Colorado Department of Public Health and Environment

COLORADO DISCHARGE PERMIT SYSTEM (CDPS)
FACT SHEET TO PERMIT NUMBER COR090000
GENERAL PERMIT FOR
DISCHARGES FROM
MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)

TABLE OF CONTENTS

I. TYPE OF PERMIT 2
II. SCOPE OF THE GENERAL PERMIT 2
A. Types of MS4s Covered 2
B. Types of MS4s Not Covered 2
C. Types of Discharges Covered 3
D. Permit Consolidation 3
III. STATUTORY AND REGULATORY FRAMEWORK 4
IV. RECEIVING STREAMS 7
A. Discharge Segments 7
B. Impaired Segments 7
V. MAJOR CHANGES FROM LAST PERMIT RENEWAL 9
VI. BASIS FOR EFFLUENT LIMITATIONS, RECORDKEEPING AND REPORTING 15
A. Coverage Under this Permit 15
B. Control Measures 17
C. Program Description Document 17
D. Public Involvement/Participation 18
E. Effluent Limitations 18
F. Other Terms and Conditions 34
G. Program Review And Modification 38
H. Compliance Schedule 38
I. Reporting Requirements – Annual Report 38
J. Definitions 39
K. General Requirements 39
VIII. STANDARD CONDITIONS 39
A. Notification Requirements 39
B. Permittee Responsibilities 40
IX. COMPLIANCE HISTORY 40
X. REFERENCES 41

I. TYPE OF PERMIT

Master General, NPDES, Municipal Separate Storm Sewer Systems, Second Renewal, Statewide. Stormwater Component.

This renewal master general combines two discharge permits listed below (see Part II.D of the fact sheet).

Stormwater Discharge Permit Name	Effective Date	Expiration Date
Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems (COR090000)	March 10, 2008	March 9, 2013
Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems (Cherry Creek Reservoir Drainage Basin) (COR080000)	March 10, 2008	March 9, 2013

II. SCOPE OF THE GENERAL PERMIT

The current general permits COR090000 and COR080000 expired on March 9, 2013 and have been administratively extended by the Water Quality Control Division (Division). The current general permits provide discharge permit coverage for approximately 60 municipalities that own and operate MS4s. This general permit is needed to continue to provide coverage for these discharges and for newly designated MS4 discharges.

A. Types of MS4s Covered

- Discharges from regulated small MS4s. These are the types of discharges currently covered under the two permits being renewed under this general permit and are those required to obtain permit coverage in accordance with Regulation 61.3(2)(f)(v) (5 CCR 1002-61).
- Discharges from an MS4 that are determined to contribute to violations of a water quality standard or are a significant contributors of pollutants can obtain coverage under this general permit. These discharges would be required to obtain permit coverage in accordance with Regulation 61.3(2)(f)(iii).

B. Types of MS4s Not Covered

- Large and Medium MS4s. These are entities that were designated for permit coverage under the Phase 1 stormwater regulations. These entities are currently covered under individual permits and were not contemplated for coverage under this general permit as part of this renewal.
- Federal facilities. The Division does not currently have NPDES delegation for federal facilities. MS4s designated by EPA for permit coverage in Colorado are currently covered under individual permits issued by the EPA and are not contemplated for coverage under this general permit as part of this renewal.
- MS4s located on Indian Lands. It is anticipated that any MS4 located on Indian Lands needing permit coverage would be permitted by EPA or a tribal authority.
- Non-Standard MS4s. Entities other than a city or county (Non-Standard MS4s) who are covered under the general permit for Stormwater Discharges Associated with Non-Standard Municipal Separate Storm Sewer Systems MS4s in general are not expected to be covered under this general permit. This separate permit includes requirements that are more appropriate for most Non-Standard MS4s. However, the Division may still require some Non-Standard MS4s to obtain coverage under this general permit, if they are determined to have roles within their operational area similar to a city or county.
- Discharges from MS4s covered by an individual permit. This includes any municipality that requests coverage under an individual permit or is notified by the Division to apply for and obtain an individual permit.

C. Types of Discharges Covered

In this permit renewal, the Division is clarifying that all discharges from the permitted MS4 to waters of the state are authorized under this permit. This includes permit coverage for all stormwater discharges and non-stormwater discharges from the MS4, including those discharges that have separate permit coverage for the discharge to waters of the state from a facility or activity from which the discharge originates. The scope of this permit is limited to authorizing the discharge from the MS4, and does not address additional point source discharges with a duty to apply for discharge permit coverage. As discussed further in Part III, the operator of a facility or activity that generates a discharge to the MS4, which may be the MS4 permittee but more often is a separate entity, is responsible for meeting any applicable requirements for obtaining permit coverage or spill reporting for that discharge. This limited scope is in recognition that some point source discharges are conveyed through an MS4 prior to discharge to waters of the state, including discharges for which the operator of the MS4 does not have operational control over the facility or activity that generates the discharge. The Division is also not including in this permit authorization for point source discharges other than the discharge from the MS4 for which the permittee is the operator of the facility or activity from which the discharge originates. Inclusion of terms and conditions for all additional point source discharge for which the permittee may be the operator was outside the scope of consideration for this permit. For example, this permit does not authorize the permittee to discharge stormwater associated with industrial activity from their own construction activities, even when such discharge is to the permitted MS4. The permittee must obtain separate permit coverage (i.e., obtain a stormwater discharge permit for construction activities) for such discharges.

The Division is also clarifying in this renewal that neither the 2006 federal pesticide rule, the Sixth Circuit Court vacatur of that rule, nor the EPA pesticide general permit (PGP) or Division PGP have changed in any way the determination of whether certain types of stormwater runoff are required to obtain permit coverage, or under what type of permit coverage discharges is required. This is true whether the runoff contains pesticides or pesticide residues resulting from the application of pesticides. The previous MS4 general permits, and this MS4 general permit, already authorize the discharge of pesticides in stormwater from the MS4. Non-stormwater discharges from pesticide applications to waters of the state require coverage under a separate PGP.

In this renewal the Division made some minor changes to more clearly list pesticides as pollutant source to be addressed in the control measures implemented to comply with permit requirements. The previous permit includes pesticides in the definition of significant materials. For this renewal the Division removed the definition of significant materials and instead listed pesticides as a specific pollutant source to be addressed in the requirements associated with construction sites and municipal operations. The Division also expects that public education and outreach will continue to address pesticides as a pollutant source in stormwater runoff.

This permit also provides clarification for what constitutes an MS4. Included in the definition of an MS4 are areas owned or operated by a municipality that are contiguous to classified waters of the State and that are designed or used to convey stormwater into the water way. These areas are often maintained by municipalities through direct ownership, easement, or right-of-way for the purpose of managing flood plains, stream banks, and channels for conveyance of stormwater flows. For example, a discharge from a privately- owned stormwater collection system into and through a municipality's easement along a stream or other water way would be considered a discharge into the municipality's MS4. Excluded from being part of the MS4 are those conveyances used primarily for irrigation return flow and/or for supplying irrigation water to irrigated land (i.e., irrigation ditches); that are identified in the permittee's application or subsequent modification as not being part of the MS4; and are listed in the permit certification. This option would result in such conveyances being treated consistent with classified waters discussed above. This clarification was added to the permit to address concerns from stakeholders, including those in the Grand Valley, regarding potential future responsibilities for compliance with MS4 permit requirement if large irrigation ditch systems were regulated as MS4s.

D. Permit Consolidation

The previous general permit COR080000 covers discharges from MS4s in the Cherry Creek Reservoir Drainage Basin. The previous COR080000 permit covers only 8 permittees and the majority of the content of the permit is the same as the previous COR090000 permit. Therefore the Division has added the content specific to the Cherry Creek Reservoir Drainage Basin permittees in the COR090000 general permit. The COR080000 will be terminated upon reissuance of the

COR090000 permit, and the certifications will identify which permittees the Cherry Creek Reservoir Drainage Basin language pertains to.

The Water Quality Control Division (Division) determined that combining the COR090000 permit and COR080000 permit into one permit promoted improved consistency of permit requirements and a flexible and efficient process for issuing permit certifications.

III. STATUTORY AND REGULATORY FRAMEWORK

Every permit issued as part of the Colorado Discharge Permit System is required to contain terms and conditions that the Division determines necessary to ensure compliance with Regulation 61, applicable control regulations, and the State and Federal Clean Water Acts (Colorado Water Quality Control Act 25-8-503 (4)).

The discharge control conditions established by this permit are based on Section 402(p)(3)(B) of the Clean Water Act, which requires that a permit for discharges from MS4s:

- include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
- require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP) including management practices, control techniques, and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

MEP is a statutory standard that directs the permitting authority to establish the level of pollutant reductions that all MS4 operators must achieve. This permitting approach is unique to MS4 discharges and distinct from the direction provided for permitting other sources in the NPDES framework. Technology based standards promulgated as effluent limitation guidelines (ELGs) do not apply to MS4 permits, and while EPA has initiated rulemaking to establish performance standards for discharges from newly developed and redeveloped sites, no such rules currently apply to this permit renewal.

In this permit the Division has defined the management practices, control techniques, and system design and engineering methods as narrative requirements that the Division considers to be Effluent Limitations, since they are restrictions or prohibitions on the quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharge from MS4s into state waters. This is consistent with the definition of Effluent Limitation contained in Regulation 61.2(26).

In determining the Effluent Limitations for this permit term, the Division determined that the level of control should reflect the average of the best existing performance at the time of permit renewal. The Division envisions application of MEP as an iterative process, consistent with EPA's discussion in the preamble of the federal Phase II regulation. The Division has also looked to how the term practicable is applied within other parts of the Clean Water Act framework, specifically within establishment of technology based controls within the ELG framework. The standard for Best Practicable Control Technology Currently Available is defined by EPA as "the first level of technology-based standards established by the CWA to control pollutants discharges to waters of the U.S." BPT guidelines are generally based on "the average of the best existing performance by plants within an industrial category or subcategory." This provides practical guidance to permitting authorities on what to look for in establishing an MEP standard. This approach recognizes that there are municipalities that implement programs that go beyond the MEP standard, and is consistent with the goal of establishing a standard that all municipalities can and must implement. The permitting authority is directed to establish the MEP standard, in recognition that implementation beyond that standard will be feasible and appropriate for some municipalities.

The routine review process implemented through permit renewal is how permitting authorities are able to iteratively refine the MEP standard. This provides the opportunity to continually adapt to current conditions and control measure feasibility and effectiveness.

The Division has used multiple sources to identify the average of the best existing performance for the various MS4 program areas. These are summarized below, and are discussed in further detail as applicable to specific Effluent Limitations:

- Oversight of Municipalities covered under this permit
- Stakeholder input obtained in advance of preparing this draft
- EPA's permit improvement guide
- MS4 permits in effect issued by other permitting authorities (states and EPA)
- Published studies (e.g., info on green infrastructure, etc.)

Meeting the Effluent Limitations in accordance with Part I.E, and Part III of the renewal permit as applicable to a specific MS4s, of the permit will constitute compliance with MEP. The Effluent Limitations are established for program areas covering Public Education and Outreach, Illicit Discharge Detection and Elimination, Construction Site Stormwater Runoff Control, Post-Construction Stormwater Management in New Development and Redevelopment, and Pollution Prevention/Good Housekeeping for Municipal Operations.

Non-stormwater discharges are an important element of the scope of this permit and of the Effluent Limitations established. For this renewal the Division has clarified that all discharges from the MS4 are within the scope of permit coverage. This permitting approach is unique to MS4 discharges and distinct from the approach taken for permitting other sources within the NPDES framework. The Division has taken this approach following review of the language provided in the Federal Clean Water Act and the legislative history associated with adoption of those provisions. The Division has determined that Congress established these unique provisions regarding permitting discharges from MS4s in acknowledgement that not all discharges from an MS4 could be anticipated, characterized, and disclosed in a permit application, that not all non-stormwater discharges from an MS4 could be prohibited or eliminated, and that not all non-stormwater discharges into an MS4 pose significant environmental problems.

The Division has interpreted the statutory requirement that the MS4 "effectively prohibit non-stormwater discharges" to not require an outright prohibition of all non-stormwater discharges. This interpretation is consistent with state and federal regulations which include allowable non-stormwater contributions for MS4 discharges. Therefore, the statutory standard to reduce the discharge of pollutants to the maximum extent practicable was applied by the Division in determining Effluent Limitations for non-stormwater discharges, included in Part I.E.2 of the renewal permit (Illicit Discharge Detection and Elimination). Discharges subject to Effluent Limitations requiring their prohibition, detection, and elimination are referred to in the permit as Illicit Discharges. Discharges not requiring their prohibition, detection, and elimination are referred to in the permit as being excluded from being an Illicit Discharge.

In developing these permit terms and conditions, the Division has further defined categories of discharges and evaluated the extent to which Control Measure must be implemented to prohibit the discharges. Discharges authorized by this permit fall into one of the following two categories:

1. Illicit Discharges: Non-stormwater discharges for which the permit includes requirements for prohibition, detection, and elimination, unless the discharge to the MS4 is authorized by a separate CDPS or NPDES discharge permit. These are discharges for which established management practices and control techniques include either preventing discharges or obtaining and complying with a separate discharge permit.
2. Discharges Excluded from being an Illicit Discharge
    a. Stormwater Discharges. The permit contains Effluent Limitations to restrict the quantities, rates, and concentrations of pollutants in stormwater discharges, but does not include requirements to prohibit unpermitted discharges for which separate permit coverage is required (i.e., stormwater discharges associated with industrial activity in accordance with Regulation 61).
    b. Non-stormwater discharges determined not appropriate and/or practicable for the MS4 permittee to prohibit: These discharges may fall into one or more of the following categories.
        i. Regulatory Excluded: Discharges for which prohibition, detection, and elimination is not required because the discharge is exempt from the definition of point source (i.e., irrigation return flow). This is specifically addressed in the permit because while this discharge is exempt from permit coverage, it is expected to be present in discharges from the MS4, and often commingled with other discharges for which Effluent Limitations have been established.

ii. Practicability to Prohibit: Discharges for which prohibition, detection, and elimination is not required because this level of control is not deemed to be practicable in most cases (e.g., emergency fire-fighting activities). In this case the Division is relying on the discretion provided by Congress to allow the permitting authority to authorize the municipality to convey and discharge those discharges through the MS4.

iii. Unknown pollutant potential and/or practicability to control: Discharges for which prohibition, detection, and elimination has not been determined to meet the MEP standard. This includes discharges that have not been fully characterized in terms of their extent or pollutant levels. Examples include discharges that are currently being permitted to some extent but for which the occurrence of unpermitted discharges is still significantly high. The permit includes a process for adding additional discharges to the exclusion from being Illicit Discharges, including appropriate Division review and approval, and public notice procedures

iv. Low Pollution Potential: Discharges for which prohibition, detection, and elimination is not required because this level of control is not currently deemed necessary to reduce the discharge of pollutants. In these cases, the level of pollutant reduction is expected to result in protection of water quality standards. This includes discharges that meet the Division's Low Risk Policy.

Discharges from sources that are not Illicit Discharges may still be subject to other Effluent Limitations in Part I.E or Part III of the renewal permit to restrict or prohibit the quantities, rates, and concentrations of pollutants. Examples include stormwater discharges associated with construction activities, stormwater discharges associated with new development and redevelopment activities, stormwater discharges associated with municipal operations, and stormwater and non-stormwater discharges from sources for which public education is targeted.

The Division has clarified that the scope of the permit is limited to authorizing discharges from MS4s. The Division is also clarifying in this fact sheet the types of discharges that are conveyed and discharged through the MS4 that need to be separately permitted. The permit explicitly states that it does not remove the responsibility for the operator of a discharge to obtain separate CDPS permit coverage or report spills when required in accordance with the Colorado Water Quality Control Act and Regulation 61. The Division does not have the authority to exempt any operator for a point source discharge from the requirement to obtain permit coverage or the authority to modify the definitions of point source or discharge. Therefore, the determination in the permit of whether a discharge to the MS4 is an Illicit Discharge or not has no bearing on the statutory and regulatory requirements for point source discharge permitting and reporting unpermitted discharges. However, as a practical solution to allow the Division as a permitting authority and operators to focus on discharges that have the greatest potential to cause water quality impacts, the Division has intentionally not required MS4 permittees to prohibit, detect, and eliminate certain discharges and has issued a Low Risk Policy to promote transparency and consistency between operators and the Division in how these discharges are addressed on a day-to-day basis within the permitting framework.

Permitting authorities are also directed to determine if additional provisions are appropriate for the control of pollutants beyond MEP, as needed to comply with water quality standards. For this permit term, the Division has determined that additional provisions are not necessary to result in control of pollutants beyond the MEP standard. The Division has included monitoring and reporting conditions for some discharges that have been assigned wasteload allocations (WLAs) in a total maximum daily load (TMDL) determination, and to further characterize certain non-stormwater discharges that are not separately permitted. This is intended to inform future determinations regarding whether pollutant reductions are appropriate and feasible.

The approach for responding to new information that becomes available during the permit term, which indicates the terms and conditions of the permit are not adequate to implement Water Quality Standards, has been refined in this renewal. The Division no longer plans to include additional requirements in a permittee's certification, and instead has clarified that this information would provide a basis to modify the permit (see Part I.F.4 or II.B.5 of the renewal permit). The Division intends to continue to use the option of requiring alternative permit coverage.

There are no numeric Effluent Limitations included in this permit. Stormwater and non stormwater management requirements are the controls that are used to achieve reduction of pollutants in the stormwater discharges from MS4s in

this permit. The Division has determined that the terms and conditions in the permit, and discussed in this fact sheet, are necessary to ensure the required compliance.

IV. RECEIVING STREAMS

A. Discharge Segments

The Division has reviewed the stream segment(s) to which MS4s with current certifications discharge, in order to inform the determination of what terms and conditions needed to be included in this permit. Stream segments will be identified in the permit certification when issued under this permit. The receiving water review focused on impairment, including a review of impaired segments for which a TMDL has been completed and impaired segments for which a TMDL has not been completed.

The review of impaired segments for which a TMDL has been completed is intended to identify whether MS4 discharges were WLAs or load allocations (LAs). Specifically whether discharges from MS4s were identified as sources for which either controls already in place need to continue, or for which additional controls are appropriate to achieve additional pollutant reduction and lead toward attainment of the water quality standard. The completed TMDLs that were identified for consideration of permit conditions are discussed below.

B. Impaired Segments

1. COSPBO02: Boulder Creek from North Boulder Creek to South Boulder Creek. E coli TMDL.

   MS4 Discharges Under Permits Covered by this Renewal:
   - COR090019: City of Boulder
   - COR090020: Boulder County

   WLAs for E coli cfu/day were assigned to the two MS4s that will be covered under the permit based on urban land use. Discharges from open lands were considered non-point source in this TMDL and assigned LAs. Open lands included the following land use categories: park, urban, other; open space.

   Reductions were prioritized for specific outfalls within the jurisdictions of the City of Boulder, the University of Colorado, and the Boulder Valley School District for land within the subcatchment outfall basins.

   Specific Implementation and Monitoring Recommendations Included the following:
   - Education and outreach, specifically a targeted pet waste clean-up program
   - Municipal incentives to encourage proper irrigation and landscaping to reduce runoff
   - Education of municipal maintenance staff on waste management and ground maintenance as it pertains to bacterial sources
   - Stormwater BMP projects
   - Structural BMPs such as LIDs
   - Education and Outreach
   - Infrastructure and Maintenance Upgrades
   - Additional Monitoring

   Implementation of the TMDL recommendations is underway and continues with the renewal permit. The Effluent Limitations included in the renewal permit are determined to be consistent with the assumptions and requirements of WLAs. To confirm that the current Effluent Limitations in the permit are adequate to ensure compliance with the WLA, additional reporting and monitoring requirements have been included in Part III of the permit for the applicable permittees. If the Division determines that the Effluent Limitations in this permit are not adequate to require compliance with the WLA, the Division will modify this permit in accordance with Part II.B.5 of the renewal permit, or require the permittee to apply for and obtain an individual CDPS permit that includes the necessary Effluent Limitations.

The permit includes the following Effluent Limitations applicable to reduction of E coli in discharges from the MS4:

- Public education
- Illicit Discharge Detection and Elimination, including the requirement to remove, or require and ensure the removal, of the source of an Illicit Discharge, including sewage connections and seepage and overland discharges/dumping, when identified.

2. COSPMS04: Barr Lake and Milton Reservoir, Dissolved Oxygen TMDL and COSPMS04: Barr Lake and Milton Reservoir, pH TMDL

MS4 Discharges Under Permits Covered by this Renewal:

- COR090041: Adams County
- COR080010: Arapahoe County
- COR090013: City of Arvada
- COR090089: City of Brighton
- COR090066: City of Cherry Hills Village
- COR090032: City of Commerce City
- COR080003: Douglas County
- COR090068: City of Edgewater
- COR090056: City of Englewood
- COR090038: Federal Heights
- COR090003: City of Glendale
- COR080004: City of Greenwood Village
- COR090024: Jefferson County
- COR090055: City of Littleton
- COR080016: City of Lone Tree
- COR090082: City of Sheridan
- COR080021: City of Centennial, (Southwest Metro Stormwater Authority)
- COR090034: City of Thornton
- COR090037: Weld County
- COR090015: City of Wheat Ridge

The dissolved oxygen TMDL is an addendum to the pH TMDL and the implementation of the TMDLs will be phased concurrently with an adaptive management approach. The TMDL focuses on a required 20% reduction in target load of total phosphorous for MS4 Regulated Areas for both Barr and Milton. Implementation of the TMDL recommendations is underway and continues with the renewal permit. The Division's determination is that the Effluent Limitations in the Post Construction section of the permit that require Control Measure be implemented for redevelopment will result in controls being implemented that are adequate to meet this load reduction. The TMDL also recommends monitoring to implement the adaptive management approach for this TMDL. The Division's determination is that the terms and conditions in the permit regarding the Regulation 85 MS4 Data Report are adequate for this permit term. This determination will be reviewed every permit term and will consider the results from the Regulation 85 Routine Review to adjust permit requirements as needed to implement the TMDL requirements.

3. COSPUS14: South Platte River Bowles Avenue to Burlington Ditch, E coli TMDL

MS4 Discharges Under Permits Covered by this Renewal:

- COR080010: Arapahoe County
- COR090056: City of Englewood
- COR090055: City of Littleton
- COR090082: City of Sheridan

The TMDL includes density based WLA for all MS4 discharges to the segment of 126 *cfu*/100ml E. coli Density. For the MS4s covered by this permit that discharge into this segment, the Division has determined that the Effluent Limitations in the Illicit Discharge Detection and Elimination program are adequate to meet the WLA. Monitoring conducted in 2007 for MS4 outfalls for these municipalities did not identify that sources existed expected to contribute to exceedance of the WLA. The requirement of the Illicit Discharge Detection and Elimination program are expected to result in this condition being maintained.

4. COGUUN12: tributaries to the Uncompahgre River, Selenium TMDL, COGUUN4b: Uncompahgre River from LaSalle Road to Confluence Park, Selenium TMDL, and COGUUN4c: Uncompahgre River from Confluence Park to the Gunnison River, Selenium TMDL

   MS4 Discharges Under Permits Covered by this Renewal:
   - COR090061: City of Montrose

   The MS4 discharges were not evaluated or characterized for this TMDL, and the permit does not contain Effluent Limitations to meet the requirements of these TMDLs.

   The Division has specifically identified stream segments that are impaired for E coli, and for which a TMDL has not yet been developed, that are within the Permit Areas of permittees under the two general permits that will be covered by this renewal. This informed the decision to include multiple options for monitoring in the draft renewal permit. The Division expects to continue coverage for these facilities under this general permit.

   The review of impaired segments for which a TMDL has not been completed led the Division to consider additional terms and conditions related to monitoring discharges from MS4s in order to characterize pollutant levels in the discharge for the purpose of generating information to develop TMDLs. The Division initially considered including monitoring requirements in the draft permit for E coli, selenium and arsenic. The Division eliminated arsenic from further consideration in this permit term due to uncertainty regarding the statewide standard and in particular the technologically feasible level. The Division discussed the concept of monitoring requirements for E coli and selenium extensively in the stakeholder process conducted in advance of preparing draft permit documents. Based on the input received, the Division decided to include three options for E coli monitoring requirements in this draft permit for notice and comment and decided to not include any selenium monitoring requirements in the draft permit for notice and comment. Additional information regarding the stakeholder process, input received, and the concepts the Division included for notice and comment are included later in this fact sheet.

V. MAJOR CHANGES FROM LAST PERMIT RENEWAL

Permits are issued for a term of 5 years, and upon expiration, the Division must reissue the permit to include such conditions in the renewal permit that are necessary to implement state and federal requirements. This comprehensive permit renewal acts on new information resulting from sources including the Division's compliance oversight activities, other state permits, case law, EPA guidance, and further evaluation of statutory and regulatory direction.

The Division conducted an extensive stakeholder process that started in November 2012 with a series of meetings to obtain input from permittees, a Pre-Public Notice Meeting on May 6, 2013, and submittal of written input from stakeholders. The purpose of this stakeholder process was to increase awareness of the renewal process for the general permit, discuss the major areas of review, and obtain input for development of draft permit conditions. The Division considered the stakeholder input received during the meeting, and written input received after the meeting.

The Division has substantially revised the framework of the draft renewal permit. The previous MS4 permits were not clear regarding which terms and conditions were intended to reduce pollutants in the discharge, and which terms and conditions were intended to be associated with monitoring, recordkeeping, and reporting. The permit was also revised to incorporate the requirements for meeting the MEP standard. In previous permit terms, the Division provided extensive guidance to clarify the intent of the permit and expectations for compliance, including the Municipal Guidance document

developed for the first permit term, frequent meetings with stakeholders, emails, memos, and audit reports. This patchwork of documentation comprised the standards and Division interpretations. The Division then used submittals, public notice of permittee program description documents, and oversight to review a permittee's controls implemented to reduce the discharge of pollutants to determine compliance with the MEP standard. This permit includes more extensive permit language, because it replaces much of the language previously included in guidance and eliminates the need for submittal, approval, and public notice of program description documents. The overall clarity is expected to increase by consolidating and removing document duplication from referencing multiple documents. While the renewal permit is longer than the previous permit, the overall length of the renewal permit is shorter compared to the previous permit plus guidance under the previous term. This Fact Sheet is not intended to include guidance on how to comply with permit terms and conditions, but instead provides the basis for permit terms and conditions. This permit also removes the additional process of program description submittal and review by the Division, which resulted in significant workload for both the permittees and the Division. These changes also ensure that stakeholders have the opportunity to review and comment on draft language, including language that was previously contained in Division guidance documents or permittee program submittals.

Major changes from the last renewal include the following, and are detailed in Part V of the Fact Sheet. Numerous other minor changes were made for clarification purposes.

Summary list of additional major changes in the renewal permit:

- Specific requirements of COR080000 Cherry Creek Reservoir Basin Discharges have been incorporated into this permit and are applicable to MS4 discharges to the basin. The COR080000 will be terminated upon reissuance of COR090000.
- This permit includes the previous intent of having MS4 permittees, which are counties, evaluate the non-census designated areas for growth potential and implement programs 2, 4 and 5 in areas with high growth potential in the permit. The permit identifies the process and options to designate these additional areas.
- The renewal permit eliminates the requirement that the Permittee develop and submit for approval and public notice a description of controls that will be implemented during the permit term. Instead the renewal permit includes narrative Effluent Limitations that define the level of pollutant reduction needed, and those provisions receive public notice and comment through the permit development process.
- This renewal permit clarifies that the information documenting the permittee's program (i.e., the Program Description Document (PDD)) are recordkeeping requirements.
- Minimum requirements are defined in the permit for Public Education and Outreach including requirements associated with a website, and a requirement to provide Illicit Discharge information targeting businesses and the general public. Additionally, an Education and Outreach Strategies Activity Table is provided from which the permittee must select and implement activities.
- The Public Participation program has been moved out of the Effluent Limitations section and into Part I.D of the renewal permit in order to clarify it does not include requirements to control pollutants (i.e., Effluent Limitations).
- Minimum requirements are defined in the permit for the Illicit Discharge Detection and Elimination program areas including the regulatory mechanism, tracing an Illicit Discharge, removing an Illicit Discharge, documenting an Illicit Discharge, and enforcement. A section for industrial facilities has been added.
- Changes were made to the list and process regarding discharges that are excluded from the definition of "Illicit Discharge." These changes were made in response to new information available about specific types of discharges, including their potential pollutant levels and feasibility of control.
- Minimum requirements are defined in the permit for the Construction sites program (Part I.E.3.a of the renewal permit) for the regulatory mechanism, Control Measure, site plans, site plan review, site inspections, inspection frequency, enforcement response and Cherry Creek Reservoir Basin Discharges.
- Minimum requirements are defined in the permit for the Post Construction program (Part I.E.4.a of the renewal permit) for the regulatory mechanism, Control Measure, site plan requirements, site plan review, construction inspection and acceptance, post acceptance site inspection, inspection documentation, enforcement response, Cherry Creek Reservoir Basin Discharges.
- Minimum requirements are defined in the permit for the Municipal Operations and Good Housekeeping program, including requirements for bulk storage, inspection documentation, Operations and Maintenance Procedures, and nutrient source reductions.

- Two additional options for monitoring are included for dry weather flows for those parts of the MS4 that directly discharge to segments impaired for E coli for which a TMDL has not been developed, as reflected on the 303(d) list. This is targeted at identifying and characterizing sewage connections and seepage that result in discharges from the MS4.
- Compliance schedules are provided in the permit for renewal permittees and new permittees. This replaces the process of relying on guidance, program submittals, and separate public notice when establishing deadlines, consistent with the approach for establishing Effluent Limitations. Compliance schedule dates are included in a separate table to address different dates for new and renewal permittees.
- This renewal incorporates new and revised regulatory requirements that apply to the discharges, specifically Regulation 85 requirements are included in the Public Education and Municipal operations programs
- Reporting requirements were revised to address new terms and conditions and to include a requirement for annual certification by the permittee.
- The Program Modification section was deleted because these procedures are no longer necessary.
- Signatory Authority was modified to match the requirements in Regulation 61.

The most significant areas for which input was received from stakeholders that was directly related to development of the draft permit are summarized in the Table 2, along with a summary of the resulting permitting approach. Table 2 also identifies concepts for which the Division is specifically seeking comment to further evaluate current determinations. In many cases, the areas that the Division is specifically requesting feedback were ones for which concerns were raised by stakeholders, but for which alternative options for permit terms and conditions were not identified.

Table 2: Stakeholder Input into Permit

Subject	Stakeholder Input	Approach for Draft Permit
Effluent Limitations	Stakeholder input indicated a preference to not include Effluent Limitations in the permit.	The Division has included Effluent Limitations in the permit to provide clarity and transparency in permit requirements and increase efficiency. The previous permit required the permittee to develop a program and Division to review and approve the program prior to implementation. This framework was less transparent, resulted in highly variable implementation, did not result in overall compliance with permit conditions, caused uneven economic implications and was not an efficient use of staff time. The Division explained to stakeholders that the permit will use the term "effluent limitation" to reflect terms and conditions of the permit that are intended to reduce pollutants in the discharge. This framework also allows the Division and permittees to gain efficiencies with the PDD framework and the program modification requirements, which have been deleted from the renewal permit.
Permit Area (County Growth Areas)	Stakeholders indicated a preference for allowing exceptions for traditionally rural character development. This would exclude non-urban character development from inclusion in the construction and post construction requirements. Stakeholder also indicated they preferred for the permit to not address reporting or requirements for activities outside of the Growth Areas.	Division incorporated stakeholder input and the draft renewal permit allows the permittees to develop and submit Growth Area maps with the permit application. The permit includes exclusions for projects that are not urban character. The Division is specifically seeking comment on the exclusions included in the draft permit and any additional exclusions for consideration. The Division also did not include reporting or requirements for activities outside of the Growth Areas. The lack of proactive reporting for activities outside of the Growth Areas will likely result in the need for future information gathering and discussions with permittees to access the accuracy of the projected growth areas.

PDD requirements	Stakeholders prefer that the permit does not include a requirement for the PDD to be organized according to the permit numbering scheme. Stakeholders preferred a timeframe to provide the PDD to the Division, as opposed to an initial Division concept that the PDD be "immediately available."	The required elements of the PDD are based on the Division's determination of a PDD structure and content that would allow the PDD to be a tool for staff training and transitions during staff changes; in additional to a publicly –available document that provides a summary of the permittee's program. The Division did not include the requirement that the PDD be organized to mirror the structure of the permit. The Division did not include the requirement that the PDD be "immediately available." The Division has included a 10 day time frame for the PDD to be provided to the Division.
Public Education	Stakeholder input included versions of activity tables and minimum standards for the permittee's webpage. Stakeholder input also included doubt about the effectiveness of a webpage.	The permit includes an activity table that was based on input provided by stakeholders. The Division has included minimum standards for the permittee's web-based information regarding the MS4 permit program.
Public Education: Nutrients	Stakeholder input indicated preference to not include minimum sources to target for education and outreach. Stakeholder input indicated that the nutrient regulations contained adequate requirements for permittees to identify sources.	The permit does not include minimum sources for permittees to target with education and outreach. The permit does include minor additions to what is in the regulation to provide clear and measurable permit conditions.
Illicit Discharge and Detection: Occasional Incidental Discharges	Stakeholder input indicated a range of responses following the Division's concepts that included eliminating the provision for permittees to exclude additional discharges from being Illicit Discharges (i.e., occasional incidental discharges). Most stakeholders expressed a desire to keep the concept of occasional incidental discharges.	The Division's initial concept was to eliminate this provision because it provides a method for permittees to allow a discharge that is not allowed by state law, is reasonable to prohibit, and/or has the potential to impact water quality. Additionally, the previous permit language lacks transparency since public notice is not required when exempting a discharge from prohibitions. Based on feedback, the Division has revised the approach to incorporate requirements to address these concerns. The draft permit addresses providing for public notice and transparency regarding discharges and limiting allowed discharges to those with low risk of water quality impacts or for which prohibition is not practicable.
Illicit Discharge and Detection: Centralized Recordkeeping	Stakeholder input indicated concern regarding a centralized database of Illicit Discharges. Stakeholder input indicated that entities outside of permittee control (e.g., volunteer fire department, special district) may be an intake and response group for Illicit Discharges yet the MS4 permittee does not have control over this entity.	The draft permit requires permittee to provide a centralized database of Illicit Discharge incident reporting. The requirement is only applicable Illicit Discharges identified by, or reported to, the permittee. The permit does not include requirements for information reported to entities not under the control of the permittee.
Illicit Discharge and Detection: Enforcement	Stakeholder input indicated a concern regarding a requirement to develop and implement an enforcement response guide or plan that that included requirements for specific responses. Stakeholder input indicated that Illicit Discharges are unique and the enforcement should be tailored to the situation.	The permit does not pair violations with required responses. The draft permit requires that permittees address findings of a similar nature consistently. The permit includes common categories of responses for the permittee to address.

Construction Sites: Control Measure Requirements	Stakeholder input included concern regarding a permit requirement for minimum Control Measure on construction sites, specifically for requiring a sediment control measure for all disturbed areas. Stakeholders expressed concerns that such a design standard would need to allow for incidents when controls were not necessary.	The Division has determined that inadequate sediment control is a primary factor in construction site non-compliance. The Division has determined that minimum standards are needed and has provided minimum standards of Control Measure for all construction sites. The Division incorporated concerns identified by stakeholders in developing a design specification for sediment Control Measure, which is included in the draft renewal permit. The Division is specifically seeking comment on the control measure requirements provided in the draft renewal permit.
Construction Sites: Inspections and Documentation	Stakeholder input indicated a preference to maintain flexibility to implement inspection procedures and activities. Stakeholder input included concern regarding an inspection frequency more frequent than monthly with programs managed by limited staff people. Specifically with 14 day inspections, stakeholders were concerned about the ability of one staff inspector to take leave yet retain compliance.	The Division has determined that minimum standards were needed in the permit for the construction sites program to require inspections. The Division incorporated stakeholder input to include a minimum standard in the permit. The Division has provided flexibility by requiring an inspection frequency of every 30 days and pairing the inspection frequency with options for permittees to address staff scheduling and other factors for reducing inspections. The Division modified an initial concept for inspection documentation and provided minimum standards for inspections that complement the minimum standards for the site plan review and inspection sections. Reflecting permittee input, the Division did not link inspection frequency with enforcement procedures or actions, which was intended to address the need for more frequent oversight at some sites. The Division is specifically seeking feedback on the practicability of the inspection frequency given the allowances and requirements for increased or decreased frequency and scope.
Construction Sites: Overlapping Jurisdictions	Stakeholder input indicated a preference to allow for permittees to rely on a neighboring permittees standards and oversight for projects with overlapping jurisdictions.	The draft permit allows permittees to enter into written agreements to use one permittee's requirements to regulate in an adjacent jurisdiction on an overlapping project.
Construction Sites: Enforcement Response Plan	Stakeholder input indicated a concern regarding a requirement to develop and implement an enforcement response guide or plan that that included requirements for specific responses. Stakeholder input indicated that construction activities are unique and the enforcement should be tailored to situation.	The permit does not pair violations with required responses. The draft permit requires that permittees to address findings of a similar nature consistently. The permit includes common categories of responses for the permittee to address.
Post Construction: Excluded projects related to Roadway Development	Stakeholder input expressed a preference for allowing additional adjacent paved areas without requirement for permanent Control Measure. The Water Quality Forum – MS4 workgroup provided a framework for the exclusion.	The Division engaged in extensive discussion with the Water Quality Forum – MS4 workgroup regarding roadway permanent water quality Control Measure. The Division has provided an exclusion of roadway redevelopment in the draft renewal permit. The exclusion provides a framework for adding impervious area without requiring permanent water quality Control Measure.
Post Construction: Pavement management	Stakeholder input expressed concern regarding activities related to pavement management and a desire for clear definitions of activities that are considered pavement management and will not require post-construction Control Measure.	The Division clearly excludes maintenance and pavement management activities by providing a definition of pavement management in the draft renewal permit.

Post Construction: Underground projects	Stakeholder input expressed a preference for clearly excluding underground projects (e.g., underground utilities) that do not permanently alter the surface from the permanent water quality control measure requirements.	The Division has clearly excluded activities for installation or maintenance of underground utilities or infrastructure that does not permanently alter the terrain, ground cover, or drainage patterns from prior to the project.
Post Construction: Regional WQCV Facility	Stakeholder input indicated a preference to allow an alternative design standard when a site drains to regional WQCV facility.	The Division has provided alternative treatment standards and requirements when a site drains to regional WQCV facility.
Post Construction: Design Standard and Exclusions	Stakeholder input indicated a preference for the Division to provide additional design standard options if 100% WQCV was going to be implemented as a design standard; specifically regarding redeveloped sites, constrained sites and regional Control Measure.	The Division recognizes that treatment must be tailored to the land development site and the draft permit provides several options for post construction requirements. The Division is specifically seeking comment on the design standards provided in the draft renewal and others standards for Division consideration.
Post Construction Definition of Redevelopment	Stakeholder input included a recommended concept definition of redevelopment, which stated that redevelopment applies when sites are 35% or more impervious area.	The Division's approach for the definition includes existing 35% impervious area as a benchmark to define redevelopment.
Post Construction: Post Acceptance Site Inspection	Stakeholder input included a concern regarding requiring inspections of permanent water quality Control Measure on residential lots. Permanent Control Measures on residential lots tend to be vegetative and include infiltration. Stakeholders were concerned about the workload to address distributed controls and expressed that adding an inspection burden on residential controls may reduce the use of these source controls. Stakeholder input preferred allowing the exiting land use regulations for inspection and enforcement of residential Control Measure.	The Division provided an exclusion from the minimum inspection frequency for permanent Control Measure serving an individual residential lot.
Municipal Operation and Good Housekeeping	Stakeholder input included concern that revised requirements for municipal facility runoff control plans (MFRCP) would require permittees to duplicate previously completed information (e.g., standard operating procedures) into a new plan format.	It is not the Division's intent for the permittee to duplicate paperwork. The Division has provided clear language in the draft renewal permit that existing standard operating procedures can be used to the meet the permit requirement. Some permittees may need to supplement additional documents to meet the new record keeping requirements.
Municipal Operation and Good Housekeeping: Bulk Storage	Stakeholder input identified concerns that bulk storage may not be practicable.	The Division has determined that requiring bulk storage in the permit is practicable based on the long-term inclusion of this requirement in stormwater discharge permits for industrial activities in Colorado. However, the Division is specifically seeking comment on how and why practicability would differ for municipal operations and to identify potential alternative requirements to minimize the discharge of pollutants associated with these sources. The Division is specifically seeking comment on the language in the renewal permit regarding multiple tanks served by a single containment system and additional concepts for the Division to consider, such as providing secondary containment for the largest tank volume plus a volume for the 24-hour rainfall as determined by a 25-year storm. In the case of multiple tanks, the Division acknowledges that the secondary containment does not provide capacity for all storage tanks.

Monitoring	Stakeholder input expressed concern regarding selenium and E coli monitoring concepts discussed during stakeholder meetings. Stakeholders specifically addressed concern over the potential for MS4s not to be contributing to impairment, the limited solutions for E coli and selenium impairment, and concern over program funds being redirected from other program areas that may be more effective at improving water quality. Stakeholder input included other methods of determining E coli sources. Stakeholder feedback included concerns over costs because some permittees stated that the potential number of outfalls to be monitored was unknown and therefore the cost to implement a monitoring program was unknown.	The Division has not included selenium monitoring requirements in the draft permit. The Division is considering three options regarding terms and conditions associated with monitoring for E coli and is seeking public comment on all three options. One of the options reflects stakeholder input that there are other methods to determine the source of E coli and the permittee has an option to implement other methods that are provided in the renewal permit. The Division is seeking comment on the three options, and intends to use this input to determine the most appropriate terms and conditions for the final permit in regards to monitoring requirements for E coli. Additionally, Option 3 in the draft renewal permit includes a waiver process based on population to limit the required laboratory analysis for E coli sampling. This exclusion has been added to address concerns by stakeholders that the cost is unknown and could be extremely high and not result in an environmental benefit.
Monitoring	Stakeholders provided input that irrigation return flows are interconnected with the MS4 system for some permittees.	It is the Division's intent to exclude irrigation season flows from the monitoring requirements. The renewal permit includes a waiver option for permittees to sample outside of a required quarter to avoid the irrigation season. An additional exclusion is included for dry weather flows that are predominantly associated with irrigation return flows or supply.
Coal Tar-Based Asphalt Sealant	Stakeholder input indicated preference for not including requirements regarding coal tar-based asphalt sealant.	The Division provided stakeholder information from the United State Geologic Survey regarding coal tar-based asphalt sealant, which contains a high concentration of poly aromatic hydrocarbons (PAHs). Some PAHs are classified as probable carcinogens. The Division has determined that the coal tar asphalt sealant is a potential pollutant in urban runoff and/or could limit the ability for maintaining post-construction Control Measure. However, the draft permit does not included associated requirements. The Division is specifically seeking comment on this approach.

Prior to the pre-public notice meeting, the Division held seven stakeholder meetings to gather input and provided significant website communication. The Division is providing an extended rather than 30-day public notice period, and will hold a Public Meeting during the Public Notice periods.

This fact sheet will use the term "previous permit" when referring to the permit in effect from March 10, 2008 to present and "renewal permit" will refer to the permit that is replacing the previous permit when issued. To provide clarity to the reader, the organization of the Fact Sheet follows the order of the renewal permit.

VI. BASIS FOR EFFLUENT LIMITATIONS, RECORDKEEPING AND REPORTING

A. Coverage Under this Permit

1. Discharges Authorized Under this Permit

The discharges eligible for coverage under this permit include those previously covered under General Permits COR090000 and COR080000. This general permit authorizes discharges of stormwater from municipal separate storm sewer systems that meet the designation criteria in Regulation 61.3(2)(f)(v), of the State in Colorado, except facilities that meet the designation criteria in the Regulation 61.3(2)(f)(v)(A)(II) that are permitted with the non-standard MS4 general permit.

2. Limitations on Coverage

The Division modified this section in the renewal permit to be clear that discharge(s) to a receiving water designated as "outstanding waters" are not eligible for coverage. The Division has determinate that a more detailed analysis would be needed to determine if provisions for control of pollutants beyond those included to meet MEP would be appropriate in those cases.

3. Permit Area

The Division has modified the portions of Part I.A.3(b) and Part I.E of the renewal permit that pertain to the application of "Growth Area Requirements." These requirements have been further expanded to allow for a more proactive and effective approach to water quality protection in areas with high population growth and growth potential. The Division stated in the previous factsheet that it intended to review the previous permit boundaries for permittees covered under this general permit, to determine if currently unpermitted areas outside of a Census Designated Urbanized Area meet the designation criteria in Regulation 61.3(2)(f)(iii) and (v). The changes to the permit do not change the process or requirements for designation, which are included in Regulation 61. The Growth Area Requirements shall apply when such designation is based on actual or potential significant contributions of pollutants associated with construction and development to support high population growth or high growth potential. The criteria for designation in the permit are intended to identify when these conditions for potential significant contributions exist.

Growth Area Requirements only require a permittee to meet the requirements in Part I.E of the renewal permit for Construction Sites (Part I.E.3) and Post-Construction Stormwater Management in New Development and Redevelopment (Part I.E.4).

Requiring the implementation of these program areas in Growth Areas will allow for the following goals to be met:

- Require local control of pollutant sources during the period of significant construction in an area, instead of after an area has already been developed and the water quality impacts from construction associated with the growth may have occurred.
- Require the implementation of permanent water quality controls for new development/redevelopment, to prevent impacts associated with the future population at a time when installation of structural controls is most practicable (i.e., to avoid retrofitting).
- Allow the permittee to focus on implementation of programs most applicable for areas with growth, but without established populations.

Exclusions are included in the requirements for construction and post-construction for oversight activities in Growth Areas for projects active and planned at the time of the permit renewal. These exclusions are intended to allow for a timeframe for permittee's to expand their programs into these areas and work with operators to bring them into the permittee's framework.

The permit was revised to clarify that requirements do not apply to requiring actions for state land that the permittee does not have land use authority over.

4. Cherry Creek Reservoir Drainage Basin

Language has been added to accommodate the addition of COR080000 requirements for those parts of the MS4 that drain into the Cherry Creek Reservoir drainage basin. As per the Cherry Creek Reservoir Control Regulation (5 CCR 1002-72), additional requirements are included in the Public Education, Construction, and Post-Construction program areas. In addition, the stormwater section of the regulation (72.7) continues to be incorporated by reference in the permit. General Permit COR080000 will no longer be issued and permittees with coverage under COR080000 will be issued new permit certifications under COR090000. Consistent with the approach in the rest of permit, the draft

renewal permit includes requirements for activities covered by the control regulation. Exclusions from oversight activities are included when determined to not be appropriate for the nature of the activities.

5. Application and CDPS Stormwater Management Program Description for New and Draft renewal Applicants

   The Division combined the requirements for new and draft renewal applicants and provided additional clarification regarding the process if the Division denies the application for coverage under the general permit. The Division also deleted the detailed requirements for the application in the permit.

6. Permit Compliance

   The Division added this section to the draft renewal permit to clarify conditions that constitute a violation of the permit (e.g., failure to comply with the terms and conditions of the permit; failure to perform corrective actions, etc.).

B. Control Measures

The Division uses the term "control measure" (defined in Appendix B) instead of "Best Management Practice (BMP)" throughout the renewal permit. This term has a broader range of meaning than BMP, as it includes both BMPs and "other methods", and as such, better describes the range of pollutant reduction practices a permittee may implement. Consistent with the stormwater permits the renewal permit replaces, the Division does not mandate specific Control Measure a permittee must implement to control pollutant sources. The permittee has the flexibility to select appropriate control measures that when implemented, enable the permittee to meet permit requirements.

Also, the Division uses and defines the term "minimize" to provide the permittee with a clear expectation for the level of performance of Control Measures implemented to achieve Effluent Limitations that require the permittee to "minimize" pollutants.

C. Program Description Document

The Division has substantially modified this section. The previous permit framework required a program description be developed that addressed pollutants of concern and required the permittee to develop and implement requirements to meet MEP. The Division has changed this framework and has provided the requirements that meet MEP in the renewal permit. The Division has relocated the practice-based permit conditions to a new section titled effluent limitations, addressed in E, below. The permit now requires a Program Description Document (PDD) as a record keeping requirement to identify Control Measures selected by the permittee and to document the implementation to allow for effective implementation by the permittee, oversight, and public involvement.

The PDD is developed and maintained by the permittee and only submitted to the Division upon request. This is a substantial change from the previous permit, which required the submittal of the permittee's program description, which the Division reviewed, approved and provided public notice during certification. This change also resulted in the program modification section of the previous permit no longer being applicable.

The information in the PDD is not the same as information required in the Recordkeeping sections of the permit, which address documentation that required activities have been completed.

Permittee feedback during audits indicated that permittees were reluctant to make changes to their program descriptions submitted to the Division under the previous permit because of confusion or concern over the review and approval process. The Division anticipates that the renewal permit, which has clear requirements in the permit and allows the permittee to tailor and modify their selection and implementation of controls as needed without Division review or approval, will be more efficient for both the Division and permittees.

The required elements of the PDD were purposely chosen to allow the PDD to be used as an internal training tool and to provide continuity in the case of permittee staff changes. Program audits indicated that there may be substantial lag time

and potential non-compliance when new staff is hired, specifically a stormwater coordinator because the permittee lacked a complete document to facilitate staff transitions and continued compliance.

The draft renewal permit includes a requirement that the PDD be submitted to the Division within 10-days of a request. This timeframe recognizes that a document that is intended to reflect current conditions must be updated periodically and may not be immediately available.

D. Public Involvement/Participation

The Division has moved the Public Involvement/Participation section from the Effluent Limitation section, as these are not practices implemented to minimize the discharge of pollutants to the MS4. A requirement for the permittee to accept and respond to public information that was in the Construction Sites program has also been relocated to consolidate Public Involvement and Participation to this section.

E. Effluent Limitations

This permit defines minimum requirements required by MS4 permittees to meet the federal and state regulatory requirement to control the discharge of pollutants to the MEP and effectively prohibit non-stormwater discharges. In each program area of the permit, after the Limitations section, Recordkeeping and PDD sections are provided to identify record keeping requirements associated with the Effluent Limitations. The renewal permit includes requirements for retention of records in two different subsections, Recordkeeping and PDD, to distinguish between records to document the specific actions (Recordkeeping), and records to document procedures and plans (PDD). The permit also identifies retention requirements for records in accordance with the Recordkeeping subsection of "the effective period of the permit and three years following." This retention requirement removes the ambiguity with determining the time for which a record "is no longer being actively utilized for stormwater management," which is the basis for the overall retention of records requirement in Part I.K.2.

The Division has relocated the practice-based permit conditions that were previously under the CDPS Stormwater Management Program section to this newly titled section. The intent is to clearly identify the practice-based permit conditions as Effluent Limitations. As provided in Regulation 61.2(26) "effluent limitation" means any restriction or prohibition established under this article or Federal law on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into state waters, including, but not limited to, standards of performance for new sources, toxic effluent standards and schedules of compliance. Regulation 61.8(3)(r) requires that "the permit shall include best management practices to control or abate the discharge of pollutants when numeric Effluent Limitations are infeasible, when the practices are reasonably necessary to achieve Effluent Limitations and standards, or when authorized under 304(e) of the federal act for control of toxic pollutants and hazardous substances."

The permit also contains a Part III for which requirements applicable to only specific permittees can be included. As discussed above, this section currently addresses additional requirements for discharges subject to TMDL WLAs. The Division recognizes that the determinations of requirements to implement the MEP standard, and other terms and condition, may not be practicable for some permittees based on community specific conditions or that it is possible that the requirements contain additional flexibility for more effective or efficient practices. In such cases, the permittee may apply for coverage under an individual permit that includes determinations specific to their MS4. However, to allow for a more efficient approach when it is identified that the renewal permit only needs minor revisions to requirements to address the needs of a community, the permittee may request a modification of this permit in accordance with Part II.B.5 of the renewal permit that identifies the requested MS4-specific terms and conditions. If determined appropriate, the Division will modify the renewal permit to include the proposed MS4-specific terms and condition in Part III of the renewal permit, following the required provisions of Regulation 61.10, including public notice and comment. The Division remains responsible for ensuring the proposed terms and conditions meet the statutory and regulatory framework and are appropriate for inclusion in a general permit, and may deny such modification request in accordance with the Regulation 61 or require application for an individual permit.

1. **Public Education and Outreach on Stormwater Impacts:**
The Division has made extensive changes to this program area to include requirements in the renewal permit that clearly define the expectations for the scope and scale of the education actions implemented by the permittee. This section provides minimum standards for: a website, targeted information to businesses and the general public, nutrient education, and the activity table. Stakeholder input following the pre-public notice meeting included minimum standards for the four sub program requirements that were used to develop this section of the permit and concepts of the activity table similar to the activity table in the renewal permit. Some stakeholders also indicated a preference for a statewide campaign to allow collaboration. The permit allows for requirements to be met through collaboration, and the Division highly recommends that stakeholders pursue options for a statewide education campaign.

Website: The Division has added requirements for the permittee to create and maintain a website that provides standard minimum content. Permittee website-based content, regarding the MS4 permit program is highly variable. The Division has reviewed website content during compliance oversight activities and as needed in the process of receiving citizen inquiries. In some instances, citizens noted to the Division that they were unable to find basic information such as how to file a construction related complaint with the permittee or to understand the Illicit Discharges program. The Division has determined that citizens should be able to obtain basic permit and permittee program information from the permittee's webpage. The type of information and level of detail required on the permittee's webpage is a similar level of detail that many permittees currently provide for other departments and services such as community planning and economic development.

Illicit Discharges: The Division has added minimum requirements for the permittee to provide information regarding Illicit Discharges. The Division has selected the power washing, carpet cleaning and mobile auto detailing sectors for targeted information for several reasons. These are businesses with a historical practice of discharging to the MS4 and some of these businesses advertise services on the internet and can be easily located for education and information, if needed. Also, business owners (power washing and car washing) who have invested in the equipment to operate in accordance with the permit and regulations are at an economic disadvantage compared to operators who have not invested in proper equipment. Some business owners have voiced frustration to the Division over the lack of a fair economic environment and lack of enforcement for those who illegally discharge from these operations to the MS4.

Education and Outreach Strategies Table: The Division has been implementing a process similar to what is identified in this section when reviewing permittee program descriptions for adequacy during previous permit terms. Permittees were unaware of the existence of the table or the ranking system that was used by the Division. Since requirements are incorporated into the renewal permit and the Division is no longer reviewing program descriptions prior to issuing the permit certification, the activity table has been added to the renewal permit to allow permittees the flexibility to implement the activities that permittees determine are the most effective. Providing the activity table in the permit also allows permittees to make changes to their programs without submitting a program modification to the Division and public noticing the change. Stakeholder input after the pre-public notice meeting included similar versions of activity table that is provided in the renewal permit. The level of education and outreach required is consistent with what has been implemented by permittees in the previous permit term.

Nutrients: The Division has added this section in accordance with the requirements for MS4 permittees in Colorado Water Quality Control Commission Regulation 85 (Regulation 85). The Division includes the phrase from Regulation 85, "education and outreach on stormwater impacts associated with nutrients," to be clear that outreach is required by the regulation and the renewal permit. "Outreach" is active and requires contact by the permittee and an exchange of education and information. Making information available on a website without further action or outreach is passive education and does not meet the Regulation or the permit requirements. The Division expects that the permittee will "reach out" to identified sources and provide information and education. Additionally, the permit includes the phrase "The Permittee must provide public education and outreach…" "Provide" is used in the renewal permit to be clear that permittees can use existing information and are not required to develop new materials. A collaborative education and outreach program is clearly allowed in Regulation 85 and the draft renewal permit. The Division encourages and recommends that permittees collaborate on the nutrient-related requirements in the renewal permit and has provided a timeframe in the compliance schedule that would allow such collaboration.

Note that COR080000 includes additional education requirements. This section has not been included in the renewal permit because Regulation 85 addresses these requirements and has applied them to all city, county, and city and county MS4 permittees:

The Division has purposely not provided a minimum list of targeted sources for permittees to address through education and outreach. The Division will assess this decision over the permit term by reviewing the nutrient education and outreach activities conducted by permittees and any permittee justification for not targeting specific sources. The Division may provide minimum standards for targeted sources in a future permit term.

2. Illicit Discharge Detection and Elimination

There were numerous changes in this program area. Many of the changes were based on compliance oversight activities conducted by the Division that identified common aspects of non-compliance. Additionally, a review of permittee regulatory mechanisms indicated that more clear requirements for the regulatory mechanism is needed for consistent implementation of the Illicit Discharges, Detection and Elimination Program.

Storm Sewer System Map: The requirements have not changed from the previous permit.

Regulatory Mechanism: The Division has added new aspects to an existing requirement by adding clear minimum elements to be addressed in the regulatory mechanism for the mechanism to allow for effective prohibition of Illicit Discharges. These minimum elements were identified by the Division based compliance oversight activities. A common compliance issue was that many permittees provided a time frame to correct an Illicit Discharge during which the discharge was authorized to continue. This timeframe was either structurally provided in a permittee's regulatory mechanism or it was provided in program documentation and applied at the staff level without being supported by the permittee's regulatory mechanism. In many cases, the time frame could remove the ability to require removal of a discharge that could cause water quality impacts, or would remove the ability for permittees to require proactive compliance with prohibitions. A review of permittee regulatory mechanisms also indicated that some regulatory mechanisms limited permittee access to sites with certain permits or zoning. This would have limited the permittee's ability to respond to potential Illicit Discharges. Therefore the renewal permit is clear that the permittee's regulatory mechanism cannot limit access to properties in the permittee's jurisdiction, unless restricted by laws outside the permittee's control.

The renewal permit still allows for a process for a permittee to provide a timeframe to eliminate an Illicit Discharge when immediate removal is not practicable through flexibility in implementing removal and enforcement actions. However, the timeframe to eliminate an Illicit Discharge cannot be implemented in such a way to remove the ability to require immediate removal or allow for enforcement for the occurrence of an Illicit Discharge when appropriate. The Permittee's procedures and rules must result in an Illicit Discharge being subject to potential enforcement procedures for both the original finding of violation, as well as during any provided timeframe to eliminate the Illicit Discharge. Also, note that the Permit does not require, and it is not the Division's intent to imply through this summary, that the enforcement mechanism mandate or limit enforcement options to a per-day-of-violation monetary penalty calculation methodology.

Regulatory Mechanism Exemptions: The Division added a section to address exceptions to the permittee's regulatory mechanism based on the Division finding allowances in regulatory mechanisms and program documents that would allow for exemptions, waivers and variances that could be implemented in such a way as to violate the permit requirements. The Division understands that exemptions, waivers and variances are a legal process in the permittee's code and ordinances and are relied on to address unforeseen circumstances without relying on revisions to regulatory mechanisms. However the Division has added clarity that exclusions, exemptions, waivers and variances cannot be implemented in a manner that creates a non-compliance with the permit requirements, and that processes must be in place to facilitate this result.

Discharges Excluded from being an Illicit Discharge: Additional discharge sources have been added to the list of allowable discharges based on review of the practicability of effectively prohibiting the discharges, as discussed in

Part III of the fact sheet. In addition some discharges sources have been clarified or consolidated.

- **Uncontaminated groundwater not associated with construction**: This category consolidates potential sources of groundwater from the previous permit as follows: "uncontaminated pumped ground water," "foundation drains," "water from crawl space pumps," and "footing drains." Groundwater associated with construction is not included in this category. Groundwater associated with construction is not as a category "uncontaminated" due to the potential pollutant sources associated with the construction activities. The Division has an established permitting program for construction dewatering that results in prohibition of discharges without permits being practicable. The reference to infiltration was clarified to include the intent that the reference is to infiltration into the MS4, and removes the regulatory cross reference.

  The permit also separates out stormwater and groundwater into two sources in the draft renewal permit, both of which could be present in the sources in the previous permit. The Division has previously, and continues to, interpret that stormwater runoff that is captured in structures or infiltrates and then is dewatered still meets the definition of stormwater. Therefore, where the source water for a dewatering activity is composed entirely of stormwater runoff, the requirement for the operator to obtain separate permit coverage is typically based on whether the point source discharge of stormwater is required to have permit coverage in accordance with Regulation 61.3(2) (i.e., is stormwater associated with industrial activities, which includes construction). If an industrial stormwater discharge permit certification is already held by a facility where dewatering is conducted, the dewatering discharge must be consistent with the terms and condition of the industrial stormwater permit.

  It is the Division's current practice to determine that a dewatering discharge includes groundwater, and therefore is not composed entirely of stormwater runoff, when the discharge is drawn from below a groundwater table, including as a result of seasonal or precipitation-driven increases in the groundwater table elevation.

  As is currently discussed in the fact sheet in the Subterranean Dewatering general permit (COG603000), in general, residential structure subterranean dewatering is presumed to be in direct response to precipitation events and composed entirely of stormwater (e.g., single family home sump pump discharges). Some large residential structures such as multi-family complexes with underground parking structures where the dewatering discharge includes groundwater have been covered under this permit.

- **Dye Testing**: Dye testing with a passive tracer, or an active tracer if no suitable passive tracer can be identified, and conducted in accordance with manufacturers' recommendations: The Division has added dye tracing to the list of discharges to the draft renewal permit as a source that is not an Illicit Discharge. An active tracer is one that is added to the effluent stream above the point of effluent discharge over an interval of time sufficient to allow its complete dispersion in the effluent plume. The most common active tracer is fluorescent dye (e.g. rhodamine), but also includes inert salts such as sodium chloride or lithium bromide also can be used.

- **Stormwater runoff:** For clarity, stormwater runoff was added to the list as a source that is not an Illicit Discharge. This includes discharges of stormwater for which pollutants may be present. For example, stormwater runoff, from surfaces for which anti-icing or deicing materials have been added, remains stormwater runoff and is a source that does not have to consider an Illicit Discharges. This interpretation is consistent with Regulation 65, Regulation Controlling Discharges to Storm Sewers, which does not apply to "pollutants that are incidentally deposited and are mobilized by waters that only flow as a result of a storm event." In this regulation the word "incidental" is key, as runoff into the storm sewer of deicer material is liable to happen as a consequence of applying deicer and fits with the definition of "incidental."

- **Discharges that are in accordance with one of the following Division Low Risk Policy guidance documents:** The Division has developed the Low Risk Policy, WQP-27, to address discharges with the lowest potential risk to water quality and additional permit language to provide a mechanism for the Permittee to assess the potential for certain discharges to contain pollutants. Discharges associated with snow melting, swimming pools, potable water, uncontaminated groundwater to land, and surface cosmetic power washing operations to land are currently addressed by guidance under the Division's Low Risk Discharges. The previous permit included "discharges

from potable water sources," and "potable water line flushing." These sources are now addressed under the low risk guidance for potable water. Water line flushing could include discharges not covered under the potable water guidance, however the discharges that are not potable do have increased pollutant potential and are addressed by the Division's established permitting program for hydrostatic testing of pipelines that results in permit coverage being a practicable approach.

The permittee can still prohibit any of the Division's Low Risk Discharges or other discharges listed in the renewal permit.

In addition, a provision was added to the permit to allow for the permittee to incorporate new sources covered by future Division's low risk policy guidance documents into their of sources that are not Illicit Discharges. These sources would be public noticed by the Division during the development of new low risk policy guidance documents.

- **Additional Discharges**: The Division has made substantial changes from the process in the previous permit for addressing occasional, incidental non-stormwater discharges. The Division has improved transparency regarding these non stormwater discharges and has included more clear expectations and criteria for making determinations. There was a lack of clarity in Division expectations in what non-stormwater discharges must be controlled and what constitutes adequate response and enforcement expectations. In the previous permit, the permittee could make a determination that a discharge is not reasonably expected to be a significant contributor of pollutants to the MS4. This process has been enhanced.

  Compliance oversight activities conducted by the Division indicated that many permittees allowed additional discharges without prohibition, and it was not clear that assessment of the potential for water quality impacts or the practicability of prohibition had occurred. Additionally, during review of the completed Targeted Permit Questionnaire, the Division noted that the permit language and guidance provided in the previous permit was unclear and may not result in regulatory mechanisms that comply with the permit. For example, many permittees stated that their regulatory mechanism includes the list of discharges that are not Illicit Discharges in the permit. However, upon review of the submitted documentation, there is a discrepancy between the discharges in the permit and the regulatory mechanism language. For example, the "residential car washing" discharge in the permit is not the same as "non commercial vehicle washing," which appeared in some permittee regulatory mechanisms. Additionally, many permittees indicated in the questionnaire that their regulatory mechanism did not allow for or include occasional, incidental non-stormwater discharges. However the submitted code language included examples of occasional, incidental non-stormwater discharges such as: "Water not containing pollutants," "discharges necessary to protect public health and safety," and "discharges from ditches." The permittees did not provide supporting documentation or procedures for allowing these discharges. Some permittees stated in the questionnaire that they have developed a list of occasional, incidental non-stormwater discharges yet did not submit information or documentation that substantiates the occasional, incidental non-stormwater discharges, or stated that the determination is "case by case" without providing any information about the "case by case" decision-making process.

  The Division has identified that it is appropriate that some discharges not be addressed as Illicit Discharges that are in addition to those listed in the permit. Therefore, the draft renewal permit includes a process for permittees to incorporate new sources into the list of sources that are not Illicit Discharges. For discharges with low potential for pollution, the permit includes basic considerations and criteria for the evaluation. The criteria that the discharges with proper management are not expected to contain pollutants in concentrations that are toxic or in concentrations that would cause or contribute to a violation of a water quality standard, is consistent with Division practices for evaluating sources for coverage under the Low Risk Policy The Division also understands that some discharges may not be practicable to prohibit based on the absence of sufficient permitting options and existing discharge practices. The Division understands that permittees have historically accepted certain discharges (e.g., charity car washes, discharges from fire suppression systems) and the Division is uncertain about their impact to receiving water quality and their practicability to control. The renewal permit includes a transparent option for discharges to be removed from being Illicit Discharges without causing permittees to be in

non-compliance over discharges in this category. The renewal permit clearly requires public notification of non-stormwater discharges. The renewal permit provides a process and timeframe for submitting discharges that are identified both before and after the effective date of this permit. The permit also includes a process for Division review and denial of new sources. If the Division denies the discharge, the permittee may prohibit the discharge, apply for a permit modification, or request a Low Risk Policy determination for a category of discharges not meeting the permit criteria to not be an Illicit Discharge.

Tracing an Illicit Discharge: The Division has added new aspects to an existing requirement. The renewal permit includes a minimum standard for tracing an Illicit Discharge. This ensures that permittee are meeting a minimum standard for Illicit Discharge response procedures and have a level playing field.

Removing an Illicit Discharge: The Division has added new aspects to an existing requirement. The renewal permit includes a minimum standard and provided clarity for removing an Illicit Discharge to ensure that all permittees are meeting a minimum standard for Illicit Discharge response procedures. The renewal permit also clarifies that spilled material that has the potential to be discharges is included in addition to removing the source of a discharge.

Enforcement: The Division is clarifying Division expectations that similar violation should be responded to in a uniform manner by the permittee and enforcement procedures should be transparent. The Division has provided examples of informal, formal and judicial responses for the permittee to evaluate.

Training: The concept of priority areas from the previous permit was incorporated into this section to provide a clear expectation of the use of this tool. The Division has added new aspects to an existing requirement by including a minimum standard to require that industrial areas, areas with a history of illegal dumping or past Illicit Discharges are priority areas. Compliance oversight activities conducted by the Division indicated that permittees were inconsistent regarding the priority areas selection. It was intended that the permittee would implement the example priority areas provided in the permit if those example conditions existed in the permittee's jurisdiction. The Division has determined that the minimum standards for priority areas provided in the renewal permit are a reasonable standard for all permittees to include.

Industrial Facilities: The Division has added a reporting requirement to notify the Division of an industrial facility that the permittee believes is having a negative impact on water quality. The Division does not require the permittee to respond or interact with the industrial discharger in the renewal permit, unlike the Phase I Stormwater permits. A Phase I individual permit requires that the permittee responds and takes measures to require compliance and notify the Division if compliance cannot be obtained, then the Phase I permittee must notify the Division. At this time, the Division has not established that it is practicable for Phase II MS4 permittees to expand current programs to meet the standard in Phase I permits. However, the Division has determined that it is logical, and practicable, to require permittees to notify the Division of information they already have to allow the Division to respond as needed.

Illicit Discharge Incident and Response Record Keeping: The Division has added requirements for documenting incidents of Illicit Discharges to clarify the requirements under the previous permit for maintaining records. In addition, it has been required that a centralized recordkeeping of Illicit Discharge be maintained that allows permittees to identify repeat occurrences. Division and EPA audits noted a lack of consistency with the process of documenting and evaluating Illicit Discharges from intake to resolution. The renewal permit provides a clear, consistent, minimum standard. Centralized recordkeeping requirement places an emphasis on permittee controlled intake points and not groups outside of permittee's control. Groups outside the permittees control are expected to be special districts (e.g., fire protection district), clearly outside the permittee's control that may receive and respond to Illicit Discharge complaints. Departments in the municipality are not considered outside the permittee's control.

3. Construction Sites

The Division has made substantial changes to this program area to increase transparency of Division expectations and make it clear that the construction sites program must be proactive.

The current Division general permit authorizing stormwater discharges associated with construction activities (COR030000) contains minimum standards and the regulated industry and the public has indicated benefits from and preferences for this uniformity. Additionally, construction site operators have expressed to the Division that the lack of clear minimum requirements in the MS4 permit creates confusion and an unlevel playing field among construction site operators across jurisdictions; and does not provide a minimum standard. Additionally, the previous permit allowed an economic advantage to permittees that did not implement an effective construction sites program that required Control Measure for construction pollutant sources. The renewal permit contains clear minimum standards and creates a more level playing field among MS4 permittees and construction site operators.

Compliance oversight activities conducted by the Division indicated that minimum standards were needed in the renewal permit for many reasons. The Division determined that the previous permit that allowed the permittee flexibility to establish minimum standards was not an adequate method to minimize pollutants to the MS4 from construction activities to the MEP, because the permit did not provide a minimum standard. Minimum standards varied across permittees, as did the level to which pollutants were being controlled through effective practices. Because permittees could establish their own oversight procedures without set expectations in the permit, the economic burden of oversight varied greatly across permittees. For example some permittees review all site plans, others review a percentage or only certain types of site plans and not others. Some permittees inspect construction sites every 14 days and other permittees inspect construction sites 2-3 times a year or less. Compliance oversight activities also indicated that permittees were often not implementing the level of program oversight committed to in the 2008 program description documents. In practice, the procedures documented in permittee program description documents were not always followed or there was a discrepancy regarding what the permittee intended in the program description document and what the Division interpreted from reviewing the description.

Renewal Permittees: Because this draft renewal permit is establishing for the first time an expectation for a level of oversight through plan review and inspections, a compliance schedule is needed. To ensure a level of oversight continues until the compliance schedule deadlines, the permit includes a requirement for permittees to continue implementing the oversight programs from the previous permit until the new program requirements take effect. The previous permit included procedures for modification of the program that are not included in the draft renewal permit. Instead, renewal permittees are authorized to modify these previous permit term programs through meeting the requirements in the renewal permit.

Regulatory Mechanism: The Division has added new aspects to an existing requirement by adding clear minimum elements to be addressed in the regulatory mechanism. These minimum elements were identified by the Division based on audit findings and reviewing the completed Targeted Permit Questionnaires. For example, some permittees stated that the regulatory mechanism requires pollutant control practices "be implemented and maintained," yet the submitted code language for some permittees only requires controls to be maintained, but not implemented. Therefore, according the example code, the lack of pollutant control practices on a construction site is not automatically considered a violation by the permittee. For others, the submitted language requires erosion and sediment controls and not waste controls. The renewal permit clearly specifies the elements that are required in the regulatory mechanism. Also, the local laws for which the Permittee has authority to change shall not be considered constraints.

Regulatory Mechanism Exemptions: The Division added a section to address exceptions to the permittee's regulatory mechanism based on the Division findings of allowances in regulatory mechanisms and program documents that would allow for exemptions, waivers and variances that could be implemented in such a way as to violate the permit requirements. The Division understands that exemptions, waivers and variances are a legal process in the permittee's code and ordinances and are relied on to address unforeseen circumstances without relying on revisions to regulatory mechanisms. However the Division has added clarity that exclusions, exemptions, waivers and variances cannot be implemented in a manner that creates a non-compliance with the permit requirements, and that processes must be in place to facilitate this result.

Control Measure Requirements: The renewal permit provides more detail regarding minimum requirements for Control Measure to address a lack of minimum standards for construction site Control Measures. The minimum

requirements identified in the renewal permit were developed based on: common non-compliance findings identified by the Division during oversight activities, controls determined practicable through effective implementation in the Division Construction Stormwater Permit (COR030000), and are solutions that the Division has determined comprise a reasonable expectation of all construction sites. The requirements include identification of when buffer areas and inlet protection are not adequate for controlling discharges from disturbed areas. In general, these controls are not identified in accepted design manuals as controls to remove sediment from runoff from concentrated flow. However, the standard recognizes that in some cases they may function for this purpose. For example, a buffer area may allow full infiltration of regular runoff events from smaller areas of disturbances, such as trench areas for utility installation.

This standard and minimum requirement has been developed because the previous permit language was inadequate to address sediment transport from construction sites, which is a fundamental aspect of construction sites oversight. The minimum requirements are part of a comprehensive framework for construction sites oversight that carries the minimum Control Measure requirements through the site plan review and enforcement process. The minimum standards provide a measureable framework for construction site operators to determine operating costs and for permittees to implement construction site programs to a minimum standard. The Division has provided clarity on expectations of the construction Control Measures by introducing the terms and concepts of "inadequate construction activities control measure" and "construction activities control measure requiring routine maintenance" to differentiate the reason for inadequacy on oversight activities. The permittee does not need to incorporate these terms into program documents, however the permittee must review existing documents, and modify as necessary, to ensure standards and conditions, including processes for site-specific determinations and waivers, will result in meeting the requirements for Control Measures.

Site Plan: The Division has also made substantial changes regarding the requirement for site plans to be developed and submitted by site operators. The previous permit did not establish a requirement for site plans to be developed, submitted, or reviewed for all sites, or an expectation for which sites this requirement was applicable. The minimum requirements identified in the renewal permit were developed based on common non-compliance aspects identified by the Division during compliance oversight activities. The Division's Stormwater Construction Permit sets a clear precedent that site plans are practicable to be developed for all covered construction activities. The renewal permit clearly requires that site plans include design details for all Control Measures implemented and includes a minimum list of activities that must be addressed on the site plans. The list of activities is from the Division's Stormwater Construction Permit.

The Division has also added language regarding site plan modifications. The intent of the permit is that the permittee will conduct site inspections based on a site plan that the permittee has reviewed and has confirmed that site plan requirements have been met. The Division expects that reviewed site plans will change during the course of construction activities based on field conditions. Feedback from permittees during oversight activities indicated that the permit lacked clarity, which created confusion regarding plan modifications and the "approval" process of plan modifications. The renewal permit clearly allows the permittee to allow for responsive review of modifications during subsequent inspections.

Site Inspection: The Division has provided substantial changes and clarity regarding inspection frequency and scope. The previous permit did not establish a requirement for site inspections to be conducted for all sites, or an expectation for which sites this requirement was applicable. The Division conducted extensive oversight activities of the construction program and noted numerous findings in this program area for which the root causes included a lack of a minimum standard in the permit for inspection frequency and inspection scope. The Division discussed several concepts during stakeholder meetings that combined inspection, inspection scope and/or enforcement, intended to foster a compliant construction sites program. The Division included concepts that paired an increased inspection frequency with a reduced enforcement escalation process or a reduced inspection frequency with a more rapid escalation process. The Division also paired inspection frequency with increasing and decreasing the level of detail of an inspection.

A review of the 2012 annual reports comparing the number of active construction sites and "full" inspections indicated that less than 10% of permittee conduct monthly inspections and approximately 25% of permittees currently

conduct 9 or more inspection per year. Approximately 50% of permittees conduct inspections that are less frequent than quarterly. These numbers are based on all sites, including sites that may be inactive or temporarily stabilized. The Division identified the lack of a minimum inspection frequency as a basic gap in the permit that led to variability in the site inspection requirement. The lack of a minimum standard also allows an economic discrepancy between permittees and increases the potential for non-compliant construction sites to operate. Construction site operators have conveyed frustration with the Division that non-compliance carries little risk when there is a lack of inspection oversight; and operators that bear the cost of compliance economically suffer. The Division noted during compliance oversight activities that permittees implemented a combination of inspection and enforcement procedures that did not result in an overall compliant construction sites program.

The Division has provided multiple options for permittees to retain flexibility and implement a compliant construction sites program. The Division has included stakeholder feedback and incorporated the feedback into options that are reflected in the Alternate Inspection Schedule and Scope section. This section specifically provides a path for permittees that prefer to maintain a frequency more than once a month as well as options for addressing chronic and recalcitrant operators based on field findings.

- Inspection frequency: The renewal permit establishes every 30 days (with alternate frequency options) as a minimum baseline frequency for construction site inspections. However, the permit also allows for this frequency to be reduced, most significantly for sites without construction activity that are awaiting final stabilization. Reductions are also allowed for during winter conditions, which likely would only be met for high altitude portions of a few MS4 and for occupied residential lots. It is therefore difficult to compare the proposed frequency to the average occurrences of inspections provided above from the 2012 annual reports. Additionally, some inspections may have reduced scope as discussed below, which also would result in the frequencies not being comparable. At this time, and considering the companion requirements of site plan oversight, inspection scope and enforcement response in the renewal permit, the Division has determined that every 30 days is a reasonable inspection frequency requirement that provides a framework for a compliant construction sites program. The Infeasibility Frequency Exclusion provides flexibility for permittees to address staff absences. The permit also includes a reduction in frequency for construction activities operated by a participant in a Division designated Stormwater Management System Administrator's Program to address statutory direction in accordance with Article 8 of title 25, Colorado Revised Statutes, and to recognize the high level of compliance observed by the Division at participant sites.
- Inspection scope: Paired with a minimum inspection frequency is an inspection scope that reflects the minimum requirements for Control Measures on the site plan and the Control Measures for the specific activities that are the highest risk of discharging pollutants to the MS4. The minimum inspection elements were developed based on compliance oversight activities conducted by the Division between 2009 and 2012. Homebuilder sites often constitute a majority of construction sites within an MS4, and the allowance for reduced scope on these sites is expected to significantly increase the flexibility in how oversight is performed by MS4s while maintaining the requirement to effectively observe and respond to control measure inadequacies.
- Required Increased Inspection Frequencies: The renewal permit addresses increased inspection frequencies based on reoccurrence of control measure inadequacies. The permit includes flexibility for the permittee to forgo the increased frequency when alternative means have allowed for a prevent chronic and recalcitrant violations.
- Inspection Follow-up: The renewal permit requires follow-up oversight to confirm a return to compliance. Flexibility is included for permittee's to determine the most appropriate methods of follow up.

Enforcement Response: The Division has determined it is practicable and necessary for permittees to develop and implement an enforcement response program that allows escalated responses when necessary. The program must be able to obtain proactive compliance from chronic violators that repeatedly violate the Construction Sites program requirements. The program must also include sanctions adequate to obtain compliance from recalcitrant violators. All of these elements are essential to effectively requiring controls be implemented. The previous permit allowed the permittee wide flexibility in developing and implementing procedures for enforcement of Control Measure. The Division conducted extensive oversight activities of the construction program and noted numerous findings related to the lack of enforcement response even when permittees document an operator failing to follow direction to address noncompliance with a permittee's program. The permittee's Enforcement Response processes must convey that construction sites are expected to be in compliance and the permittee cannot allow a site to oscillate in and out of

compliance without escalating enforcement.

Some MS4 permittees have enforcement response plans or procedures as part of their pretreatment programs and the Division has determined that it is appropriate and reasonable for permittees to develop enforcement responses for common construction-related violations consistent with this approach. The renewal permit includes categories of enforcement responses. The permit does not require the implementation of specific actions. The renewal permit does require that the permittee have the capability and processes to implement all categories of responses. The Division is clarifying Division expectations that similar violations should be responded to in a uniform manner by the permittee and enforcement procedures should be transparent.

Training: The requirements have not changed from the previous permit.

Co-regulating MS4 permittees: The Division has expressly allowed co-regulating MS4 permittees to enter into an agreement for oversight of projects that overlap the co-regulating permittee's jurisdictions. Stakeholder discussion indicated that projects that occur across multiple jurisdictions or overlap jurisdictions are subject to multiple inspection standards and requirements; and place an unreasonable burden on construction contractors in meeting different standards and requirements for the same project. The example provided by stakeholders was the FasTracks transit project that passes through multiple permittee jurisdictions. Feedback indicated that both permittees and the construction industry wanted a mechanism in the permit that would allow co-regulating MS4 permittees to enter into agreements that would allow the project to adhere to one set of standards and requirements. The language in the renewal permit is intended to allow such arrangements between co-regulating MS4 permittees for overlapping projects as long as an agreement between the entities in place for one or more MS4 permittees to allow another permittee's construction sites standards to be implemented. The renewal permit does not require any MS4 permittees to enter into such agreements.

The renewal permit requires site plan review for all site covered construction activities and requires that the permittee provide confirmation that requirements have been met. The Division identified the lack of clarity as a basic gap in the permit that led to variability in the site plan review process and inadequate site plans implemented. The lack of a minimum standard allows an economic discrepancy between permittees and increases the potential for inadequate site plans to be implemented. Permittee feedback during oversight activities indicated that a field inspector may have little recourse to require correction of an inadequate site plan because of the permittee's internal processes. This renewal language provides a uniform minimum standard and a basis for all permittees to quantify the regulatory investment. The Division has determined that reviewing all site plans is necessary for the permittee to have a program that is designed to prevent inadequate site plans from being implemented.

Oversight and Response Record Keeping: The Division has added requirements for documenting oversight and response for construction activities to clarify the requirements under the previous permit for maintaining records. Minimum standards for inspection documentation have been added to the renewal permit. This is based on a review of inspection documentation during compliance oversight activities conducted by the Division between 2009 and 2012 and as part of the comprehensive overhaul of this program area. Division compliance activities indicated that documentation between permittees and among staff of the same jurisdiction were highly variable. It was difficult to confirm repeat violations, uncorrected violations, or a return to compliance when inspection forms did not reflect consistent extent of oversight. In some cases the inspection form structurally allowed gaps in oversight because the form lacked appropriate prompts. For example, control measure categories were left off the form and therefore may not be reviewed by inspection staff, or the form lacked a prompt to indicate the condition of the control measure (adequate, in violation, missing, or in need of maintenance). In some cases, the status of Control Measure from multiple lots was noted on the same form, which created difficulty in tracking compliance on follow up inspections and was a barrier to enforcement for chronic and recalcitrant violators. It was clear that the lack of minimum requirements for inspection documentation is a barrier to a compliant construction sites program and potential enforcement. For the above reasons, the inspection documentation (e.g., form) must be limited to addressing a single operator. For example lots in a subdivision that are not under the control of one developer or builder cannot be comingled on an inspection form.

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

The Post-Construction Stormwater program under Regulation 61.8(11)(a)(ii)(E)(I) addresses implementation of Control Measures after construction is completed, to control pollution sources associated with the long-term use of areas that have undergone new development and redevelopment. Examples of controls include permanent water quality ponds at housing developments, using vegetated swales designed to increase infiltration and remove pollutants for runoff from new roads, minimizing impervious area or encouraging infiltration at new commercial developments, etc. The Division has made extensive modifications to the permit terms and conditions to implement this requirement by adding measurable minimum standards. The Division conducted program audits of approximately 20% of permittees and noted numerous findings in this program area where controls for new development and redevelopment were not implemented that would provide practicable levels of pollutant controls. The root cause of the findings was often because the previous permit did not specify minimum standards for this program element and permittees implemented variable standards for post construction Control Measure. Similarly to the construction sites program, implementing different water quality standards and Control Measures created an uneven economic environment among permittees and property owners or land developers. Permittees that require a robust design standard (e.g., WQCV) and require the property owner to bear the cost to implement the design standard are at an economic disadvantage over those that have not required controls, or significantly waive the requirements for controls.

The draft renewal permit focuses on controls from Covered Development Projects instead of a narrow focus on impervious area, and this standard applies to both pervious and impervious areas. However in many cases, impervious areas will not contribute flow during a WQCV event and therefore not result in additional or expanded controls being needed. Impervious area is referred to when appropriate for some design standards included in the draft renewal permit.

The draft renewal permit also identifies that Covered Development Projects include all projects for which Control Measures were required in accordance with an MS4 permit. For renewal permittees, that includes all projects meeting the definition of a Covered Development Project for which the project was completed following March 10, 2008. That date was the end of the first MS4 permit term, and the date that compliance schedules for implementing controls to meet MS4 permit requirements (via measurable goals) ended, for all renewal permittees.

Excluded projects: The Division has added this section, which provides exclusions from coverage in the permittee's post construction program. Allowance of these exclusions could result in runoff that will not receive mitigation for pollutants.

The renewal permit includes terms and conditions that evolved from extensive discussion with permittees regarding permanent Control Measure for roadway projects. This broad based discussion originated from Division compliance oversight activities which noted that permittees did not consistently include permanent Control Measures on roadway projects that involved existing roads. The Division provided information to permittees on this topic via memos dated March 14, 2011 and another January 20, 2012. The January 20, 2012 memo stated that the Division acknowledged that the permit lacked clarity regarding the requirements for control measures for roadway redevelopment projects and the memo stated that the Division intended to limit oversight of the post construction Control Measures for the remainder of the permit term. The memo further described the limits of Division oversight in this program area. The Division has determined that there are project scenarios, which add impervious area to existing roadway, that are reasonable to exclude from the post construction requirements. The exclusions were developed based on permittee discussion and feedback during the Water Quality Forum-MS4 work group meetings.

A key aspect of stakeholder concern involved the economics of adding permanent Control Measures to address each roadway project because linear projects do not typically have access to land outside of the right of way for more cost effective Control Measures. Stakeholders provided narrative examples of projects where Control Measures could cost more than, or a substantial portion of, the roadway project and this cost would lead to fewer roadway and related roadway safety projects to be completed. Specifically Douglas County provided a memo to the Division on August 30, 2013 titled Permanent Water Quality: 100% Water Quality Capture and Treatment Scenario. The memo "provides a summary of permanent water quality improvements for a hypothetical intersection reconstruction project located in Douglas County. The design and costs included in this memorandum are based solely on the conceptual design that

was completed at the request of Douglas County. The conceptual design was completed to develop comparative costs associated with various water quality infrastructure facilities." At issue is the cost to provide WQCV from new impervious areas from roadway projects. The conceptual design reviewed two scenarios for treatment. One scenario included treatment of other paved areas that were not part of the project, but were selected based on reduced cost to a similar cover type (pavement). The other scenario designed a treatment system that treated the new impervious roadway. The increased flexibility of trading areas to be treated allowed a much lower cost that a requirement to treat the new impervious area based on the conceptual project. In this renewal permit, a constrained site design standard is intended to provide for flexibility in these scenarios in lieu of specific conditions regarding trading redeveloped areas for existing developed areas. One reason a constrained site design standard was preferred over a trading concept is the difficulty in tracking existing developed areas relative to MS4 permit terms and requirements and variable timelines for when existing developed areas are redeveloped relative to making trading a permit requirement. The Division has and continues to encourage MS4 permittees to go beyond the MEP standard established in this permit by implementing Control Measures for currently developed areas.

The draft renewal permit includes reporting and recordkeeping requirements to track implementation of exclusions that could result in significant areas being excluded from requirements for future Control Measure for runoff from developed areas. The Division will use this information in future permit terms when evaluating the potential for water quality impacts and the practicability of additional requirements. Future options include incorporation requirements for a permittee to implement controls to address discharges for which no controls are in place or anticipated based on redevelopment requirements to reduce pollutant discharges to the MS4.

Exclusions in the draft renewal permit include:

- Pavement Management: pavement management has been defined and projects are clearly excluded from the requirements of Part I.E.4 of the renewal permit. The intention is to better define these projects as not being development projects.
- Excluded Roadway Redevelopment: Bike paths, paved shoulders and turn lanes were specifically mentioned by stakeholders as projects that do not add capacity to the roadway but increase safety and should be allowed without triggering permanent Control Measures. The renewal permit allows 8.5 feet of new impervious area to an existing roadway as an exclusion. This size allows the desired adjacent safety pavement projects and was determined to add less than one acre of impervious are per mile of roadway. This is intended to mirror the regulatory standard for controls on projects exceeding one acre based on assumption that when projects are spread out over a long linear area, the potential for water quality impacts on the receiving water and the practicability of control are reduced.
- Excluded Existing Roadway Areas for Roadway Redevelopment: The renewal permit also provides an exclusion from implementing permanent Control Measures that address existing impervious areas for redevelopment of existing roadways if the project does not double the width of the road. To be clear, a project that doubles the width of the road requires permanent Control Measures for the new impervious area. This exclusion is based on a determination that it may not be practicable in for certain projects to essentially retrofit in controls for the existing portion of a projects. However, for projects not meeting this exclusion the fact that the roadway is more substantially reconstructed would increase opportunities and practicability for controls.
- Underground Projects: Based on permittee feedback regarding underground utility work that does not permanently alter the surface, the renewal permit provides an exclusion for underground projects based on the reduced opportunity for implementing controls associated with the project.
- Large Lot Single Family Projects: The Large Lot Single Family Projects exemption that is provided in the Cherry Creek Basin regulation has been included in the renewal permit and applies to all permittees.
- Infiltration Conditions: The infiltration condition exclusion essentially identifies projects for which infiltration exists as a control measure. Therefore, this exclusion is not removing the requirement for a permanent Control Measure, but instead identifying projects for which the additional terms and conditions for oversight are not necessary due to the nature of the control measure. Because this exclusion is limited to sites without concentrated flow, it is very limited and is essentially intended for sites with only minor impervious areas, such as parks.
- Area Draining to Regional WQCV Facility: The renewal permit excludes projects that drain to a qualifying regional facility from the base design standard requirements. The Division recognizes the investment that some permittees have made in regional flood control with combined water quality structures. The renewal permit

provides minimum standards for the regional water quality facility for this exclusion to be applied. Since the regional WQCV facility is a permanent mechanism to remove pollutants, it is not necessary to require additional controls for projects meeting the exclusion. The permit does require controls to ensure the continued functionality of the regional facility consistent to what is required for new Control Measures.

Regulatory Mechanism: The Division has added clear minimum elements to be addressed in the regulatory mechanism. These minimum elements were developed by the Division based on audit findings and reviewing the completed Targeted Permit Questionnaires. The local laws for which the Permittee has authority to change shall not be considered constraints.

Regulator Exemptions: The Division added a section to address exceptions to the permittee's regulatory mechanism based on the Division finding allowances in regulatory mechanisms and program documents that would allow for exemptions, waivers and variances that could be implemented in such a way as to violate the permit requirements. The Division understands that exemptions, waivers and variances are a legal process in the permittee's code and ordinances and are relied on to address unforeseen circumstances without relying on revisions to regulatory mechanisms. However the Division has added clarity that exclusions, exemptions, waivers and variances cannot be implemented in a manner that creates a non-compliance with the permit requirements, and that processes must be in place to facilitate this result.

Control Measure Requirements: The renewal permit includes design standards for permanent water quality Control Measures. Control Measures may utilize infiltration, treatment, consumption, or evaporation to meet the standards for pollutant removal. The Division conducted compliance oversight activities and determined that the requirement for permittees to develop "water quality strategies" through "structural and non structural practices" was not sufficient to result in post construction runoff from new and redevelopment projects being controlled to the MEP, and resulted in some projects not receiving any effective controls. The Division noted a wide range of variability in the design strategy and how the strategy was applied. Many permittees stated in their program description document that UDFCD Volume 3 is used as a design manual. However UDFCD Volume 3 is a guidance document and permittees were often not clear in their program documentation if the manual was considered optional guidance, or if permittees had adopted only certain portion(s) of the manual (e.g., WQCV) as a regulatory standard. Additionally it was also noted in permit audits that permittees may be implementing different standards for redevelopment vs. new development even though a variable standard was not stated in the permittee's program description document. Therefore the permittee did not have a clear regulatory standard or design strategy. A lack of a clear design standard in the permit prevented some permittees from confirming that permanent Control Measures were included on site plans and that permanent Control Measures meeting a performance standard were installed.

Many permittees did, however implement WQCV as a minimum design standard for new development; and these permittees were at an economic disadvantage compared to permittees that did not have a design standard or implemented a variable standard. For example, a permittee that implemented planting street trees and street sweeping would have met the permit requirements for post construction structural and non structural controls, yet be implementing a different water quality standard and incurring a different cost compared to a permittee that required WQCV on all new and redevelopment.

- Base Design Standards: The renewal permit contains three options for based design standards for permanent water quality Control Measures. These options were developed based on review of existing manuals, EPA guidance, permittee discussion and stakeholder input. Permittees identified a preference for the renewal permit to provide flexibility in the design standard that considers variability in site conditions. The base design standard includes 100% WQCV, 80% TSS removal, and green infrastructure for 70% of WQCV. The implementation by permittees of the WQCV standard has demonstrated this approach is practicable. The other two options were developed to provide approximately equivalent water quality benefits. Permittees can allow Control Measures meeting more than one of these portions for a single development projects. Each control measure shall be evaluated independently to ensure it meets one of the three criteria.

  The treatment of WQCV references a minimum drain time of 12 hours based on evaluation of existing manuals that did not identify controls utilizing times of less than 12 hours. For some controls, additional time will be

necessary for proper design and implementation in accordance with best practices. The Division expects that permittees will reference UDFCD Volume 3 information or equivalent design guidance for the recommended drain times for the specific control measure, which for certain Control Measure, is more than 12 hours.

- Constrained Redevelopment Sites: This section has been added because the Division acknowledges that there are constrained sites under redevelopment; and flexibility is needed. It is anticipated that the constrained site standards will be implemented on highly urban or densely developed sites lacking the open area to include permanent Control Measures. For this reason, the renewal permit prohibits constrained sites standards to be applied on sites that are less than or equal to 85% impervious area.
- Prior Permit Term Standard: The prior permit term standard was implemented to allow for continuation of the requirement from the previous permit terms that permittee's ensure the long term operation and maintenance of controls implemented in accordance with those permits. Permittees are not required to retrofit these existing controls to meet the new standards in the renewal permit. The prior permit term standard is also applicable to projects currently under development or planning for which it is not practicable to revise plans to meet the new standards.

Site Plans: The Division has added this section to require the permittee to provide similar oversight to reduce the potential for inadequate Control Measures to be implemented. This requirement is the same level of oversight that exists in the construction program area. Some site plan requirements reflect the addition of minimum requirements for Control Measures that have been added to the renewal permit and other requirements were developed based on oversight activities conducted by the Division. The renewal permit clearly requires that site plans include design details for all Control Measures implemented and requires operation and maintenance documentation.

The Division has requirements for review of site plans because the previous permit did not include a requirement for site plan review. Plan review is a basic oversight step that the permittee must implement to prevent inadequate site plans from being implemented. Additionally, the cost of permanent Control Measures and difficulty of correcting mistakes after the project is completed warrant this minimum standard of oversight. The renewal permit requires site plan review for all covered development projects and requires that the permittee provide confirmation that requirements have been met. The Division has determined that reviewing all site plans is necessary for the permittee to have a program that is designed to prevent inadequate site plans from being implemented.

The Division has also added language regarding site plan modifications. The Division understands that reviewed site plans may change during the course of construction or require modification during long-term operation and maintenance. The renewal permit clearly allows the permittee to create a process for plan modifications and provides the minimum standards of modified plans or portions of plans to meet the same review standard for initial plans. The renewal permit also provides a requirement that plans must be modified before changes are implemented on the ground.

The Division has only applied this requirement to newly implemented Control Measures after December 31, 2014. The Division has at this time not made a determination that it is practicable to develop or modify plans for existing Control Measures. The Division will evaluate the effectiveness of MS4 permittees at ensuring the long term operation and maintenance of existing plans in the absence of this requirement and reevaluate this determination for the next permit term.

Construction Inspection and Acceptance: The Division has added a new aspect and clarification to an existing requirement. The previous permit required confirmation that Control Measures have been installed. However, the permit did not state the timeframe that permanent water quality Control Measure had to be operational after completion of a project or clearly require an inspection prior to accepting the control measure. The renewal permit clearly requires an inspection to confirm that the control measure(s) was constructed and includes a final as-built drawing. The Division intends that completed new and redevelopment permanent water quality Control Measures be operational. The Division also recognizes that some projects are completed in phases and in some cases, the permanent water quality control measure was planned to be completed during a subsequent phase. The previous permit did not prevent or address the potential scenario of the permanent water quality control measure never being

constructed or being delayed significantly if the subsequent project phases were abandoned or delayed. This scenario would create the potential for a completed phase of a new or redevelopment project to not be served by a required permanent water quality control measure. The renewal permit addresses this gap and places a limit of one year for the permanent water quality Control Measure to become operational.

Post Acceptance Oversight: The Division has added a new aspect to an existing requirement. Compliance oversight activities conducted by the Division indicated that minimum standards were needed in the renewal permit because flexibility to establish minimum standards was not an adequate method to minimize pollutants to the MS4 from new and redevelopment. Although the previous permit required that the permittee develop and implement a long-term operation and maintenance program, the permit did not require field inspection at a minimum frequency nor did it include a minimum standard for inspection oversight. Minimum standards therefore varied across permittees. Some permittees committed to inspecting all permanent water quality Control Measure yearly, others committed to inspecting 10-20% of the permanent water quality Control Measures a year and some permittees implemented a 5 to 10 year inspection rotation.

The previous permit did not foster a level economic environment among permittees. Because permittees could establish their own oversight procedures and frequency, the economic burden of oversight varied greatly across permittees. Permittees could meet the permit requirements with one inspection during the permit term and permittees that provided a more frequent inspection schedule and robust compliance program were at an economic disadvantage. Compliance oversight activities conducted by the Division indicated that most permittees were inspecting a portion of permanent water quality Control Measures. The renewal permit establishes a minimum inspection frequency of once during the permit term for permanent water quality Control Measures.

The renewal permit also provides for an alternative process for oversight of Control Measures serving an individual residential property. The exclusion was added based on stakeholder input that permanent water quality Control Measures on individual residential lots were generally vegetative Control Measures such as grass buffers and swales. Stakeholders expressed that platting and zoning regulations and processes are adequate to address long-term operation and maintenance of these “soft” Control Measures on individual residential properties without the regulatory burden of including these structures in the minimum inspection schedule of the renewal permit.

Enforcement Response: The Division has added new aspects to an existing requirement because of the iterative nature of MEP. The previous permit allowed the permittee wide flexibility in developing and implementing procedures for enforcement of Control Measures. The Division conducted oversight activities of the post construction program and noted findings related to the lack of enforcement response even when the permittee documented an enforcement response in the regulatory mechanism or program description document.

Tracking: The tracking requirement now addresses Regional WQCV Facilities, as discussed above.

Co-regulating MS4 permittees: The Division has expressly allowed co-regulating MS4 permittees to enter into an agreement for implementing permanent Control Measures for projects that overlap the co-regulating permittee’s jurisdictions. This is similar to the allowance added to the Construction Sites Program. Stakeholder discussion indicated that projects that occur across multiple jurisdictions or overlap jurisdictions are subject to multiple inspection standards and requirements; and place an unreasonable burden on the owner/operator in meeting different standards and requirements for the same project. Feedback indicated that both permittees and the construction industry wanted a mechanism in the permit that would allow co-regulating MS4 permittees to enter into agreements that would allow the project to adhere to one set of standards and requirements. The language in the renewal permit is intended to allow such arrangements between co-regulating MS4 permittees for overlapping projects, as long as an agreement between the entities in place for one or more MS4 permittees to allow another permittee’s post construction standards to be implemented. The renewal permit does not require any MS4 permittee’s to enter into such agreements.

Oversight and Response Record Keeping: The Division has added requirements for documenting oversight and response for covered development projects to clarify the requirements under the previous permit for maintaining

records. The Division conducted oversight activities and noted documentation and follow up variation among permittees that hindered the effectiveness of the post construction program. For example, during oversight, the Division noted that some permittees did not have an effective mechanism of noting deficiencies of the permanent water quality Control Measures and of following up on deficiencies. Inspection documentation did not universally provide prompts to indicate if the structure was initially constructed according to the approved plans, or if the functional elements of the control measure were operating according to the approved plans. In one specific example, the Division noted that the permittee limited the inspection to certain aspects of the control measure and did not note that the inlet to a structure was clogged thereby allowing stormwater to by-pass the structure. The renewal permit provides the minimum inspection documentation requirements in the corresponding recordkeeping section.

5. Pollution Prevention/Good Housekeeping for Municipal Operations

This program area has been significantly restructured and includes new requirements and clarification or expansion of existing requirements reflecting the iterative nature of MEP and in response the oversight activities conducted by the Division. The renewal permit separates the requirements into covered municipal facilities and covered municipal operations. The Division identifies a different standard for facilities based on practicability for plans and oversight based on the more fixed nature of pollutant sources and constrained nature of the sites.

Control Measure Requirements: The renewal permit includes this section to clearly link control measure requirements to the regulatory standard to minimize the discharge of pollutants to State waters from municipal operations.

Municipal Facility Runoff Control Measures: The Division has added new aspects to an existing requirement to provide clear minimum requirements for municipal facilities that must be addressed by the permittee. For example, the renewal permit specifically includes, "solid-waste transfer stations where waste and recyclables are briefly held prior to further transport," whereas the previous permit included "outdoor storage areas" as a general category. This increased specificity is because the Division intends for the permittee to examine each facility and ensure Control Measures are appropriate for the specific facility. The Division determined that the categories in the previous permit were too general and potentially created a scenario where activities would be combined and specific Control Measures may be overlooked or not documented in SOPs. This section of the permit does not require the permittee to create new municipal facility runoff control plans. Existing SOPs can be used to meet the requirements of this section, and modified if necessary to address any requirements not previously addressed.

The renewal permit also specifies the minimum categories of Control Measures that must be implemented. This is to provide clarity that the permittee is not limited to certain solutions or management techniques to minimize pollutants.

Bulk storage: This section includes requirements for bulk storage, which were not previously included. The Division noted during compliance oversight activities that some permittees did not provide secondary containment or other controls for bulk storage. The failure to implement controls for these pollutant sources was intended by the Division to be a violation of the previous permit requirements; however lack of clarity resulted in this condition being prevalent. Specific observations included magnesium chloride bulk storage and waste oil storage. The Division has determined that secondary containment is practicable because this is an existing requirement in industrial activities in Division stormwater discharge permits. Bulk storage is defined in the permit and pertains to the primary source storage (i.e. containment to be drawn from or added to) of material. Bulk fuel storage or "silos" of magnesium chloride are bulk storage examples. Electrical, operating, or manufacturing equipment, motive power containers, a tank of magnesium chloride on an application truck, and ancillary product piping, are not considered bulk storage. The containment in direct contact with the bulk material is the primary containment. Secondary containment is the back-up containment to the primary containment. The requirement is for secondary containment or equivalent that is adequate protection so as to contain all spills and prevent spilled material from entering State waters. Examples of secondary containment or equivalent controls include impervious bermed areas, double walled tanks, storage lockers and buildings with built in containment, discharges to a sump, and structural or non-structural Control Measures. A compliance schedule was added for the bulk storage requirements. Prior to the due date in the compliance schedule, the permittee remains responsible for complying with previous permit requirements for preventing or reducing pollutants in runoff from bulk storage.

Municipal Facility Inspection Procedures: The renewal permit includes inspection procedures that are consistent with the current CDPS COR900000 permit for Industrial Stormwater Discharges to meet MEP. The Division determined through compliance oversight activities and review of other permits and permit guidance, that an annual inspection meets MEP for municipal facilities. The Division considered a quarterly visual observation of stormwater discharges, which is in the COR900000 permit for Industrial Stormwater Discharges and in the Utah General Permit for MS4 discharges, and may review this requirement in future permit terms. The language from the Utah General Permit is provided as reference:

"At least once per quarter, the Permittee must visually observe the quality of the storm water discharges from the "high priority" facilities (unless climate conditions preclude doing so, in which case the Permittee must attempt to evaluate the discharges four times during the wet season). Any observed problems (e.g., color, foam, sheen, turbidity) that can be associated with pollutant sources or controls must be remedied to prevent discharge to the storm drain system. Visual observations must be documented and records kept with the SWMP document. This inspection must be done in accordance with the developed SOPs. The inspection report must also include any identified deficiencies and the corrective actions taken to remedy the deficiencies."

Minimum inspection procedures have been paired with minimum inspection documentation requirements in the corresponding recordkeeping section. Note that a record is required of the field condition where stormwater is discharged from the site. The Division has added these requirements because the previous permit did not include minimum standards for inspection documentation. The Division conducted oversight activities and noted documentation and follow up variation among permittees that hindered the effectiveness of the Municipal Operation program. The additional clarification and requirements of the municipal operations program warrant this minimum level of information on inspection documentation that is similar to the IDDE, Construction and Post Construction program areas.

Municipal Operations and Maintenance Procedures: The Division has provided additional detail in the permit for this requirement. The Division addressed this requirement previously by requiring a One-time Operating Procedures submittal that included the municipal operations that are now listed in the renewal permit. The renewal permit includes a requirement for Control Measures to minimize the discharge of pollutants associated with removal of sediment, debris, and other pollutant sources from the MS4. Operations may be grouped together by type, and procedures may be developed that address each group.

Additionally the renewal permit includes a new requirement for Control Measures associated with removal of sediment, debris, and other pollutant sources from the MS4. This requirement specifically originated with feedback to the Division from operators seeking guidance reading dredged material from post construction structures and MS4 infrastructure.

Nutrient Source Reductions: The Division has added this section in accordance with the requirements for MS4 permittees in Colorado Water Quality Control Commission Regulation 85 (Regulation 85). The renewal permit requires permittees to identify the sources of nutrients and the renewal permit only includes sources associated with fertilizer as a minimum sources for permittees to evaluate. The Division will review sources identified by the permittee and may modify this section in future permit terms as appropriate. Regulation 85 clearly allows permittees to participate in a collaborative program and apply the program to the permittee's jurisdiction. The Division encourages and recommends that permittees collaborate on the nutrient-related requirements in the renewal permit and has provided a timeframe in the compliance schedule that would allow such collaboration.

Training: The Division has added new aspects to an existing requirement. The renewal permit includes a requirement to train employees that will conduct inspections. Training employees to conduct inspections is a companion requirement based on the Division adding a municipal facility inspection requirement in the renewal permit.

F. Other Terms and Conditions

The conditions for Resources and Special Provisions for Non-Standards MS4s have been deleted. The following identifies changes made from the previous permit:

1. **Discharges to Waters with Total Maximum Daily Loads (TMDLs)**: Minor changes from previous permit to streamline language.

2. **Monitoring:** Regulation 61.8(4) states that "any discharge authorized by a discharge permit may be subject to such monitoring, record-keeping, and reporting requirements as may be reasonably required in writing by the Division." It is the Division's standard practice to include monitoring requirements for discharges to segments on the 303(d) List of Water-Quality-Limited Segments Requiring TMDLs when the discharge may contribute to the impairment for that segment. This facilitates having information available to characterize loads as part of development of a TMDL. The Division has evaluated including requirements in the renewal permit consistent with this practice, as discussed below. Based on this evaluation, the Division has provided three monitoring options in the renewal permit. The Division is seeking comment on the three options or additional options for consideration by the Division. The Division will review comments to the renewal permit and make a final determination on the required monitoring requirements in the renewal permit. The Division considered both wet and dry weather monitoring options and decided to focus on dry weather for this permit term. At this time pollutants that are known contributors to water quality impairment expected to be contributed primarily through wet weather discharges, such as nutrients, are expected to be characterized through the requirements contained in Regulation 85 and controlled through the practice-based controls in the five program areas of the permit. This decision will be reviewed during subsequent permit renewal activities.

   The Division engaged in substantial internal and external discussion regarding dry weather monitoring for the renewal permit and identified E. coli, arsenic and selenium as parameters of impairment for which MS4s could be significant contributors of pollutants warranting further characterization. The Division limited the evaluation of potential monitoring requirements to discharges to segments identified as impaired for these parameters on the current 303(d) list for which TMDLs have not yet been developed. It was identified that monitoring was a potential option for characterizing these discharges and providing data needed for completing TMDLs for the segments. This information could inform decisions regarding WLAs for MS4s, and the practicability for controls on the pollutants in discharges.

   Arsenic: The Division has identified through monitoring data (e.g., construction dewatering and groundwater discharge permits) that arsenic is often elevated in groundwater in impaired watersheds. Because groundwater often discharges to MS4s (e.g., infiltration, pumping, drains), arsenic is potentially present in MS4 discharges. However, rulemaking is scheduled to evaluate and potentially revise Arsenic standards in Colorado, which if adopted would likely result in revisions to segments identified on the 303(d) list. Therefore, the Division decided not to include required monitoring for Arsenic in the draft renewal permit. The Division is specifically seeking comment on this approach.

   Selenium: Selenium is one of the most common causes of impairment in Colorado. Elevated levels of selenium in state waters are known to be associated with land use and development activities in areas with surficial selenium deposits. Infiltration rates and conditions on developed land can be modified from what occurs naturally, due to activities such as landscaped watering, nitrate additions from fertilizers, and the presence of unlined water features. Selenium in underlying shale deposits can then be mobilized and subsequently transported to receiving waters via subsurface flow, including infiltration to MS4s. Another urban source of selenium contribution via an MS4 discharge is groundwater dewatering, such as via sump pumps installed in areas where urbanization has occurred in flood plains, where groundwater is high, or where land use opportunities such as underground parking necessitates active groundwater dewatering. Known control measures that have been implemented by municipalities and effectively reduce discharges of selenium include lining previously unlined golf course water features, restricting underground structures in areas of high groundwater, and lawn watering restrictions typically implemented for conservation purposes. The Division has included information regarding possible sources of selenium in MS4 discharges and possible control measures solely to inform the consideration of monitoring requirements. The Division is not contemplating establishment of an MEP standard for controls in this permit term. The Division understands that sources such as irrigation return flow are exempt from the definition of point source, and control measures often would not be feasible to consider until redevelopment opportunities arise.

The Division presented a selenium monitoring concept at the pre public notice meeting, based on terms and conditions included in the Colorado Springs permit (COS000004), which authorizes discharges from the MS4 to segments impaired for selenium. Extensive input was provided from stakeholders that inclusion of such a monitoring requirement would be unreasonable. As a result the Division has further evaluated the stakeholder information and the current need for information on selenium data. The Division has determined that selenium monitoring is a lower priority than E coli at this time due to uncertainty regarding practicability of control and that ambient data can be used to characterize urban contributions. The Division intends to reevaluate this determination in the future.

E. coli: The Division identified that the presence of E coli in dry weather flows above the water quality standard has resulted from sanitary sewer seepage and/or cross connection into an MS4. E coli is potentially present in MS4 dry weather discharges, and has been shown to contribute to exceedances of stream standards through the development of TMDLs. The Division determined it is reasonable to require monitoring for E coli in MS4 permits as reflected by the monitoring requirements in Denver and Colorado Springs individual MS4 permits (COS000001 and COS000004), as well as monitoring that was required through Illicit Discharge detection and elimination program implementation for MS4s discharging to Segment 14 of the South Platte to identify potential sources of impairment, and to identify specific portions of the MS4 for which infrastructure repairs/improvements may be needed. In other cases municipalities have collected dry weather discharge E coli data and provided it to the Division for the development of TMDLs in advance of data collection being required through the permit.

The Division as this time has decided to include three options of requirements for monitoring to address E coli discharges in the draft permit. The decision to move forward with draft language regarding two of the options which would increase the monitoring requirements over the current permit is based on the following:

- The Division has completed two TMDLs for E coli impaired waters for which discharges from MS4s were identified as significant contributors of E coli to the impaired waters that required WLAs and the implementation of additional controls. Refer to discussions in Part IV.B of the fact sheet for COSPBO02 and COSPUS14. In both these cases, monitoring data was instrumental to the Division in completing the TMDL and identifying the sources contributing to impairment.
- Illicit Discharges to MS4s of sanitary sewage has been identified as a significant source of E coli that is discharged to state waters from the MS4. The level of control that was required through the provisions of the illicit discharge detection and elimination program in previous permits, and obtained through implementation of those provisions, has not been adequate to prohibit, detect, and eliminate these discharges and their contributions to impairment. Stakeholders from two communities with WLAs in the above referenced TMDLs both identified that the permit should require removal of these sources. In stakeholder discussions it was mentioned that the Division should proactively require elimination of these sources through a sanitary sewer operation and maintenance program. This could be similar to requiring implementation of capacity, management, operations, and maintenance (CMOM) programs to provide a more robust requirement to require better manage, operation, and maintain of collection sanitary sewer collection systems, including investigation and response to sanitary sewage sources to the MS4. The Division has identified at this time that focusing on assessing discharges to identify were MS4 discharges may be contributing to impairment is more appropriate.
- The Division has identified the TMDLs for E coli as high priorities and therefore expects that the timing for requiring monitoring would be appropriate.

The Division presented a monitoring concept at the pre-public notice meeting that included E coli and selenium monitoring in the renewal permit. Stakeholder written input following the pre public notice was as follows: For E. coli monitoring, stakeholder input reflected concerns with E coli monitoring and suggested other methods of detecting sanitary sewage that would be more efficient use of local government funds. Specifically, smoke testing of the sanitary sewer system and video inspection of storm sewers. Additional concerns regarding E coli reflected the lack of controllability of a common source (i.e., wildlife) and that since it is not feasible to control wildlife, monitoring is not an efficient use of limited local government funds.

Following the pre public notice meeting, the Division requested that permittees complete a voluntary survey regarding storm sewer outfall mapping and monitoring. Approximately half of the COR090000 and COR080000 permittees

submitted a completed survey. All respondents indicated that the required mapping storm sewer activity was completed. Approximately half of the respondents indicated that they were conducting dry weather outfall screening, which is not required by the permit, and did not have an economic barrier from continuing some level of dry weather outfall screening. Additionally, approximately half of the respondents indicated that they know how many outfalls that discharge to segments impaired for E coli and Selenium (as discussed above, the original Division concept included Selenium monitoring, which has not been included in the draft renewal permit). Permittees identified a range of outfalls from 0 to 193, with approximately half of those respondents having less than 30 outfalls that discharge to segments impaired for E coli and Selenium. Approximately 25% of respondents knew or had an estimate of how many outfalls into segments impaired for E coli and Selenium had dry weather flows; and approximately 25% of respondents have outfall monitoring data for E coli and/or selenium. The Division anticipates that since selenium has not been included in the draft permit, even fewer outfalls will be affected by an E coli monitoring requirement. Additionally, outfall screening and some level of monitoring should not have any economic impact on the portion of current permittees who are already conducting those activities.

Three Monitoring Options: The three options are provided as stand-alone options in the permit and Option One is repeated in Option 2 and 3.

Because the monitoring requirements proposed in Option 2 and 3 are focused on potential sources most likely to occur in existing urbanized areas, the proposed monitoring applies to the permit boundaries in effect by the effective date of the renewal permit and does not include Growth Areas. Consistent with Division practice, the renewal permit establishes monitoring and reporting requirements under Options 2 and 3 until such time as the TMDLs is complete and WLAs have been determined. It is the Division's intent to use information gathered during the permit term to evaluate trends and identify the scope and scale of E coli in MS4 discharges covered by this permit. The information will also be used to prioritize areas of the program and to assess the effectiveness of program components such as Illicit Discharge detection and elimination requirements..

For Options 2 and 3, the permittee’s certification will identify the segments impaired for E coli that will be subject E coli require dry weather outfall screening.

Option One: consists of the language in the previous permit that allows the Division the option addressing monitoring on an individual permittee case by case basis. With this requirement, the Division may include monitoring in individual permittee certifications as reasonably required. The Division decided to include this option in the draft permit due to feedback from stakeholders that Options 2 and 3 may be unreasonable. The Division is actively seeking input on Option 1 which is the same language in the previous permit to be able to effectively evaluate the status quo approach in contrast to the other options developed for the draft permit.

Option Two: The second option includes the requirement in Option One and adds a requirement for the permittee to conduct dry weather outfall screening to identify sources of E coli for outfalls that discharge to portions of segments that are impaired for E coli. Option Two reflects permittee input following the pre public notice meeting that there it would be more effective to focus efforts on identifying and removing Illicit Discharges. Stakeholders also provided feedback that analytical monitoring for E coli may not be the most effective options for identifying sanitary sewage sources. Other techniques identified included using cameras or smoke testing the sanitary sewer systems. Option two allows the permittee to focus on identifying sanitary sewage contributions in the storm sewer system instead of characterizing E coli contributions.

Completion of all actions required for Option 2 is December 31, 2018. The renewal permit requires the permittee to develop and implement methodologies to identify outfalls with dry weather discharges and then perform at least two screening of those outfalls. Permittees are required to identify outfalls of concern during the screening, and then perform monitoring on those outfalls. The permit includes flexibility for the permittee to identify the method of monitoring determined to be appropriated for their system and community, including non-analytical methods such as using cameras to identify infiltration or cross connection.

Permittees may use previous screening and monitoring efforts to meet this requirement. The permit requires the previously conducted action must have occurred after March 10, 2008 to help ensure the information is still relevant.

Option Three: The third option includes the requirement in Option One and adds a requirement for the permittee to conduct dry weather outfall screening to identify potential significant sources of E coli for outfalls that discharge to portions of segments that are impaired for E coli. The Difference between option 2 and 3 is that option 3 requires water quality analysis for outfalls of concern with a focus on characterizing the contributions to the receiving stream with a reliance on analytical monitoring. Deadlines are included in the compliance schedule to require progress towards completing all required actions during the permit term.

The renewal permit allows for the permittee to sample outside of a required calendar quarter as needed to avoid irrigation ditch flows comingling with other discharges from the MS4. Also, based on permittee concern that water quality analysis costs were unknown and potentially extreme, the renewal permit provides a mechanism to link the number of samples to the MS4 population. This is based on feedback that smaller MS4 communities with fewer people have fewer financial resources. The Division has linked one sample per 1000 people of population in the MS4. This provides economic parity for sampling costs, which was identified as a concern by some stakeholders.

Both Options 2 and 3 require flow quantification to determine if the dry weather flow is less than 5 gpm. Visual estimate of a dry weather flow is not adequate for this exclusion. The renewal permit has purposely provided language for the permittee to exclude dry weather flows from irrigation return flows from agricultural land and irrigation ditches. The Division acknowledges that some permittees have irrigation ditches that provide service to city properties and the ditch network is intertwined with the storm sewer network. Stakeholder input to the Division expressed that the permit should not require sampling of irrigation return flow and the Division clearly stated that the intent of the monitoring provision is to exclude contributions from irrigation return flows. The renewal permit language includes a benchmark of 90% irrigation return flow because the Division believes this value will identify flow in conveyances primarily used for agricultural irrigation water supply or return flow.

3. **General Monitoring and Sampling Requirements:** This section has been added and is paired with the monitoring requirements that have been added in the renewal permit.

G. Program Review And Modification

This section has been substantially edited. The requirements related to Division Review of Programs and Reports and Demonstration of Adequacy have been removed and the aspects of program review and approval and is now limited to the Annual Program Review conducted by the permittee.

H. Compliance Schedule

This section has been added to the renewal permit. The Clean Water Act (40 CFR 122.34(a)) and Regulation 61.8 (11)(a)(i) require development and implementation of the permittee's CDPS Stormwater Management Program as required by the permit in accordance with the Compliance schedule tables. Many of the permit requirements are not effective immediately. A compliance schedule consolidates the information regarding the compliance dates for permit requirements.

Compliance dates are not provided in the specific permit section, unless the compliance date is the same for new and renewal permittees. There are different compliance schedules for New and Renewal permittees because the due dates are typically different with new permittees receiving an extra year. This reflects the time for new permittees to become permitted the first year. In many instances, a compliance schedule item for new permittees reflects an expansion of current program requirements and is not a completely new requirement. The compliance schedule only requires notification in the annual report that a requirement has been completed and does not require the submittal of reports. This permit includes an extra column titled ICIS Codes so that compliance elements can be internally coordinated better with the ICIS reporting.

I. Reporting Requirements – Annual Report

This section has been updated to reflect the reporting requirements of the renewal permit. The Division intends to continue to provide an Annual Report form. The intent of the Annual Report is to provide a representative summary to the Division that allows the Division to gain a basic understanding of the permittee's program status and implementation. The Annual Report also includes requirements to provide basic quantities of certain elements (e.g., number of construction sites, inspections, and enforcement actions) that allow the Division to gain insight on the scope and scale of a program area. The Division has attempted to limit the basic reporting items and includes a focus on any exceptions implemented by the permittee. For example, the annual report requires the permittee to provide a list of list of construction activities affected by the Decreased Minimum Scope element. If the permittee does not implement the mechanisms in the permit that allow reduced oversight, then the permit has a reduced reporting requirement. The annual report items are expected to be reported based on when the program area is required in the compliance schedule. For example, the annual report requires a summary of monitoring activity requirements and results with a cumulative summary report, yet the compliance schedule does not require the Identification of Dry weather Flows for New Permittees to be completed until December 31, 2016, therefore the Division does not expect the permittee to address this item in the Annual report submitted prior to March 10, 2017.

J. Definitions

Many definitions have been added to the renewal permit to increase clarity about the intent of term in the context of the permit and align with new permit language.

K. General Requirements

1. Signatory Requirements: This section has been modified to reflect the requirements in Regulation 61. The previous permit did not include the complete language in Regulation 61, which resulted in unclear expectations regarding the signatory authority and duly authorized representative. Division compliance oversight activities noted that the legal contact or duly authorized representative may not have the proper authority in the organization to sign reports submitted the Division. The duly authorized representative is required to have responsibility for the overall operation of the regulated facility, yet some permittee's organizational chart clearly showed that the legal contact did not have responsibility for the overall operation of the regulated facility. For example, a permittee may have designated the Public Works Director to be the legal contact or duly authorized representative however the Public Works Director may not have authority over the Planning Director under whose oversight, construction plans are reviewed and approved. The Division expects that in most instances, the legal contact or duly authorized representative will be an elected official or the City/ County Manager.

2. Retention of Records: This section has been updated to reflect changes in required recordkeeping and program description documentation.

VIII. STANDARD CONDITIONS

Part II of the permit has been updated with new or revised standard language that is in all permits issued by the Division.

A. Notification Requirements

This section was formally titled Permittee Responsibilities and now contains the following subsections:
1. Notification to Parties: updated contact information for oral and written notification
2. Change in Discharge or Wastewater Treatment: new section
3. Special Notifications Definitions: new section
4. Non-Compliance Notification: updated language
5. Other Notification Requirements: new section
6. Bypass Notification: new section
7. Upsets: no new requirements from pervious permit
8. Discharge Point: new section
9. Proper Operation and Maintenance: updated language

10. Minimization of Adverse Impact: Updated language
11. Removed Substances: New section
12. Submission of Incorrect or Incomplete Information: updated language
13. Bypass: new section
14. Reduction, Loss, or Failure of Treatment Facility: new section

B. Permittee Responsibilities

1. Inspections and Right to Entry: updated language
2. Duty to Provide Information: no new requirements from pervious permit
3. Transfer of Ownership or Control: new section
4. Availability of Reports: updated language
5. Modification, Suspension, Revocation, or Termination of Permits By the Division: updated language
6. Oil and Hazardous Substance Liability: no new requirements from pervious permit
7. State Laws: no new requirements from pervious permit
8. Permit Violations: New section
9. Property Rights: no new requirements from pervious permit
10. Severability: no new requirements from pervious permit
11. Renewal Application: new section
12. Confidentiality: new section
13. Fees: updated language
14. Duration of Permit: new section
15. Section 307 Toxics: new section
16. Effect of Permit Issuance: new section

IX. COMPLIANCE HISTORY

The Division conducted compliance assurance activities for approximately 25 of the 57 permittees. Compliance assurance activities included: 10 full program audits, one program audit targeting the construction and post construction programs and 16 construction site screening inspections. In additional to these field-based compliance assurance activities, the Division reviewed file documentation for several permittees. From these activities, the Division was able to identify several non-compliance issues that appeared to be common across permittees regardless of size of the community or apparent robustness of the permit program. The Division has initially anticipated that Division audits would be reviewed by other permittees to facilitate a self-audit and result in permittees correcting self-identified non-compliance issues. However, permittee feedback indicated that permittees were unlikely to make changes to their programs in the absence of the Division conducting a compliance assurance activity and tailoring the corrective actions to each permittee's program.

Because of the level of resources involved in full program audits for all permittees during the permit term, compared to the Division's available resources, the Division developed a Targeted Permit Questionnaire. This questionnaire targeted specific program elements that were identified as common sources of non-compliance. The questionnaire was not a full audit. The questions were based on the common findings that were identified during permit audits conducted by the Division in 2010 and 2011. The questions were developed to help the Permittee determine compliance with the previous permit. The Division provided permittees six months to complete the questionnaire and make the required program changes. The Division intended to allow the permittee time to correct the non-compliance items to avoid submitting a notice of non-compliance; providing the permittee was able to correct the non-compliance items before the due date, which was 6 months after the distribution of the questionnaire.

The Targeted permit questionnaire included clarifying language for the permittee to conduct a targeted self-audit from the perspective of a Division audit activity. Much of the clarifying language provided in the questionnaire, has been expanded and incorporated into the permit renewal.

X. REFERENCES

A. Colorado Department of Public Health and Environment, Water Quality Control Division Files, audited permittees.

B. Colorado Department of Public Health and Environment, Water Quality Control Division, stakeholder input following pre public notice meeting, May 6, 2013.

C. Colorado Department of Public Health and Environment, Water Quality Control Division, Total Maximum Daily Load for:
1. COSPBO02: Boulder Creek from North Boulder Creek to South Boulder Creek. E coli
2. COSPMS04: Barr Lake and Milton Reservoir, Dissolved Oxygen
3. COSPMS04: Barr Lake and Milton Reservoir, pH TMDL
4. COSPMS04: Barr Lake and Milton Reservoir, Implementation Plan for pH TMDL
5. COSPUS14: South Platte River Bowles Avenue to Burlington Ditch, E coli TMDL
6. COGUUN12: tributaries to the Uncompahgre River, Selenium TMDL,
7. COGUUN4b: Uncompahgre River from LaSalle Road to Confluence Park, Selenium TMDL,
8. COGUUN4c: Uncompahgre River from Confluence Park to the Gunnison River, Selenium TMDL

D. Colorado Discharge Permit System Regulations, Regulation 5 CCR 1002- 61, Colorado Department of Public Health and Environment, Water Quality Control Commission, effective September 30, 2009.

E. Regulations Controlling Discharges to Storm Sewers, Regulation 5 CCR 1002-65, Colorado Department of Public Health and Environment, Water Quality Control Commission, effective May 30, 2008.

F. Cherry Creek Reservoir Control Regulation, 5 CCDR 1002-72, Colorado Department of Public Health and Environment, Water Quality Control Commission, effective November 30, 2012.

G. Nutrient Management Control Regulation, Regulation 5 CCR 1002-85, Colorado Department of Public Health and Environment, Water Quality Control Commission, effective September 30, 2012.

H. Environmental Protection Agency, MS4 permit Improvement Guide, April 2010.

I. State MS4 General Permits. Review of portions of the following permits: Arkansas (2009), California 2013), Kansas (2004), Ohio (2009), New Jersey (2009), New York (2010), Pennsylvania (2002), Texas (2007), Utah (2010), Vermont (2012)

Michelle DeLaria
November 1, 2013