STATE OF COLORADO

Welch - CDPHE, Mary <mary.welch@state.co.us>

City of Golden COR070000 comments.pdf

Tracey Pond <TPOND@cityofgolden.net> Mon, Sep 16, 2019 at 12:22 PM
To: "Mary.Welch@state.co.us" <Mary.Welch@state.co.us>

Mary,

Please find attached, the City of Golden's comment on the draft Phase II Non-standard MS4 permit COR070000. Please feel free to contact me if you have any questions regarding the attached comments.

Thank you,

Tracey

Tracey Pond | Stormwater Manager

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City of Golden COR070000 comments.pdf
382K

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September 16, 2019

Mary Welch (via email)
CDPHE WQCD Permits
4300 Cherry Creek Dr. South - B2
Denver, CO 80246

RE: Comments on the Draft Phase II Non-standard MS4 General Permit COR070000

Dear Ms. Welch:

Thank you for the opportunity to provide comment on the draft COR070000 Non-standard MS4 permit. While the City is a standard MS4 with coverage under the COR090000 permit and not subject to this draft permit, the Division has made clear that permit conditions reflected here should be anticipated in future MS4 permits. Therefore, the comments provided below reflect the City of Golden's concerns on broader permit conditions included in the Non-standard MS4 permit. Golden also supports specific comments submitted by the Colorado Stormwater Council.

Please contact me if I can provide additional clarification on the following comments.

Sincerely,

Tracey Pond, Stormwater Manager

1. The Division's iterative approach to MEP is not reflected in the draft permit.
The draft permit is not consistent with COR080000 and COR090000, the most recent MS4 Phase II permits issued in 2016. It is also significantly different than recent MS4 permits issued and public noticed by the EPA.

The Division's iterative approach to MEP is discussed in the Fact Sheet (H.). It states:

- *MEP should continually adapt to current conditions and BMP effectiveness;*
- *The division determined that the level of control should reflect the average of the best existing performances at the time of permit renewal; and*
- *The routine review process implemented through permit renewal is how [the division is] able to iteratively refine the MEP standard through permit requirements.*

The Fact Sheet also includes citations of the most used references for determining MEP, including: "*other MS4 permits recently issued by the division" and "MS4 permits in effect issued by other permitting authorities (states and EPA)".*

The MS4 Phase II permit was issued in 2016. Full implementation in accordance with the compliance schedule in that permit was July 1, 2019, prior to the issuance of this draft permit on June 13, 2019. Not only were the MS4 Phase II programs not yet fully implemented, they have not been evaluated by CDPHE. While two MS4 Phase II audits were conducted by EPA in April 2019, neither the Construction or Post Construction Programs could be audited for compliance with the new permit conditions because they were not yet implemented - nor required to be.

Permit conditions that are implemented, evaluated and determined effective would be considered the "average of the best programs." Without implementing a program, it is impossible to determine whether these draft permit conditions are actually the "average of the best programs." This draft permit does not reflect the "average of the best" programs found in Colorado and therefore, does not reflect the iterative MEP standard.

2. Responsibility for oversight of Site Plan revisions is unnecessary and burdensome for the MS4.
The specific permit sections of concern are cited below:

> *Site Plans I.E.3.c.iv. "… the permittee must take all documentation and enforcement steps necessary at each site in order to ensure that the Site Plan is maintained to reflect all current conditions."*
>
> *Site Plan Revisions I.E.3.c.iv.B.2. ".... The permittee must review these revisions during inspections, determine if the permittee approves, and show in some way (like initialing the map or through an electronic log) that the permittee approves of the minor modifications."*
>
> *Routine Inspection I.E.3.c.v.D.2. "Scope: The inspection must assess the following: (1) Current Site Plan: Evaluate whether the Site Plan accurately reflects site conditions, includes all existing control measures and potential pollution sources. Evaluate the adequacy of any changes…"*

The Fact Sheet does not provide adequate basis for this requirement. Instead, the Fact Sheet speaks to the benefit to the construction operator, not the MS4 and ignores the significant resources required of the MS4 to include oversight of site plan revisions as part of the inspection scope. The Fact Sheet states:

> *all applicable construction sites need site plans…under the Stormwater Discharges Associated with Construction Activity general permit….Site plans are an important control measure and it* ***helps the construction operator*** *budget for the control measures that will be needed to comply with this renewal permit and* ***helps the construction operator*** *and staff locate, install, and maintain control measures to protect water quality.*

Site plan review during an inspection would add approximately an hour to each routine inspection performed. Based on routine inspections performed by the City of Golden in 2018, an additional 368 hours would be necessary to comply with the conditions in this draft permit; nearly a full work day per week. Oversight of the maintenance of a site plan takes away resources from oversight of control measures that meet the requirements of Regulation 61 to reduce or prevent the discharge of pollutants to the MS4.

The MS4 Phase II permit requires an MS4 to perform an initial site plan review; to have criteria for control measures (e.g., standard details); and to perform routine inspections throughout construction. These are all factors that facilitate a familiarity with a construction site and negate the need for the MS4 to review a site plan during each inspection. Importantly, the MS4 has the initial site plan to which it can readily refer. An MS4 also has the authority to request review or submittal of an updated site plan throughout a construction project, and to require approval of modifications, if deemed necessary.

MS4s often inspect sites without notice. Obtaining a copy of the updated site plan at the time of inspection is not always possible – or necessary as described above. In fact, the draft permit requirement presents the potential for non-compliance when an MS4, performing a routine, unannounced inspection, cannot obtain access to the site map. The MS4 either can't review the plan to meet the required scope of the inspection, or has to return at a later date to gain access to the plan, but risks meeting the required minimum inspection frequency. Furthermore, a maintained plan does not equate to effective control measures and the reduction of pollutants discharged cannot be correlated with review of the site plan. This requirement presents an unacceptable risk without identified benefit.

MS4 Construction Site programs are results based. Inspections are conducted to monitor BMPs. Enforcement should be based upon discharges to the MS4, not whether paperwork is current, or if a specific BMP is in the exact location indicated on the Plan. We request the requirement be removed from the draft permit as it will only take resources away from the ultimate objective of reducing the discharge of pollutants to the MS4.

3. A prescribed enforcement response is not necessary, effective or supported by the Fact Sheet.

Permit requirement:

> *I.E.3.c.vi.(C) Enforcement Response The permittee must escalate enforcement procedures at a construction site if non-compliance has continued at the site for more than two inspections. If the permittee does not escalate enforcement at that time, permittee will write and submit to the division a report justifying why the permittee did not choose to take enforcement actions under the enforcement escalation policy.*

Fact Sheet:

Enforcement Response 3.c.vi.:

The division has determined it is practicable and necessary for permittees to develop and implement an enforcement response program that allows escalated responses when necessary. The program must be able to obtain proactive compliance from chronic violators that repeatedly violate the construction sites program requirements. The program must also include sanctions adequate to obtain compliance from recalcitrant violators. All of these elements are essential to effectively requiring that controls be implemented. The permittee's enforcement response processes must convey that construction sites are expected to be in compliance and the permittee cannot allow a site to oscillate in and out of compliance without escalating enforcement.

The permittee has the flexibility to develop and implement procedures to escalate enforcement when it is determined that corrections to MS4 program noncompliance are not made in a timely manner."

The requirement to escalate enforcement if non-compliance continues for more than two inspections ignores important factors such as intent, circumstances and typical responsiveness of a construction site operator that are appropriately considered when determining whether escalating enforcement is necessary or effective. It serves no one to take a punitive approach with a responsive operator. An enforcement response is used to ensure a return to compliance when voluntary compliance does not occur. A mandated enforcement response based solely upon inspection results from two inspections also fails to consider what constitutes significant non-compliance at a construction site.

The requirement to submit a written report to the Division relies on a process that further burdens MS4s and the resource-limited Division, presumably tasked with reviewing such reports. Instead, limited resources should be prioritized to those outcomes that have actual water quality benefit, such as an enforcement response (Stop Work, using surety for corrective action, etc.) that can bring timely and definitive results based on the severity of violation and recalcitrance of the violator. This approach is supported by the Fact Sheet and is reflected in the current MS4 Phase II permits.

4. Golden supports the inclusion of an Equivalent Area Treatment Standard, as submitted by the Colorado Stormwater Council, as an additional Post-construction design standard.

Golden was established as a city in 1859 and as many cities, developed around its major waterway, Clear Creek. Golden is largely built-out, with the exception of infill redevelopment, along with the most challenging sites remaining for new development. Infill redevelopment presents many challenges such as lot line to lot line/public right of way site development, as well as significant existing utility constraints in its historic downtown. Remaining sites available for new development often present challenges such as topography and geologic hazards. These challenges prompted the City's involvement in the development of an additional Post-construction design standard through an effort undertaken by the Colorado Stormwater Council following the issuance of the Phase II MS4 permit in 2016. The proposed Equivalent Area Treatment Standard will allow for greater flexibility, reduced cost, potentially improved maintenance accessibility and greater water quality benefit. An additional design standard that allows treatment of an equivalent area is important to Golden given the constraints described above.

5. **The proposed monitoring requirements in Part III are costly, resource intensive and will not produce relevant data to best characterize the stormwater contribution to impaired stream segments and segments with TMDLs.**

Any undertaking of monitoring must have clear objectives to ensure relevant data is collected and should begin with an analysis of existing data. Part III of the permit should not be prescriptive. Instead, it should be based on the development of plans to characterize the MS4 stormwater contribution - through a regionally coordinated effort as appropriate - with the goal of characterizing pollutant loading that is not yet understood. Lastly, applying a WWTF approach to an MS4 permit is unworkable, costly and will not result in meaningful data to understand loading from a stormwater contribution.