COLORADO
Department of Public Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

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

A. ACRONYMS

CDPS – Colorado Discharge Permitting System

CGP – Construction General Permit

CWA – Clean Water Act

ELG – Effluent Limitation Guideline

EPA – Environmental Protection Agency

NPDES – National Pollutant Discharge System

PAH – Polyaromatic hydrocarbon

TMDL – Total Maximum Daily Load

USACE – United States Army Corps of Engineers

WLA – Wasteload Allocation

WQCC – Water Quality Control Commission

WQBEL – Water Quality Based Effluent Limitation

B. FACT SHEET DESCRIPTION

The National Pollutant Discharge Elimination System (NPDES) permit was created by Congress as the implementation tool under the Clean Water Act (CWA) for the restriction of the quantity, rate, and concentration of pollutants that the point sources may discharge into water. The division, as the delegated authority for development and issuance of NPDES permits for the State of Colorado, is obligated to develop and issue NPDES permits in a manner that meets federal statutory requirements (the Clean Water Act, 33 U.S.C. § 1251 et seq.), state statutory requirements (the Colorado Water Quality Control Act, 25-8-101 et seq.) and state and federal regulations.

Routine review is an integral aspect of the NPDES and the Colorado Discharge Permitting System (CDPS) program. The Clean Water Act incorporates a finite term for NPDES permits in order to allow for routine review of permit terms and conditions; the Colorado Water Quality Control Act similarly recognizes that the periodic renewal of permits is required. Routine review of CDPS permits provides a mechanism for the division and the public to scrutinize the existing conditions of the permit; to upgrade the permit requirements to reflect changing knowledge, law, or advances in science and technology; to ensure that the permit limits are protective of the most recent water quality classifications, standards, and antidegradation designations established by the Water Quality Control Commission; and, if necessary, to protect against human error by the permit writer introduced into previous permits. Routine review often results in the incorporation of new or different permit limitations or approaches.

This fact sheet's primary purpose is to provide the rationale for permit terms and conditions and its secondary purpose is to provide permittees with information to aid in compliance with the permit.

This fact sheet addresses the following statutory and regulatory requirements:

- A "fact sheet" as required by the federal Discharge Permit Regulations 40 C.F.R. §124.8 and 124.56 to "briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit" and to describe the reasons for permit terms and conditions.

- A permit "rationale" as required by Colorado Discharge Permit System Regulations, 5 C.C.R. 1002-61 §61.5(2).
- A "preliminary analysis" as required by Colorado Water Quality Control Act, C.R.S. § 25-8-502(3)(b).
- A "statement of basis and purpose" as required by the federal Clean Water Act, 40 C.F.R. §124.7, to "describe the derivation of permit conditions and the reasons." A "statement of basis and purpose" as required by SB 13- 073 and incorporated into Colorado Water Quality Control Act, C.R.S. § 25-8-503.5, "explaining the need for the proposed requirements" and to "present evidence supporting the need for the proposed requirements, including information regarding pollutant potential and available controls, incidents of environmental damage, and permit violations". Where requirements are retained from the previous permit, the division has determined that the requirements remain appropriate and that their removal may result in an increase in pollutants discharged.

C. TYPE OF PERMIT

General Permit, NPDES/CDPS, Stormwater Discharges Associated with Construction Activities, renewal, statewide. This permit renewal is for the general discharge permit listed below, and the associated stormwater discharges are authorized statewide to state waters of Colorado.

Stormwater Discharge Permit Name	Effective Date	Expiration Date
Stormwater Discharges Associated with Construction Activities (COR400000)	April 1, 2019	March 31, 2024

Prior to 2019, stormwater discharges for construction activities were covered under different a different permit number: COR030000

D. SIC CODES

Regulation 61.3(2)(e)(iii)(J) and Regulation 61.3(2)(f)(ii) requires specific types of facilities that discharge stormwater associated with industrial activity, to obtain a CDPS permit for such discharge. The regulation 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.

This permit covers construction activities associated with the following SIC Codes:

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.

E. BACKGROUND

This permit authorizes stormwater discharges associated with construction activities that have the potential to result in erosion, sediment transport, and the release of other pollutants related to the activity. The permit primarily relies upon practice-based effluent limitations for stormwater discharges through control measures and the requirement to develop and implement a stormwater management plan. See Part I.B.1 and Part I.C. of the permit. The permit also includes prohibitions against discharges of non-stormwater. See Part I.A.2. of the permit.

The permittee must implement control measures to minimize the discharge of pollutants from all potential pollutant sources at the site. Control measures must be selected, designed, installed and maintained in accordance with good engineering, hydrologic and pollution control practices to

prevent pollution or degradation of state waters. These measures must effectively minimize erosion, sediment transport, and the release of other pollutants related to construction activity.

F. COMPLIANCE WITH PROCEDURAL REQUIREMENTS

1. Compliance with Section 25-8-503.5 of the Water Quality Control Act (Cost-Benefit Analysis)

Section 25-8-503.5(1) of the Colorado Water Quality Control Act requires the division to do the following for general permits:

a) Prepare a statement of basis and purpose explaining the need for the proposed requirements;
b) Present evidence supporting the need for the proposed requirements, including information regarding pollutant potential and available controls, incidents of environmental damage, and permit violations;
c) Before implementing the proposed requirements, provide public notice of, and consider comments received from affected parties about the proposed requirements; and
d) Upon request by an affected party, consider and give due weight to a cost-benefit analysis:
   (I) Received by the division during the comment phase set forth in paragraph (c) of this subsection (I);
   (II) Concerning one or more proposed requirements that are not already required by federal or state statute or rule;
   (III) Prepared by a third party chosen from an approved list of analysts, as developed by the division in consultation with representatives of the industries that are subject to general permitting; and
   (IV) Paid for by the affected party.

The division will comply with Section 25-8-503.5(1)(a) and (b) as follows. In accordance with Section 25-8-503.5(1)(a), this draft fact sheet constitutes the draft statement of basis and purpose explaining the need for the proposed requirements. The final fact sheet and responses to comments together constitute the final statement of basis and purpose explaining the need for the proposed requirements.

The division complied with Section 25-8-503.5(c) by providing public notice of the draft permit and fact sheet, establishing a public comment period, and considering and responding to the comments received during the public comment period.

The division complied with Section 25-8-503.5(d) by considering and giving due weight to any cost benefit analysis submitted to the division during the public comment period meeting the criteria established by Section 25-8-503.5(d). No such comments were received. In accordance with Section 25-8-503.5(d)(III), the division will, upon request, develop an approved list of analysts to conduct such a cost benefit analysis in consultation with representatives of the industries that are subject to general permitting. Requests to develop an approved list of analysts must be received by the division by the close of the comment period. No such request was received.

2. Economic Reasonableness Determination and Evaluation

Section 25-8-503(8) of the Colorado Water Quality Control Act requires the division to "determine whether or not any or all of the water quality standard based effluent limitations are reasonably related to the economic, environmental, public health and energy impacts to the public and affected persons, and are in furtherance of the policies set forth in sections 25-8-102 and 25-8-104." These statutory factors are referred to herein as the “economic reasonableness” factors.

Note this provision specifically applies to water quality standards-based effluent limitations, not technology based limits, monitoring requirements, benchmarks, special studies, recordkeeping requirements, control regulation requirements, antidegradation requirements or other permit terms and conditions that are not water quality standard based effluent limitations.

During classification and standards rulemakings, the Water Quality Control Commission (Commission) conducts this kind of analysis in assigning water quality standards. Specifically, Regulation 31.7(2) provides that when adopting new or revised standards for pollutants, the Commission must take the following into consideration:

a) The need for standards which regulate specified pollutants;
b) Such information as may be available to the WQCC as to the degree to which any particular type of pollutant is subject to treatment; the availability, practicality, and technical and economic feasibility of treatment techniques; the impact of treatment requirements upon water quantity; and the extent to which the discharge to be controlled is significant;
c) The continuous, intermittent, or seasonal nature of the pollutant to be controlled;
d) The existing extent of pollution or the maximum extent of pollution to be tolerated as a goal;
e) Whether the pollutant arises from natural sources;
f) Beneficial uses of water; and
g) Such information as may be available to the WQCC regarding the risk associated with the pollutants including its persistence, degradability, the usual or potential presence of the affected organism in any waters, the importance of the affected organisms, and the nature and extent of the effect of the pollutant on such organisms.

The Colorado Discharge Permit System Regulations, Regulation 61.11 then provides that the division may rely upon the Commission's evaluation and presume that permits written to meet the Commission's standards already take into consideration the statutory "economic reasonableness" factors. Specifically, Regulation 61.11(a) states that "Where economic, environmental, public health and energy impacts to the public and affected persons have been considered in the classifications and standards setting process, permits written to meet the standards may be presumed to have taken into consideration economic factors unless:

(i) A new permit is issued where the discharge was not in existence at the time of the classification and standards rulemaking, or
(ii) In the case of a continuing discharge, additional information or factors have emerged that were not anticipated or considered at the time of the classification and standards rulemaking."

The division interprets the "additional information or factors" not anticipated or considered at the time of the classification and standards rulemaking discussed in Regulation 61.11(a)(ii) to refer back to the Commission's required considerations in Regulation 31.7(2).

The effluent limits in this permit are based on the Basic Standards and Methodologies for Surface Water, Regulation No. 31; Basic Standards and Methodologies for Ground Water, Regulation No. 41; Classifications and Numeric Standards for Arkansas River Basin, Regulation 32; Classifications and Numeric Standards for Upper Colorado River Basin and North Platte River (Planning Region 12), Regulation 33; Classifications and Numeric Standards for San Juan River and Dolores River Basins, Regulation 34; Classifications and Numeric Standards for Gunnison and Lower Dolores River Basins, Regulation 35; Classifications and Numeric Standards for Rio Grande Basin, Regulation 36; Classifications and Numeric Standards for Lower Colorado River Basin, Regulation 37; and Classifications and Numeric Standards for South Platte River Basin, Laramie River Basin, Republican River Basin, Smoky Hill River Basin, Regulation 38. In those proceedings, the Commission adopted numeric standards to protect classified uses in accordance with Regulation 31.7(2), including treatability limitations or other situations where attaining standards would not be "reasonably related to the economic, environmental, public health and energy impact to the public and affected persons."

This is a renewal permit, meaning the exception at Regulation 61.11(a)(i) does not apply. Nor at this time does the division have evidence that additional information or factors like those described in Regulation 31.7(2) have emerged that were not anticipated or considered at the

time of the classification and standards rulemaking. Therefore, based on currently available information, the division determines that the water quality standard-based effluent limitations included in this permit are reasonably related to the economic, environmental, public health and energy impacts to the public and affected persons and are in furtherance of the policies set forth in Sections 25-8-102 and 104.

During the public comment period on the draft permit, permittees and the public may offer evidence pursuant to Regulation 61.11(b) as to whether the water quality standard-based effluent limitations of this permit are reasonably related to the economic, environmental, public health and energy impacts to the public and affected persons and are in furtherance of the policies set forth in Sections 25-8-102 and 104. No comments about economic reasonableness were received by the Division during the public notice of this permit.

3. Opportunity for Administrative Adjudication

Once the final permit is issued, the applicant or any other person affected or aggrieved by the division's final determination may request an adjudicatory hearing within 30 calendar days of the date of issuance, under 5 CCR 1002-61 (Colorado Discharge Permit System Regulations), Regulation 61.7. Any request must comply with the Water Quality Control Act, 24-4-101, C.R.S., et seq. and the Water Quality Control Commission's regulations, including Regulation 61.7 and 5 CCR 1002-21 (Procedural Rules), Regulation 21.4(B). Failure to contest any term and condition of the permit in this request for an adjudicatory hearing constitutes consent to the condition by the permittee.

4. Opportunity to Request a Stay of Terms and Conditions of Final Permit

If an applicant for a renewal permit files a request for an administrative hearing in accordance with Section 24-4-105, C.R.S., the applicant may also request that the division stay the contested terms and conditions of the renewal permit. This request must be made within 30 days of issuance of the final permit.

G. STAKEHOLDER PARTICIPATION

As part of efforts to allow the public to participate, the division established a stakeholder signup list for anyone interested in receiving information regarding the renewal. Prior to issuing the draft permit, the division hosted two stakeholder meetings on July 24, 2023 and August 2, 2023. In addition, the division met with Colorado Department of Transportation on July 26, 2023. During these stakeholder meetings the division presented information on areas to improve clarity and specificity to improve permit compliance and described some approaches considered to strengthen the permit in order to better protect water quality. The division evaluated direct feedback from attendees during those meetings. Additionally, feedback could be provided through a feedback form before and after the meetings, and, where appropriate, incorporated the feedback into draft permit language or notated areas for improving guidance documents and trainings once the renewal permit is issued.

Several topics the stakeholders discussed in addition to the below potential changes included:

- Final stabilization and presence of weeds. During this permit renewal, the division did not consider any changes to its current requirements or inspection practices regarding the presence of weeds on sites that have reached final stabilization using vegetative cover. The 70% vegetative cover requirement of what would be provided by native vegetation or an adequate reference site is based on a perennial type of plant such as cacti, grasses, shrubs, sagebrush, trees, etc. While weeds may be present, weeds would not typically be included in the 70% analysis due to typically being annuals and not perennials.
- Training requirements for qualified stormwater managers. During the permit renewal, the division is not considering requiring a specific type of stormwater management training for qualified stormwater managers, like EPA does in their Construction Stormwater Permit. The current permit already contains provisions for a site representative knowledgeable in the

principles and practices of erosion and sediment control and pollution prevention. Additionally, through the Water Quality Improvement Fund, the division provides grants for stormwater training development.

Additionally, during the public comment period, the division hosted an informational meeting on November 2, 2023 to answer questions and provide information on how to provide public comments.

H. COMPLIANCE HISTORY

Between April 1, 2019 and May 31, 2023, the division's compliance unit conducted approximately 691 construction stormwater inspections. Approximately 97 or 14% of the inspections met criteria for enforcement (resulted in an actual or high potential for a discharge to a state water), and 8% of inspections were referred for formal enforcement, for a total of 22 enforcement cases. Two out of the 22 cases involved sites without prepared stormwater management plans, and ten of the 22 cases involved major stormwater management plan deficiencies. Three cases involved sites that were not permitted, while the remaining 19 cases involved inadequate control measures. Eight cases involved a systematic failure to conduct self-inspections. A total of eight enforcement cases documented significant impacts to state waters.

Between April 1, 2019 and May 31, 2023, the division's compliance unit conducted approximately 87 construction stormwater inspections at sites enlisted in the Colorado Stormwater Excellence Program. One inspection of the 87, or 1.1%, met criteria for enforcement, thus demonstrating the compliance success for those contractors participating in the program.

In addition to traditional compliance enforcement inspections, due to the COVID-19 pandemic, the division began conducting final stabilization inspections of sites with recently terminated permits. The division completed 694 of these inspections between April 2020 and May 2023. Of those, 635 or 91.5% met final stabilization requirements. The division observed that 33 or 4.8% of the sites included areas of disturbance that were not finally stabilized, while 25 or 3.7% of the sites were finally stabilized but still had temporary control measures present.

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.

I. LEGAL AUTHORITY FOR TECHNOLOGY AND WATER QUALITY BASED PERMIT LIMITS

Effluent limits are defined in CWA Section 502(11) as "any restriction on the quantity, rate, and concentration of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance." Effluent limits are among the permit conditions and limits prescribed in NPDES permits issued under Section 402(a) of the Act, 33 U.S.C. §1342(a). The Colorado Water Quality Control Act C.R.S. § 25-8-503(4) states that "no permit shall be issued which allows a discharge that by itself or in combination with other pollution will result in pollution of the receiving waters in excess of the pollution permitted by an applicable water quality standard unless the permit contains effluent limitations and a schedule of compliance specifying treatment requirements. Effluent limitations designed to meet water quality standards shall be based on application of appropriate physical, chemical, and biological factors reasonably necessary to achieve the levels of protection required by the standards." Regulation 61.2(26) then defines an effluent limitation as "any restriction or prohibition established under this article or Federal law on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into state waters, including, but not limited to, standards of performance for new sources, toxic effluent standards and schedules of compliance."

Technology Based Effluent Limitations

The CWA requires that discharges from existing facilities, at a minimum, meet technology based effluent limitations reflecting, among other things, the economically achievable technological capability of permittees to control pollutants in their discharges. These requirements are

incorporated into Regulation 61.8(2)(a). The division determines it is infeasible at this time to develop new technology-based limits for the renewal permit, and continues to include relevant Effluent Limitations Guidelines (ELGs) from EPA (40 CFR 450.10 – 450.24) as technology-based permit limits including reliance on EPA's 2022 CGP (EPA, 2022).

Water Quality Based Effluent Limitations

Water quality based effluent limitations (WQBELs) are required under the conditions set by CWA Section 301(b)(1)(C) and Regulation 61.8(2)(b). Regulation 61.8(3)(r) requires inclusion of best management practices, or practice-based limitations in permits "to control or abate the discharge of pollutants when numeric effluent limitations are infeasible, when the practices are reasonably necessary to achieve effluent limitations and standards, or when authorized under 304(e) of the federal act for control of toxic pollutants and hazardous substances." In lieu of developing new technology-based limits and implementing numeric WQBELs for all permittees, the previous and this renewal permit incorporate narrative effluent limits, referred to as practice-based limits, to support control or abatement of the discharge of pollutants in stormwater runoff. Practice-based limits are consistent with EPA's 2022 CGP. The iterative nature of the permit ensures that facilities are using and maintaining control measures to meet narrative limits (see Part I.E). When necessary, additional requirements are applied to permittees discharging to waterbodies subject to wasteload allocations from Total Maximum Daily Loads (TMDLs) or control regulations.

Regulation 61.8(3)(b)(G)(II) requires that water quality-based effluent limits developed to protect narrative or numeric water quality standards be consistent with the assumptions and requirements of any available wasteload allocation (WLA) prepared by the division. The division currently does not have any approved or established TMDLs with WLAs for construction stormwater. If a WLA in a TMDL is established, the division will review to determine whether any more stringent numeric or narrative requirements are necessary to be consistent with the wasteload allocation (WLA), whether compliance with the existing permit limits is sufficient, or, alternatively, whether an individual permit application is necessary. This review process will also be used to evaluate discharges subject to Watershed Protection Control Regulations 71-74, as applicable. At the time of the drafting of this renewal, no Control Regulations included additional requirements for construction stormwater. If the division determines additional requirements are necessary, they will be incorporated into the permittees' certifications.

J. ANTIDEGRADATION

1. Outstanding Waters

As in the past, discharges to outstanding waters are eligible for coverage under this permit when in accordance with Regulation 31.8(1)(a) that all 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 result 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 additional flexibility in Regulation 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."

Currently Regulation 31.8(1)(a) states … "these waters, which are those designated outstanding waters pursuant to section 31.8(2)(a), shall be maintained and protected at their existing quality. Short-term degradation of existing quality is allowed for activities that result in long-term ecological or water quality benefit or clear public interest." 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 31.8(1)(a). In the previous renewal, the division increased the site

inspection frequency requirement for discharges to outstanding waters to provide additional assurance that sites are maintained in a compliant condition. As in the previous permit, the increased requirements for discharges to outstanding waters does not apply to sites that discharge first to a receiving water that is not designated as outstanding water regardless of whether that then 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.

As noted above, Regulation 31.8(1)(a) allows for short-term degradation for activities that are for ecological or water quality benefit or in the public interest. The Water Quality Control Commission in Regulation 31 in the statement of basis and purpose (pg. 230) stated regarding temporary impacts in outstanding waters, that short-term should mean "…weeks and months, not years. In some cases, projects may need to extend over multiple work seasons … "Additionally, it directs that in "…all cases the impacts of a project over time must be considered." The division analyzed the previous permit term, and only three of the over five thousand permit certifications issued were directly to outstanding waters. Of those three projects, the median project timeline was approximately one month with a median disturbance of three acres. The maximum project length was eight months. The division continues to determine that permitted sites under this permit meet the outstanding waters requirements of being short term ("months"). Additionally, the short term duration, along with the minimal amount of disturbance, indicates minimal impacts over time. Finally, for short-term degradation to be allowed there needs to be an ecological or water quality benefit or in public interest. All three of the projects meet this requirement: dam maintenance, habitat improvement, and a water tank replacement at a National Park. The division continues to recommend maintaining the more frequent site inspections for those sites on outstanding waters and has included clarifying language that projects to outstanding waters need to be short-term and have a long-term ecological or water quality benefit or clear public interest.

2. Reviewable & Use Protected Waters

As stated in Regulation 31.8, The Basic Standards and Methodologies for Surface Water, an antidegradation analysis is required for all discharges to waters designated "reviewable" which includes significance determination tests (Reg 31.8(3)(c)(ii)). The division's antidegradation policy further explains the antidegradation review process for reviewable waters. The policy states on pg. 8 that, "This antidegradation guidance document is focused on the significance tests for new or renewed Individual CDPS Permits. The significance tests for General Permits are not specifically described herein due to the nature of the classes of discharges which are addressed by General Permits."

This permit authorizes stormwater discharges associated with construction activities and includes the protection of narrative standards through practice-based effluent limitations, specifically control measures and stormwater management plans. The Antidegradation policy's significance determination guidance is more focused on the protection of numeric water quality standards. The permittee must implement control measures that effectively minimize erosion, sediment transport, and the release of other pollutants related to construction activity. The permit provides detailed requirements in Part I.B.1.a. of the permit for those control measures, practices for other pollutants, and stabilization methods (temporary and permanent or final). The stormwater management plan must contain site-specific information, including soil type and erodibility; identify potential sources of pollution; address materials handling, spill prevention and response; and include design specifications and implementation information for control measures, among other requirements.

It is the division's expectation that compliance with the conditions of this permit will result in stormwater discharges being controlled to the extent that all receiving waters will be maintained and protected at their existing quality as required by Regulation 31.8(1)(a), including segments classified as use protected and reviewable. This means that all applicable water quality standards and antidegradation requirements will be met.

K. SUMMARY OF CHANGES

This table summarizes the various types of changes the division is proposing with more in depth discussion on larger topics below. In addition to these changes, the division corrected typos, formatting errors, and ensured Part II was up to date.

Change	Summary of the Changes	Part(s) Where Change Appears
New Items	Require temporary stabilization or the installation of sediment or erosion control measures on residential lots that get removed. Document in the stormwater management plan which lots were removed.	I.A.3.i and I.C.2.j.ii – Removal of Residential Lots
Changes for Clarity	Throughout permit eliminated SWMP and replaced with the full word stormwater management plan.	Throughout
	Clarified that potential pollutant sources might include run-on onto a site.	I.B.1 – Effluent Limitations
	Clarified a vegetative buffer must have upgradient control measures as well.	I.B.1.a.i(e) – Effluent Limitations
	Clarified several areas per current compliance guidance: perennial vegetation may include trees and shrubs, included definition of native vegetation, reiterated must follow local jurisdiction's plant species requirements, and added returning land to cropland as an example of allowable alternative final stabilization criteria.	I.B.1.a.iii(b) – Final Stabilization
	Clarified outstanding waters receiving waters.	I.B.2.b – Outstanding Waters
	Clarified electronic copies of the stormwater management plan are allowed.	I.C.1.c – Stormwater Management Plan
	Clarified the various permits and low risk discharge guidance documents required to be part of the stormwater management plan.	I.C.2.b – Stormwater Management Plan Content
	Clarified several items in the stormwater management plan are required on every site.	I.C.2.e – Stormwater Management Plan Content
	Added that stormwater management plan changes may be on maps, redlines, logs, etc.	I.C.3.e – Stormwater Management Plan Review
	Winter exclusions, clarified what types of sites this means.	I.D.4.c – Inspection Types
	Signature for inspection reports was moved from Part I.A to the Inspection Reports section since it only applied to that portion of the permit.	I.D.5.c.xiii – Inspection Reports
	Clarified definition for "Control Measure Requiring Routine Maintenance"	I.E.6 - Definitions
	Added link to submission form to clarify twenty-four hour reporting requirements	Part II.L.6 – Twenty-four Hour Reporting
Changes for Specificity	Masonry washout was included with reference to concrete washouts. Water used to wash vehicles, equipment and external buildings was also included.	I.A.1.b –Non-stormwater Discharges
	Made limitations on coverage explicit for: Regulation 84 reclaimed water for dust suppression; wastewater from washout and/or cleanout of paint, form release oils, curing compounds, and other similar construction materials; fuels, oils, or other	I.A.2.d - Limitations on Coverage

Change	Summary of the Changes	Part(s) Where Change Appears
	pollutants used in vehicle and equipment operation and maintenance; additions of soaps, solvents, or detergents; surface water discharges of vehicle and equipment washing or external building washdown; chemical additions (e.g. flocculant).	
	Added the current practice regarding due diligence of permit transfers, modifications, and terminations. Added current practice on providing the new permit certification number(s) for modifications of acreage. Added the current practice regarding written agreements required for permit transfers.	I.A.3.h – Permit Applications
	Added the division may choose to not renew a permit or certification because of unpaid dues.	I.A.3.j – Permit Coverage
	Added option to decompact compacted soil prior to applying vegetative cover.	I.B.1.a(f)
	Revised diversion designs for anticipated flows instead of all flows.	I.B.1.a(i)
	Added dust must be minimized.	I.B.1.a(j) – Effluent Limitations
	Added requirement to control discharge to minimize erosion at the discharge point.	I.B.1.a(k) – Effluent Limitations
	Specified that spills and leaks need to be mitigated immediately.	I.B.1.a.ii(b) – Practices for Other Common Pollutants
	Added minimizing exposure to fertilizers, pesticides and herbicides.	I.B.1.a.ii(e) – Practices for Other Common Pollutants
	Added washout for paint, form release oils, curing compounds, or other construction materials needs to go to leak proof container or lined pit.	I.B.1.a.ii(f) – Practices for Other Common Pollutants
	Added no hosing down of the site in order to resolve a corrective action and also must mitigate sediment that has migrated offsite.	I.B.1.c.ii – Corrective Actions
	Specified if Regulation 84 reclaimed water is used for dust suppression, then need to include that in the stormwater management plan.	I.C.2.e.ii – Stormwater Management Plan
	Specified the stormwater management plan must describe where water goes off the site.	I.C.2.c.vi – Stormwater Management Plan
	Specified the site description needs to include a description of any effluent limits that are infeasible and why they are infeasible.	I.C.2.c.x – Stormwater Management Plan
	Specified that locations of other potential sources of pollution not listed otherwise must be included on site map	I.C.2.d.vii – Stormwater Management Plan
	Specified the map needs to include names of springs, streams, wetlands, diversions and other state waters within or bordering the site.	I.C.2.d.x – Stormwater Management Plan
	Added sod application to site awaiting final stabilization.	I.D.4.b.i
	Specified an additional area to be inspected is where stormwater is being pumped.	I.D.5.a – Areas of Inspection

Change	Summary of the Changes	Part(s) Where Change Appears
	Added construction site for common nomenclature.	Definitions
	Added disturbed area to assist with inspection areas.	Definitions
	Added native vegetation per our guidance on final stabilization.	Definitions

1. **New Items**

   a. **Sale of Residence to Homeowner (Part A.3.i; Part C.2.j.ii) – Temporary Stabilization**

   Through compliance inspections and discussions with city and county stormwater managers it has been identified that unstabilized areas of a residential lot (e.g. backyards) may contribute to sediment migrating off the lot. The division added a requirement that when a homebuilder or developer meets the provisions to remove the residential lot from their stormwater management activities, the homebuilder or developer needs to add temporary stabilization or sediment/erosion control measures to minimize sediment leaving the lot to those areas that will be under the homeowners' responsibility to landscape. For lots with slopes greater than 3:1, the permittee must utilize a temporary stabilization control measure that is appropriate for slopes and has a specification for such an application.

2. **Changes for Clarity**

   The division included a number of relatively minor changes that focus on improving the clarity where permittees or other stakeholders have raised questions. These changes generally do not change the underlying requirement from the previous permit, but rather are to make the division's original intent clearer. It is the division's intention that these clarifications improve the overall understanding. Changes include the following:

   a. **Run-on**

   The division received a comment regarding batch plants permitted under a separate NPDES/CDPS permit which was related to the interconnectedness between the two permits. If a batch plant is dedicated only to the one construction site, it can be covered under this general permit per Part I.A.1. If the plant is covered, it must be included in the stormwater management plan. If it is not covered and is covered under another NPDES/CDPS permit, that permit will dictate the requirements needed to be followed. If there is potential for run-on to the construction site from the separately permitted industrial site, any run on is now the responsibility of the permittee covered under this permit (Part I.C.2.e - The stormwater management plan must list all potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with construction activity from the site.) The permittee may choose to divert the run-on around the site or may choose to install control measures to manage any potential pollutant sources and flows.

   b. **Vegetative Buffer**

   The current permit includes the requirement of a vegetative buffer in alignment with the EPA ELG, but it was not explicit about also including a sediment/erosion control measure with the buffer. Even if a permittee is able to maintain a 50 foot vegetative buffer upgradient of a receiving water, the division requires that sediment and/or erosion control measures are also installed. The division has included that language to be explicit. The division always requires the use of an upgradient control measure along with the vegetative buffer. Given the semi-arid environment in Colorado, the existing vegetation may be very sparse at times. The 2022 EPA CGP also includes the requirement for perimeter control and outlines methodologies for compliance. Linear construction projects may find the 50 foot vegetative buffer infeasible due to site constraints like limited right of ways. The division's

expectations for permittees in these scenarios would be to maintain as much vegetative buffer as possible and install control measures necessary to ensure erosion and sediment transport are minimized.

c. Final Stabilization

The division identified several areas where it would be beneficial to move the division's compliance guidance into the permit to help permittees with vegetative final stabilization. The division would include trees and shrubs, not just grasses or other perennial plant species in the consideration for calculation of the 70% perennial coverage threshold because the intent is being met of reducing the amount of soils uncovered and thus exposed to stormwater. As part of this clarification, the division also included the definition of native vegetation for the local, undisturbed area that was developed in guidance. It is not the intent of the division to require the permittee to obtain a botanist or other specialist.

An alternative coverage allowance was added to address when a site is disturbed but later will have a crop planted. An example of this scenario is for a pipeline or utility through an agricultural field. It is unnecessary for the permittee to plant grass for final stabilization if a farmer is going to then till the soil to plant a crop. The final addition, already expressed in the previous permit, is to remind the permittee to adhere to the local jurisdiction's plant species requirements for vegetative final stabilization.

d. Outstanding Waters

See Fact Sheet Section Part I.I. Outstanding Waters. In the previous permit renewal, the division included an additional inspection frequency for sites to outstanding waters. The explanation was found in the fact sheet and the additional inspection frequency in the inspection section. The division included language in the general permit to capture the requirement of Regulation 31.8(1)(a) that permit coverage for sites that discharge to outstanding waters must be short-term and have a long-term ecological or water quality benefit or clear public interest. Additionally, to assist permittees, the division included a link to a GIS map of the state's outstanding water segments. As noted in the above section, the last permit term only had three permit certifications to outstanding waters out of over 5,000 permit certifications issued. After looking at the map, if a permittee is unsure if they will discharge to an outstanding waters segment, they may contact the division's permit staff for assistance.

e. Electronic Stormwater Management Plans

Permittees are currently allowed to have electronic copies of stormwater management plans, this inclusion in the permit makes it explicit. The electronic copy must be in a format that is read similar to a paper copy and is immediately accessible to an inspector similar to a paper copy. These requirements are comparable to those found in EPA's CGP and are already practiced by many sites in Colorado.

f. Stormwater Management Plan Content

The division included three pollutant sources that must be included in all stormwater management plans, as the division's compliance team has noted sites that have not included sediment from disturbed or stored soils as a pollutant source. If a site was not disturbing or stockpiling soils, then a permit would not be required. The division requires the following three pollutant sources for every site: disturbed or stored soils, vehicle tracking of sediments, and on-site waste management practices. It is still the requirement that if the site has any of the remaining pollutant sources, the permittee is required to include those in their stormwater management plan and include control measures.

Additionally, the division clarified requirements regarding the discharge path described in the stormwater management plan. In the stormwater management site description, permittees

must include a description of the general flow direction and where or how the discharge leaves the site. This description must include the immediate conveyance or area receiving the discharge and the receiving water(s), if different from the immediate conveyance or area.

g. Stormwater Management Plan Change Tracking

It is already allowed that permittees can utilize various tracking methods for site changes in their stormwater management plan. The division is being explicit that different methods are acceptable, such as, maintaining historical site maps, log of changes, redlines, etc.

h. Winter Exclusion Clarification

The division has identified sites misapplying the winter exclusion for site inspections. Typically, this exclusion does not apply to sites on the Front Range or Western Slope as snow melt occurs quickly after a snowstorm and a site is still accessible for construction activities. The division has not changed any portions of winter exclusion applicability, but has included language that directs permittees to those sites that this is applicable to. Those sites are typically inaccessible in the winter months, are frequently, but not always, at high elevations, and do not melt or have runoff from the site during those winter months.

i. Inspection Report Signatures

The division moved the portion of the previous permit (Part I.A.3.f) that identified the statement, date and signature requirements for inspection reports to the inspection section. That portion of the permit only applied to inspection reports, so it was moved for readability.

j. Definitions

In Part I.E.6, the division added language to the definition for "Control Measure Requiring Routine Maintenance" to clarify that the control measure requires routine preventative maintenance to prevent a breach of the control measure in subsequent storms. Control measures requiring routine maintenance may need minor repairs and proactive upkeep to ensure that the stormwater controls remain in effective operating condition.

k. Part II – added submittal form

In Part II.L.6, the division included a link to the division's twenty-four hour reporting form to clarify that the permittee must report the circumstances in Part II.L.6.a-e on the form, rather than orally.

3. Changes for Specificity

The division included several modifications to address specific problems that have been identified during compliance inspections or to reflect changes in industry standards of current best practices. These changes are narrowly focused on specific topics.

a. Including Masonry with Concrete Washout

The division has included masonry washout with concrete washout due to the similar pollutant potential of the activity to concrete as it relates to pH and sediment. In alignment with the division's low risk discharge guidance on surface cosmetic power washing to land, the division included water used to wash vehicles, equipment and external buildings to ground within the permit as long as the control measures listed in Part I.B.1.a.ii(c) were implemented, similar to those of concrete and masonry washouts. Additionally, no soaps, solvents and detergents can be added. As before, the discharge to surface water is not allowed and is included in the limitations on coverage section. The division determined that these discharges to ground are typically short-term and of small volume that, with proper management and distance from groundwater, are not expected to contain pollutants in

concentrations that are toxic or in concentrations that would cause or contribute to a violation of a groundwater water quality standard.

b. Explicit Limitations on Coverage

The division is proposing more explicit limitations on coverage (Part I.A.2.a) for non-stormwater items that aren't allowed due to the nature of their potential for pollutants. Some of the language is similar to EPA's 2022 Construction Stormwater Permit. The division has the limitations on coverage to be a reminder to the owner/operator that the only non-stormwater discharges authorized by this permit are at Part I.A.1.b. The list is not exhaustive.

Specifically, the permit limits coverage of the following: use of Regulation 84 reclaimed water for dust suppression (reclaimed water may be used for dust suppression, but may not be discharged via surface water from the site); discharges of potable water used for dust suppression; wastewater from washout and/or cleanout of paint, form release oils, curing compounds, and other similar construction materials; fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; soaps, solvents, or detergents; wash water used in vehicle and equipment washing or external building washdown; and chemical additions for treatment of stormwater (i.e. flocculant).

The division also clarified that vehicle and equipment wash water and exterior building washdown water is limited in coverage in this permit and instead can utilize the division's existing low risk discharge guidance on surface cosmetic power washing as long as the conditions are met within the guidance document or following the practice-based effluent limitations for concrete or masonry washout (Part I.B.1.a.ii(c)) to ground. Discharges to land from power washing are a type of industrial activity that are typically short-term and of small volume that, with proper management, are not expected to contain pollutants in concentrations that are toxic or in concentrations that would cause or contribute to a violation of a groundwater water quality standard. Discharges of this type to surface water pose a significantly greater potential for causing or contributing to a violation of surface water quality standards. This is because the transport pathway for these discharges is much more direct and the pollutant potential is higher relative to the more stringent standards for aquatic life that apply.

c. Corrective Actions

If a permittee needs to resolve a corrective action, it is not allowed to use water to "hose" down the area to mitigate the sediment offsite and clean up the site. It is the expectation that the permittee sweep up or otherwise clean up the sediment, leak or spill. Additionally, if sediment has migrated off the site boundaries, it has been the expectation that the permittee mitigate the accumulated sediment. Mitigation may include removing the sediment or stabilizing the area where sediment was deposited.

d. CDPS permits and other documents in the Stormwater Management Plan

Inspections throughout the permit term have identified that permittees did not include this general permit or the corresponding certification or when the site is utilizing a low risk discharge guidance in their stormwater management plan. The division clarified that these need to be listed and copies included in the plan. In electronic versions, hyperlinks are an acceptable alternative. Additionally, if the site has another state discharge permit or US Army Corps of Engineers 404 permit, such as a certification under a dewatering permit or industrial stormwater permit, those documents need to be listed.

e. Permittee Initiated Permit Actions

When a permittee needs to transfer permit coverage to another permittee, the "old" permittee completing the transfer must provide the division with the new certification

number or with documentation of due diligence. The permit includes examples of due diligence: certified letters, multiple attempts at email and phone contact.

f. Unpaid Fees

The permit includes a provision that the division may not reissue a certification if there are outstanding past due fees.

g. Decompaction

The division received comments regarding Part I.B.1.a.i(f) on soil compaction in areas that will require vegetative final stabilization. It is understood that compaction may occur and the permittee would have to document if it is infeasible to avoid soil compaction, but once the permittee is going to begin revegetation, decompaction needs to occur in order to allow vegetation to become established.

h. Diversion Flow Design

The division received comments regarding Part I.B.1.a.i(i)(1) regarding the language for designing lined or piped structures for all flow conditions. Temporary diversions that are oversized for any flow conditions result in more disturbance and higher costs. The Mile High Flood District has developed temporary diversion criteria that provides information on the factors that should be accounted for when sizing temporary diversion structures. The division's guidance for the diversion of state waters states that design is based on the timing and duration of the project and the anticipated flows during the time the diversion is in place.

i. Control Measures to Meet Effluent Limitations

The permit includes updates to align with EPA's 2022 CGP and the EPA ELG and to specify control measures to prevent the discharge of sediment in stormwater. The permit includes a requirement to minimize dust, which is consistent with EPA's 2022 CGP for dry climates. The permit also includes the following requirements, consistent with EPA's 2022 CGP and the EPA ELG:

- A requirement to minimize erosion at stormwater discharge locations. Control measures to meet this requirement could include the use of erosion controls and/or velocity dissipation devices (e.g. check dams, sediment traps) at the outfall to slow down stormwater flow.
- A specific requirement that spills and leaks must be contained and mitigated immediately upon identification.
- Added specific requirement that washout for paint, form release oils, curing compounds, or other similar construction materials must go to leak proof container or lined pit. The permit includes a clarification that the container or lined pit must be designed to prevent discharges to groundwater.
- Minimize exposure to fertilizers, pesticides, and herbicides. Specifically, the permit requires that the permittee stores, uses, and disposes of the fertilizer, pesticide, or herbicide in accordance with manufacturer's directions in order to minimize the potential discharge of excess or improperly applied product.

j. Stormwater Management Plan

The division included the following specific requirements for the stormwater management plan:

- If Regulation 84 reclaimed water is used for dust suppression, then that pollutant source must be included in the stormwater management plan.
- The site map must include locations of other potential sources of pollutants not listed otherwise.

- The site description and site map in the stormwater management plan must include a complete identification of locations where the stormwater has the potential to discharge off of the construction site. This includes sheet flow and discrete stormwater outfalls.
- The site description must document any effluent limitations that were determined to be infeasible and provide detail regarding why they are infeasible.
- The site map must include locations and names of springs, streams, wetlands, diversions and other state waters within or bordering the site. The division added the requirement to include the name of these waters, but recognizes that some water bodies are unnamed. In those cases, a description such as, "unnamed tributary to the South Platte River" satisfies this requirement. The division also added that waters adjacent to the site must also be included in the site map.

k. Inspection of Sites Awaiting Final Stabilization

The division added that sites awaiting final stabilization could qualify for the reduced inspection frequency if the application of sod or seed has not occurred due to seasonal conditions or the necessity for additional seed application to augment previous efforts as long as the remaining criteria are met. For either sod or seed, it is still the requirement that permittees install and maintain temporary stabilization control measures.

l. Inspection Scope

The division added areas where stormwater is being pumped from (e.g. from a stormwater detention pond) to the list of areas to be visually inspected. The inspection includes assessing the adequacy of control measures of pumped stormwater (e.g. sediment plume, suspended solids, unusual color, decreased clarity, presence of odor or foam, etc.).

The previous permit included locations where stormwater has the potential to discharge off-site in the list of areas to be inspected. The division included in the permit areas exhibiting visible erosion and sedimentation.

m. Definitions

The division included or modified the following definitions:

- Construction site: A definition was added to specify what is meant throughout the permit and to indicate that "construction site," "site," and "facility" are used interchangeably throughout the permit. This includes offsite locations used for storage or staging for the site;
- Disturbed area: A definition was added to specify what is meant in Parts I.B.1.a.i.a-b, I.D.5.a.ii, and I.C.2.j.iii. The division intends to specify that an area that has temporary stabilization is a disturbed area because it has not achieved final stabilization;
- Native vegetation: In an effort to align with EPA's definition and implementation of natural vegetation, the division added a definition to specify what is meant by native vegetation in the Parts I.B.1.a.iii.b.2.b, I.C.2.c.iv, and I.E.10 of the permit; and
- Diversion: The division added "ford" as an example.

L. OTHER CLARIFICATIONS

The division considered additional clarifying changes to the permit and has determined that the existing permit language is appropriate. However, a discussion of these items which were raised in stakeholder outreach meetings is provided below for clarity.

a. Stormwater Discharges (Part I.A.1.a)

Stormwater discharges authorized under the permit in Part I.A.1.a may include stormwater collected onsite (e.g. in a depression) and pumped to discharge. Therefore, the permit

requirements (including control measures, inspections, stormwater management plan, etc.) apply to the discharge of this water.

b. Batch Plants (Part I.A.1.a.iii)

If a batch plant is dedicated to a construction site, it is covered under the permit, and the permittee is required to maintain control measures, conduct inspections, and comply with all other provisions of the permit.

c. Minimize Soil Disturbance (Part I.B.1.a.i.h)

The division considered further clarifying the requirement to minimize the amount of soil exposed during construction through explicitly limiting the amount of disturbance allowed at one time. At this time, the division elected not to include this requirement in the permit, but may consider a provision in future permit renewals.

d. Monitoring (Part I.F)

The division may require sampling and testing, on a case-by-case basis. For example, the division may invoke this requirement for construction activities located in areas of soil contamination.

e. Construction Activity (Part I.E.3)

The division did not include a definition of "construction support activity." However, the definition of "construction activity" in Part I.E.3 of the permit includes EPA's definition of "construction support activity." For example, the definition of "construction activity" includes staging areas and borrow areas.

K. CHANGES MADE FOLLOWING THE COMMENT PERIOD

The division corrected typographical errors throughout the permit and fact sheet. Most changes are discussed in the division's responses to public comment. Additionally, the division made the following changes to the permit.

- In Part I.B.1.a.i(e), the division added clarity that the permittee must maintain 50 horizontal feet of pre-existing vegetation upgradient of the receiving water and install control measures upgradient of the vegetative buffer.
- In Part I.C.2.c.vi, the division removed the word "policy."
- In Part I.C.2.h, the division removed "structural and nonstructural" for conciseness.

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Part II DIVISION RESPONSES TO PUBLIC NOTICE COMMENTS (SEE ATTACHED)

The division responses to public notice comments on the draft renewal construction stormwater general permit COG400000 are addressed in Part IV and provided in the permit file under separate coverage.