

<p style="text-align: center;">Water Quality Control Division</p> <p style="text-align: center;">Implementation Policy</p> <p style="text-align: center;">Colorado Department of Public Health and Environment</p>	Implementation Policy Number: Clean Water 7
	Statutory or Regulatory Citations: Colorado Water Quality Control Act Federal Clean Water Act 5 CCR 1002-31
	Key Words: Colorado Discharge Permit System, Reclaimed Water, Potable Water, Discharge, Low Risk, Compliance, Spill
<p>Reporting of Surface Water Discharge Associated with Residential and Landscape Irrigation</p>	Approved By:
	Approval Date: 12/08/2015
	Effective Date: 12/08/2015
	Scheduled Review Date: 12/1/2020

Purpose:

The purpose of this policy is to define a category of point source discharges associated with residential and landscape irrigation systems for which the Water Quality Control Division will not seek reporting as an unpermitted discharge in accordance with Part 25-8-601, C.R.S. of the Colorado Water Quality Control Act, and for which the division will not take enforcement action against those operators that have not reported or obtained permit coverage for the discharge.

Nothing in this policy shall be construed to identify the need for, or priority of, compliance responses for discharges outside of the applicability of this policy or discharges that do not meet the limitations of this policy.

Authority:

In accordance with the Colorado Water Quality Control Act, 25-8-601, C.R.S., and consistent with the federal Clean Water Act, no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division. The Colorado Water Quality Act also includes provisions for oversight and enforcement of the requirements to obtain permit coverage for point source discharges and for reporting of non-permitted point source discharges. Point source discharges associated with irrigation activities are subject to requirements in the Colorado Water Quality Control Act to obtain discharge permit coverage and for reporting of non-permitted point source discharges (unless excluded by 25-8-504, C.R.S. (Agricultural Wastes). However, neither the act nor the implementing regulation for the act compels specific compliance or enforcement responses for point source discharges that occur without permit coverage or for failure to report a non-permitted discharge. Guidelines for responding to such occurrences are instead contained within implementing policies and procedures. Consistent with this process, this policy relies on the discretion provided in the act and regulation for the division to determine the appropriate response to the occurrences of unpermitted and non-reported discharges.

Definitions:

Potable Water: Water suitable for human consumption in accordance with Colorado Primary Drinking Water Regulations (5 CCR 1002-11), or water intended for human consumption from a public or private supply system not subject to 5 CCR 1002-11.

Reclaimed Water: Domestic wastewater that has received secondary treatment by a domestic wastewater treatment works and such additional treatment as to enable the wastewater to meet the standards for approved uses per Regulation 84, *Reclaimed Water Control Regulation* (5 CCR 1002-84).

Residential and Landscape Irrigation System: An irrigation system used for irrigation of residential properties or that is used for the irrigation on non-residential properties of areas of grass, trees, and other vegetation, including, but not limited to parks, greenbelts, golf courses, and common areas at apartments, townhouses, commercial/business parks, and other similar complexes.

State Surface Waters: All surface waters that meet the definition of “State Waters.”

State Waters: All surface or subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

Storm Sewer: Storm sewer pipe or inlet to such pipe, for which discharges are regulated in accordance with 5 CCR 1002-65, Regulation Controlling Discharges to Storm Sewers.

Applicability:

This policy is applicable to the point source discharge to state surface waters and storm sewers from residential and landscape irrigation system malfunctions, breaks, runoff, and overspray of reclaimed water from a user’s site authorized in accordance with 5 CCR 1002-84 (Reclaimed Water Control Regulation), or of potable water.

This policy does not address compliance with the requirements of the Reclaimed Water Control Regulation 5 CCR 1002-84.

This policy is not applicable to the following discharges which are already addressed elsewhere in statute, regulation, or policy:

- Non-point source discharges from flows or return flows of irrigation water that are already not subject to requirements for spill reporting or CDPS permitting requirements in accordance with 25-8-504, C.R.S. (Agricultural Wastes).
- Discharges of potable water that are in accordance with guidance issued in accordance with the division’s Low Risk Discharges Water Quality Policy 27, including the Low Risk Discharge Guidance for Discharges of Potable Water. Note that the guidance for potable water includes the additional limitation that discharges directly to a state surface water (any stream, creek, gully, whether dry or flowing) must not contain any residual chlorine, but does not limit the total quantity of discharge. Therefore a discharge meeting the additional chlorine limitation but exceeding the 10,000 gallon per incident threshold established in this policy may still fall within the scope of the low risk guidance.
- Discharges of potable water that do not reach state surface waters that are identified as non-reportable spills in the Guidance for Reporting Spills under the Colorado Water Quality Control Act, Water Quality Control Division Policy No: WQE-10.
- Land application discharges of reclaimed water from a use authorized in accordance with 5 CCR 1002-84 (Reclaimed Water Control Regulation) that do not include a discharge to state surface waters. Such discharges are addressed as not requiring a permit, and therefore do not require reporting as a spill, per Regulation 61.14(1)(a)(v).
- Land application discharges from irrigation systems located on domestic wastewater treatment plant sites using treated effluent that are applied at an agronomic rate that do not include a discharge to state surface waters. Such discharges do not require a permit per Regulation 61.14(1)(b)(ix), and therefore do not require reporting as a spill.

This policy does not address, pre-empt, or supersede limitations on concentration or loading of nitrogen or phosphorus from land application of reclaimed water pursuant to a control regulation adopted by the Water Quality Control Commission.

Policy:

While Colorado statute (25-8-601(2), C.R.S.) includes requirements for notification to the Water Quality Control Division of spills or unpermitted discharges which may cause pollution of the waters of the state, the division will not have an expectation for notification, and will not take enforcement action against those operators who do not provide notification, for unpermitted discharges from residential and landscape irrigation system malfunctions, breaks, runoff, and overspray, provided that the operator can prove that all of the following limitations have been met.

1. The source water used to supply the irrigation system meets one of the following:
 - o Is potable water;
 - o Is reclaimed water from an irrigation use authorized in accordance with 5 CCR 1002-84 (Reclaimed Water Control Regulation); or
 - o Is treated effluent applied at an agronomic rate from an onsite landscape irrigation system located on a domestic wastewater treatment plant.
2. The discharge is less than 10,000 gallons per individual incident.
3. The discharge does not result in serious environmental harm, adverse impacts to the beneficial uses of state waters, or pose an imminent or substantial endangerment to public health and/or the environment.
4. The discharge does not cause erosion of a land surface.
5. The irrigation system is regularly inspected and maintained as necessary to ensure proper operation and to minimize releases.

Discharges that do not meet these limitations shall be reported to the division in accordance with the division policy WQE-10, Guidance for Reporting Spills under the Colorado Water Quality Control Act and Colorado Discharge Permits.

Colorado statute also requires that operators of point source discharges obtain a CDPS permit (25-8-501, C.R.S.). Discharges from irrigation systems that are within the scope of the policy are generally unplanned, unavoidable, and ubiquitous discharges for which CDPS permitting and compliance with permit conditions may not be practicable, and the attempted permitting of these discharges would not be an efficient use of the division's limited resources. The division will not take enforcement action against those operators which have not obtained CDPS permit coverage for discharges meeting the above limitations. In addition, nothing in this policy shall be interpreted to constitute a determination by the division that discharges not meeting these limitations have the potential to cause pollution or should be prioritized or targeted for permitting or formal enforcement response by the division. The division will determine on a case-by-case basis the appropriate response to the occurrences of such discharges.

This approach to enforcement will not apply to criminal violations or in situations where there are egregious circumstances, such as those resulting in serious environmental harm, adverse impacts to the beneficial uses of state waters, or which pose an imminent or substantial endangerment to public health and/or the environment.

It should be noted that unpermitted surface water discharges could be subject to third-party or federal enforcement even where control measures are implemented. Operators wishing to obtain the additional legal protection provided by permit coverage can submit an individual permit application for these discharges to the division for processing. The division has decided not to issue a general permit for discharges covered by this policy.

The issuance of this policy does not convey any property or water rights in either real or personal property, or stream flows, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights. All discharges must comply with the lawful requirements of federal agencies, municipalities, counties, drainage districts, and other local agencies regarding any discharges to storm water conveyances, or other water courses under their jurisdiction.

This policy in no way limits the division's authority to enter and inspect premises and records, as provided in the Colorado Water Quality Control Act (Section 25-8-306).

This policy is intended to provide operational direction to the division. Nothing in this policy shall be construed to preclude the authority of the division pursuant to any applicable state law or regulation under authority granted by Section 510 of the Clean Water Act.

Background:

Discharges from irrigation systems within the scope of this policy (i.e., that are within the applicability and meet the conditions of the policy) typically rely on a distribution and application system that, even when operated and maintained in accordance with good practices, are still expected to occasionally result in discharges from system malfunctions, breaks, runoff, and overspray. These systems are often in close proximity to impervious areas, gutters, storm sewers, ditches, stormwater detention facilities and other conveyances that make it likely that such occurrences will result in a release to surface waters of the state. It is expected that the majority of irrigation systems within the scope of the policy will occasionally have such a discharge.

The regulation of all discharges within the scope of this policy through the current Colorado Discharge Permitting System and spill notification process would likely be infeasible at this time. This policy is intended to recognize the discharge conditions that are currently inherent to the irrigation systems currently in use, and the resulting discharges that occur. Currently, a significant majority of discharges that would fall under the scope of this policy are occurring without reporting to the division.

For reclaimed water, the Water Quality Control Commission recognized the infeasibility of preventing all discharges from irrigation by including a requirement in the Regulation 84 (Reclaimed Water Control Regulation) that users must minimize runoff. The use of the term "minimize" as opposed to "prevent" identifies recognition that prevention is not a reasonable expectation.

The Water Quality Control Commission addressed that unpermitted discharges from irrigation should be addressed differently than other point source discharges in the Municipal Separate Storm Sewer System requirements in Regulation 61 (Colorado Discharge Permit System). The regulation allows Municipal Separate Storm Sewer System permits to be issued that do not require the permittees to detect and eliminate discharges or flows from landscape irrigation and lawn watering (i.e., illicit discharges) unless identified as significant contributors of pollutants.

The division included residential irrigation systems in addition to landscape irrigation within the scope of this policy to recognize that residential gardens are often incorporated into common landscape irrigation systems or utilize similar systems with similar potential for discharges.

Discharges within the scope of this policy are expected to contain pollutants, including residual chlorine from potable water, and nutrients and other pollutants addressed in 5-CCR 1002-84 from reclaimed water. There is a potential that some of the discharges within the scope of this policy may cause pollution in some scenarios depending on the source water, the receiving water, flow conditions in the receiving water, and the specifics of the discharge. However, it is also expected that many discharges will not result in conditions that would cause pollution by alteration of the physical, chemical, biological, and radiological integrity of the receiving water. The division's determination to proceed with issuance of this policy is based primarily on the fact that this category of

discharge is already occurring and solutions to terminate, treat, or apply additional limitations on pollutants in the source water to prevent discharges of pollutants are not currently considered practicable.

In addition, although the policy includes a limitation that flows must be less than 10,000 gallons per incident, this policy is in no way intended to identify that all discharges of greater than 10,000 gallons would be expected to, or have the potential to, result in pollution of a receiving water. It is expected that in many cases the pollutant concentrations in discharges of reclaimed or potable water in discharges over 10,000 gallons, but otherwise within the scope of this policy, would not be significant enough to impact the physical, chemical, biological, and radiological integrity of water that would result in meeting the definition of pollution. However, it is the division's determination that the 10,000 gallon threshold identifies a discharge event that would be reasonably atypical, result in a level of reporting for which the division can reasonably administer, and would result in conditions that may warrant further evaluation to determine if additional follow-up with the operator or response to evaluate potential water quality impacts may be necessary. The 10,000 gallon threshold is not intended, and should not be construed, to identify the need for, or priority of, compliance responses for discharges that exceed this volume. The 10,000 gallon threshold is applied to any one individual incident, such as a single occurrence of a line break, sprinkler head malfunction, or overspray occurring during a single irrigation cycle.

For uses of reclaimed water, the operator of an irrigation system is also required to provide reporting for some of the discharges within the scope of this policy, as well as discharges that exceed the 10,000 gallon threshold, to the entity that provides the water (i.e., the reclaimed water treater). Specific reporting requirements are included in the reclaimed water user's Notice of Authorization issued in accordance with 5 CCR 1002-84. This reporting allows for additional oversight of the irrigation systems by the treater, and was a consideration in the division's determination to not seek reporting for the discharges within the scope of this policy.

The division has determined that it is appropriate to re-evaluate this policy once every five years. The division will reevaluate all assumptions and determinations based on the availability of new information of potential water quality impacts during future reviews of this policy. The division may also reopen this policy for consideration at any time prior to the five year reevaluation period based on new information or changes in Water Quality Control Commission regulations.

References:

1. Colorado Discharge Permit System Regulations 5 CCR 1002-61
2. Colorado Water Quality Control Act (25-8-101, et seq.)
3. Guidance for Reporting Spills under the Colorado Water Quality Control Act, Water Quality Control Division Policy No: WQE-10
4. Reclaimed Water Control Regulation 5 CCR 1002-84
5. Regulation Controlling Discharges to Storm Sewers 5 CCR 1002-65
6. Water Quality Control Division Low Risk Discharges Water Quality Policy 27
7. Water Quality Control Division Low Risk Discharge Guidance for Discharges of Potable Water