applicable issue sections of Part 5 under the “Planned Solutions” subsections (see Table 6-1 for a summary), and include an identification of the specific venue for further discussion. For each of these potential revisions, further discussion will occur through either the Colorado Water Quality Forum’s ongoing meetings or during the Construction Stormwater permit renewal process scheduled for late 2014. Both of these approaches include a public process that incorporates multiple stakeholders and provide opportunities for continued involvement of the entities that participated in the stakeholder process for this report.

Finally, the Division and stakeholders recognized that scheduling check-ins to evaluate the progress and successes of the revisions identified in Part 5 would be beneficial. The Division and stakeholders will schedule two meetings through the Colorado Water Quality Forum. The first will occur in summer of 2013, approximately at the time that many of the planned revisions will be implemented (June 30, 2013), the second will be scheduled in late 2013 following the completion of the work plan for federal fiscal year 2012 and completion of the work plan for federal fiscal year 2013 plan (October, 2013).

TABLE 6-1: Future Actions Identified in the Report:

Issue	Section of Report	Includes:		
		Planned Solutions with Implementation Timeline	Recommended Solutions Requiring Resources	Planned Future Dialogue
Pre-Inspection Notification	5.a.i	Yes		
Time-of-Inspection Communication	5.a.ii	Yes		
Expedited Settlement Agreement Language	5.a.iii	Yes		
Compliance Determinations and Status Communication	5.a.iv	Yes		
Incomplete Inspection Responses	5.a.v	Yes	Yes	
Compliance Assistance Training	5.b.i	Yes		
Site-Specific Compliance Assistance	5.b.ii		Yes	
Project Owner Commitment	5.b.iii			Yes
Compliance Assurance Model	5.c		Yes	
Expediting Compliance Process	5.d	Yes	Yes	
Conflicting Requirements and Determinations	5.e	Yes	Yes	Yes