2016 MS4 General Permit and Construction
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What is an MS4 Permit

- Permit issued to government entities in urban areas or over 10,000 in population
- COR090000 and COR080000 General Permits for cities and counties renewed this year
  - There is also a nonstandard permit for districts and other government entities, but it is not focused on oversight of 3rd parties and has not yet been renewed
- Authorizes point source discharges from the cities stormwater system
- Includes requirements to reduce the discharge of pollutants
The MS4 Permit and Third Parties

• The MS4 permit requirements apply to the permittee (city or county)

• The permit requires the permittee to regulate, through ordinance or other regulatory mechanism, activities of third parties that may impact the quality of discharges

• If a construction site operator’s action is not in accordance with the permit requirement, it is the MS4 permittee that is in violation of the MS4 permit, not the construction site operator

  • HOWEVER, the construction site operator and owner may still be in violation of the CWA, Colorado Water Quality Control Act, or a separate permit (Construction Stormwater)
Legal Authority of the City or County

• Legal authority to regulate construction site is provided in the state statutes...NOT by the permit

• Cities and Counties have authority to be more stringent than the permit

• Cities and Counties have authority to regulate activities, even if the resulting/potential discharge is not covered by the permit, including
  • Construction sites outside the permit area
  • Discharges that do not go to the permittee’s collection system (MS4)
What is the permittee’s MS4 (stormwater collection system)

- A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) designed or used for collecting or conveying stormwater (full definition in permit/reg)

- Includes conveyances that are owned or operated by the permittee through agreement, contract, direct ownership, easement, or right-of-way and are for the purpose of managing flood plains, stream banks, and channels for conveyance of stormwater flows in order for the discharges to be authorized by this permit.

- Paraphrased: If the water flows over area managed by the permittee to allow drainage, it is most likely the MS4
Change in Basic Permit Approach

Previous Permit

• Set basic program outcome expectations, and permittee identified in a program description the specifics on how those outcomes would be reached.
  • E.G.: develop, implement, and document procedures for construction site compliance assessment, including site inspections

Current Permit

• Identifies the basic minimum scope and scale of a program implementation. Procedures and processes are documented by the permittee, but the expectations are in the permit
  • E.G.: A routine inspection must be conducted at least once before final stabilization....Conduct at least every 45 days (with exceptions)....etc..

• Permittees must continue to meet the Previous Permit requirement until they revise the program to meet the Current Permit (no later than July 2019)
Construction Sites Section of Permit

• Covers all discharges (not just stormwater) from construction activities
  • In the permit area
  • that result in a land disturbance of greater than or equal to one acre, including activates part of a common plan of development one acre or more
• A few exclusions:
  • R-Factor Waiver sites
  • Some exclusions for county growth areas (e.g., some large lot single family home development and some agricultural construction)
Basic Components of Construction Sites Section of Permit

- Selection, installation, implementation, and maintenance of control measures in accordance with Good Engineering, Hydrologic and Pollution Control Practices: Methods, procedures, and practices that:
  - Are based on basic scientific fact(s).
  - Reflect best industry practices and standards.
  - Are appropriate for the conditions and pollutant sources.
  - Provide appropriate solutions to meet the associated permit requirements, including practice based and numeric effluent limits.
Basic Components

• All site plans must be reviewed

• Inspections
  • 45-day routine inspections
  • Reduced inspections frequency for certain sites: inactive, Qualified CSEP (Associated General Contractor’s excellence program), staff vacancy
  • Allows a 90-day frequency PLUS 14-day indicator inspections
  • Must conduct follow-up Compliance Inspections when for failure to implement or inadequate controls. Allows for operator inspectors and reports with photos.
Basic Components

- Enforcement with sanctions and a process for escalation
- Training to make sure operators are aware of the program
- Record keeping and procedures
Construction activities that overlap jurisdictions

• When a written agreement is in place with a co-regulating MS4 permittee:
  • Control measure requirements may be imposed on the operator in accordance with the requirements of a co-regulating MS4 permittee pursuant to the written agreement.
  • Site plan review/acceptance and site inspection actions may be conducted by a co-regulating MS4 permittee to meet the requirement of the permit.
Stormwater Discharges Associated with Construction Activity

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General Permit: Considerations

- House Bill 12-1119
- EPA Effluent Limitation Guidelines
- Stormwater inspections conducted at construction sites.
- EPA and other state’s - most recent construction stormwater general permits.
General Permit: Notable changes

• Change permit number:
  • From COR030000 to COR400000.

• Adjust layout of permit.

• Removal of uncontaminated groundwater to land.
  • Covered under a low risk discharge policy.
General Permit: Notable changes

• Added 7 day inspection frequency option
• Added definition for a qualified stormwater manager.
General Permit: Notable changes

• Incorporate EPA Effluent Limitation Guidelines.
  • Examples:
    • Maintaining pre-existing vegetation within 50 feet of a surface waterbody, unless infeasible.
    • Temporary soil stabilization.
    • Surface outlets for discharges from basins and impoundments
  • The term infeasible -
    “Not technologically possible, or not economically practicable and achievable in light of best industry practices.”
General Permit: Notable changes

• Control Measure Requirements.
  • Structural and Non-structural.
  • Control measure requiring routine maintenance.
  • Inadequate Control Measure.
General Permit: Notable changes

• Owner/Operator Requirements

• Background:
  • House Bill 12-1119 stakeholder process.
  • EPA and other states.
General Permit: Notable changes

• Owner/Operator Requirements

• Draft:
  • Requires the owner and operator’s signatures
  • Allows flexibility for owner’s signature
  • Allows flexibility for operator to terminate
Questions?