

# What does clear, specific, and measurable look like in Colorado?

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# Audits

- Permit was set to expire on March 9, 2013
- Conducted 10 audits in 2009-2010
- Realized that the permit was unenforceable
- EPA memo came out in November 22, 2014



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

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OFFICE OF WATER

## MEMORANDUM

**SUBJECT:** Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs"

**FROM:** Andrew D. Sawyers, Director  
Office of Wastewater Management *Andrew D. Sawyers*  
Benita Best-Wong, Director  
Office of Wetlands, Oceans and Watersheds *Benita Best-Wong*

**TO:** Water Division Directors  
Regions 1 - 10

This memorandum updates aspects of EPA's November 22, 2002 memorandum from Robert H. Wayland, III, Director of the Office of Wetlands, Oceans and Watersheds, and James A. Hanlon, Director of the Office of Wastewater Management, on the subject of "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs" (hereafter "2002 memorandum"). Today's memorandum replaces the November 12, 2010, memorandum on the same subject; the Water Division Directors should no longer refer to that memorandum for guidance.

This memorandum is guidance. It is not a regulation and does not impose legally binding requirements on EPA or States. EPA and state regulatory authorities should continue to make permitting and TMDL decisions on a case-by-case basis considering the particular facts and circumstances and consistent with applicable statutes, regulations, and case law. The recommendations in this guidance may not be applicable to a particular situation. EPA may change or revoke this guidance at any time.

## Background

Stormwater discharges are a significant contributor to water quality impairment in this country, and the challenges from these discharges are growing as more land is developed and more impervious surface is created. Stormwater discharges cause beach closures and contaminate shellfish and surface drinking water supplies. The increased volume and velocity of stormwater discharges causes streambank erosion, flooding, sewer overflows, and basement backups. The decreased natural infiltration of rainwater reduces groundwater recharge, depleting



# Stats-59 Phase II Permittees

## Old permit

- Permit-22 pages
- Fact sheet-18 pages

## Current permit

- Permit-63 pages
- Fact sheet-110 pages (RTC 199 pages)



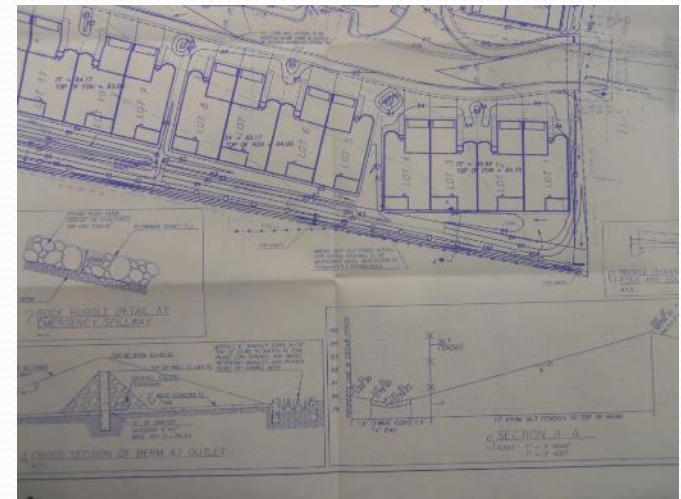
# Clean, Specific, and Measureable

- Construction
  - Minimum site plan review requirements
  - Minimum inspection frequencies
  - Minimum recordkeeping requirements, including a written enforcement response plan
- Post-Construction
  - Design standards
  - Minimum inspection frequencies



# Old Permit-Construction Site Plan Review

- “The program must include, at a minimum, the development, implementation, and documentation of compliance assessment, including site plan reviews which incorporates consideration of potential water quality impacts.”



# Current Permit-Construction Site Plan Review

- “The permittee must require operators to develop site plan(s) that locate (if applicable) and identify all structural and non-structural control measures for the **applicable construction activities**. The site plan(s) must contain installation and implementation specifications or a reference to the document with installation and implementation specifications for all structural control measures. A narrative description of non-structural control measures must be included in the site plan(s).”



# Old Permit-Construction Site Inspections

- “The program must include, at a minimum, the development, implementation, and documentation of compliance assessment, including site inspections.”



# Current Permit-Construction Site Inspections

- Three types of inspections
  - Routine site inspection (every 45 days)
  - Reduced site inspection (every 90 days)
    - Inactive sites
    - Staff vacancy
    - Indicator (reconnaissance) inspection (every 14 days)
      - Routine must be conducted at least once before this inspection frequency can be used
      - If there are issues, must conduct a routine or compliance inspection
  - Compliance site inspection (within 14 days)
    - Inadequate control measure (vs. control measure needing maintenance)
    - Operator can conduct and submit report with photos





# Old Permit-Construction Site Enforcement

- “The program must include, at a minimum, the development, implementation, and documentation of compliance assurance, including procedures for enforcement of control measures that include documented procedures for response to violations of the permittee’s program requirements. ”



# Current Permit-Construction Site Enforcement

- The document(s) must detail the types of escalating enforcement responses the permittee will take in response to common violations and time periods within which responses will take place, including as a minimum:
  - Construction commencing without site plan review
  - Control measures not maintained in operational condition at time of permittee inspection, including sites that have temporarily shut down construction activities.
  - Uncorrected finding(s) from previous inspections.
  - Failure to implement a control measure for a pollutant source or inadequate control measure resulting in a discharge of pollutants from the applicable construction site or to the MS4.



# Old Permit-Post-Construction Design Standards

- “Develop, implement, and document strategies which include the use of structural and/or non-structural BMPs appropriate for the community that addresses the discharge of pollutants from new development and redevelopment projects and/or maintain or restore hydrologic conditions to **minimize** the discharge of pollutants and prevent in-channel impacts associated with increased imperviousness.”



# Current Permit-Post-Construction Design Standards



- Defined minimize:
  - The term “minimize,” for purposes of implementing control measures of this permit, means reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practices.
- Seven different design standards
  1. Water Quality Capture Volume (WQCV) Standard
    1. May exclude up to 20% of site not to exceed 1 acre
  2. Pollutant Removal Standard
    1. Treat the 80<sup>th</sup> percentile storm event, reduce TSS to 30mg/L or less
    2. May exclude up to 20% of site not to exceed 1 acre
  3. Runoff Reduction Standard
    1. Infiltrate WQCV from 60% of new impervious area



# Current Permit-Post-Construction Design Standards

- Seven different design standards
  4. Regional WQCV BMP Standard
  5. Regional WQCV Facility Standard
  6. Constrained Redevelopment Site
    1. The site has to be >75% impervious and permittee has to determine that the other design standards are impracticable
    2. Treat WQCV for 50% of the impervious area
    3. 50% of the impervious area drains to a pollutant removal BMP (TSS to 30 mg/L)
    4. Infiltrate WQCV from 30% of impervious area
  7. Previous Permit Term Standard



# Old permit-Post-Construction Minimum Inspection Frequency

- “Develop, implement, and document procedures to determine if BMPs are being installed according to specifications.”
- “Develop, implement, and document procedures to ensure adequate long-term operation and maintenance of BMPs, including procedures to enforce the requirement for other parties to maintain BMPs when necessary.”



# Current Permit-Post-Construction Minimum Inspection Frequency

- Inspected after the BMP is completed
- Once a permit term for long-term operation and maintenance



# Lessons Learned

- Conduct audits of permittees before renewing the permit
- Coordinate with MS4 groups
- Make sure upper management supports the changes in the permit and supports staff
- Consider public noticing the draft permit two times if there are contentious issues
- Focus on only a few changes in the permit if resources are limited





# Lessons Learned

- Use clear, specific, measureable language from other state general permits, especially in your region
- Give generous compliance schedules
- Consider writing a lengthy fact sheet if needed to explain the “why”
- Use the response to comments as another tool
- Be open to modifying the general permit after issuance



# Questions?

- <https://www.colorado.gov/pacific/cdphe/wq-municipal-ms4-general-permits>

