



The first draft of the renewal permit was public noticed on November 1, 2013 and comments were accepted until January 10, 2014. The division announced on December 20, 2013 that a second draft of the renewal permit would be developed. The second draft of the renewal permit was public noticed on April 1, 2015 and comments were accepted until June 30, 2015. The division held five stakeholder meetings during the 60-day public notice period. These were not official public meetings and only written comments are reflected in this document.

This response to comments does not address comments received on the first draft of the general permit. This response to comments only includes comments on and the division's response to the second draft of the general permit. Comments listed in this document are verbatim and only include those that were specific to the Cherry Creek Reservoir Drainage Basin Phase II MS4 Draft General Permit (COR080000).

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

1. Cherry Creek Basin Water Quality Authority
2. City of Aurora
3. City of Canon City
4. City of Castle Pines
5. Colorado Stormwater Council
6. Colorado Stormwater Council, Non-Standard Committee
7. City and County of Denver
8. Douglas County
9. Greenwood Village
10. Town of Castle Rock
11. Town of Parker
12. Xcel Energy





Comments on the second draft of the COR080000 general permit:

A. General Topics

Comment 1: Part III

Cherry Creek Basin Water Quality Authority:

We appreciate the Division's decision to retain a separate permit for the Cherry Creek Basin. However, the Cherry Creek permit (COR080000) is **exactly the same** as the Statewide General MS4 permit (COR090000), with only a few exceptions:

Part III (MDL-based MS4 requirements) was not included in the Cherry Creek permit because this section is not applicable to Cherry Creek (see Comment 10 below, which requests additional supporting language to this effect in the Cherry Creek Fact Sheet).

Response 1: Part III

The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 2: Separate general permit for Cherry Creek Basin permittees

Douglas County: We feel strongly that the retention of the Cherry Creek Basin Permit (080000) as a separate permit is, in our opinion, beneficial and productive.

Response 2: Separate general permit for Cherry Creek Basin permittees

The division takes note of this comment. No changes to the permit or fact sheet are necessary.

Comment 3: Support for Cherry Creek Basin Water Quality Authority

City of Aurora: Regarding the Cherry Creek Basin MS4 General Permit COR080000, we support the position taken by Phase II communities in the Cherry Creek Basin

City of Castle Pines: The City also is in general support of the written comments submitted to the Division by the Cherry Creek Basin Water Quality Authority (CCBWQA). Although only a portion of the City falls within the Cherry Creek Basin, the City implements a program that meets Control Regulation 72 throughout the entire City jurisdiction.

Town of Castle Rock: The Town of Castle Rock is a member of the Colorado Stormwater Council (CSC) and the Cherry Creek Basin Water Quality Authority (CCBWQA). We have been an active participant in the response efforts put forth by the CSC and the CCBWQA and are in general agreement with formal comments provided by both parties. Included in this response are comments on the Draft Renewal Permit intended to supplement those comments prepared and submitted by the CCBWQA and CSC regarding permits COR-080000 and COR-090000.





Douglas County: Please note that we concur with the comments put forth by the Cherry Creek Basin Water Quality Authority

Greenwood Village: As several watersheds originate in or surrounding the Village, and Colorado is a headwaters state, the Village appreciates the contribution that water quality provides to quality of life which is integral to the Village. The Village has concern with potential for negative water quality impacts and is an active member the Cherry Creek Basin Water Quality Authority and Colorado Stormwater Council (CCBWQA and CSC, respectively). The Village has also continued cooperation with the Division and with these partnerships will continue to improve water quality in Colorado. The Village is in support of the comments respectively submitted by the CCBWQA and CSC as Village staff participated in the generation of these comments. In the spirit of brevity, this letter will not reiterate these comments. However, this letter provides comment to address the Village's additional concerns and supplements those submitted by the CSC and the CCBWQA.

Town of Parker: Through the comment period the Town has actively participated in the Division workgroup sessions, work sessions with the Cherry Creek Basin MS4's and the Cherry Creek Basin Water Quality Authority Technical Advisory Committee (CCBWQA TAC), and work sessions with the Colorado Stormwater Council (CSC). The Division will receive comments from both the Cherry Creek Basin Water Quality Authority and the Colorado Stormwater Council. The Town of Parker concurs with both entities as stated below:

- The Town concurs with the CCBWQA TAC comments dated June 11, 2015 as they relate to the COR080000.

Southeast Metro Stormwater Authority: SEMSWA was also an active participant on the Colorado Stormwater Council (CSC) Work Group comment effort and the Cherry Creek Basin Water Quality Authority's Technical Advisory Committee (TAC) review discussions. We will not be reiterating either of those groups' comments unless there is something specific that pertains to how SEMSWA will be implementing our programs in the new permit term. We encourage the Division to consider both the CSC and TAC comments and value the amount of effort that went in to those documents by MS4 staff who manage implementation of the permit requirements on a daily basis.

Response 3: Support for Cherry Creek Basin Water Quality Authority

The division takes note of these comments. No changes to the permit or fact sheet are necessary.

Comment 4: Modified MEP

Cherry Creek Basin Water Quality Authority:

There are a total of **19 sentences** added to the 56-page Cherry Creek permit, in 8 separate sections of the permit. Of these additions:

- One involved expanded requirements for non-urbanized, non-growth areas in the Cherry Creek basin;
- Two additions modify the definition of "applicable construction activities" to be consistent with the more stringent Regulation 72 definition;
- Four additions require additional documentation and record keeping for the Cherry Creek basin; and





- The final addition incorporates Regulation 72 MS4 requirements by reference, but only Regulation 72 requirements are in effect as of October 1, 2015, and it specifically states that later amendments are not included in this incorporation. This section further states that the more stringent of either Regulation 72 or COR080000 requirements will always apply.

The Cherry Creek permit is only made **more stringent** than the Statewide permit in eight specific places, while retaining all of the newly defined "MEP" (Maximum Extent Practicable) prescriptive requirements included in the new Statewide permit. This is not what the Authority requested in its comments. The Authority requested the flexibility that is currently found in a working combination of Regulation 72 and the Cherry Creek-specific permit, which function together as a unit, and allow the fluid incorporation of new science and better management practices as they evolve based on the basin's site specific and unique stormwater management approach. (see Part I.A.3.a.ii(C) (p. 6); Part I.A.6 (p. 7); Part I .3.a.ix (p. 21); Part I .3.b.ix (p. 22); Part I .3.a.ix (p. 23); Part I.E.4.a.x (p. 29); Part I.E.4.b.x (p. 30); and Part I.E.4.c.x (p. 31))

At the Division's May 13th Stakeholder meeting, in response to similar comments from Cherry Creek MS4s, Division staff indicated that although it realizes the MEP requirements in the new Cherry Creek permit are more stringent than in Regulation 72, the Division believes that since it has set these same more stringent requirements in the new Statewide permit, it must do the same for the Cherry Creek permit. We disagree. All MS4s are not the same. Cherry Creek Basin MS4s are implementing more "mature" programs than many other small MS4s, in direct response to early Regulation 72 and its precursor documents, including its 1985 Cherry Creek Basin Water Quality Master Plan and exemplified by the construction of the first Cherry Creek Pollutant Reduction Facility project along Shop Creek in 1991, predating the State's 1993 Phase I Stormwater Permit Application Regulations. The Authority and its members have been working to effectively control stormwater for nearly 30 years now, since before our members officially became "MS4s".

The Division's new MEP definition significantly diminish the proven effectiveness of Cherry Creek MS4 programs. **The Division's new definition (below) is not appropriate for Cherry Creek MS4s.**

"In determining the level of control to be required for this permit term, the division determined that the level of control should reflect the average of the best existing performance at the time of permit renewal as described further below. In plain language the division interpreted the term "maximum extent" to mean that that standard was not intended to be the minimum or the average, or a single maximum, but a maximum that can be achieved by permittees operating a compliant program. The division has also looked to how the term "practicable" is applied within other parts of the CWA framework, specifically within the ELG framework. EPA sets Best Practicable Control Technology Currently Available (BPT) for effluent limitation guidelines for conventional, toxic, and nonconventional pollutants. 33 U.S.C. 1251 *et seq.*, section 304(b)(l) of the CWA lists the factors that EPA must consider when setting BPT. The standard for BPT is defined by EPA as "the first level of technology-based standards established by the CW A to control pollutant discharges to waters of the U.S." BPT guidelines are generally based on "the average of the best existing performance by plants within an industrial category or subcategory." This provides





practical guidance to permitting authorities on what to look for in establishing an MEP standard. This approach recognizes that there are municipalities that implement programs that go beyond the MEP standards, and is consistent with the goal of establishing a standard that all municipalities can and must implement. The permitting authority is directed to establish the MEP standard, in recognition that implementation beyond that standard will be feasible and appropriate for some municipalities. Permittees are not tasked with setting MEP. The division sets the requirements that make up MEP." (see Fact Sheet, Part I, p. 12)

The EPA's MEP Standard only requires that permits issued to MS4s require controls to reduce the discharge of pollutants to the "maximum extent practicable". It does not require that MEP be precisely defined. However, the Division has now defined this term as "the average of the best existing performance at the time of permit renewal" and as "a maximum that can be achieved by permittees operating a compliance program." MEP is not intended to be defined, as discussed by the EPA in its Phase II

Stormwater Rule (Federal Register, Vol. 64, No. 235, page 68,754):

"EPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. MS4s need the flexibility to optimize reductions in storm water pollutants on a location by- location basis. EPA envisions that this evaluative process will consider such factors as conditions of receiving waters, specific local concerns, and other aspects included in a comprehensive watershed plan. Other factors may include MS4 size, climate, implementation schedules, current ability to finance the program, beneficial uses of receiving water, hydrology, geology, and capacity to perform operation and maintenance.

The pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. Permit writers may evaluate small MS4 operator's proposed storm water management controls to determine whether reduction of pollutants to the MEP can be achieved with the identified BMPs.

EPA envisions application of the MEP standard as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Successive iterations of the mix of BMPs and measurable goals will be driven by the objective of assuring maintenance of water quality standards. If, after implementing the six minimum control measures there is still water quality impairment associated with discharges from the MS4, after successive permit terms the permittee will need to expand or better tailor its BMPs within the scope of the six minimum control measures for each subsequent permit. EPA envisions that this process may take two to three permit terms."

The Phase II Stormwater Rule also explains how this process will work:

"In issuing the general permit, the NPDES permitting authority will establish requirements for each of the minimum control measures. Permits typically will require small MS4 permittees to identify in their NOI the BMPs to be performed and to develop the measurable goals by which implementation of the BMPs can be assessed. Upon





receipt of the NOI from a small MS4 operator, the NPDES permitting authority will have the opportunity to review the NOI to verify that the identified BMPs and measurable goals are consistent with the requirement to reduce pollutants under the MEP standard, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. If necessary, the NPDES permitting authority may ask the permittee to review their mix of BMPs, for example, to better reflect the MEP pollution reduction requirement."

Regulation 61 parallels the EPA Phase II Rule:

"At a minimum, the MS4 permit will require that the regulated small MS4 develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Colorado Water Quality Control Act (25-8-101 et seq., C.R.S.). The stormwater management program must include the minimum control measures described in subsection (ii) of this section, unless the small MS4 applies for a permit under 61.4(3)(c). **Implementation of BMPs consistent with the provisions of the stormwater management program required pursuant to this section and the provisions of the permit required pursuant to subsection (ii) constitutes compliance with the standard of reducing pollutants to the MEP.**" (§61.8(11)(a)(i)) [emphasis added]

The "stormwater management program" referenced in Regulation 61 is the program to be developed by the MS4s, reviewed by the Division, and implemented, and enforced by the MS4s. "Section (ii)" above defines specific management program requirements for each of the six minimum control measures that by statute will constitute compliance with MEP. Regulation 61 specifically relies on an MS4-developed stormwater management program to meet MEP, allowing the MS4 the ability to adapt its program to its specific circumstances and water quality needs. Not all programs have to adopt the "average of the best," rather programs are to be focused on protecting water quality. If EPA issues Effluent Limitation Guidelines for small MS4s, then and only then would Best Practicable Control Technology Currently Available (BPT) be required. This has not been yet been done.

It is this kind of flexibility and continual tailoring of BMPs to local conditions that have made the Cherry Creek MS4 programs so successful. We therefore request that COR080000 be modified such that the definition of "MEP" for this permit is consistent with the EPA guidance and consistent with Regulation 61.

Douglas County: "...in general, the new COR080000 Permit should be rewritten to truly be a basin-specific permit recognizing the Cherry Creek Basin's long-standing programs as MEP."

Response 4: Modified MEP

No changes have been made to the permit based on this comment. The division acknowledges and appreciates the program requirements that have been put into place and successfully and proactively implemented in MS4 programs in the Cherry Creek Basin. The Division finds that the new MEP definition does not diminish the





proven effectiveness of Cherry Creek MS4 programs, and the proactive and more stringent requirements that have been and continue to apply to areas within the basin. The renewal permit clearly identifies geographic areas, such as non urbanized and non growth areas, and program requirements, such as the construction sites program, where Regulation 72's more stringent requirements apply. The division disagrees that MEP is not intended to be defined. The previous permit framework required that a program description document (PDD) be developed that addressed pollutants of concern and required the permittee to develop and implement requirements to meet MEP. The division has changed this framework and has provided the requirements that meet MEP in the renewal permit. The division finds that this change was necessary to meet the statutory and regulatory direction provided that requires the division to establish the level of pollutant reductions that all MS4 operators must achieve to meet the MEP standard and was necessary to result in permit requirements that are clear. The division agrees that the MEP standard is intended to be iterative, and finds that permit conditions for discharges to the Cherry Creek Reservoir basin are appropriately modified in this permit renewal to meet the iterative nature of the MEP standard that is also being applied to MS4s outside the Cherry Creek Reservoir basin. The communities covered under both phase II general permits (COR090000 and COR080000) are similar when considering such factors, including but not limited to, conditions of receiving waters, specific local concerns, MS4 size, climate, implementation schedules, current ability to finance the program, beneficial uses of receiving water, hydrology, geology, and capacity to perform operation and maintenance. In determining the level of control to be required for this permit term, the division determined that the level of control should reflect the average of the best existing performance at the time of permit renewal. Therefore where the MEP standard for this renewal as derived to meet the requirements of Regulation 61 was found to be more stringent than that currently required by Regulation 72, the division intentionally applied that standard to MS4s in the Cherry Creek Reservoir basin.

Comment 5: Additional draft permit request

Cherry Creek Basin Water Quality Authority: It may take significant time to truly write a Cherry Creek basin specific permit that is not essentially the same as the new Statewide permit, with a few more areas made more stringent and even less flexible. We note that the first draft of the renewal permit COR090000 was public noticed on November 1, 2013, with a second draft released May 1, 2015. This is essentially the first time (May 1, 2015) that the Cherry Creek entities have seen our separate permit. We therefore request that we be given the same opportunity that other MS4s have had, and the Division carefully consider our comments on the uniqueness of our programs, and reissue a second draft that is more fitting for our basin.

The Cherry Creek basin entities request a more carefully devised permit for our basin, which is fully consistent with and appropriately incorporates Regulation 72 requirements. This could be implemented by recognizing Regulation 72 control requirements and Regulation 61 requirements as complying with MEP.

Douglas County: The Cherry Creek Basin entities request a more carefully devised permit for our basin, which is fully consistent with and appropriately incorporates Reg. 72 requirements. This could be implemented by recognizing Reg. 72 control requirements and Reg. 61 requirements as complying with MEP.





The new COR080000 should be rewritten to truly be a basin-specific permit recognizing the Cherry Creek Basin's long-standing programs as MEP.

Town of Castle Rock: Due to the unique nature of the Cherry Creek General Permit, the Town requests a second public comment period to provide input.

The Town of Castle Rock concurs with the CCBWQA in requesting thoughtful consideration of comments and a second public notice period on the Cherry Creek specific permit COR080000. In particular, it appears that the current draft permit was highly influenced based on audit results of permittees throughout the state. The Town requests that a separate and distinct effort be completed and documented in the fact sheet that evaluates permit compliance of those MS4s covered under the Cherry Creek general permit. This information should be considered and cause to influence the next draft of the Cherry Creek permit.

Response 5: Additional draft permit request

The division conducted an extensive stakeholder process that included a series of meetings to obtain early stakeholder input, two drafts of the permit and additional informal meetings and dialogue with permittees over the course of three and a half years. During the entire permit development process, input was solicited from Cherry Creek Reservoir basin permittees on all aspects of permit development. Early dialogue was held regarding the possible consolidation of the two permits, and the first draft of the COR090000 incorporated the required elements of control regulation 72 in an attempt to consolidate all phase II permittees under one general permit. In response to requests received as comments on the first draft, the division drafted a separate permit for COR080000 as part of the second draft. Therefore, COR080000 permittees have had extensive input on the renewal permit throughout the renewal process.

Comment 6: Incorporation of Regulation 72 by reference

Cherry Creek Basin Water Quality Authority:

The Fact Sheet notes that the most stringent requirement(s) among Regulation 61, Regulation 85, Regulation 72, and Regulation 65 are incorporated into the Cherry Creek permit, either as permit terms and conditions or through incorporation by reference. The permit itself notes that "For discharges to the Cherry Creek Reservoir drainage basin the permit requirement is the more stringent of the specific terms and conditions contained in this permit and the requirements contained in Regulation 72 that are incorporated by reference." (Part I.A.6) It also states that it only incorporates by reference the version of Regulation 72 that was in effect as of October 1, 2015. (Part I.A.6) Thus, if the Commission adopts any changes to the stormwater portion of Regulation 72 (§72.7) in the future, they will not be automatically incorporated into the permit, as is done now.

Regulation 72 requires: "The [§72.7] requirements, **at a minimum**, shall be incorporated into any Stormwater Permit issued to a Municipal Separate Storm Sewer System (MS4) in the Cherry Creek watershed, in addition to the requirements included in Regulation #61 (5 CCR 1002-61)" [emphasis added]. The Regulation 72 requirements are in addition to the Regulation 61 requirements. The Commission makes findings in





its Statements of Basis Specific Statutory Authority and Purpose that changes to Regulation 72 are appropriate and not inconsistent with Regulation 61. For example:

"In this rulemaking, changes were made to Section 72.7 Stormwater Permit Requirements only. These changes were recommended by the Cherry Creek Basin Water Quality Authority to incorporate revised water quality control strategies based on recent studies, information and conditions. The Authority has express statutory authority to develop and revise such strategies under C.R.S. 25-8.5-111(1)(a). The adopted changes clarify specific areas that are covered by stormwater requirements and provide consistency between State and Federal stormwater requirements. The changes are based on experience the Authority has gained in recent years, will improve the effectiveness of its Regulation 72 stormwater program, and address limited situations where the Commission believes certain BMPs are not practicable. Regulation 72 was modified to clarify that post-construction stormwater controls for new development and redevelopment can include structural and/or non-structural controls, as may be appropriate for the local situation. Use of non-structural BMPs in some cases may provide for a more effective and efficient solution to meet the overall goal of controlling pollutants and is consistent with the requirements in Regulation 61. Specifically, a new non-structural BMP, "Runoff Reduction Practices," was added to Regulation 72.7.2(c)(6), and the Large Lot Single Family Development provision that incorporates this BMP is now automatically excluded from additional post-construction BMP requirements under Regulation 72. The Commission finds that the implementation of Runoff Reduction Practices to Large Lot Single Family Development will result in infiltration of the Water Quality Capture Volume and thus not require other Regulation 72 structural post-construction BMPs and associated administrative requirements. Similarly, the Commission has determined that it is also appropriate to exclude a limited subset of roadway projects, as defined at 72.7.l(d), from Regulation 72 post-construction requirements that it finds are not practicable for these projects. This is not intended to exclude roadway de-icing operations and drainage improvements associated with roadway maintenance. These activities would not be expected to cause increased stormwater quality impacts, as compared to pre-project conditions, as the original footprint for Excluded Roadway Projects would not be changed, and there would be no additional runoff due to the limitation on no increase in impervious area. The Commission has also added language to Section 72.7(2)(b)(5)(ii) that authorizes MS4 permittees to modify schedules for stabilization and revegetation to allow for physical considerations adverse to stabilization or revegetation goals. This flexibility has been provided to address situations where physical constraints exist that would result in making the stabilization and revegetation schedules in Regulation 72 impracticable. Typographical errors and cross- references were also corrected. Clarifications were made to several definitions, and language was added to ensure that Regulation 72 is consistent with the language of Regulation 61. These changes are not intended to define "new development and redevelopment" as used in Regulation 61, nor to modify MS4 permit construction program requirements or permit requirements defined in Regulation 61. The Commission supports the ongoing efforts between the Division and the MS4 community to define "new development and redevelopment" in accordance with Regulation 61." (§72.28, Commission's Statement of Basis and Purpose, 2012)

The storm water requirements of Regulation 72 are based on Regulation 61 requirements. During the 2001 adoption of detailed Regulation 72 stormwater





requirements, much effort was spent to ensure Regulation 72 included all required portions of Regulation 61. For example:

"The stormwater provisions of the regulation are based on several sources. First, the Phase II stormwater regulation as part of Regulation 61 was recently adopted by the Commission. It lists six minimum control measures that the regulated MS4s must implement once they are required to apply for a permit. These requirements are cross-referenced in this control regulation, and include Public Education, Public Involvement and Participation, Illicit Discharge Detection and Elimination, Construction Site Stormwater Runoff Control, Post-Construction Stormwater Management in New Development and Redevelopment, and Pollution Prevention/Good Housekeeping for Municipal Operations. The municipalities with MS4s that drain into the basin will be required to have permit coverage for those discharges that will include developing programs to cover these six measures. In addition to the basic measures, this control regulation incorporates more detailed requirements under the Public Education, Construction, and Post-Construction Minimum Measures. The provisions of Regulation 61 concerning the six minimum control measures still apply to permittees covered by this Control Regulation. This includes the standard for permit compliance that stormwater management programs reduce the discharge of pollutants to the maximum extent practicable (MEP)." (§72.25, Commission's Statement of Basis and Purpose, 2001)

"In addition, the Division maintains the right to require additional measures from MS4 permittees if needed to comply with the requirements of Regulation 61, this control regulation, or other State requirements." (§72.25, Commission's Statement of Basis and Purpose, 2001) Regulation 72 is fully compliant with Regulation 61, and the Commission and Division will continue to ensure this is so, as part of its Statements of Basis Specific Statutory Authority and Purpose. It would be unproductive to expend significant efforts adopting changes to Regulation 72 that cannot be implemented due to inconsistencies with Regulation 61.

The real issue is not whether or not the Cherry Creek MS4 programs are compliant with current Regulation 61 requirements; they are. The issue is whether, for the Cherry Creek basin, the Division needs to strictly define the term "MEP" (see comment #1 above) and impose extremely detailed prescriptive requirements on the Cherry Creek MS4s, or whether the proven effectiveness of Regulation 72 operating together with Regulation 61 requirements as adopted by the Commission can be allowed to continue as it has successfully in the past. Again, Cherry Creek MS4s have more mature programs; in fact, many of the "average of the best" prescriptive requirements in the Statewide permit are taken from the Cherry Creek basin. This flexibility that encourages newer and better controls that may not fit within the new, more stringent Statewide permit requirements and should be allowed to continue in the basin.

The new Cherry Creek permit should include the same language as the previous Cherry Creek permit: "In addition, the stormwater section of the regulation (72. 7) is hereby incorporated by reference." (Part I.A .3(b))

The following language should be deleted from the draft Cherry Creek permit: "For discharges to the Cherry Creek Reservoir drainage basin the permit requirement is the





more stringent of the specific terms and conditions contained in this permit and the requirements contained in Regulation 72 that are incorporated by reference. Throughout this permit requirements promulgated by the Water Quality Control Commission in the Cherry Creek Reservoir Control Regulation (5 CCR 1002-72) have been adopted and incorporated by reference."

Douglas County: The new Cherry Creek permit should include the same language as the previous Cherry Creek permit: "In addition, the stormwater section of the regulation (72.7) is hereby incorporated by reference." (Part I.A .3(b)) The following language should be deleted from the draft Cherry Creek permit: "For discharges to the Cherry Creek Reservoir drainage basin the permit requirement is the more stringent of the specific terms and conditions contained in this permit and the requirements contained in Regulation 72 that are incorporated by reference. Throughout this permit requirements promulgated by the Water Quality Control Commission in the Cherry Creek Reservoir Control Regulation (5 CCR 1002-72) have been adopted and incorporated by reference."

Response 6: Incorporation of Regulation 72 by reference

The division did not make any changes to the permit based on this comment. The division has had a longstanding practice of incorporating the requirements of Regulation 72 by reference into this general permit and found this to be an appropriate approach for this renewal to include Regulation 72 requirements. The division has had extensive dialogue with stakeholders about this approach, and understands that there is some agreement, and some disagreement. The division has had a number of discussions related to incorporation of regulation 72 by reference with permittees. Prior to the 2nd public notice, the division sent an email to all of the COR080000 permittees requesting input regarding incorporating Regulation 72 by reference or weaving the requirements throughout the draft permit. The majority of permittees that responded requested implementation of Regulation 72 by reference. Division staff also attended meetings with SEMSWA and Douglas County on May 13, 2015 and June 2, 2015 respectively. In each of these meetings the topic of incorporation of regulation 72 by reference was one of the topics discussed. The division also held a meeting on June 12, 2015 where all COR080000 permittees were invited to discuss the incorporation of Regulation 61 and Regulation 72 MEP in the permit and how it would affect permit area. The division has considered numerous approaches to implementing Regulation 72 requirements. Due to the nature of the language in Regulation 72, the division has determined that incorporation by reference is the best approach.

Please see added discussion on this topic in the fact sheet.

Comment 7: The term "maximum" extent allowable

Cherry Creek Basin Water Quality Authority:

The new Cherry Creek permit would require that the MS4 must develop and implement a regulatory mechanism "to the maximum extent allowable under state or local law". This could require local governments to add additional enforcement options that they currently do not have, just because they are allowed under State or local law. This is not necessary if the mechanisms already in place are effective in controlling





stormwater pollution. The goal is to protect water quality, not to have a large amount of tools available to do so. If the current programs are effective, they shouldn't need to be expanded.

The terminology used in Regulation 61 is (to the extent allowable under State or local law" (see §61.8(11)(a)(ii)(C)(l)(b), §61.8(11)(a)(ii)(D)(II)(a), and, §61.8(11)(a)(ii)(E)(II)(b)).

The current Cherry Creek permit includes the following program requirements for the construction program and post-construction programs, respectively:

"An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions and procedures adequate to ensure compliance, to the extent allowable under State or local law." (Part I.B.4(a)(2)(i)(A))

"Use an ordinance or other regulatory mechanism to address post- construction runoff from new development and redevelopment projects to the extent allowable under State or local law" (Part I.B.5(a)(2))

Note that both Regulation 61 and the previous permit include "to the extent allowable under State or local law"; there is no requirement that this be the maximum extent allowable under State or local law. The word "maximum" should be deleted from the definition of regulatory mechanism in Part I.E. 2.A.II of the draft Cherry Creek permit. This comment also applies to all other sections of the draft permit that contain this same language.

Response 7: The term “maximum” extent allowable

This comment has been incorporated into the permit.

Comment 8: Overlapping permit areas

Southeast Metro Stormwater Authority: There are multiple references throughout the permit to activities that “Overlap Permit Areas”. We do not believe that there are instances of permits that overlap; rather, permit areas may be concurrent or adjacent, with projects that overlap the permit boundaries. Please clarify these references accordingly. Example revised language might read: activities that overlap multiple Permit Areas.

Response 8: Overlapping permit areas

No changes were made to the permit based on this comment. The division believes that the terminology used in the permit is synonymous with the suggested language.

Comment 9: Underground utility exclusion

Cherry Creek Basin Water Quality Authority:





In its January 8, 2014 comments, The Authority recommended the following modifications to the permit exclusion for underground utilities (see Part I.E.4.a.i(D)):

"Activities for installation or maintenance of underground utilities or infrastructure that does not permanently increase ~~alter~~ the amount of imperviousness, terrain, ground cover, or drainage patterns that existed prior to the project. This exclusion includes, but is not limited to, projects to install, replace, or maintain utilities under roadways or other paved areas that return the surface to the same condition."

The original draft of the permit did not allow any changes in grading post-project. The Regulation 72 exclusion ("Underground utility construction, provided that stormwater runoff and erosion from soil and material stockpiles are confined and will not enter the drainage system") has been used for a number of years by several MS4s, and has been shown to be effective in protecting water quality without these limitations on post-project grading and drainage patterns.

The second draft of the permit contains the original language:

"Activities for installation or maintenance of underground utilities or infrastructure that does not permanently alter the terrain, ground cover, or drainage patterns from those present prior to the project. This exclusion includes, but is not limited to, projects to install, replace, or maintain utilities under roadways or other paved areas that return the surface to the same condition."

This is a modification from the previous draft, but does not address the Authority's concerns. As written, the permit this limits the flexibility the MS4s have been using with respect to underground utility construction. The basin-specific permit should recognize the Cherry Creek basin's longstanding programs as MEP.

Response 8: Underground utility exclusion

This comment has been incorporated into the permit.

Comment 10: Add an additional exclusion for projects with land disturbance to undeveloped land that will remain undeveloped following disturbance.

Cherry Creek Basin Water Quality Authority:

The original draft permit contained language that is more stringent than Regulation 72 with respect to an exclusion for land disturbances that will remain undeveloped following disturbance and will be reclaimed. In its January 8, 2014 comments, the Authority recommended the following modifications to the draft permit language (Part I. E.4.a.i.Fa), to make this exclusion consistent with Regulation 72:

"Development activities for which post-development surface conditions are not projected to result in the occurrence of concentrated stormwater discharges to State waters during the 80th percentile stormwater runoff event are excluded from the infiltration condition requirements, and are not projected to result in a surface water discharge form 80th percentile stormwater runoff events (i.e., the 80th percentile event is infiltrated prior to flows being concentrated.). This includes land disturbances to undeveloped land that will remain undeveloped following disturbance and will be revegetated in accordance with the MS4's site-specific criteria. This exclusion does not





apply to projects including residential or commercial buildings. For this exclusion to apply, the permittee must confirm and document the site considerations used for this determination through either a site-specific determination or as part of in accordance with allowable design standards. Documented as part of the permittee's PDD, ' which are based on rainfall and soil conditions present within the Permitted Area and include allowable slopes, surface conditions, and ratios of impervious area to pervious area."

The new Cherry Creek permit now contains the following exclusion:

"Development activities for which post-development surface conditions do not result in the occurrence of concentrated stormwater flow during the 80th percentile stormwater runoff event, and are not projected to result in a surface water discharge from 80th percentile stormwater runoff events (i.e., the 80th percentile event is infiltrated prior to flows being concentrated). This exclusion does not apply to projects including residential or commercial buildings. For this exclusion to apply, the permittee must confirm and document the site considerations used for this determination through either a site-specific determination or as part of allowable design standards documented as part of the permittee's PDD, which are based on rainfall and soil conditions present within the Permitted Area and include allowable slopes, surface conditions, and ratios of impervious (Page 24 Permit No. COR-090000 area to pervious area)."

The Authority's requested modifications were not made, which takes away the MS4's ability to continue to apply to use its post-construction exclusion for "undeveloped-to-undeveloped conditions" exclusion so long as the undeveloped land will be reclaimed (revegetated/stabilized) in accordance with Regulation 72 very stringent requirements. We again request this modification. The basin specific permit should recognize the Cherry Creek basin's long-standing programs as MEP.

Response 10: Add an additional exclusion for projects with land disturbance to undeveloped land that will remain undeveloped following disturbance.

This comment has been incorporated into the permit.

Comment 11: Inconsistent Requirements between Regulation 72 and Draft COR080000 Permit for Regional WQCV Facilities

Cherry Creek Water Quality Basin Authority:

In its January 8, 2014 letter, the Authority commented on the importance of PRFs, which are required by Regulation 72. We objected to the first draft of the permit, which would require WQCV, and then prohibit the use of regional WQCV facilities where there is a classified drinking water use upstream of the regional WQCV. We noted that the entire mainstem of Cherry Creek is classified for drinking water supply. The Authority's recommended changes are shown below:

"The regional WQCV Facility must be located prior to discharge to a classified state water, or when located following the discharge to a classified state water, the permittee shall evaluate and document that no drinking water uses exist and no other beneficial uses are expected to be adversely impacted by pollutant discharges from the new development project for the state water upgradient from the regional WQCV facility."





The Division modified the language in the new draft permit as follows:

"Applicable Development Project Draining to a Regional WQCV Facility: The regional WQCV facility is designed to accept drainage from the applicable development project. Stormwater from the project may discharge to a water of the state before being discharged to the regional WQCV control measure. Before discharging to a water of the state, 20 percent of the total impervious surface of the applicable development project must first drain to a control measure covering an area equal to 10 percent of the total impervious surface of the applicable development project. The control measure must be an engineered grass buffer, swale, porous pavement, or porous landscape detention control measure designed in accordance with a design manual identified by the permittee. In addition, the stream channel between the discharge point of the applicable development project and the regional WQCV facility must be fully stabilized."

While the new language addresses our initial concern by removing the prohibition for the use of regional WQCV facilities where drinking water classified uses are present upstream, new language has been added that is equally prohibitive. There is no rationale in the fact sheet for the new language. The newly added requirement that the entire stream channel between the discharge of stormwater from upstream development be fully stabilized could also undermine the use of regional facilities, especially in instances when no other workable solutions for WQCV exist, e.g., for transportation projects, such as airport runways. This new requirement is also unnecessary, due to the addition of the 20/10 rule now included in the new language. The Authority requests that the "full stabilization" requirement be deleted. The Authority previously suggested the requirement could instead require either a reclaimed channel upstream of the WQCV facility or on-site BMPs to treat the runoff prior to entering the stream. The basin specific permit should recognize the Cherry Creek basin's long-standing programs as MEP.

Response 11: Inconsistent Requirements between Regulation 72 and Draft COR080000 Permit for Regional WQCV Facilities

These comments have not been incorporated into the permit. The requirement of concern has been removed from the permit.

Comment 12: Inconsistent use of contiguous definition and removal of term related:

Cherry Creek Water Quality Basin Authority:

The new draft COR080000 Permit includes two different definitions:

" 'Part of a Larger Common Plan of Development or Sale' means a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules, but remain related'." (see Definitions section (p. 46))





"A 'common plan of development or sale' is a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules, but remain related. Consistent with EPA guidance, 'contiguous' is interpreted to mean construction activities located in close proximity to each other (within 1/4 mile). Construction activities are considered to be "related" if they share the same development plan, builder or contractor, equipment, storage areas, etc." [emphasis added] (see p. 16)

For Clean Water Act purposes, EPA does not have a formal definition for "contiguous". It is not defined in the CWA, nor in the Phase II Stormwater Rule. Therefore, the common construction of the word should be used. Merriam-Webster (10th ed.) defines "contiguous" as "being in actual contact with: touching along a boundary or at a point".

Actual EPA guidance on this follows. All of these definitions are consistent with the common construction of "being in actual contact with; touching along a boundary or point".

1) From the Preamble to the Phase II Rule:

"A "larger common plan of development or sale" means a contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan, e.g., a housing development of five V4 acre lots".

2) From EPA's Final Waters of the United States rule (May 27, 2015)

http://www2.epa.gov/sites/production/files/2015-05/documents/rule_preamble_web_version.pdf

"(c) Definitions- In this section, the following definitions apply: (1) Adjacent. The term adjacent means bordering, contiguous, !!.r neighboring a water identified in paragraphs (a)(l) through (5) of this section, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like.

And from the Preamble to the Rule: "Within the definition of "adjacent," the terms bordering and contiguous are well understood, and for continuity and clarity the agencies continue to interpret and implement those terms consistent with the current policy and practice."

3) From RCRA rules (40 CFR Part 262):

"contiguous property - property that is one continuous plot of land or several plots of adjoining land; noncontiguous properties with a private right-of-way under the control of the owner of the properties; contiguous property divided by a road (public or private) with the property entrance and exit directly across from each other and perpendicular to the road (crossroads intersection)."

4) From CERCLA FAQs

[http://emergencymanagement.supportportal.com/link/portal/23002/23016/Article/21698/What does-%20contiguous-property-%20mean](http://emergencymanagement.supportportal.com/link/portal/23002/23016/Article/21698/What%20does%20-%20contiguous%20property%20-%20mean)

"What does "contiguous property" mean? Property that is adjoining. Public rights-of-way (e.g., railroads, highways) do not prevent property from being considered contiguous."





The Commission interpreted "contiguous" with respect to oil and gas regulated construction activities (see SOBP §61.58.C). Note that "Contiguous" still means "physically-connected" in the Commission's interpretation.

" 'Contiguous' is interpreted to mean sites up to 1/4 mile apart and/or having the area between the sites disturbed (i.e., connected by a road or pipeline)." Note that in this definition, "contiguous" sites are still connected by "roads constructed to provide access to the pad area, and any pipelines constructed for transmission of product for transport, storage or processing."

The Division's arbitrary definition of "contiguous" should be struck from the permit on p. 16; the actual definition on p. 46 should be used throughout. This also should be changed in the Fact Sheet (e.g., p. 89); the same inappropriately expanded definition is used here as well. Also, a definition for 'contiguous' is included in the Fact Sheet ("means within 0.25 miles"). The inclusion of this definition by slipping it into the Fact Sheet is especially problematic, because "contiguous" is also used in the permit as part of the definition of "Roadways"; this could dramatically alter the carefully-designed roadway exclusion provisions. The Division's definition of contiguous should also be deleted. There is no basis for this, in either Regulation 61 or in EPA guidance. Similar comments apply to the Division's interpretation of "related". Several developments share the same builder, equipment, and/or storage areas. This is an arbitrary interpretation far from the intent of the regulation.

Response 12: Inconsistent use of contiguous definition and removal of the term related:

This comment was partially incorporated into the permit. The definition of contiguous is now consistent throughout the permit. However, the definition of contiguous used in the permit is consistent with the definition in the Statement of Basis and Purpose of Regulation 61.

The word "related" is integral to the definition of a "common plan of development" because construction sites must be both contiguous and related. For example, without the term "related" included in the definition of a "common plan of development," two unrelated construction projects that are simply located next to each other could be considered a "common plan of development." The definition of related, however, has been removed from the permit.

B. Part I.A. - Coverage under this permit

1. Discharges Authorized Under this Permit

Comment 1: Include stormwater discharges to ground water in the permit

Cherry Creek Basin Water Quality Authority: The draft permit states that: "Discharge" means the discharge of pollutants as defined in section 25-8-103(3) C.R.S. For the purposes of this permit, discharges do not include land application or discharges to the ground." (see Part I.A.1.a.i.)

However, many of the BMP and WQCV facilities required in Regulation 72 do intentionally "contribute water to the ground (e.g., swales, MD CIA, constructed wetlands, modular porous block pavement, detention ponds, porous pavement, porous





landscape detention, and sand filter extended detention basins). The permit also states:

"Any discharge to the waters of the state [which includes subsurface waters] from a point source other than specifically authorized by this permit is prohibited."

It appears that the Division's intent, by redefining the word "discharge", is to not, therefore, prohibit the types of BMPs included in Regulation 72, but rather to redefine discharge so land application and discharges to the ground are not prohibited.

We recommend that this be clarified by adding the following statement: "The Division does not intend to require a permit for discharge from an MS4 to subsurface waters."

Response 1: Include stormwater discharges to ground water in the permit

The permit does not prohibit discharges to ground water; it just does not cover them. The storm sewer system map only needs to identify discharges to state waters from MS4 outfalls, which, in this permit, does *not* include ground water. The fact sheet and permit have been updated with additional information.

2. Limitations on Coverage

No Cherry Creek specific comments were received for this section. See the COR090000 response to comments.

3. Permit Area

Comment 2: Regulation 72 tiers Incorporated into Permit

Cherry Creek Basin Water Quality Authority: This is one important example of the inconsistency between the new COR080000 and Regulation 72 for Non-urbanized Non-growth Areas. Because the Cherry Creek permit is essentially the same as the Statewide General Permit, there are portions of the Cherry Creek Permit that are not even appropriate for the basin, and cause unnecessary confusion in figuring out which permit conditions actually apply. For example, within the same subsection of the Cherry Creek permit, there is a provision allowing counties to designate Growth Areas (for which the Pollutant Restrictions, Prohibitions, and Reduction Requirements and Recordkeeping in Part E requirements will apply). Counties can also designate No Growth Areas:

"County Growth Areas: Growth areas will be designated for permit coverage by the Division in accordance with one of the following processes, which will be identified in the permit certification: (1) Growth Areas identified by the permittee . . . (2) Growth Areas identified by the Division . . . (3) No Growth Area determination . . ." (Part I.A.3)

However, immediately below this is a statement that the permit area also includes all Non-urbanized Non-growth Areas of the MS4 that drain wholly or in part into the Cherry Creek Reservoir drainage basin. (Part I.A.3.a.ii(c)) Thus, the Counties can only designate Growth and No Growth Areas outside of the Cherry Creek basin. All of the Construction and Post-Construction requirements will therefore apply to all county lands within the basin. This is contrary to Regulation 72, which has 3 different tiers for construction and post-construction, depending on the size of the disturbance (< 1 acre





disturbance and < 500 ft² of new imperviousness; (< 1 acre disturbance and > 500 ft. 2 and < 5,000 ft² of new imperviousness; and > 1 acre of land disturbance or < 5,000 ft² of new imperviousness). These tiers have been carefully developed by the Authority and its partners over a long time to fit our basin. The new permit does not recognize these tiers, and applies all of the construction/post-construction requirements to all county areas within the basin requirements that only apply to > 1 acre of land disturbance under the Statewide MS4 permit.) This blanket approach of just adding a few new sentences to the Statewide MS4 permit incorrectly incorporates Regulation 72 requirements.

Response 2: Regulation 72 tiers incorporated into permit

Changes to the permit have not been made based on this comment. Projects less than one acre that are not part of a large common plan of development or sale must only meet Regulation 72 requirements.

Comment 3: Part III permit area request

Southeast Metro Stormwater Authority: Thank you for the clarity regarding “permit areas” you provided in the new draft permit. We would like to request some specific assistance, possibly in Part III, for the unique entity that SEMSWA represents. As you are aware, SEMSWA assumed stormwater management functions for three former non-standard (COR-070000) permit holders in 2007 and 2008. Two of the three former permit holders had permitted areas in both the City of Centennial and Arapahoe County. One of the former permit holders was entirely within Arapahoe County’s jurisdiction. Since SEMSWA holds the permit for the City of Centennial’s municipal jurisdiction, we have incorporated discharge requirements for the two former non-standard permitted areas located within the City into our permit area. Those areas of the three non-standards assumed by SEMSWA that are within the County’s jurisdictional boundaries will no longer be represented as being under SEMSWA’s COR-080000 permit coverage. SEMSWA will participate in the renewal process for the COR-070000 permit and will apply for a non-standard permit for areas SEMSWA has MS4 responsibility for, but are within the County’s COR-080000 permit area.

Response 3: Part III permit area request

No changes have been made to the permit based off this comment. The general permit is not intended to have a program specific section for each permittee. The permit provides significant opportunities for individual permittees to tailor program requirements to those selected by the municipality. If a permittee would like a permit that is tailored to their program beyond that currently encompassed in the general permit, the division encourages those suggestions to be submitted so that if they make sense, they can be added to the permit for all permittees. Another option is that a permittee always retains the option of applying for an individual permit.





Comment 4: Adjacent to State waters

City of Castle Pines: The topics considered "high-level" issues for the City include the following: General- Permit area, adjacent to state waters;

Response 4: Adjacent to State waters

This section of the permit, has been revised for clarity. The division is not redefining or expanding the definition of an MS4. The division is, however, clarifying "(B) Designed or used for collecting or conveying stormwater." The fact sheet has been updated with further discussion.

Comment 5: Non-standard permit implementation obligations

City of Castle Pines: The topics considered "high-level" issues for the City include the following: clarification of non-standard permit implementation obligations.

Response 5: Non-standard permit implementation obligations

This comment has been incorporated into the permit.

4. County Growth Area Requirements

No Cherry Creek specific comments were received for this section. See the COR090000 response to comments.

5. Application for New and Renewal Applicants

No Cherry Creek specific comments were received for this section. See the COR090000 response to comments.

6. Cherry Creek Reservoir Drainage Basin Requirements

Comment 6: Less than one acre of disturbance

Southeast Metro Stormwater Authority: Part I.A.6. Cherry Creek Reservoir Drainage Basin Requirements

As noted in the draft permit, the Cherry Creek basin has special requirements due to Control Regulation 72, and for this reason, the COR-080000 permit is specific to the parts of the MS4s that drain to the Cherry Creek Reservoir Drainage Basin. Discussions with the Division have indicated a preference to identify those projects in the Cherry Creek Reservoir Drainage Basin that disturb less than one acre differently.

As such, please revise this section to read: For projects with disturbances less than one acre that discharge to the Cherry Creek Reservoir drainage basin, the requirements contained in the Cherry Creek Reservoir Control Regulation (5 CCR 1002-72) shall apply.

Response 6: Less than one acre of disturbance

Changes have been made to the fact sheet and permit based off this comment.





C. Part I.E. Pollutant Restrictions, Prohibitions, and Reduction Requirements and Recordkeeping

Comment 1: Include additional exclusion to address emergency operations

Southeast Metro Stormwater Authority: Part I.3.a.i. Exclusions. Please include an additional exclusion to this section to address emergency operations. We recommend the language utilized in Regulation 72 that excluded Emergency operations related to flood, fire, or other force majeure that maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

Response 1: Include additional exclusion to address emergency operations

This comment has not been incorporated into the permit. The division understands that there can be situations where events preclude implementation of program requirements to reduce the discharge of pollutants in stormwater runoff from construction activities. The permitting and compliance framework in place adequately addresses these situations. In accordance with Regulation 61.8(3) provisions are included in all permits that define proper operation and maintenance, bypass, and upset and instruct permittees on how to report and respond specific circumstances that result in permit non-compliance.

Comment 2: Delete Part I.E.3.a.ix.

Southeast Metro Stormwater Authority: Part I.3.a.ix. Cherry Creek Reservoir Basin Discharges. As Cherry Creek Basin requirements are requested to be addressed in Part I.A.6, please delete Part I.3.a.ix.

Response 2: Delete Part I.E.3.a.ix.

This comment has been partially incorporated into the permit. Part I.E.3.a.ix.(A) of the second draft permit has been deleted however, the division believes that it is appropriate to require permittees to ensure that their control measures (if located in areas that discharge to the Cherry Creek Reservoir), meet the requirements of Regulation 72.7.

D. Fact Sheet

Comment 1: Barr-Milton TMDL

Cherry Creek Water Quality Basin Authority: In our January 8, 2014 comments, we noted the importance of Regulation 72 in the Barr-Milton TMDL in defining MS4 requirements for Cherry Creek MS4s, and requested language be included in the Fact Sheet.





The Division did incorporate this requested addition; however, it was included in the Fact Sheet for COR090000 (the General MS4 permit for the rest of the State). This same language should be included in COR080000:

"For the Barr-Milton TMDL analysis, the Fact Sheet (IV.b.2) lists several regulated permittees that are partially within the Cherry Creek Basin (Aurora, Arapahoe County, Douglas County, Greenwood Village, Lone Tree, and Centennial/SEMSWA). The fact sheet then notes that the Barr-Milton TMDL requires a 20 percent reduction in target load of total phosphorus for the regulated MS4s. The division then makes a finding that the post-construction effluent limitations in proposed COR090000 will result in meeting this 20 percent reduction goal. The division also recommends monitoring, which will be accomplished through the Regulation 85 MS4 data report. It also states that: "This determination will be reviewed every permit term and will consider the results from the Regulation 85 Routine Review to adjust permit requirements as needed to implement the TMDL requirements."

The [first draft of the] fact sheet, however, did not include an important fact relevant to the Cherry Creek Basin: point source dischargers (including permittees) that are located outside of the Barr-Milton "datashed" are not given a specific wasteload allocation, but are instead included in the background load [(AKA, "Load Allocation", or LA) (Section 4.3 Barr-Milton Watershed TMDL, dated May 2013). The entire Cherry Creek Basin, ending at the dam, is outside of the Barr-Milton datashed. In the response to comments section, the division states:

"However, there is no permit requirement for the reduction of load allocations, and since the upstream reservoirs of Cherry Creek, Chatfield Reservoir, and Bear Creek Reservoir fall under the Load Allocation, there are no implications for permit-based controls or reductions in the Cherry Creek Basin from the Barr-Milton Watershed TMDL. The division believes that adequate efforts are being made in the Cherry Creek Basin to address phosphorus control (Cherry Creek Reservoir Control Regulation, 5 CCR 1 002-72), and does not anticipate any further regulatory requirements beyond what is required by the Cherry Creek Basin Control Regulations. Phosphorus controls required by the Cherry Creek Basin Control Regulation are adequate to control phosphorus downstream, over time." (page 20 of 28, Barr-Milton Watershed TMDL). Additional future controls, above and beyond Regulation 72 MS4 requirements, cannot be applied to portions of MS4s in the Cherry Creek Basin under the approved Barr-Milton TMDL."

All of this language should also be included in the COR080000 Fact Sheet, at the very end, under Part I.F.4 - Discharges to Waters with Total Maximum Daily Loads.

Response 1: Barr-Milton TMDL

This comment has been incorporated into the permit. The language regarding the Barr-Milton TMDL has been updated.

Comment 2: Permit area exclusion for areas with no legal authority

Douglas County: Please include an exemption for state and federal lands within the Permit Area section, such as: For all cities, including combined cities and counties, required to obtain coverage under this permit, the geographic area of permit coverage will include the area of the municipal incorporated boundary, but will exclude lands





and facilities for which the permittee does not have the legal authority to impose the requirements necessary to comply with this permit, such as state and federal lands and facilities.

Response 3: Permit area exclusion for areas with no legal authority

The division has made changes to the permit based on this comment.

Comment 3: City of Castle Pines Name Change

There is one comment unique to the City of Castle Pines. In the fact sheet, D. MS4 Permittees Covered Under this Permit- please change "City of North Castle Pines" to the correct name, City of Castle Pines.

This name change was submitted to the Division through a modification form on August 13, 2014.

Response 4: City of Castle Pines Name Change

The division has made a change to the name for the City of Castle Pines.

