### Colorado Water Quality Control Division

WATER QUALITY
CONTROL
DIVISION

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# Guidance for Reporting Spills under the Colorado Water Quality Control Act and Colorado Discharge Permits

#### Purpose

To provide guidance on applicable Colorado reporting requirements pursuant to § 25-8-601(2), C.R.S., that pertains to spills or discharges that may cause pollution of State waters. This guidance does not relieve an entity of any other statutory or regulatory requirements applicable to a spill. Facilities possessing a Colorado Discharge Permit System (CDPS) permit should follow applicable permit terms and conditions regarding spill reporting and response. This guidance is not intended to supersede or modify such permit terms and conditions or the applicable statute and regulations. This guidance does not limit the existing rights or responsibilities of persons with respect to spill reporting. For example, persons retain the right and responsibility to determine in the first instance whether a particular spill is covered by an existing permit or may cause pollution to State waters (i.e., surface or ground waters).

#### II. Statutory Requirement Addressed

Colorado Water Quality Control Act - Spill Reporting Requirements - § 25-8-601(2), C.R.S.

"Any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state contrary to the provisions of this article as soon as he has knowledge thereof, shall notify the division of such discharge."

State waters means any and all surface and 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systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed (§ 25-8-103 (19), C.R.S.).

Examples of State waters include, but are not limited to, perennial streams, intermittent or ephemeral gulches and arroyos, ponds, lakes, reservoirs, irrigation canals or ditches, wetlands, stormwater conveyances (when they discharge to a surface water), and groundwater.

#### III. Policy/Applicability

The Division distinguishes between reporting requirements for spills that occur with respect to activities that result in a discharge that is authorized under a CDPS permit and those that are not. For non-permitted activities, or in the case of an activity where a permit does not address reporting of or response to a given spill, the Division recommends that the responsible person(s) take the following actions:

- 1. Immediately report spills that may result in a non-permitted discharge of pollutants to State waters to the Environmental Release and Incident Reporting Line at 1-877-518-5608;
- 2. Include the following information, if available, when notifying the Division of a spill:
  - The name of the responsible person and, if not reported by that person, the name of the person reporting the spill and the name of the responsible person if known;
  - b. An estimate of the date and time that the spill began or the actual date and time, if known;

- The location of the spill, its source (e.g., manhole, tanker truck), and identification of the type of material spilled (e.g., untreated wastewater, biosolids, specific chemical);
- d. The estimated volume of the spill and, if known, the actual date and time the spill was fully controlled/stopped.
- e. Whether the spill is ongoing and, if it is, the rate of flow and an estimate of the time that the spill will be fully controlled, if known;
- f. Measures that are being or have been taken to contain, reduce, and/or clean up the spill;
- g. A list of any potentially affected area and any known downstream water uses (e.g., public water supplies, irrigation diversions, public use areas such as parks or swim beaches) that will be or have been notified; and
- h. A phone number and e-mail to contact a representative of the responsible person that is in charge of the response. Where a non-responsible person is reporting the spill, they are encouraged, but not required, to provide contact information.

Reporting and management of spills that occur with respect to activities resulting in a discharge authorized under a permit should be performed in accordance with the specific requirements of that permit. If the permit does not provide specific reporting or management response requirements for a given spill that may pollute State waters, the Division recommends that the responsible person report the spill in accordance with the procedures listed above.

This guidance only addresses reporting requirements under the Division's authority. The person or entity engaged in any operation or activity that results in a spill is responsible for any other applicable reporting requirements associated with the spill to other regulatory agencies.

Section 25-8-601(2), C.R.S. only addresses spill reporting to the Division. Section 25-8-202(7), C.R.S. provides certain water quality responsibilities to other state "implementing agencies." The Division's position is that, where a spill to the ground that may impact ground water only is fully and timely reported to an implementing agency having jurisdiction over that spill, the intent of section 601(2) has been fulfilled, and the spill need not also be reported to the Division. The Division suggests that the responsible person confirm with the implementing agency that a spill falls under the jurisdiction of the implementing agency at the time it is reported in order to avoid possible legal liability should it fall under the Division's jurisdiction.

## IV. <u>Division Examples of Non-Reportable Spills</u>

The Division has identified the following examples of types of spills that are considered "non-reportable" under § 25-8-601(2), C.R.S. Documentation of such spills, including the information listed in section III.2.a – III.2.f above, should be maintained by the responsible person for Division review for a period of three years.

- 1. A spill to a generally impervious surface or structure (e.g., paved street/parking lot, storm sewer, warehouse floor, manhole, vault, concrete basement), or onto soils, that is fully contained in/on the impervious surface/structure or soils, or that is managed in a manner so that it will not reach State waters at the time of the spill or in the future. Such spills that are cleaned up within 24 hours will be considered by the Division to have no potential to reach State waters. However, even if such spills are not cleaned up within 24 hours, the responsible person may be able to "fully contain" or otherwise manage a spill such that it will not reach State waters. Where there is a sump pump present in a basement to which a spill occurred, the responsible person must establish that the pump did not discharge to State waters during the time between the start of the spill and the completion of clean-up in accordance with best management practices.
- A spill or discharge that is managed consistent with best management practices that are established in accordance with a CDPS discharge permit or any Water Quality Control Commission-adopted control regulation related to spill management or reporting.
- 3. A spill of potable water from a public water system that does not reach surface waters.