

COLORADO DISCHARGE PERMIT SYSTEM
MUNICIPAL STORMWATER DISCHARGE PERMIT

SUMMARY OF RATIONALE

CITY OF AURORA

PERMIT NO. COS-000003

PART	CONTENTS	PAGE
I.	Type of Permit	1
II.	Permittee Information	1
III.	Receiving Streams	2
IV.	Legal Authority to Control Discharge of Pollutants	2
V.	Terms and Conditions	2
VI.	Monitoring and Reporting	9
VII.	Response and Changes after Public Notice	9

I. TYPE OF PERMIT

This is a municipal stormwater discharge permit which authorizes the discharge of stormwater from the municipal separate storm sewer system (MS4) owned and operated by the City of Aurora (Aurora). The permit is intended to authorize discharges of stormwater even as jurisdictional boundaries change through the life of the permit.

II. PERMITTEE INFORMATION

A. Permit Type and Fee Category: Medium Municipal Separate Storm Sewer permit –Second renewal
Category 23, Subcategory 1 - Municipalities of 250,000 and over in population. Current fee: \$10,580 (see CRS 25-8-502 (P)).

B. Permit Contacts:

Legal:	Mark Pijfer Director, Aurora Water (303) 739-7370, mpijfer@auroragov.org
Administrative and Technical	Jill Piatt Kemper Senior Environmental Engineer, Aurora Water (303) 739-7390, jpiatt@auroragov.org
Mailing Address:	Aurora Water Department 15151 E. Alameda Parkway, Suite 3600 Aurora, CO 80012
Latitude:	39° 42' 00''
Longitude:	104° 47' 00''

ISSUED JANUARY 30, 2009

EFFECTIVE MARCH 1, 2009

EXPIRATION DATE FEBRUARY 28, 2014

III. RECEIVING STREAMS

Aurora contributes municipal stormwater runoff to state waters in the South Platte River watershed. See Part I.K of the permit for a definition of state waters.

Three of the segments to which Aurora discharges are on the Division's 303(d) list, meaning that as of the effective date of the 303(d) list (April 30, 2008) at least one of their classified uses was impaired, based on one or more parameters.

For Cherry Creek Reservoir, the equivalent of a TMDL has already been developed, and is codified in the Cherry Creek Reservoir Control Regulation (5 CCR 1002-72). The control regulation includes a section that lists specific requirements for public education and outreach, construction sites, and post-construction controls for new development and redevelopment. These additional requirements are included in the permit, either directly, or incorporated by reference.

IV. LEGAL AUTHORITY TO CONTROL DISCHARGE OF POLLUTANTS

Aurora, as a permittee, is responsible for compliance with this permit and must have the authority to implement the conditions contained in the permit. The permit application regulations require that the applicant demonstrate that they have adequate legal authority to control the contributions of pollutants in stormwater discharges to its MS4 in several specific areas. Aurora has indicated in the Part 2 application that the City has adequate legal authority. See Part I.B.2 of the permit.

V. TERMS AND CONDITIONS

The narrative requirements in the permit are for the permittee to reduce the discharge of pollutants from its MS4 to the maximum extent practicable, to protect water quality standards, and to satisfy the appropriate water quality requirements of the Colorado Water Quality Control Act (25-8-101 et seq., C.R.S.) and the Colorado Discharge Permit Regulations (61.0) through the development and implementation of a CDPS Stormwater Management Program. Implementation of the CDPS Stormwater Management Program involves implementation of a suite of Best Management Practices (BMPs) to reduce the discharge of pollutants from the MS4. "Maximum extent practicable" (MEP) is the standard that establishes the level of pollutant reductions that operators of regulated MS4s must achieve through implementation of BMPs included in their CDPS Stormwater Management Program.

The Division has made a determination that discharges from the MS4 authorized by this permit have the reasonable potential to result in exceedance of a Water Quality Standard. The Division has also determined that the practice-based effluent limits in the permit (i.e., implementation of a CDPS Stormwater Management Program) are adequate to protect Water Quality Standards resulting from discharges authorized by this permit. If additional information becomes available that indicates that this permit is not protective of Water Quality Standards, modifications of the permit requirements to be protective of those standards shall occur in accordance with Part I.B.4 or II.C of the permit. Requirements to protect water quality standards may exceed those set by the MEP standard discussed above. Likewise, implementation of the CDPS Stormwater Management Program to the MEP may result in reduction of pollutants in excess of that necessary to protect water quality standards. Implementation of a CDPS Stormwater Management Program in accordance with Part I.B of the permit will constitute compliance with MEP.

The Division has intentionally not provided a precise definition of MEP, in order to allow maximum flexibility in MS4 permitting. The permittee needs the flexibility to optimize reductions in stormwater pollutants on a location-by-location basis.

Based on EPA's discussion in the preamble of the federal Phase II regulation, the Division envisions application of the MEP standard as an iterative process. The standard of MEP should be applied to permit requirements that adapt to current conditions and BMP effectiveness, and must protect water quality and satisfy the appropriate water quality requirements of the Colorado Water Quality Control Act (25-8-101 et seq., C.R.S.) and the Colorado Discharge Permit Regulations (61.0). Successive iterations of the mix of BMPs will be driven by this objective. If, after implementing the Stormwater

V. TERMS AND CONDITIONS (cont.)

Management Program, there is still water quality impairment associated with discharges from the MS4, the permittee will need to expand or better tailor its BMPs within the scope of the program areas, as per the standard of MEP. This process may involve more than one permit term.

For requirements specific to discharges within the Cherry Creek Reservoir drainage basin, the schedule format used throughout the permit is changed. The requirements are based on the Cherry Creek Reservoir control regulation, and are highly prescriptive. Therefore, Division approval of those program elements is not required prior to implementation. (The Division retains the right to review the program elements, as per Part II.A.7 of the permit.)

A. Stormwater Management Program Requirements

The first permit required Aurora to implement system-wide management programs to control stormwater pollution for the municipality. Some elements of these programs were already in place, while some had to be developed. Aurora submitted the specified management programs as required in the compliance schedule in the previous two permits. The programs are, in general, incorporated into the permit as written and supplemented.

Subsequent permit terms are used in part to review existing programs, and determine whether or not the programs should be enhanced, changed or expanded. Based on proposals by the permittee, internal review, and the Phase II regulations (see discussion below), the Division has included additional requirements in the programs. See the initial rationale, dated April 15, 1996, and Part I.B.1 of the permit, for a description of the basic programs. Changes and additions to the programs for this permit term are described below.

Aurora is in Phase I of the Federal and State stormwater regulations, which address municipalities with populations over 100,000. Since Aurora's original permit was issued, Phase II was promulgated, which requires many smaller MS4 operators to obtain permit coverage. The Phase II regulation includes minimum requirements for a stormwater discharge control program determined by the Division and EPA to be necessary to meet the regulatory standard of maximum extent practicable (MEP) for small MS4s. It is the State and EPA's intention that the various elements of the stormwater management programs for the Phase I municipalities (i.e., medium and large MS4s) be at least equal to those required for the Phase II municipalities (although the Phase I municipalities also have requirements for industrial sites and wet weather monitoring). By including requirements in this permit that are consistent with the minimum program requirements from the Phase II regulations, the Division is including the most recent regulatory interpretation of the MEP standard.

The statewide Phase II MS4 general permit was renewed in early 2008, and included several changes. In keeping with the regulatory intent, and to provide consistency in the Division's administration of the MS4 program, similar changes and additions will be required in Aurora's programs as well. The compliance schedules for these items will generally be based on the schedules included in the statewide MS4 general permit. The compliance schedules can be found at Part I.E of the permit.

Part of Aurora is in the Cherry Creek Reservoir drainage basin. All dischargers to this basin are subject to Regulation 72 - Cherry Creek Reservoir Control. This regulation mandates additional controls on stormwater discharges for phosphorus. As part of Phase II, operators of MS4s that drain into the reservoir basin are required to obtain permit coverage for their discharges. This permit coverage contains additional mandatory Best Management Practices (BMPs), mostly related to phosphorus control in the construction, post-construction, and public education programs. Aurora's permit incorporates these provisions, applicable only to the areas in the city that drain into the basin.

1. Commercial/Residential Management Program

A management program is required addressing commercial and residential areas, to reduce the discharge of pollutants to the MS4. Part I.B.1.a of the permit contains more detail about each program area.

a. Maintenance of Structural Controls. No program changes required.

V. TERMS AND CONDITIONS (cont.)

- b. **New Development Planning Procedures.** *The requirements of this section were reworded, but except where specifically discussed in item (1), below, no new requirements were added to those in Aurora's previous permit.*

- 1) *Part I.B.1(a)(2)(f) of the permit was added to require tracking of the location and adequacy of post-construction BMPs.*

In keeping with the Cherry Creek Reservoir Control Regulation (5 CCR 1002-72), for those parts of the City that drain into the Cherry Creek Reservoir drainage basin, the permittee must continue to implement the Post-Construction requirements of both the Cherry Creek Reservoir Control Regulation and the Colorado Discharge Permit Regulations (61.0) referenced in Part I.B.1.a(2)

- c. **Assess Impacts of Flood Management Projects.** *After evaluation, Aurora has determined that two existing structural flood control devices should be retrofitted to provide additional pollutant removal from stormwater. They are the Upland Pond and the 6th Avenue Pond. The permit will require Aurora to complete these improvements by the specified deadlines.*

The Annual Report requirements for this program area were clarified.

2. **Illicit Discharges Management Program**

This permit requires an effective detection and removal program for illicit or improper discharges. Part I.B.1.b of the permit contains more detail about each program area.

a. **Prevention of Illicit Discharges and Improper Disposal.**

The requirements of this section were reworded, but except where specifically discussed in items (1) through (3), below, no new requirements were added to those in Aurora's previous permit. A deadline is included for any changes that need to be made by the permittee to fully comply with this section.

- 1) *Part I.B.1.b(1)(d) of the permit was added to clarify that discharges specifically authorized by a separate CDPS permit and discharges resulting from emergency fire fighting activities do not need to be prohibited.*

Note that although excluded from the requirements of the Illicit Discharges Management Program, discharges authorized by a separate CDPS permit and their associated activities may still need to be addressed under other Stormwater Management Program requirements (e.g., requirements for the Construction Sites program to address non-stormwater discharges).

- 2) *Part I.B.1.b(1)(b) of the permit continues to include a list of discharges that the permittee is not required to prohibit from entering the MS4. Although the permit does not require the permittee to prohibit these discharges, the permit does not authorize these discharges.*

Part I.B.1.b(1)(c) of the permit was added to authorize the permittee to exclude additional specific incidental non-stormwater discharges from being considered illicit discharges that must be prohibited from entering the MS4. Although the permit does not require the permittee to prohibit these discharges, the permit does not authorize these discharges.

- 3) *Some discharges that the permittee was not required to prohibit from entering the MS4 under the conditions of the previous permit term are no longer automatically allowed in this permit term. The permittee may no longer allow municipally-owned swimming pool discharges, water from street washing (including side walks and medians) that is conducted by city staff or contractors, and street wash water associated with construction activities, to be discharged to the MS4, unless*

V. TERMS AND CONDITIONS (cont.)

otherwise allowed by a separate CPDS permit, or in accordance with one of the permit conditions discussed in subparagraph (2), above.

- b. **Ongoing Field Screening, Investigation of Suspected Illicit Discharges.** *The two sections were merged, and the language changed, Except where specifically discussed in items (1) and (2), below, no new requirements were added to those in Aurora's previous permit.*
- 1) *A requirement was added in Part I.B.1(b)(2)(a) of the permit, for the permittee's storm sewer system inventory to include identification of state waters that receive discharges from the MS4.*
 - 2) *A requirement was added in Part I.B.1(b)(2)(b) of the permit that the permittee's procedures for detection and elimination be documented.*
 - 3) *A requirement was added to Part I.B.1(b)(2)(d) of the permit that the permittee must maintain records of illicit discharges and response.*
- c. **Procedures to Prevent Contain and Respond to Spills.** *No program changes required.*
- d. **Public Reporting of Illicit Discharges.** *No program changes required.*
- e. **Public Education - Proper Management and Disposal of Pollutants.** *The requirements of this section were reworded, but no new requirements were added to those in Aurora's previous permit.*

Part I.B.1(b)(5) of the permit has been clarified to require that the education program must promote behavior change by the public to reduce water quality impacts associated with pollutants in stormwater runoff and illicit discharges. This is not a new requirement, but clarifies requirements that were also in the previous permit. It is not acceptable for a permittee to implement a program that disseminates information without an overall goal to promote the changes in behavior that would meet the goal of protecting water quality. This program area must be reviewed for compliance and effectiveness. A deadline is included for any program updates needed for the permittee to fully comply with section I.B.1(b)(5).

A requirement to educate the public on stormwater quality issues associated with pesticides, herbicides, and fertilizers was added to this section. This requirement was previously under the Pesticide, Herbicide, and Fertilizer Application section of the previous permit.

In keeping with the Cherry Creek Reservoir Control Regulation (5 CCR 1002-72), a section is included with additional provisions for those parts of the City that drain into the Cherry Creek Reservoir drainage basin.

- f. **Household Hazardous Waste and Motor Vehicle Fluid Collection.** *No program changes required.*
- g. **Control of Sanitary Sewer Seepage into the Municipal Storm Sewer System.** *No program changes required.*
3. **Industrial Facilities Program**
No program changes required.
4. **Construction Sites Program**

The permit requires a Construction Sites Program to reduce the discharge of pollutants from construction sites, including updating of codes and regulations, Best Management Practices guidance, site inspection

V. TERMS AND CONDITIONS (cont.)

and enforcement procedures, and training and education of construction site operators. Part I.B.1.d of the permit contains more detail about each program area.

- a. **Procedures for Site Planning.** Part I.B.1.d.1.a. of the permit was revised to clarify that nonstormwater discharges associated with construction activity (such as wash water or construction dewatering) must be addressed when they have the potential to discharge pollutants from a construction site. This requirement applies even if the discharge is authorized by a separate CDPS discharge permit.

In keeping with the Cherry Creek Reservoir Control Regulation (5 CCR 1002-72), a section is included with additional provisions for those parts of the City that drain into the Cherry Creek Reservoir drainage basin.

- b. **Structural and Non-Structural Best Management Practices.** No program changes required, beyond those needed to fully implement the changes under Procedures for Site Planning.

In keeping with the Cherry Creek Reservoir Control Regulation (5 CCR 1002-72), a section is included with additional provisions for those parts of the City that drain into the Cherry Creek Reservoir drainage basin.

- c. **Procedures for Site Inspection and Enforcement.** Part I.B.1.d.3.c of the permit was amended to clarify that written procedures must include specific processes and sanctions to minimize the occurrence of, and obtain compliance from, chronic and recalcitrant violators of control measures.

- d. **Training and Education for Construction Site Operators.** The requirements of this section were reworded, but no new requirements were added to those in Aurora's previous permit.

5. Pollution Prevention/Good Housekeeping for Municipal Operations

The Pollution Prevention/Good Housekeeping for Municipal Operations requirements are broken into two main subsections: "Municipal Facility Runoff Control Plans" and "Operations and Maintenance Procedures."

The "Municipal Facility Runoff Control Plans" (MFRCPs) section has been reworded, but no new requirements have been added relative to MFRCPs. Some additional flexibility has been allowed by removing the distinction between major and minor facilities, and the requirements for some operations have been removed and added to the "Operations and Maintenance Procedures" section. The permittee may retain its existing major and minor categorization and does not have to regroup or recategorize its municipal facilities and operations to meet the requirements of Part I.B.1.e(2).

The "Operations and Maintenance Procedures" section contains some new requirements, as well as requirements that were in the previous permit's "Public Streets Maintenance" and "Pesticide, Herbicide, and Fertilizer Application" sections. Requirements from the previous permit have been reworded and, in some cases, are less prescriptive concerning the specific program elements used to control sources. This measure's emphasis on proper O&M and employee training, as opposed to requiring the permittee to undertake major new activities, is meant to ensure that municipal activities are performed efficiently to minimize contamination of storm water discharges.

The requirements in this section to control pollutant sources associated with the permittee's facilities and operations differ significantly from those in the "Municipal Facility Runoff Control Plans" section. In general, operations and facilities covered under the "Operations and Maintenance Procedures" section do not require plans that specifically address each applicable facility/operation. Instead, the permittee must document the processes implemented for pollution prevention and good housekeeping. The documented processes can be specific to certain facilities/operations, or be more general in addressing activities associated with multiple facilities/operations. Examples include inserting water quality practices into

V. TERMS AND CONDITIONS (cont.)

existing operating procedures, developing training plans, or having specific environmental management procedures in place. The permittee is encouraged to integrate the pollution prevention and good housekeeping practices into existing processes when possible, to facilitate adoption of the practices as "business as usual".

All of the new requirements that were added to those in Aurora's previous permit are addressed in items (a) and (b), below.

In addition to the new requirements listed below, the language was also clarified in several areas to emphasize the importance of employee training. This is not a new requirement, but clarifies requirements that were also in the previous permit.

- a) A requirement was added to develop and maintain a list of industrial facilities the permittee owns or operates, and that are subject to separate coverage under the State's general stormwater permits for discharges of stormwater associated with industrial activity. Because alternative CDPS permitting requirements are in place for stormwater discharges authorized by these separate permits, the requirements of Parts I.B.1.e(2) and (3) of this permit do not apply to those discharges.

A deadline is included for any changes that need to be made by the permittee to fully comply with this permit section, I.B.1.e(1).

- b) Requirements were added to develop, document and implement procedures to prevent or reduce pollutants in runoff from municipal operations and facilities. Some of these operations and facilities were previously addressed by requirements of the previous permit and some potentially impose new requirements, as described below. Where an MFRCP already addresses an operation/facility, the permittee may continue to use that plan to meet the new permit requirements or develop revised procedures. Requirements for several new facilities and operations have been added to address the potential for water quality impacts to state waters.
- **Streets, Roads, Highways, Municipal Parking Lots:**
These sources were addressed under Part I.B.1.a.3 (Public Street Maintenance) of the previous permit. Procedures developed and implemented in compliance with that section of the previous permit meet the requirements of this new permit section for these facilities.
 - **Maintenance and Storage Yards, Maintenance Shops with Outdoor Storage Areas:**
The requirement to develop and implement procedures for these facilities is new in this permit, unless covered under an MFRCP, as described above.
 - **Snow Dumps/Snow Disposal Areas**
These sources were addressed under Part I.B.1.e (Municipal Facility Runoff Control Program) of the previous permit. Procedures developed and implemented in compliance with that section of the previous permit would meet the requirements of this new permit section for these facilities.
 - **Park and Open Space Maintenance**
The requirement to develop and implement procedures for these operations is new in this permit, unless covered under an MFRCP, as described above.
 - **Building Maintenance**
The requirement to develop and implement procedures for these operations is new in this permit, unless covered under an MFRCP, as described above.
 - **New Construction of Municipal Facilities**
The requirement to develop and implement procedures for these operations is new in this permit, unless covered under an MFRCP, as described above.
 - **Application of Pesticides, Herbicides, and Fertilizers.**
These sources were addressed under Part I.B.1.a.5 (Pesticide, Herbicide, and Fertilizer Application) of the previous permit. Procedures developed and implemented in compliance with that section of the previous permit meet the requirements of this new permit section for these operations
 - **Large Outdoor Festivals and Events**

The requirement to develop and implement procedures for these operations is new in this permit, unless covered under an MFRCP, as described above. This includes events/festivals conducted by the permittee or at permittee facilities, such as parks or streets.

A deadline is included for any changes that need to be made by the permittee to fully comply with this permit section, I.B.1.e(3).

B. Total Maximum Daily Load (TMDLs)

Part I.B.4 of the permit has been added to address options for when a TMDL has been approved for any waterbody into which the permittee discharges, and when discharges requiring controls under this permit certification have been assigned a pollutant-specific WLA under the TMDL.

C. Program Review and Modifications

Provisions are included in the permit for program review and modification, as well as for review and approval of plans and reports. See Part I.C. of the permit.

VI. MONITORING AND REPORTING REQUIREMENTS

The Division has included several monitoring and reporting requirements as provisions in this permit. Wet weather monitoring will continue to characterize the quality of stormwater discharged from the Aurora MS4. Annual reporting will track the progress of individual components of the Stormwater Management Program.

It is the Division's intent to use information gathered during the permit term to evaluate trends in the reduction of pollutant discharges to waters of the state. The information will also be used to prioritize areas of the program and to assess the effectiveness of program components. Over the long term (several permit terms), monitoring and reporting data may indicate trends in receiving water quality impacts from stormwater.

A. Wet Weather Monitoring Requirements

The federal regulations that direct the national discharge permitting program require monitoring in permits to assure compliance with permit limits [40 CFR 122.44 (i)]. While the regulations specifically list factors that relate to numerical effluent limits, the regulations allow for other measurements to be used as appropriate [40 CFR 122.44 (i) (1) (iii)]. The Division has included wet weather monitoring as a permit requirement in order to gauge the quality and impacts of stormwater discharges leaving the Aurora MS4.

The stormwater permit application regulations [5 CCR 1002-61, Section 61.4(3)(c)(ii)(C)(IV)] include a requirement that the applicant propose a comprehensive monitoring program in order to gauge the quality and impacts of stormwater discharges in state waters. During the previous two permit terms, Aurora participated in a metropolitan area in-stream wet weather monitoring program, coordinated by the UDFCD. Aurora proposes to continue this participation. This arrangement is acceptable to the Division.

The wet weather monitoring requirements are in Part I.D. of the permit.

B. Annual Reporting Requirement

Aurora will prepare an annual system-wide report. The objective of the report is to summarize the progress Aurora has made in implementing the conditions of the permit. Specific requirements for the Annual Report are discussed in Part I.F. of the permit.

VI. MONITORING AND REPORTING REQUIREMENTS (cont.)**C. Compliance Schedule**

Some of the permit requirements are not effective immediately. A compliance schedule is included in Part I.E. of the permit which consolidates the information regarding the compliance dates for requirements that are discussed elsewhere in the permit.

D. Upset, Noncompliance Provisions

As required by the Colorado Discharge Permit Regulations (61.0), the standard permit language regarding upset provisions and non-compliance notification has been added to Part II.A.5, and Part II.B1, respectively.

*Kathryn Dolan
Nathan Moore
July 18, 2008*

VII. RESPONSE AND CHANGES AFTER PUBLIC NOTICE

Several written comments were received during the public notice period. Comments and changes to the permit are addressed below, except for minor change and comments that were made for clarification. Changes to the permit and rationale based on comments and additional internal review are discussed in subsection A, below. Response to comments for which changes were not made is addressed in subsection B, below.

A. Permit Changes After Public Notice

- 1. Several references in the permit that required action by specific departments/work groups within the permittee's organization were removed to allow for operational flexibility.*
- 2. Discussion of potential permitting requirements in response to future TMDLS have been removed from the permit and rationale since they are not applicable to the current permit requirements. The identification of water bodies within the permitted area currently on the Division's 303(d) but for which a TMDL has not been developed at the time of permit issuance was kept in Part III of the rationale. Consideration of water quality impairments is required when developing permit requirements that are protective of stream standards.*
- 3. A statement was added to Part V.A.5 of the rationale clarifying that the permittee may retain its use of the "minor" and "major" categories for municipal facilities.*
- 4. Language was removed from Part I.A.2 of the permit that provided guidance on what discharges were not authorized under the permit and could therefore require separate CDPS permit coverage. The information was guidance, and not appropriate for inclusion in the permit. The topic is instead addressed in Part V.A.2(a)(2) of the rationale.*
- 5. The requirements in Part I.B.1a(2)(a) of the permit include the option to address runoff from new development and redevelopment projects by either implementing pollutant removal BMPs, following low impact development practices, or a combination of the two. This section of the permit has been edited to clarify the requirement.*
- 6. Part I.B.1.a(2)(f) of the permit was revised to clarify requirements for assessing BMPs.*
- 7. Part I.B.1.a(3) of the permit was revised to clarify which reviews need to be addressed and that the Annual Report only needs to indicate if water quality improvements were incorporated.*

VII. RESPONSE AND CHANGES AFTER PUBLIC NOTICE (cont.)

8. *Part I.B.1.b(1)(c) of the permit was revised to require that additions or modifications to the list of occasional and/or incidental non-stormwater discharges be approved in accordance with Part I.C.3 of the permit.*
9. *Revisions were made to Part I.B.1.b(2)(a) of the permit to clarify requirements for ongoing revisions to the outfall map and associated field observations of discharges.*
10. *The requirement in Part I.B.1.b(2) of the permit to implement a plan for "removing" a source of a discharge has been changed to "elimination of" the source. This language clarifies that the intent of the permit requirement is to stop the source from resulting in future discharges. The permit requires that the plan be developed and implemented, however, the requirement does not automatically result in non-compliance if a source cannot be found and eliminated.*
11. *Part I.B.1.d(1)(a) of the permit was revised to clarify that the permittee is responsible for requiring BMPs to be implemented to control the discharges of pollutants associated with waste and nonstormwater discharges at construction sites. This requirement is consistent with the previous permit that required the program to address all discharges of pollutants from construction sites, not just those associated with stormwater runoff. The requirement applies to discharge covered by separate CDPS discharge permits, such as permits for construction dewatering or potable water sources.*
12. *Part I.B.1.e(2)(f) of the permit was revised to require that MFRCs be implemented when operations begin, and not before. Potential overlap exists between construction activities and operation activities for new facilities. Applicable facilities must have their MFRCs completed prior to facility becoming operational and implemented at the time they begin operations. MFRCs must identify those pollution sources present, and be revised as necessary when conditions change, such as completion of additional portions of a facility following initial operations.*
13. *Part I.B.1.e of the permit has been revised to clarify that new requirements are included only in subsections (1) and (3). Part V.A.5(b) of the rationale was revised to provide further guidance on what new facilities and operations the permittee may need to develop procedures to comply with subsection (3). Part V.A.5(b) of the rationale also addresses where requirements included in alternative sections of the previous permit have been replaced with requirements under Part I.B.1.e of the permit. The permittee will have to review its current activities, operations, and procedures to determine what, if any, new procedures must be developed.*
14. *Part I.B.4 of the permit has been revised to clarify the process for which revisions to the permit could occur to address requirements of a TMDL. This section imposes no specific requirements but has been included to allow for clarity on this important aspect of the permitting program.*
15. *Definitions in Part I.K of the permit were revised for the terms "Discharge" and "State Waters" to be consistent with state regulations. The term "Significant Materials" is not used in the permit, and therefore the definition was removed.*
16. *The requirement in Part I.F.4 of the permit to list inspections and enforcement actions in the Annual Report has been removed. A summary remains required by Part I.F.8*
17. *Part II.D.4 of the permit was revised to use terms more consistent with other requirements in the permit.*
18. *Part I.B.1.e(1) of the permit was revised to clarify that the permittee is not required to meet the requirements in Parts Part I.B.1.e(2) and (3) for preventing or reducing pollutants in runoff from municipal operations for stormwater discharges authorized by these separate CDPS industrial stormwater permits.*
19. *The requirement to address sites used for temporary storage of sweeper tailings or other waste piles was removed from Part I.B.1.e(2)(a). This potential pollution source is addressed in Part I.B.e.(4) of the permit.*

20. Language was added to Part I.B.1.b(5) to clarify that the permittee must review the education plan for compliance and effectiveness and update as necessary.
21. Language was added to Part I.B.1.a(2) of the permit requiring specific consideration of industrial and commercial land uses as part of the New Development Planning Procedures. This language was added to clarify the permit expectations that BMP requirements be appropriate for the land use being addressed.
22. A reference to Sanitary Sewer Overflows was added to Part I.B.1.b(2) of the permit to clarify that discharges from this source are included in the definition of illicit discharges and must be fully addressed by the permittee's programs implemented under that section.
23. "Large outdoor festivals and events" were added to the examples of activities that the permittee must address with its Operations and Maintenance Procedures in Part I.B.1.b. The permittee's program must address pollutant sources associated with large outdoor festivals and events, such as dumping of waste and litter clean-up. These sources have the potential to provide a significant pollutant loading to runoff from the MS4 if not properly managed.
24. A requirement was added to Part I.B.1.b(2)(d) to require that a record be maintained by the permittee of all reported illicit discharges and the permittee's response.
25. Part I.B.1.e(3) was revised to require the listed facilities and activities to be covered by the requirements of that section.
26. Part I.B.1.c was revised to clarify requirements for addressing stormwater runoff from industrial facilities having a negative water quality impact on the discharge from the MS4. The permit modification does not require additional authority be developed or implemented by the permittee beyond that by Part I.B.2.a of this permit, and the previous two permit terms.

B. Response to Additional Public Comments

1. *Comment: The permittee requested that the discussion in Part VI of the rationale that address requirements to meet water quality standards be removed from the permit because they do not relate to current permit requirements.*

Response: The discussion of water quality standards in the permit rationale provides important information for stakeholders in understanding how the permit relates to the regulatory requirement to issue permits that are protective of those standards.

2. *Comment: The permittee requested that the Rationale state that compliance with Part I.B of the permit constitutes compliance with the Colorado Water Quality Control Act.*

Response: The proposed statement is not accurate. The Colorado Water Quality Control Act includes requirements exceeding those addressed by Part I.B of the permit.

3. *Comment: The permittee requested the discussion in Part V of the rationale be revised to state that the permit requirement intended to "satisfy the appropriate water quality requirements of the Colorado Water Quality Control Act (25-8-101 et seq., C.R.S.) and the Colorado Discharge Permit Regulations (61.0)" only apply to the "maximum extent practicable."*

Response: Regulation 61 requires CDPS permits to fully satisfy the water quality requirements of the Colorado Water Quality Control Act (25-8-101 et seq., C.R.S.) and the Colorado Discharge Permit Regulations (61.0).

VII. RESPONSE AND CHANGES AFTER PUBLIC NOTICE (cont.)

4. *Comment: The permittee requested that authorization in the permit for discharges from emergency firefighting activities not be limited to emergencies.*

Response: The permit limits the authorization for discharges from firefighting activities to emergencies. It is the Division's determination that this is consistent with the intent of State and Federal regulations. The operator of the non-emergency firefighting operations may submit separate application for coverage for these discharges under an individual permit for which appropriate effluent limits will be developed by the Division.

5. *Comment: The permittee proposed edits to Part I.B.1.d(1)(a) of the permit that would have removed specific reference to some stormwater pollutant sources in the permit, including construction site wastes and materials.*

Response: The references to construction site wastes and materials were kept in this section to clarify that BMPs must be implemented to control the discharge of pollutants associated with these sources.

6. *Comment: The permittee commented that the requirements in Part I.B.1.d(3) of the permit should be revised to not require that a program be in place to "ensure" compliance at construction sites. The permittee stated that a requirement to ensure compliance is unreasonable and the permittee should only be required to implement a program "designed to achieve" compliance or "insure" compliance through the use of letters of credit or deposits that provide insurance of implementation.*

Response: The permittee must have a program that allows it to ensure the conditions at construction sites meet the permittee's requirements. This requirement is consistent with language in Regulation No.61, part 61.8(11)(a)(ii)(D)(II)(a)-(f). The Division has determined that it is appropriate and necessary for this permit to reflect the requirements listed in that section of the regulation (see paragraph 3 in Part V.A of the rationale). The permit was clarified to indicate that enforcement is only required to the extent allowable under State or local law.

The permit contains practice based effluent limits for which the Division has determined implementation of the required practices will meet the regulatory requirements for protection of water quality. A permit condition that only requires a program to be designed to obtain a result but does not require a result does not meet the intent of the regulatory requirements for effluent limits. The program can allow for escalation of enforcement response to obtain compliance. The permit does not require that conditions at sites are at all times in full conformity with the program requirements, as long as compliance can be achieved through escalation and that chronic and recalcitrant violators are addressed. The alternative language proposed by the permittee would not allow for the permit to be enforceable if the permittee failed to escalate its response to noncompliance as necessary to end conditions with potential to impact State Waters. It is the Division's determination that it is a reasonable expectation that the permittee be required to escalate responses until compliant conditions can be achieved.

This permit condition is developed in accordance with the regulatory standard that the permit contain requirements to reduce the discharge of pollutants to the maximum extent practicable (MEP). In determining if a permittee has complied with the permit condition, the Division may consider such factors as the adequacy of the permittee's overall Construction Sites program, its ability to require that the necessary actions be performed by the responsible parties, how the permittee has carried out the Construction Sites program, and the permittee's ability to provide appropriate mechanisms to ensure compliance. It is expected that the permittee has adopted or will put into place procedures, ordinances or other regulatory mechanisms that will require, to the extent allowed by State and local law, that BMPs be appropriately designed and planned, and provide for enforceable operation and maintenance by the owner/operator. Factors such as the extent of the inspection system, and the procedures in place and implemented for instances when BMPs are not operated and/or maintained, can be evaluated by the State to determine if the permittee's program meets the permit requirement.

VII. RESPONSE AND CHANGES AFTER PUBLIC NOTICE (cont.)

7. *Comment: The permittee requested that an overall compliance schedule due date be added to the permit for program revisions required by the permit for which a specific due date is not identified.*

Response: The permit provides deadlines for all new requirements for which a compliance schedule has been determined necessary. An overall deadline that does not specifically identify the associated requirements is not needed and would potentially add ambiguity to the permit.

8. *Comment: The permittee commented that the phraseology of Part II.A.3 of the permit is inconsistent with the requirements of the stormwater program.*

Response: The permit requires the permittee to implement a CDPS Stormwater Management Program that includes facilities and system for treatment and control installed or used by the permittee to achieve compliance with the conditions of this permit. All requirements of the permit to remove pollutants from water comprise treatment. All requirements of the permit to prevent or reduce pollution of water comprise "control". This requirement to properly operate and maintain these facilities and systems is fundamental to implementation and in no way conflicts with BMP requirements in the permit, or the requirement that the CDPS Stormwater Management Program is required to be designed to reduce the discharge of pollutants from the MS4 to the "maximum extent practicable" (MEP).

9. *Comment: The permittee requested that Parts II.A.5 and II.B.1(a) of the permit be removed. The permittee commented that these requirements are inconsistent with the requirements of the stormwater program.*

Response: Regulation 61.8 requires that the conditions included in Part II.A.5 and Part II.B.1(a) be included in all CDPS discharge permits. Although some of language in these sections uses terms typically associated with wastewater treatment plants, the conditions are not inconsistent with the requirements of stormwater discharge permits. The permittee provided comments specifically questioning the appropriateness of references to effluent limits in the permit. As discussed in Part V of the rationale, the required practices included in this permit, including the requirement to implement a CDPS Stormwater Management Program, are practice-based effluent limits required in place of numeric effluent limits. The requirement to implement a Stormwater Management Program is consistent with the definition of "effluent limitation" because it includes "restrictions and prohibitions" in the form of requirements to implement certain programs and BMPs. The programs and BMPs required by the permit are explicitly to reduce or prevent the discharge of quantities, rates, and concentrations of pollutants to State Waters. Regulation 61.8(3)(r) recognizes that best management practices can be substituted for numeric effluent limits when numeric are infeasible, or "when the [best management] practices are reasonably necessary to achieve effluent limitations and standards." The permittee commented that the requirements of Regulation 62 do not apply to stormwater discharges. However, the requirements in the permit are based on Regulation 61, not Regulation 62.

10. *Comment: The federal Environmental Protection Agency (EPA) provided a comment requesting that the Stormwater Management Program developed in accordance with this permit be made available for public comment.*

Response: Upon issuance of the permit, the Division will provide public notice on the Division website (<http://www.cdph.e.state.co.us/wq/PermitsUnit>) with procedures for public review of the Stormwater Management Program.

11. *Comment: The EPA provided a comment expressing concern with the similarity between MS4 permits issued to the City of Lakewood, the City of Aurora, and the City and County of Denver.*

Response: The three municipalities are located within the same watershed and have similar pollutant sources and water quality concerns. The Division has assessed the permitting needs for each municipality independently, but determined similar permit requirements are appropriate for all three.

VII. RESPONSE AND CHANGES AFTER PUBLIC NOTICE (cont.)

12. *Comment: The EPA provided a comment that the Maintenance of Structural Controls (Part I.B.1.a(1) of the permit) requirements do not contain enforceable conditions for maintenance frequency or criteria.*

Response: This section of the permit addresses structural controls designed for drainage, and not those specifically incorporating water quality control elements, as required by Part I.B.1.a(2). The permit requires periodic maintenance activities to reduce pollutants but does not set specific criteria or schedules. More prescriptive requirements have not been determined necessary to protect water quality from these sources. If it is determined that maintenance of the structural control addressed by Part I.B.1.a(1) of the permit is not adequate to prevent water quality impacts, the permit will be modified in accordance with Part II.C of the permit.

13. *Comment: The EPA provided a comment that the New Development Planning Procedures (Part I.B.1.a(1) of the permit) do not contain specific design standards for structural and/or non-structural BMPs.*

Response: Design standards for implementing controls to prevent or minimize water quality impacts from new development and redevelopment projects can be complex and difficult to incorporate into permit requirements while providing adequate flexibility to allow for effective and efficient implementation of the program. The Division acknowledges that specific standards directly incorporated into the permit would provide clearer and in some cases more enforceable requirements. However, at this time, the appropriate standards have not been developed that would allow for this approach. The permit therefore requires that these standards be incorporated into programs approved by the Division.

14. *Comment: The EPA provided a comment that the permit should be revised to specifically reference ordinances or other regulatory mechanisms that the permittee has implemented to meet the requirements of the permit.*

Response: Ordinances and regulatory mechanisms are referenced in reports submitted by the permittee to the Division. Incorporation of these references in the permit is not necessary for the permits to be enforceable and could provide an administrative burden on the Division to address minor modifications to ordinances by the permittee that in many cases would not be relevant to the permit conditions.

15. *Comment: The EPA provided a comment that the tracking system required by Part I.B.1.a(2)(f) of the permit should be revised to require additional specifications on BMPs.*

Response: Conditions in Part I.B.1.a(2) of the permit require procedures for long-term operation and maintenance of BMPs and determining whether the BMPs are constructed and operating consistent with their original design. Additional specifics on what information is required to be tracked by the permittee to meet this requirement are not necessary to enforce compliance with these conditions.

16. *Comment: The EPA provided a comment recommending several specific elements be added to require field screening as part of the Illicit Discharge Detection and Elimination program.*

Response: Field screening for illicit discharges when not done to address a specific concern has not proven to be an effective ongoing program element for this permit. The requirement for general field screening has been replaced with a requirement to train field staff in ongoing observation and response to illicit discharges.

17. *Comment: The EPA provided a comment recommending additional prescriptive requirements in the permit for staff training and illicit discharge response.*

Response: Conditions in Part I.B.1.b(2) of the permit includes requirements for staff training and illicit discharge response and elimination. The additional specifics recommended by the EPA are included within

VII. RESPONSE AND CHANGES AFTER PUBLIC NOTICE (cont.)

the permittee's approved plans and procedures. It is not necessary to include these additional details in the permit for the requirements of the permit to be clear and enforceable.

18. *Comment: The EPA provided a comment recommending the permit require tracking and reporting the industrial code and location of industrial facilities to facilitate CDPS permitting by the Division.*

Response: This information is available to the Division from alternative sources and therefore it is not necessary for the permittee to duplicate those sources.

19. *Comment: The EPA provided a comment recommending that the permit clarify that the permittee must inventory, inspect, and report recalcitrant violators to the Division for industrial sites regulated by CDPS stormwater regulations.*

Response: The Division has determined that the requirement in previous permit terms to provide more inspection and compliance assurance activities for industrial facilities was not a particularly effective program. The Division believes that it is appropriate and important for the permittee to work with the business community to reduce the contribution of pollutants to state waters from industrialized portions of the city. However, the City's resources could be better spent on education of and outreach to industries, versus enforcement and monitoring. The permittee is required to provide education of and outreach to industries. In addition, the permittee is required to take action as needed for industrial site runoff that may be having a negative impact on the MS4.

20. *Comment: The EPA provided a comment recommending that the permit prescribe a minimum frequency for construction site inspections.*

Response: The frequency of inspections for construction sites is variable for MS4 programs. The frequency can depend on the stage of construction, compliance history of the operator, and the degree that enforcement, education, and other program elements are used to deter noncompliance. Therefore, the permittee is required to address its inspection program within its program description and procedures to allow for the flexibility necessary to implement an effective and efficient program.

21. *Comment: The EPA provided a comment that the permit should require the permittee to report recalcitrant violators of the Construction Sites program to the Division. The EPA also commented that the permittee should be required to report on its enforcement activities.*

Response: The permit requires that the permittee have a program to obtain compliance from recalcitrant violators. It is therefore unnecessary for the Division to be informed and become involved to obtain compliance from recalcitrant operators if the permittee is in compliance with the permit. However, the Division will continue to implement its own oversight program of construction sites within the permitted area for oversight of the permittee's compliance with the MS4 permit and construction site operators' compliance with their CDPS stormwater construction permits. The permittee is required to report on its inspections and enforcement activities in the Annual Report.

22. *Comment: The EPA provided a comment that the permit should require the permittee to incorporate oversight procedures that address the sampling requirements for construction dewatering consistent with the CDPS construction dewatering general permit.*

Response: The Division requires submittal of sampling results for construction dewatering permits. Because this information is already being submitted and reviewed by the Division, it is not necessary for the MS4 permittee to duplicate this activity. The MS4 permittee must assess the adequacy of BMPs implemented to control the discharge of pollutants to the MS4 as part of its Construction Sites program (Part I.B.1.d(1)(a)). The illicit discharge requirements in Part I.B.1.b of this permit requires that the permittee prohibit discharges from construction dewatering without a CDPS permit.

VII. RESPONSE AND CHANGES AFTER PUBLIC NOTICE (cont.)

23. *Comment: The EPA provided a comment that the permit should require annual reporting of Sanitary Sewer Overflows.*

Response: Sanitary Sewer Overflows must already be reported to the Division in accordance with 25-8-601(2), C.R.S. The report must include, among additional information, the location, estimated volume, and time of the spill. Requiring additional reporting by the MS4 permit would be duplicative. Part I.B.1.b(2)(d) of the permit does require the permittee to maintain records of illicit discharges and the permittee's response. The Division may review this information as part of an assessment of the permittee's compliance with permit requirements related to Sanitary Sewer Overflows.

24. *Comment: The permittee requested that the requirement for the City to list annual expenditures for the past reporting year, and budget for the next reporting year in their Annual Report be removed.*

Response: State regulations (Colorado Discharge Permit System Regulations, 61.8(4)(n)) require the permit to include this reporting requirement.

*Kathryn Dolan
Nathan Moore
January 27, 2008*