STATE OF COLORADO

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Non-Standard MS4s General Permit - Comments from Meridian Metro District

Eric Hecox <Eric.Hecox@sheaproperties.com> Wed, Sep 11, 2019 at 2:41 PM
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Ms. Welch

Please see the attached comments from Meridian Metro District. The original is also being mailed. Please let me know if you have any questions.

Eric

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MERIDIAN METROPOLITAN DISTRICT MS4 letter 9-11-19.pdf
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Ms. Mary Welch
Environmental Protection Specialist
Colorado Department of Public Health and Environment, WQCD-P-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Re: CORO70000 Non-Standard MS4 Permit Renewal

Dear Ms. Welch:

The Meridian Metropolitan District (the District) is a Colorado special district serving development both north and south of Lincoln Avenue in Douglas County, east of I-25. It is responsible for providing a variety of municipal services to that area including water, sanitary and storm sewer, street and park and recreation services. The District is the holder of a Non-Standard MS4 Permit.

Recent communications both in writing and in meetings with Division Staff have presented the District with a serious dilemma. Proposed changes to the requirements in the Non-Standard MS4s General Permit place extensive unfunded mandates upon the District and, indeed all holders of such permits. Moreover, in the brief comment period between June 13 and September 16, it is impossible for the District to identify or understand all of the potential challenges to be addressed financially or practically in order to intelligently comment, agree or object to massive changes to the operational requirements now being directed at the District.

As you know, Executive Order D 2011-005 requires that "no state agency shall promulgate any regulation creating a mandate on local governments unless the state government provides the funding necessary to pay for the direct costs incurred by local governments in complying with the mandate" (Section II.A.3). The District is therefore justifiably concerned about where the funding to pay for the costs that will be incurred by the District in compliance with the new Permit standards will come from and, frankly, at this point has no understanding of the magnitude of the funding required. In that regard the District and many other non-standard permit holders are just now in the process of developing their 2020 budgets that must be complete by December 15 of this year. If the costs of the new requirements have not been fully analyzed or will not be fully covered by the State then the District and most, if not all non-standard permit holders will not have anticipated nor have access to the necessary revenues in 2020 to comply with the Permit.

As examples, the District has not and will not be able to analyze the staffing changes that are necessary to comply. The District is fairly sophisticated and has some consultants available to it for counsel. But let us imagine the plight of smaller special district permit holders governed by boards of directors populated with neighborhood homeowners. They have no ability to understand the Permit let alone its requirements. In the absence of a true fiscal analysis and understanding of the impact across a broad spectrum of stakeholders, implementation will not be possible financially or practically.

I also call your attention to the fact that the Standard MS4 Permit, applicable to such jurisdiction as Douglas County was renewed in 2016. Many of the requirements in the draft Non-Standard Permit that the District is concerned about first appeared in the draft Standard Permit but were ultimately removed due to objections of the Standard Permit holders. It is unacceptable that requirements that were deemed not appropriate for the Standard Permit holders are now being proposed for Non-Standard Permit holders that have significantly less resources, capacity, and expertise. Unless these sections are revised, please detail why the State believes this is appropriate.

For these and many other reasons as outlined in the attached appendix the District is requesting the following:

- Revise entire sections of the draft permit and return to the language in the current permit as outlined in the attached appendix.
- Provide a fiscal analyze detailing the costs, staffing, and resources, non-standard permit holders will need in order to comply with the new requirements.
- Eliminate all sections of the draft permit that are duplicative with the Standards.
- Eliminate all sections that were deemed not appropriate for the Standard Permit in 2016 but are now being proposed for Non-Standards.
- Address each of the individual technical comments in the attached appendix.
- Provide an additional draft permit and comment period.

Unless the draft permit is significantly revised, then pursuant to Executive Order D 2011-005 Section II.D. - F. the District will request a temporary waiver of the new Permit requirements until it has a full understanding of where the funding for compliance will come from and is comfortable that the new Permit requirements are not unduly burdensome on the tax payers within the District. In that regard please tell us the rules that the State has adopted for granting waivers (Section II.D.), the policy describing the circumstances under which a Non-Standard Permit holder can obtain a waiver (Section II.D.), and how these rules and policies further the objective of preventing unnecessary regulation of local governments from state government.

Thank you.

Eric B. Hecox

Eric Hecox
General Manager

APPENDIX

General Comments

1. **Additional Draft Permit & Comment Period Reasoning**
    a. New Non-Standard MS4 Permittees have not yet been identified or had the opportunity to comment on the permit.
    b. There appear to be many incorrect citations as identified in the Colorado Stormwater Council's comments. It is not possible to comment on a permit condition due to an incorrect citation.
    c. With the significant changes proposed in the draft permit, it is very difficult to understand and identify all the potential challenges faced by Non-Standard Permit Holders in 95 calendar days (June 13th to September 16th). The current permit has been administratively extended for over six (6) years.
    d. Please consider involving Standard Permittees to provide input to limit duplicative regulatory mechanisms and services.
    e. Part I; C. Program Description Document; 1. Development and Maintenance; the PDD in the draft permit needs additional information and a specific list of items to include. Stakeholders need the opportunity to review and comment.
    f. Option 1 – Construction Sites Option (follow the requirements of a city and/or county local program(s) has been removed from the draft permit. This is a significant change to the current permit and will require significant modification of existing programs.
    g. Part I; E. Effluent Limitations and Recordkeeping 3. Construction Sites in the draft permit will require significant increase in staffing and resource acquisition for inspections and record keeping.
    h. Option 1 – Post Construction Stormwater Management Option (follow the requirements of a city and/or county local program(s) has been removed from the draft permit. This is a significant change to current permit and will require significant modification of existing programs.
    i. Part I; E. Effluent Limitations and Recordkeeping 4. Post-Construction Management in New Development and Redevelopment in the draft permit will require significant increase in staffing, training and resource acquisition for inspections and record keeping.
    j. Part I; E. Effluent Limitations and Record Keeping 5. Pollution Prevention/Good Housekeeping for Permittee Operations vi. Use of Fire Fighting Foam in Training Activities and Emergencies in the draft permit should be removed as it has been addressed by Colorado HB19-1279 on June 3, 2019.

k. Part I; F. Other Terms and Conditions 8. Monitoring in the draft permit will require significant increase in staffing, training and resource acquisition for inspections and record keeping. New Permittees have not been identified yet and unknown if affected.

l. Part I; H. Compliance Schedule in the draft permit is not practical with the major changes in the proposed draft permit.

2. Draft Permit Comments

a. Part I; A. Coverage Under this Permit, 1. Discharges Authorized Under this Permit

   i. Entire Permit.

      1. Due to the significant changes within this draft, please provide a second draft of the permit for public notice.
      2. Please consider developing permits that are more specific to each type on Non-Standard Permit Holder. The draft permit proposes significant operational changes to the current permit holder especially in the Construction (removal of Option 1), Post-Construction (removal of Option 1) and Monitoring (new) sections.

b. Part I; A. Coverage Under this Permit; 2. Jurisdictional Boundary

   i. Jurisdiction boundary is publicly owned systems with a daily user population of at least 1,000 and located in urbanized area. In the fact sheet *"Jurisdictional can indicate the Non-Standard can enact laws, ordinances, or codes, but often it means they are limited to addressing their own activities"*.

      1. Due to significant differences, please consider developing permits specific to each type of Non-Standard Permit.

c. Part I; A. Coverage Under this Permit; 6. Cherry Creek Reservoir Drainage Basin Requirements

   i. *Requirements in the Cherry Creek Reservoir Control Regulation are in addition to requirements in the Colorado Discharge permit System.*

      1. Please provide clarification and process if conflicts between Regulation 61 or 72 and this permit occur.

d. Part I; C. Program Description Document; 1. Development and Maintenance

   i. *PDD information must be maintained to reflect current implementation.*

      1. Please provide a template showing necessary items.
      2. Would an annual update of the current PDD to the website be adequate?

e. Part I; C. Program Description Document; 2. Availability
   i. *Must be available to the public at reasonable times during regular business hours.*
      1. The PDD in the draft permit needs additional information and a specific list of items to include. Please provide.
      2. If provided on the permittee's website, wouldn't that meet the requirements of "available to the public at reasonable times during business hours"?

f. Part I; D. Public Involvement/Participation; 1. Public Involvement and Participation Process 1. Public Involvement and Participation Process
   i. *Notice of all public hearings should be published in a community publication or newspaper of general circulation, to provide opportunities for public involvement that reach a majority of citizens through the notification process (from Fact Sheet).*
      1. Please revise section to "The permittee must implement and document a Public Involvement and Participation process that complies with its own ~~state and local~~ public requirements for actions conducted, when applicable, to comply with this permit".

g. Part I; E. Effluent Limitations and Recordkeeping; 1. Public Education and Outreach a. i. Illicit Discharges
   i. *"The permittee must provide information to the targeted user population, vendors, concessionaire, tenants and contractors regarding the permittee's prohibitions of and the water quality impacts associated with illicit discharges".*
      1. Please revise to more a general approach to specific populations determined by the MS4 within the MS4 (i.e. targeting all potential user population, vendors, concessionaire, tenants and contractors is large and will expire limited MS4 resources).

h. Part I; E. Effluent Limitations and Recordkeeping; 2. Illicit Discharge Detection and Elimination a. ii. Regulatory Mechanism
   i. *"To the extent allowable under state or local law, the permittee must implement a regulatory mechanism to meet the requirements in Part I.E.2.a."*
      1. Please remove or provide clarification to "extent allowable under state or local law". Most Non-Standard MS4's do not have an existing police/sheriff office or a judicial court system. Civil actions typically take several years and costs that may expire limited MS4 resources.

2. Please remove "Provide the permittee the legal ability to cease or require to be ceased and remove or require and ensure the removal of and impose penalties for all illicit discharges for the period from when the illicit discharge is identified until removed". Most Non-Standard MS4's do not have an existing police/sheriff office or employees trained to enforce Regulatory Mechanisms which could potentially impact the health of the employees if the spill is hazardous.
3. Regulatory mechanisms for illicit discharge have already been developed by most Cities and Counties. It seems possible that citizens attempting to comply with a city or county regulatory mechanisms may violate a Non-Standards. Also, if the regulatory mechanisms are the same between Non-Standards and Standards, what purpose would a Non-Standard regulatory mechanism serve?
4. Some Non-Standards operate in more than one (1) Standard Permit jurisdiction. The proposed regulatory mechanisms may require significant legal representation and fees in order to develop a mechanism that complies with the multiple existing Standard regulatory mechanisms.
5. Standard Permits may have several Non-Standards Permits within its jurisdiction. Will the Standard Permittees be responsible for coordinating consistency with all the regulatory mechanisms as they have land use authority and enforcement agencies?
6. It does not seem likely, after following a Standard's Program/Option 1 for 10 years, to implement an entirely new program by September 1, 2022.

i. <u>Part I; E. Effluent Limitations and Recordkeeping; 2. Illicit Discharge Detection and Elimination a. ii. Regulatory Mechanism</u>
   i. *"To the extent allowable under state or local law, the permittee must implement a regulatory mechanism to meet the requirements."*
      1. Please remove or provide clarification to "extent allowable".

j. <u>Part I; E. Effluent Limitations and Recordkeeping; 2. Illicit Discharge Detection and Elimination a. iv. Tracing an Illicit Discharge</u>
   i. *"This may include identifying unpermitted discharges of groundwater that do not meet water quality standards."*

1. Please remove. Non-Standard Permittees do not have the financial resources or training budgets to identify which discharges are permitted let alone if the discharge meets water quality standards.

k. Part I; E. Effluent Limitations and Record Keeping 2. Illicit Discharge Detection and Elimination a. v. Discharges that Could be Excluded from Being Effectively Prohibited
   i. Revise Entire Section
      1. Please consider revising this entire section as oversight of CDPS and NPDES permits appears to be outside the scope of Non-Standard Permittees.

l. Part I; E. Effluent Limitations and Record Keeping 2. Illicit Discharge Detection and Elimination a. v. Discharges that Could be Excluded from Being Effectively Prohibited L. Foundation Drains N. Water from crawl space pumps O. Footing Drains.
   i. *"The permittee must verify that any new discharges from footing drains into the MS4 from a commercial or multi-family property without a CDPS or NPDES permit would meet the water quality standards for the receiving stream".*
      1. Please remove. Non-Standard Permittees do not have the financial resources or training budgets to identify which discharges are permitted let alone if the discharge meets water quality standards.
      2. Will the Standard Permittees be responsible for coordinating oversight within its jurisdictional boundary for the CDPS or NPDES permit as they have land use authority and enforcement agencies for these types of developments?

m. Part I; E. Effluent Limitations and Record Keeping 2. Illicit Discharge Detection and Elimination a. v. Discharges that Could be Excluded from Being Effectively Prohibited U. Discharges from emergency fire fighting activities.
   i. *From the Fact Sheet "After the fire has been put out, any remaining discharge from fighting the fire and the associated chemicals in stormwater ponds or other control measures cannot be discharged to the MS4 and the permittee must ensure that it is disposed of properly".*
      1. Please remove as Non-Standard stakeholders do not have authority to regulate emergency service providers. In order to implement, CDPHE must require all emergency service providers to contact all possible impacted MS4's

immediately with the location, time and date of fire; type and amount of fire suppression materials used; location and type of BMP's installed by the emergency service provider; location, type and amount of all potentially hazardous waste within the facility on fire; and any other necessary information. Also, the Non-Standard Stakeholder will need an immediate mechanism in order to receive reimbursement for the potentially high cost of remediation.

2. Please consider having Standard Permittees be responsible for coordinating and removal of fire-fighting chemicals within its jurisdictional boundary as they have land use authority and enforcement agencies for these types of emergency situations.
3. Please consider making all emergency service providers Non-Standard Permittees.

n. <u>Part I; E. Effluent Limitations and Record Keeping 3. Construction Sites a.</u>
   i. *"Permittee must implement a program to reduce or prevent the discharge of pollutants to the MS4 from."*
      1. Most Non-Standards were previously allowed to follow a Standard Permit Holders program for Construction and Post Construction. Please add Option 1 from the previous permit into the draft permit.
      2. Please consider having Standard Permittees be responsible for coordinating and oversight of this program within its jurisdictional boundary as they have land use authority and enforcement agencies for development.
      3. It does not seem likely, after following a Standard's Program/Option 1 for 10 years, to implement a new program by September 1, 2022.

o. <u>Part I; E. Effluent Limitations and Record Keeping 3. Construction Sites c. Construction Program Requirements iv. Site Plan (f)</u>
   i. *"The site plan must include a documented use agreement between the owner/operator and the owner or operator of any control measures located outside of the permitted construction site area that are utilized by the owner/operator for compliance with this permit, but not under the direct control of the owner/operator."*
      1. Please remove as this is not required under the Standards' GESC program.

p. Part I; E. Effluent Limitations and Record Keeping 3. Construction Sites d. Record Keeping

1. Please revise. Most Non-Standards were previously allowed to follow a Standard Permit Holders program for Construction and Post Construction. As a result, Standard Permit Holders have staffed, developed and/or purchased software to manage its current permit record keeping requirements. It is unknown at this time, the estimated cost of purchasing, staffing or developing software for Non-Standards in order to achieve this and manage its record keeping requirements.
2. Even if record keeping software is not purchased and the Standard Permit Holder is willing to assist the Non-Standard with record keeping, the estimated cost to the Non-Standard for software upgrades or additional staffing by the Standard is not available at this time.
3. Unknown at this time, if the Standard Permit Holder record keeping system is capable of meeting the Non-Standard Permit requirements.
4. Some Non-Standards operate in more than one (1) Standard Permit jurisdiction. The proposed record keeping requirements may require significant expense in order to develop a system that integrates with multiple existing Standard systems.
5. Standard Permits may have several Non-Standards Permits within its jurisdiction. Will the Standard Permittees be responsible for coordinating consistency with all the requirements as they have land use authority and enforcement agencies?
6. It does not seem likely, after following a Standard's Program/Option 1 for 10 years, to implement a new program by September 1, 2022.

q. Part I; E. Effluent Limitations and Record Keeping 4. Post-Construction Stormwater Management in New Development and Redevelopment

i. *"Permittee must implement a program to ensure that controls are in place that would prevent or minimize water quality impacts."*

1. Most Non-Standards were previously allowed to follow a Standard Permit Holders program for Construction and Post Construction. Please add Option 1 from the previous permit into the draft permit.
2. Standard Permits may have several Non-Standards Permits within its jurisdiction. Will the Standard Permittees be responsible for coordinating consistency with all the

requirements as they have land use authority and enforcement agencies?

3. It does not seem likely, after following a Standard's Program/Option 1 for 10 years, to implement a new program by September 1, 2022.

r. <u>Part I; E. Effluent Limitations and Record Keeping 4. Post-Construction Stormwater Management in New Development and Redevelopment b. Regulatory Mechanism</u>

i. *"Permittee must implement a regulatory mechanism to meet the requirements in Part I.E.4a through I."*

1. Most Non-Standards were previously allowed to follow a Standard Permit Holders program for Construction and Post Construction. Please add Option 1 from the previous permit into the draft permit.
2. Regulatory mechanisms for Post-Construction Stormwater Management have already been developed by most Cities and Counties. Also, if the regulatory mechanisms would be the same between Non-Standards and Standards, what purpose would a Non-Standard regulatory mechanism serve?
3. Some Non-Standards operate in more than one (1) Standard Permit jurisdiction. The proposed regulatory mechanisms may require significant legal representation and fees in order to develop a mechanism that complies with the multiple existing Standard regulatory mechanisms.
4. Standard Permits may have several Non-Standards Permits within its jurisdiction. Will the Standard Permittees be responsible for coordinating consistency with all the regulatory mechanisms as they have land use authority and enforcement agencies?
5. It does not seem likely, after following a Standard's Program/Option 1 for 10 years, to implement a new program from scratch by September 1, 2022.

s. <u>Part I; E. Effluent Limitations and Record Keeping 4. Post-Construction Stormwater Management in New Development and Redevelopment m. Record Keeping</u>

i. *"Permittee must maintain the following records for activities to meet the requirements of Part I.E.4 and Part I.K.2."*

1. Section starts with ix so please provide previous eight items or restart numbering.

2. Please revise. Most Non-Standards were previously allowed to follow a Standard Permit Holders program for Construction and Post Construction. As a result, Standard Permit Holders have staffed, developed and/or purchased software to manage its current permit record keeping requirements. It is unknown at this time, the estimated cost of purchasing, staffing or developing software for Non-Standards in order to achieve this and manage its record keeping requirements.
3. Even if record keeping software is not purchased and the Standard Permit Holder is willing to assist the Non-Standard with record keeping, the estimated cost to the Non-Standard for software upgrades or additional staffing by the Standard is not available at this time.
4. Unknown at this time, if the Standard Permit Holder record keeping system is capable of meeting the Non-Standard Permit requirements.
5. Some Non-Standards operate in more than one (1) Standard Permit jurisdiction. The proposed record keeping requirements may require significant expense in order to develop a system that integrates with multiple existing Standard systems.
6. Standard Permits may have several Non-Standards Permits within its jurisdiction. Will the Standard Permittees be responsible for coordinating consistency with all the requirements as they have land use authority and enforcement agencies?
7. It does not seem likely, after following a Standard's Program/Option 1 for 10 years, to implement a new program by September 1, 2022.

t. <u>Part I; E. Effluent Limitations and Record Keeping 5. Pollution Prevention/Good Housekeeping for Permittee Operations vi. Use of Fire Fighting Foam in Training Activities and Emergencies</u>
   i. *The permittee must prohibit the use of Class B firefighting foam that contains intentionally added perfluoroalkyl and perfluoroalkyl substances for training or testing purposes.*
      1. Non-Standard stakeholders do not have authority to regulate emergency service providers.

u. <u>Part I; E. Effluent Limitations and Record Keeping 5. Pollution Prevention/Good Housekeeping for Permittee Operations vi. Use of Fire Fighting Foam in Training Activities and Emergencies</u>

i. *Compliance Schedule – Fire Fighting Training: Prohibit the use of Class B fire fighting foams that contain perfluoroalkyl substances by September 1, 2020.*
    1. Please remove from the permit as it has been addressed by Colorado HB19-1279.

ii. *Compliance Schedule – Fire Fighting Training: Evaluate alternatives to Class B fire-fighting foams that contain perfluoroalkyl substances by September 1, 2024.*
    1. Please remove from the permit as it has been addressed by Colorado HB19-1279.

v. <u>Part I; F. Other Terms and Conditions 4. Resources</u>
    i. *"The permittee must provide finances, staff, equipment, and support capabilities to implement the CDPS stormwater program."*
        1. Unable to determine the finances, staff, equipment and support capabilities at this time.

w. <u>Part I; H. Compliance Schedule 1. Renewal Permittees</u>
    i. *"All requirements of the cited section, and all subsections, must be met by the compliance schedule deadline in Table 2."*
        1. Please revise and provide additional draft permit and comment period.
        2. Many stakeholders have completed or are in the process of developing the 2020 budget. Since the permit is still in draft form, many stakeholders will not have the appropriate finances in 2020 to comply with the permit.
        3. Unable to determine the finances, staff, equipment and support capabilities at this time.
        4. The compliance schedule is not practical with the major changes in the draft permit when compared to the current permit.

x. <u>Part I; I. Reporting Requirements 2. Annual Report</u>
    i. *"For renewal permittees, the first report shall include the annual report items from the previous permit for January 1, 2019 to July 1, 2019. In addition, for renewal permittees, the first report shall include information below on all activities conducted from July 1, 2019 to December 31, 2019."*
        1. Please revise and allow for one annual report as July 1st has passed and a new permit has not been issued.

y. <u>Part III; A. Requirements Applicable to Permittees with Discharges to Impaired Waters and Waters with Total Maximum Daily Loads</u>
    i. Entire Section
        1. Please remove entire sampling sections. Currently Standard Stakeholders with more financial resources are not required to complete sampling.