



**Colorado Discharge Permit System (CDPS)  
 Fact Sheet to Permit Number COR400000  
 Master General Permit for Stormwater Discharges Associated with Construction Activities**

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**I. TYPE OF PERMIT**

**A. Permit Type:**

This is a renewal of the master general permit for stormwater discharges associated with construction activities and specific non-stormwater discharges associated with construction activities. The types of discharges authorized under the permit are described in Part I.A.1. and I.A.2. of the master general permit.

**B. Discharge To:**

Waters of the State of Colorado.

**II. GENERAL DISCHARGER INFORMATION**

**A. SIC Code:**

1521 (General Contractors-Single Family Houses), 1522 (General Contractors-Residential Buildings, other than Single-Family), 1531 (Operative Builders), 1541 (General Contractors-Industrial Buildings and Warehouses), 1542 (General Contractors-Nonresidential Buildings, other than Industrial Buildings and Warehouses), 1611 (Highway and Street Construction, except Elevated Highways), 1622 (Bridge, Tunnel, and Elevated Highway Construction), 1623 (Water, Sewer, Pipeline, and Communications and Power Line Construction), 1629 (Heavy Construction, Not Elsewhere Classified) and various other construction related SIC codes.

**B. Discharge Location:**





Discharges from specific permitted construction projects statewide.

**III. BACKGROUND**

As required under the Clean Water Act amendments of 1987, the Environmental Protection Agency (EPA) has established a framework for permitting municipal and industrial stormwater discharges. This framework is under the National Pollutant Discharge Elimination System (NPDES) program (Note: The Colorado program is referred to as the Colorado Discharge Permit System, or CDPS, instead of NPDES.) The Water Quality Control Division ("the division") has permit regulations (5CCR 1002-61) in place. These regulations require specific types of industrial facilities that discharge stormwater associated with industrial activity (industrial stormwater), to obtain a CDPS permit for such discharge. The regulations for these industrial facilities specifically include construction activities that disturb one acre of land or more. Construction activities that are part of a larger common plan of development which disturb one acre of land or more over a period of time are also included.

The permit also discusses necessary compliance with water quality standards. Water quality standards are promulgated through the Water Quality Control Commission's rulemaking process and established regulations, which are available to the public. The rule making process includes extensive public notice and public participation components. Compliance with some water quality standards is generally confirmed with laboratory analysis. However, compliance with narrative water quality standards found in Regulation 31.11, may be confirmed without laboratory sampling in some instances. For example 31.11(1)(a)(iii) addresses "...color, odor, or other conditions in such a degree as to create a nuisance or harm existing beneficial uses..."

**A. General Permits:**

The Division has determined that the use of general permits is the appropriate procedure for handling most of the thousands of industrial stormwater applications within the State.

**B. Industry Information:**

The types of industrial activities covered under this general permit include construction related activities that meet the definition of construction activity in the general permit (Part I.E.3.) and that discharge to state waters.

**C. Violations/Penalties:**

Dischargers of stormwater associated with industrial activity, as defined in the CDPS regulations (5CCR 1002-61), that do not obtain coverage under this or other Colorado general permits, or under an individual CDPS permit regulating industrial stormwater, will be in violation of the Clean Water Act (CWA) and the Colorado Water Quality Control Act, 25-8-101. For facilities covered under a CDPS permit, failure to comply with any CDPS permit requirement constitutes a violation.

**D. Performance History:**

In 2014 the division conducted approximately 90 construction stormwater inspections. There were approximately 360 inspection findings in total. Of the 360 inspection findings 202, or 77%, were findings related to control measure violations. Of the remaining 158 findings, 95 were related to errors in the Stormwater Management Plan (SWMP). As part of the renewal process for





this permit, the division’s compliance inspection findings were reviewed and considered when making changes to this permit.

**IV. SUMMARY OF MAJOR CHANGES SINCE LAST RENEWAL**

When determining changes to include in the permit, the division considered feedback from internal and external stakeholders.

On November 2, 2015, the division hosted two stakeholder meetings to share the division’s plans for the permit renewal, to hear what challenges were being faced by those who had to implement the permit requirements, and to hear stakeholder suggestions for improvements to the permit. The invitation to the November 2015 stakeholder meetings was extended to all active permittees at the time, as well as several industry groups, municipalities, consultants, and others who had expressed an interest in the permit to the division. Several stakeholders followed up the stakeholder meeting with informal written comments including: Colorado Contractor’s Association, Douglas County, Colorado Department of Transportation, CMS Environmental Solutions, and Altitude Training. All comments received were considered by the division during the development of the permit.

On October 24, 2016 the renewal permit was put on public notice and comments were accepted until December 16, 2016. Appendix I of this fact sheet provides the division’s response to comments received for the first public notice period.

On January 31, 2018 the renewal permit was public re-noticed with the limited scope of the following parts: Parts I.A.1.b.ii., I.B.1.a.ii.b., I.C.2.a.vii.i., I.C.4. I.E.1., I.E.20., I.E.25., I.E.26., I.E.33., and Part II. Public comments were accepted on the parts of the permit listed above until March 5, 2018. Appendix II of this fact sheet provides the division’s response to comments for the second special public notice period.

The following is a summary of the proposed major changes from the 2007 general permit that appear throughout the entire renewal permit. Discussion of changes to specific sections of the permit follow in the next section of this fact sheet.

**A. Restructuring and Reorganization:**

The renewal permit has had an overall restructuring and reorganization. This was done in order to add clarity by placing each type of requirement (e.g. Stormwater Management Plan, Control measures, etc.) in its respective section. The second special public notice also included restructuring and reorganization of Part II.

**B. General Permit Number Change:**

The renewal permit number changed from COR030000 to COR400000. This has been done to allow for additional certification issuance numbers, as the 2007 general permit number only had enough certification issuance numbers for approximately one year after the issuance of the renewal permit.

**C. Removal of Obsolete/Duplicative Requirements:**





The renewal permit removed obsolete/duplicative requirements. An example of this would be the paragraph in the 2007 general permit that allowed for uncontaminated groundwater discharges to land. The Division now has a Low Risk Discharge Guidance Policy that addresses discharges of uncontaminated groundwater to land without permit coverage.

**D. Incorporation of Effluent Limitation Guidelines**

The renewal permit incorporates the latest construction stormwater effluent limitation guidelines issued by the EPA and placed in the Code of Federal Regulation 40 Part 450, Construction and Development Point Source Category.

**E. Terminology Change:**

The renewal permit replaced the term Best Management Practice (BMP) with the term Control Measure. Regulation 61.2(9) defines best management practices as “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘state waters.’ BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.” Subsequent to the last construction stormwater general permit renewal process the EPA has been using the term “control measure” in stormwater permits. The permit uses the term “control measure” to be consistent with EPA and State terminology. The term “control measure” has a broader range of meaning than “BMP” since it includes both BMPs and “other methods.” The term “control measure” better describes the range of pollutant reduction practices a permittee may implement. For example, control measures may include the following, not all of which may be encompassed within the definition of BMP:

- o Specific pollution prevention practices for minimizing or eliminating the pollutants or constituents of concern in the discharge;
- o Specific behavioral practices for minimizing or eliminating the pollutants or constituents of concern in the discharge;
- o Narrative requirements to minimize pollutants or constituents of concern in discharges or the discharges themselves;
- o Structural controls including physical structures that provide treatment in place, such as regional detention facilities, silt fence, etc.

Please note: From this point forward, the organization of the fact sheet follows the order of the renewal permit to provide clarity to the reader. The changes to specific sections of the general permit have been explained below.

**Part I**

**A. COVERAGE UNDER THIS PERMIT**

**1. Authorized Discharges**

**a. Allowable Stormwater Discharges**

- i. Stormwater discharges associated with construction activity. The renewal permit, as with the 2007 permit, authorizes the discharge of stormwater associated with construction related activity that occurs at a wide variety of





facilities and locations. The following types of construction activity and/or discharges have been a source of confusion to permittees in the past, so they are further explained here.

- Construction activity at mining facilities: Where construction activities occur that exceed the one-acre threshold and where the discharges do not commingle with process water from the facility, discharges associated with construction activities at mining facilities need permit coverage and continue to be eligible for coverage under this permit. Construction of staging areas, access roads, pads for storage of auxiliary vehicles and equipment, and structures are examples of construction activities that occur at mining facilities.
- Construction activity related to oil and gas operations: Discharges associated with construction activities related to oil and gas operations continue to need permit coverage and continue to be eligible for coverage under this general permit. The federal Energy Policy Act of 2005 exempts nearly all oil and gas construction activities from federal requirements under the Clean Water Act’s NPDES stormwater discharge permit program. In January 2006, the Colorado Water Quality Control Commission held a hearing to determine what effects, if any, the change in federal law would have upon Colorado’s stormwater regulations. The Commission determined that the evidence presented in the hearing demonstrated that oil and gas construction sites are not significantly different from other construction sites, especially with potential sediment yield from disturbed areas. Oil and gas construction sites in Colorado that disturb one or more acres are still required to be covered under Colorado’s stormwater permitting regulations (Colorado Discharge Permit System (CDPS) regulation (5 CCR 1002-61.58)) In practice, oil and gas construction sites have the same requirements under this permit as do other types of construction. However, this permit contains some references to the federal Clean Water Act; generally, these references are not applicable to oil and gas construction sites to the extent that the references are limited by the federal Energy Policy Act of 2005. See Part I.G. of the permit.
- Discharges to Outstanding Waters: As in the past, discharges to outstanding waters are eligible for coverage under this permit. In accordance with Regulation (5 CCR 1002-31.8(1)(a)) outstanding waters “shall be maintained and protected at their existing quality.” In 1988, the Water Quality Control Commission adopted the “shall be maintained and protected at their existing quality” language and deleted previous “no degradation” language. These changes were made to clarify, as EPA had done through a change to the federal water quality standards rule, that activities affecting outstanding waters which results in only temporary or short-term changes in water quality may be allowed.

In 2016 the commission retained the requirement for outstanding waters to be maintained and protected at their existing quality, while adding an





additional flexibility in Regulation 31 (5 CCR 1002-31.8(1)(a)) that allows “short-term degradation of existing quality ... for activities that result in long-term or ecological or water quality benefit or clear public interest.” As noted in the Statement of Basis and Purpose, the commission did not intend this to change the division’s policy or procedures regarding determining the meaning of whether outstanding waters are being “maintained and protected at their existing quality.”

The division expects that compliance with the conditions of this permit will result in stormwater discharges being controlled to the extent that all receiving waters (including outstanding waters) will be maintained and protected at their existing quality as required by Regulation (5 CCR 1002-31.8(1)(a)). This means that all applicable water quality standards and antidegradation requirements, including the outstanding waters requirement, will be met. The division has increased the site inspection frequency requirement for discharges to outstanding waters to provide additional assurance that sites will be maintained in a compliant condition.

Historically, nonfederal discharges to outstanding waters have been likely to result in a long term ecological or water quality benefit or have otherwise had a clear public interest. Throughout this permit term, the division will evaluate whether this remains the case. Furthermore, the division will evaluate whether an explicit requirement is necessary in a future permit term that covered activities result in long term ecological or water quality benefit or otherwise have a clear public interest. The division will also consider if the terms of a future permit can ensure that there is no short or long term degradation of existing quality in outstanding waters from any covered activity.

The increased requirements for discharges to outstanding waters, including the increased site inspection frequency requirement would not apply to sites that have a receiving water that flows to an outstanding water.

A map of Colorado’s outstanding waters is available online at:

<https://www.colorado.gov/pacific/cdphe/clean-water-gis-maps>

- Construction support activities. The permit authorizes stormwater discharges from construction support activities that are dedicated to a single contiguous construction site.
- The renewal permit also adds masonry mixing stations to the currently allowable stormwater discharges from dedicated asphalt and concrete batch plants.

This includes concrete and asphalt batch plants and borrow or fill areas that produce earthen materials, such as soils, sand, and gravel. These batch plants and borrow areas can also be covered under the division’s sand







and gravel mining processing (and other nonmetallic minerals except fuel) general permit (COR340000). However, the division has determined that discharges from facilities that meet the criteria described in the renewal permit are appropriately covered under this general permit because they are dedicated to a single construction site. The division has also determined that benchmark sampling is not required for these types of sand and gravel facilities because they more closely meet the definition of construction activities than mining activities.

**b. Allowable Non-Stormwater Discharges**

- The renewal permit includes irrigation return flow as an allowable non-stormwater discharge because these types of discharges are exempt from being considered point source discharges under the CWA.
- Discharges of uncontaminated groundwater to land, which were previously considered allowable non-stormwater discharges, are no longer covered in the renewal permit. These discharges were removed because the division now has a Low Risk Discharge Guidance Policy, *Water Quality Policy 27 - Uncontaminated Groundwater to Land*. This policy requires the same conditions as the 2007 general permit and therefore removes the need for this condition in the general permit. This revision does not affect a permittee’s ability to dewater stormwater not comingled with groundwater discharges through appropriate control measures.
- The general permit conditionally authorizes discharges to the ground of concrete washout waste from washing of tools and concrete mixer chutes when appropriate control measures have been implemented. The permit prohibits the discharge of concrete washout waste from reaching a storm sewer system, leaving the site as surface runoff, or reaching a receiving water. Please note that the term receiving water has been defined by the general permit. The permit requires that a control measure for concrete washout waste be in place to prevent discharges of concrete washout waste from the site. The use of unlined pits to contain concrete washout waste continues to be a common practice in Colorado. The Division has further evaluated the need for a permit for discharge of concrete washout waste to the ground. The Division has determined that the use of appropriate Control Measures for on-site washing of tools and concrete mixer chutes would prevent any significant discharge to groundwater. Because pH is a pollutant of concern for washout activities, the soil must have adequate buffering capacity to result in protection of the groundwater standard, or a liner/containment shall be used. The following management practices are recommended to prevent an impact from unlined pits to groundwater:

- (1) the use of the washout site should be temporary (less than 1 year), and
- (2) the washout site should not be located in an area where shallow groundwater may be present, such as near natural drainages, springs, or wetlands





Where adequate management practices are not followed to protect groundwater quality, the Department may require discharges to unlined pits to cease, or require the entity to obtain alternate regulatory approval through notice from either the Water Quality Control Division or the Hazardous Materials and Waste Management Division.

2. Limitations on Coverage

This section has been added to the renewal permit for clarity. It has also been added to update the permitting with the most current stormwater permitting structure.

3. Permit Certification and Submittal Procedures

a. **Duty to apply**

This section has been added to the renewal permit for clarity. It has also been added to update the permitting with the most current stormwater permitting structure.

Common Plan of Development or Sale: The definition of “Common Plan of Development or Sale” in this version of the permit intentionally incorporates proximity boundaries. Specifically, Part I.E. of the general permit defines “Common plan of Development or Sale” as follows: “A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules, but remain related. The Division has determined that “contiguous” means construction activities located in close proximity to each other (within ¼ mile). Construction activities are considered to be “related” if they share the same development plan, builder or contractor, equipment, storage areas, etc. “Common plan of development or sale” includes construction activities that are associated with the construction of field wide oil and gas permits for facilities that are related.”

The division recognizes that multiple construction sites may be part of a common plan of development or sale. Specifically, Part I.A.3.a of the general permit provides a duty to apply for permit coverage for “Construction sites that are part of a common plan of development or sale;”

The renewal permit adds a requirement for public emergency related sites to apply for coverage under the general permit no later than 14 days after the commencement of construction activities. This requirement was added in order to provide flexibility for those sites that must immediately start construction for matters of public safety. The EPA’s 2017 construction stormwater general permit has a requirement similar to the requirement in the renewal permit. Please note that any discharge that occurs prior to the issuance of a permit certification is still in violation of the water quality control act regardless of the application and stormwater management plan provisions of this permit.

b. **Application Requirements**

This section contains new requirements regarding who must sign a completed permit application. The new signature requirements do not apply to those permittees that hold a discharge certification under the 2007 general permit in effect as of the time the renewal permit becomes effective.







Co-permittee Signature Requirements: Under the Water Quality Control Act and implementing regulations, both the owner and operator must apply for permit coverage as co-permittees, unless the Division waives the requirement. In some industries the owner and operator are the same person or organization, however, this is often not the case for construction sites. The division recognizes that in some cases, the owner of the activity will not be the owner of the land.

The division does not intend to require individual homeowners within a subdivision to obtain permit coverage when the conditions of I.A.3.j., sale of residence to a homeowner have been met. Once the conditions of part I.A.3.j. of the permit are met, permit coverage will no longer be required for the lot. In those cases where the lot is greater than one acre of construction activity related disturbance, as defined by the permit, the permittee will be required to maintain permit coverage through final stabilization of the lot. In those cases where the operator is building a single home that is either part of a larger common plan of development or the lot is one acre or more of disturbance, the operator may assume the responsibility of both the owner and the operator. In those cases where the homeowner is assuming the role of both the owner and the operator, the homeowner would have to obtain or maintain permit coverage.

The Water Quality Control Act and implementing regulations do not include definitions of owner or operator. The 2007 construction stormwater permit defines the operator as the entity that has day-to-day supervision and control of activities occurring at the construction site. The 2007 permit states that this can be the owner, the developer, the general contractor or the agent of one of these parties, in some circumstances. The 2007 permit states that it is anticipated that at different phases of a construction project, different types of parties may satisfy the definition of 'operator' and that the permit may be transferred as the roles change. In the 2007 construction stormwater general permit the division waived the requirement for owners to apply and only the operator is required to apply. For most construction sites in Colorado, the owner is not currently a permittee.

The division has had ongoing dialogue with construction owners and operators during this permit term regarding the site owner commitment to compliance with the requirement to obtain permit coverage and comply with permit requirements and the option of co-permittees as a potential solution to the problem. The issue of site owner commitment has been raised by operators during compliance oversight, and enforcement settlement discussions. It has also been brought to the division's attention through discussions with stakeholders.

In 2012, the division collaborated with the construction industry and other interested persons to develop a more responsive and streamlined process for preventing violations of the Water Quality Control Act in regards to construction permitting and of violations of the construction stormwater permit. This stakeholder process was conducted consistent with the requirements of HB12-1119 and the results are summarized in a report that was provided to the General Assembly of the State of Colorado on December 1, 2012. Site owner commitment was raised as a potential





root cause for variable levels of compliance throughout the industry and a cause for creating inequities during the bidding process. Stakeholders explained that when the owner is not a permittee, the owner may require the contracted site operator to obtain the permit and be responsible for all aspects of permit compliance. In other cases, the owner may develop a stormwater management plan, incorporate it into the contract documents, and then require the operator to implement the day-to-day compliance responsibilities. An issue that was raised is situations where deficiencies with the plan are identified and situations where changes need to be made to the plan and other control measures on site. More specifically, it was discussed that some project owners may not want to pay for changes in the stormwater management plan and controls, exposing only the operator who holds the permit certification to liability including civil penalties. The owner may also accept bids from operators that do not include adequate costs for stormwater permit compliance, therefore discouraging such compliance and giving a competitive advantage to contractors who willingly or unintentionally fail to include adequate compliance costs in bids and may subsequently operate out of compliance. It was generally agreed upon by participants in the stakeholder process that when it is the operator that obtains the permit, the owner is likely to not be as engaged or concerned with permit compliance, which in some situations is contributing to non-compliance.

Issues associated with how the lack of real or perceived liability for owners affects noncompliance was discussed extensively during the HB12-1119 stakeholder process. However, there was no clear consensus on a solution or if State requirements or oversight was even the proper avenue for a solution. The division committed to ongoing dialogue on this issue with the regulated community and specifically to reevaluate the topic during the public process associated with the Construction Stormwater Permit renewal. Ideas discussed in this stakeholder process included requiring owners to obtain separate or dual permit coverage for their sites and requiring that applications identify the project owner. It was also discussed that more time should be spent evaluating EPA's recent renewal of the national general permit and other state permits to further inform the discussion.

The division further evaluated EPA's Construction Stormwater General Permit (CGP) to inform the decision. The CWA and federal implementing regulations differ from Colorado's in that when a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit. The question of who needs to obtain permit coverage, given all of the people involved on a construction site, was addressed in depth during development of the EPA's 1998 CGP. In that general permit renewal, the EPA included a definition of operator, as follows:

- "Operator for the purpose of this permit and in the context of storm water associated with construction activity, means any party associated with a construction project that meets either of the following two criteria:
1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications;
  2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution





prevention plan for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).”

The EPA made it clear in the 1998 CGP definition of operator that any party that meets either of the two criteria must obtain permit coverage.

The Division evaluated other state permits to further inform the decision and found there is a trend nationally to require both owners and operators to be permittees and to sign and actively acknowledge their role in compliance with the construction general permit. The division found that at least one state, Oklahoma, implemented this requirement following an economic downturn to address a root cause problem of permitted operators “walking away” from construction and development projects and leaving disturbed land unstabilized. In that case a co-permittee approach was adopted as a tool to leverage site owner compliance with site stabilization requirements.

The division also evaluated whether MS4 practices in Colorado require both owners and operators to obtain permit coverage when implementing construction site program requirements. The division found that some MS4s require co-permittees and some do-not.

The division raised the possibility of including a co-permittee requirement in the renewal permit at the stakeholder meetings held November 2, 2015. The division solicited input on this decision at the meeting and in writing in follow up to the meeting.

- The majority of those who provided input agreed with the recommended approach to include a co-permittee requirement.
- One entity recommended against the requirement and another recommended that in cases where the owner is a permittee, the requirement for the operator to obtain permit coverage be waived.
- Several stakeholders expressed concern that a requirement to obtain signatures from both the owner and operator would extend application timelines and potential result in project delays, particularly in the absence of an on line application system.

The renewal permit adds a requirement for the owner and operator of a construction site to be co-permittees. Both the owner and operator must sign the application. The permit includes definitions of owner and operator. The definition of owner is consistent with EPA’s first criterion of operator, and the definition of operator is consistent with EPA’s second criterion for operator. These definitions are also consistent with those adopted by many other states. While the division did not adopt a stakeholder recommendation to waive the requirement that operators sign the application, the renewal permit does allow owners to sign as operators in cases where the owner is acting as both the owner and the operator.

The division has included a requirement that both the owner and the operator sign the permit application. The division has decided to apply the requirement only to





new applications received after the renewal permit becomes effective. This was done to eliminate the need to administer an application supplement for the thousands of renewal applications already received to obtain co-permittee information and signatures.

Further, the division is actively working on development of an online permit application system, Colorado Environmental Online Services (CEOS) that negates the need to send paper copies of signed applications, and would allow owners and operators to sign the permit application in the same day. The division has delayed the effective date of the permit renewal to allow adequate time to finalize the CEOS application tool to address concerns about possible impacts in terms of increased time for the permit application process to obtain dual signatures when owners and operators are differing entities. The Division also intends to update its construction stormwater permitting guidance with detailed guidance and examples of what does and does not constitute an owner and operator.

**c. Division Review of Permit Application**

The renewal permit does not retain automatic coverage after ten calendar days of receipt of the application by the division. This is consistent with current division general permit renewal permits and the division has consistently met the 10 day goal for reviewing applications and authorizing coverage where received applications are complete. The renewal permit no longer authorizes automatic coverage solely based on the receipt of an application.

Please note that Regulation 61.4(3)(a)(i) requires at least 90 days before the date on which construction is to commence, unless the divisions determines that differential approval dates are required. For construction stormwater, the division recognizes that a 90 day application period is not always possible given the nature of construction projects and the construction industry. It has therefore has elected to allow permittees to apply 10 days in advance of construction activities commence.

**d. Alternative Permit Coverage**

This section has been added to the general permit for clarity. It has also been added to update the permitting with the most current stormwater permitting structure.

**e. Submittal Signature Requirements**

This section of the permit has been added to incorporate the certification required to be included with submittals to the division. The section acknowledges and provides requirements for field wide coverage. This section is only intended to cover oil and gas facilities at this time.

**f. Permit Coverage without Application**

Qualifying Local Programs

The renewal permit includes the language from the 2007 permit that allows permit coverage without an application for stormwater discharges associated with small construction activity (i.e., one to five acre disturbed area sites), for sites covered by a qualifying local erosion and sediment control program (Qualifying Local Program). A Qualifying Local Program is a municipal stormwater program for stormwater





discharges associated with small construction activity that has been formally approved by the Division. The requirements for Qualifying Local Programs are outlined in Part CCR 1002 61.8(12) of the Colorado Discharger Permit System Regulations. At the time of development of this renewal permit, there are three approved Qualifying Local Programs in place in Colorado: the City of Golden, the City of Lakewood, and the City of Durango. These programs were developed and approved without consideration of requirements that have been incorporated through this renewal, including requirements associated with the federal effluent limitation guidelines. The division expects that the existing Qualifying Local Programs will update their requirements to become aligned with the updated requirements included in this permit, such as those associated with the federal effluent limitation guideline. However, those changes will take time. Therefore, the division has clarified in the renewal permit that if the requirements of the Qualifying Local Program are equivalent to the requirements of this renewal permit, the requirements of the Qualifying Local Program are incorporated by reference into the renewal permit. The division has also clarified that, if the requirements of the Qualifying Local Program are *less stringent* than the requirements of this renewal permit, the requirements of the renewal permit apply *in addition to* the requirements of the Qualifying Local Program. The division considered and determined that providing a compliance schedule for qualifying local programs to implement the renewal permit requirements into their construction sites programs was unnecessary.

The division intends to review and approve qualifying local programs requirements prior to the effective date of the renewal permit.

**g. Reassignment of Permit Coverage**

Permittees should submit the Notice of Reassignment Form when construction activity at the site is not complete, but the permittee no longer has operational control for a specific portion of the site. Permittees that do not have operational control over compliance with the permit conditions can therefore transfer permit coverage to the newly responsible owner or operator.

If the owner or operator cannot obtain a signature from the newly responsible owner or operator, then they must provide the division proof of due diligence attempts to obtain a signature along with a notice of termination request form. For example, due diligence could include a receipt from a certified mailed letter that contains a request to sign the applicable form.

**h. Transfer of Permit Coverage**

Permittees should utilize the division's transfer of permit coverage form in instances where the owner or operator no longer has operational control over the construction site. If the owner or operator cannot obtain a signature from the newly responsible owner or operator, then they must provide the division proof of due diligence attempts to obtain a signature along with a notice of termination request form.

If the operator is no longer responsible for a site they may transfer permit coverage to the owner, or to a newly responsible operator. The division generally considers a permittees presence onsite as well as whether or not they are conducting any work







onsite to be significant when determining operational control. If a permittee is no longer on the site and is no longer conducting work at the site, then they no longer have operational control over the compliance with the permit conditions. It is important to note that this may only occur if the operator no longer is responsible for the site. If the operator is responsible for reaching final stabilization they may not transfer coverage to the owner. Instead, both the owner and operator may terminate once all permit conditions have been met for inactivation.

**i. Termination of Permit Coverage**

Under the renewal permit, permittees shall only submit a termination application when they have met all the requirements of the permit, including the final stabilization requirements.

**j. Sale of Residence to Homeowner**

The renewal permit does not include any changes to this section.

**k. Permit Expiration and Continuation**

Language has been added to this section for clarity. It has also been added to update the permitting with the most current stormwater permitting structure.

Additionally, changes have been made to this section to correct the internal inconsistency regarding reapplication requirements in the previous permit and Regulation 61.4. Comments were received requesting consistency between Part II.B.12. (now Part II.X.) and this section. The division elected to allow 90 days for reapplication at the time of expiration of the general permit.

**B. EFFLUENT LIMITATIONS**

This permit does not impose numeric effluent limits or require submission of effluent monitoring data in the permit application or in the permit itself. The permit instead imposes practice-based effluent limitations for stormwater discharges through the requirement to develop and implement a Stormwater Management Plan (SWMP). The narrative permit requirements include prohibitions against discharges of non-stormwater (e.g., process water). See Part I.A.1.b. of the permit.

**1. Requirements for Control Measures Used to Meet Effluent Limitations**

The division has added requirements for specific structural and nonstructural control measures. This was done primarily based on a desire to add clarity of requirements for those control measures that continually required corrective actions based on division inspection findings. In 2014 the division conducted approximately 90 construction stormwater inspections. There were approximately 360 inspection findings in total and of those 220, or 78%, were control measure findings.

The renewal permit also provides requirements for the permittee to select, implement and maintain control measures at a permitted construction site that adequately minimize pollutants in the discharges to assure compliance with the terms and conditions of the permit. Part I.B.1. (et. Seq.) of the permit includes basic design standards for control measures implemented at the site. Facilities must select, install,







implement, and maintain appropriate control measures, following good engineering, hydrologic and pollution control practices. Control measures implemented at the site must be adequately designed to control all potential pollutant sources associated with construction activity to prevent pollution or degradation of state waters. Pollution is defined in CDPS regulations (5 CCR 1002-61) as man-made or man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water. Utilizing industry-accepted standards for control measure selection that are appropriate for the conditions and pollutant sources present will typically be adequate to meet these criteria, since construction control measures are intended to prevent the discharge of all but minimal amounts of sediment or other pollutants. However, site-specific design, including ongoing assessment of control measures and pollutant sources, is necessary to ensure that control measures operate as intended.

The general permit did not incorporate the EPA effluent limitation guideline requirement to require vehicle washout waste to flow through a sediment basin or equivalent measure because this type of discharge is not authorized under the general permit. The division determined that because there is no allowable discharge, there is no need for an effluent limitation.

**a. Stormwater Pollution Prevention**

The renewal permit adds requirements for both structural and nonstructural control measures. The control measures that have been added are considered to meet industry standards and best management practices for both stormwater and non-stormwater discharges. Control measures can be implemented to control both run-on and run-off from construction sites.

Vehicle tracking - The division recognizes that fine grains (i.e., staining) may remain visible on the surfaces of off-site streets, other paved areas, and sidewalks after you have implemented sediment removal practices.

Maintaining pre-existing vegetation - The division added this requirement as part of the EPA effluent limitation guideline requirements.

Stabilization Requirements

Temporary Stabilization:

The renewal permit incorporates an EPA Effluent Limitation Guideline requirement that a timeline must be implemented for temporary stabilization on construction sites. The division determined that 14 days is an achievable amount of time to achieve temporary stabilization based on typical current industry practices as well as a review of other state construction stormwater general permit requirements. The other state general permits that were reviewed include, but are not limited to, Utah, Nevada and Arizona. These states have a similar climate type as Colorado and also require 14-day temporary stabilization.

Temporary stabilization measures include, but are not limited to, the following as appropriate: tracking, terracing, cross-contour ripping/grooving, mulching, or other





similar practices. Where temporary stabilization measures are not appropriate, adequate sediment control measures must be implemented

The renewal permit also adds clarity to the requirement to remove temporary control measures once final stabilization has achieved. The 2007 permit states the following:

Part I.C.4.b) "Final stabilization practices for obtaining a vegetative cover should include, as appropriate: seed mix selection and application methods; soil preparation and amendments; soil stabilization practices (e.g., crimped straw, hydro mulch or rolled erosion control products); *and appropriate sediment control BMPs as needed until final stabilization is achieved*; etc." (emphasis added)

The division attempted to clarify that once final stabilization is achieved the temporary control measures shall be removed before the discharge certification is terminated.

**Final Stabilization:**

The renewal permit does not include any changes to this section.

The division may approve alternative final stabilization criteria for specific operations. The permittee must provide a written request to the division with information regarding why the site cannot meet the final stabilization requirements in the permit. The written request should include an explanation of how the site is meeting an alternative approach and is minimizing the discharge of construction related pollution into state waters.

The division has a memorandum available that discusses alternative final stabilization methods that do not require specific approval. The guidance document is located on the division's website and is titled "Final Stabilization requirements for stormwater construction permit termination - Alternatives to the 70% plant density re-vegetation requirement".

**b. Maintenance**

The renewal permit adds the definition of a control measure requiring routine maintenance. This is consistent with the Phase II Municipal Separate Storm Sewer System (MS4) general permits (COR090000 and COR080000) that became effective on July 1, 2016.

Based on construction site audits conducted during the renewal of the Phase II MS4 general permits (COR090000 and COR080000), the division has determined that inadequate sediment controls are a primary factor in construction site noncompliance. The division has determined that minimum requirements are needed and has provided minimum requirements for control measures for all construction sites.





**c. Corrective Actions**

The division added a requirement for permittees to take corrective action (Part I.E.) for inadequate control measures. This requirement was added to provide additional clarity on actions required when an inspection results in a finding related to control measures. The permit defines the term ‘control measures requiring routine maintenance’ and intentionally distinguishes these types of control measure findings from those that are defined in the permit as ‘inadequate control measures’. Those control measures that meet the definition of inadequate control measure must follow the steps of Part I.E. of the permit. This requirement was also added to be consistent with federal and state stormwater permits.

The division has added the definition of an inadequate control measure. This is consistent with the Phase II Municipal Separate Storm Sewer System (MS4) general permits (COR090000 and COR080000) that became effective on July 1, 2016.

**2. Discharges to an Impaired Waterbody**

No substantive changes were made to this section from the previous general permit. Based on public comment received this section has been moved from Part I.E. to Part I.B.2.

An example of when the division would require sampling would be when a Total Maximum Daily Load (TMDL) includes a Waste Load Allocation (WLA) for construction, which might require monitoring for a pollutant of concern.

**3. General Requirements**

This section of the permit does not incorporate any new requirements, however it does include a narrative Water Quality Based Effluent Limitation (WQBEL). A discussion on the narrative WQBEL is below:

The permit requires that stormwater discharges from construction activities shall not cause, have the reasonable potential to cause, or measurably contribute to an excursion above any water quality standard, including narrative standards for water quality. This condition is the basis for all CDPS Discharge permits, and addresses the need to ensure that waters of the State maintain adequate water quality, in accordance with water quality standards, to continue to meet their designated uses. In most cases, control measures can be adequate to meet applicable water quality standards. If water quality impacts are noted, or the Division otherwise determines that additional permit requirements are necessary, they are typically imposed as follows:

- at the renewal of this general permit or through a general permit specific to an industrial sector (if the issue is sector-based);
- through direction from the Division based on the implementation of a TMDL (if the issue is watershed-based); or
- if the issue is site-specific, through a revision to the certification from the Division based on an inspection or SWMP review, or through an individual permit.





C. STORMWATER MANAGEMENT PLAN (SWMP) REQUIREMENTS

1. SWMP General Requirements

The 2007 general permit requires the SWMP to be completed prior to applying for coverage. The renewal permit adds the flexibility for the SWMP to be completed prior to commencement of construction activities instead of prior to applying for permit coverage.

It also adds flexibility for public emergency related sites to have up to 14 days to create a SWMP in accordance with the permit requirements.

2. SWMP Content

**Qualified Stormwater Manager:** The permit SWMP conditions include the requirement for dischargers to provide the title and name of the site designated qualified stormwater manager. The qualified stormwater manager, is defined by the renewal permit as the following:

“Qualified Stormwater Manager: An individual knowledgeable in the principles and practices of erosion and sediment control and pollution prevention, and with the skills to assess conditions at construction sites that could impact stormwater quality and to assess the effectiveness of stormwater controls implemented to meet the requirements of this permit.”

This definition and additional language were added to the renewal permit so that permittee(s) ensure that the individuals responsible for meeting the requirements of this permit are properly trained on up-to-date stormwater management practices in the area of construction stormwater. Proper training can include, but is not limited to, proper selection, implementation, operation and maintenance of various structural and non-structural control measures, and proper documentation of various permit requirements (e.g. inspections, corrective actions and SWMP documentation) The division is not requiring specific training criteria in order to be considered a qualified stormwater manager and does not recommend any specific course. In this case on-the-job or in-house training would be considered acceptable.

**Implementation of Control Measures:** The renewal permit requires that permittee(s) obtain a documented use agreement for any control measures outside of the permitted area that are being utilized by the construction site for compliance with the conditions of the permit. The documented use agreement must include installation specifications, design specifications, and maintenance requirements. The division recommends that the documented use agreement also include a maintenance agreement between all parties utilizing the control measure.

**Site Description:** The stormwater management plan adds a requirement to document all locations on the construction site where stream crossings will occur. The division has determined that the areas upland of the stream crossing are potential sources of pollutants that may reach surface water. Please note that the construction stormwater general permit covers discharges of stormwater into state waters. State regulations for these discharges are not exempted by obtaining coverage from Army Corps of Engineers under section 404 of the CWA.





**Site Map:** The permit adds requirements to provide the locations of the following items:

- locations of all structural and non-structural control measures;
- locations of pre-existing vegetation maintained around state waters; and
- locations of all stream crossings.

These items were added as site map requirements based on the addition of these requirements throughout the permit.

The permit requires that the site map contain the:

“locations of springs, streams, wetlands and other state waters including areas that require pre-existing vegetation be maintained within 50 feet of a state water;”  
To address this requirement, all state waters located within the permitted boundary should be included in the site map.

The permit also requires that any stream crossings (and associated control measures) located within the permitted boundary be included in the site map.

The addition of “including areas that require pre-existing vegetation be maintained within 50 feet of a state water” was meant to reiterate that pre-existing vegetation is required to be maintained, unless infeasible. This requirement can be met by listing all of those springs, streams, wetlands and other receiving waters that are within the permitted boundary.

### 3. SWMP Review and Revisions

The renewal permit adds a requirement to document the date and description of revisions made to the SWMP. The requirement has been added to align the permit with current industry practices along with other states’ and the EPA’s current general permit requirements.

The division added language to this section regarding compliance with SWMP revisions. This was added to further clarify the language in the 2007 general permit which states the following:

Part I.D.5.d)1) “the SWMP shall be revised *as soon as practicable*, but in no case more than 72 hours after the change(s) in BMP installation and/or implementation occur at the site (emphasis added)”

The division received input regarding this terminology over the course of the 2007 permit term. The added language in this section is an attempt to further clarify the requirements for SWMP revisions. The language is meant to allow the permittee(s) the flexibility to add proposed changes to the SWMP prior to implementation in the field and go back and amend those proposed changes, as needed, once the control measure has been implemented in the field. Permittees are considered non-compliant with the permit’s SWMP requirements until the control measure changes implemented in the field have been reflected in the site SWMP.





4. SWMP Availability

The renewal permit contains only editorial changes to this section.

**D. SITE INSPECTIONS**

The renewal permits adds a requirement for construction sites to conduct the first site inspection within 7 calendar days of the commencement of construction activities on site. This has been added to provide clarity regarding when construction site inspections should be initiated on construction sites.

1. Person Responsible for Conduction Inspections

The renewal permit adds a requirement for site inspections to be conducted by the site designated qualified stormwater manager.

2. Inspection Frequency

The renewal permit adds the ability to choose either a 7 day or 14 day for post storm inspection frequency. This addition is in line with the 2007 construction stormwater general permit issued by the EPA. The added requirement allows permittee to determine which inspection frequency is most appropriate for their site conditions.

3. Inspection Frequency for Discharges to Outstanding Waters

4. Reduced Inspection Frequency

The renewal permit does not include any changes to this section.

5. Inspection Scope

The renewal permit attempts to add clarity to the inspection scope requirements in the 2007 general permit by expanding on what is required during a construction site inspection.

The permit also adds a requirement for the frequency of the inspection to be described on each inspection report. This requirement was added so that it is clear if the permittee(s) are utilizing the 7-day or 14-day with post storm inspection frequency.

6. State or Federal Inspections

The renewal permit does not include any changes to this section.

**E. DEFINITIONS**

The division has updated some definitions in the renewal permit to align with the recently issued Phase II Municipal Separate Storm Sewer System (MS4) General Permits.







"Common Plan of Development or Sale" - Activities located within ¼ of a mile of each other are "contiguous". The division has utilized the ¼ mile as a general rule of thumb for determining if a project is contiguous based on previous determinations by the division and by EPA. This definition is consistent with other division issued stormwater general permits.

The division has also added definitions based on public comment requests.

The division has also added or altered the following definitions to provide additional clarity and/or consistency with the Phase II Municipal Separate Storm Sewer System (MS4) General Permits:

- "Bypass" - This definition has been added based on public comment received.
- "Common Plan of Development or Sale" - This definition was altered based on public comment received.
- "Control Measures Requiring Routine Maintenance"
- "Good Engineering, Hydrologic and Pollution Control Practices"
- "Inadequate Control Measure" - This definition was altered based on public comment received.
- "Infeasible" This definition was taken directly from the EPA construction stormwater effluent limitation guideline.
- "Minimize"
- "Municipality" - This definition has been altered based on public comment received.
- "Municipal Stormwater Management Program"
- "Owner" - This definition was adjusted based on public comments received.
- "Permittee"
- "Presentation of Credentials"
- "Public Emergency Related Site"
- "Qualified Stormwater Manager"
- "State waters" - This definition has been added based on comments received.
- "Steep Slopes"
- "Total Maximum Daily Load"
- "Upsets"

The following definitions were removed based on public comments received:

- "Outfall"

F. SIGNATORY REQUIREMENTS

1. Authorization to Sign

This section has been amended in the renewal general permit in an attempt to clarify when a document needs to be signed by the Owner or Operator, or an authorized representative, or by the sites qualified stormwater manager.

a. Reports required for submittal to the division:

The permit adds requirements for cases where the Owner, Operator, or an authorized representative must sign the documents. An example of a document that is required for submittal to the division, would be a discharge monitoring report





associated with a Total Maximum Daily Load (TMDL) as discussed in Section I.B.2 (if applicable) of a transfer of ownership.

**b. Reports not required for submittal to the division:**

- 2. The permit adds requirements for cases where the site designated qualified stormwater manager must sign the documents. Examples of these types of documents include the stormwater management plan or inspection reports. Signature Certification
  - a. The division did not make any changes to the signature certification for documents required for submittal.
  - b. The division added a signature certification requirement for documents maintained for compliance with the permit. This was done to further incorporate the requirement for a qualified stormwater manager.
- 3. Change in Authorization to Sign  
The renewal permit does not include any changes to this section.

**G. RETENTION OF RECORDS**

**1. On-site Retention**

The permit provides flexibility in allowing on-site SWMP to be retained in an electronic or hardcopy format. The renewal permit does not include any changes to this section.

**H. MONITORING**

The renewal permit includes the language in the 2007 permit that allows the division the option of 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.

**I. Oil and Gas Construction**

This section has been added to the permit based on public comments received. The public comments received requested the language in this section be copied from the previous permit and added to the renewal permit.

**V. REFERENCES**

- A. Colorado Discharge Permit System Regulations, Regulation No. 61, Colorado Department of Public Health and Environment, Water Quality Control Commission, effective June 30, 2015.
- B. Code of Federal Regulations (40 CFR Part 450, Construction and Development Point Source Category), Office of the Federal Register, Government Printing Office, effective March 6, 2014.
- C. Water Quality Policy 27(WQP27, Low Risk Discharge Guidance, Discharges of Uncontaminated Groundwater to Land), Colorado Department of Public Health and Environment, Water Quality Control Division, effective September, 2009.



## Appendix I

### PUBLIC NOTICE COMMENTS

The draft of the renewal permit was public noticed on October 24, 2016 and comments were accepted until December 16, 2016. Only written comments submitted during the public notice comment period are reflected in this document. Comments listed in this document are verbatim and only include those that were specific to the Stormwater discharges associated with construction activities (COR400000).

Comments were received from a number of stakeholders, including the following:

1. City of Aurora
2. City of Glendale
3. City of Golden
4. City of Greenwood Village
5. Colorado Department of Transportation
6. Colorado Oil and Gas Association (COGA)
7. Colorado Stormwater Council
8. G.E. Johnson Construction Company
9. G.H. Phipps Construction Companies
10. Home Builders Association - Metro Denver
11. HRL Compliance Solutions
12. Silverpick Contracting Inc.
13. Sonja Erickson
14. Southeast Metro Stormwater Association
15. Southern Ute Indian Tribe Growth Fund
16. U.S Army Corps of Engineers
17. Western Slope Colorado Oil and Gas Association
18. Wright Water Engineers
19. Xcel Energy

Comments on the draft of the COR400000 general permit:

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## I. General Topics

### Comment 1: Permit Changes

*Silverpick Contracting Inc.: The new permit makes some changes in language and definition that creates the need to rewrite our SWMP Master Plan to reflect these new terms. This will cost time and money.*

*We at Silverpick Contracting Inc. are committed to building very energy efficient affordable homes for our market. Our Margins are very tight. These changes to the Permit only make our margins tighter. Silverpick takes our stewardship of the environment and our stormwater responsibilities seriously. These new requirements don't help us do our jobs in any way.*

### Response 1: Permit Changes

The division takes note of this comment. No changes to the permit or fact sheet were made based on this comment.

### Comment 2: Retaining the current active permit language regarding oil and gas

*Colorado Oil and Gas Association: Application of the Permit to the oil and gas industry must be viewed in relationship to the applicability of the federal regulatory framework. Section 323 of the Energy Policy Act of 2005 exempts oil and gas construction activities from coverage and permitting requirements under the federal Clean Water Act. While the Colorado Water Quality Control Commission has not carried this exemption to the Colorado Discharge Permit System, the Water Quality Control Division ("Division") is not mandated by the Clean Water Act in the regulation of construction activities associated with oil and gas activities. Recognition of this exemption has long been integrated into both the Permit and the Stormwater Fact Sheet for Construction at Oil and Gas Facilities (dated 7/07) ("O&G Fact Sheet"). This recognition, in part, is as a result of prior negotiations between industry representatives and the State surrounding the application of the State stormwater program to oil and gas sites. This recognition should continue to be expressly stated in the Permit as reflected in the current permit. Specifically, COR-030000 states:*

*"Stormwater discharges associated with construction activities directly related to oil and gas exploration, production, processing, and treatment operations or transmission facilities are regulated under the Colorado Discharge Permit System Regulations (5CCR 1002-61), and require coverage under this permit", "however, references in this permit to specific authority under the Federal Clean Water Act (CWA) do not apply to stormwater discharges associated with these oil and gas related construction activities, to the extent that the references are limited by the federal Energy Policy Act of 2005." (See COR-030000, Part 1. A.1.b).*

*The O&G Fact Sheet also recognizes that "Although federal permit coverage for these discharges was conditionally exempted from the Federal Clean Water Act by the 2005 Federal Energy Bill, the Water Quality Control Commission has maintained the requirement within Colorado's regulations ....". This statement underscores that the O&G Fact Sheet and Permit have overlapping and integrated requirements as pertaining to oil and gas facilities, and this Permit, as applied to oil and gas operations, shall be read to incorporate the O&G Fact Sheet provisions and shall be construed in a manner consistent with the O&G Fact Sheet.*



*It is important for the Division to recognize this federal exemption in Permit No. COR-400000 and in subsequent revisions to the O&G Fact Sheet. Any failure to acknowledge the unique aspects of oil and gas inherent in the exemption - and the fact that federal standards such as the Effluent Limitations Guidelines ("ELGs") are not necessarily applicable to oil and gas - would call into question the enforceability of the Permit for oil and gas operations and create needless legal uncertainty surrounding the program.*

**Response 2: Retaining the current active permit language regarding oil and gas**  
Changes have been made to the permit based on this comment. A discussion of the federal Clean Water Act exemption has been added to the permit in Part I.G to clarify the difference in federal and state requirements. Additionally, the fact sheet already contained a discussion on the federal exemption.

**Comment 3: Oil and gas industry permit exclusions**

*Colorado Oil and Gas Association: The Permit's ELG standards create unnecessary compliance challenges for COGA members and serve as an example of a federally driven provision that need not be strictly applied to oil and gas sites. For example, requirements of control measures "within 50 feet of a state water body" would create significant uncertainty and would be infeasible in many rural locations where proximity to ephemeral or temporary drainages is very common. (See B.1.a.ii.(a)). Landowners often dictate siting of a location which may be within 50 feet of a tributary, irrigation ditch, stock pond, etc. However, due to the split surface/mineral estate situation unique to oil and gas production, owner/operators often have limited ability to access control points for "surface water bodies" and otherwise implement controls.*

**Response 3: Oil and gas industry permit exclusions**

The Water Quality Control Commission (WQCC) is authorized to adopt rules that are more stringent than corresponding federal requirements, including the requirement to install control measures for facilities within 50 feet of a state water body. The Division recognizes that Section 323 of the federal Energy Policy Act of 2005 exempts construction activities associated with oil and gas activities from NPDES coverage. However, in March of 2006, the WQCC found that despite the Energy Policy Act, oil and gas construction sites are not significantly different than other types of construction sites and pose a substantial risk of water quality impacts if not managed appropriately. Therefore, it found that any construction activities at oil and gas sites need CDPS permit coverage for stormwater discharges. See Regulation 61.58 SBP, March 2006.

The division agrees that the Federal Effluent Limitation Guidelines, or ELGs, are appropriate for protecting water quality in the state of Colorado and therefore have adopted them into the construction stormwater general permit renewal. The Division is authorized to incorporate the federal ELGs into CDPS permits. Therefore, throughout this renewal permit oil and gas is subject to the same requirements as all other construction sites.

In addition please note that the requirement for control measures within 50 feet of a water body are required unless "infeasible".

**Comment 4: Adjustments to the definition of training**

*G.H. Phipps: I think "training" needs to be more defined and more specific, as in classes recognized by the State, such as those offered at Red Rocks or AGC Colorado.*

**Response 4: Adjustments to the definition of training**

The division takes note of this comment. No changes to the permit or fact sheet have been made based on this comment because the division deliberately has provided flexibility on the definition of training in the permit.

**Comment 5: Field Permit Coverage for Oil & Gas**

Colorado Oil and Gas Association: COGA requests the Permit provide specifically for *Field Permit Coverage*. *Field Permit Coverage is an existing concept and accounts for the unique nature of oil and gas production and limitations of federal authority by the Energy Policy Act of 2005.*

*Field Permit coverage is discussed in the Oil and Gas Fact Sheet:*

*Section E. 'The Division strongly recommends that those involved in construction associated with oil and gas exploration and production consider applying for coverage under a Field Permit certification, as discussed in Section H, below. This process eliminates the need for an operator to submit separate applications and inactivation forms for multiple sites within a well field. This process, along with streamlining the SWMP and inspection procedures as discussed in Sections G and H, below, can considerably reduce the resources necessary for an operator to comply with the stormwater requirements and protect State surface waters.'* (See Section E).

*Section H. 'Due to the nature of oil and gas construction activities related to exploration activities, the Division allows for coverage to be obtained under the Stormwater Construction Permit for multiple construction activities in an oil and gas field (Field Permit Coverage), instead of obtaining permits for each separate site or common plan of development.'*

*Section H.1. of the Fact Sheet addresses the size of the permitted area: 'A single permit certification may be allowed to cover all activities in an oil and gas field, although in some cases, additional certifications may be required in order to maintain a manageable area and amount of activity under a single permit certification. In general, the Division requires that the permitted area be discrete enough to allow for adequate administration by the permittee and enforcement by the Division. Although the Division has not developed specific criteria for a maximum area to be covered under one certification, it is our expectation that the individual sites covered under a single certification will be related (e.g., within the same oil field or collection system) and will be of manageable size, probably no larger than a USGS quadrangle, although there is flexibility on this issue....'*

*Many oil and gas operators conduct construction activities under a field-wide permit that would cover a common area of development. This common area of development involves drilling, production and/or gathering operations and can consist of one or more large leases that are contiguous or consist of multiple smaller and large leases that may be non- contiguous but in a defined operational area.*

*Surface use constraints and the continuous changing nature of exploration, production and gathering activities, renders compliance with many permit stormwater requirements technically impracticable. These unique aspects of the oil and gas industry further support the inclusion of alternative permit coverage through Field Permit Coverage and the appropriate allowances.*

**Response 5: Alternative Permit Coverage**

Changes to the permit and fact sheet have been made based on this comment. The division intends to continue offering the option of field wide permit coverage for oil and gas construction activity. Changes have been incorporated into the permit and fact sheet to document the option of field wide permit coverage for oil and gas construction activities.

**Comment 6: Retention of current permit language regarding termination**

Colorado Stormwater Council: *Please consider retaining current permit language:*

*For sites where all areas have been removed from permit coverage, the permittee may submit an inactivation notice and terminate permit coverage. In such cases the permittee would no longer have any land covered under their permit certification, and therefore there would be no areas remaining to finally stabilize. Areas may be removed from permit coverage by:*

*-reassignment of permit coverage (Part I.A.8 of the permit);*

*-sale to homeowner(s) (Part I.A.9 of the permit); or*

*-amendment by the permittee, in accordance with Division guidance for areas where permit coverage has been obtained by a new operator or returned to agricultural use.*

*Or language from the draft EPA 2017 Construction General Permit that addresses land disturbance associated with agricultural use: Disturbed areas on agricultural land that are restored to their preconstruction agricultural use. The final stabilization criteria does not apply.*

**Response 6: Retention of current permit language regarding termination**

The division takes note of this comment. No changes to the permit and fact sheet have been made in response to this comment.

Consistent with previous division practices, areas where construction activities have occurred that are returned to agricultural uses are no longer required to maintain coverage under this permit because discharges of agricultural storm water discharges as exempted by Section 402(l)(1) of the 1987 Water Quality Act from NPDES permitting requirements and/or the state agriculture exemptions.

In addition, reassignment of permit coverage, sale to homeowner, and other topics that affect or are related to termination have been incorporated into other areas of the permit and, in some cases expanded, thus the language from the previous permit fact sheet (cited above) is no longer appropriate for this permit.

**Comment 7: Oil and gas fact sheet**

Colorado Oil and Gas Association: *Adoption of federal standards such as the ELGs are subject to refinement for oil and gas sites to account for the unique aspects of this industry, as further described in the Stormwater Fact Sheet for Construction at Oil*

*and Gas Sites dated [insert date] ("Fact Sheet"). In this regard, the Fact Sheet itself recognizes that "Although federal permit coverage for these discharges was conditionally exempted from the Federal Clean Water Act by the 2005 Federal Energy Bill, the Water Quality Control Commission has maintained the requirement within Colorado's regulations ....". This statement underscores that the Fact Sheet and Permit have overlapping and integrated requirements as pertaining to oil and gas facilities, and this Permit, as applied to oil and gas operations, shall be read to incorporate the Fact Sheet provisions and shall be construed in a manner consistent with the Fact Sheet. After this Permit becomes final, any necessary revisions shall be made to the Fact Sheet through a notice and comment process which allows all interested parties to provide comments before the Fact Sheet is finalized.*

**Response 7: Oil and gas fact sheet**

The division takes note of this comment. The division disagrees that "the Fact Sheet and Permit have overlapping and integrated requirements as pertaining to oil and gas facilities." The document titled *Stormwater Fact Sheet - Construction at Oil and Gas Facilities, Revised July 2007*, is a guidance document developed by the division to provide guidance and clarification for compliance with discharge permit requirements. While the division welcomes feedback to improve the specified guidance document and seeks to maintain and update the guidance document, it is not the division's practice nor is there a requirement to provide a formal public notice and comment process for guidance documents.

The Oil and Gas Fact Sheet will continue to contain information that the division determines is better suited for inclusion in guidance rather than in a permit.

**Comment 8: Qualifying local programs comment deferment**

*Colorado Stormwater Council: The Colorado Stormwater Council has deferred to individual QLP's to address comments and concerns specific to the draft permit on those programs and supports those MS4s in their specific comments.*

**Response 8: Qualifying local programs comment deferment**

The division takes note of this comment. No changes to the permit or fact sheet were made based on this comment.

**Comment 9: Term "permittee" vs "owner/operator"**

*Home Builders Association of Metro Denver: There are many references to both a "permittee" and "owner/operator":*

*These references seem to interchange often throughout the document. Once the permittee is defined as the "owner" and "operator" and the term permittee could be used in place of owner and operator throughout the document or vice versa. Unless, however, it is appropriate for the subject to refer to them separately.*

*G.E. Johnson Construction Company: There are many references to both a "permittee" and "owner/operator", they seem to interchange often throughout the document. Once the permittee is defined as the "owner and operator" then the term permittee could be used in place of owner and operator throughout the document. Unless it is appropriate for the subject to refer to them separately.*

**Response 9: Term "permittee" vs "owner/operator"**

Changes have been made to the permit based on these comments. Specifically, "permittee" has replaced "owner/operator" in several places in the permit.

**Comment 10: Edits to draft renewal permit provided with comments**

City of Aurora: *Provided an edited version of the draft renewal permit as part of their public comments to the division.*

Colorado Oil and Gas Association: *Provided an edited version of the draft renewal permit as part of their public comments to the division.*

**Response 10: Edits to draft renewal permit provided with comments**

The edited versions of the draft renewal permit provided by the commenters, did not include the reasoning or intent behind the requested changes. In some cases the reasoning or intent of the edits was apparent (e.g., correction of errors or typos). The division adopted some of the edits where the intent of the requested edit was clear and the division agreed that the edits were justified.

**Comment 11: Request to review the term "prevent" throughout permit**

G.E. Johnson Construction Company: *We like the definition of "minimize" however there are still references earlier in the permit to "prevent". Most control practices are not designed to "prevent" discharges but to "minimize" pollutants in the discharge. Request clarification and change - We recommend that the state review all references to the word "prevent".*

Home Builders Association of Metro Denver: *There are references earlier in the Permit to "prevent". Most control practices, other than the prohibitions required by the federal effluent limit guidelines, are not designed to "prevent" discharges but to "minimize" pollutants in the discharge. The state should review all references to the word "prevent" and change to minimize where appropriate.*

**Response 11: Request to review the term "prevent" throughout permit**

Changes to the permit were made based on this comment. Specifically, the word "prevent" was preserved when used in reference to "preventing pollution". In most cases where "prevent" was used in reference to "pollutant" (not pollution), the word "minimize" was added or retained.

The division recognizes that it is not possible to completely prevent the discharge of pollutants, which is why the permit requires permittees to minimize (not prevent) the discharge of pollutants. However, the division does expect permittees to "prevent" pollution of state waters. The requirement to prevent pollution or degradation of State waters is included in the permit as a design standard for BMPs (control measures). Pollution is defined in CDPS regulations (5CCR 1002-61) as man-made or man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water. Utilizing industry-accepted standards for BMP (control measure) selection that are appropriate for the conditions and pollutant sources present will typically be adequate to meet these criteria, since construction BMPs are intended to prevent the discharge of all but minimal amounts of sediment or other pollutants, which would not result in actual pollution of State waters, as defined above. However, site-specific design, including ongoing assessment of BMPs and

pollutant sources, is necessary to ensure that BMPs (control measures) operate as intended.

**Comment 12: Determining receiving water**

G.E. Johnson Construction Company: *There are many references to the receiving water and we understand that protecting the receiving water is important. What is the distance from the project boundaries that a permittee should consider when determining a receiving water? This is important because many projects may be many miles away from an active water body (or ephemeral or dry streams) and the potential for discharge to reach them is low.*

**Response 12: Determining receiving water**

No changes to the permit and fact sheet have been made. Section 61.4(1)(j)(vii) requires each applicant to identify “the type of discharge, and the receiving waters for each discharge point.” The receiving water, therefore, needs to be identified in the permit application. The receiving water should be determined based on the nearest state water that the site has the potential to discharge into. “Receiving waters” is defined in the permit in Part I.E. Please also see comment 16.

**Comment 13: Consistent terminology for state waters**

G.E. Johnson Construction Company: *Surface waters are referenced in many places in the permit. There are many terms being used to reference surface water or receiving waters they include: surface water, surface water body, state waters, water courses, water body, etc. We suggest a consistent term. Are they all receiving waters or all state waters?*

Home Builders Association of Metro Denver: *2. Surface waters are referenced in many places in the permit:*

- *There are many terms we feel are being used to reference surface water or receiving waters. They include: surface water, surface water body, state waters, water courses, water body, etc. We suggest a consistent term. Part I.A. COVERAGE UNDER THIS PERMIT*

*“A description of stream crossing...”. and the following section 2.C.1.vii. See Part I.B. a. ii. a comment about the use of the terms State water bodies, water bodies, and stream. We suggest using State water body.*

Colorado Oil and Gas Association: *Proposed change due to the permit contains a definition for “receiving waters” and not “state surface waters”.*

**Response 13: Consistent terminology for state waters**

Changes to the permit have been made based on these and related comments. Specifically, the division has revised the permit to consistently use the defined term “receiving waters” when applicable in the permit.



G.E. Johnson Construction Company: *There are many references to specific regulations - EPA, CDPS, CFR, etc. and the Clean Water Act and Federal Clean Water Act but the references are all inconsistent. We suggest citing the entire regulation for those who may be a permittee but are not well versed in all of the regulations sited.*

Home Builders Association of Metro Denver: *There are many references to specific regulations - EPA, CDPS, CFR, etc., as well as the Clean Water Act and Federal Clean Water Act:*

*The references are all inconsistent. We suggest citing the entire regulation for those who may be permittee but are not well versed in all of the regulations cited.*

**Response 13: References to regulations**

Changes to the permit and fact sheet have been made based on these comments. The references to the Federal Clean Water Act have been changed to CWA, once established in the permit. Standard references to regulations are made throughout this permit. Please contact division staff for more information on a specific reference to a regulation

**Comment 14: 404 permitting overlap with the general permit**

Home Builders Association of Metro Denver: *U.S. Army Corps of Engineers 404 general or individual permit:*

- *Will an Army Corps of Engineers 404 permit supersede the control measures required under this permit? The 404 permit allows some level of degradation since you'll be disturbing the stream channel. This permit does not. Need to consider that the 404 permit supersedes this permit.*

**Response 14: 404 permitting overlap with general permit**

No changes to the permit were made based on this comment. Neither a 404 general permit nor a 404 individual permit would supersede the control measures of this stormwater discharge permit. The permits are issued by different government agencies and have different purposes. A 404 permit is issued by the Army Corps of Engineers under Section 404 of the Clean Water Act to authorize the discharge of dredged or fill material into waters of the United States. This permit is issued by the state of Colorado and authorizes permittees with construction activities that occur outside of state waters to discharge stormwater associated with those construction activities into state waters pursuant to Sections 401 and 402 of the Clean Water Act. It is possible that a single project may require both a permit issued under Section 404 of the Clean Water Act for work within the stream channel and this permit since they have different purposes.

**Comment 15: Distance to receiving waters**

Home Builders Association of Metro Denver: *This is not defined in the permit. If the distance is great and there is no potential to impact these receiving waters, shouldn't there be a waiver or a way to not require an NOI and SWMP? For instance, a*

*construction activity in a closed basin where there is no inflow or outflow from the basin; or in an arid climate, where waters evaporate before even getting to the stream. That is another factor why a minimum design event requirement, in our opinion, should be considered for the requirement of and design/implementation of specific Control Measures beyond which, the owner/operator is not liable (example September 2014 flood).*

**Response 15: Distance to receiving waters**

No changes were made to the permit based on this comment. If a project has no potential to discharge to a state waters and is not part of a larger common plan of development or sale that has the potential to discharge to a state water or to a storm sewer (See 5 CCR 1002-65, Regulation Controlling Discharges to Storm Sewers), then coverage under the construction stormwater general permit is not required. However, note that preventing a discharge to a state water as defined in Colorado Water Quality Control Act would in most cases necessitate preventing the release of stormwater or other materials from the site.

**Comment 16: Requested compliance assistance**

*Home Builders Association of Metro Denver: We encourage the Division to focus on compliance assistance. Is the Division considering offering a paid visit and inspection without the threat of violation to help out the construction industry to comply?*

**Response 16: Requested compliance assistance**

No changes to the permit have been requested or made due to this comment. The modifications requested are not within the scope of the public notice comment for the draft general permit or the associated fact sheet. The division takes note of this comment.

**Comment 17: Economic disadvantage**

*Home Builders Association of Metro Denver: For builders that are trying to comply with the regulations have an economic disadvantage compared to those who deliberately don't comply. When inspecting a site and making compliance decisions, can the Division give credit to a builder that has implemented Control Measures? From previous discussions, we understand the Division has only inspected about 2 to 3 percent of the construction sites over the past several years. Although the Division is staffing up to meet the U.S. EPA goal of 10 percent, we suspect there are those in the construction industry who may purposely avoid implementing controls. We emphasize that the Division should identify calcitrant offenders for inspections, rather than arbitrarily inspecting or targeting sites. If a builder has implemented controls but the day of the inspection there is an indication of issues, can the Division assure the industry that the builder who is trying to comply gets some compliance assistance rather than a notice of violation?*

**Response 17: Economic disadvantage**

The division takes note of this comment. No changes to the permit have been requested or made due to this comment.

## II. Part I.A. COVERAGE UNDER THIS PERMIT

### 1. Authorized Discharges

#### **Comment 18: Determination of single construction site**

*HRL Compliance Solution, Inc.: What determines a single construction site? Is a construction site the main disturbance and any other disturbance within a ¼ mile, or is each disturbance within ¼ mile considered a single construction site within the common plan?*

*The Oil & Gas infrastructure is designed to have multiple locations under one SWMP/permit. Each location is considered a separate construction site and therefore are on different inspection schedules, due to different start up dates.*

*Suggestion: Define Common Plan of Development to mean projects that may occur in multiple locations and/or multiple phases, within a designated area, but are part of a Common Plan of Development.*

*Western Slope Colorado Oil and Gas Association: There are lingering questions around what determines a single construction site. Is a construction site the main disturbance and any other disturbance within a ¼ mile or is each disturbance within ¼ mile considered a single construction site within the common plan?*

*The O&G infrastructure is designed to have several locations under one SWMP/permit but they are considered separate construction locations and thus would be under different inspection schedules. They can be and have been within a ¼ mile of each other but are considered different projects.*

*Define the term Common Plan of Development to allow permittees to have project specific boundaries rather than proximity boundaries. Definition taken from the Wyoming Large Construction General Permit: "Common Plan of Development or Sale" means projects that may occur in multiple locations and/or multiple phases, but are part of a single, overall plan. Add language to the permit that recognizes that field wide blanket coverage can have single projects listed under one SWMP.*

#### **Response 18: Determination of single construction site**

Additional clarifying language regarding common plan of development or sale has been added to the fact sheet. However, changes have not been made to the permit based on this comment because the division believes that the existing definitions of the terms "construction activity" and "Common Plan of Development" provide adequate clarification.

Additionally, Part I.C.1.a, provides that "A SWMP shall be developed for each construction site covered by this permit." The general permit intentionally provides flexibility as to whether individual SWMPs are developed for each separate construction site or whether one SWMP addresses all the unique construction sites that are part of a common plan of development or sale.

#### **Comment 19: Determination of a single construction site - borrow/fill areas**

*G.E. Johnson Construction Company: The wording "...dedicated to providing material to a single contiguous site..." implies only "borrow" areas. Suggest*

*clarification. Does this mean to include both import (borrow) and export receiving (fill) sites within 1/4 mile as allowable discharges? In addition, would borrow or fill sites that are within 1/4 mile and are covered under a separate permit be exempt for coverage under this permit for construction activities associated with the borrow or fill?*

*Home Builders Association of Metro Denver: The wording "...dedicated to providing material to a single contiguous site..." implies only "borrow" areas. Suggest clarification. Does this mean to include both import (borrow) and export receiving (fill) sites within 1/4 mile as allowable discharges? In addition, would borrow or fill sites that are within 1/4 mile and are covered under a separate permit be exempt for coverage under this permit for construction activities associated with the borrow or fill?*

**Response 19: Determination of a single construction site - borrow/fill areas**

These comment has not been incorporated into the permit. The division has determined that the terms "construction activity" and "common plan of development or sale" are appropriate. Please note that the definition of construction activity includes "stockpiling of fill materials."

Additionally, as discussed in the fact sheet, batch plants and borrow areas can also be covered by the division's sand and gravel mining processing (and other nonmetallic minerals except fuel) general permit (COR340000). However, the division has determined that discharges from facilities that meet the criteria described in the renewal permit may be appropriately covered under this general permit because they are dedicated to a single construction site. The division would not expect a dedicated batch plant or borrow area to be covered by both permits. However, if a facility that has a sand and gravel discharge certification is conducting construction activities that are outside of typical daily operations, coverage under the construction general permit would be required.

**Comment 20: Masonry mixing station language**

*G.E. Johnson Construction Company: We like the addition of the masonry mixing station wording to this permit. Dedicated asphalt/concrete batch plants are a much different thing than smaller mixing stations. This has been a point of confusion in state inspections.*

*Home Builders Association of Metro Denver: We like the addition of the masonry mixing station to the definitions in this permit. Dedicated asphalt/concrete batch plants are a much different thing than smaller mixing stations. This has been a point of confusion in state inspections. A masonry mixing station needs to be defined as to whether this applies to commercial type masonry mixing stations or small scale mixing stations for residential masonry work.*

**Response 20: Masonry mixing station language**

The division appreciates the support for the approach to masonry mixing stations. No changes to the permit or fact sheet were made based on these comments.

**Comment 21: Additional allowable discharges**

South East Metro Stormwater Association: SEMSWA has included a reference to the EPA draft Construction General Permit (CGP) in our comments, and sees several instances where the EPA effort could be utilized, if only in the Fact Sheet for clarification purposes. We especially like the following draft EPA Permit language and/or conditions that could enhance the State's permit:

1 ) Consider including a number of additional discharges and conditions on the discharges for I.A.1.b. Allowable Non-Stormwater Discharges

City of Glendale: Please include non stormwater discharges such as those listed in the MS4 Permit or provide a discussion in the fact sheet about how the discharges are not addressed by the permit and why. In addition, please consider adding the following as allowed non-stormwater discharges in line with the EPA draft general permit.

*Suggested language:*

All discharges authorized by this permit must be composed entirely of stormwater associated with construction activity unless listed below. Discharges listed as allowable non-stormwater must be identified in the stormwater management plan in accordance with Part I.C. and must have appropriate Control Measures in accordance with Part I.B. The following non-stormwater discharges associated with construction activity are authorized under this permit provided that, with the exception of water used to control dust and to irrigate vegetation in stabilized areas, these discharges are not routed to areas of exposed soil on your site:

- a. Discharges from emergency fire-fighting activities;
- b. Landscape irrigation;
- c. Water used to wash vehicles and equipment, provided that there is no discharge of soaps, solvents, or detergents used for such purposes;
- e. Water used to control dust;
- f. External building washdown, provided soaps, solvents, and detergents are not used, and external surfaces do not contain hazardous substances (e.g., paint or caulk containing PCBs);
- g. Pavement wash waters provided spills or leaks of toxic or hazardous substances have not occurred (unless all spill material has been removed) and where soaps, solvents, and detergents are not used. You are prohibited from directing pavement wash waters directly into any water of the U.S., storm drain inlet, or stormwater conveyance, unless the conveyance is connected to a sediment basin, sediment trap, or similarly effective control;
- h. Uncontaminated air conditioning or compressor condensate;
- i. Uncontaminated, non-turbid discharges of ground water or spring water;
- j. Foundation or footing drains where flows are not contaminated with process materials such as solvents or contaminated ground water; and
- k. Discharge authorized by a different CDPS permit and/or a discharge that does not require CDPS permit authorization.

Xcel Energy: There is no mention of irrigation return flow or discharges associated with construction dewatering in the draft permit language. EPA's GCP includes irrigation flows, water used to control dust, wash water (given caveats that does not include soaps etc.), foundation drains (again with caveats that there is no process material or contaminated groundwater), and construction dewatering. We

*recommend keeping the language consistent with what is EPA considers allowable non-stormwater discharges.*

*We understand there is low-risk dewatering guidance but we are unclear how enforcement will work if this is not directly covered under this permit and how this permit (Page 15, Section Part 1.C.2.a.vi(f), "requiring a description of allowable non-stormwater discharges including those being discharge under a division low risk guidance policy") can regulate these discharges including their description and locations when these discharges are not included in the allowable non-stormwater discharge section of the permit.*

*Wright Water Engineers: There is no mention of irrigation return flow or discharges associated with construction dewatering in the draft permit language. EPA's GCP includes irrigation flows, water used to control dust, wash water (given caveats that does not include soaps etc.), foundation drains (again with caveats that there is no process material or contaminated groundwater), and construction dewatering. We recommend mimicking EPA allowable non-stormwater discharges. We understand there is low-risk dewatering guidance but we are unclear how enforcement will work if this is not directly covered under this permit and how this permit (Page 15, Section Part 1.2.vi. f, "requiring a description of allowable non-stormwater discharges including those being discharge under a division low risk guidance policy") can regulate these discharges including their description and locations when these discharges are not included in the allowable non-stormwater discharge section of the permit.*

**Response 21: Additional allowable discharges**

Based on these comments and comment 22 directly below, discharges of landscape irrigation return flow has been added to the list of allowable non-stormwater discharges in the permit. No other non-stormwater discharges listed in the comments have been added to the list.

With the exception of discharges from fire-fighting activities, the additional discharges provided in these comments represent potential point source discharges that may require separate permit coverage and are not covered under this stormwater general permit. In addition, some of these discharges are not applicable to construction activities.

**Comment 22: Landscape irrigation return flow**

*G.E. Johnson Construction Company: We noticed that landscape irrigation flows are no longer listed as an allowable non-stormwater discharges. Suggest clarification. Does that mean landscape irrigation cannot be discharged? Landscape irrigation could still combine with construction activity discharges from adjacent properties or from within a single construction site that has not yet be fully stabilized. Also, many other states have a much longer list of allowable non-stormwater discharges that could also be applicable in Colorado. Has the state looked and compared these other state's lists?*

*Home Builders Association of Metro Denver: Allowable non-stormwater discharges. We noticed that landscape irrigation flows are no longer listed as allowable non-stormwater discharges. Does that mean landscape irrigation cannot be discharged?*

*What is a "return flow"? Landscape irrigation is required in many cases to achieve stabilization and should be included as an allowable non-stormwater discharge. Also, many other states including the federal construction general permit have a much longer list of allowable non-stormwater discharges that perhaps could also be applicable in Colorado. Has the State looked and compared these other state's lists?*

**Response 22: Landscape irrigation return flow**

Changes to the permit were made based on these comments. Specifically, landscape irrigation return flow has been added to the list of allowable non-stormwater discharges.

**Comment 23: Firefighting activities**

*Colorado Stormwater Council: Firefighting activities (and other "non-stormwater" allowable discharges") can and will occur during dry weather and should not need to be mixed with stormwater to be considered allowable. Firefighting activities not mixed with stormwater should be discussed as well as other discharges such as air conditioning condensation and irrigation runoff that may or may not be discharged with stormwater runoff.*

*The proposed language is derived from the 2017 EPA draft permit. The draft EPA Permit includes a number of additional discharges and conditions on the discharges that the Division should consider.*

*City of Aurora: All emergency firefighting discharges should be included and not be categorized separately.*

**Response 23: Firefighting activities**

These comments have not been incorporated into the permit. The division has intentionally separated emergency firefighting activities to align with various other stormwater permits issued by the division.

**Comment 24: Requested language revision**

*City of Aurora: Contradiction: How can the discharge be composed entirely of Stormwater if it's under "Non-Stormwater Discharges" section? Suggestion: Remove first sentence and replace with "Allowable Non-Stormwater Discharges include:..."*

**Response 24: Requested language revision**

This comment has been partially incorporated into the permit. The division removed the sentence as requested but did not replace the sentence with the suggested language provided.

**Comment 25: On-site disposal of concrete waste**

*G.E. Johnson Construction Company: This comment is in reference to the wording of "permanent, on-site disposal of concrete waste." Concrete is used as a building material in many ways. Although we understand that disposal of concrete wash water directly into a surface water has a potential for negative impacts to the natural environment of those waters, hardened concrete does not pose the same potential for negative impacts. It is impossible to eliminate all permanent disposal of hardened concrete waste on site. There will always be at least minor*

amounts left on site. This has been an ongoing issue during inspections and have been interpreted much differently between state and local inspectors. Suggest clarification - on how much hardened concrete is acceptable to leave on site that ultimately gets buried? The use of the word "permanent" could mean every pea sized piece of hardened concrete must be removed. This is impossible. Suggest a reference to concrete wash water not concrete waste.

City of Aurora: Only permanent? Will "temporary" onsite disposal of concrete waste be allowed?

Home Builders Association of Metro Denver: This comment is in reference to the wording of "permanent, on-site disposal of concrete waste." Concrete is used as a building material in many ways. Although we understand that disposal of concrete wash water directly into surface water has a potential for negative impacts to the natural environment of those waters, hardened concrete does not pose the same potential for negative impacts. It is impossible eliminate all permanent disposal of hardened concrete waste on site. There will always be at least minor amounts left on site. This has been an ongoing issue during inspections with very different interpretations between State and local inspectors. We suggest clarification. How much is acceptable to leave on site that ultimately gets buried? The use of the word "permanent" could mean every pea sized piece of hardened concrete must be removed. This is impossible. We suggest a reference to concrete wash water not concrete waste. Further, does the Water Quality Control Division stormwater group have authority under the Clean Water Act for control of pollutants to groundwater? We believe in past meetings with CDPHE that it has been inferred that if the groundwater is in communication with surface water, then the Clean Water Act applies.

This permit does not authorize on-site waste disposal. We suggest inserting between the words "authorize" and "on-site" the word "permanent". This is important since the Division defines storage but not disposal in the permit. Or, perhaps add a definition for disposal.

Colorado Department of Transportation: Liquids: Suggest changing the term "discharge" to "waste" to the ground. Solids: how do you define concrete waste? We technically do not have waste because we are able to re-use solid concrete pieces as fill because it is considered as an "intended use."

**Response 25: On-site disposal of concrete waste**

These comments have been partially incorporated into the permit. Part I.A.1.b.iii of the general permit was modified to remove the discussion about onsite concrete waste disposal. The disposal of hardened concrete waste is covered under solid waste regulations and must meet the requirements of those regulations.

**Comment 26: Clarification on need for concrete washout control measure**

City of Aurora: Does this eliminate the need for a concrete washout as long as they have adequate perimeter controls in place to prevent discharges of concrete waste off site?

CWS Colorado L.L.C.: My main concern is with Part 1 Section A item B iii, Discharges to the ground of concrete washout water associated with the washing of concrete tools and concrete mixer chutes. If you refer to the Environmental



*Protection Agency's Construction Stormwater General Permit Section 2.3.1. Prohibited Discharges, you will find that the EPA has identified waste water from the washout of concrete as a prohibited discharge, not as an allowable discharge (as your draft states), unless the washout is managed by an appropriate control as described in the EPA's control section Part 2.3.3.4. Your permit as proposed in your draft, would undermined what the EPA has set out as standards for construction sites, which is limiting what could be a toxic waste into state and federal waters. By allowing concrete wash water to be discharged to the ground with no identified controls, there could be open discharge of federally prohibited waste material into the environment. What your current draft says, is that it is permissible to discharge waste and/or washout water onto the ground as long as it does not leave the construction site. Basically, that means that any ready mix, or concrete pump truck driver can drive out to an open dirt field, and washout their equipment, because by doing that, the water will just seep into the ground, and never leave the site. Am I right, or am I missing something? At least your existing permit requires that a below grade pit be made available to capture the washout waste. This draft does not mention the words "below grade pit". In fact, I find no mention of control or containment at all. If there is not going to be any requirement for a leak-proof container, or other type of containment in this draft, will the state at least require that a hydrolysis study be done prior to performing any construction activities, to determine where the water table is, to make sure that there is no leaching of washout waters into state waters? Your draft is not only very vague, but undermines what the Federal Environmental Protection Agency is trying to prevent, and that is to minimize the amount of pollutants that can end up in state and federal waters.*

*Home Builders Association of Metro Denver: The language in this section only states "groundwater, so this is unclear. If this section remains as it is written, will all concrete washouts be required to be lined if the depth of groundwater and an assessment potential impacts are not determined in advance?"*

**Response 26:** Clarification on need for concrete washout control measure  
Changes to the fact sheet have been made based on this comment. The division has added further clarifying language regarding concrete washout water on construction sites. The EPA's Construction General Permit reflects EPA's judgment regarding what requirements are appropriate to implement the federal regulations. The division has the flexibility to adopt the same requirements as EPA or to make other requirements that are protective of water quality and which meet both state and federal stormwater regulations. In the case of concrete wash water, the EPA CGP states: "Direct wash water into a leak-proof container or leak-proof and lined pit designed so that no overflows can occur due to inadequate sizing or precipitation." The division has chosen to allow the permittee flexibility in the selection of control measures used to ensure that concrete wash water does not leave the site as surface runoff or reach a state water other than discharges to the groundwater. The EPA permit, consistent with the federal Clean Water Act, does not regulate discharges to groundwater, so this allowance is not contradictory to the federal requirements. Please note that the previous permit did not require "a below grade pit...to capture the washout waste". See fact sheet for further discussion of concrete wash water.

## 2. Limitations on Coverage

### Comment 27: Typographical errors

City of Golden: According to I.A.3.e. Permit Coverage without Application - Qualifying Local Program, QLP's are exempt from this section of the permit. Is this a typographical error that should read II.A.2?

*If it's not a typographical error, please clarify why Limitations on Coverage would not apply to QLP? How would a site with QLP coverage discharge the following if not allowed through the QLP:*

*Discharges associated with emergency firefighting activities that are combined with stormwater discharges associated with construction activity.*

*Discharges from uncontaminated springs combined with stormwater associated with construction activity.*

*Discharges to the ground of concrete wash water associated with the washing of concrete tools and concrete mixer chutes. This does not include an authorization for on-site disposal of concrete waste. Permanent, on-site disposal of concrete waste is not authorized by this permit. Discharges of concrete wash water must not leave the site as surface runoff or reach state surface waters.*

Home Builders Association of Metro Denver: *Low-risk Guidance Document. Discharges Capitalize Risk.*

### Response 27: Typographical errors

Changes to the permit have been made based on these comments. The section reference for Qualified Local Programs was incorrect and has been amended and 'risk' has been capitalized.

### Comment 28: Requested addition of website address

Home Builders Association of Metro Denver: *Currently Covered. Please give the website addresses of where to find the Low Risk Guidance.*

### Response 28: Requested addition of website address

No changes to the permit have been made based on this request. The division did not incorporate the website link into the permit because web addresses change frequently and the division would have to modify and public notice the permit to correct any change to the web address during the permit term.

## 3. Permit Certification Procedures

### Comment 29: Owner/operator signature requirements

Southern Ute Indian Tribe Growth Fund: *There is no federal requirement that both the owner and operator must be permittees. 40 CFR §122.21 requires that the operator is obligated to obtain a permit. It is only by changing the definition of operator in the permit to also include the owner that the owner must also obtain a permit. As stated in the Fact Sheet, the EPA clarified their interpretation of what 'operator' means for the 1998 CGP. However, as stated in the preamble to the 1998 CGP, the definition for operator in the permit was not a formal*

regulatory definition in and of itself. Even though the EPA and some other states may be requiring that both the owner and operator are permittees, there is no federal requisite that the Division follow suit. If it was, then the EPA should have objected to the issuance of the 2007 permit, which does not require the owner to be a permittee.

*Wright Water Engineers, Inc.: Draft EPA CGP 2017 (See Section 1.1) removed owner signature requirements due to lack of control over plans and specification and day to day activities. For example, the operator typically develops the BMP site maps and the owner has little control over those maps or the permit requirements. Draft EPA CGP 2017 definition of operator is as follows and is the only entity responsible (or eligible) for applying for coverage the CGP. Operator" - for the purposes of this permit and in the context of stormwater discharges associated with construction activity, any party associated with a construction project that meets either of the following two criteria: 1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or 2. The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit). Some rationale given for removing the owner from being a co-permittee include: that the owner often does not have stormwater knowledge which is why the owner hires a general contractor to develop the site and be responsible for day to day activity and has the expertise to deal with construction issues including stormwater management and permitting. We recommend that the owner can be identified on the application but not necessarily be the co-permittee with joint liability and the permit should allow the owner and operator decide who should be the permittee and who should be listed as the owner or the operator. We believe listing both the owner and operator is different than being co-permittees.*

**Response 29: Owner/operator signature requirements**

No changes to the permit were made based on this comment. The division has the flexibility to adopt the same requirements as EPA or to make other requirements that are protective of water quality and which meet both state and federal stormwater regulations. At the state level, Regulation 61.4(1)(b) allows the division to waive the requirement for the owner to sign the application if the discharge is short-term or intermittent; however, the division has elected not to waive this requirement. Please see the fact sheet for a full discussion of the division's decision to require owner/operator signatures.

**Comment 30: Owner/operator general requirements**

*Sothorn Ute Indian Tribe Growth Fund: It has been the SUIT Growth Fund's experience that the commitment of the operator of the construction site can also be a potential root cause for variable levels of compliance. Up until the past few years, the SUIT Growth Fund's business enterprises involved in ground disturbing activities would assume the role of owner, obtain the construction stormwater general permit certification, prepare and maintain the stormwater management plan (SWMP), conduct the required inspections, prepare the reports, and assume full liability for permit compliance. However, it was frequently very challenging maintaining permit compliance since the owner did not have day to day control of operations on the ground. It was often difficult to compel some operators to*

*complete the required compliance activities such as the maintenance or installation of control measures, even though such activities had been delegated by contract as their responsibility. Since the operator was not a permittee, they had no liability with respect to permit compliance. Construction schedules often took precedent over completing maintenance or corrective action within the time frame required by the permit. The SUIT Growth Fund found that the lack of operational control over the site was a definite liability issue.*

*Since the operator can be the permittee under the 2007 permit, the SUIT Growth Fund began reassigning permit coverage to the operator for each new phase within one of their large developments (where they are the owner/permittee) to address this liability issue. These phases are typically associated with the installation of infrastructure (e.g., utilities, streets, sidewalks, storm sewer systems, parks, etc.) for a specific area within the common plan of development. Upon completion of the installation of the infrastructure, the permit coverage for the phase/area that had not achieved final stabilization criteria is transferred back to the owner/permittee, who would again assume permit coverage responsibility until the undeveloped lot(s) was sold to another operator or was developed by the owner and then sold. SUIT Growth Fund has found that day to day operations on the ground can have a very significant effect on permit compliance. By reassigning permit coverage for the area to the operator, the operator has complete control over the preparation and implementation of the SWMP as well as compliance with the requirements of the permit. To date, the SUIT Growth Fund has found that this has worked well for both the owner and the operators of the various phases at this development.*

*In summary, the SUIT Growth Fund highly recommends that the application requirement in the 2007 permit are retained in the renewal permit. If the Division must require that both the owner and operator must be permittees, the SUIT Growth Fund recommends that the Division allow the owner and operator to obtain separate permit coverage as long as each permittee's scope of work is defined and the permittee responsible for each requirement of the permit is identified in the SWMP. If, on the other hand, the Division retains the new requirement as proposed in the renewal permit, it is recommended the Division exempt not only existing permittees but also any future reassignments of areas covered by submitted by existing permittees as well as future homeowner who contract home construction on a lot that they own in a common plan of development that is less than 1 acre and the owners of the land on which oil and gas operation construction activities will be taking place from the new application requirement.*

*Home Builders Association of Metro Denver: Application Requirements (partial quote)*

*"To obtain authorization to discharge under this permit, applicants applying for coverage following the effective date of the renewal permit shall meet the following requirements:*

*i. Signature requirements: Both the owner and operator of the construction site, as defined in Part I.F., must agree to the terms and conditions of the permit and submit a completed application that includes the signature of both the owner and*

*the operator. In cases where the duties of the owner and operator are managed by the owner, both application signatures may be completed by the owner. Both the owner and operator are responsible for ensuring compliance with all terms and conditions of the permit, including implementation of the stormwater management plan.*

*ii. Applicants must use the paper form provided by the Division or the electronic form provided on the Division's web-based application platform when applying for coverage under this permit.*

*iii. The applicant(s) must develop a stormwater management plan (SWMP) in accordance with the requirements of Part I.C. The applicant(s) must also certify that the SWMP is complete, or will be complete, prior to commencement of any construction activity."*

*This section appears to create a situation where the owner and operator are jointly and severally liable for permitting, development of the SWPPP and compliance during construction. The homebuilding association opposes this requirement for several reasons. In the construction industry there are several business models to develop real estate. One such model is where an owner purchases the property, develops plans and specifications, and provides financing to develop the property. In many cases the owner hires a contractor to perform and manage the construction effort because contractor has the expertise, staff and "know how" to manage a construction site including stormwater permit compliance. It is not reasonable to require an owner who may not have the expertise, stormwater management skills, staff to monitor the day to day performance of an operator who has a contractual obligation to manage day to day stormwater permit compliance at the construction site to the extent necessary. It would also not be appropriate or reasonable to fine or penalize an owner in a stormwater related enforcement action who does not have the control of the day to day operations at a construction site for violations that are the sole responsibility of the operator that has day to day responsibility for permit compliance.*

*The draft permit requires the applicants, both the owner and the operator, to jointly develop the SWMP. The SWMP is a state and federally enforceable document and as such, only the entity that develops the SWMP should be accountable for contents of the SWMP. In a co-permittee situation all operators would be responsible for the adequacy of the SWMP. Regardless of which entity develops the SWMP, the co-permittee who did not develop the SWMP should not be held accountable for its content in the event of an enforcement action due to the content or lack of content of a SWMP. This co permitted condition will increase a cost; create additional time commitments, and additional paperwork burden on an owner and operator that are unnecessary.*

*We recommend that the draft permit define the owner as the person who owns the property or has a long term leasehold interest in the property. We also recommend that the draft permit allow the operators to determine amongst themselves who will be responsible for permit coverage, SWMP development and permit compliance on the jobsite. The permit should follow the permitting*

*guidelines and definitions contained in the current federal construction permit that states the following:*

*“Operator - for the purposes of this permit and in the context of stormwater discharges associated with construction activity, any party associated with a construction project that meets either of the following two criteria:*

- 1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or*
- 2. The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit).”*

**Response 30: Owner/operator general requirements**

No changes to the permit or fact sheet were made based on this comment.

Part IV of the fact sheet, sub Part I.A.3.b., provides an extensive discussion of the assessment, regulatory review, and stakeholder process leading to and supporting the division’s determination to require both the owner and the operator signatures on the permit application. More specifically, Regulation 61.4(1)(b) requires that a facility or activity owned by one person but operated by another requires both the owner and the operator to sign the permit application, and the permit will be issued to both as permittees. The Division has the authority to waive the requirement when the discharge is short-term or intermittent. The Division has elected not to waive this requirement for this permit.

As indicated in Part IV, sub Part I.A.3.b of the fact sheet, the requirement for both signatures pursuant to Reg 61.4(1)(b) will be applied only to new applications received after the renewal permit becomes effective. The division anticipates that the co-permittee approach provided under this general permit will increase site owner commitment to comply with the requirements to obtain a permit and meet permit requirements, and that this approach is reasonable and necessary to ensure the protection of state waters.

**Comment 31: Overarching permit certification for larger common plan areas**  
*Southern Ute Indian Tribe Growth Fund: For very large common plan of developments (such as the development that the SUIT Growth Fund owns) that will take decades to build out, the proposed application requirement will result in the owner maintaining multiple certifications at one time if more than one operator is working in the development (each with operational control of a specific area within the development) at the same time. Although the owner could avoid multiple certifications by assuming the responsibility for being the owner and operator for all phases of development in which he retains ownership but, as was discussed in Bullet 3 above, there are liability issues with that approach that may be unacceptable to the owner. For each permit certification, the owner as a co-permittee would be required to maintain a SWMP until the permit coverage can be terminated or transferred (i.e., the owner permittee no longer meets the definition of ‘owner’).*

*Typically, the entire area of each infrastructure installation phase at the SUIT Growth Fund's development is not finally stabilized upon the completion of the operator's work responsibilities. Therefore, the permit coverage cannot be terminated at that time. However, according to the renewal permit, if operator has completed his responsibilities for that area of the development, and full responsibility for the operation of the area is returned to the owner and the operator is no longer present onsite, 'the operator may terminate its coverage under the general permit leaving the owner as the sole permittee.' At that time, the owner will be responsible for maintaining permit coverage for the area until the permit can be terminated or transferred (i.e., the owner permittee no longer meets the definition of 'owner.')* Overtime, the owner at large developments may end up the sole permittee for numerous permit certifications each with their own SWMP.

*In addition, each permit certification will have annual fees. Depending on how quickly the final stabilization criteria is reached for the entire area covered by each permit certification, the owner could end up paying more in annual fees than is currently paid under the 2007 permit. Although the owner may be able to consolidate these individual permit certifications into one certification over time, the owner will be charged a fee equivalent to 25 percent of the annual permit fee each time they do so. Therefore, for large common plans of development that are of long duration, the proposed requirement will increase the compliance work load, complexity, and costs for the owner.*

*Using the same development scenario but operating under the 2007 permit application requirements, the owner/permittee of a large development can reassign permit coverage responsibility for areas currently being developed to the operator who will have day to day supervision and control over the activities of the area and implementation of the SWMP. The owner maintains one permit certification and one SWMP for all areas of the development over which the owner controls and each operator has their own certification and SWMP for the area they control. If, due to the scope of work for the project, the operator will not be able to meet the final stabilization criteria for permit termination at the completion of his work, the operator can transfer permit responsibility for the area to the owner as per the contract agreement. The owner is responsible for the annual fees for only one permit, maintaining one SWMP, and ensuring compliance with all terms and conditions of the permit for those areas where the owner has day to day supervision and control over the activities in that area, including implementation of the SWMP. The operator in turn has complete control over preparing and maintaining his SWMP and its implementation and ensuring compliance with all terms and conditions of the permit for those areas where they have day to day supervision and control over the activities of that area.*

*Therefore, the SUIT Growth Fund recommends that the current requirements for the permit applicant, i.e., has day to day supervision and control over the activities of the site and implementation of the SWMP, be retained in the renewal permit.*

**Response 31:** Overarching permit certification for larger common plan areas  
No changes have been made to the permit based on these comments. It is the division's intent to use the co-permittee approach to ensure that both the owner

and operator are responsible for maintaining the SWMP and ensuring compliance with the permit.

**Comment 32: Multiple operators with one owner**

*Southern Ute Indian Tribe Growth Fund: If the Division requires that both the owner and operator for the same project must be permittees, then the SUIT Growth Fund recommends that the owner and operator be allowed to obtain separate permit coverage. In addition, it is recommended that the Division incorporates language similar to that from the Part 1.1 of the 2012 CGP regarding multiple operators associated with the same project. The pertinent extract from the 2012 CGP provided below:*

*“Note: Where there are multiple operators associated with the same project, all operators are required to obtain permit coverage. The following applies in these situations:*

- 1. If one operator has control over plans and specifications and a different operator has control over activities at the project site, they may divide responsibility for compliance with the terms of this permit as long as they develop a group SWPPP (see Part 7.1.1), which documents which operator has responsibility for each requirement of the permit.*
- 2. If an operator only has operational control over a portion of a larger project (e.g., one of four homebuilders in a subdivision), the operator is responsible for compliance with all applicable effluent limits, terms, and conditions of this permit as it relates to the activities on their portion of the construction site, including protection of endangered species, critical habitat, and historic properties, and implementation of control measures described in the SWPPP in the areas under their control.*
- 3. You must ensure either directly or through coordination with other permittees, that your activities do not render another party’s pollutant discharge controls ineffective.”*

*By allowing the owner and operator to have separate permits, some of the issues associated with large common plan of developments that were discussed in Bullets 3 and 4 would be addressed. The owner of a large common plan of development would only need to have one permit.*

**Response 32: Multiple operators with one owner**

No changes have been made to the permit based on these comments. Under the terms and conditions of the permit the owner of a Larger Common Plan of Development shares responsibility with each of the individual operators within the Larger Common Plan of Development, as applicable, for each construction site.

**Comment 33: Individual homeowner exemption**

*Southern Ute Indian Tribe Growth Fund: According to the signature requirements of the renewal permit, a future homeowner who buys a lot that is less than one acre of disturbance but located within a common plan of development that has an active construction stormwater general permit and contracts out the construction of the home will be required to be a co-permittee. In the Three Springs Development, a common plan of development in Durango, Colorado, most of the*



*residential lots are less than 0.5 acres and many are less than a 0.10 acres. It does not seem appropriate to require a future homeowner, who purchased their lot outright rather than purchasing the lot and the future house from a homebuilder, to have to assume the responsibility and liability for construction stormwater general permit compliance. The operator/homebuilder as per the 2007 permit should continue to be responsible for signing the permit application and compliance with the permit requirements for the following reasons.*

*Typically, the homebuilder, not the lot owner, will control most operations that will affect stormwater pollution. The homebuilder, being the professional in the building industry, will be much more knowledgeable about the requirements of permit compliance due to past construction activities that required a construction stormwater general permit or, if not familiar with construction stormwater general permits, will benefit from becoming more knowledgeable about the permit and compliance since a permit may be required for their future project(s). For example, the operator/homebuilder may already be working on other lots within the development or is planning to continue to do so in the future, and thus is or will be required to obtain a permit coverage and comply with the permit requirements.*

*For the lot owner/future homeowner, building a home could be a once in a lifetime event. It seems inappropriate to burden the lot owner with the responsibilities and liabilities of construction stormwater general permit for construction activities of relatively short duration and that disturb such a small area.*

*Therefore, the operator, not the owner, should bear the responsibility for obtaining the permit and being the sole permittee. During the November 4, 2016 Public Notice Meeting, the Division stated that for construction activity related to oil and gas operations the operator would act as both the owner and operator even though the operator did not own the property thereby eliminating the need to involve the landowner (farmer, rancher, etc.) in the permitting process. Therefore, if the Division determines that it is appropriate to retain the application requirement as proposed in the renewal permit, the SUIT Growth Fund recommends that future homeowners who own lots that are less than 1 acre in a common plan of development are exempt from the application requirements when home construction activities begin.*

**Response 33: Individual homeowner exemption**

These comments have been partially incorporated into the permit. Part I.E. of the permit has been modified to add the following to the definition of owner: "The party that has funded the implementation of the construction plans and specifications. This is the party with ownership or long term lease of the property or easements on which the construction activity is occurring (e.g., the developer)."

The division recognizes that when a homeowner elects to construct a home without hiring a homebuilder, on a lot that is less than one acre but is part of a Larger Common Plan of Development, the homeowner will be required to obtain a permit as the owner and operator of the activity.

**Comment 34: Request to document owner allowance**

Southern Ute Indian Tribe Growth Fund: As was stated previously, the Division indicated during the November 4, 2016 Public Notice Meeting that the operator for construction activity related to oil and gas operations would be allowed to act as both the owner and operator even though the operator did not own the property on which the construction activity was taking place. By allowing this deviation from the proposed requirement, the landowner (farmer, rancher, etc.) would not have to become a party to the renewal permit. The SUIT Growth Fund supports this approach and recommends that the Division documents this exemption in the final renewal permit documents.

**Response 34: Request to document owner allowance**

No changes to the permit have been made based on this comment. The definition of "owner" already incorporates and documents this allowance by stating that the owner can be a party with a long term lease or easements on the property.

**Comment 35: Field wide permit coverage for oil and gas construction**

Colorado Oil and Gas Association: To remain consistent with proposed Field Permit coverage in Part I.A.3.d.iii. below.

*Insert the following "Construction sites that are part of a field permit coverage where the common plan of development will disturb one acre or more."*

Western Slope Colorado Oil and Gas Association: There are lingering questions around what determines a single construction site. Is a construction site the main disturbance and any other disturbance within a ¼ mile or is each disturbance within ¼ mile considered a single construction site within the common plan?

Define the term Common Plan of Development to allow permittees to have project specific boundaries rather than proximity boundaries. Definition taken from the Wyoming Large Construction General Permit: "Common Plan of Development or Sale" means projects that may occur in multiple locations and/or multiple phases, but are part of a single, overall plan. Add language to the permit that recognizes that field wide blanket coverage can have single projects listed under one SWMP.

**Response 35: Field permit coverage for oil and gas operations**

Changes to the permit have been made in response to this comment. The definition of "Common Plan of Development or Sale" has been modified to incorporate the language requested by the Colorado Oil and Gas Association.

**Comment 36: Water quality standards**

City of Aurora: How does the permittee know what the water quality standards are? What is the division's duty to inform about their designations? What basis does the division have for the designation? Is it publicly noticed?

G.E. Johnson Construction Company: Although we understand references to contributing to water quality standards is used in most general permits. Suggest clarity - how would a permittee or the state know that their discharge contributes to a violation of a water quality standard? Unless testing is performed and the analysis parameters are known, how would a builder or general contractor know a violation has or can occur?

**Response 36: Water quality standards**

No changes to the permit were requested or made based on this comment. However, additional clarifying language has been added to the fact sheet.

Please note: The fact sheet for EPA's 2017 Construction General Permit states:

"In the absence of information demonstrating otherwise, EPA expects that compliance with the conditions in this permit will result in stormwater discharges being controlled as necessary to meet applicable water quality standards. If at any time the operator becomes aware, or EPA determines, that the discharge is not being controlled as necessary to meet applicable water quality standards, the operator must take corrective action as required..."

The division agrees with EPA's view on this issue.

**Comment 37: Requested change to the definition of "owner"**

Xcel Energy: *Xcel Energy does not necessarily fall into the "lease" category but we, along with other utility companies have easements where our construction projects are conducted.*

*We recommend adding "as defined in Part 1.E and 1.F" since the definitions are located in Part 1.E. of the permit and revising the definition of the Owner to read:*

*"The party that has control over construction plans and specifications, including, the ability to approve modifications to those plans and specifications. This is the party with ownership or long term lease of the property or easements on which the construction activity is occurring (e.g., the developer)." (Addition to the definition is shown in bold).*

GE Johnson Construction Company: *Addition of the owner is a positive addition. However, suggest clarification on the definition of owner as indicated in the above general comments.*

Home Builders Association of Metro Denver: *The addition of the "owner" is a positive addition. However, we suggest clarification on the definition of owner as indicated in the above general comments.*

Colorado Department of Transportation: *Both the owner and operator of the construction site, as defined in part 1.F., must agree to the terms and conditions of the permit and submit a completed application that includes the signature of both the owner and the operator.*

*Clarification needs to be added on how temporary construction easements will be handled.*

Wright Water Engineers, Inc.: *Recommend revising the definition of the Owner to read: "The party that has funded the development of the construction plans and specifications. This is the party with ownership or long term lease of the property or easements on which the construction activity is occurring (e.g., the developer)." (Addition to the definition is shown in bold)*

**Response 37: Requested change to the definition of “owner”**

Changes to the permit and fact sheet have been made based on these comments. The definition for owner in Part I.E. of the permit has been modified.

**Comment 38: Clarification on signature requirements**

Colorado Department of Transportation: *Clarification question: what if both the owner and operator are unable to sign the same application document?*

*Does this mean that now with two permittees, the operator only has to sign a Termination form when they are done, leaving only the owner as a permittee? On our sites, currently the operator transfers the permit to the owner after construction is done so we are aware that they think they are done.*

**Response 38: Clarification on signature requirements**

No changes to the permit were requested or made based on this comment.

In the event that the application is not electronically accessible, the division will either grant a waiver or accept different signature pages for each permittee required to sign. Additionally, the division would require acknowledgement from the owner that the operator was terminating their portion of the certification and that the owner would have sole responsibility.

**Comment 39: Owner/Operator responsibilities**

Sothorn Ute Indian Tribe Growth Fund: *The SUIT Growth Fund also does not agree with the permit stipulation in Part I.A.3.b.i. of the renewal permit that ‘both the owner and operator are responsible for ensuring compliance with all terms and conditions of the permit, including implementation of the stormwater management plan’ for the reasons provided below.*

*Division Note: Due to length, the full comment letter is not reproduced here. For full content, please see comment letter, available through the division’s environmental records database located on the CDPHE website.*

**Response 39: Owner/Operator responsibilities**

No changes to the permit were made based on this comment. The division would consider both the owner and the operator equally responsible for compliance with the general permit requirements. Therefore, to clarify this intent, the original language in the draft general permit states that both the owner and operator are responsible for ensuring compliance with all terms and conditions.

**Comment 40: Electronic submittals**

Home Builders Association of Metro Denver: *Application Delivery. Are electronic submittals acceptable and consistent throughout?*

**Response 40: Electronic submittals**

No changes to the permit were requested or made based on this comment.

The division understands the benefits of electronic submittals to permittees. Therefore, the division is actively working on development of an online permit application system and plans to coordinate the timing of the permit effective date with the timing of the Colorado Environmental Online Services (CEOS) application system. In the event that the division is not able to coordinate the timing of the

online permit application system, the division will continue to accept applications via electronic application forms, followed by submittal of a hard copy application with all required signatures.

**Comment 41: Stormwater management plan flexibility**

GE Johnson Construction Company: *Addition of "or will be complete" referring to completion of a SWMP is good. There are many times when the time between the award of a project and the anticipated start date is short. This will allow permittees to still apply for the permit within the required timeframe and still get the SWMP done prior to commencement of activities. Request clarification - During the application process with there be somewhere to indicate that the SWMP has not yet been completed but will be prior to commencement of construction activities?*

Home Builders Association of Metro Denver: *The addition of "or will be complete" referring to completion of a SWMP is another good inclusion that allows for flexibility. There are many times when the time between the award of a project and the anticipated start date is short. This will allow permittees to still apply for the permit within the required timeframe and still get the SWMP done prior to commencement of activities. During the application process will there be somewhere to indicate that the SWMP has not yet been completed but will be prior to commencement of construction activities?*

**Response 41: Stormwater management plan flexibility**

No changes to the permit were made based on this comment.

The division intends to have a location on the application where the applicants may certify that the Stormwater Management Plan (SWMP) will be completed prior to the commencement of construction activities as defined by the general permit.

**Comment 42: Public emergency related sites**

City of Aurora: *Clarify when the time frame begins, after the clean-up of the public emergency related site, or from when the public emergency started? i.e. floods: from when it started 'flooding' or when the area has drained. Further, it is recommended to increase the time frame from 14 days to at least 30 days.*

Home Owners Association of Metro Denver: *Public Emergencies. Concept of "public emergency" adequate says e.g., can others be included? Should the type of emergencies (i.e. flooding, fire, etc.) be included?*

*Inconsistency between timelines of submittal and work commencement, please clarify.*

**Response 42: Public emergency related sites**

Changes to the permit and fact sheet were made based on the comment provided requesting additional clarification on the timelines and work commencement.

Additionally, the division believes that the definition of "public emergency" in the original draft permit covered the appropriate types of emergency scenarios. In addition, the division believes that the timelines are adequate and clearly stated in the permit.

Specifically, Part I.E of the general permit includes a definition of "Public Emergency Related Site" and provides examples to clarify the division's intent regarding the use of this term. Per Part I.A.3.b.i of the general permit, the time frame for applying for coverage begins with the commencement of construction activities - specifically: *The applicant(s) must submit a complete, accurate, and signed permit application electronically, by mail or hand delivery to the division at least 10 days prior to the commencement of construction activity except that construction activities that are in response to a public emergency related site shall apply for coverage no later than 14 days after the commencement of construction activities.*

**Comment 43: Application response requirement from the division**  
*GE Johnson Construction Company: This section states that the "...the division may" do different things regarding the permit application. Suggested change - We feel the word "may" should be changed to "will".*

*Request clarification - If the state "delay's" authorization will they contact the permittee and provide a reason for the delay?*

*City of Aurora: Strike may and replace with 'shall take one of the following actions'*

*Home Builders Association of Metro Denver: In the previous permit, if the permittee had not heard from CDPHE within ten days it was assumed that the permit was approved and work could begin. We recommend that this be added back into the permit. Having a timeline associated with the authorization to discharge allows the developer to schedule labor, materials, and equipment with some certainty that the permit authorization will be issued and the start of construction date will be accurate. Without that, developers could incur significant remobilization or equipment standby costs due to uncertainty of when the authorization to discharge will be approved. The Division should include a condition that approval is granted within 10 days unless written notification is given to the applicant to the contrary.*

*Request clarification - If the state "delay's" authorization will they contact the permittee and provide a reason for the delay?*

**Response 43: Application response requirement from the division**  
No changes to the permit or fact sheet were made based on this comment. The division has chosen to not change "may" to "shall" to allow flexibility for changes to application procedures without the need for a permit modification. Please see the fact sheet for full discussion of this topic.

**Comment 44: Oil and gas partial permit exemption request**  
*Colorado Oil and Gas Association: Field Permit Coverage*

*A permittee engaged in oil and gas exploration and production activities may apply for Field Permit certification. In this case, the same application is used to apply for Field Permit coverage as is used for regular Stormwater Construction Permit coverage. However, the information provided on the application will vary to account for the non-typical coverage being requested, and federal regulatory applicability. These variations are set forth in the Stormwater Fact Sheet for*

*Construction at Oil and Gas Facilities. Permits qualifying for Field Permit coverage are exempt from the following sections of this general permit*

*Part I.A.3.i.; Part I.B.2.; Part II.B.5.b.iii.; Part II.B.5.b.v.; Part II.B.5.b.iii.; Part II.B.5.b.v.; Part II.B.5.b.vii.; Part II.b.5.c.i.*

**Response 44: Oil and gas partial permit exemption request**

No changes to the permit were made based on this comment.

Changes to the fact sheet were made based on this comment. Specifically, the fact sheet has been modified to include relevant information regarding the field wide permit coverage for oil and gas exploration and production activities. Please refer to response #3 for more regarding the application of federal ELGs.

The division disagrees that certifications qualifying for field permit coverage are exempt from sections cited in the comment. The sections cited in the comment primarily refer to instances where the division may modify a permit, such as in the event of a regulation change. Standard permit provisions such as those in the sections cited are appropriate for field wide permit coverage as well as standard permit coverage.

**Comment 45: Incorrect reference for qualifying local program exemptions**  
G.E. Johnson Construction Company: Suggested change - This section references *sections of the general permit that are exempt under a qualifying local program - there is no Part I.A.4 - what section was intended here?*

City of Golden: *As these permit sections are specific to Division processes and authority, the exemptions for QLP should also include:*

*I.A.3.d. Alternative Permit Coverage; I.A.3.f. Reassignment of Permit Coverage; I.A.3.g. Transfer of Permit Coverage; I.A.3.h. Termination of Permit Coverage; I.A.3.j. Permit Expiration; I.C.4. SWMP Availability, signed certification; I.F. Signatory Requirements; and portions of Part II, noted in comment #13, below.*

*Part I.A.2. appears to be a typo that should be changed to Part II.A.2. Part I.A.4 is an incorrect citation and should be changed to Part II.A.4.*

*It is easier to refer to the permit sections that apply to QLP per the current permit format, than to determine which sections apply based on excluded sections cited the draft permit. It is suggested that the applicable sections of the general permit be listed in this section for clarity.*

Xcel Energy: *There is no Part I.A.4 in the permit. Do you mean to reference Part 11.A.4?*

Southern Ute Indian Tribe Growth Fund: *Two of the sections of the renewal permit that are referenced in the last sentence of Part I.A.3.e., i.e., Part I.A.2 and Part I.A.4, are incorrect. The correct references should be to Part II.A.2 and Part II.A.4.*

Home Builders Association of Metro Denver: *We suggest a change. This section references sections of the general permit that are exempt under a qualifying local program - there is no Part I.A.4 - what section was intended here?*



**Response 45: Incorrect reference for qualifying local program exemptions**  
Changes to the permit and fact sheet were made based on these comments. The exemptions were corrected to reflect the intended sections. The division will continue to list the sections of the permit that are exempt.

**Comment 46: Request to list qualifying local programs on division website**  
*City of Golden: Since removing the list of designated QLP's from the Division's website, the City has experienced an increase in misunderstanding among applicants regarding the Program. The City believes that listing Division designated QLP's on its website provides clear and easily accessible information for owner/operators. The information currently supplied by the Division (on page 3 of the SWMP Guidance) is difficult to find; conveyed to the wrong audience; and results in significant confusion and, at times, duplicate permitting and unnecessary administrative burden on the Division, and applicant, to terminate unneeded certifications.*

**Response 46: Request to list qualifying local programs on division website**  
The division takes note of this comment. No changes to the permit or fact sheet were made based on this comment. The request to add the QLP's to the division website is outside of the scope of this permit, but the request is under consideration by the appropriate parties within the division.

**Comment 47: List of more stringent requirements**  
*City of Golden: Requirements of this permit that are in addition to or more stringent than the requirements of the Qualifying Local Program apply in addition to the requirements of the Qualifying Local Program.*

*A QLP is reviewed and approved to maintain designation. To ensure the permit requirements are clear and specific, the sections of the draft permit that are more stringent than previous permit requirements should be called out specifically in the fact sheet.*

**Response 47: List of more stringent requirements**  
No changes to the permit or fact sheet were made based on this comment. The fact sheet to the general permit provides a summary of the major changes since the last permit renewal, a description of those changes, and the basis and rationale for new permit conditions. The fact sheet is not designed to cross-compare the level of stringency between previous and new permit requirements.

**Comment 48: Qualifying local program qualification process**  
*City of Golden: The division expects that the existing Qualifying Local Programs will update their requirements to become aligned with the updated requirements included in this permit. The division has also clarified that, if the requirements of the Qualifying Local Program are less stringent than the requirements of this renewal permit, the requirements of the renewal permit apply in addition to the requirements of the Qualifying Local Program. The division considered and determined that providing a compliance schedule for qualifying local programs to implement the renewal permit requirements into their construction sites programs was unnecessary.*  
*As a QLP, the City adheres to an application provided by the Division. The QLP designation, up to this point, has involved a process of review, approval and*

*designation by the Division. It is our understanding that the City's compliance with the QLP is contingent upon adherence to the program as submitted, reviewed and designated by the Division.*

*The language in the Fact Sheet does not acknowledge this formal process for QLP's and it is therefore unclear how a QLP would approach implementing the new program requirements before review and approval from the Division.*

*The City agrees that a compliance schedule is not necessary for QLP's. However, clarity in the reapplication for approval process, in coordination with the implementation of new requirements, is needed. There must be a process to enable operators covered under a QLP to be in compliance while the Division updates the QLP designation process, and the City's program is updated, reviewed and approved. A gap in QLP coverage during such time would be disruptive at the least, and infeasible to active projects.*

*We believe the Division should follow its QLP approval timeframe for reapplication 30 days prior to the permit renewal.*

*Southern Ute Indian Tribe Growth Fund: On page 11 of the Fact Sheet, the Division requested comments on the Division's determination that providing a compliance schedule for qualifying local programs to implement the renewal permit requirements into their construction sites programs was unnecessary.*

*The SUIT Growth Fund believes that the Qualifying Local Program should have a responsibility similar to those of existing permittees (for both small and large construction activities) to meet a deadline for coming into compliance with all of the requirements of the renewal permit. Otherwise, the permittees who have disturbances that are under 5 acres and located within a Qualifying Local Program area will need to be familiar with requirements of two permits for stormwater discharges associated with construction activities to make sure they are in compliance with both. The following are just a few examples of the differences between the current stormwater permit requirements of the City of Durango, which has a Qualifying Local Program, and the renewal permit which a permittee located within the City of Durango would need to be aware of if the renewal permit went into effect and the CITY of Durango had not updated their program with the renewal permit requirements.*

- The City of Durango does not currently require signatures of both the owner and operator on the permit application as is required by Part I A.3.b. of the renewal permit.*
- With respect to control measures, the City of Durango does not currently require all of the control measures, such as outlets on basins and impoundments that withdraw water from surface or the requirement for a maintaining pre-existing vegetation or equivalent control measure within 50 feet of a state surface water body, required in Part I.B.1*
- With respect to inspection requirements, the City of Durango does not currently require the sampling of a discharge occurring during the inspection as is required by Part I.D.5.b.iv. of the renewal permit.*
- The City of Durango requires that the permittees use their stormwater inspection form. This form would need to be updated to be in compliance with the Inspection Reports requirements found in Part I.D.5.c of the renewal permit as well as the inspection form certification requirements found in Part I.F.2.b. of*

*the renewal permit. If City of Durango does not update their inspection form, the permittees would need to prepare two reports in order to be in compliance with both the local program and the renewal permit.*

*Therefore, the SUIT Growth Fund recommends that the Division give the Qualifying Local Programs a compliance schedule to implement the renewal permit requirements into their construction site programs.*

**Response 48: Qualifying local program process**

Changes to the fact sheet have been made based on this comment. Specifically, additional language was added to clarify that the division intends to review all QLP requirements prior to the effective date of the renewal general permit. Additionally, as discussed in the fact sheet, the division considered giving the qualifying local programs a compliance schedule but have determined that the delayed effective date would be a sufficient amount of time.

**Comment 49: Request for additional language in oil and gas guidance**  
*Wright Water Engineers, Inc.: There is language in the Oil and Gas Fact Sheet, Additional Final Stabilization Guidance regarding agricultural land. We recommend this language be modified to include other utilities that may not be regulated by COGCC but encounter similar situations when constructing in agricultural areas with long-term easements and potentially larger temporary easements for construction. We recommend a section or guidance be added to the draft permit or to the Final Stabilization Memorandum (dated March 5, 2013) to address agricultural lands which may be crop lands or for lands used for grazing and may or may not be regulated by COGCC but are exempt from the Section 402 of the Clean Water Act.*

*Xcel Energy: Xcel Energy is often faced with the situation of no longer having "operational control" over a site where our construction was conducted within our easement but the private property owner takes over the area and is unwilling to reassign that portion of the permit. (For example the owner replants crop or introduces cattle back into the area hindering vegetation reestablishment or denies Xcel access to the area). We recommend including the language in the Oil and Gas Fact Sheet regarding final stabilization guidance for agricultural land be modified to include other utilities that may not be regulated by COGCC but encounter similar situations when constructing in agricultural areas with long-term easements and potentially larger temporary easements for construction. This language should be added or guidance provided to the draft permit or to the Final Stabilization Memorandum (dated March 5, 2013) to address agricultural lands which may be crop lands or for cattle grazing lands that may or may not be regulated by COGCC but are exempt from the Section 402 of the Clean Water Act.*

**Response 49: Request for additional language in oil and gas guidance**

No changes to the permit or fact sheet were made based on this comment.

Consistent with previous division practices, areas where construction activities have occurred that are returned to agricultural uses are no longer required to maintain coverage under this permit because discharges of agricultural storm water discharges as exempted by Section 402(l)(1) of the 1987 Water Quality Act from NPDES permitting requirements.

The division takes note of this comment and recognizes the value of guidance documents. However, the memorandum or guidance requested to be modified is not within the scope of the public notice comment for the draft general permit or the associated fact sheet.

**Comment 50: Request to update to exemption list for qualifying local programs**

City of Golden: (Part I.A.3.g. and I.A.3.f.) This section should not apply to QLP as it is specific to a Division process. Remove from QLP requirements.

*When a site has reached final stabilization in accordance with I.B.3., the permittee must submit a Termination Application form signed in accordance with Part II.A.*

*When a site has reached final stabilization in accordance with I.B.3., the permittee must submit a Termination Application form signed in accordance with Part II.A.*

*This section should not apply to QLP. Remove from QLP requirements, or follow the current permit which states: Permit Coverage Termination: When a site under a Qualifying Local Program has been finally stabilized, coverage under this permit is automatically terminated.*

*This section should not apply to QLP. Remove from QLP requirements, or follow the current permit which states: Permit Coverage Termination: When a site under a Qualifying Local Program has been finally stabilized, coverage under this permit is automatically terminated.*

**Response 50: Request to update to exemption list for qualifying local programs**

Changes have been made to the permit based on this comment. The sections of the permit have been adjusted, but the applicable referenced section has been exempted in the permit for QLPs.

**Comment 51: Request for clarification in Part I.A.3.f.**

City of Aurora: What distinguishes if the evidence is sufficient? A text or a certified letter? Please clarify.

**Response 51: Request for clarification in Part I.A.3.f.**

No changes to the permit or fact sheet were made based on this comment.

The fact sheet provides clarification of this topic. As provided in Part I.A.3.f of the fact sheet: *If the owner or operator cannot obtain a signature from the newly responsible owner or operator, then they must provide the division proof of due diligence attempts to obtain a signature along with a notice of termination request form. For example, due diligence could include a receipt from a certified mailed letter that contains a request to sign the applicable form.*

**Comment 52: Request to modify reassignment form**

Home Builders Association of Metro Denver: Reassignment of Permit Coverage. Sometimes lots in a community are sold to a merchant homebuilder in different

parcels at different times. The homebuilder may already have a permit for a portion of the community when he purchases more lots. Can the reassignment form be changed to include a place for the buyers existing permit number?

Southern Ute Indian Tribe Growth Fund: The Fact Sheet on page 10 states that the requirement that both the owner and the operator sign the permit application will only apply to new applications received after the renewal permit becomes effective. Will the reassignment of areas within an existing common plan of development to an operator from the owner who already has 2007 permit coverage for an existing common plan of development also be exempt from the new requirement? In other words, can the owner of a common plan of development with 2007 permit coverage reassign permit coverage for a phase of the common plan of development to the operator responsible for work within that phase but who does not meet the new definition of "owner" so as the sole permittee?

If not, does that mean the owner will have to co-sign Part I of the reassignment form with operator in addition to signing Part II as the previous permittee? If the owner is required to be a co-permittee for the phase, the owner will have to pay an annual permit fee on the permit coverage for the development, at least part of the annual permit fee for the phase under construction, and a least part of the fee to transfer the phase area from one permit certification to another. For large existing developments where the owner is the sole permittee, the owner's compliance costs will increase if an exemption is not allowed for the reassignment of phases within the development to the operator (as the sole permittee) for that phase.

Colorado Department of Transportation: What if the new responsible owner/operator refuses to sign because they feel that the site is not in an acceptable condition to take over and they want the current permittee to fix it? There should be a statement of reason why the new owner/operator won't sign.

**Response 52: Request to modify reassignment form**

No changes to the permit or fact sheet were requested or made based on this comment. The modifications requested are not within the scope of the public notice comment for the draft general permit or the associated fact sheet. The division takes note of this comment and may elect to modify its Notice of Reassignment Form.

**Comment 53: Termination versus transfer clarification**

G.E. Johnson Construction Company: Request clarification and change - This section is titled Termination of Permit coverage and refers to termination once the site had reached "final stabilization". It also discusses transfer of responsibilities between owners and operators. Request clarification - How is this accomplished? Seems that the owner would not need to hold a permit if the site has reached final stabilization. In which case the permit could just be terminated for both owner and operator. Or would the owner still need to hold a permit if the site is not yet reached final stabilization under the conditions of the permit. Wouldn't this be more of a transfer situation rather than a termination?

Colorado Department of Transportation: Clarification Question: Can either the owner or the operator submit a termination application or do both permittees both have to sign the Termination Application?

City of Glendale: Discussion in the Fact Sheet does not match the requirement in the permit. Please clarify in the Fact Sheet that if a permittee no longer has a presence on the site, it does not mean they can terminate the permit.

Often times a contractor will leave a site once initial stabilization methods have been implemented, but not achieved. The Fact Sheet discussion is written to allow termination at that point. Often times, even though the contractor is not onsite and work construction has stopped, they may still have operational control or be required to ensure the site is stabilized.

City of Golden: This section should not apply to QLP. Remove from QLP requirements, or follow the current permit which states: Permit Coverage Termination: When a site under a Qualifying Local Program has been finally stabilized, coverage under this permit is automatically terminated.

Home Builders Association of Metro Denver: Termination. This section is titled, "Termination of Permit coverage" and refers to termination once the site had reached "final stabilization". It also discusses transfer of responsibilities between owners and operators. We would request a clarification - How is this accomplished? Seems that the owner would not need to hold a permit if the site has reached final stabilization. In which case, the permit could just be terminated for both owner and operator. Or, would the owner still need to hold a permit if the site is not yet reached final stabilization under the conditions of the permit. Would this not be more of a transfer situation rather than a termination? Also, to be consistent, shouldn't this say owner/operator? There is a need to clearly define permittee versus owner/operator.

Southern Ute Indian Tribe: The renewal permit states that if the operator meets the conditions of permit termination for the operator as described in Part I A. 3.h., the operator can sign the termination form and certify that the owner is aware of the termination. It is quite possible due to a number of reasons, such as miscommunication between permittees or failure of the operator to notify the appropriate personnel within the owner's organization that the operator is going to proceed with termination, that the owner may not be aware that the operator is terminating permit coverage. It is recommended that when the Division notifies the operator of the receipt of the termination that the co-permittee (owner) is copied on the correspondence. It is also recommended that the Division provide some type of a regulatory review process in the event there is a disagreement between the owner and operator as to whether the operator has met the terms for termination, i.e., the operator has completed all of his responsibilities for that phase and the conditions for returning the full responsibility for the operation of the site to the owner has been met.

The fact sheet appears to have oversimplified the requirements that the operator must meet in order to terminate their permit coverage. The fact sheet states that the permittee may not terminate coverage unless the permittee is no longer onsite and is no longer conducting work at the site. Part I A. 3.h. of the renewal permit states the operator must have completed the site phase for which he is

*responsible, the owner has subsequently assumed the full responsibility for the operation of the phase, and the operator is no longer present onsite before the operator's permit coverage can be terminated. An operator may no longer be onsite and no longer conducting work at the site for reasons other than having fulfilled their responsibilities for the site phase. The operator may no longer be onsite and conducting work on the site due to a number of reasons such as moving all equipment and manpower to temporarily work on another project at another location, bankruptcy, or failure to complete his contractual obligations with respect to permit requirements that are within his responsibilities for the site phase. The operator should not be allowed to terminate their permit coverage unless all conditions of Part I A. 3.h are met. The Division should clarify in the Fact Sheet all of the requirements that the operator must meet in order to terminate their permit coverage.*

**Response 53: Termination versus transfer clarification**

Changes to the permit and fact sheet were made based on the comment. Part II.L.3. of the permit, titled "Transfer of Ownership or Control" has been modified to clarify requirements for transferring permit coverage as specified in the comment. In all cases of transfers require notification and signatures from both parties involved.

Additionally, as stated in the permit, when a permit reaches final stabilization, as defined by the permit, permittees may request to terminate coverage using the division provided termination application.

**Comment 54: Sale to homeowner clarification**

*G.E. Johnson Construction Company: Request clarification regarding reduction of permit coverage for lot transfer to homeowners - would the permittee be required to submit something to the state in order to terminate coverage for those lots? Or can they simply modify their SWMP to indicate which lots have been turned over to the homeowner?*

*Home Builders Association of Metro Denver: Sale of Residential Home to Homeowner states:*

*Residential construction sites only: The owner and operator may remove residential lots from permit coverage once the lot meets the following criteria:*

- i. the residential lot has been sold to the homeowner(s) for private residential use;*
- ii. a certificate of occupancy, or equivalent, is maintained on-site and is available during Division inspections;*
- iii. the lot is less than one acre of disturbance;*
- iv. all construction activity conducted on the lot by the permittee is complete;*
- v. the permittee is not responsible for final stabilization of the lot; and*
- vi. the SWMP was modified to indicate the lot is no longer part of the construction activity.*

*If the residential lot meets the criteria listed above then activities occurring on the lot are no longer considered to be construction activities with a duty to apply and maintain permit coverage. Therefore, the owner and operator are not*



*required to meet the final stabilization requirements and may terminate permit coverage for the lot."*

*We request clarification regarding the reduction of permit coverage for lot transfer to homeowners. Would the permittee be required to submit something to the state in order to terminate coverage for those lots? Or, can they simply modify their SWMP or SWMP site map in hand written form to indicate which lots have been turned over to the owner?*

*Additionally, in relation to item A.3.I. iv above, what is the permittee required to do for properties sold that are greater than 1 acre? Once a property is sold, the seller or the permittee does not have the right to enter that property. It is suggested that the one acre requirement be removed.*

*Silverpick Contracting, Inc.: The proposed new permit # COR400000, includes a requirement for both the owner and the operator to sign the permit applications and modifications. While we understand that for different operations this may be a great idea, it doesn't take our situation into consideration. We modify our permit as needed to include and exclude lots as needed without terminating the permit. It seems that with the new requirements if we have a homeowner who owns the lot we must get a new permit. This places an undue burden on Silverpick Contracting Inc. to educate the client about stormwater.*

*Something we don't have a lot of extra time for. It creates more paperwork for us. This requirement quite simply complicates and adds nothing in our case to the finished product. We work under a Common Development Plan implemented when Three Springs Subdivision was originally planned. Not only that there is a design and review requirement that makes it impossible to leave any project in an unstabilized condition.*

#### **Response 54: Sale to homeowner clarification**

No changes to the permit were made based on this comment. The division does not intend to require individual homeowners within a subdivision to obtain permit coverage when the conditions of I.A.3.j., sale of residence to a homeowner, are met. Once the conditions of part I.A.3.j. of the permit are met, permit coverage will no longer be required for the lot. In those cases where the lot is greater than one acre of construction activity related disturbance, as defined by the permit, the permittee will be required to maintain permit coverage through final stabilization of the lot. In those cases where the operator is building a single home that is either part of a larger common plan of development or the lot is one acre or more of disturbance, the operator may assume the responsibility of both the owner and the operator. In those cases where the homeowner is assuming the role of both the owner and the operator, the homeowner would have to obtain permit coverage.

#### **Comment 55: General permit expiration**

*G.E. Johnson Construction Company: Request clarification and change - When a general permit expires and the coverage is continued under a new general permit, will the state notify the permittees of the change and require a form to be submitted to indicate they wish to extend their permit coverage under the new general permit? Or do they have to "reapply" by submitting a new permit application? The 90 day period contradicts the 180 day requirement stated in*

*section Part II.B.12. We suggest changing the time period to 10 days to be in line with the permit application requirements.*

*Wright Water Engineers, Inc.: At the stakeholder meeting it was stated that existing permittees did not have to reapply for continued permit coverage and in my subsequent discussions with a member of the Division, it was stated that because current permittees reapplied under the administratively extended permit that they would not have to reapply again; however, the language in the draft permit is still confusing, and I am not sure it is clear when all SWMP requirements will be required from the time of the issuance of final renewed permit and if existing permittees have to reapply. If this language cannot be changed in the permit itself, I recommend guidance in the email or on the website to direct everyone on the requirements and the dates for compliance with the renewed permit COR400000.*

*Home Builders Association of Metro Denver: Permit Expiration. We request consideration of clarification and change to this section. When a general permit expires and the coverage is continued under a new general permit, will the state notify the permittees of the change and require a form to be submitted to indicate they wish to extend their permit coverage under the new general permit? Or, do they have to "reapply" by submitting a new permit application? The 90 day period contradicts the 180 day requirement stated in section Part II. B. 12. We suggest changing the time period to be consistent.*

**Response 56: General permit expiration**

A change to Part I and Part II of the permit was made to require the permittee to reapply 90 day in advance of permit expirations, in order to match the time period on Section II.X. (formerly Part II.B.12.)

When the general permit expired on July 1, 2012 all active permittees who desired continuation of coverage were required to reapply 180 days before the expiration date of July 1, 2012. Those permittees who applied for continuation of coverage in 2012 will not be required to reapply again when this renewal permit becomes effective. Permittees who received their certifications after July 1, 2012, will also not be required to reapply for coverage under this renewal permit, as they have already applied for their certification under the administratively extended permit. However, going forward, when this renewal permit expires in 5 years (2023), permittees will be required to reapply 90 days in advance of the 2022 expiration date.

**Comment 56: Typographical errors**

*Wright Water Engineers, Inc.: Recommend adding "as defined in Part 1.E and 1.F" since the definitions are located in Part I.E. of the permit.*

*GE Johnson Construction Company: Request change - subsection bullets are miss numbered - i, ii, iii, i, ii, iii, etc.*

*Xcel Energy: Yellow highlighted numbering is off in this section. (I.A.3.b.)*

*Colorado Oil and Gas Association: Definitions are contained in Part 1.E.*

Home Builders Association of Metro Denver: Please note that subsection bullets are miss numbered and should read: i, ii, iii, i, ii, iii, iv, v, vi, etc.

**Response 57: Typographical errors**

Changes to the permit were made based on these comments.

**III. Part I.B. EFFLUENT LIMITATIONS**

**1. Requirements for Control Measures Used to Meet Effluent Limitations**

**Comment 57: Increased long term stabilization requirements**

GH Phipps: I think there should be increased emphasis on long term stabilization measures/stormwater quality improvements. By that I mean final stormwater quality processes/means/etc. such as ponds, etc. should be encouraged if not required to be installed first, barring difficult circumstances or processes. These measures, in the long run, will help ensure short term water quality improvements as well as the long term water quality improvements.

**Response 57 Increased long term stabilization requirements**

The division takes note of this comment. No changes to the permit or fact sheet have been made based on this comment because the division deliberately has provided flexibility for final stabilization to allow the permittee to determine what the most appropriate final stabilization methods would be for their site.

**Comment 58: Term "any" and "all"**

City of Aurora: Avoid using the word "all" or "any"

**Response 58: Term "any" and "all"**

The division takes note of this comment. No changes to the permit or fact sheet have been made based on this comment. The request provided an inadequate justification for the requested change.

**Comment 59: Eliminate the term "prevent" pollution**

Home Builders Association of Metro Denver: Control Measures. In reference to the statement, "must be designed to prevent pollution...". Most control measures are designed to detain, filter or otherwise reduce the presence of pollutants and still allow for discharge. This permit "authorizes" the discharge of stormwater. Sediment for example is almost impossible to "prevent" from being included in discharge water. Therefore, this statement implies that no sediment can be discharged. This is quite impossible. We would suggest changing the wording from "prevent" to "minimize" or "minimize to the extent feasible".

**Response 59: Eliminate the term "prevent" pollution**

No changes to the permit or fact sheet were made based on this comment.

The division recognizes that it is not possible to completely prevent the discharge of pollutants, which is why the permit requires permittees to minimize (not prevent) the discharge of pollutants. The requirement to prevent pollution or degradation of state waters is included in the permit as a design standard for BMPs (control measures). Pollution is defined in CDPS regulations (5CCR 1002-61) as man-made or man-induced, or natural alteration of the physical, chemical,

biological, and radiological integrity of water. Utilizing industry-accepted standards for BMP (control measure) selection that are appropriate for the conditions and pollutant sources present will typically be adequate to meet these criteria, since construction BMPs are intended to prevent the discharge of all but minimal amounts of sediment or other pollutants, which would not result in actual pollution of State waters, as defined above. However, site-specific design, including ongoing assessment of BMPs and pollutant sources, is necessary to ensure that BMPs (control measures) operate as intended.).

**Comment 60: More stringent concrete washout requirements**

*CWS Colorado, LLC: My main concern is with Part 1 Section A item B iii, Discharges to the ground of concrete washout water associated with the washing of concrete tools and concrete mixer chutes. If you refer to the Environmental Protection Agency's Construction Stormwater General Permit Section 2.3.1. Prohibited Discharges, you will find that the EPA has identified waste water from the washout of concrete as a prohibited discharge, not as an allowable discharge (as your draft states), unless the washout is managed by an appropriate control as described in the EPA's control section Part 2.3.3.4. Your permit as proposed in your draft, would undermined what the EPA has set out as standards for construction sites, which is limiting what could be a toxic waste into state and federal waters. By allowing concrete wash water to be discharged to the ground with no identified controls, there could be open discharge of federally prohibited waste material into the environment. What your current draft says, is that it is permissible to discharge waste and/or washout water onto the ground as long as it does not leave the construction site. Basically, that means that any ready mix, or concrete pump truck driver can drive out to an open dirt field, and washout their equipment, because by doing that, the water will just seep into the ground, and never leave the site. Am I right, or am I missing something? At least your existing permit requires that a below grade pit be made available to capture the washout waste. This draft does not mention the words "below grade pit". In fact, I find no mention of control or containment at all. If there is not going to be any requirement for a leak-proof container, or other type of containment in this draft, will the state at least require that a hydrolysis study be done prior to performing any construction activities, to determine where the water table is, to make sure that there is no leaching of washout waters into state waters? Your draft is not only very vague, but undermines what the Federal Environmental Protection Agency is trying to prevent, and that is to minimize the amount of pollutants that can end up in state and federal waters.*

*Colorado Department of Transportation: We feel that the permittee should be required to provide a lined or leak-proof concrete washout structure or provide proof that the soil has adequate buffering capacity.*

*Per the EPA 2017 CGP section 2.3.4.a. states "Direct wash water into a leak-proof container or leak-proof and lined pit designed so that no overflows can occur due to inadequate sizing or precipitation." This also eliminates the possibility of groundwater contamination.*

*Without having a requirement for the permittee to quantify the buffering capacity of the soil, the possibility of pH affecting the quality of groundwater is very real. Additionally this activity could interfere with subterranean permits*

*that my become part of the facility following construction completion. If the groundwater quality has an elevated pH due to this activity during construction, compliance with a nearby subterranean permit may be impossible.*

**Response 60: More stringent concrete washout requirements**

No changes to the permit have been made based on these comments. However, additional language has been added to the fact sheet to further clarify that the discharge of concrete washout water is not authorized to reach receiving waters.

**Comment 61: On-site disposal of concrete waste**

*G.E. Johnson Construction Company: This comment is in reference to the wording of "permanent, on-site disposal of concrete waste." Concrete is used as a building material in many ways. Although we understand that disposal of concrete wash water directly into a surface water has a potential for negative impacts to the natural environment of those waters, hardened concrete does not pose the same potential for negative impacts. It is impossible to eliminate all permanent disposal of hardened concrete waste on site. There will always be at least minor amounts left on site. This has been an ongoing issue during inspections and have been interpreted much differently between state and local inspectors. Suggest clarification - on how much hardened concrete is acceptable to leave on site that ultimately gets buried? The use of the word "permanent" could mean every pea sized piece of hardened concrete must be removed. This is impossible. Suggest a reference to concrete wash water not concrete waste.*

*City of Aurora: See comments associated with Part I.A.1.b.*

*Home Builders Association of Metro Denver: Concrete Wash Waste. This section is open-ended with "groundwater". Also, see previous comment about the jurisdiction of groundwater control under the Permit. What are reasonable measures? Does this imply a liner? Does concrete washout waste include hardened chunks? Permanent disposal needs be defined. Less than one year? This permit authorizes discharges to the ground of concrete washout waste which will subsequently be disposed of off-site.*

**Response 61: On-site disposal of concrete waste**

Changes to the permit and fact sheet have been made based on these comments. The permit and fact sheet have been updated to include the term "concrete washout waste". Additionally, the sentence which included the term "permanent disposal" has been removed. For further information regarding the on-site disposal of concrete waste please see the division's response to comment #26 above.

**Comment 62: Linear construction sites exemption**

*Southeast Metro Stormwater Association: SEMSWA has included a reference to the EPA draft Construction General Permit (CGP) in our comments, and sees several instances where the EPA effort could be utilized, if only in the Fact Sheet for clarification purposes. We especially like the following draft EPA Permit language and/or conditions that could enhance the State's permit:*

*For areas at "linear construction sites" where perimeter controls are infeasible (e.g., due to a limited or restricted right-of-way), allow the implementation of other practices as necessary to minimize pollutant discharges to perimeter areas*

of the site for I.B.1.a.i. Structural Control Measures for Erosion and Sediment Control.

City of Glendale: Please consider including this language from the draft EPA 2017 Construction General Permit:

*Exception. For areas at "linear construction sites" (as defined in Appendix A) where perimeter controls are infeasible (e.g., due to a limited or restricted right-of-way), implement other practices as necessary to minimize pollutant discharges to perimeter areas of the site.*

*Exception: Stabilization is not required for exit points at linear utility construction sites that are used only episodically and for very short durations over the life of the project, provided other exit point controls are implemented to minimize sediment track-out;*

Colorado Stormwater Council: Please consider including this language from the draft EPA 2017 Construction General Permit:

*Exception. For areas at "linear construction sites" (as defined in Appendix A) where perimeter controls are infeasible (e.g., due to a limited or restricted right-of-way), implement other practices as necessary to minimize pollutant discharges to perimeter areas of the site.*

**Response 62: Linear construction sites exemptions**

No changes were made to the general permit or fact sheet based on these comments. The division believes that the permit requirements give adequate flexibility for permittees to choose control measures that are appropriate for linear construction as well as other types of construction.

**Comment 63: Vehicle tracking control**

Southeast Metro Stormwater Authority: SEMSWA has included a reference to the EPA draft Construction General Permit (CGP) in our comments, and sees several instances where the EPA effort could be utilized, if only in the Fact Sheet for clarification purposes. We especially like the following draft EPA Permit language and/or conditions that could enhance the State's permit:

*Perhaps recognizing and addressing fine grains and "staining" from vehicle tracking as acceptable and reasonable, providing clearer and more specific expectations for I.B.1.a.i. Structural Control Measures for Erosion and Sediment Control.*

G.E. Johnson Construction Company: request clarification - We understand the need for vehicle tracking controls, however, there are times and conditions when VTC are not feasible due to space restrictions or landscaping efforts in progress. Will the state consider street cleaning, inlet protection and other measures acceptable during these times and conditions?

City of Glendale: Please consider adding the following from the draft EPA 2017 Construction General Permit:

The draft EPA 2017 Construction General Permit also includes the following language:

*Where sediment has been tracked-out from your site onto paved roads, sidewalks, or other paved areas, remove the deposited sediment by the end of the same business day in which the track-out occurs or by the end of the next business day if track-out occurs on a non-business day. Remove the track-out by sweeping, shoveling, or vacuuming these surfaces, or by using other similarly effective means of sediment removal. You are prohibited from hosing or sweeping tracked-out sediment into any stormwater conveyance, storm drain inlet, or water of the U.S. (Fine grains that remain visible (i.e., staining) on the surfaces of off-site streets, other paved areas, and sidewalks after you have implemented sediment removal practices are not a violation of Part 2.2.4.)*

*There are cases where implementation of a structural control measure for vehicle tracking does not make sense. The EPA language for linear utility construction should be considered to allow for cases where continuous access is not necessary.*

*Recognizing and addressing fine grains and “staining” that remain visible after removal of deposited sediment from tracking as acceptable is reasonable and provides clear and specific expectations. At a minimum, a discussion in the fact sheet regarding the matter should be included.*

*Colorado Stormwater Council: Vehicle tracking controls shall be implemented to minimize vehicle tracking of sediment from disturbed areas to impervious areas, unless stormwater runoff from the impervious area is directed to a control measure implemented to control runoff in accordance with subsection Part IB.1.a.i(b)Part I.B.1.a.i.(b).*

*Vehicle tracking controls are not always structural control measures. Separating out the structural controls from non-structural is confusing and not necessary since often times controlling potential pollution for a specific activity entails both structural and nonstructural controls. (regarding the suggested edit) Why would the control measure for the impervious area need to be the same control measure for the disturbed area? These could be two different measures. What’s important is that both areas are treated.*

*Please consider adding the following from the draft EPA 2017 Construction General Permit:*

*Exception: Stabilization is not required for exit points at linear utility construction sites that are used only episodically and for very short durations over the life of the project, provided other exit point controls are implemented to minimize sediment track-out;*

*The draft EPA 2017 Construction General Permit also includes the following language:*

*Where sediment has been tracked-out from your site onto paved roads, sidewalks, or other paved areas, remove the deposited sediment by the end of the same business day in which the track-out occurs or by the end of the next business day if track-out occurs on a non-business day. Remove the track-out by sweeping, shoveling, or vacuuming these surfaces, or by using other similarly effective means of sediment removal. You are prohibited from hosing or sweeping tracked-out sediment into any stormwater conveyance, storm drain inlet, or water of the*

*U.S. (Fine grains that remain visible (i.e., staining) on the surfaces of off-site streets, other paved areas, and sidewalks after you have implemented sediment removal practices are not a violation of Part 2.2.4.)*

*There are cases where implementation of a structural control measure for vehicle tracking does not make sense. The EPA language for linear utility construction should be considered to allow for cases where continuous access is not necessary.*

*Recognizing and addressing fine grains and “staining” that remain visible after removal of deposited sediment from tracking as acceptable is reasonable and provides clear and specific expectations. At a minimum, a discussion in the fact sheet regarding the matter should be included.*

*Wright Water Engineers, Inc.: This statement implies that vehicle tracking controls must have at least one structural control due to the location of this requirement as a subsection of the Structural Control Measures. This differs from what was stated at the Stakeholder meeting where Nathan indicated administrative controls limiting access could be used (although maybe Nathan meant only if the limiting consisted of physically blocking off the access which I guess could be considered structural but what about when someone says limitations are verbally given?). I recommend relocating if not specifically addressing the need for at least one structural control and clarifying the Divisions expectation regarding Vehicle Tracking Controls what is the minimize control. I recommend there is one structural sediment control if there is active construction occurring. I also recommend language that states “sweeping alone cannot be the only control measure.”*

*Home Builders Association of Metro Denver: We request a clarification. We understand the need for vehicle tracking controls, however, there are times and conditions when VTC’s are not feasible due to space restrictions or landscaping efforts in progress. We suggest adding non-structural practices such as street cleaning, inlet protection, and other measures acceptable during these times and conditions.*

*Western Slope Colorado Oil and Gas Association: Can CDPHE provide practicable examples of control measures that would control/maintain tracking from a location onto a dirt road.*

*If the road is maintained by another entity (BLM/County/Private landowner) blading may be more difficult to arrange, especially for a very small amount of sediment. Can CDPHE feasibility/impracticability be used in these scenarios?*

**Response 63: Vehicle tracking control**

Changes have been made to the permit and fact sheet based on these comments. The structural and non-structural control measure section headings of the permit have been removed. Language has been added to the fact sheet regarding the staining of paved surfaces. Additionally, the language regarding the vehicle tracking control requirements has been adjusted to allow for alternative controls to be utilized.

The request to include the exemption for linear construction sites was not included. The division determined that the requested language was unclear.



**Comment 64: Control measure storm size**

Home Builders Association of Metro Denver: *Control Measures for Stormwater Pollution Prevention. Should a design event be specified for many of the structural controls? There are storms beyond which the home builder has no control and should not be held accountable. The event in September 2014 is an example. Also, a size of the watershed should be specified for small areas where controls may not be needed or are infeasible.*

Colorado Department of Transportation: *what size storm event should the CMs be designed for? This was not identified anywhere?*

Wright Water Engineers, Inc.: *This section also states that "control measure(s) must be adequately selected and sized" but does not specify the design storm control measures are sized to. Would it be possible to reference that in general most construction control measures are sized to no more than the two-year storm event? Without this information you set up the permittee for failure in larger storms or if perhaps a statement can be added that in the event of a bypass or upset condition, Part II, a. 7 or 8 must be followed.*

City of Aurora: *The phrase "adequately selected and sized" is ambiguous. Can this be clarified or defined?*

**Response 64: Control measure storm size**

No changes to the permit or fact sheet were made based on this comment. The division has deliberately provided flexibility for permittees to utilize industry-accepted standards for control measure selection on a site specific basis. Please note that the upset provisions in Section II.A.8 of the permit may be applicable for some extreme weather events.

**Comment 65: Eliminate "selected and sized"**

Southeast Metro Stormwater Authority: *We do not see how it is possible for control measure(s) to be selected and sized for the drainage area to contain or filter flows in order to prevent the bypass of flows without treatment. As you know, even our MS4 Permit permanent Post Construction control measures are not sized to prevent the bypass of flows without treatment, since this would mean that a site must have control measures in place to treat flows from a 10 or 100-year event. These larger by pass flows need to be handled as an upset condition, and not be expected to be treated with more than the standard and expected site control measures. We would suggest that the control measure must be selected, designed and installed, and adequately sized in accordance with good engineering, hydrologic and pollution control practices, such as stated in Part I.B.1 Control Measures. This level of due diligence is appropriate for predictable stormwater runoff from disturbed areas, including the expected flow rate, duration, and flow conditions (i.e., sheet or concentrated flow), and need not be further expanded on in this section.*

City of Glendale: *It is not possible for control measure(s) to be selected and sized for the drainage area to contain or filter flows in order to prevent the bypass of flows without treatment. At some point, flows will overtop a control measure allowing bypass.*

*Even post-construction control measures are not sized to prevent the bypass of flows without treatment. This would mean that a site must have control measures in place to treat flows from a 10 or 100-year event. A site would never have an arguable defense for an upset condition.*

*Colorado Stormwater Council: It is not possible for control measure(s) to be selected and sized for the drainage area to contain or filter flows in order to prevent the bypass of flows without treatment. At some point, flows will overtop a control measure allowing bypass.*

*Even post-construction control measures are not sized to prevent the bypass of flows without treatment. This would mean that a site must have control measures in place to treat flows from a 10 or 100-year event. A site would never have an arguable defense for an upset condition.*

*Xcel Energy: Requiring a control measure for all disturbed areas and soil storage areas is not a practicable requirement on long linear projects. Quite often Xcel has had projects on transmission/distribution lines in the middle of a flat, open field. We have not always installed a structural control measure around the work area because the area is flat and in a field with no chance of offsite discharge. In our SWMP we note that the vegetation and/or topography is the control measure. In the middle of an open ag field with no slopes or drainages it is not necessary to install a structural control measure to protect dirt from dirt. We have also noticed that installing Control Measures can sometimes cause more disturbance/damage to buffers/vegetation areas for a small construction project to change out equipment on a pole. On a long pipeline project or a temporary access road, it is not necessary to install a structural control measure on each side of the road or right-of-way the entire stretch of the project. We focus our efforts where the discharge concentrates or at areas where there is potential for offsite discharge.*

*What size storm event is a control measure "expected" to be selected and sized for?*

**Response 65: Eliminate "selected or sized"**

These comments have been partially incorporated into the permit. The language in Part I.B.1.a.i(b) has been adjusted to remove "selected and sized" and incorporate "good engineering, hydrologic and pollution control practices".

Note that temporary sediment control measures are not typically designed to treat to a specific storm event. Additionally, Part I.B.1.a.i(b) is only applicable when flow from disturbed areas is directed to a single control measure before offsite flow occurs.

**Comment 66: Combining structural and nonstructural control measures**  
*City of Glendale: Please consider combining non-structural control measure in with structural control measures.*

*Vehicle tracking controls are not always structural control measures. Separating out the structural controls from non-structural is confusing and not necessary since often times controlling potential pollution for a specific activity entails both structural and nonstructural controls.*

City of Aurora: May want to combine structural and non-structural controls into one section as certain activities, such as VTCs (rock vs sweeping) can be covered by both types of controls.

Colorado Stormwater Council: Please consider combining non-structural control measure with structural control measures. Differentiating between Structural and Non-Structural does not add clarity or serve to increase awareness about sediment and erosion control measures.

Wright Water Engineers, Inc.: Much like part a) under Structural Control it is assume you mean there must be at least one structural control measure to minimize sediment in the discharge. If this is not the case, then consider moving both a) and b) so they are not subsections under structural. If the requirements is for at least one structural control then add the word structural control to the language to be clear.

**Response 66: Combining structural and nonstructural control measures**  
Changes to the permit have been made based on these comments. The structural and non-structural control measure section headings of the permit have been removed.

**Comment 67: Clarification on temporary access and dirt roads**  
HRL Compliance Solutions, Inc.: What is the expectation for dirt roads?  
Suggestion: Change 'impervious areas' to 'paved surface'.

Wright Water Engineers, Inc.: We also recommend guidance on access roads and trail construction in flat vegetated areas. Oil and gas and utility companies often create access roads that are temporary in nature, and use topography and vegetation as their BMP. Would these roads now require a sediment control BMP along both sides when it is very flat topography?

**Response 67 Clarification on temporary access and dirt roads**  
The division takes note of the comment. No changes were made to the permit or fact sheet based on this comment. The modifications requested are not within the scope of the public notice comment for the draft general permit or the associated fact sheet. The division considers these compliance/implementation questions that are best answered based on site specific conditions.

**Comment 68: Adding language regarding controlling run-on**  
Wright Water Engineers, Inc.: I also recommend adding language that allowed work to use control measures to keep water from flowing through their sites as potential control measures such as in waterways using temporary diversions as the structural controls. The language may need to be expanded to cover these controls which are not really treating the water as much as preventing or minimizing the water from entering the work areas.

**Response 68: Adding language regarding controlling run-on**  
No changes were made to the permit. Language clarifying that control measure may be used to control both run-on and run-off from sites has been added to the fact sheet.

**Comment 69: Clarification on requirement for outlets**

Wright Water Engineers, Inc.: *This is not practical but may be feasible. Skimmers aren't always great for smaller basins and sediment traps. Other more practical measures might include riprap weirs or temporary pipes that pull water from the upper zone of the impoundment. This might be good and practical for larger ponds sized to store >10,000 or 20,000 c.f. but we recommend other options for smaller ponds/impoundments. Also, impoundment is very broad and might include check dams for some people. Recommend adding language "withdraw water from the top portion of the ponded area"*

Colorado Department of Transportation: *Need a definition/requirement and explanation for what an outlet is?*

City of Aurora: *More clarification is needed to understand what is meant.*

Colorado Stormwater Council: *Please consider following proposed language:*

*Utilize a floating skimmer outlet structure for sediment basins, unless infeasible.*

Western Slope Colorado Oil and Gas Association: *This statement seems very prescriptive. Can CDPHE clarify the intent of the statement or change the language. It uses both Impoundment and infeasible that are subjective based on current definitions.*

*Change to read: "Outlets that withdraw water from or near the surface shall be installed when discharging from basins and impoundments, unless infeasible."*

**Response 69: Clarification on requirement for outlets**

Changes to the permit have been made based on these comments. Additional clarifying language including the suggested change to add "or near" the surface has been made.

Please note that this requirement intentionally includes the use of the phrase "unless infeasible" to clarify that there is flexibility in those cases where the requirement is not technologically possible, or not economically practicable and achievable in light of best industry practices. Additionally, this requirement is part of the federal effluent limitation guidelines and thus must be included in the permit.

**Comment 70: Clarification of pre-existing vegetation requirement**

Colorado Oil and Gas Association: *This is an example of a federally- driven provision that need not be strictly applied to oil and gas sites, as reflected by the federal exemption (see comment above). Application of this standard to the unique circumstances faced during oil and gas construction would create significant uncertainty and would be infeasible in many rural locations where proximity to ephemeral or temporary drainages is very common. In addition, due to the split surface/mineral estate situation unique to oil and gas production, owner/operators often have limited ability to access control points for "surface water bodies" and otherwise implement controls.*

Home Builders Association of Metro Denver: *Pre-existing Vegetation.*

*We would recommend adding language to the fact sheet to clarify that these areas are expected to have adequate sediment and/or erosion controls above them the vegetative strips, capable of treating run off from the site, prior to entering the vegetative buffer area. Several permittees may misinterpret the vegetation to be a single and primary “vegetative buffer” control. Several other states allow the use of buffer strips as a primary BMP and this could widely be misinterpreted. Maintain pre-existing...“within 50 feet of state surface water body”. In other parts of the document, it says “stream” and “state waters”. We suggest making all the terms the same for consistency and to define all terms used. Are ephemeral stream channel considered a state surface water body”*

*HRL Compliance Solutions, Inc.: Can CDPHE clarify the intent of the statement or change the language. There are hundreds of intermittent and dry drainages that are within 50 feet of a construction location and the permittee is required to ensure adequate BMPS/controls to minimize sediment discharge. Landowners usually dictate where a location can be constructed and sometimes this is within that 50 feet.*

*How would this apply to pipeline or roads that cross drainages? (ref - Page 15 Part 1.C.2.a.vi.(h).*

*Reword statement - “If the disturbance is within 50 feet of a perennial drainage, permittee must implement adequate control measures.”*

*Southern Ute Indian Tribe: Part I.B.1.a.ii.(a) requires that the permittee maintain pre-existing vegetation or equivalent control measures for areas within 50 feet of a state surface water body, unless infeasible. All though the Division has stated that they do not want to be too prescriptive in their renewal permit requirements, the vagueness of this requirement leads to many questions such as the following.*

- From what point along the state surface water body is the 50 foot buffer width measured? Is it measured from the ordinary high water mark or the edge of the stream or river bank, bluff or cliff?*
- If there is no pre-existing vegetative buffer due to pre-existing development that removed all vegetation, is the permittee required to comply with the 50 foot vegetated buffer requirement?*
- If the 50 foot buffer has some vegetation but also impervious surfaces or pre-existing structures and the permittee maintains this pre-existing buffer, has the permittee complied with the buffer requirement if they maintain this pre-existing buffer? Or, would this be an example where it is infeasible to comply with the requirement?*
- If a lot to be developed is entirely within the buffer, would it be considered infeasible to comply with this requirement?*
- How does the permittee determine what is consider an equivalent control measure? In order to have the same sideboards for all permittees, the Division should provide guidance on how equivalent control measures are to be determined. It is recommended that the Division consider the methodology used*

*in EPA's Construction Stormwater General Permit (CGP), i.e., sediment load reduction equivalent to pre-existing vegetation buffer. The Division should provide examples of situations where it will be infeasible to comply with the buffer requirement.*

- Are linear projects required to comply with this requirement if there are site constraints such as limited right of way or in ability to move right of way away from the surface water body? Depending on what equivalent control measures would be required, it may be infeasible to implement them.*
- If there is no discharge of stormwater to a state surface water body that is within 50 feet of the permittee's site due to topography or implementation of a berm or other barrier that will prevent any discharge, is the permittee exempt from complying with this requirement?*
- If a permittee is conducting construction activities within the 50 foot buffer that are approved under Clean Water Act Section 404, they should not need to comply with this requirement.*
- Does the permittee need to document in the SWMP how the equivalent control measures were determined?*

*SUIT Growth Fund believes that permittees will need to know the answers to the questions listed in order to comply with the permit requirement. The requirement as written is too vague for uniform compliance by all permittees. It is highly recommended that the Division provide more information on Part I.B.1.a.ii.(a) and clear guidance on how to comply with the new requirement.*

*Western Slope Colorado Oil and Gas Association: This statement seems very prescriptive. Can CDPHE clarify the intent of the statement or change the language. There are hundreds of intermittent and dry drainages that are within 50 feet of a construction location and the permittee is required to ensure adequate BMPs/controls to minimize sediment discharge. Landowners usually dictate where a location can be constructed and sometimes this is within that 50 feet.*

*How would this apply to pipeline or roads that cross drainages? (ref - Page 15 Part 1.C.2.a.vi.(h)).*

*i. Strike statement - "Maintain pre-existing vegetation or equivalent control measure for areas within 50 feet of a state surface water body, unless infeasible. Or; ii. Reword statement -*

*1. "If the disturbance is within 50 feet of a perennial drainage, permittee must implement adequate control measures." Or*

*2. "Minimize vegetative disturbance within 50 feet of a state surface water body, maintain pre-existing vegetation whenever practicable."*

*Wright Water Engineers, Inc.: Recommend this language be changed so the buffer pertains to receiving waters as define in Part 1.E if they are within the permitted project area. Additionally, recommend adding the word horizontal to read within 50 horizontal feet so when doing bridge work contractors don't use a 50 foot vertical buffer. If the language stays as a State surface water body, the*

*definition be added to Part 1. E. Protecting 50 feet along both side of road side ditches and permanent (long-term BMP required) water quality features is not practical but it is not infeasible in all cases. I recommend that although EPA CGP has moved towards the word infeasible that not practical is a better terminology for this permit requirement.*

*Xcel Energy: Recommend this language be changed so the buffer pertains to receiving waters as define in Part 1.E if they are within the permitted project area. Additionally, recommend adding the word horizontal to read within 50 horizontal feet.*

**Response 70: Clarification on pre-existing vegetation requirement**

Changes to the permit have been made based on these comments. Specifically, the requirement has been revised so as to pertain to receiving waters, not state waters. Receiving waters is a defined term in the permit. Also, clarifying language was added, as requested, that the requirement applies to "50 *horizontal* feet," not vertical.

The requirement to maintain pre-existing vegetation is a federal effluent limitation guideline. The division has incorporated this requirement into the permit, therefore it is now a state permit requirement. Federal oil and gas exemptions are not applicable.

Please note that all comments/questions regarding compliance assistance are not within the scope of the public notice comment for the draft general permit or the associated fact sheet. The division takes note of the comments/questions

**Comment 71: Clarification on minimizing soil compaction**

*G.E. Johnson Construction Company: Regarding soil compaction for areas that will be vegetated for final stabilization. Soil compaction most likely will occur during construction activities in these areas and is unavoidable. However, these areas would need to be tilled or surface roughened as part of implementing the stabilization or infiltration control measures. Suggested Change - It seems more reasonable to indicate that soil compaction must be mitigated prior to implementing stabilization or infiltration control measures.*

*Home Builders Association of Metro Denver: Soil Compaction. In regards to soil compaction for areas that will be vegetated for final stabilization, soil compaction most likely will occur during construction activities in these areas and is unavoidable. However, these areas would need to be tilled or surface roughened as part of implementing the stabilization or infiltration control measures. We suggested changing the wording because it seems more reasonable to indicate that soil compaction must be mitigated prior to implementing stabilization or infiltration control measures.*

**Response 71: Clarification on minimizing soil compaction**

No changes have been made to the permit or fact sheet based on this comment. The division is requiring minimization of soil compaction in areas where infiltration control measures or vegetative final stabilization are implemented. This does not mean that these areas are not subject to soil compaction, but rather that these areas have as little soil compaction as possible. The term "minimize" is not

synonymous with "prohibit". Activities that cause soil compaction are still allowed to occur as necessary.

**Comment 72: Clarification on steep slopes**

*HRL Compliance Solutions, Inc.: O&G locations on the Western Slope may be built in steep canyons that include 'steep slopes'. The location of the disturbance (well pad, pipeline, road) is often dictated by the geology, access and landowner (private/BLM/State/County).*

*Reword Statement - "If feasible, minimize the amount of soil exposed during construction activity, including the disturbance of steep slopes. If infeasible, permittee must implement adequate control measures."*

*Home Builders Association of Metro Denver: Soil Exposure. We suggest adding the words "unless infeasible" at the end of this statement. Colorado has extremes of elevation changes and building on some requires the disturbance of steep slopes. During some construction activities steep slopes may have to be disturbed for cut and fill operations or similar instances.*

*Western Slope Colorado Oil and Gas Association: What does 'minimize amount of soil exposed,' mean? This seems very subjective.*

*O&G locations on the Western Slope are frequently built in steep canyons that include 'steep slopes'. The location of the disturbance (well pad, pipeline, road) is often dictated by the surface owner (private and BLM) and geology.*

*Decreasing pad size can result in steep cut and fill slopes. This statement contradicts itself. More disturbance is needed to lay a slope back.*

*Strike statement - "Minimize the amount of soil exposed during construction activity, including the disturbance of steep slopes." Or;*

*Reword Statement - "If feasible, minimize the amount of soil exposed during construction activity, including the disturbance of steep slopes. If infeasible, permittee must implement adequate control measures."*

*G.E. Johnson Construction Company: Suggested Change - Suggest adding the words "unless infeasible" at the end of this statement. Colorado has extremes of elevation changes and building on some requires the disturbance of steep slopes. During some construction activities steep slopes may have to be disturbed for cut and fill operations or similar instances.*

**Response 72: Clarification on steep slopes**

No changes have been made to the permit or fact sheet based on this comment. The division is requiring that the disturbance of steep slopes be minimized. This does not mean that the disturbance of steep slopes is prohibited, but rather that the permittee, if feasible, must minimize the disturbance of steep slopes on project sites. The term minimize is not synonymous with prohibit. Activities that cause disturbance to steep slopes are still allowed to occur as necessary. Please note that a definition for steep slopes has been added to the general permit for clarification and in response to another comment.



**Comment 73: Clarification on bulk storage**

Colorado Department of Transportation: Bulk storage needs a quantitative value similar to the requirement for SPCC.

*Total aggregate capacity of aboveground oil storage containers greater than 1,320 gallons of oil? (Do not include containers less than 55 gallons, permanently closed container, mobile power containers, or storage containers used exclusively for wastewater treatment.)*

Wright Water Engineers, Inc.: Quantify what is meant by "bulk storage." I recommend using 55 gallons or greater to follow SPCC regulations.

City of Aurora: Not all fuel storage requires structural controls. Further, bulk is an undefined term.

Xcel Energy: Recommend quantifying what is meant by "bulk storage." (i.e. using 55 gallons or greater to follow SPCC regulations).

Home Builders Association of Metro Denver: Bulk storage tanks. Bulk storage tank is not defined; we'd suggest adding a definition. We recommend the Division provides a minimum volume of a tank that must conform to this section. Since secondary containment is not defined, can you include double-walled tanks or add a definition of secondary containment? Also, since the compliance for some tanks fall under other agencies, perhaps you should refer to petroleum storage tank registration, inspection, and spill control as overseen by the Colorado Department of Labor and Employment, Oil and Public Safety and the petroleum tanks in the oil and gas industry are overseen by the Colorado Oil and Gas Conservation Control Commission?

**Response 73: Clarification on bulk storage**

Changes were made to the permit based on these comments. The recommended requirement for containers 55 gallons or greater has been incorporated. The ability for the use of secondary containment or equivalent (i.e. double walled tanks) was already implemented in the permit, therefore no additional language was incorporated.

**Comment 74: Temporary stabilization**

Colorado Department of Transportation: The permit needs to define what is an expected temporary stabilization measure. For example is slope roughening an expectable temporary stabilization measure?

Colorado Oil and Gas Association: No written comment provided. The following edit was suggested: 14 days was replaced with 30 days.

Home Builders Association of Metro Denver: Would this apply to temporary stockpile staging areas? Active stockpile areas may have periods where they are not used for over 14 days. If it is a typical construction stockpile and not a scraper stockpile it is usually laid in a naturally roughened state, combined with a flat area at the base essentially acting as a sediment control measure. As a result it is rare to see evidence of erosion and discharge from typical stockpiles. Perhaps exclusion for active temporary stockpile areas that are under 15' tall and are not

*adjacent to any sensitive areas? If a time limit is necessary 30 days may be more feasible?*

*The SWMP must document the constraints necessitating the alternative schedule, provide the alternative stabilization schedule, and identify all locations where the alternative schedule is applicable on the site map. The timing of this requirement is left unwritten which we think is very good. This should be an alternative approach and be completed as the details are developed. We assume that hand written comments on the site map are adequate. Is this correct?*

*HRL Compliance Solutions, Inc.: Construction of an O&G location can, in some cases, take longer than 14 days, and after the construction of the site has been completed, necessary activities to prepare for drilling operations on the site may not be conducive to temporary stabilization.*

*Wright Water Engineers, Inc.: Recommend some guidance be developed by the Division regarding this requirement and when physical characteristics of the terrain and climate prevent stabilization. I assume winter conditions would factor into this and potentially wet, muddy conditions.*

*Western Slope Oil and Gas Association: O&G locations can be under construction for more than 14 days and the practice is to have adequate perimeter controls and not to focus on 'temporary stabilization' controls. O&G construction projects frequently last more than 14 days due to weather constraints (snow events and precipitation events), scheduling and project types such as pipeline installation (long linear projects). It will just be torn out; it is not practical.*

*Temporary stabilization measures can include techniques and practices that are designed to be short-term in nature. As was done with Final Stabilization Measures in Part 1.B.1.a.iv.(c), please include some examples.*

*Some locations are built in very steep terrain and in order to minimize disturbance the location may be built with a steep cut slopes that cannot be temporarily stabilized during the drilling and completion phases of construction. When the location is put into interim reclamation the location can be reduced in size and slopes be put back in that would allow for stabilization. During this D&C phase of construction there would be adequate control measures in place for sediment control at the perimeter of the location.*

*This language seems more specific to large non-oil and gas projects like sanitation improvement districts, and subdivisions where tens of acres will be disturbed. Non-linear oil and gas projects are usually less than 5 acres and are considered active construction until the production phase. In linear oil and gas projects stabilization usually occurs directly after the construction of the pipeline is completed, the trench backfilled, and topsoil replaced.*

*Add language: "The permittee may exceed the 14-day schedule when either the function of the specific area of the site requires it to remain disturbed, or, physical characteristics of the terrain and climate prevent stabilization. Adequate control measures must be in place until more permanent stabilization can be implemented." And/or add language: Stabilization measures must be initiated as soon as practicable but no later than fourteen (14) days in portions of the*

construction site that have temporarily or permanently ceased except as provided below: Where snow or frozen ground conditions preclude stabilization within 14 days; When earth disturbing construction activities will resume within 14 days; When perennial vegetative stabilization measures are not possible within 14 days due to semiarid climates or drought stricken conditions. If temporary stabilization measures are infeasible, due to one or more of the listed conditions, then BMPs must achieve equivalent storm water treatment. And/or add language: "Temporary stabilization measures include, but are not limited to, the following as appropriate: tracking, terracing, cross-contour ripping/grooving, mulching, or other similar practices. Where temporary stabilization measures are not appropriate, adequate sediment control measures must be implemented"

**Response 74: Temporary stabilization**

Changes have been made to the permit and fact sheet based on these comments. Examples of what types of control measures are considered temporary stabilization have been added to the permit and fact sheet. However, the language as drafted, allows enough flexibility to account for instances where a site requires more than 14 days to implement temporary stabilization, including those instances where snow or frozen ground preclude stabilization.

**Comment 75: Final stabilization**

G.E. Johnson Construction Company: Regarding the definition of final stabilization, we understand the EPA and other states have adopted the 70% rule however much of CO is semi-arid and are in drought conditions making achieving the 70% coverage close to impossible or at the very least would take a really long time. Request clarification - Has the state considered options for re-establishing vegetation in arid condition or during times of drought?

Home Builders Association of Metro Denver: Final Stabilization. Regarding the definition of final stabilization, we understand the EPA and other states have adopted the 70% rule however, much of Colorado is semi-arid and are in drought conditions making achieving the 70% coverage close to impossible or at the very least, would take a really long time. We would suggest adding alternatives to the 70% stabilization in arid and semi- arid climates. Perhaps the Division could add a section on the permittee provisions for petitioning a lesser percentage of regrowth possibly after a certain amount of time has passed or provide for an alternative approach altogether that is submitted to and approved by the Division. Has the state considered options for re-establishing vegetation in arid conditions or during times of drought?

*Final Stabilization. Final Stabilization must be designed. We suggest the CDPHE divide these options, to be consistent with other sections of the permit, into structural (1-4) and non- structural or alternative stabilization measures (5). Perhaps under item 5, you could add that "other measures may be acceptable if approved by the Division". We understand that c. states ...'But not limited to", but once you provide a list, it implies that these are the measures the Division would approve.*

Colorado Department of Transportation: change (d) to: The permittee(s) must ensure all temporary non-biodegradable sediment control measures are removed from the construction site once final stabilization is achieved. Then add a

*definition for biodegradable. This requirement should not include temporary control measures that are considered biodegradable.*

*The industry defines biodegradable as any product that will decompose down to natural elements in a commercial composting facility within 2 years. All the materials in the biodegradable control measure must have the ability to be processed by, and become part of, organic living things. The language as written literally means that erosion control blankets and other biodegradable products that are made for staying in place would need to be removed. Removing those would uproot the vegetation and cause more problems.*

**Response 75: Final Stabilization**

Changes to the permit and fact sheet have been made based on these comments. The division believes that the requirements for final stabilization already allow the flexibility requested in the comment. The division added Part I.B.1.a.iii.(c)(6). This language already existed at the end of part I.B.1.a.iii.(c)(5), but has now been given its own description row in order for it to be more clear that the flexibility exists.

Additionally, as discussed in the fact sheet, the state utilized a similar approach to final stabilization as other states that have arid and semi-arid climates.

Also, please note that the "70% rule" applies to 70% of pre-disturbance levels; it does not require an absolute 70% plant density.

**Comment 76: Control measure maintenance**

*Colorado Oil and Gas Association: This proposed language is in current stormwater permit COR-030000, Part I.D.7., page 13 and should be included in the new permit to provide clarity.*

*A specific timeline for implementing maintenance procedures is not included in this permit because BMP maintenance of control measures is expected to be proactive, not responsive. Observations resulting in BMP maintenance activities of control measures can be made during a site inspection, or during general observations of site conditions.*

*Colorado Stormwater Council: Please consider the following proposed language:*

*The permittee must ensure that all control measures remain in effective operating condition and are protected from activities that would reduce their effectiveness. Control measures must be maintained in accordance with good engineering, hydrologic and pollution control practices.*

*Specifically including "removal of collected sediment that exceeds the acceptable tolerances of the control measures" is redundant to the requirement that control measures are maintained in accordance with good engineering, hydrologic and pollution control practices. It also excludes other types of typical maintenance, all of which are encompassed within good engineering, hydrologic and pollution control practices.*

Home Builders Association of Metro Denver: Maintenance. We understand the Division has communicated that routine maintenance if repairs or controls are replaced in a timely manner is not a violation of the permit. Yet in this section, it just states that, "the necessary repairs or modifications" must be "conducted to maintain an effective operating condition". We'd like the Division to add language that if the repairs or modifications are done on a timely basis, this is not a violation of the permit. This issue is very important to the entire construction industry and still meets the requirement to maintain clean water. We believe this is the one issue that has the potential for abuse by the Division and the MS4 inspectors, issuing a notice when it's really a routine maintenance issue. There are other sections in the permit that indicate that protection of the state waters is the prime goal and language that states how this is accomplished; such as adequate control measures. Also see comment on Part I.B.1.a.1 indicating that a design storm above which the home builder is not responsible is not spelled out in the permit. This is typically a 2-yr 24 hour event for Control Measures up the watershed and 10-year/24-hour event for detention basins.

**Response 76: Control measure maintenance**

Changes to the permit have been made in response to these comments. Specifically, a modified version of the suggested language (included in the previous permit and suggested by the Colorado Oil and Gas Association above) has been added to the permit.

**Comment 77: Notice of non-compliance**

HRL Compliance Solutions, Inc.: *If a control measure is deemed inadequate and inadequate is considered out of compliance, all parties will be overwhelmed and burdened with the notification process that is required for non-compliance (See Page 26 - Part II.3). If a control measure is deemed inadequate it should be replaced or repaired. Reserve the notification process for discharges that carry pollutants to a perennial water.*

*Change the statement - "All nonfunctional control measures must be repaired, replaced or supplemented as soon as possible or as soon as field conditions allow.*

Western Slope Colorado Oil and Gas Association: *If a control measure is deemed inadequate and inadequate is considered out of compliance, all parties will be overwhelmed and burdened with the notification process that is required for non-compliance (See Page 26 - Part II.3). If a control measure is deemed inadequate it should be replaced or repaired. Reserve the notification process for discharges that carry pollutants to a perennial water.*

*Suggested Language: "The permittee shall ensure compliance with the permit and ensure that inadequate control measures are replaced or corrected." or*

*"All nonfunctional control measures must be repaired, replaced or supplemented as soon as possible or as soon as field conditions allow."*

*i. Can CDPHE further clarify how corrective actions could be managed in this permit or in the guidance document.*

ii. Can CDPHE clarify that the WQCD does not need to be notified when inadequate controls measures are identified and that they can be tracked in the corrective action log.

Colorado Oil and Gas Association: See COR-030000, Part I, D.7. Pg. 13

**Response 77: Notice of non-compliance**

The Part II language has been revised consistent with the Part II language that 40 CFR 122.41 requires to be incorporated into all NPDES permits, including stormwater general permits. The division is providing guidance regarding noncompliance reporting.

**Comment 78: Inadequate control measures**

Home Builders Association of Metro Denver: The manner in which inadequate control measures are defined in this permit and the MS4 permit (pages 19 and 22 at end of this comment) equates to control measure being installed and destroyed by trade partners to be equally as non-compliant as permittees who do not install control measure in the first place. This puts non-compliance at an economic advantage over compliance. Many permittees spend a tremendous amount of resources routinely repairing trade partner damage. These permittees also spend a tremendous amount of resources training and holding trades accountable. Unfortunately damage to some degree continually occurs, even when it is directly hitting the bottom line of the permittee. The fear is that through the implementation of this definition and the current MS4 escalation policy requirements, permittees who invest these resources towards a compliance program will not see a benefit versus those who choose to partially or simply not implement a program at all.

In addition, today's traditional BMPs/Control Measures and best available technologies cannot withstand the rigors of active construction sites. As a result the Division and stormwater inspectors in general will always find one control measure onsite that is inadequate. From the literal interpretation of both the draft Construction General Stormwater Permit and the recently codified MS4 General Permit; over time, a regulator would be obligated to enforce on a project that has contractor damage regardless of the amount of resources they have invested to achieve compliance.

What this does is it holds permittees who try and invest towards compliance theoretically in the same position as those who don't. If a permittee continually spends \$20,000 a month on BMP/Control Measure maintenance and repairs, and they are still in violation of the permit, then what incentives does a permittee have to continue to invest these resources towards compliance? We understand that through experience with the Division and the way the Enforcement Response Guide has been applied, this is not occurring; however, without a change in the definition or clarification to the fact sheet, it is likely that the language taken in its literal definitions could create an unachievable standard. It would have the potential to be abused and discourage overall compliance.

Perhaps it could be clearly explained (in the fact sheet) that as long as inadequate control measures meet the below requirements they be considered "Low Risk" inadequate measure, or considered a maintenance item. The escalation policy would not apply to a low risk inadequate control measure.

- Properly selected and implemented,
  - Adequate routine inspections are occurring,
  - Corrective actions are being addressed in accordance with the general permit requirements and,
  - The damaged BMPs have not resulted in a discharge, or have the immediate likelihood to result in a discharge.
- 

US EPA Stormwater Webcast EPA's Proposed Construction General Permit 05-24-2011 slide number 38:

*"Corrective Action*

- A "corrective action" is any action taken to:
  - Repair, modify, or replace a CONTROL MEASURE
  - Clean up and dispose of spills, releases, or other deposits found on the site
  - Remedy a permit violation
- Where problems are found, corrective action is required to remedy them
- Conditions requiring BMP/ Control Measures maintenance are not violations
- Failure to take corrective action is a violation"

*We need to establish realistic standards so that compliance can be achieved on a continual basis.*

Phase II Municipal Separate Storm Sewer System (MS4) general permits (COR090000 and COR080000) pages 19 and 22:

Page 19:

*viii. Enforcement Response: Implement an enforcement response process that includes failure of operators of Control Measures to meet the requirements imposed by the permittee, which at a minimum includes:*

*(A) Processes and sanctions adequate to minimize the occurrence of, and obtain compliance from, chronic and recalcitrant violators of Control Measures.*

*(B) The permittee's enforcement response must ensure that findings of a similar nature are enforced upon consistently.*

*(C) The following categories of responses must be included in permittee's process:*

*1) Informal Responses which may include: Telephone Notification, Verbal Notice, Notice of Violation, Meetings*

*2) Formal Responses which may include: Administrative Order, Compliance Schedule, Order to Show Cause, Monetary Penalty (Administrative), Suspend Service*

*3) Judicial Response which may include: Injunctive Relief, Consent Decree, Civil Penalties, Criminal Penalties*

Page 22:

viii. *Enforcement response: A summary of the procedures for enforcement response, including the citation(s) and location(s) of supporting documents, that includes*

*(A) Describe the types of escalating enforcement responses the permittee will take in response to common violations and time periods within which responses will take place, including as a minimum:*

- 1) Construction activities operator commencing construction activities without site plan review in accordance with permit requirements.*
- 2) Site plans not maintained and modified in accordance with permit requirements.*
- 3) Control Measure not maintained in operational condition at time of MS4 inspection.*
- 4) Uncorrected finding(s) from previous inspection(s).*
- 5) Failure to implement a Control Measure for a pollutant source or inadequate Control Measure not resulting in pollutants leaving the site (i.e., trackout or other transport of sediment down gradient of a Control Measure designed for the pollutant source).*
- 6) Failure to implement a Control Measure for a pollutant source or inadequate Control Measure resulting in pollutants discharging to the MS4 or leaving the control of the operator.*
- 7) Construction activities in receivership. Include the procedures for the permittee to install effective and appropriate Control Measures in the case of sites with covered construction activities that are in receivership.*

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*Generally, we ask the Division to clarify corrective actions, particularly an inadequate control measure versus regular maintenance. Based on the way it is currently written, there is little incentive to perform maintenance over escalation procedures. Paying fines for violation (economic advantage, held to same standard), scheduled for repair immediately. Corrective action log should be loophole.*

*Our position is that a BMP/Control Measure that gets destroyed should be maintenance, and is not an inadequate control measure, as long as there is not an indication of a release to a receiving State water body.*

*Colorado Stormwater Council: Please consider adding language from the draft EPA 2017 Construction General Permit that differentiates between corrective action and routine maintenance. Additionally, replacement can be considered routine maintenance.*

**Response 78: Inadequate control measures**

Changes to the permit were made based on these comments. Changes have been made to the definitions for both a "control measure requiring routine maintenance" and an "inadequate control measure" to provide added clarity. Additionally, Part I.B.1.b. has been changed to clearly state that a "control



measure requiring routine maintenance” is not subject to the corrective actions section. Part I.B.1.c. has been changed to clarify that noncompliance notifications are only required if Part II.L. has been met.

The division does not agree that requiring that control measures be maintained in operating condition, and the resulting potential for violations if they are not, creates a disincentive to install the control measures in the first place. Neither the divisions MS4 permits nor its Clean Water Program Enforcement Management System require the implementation of an enforcement response that disregards the nature and scale of violations in such a way were the temporary failure of specific control measures would be responded to in the same manner as chronic or recalcitrant failure to implement control measures.

**Comment 79: Clarification of the term “immediately”**

Colorado Oil and Gas Association: Add language: “immediately or as soon as practicable”

*This would give the permittee more flexibility in addressing repairs. Oil and gas operators typically contract with a 3rd party to conduct stormwater inspections. If deficiencies are observed at a location by the 3rd party contractor, information regarding same is communicated to the permittee verbally or electronically and a work order may be generated. This communication will generally occur post-inspection and the potential delay for the final implementation of corrective action may be several days.*

HRL Compliance Solutions, Inc.: Can CDPHE define “immediately”? Is it a day, a week, or a month? “One-Calls” are required prior to digging. This process can take up to 72 hours. Does the definition of ‘immediately’ allow for proper safety protocols such as a one-call prior to repair?

Western Slope Colorado Oil and Gas Association: Can CDPHE define “immediately”? Does it mean within the hour or within the day, week, month?

Can CDPHE clarify that initiation of a repair process qualifies as “repair immediately”?

*Qualified Stormwater Persons in the industry are trained to prioritize stormwater corrective action items. If a correction item is identified that requires an immediate response, personnel may be redirected to higher risk items. A non-oil and gas example would be a construction project, where wattles are being replaced or installed, when a discharge of sediment from the line of disturbance is identified and the personnel installing the wattles are re-directed to the higher priority task.*

Add language: “The permittee must initiate work to fix the problem immediately after discovering the problem to minimize the discharge of pollutants. Initiating work includes, but is not limited to: creating work-orders, requesting underground line locations, ordering materials, scheduling work and conducting repairs.

Home Builders Association of Metro Denver: “(a) Describe why it is infeasible.....” and “(b) provide a schedule....” It is a good idea to add language when it is

*infeasible to initiate the control immediately. Documenting what is done is a valuable tool and provides protection for the home builder when it is infeasible but still insures ultimate compliance since measures must be implemented to minimize or prevent the discharge of pollutants must be done as soon as practicable/feasible. The definition of infeasible is good.*

**Response 79: Clarification of the term “immediately”**

Changes to the permit were made based on these comments. Specifically, a modified version of the language suggested by the Western Slope Colorado Oil and Gas Association was added to Part I.B.1.c.i.:

*“Once the permittee observes or is notified of an inadequate control measure, the permittee must initiate work (i.e., take immediate steps) to prevent or minimize the potential or actual discharge of pollutants to state waters. Initiating work may include, but is not limited to, creating work-orders, requesting underground line locations, ordering materials, scheduling work and conducting repairs.”*

**Comment 80: Cleaning up spills**

*G.E. Johnson Construction Company:* *Since surfaces are not defined, we would like to understand better an expanded explanation of this concept. Does this apply to paved surfaces only? The use of the word “any” is too broad. Should this not focus on only potential discharges to surface waters and receiving streams?*

*Further, regarding cleaning of discharges, many times when cleaning paved surfaces, a film or shadow remains that cannot be removed except by application of pressurized water treatments (which generally are not acceptable). Will the state recognize that this film/shadow may not be able to be removed despite all efforts and therefore consider the cleaning as a Corrective Action?*

*Home Builders Association of Metro Denver:* *Since surfaces are not defined, we would like to understand better an expanded explanation of this concept. Does this apply to paved surfaces only? The use of the word “any” is too broad. Should this not focus on only potential discharges to surface waters and receiving streams?*

*Further, regarding cleaning of discharges, many times when cleaning paved surfaces, a film or shadow remains that cannot be removed except by application of pressurized water treatments (which generally are not acceptable). Will the state recognize that this film/shadow may not be able to be removed despite all efforts and therefore consider the cleaning as a Corrective Action?*

**Response 80: Cleaning up spills**

Changes have been made to the permit based on these comments. Specifically, the requirement has been changed to “*minimize* discharges of material in a subsequent storm event” instead of *prevent*. The definition of “*minimize*” should adequately address this commenter’s concern.

**2. Discharges to an Impaired Waterbody**

**Comment 81: Clarification on impaired waterbodies**

*G.E. Johnson Construction Company:* *This section may be confusing to some permittees. It would be nice to know how close you would need to be to an impaired waterbody for this to apply. The ultimate discharge from a construction*

*site may be miles away with little potential for that waterbody to be affected. Yet that waterbody may be considered the "ultimate discharge" location identified in the permit application. When does this kick in?*

*Home Builders Association of Metro Denver:* *This section may be confusing to some permittees. We would like to have a good idea about how close you would need to be to an impaired waterbody for this to apply. The ultimate discharge from a construction site may be miles away with little potential for that waterbody to be affected. Yet that waterbody may be considered the "ultimate discharge" location identified in the permit application. How and when would this apply?*

**Response 81: Clarification on impaired waterbodies**

The permit has been changed in response to this comment. Specifically, clarifying language has been added to Part I.B.2 of the permit.

**3. General Requirements**

**Comment 82: Add the term "applicable"**

*Colorado Department of Transportation:* *change "any" to "applicable" for the water quality standards and narrative water quality standards.*

**Response 82: Add the term "applicable"**

Changes to the permit have been made in response to this comment. The division added the term "applicable" to the sentence as requested, but did not delete the term "any".

**Comment 83: Clarification on required sampling provision**

*Colorado Oil and Gas Association:* *This testing protocol is not necessarily applicable to stormwater discharges. This entire requirement goes against the flexible nature of the Fieldwide Permit approach reflected in the Fact Sheet, reinforcing the need to cross-reference these two interrelated documents in the Permit itself.*

*Home Builders Association of Metro Denver:* *"The Division may require sampling and testing...." This statement is too open ended. We understand that the CDPHE wants to maintain flexibility, but the test that the SWMP is not adequate to minimizing pollutants is too open ended. Particularly, since the CDPHE doesn't review the SWMP and provide comments in advance. There should be an intermediate step before sampling and testing is required. Perhaps state a review and comment by the Division and opportunity for the home builder to update the SWMP and provide adequate control measures should be added. Also we suggest the Division define Whole Effluent Toxicity since some in the industry may not be familiar with that terminology.*

**Response 83: Clarification on required sampling provision**

No changes to the fact sheet or permit have been made based on these comments. Please note that this is not a new requirement and the change in language actually narrows the divisions' scope in comparison to the previous permit. It would be rare for the division to require sampling under this permit. An example of when the division would require sampling would be when a Total Maximum Daily Load (TMDL) includes a Waste Load Allocation (WLA) for construction, which might require monitoring for a pollutant of concern.

Please note that a definition for Whole Effluent Toxicity is located in Regulation 61.

**Comment 84: Complying with federal agencies**

G.E. Johnson Construction Company: Request clarification - Complying to the requirements of "federal agencies", may be confusing. The EPA is a federal agency but technically since CO is a delegated state those construction sites on private land in CO don't have to comply with the EPA NPDES requirements. Suggest that this statement qualify what federal agencies apply or exempt EPA NPDES from the requirements.

Home Builders Association of Metro Denver: Complying with the requirements of "federal agencies", may be confusing. The EPA is a federal agency but technically since Colorado is a delegated state, those construction sites on private land in Colorado do not have to technically comply with the EPA National Pollutant discharge Elimination System (NPDES) requirements. We suggest that this statement identifies what federal agencies apply or, exempt EPA Clean Water Act NPDES program from the requirements.

**Response 84: Complying with federal agencies**

This comment has not been incorporated into the permit. Although the State of Colorado has been delegated to implement the Federal Clean Water Act, the delegation does not supersede the EPA's authority to retain authority over permit review or conduct inspections within the state. Additionally, the state of Colorado is an EPA delegated state and therefore has permitting over areas of the state that are not federal land. Furthermore, in areas of federal land, the state has permitting authority if the project is privately funded.

**Comment 85: Requested terminology change**

G.E. Johnson Construction Company: Also see comment for Part I.B,1 above -In reference to the statement "manage to prevent pollution...". Suggested Change - We would suggest changing the word prevent to "minimize to the extent feasible".

Home Builders Association of Metro Denver: Also see comment for Part I. B. 1 above in reference to the statement "manage to prevent pollution...". We would suggest changing the word "prevent" to "minimize to the extent feasible".

**Response 85: Requested terminology change**

Please see the response to comments #11 and 59 above.

#### IV. Part I.C. STORMWATER MANAGEMENT PLAN (SWMP) REQUIREMENTS

##### 1. SWMP General Requirements

**Comment 86: Public emergency related stormwater management plan**

Southeast Metro Stormwater Association: SEMSWA is of the opinion that 14 days does not provide sufficient time for development of a SWMP, which is required to be reviewed prior to land disturbing activities per the MS4 Permit. We believe it should be within 30 days after the commencement of construction activities. This is consistent with the

*EPA's draft Construction General Permit as well.*

*We believe that for smaller emergency projects, those under 5 acres, that would potentially be completed in less than the 30 days, the rainfall erosivity waiver for exclusion from COPS stormwater permitting for small construction projects would be appropriate, and thus not be in conflict with this requested change.*

*City of Glendale: 14 days should be changed to 30 days after the commencement of construction activities.*

*14 days does not provide sufficient time for development of a SWMP, which is required to be reviewed prior to land disturbing activities per the MS4 Permit.*

*Thirty days is consistent with EPA CGP.*

*For projects that would be completed in less than the 30 days allowed for plan development, most would apply for a permit under the rainfall erosivity waiver for exclusion from CDPS stormwater permitting for small construction projects (less than five acres).*

*City of Aurora: 14 days does not give an adequate amount of time to develop, review, and implement a SWMP. It is recommended that this be increased to at least 30 days.*

*Colorado Stormwater Council: 14 days should be changed to 30 days after the commencement of construction activities.*

*14 days does not provide sufficient time for development of a SWMP, which is required to be reviewed prior to land disturbing activities per the MS4 Permit.*

*Thirty days is consistent with EPA CGP.*

*For projects that would be completed in less than the 30 days allowed for plan development, most would apply for a permit under the rainfall erosivity waiver for exclusion from CDPS stormwater permitting for small construction projects (less than five acres).*

**Response 86: Public emergency related stormwater management plan**  
No changes to the permit have been made based on this comment. The division believes that 14 days after commencement of construction activities is a reasonable time frame to complete a SWMP. Many emergency projects are completed within 30 days and the SWMPS can be simple and quickly generated.

**Comment 87: Onsite stormwater management plan clarification**  
Colorado Oil and Gas Association: *Suggested language change:*

*"or at the nearest field office in reasonable proximity of the construction activity specifies another location and obtains approval from the division."*

*This should be generally acceptable without approval from the Division, especially for the oil and gas industry scenario.*

G.E. Johnson Construction Company: Request clarification - Will electronic SWMPs considered onsite when the means are available to pull the plan up for review by the state or others?

Home Builders Association of Metro Denver: Will electronic SWMPs be considered onsite when the means are available to pull the plan up for review by the state or others? We suggest the option of allowing completed inspection reports to be kept electronically rather than stored in the SWMP as long as they can be viewed or produced from on site.

**Response 87: Onsite stormwater management plan certification**

A change to the permit was made based on these comments. Specifically, the permit allows the SWMP to be retained onsite or be onsite. This change would allow for electronic versions of the SWMP provided that they are accessible while onsite.

**2. SWMP Content**

**Comment 88: Clarification on qualified stormwater manager**

HRL Compliance Solutions, Inc.: What certifications or prerequisites are required to be 'Qualified'?

*The term qualified stormwater manager seems to have a generic application to anyone involved in the stormwater process i.e. SWMP Administrator and inspector. For most O&G operators, the stormwater manager is the plan administrator responsible for implementing the plan, revising the SWMP as needed, ordering maintenance, and ensuring compliance with the permit. The stormwater inspector is responsible for conducting the inspection and documenting corrective actions.*

*Can CDPHE recognize these two roles separately in the permit, define the roles in the definitions section, and update the referenced sections to accommodate the separate roles.*

Western Slope Colorado Oil and Gas Association: Sometimes the stormwater manager/administrator and the stormwater inspector are the same person but in O&G these two roles are often separated. The stormwater manager is the plan administrator responsible for implementing the plan, revising the SWMP as needed, ordering maintenance, and ensuring compliance with the permit. The stormwater inspector is responsible for conducting the inspection and documenting corrective actions.

*Can CDPHE recognize these two roles in the permit, define the roles in the definitions section, and update the referenced sections to accommodate the separate roles.*

Colorado Oil and Gas Association: Acknowledgement that more than one SWMP Administrator may be part of a permittee's stormwater team.

Southern Ute Indian Tribe Growth Fund: Part I.C.2.i of the renewal permit is confusing as proposed. This part states that 'the SWMP must list individual(s) by title and name who are designated as the site's qualified stormwater management

*plan administrator responsible for implementing the SWMP in its entirety.' It would appear that the permittee is to provide the name of the SWMP administrator. However, this part is labeled 'Qualified Stormwater Manager' not SWMP Administrator. On page 15 of the Fact Sheet, the SWMP Content requirements of the renewal permit are discussed. The Fact Sheet states that the draft permit SWMP conditions include a requirement that dischargers provide the title and name of the site designated qualified stormwater manager. Since SWMP Administrator is not mentioned, it is unclear if the permittee is to assume that the SWMP administrator must be a qualified stormwater manager.*

*In Part I.D.1. of the renewal permit, it states that the person conducting the stormwater inspections must also be a qualified stormwater manager. On large construction projects, there may be individuals who are responsible for only conducting inspections while other individual(s) may be also responsible for implementing the SWMP in its entirety, i.e., developing, implementing, maintaining, and revising the SWMP. (In the 2007 permit, the individual who is responsible developing, implementing, maintaining, and revising the SWMP was called the SWMP administrator.) All of these individuals must be qualified stormwater managers according to the requirements of the renewal permit but only one individual may carry out the activities of the 'SWMP administrator'. Does the Division want the permittee to list all qualified stormwater managers regardless of their role, inspector and/or administrator in implementing the SWMP? If so, the Division should clarify this requirement in the renewal permit and Fact Sheet.*

*If the Division's intent is that only the designated SWMP administrator to be listed in the SWMP, it is recommended that Part I.C.2.i. is modified as follows:*

*"i. SWMP Administrator. The SWMP must list individual(s) by title and name who are designated as the site's stormwater management plan administrator responsible for implementing the SWMP in its entirety. The SWMP Administrator must be a Qualified Stormwater Manager."*

*Wright Water Engineers, Inc.: Based on public meeting comments, permittees seem confused about what qualifies someone to be able to perform inspections. We recommend the Division provide some guidance on this topic discussing options of certifications/trainings, on-the-job experience and training etc.*

**Response 88: Clarification on qualified stormwater manager**

Changes to the permit have been made in response to these comments. Language has been added that clarifies that the qualified stormwater manager role can be filled by more than one individual. However, no new definitions or terminology were added to the permit. Permittees have the flexibility to incorporate as many qualified individuals as deemed necessary to comply with the requirements of the permit. Additionally, the fact sheet discusses what is deemed acceptable training for a qualified stormwater manager.

**Comment 89: Clarification on materials handling requirements**

*G.E. Johnson Construction Company: Request clarification - Regarding the statement "...describe and locate...", - "and locate" can be broad or specific, how is this expected to be identified in the SWMP?*

Home Builders Association of Metro Denver: Regarding the statement "...describe and locate...", "and locate" can be broad or specific, how might this be expected to be identified in the SWMP?

Southern Ute Indian Tribe Growth Fund: Part I.C.2.a.iii. Materials Handling states that "The SWMP must describe and locate all control measures implemented at the site to minimize impacts from handling significant materials that could contribute pollutants to runoff." Since the term 'handling' is often used in the context of moving, carrying, transporting, etc., it is recommended that the words 'and storing' are added in the first sentence after the word 'handling' to help clarify the intent of the requirements.

The second sentence of this part is also unclear as written. The effluent limitations require that the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater is minimized. Since it is assumed that the intent of this sentence is for permittees to develop procedures that prevent the discharge of pollutants due to the exposure of any of these materials and/or activities to stormwater, it is recommended that the sentence is revised as follows:

*"These procedures should cover the handling and/or storage of building materials, paints and solvents, landscape materials, fertilizers or chemicals, sanitary waste material, trash and equipment maintenance or fueling that are exposed to precipitation."*

**Response 89: Clarification on materials handling requirements**

No changes were made to the permit or fact sheet based on this comment. The requirement to locate can be addressed through maps or narrative descriptions of the location control measures will be implemented. Requirements for material storage are addressed in Part I.C.2.a.iv(e). The applicability of the control measures in this part is not limited only to those activities exposed to precipitation, but to all activities that could contribute pollutants to runoff, for example as a result of spills.

**Comment 90: Requested changes to potential sources of pollution list**  
Colorado Department of Transportation: add (m) saw cutting material, including dust; add concrete spoils to the list in ( )

G.E. Johnson Construction Company: Suggested Change - Typo and the end of this sentence - "; and" isn't appropriate at the end of a list.

Home Builders Association of Metro Denver: There is a typo and the end of this sentence - "; and" isn't appropriate at the end of a list.

**Response 90: Requested changes to potential sources of pollution list**

Changes to the permit have been made in response to these comments. With the exception of the request to add concrete spoils. Concrete spoils are covered under Part I.C.2.a.iv(j).



**Comment 91: Impervious surfaces clarification**

HRL Compliance Solutions, Inc.: *What is the definition of "impervious areas/impermeable surfaces?"*

*What is the expectation for dirt roads?*

*Suggestion: Change 'impervious areas' to 'paved surface'.*

Western Slope Colorado Oil and Gas Association: *What is the definition of "impervious areas/impermeable surfaces?"*

*Can CDPHE provide practicable examples of control measures that would control/maintain tracking from a location onto a dirt road.*

*If the road is maintained by another entity (BLM/County/Private landowner) blading may be more difficult to arrange, especially for a very small amount of sediment. Can CDPHE feasibility/impracticability be used in these scenarios?*

**Response 91: Impervious surfaces clarification**

No changes to the fact sheet or general permit were made based on these comments. The division takes note of this comment. The division has determined that the requested clarification would be addressed more appropriately in a guidance document.

**Comment 92: Individual masonry mixing stations**

City of Aurora: *It is unclear what the Division is expecting with respect to individual masonry stations.*

**Response 92: Individual masonry mixing stations**

No changes have been made to the permit based on this comment. This comment is unclear, the general permit does not mention individual masonry stations. However, it does mention masonry mixing stations regarding allowable stormwater discharges, SWMP potential sources of pollution and inclusion of locations on site maps. The division believes that where masonry mixing stations is mentioned within the permit the requirements are clear.

**Comment 93: Clarification on specifications**

Home Builders Association of Metro Denver: *paragraph 1: Regarding requiring design specifications for "each Control Measure", not all control measures have specific design specifications; dumpsters for example. Also, some control measures are administrative and also have no "design specification". Design specifications cannot be provided for "all" control measures. We suggest rewording this to require design specifications for structural control measure where appropriate. Some structural control measures are added in the field and the contractor may be able to provide manufacturing*

G.E. Johnson Construction Company: *Request clarification and possible change - Regarding requiring design specifications for "each control measure", not all control measures have specific design specifications - dumpsters for example. Also some control measures are administrative and also have no "design specification".*

*Design specifications cannot be provided for "all" control measures. Suggest rewording this to require design specifications for structural control measure where appropriate.*

*City of Aurora: No written comment provided. Inserted the following language: The SWMP must include performance measures for all utilized control measures by the construction site.*

**Response 93: Clarification on specifications**

Changes to the permit have been made based on this comment. The division recognizes that not every control measure will have a design specification and therefore added language allowing for design or narrative specifications. It is expected that all control measures will at a minimum include a narrative description of the intended use, inspection and maintenance of the control measure.

**Comment 94: Separate inspection documentation requirement**

*G.E. Johnson Construction Company: paragraph 2 - Question and possible change - is this statement appropriate in this location of the permit? Inspection reports are discussed in Part I.D.5.c. If a discussion regarding inspection reports is appropriate for this section then we recommend the reference to including inspection reports should be its own section - maybe Part I.C.2.a.ix.*

*Home Builders Association of Metro Denver: paragraph 2: We wonder if this statement is appropriate in this particular location of the permit. Inspection reports are discussed in Part I.D. 5. c. If a discussion regarding inspection reports is appropriate for this section, then we recommend the reference to including inspection reports should be its own section - maybe Part I. C. 2. a. ix.*

**Response 94: Separate inspection documentation requirement**

Changes have been made to the permit based on this comment. A new section Part I.C.2.a.ix. has been added and discusses the inspection report requirement. The intention of this requirement is to clarify that inspection reports are required to be kept in the SWMP.

**Comment 95: Offsite control measures**

*G.E. Johnson Construction Company: paragraph 3 - Request clarification - Regarding offsite controls, what is the state's definition of an "offsite control measure". An inlet protection device may be "offsite" but it may be blocks or miles away. Please clarify what is expected here.*

*Home Builders Association of Metro Denver: paragraph 3: Regarding offsite controls, what is the state's definition of an "offsite control measure"? An inlet protection device may be "offsite" but it may be blocks or miles away. Please clarify what the expectation is here.*

*This requirement makes sense in situations where multiple permittees are sharing a common downgradient measure such as a pond, or in a situation where a permittee has an agreement to use a regional detention pond and will clean it out accordingly; however, to which degree must this be adhered too? In most offsite control measure cases it is an inlet protection downgradient from the project. Would the permittee need to get a use agreement with the MS4's in these situations? Perhaps exclusion is appropriate in these situations?*

*i. e.) "Permittee is responsible for getting an agreement in place for offsite control measures when you don't have "operational control" of the offsite measure, or if multiple permittees are utilizing the same offsite control measure".*

*Also we have identified a need to define the distance from the site where this requirement applies. We also like to see a definition of off-site control measures.*

*City of Aurora: It is unclear if this phrase is only associated with offsite control measures or all control measures. Additionally, the wording in the current permit with respect to maintaining control measures, appears to be more appropriate. Modified language is inserted in the draft permit.*

*Inserted language: "All control measures identified in the SWMP must be maintained in effective operating condition pursuant to the established performance standards. Proper selection and installation of control measures and implementation of comprehensive Inspection and Maintenance procedures, in accordance with the SWMP, should be adequate to meet this condition. Control measures that are not adequately maintained in accordance with good engineering, hydrologic and pollution control practices, including removal of collected sediment outside the acceptable tolerances (performance standards) of the control measures, are considered to be no longer operating effectively and must be addressed in accordance with this permit. A specific timeline for implementing maintenance procedures is not included in this permit because control measure maintenance is expected to be proactive, not responsive. Observations resulting in control measure maintenance activities can be made during a site inspection, or during general observations of site conditions."*

*Southern Ute Indian Tribe Growth Fund: Part I.C.2.a.v. of the renewal permit requires that the SWMP include a documented use agreement with the owner or operator of all offsite control measures utilized by the construction site. Since both the owner and operator of the offsite control measures are responsible for ensuring compliance with all terms and conditions of their permit, including implementation of their stormwater management plan (e.g., the maintenance of these shared control measures), both permittees should be a party to the use agreement.*

*The SUIT Growth Fund recommends that Part I.C.2.a.v. is revised to require a documented use agreement between all permittees (the owner and the operator, if applicable) of the offsite control measures utilized by the construction site. It is proposed that this part is revised as follows:*

*"The SWMP must include a documented use agreement with the permittee(s) (owner and operator, if applicable) of all offsite control measures utilized by the construction site."*

**Response 95: Offsite control measure**

Changes to the permit were made based on these comments. The term "offsite control measure" has been changed to "control measure outside of the permitted area".

**Comment 96: Final stabilization**

*G.E. Johnson Construction Company: Request clarification and possible change - What "methods" for determining percentage of vegetative ground cover is acceptable? Generally, a visual observation is done. Also we noticed that the reference to the vegetative density has been removed. Does that mean we would need to describe how much of the site is vegetated (vegetation v impervious surfaces) or does the state still want to know the density of what vegetation exists on the site?*

*Wright Water Engineers, Inc.: Guidance from the Division and stakeholder on this topic would be helpful. UDFCD may be interested in providing some guidance on this topic.*

*Xcel Energy: Guidance from the Division and stakeholders on this topic would be helpful. What other method besides visual would the Division want used?*

*Colorado Oil and Gas Association: When dealing with percent vegetation, slope and aspect are very important. If the proposed site has multiple slopes and aspects, so should the description. A description of the percent of existing vegetative ground cover relative to the entire site may require steeper slopes with southern aspects to carry a higher percentage of vegetative ground cover than is sustainable.*

*Home Builders Association of Metro Denver: What "methods" for determining percentage of vegetative ground cover is acceptable? Generally, a visual observation is done. Also, we noticed that the reference to the vegetative density has been removed. Does that mean we would need to describe how much of the site is vegetated (vegetation opposed to impervious surfaces) or does the state still want to know the density of what vegetation exists on the site?*

**Response 96: Final stabilization**

No changes to the permit were made based on these comments. The permittee has flexibility regarding how to determine when final stabilization is achieved. Additional detail regarding final stabilization is available as division guidance.

**Comment 97: List of allowable non-stormwater discharges in SWMP**  
*Wright Water Engineers, Inc.:* Repeat of previous comment - if we are not allowing construction dewatering to be an allowable non-stormwater discharge this language does not work. Recommend keeping as an allowable non-stormwater discharge and refer to low risk guidance for requirements to be considered allowable under this permit.

*Xcel Energy:* There is no mention of irrigation return flow or discharges associated with construction dewatering in the draft permit language. EPA's GCP includes irrigation flows, water used to control dust, wash water (given caveats that does not include soaps etc.), foundation drains (again with caveats that there is no process material or contaminated groundwater), and construction dewatering. We recommend keeping the language consistent with what is EPA considers allowable non-stormwater discharges.

*We understand there is low-risk dewatering guidance but we are unclear how enforcement will work if this is not directly covered under this permit and how this permit (Page 15, Section Part 1.C.2.a.vi(f). "requiring a description of allowable non-stormwater discharges including those being discharge under a division low risk guidance policy") can regulate these discharges including their description and locations when these discharges are not included in the allowable non-stormwater discharge section of the permit.*

**Response 97: List of allowable non-stormwater discharges in SWMP**

No changes to the permit were made based on this comment. The division has intentionally not included construction dewatering in the list of allowable non stormwater discharges that are covered under this construction stormwater permit because dewatering discharges are to be addressed by other means. Specifically, the division anticipates that a significant portion of construction dewatering discharges that occur as land application will fall under the low risk policy entitled "Uncontaminated Groundwater to Land." In the event that dewatering discharges do not fall under this low risk policy, discharge permit coverage for construction dewatering activities will be available under a separate general permit issued by the division. The separation of permits for construction stormwater vs construction dewatering activities will allow the division to regulate these two activities separately. Construction dewatering that does not meet the low risk discharge policy requires compliance with numeric standards, which cannot be easily incorporated into the construction stormwater permit, since the construction stormwater permit is a practice based, not numeric based, permit.

**Comment 98: Ultimate receiving waters**

*G.E. Johnson Construction Company: Request clarification - Many times the location of the ultimate discharge from an MS4 inlet into an ultimate receiving water is not able to be determined. Not all MS4s have this information readily available and an educated guess is usually put in the application and SWMP. Is this acceptable?*

*Home Builders Association of Metro Denver: Many times the location of the ultimate discharge from an MS4 inlet into an ultimate receiving water is not able to be determined. Not all MS4s have this information readily available. If the Division is going to include such a requirement the Division should provide a reliable source for the regulated community to locate this information that is readily available on its website.*

**Response 98: Ultimate receiving waters**

No changes to the permit were made based on these comments.

As stated in the application for coverage under the construction stormwater permit, the division expects the information provided on the application to be true, accurate and complete to the best of the applicant's knowledge. A stream segmentation map is available on the division website.

**Comment 99: Clarification on offsite flow descriptions**

*Southern Ute Indian Tribe Growth Fund: Part I.C.2.a.vi.(g) of the renewal permit requires a description of areas receiving offsite flow from the site. Does offsite flow include sheet flow or just point source discharges? Is offsite flow the same as outfall locations? It is recommended that the Division clarify what is required.*

**Response 99: Clarification on offsite flow descriptions**

Changes to the permit have been made based on this comment. Specifically, requirement has been removed.

**Comment 100: Clarification on site map requirements**

*Southern Ute Indian Tribe Growth Fund: Part I.C.2.a.vii. of the renewal permit requires that that the SWMP include a site map which provides certain information including the locations of springs, stream, wetlands, and other surface waters including areas that require pre-existing vegetation be maintained within 50 feet of a state surface water body. Are only the locations of those features that are located within the construction site boundaries to be shown on the site map? Or, is any feature that is located within some distance 'X', e.g., 50 feet, from the site boundary to be shown on the site map? The 2007 permit implied that locations of springs, streams, wetlands and other surface waters found within the construction site boundaries were to be identified on the site map. It is recommended that clarification is provided in the permit documents as to the extent of the site map relative to the construction site boundary so that*

*the permittee is clear on which springs, streams, wetlands and other surface waters etc. are to be shown on the site map.*

Colorado Department of Transportation: *remove "as applicable",*

Western Slope Colorado Oil and Gas Association: *This statement seems very prescriptive. Can CDPHE clarify the intent of the statement or change the language? There are hundreds of intermittent and dry drainages that are within 50 feet of a construction location and the permittee is required to ensure adequate BMPS/controls to minimize sediment discharge. Landowners usually dictate where a location can be constructed and sometimes this is within that 50 feet.*

*Strike statement - "locations of springs, streams, wetlands and other surface waters including areas that require pre-existing vegetation be maintained within 50 feet of a state surface water body. Or;*

*Reword statement - locations of springs, streams, wetlands and other surface waters and required control measures if the disturbance is within 50 feet of a perennial drainage.*

**Response 100: Clarification on site map requirements**

Changes to the permit and fact sheet have been made based on these comments. The fact sheet now clarifies that the site map requirement to list locations of stream crossings pertains to the location within the permitted boundary and the term "as applicable" was removed from Part 1.C.2.a.vii.(h). Additionally, clarifying language was added to the fact sheet regarding the location of springs streams, wetlands and other state waters.

**Comment 101: Stream crossing locations clarification**

Western Slope Colorado Oil and Gas Association: *How would this apply to pipeline or roads that cross drainages? (ref - Page 15 Part 1.C.2.a.vi.(h).*

*Strike statement - "locations of springs, streams, wetlands and other surface waters including areas that require pre-existing vegetation be maintained within 50 feet of a state surface water body. Or;*

*Reword statement - locations of springs, streams, wetlands and other surface waters and required control measures if the disturbance is within 50 feet of a perennial drainage.*

**Response 101: Stream crossing locations clarification**

Changes to the fact sheet were made based on this comment. Specifically, clarifying language regarding how the requirement can be met. No changes to the permit were made based on this comment. The permit already requires the site map to include a location of all structural and non-structural control measures.

**Comment 102: Clarification of “planned practices” after final stabilization**  
G.E. Johnson Construction Company: Request clarification - Regarding the statement "...any planned practices to control pollutants in stormwater discharges that will occur after construction...", what exactly is this referring to? Water quality vaults, sand/oil separators, detention/retention ponds, storm sewer inlets? Please clarify what is expected here.

Home Builders Association of Metro Denver: Regarding the statement "...any planned practices to control pollutants in stormwater discharges that will occur after construction...", what exactly is this referring to? Water quality vaults, sand/oil separators, detention/retention ponds, storm sewer inlets? Please clarify what is expected here.

**Response 102: Clarification of “planned practices” after final stabilization**  
Changes to the permit have been made based on these comments. Specifically, additional clarifying language has been added to Part I.C.2.a.viii.

### 3. SWMP Review and Revisions

**Comment 103: Timing of site map revisions**  
HRL Compliance Solutions, Inc.: Question/Concern: This paragraph seems to contradict itself.

*Suggestion: Simplify the statement - The permittee must ensure the site changes are reflected in the SWMP. The permittee is noncompliant with the permit until the SWMP revisions have been made.*

G.E. Johnson Construction Company: last paragraph - Suggested Change - Making SWMP revisions prior to the change in the field is not always feasible. We suggest adding "or immediately after the change in the field" to this requirement?

Western Slope Colorado Oil and Gas Association: i. This paragraph seems to contradict itself.

ii. Division Comment: It's proactive to update the site map prior to field changes when prescribing a BMP install/change. This demonstrates to the division that operators are thinking about the site plan prior to a failure.

iii. WSCOGA Comment: Currently, if there's a maintenance issue associated with a BMP, the inspector documents this in the work order. The site map is updated only when actual field conditions change. The point is that the site map reflects current field conditions, not proposed. Can the inspection documentation suffice as adequately satisfying this requirement?

*Simplify the statement, "For SWMP revisions made following a change(s) onsite, including revisions to sections addressing site conditions and control measures, a notation must be included in the SWMP prior to the onsite change that identifies*



*the time and date of the site change, the control measure removed, or modified, the location(s) of those control measures, and the proposed changes to the control measure. The permittee must ensure the site changes are reflected in the SWMP. The permittee is noncompliant with the permit until the SWMP revisions have been made.*

*Colorado Oil and Gas Association:* *The requirement to make a notation in the SWMP prior to an onsite change would restrict an owner/operator from making onsite field decisions that were not anticipated or in the event of emergency situations where immediate field decisions are necessary. COGA is also concerned with the language deeming a permittee as "noncompliant with the permit until the SWMP revisions have been made" as it creates instantaneous non-compliance without affording sufficient time and opportunity for revisions.*

*"The permittee must ensure the site changes are reflected in the SWMP as soon as practicable but within 72 hours. The permittee is noncompliant with the permit until the SWMP revisions have been made."*

*Home Builders Association of Metro Denver:* *Last paragraph: Making SWMP revisions prior to the change in the field is not always feasible. We suggest adding "within 72 hours after the change in the field" to this requirement. This timing element requirement as written is a restrictive enforceable requirement that is not necessary and will provide no benefit to the environment. It will only place an additional cost and paperwork burden on the permittee. Additionally what is the purpose in including the time of the amendment?*

*Colorado Department of Transportation:* *1) The first sentence contradicts itself. It starts with 'following' then states notation needs to be made 'prior to'. Delete "prior to the onsite change."*

*2) Also, why is the time necessary? The date and type of change are more useful.*

*3) Delete last sentence*

*1) & 2) our MS4 permit states, "In such cases, the permittee may allow revisions as soon as practicable, but in no case more than 72 hours after the change(s) in control measure installation and/or implementation occur at the site. In such cases, a notation must also be included with the SWMP when the site change(s) that includes the date, type and location of the change(s) in the field."*

*3) all other locations of the permit states to "minimize", so as long as changes are made as soon as practicable, we are "minimizing" pollutants.*

*Wright Water Engineers, Inc.:* *This contradicts the idea that there is proposed BMP or control measure map that is developed prior to construction and then control measures are added or removed as they occur in the field and that during construction the Site Map must match field conditions. Currently permit allows*

72 hours after the change is made in the field so this is a big change for SWMP Administrators. Typically, a change is recommended during an inspection and then there may be a discussion determining the best type of additional control to be added (e.g. if additional perimeter control is needed what type, check dams, etc.). We recommend control measures be proposed but not be placed on the Site Map until after they are installed in the field to ensure if changes to type of material used for controls (such as type of perimeter controls, check dams etc.) are properly documented on the Site Map because what is proposed is not always what is finalized in the field. Recommend revised language that a notation must be included in the SWMP within 72 hours of the change in the field as the permit is currently written. This will not eliminate proactive planning but will avoid confusion on the maps on what is really installed and what is proposed. Additionally, we recommend the removal of the documentation of time. No one is putting times on the maps just dates and initials. Documenting time would not only clutter the maps but also add little benefit. Dates and initials are important.

Xcel Energy: This contradicts the idea that there is proposed BMP or control measure map that is developed prior to construction and then control measures are added or removed as they occur in the field and that during construction the Site Map must match field conditions. We recommend the Division revise the language that a notation must be included in the SWMP within 72 hours of the change in the field as the permit is currently written. Typically, a change is recommended during an inspection and then there may be a discussion determining the best type of additional control to be added. Control measures should be proposed but not be placed on the Site Map until after they are actually installed in the field to ensure if changes to type of material used for controls are properly documented on the Site map because what is proposed is not always what is implemented in the field.

**Response 103: Timing of site map revisions**

Changes have been made to the permit based on these comments. Specifically, additional clarifying language has been added to Part I.C.3. Please note that while the division recognizes that SWMP changes may occur after changes occur in the field, it is still the expectation of the division that stormwater management at sites be proactive.

**4. SWMP Availability**

**Comment 104: Making SWMP available for review by others**

HRL Compliance Solutions, Inc.: Reference: Page 16 Part 1.C.4 - second paragraph - "The permittee must make plans available to members of the public upon request" Question/Concern: How is this handled?

City of Golden: *If the SWMP is required to be submitted to any of these entities, the submission must include a signed certification in accordance with I.F.1., certifying that the SWMP is complete and compliant with all terms and conditions of the permit.*

*It is suggested the signed certification be a requirement from the Division to the owner/operator at the time of request for submittal of SWMP and not an applicable requirement to QLP. A signature does not need to be required because the SWMP is submitted as part of an initial site plan review to the local MS4 (QLP). The QLP reviews the plan for compliance with the terms and conditions of the permit.*

**Response 104: Making SWMP available for review by others**

No changes have been made based on this comment. If the permittee obtains a request from a citizen or an authorized regulating agency the provisions of this section are required. This is true regardless of whether or not they are operating in a qualified local program.

**V. Part I.D. SITE INSPECTIONS**

**1. Person Responsible for Conducting Inspections**

No comments were received regarding this section.

**2. Inspection Frequency**

**Comment 105: Adding alternative inspection provision**

*Xcel Energy: Language in the current permit COR030000*

*When site conditions make the schedule required in this section impracticable, the permittee may petition the Division to grant an alternative inspection schedule.*

*We recommend keeping this language in the draft permit COR400000. Xcel Energy recently spoke with Nathan Moore about an upcoming transmission line job that will be required to be permitted. On this long line we have a series of transmission poles that will only be accessible by helicopter and have to be dug by hand. In this situation the disturbance from this work is extremely minimal and very temporary. It was our intent to petition the Division to allow Xcel to remove these poles from the inspection requirement since we utilize a 3rd party inspection contractor to conduct our inspections and they cannot be airlifted into the site. In the past when this type of work has been conducted we required the inspector to hike into the area which could literally take hours to get to 1 pole location only to find no issues because the disturbance impact from helicoptering material in and digging by hand is minimal.*

**Response 105: Adding alternative inspection provision**

Changes were made to the permit based on this comment. Specifically, language has been added under Part I.D.2.

**Comment 106: Appreciation for inspection frequency addition**

Xcel Energy: Xcel Energy would like to thank the Division for providing this option.

*This is in line with the EPA CGP other than the storm event triggers.*

G.E. Johnson Construction Company: option of 7 day only inspections is great.

*Thanks*

*Home Builders Association of Metro Denver: We appreciate the option of 7 day only inspections (see also Part I. D. 2. a. and Part I. D. 2. b.).*

**Response 106: Appreciation for inspection frequency addition**

The division takes note of this comment. No changes to the permit or fact sheet were made based on this comment.

**Comment 107: Request to adjust inspection frequency**

Sonya Erickson, CPESC: I am writing in response to the call for public comments regarding the Construction Stormwater Permit. I am the Water Pollution Control Manager for Region 2 at CDOT. As you may know, the revised MS4 permit was issued on July 26th 2015. As you may also know, the construction sites program requirements in the MS4 permit are very similar to the requirements in the COR030000 permit. When the new MS4 permit (COS00000S) was issued in July, some significant changes occurred to the inspection frequency language that could directly affect my position in a positive way.

*To summarize the changes, the new MS4 permit requires inspections every 30 days, unless a reduced inspection frequency is warranted, based on the assessment that the site is at low risk for a discharge to Waters of the State (page 13 and 14 of the COS00000S). It also allows sites that are in final stabilization configuration, but just don't have enough growth yet, to be inspected every 90 days (page 13).*

*Page 12 of the COR030000 permit calls for inspections every 14 days (at COOT, consultants do the 14 day inspections and Water Pollution Control Managers do monthly inspections). In addition, it requires sites that are in final stabilization configuration, but just don't have enough growth yet to be inspected every 30 days (page 12).*

*Every site that disturbs over an acre and has a COR030000 permit, is inspected by the Water Pollution Control Manager. Obviously, I have to inspect based on the permit with the stricter requirements. Right now that is the COR030000.*

*My request, is that the language on inspection frequency in the two permits match. That way the Water Pollution Control Manager can take advantage of the reduced frequency of inspections as allowed in the MS4 permit without violating the COR030000 permit inspection schedule. As it stands now, the COS00000S will allow me to inspect less than monthly, but the COR030000 will not allow me*

*to do that. If the language matched, then I could take advantage of the reduced inspection/risk-based frequency on all the sites that disturb over an acre.*

**Response 107: Request to adjust inspection frequency**

No changes to the permit were made based on this comment. The permittee is required to have operational control of the inspections being conducted to ensure compliance with the construction stormwater general permit. In those cases where the municipality is both the construction stormwater permittee and the MS4 permittee, the municipality may use one inspection to meet the requirements of both permits. In all cases the minimum inspection frequencies for the construction stormwater general permit and the MS4 permit shall be met.

**Comment 108: Request for additional language regarding inspection safety**  
*Xcel Energy: We would also request some additional language be added about not requiring inspections if safety is an issue (e.g. similar to MS4 inspection language). This allows for inspectors to document delay of the inspection when conditions are dangerous (i.e. muddy, snow packed, road closures when accessing remote/outlying areas, or fire burn areas) without the concern of being out of compliance.*

*Wright Water Engineers, Inc.: We would also like to see some additional language added about no requiring inspections if safety is an issue (e.g. similar to MS4 inspection language). This allows for inspectors during large storm events that cause flooding or muddy conditions that are dangerous when accessing remote areas on unpaved roads, or fire damaged areas to document these conditions and not risk trying to get to the sites for fear of being out of compliance.*

**Response 108: Request for additional language regarding inspection safety**  
Changes to the permit have been made based on these comments. Specifically, Part I.D.2.c., which allows permittees to petition the division when the required routine inspection frequencies are impractical.

**Comment 109: Holiday inspection exclusion**

*Home Builders Association of Metro Denver: For example if an inspector is on a 7 day routine and normally conducts an inspection on a Thursday, and Thanksgiving occurs, the inspector will need to perform an inspection on the Wednesday prior to Thanksgiving, then another inspection that following Wednesday, followed by an inspection the following day Thursday to get it back on its normal cycle.*

*In order to eliminate this redundancy, perhaps exclusion can be added, as follows:*

*“On National Holidays that occur during the same day as the scheduled routine inspection, an additional inspection must occur 1-3 business days prior to that holiday, in order to account for the holiday inspection.*

*National Holidays are generally “New Year’s, Memorial Day, July 4th, Labor Day, Thanksgiving and day after, and Christmas.”*

*This method will avoid the need for the permittee to perform a redundant inspection to cover for the holiday. In this case if the permittee performs their Thanksgiving inspection on Wednesday as opposed to Thursday, then they simply perform the next inspection the following Thursday. The 1-3 business days give the permittee flexibility to get it done prior to the holiday while ensuring that there is space between the previous inspection and the holiday inspection. It also ensures that an inspection never goes over 3 days past the normal 7-day occurrence of an inspection, in instances where the holiday inspection variance is granted. In the example above, it was only one additional day between inspections. This can be applied to both the 7 day or 14 day inspection cycles, with the same benefit.*

*We like the option of going to a set schedule versus a 14-day and after storm events inspections schedule requirements. Another option to consider is making the 7 day option a 10 day option during holiday periods to give the home builder more flexibility? A 10-day inspection option would still translate into a minimum of 37 inspections a year (unless the site is snow covered and is subject to the snow cover exemption).*

**Response 109: Holiday inspection exclusion**

No changes have been made to the permit or fact sheet based on this comment. The division believes the permit already allows adequate flexibility regarding this issue. The permit allows permittees to switch from 7 day inspections to 14 day with post storm inspections as they determine necessary.

**Comment 110: Inspection by storm event size**

*Home Builders Association of Metro Denver: We are wondering, did the State consider an option for a numeric definition of a storm event? For example, U. S. EPA uses 0.25". The provision of "cause's surface erosion" could mean a rain drop. Although it is understood that each event affects specific sites differently, a general precipitation amount guide is preferred. During inspections how does a permittee prove that, for example, a 0.5" of rain did not cause surface erosion on one site when it may have on another site? Generally, state inspectors create a finding if they see that a rain gauge for the area indicated rain of any measurable amount but no post storm event was performed. Who has the burden of proof that a permittee is doing the correct storm events - the permittee or the state inspectors?*

*Xcel energy: We recommend some guidance on storm event inspections such as duration between storms.*

**Response 110: Inspection by storm event size**

No changes to the permit or fact sheet were made based on this comment. The comment does not accurately capture actions by state inspectors. The division has deliberately provided flexibility for permittees to utilize industry-accepted standards for control measure selection on a site specific basis.

### 3. Inspection Frequency for Discharges to Outstanding Waters

#### Comment 111: Outstanding waters

G.E. Johnson Construction Company: Request clarification and change - What if that outstanding water is miles away and there is a minimal chance for pollutants from a site to reach that water. The state should clarify how close to a project an outstanding water must be before this requirement kicks in. Also does this 7-day inspection frequency apply to those sites where all construction activities have been completed and we are waiting to the "grass to grow"? In addition, a definition of "outstanding water" should be included and a reference to how a permittee determines if their project is close to an outstanding water.

Home Builders Association of Metro Denver: Outstanding Waters:

- Please define and reference the CDPHE website where this information can be obtained. In the stakeholders meeting, the Division said that these waters are on federal land and that it's not a concern to construction industry. We'd like to know where this information is located and how these waters are defined. Perhaps this could be done in a revised Fact Sheet.

"...designated as an Outstanding Water by the Water Quality Control Commission. We suggest a definition of Outstanding Water Body and reference with website link to find the locations of a designated water body that is already defined. What if that outstanding water is miles away and there is a minimal chance for pollutants from a site to reach that water? Clarification of how far away an outstanding water can be before this requirement kicks in would be very helpful. Also, does the 7-day inspection frequency apply to those sites where all construction activities have been completed; and while we are waiting for the "grass to grow"?"

Wright Water Engineers, Inc.: This subject was discussed at the stakeholder meeting but to have the requirement in the permit in our opinion does put some responsibility on the Division to supply a map of these areas.

Western Slope Colorado Oil and Gas Association: i. Can CDPHE define Outstanding Water?

ii. Is there a list or link that can be provided?

iii. Is there up-to-date GIS data available?

Xcel Energy: Will the Division be notifying the permittee when issuing the certification if their project falls in the area of Discharges to Outstanding Waters or is the permittee expected to make this determination themselves?

#### Response 111: Outstanding waters

Changes were made to the permit and fact sheet based on these comments. Specifically, additional clarifying language has been added to the permit regarding reduced inspection frequencies.

Please note that the WQCC designates outstanding waters Regulation 31.8(2) and a map of Colorado's outstanding waters is available on the division's website.

#### 4. Reduced Inspection Frequency

##### **Comment 112: Winter conditions language**

*HRL Compliance Solutions, Inc.: Question/Concern: Snow can dry out or be blown off site during the winter, yet frozen ground conditions exist with no threat of sediment transport.*

*Suggestion: include 'frozen conditions exist'*

*Western Slope Colorado Oil and Gas Association: Snow can dry out or blow off during winter, even though frozen conditions, that would preclude erosion, still exist. Frozen conditions are present when temperatures are consistently below 32F and there is no opportunity for stormwater erosion/sediment transport.*

*If temperatures are below freezing, if there is any precipitation, it will be in the form of snow, no possibility of runoff, etc.*

*Change 'snow cover exists' to 'frozen conditions exist'.*

##### **Response 112: Winter conditions language**

No changes have been made to the permit based on this comment. When frozen conditions exist on a site, but construction activities are still occurring, an inspection is still required to occur.

##### **Comment 113: Additional language for safety access issues**

*Wright Water Engineers, Inc.: This language helps with the safety issue that may be present 24 hours after the storm event limiting access to the site and for limiting weekend work when no construction is occurring. However we would still like to see language added about safety for conditions that may still be an issue more than 72 hours after the event.*

*Xcel Energy: This language helps with the safety issue that may be present 24 hours after the storm event limiting access to the site and for limiting weekend work when no construction is occurring. However we would still like to see language added about safety for conditions that may still be an issue more than 72 hours after the event.*



**Response 113: Additional language for safety access issues**

No changes to the permit have been made based on this comment. Permittees are encouraged to contact the division to discuss inspecting construction sites during emergency situations.

**5. Inspection Scope**

**Comment 114: Request for additional clarifying language**

City of Glendale: Please clarify that the intent is to inspect for evidence of pollutants leaving the site, not entering the stormwater drainage system.

*Proposed language: "When conducting a site inspection the following areas, if applicable, must be inspected for evidence of, or the potential for, pollutants leaving the construction site boundaries, entering the offsite stormwater drainage system, or discharging to state waters:"*

Colorado Stormwater Council: Please clarify that the intent is to inspect for evidence of pollutants leaving the site, not entering the stormwater drainage system.

*Proposed language: "When conducting a site inspection the following areas, if applicable, must be inspected for evidence of, or the potential for, pollutants leaving the construction site boundaries, entering the offsite stormwater drainage system, or discharging to state waters:"*

**Response 114: Request for additional clarifying language**

No changes have been made to the permit in response to these comments. Regulation 65.2(1) does not allow the discharge of pollutants from a point source to a storm sewer pipe or inlet to such pipe, regardless whether that pipe or inlet is onsite or offsite. Therefore, the division believes the addition of the term "offsite" in the language suggested in the comment would not meet the requirements of regulation 65. Please note that regulation 65.2(4) allows a responsible party to demonstrate to the division that a discharge to a storm sewer is contained prior to reaching a state water.

**Comment 115: Clarification to areas to be inspected**

Colorado Department of Transportation: What is meant by ALL disturbed areas? Do you mean all areas disturbed by the construction activity?

*Change "access" to "exit". In order to limit construction tracking from the site, the "exit" points are the true areas of concern.*

**Response 115: Clarification to areas to be inspected**

Changes have been made to the permit based on these comments. The division has removed the term "access" and replaced it with the term "exit" in Part I.D.5.

**Comment 116: Clarification regarding haul routes**

Home Builders Association of Metro Denver: Designated Haul Routes. Please add the term "on-site" before haul routes.

**Response 116: Request for additional language regarding haul routes**  
No changes have been made to the permit in response to this comment. Haul routes may be required to be included in the construction stormwater inspection but not be part of the immediate construction site. The division believes that the addition of the term "on-site" would add the potential for an incorrect interpretation of the requirement.

**Comment 117: Clarification to inspecting discharges**

City of Glendale: *It is unclear if this is a discharge of stormwater or a discharge of pollutants.*

*Please clarify what kind of discharge.*

City of Aurora: *Clarify what type of discharge.*

Colorado Stormwater Council: *It is unclear if this is a discharge of stormwater or a discharge of pollutants.*

G.E. Johnson Construction Company: *Request clarification - The statement "if a discharge occurs during the inspection" implies that something is occurring during the inspection that could cause a discharge, e.g. rain or snow melt event. Is this what the state intended or was the intent of this statement to be that a discharge in general was observed not necessarily one that occurs during the inspection?*

Home Builders Association of Metro Denver: *The statement, "if a discharge occurs during the inspection" implies that something is occurring during the inspection that could cause a discharge, e.g. rain or snow melt event. Is this what the state intended or, was the intent of this statement to be that a discharge in general was observed...not necessarily one that occurs during the inspection?*

Western Slope Colorado Oil and Gas Association: *This is a discharge permit that allows clean discharges. Why must single discharge events be documented. What is the intent?*

*What value does this documentation serve?*

*Is it not the intent for clean discharges to occur at all times?*

*Strike both (a) and (b). (a) identify all points of the site from which there is a discharge; (b) observe and document the visual quality of the discharge and notate the characteristics of the stormwater discharge, including the color, odor, presence of any floating, settled, or suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollutants; and as a discharge permit that enforces practice-based effluent limitation guidelines, discharge effluent observations should not be required. It's in direct contradiction to the permit itself and, if included, these parts should be optional.*

**Response 117: Clarification to inspecting discharges**

Changes were made to the permit based on these comments. This section of the permit has been removed.

**Comment 118: Discrepancy between Part II and Part I.D.5.**

*HRL Compliance Solutions, Inc.: According to Page 26 - Part II.A.3 - "The permittee shall give advance notice to the division, in writing, of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements." Would this be major changes or is this referring to any type of change, such as wattles being replaced with straw bales or a diversion ditch being installed to prevent run-on. More clarification on this would be most appreciated.*

*If a sediment trap requires cleaning does this mean the control measure is out of compliance and we need to notify CDPHE?*

*Suggestion: Be very clear about what is required for a non-compliance notification. Notification of an egregious discharge to a waters of the state is understandable, however to notify the Division of every maintenance/repair or installation action required for permit implementation and maintenance would be an unachievable goal.*

*Western Slope Colorado Oil and Gas Association: According to Page 26 - Part II.A.3 - "The permittee shall give advance notice to the division, in writing, of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements." Does CDPHE really want every single change to each SWMP, site map update, and required maintenance following an inspection? This seems like a paperwork nightmare.*

*If a sediment trap requires cleaning does this mean the control measure is out of compliance and we need to notify CDPHE?*

*If a stake starts to wiggle in a wattle and we have to fix that, does this require a notification?*

*Be very clear about what is required for a non-compliance notification. It would make sense that a permittee would notify the agency if a pollutant source left the construction location and entered a perennial water. It does not make sense to notify the agency of every detail required for permit implementation and maintenance.*

**Response 118: Discrepancy between Part II and Part I.D.5.**

The Part II language has been revised consistent with the Part II language that 40 CFR 122.41 requires to be incorporated into all NPDES permits, including stormwater general permits. The division is providing guidance regarding noncompliance reporting.

**Comment 119: Requested changes to inspection report requirements**  
City of Aurora: Part I.D.5.c.iv. - *This is extraneous as the information is contained in the SWMP.*

Part I.D.5.c.v. - *This is extraneous as the information is contained in the SWMP.*

Colorado Oil and Gas Association: Part I.D.5.c.ix.; Part I.D.5.c.vi.; Part I.D.5.c.vii.; Part I.D.5.c.viii. - *Add "any"*

Part I.D.5.c.v. - *Add "approximate"*

Wright Water Engineers, Inc.: Part I.D.5.c.v. - *Recommended language - estimate of acreage of disturbance at the time of inspection.*

Xcel Energy: Part I.D.5.c.v. - *We recommend changing language to read - estimate of acreage of disturbance at the time of inspection.*

**Response 119: Requested changes to inspection reports requirements**  
Changes to the permit have been made based on these comments. Specifically, "estimated" has been added to Part I.D.5.c.v. However, the division does not agree that determining and recording the phase of construction during an inspection is extraneous and therefore has not removed this requirement. Additionally, the division determined the requested addition of "any" did not provide further clarification of the requirements. Additional clarifying language has been added to some requirements in this section.

## 6. State or Federal Inspections

This section of the permit is now located in Part II.I.

**Comment 120: Requested language changes or edits**  
Colorado Oil and Gas Association: Suggested language change: *"The permittee must allow the director of the State Water Quality Control Division, the EPA Regional Administrator (if applicable),"*

G.E. Johnson Construction Company: *Request change - typo in second sentence "include, : sampling"*

Home Builders Association of Metro Denver: *Note there is a typo in second sentence "include, sampling".*

**Response 120: Requested language changes or edits**  
Changes have been made based on these comments. Specifically, the division corrected the typographical error in Part I.D.6.c.

Please note that the requested addition of "if applicable" has not been incorporated into the permit because if the permittee holds a discharge certification through the division, the provision would always be applicable.

## VI. Part I.E. DEFINITIONS

### **Comment 121: Definition of common plan of development**

*City of Aurora: How and why did the Division arrive at the ¼ mile distance? This appears to be arbitrary and may not fully address the issue.*

*Colorado Oil and Gas Association: To remain consistent with proposed Field Permit coverage in Part I.A.3.d.iii. above.*

*Many oil and gas operators conduct construction activities under a Field-Wide Permit that would cover a common area of development. This common area of development involves drilling, production and/or gathering operations and can consist of one or more large leases that are contiguous or consist of multiple smaller and large leases that may be non-contiguous but in a defined operational area.*

*Home Builders Association of Metro Denver: Definition of common plan of development, we noticed that the reference to disturbance of an acre or greater has been removed from this definition. Regarding the statement "different times on different schedules" - what if all construction is complete in a development (whether commercial or residential) and the one lot left is under an acre, would a permit still be required for this lot? It could be that this one lot was left idle for many years.*

### **Response 121: Definition of common plan of development**

Changes to the permit and fact sheet have been made based on these comments. Clarifying language regarding field wide permit coverage has been added to the definition in the permit. Additionally, clarifying language regarding the ¼ mile determination has been added to the fact sheet.

### **Comment 122: Definition of control measure**

*Home Builders Association of Metro Denver: Control Measure. The narrative of control measures includes structural controls. Shouldn't the definition include non-structural controls also?*

### **Response 122: Definition of control measure**

No changes to the permit have been made based on this comment. The division believes that the definition includes structural and non-structural control measures by stating "Any best management practice or other method used to prevent or reduce the discharge of pollutants to waters of the state."

### **Comment 123: Definition of final stabilization**

*Colorado Oil and Gas Association: No written comment provided. The following suggested edit was provided: "(7) Final Stabilization - The condition reached when all ground surface disturbing activities at the site have been completed, and for all areas of ground surface disturbing activities where a uniform vegetative cover has been established with an individual plant density of at least 70 percent of predisturbance levels, or equivalent permanent, physical erosion reduction methods have been employed."*

Home Builders Association of Metro Denver: Final Stabilization. Please define “physical erosion control method” or reference the memorandum letter issued March 2015 by CDPHE. Since this is a new Permit, it is appropriate to add the definition as opposed to referencing the past documents.

**Response 123: Definition of final stabilization**

A change to the permit was made based on this comment. Specifically, the suggestion to add the word “where” was added to the definition of “final stabilization”. However, the division does not believe it is necessary to define “physical erosion control method” as it is a common industry practice for final stabilization.

**Comment 124: Definition of inadequate control measure**

Home Builders Association of Metro Denver: Inadequate Control Measure. After the term not operating add the following “evidence of a release to receiving state waters.” This would be consistent with the intent of the Clean Water Act to control pollution to receiving waters and the issue is whether the inadequate control measure shows evidence of a release. If not, we consider this a routine maintenance issue. If there is no evidence of a release and it’s scheduled to be repaired or replaced, then the Control Measure should not be deemed inadequate.

**Response 125: Definition of inadequate control measure**

Changes to the permit were made based on this comment. Specifically the definition has been adjusted to add additional clarity. However, please note that a control measure need not show evidence of release to a state water in order to be considered an inadequate control measure.

**Comment 125: Definition of infeasible**

HRL Compliance Solutions, Inc.: Can CDPHE expand on their definition of infeasible as well as what the Division feels is “not economically practical”.

Western Slope Colorado Oil and Gas Association: Can CDPHE expand on their definition of infeasible. What does “not economically practical” mean?

Colorado Oil and Gas Association: Expansion of the definition for “infeasible” to cover other situations sometimes encountered by oil and gas operators.

*(10) Infeasible - Not technologically possible, or not economically practicable and achievable in light of best industry practices, not possible due to the inability to obtain access, or not possible in light of additional clarifications and allowances contained in the Oil and Gas Stormwater Fact Sheet for Construction at Oil and Gas Facilities.*

Home Builders Association of Metro Denver: Infeasible. We would like to commend the Division for adding this language.

**Response 126: Definition of infeasible**

No changes to the permit were made based on these comments. The division has intentionally not further interpreted the term “infeasible,” which is new to this permit. Therefore, the common language definition applies. The division may later

decide to provide guidance on applying the term if warranted based on field observations and/or other feedback from permittees.

**Comment 126: Definition of municipality**

Colorado Oil and Gas Association: The following suggested edit was provided: "(12) Municipality - A city, town, county, district, association, or other public body created by, or under, State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under section 208 of CWA (1987). A municipality, for purposes of this permit also includes a ~~state~~; special districts under state law such as a sewer district, flood control district or drainage district, or similar entity; or an Indian tribe or an authorized Indian tribal organization."

**Response 126: Definition of municipality**

Changes to the permit have been made based on this comment. Specifically the entire last sentence of this definition has been removed to be consistent with Regulation 61.

**Comment 127: Definition of owner**

Wright Water Engineers, Inc.: *Recommended change in language to add easement owners*

Home Builders Association of Metro Denver: *Is the owner not just a "developer" but one that holds the legal title to the property? A developer may not hold legal title to the property and may be hired by the legal owner to develop the site; thus making the developer an operator. This could be confusing. We feel the state should add that an owner is a "legal title" owner of the property and abandon the "owner/operator" concept.*

G.E. Johnson Construction Company: *The definition of the "owner" implies a developer. A developer could also be an operator but an owner may not be a developer. Owner - the word itself implies legal title to the property. The state should clarify if the "owner" could be a party who is the legal owner the property and/or one who has been hired to develop it for the legal owner.*

**Response 127: Definition of owner**

Changes to the permit have been made based on these comments. Specifically, additional language, including language regarding easements, has been added to the definition.

**Comment 128: Definition of outfall**

Colorado Oil and Gas Association: *The following edit was suggested: "(16) Outfall - A point ~~source at the point~~ where stormwater leaves the construction site and discharges to a receiving water or a stormwater collection system."*

Home Builders Association of Metro Denver: *The definition of outfall states it is a "point source", many construction sites sheet flow off site. How would the permittee determine an outfall for sheet flow? We suggest that only a concentrated flow from a*

*conveyance be defined as an outfall or discharge point in compliance with the Clean Water Act. We don't believe that sheet flow is a point source and subject to the regulations or the Permit.*

**Response 128: Definition of outfall**

Changes have been made to the permit based on these comments. Specifically, the definition has been removed.

**Comment 129: Definition of qualified stormwater manager**

Colorado Oil and Gas Association: *Acknowledgement that more than one SWMP Administrator or individual may be part of a permittee's stormwater team.*

**Response 129: Definition of qualified stormwater manager**

*Changes have been made to the permit based on these comments. Specifically language has been added to Part I.C.2.a.i. to clarify that the role of stormwater manager may be held by more than one individual on a site.*

**Comment 130: Definition of receiving water**

Wright Water Engineers, Inc.: *Recommend that this definition be used for the 50 foot preservation of vegetation unless infeasible.*

Xcel Energy: *We recommend that this definition be used for the 50 foot preservation of vegetation unless infeasible.*

G.E. Johnson Construction Company: *Request clarification - Can the state consider defining a distance for this receiving water to apply - this may be miles away with little chance of pollutants from a construction site reaching it.*

Home Builders Association of Metro Denver: *Can the state consider defining a distance for this receiving water to apply? This may be miles away with little chance of pollutants from a construction site reaching it.*

**Response 130: Definition of receiving water**

No changes to the permit have been made based on this comment. Determining whether a discharge will reach a state water is very site specific which can vary based on many factors such as soil type, climate, topography, and amount of precipitation. Therefore, it is appropriate for the permittee to decide on a site specific basis whether the discharge will reach state waters.

**Comment 131: Definition of significant materials**

G.E. Johnson Construction Company: *Request clarification and change - Some of the items listed don't seem to relate to a construction project but more for manufacturing or industry. Do they belong in this section? It may be helpful to add quantities for what would be considered a "significant" material - for example 1 quart of motor oil v 55-gallons.*

Home Builders Association of Metro Denver: *Insignificant Materials. We believe that the quantity of "raw materials" should be provided to give guidance to the*



*construction industry. There must be a deminimis amount that would not have to be considered under this definition and/or a non-toxic compound could be excluded under this definition. Some of these items do not seem to relate to a construction project; but more toward manufacturing or industry.*

**Response 131: Definition of significant materials**

No changes to the permit were made in response to these comments. The definition for significant materials comes directly from Regulation 61 (61.2(97)) and is appropriate for this permit.

**Comment 132: Definition of stormwater**

Colorado Oil and Gas Association*The following edit was suggested: "(29) Stormwater - ~~Stormwater~~ Precipitation runoff, snow melt runoff, and surface runoff and drainage. See 5 CCR 1002-61.2(103).*

**Response 132: Definition of stormwater**

Changes have been made in response to this comment. Specifically, the suggested definition has been added.

**Comment 133: Definition for state waters**

City of Glendale: *Please include the definition of state waters in the permit. The term "state waters" is used throughout the permit and should be defined within the permit.*

Colorado Stormwater Council: *The term "state waters" is used throughout the permit and should be defined within the permit.*

HRL Compliance Solutions, Inc.: *Can CDPHE define State Surface Water Body?*

Western Slope Colorado Oil and Gas Association: *Can CDPHE define State Surface Water Body?*

Colorado Oil and Gas Association: *Proposed change due to the permit contains a definition for "receiving waters" and not "state surface waters".*

Home Builders Association: *State surface water body is not defined, please add a definition.*

U.S. Army Corps of Engineers - Colorado West Regulatory Branch: *Please include a definition of the term "state surface water body" in your stormwater permit. Because the US Army Corps of Engineers has regulatory responsibility for impacts to "waters of the United States", we often are asked to confirm aquatic resource boundaries by others. If this were required for purposes of identifying 'state surface water bodies' for setback purposes but does not involve a Section 404 permit, we will prioritize the request in consideration of our workload related to Section 404 permit requests first.*

*Please know that we are cognizant that states and local governments require Corps verification of both aquatic resource boundary confirmations and geographic jurisdictional limitations and we will do our best to work with the State of Colorado and other local agencies to provide a timely response. If our response time to such*

*requests were to become problematic, we are open to the development of an operating procedure to help facilitate the issue.*

**Response 133: Definition for state waters**

Changes have been made to the permit in based on these comments. Specifically, a definition of "state waters" has been added to the definitions section. Also see response to comment #13 above.

**Comment 134: Definition for impoundment**

*HRL Compliance Solutions, Inc.: Can CDPHE define impoundment? Would a retention pond or sediment trap be considered an impoundment?*

*Western Slope Colorado Oil and Gas Association: Can CDPHE define impoundment? Would a retention pond or sediment trap be considered an impoundment?*

**Response 134: Definition for impoundment**

No changes were made to the permit or fact sheet based on this comment. The division has intentionally not further interpreted the term "impoundment," which is new to this permit and based on language in the Federal Effluent Limitation Guidelines. Therefore, the common language definition applies. A retention pond or sediment trap that impounded water would therefore be an impoundment.

**Comment 135: Definition for steep slopes**

*Southern Ute Indian Tribe: Part I.B.1.a.ii.(d) requires the minimization of the disturbance of steep slopes. What is the definition of a 'steep' slope? The Division should provide a definition for steep slope so that there is consistency of compliance amongst permittees.*

**Response 135: Definition for steep slopes**

Changes to the permit have been made in response to this comment. Specifically, a definition of "steep slope" has been added.

**Comment 136: Definition for haul route**

*HRL Compliance Solutions, Inc.: 'designated haul routes' - Can CDPHE define haul route?*

*Western Slope Colorado Oil and Gas Association: i. Can CDPHE define haul route?*

*ii. If haul route means access roads that are used to transport product/material to and from a construction location this could be hundreds and hundreds of roads. This could be private landowner, BLM, or county roads that do not belong to the permittee.*

*iii. Why would CDPHE want the inspector to inspect a haul road outside of the construction site?*

*iv. Clarify that dedicated haul roads are related to borrow and staging areas located within ¼ mile of the construction site.*

Colorado Oil and Gas Association: Many oil and gas operators conduct construction activities under a field-wide permit as part of a common plan of development. The term 'designated haul routes' in this context is too broad.

**Response 136: Definition for haul route**  
No changes have been made based on this comment.

**Comment 137: Definition for dedicated storage areas and disturbed areas**  
Colorado Department of Transportation: Add "Dedicated Storage Areas" and "Disturbed Areas"

**Response 137: Definition for dedicated storage areas and disturbed areas**  
No changes have been made based on this comment. The division does not believe it is necessary to define these terms as they are common in the industry.

**Comment 138: Definition for field permit coverage**  
Colorado Oil and Gas Association: To remain consistent with proposed Field Permit coverage in Part I.A.3.d.iii. above.

*Added definition "Field Permit Coverage - A single permit certification covering all activities in an oil and gas field, although in some cases, additional certifications may be required in order to maintain a manageable area and amount of activity under a single permit certification. In general, the Division requires that the permitted area be discrete enough to allow for adequate administration by the permittee and enforcement by the Division. Individual sites covered under a single certification will be related (e.g., within the same oil field or collection system) and will be of manageable size."*

**Response 138: Definition for field permit coverage**  
Changes were made based on this comment. Specifically Part I.G. regarding oil and gas field wide permit coverage has been added. However, no definition has been added to the definitions section.

**Comment 139: Definitions for noncompliance, unanticipated bypass and upset**

G.E. Johnson Construction Company: Request clarification and change - Define unanticipated bypass, upset and explain the differences.

Home Builders Association of Metro Denver: Please define noncompliance, unanticipated bypass, upset, and explain the differences so that we can understand this section's intent.

**Response 139: Definitions for noncompliance, unanticipated bypass and upset**

These comments have been partially incorporated into the permit. Specifically the term "bypass" and the term "upset" have been included in the definitions section of the permit. The division feels that the permit defines noncompliance with various

sections of the permit, throughout the permit and has not provided a definition of this term.

**Comment 140: Definition for water quality standard**

G.E. Johnson Construction Company: *Suggested Addition - Suggest adding a definition of water quality standard. Some permittees many not understand this.*

**Response 140: Definition for water quality standard**

No changes to the permit were made based on this comment. Regulation 61 and the water quality control act maintain the definition for a water quality standard.

**Comment 141: Definition of 'impervious areas'**

HRL Compliance Solutions, Inc.: *What is the definition of "impervious areas/impermeable surfaces?"*

*Suggestion: Change 'impervious areas' to 'paved surface'.*

Western Slope Colorado Oil and Gas Association: *What is the definition of "impervious areas/impermeable surfaces?"*

**Response 141: Definition of 'impervious areas'**

No changes to the permit have been made based on this comment. A definition has not been added to the permit.

**Comment 142: Definition of qualifying local programs**

City of Golden: *It is expected that the QLP renewal process will provide an opportunity to acknowledge different, but equivalent terms used by the QLP for Operator, Owner, Permittee(s) and Qualified Stormwater Management than the terms defined in the permit.*

**Response 142: Definition of qualifying local programs**

No changes were made to the permit or fact sheet based on this comment. The division will coordinate with current and potential Qualifying Local Program entities following issuance of the permit regarding evaluation and determinations of conformity with the requirements of the permit and regulation. In general, unless a specific phrasing is required by the regulatory document, the use of equivalent wording is not prohibited.

## VII. Part I.F. SIGNATORY REQUIREMENTS

This section of the permit is now located in Part II.K.

**Comment 143: Qualifying local program exemption request**

City of Golden: *This section should not apply to QLP. Remove from QLP requirements.*

*All reports required for submittal or required by the permit must be signed by the permittee in accordance with the following criteria.*

*and*

*Reports required for compliance with the permit must be signed the individual(s) designated as the Qualified Stormwater Manager.*

*It is suggested the Signature Certification be a requirement from the Division to the owner/operator at the time of request for submittal and not an applicable requirement to QLP.*

**Response 143: Qualifying local program exemption request**

No changes to the permit were made based on these comments. The division reserves the right to request an application or compliance documentation from projects within qualifying local program areas. Therefore, the division has determined that qualifying local programs should not be exempt from this section. The signature certification for submittals to the division will only be required when the entity is submitting documents to the division.

**Comment 144: Language edit requests**

*Colorado Oil and Gas Association: No written comment provided. The following edit was suggested: changed "vice president" to "manager"*

*Colorado Department of Transportation: Part I.F.1.a.v.(b) - With so many permits that we obtain throughout the State, we need to have designees that are familiar with the sites be able to sign the permits etc. Add "or designee"*

*Part I.F.1.b. - add "by" between signed and the*

*Southern Ute Indian Tribe Growth Fund: Part I.F.1.b. is missing a word and should be revised as follows: "Reports required for compliance with the permit must be signed by the individual(s) designated as the Qualified Stormwater Manager."*

*G.E. Johnson Construction Company: Request change - This sentence is not well worded. Suggest changing to it to state "...signed by the..."*

**Response 144: Language edit requests**

Changes have been made based on these comments. Specifically, the word "by" was added to correct the sentence. Please note that the signatory requirements are defined in regulation 61 and will not be adjusted for this permit.

**1. Authorization to Sign**

**Comment 145: Signature requirements for SWMP**

*Colorado Stormwater Council: Specify which reports fall under which category, instead of using "reports."*

*Since any report, including inspection reports, may be required to be submitted to the Division, it is not clear which types of reports must be signed by the permittee and which may be signed by the Qualified Stormwater Manager.*

*Southern Ute Indian Tribe Growth Fund: Part I.F.1. of the renewal permit requires that "all reports required for submittal or required by the permit must be signed by the permittee in accordance with the following criteria." The words 'by the*

*permittee' should be deleted from the sentence because one of the criterion, Part I. F. 1.b., requires reports to be signed by the Qualified Stormwater Manager, not the permittee. Therefore, the revised sentence would read as follows:*

*"All reports required for submittal or required by the permit must be signed in accordance with the following criteria."*

*Although the renewal permit is clear about the signature requirements if the SWMP needs to be submitted, Part I.F. is not clear as to the signature requirements for the SWMP if it does not need to be submitted. In Part I.C.4, it states that if a SWMP is required to be submitted to the Division, EPA, or any local agency, the submission must include a signed certification in accordance with Part I.F.1, certifying that the SWMP is complete and compliant with the terms and conditions of the permit. Part I.F.1.a. of the renewal permit states that all reports required for submittal must be signed by both the owner and the operator.*

*Home Builders Association of Metro Denver: This sentence is poorly worded because we can't decipher such things as: 1.) what "reports" are the Division referring to? Can the State provide examples so we can understand the request?*

**Response 145: Signature Requirements for SWMP**

Changes have been made to the permit and fact sheet based on these comments. Clarifying language has been added to Part II.K. and a modified version of the suggested language has also been added. In addition, examples were added to the fact sheet.

**Comment 146: Requested clarification on "duly authorized"**

*G.E. Johnson Construction Company: Request clarification - for duly authorized representative - how does the written authorization need to be submitted to the state? Will there be a form specific for this purpose? Also there may be more than one duly authorized representative for the same or different functions relating to the permit e.g. SWMP development and day to day compliance.*

*Home Builders Association of Metro Denver: The question here is, "duly authorized representative" - how does the written authorization need to be submitted to the State? Will there be a form specific for this purpose? Also, there may be more than one duly authorized representative for different functions relating to the permit e.g. SWMP development, and day to day compliance.*

**Response 146: Requested clarification on "duly authorized"**

No changes to the permit were made in response to this comment.

The division does not currently have a form to designate a duly authorized representative. Unless and until a form is created, a written letter submitted to the division with the relevant information and the signature(s) of the owner and/or operator will suffice to designate a duly authorized representative. Please note that these signatory requirements only apply to documents required for submittal to the division.

**Comment 147: Clarification to Part I.F.1.b.**

*Southern Ute Indian Tribe Growth Fund: Part I.F.1.b. states that reports required for compliance with the permit must be signed by the Qualified Stormwater Manager. According to Part I.C.4, all SWMPs are considered reports. Since the SWMP is a report required for compliance with Part I.C. of the renewal permit, it would appear based on Part*

*I.F.1.b. that it should be signed by the Qualified Stormwater Manager. However, the renewal permit has only two signature certifications:*

- *Part I.F.2.a. is a signature certification for person(s) signing documents for submittal and*
- *Part I.F.2.b. is a signature certification for person(s) signing inspection documents for compliance with the permit.*

*However, neither of the signature certifications in Part I.F.2 are applicable if the SWMP is not being submitted to an authority.*

*Does the SWMP only need to have a signed certification if it is to be submitted to the Division, EPA, or any local agency? If the intent of the Division is to require the SWMP to be signed only if it is submitted, then Part I.F.1.b of the renewal permit should be modified to be clear as to what type of reports required for compliance must be signed by the Qualified Stormwater Manager. Otherwise, a signature certification for SWMPs that are not being submitted should be added to Part I.F.2.*

**Response 147: Clarification to Part I.F.1.b.**

No changes to the permit were made based on these comments. The signature certification for inspection reports required for compliance is applicable in all cases when an inspection report is being created for compliance with the general permit. This certification and the signature should be on each report regardless of whether or not it will be submitted to the division. As specified in the permit, the qualified stormwater manager(s) may sign these documents. (See Part I.A.3.f.)

**2. Signature Certification**

**Comment 148: Requested change to inspection records certification**

*HRL Compliance Solutions, Inc.: The stormwater inspector is responsible for inspecting the locations and documenting the corrective action. The stormwater inspector is not always the person who is responsible for ordering and ensuring that maintenance/repairs are conducted. It seems inappropriate for the inspection records to require this statement.*

*Change the statement to read, "I verify that to the best of my knowledge and belief, this site is in compliance with the permit."*

*The inspection is not signed unless the site is in compliance.*

Western Slope Colorado Oil and Gas Association: *The stormwater inspector is responsible for inspecting the locations and documenting the corrective action. The stormwater inspector is not always the person who is responsible for ordering and ensuring that maintenance/repairs are conducted. It seems inappropriate for the inspection records to require this statement when it is not true.*

*Change the statement to read, "I verify that I have completed this inspection and have documented any corrective action that are required to maintain compliance with the permit."*

**Response 148: Requested change to inspection records certification**

No changes to the permit were made based on this comment. This certification statement is an important part of the compliance process. If the inspector is not responsible for ordering or ensuring maintenance/repairs, then the report can be signed by the person with that responsibility.

**Comment 149: Electronic signatures**

HRL Compliance Solutions, Inc.: *What is acceptable as a signature? Can it be an electronic signature?*

**Response 149: Electronic signatures**

No changes to the permit were made based on this comment. The division accepts electronic signatures for inspection reports. However, at this time, still requires ink signatures for submittals to the division. This requirement will be changing upon implementation of the CEOS permit application system.

**3. Change in Authorization to sign**

**Comment 150: Clarification on form used to make authorization changes**

G.E. Johnson Construction Company: *Request clarification - Will a change of contact form still be used for this purpose?*

Home Builders Association of Metro Denver: *Will a change of contact form still be used for this purpose?*

**Response 150: Clarification to form used to make authorization changes**

No changes to the permit have been made based on these comments. The change of contact form can still be used to make a change in authorization. Please note, the change of contact form will not be required when those changes do not affect the person(s) listed in the fact sheet of the certification or the application.

**VIII. Part I.G. RETENTION OF RECORDS**

This section of the permit is now located in Part II.O.



## 1. On-site Retention

### Comment 151: Electronic documents support

Wright Water Engineers, Inc.: *The ability to move to electronic copies follows the trend of using more and more electronic devices. We support this language.*

Xcel Energy: *Xcel Energy would like to thank the Division for the ability to move to electronic copies. We support this language as the trend towards paperless records is growing.*

### Response 151: Electronic documents support

The division appreciates this feedback. No changes to the permit or fact sheet were made based on this comment.

## 2. Post-Expiration or Termination Retention

No comments were received for this section.

## IX. Part I.H. MONITORING

No comments were received regarding this section.

## X. Part II.A. NOTIFICATION REQUIREMENTS

### Comment 152: Part II applicability to qualifying local programs

City of Golden: *It is difficult to discern applicable sections of Part II that apply to QLP and that are new from the previous permit, due to the addition of applicable sections and the extent of changes in permit language. Please call out specific sections of Part II that are applicable to QLP, to enable a determination of equivalent.*

*Sections of Part II that deal specifically with Division processes, such as those addressing permit modification, termination, revocation, reissuance, fees and duration of permit should not apply to QLP.*

### Response 152: Part II applicability to qualifying local programs

No changes have been made to the permit or fact sheet based on this comment. Additional guidance regarding qualifying local programs will be provided by the division during the delayed effective date.

### Comment 153: Request to correct heading error

G.E. Johnson Construction Company: *Request change - Header of page is confusing as this page starts Part II. Should change page headers as sections change.*

Home Builders Association of Metro Denver: *Header of page is confusing as this page starts Part II. We suggest changing page headers as sections change.*

**Response 153: Request to correct heading error**

Changes to the permit have been made based on this comment. Specifically, requested changes have been made.

**Comment 154: Request to remove blank page**

G.E. Johnson Construction Company: Request change - blank page should be deleted

Home Builders Association of Metro Denver: Page is blank, it should be deleted.

**Response 154: Request to remove blank page**

Changes to the permit have been made based on this comment. Specifically, the blank page has been removed.

**1. Notification to Parties**

No comments were received for this section.

**2. Change in Discharge**

**Comment 155: Notification of planned changes to facility**

G.E. Johnson Construction Company: Request clarification and change - Regarding advanced notice for planned physical alterations or additions to the permitted facility, sometimes these additions are not planned - such as a grading operator who goes out of planned permitted area without the direct knowledge of an operator. In this case would notice still be required to indicate the additional area of disturbance or can these types of additions be added to the SWMP on site without notification to the state? Would also be helpful to include a definition of "planned physical alterations or additions".

Home Builders Association of Metro Denver: In regard to advanced notice for planned physical alterations or additions to the permitted facility, sometimes these additions are not planned - such as a grading operator who goes out of planned permitted area without the direct knowledge of an operator. In this case, would notice still be required to indicate the additional area of disturbance or can these types of additions be added to the SWMP on site without notification to the state? It would also be helpful to include a definition of "planned physical alterations or additions".

**Response 155: Notification of planned changes to facility**

No changes to the permit have been made based on these comments. This section of the permit is for "planned physical alterations or additions" to the project site that would "change the nature or increase the quantity of pollutants discharged." Typical changes that would occur during construction would not be expected to change the nature or the range of quantity of pollutants in a way that is significantly different from the previous construction activity at the site or other sites within the construction sector. However, in the unlikely event that a construction site changes its processes so significantly that the nature of its

discharge or the quantity of pollutants discharged is no longer typical of what is expected from the construction sector, this notification requirement would apply.

**Comment 156: Clarification of applicability to construction sites**

G.E. Johnson Construction Company: Request clarification - This part references an approved land application plan, what is this? Does this really apply to a construction site?

Home Builders Association of Metro Denver: This part references an approved land application plan. Please explain what this is and how it applies to a construction site.

**Response 156: Clarification of applicability to construction sites**

No changes to the permit have been made based on these comments. This section of the permit is for changes to the project site that would result in a "change in the permittee's sludge use or disposal practices." This section of the permit would rarely apply to a construction site. If a permittee is considering changing the disposal practices at the site, such as land apply sludge generated from a portable restroom, then the permittee shall notify the division

**3. Noncompliance Notification**

**Comment 157: Notice of "planned" non-compliance**

G.E. Johnson Construction Company: Request clarification - Regarding advanced notice to the state for "planned changes", noncompliance is generally never "planned". Clarify what would be a "planned" noncompliance activity or event. Seems like part b below is for non-planned noncompliance events.

Colorado Department of Transportation: What about for when we have noncompliance with the SWMPs per Part I.C.3.d. on page 16 and CMs per Part I.B.1.c on page 11. Part I.B.1 states we need to "minimize" so as long as we are doing our due diligence to do that we shouldn't have to submit a non-compliance notification.

Home Builders Association of Metro Denver: Regarding advanced notice to the state for "planned changes", noncompliance is generally never "planned". Please clarify what would be a "planned" noncompliance activity or event. It appears to us that part b below is for non-planned noncompliance events.

Southern Ute Indian Tribe Growth Fund: Part II.A.3.ab requires the 'permittee' to report orally for certain types of noncompliance notification, for example, a release of hydraulic oil due to hose failure on a piece of equipment that enters a MS4. Since the renewal permit requires both the owner and operator, if different, to be permittees, do both permittees need to report orally to the Division?

**Response 157: Notice of “planned” non-compliance**

No changes to the permit have been made based on these comments. This section of the permit only applies to planned changes to the permitted facility, such as the facility beginning an operation that would require separate permit coverage.

**Comment 158: Request to fix broken link to definitions page**

G.E. Johnson Construction Company: Request change - The link for “upset” to the definition does not work, if the state intends to leave these links in the final permit the link should be fixed.

Home Builders Association of Metro Denver: The link for “upset” to the definition does not work; if the state intends to leave these links in the final permit the link should be fixed.

**Response 159: Request to fix broken link to definitions page**

Changes to the permit have been made based on this comment.

**Comment 159: Error in reference**

G.E. Johnson Construction Company: Request change - This section (Part II.A.b.iv.) refers to a “Part III” of the permit. There is no Part III, what is the correct reference.

**Response 160: Error in reference**

Changes have been made to the permit based on this comment. The reference has been corrected.

**Comment 160: Clarification on DMR requirements**

G.E. Johnson Construction Company: Request clarification and change - This section refers to submitting DMRs, when would DMRs be required under this permit? Should Part I.H include a reference that DMRs may be required?

Home Builders Association of Metro Denver: This section refers to submitting DMRs. When would DMRs be required under this permit?

**Response 160: Clarification on DMR requirements**

This section has been removed from the permit.

**4. Transfer of Ownership or Control**

**Comment 161: Request to adjust notification requirement**

G.E. Johnson Construction Company: Request change - Regarding transfer of ownership and the 30 day requirement, there may be times when there isn't 30 days advanced notice of the change, what does the permittee do then? Suggest changing 30-days to 10-days to be consistent with the application requirements.

Home Builders Association of Metro Denver: Regarding transfer of ownership and the 30 day requirement, there may be times when there isn't 30 days advanced notice of the change. What does the permittee do then?

**Response 161: Request to adjust notification requirement**

Changes have been made to the permit based on these comments. The request to change the 30 day requirement to 10 days has been incorporated into the permit.

**5. Other Notification Requirements**

**Comment 162: Requested clarification and change**

G.E. Johnson Construction Company: Request clarification and change - Other notifications - What other notifications apply? This section is confusing. This is a construction general permit, how does manufacturing, mining and silvicultural dischargers relate to this permit? Suggest eliminating everything from the 3rd paragraph to the end of this section.

Home Builders Association of Metro Denver: In regard to "other notifications" - what other notifications apply? This section is confusing. This is a construction general permit, how does manufacturing, mining and silvicultural dischargers relate to this permit? If permittees are not required to collect samples how would they know if these limits have been exceeded?

**Response 162: Requested clarification and change**

This section has been removed from the permit.

**6. Bypass Notification**

**Comment 163: Clarification on bypass**

G.E. Johnson Construction Company: Request clarification and change - If a bypass is unavoidable (7.b.i below) the permittee would not have the 10 days prior to bypass to provide advance notice. Also the state should consider defining what the bypass is (Part II,A,7) before describing advance notices for it. Suggest swapping the two sections around.

Home Builders Association of Metro Denver: If a bypass is unavoidable (7.b.i below) the permittee would not have the 10 days prior to bypass to provide advance notice.

**Response 163: Clarification on bypass**

Changes to the permit have been made based on these comments. Specifically, the term bypass has been defined. Additionally, clarifying language has been added to the permit. (See Part II.M.)

## 7. Bypass

### Comment 164: Clarification on "auxiliary treatment facility"

G.E. Johnson Construction Company: Request clarification - Describe what an "auxiliary treatment facility" would be on a construction site.

Home Builders Association of Metro Denver: Please describe what a "treatment facility" would be on a construction site.

### Response 164: Clarification on "auxiliary treatment facility"

No changes to the permit were made based on these comments. The term treatment facility is included in the definition of bypass, which is defined by Regulation 61.

## 8. Upsets

### Comment 165: Clarification on what is considered an "upset"

G.E. Johnson Construction Company: Request clarification - is an upset site considered an "Act of God"?

### Response 165: Clarification on what is considered an "upset"

Changes to the permit were made based on this comment. The term "upset" is defined by the general permit Part I.E.

### Comment 166: Correction of reference

Colorado Department of Transportation: We believe the Division meant Part II.A.3.b., not Part II.A.4

### Response 166: Correction of reference

Changes have been made to the permit based on this comment. Specifically, the reference has been corrected.

## 9. Submission of Incorrect or Incomplete Information

No comments were received for this section.

## XI. Part II.B. RESPONSIBILITIES

### 1. Reduction, Loss, or Failure of Treatment Facility

No comments were received for this section.

### 2. Inspections and Right to Entry

#### Comment 167: Requested deletion of section

G.E. Johnson Construction Company: Request change - this section is the same as Section Part I.D.6. is it needed in both places? Suggest deciding where it is most appropriate and delete the other.

Home Builders Association of Metro Denver: This section is the same as Section Part I.D.6. Is it needed in both places?

**Response167: Requested deletion of section**

The Part II language has been revised consistent with the Part II language that 40 CFR 122.41 requires to be incorporated into all NPDES permits, including stormwater general permits. Also, see Part II.I of the permit.

**3. Duty to Provide Information**

No comments were received for this section.

**4. Availability of Reports**

No comments were received for this section.

**5. Modification, Suspension, Revocation, or Termination Permits by the division**

**Comment 168: Requested definition of "reopened" for Part II.B.5.g.**

G.E. Johnson Construction Company: Request change - Please define "reopened".

Home Builders Association of Metro Denver: Please define "reopened".

**Response 168: Requested definition of "reopened" for part II.B.5.g.**

No changes to the permit have been made based on these comments. Please see Part II.P. for more information on reopening a permit for modification.

**Comment 169: Incorrect reference to regulation 61**

G.E. Johnson Construction Company: Request clarification and change - There are inconsistent references to regulations - "61.10(e) through (g)" is an example. Please consistently reference all regulation (CDPS, EPA, CFR, etc.). Long references are probably better than short for those who are not as familiar to them.

Home Builders Association of Metro Denver: There are inconsistent references to regulations such as, "61.10(e) through (g)" as an example. Please consistently reference other regulation (CDPS, EPA, CFR, etc.). Long references are probably better than short for those who are not as familiar to them.

**Response 169: Incorrect reference to regulation 61**

Changes have been made based on this comment. Specifically, the references have been corrected.

**6. Oil and Hazardous Substance Liability**

No comments were received for this section.

**7. State Laws**

No comments were received for this section.

**8. Permit Violations**

No comments were received for this section.

**9. Severability**

No comments were received for this section.

**10. Confidentiality**

No comments were received for this section.

**11. Fees**

**Comment 170: Correction of an incorrect reference**

*Southern Ute Indian Tribe Growth Fund: The citation listed for the annual fees in Part II B.11 is incorrect and should be updated.*

**Response 170: Correction of an incorrect reference**

Changes to the permit were made based on this comment. Specifically, the citation was corrected.

**12. Duration of Permit**

**Comment 171: Adjustment to renewal application timeframe**

*G.E. Johnson Construction Company: Request change - This section references a duration of 180 days to provide the state with a permit renewal application prior to the expiration of the permit. We feel this timeframe is excessive and is in conflict with other permit application requirements. We suggest shortening this to 10 days to be within the same guidelines as a new permit application.*

*Home Builders Association of Metro Denver: This section references a duration of 180 days to provide the state with a permit renewal application prior to the expiration of the permit. We feel this timeframe is excessive and is in conflict with other permit application requirements. We suggest shortening this to 10 days to be within the same guidelines as a new permit application. Should this refer back to the comment concerning "is an application needed for renewal"?*

**Response 171: Adjustment to renewal application timeframe**

No changes to the permit have been made based on these comments. Section 61.4(3)(a)(i) states that we must allow 90 days for permittees to reapply for their general permits, but may require a longer deadline.

**Comment 172: Correction of an incorrect reference**

*Colorado Department of Transportation: Part II.B.4. pertains to "Availability of Reports" not terminations. What section should be referenced here?*

**Response 173: Correction of an incorrect reference**

Changes to the permit were made based on this comment. Specifically, references were correct.



### 13. Section 307 Toxics

No comments were received for this section.

### 14. Effect Permit Issuance

No comments were received for this section.

## XII. Fact Sheet

#### **Comment 173: Request to add additional SIC codes**

*Southern Ute Indian Tribe Growth Fund: On page 1 of the Fact Sheet, the SIC code for oil and gas operations is not listed in Part II.A. However, on page 4 of the Fact Sheet, the Division clarifies in Part I. A.1.a.i. that discharges associated with construction activity related to oil and gas operations will continue to need permit coverage under the draft Construction Stormwater Permit (COR40000)(renewal permit). Since permit coverage will be required for this type of construction activity, the SIC code for oil and gas operations should be added to Part II.A. SIC Code of the Fact Sheet.*

#### **Response 173: Request to add additional SIC codes**

No changes to the fact sheet have been made based on this comment. The activity being permitted for oil and gas sites is the construction phase, therefore the appropriate SIC code is the general construction code.

#### **Comment 174: Clarify stormwater dewatering vs. construction dewatering**

*Southern Ute Indian Tribe Growth Fund: According to the 2007 Construction Stormwater General Permit (2007 permit), stormwater dewatering from excavations, ponds, depressions, etc. is not considered to be 'construction dewatering' as long as only stormwater (no co-mingled groundwater or other process water) was being removed. Therefore, stormwater dewatering can be discharged to surface waters or to municipal separate stormwater sewers as long as pollutants in the discharge are controlled. Although stormwater dewatering is not discussed in the renewal permit or fact sheet, it is assumed that stormwater dewatering will still be allowed. Many operators might not realize that there are different types of dewatering, i.e., stormwater vs construction, and that the type of dewatering trigger different permit requirements. Therefore, it is recommended that the Division clarifies either in the Construction Stormwater Permit (COR40000)(renewal permit), fact sheet, or other guidance document prepared for the renewal permit the difference between stormwater dewatering and construction dewatering (as defined by the 2007 permit) and that stormwater dewatering is still an allowable discharge. This clarification would be helpful in ensuring that the appropriate regulatory requirements are being applied by the operator to the dewatering discharge, since the treatment costs may vary depending on the regulatory requirements.*

*For example, if the permit coverage area for an operator is very small, the operator may not be able to apply the dewatering discharges regardless of type (construction vs stormwater) to the land such that it infiltrates prior to reaching state waters or*

*drainage systems as required by "Low Risk Discharge Guidance: Discharges of Uncontaminated Groundwater to Land (2009)." If the source of the dewatering discharge was uncontaminated groundwater or groundwater and stormwater (i.e., construction dewatering) and the operator cannot meet the requirements of Low Risk Discharge Guidance, then the operator would need to obtain a Construction Dewatering permit to discharge offsite. If such a permit was not previously obtained, the project could be delayed while waiting the issuance of a permit certification (up to 30 days). Plus, the operator would have to comply with the requirements of the Construction Dewatering permit, which may require the testing of discharge samples, as well as those of the construction stormwater general permit. Compliance costs will more than likely increase, e.g., costs for preparing the application, annual permit fee, etc.*

*However, if the source of the dewatering was stormwater only, the operator is allowed under his construction stormwater general permit certification to discharge the stormwater dewatering to state waters as long as it is treated. Thus, providing information in the renewal permit documents on the different types of dewatering discharges, which type of dewatering discharge is allowable, and the associated regulatory requirements for the discharge could help permittees control compliance costs.*

**Response 174: Stormwater dewatering vs. construction dewatering**  
The commenter is correct in that if the operator cannot meet the criteria of the low risk discharge guidance, dewatering of groundwater and/or groundwater mixed with stormwater must be covered under a different permit. Further explanation has been added to the fact sheet.

**Comment 175: Requested clarification to EPA application requirements**  
Southern Ute Indian Tribe: *The Fact Sheet states on page 9 that EPA has been requiring co-permittees that are similar to the Division's co-permittee requirements proposed in this renewal permit since 1998. This statement is incorrect. The EPA required that each operator is responsible for obtaining permit coverage. It is not possible for the owner and operator to apply as co-permittees for coverage under the EPA's CGP. Division should correct the Fact Sheet.*

**Response 175: Requested clarification to EPA application requirements**  
Changes to the fact sheet have been made based on this comment. Specifically, clarifying language has been added as requested.

**Comment 176: Operator termination clarification**  
Colorado Stormwater Council: *Often times a contractor will leave a site once initial stabilization methods have been implemented, but not achieved. The Fact Sheet discussion is written to allow termination at that point. Often times, even though the contractor is not onsite and work construction has stopped, they may still have operational control or be required to ensure the site is stabilized.*

*Southeast Metro Stormwater Association:* A contractor may chose to leave a site once initial stabilization methods have been installed, but that effort at stabilization is not considered final stabilization. The Fact Sheet discussion is written to allow termination of permit coverage at that point. Even though the contractor is not onsite and actual land disturbing construction has stopped, they may still have operational control per our GESC permit requirements and/or be required to ensure the site is final stabilized, depending on phasing and plan details. Please clarify in the Fact Sheet that even if a permittee no longer has an active presence on the site, it does not mean they can terminate the permit.

**Response 176: Operator termination clarification**

Changes to the fact sheet have been made based on the comments. Specifically additional clarifying language has been added.

**Comment 177: Signature clarification**

*Colorado Department of Transportation:* Clarification need: signature block - how change/add/remove owner or operator info? Does a mod form need to be submitted? Will each 'owner and operator' be required to submit an application or will there be spaces on the application for all signatures?

*EPA CGP App 1 section I.11.3., "Changes to Authorization. If an authorization under this permit is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new NOI must be submitted to EPA. See Table 1 in Part 1.4.2 of the permit. However, if the only change that is occurring is a change in contact information or a change in the facility's address, the operator need only make a modification to the existing NOI submitted for authorization."*

**Response 177: Signature Clarification**

No changes to the fact sheet or permit were made based on this comment. Permittee's will be able to submit application signatures together or separately.

**Comment 178: Explanation of Part II requirements**

*Colorado Department of Transportation:* How come there isn't any explanation of Part II of the permit?

**Response 178: Explanation of Part II requirements**

Part II of the general permit is boilerplate language that is inserted into every permit. Subsequent to this comment being received, the division has released a second draft version of the renewal permit for public notice. Please see Appendix II to the fact sheet. The division has tailored sections of Part II to this permit.

## Appendix II

### SECOND PUBLIC NOTICE COMMENTS

Parts of the draft of the renewal permit was public noticed for a second time on January 31, 2018 and comments were accepted until March 5, 2018. Only written comments submitted during the public notice comment period are reflected in this document. Comments listed in this document are verbatim and only include those that were specific to the Stormwater discharges associated with construction activities (COR400000).

Comments were received from a number of stakeholders, including the following:

1. Brian Deurloo
2. Christopher Tippie
3. City of Aurora
4. Colorado Oil and Gas Association (COGA)
5. Colorado Oil and Gas Association - Western Slope
6. Colorado Petroleum Council
7. Colorado Stormwater Council
8. Colorado Mining Association
9. CWS Colorado
10. Douglas County
11. Home Builders Association of Colorado Springs
12. Home Builders Association of Metro Denver
13. Southern Ute Indian Tribe Growth Fund
14. Tri State Generation and Transmission Association, Inc.
15. Xcel Energy

Comments on the draft of the COR400000 general permit:

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I. Part I.A. COVERAGE UNDER THIS PERMIT

1. I.A.1.b.ii. - Allowable Non-Stormwater Discharges

**Comment 1: Clarification on concrete washouts**

*City of Aurora: On p.1, the added paragraph about discharges to the ground of concrete washout water associated with the washing of concrete tools and concrete mixer chutes is new and requires more explanation. It appears to contradict a later section that deals with concrete washouts.*

*CWS Colorado: These sections are vague, and confusing. In Part 1 section A part 1a item iii .1 you identify concrete batch plants and masonry mixing as stormwater discharge, but in Part b ii you specifically identify concrete washout water as a Non-Stormwater discharge.*

**Response 1: Clarification on concrete washouts**

The section of the permit which refers to concrete batch plants and masonry mixing stations is discussing the stormwater runoff associated with these stations, it is not allowing pollution associated with the mixing of concrete or masonry mixing, but rather the discharge of stormwater from the dedicated stations.

Additionally, the division is unclear which section of the permit is believed to be in conflict with this section. However, a review of all mentions of concrete washout has been done throughout the permit.

II. Part I.B. EFFLUENT LIMITATIONS

1. I.B.1.a.ii.(b) - Practices for other common pollutants

**Comment 2: Concrete washout location**

*CWS Colorado: At the bottom of page 7 in section B Effluent Limitations Item ii your proposed draft states that designs for masonry operations and concrete washing activities should be in place to prevent pollutants from reaching stormwater runoff.*

*With that statement, you are verifying two things, 1) concrete wash water, and masonry operations are pollutants, and 2) that the water from this activity can reach stormwater runoff. So concrete wash water should be classified as a stormwater discharge along with concrete batch plants, and masonry operations, and not as a non-stormwater discharge as you have proposed in this draft.*

*This language is vague, and could be left open for misinterpretation, or confusion on the part of the permit holder. Your language of (Discharges that may reach groundwater must flow through soil that has adequate buffering capacity prior to reaching groundwater) is adequate for this type of discharge; however it is not a good control measure. We would suggest the following verbiage;*

*“Concrete Washout discharges must be contained; either 1. in a leak proof prefabricated container, 2. leak proof lined pit, or 3. discharged directly to the ground. If applied directly to the ground permit holder must provide proof of analysis documenting the soil buffering capacity. Discharge of concrete wash water is not permitted if discharge area is less than 500 feet of surface water or waters of the state”*

*We recommend a 500’ setback for direct discharge to the ground, because groundwater is often closer to surface areas when near surface waters. Also during a stormwater event like a major rain storm and/or snowmelt runoff, surface runoff will travel much further due to ground saturation or frozen surfaces.*

**Response 2 Concrete washout location**

Changes to the permit were made based on this comment. Specifically, the the language regarding concrete washout has been adjusted. Additionally, discharges that are listed in the general permit as non-stormwater discharges are simply discharges that are not entirely composed of stormwater and incidental pollutants.

**Comment 3: Correct citation**

*Douglas County: Comment: “I.A.1.b.2” Is this the correct permit citation?*

**Response 3: Correct citation**

Changes have been made to the permit based on this comment. Specifically, the citation have been correct to read “I.A.1.b.ii.”.

**Comment 4: Determining buffering capacity**

*Douglas County: The draft permit language implies that the permittee/applicant perform chemical (pH) analysis/testing of soil, permeability, measures infiltration rates, contact time, etc. in order to prove adequate buffering capacity prior to planning where to place a concrete washout basin.*

*Home Builders Association of Metro Denver: How is buffering capacity determined? Is it better to say or restrict the minimum amount of earth above ground water? This would prohibit wash water in or near surface waters.*

**Response 4: Determining buffering capacity**

No changes to the permit were made based on these comments. The division has however added language requiring that concrete washouts not be located in areas where shallow groundwater may be present. It is the permittee’s responsibility to ensure that the site conditions result in compliance with the permit conditions, including Part I.B.3.a that requires discharges not cause, have the reasonable potential to cause, or measurably contribute to an exceedance of any applicable water quality standard, including narrative standards for water quality. The division has added language to clarify that “adequate” buffer is determined based on meeting the other conditions of the permit, including Part I.B.3.a. Determining



the soil type of the area the concrete washout will be located may be adequate for determining buffering capacity.

### III. Part I.C. STORMWATER MANAGEMENT PLAN (SWMP) REQUIREMENTS

#### 1. I.C.2.a.iii.

Comment 5: Typographical error in document

Western Slope Colorado Oil and Gas Association: Should the statement read, "The SWMP must describe and locate all control measures implemented at the site to minimize impacts from handling [materials that could cause] Severe Property Damage" (and then leave off the definition?).

ii. Or was this insert a typo and the Severe Property Damage definition can just be listed in the definitions section.

Brian Deurloo: the first sentence does not make sense. Suggest grammar edits.

Christopher Tippie: the first sentence does not make sense. Suggest grammar edits.

Douglas County: Is this permit requirement tied to POTWs? Construction of POTWs? Flood damage related to a construction site? Fire damage?

Colorado Stormwater Council: The SWMP must describe and locate all control measures implemented at the site to minimize impacts from handling Severe Property Damage - substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. See 40 CFR 122.41(m)(1)(ii).

This section is confusing.

Xcel Energy: This section does not make sense as written. Should this sentence read "The SWMP must describe and locate all control measures implemented at the site to minimize impacts from causing Severe Property Damage?"

The definition of Severe Property Damage is listed in the definitions section and does not need to be included in this section.

Home Builders Association of Metro Denver: Appears to be a typo or unrelated connotation of paragraph. Please advise.

Colorado Oil and Gas Association: It is not necessary to include the definition for Severe Property Damage within this section.

Home Builders Association of Colorado Springs: Definition of treatment facility needed.

**Response 5: Typographical error in document**

Changes to the permit have been made based on these comments. There was a typographical error in the document, which has been corrected.

**2. I.C.2.a.viii.(i)**

**Comment 6: Clarification on pre-existing vegetation requirement**

Tri-state Generation and Transmission Association, Inc.:

*The requirement for a 50-ft buffer of "pre-existing vegetation" is not always appropriate or possible at some construction sites, i.e. linear projects. Part I.B.1.a.i.(d) identifies that this buffer may be infeasible. The language in Part I.C.2.vii.i. should be modified to more clearly limit the requirement to areas where this is appropriate and feasible, as described below (double underlining): (i) locations of springs, streams, wetlands and other state waters, including areas that require pre-existing vegetation be maintained within 50 feet of a receiving water, where feasible; and*

Home Builders Association of Colorado Springs: Clarify when pre-existing vegetation is required to be maintained within 50 feet of a receiving water and where the requirement cited.

Douglas County: What requirements/regulations for the 50-foot vegetative buffer is this permit requirement referencing...local, state, federal? Is this permit requirement implying (stating?) that a 50-foot vegetative buffer is required adjacent to all receiving waters?

Southern Ute Indian Tribe Growth Fund: Allows for "maintaining pre-existing vegetation or equivalent control measures for areas..." the requirement above does not provide the same alternative approaches to implement equivalent control measures alternative to maintaining the vegetative buffer. If areas cannot comply with the pre-existing vegetative buffer requirement, how should this be addressed within the context of this requirement? Additionally receiving waters should be re-defined to meet either State or Federal definition as a waters of the State or waters of the US respectively.

City of Aurora: The paragraph describing the Site Map on page 13 should include "if feasible" on item (i). If work is occurring adjacent to a receiving water, pre-existing vegetation may not be maintained.

Colorado Stormwater Council: Proposed language: locations of springs, streams, wetlands and other state waters, including areas that require pre-existing vegetation be maintained within 50 feet of a receiving water, where determined feasible in accordance with I.b.1.a.i(d); and

Colorado Oil and Gas Association - Western Slope: i. specifically exclude long linear projects (roads and pipelines) from the requirement of maintaining a 50 foot vegetative buffer.

ii. The definition of 'infeasible' in this context is too subjective. ii. Further define 'infeasible' so that inspectors (CDPHE and Stormwater Managers) can consistently apply the term. Eliminate the possibility for subjectivity.  
iii. Please provide the intent behind this requirement. Is the hope to create or provide a "vegetative buffer" In our semi-arid environment, the qualities required for a vegetative buffer are severely lacking. EPA's permit went into great detail and provided support with providing guidelines for determining if additional BMPs were needed or not.

**Response 6: Clarification on pre-existing vegetation requirement**  
Changes to the permit have been made based on these comments. Specifically, the suggested language has been implemented. Please note that the locations of springs streams, wetlands and other state waters are still required to be located on the site map.

#### IV. Part I.D. SITE INSPECTIONS

No comments were received regarding this section.

#### V. Part I.E. DEFINITIONS

##### 1. Part I.E.(1)

**Comment 7: Clarification on definition of bypass**  
Douglas County: Is this permit requirement tied solely to POTWs?  
Construction/modification of POTWs?

Xcel Energy: This does not seem applicable to the stormwater construction permit as written.

Home Builders Association of Colorado Springs: Definition of treatment facility needed.

**Response 7: Clarification on definition of bypass**  
The division has added this definition to the general permit to clarify its meaning as used in Part II of the general permit.

##### 2. Part I.E.(20)

**Comment 8: Clarification on formal request process**  
Home Builders Association of Metro Denver: Email and phone should not be used to formally request entry. Written letter and email courtesy notification should be used. Sentence too vague on formal request process.

**Response 8: Clarification on formal request process**

No changes to the permit were made based on these comments. Providing notification with a mailed letter would be too slow of a means of communication to meet oversight needs, which typically necessitate notification within 24 hours of an inspection.

**3. Part I.E.(25)**

**Comment 9: Changes to the definition of receiving waters**

*Xcel Energy: Construction often occurs adjacent to or within these “receiving waters”. For example, when open trenching across a borrow ditch or arroyos, there will be impacts, but there are control measures down gradient of where the construction activity is occurring that would prevent the discharge off site or to the ultimate receiving water.*

*We recognize that these “receiving waters” are potential conveyances however, if the work is occurring adjacent to or within them, there will be temporary impacts that will have control measures in place to prevent an ultimate discharge offsite. PSCo cautions against lumping borrow ditches and other waters that may not be subject to 404 permitting into the same category as receiving waters that are subject to 404 permitting.*

*Colorado Oil and Gas Association – Western Slope: Question/Concern:*

*i. Are permanent dry drainages and barrow ditches truly considered a ‘Receiving Water’?*

*ii. Does the state understand how much this definition encompasses and is that the intent?*

*iii. The definition seems to be written as a ‘catch all’ rather than a clear definition of water that should be protected.*

*iv. The definition of ‘receiving water’ as it is currently written, makes it impossible to comply with the 50-foot buffer requirement (Part I.B.1.a.i.d) if a road side ditch or borrow ditch is considered a ‘receiving water’.*

*Suggestion:*

*i. More clearly define receiving water. ‘Ex: An intermittent or perennial drainage that has contiguous flow or connection (no obstruction) to an active water course.’*

*ii. Remove borrow ditch from the definition.*

*iii. Remove the requirement for a 50-foot vegetation buffer and require that the permittee install ‘adequate BMPS’ to prevent a sediment discharge to waters of the state. If a vegetation buffer is the desired BMP, the permittee will employ it.*

*If there are other BMPs that are more appropriate for the project they can be employed without the restrictive 50-foot buffer. +*

*Colorado Oil and Gas Association: Receiving Water - Creeks, streams, rivers, lakes, estuaries, ground-water formations, or other bodies of water into which surface water and/or treated or untreated waste are discharged, either naturally or in man-made systems. Any classified or unclassified surface water segment (including tributaries) in the State of Colorado into which stormwater associated with construction activities discharges. This definition includes all water courses, even if they are usually dry, such as borrow ditches, arroyos, and other unnamed waterways.*

*The addition of such waters as borrow ditches seems to surpass the authority of water quality control or the clean water act definition as intended. The term receiving waters "includes all water courses".." such as borrow ditches.." is not clear how a feature such as a borrow ditch would be considered to be a drainage which meets a current definition of a waters, much less a "receiving waters". These features may be often disrupted by or actually constructed as a part of the project, additionally many projects parallel or are immediately adjacent to roads that have such features. In these instances, a buffer or control equivalent would be required or perhaps at times infeasible. To define these features as receiving waters is broad and nearly undefinable under current regulatory definitions whether State or Federal. The 2017 EPA construction general permit defines that a vegetative buffer or control equivalent be implemented within 50 feet of a waters of the US as defined under 40 CFR 230.3(s). The previous version of this draft permit (Oct 24, 2016) defined the buffer as being required within 50 feet of state surface waters, which are defined under 25-8-103 (19) of the Colorado Water Quality Control Act. Recommend that "receiving waters" be redefined to either meet state waters or waters of the US, to be consistent with Clean Water Act standards, and meet the intent of this permit to allow stormwater discharges that meet effluent requirements established herein for these discharges to receiving waters.*

**Response 9: Changes to the definition of receiving waters**

No changes to the permit were made based on these comments. Receiving waters is defined in the permit as any classified or unclassified surface water segment (including tributaries) in the State of Colorado into which stormwater associated with construction activities discharges. This definition includes all water courses, even if they are usually dry, such as borrow ditches, arroyos, and other unnamed waterways. With this definition, the division sought a balance between the broad definition of state waters in Colorado and the need to narrow the scope of this permit when applicable. Part I.E.(26)

**Comment 10: Clarification on definition of severe property damage**  
*Xcel Energy: PSCo is unsure what the intent of having this language in the permit is for. Recommend clarifying what the intent is to better understand what definition. If this language does need to be in the permit, treatment facilities does not seem applicable to construction permits. We recommend changing to control measures if this is the intent.*

*Home Builders Association of Metro Denver: Definition of treatment facility needed.*

*Douglas County: Is this permit requirement tied solely to POTWs? Construction/modification of POTWs?*

**Response 10: Clarification on definition of severe property damage**  
The definition of severe property damage has been included in the permit to further clarify standard language in Part II of the permit. The definition comes directly from 40 CFR 122.41(m)(1)(ii).

#### 4. Part I.E.(30)

**Comment 11: Clarification of definition of state waters**  
*Xcel Energy: PSCo recognizes the difficulty of changing this definition due to the State's current water quality regulations, however, this definition is very broad.*

*Southern Ute Indian Tribe Growth Fund: These waters should also be known as the receiving waters for purposes of this permit.*

**Response 11: Clarification of definition of state waters**  
The division recognizes that the definition of state waters is broad in nature. However, the addition of the definition of receiving water was included to narrow the scope where applicable.

#### 5. Part I.E.(34)

**Comment 12: Clarification of the definition of upset**  
*Colorado Stormwater Council: The term "control measures" is used throughout the permit using the term "treatment facility" adds confusion, particularly when the industry generally does not consider, for example, a sediment trap a "treatment facility".*

*Home Builders Association of Metro Denver: Good Clarification*

*Colorado Oil and Gas Association: An upset may occur as an exceptional incident and result in temporary noncompliance for reasons other than permit effluent limitations.*

**Response 13: Clarification of the definition of upset**

No changes to the permit were made based on these comments. The definition of an upset was included to provide clarification to the permit requirements. Consistent with Regulation 61.8(3)(j), an upset can only be considered as a result of noncompliance with an effluent limitation.

**VI. Part I.F. SIGNATORY REQUIREMENTS**

No comments received regarding this section.

**VII. Part I.G. RETENTION OF RECORDS**

No comments received regarding this section.

**VIII. Part I.H. MONITORING**

No comments were received regarding this section.

**IX. Part II: General Comments:**

**Comment 13: Change in Part II language**

*Colorado Stormwater Council: The standard discharge permit language used throughout Part II, where terms such as "treatment facility", "auxiliary facilities", "laboratory controls", "bypass and "upset" are confusing when applied to stormwater discharge permits.*

*Tri-state Generation and Transmission Association, Inc.: The CSGP generally does not require monitoring and routine or annual reporting, unless there is a case-specific situation, as addressed in Part I.F.3. of the 2007 (currently effective) construction stormwater general permit. Therefore, the references throughout Part II to monitoring or sampling, monitoring equipment, monitoring records, etc. appear to be remnants from other wastewater permitting requirements. The use of a boilerplate Part II section should either identify the sections that are applicable, or conversely not applicable, to the CSGP, or just remove the inconsistent language to reflect the appropriate permit terms and conditions. The inclusion of inconsistent or inappropriate language may confuse permittees when determining the applicable terms and conditions.*

*Western Slope COGA: i. While some of the language does tie back to Part 1 of the Draft Permit, the language in Part II seems disconnected from Part 1.*

*ii. The references to the 40 CR 122.41 throughout reads as though there are wholly and separate requirements that apply outside and in-addition to the CDPHE Draft Permit.*

Create a CDPHE Permit that stands alone, while meeting the requirements of the CWA and EPA NPDES Program. Clearly state the requirements that need to be met for the CDPHE permit so the reader is not jumping to several different regulatory citations to figure out what is required.

ii. Delete language that does not directly apply to or tie back to this Permit.

**Response 13: Change in Part II language**

No changes have been made in response to these comments. The language contained in Part II is standard boilerplate language based in large part on language contained in 40 CFR 122.41 that is required to be incorporated into all NPDES permits, including stormwater general permits. The division does not have the ability to deviate from this standard boilerplate language, as much of the federal language is required to be incorporated into all NPDES permits in accordance with the delegation of authority to administer the NPDES program from EPA.

The division made efforts to review the language in Part II and compare it to the federal regulatory language in EPA's Construction Stormwater General Permit as much as possible.

**Comment 14: Requested addition of Part Z**

Brian Deurloo; Christopher Tippie: Suggest adding Part Z: DUTY TO MEASURE: A permittee must take all reasonable steps to capture stormwater pollution before it leaves the construction site and provide measurable pollution capture results to the division.

**Response 14: Requested addition of Part Z**

No changes have been made in response to this comment. The change suggested by the commenter would provide valuable information to the division, but a regulatory regime requiring quantification of measurable pollution capture results would be a new requirement not previously contemplated in the public notice drafts. A "duty to measure" would, in the division's opinion, be a major and significant addition to the permit that is outside of the general terms and conditions contained in Part II.

**Comment 15: Request to remove Part II changes**

Xcel Energy: "PSCo believes that the complete revision and rewrite of the Part II language in the Construction Stormwater Permit is not appropriate at this time. The Division had provided the revised language to the Permit Issues Forum workgroup on January 22 (and then was widely distributed to the workgroup members on January 23) with a request to provide comments by February 5. The amount of time provided was very short given the extensive changes and the difficulty in determining the source or cause of the revisions. However, many stakeholders did provide comments on the language noting that important sections in Part II had been removed, some of the revised language is (mostly) duplicative of similar sections in Part I, and there appears to be new interpretations, new requirements, or unintended consequences



*with some sections of the revised language. The Division has not responded to these comments.*

*It was noted both to the Permit Issues Forum and in the Fact Sheet for the Construction Stormwater Permit that the changes made in the Part II language were precipitated by a permit quality review audit of the permitting program performed by EPA in August 2017. To PSCo's knowledge, the written audit report has not been provided to the Division by EPA. The Division has also noted that these changes are intended to better reflect the federal regulations; however, we note that in several cases we are unable to find a corresponding section in the federal regulations that reflects the revised language. As the Division has not received the EPA audit report, it seems premature to begin making these changes in issued permits. EPA's findings concerning the Part II language would also be helpful to stakeholders in review of the changes.*

*We also note that the revised Part II language in the Construction Stormwater Permit is different than the revised Part II language provided to the Permit Issues Forum. Due to these differences, it is unclear to PSCo how revised Part II language will be adopted in individual permits and general permits. PSCo's understanding is that the Part II language was considered to be standard language and was applied in all permits, no matter the type. Is it the Division's intent to modify the language depending on the permit? Many sections in the draft Construction Stormwater Permit are not applicable to Construction Permits. Further explanation from the Division is needed.*

*It is premature to revise the Permit II language in the Construction Stormwater Permit in light of the number of questions raised by stakeholders in the Permit Issues Forum that have yet to be addressed by the Division, the lack of the written audit report from EPA, and the insufficient amount of time to review and understand the implications of the complete rewrite of the Part II language. PSCo is also concerned about the small group of stakeholders that are aware of this change and that the Division has not reached out to wider group of stakeholders through the Water Quality Forum or its monthly Water Quality Bulletin. PSCo urges the Division to reconsider the adoption of the revised Part II language until the issues raised can be resolved.*

*Colorado Mining Association: The Permit Issues Forum (PIF) workgroup, which is attended by the WQCD staff, is currently addressing proposed changes to the standard permit conditions for CDPS permits. WQCD should wait until these issues are resolved with the PIF to ensure that there are not other necessary changes to the language.*

**Response 15: Request to remove Part II changes**

In 2017, EPA performed a Permit Quality Review (PQR) audit of Colorado's permitting program. One of the critical findings from this audit was a finding that Colorado's Part II standard permit language was inconsistent with federal requirements. In response to

this finding, and in order to ensure that Colorado's permits were consistent with federal regulatory requirements, the division revised the Part II language.

The revised Part II language was brought forward to the PIF for review in January, 2018. The division indicated at that time that it intended to incorporate the revised Part II into the construction stormwater general permit. Comments received at the PIF were incorporated in part into the draft Part II language where appropriate. In this regard, the division performed stakeholder outreach and disagrees with the commenter that stakeholder engagement did not occur. Further, it is the public notice and comment process that provides the best opportunity for the division to consider changes to permit language. Not all parties interested in the construction stormwater general permit participate in the PIF or the WQF. Receiving and responding to public comments is the official forum to make comments on permit language, consider those comments, and respond to comments on the record.

The division has an obligation to issue permits that meet federal requirements, and are consistent with its obligations to abide by EPA's requirements for federally delegated programs. The division disagrees that a full stakeholder outreach is a prerequisite to making necessary changes, or that the changes made were somehow premature. No changes were made in response to these comments.

**X. Part II.B.**

**Comment 16: Clarification on applications**

*HBA Colorado Springs: Clarification needed on whether a new application is needed after the expiration of a permit.*

**Response 16: Clarification on applications**

No changes were made in response to this comment. The division recognizes the concern articulated in the comment, and clarification that permittees that have coverage under a general permit need to go through the reapplication process at the time of expiration of the general permit in order to maintain ongoing coverage for their facility. However, the division believes that further explanation of this process is a better fit in guidance documents rather than modifying the permit language itself.

**XI. Part II.C.**

**Comment 17: Severe property damage**

COGA: Would it be a defense for a permittee if non-compliance was necessary to avoid Severe Property Damage?

**Response 17: Severe property damage**

No changes were made in response to this comment. The federal language related to "need to halt or reduce an activity" does not contain a provision related to avoiding

severe property damage. Any defenses related to severe property damage would need to be evaluated on a case by case basis.

## XII. Part II.D.

### Comment 18: Part II.D. additional information

*Brian Deurloo/Christopher Tippie: The permittee must take all reasonable steps to capture stormwater pollution before it leaves the construction site and provide measurable pollution capture results to the division.*

### Response 18: Part II.D. additional information

No changes have been made in response to this comment. The change suggested by the commenter would provide valuable information to the division, but a regulatory regime requiring quantification of measurable pollution capture results would be a new requirement not previously contemplated in the public notice drafts. A “duty to measure” would, in the division’s opinion, be a major and significant addition to the permit that is outside of the general terms and conditions contained in Part II and in 40 CFR 122.41.

## XIII. Part II.E.

### Comment 19: Language change request

*City of Aurora: Section E on p. 21, section J on p. 22, sections M and N on page 26 all include language associated with facility's individual discharge permits (Regulation 61), and should not apply to the general construction storm water permit.*

### Response 20: Language change request

No changes have been made in response to these comments. The language contained in Part II is standard boilerplate language based in large part on language contained in 40 CFR 122.41 that is required to be incorporated into all NPDES permits, including stormwater general permits. The division does not have the ability to deviate from this standard boilerplate language, as much of the federal language is required to be incorporated into all NPDES permits in accordance with the delegation of authority to administer the NPDES program from EPA.

## XIV. Part II.H.

### Comment 20: Part II.H. additional information

*Brian Deurloo/Christopher Tippie: At a minimum, the permittee shall furnish to the division, the total amount of pollution captured in each catch basin or storm sewer system downstream of the permittee’s construction activities.*

### Response 20: Part II.H. additional information

No changes have been made in response to this comment. The change suggested by the commenter would provide valuable information to the division, but a regulatory regime requiring quantification of measurable pollution capture results would be a new requirement not previously contemplated in the public notice drafts. A “duty to measure” would, in the division’s opinion, be a major and significant addition to the permit that is outside of the general terms and conditions contained in Part II and in 40 CFR 122.41.

XV. **Part II.J.**

**Comment 21: Language change request**

Western Slope COGA: Reference to samples and measurements does not make sense. The language reads as if water samples are collected on a regular basis. The draft CDPHE permit does not require samples or continuous monitoring other than the required inspections. Delete Section J - Monitoring and Records Or, specify the scenarios in which monitoring and record keeping would be necessary.

COGA: The current language in the revised draft infers that monitoring is required for all permits. To avoid confusion and to further clarify, the proposed language for Part II.J.1. includes a portion of Part I.F. 1. The Division may require sampling and testing, on a case-by-case basis. If the Division requires sampling and testing, the Division will send a notification to the permittee. Reporting procedures for any monitoring data collected will be included in the notification. If monitoring is required, samples and measurements taken for the purpose of monitoring must be representative of the volume and nature of the monitored activity.

**Response 21: Language change request**

No changes have been made in response to these comments. The language contained in Part II is standard boilerplate language based in large part on language contained in 40 CFR 122.41 that is required to be incorporated into all NPDES permits, including stormwater general permits. The division does not have the ability to deviate from this standard boilerplate language, as much of the federal language is required to be incorporated into all NPDES permits in accordance with the delegation of authority to administer the NPDES program from EPA.

**Comment 22: Clarity on sampling requirements**

HBA Colorado Springs: Under what conditions are samples and measurements required? Can this section be combined with- Part I, F. Monitoring?

**Response 22: Clarity on sampling requirements**

No changes were made in response to this comment. The monitoring and recordkeeping requirements for samples that are taken contained in subsection J modify the requirements for performing sampling contained in Part I.F. In other words, the requirement to take samples (or not) is guided by Part I.F., but samples taken must meet the standard NPDES record keeping and analysis requirements of Part II.J.

**Comment 23: Additional language request**

Brian Deurloo/Christopher Tippie: Suggested addition: g. the total weight of pollution captured on site h. analysis of the pollution captured on site. The permittee must take all reasonable steps to capture stormwater pollution before it leaves the construction site and provide measurable pollution capture results to the division.

**Response 23: Additional language request**

No changes have been made in response to this comment. The change suggested by the commenter would provide valuable information to the division, but a regulatory regime requiring quantification of measurable pollution capture results would be a new requirement not previously contemplated in the public notice drafts. A "duty to measure" or requirement to quantify the total weight of pollution would, in the division's opinion, be a major and significant addition to the permit that is outside of the general terms and conditions contained in Part II and in 40 CFR 122.41.

**XVI. Part II.K.**

**Comment 24: Clarification on wet signature**

Xcel Energy: The electronic submittal is a nice feature however the need to currently also provide a wet signature seems unnecessary. EPA does not require a wet signature on their NOI. Under this new permit will permittees be able to apply with only an electronic signature or will permittees still be expected to provide a wet signature?

**Response 24: Clarification on wet signature**

No changes have been made in response to this comment. As outlined in Part II.K.2., the use of the electronic application negates the need to submit a wet signature, however all other requirements for signature in II.K.1. (i.e., responsible corporate officer, general partnership requirements, municipal requirements) must still be satisfied.

**XVII. Part II.L.**

**Comment 25: Specification on exceedances**

Western Slope Colorado Oil and Gas Association: i. Fortunately, the CDPHE does not list specific effluent limitations, so a reporting requirement for exceedances does not make sense.

1. An established effluent limit or TMDL would require significantly different and more expensive BMP structures to be employed at thousands of small oil and gas facilities. The current Permit allows the permit holder flexibility in choosing the best BMPs for the location, which includes multiple allowable discharge points. Forcing a single point of discharge for sampling purposes is a waste of resources and limits the permit holder from employing the best BMPs for that location.

**Response 25: Specification on exceedances**

No changes have been made in response to these comments. The language contained in Part II is standard boilerplate language based in large part on language contained in 40 CFR 122.41 that is required to be incorporated into all NPDES permits, including stormwater general permits. The division does not have the ability to deviate from this standard boilerplate language, as much of the federal language is required to be incorporated into all NPDES permits in accordance with the delegation of authority to administer the NPDES program from EPA. The use of this language in no way implements or changes the requirements in Part I of the permit.

**Comment 26: Variance or exemption**

Western Slope Colorado Oil and Gas Association: 2. If so, will CDPHE specify the process for which an Oil and Gas Operator can request a variance or full exemption from the CO Construction Stormwater Discharge Permit under the Clean Water Act, Section 402(I)(2) - " EPA shall not require, nor force a state to require a CWA section 402 permit for discharges of stormwater runoff from oil and gas\* exploration, production, processing or treatment operations, or transmissions facilities, composed entirely of flows that are from conveyances or systems of conveyances used for collecting and conveying precipitation runoff, and that are not "contaminated by contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations." This exemption applies to both construction and industrial activities associated with oil and gas exploration, production, processing or treatment operations, or transmission facilities."

**Response 26: Variance or exemption**

See previous response. Any request for a variance from this permit will need to be assessed on a case-by-case basis based upon the flow of stormwater over an individual facility.

**Comment 27: Remove language**

Colorado Oil and Gas Association: Strike last sentence [from II.L.1.b].

**Response 27: Remove language**

See previous response. No changes have been made in response to his comment

**Section II.L.3.**

**Comment 28: Transferring a permit- unresponsive owner**

Douglas County: What if the current permittee is in default, bankruptcy, unresponsive, deceased, etc. Is there any other procedure or provision by which a project owner can transfer permit coverage from an unresponsive contractor?

**Response 28: Transferring a permit - unresponsive owner**

No changes have been made in response to this comment. Transfer under the circumstances identified by the commenter may need to be analyzed and addressed on an individual basis.

**Comment 29: Suggested language change**

*HBA Colorado Springs*: Suggest "30 calendar days" be changed to "10 calendar days" to be consistent with 10 calendar days in Part II, L. 3. on Page 24.

**Response 29: Suggested language change**

No change has been made in response to this comment. The automatic transfer provisions, including the 30 day requirement, come directly from Regulation 61.8(6)(b).

**Section L.4**

**Comment 30:**

*Tri-state Generation and Transmission Association, Inc.*: "There are no monitoring reports required by CSGP. As noted in the general Part II comment, this language should be either qualified as not generally required or removed.

**Response 30:**

No change was made in response to this comment. This language is required and comes directly from the federal permit terms and conditions, and specifies "at intervals specified in this permit," which does not impose a new requirement to submit monitoring reports not already required in Part I of the permit.

**Section II.L.5**

**Comment 31:**

*HBA Colorado Springs*: Clarify what a compliance schedule is and when is it required.

*Tri-State Generation and Transmission Association*: There are no compliance schedules allowed under general permits, including the CSGP. As noted in the general Part II comment, this language should be either qualified as not generally required or removed.

**Response 31:**

No change was made in response to this comment. While compliance schedules are not incorporated in to the CSGP, this language is required and comes directly from the federal permit terms and condition. It does not impose a new compliance schedule not already required in Part I of the permit.

**Section II.L.6**

**Comment 32:**

*Colorado Oil and Gas Association*: Are these reporting requirements solely for POTWs? Construction/modification of POTWs?

*Strike 'may'; Strike effluent limitations and replace with condition*

**Response 32:**

No changes were made in response to this comment. This language is required and comes directly from the federal permit terms and conditions.

**Comment 33:**

*Xcel Energy: PSCo acknowledges that this is in the regulation however, this is impracticable and would not provide a benefit for water quality, public health and the environmental. In fact, this requirement for the Stormwater Construction Permit could result in more instances of non-compliance because permittees fail to submit the reports. Furthermore, annual reports would have to be printed as hard copies, signed by the permittee and submitted to the Division which would cause more of an environmental impact.*

*Many Permittees have multiple open permits for varying different timeframes. For example, PSCo currently has approximately 112 open permits. Some of these permits are open for a few months and some for several years. To have to submit 112 annual reports is a huge task. Not to mention the Division does not have the resources to review annual reports for every single construction project.*

*PSCo recommends following suite to what is in the 2017 Construction General Permit: CORRECTIVE ACTION REPORT*

*For each corrective action taken in accordance with this Part, you must complete a report in accordance with the following:*

*5.4.1 Within 24 hours of identifying the corrective action condition, document the specific condition and the date and time it was identified.*

*5.4.2 Within 24 hours of completing the corrective action (in accordance with the deadlines in Part 5.2), document the actions taken to address the condition, including whether any SWPPP modifications are required.*

*5.4.3 Each corrective action report must be signed in accordance with Appendix I, Part I.11 of this permit.*

*5.4.4 You must keep a copy of all corrective action reports at the site or at an easily accessible location, so that it can be made available at the time of an on-site inspection or upon request by EPA.*

*5.4.5 You must retain all corrective action reports completed for this Part for at least three (3) years from the date that your permit coverage expires or is terminated.*

**Response 33:**

No changes in the permit were made in response to this comment. This language is required and comes directly from the federal standard permit terms and conditions.



However, the division is providing guidance for permittees on noncompliance reporting under this permit and acknowledges that a strict interpretation of these requirements may result in burdensome reporting on both the permittee and the division.

### Section II.L.7.

#### Comment 34:

Colorado Mining Association: *"The requirements contained under Part II.L.5-7 are duplicative and overly burdensome. The requirements of a discharge permit can already include an overwhelming amount of recordkeeping and reporting. This already includes reporting noncompliances that may endanger health or the environment regardless of cause. There is no need to add another "all-inclusive" report that lists all noncompliances that occurred during the year. This is especially true for noncompliances that were already reported under the 24-hour (L.6) or compliance schedule (L.5) reporting requirements. For noncompliances that were not reported under the 24-hour or compliance schedule report, this means that the noncompliance did not endanger health or the environment. An additional annual report summarizing all noncompliances is a case of diminishing returns, adding yet another paperwork exercise that results in no benefit to health or the environment.*

Tri-state Generation and Transmission Association, Inc.: *There is no annual report required by the CSGP. The annual report for non-compliance references back to Part II.L.5. (see note above on non-applicable language) and Part II.L.6. (reporting required within 24 hours and written within 5 days, so documentation in an annual non-compliance report is duplicative). Therefore, it is unclear as to the mechanism or basis for this reporting.*

Colorado Oil and Gas Association: *"Annual reports would be a burdensome requirement for oil and gas operators. "Instances of non-compliance" is a broad topic and can be interpreted in various degrees. For example, a deficient control measure observed during an inspection, which has not resulted in a violation, may be considered an "instance of non-compliance" but was corrected immediately upon discovery or before the next scheduled inspection. Would these routine "instances of non-compliance" require an annual report."*

#### Response 34:

See previous responses for Part II.L.5-7.

## XVIII. Part II.M.

#### Comment 35:

City of Aurora: *Section E on p. 21, section J on p. 22, sections M and N on page 26 all include language associated with facility's individual discharge permits (Regulation 61), and should not apply to the general construction stormwater permit.*

Douglas County: Are these reporting requirements solely for POTWs?  
Construction/modification of POTWs?

Colorado Oil and Gas Association: Strike effluent limitation and replace with water quality standards.

**Response 35:**

No changes have been made in response to these comments. The language contained in Part II is standard boilerplate language based in large part on language contained in 40 CFR 122.41 that is required to be incorporated into all NPDES permits, including stormwater general permits. The division does not have the ability to deviate from this standard boilerplate language, as much of the federal language is required to be incorporated into all NPDES permits in accordance with the delegation of authority to administer the NPDES program from EPA. The use of this language in no way implements or changes the requirements in Part I of the permit.

**XIX. Part II.N.**

**Comment 36:**

City of Aurora: Section E on p. 21, section J on p. 22, sections M and N on page 26 all include language associated with facility's individual discharge permits (Regulation 61), and should not apply to the general construction stormwater permit.

Colorado Oil and Gas Association: Strike effluent limitations and replace with condition.

Strike effluent limitations and replace with permit condition.

**Response 36:**

No changes have been made in response to these comments. The language contained in Part II is standard boilerplate language based in large part on language contained in 40 CFR 122.41 that is required to be incorporated into all NPDES permits, including stormwater general permits. The division does not have the ability to deviate from this standard boilerplate language, as much of the federal language is required to be incorporated into all NPDES permits in accordance with the delegation of authority to administer the NPDES program from EPA. The use of this language in no way implements or changes the requirements in Part I of the permit.

**XX. Part II.O.**

**Comment 37:**

Colorado Oil and Gas Association: Strike last sentence.

**Response 37:**

No changes have been made in response to these comments. The language contained in Part II is standard boilerplate language based in large part on language contained in 40 CFR 122.41 that is required to be incorporated into all NPDES permits, including stormwater general permits. The division does not have the ability to deviate from this standard boilerplate language, as much of the federal language is required to be incorporated into all NPDES permits in accordance with the delegation of authority to administer the NPDES program from EPA. The use of this language in no way implements or changes the requirements in Part I of the permit.

**XXI. Part II.S.**

**Comment 38:**

Brian Deurloo/Christopher Tippie: Suggested addition: 2. Manage what we measure – the permittee is to provide the division with measurable and quantifiable pollution capture results.

Strike effluent limitations and replace with condition.

**Response 38:**

No changes have been made in response to this comment. The change suggested by the commenter would provide valuable information to the division, but a regulatory regime requiring quantification of measurable pollution capture results would be a new requirement not previously contemplated in the public notice drafts. A “duty to measure” would, in the division’s opinion, be a major and significant addition to the permit that is outside of the general terms and conditions contained in Part II and in 40 CFR 122.41.

**XXII. Part II.W.**

**Comment 39:**

Western Slope Colorado Oil and Gas Association: Why has the division gone to a tiered payment scale? Is the State anticipating further tiering?

**Response 39:**

Fee tiers are set by the Colorado Revised Statutes cited in this provision. Future fee changes are not known at this time. No changes have been made in response to this comment.

**XXIII. Part II.X.**

**Comment 40:**

Western Slope Colorado Oil and Gas Association: Is the permit renewal application a form the State will send out prior to the permit renewing or is this a form that will be available on the website for the Permit Holder to fill out and submit?

**Response 40:**

No changes have been made in response to this comment. Future permit applications will be submitted exclusively through the online CEOS system.