| **Permit Reference** | | **Existing Language** | **Proposed Concept or Comment** | | | **CSC Comment accepted in Final Permit?** | **Rationale** |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | | | COVERAGE UNDER THIS PERMIT | | | | |
| I.A.1. Discharges Authorized Under this Permit | *This permit authorizes discharges from the permittee’s regulated small municipal separate storm sewer system (MS4) located within the permit area.*  *Discharges from the permit area adjacent to state waters that are designed or used to convey stormwater to a water of the state are part of an MS4 and authorized by this permit. These conveyances must be owned or operated by the permittee through agreement, contract, direct ownership, easement, or right-of-way for the purpose of managing flood plains, stream banks, and channels for conveyance of stormwater flows in order for the discharges to be authorized by this permit.* | | Please remove the second paragraph relating to areas adjacent to state waters. | | | Sort of, added to the reasoning in the permit in other areas and described further in Fact Sheet. Concern with highlighted section below. Need attorney?  Factsheet page 17:  The area must be designed or used for collecting or conveying stormwater. One conveyance often overlooked by a permittee is a conveyance that is not listed above (i.e., municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains) **adjacent to a state water.** This unique conveyance that is adjacent to a state water must meet the following requirements in order to be considered an MS4:  a. The conveyance must be owned or operated by the permittee (similar to 1. above), but also must be owned or operated by the permittee through an agreement, contract, direct ownership, easement, or right-of-way. If the easement is only for a utility, then it is NOT considered part of the MS4.  b. The conveyance must be used to manage flood plains, stream banks, and stream channels. If the conveyance is only used for another purpose, then the conveyance is not part of the MS4.  To clarify the topic of areas adjacent to state waters, this permit also provides clarification for what constitutes an MS4. First, a parcel/area must be located within and discharge to the MS4 permit area. Second, the parcel/area must be under the jurisdictional control of the permittee.  Areas that are adjacent to a state water may meet the two above criteria for what constitutes and MS4. For example, some permittees have jurisdictional authority over areas, such as drainage easements or right-of-ways, which are adjacent to a state water and which the permittee maintains. These areas can serve a variety of functions, including collecting and conveying stormwater to the state water. Since an MS4 is a conveyance or system of conveyances that are “designed or used for collecting or conveying stormwater”, these areas/easements/right-of-ways could be included in the permit area. Examples of activities that could include be conducted adjacent to state waters include stream bank stabilization activities or managing flood plains. In these examples, if a site is located within the permit boundary AND discharges stormwater onto a stream bank maintained by the permittee, the stream bank WOULD BE included considered part of the MS4. Another example of an activity that would be considered part of the MS4 would be: a site that discharges directly into the stream and transfers ownership of the pipe to the MS4 permittee.  Alternatively, some permittees have no jurisdictional authority, such as drainage easements, easements, or right-of-ways, adjacent to certain state waters. Or, some permittees have an easement or right-of way, but not for the purpose of collection and conveying stormwater to that state water. These areas that are adjacent to state waters WOULD NOT be included in the permit area. An example of an area that would NOT be considered part of the MS4 would be a site that discharges directly into a stream or on a stream bank through a privately-owned pipe, where the permittee has no jurisdictional authority or drainage easement. Note that in this example, no part of the site, such as the end of a driveway or part of a parking lot, would discharge to the permittee’s MS4. If any portion of the site discharges into the permittee’s MS4, then the site would be part of the permittee’s MS4. Permittees should note that the division could separately permit these types of discharge through section 61.3(2)(a) of Regulation 61 for any site outside of the permittee’s permit area.    Permit Page 4 now only says:  A.1. Discharges from the MS4 within the permit area that are designed or used to convey stormwater to surface waters of the state are considered part of an MS4 and are authorized by this permit.  Then it was added:   1. 1. A. iv. (B) Designed or used for collecting or conveying stormwater. For the purposes of this permit, stormwater conveyances also includes conveyances that are owned or operated by the permittee through agreement, contract, direct ownership, easement, or right-of-way and are for the purpose of managing flood plains, stream banks, and channels for conveyance of stormwater flows in order for the discharges to be authorized by this permit.   2. b. vi. The discharge is from an area adjacent to a state water that IS NOT owned or operated by the permittee for the purpose of managing flood plains, stream banks, and channels for conveyance of stormwater flows. | Including areas that don’t discharge into the MS4 is beyond the scope of the MS4 permit and Regulation 61.  Fact sheet page 16 says: This permit also provides clarification for what constitutes an MS4. Included in the definition of an MS4 are areas owned or operated by a municipality that are adjacent to classified waters of the state and that are designed or used to convey stormwater into the waterway. These areas are often maintained by municipalities through direct ownership, easement, or right-of-way for the purpose of managing flood plains, stream banks, and channels for conveyance of stormwater flows. For example, a discharge from a privately-owned stormwater collection system into and through a municipality’s easement along a stream or other waterway would be considered a discharge into the municipality’s MS4.  Part I.J.29. of the draft permit defines Municipal Separate Storm Sewer System (MS4): A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):  a. Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;  b. Designed or used for collecting or conveying stormwater;  c. Which is not a combined sewer; and  d. Which is not part of a Publicly Owned Treatment Works (POTW). See 5 CCR 1002-61.2(62).  “Adjacent to state waters” is not a discharge to the municipality's MS4. CSC has concerns that by adding “adjacent to state waters” it changes the definition of a MS4. |
|  | | | EDUCATION AND OUTREACH | | | | |
| I.E.1.a.ii.  E&O  Activities Table | | *TABLE 1*  *Education and Outreach Activities Table* | Please add the following proposed concept:  The permittee may submit Public Education Program elements not listed in the table to seek Division approval if unlisted elements will be used to meet the permit requirement. | | | No, this comment was not incorporated into the permit.  Response3: Add Education & Outreach Activities that are not Listed in the Table Page 29-Public Notice Comments.  Division’s response was that “permittees may apply for a permit modification at any time during the permit term to add any additional education and outreach activities that are not listed in the table. | Permittees would like the ability to submit for approval of alternative elements or methods to add new outreach activities. Permittees envision that with the increase in technology there may be innovative opportunities for outreach. |
|  | | | ILLICIT DISCHARGE DETECTION AND ELIMINATION | | | | |
| I.E.2.a.v.(Y)  IDDE  Excluded Discharges | | *Other discharges that the permittee will not consider as an illicit discharge and approved by the Division: The permittee may propose discharges in accordance with the requirements below to seek Division approval to allow the permittee to not effectively prohibit the discharges. Upon approval by the Division, the permittee is not required to address the discharges as illicit discharges in accordance with the requirements of this permit. The permittee can still effectively prohibit these discharges if the permittee determines that the discharge is a significant source of pollution. The permittee must complete the following actions for discharges to be authorized by the Division:*  *3) The discharge is not approved until the permittee receives an approval letter from the Division.* | Please update to the following proposed concept:  If the permittee does not receive a response within 30 days, the discharge is approved by the Division as an allowable non-stormwater discharge. | | | No, these comments have not been incorporated into the permit. The division cannot anticipate the types of discharges that will be submitted for approval, the completeness of the information, and the time that will be needed to evaluate, research, and approve or deny the discharge. (page 36-37 - Public Notice Comment)  3) The discharge is not approved until the permittee receives an approval letter from the Division. | A time frame for a response from the Division is needed to ensure action can be taken by the permittee to allow the discharge in a timely manner. Thirty days is an adequate time frame for the Division to respond to a permittee’s request. |
|  | | | CONSTRUCTION SITES | | | | |
| General Comment regarding Regulation 61, Construction and Phase II MS4 | |  | Please remove all requirements from the Phase II MS4 permit that mirror the CDPS Construction Activity Permit, for which operational control remain the sole responsibility and liability of the construction site operator. Our comments below reflect this request. | | | No.  In general, this comment has not been incorporated into the permit. Many of the same requirements, such as site plans, inspections, and erosion and sediment controls, are listed for both construction operators under the construction general permit and MS4 general permit sections of Regulation 61. Using similar terms and conditions in each permit, which, in turn, are similar to requirements in Regulation 61, helps align the requirements between MS4 permittees and construction contractors. Note that the focus of the similar requirements are different, such as an MS4 permittee does not have to develop a site plan, but has to review the site plans that construction operators create for appropriate erosion sediment controls. In addition, the site inspection frequencies are less than the site inspection frequency for construction operators. Please see the division’s response to other specific comments relating to this issue from Colorado Stormwater Council below.  (Response 3, p.53) | Most of the requirements for the Division’s administration of Stormwater Discharges Associated with Construction Activity general permit can be found in 61.4(3)(b) (Application Requirements for Stormwater Discharges Associated with Industrial Activity) and 61.6 (Issued Permits).  Requirements for the Division’s administration of this Phase II MS4 permit can be found in 61.4(3)(c) (Application Requirements for Regulated Small Municipal Separate Storm Sewer Discharges) and 61.8(11) (Conditions for Phase II Municipal Stormwater Permits).  As expanded upon in the fact sheet, page 43, the requirements for the two permits are different in Regulation 61 and thus there are two different general permits that regulate stormwater on construction sites.  While both the Construction Program and the Phase II MS4 Program involve oversight requirements for construction activities, it is clear in Regulation 61 these are two distinct programs and the two programs should remain separate.  As mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities.  The focus of the MS4 Construction Program is inspection frequency, BMP selection, design, implementation and maintenance, and discharges to the MS4. The focus of the CDPS program involves heavier reliance on self-regulating paperwork for the Division’s infrequent inspection and compliance determinations.  MS4s review site plans, perform inspections, and pursue enforcement for discharges to the MS4 from inadequate BMPs. The focus is on field performance, not paperwork. To ensure site plans are updated within 72 hours, for example, may benefit CDPHE inspectors, but does not provide additional tools for the MS4s, and instead serves to actually divert resources from effective oversight. |
| I.E.3.  Construction Sites  Common Plan of Development or Sale | | *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 ¼ mile). Construction activities are considered to be “related” if they share the same development plan, builder or contractor, equipment, storage areas, etc.* | **Please consolidate and/or ensure all definitions are consistent.** It is confusing to refer to Common Plan of Development as a facility and Part of a Larger Common Plan of Development as an area.  Please remove the discussion of “related” in the permit. | | | No.  Re consistent definition:  These comments have not been incorporated into the permit. A common plan of development or sale is an area and this term is used in the definition of an applicable construction activity.  (Response 12: Consistent Definition..., p. 58)  Re “the term ‘related’”:  These comments have been partially incorporated into the permit. 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.  (Response 5: Common Plan of Development or Sale Definition and Remove the Term “Related”, p.55) | Part of a Larger Common Plan of Development or Sale is defined in three places in the permit.  **The term “related” doesn’t add clarification and could broaden what an applicable construction activity is beyond the intent of the Regulation.**  The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial. |
| I.E.3.a.i.(B)(2)  Construction Sites  Exclusions  County Growth Areas | | *Large lot single family development: A land disturbance greater than one acre on a single-family residential lot, or agricultural zoned lands, with an area greater than or equal to 2.5 acres in size and having a total site impervious area that is equal to or less than 10 percent.*  *A land disturbance greater than one acre on a single-family residential lot, or agricultural zoned lands, with an area greater than or equal to 2.5 acres in size and having a total site impervious area that is equal to or less than 20 percent only when a study specific to the watershed and/or permittee, shows that expected soil and vegetation conditions are suitable for infiltration/filtration of the 100% of the WQCV for a typical site has been conducted and approved by the permittee.* | Please change the requirement to allow for when a lot demonstrates a higher percentage of impervious; remove the cap of 20 percent.  Please clarify impervious area refers to proposed, not existing. | | | No.  These comments have not been incorporated into the permit. The division is tasked with setting a clear MEP standard in the permit. The division has only evaluated one study on runoff from large lots development and determined that 20% imperviousness was appropriate. The division has not evaluated any study with more than 20% of impervious surface on the site. Permittees can submit a modification request with a study that evaluates large lot development with more than 20% impervious surface on the site. The division can then evaluate the study and determine if a permit modification is necessary.  (Response 6: Remove 20% cap..., p.60) | When a study demonstrates higher infiltration can be achieved, the permit should not limit the opportunity to allow for more than 20% proposed imperviousness. |
| I.E.3.a.iv.(B)(1)-(3)  Construction Sites  Control Measures  Potential Pollutant Sources - site  I.E.3.a.iv.(C)(1)-(12)  Construction Sites  Control Measures  Potential Pollutant Sources - activity | | 1. *Sediment* 2. *Construction site waste, such as trash, discarded building materials, concrete truck washout, chemicals, and sanitary waste* 3. *Contaminated soils* 4. *Land disturbance and storage of soils* 5. *Vehicle tracking* 6. *Loading and unloading operations* 7. *Outdoor storage of construction site materials, building materials, fertilizers, and chemicals* 8. *Bulk storage of materials* 9. *Vehicle and equipment maintenance and fueling* 10. *Significant dust or particulate generative processes* 11. *Routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents, and oils.* 12. *Concrete truck equipment washing* 13. *Dedicated asphalt and concrete batch plants* 14. *Other areas or operations where spills can occur* 15. *Other non-stormwater discharges including construction dewatering and wash water that may contribute pollutants to the MS4* | Please change to the following proposed concept:  Combine potential pollutants listed under construction site and construction activities as follows:   1. Sediment 2. Vehicle Tracking 3. Construction site waste, such as trash, discarded building materials, concrete truck washout, chemicals, and sanitary waste 4. Outdoor storage of construction site materials, building materials, fertilizers, and chemicals 5. Vehicle and equipment maintenance and fueling 6. Concrete truck equipment washing 7. Dedicated asphalt and concrete batch plants 8. Other non-stormwater discharges including construction dewatering and wash water that may contribute pollutants to the MS4   Please remove I.E.3.a.iv(B)3; I.E.3.a.iv(C)1; I.E.3.a.iv(C)3; I.E.3.a.iv(C)5; I.E.3.a.iv(C)7; I.E.3.a.iv(C)8; I.E.3.a.iv(C)11 | | | Partially.  These comments have been partially incorporated into the permit. **The list of potential pollutant sources and the list of construction activities have been combined. Most of the items in the lists have not been removed.** The division disagrees with the commenters and has determined that control measures for sediment and contaminated soils are different and must be addressed separately in a site plan. Loading and unloading operations are a construction activity and need to remain on the list. In addition, outdoor storage and bulk storage are two different construction activities and must be addressed separately in site plans. Maintenance activities of potential pollutants sources (outdoor storage) and maintenance activities involving potential pollutants (fertilizers) are also two different construction activities and must be addressed separately in site plans. There are many other potential pollutant sources unique to an typical construction site that have not been considered when writing this permit, so this is an important construction activity that must be addressed in site plans.  (Response 7: Combine Potential Pollutant Sources...p. 73) | Distinguishing potential pollutant sources from sites and activities in two separate lists is confusing and could contribute to non-compliance. The two lists have been consolidated, per the following justification:   * Sediment sufficiently covers contaminated soils, which MS4 would not address differently from sediment, as they are not the regulating agency. It also includes land disturbance and storage of soils, and significant dust or particulate generative processes. * Loading and unloading is an operation, not a pollutant source; it is ambiguous; it is addressed as either sediment, waste or outdoor storage of materials. * It is unclear how outdoor storage and bulk storage would be different, thus they are consolidated as outdoor storage. * Routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents, and oils, are classified in the permit as activities. It is more appropriate under the requirements of this permit to require oversight of the pollutant sources from these activities which are sufficiently addressed by outdoor storage and vehicle and equipment maintenance and fueling. * Other areas or operations where spills can occur is ambiguous and potential pollutant sources are sufficiently addressed in the proposed list. |
| I.E.3.a.iv.(C)(3)  Construction Sites  Control Measures | | *Loading and unloading operations* | Please remove from this section.  See above for consolidation of corresponding potential pollutant source list that includes sediment, waste or outdoor storage of materials. | | | No.  These comments have not been incorporated into the permit. The division has determined that control measures must be provided for loading and unloading operations on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.  (Response 18: Remove “Loading and Unloading Operations,” p. 78) | Refer to proposed list of consolidated potential pollutant sources above. |
| I.E.3.a.iv.(C)(4)  Construction Sites  Control Measures | | *Outdoor storage of construction site materials, building materials, fertilizers, and chemicals.* | Please remove from this section.  See above for consolidation of corresponding potential pollutant source list that includes sediment, waste or outdoor storage of materials. | | | No.  These comments have not been incorporated into the permit. The division has determined that control measures must be provided for outdoor storage of construction site materials, building materials, fertilizers, and chemicals on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.  (Response 19: Remove “Outdoor Storage...”, p. 78) | Refer to proposed list of consolidated potential pollutant sources above. |
| I.E.3.a.iv.(C)(5) Construction Sites  Control Measures  Adequacy Standards | | *Bulk storage of materials. Bulk storage for petroleum products and any other chemicals shall have secondary containment or equivalent protection to contain all spills and prevent any spilled materials from entering the MS4.* | Please remove language that specifies how to manage storage of materials.  See above for consolidation of corresponding potential pollutant source list that includes outdoor storage. | | | No.  These comments have not been incorporated into the permit. The division has determined that control measures must be provided for the bulk storage of materials on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.  (Response 20: Remove “Bulk Storage...”, p.78) | Refer to proposed list of consolidated potential pollutant sources above.  In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities such as secondary containment for bulk storage. |
| I.E.3.a.iv.(C)(6)  Construction Sites  Control Measures | | *Vehicle and equipment maintenance and fueling.* | Please remove from this section.  See above for consolidation of corresponding potential pollutant source list that includes vehicle and equipment maintenance and fueling. | | | No.  These comments have not been incorporated into the permit. The division has determined that control measures must be provided for vehicle and equipment maintenance and fueling on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.  Response 21: Remove “Vehicle and Equipment Maintenance...”, p. 79) | Refer to proposed list of consolidated potential pollutant sources above. |
| I.E.3.a.iv.(C)(7)  Construction Sites  Control Measures | | *Significant dust or particulate generating processes.* | Please remove from this section.  See above for consolidation of corresponding potential pollutant source list that includes sediment and construction wastes. | | | No.  These comments have not been incorporated into the permit. The division has determined that control measures must be provided for significant dust or particulate generating processes on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.  (Response 22: Remove “Significant Dust...”, p. 80) | Refer to proposed list of consolidated potential pollutant sources above. |
| I.E.3.a.iv.(C)(8)  Construction Sites  Control Measures | | *Routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents, and oils.* | Please remove.  See above for consolidation of corresponding potential pollutant source list that includes outdoor storage and vehicle and equipment maintenance and fueling. | | | No.  These comments have not been incorporated into the permit. The division has determined that control measures must be provided for routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents, and oils on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.  (Response 23: Remove “Routine Maintenance...”, p. 80) | Refer to proposed list of consolidated potential pollutant sources above. |
| I.E.3.a.iv.(C)(9)  Construction Sites  Control Measures  Adequacy Standards | | *Concrete truck/equipment washing, including the concrete truck chute and associated fixtures and equipment. Control measures used for concrete washout, including from concrete trucks and masonry operations, must ensure that these activities do not result in the contribution of pollutants associated with the washing activity to stormwater runoff to the MS4. Concrete washout water shall not be discharged to the MS4.* | Please remove language that specifies how to manage concrete washout.  See above for consolidation of corresponding potential pollutant source list that includes concrete truck equipment washing. | | | No.  These comments have not been incorporated into the permit. This requirement does not prescribe a specific control measure for concrete truck and equipment washing. The division has determined that control measures must be provided for concrete truck/equipment washing, including the concrete truck chute and associated fixtures and equipment on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.  (Response 24: Revise “Concrete Truck/Equipment...”, p. 81) | Refer to proposed list of consolidated potential pollutant sources above.  The adequacy of BMPs is determined based on site specific conditions and is confirmed as required by  I.E.3.a.v(C) Initial Site Plan Review  1) Confirmation that the site plan includes appropriate control measures for all stages of construction, including final stabilization.  In addition to plan review, I.E.3.c.v. PDD Site Plans requires citation(s) and location(s) of supporting documents, including any documents that provide control measure design considerations, criteria, or standards.  Until the Division develops design criteria, this type of language should not be included in the permit. In addition, as mentioned in the Construction Working Session, the Phase II MS4 stakeholder process is not the correct forum for which to receive appropriate stakeholder input affecting construction site operators and construction activities. |
| I.E.3.a.iv.(C)(10)  Construction Sites  Control Measures | | *Dedicated asphalt and concrete batch plants.* | Please remove from this section.  See above for consolidation of corresponding potential pollutant source list that includes dedicated asphalt and concrete batch plants. | | | No.  This comment has not been incorporated into the permit. Dedicated asphalt and concrete batch plants are very different than concrete truck washout.  (Response 13: Remove “Dedicated Asphalt...”, p.76) | Refer to proposed list of consolidated potential pollutant sources above. |
| I.E.3.a.iv.(C)(11)  Construction Sites  Control Measures | | *Other areas or operations where spills can occur.* | Please remove.  See above for consolidation of corresponding potential pollutant source list. | | | No.  These comments have not been incorporated into the permit. The division has determined that control measures must be implemented to control other areas where spills can occur on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.  (Response 15: Remove “Other Areas Where Spills...”, p. 77) | Refer to proposed list of consolidated potential pollutant sources above.  Other areas or operations where spills can occur is ambiguous and potential pollutant sources are sufficiently addressed with proposed potential pollutant source list. |
| I.E.3.a.iv.(C)(12)  Construction Sites  Control Measures | | *Other non-stormwater discharges including construction dewatering and wash water that may contribute pollutants to the MS4.* | Please remove from this section.  See above for consolidation of corresponding potential pollutant source list. | | | No.  These comments have not been incorporated into the permit. The division has determined that it is appropriate to provide control measures to control other non-stormwater discharges including construction dewatering and wash water that may contribute pollutants to the MS4 on a construction site. Each construction site is unique and the list in the permit provides clarity to the permittees on which types of construction activities need to have control measures.  (Response 16: Remove “Other Non-Stormwater...”, p. 77) | Refer to proposed list of consolidated potential pollutant sources above. |
| I.E.3.a.v.(B)  Construction Sites  Site Plan Requirement | |  | Please add an exclusion for site plan requirement, site plan review, and inspections for emergency type projects. | | | No (comment was misunderstood, but can be easily addressed in procedures).  This comment has not been incorporated into the permit. Regulation 61 specifically requires permittees to review site plans. **Permittees have the flexibility to set up an expedited site plan review process for emergency projects**. Permittees should note that this section of the permit applies to applicable construction sites. Permittees have the flexibility to develop requirements that are more stringent than the permit requirements and require site plan review for smaller projects, such as 10,000 sq.ft, 50 cubic yards, and projects with bore pits.  (Response 2: Add an Exclusion for Emergency Projects, p. 84) | This exclusion is not intended to allow work without BMPs, but to allow work to occur without a site plan requirement, site plan review, and inspections.  Occasionally, emergency work is necessary to address issues such as flooding. During such instances, the focus is to address life safety issues and it may be necessary to begin land disturbance and/or construction activities immediately and prior to development of a site plan. |
| fact sheet  Page 53 | | C*onstruction operators have to conduct site inspections in accordance with their permit coverage under the Stormwater Discharges Associated with Construction Activity general permit. These operator inspections are not considered site inspections under this renewal permit. Regulation 61 specifically requires that the permittee conduct site inspections and this permit clarifies the frequency and scope of the inspections.* | Operator inspections should be considered site inspections, and allowed in accordance with the inspection frequency/scope/recordkeeping proposed concept, below. | | | No.  These comments have not been incorporated into the permit. Section 61.8(11)(a)(ii)(D)(II)(f) of Regulation 61 states that the program must include the development and implementation of “procedures for site inspection and enforcement of control measures.” The division has determined that site inspections conducted by the construction site operator and only reviewed by the permittee do not constitute a site inspection conducted by the permittee. Permittees must conduct their own site inspections.  (Response 1: Operator Inspections p. 85) | Language in other MS4 permits allow for the municipal compliance inspector to have the authority to place the burden of demonstrating compliance on the site operator, to the greatest extent possible. Inspections and recordkeeping reflected in the in the inspection frequency/scope/recordkeeping proposal should be allowed to be performed or completed by either the site operator’s inspector or a municipal inspector, as outlined in the proposal.  It is unclear how the Division determined “operator inspections are not considered site inspections under this permit” from Regulation 61. In the Construction working session, the Division cited 61.8.11.A.ii.D.ll. which states:  The program must be developed and implemented to assure adequate design, implementation, and maintenance of BMPs at construction sites within the MS4 to reduce pollutant discharges and protect water quality. The program must include the development and implementation of, at a minimum:  (f) Procedures for site inspection and enforcement of control measures. |
| I.E.3.a.vi.  Construction Sites  Site Inspection | | *Site Inspection* | Please remove the prescribed inspection frequencies. | | | No.  These comments have not been incorporated into the permit. Please see the fact sheet for more information on the importance of a minimum inspection frequency and the description of a general permit. Please see the division’s response to the revisions in the inspection frequency and an alternative inspection frequency in the response to comments.  (Response 3: Remove the Inspection Frequency p. 96) | A prescribed inspection frequency in the permit has the potential to limit the effectiveness of the MS4 oversight program. Maintaining some level of flexibility in determining which sites are inspected at what frequency, during which stage of construction, while considering site specific factors as well as compliance history remains a significant concern of MS4s. For example, at times, it may be necessary to divert resources temporarily from low-risk sites to enable more focused enforcement to implement truly effective oversight. It is our preference to eliminate the prescribed frequency from the permit altogether. However, as we are uncertain about the Division’s willingness to eliminate inspection frequency from the permit, we offer the following alternative language, below.  Finally, it must be emphasized that the option to operate under an alternative approved program, is essential. As the final permit is developed, we request the Division discuss this issue with CSC if there are any questions or alternatives that might be considered. |
| I.E.3.a.vi.  Construction Sites  Site Inspection  and  I.E.3.b.vi.  Construction Sites  Recordkeeping  Site Inspection | | The following proposed concept addresses site inspection frequency scope and corresponding recordkeeping and is intended to replace the current draft permit language, although many elements from the permit language remain in the proposal:   1. **Site Inspection**    1. **Exclusions**        1. Homeowner       2. Staff vacancy       3. Winter Conditions    2. **Routine Site Inspection**        1. Frequency: conduct at least every 45 days       2. Scope: The inspection must assess the following:          1. Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.          2. Pollutant sources: evaluate all pollutant sources to determine if an offsite discharge of pollutants has occurred.          3. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.    3. **Reduced Site Inspection**   Reduced site inspections must occur at a frequency dependent upon the type of site as indicated below in accordance with the scope outlined for each type. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.   1. **Inactive**: sites that surface ground disturbance activities are completed and are pending growth for final stabilization or for sites where no construction activity has occurred since the last inspection.    1. Frequency: conduct at least every 90 days    2. Scope: The inspection must assess the following:       1. Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.       2. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. 2. **Residential Subdivision:** residential home construction for which all road construction has been completed and Part I.E.3.a.vi(A) does not apply.    1. Frequency: conduct at least every 60 days    2. Scope: The permittee has the option to utilize a screening inspection to fulfill this requirement. The inspection must assess the following:       1. Control measures: Identify failure to implement control measures and inadequate control measures.       2. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the applicable. construction activities as necessary to determine if an offsite discharge of pollutants has occurred. 3. **Stormwater Management Administrator Program** 4. **Indicator**: inspections, such as a drive-by or screening, are conducted to assess sites for indicators of noncompliance and do not fully assess the adequacy of BMPs and overall site management. They are a reduced scope inspection and can be used to extend the frequency required of any inspection type up to 90 days when all indicators evaluated determine control measures meet Good Engineering, Hydrologic and Pollution Control Practices as defined in I.B.1. and there is no evidence of discharges to the MS4. Types of Indicator inspections are defined below:    1. **Reconnaissance**:       1. Frequency: conduct every 14 days       2. Scope: Perimeter of the site must be evaluated for indicators of inadequate BMPs. The inspection must assess the following:          1. Control measures: Identify failure to implement control measures and inadequate control measures.          2. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the applicable construction activities as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site.    2. **Operator Indicator Inspections**: when the required site inspection records completed by, or on behalf of, the site operator and are routinely submitted to the MS4 for review, the MS4 inspection site frequency may be reduced unless the MS4 identifies a failure to implement control measures or inadequate control measures during the reduced frequency inspection.       1. Frequency: conduct at least every 90 days as long as results of MS4 routine inspections assess control measures, pollutant sources and discharge points are maintained in operational condition with only routine maintenance identified. If an inspection indicates inadequate BMPs, failure to implement BMPs, or offsite discharges, a routine inspection frequency must resume.       2. Scope:          1. Control measures: Identify failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance.          2. Pollutant sources: evaluate all pollutant sources to determine if an offsite discharge of pollutants has occurred.          3. Discharge points: Evaluate discharge points to the MS4, or beyond the limits of the construction site as necessary to determine if an offsite discharge of pollutants has occurred. The permittee must require the removal of the pollutants, when feasible, from the MS4 when the permittee identifies a failure to implement a control measure or an inadequate control measure resulting in pollutants discharging to the MS4 or beyond the limits of the construction site. 5. **Compliance Inspection**:    1. Frequency: A compliance inspection must occur within 14 days of the permittee documenting an offsite discharge or systematic failures of control measures unless corrections were made and observed by the inspector during the inspection.    2. Scope: A compliance inspection must verify corrections have been completed, or are actively being addressed, on sites the permittee documented an offsite discharge or systematic failures of control measures during the previous inspection. One of the following may be performed or required in lieu of a compliance inspection within 14 days of the permittee site inspection identifying that there is a failure to implement a control measure or an inadequate control measure:       1. Routine inspection in accordance with I.E.3. (insert permit citation); or       2. Reduced Indicator Inspection in accordance with I.E.3. (insert permit citation); or       3. Operator Compliance Inspection: Require the operator to inspect and report that the control measure has been implemented or corrected as necessary to meet the requirements of Part I.E.3. 6. **Recordkeeping**    1. Site Inspection 7. Routine: Maintain inspection records with the following minimum information for all inspections conducted to meet the minimum inspection frequency:    1. Inspection date    2. Name of inspector    3. Project identification    4. Inspection results including offsite discharge, failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance    5. Type of inspection 8. Reduced: Maintain inspection records with the following minimum information for all inspections conducted to meet the minimum inspection frequency:    1. Inspection date    2. Name of inspector    3. Project identification    4. Type of inspection       1. Inactive: control measure routine maintenance, failure or inadequate; discharge points       2. Residential: control measure failure or inadequate, discharge points       3. Stormwater Management System Administrator: control measure failure or inadequate; discharge points       4. Indicator          1. Reconnaissance: Evidence of offsite discharges, inadequate control measures          2. Operator: control measure routine maintenance, failure or inadequate; discharge points 9. Compliance: Maintain inspection records with the following minimum information for all inspections conducted    1. Inspection date    2. Name of inspector    3. Project identification    4. Inspection results including any corrections that have not been resolved from the previous inspection    5. Type of inspection | | | | Partially.  *Re frequency:*  These comments have been partially been incorporated into the permit. Please see the response to an alternative inspection frequency below. The following response details the changes that were not incorporated into the permit:   * The exclusion for all staff vacancies was not incorporated into the permit. Excluding *all* inspections for a staff vacancy for potentially the entire duration of construction project is not appropriate. The “infeasibility exclusion” has been renamed to “staff vacancy” and moved to the reduced site inspection section. * The residential subdivision comment for 60-day inspections was not incorporated into the permit. Alternatively, inspections are not required for individual lots in a residential development if the residential development has a permittee-approved site plan and is being inspected under one of the inspection frequencies in the permit. * Two requirements to the indicator inspections frequency have been added. The requirement is that the permittee must have conducted a routine inspection of the construction site at least once before the permittee switches to the indicator inspection type of inspections. In addition, a routine inspection must be conducted after an indicator inspection results in a compliance inspection before the indicator inspection can be used again. * The operator indicator inspection was not incorporated into the permit. These are not permittee inspections, but are permittee report reviews. Regulation 61 specifically requires the permittee to conduct inspections, not just reviews of operator reports. * The frequency of a compliance inspection does not include “systematic failures of control measures” since this term is unclear. A “systematic failure” would need to be defined. In addition, “or are actively being addressed” was not incorporated into the scope of the inspection. If a control measure is being “actively addressed” 14 days after the offsite discharge or inadequate control measure was observed, then the site has already been out of compliance for 14 days. It is not appropriate to allow the construction site to be out of compliance indefinitely. Also, the operator compliance inspection report must include photographs.   (Response 2: Revise the Inspection Frequency, p. 93)  *Recordkeeping:*  These comments have been partially incorporated into the permit. The following have not been incorporated into the permit:   * All types of inspections: Did not remove “the location of” inspection results. An important part of inspection recordkeeping is documenting the location of the significant issues, especially offsite discharges, failed control measures, or inadequate control measures, found on the inspection, especially on large sites. The permittee, however, does not have to list the location of control measures needing maintenance.   \*this is clarified in the permit to include a “list,” not locations of   * Reduced Site Inspection: The inspection results were added as a requirement. These are still site inspections, just conducted less frequently. In addition, staff vacancy has been added to the type of inspection to document why the inspection was conducted less frequently * Operator Compliance Inspection: Requirements for the report were added.   (Response 1: Revise Recordkeeping Requirements, p. 106) | The compounded effect of the draft permit language for inspection frequency, compliance inspection and related recordkeeping, while lacking a low-risk category, continues to make the draft requirements infeasible without significant additional staffing for many MS4s. The site inspection frequency/scope/recordkeeping proposal reflects a proactive program, while at the same time enabling needed flexibility while maintaining minimum standards and a clear expectation of the level of oversight. |
| I.E.3.a.vi.(E)(2)(a)  Construction Sites  Site Inspections  Pollutant Sources  Specific Pollutant Sources | | *Identify and evaluate construction dewatering discharges and concrete washout areas for inadequate control measures and offsite discharges of pollutants. “Construction dewatering” is the discharge of groundwater, surface water, and stormwater that has mixed with the groundwater and/or surface water (i.e. commingled stormwater runoff) that has come into contact with applicable construction activities.* | | | Please remove verbiage specifically calling out construction dewatering discharges and concrete washout areas.  Please refer to inspection frequency/scope/recordkeeping proposal. | No, but revised.  These comments have not been incorporated into the permit. Construction dewatering discharges and concrete washout areas are significant sources of pollutants on a construction site. This requirement, however, has been revised to include only dewatering discharges not covered under the COG070000 general permit.  (Response 14, p. 100) | “All pollutant sources” is sufficiently inclusive and addresses these two pollutant sources.  Construction Dewatering is already included in J. Definitions. |
| I.E.3.b.vi.(A)(4)  Construction Sites  Recordkeeping  Site Inspections  Routine and Reduced Frequency/Scope Inspections | | *Inspection results including, the location of conditions resulting in offsite discharge, failure to implement control measures, inadequate control measures, and control measures requiring routine maintenance and how the issues were resolved if resolved during the inspection.* | | | Please refer to inspection frequency/scope/recordkeeping proposal.  Please remove “location of conditions”  Please remove “how the issues were resolved if resolved during inspection. | Partially.  These comments have not been incorporated into the permit. An important part of inspection recordkeeping is documenting the location of the significant issues, especially offsite discharges, failed control measures, or inadequate control measures, found on the inspection, especially on large sites. **The permittee, however, does not have to list the location of control measures needing maintenance.**  (Response 2 Remove the Requirement of Documenting the Location of Inadequate Control Measure, p. 106) | Noting the “location of conditions” is a level of detail not needed for assessment of control measures, pollutant sources or discharge points.  Documentation of "how the issues were resolved” is not relevant to determining if something was resolved or enforcing if something was not resolved. |
| POST-CONSTRUCTION STORMWATER MANAGEMENT IN NEW DEVELOPMENT AND REDEVELOPMENT | | | | | | | |
| Part I.E.4.  Post-Construction  Applicability | | *“Applicable development projects” are those that result in land disturbance of greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, unless excluded below.* | | Please include a discussion in the fact sheet or permit regarding the stabilization of a site and how stabilization changes the larger common plan area for the purposes of the permit requirements. | | No.  It is my opinion the Division misinterpreted this comment since they say stabilization is only applicable to construction program. Determining if a project is part of larger common plan is a post construction requirement. | After a lot has been sold, Land Disturbance has occurred and the site has been stabilized, it is no longer part of the Larger Common Plan of Development or Sale and should not be considered for the purposes of post-construction requirements.    The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial. |
| Part I.E.4.  Post-Construction  Applicability | | *“Applicable development projects” are those that result in land disturbance of greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, unless excluded below.*  *…*  *“New Development” means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision on an area that has not been previously developed.* | | Please change the definition of land disturbance for the purposes of the post construction section of the permit, considering the following proposed concept:  “Applicable development projects” are those that result in land disturbance of greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, unless excluded below.  For the purpose of post construction, land disturbance is where land disturbing activities change the existing ground cover (vegetative and/or non-vegetative) that results in more than 1000 square feet of imperviousness.  At a minimum, projects that do not impact water quality if a control measure is not implemented should not be considered applicable development projects.  Please change the definition of new development, considering the following proposed concept:  “New Development” is a land disturbance that results in the creation of impervious area on a site that was not previously developed, unless excluded below. | | No.  See fact sheet page 114. “As new information becomes available additional refinements can be made and projects can be added through the permit modification process and at permit renewal.”  Page 115, the definition of applicable development projects is based on land disturbance and not imperviousness as outlined in EPA’s Phase II Rule and Regulation 61.  I’m still stuck on that staging areas are included in land disturbance. | The current definition of land disturbance is applicable to construction activity, but does not pertain to post construction, for which design standards are based upon the final disposition of the site. The purpose of the post construction program is to address water quality impacts. Projects that do not result in water quality impacts should not be applicable development projects.  Redefining the term land disturbance in the permit allows a logical approach to addressing post construction concerns. A definition of “disturb” should reflect the final site condition. Using this as a trigger for post construction requirements rather than the traditional "disturbance" definition used in construction would allow projects like trails or utility projects that return the land back to its pre-existing condition to be automatically excluded from the requirements. This change in the definition for the purpose of the post construction program also ensures activities that do not actually disturb land are not included in the requirement for post construction controls, such as temporary staging areas and stockpile areas. If an area is not actually disturbed, the opportunity to install a permanent control measure does not exist.  The definition for “New Development” is too broad and may allow for misinterpretation. The definition states that “New Development*” means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision on an area that has not been previously developed*. The definition, as written, could result in requiring post construction control measures for structural projects, such as a new roof for a structure, with concurrent grading activities over an acre of disturbance, such as re-grading adjacent pervious areas to address drainage issues. Further, a land subdivision with concurrent overlot grading activities with no added imperviousness could result in a requirement for a post construction control measure. We assert that development should be tied to potential impact, or the addition or creation of impervious area, not to structural modifications or land divisions, which is a planning process. |
| I.E.4.a.i.  Post-Construction  Excluded  Projects | |  | | Please add Unpaved Roadway Construction and Maintenance to the list of exclusions. | | No, but does address that maintenance is not land disturbance.  Division’s response: The original exclusions for roadways were developed as a result of previous stakeholder processes which did not address unpaved roadways. Unpaved roadways are sources of pollutants that are appropriately addressed in the permit.  I believe response fails to address the original issue that brought about the concern expressed in the stakeholder meeting held regarding roadways. | There are exclusions for pavement management and existing roadways, but exclusions must also apply to upaved roads. |
| I.E.4.a.i.  Post-Construction  Excluded Projects | |  | | Please add the following proposed concept:  Automatic Exclusion: Construction Projects required to restore damages to existing infrastructure resulting from a disaster such as a wildfire, flood, tornado, or other occurrence that maintain the original line and grade, hydraulic capacity, or original purpose of the facility. | | No.  Fact Sheet- page 123, This section of the permit does not apply to maintenance projects, whether planned or emergency projects.  I believe we would still have a concern because the Division uses the word “routine” in association with maintenance. These types of projects are not typically “routine” | There are times when emergency work is required to restore damaged infrastructure because of a natural disaster. These operations may require changes to the infrastructure to repair, replace in-kind, or for the betterment of the structure, for example. This work occurs without going through a planning process and rarely provides an opportunity to add post construction control measures. |
| I.E.4.a.i.(A)  Excluded Projects  Pavement Management | | *” Projects, or portions of projects, for the rehabilitation, maintenance, and reconstruction of pavement, which includes roadway resurfacing, mill and overlay, white topping, black topping, curb and gutter replacement, concrete panel replacement, and pothole repair. The purpose of the project must be to provide additional years of service life and optimize service and safety. The project also must be limited to the repair and replacement of pavement in a manner that does not result in an increased impervious area and the infrastructure must not substantially change. The types of projects covered under this exclusion include day-to-day maintenance activities, rehabilitation, and reconstruction of pavement. “Roadways” include roads and bridges that are improved, designed or ordinarily used for vehicular travel and contiguous areas improved, designed or ordinarily used for pedestrian or bicycle traffic, drainage for the roadway, and/or parking along the roadway. Areas primarily used for parking or access to parking are not roadways.* | | Please remove the qualifier that parking areas or access to parking areas are not considered roadways. The exclusion is for pavement management, not roadways only.  Please add the following exclusion conditions to parking and access to parking areas. “Areas primarily used for parking or access to parking can be considered “roadways” so long as the following criteria is met:   1. The project is for maintenance purposes and 2. does not result in increased impervious area and 3. the infrastructure must not substantially change. | | No.  Fact Sheet- Page 127, The division believes that additional data and potentially additional public notice/input would be needed to fully evaluate this requested change. Permittees may request a permit modification to add this exclusion. The modification request should include sufficient information for the division to fully evaluate the request, such as Douglas County’s Residential Large Lot Study  The Division again states that maintenance of parking lots does not apply- but does not address the word “routine” | Parking lanes on roadways are common and excluding those, while including through lanes and turn lanes, does not make technical sense. Parking or access to parking areas are maintained, rehabilitated, and reconstructed with the common purpose of providing additional years of service life. So long as these projects do not add additional impervious surface area and infrastructure is not changed, these projects are, and should be similarly treated as, “roadways.” By not excluding these projects, a trigger of additional infrastructure to not only capture but convey stormwater flows can significantly increase the scope, cost, and footprint of a typical maintenance project. A higher level of engineering, review, and oversight would also be required sending a typical project with an overall construction length of 3-7 days into a significantly extended time line of months.  In addition, parking area requirements are often dictated by local codes. If rehabilitating/repaving/maintaining a parking area requires adding post-construction water quality controls, in many cases this could lead to a reduction in parking spaces, the number of which were originally dictated and approved by the local codes and requirements. |
| I.E.4.a.i.(E)  Post-Construction  Excluded Projects  Large Lot | | *A single-family residential lot, or agricultural zoned lands, greater than or equal to 2.5 acres in size per dwelling and having a total lot impervious area of less than 10 percent. A total lot imperviousness greater than 10 percent is allowed when a study specific to the watershed and/or MS4 shows that expected soil and vegetation conditions are suitable for infiltration/filtration of the WQCV for a typical site, and the permittee accepts such study as applicable within its MS4 boundaries. The maximum total lot impervious covered under this exclusion shall be 20 percent.* | | Please change the requirement to allow for when a lot demonstrates a higher percentage of impervious; remove the cap of 20 percent. | | No  Fact Sheet, page 127, Permittees can submit a modification request with a study that evaluates large lot development with more than 20% impervious surface on the site. The division can then evaluate the study and determine if a permit modification is necessary. | If a study can prove the expected soil and vegetation conditions are suitable for infiltration/filtration of the WQCV for a typical site, there is no reason to not allow a larger percentage of impervious area. |
| I.E.4.a.i.(F)  Post-Construction  Excluded Projects  Non-Residential and Non-Commercial Infiltration Conditions | | *Non-Residential and Non-Commercial Infiltration Conditions* | | Please change the title of this category to Infiltration Conditions. | | No.  The division believes that the current title is specific and clear. | The term Non-Residential and Non-Commercial is confusing. Clarification that it does not apply to residential and commercial sites can be included within the discussion of where the exclusion applies. |
| I.E.4.a.i.(F)  Post-Construction  Excluded Projects  Non-Residential and Non-Commercial Infiltration Conditions | | *This exclusion applies to applicable development projects for which post-development surface conditions do not result in the occurrence of concentrated stormwater flow during the 80th percentile stormwater runoff event. In addition, post-development surface conditions must not be projected to result in a surface water discharge from the 80th percentile stormwater runoff events. Specifically, the 80th percentile event must be infiltrated before it flows being concentrated before being discharged from the applicable development project.* | | Please change the sentence that starts with "Specifically," to the following proposed concept:  Specifically, the 80th percentile event must be infiltrated and not discharged as concentrated flow. Except, the permittee may exclude up to 20% of the applicable development project area when the permittee has determined that it is not practicable to route impervious areas to pervious areas thus infiltrating portions of the site.  In addition, the permittee must also determine that the implementation of a separate control measure for that portion of the site is not practicable. | | No.  The division found the proposed language of “not practicable” to be unclear | It is not always possible to route all impervious areas to pervious areas for infiltration. For example, in the case of a park with one parking space or a curb return, it would be difficult to route the impervious of the parking spot to the pervious area of the park for infiltration.  For this reason, we suggest allowing for a small area that may be directly connected to impervious area. |
| I.E.4.a.iv  Post-Construction  Control Measure Requirements- | |  | | Please add the following proposed concept:  Source Reduction Standard | | No.  Fact Sheet, page 140  These comments have not been incorporated into the permit. Permittees can contact division staff for questions about existing design standards. In addition, permittees can submit a permit modification to revise or add new design standards and the process will include a public notice process. | Data to support this design standard is in the process of being gathered. This design standard would apply only to applicable development project that are a municipal project until permittees are able to determine how to track and ensure the source reduction method is implemented.  Additional discussion with the Division is requested to allow for a permit modification this design standard is not included at permit issuance. |
| I.E.4.a.iv.(A)1)  Post-Construction  Control Measure Requirements- WQCV | | *100% of the applicable development project is captured, except the permittee may exclude up to 10 percent, not to exceed 1 acre, of the applicable development project area when the permittee has determined that it is not practicable to capture runoff from portions of the site that will not drain towards control measures.* | | Please change to the following proposed concept:  100% of the effective impervious area within the applicable development project is captured, except the permittee may exclude up to 20 percent of the applicable development project area when the permittee has determined that it is not practicable to capture runoff from portions of the site that will not drain towards control measures. | | Somewhat.  Increased to 20%, but kept the not to exceed one acre. | Only the developed effective impervious areas need to be treated and captured. Areas that do not contribute runoff or are undeveloped at the completion of the project should not be required to be included in the capture area. For example, a large park within a larger common plan of development should not be included in the required project area to be captured for WQCV treatment. That area may be treated through an alternative design standard such as the Runoff Reduction Standard.  After a review of projects by permittees, an allowance of 20% is more practical.  Adding the clarifier "not to exceed one acre" does not adequately address the areas that may be excluded on larger projects. A project that disturbs 30 acres may be unable to capture 2 acres (6% of the project) due to many factors such as grades of backyards, access points, etc, for example. |
| I.E.4.a.iv.(A-C)  Post-Construction  Design Standards | |  | | Please allow treatment of equivalent area for development projects. | | No.  Fact Sheet, page 140  These comments have not been incorporated into the permit. Permittees can contact division staff for questions about existing design standards. In addition, permittees can submit a permit modification to revise or add new design standards and the process will include a public notice process. | The *Douglas County Equivalent Area Study (Memo RE: Permanent Water Quality: 100% Water Quality Capture and Treatment Scenario)* shows treating an equivalent area can cost significantly less while providing the same water quality benefit.  This is not the same as water quality trading.  Additional discussion with the Division is requested to allow for a permit modification if this concept is not included at permit issuance. |
| I.E.4.a.iv. Post-Construction  Design Standards | |  | | Please add an additional trigger for constrained development sites to address sites where utilizing minimum setbacks with existing right-of-way, public utility, outfall connection or access configuration prevents the use of the design standards currently available in the permit. | | No.  Fact Sheet- page 137  **The requirement has been changed to require both criterion to be met for a constrained site**. Permittees should note the flexibility in the second criteria that allows the permittee to determine if it is practicable for the site to meet the design standards. There is significant flexibility contained in the permit for design standards and constrained sites. Permittees are encouraged to contact the division to discuss new or unanticipated scenarios as they arise. | Constrained New Development applies to new development where some portion of the project is constrained by grades that, without significant change to native topography, cannot be treated by the proposed control measure(s) to meet the requirements of I.E.4.a.iv(A)-(E) |
| I.E.4.a.iv(F)3)  Post-Construction  Additional Control Measure(s) Design Standard | | *Additional Control Measure(s) Design Standard: The permittee shall evaluate and require additional control measures at the constrained applicable redevelopment site for removal of pollutants or infiltration of runoff to the extent determined practicable by the permittee. At a minimum, additional controls shall include incorporation of control measures to reduce pollutant discharges to any facility implemented to control the flow rate of stormwater runoff for purposes of drainage or flood control (e.g., adding water quality detention to a flood control pond).* | | Please change to the following proposed concept:  Alternative Control Measure(s) Design Standard: When all other standards are determined infeasible, the permittee shall evaluate and require alternative control measures at the constrained applicable redevelopment site for removal of pollutants and/or infiltration of runoff to the extent determined practicable by the permittee.  Please remove: At a minimum, alternative controls shall include incorporation of control measures to reduce pollutant discharges to any facility implemented to control the flow rate of stormwater runoff for purposes of drainage or flood control (e.g., adding water quality detention to a flood control pond).  Please change to the following proposed concept:  At a minimum, alternative controls shall include incorporation of green infrastructure practices such as minimizing directly connected impervious areas, urban tree canopy, and land planning practices. | | Not exactly.  This design standard has been removed from the permit. The goal of this design standard was to encourage permittees to require more treatment than the constrained redevelopment sites design standard if the permittee determines that it is feasible. | CSC provided this as a comment last time and intended it as an *alternative* standard, not an *additional* standard.  The Alternative Control Measure Design Standard encourages a site to implement alternative practices when a Design Standard cannot be met.    The last sentence regarding the minimum level of additional controls and the example in parenthesis are not consistent: Adding water quality detention to a flood control facility does not reduce pollutant discharges *to* the facility, as stated. Instead, it may reduce pollutant discharges *from* the facility. An existing detention pond on a site and the existing detention pond outlet works or volume may not allow a retrofit for water quality detention. |
| I.E.4.b.i.(A)  Post-Construction  Recordkeeping Excluded Projects | | *Maintain records for activities covered under Part I.E.4.a.i. Records must include the project name, owner name, location, completion date, project acreage, reason for exclusion, and any information required below.*   * + - * 1. *Pavement Management Projects – The acreage of the excluded impervious area.* | | Please remove the requirement to track routine pavement management project. | | Partial.  These comments have been partially incorporated into the permit. This requirement has been updated to only require recordkeeping for rehabilitation and reconstruction of pavement projects that are not maintenance. Recordkeeping requirements for the day-to-day maintenance of pavement have been removed. | Routine pavement areas are not required to have control measures, as such the impervious area would not be tracked.  Projects excluded from the permit requirements should not have additional documentation or reporting requirements. Recordkeeping for Pavement Management is typically in the form of tracking quantities of material, labor and equipment hours, budgets, etc. and not necessarily tracking, for example, the impervious area of a pothole.  Compiling paperwork for projects not subject to MS4 Permit requirements is not an efficient use of limited MS4 resources. Projects not subject to the requirements of this permit would not be tracked to show they were not subject to the permit requirements. |
| I.E.4.b.i.(D)  Post-Construction  Recordkeeping Exclusions | | *Non-Residential and Non-Commercial Infiltration Conditions – The acreage of the excluded impervious area.* | | Please remove the requirement to track the acreage of the excluded impervious area. | | No.  The current permit does not allow for any exclusions-the use of the new exclusions must be closely tracked. | Runoff from projects meeting the requirement for the Non-Residential and Non-Commercial Infiltration Conditions Standard is treated through infiltration or filtration. These areas are treated and should not have additional documentation or reporting requirements. |
|  | | | | POLLUTION PREVENTION/GOOD HOUSKEEPING FOR MUNICIPAL FACILITIES | | | |
| I.E.5.a.ii.(A) (3) P2/GH  Municipal Facilities | | *Solid-waste transfer stations where waste and recyclables are briefly held before further transport* | | Please change to the following proposed concept:  Outdoor solid-waste transfer stations operated for the benefit of the public, where waste and recyclables are briefly held before further transport. This does not include those already authorized by a separate CDPS or NPDES Discharge Permit. | | No – “These comments have not been incorporated into the permit. Permittees have the flexibility to further define waste transfer stations and a municipal facility. Dumpsters are typically not considered waste transfer stations. In addition, permittees can exclude discharges specifically authorized by a CDPS or NPDES permits from being effectively prohibited (Part I.2.a.v.) Also, Part I.5. specifically excludes operations and facilities that are not authorized by a separate CDPS or NPDES discharge permit.” | All municipal buildings have a dumpster where waste and recyclables are briefly held prior to further transport. Without clarification of facilities to which this may apply, a permittee would be required to implement this permit requirement at every municipally owned building. |
| I.E.5.a.v.  P2/GH  Bulk Storage | | *Bulk storage structures for petroleum products and any other liquid chemicals located at applicable municipal facilities must have control measures implemented that provide secondary containment or equivalent protection that contains all spills and prevents any spilled material from entering state waters. For the scenario of a single containment system serving multiple tanks, the containment system must have sufficient capacity to contain 10% of the volume of containers, or the volume of the largest container plus 10%, whichever is greater.* | | Please include bulk storage as a requirement in I.E.5.a.ii instead of listing it separately.  Please clarify that this only applies to bulk liquid storage located at applicable municipal facilities that are stored outdoors and are contained in stationary tanks. | | No - bulk storage was not incorporated into I.E.5.a.ii –  “These comments have not been incorporated into the permit. The outdoor storage of bulk storage containers is an important part of preventing or reducing pollutant runoff from municipal operations. The outdoor storage of bulk materials occurs at/on both municipal facilities and on municipal operations and must remain a separate requirement in the permit.”  Yes - ( new language in italics)  Outdoor bulk storage structures, of more than 55 gallons, for petroleum products and any other liquid chemicals located at applicable municipal facilities must have control measures implemented that provide secondary containment or equivalent protection that contains all spills and prevents any spilled material from entering state waters. For the scenario of a single containment system serving multiple tanks, the containment system must have sufficient capacity to contain 10% of the volume of containers, or the volume of the largest container plus 10%, whichever is greater. Bulk storage on mobile refuelers that are subject to the authority and control of the U.S. Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of EPA, dated November 24, 1971 are not subject to the requirements of Part I.E.5.a.ii(A)(5). Before the implementation of such controls, the permittee shall implement practices, such as spill prevention and response, to prevent or reduce pollutants in runoff associated with bulk storage structures. | Bulk Storage should be included as a Control Measure under a facility, not a separate requirement.  The requirement should only apply to bulk liquid storage that is located outdoors where it could have the reasonable potential to be a stormwater pollutant. |
|  | | | | REPORTING REQUIREMENTS | | | |
| I.I.iv.(B)1)  Annual Report  Post Construction Excluded Projects | | *Excluded Projects: Provide a list of the following projects excluded from being applicable development projects in and include the recordkeeping information required by Part I.E.4.b.ii:*  *Projects excluded in accordance with Part I.E.4.a.i(A)* | | Please remove the requirement to report on Pavement Management Projects. | | No.  But clarified that routine maintenance is not applicable so would not be reported. | Pavement Management Projects excluded from the permit requirements should not have additional documentation or reporting requirements since their purpose is in line with the definition of routine maintenance in Regulation 61. Although there may be documentation for Pavement Management Projects, this information is typically documented within a project file, not in a separate database or spreadsheet for reporting.  Compiling paperwork for projects not subject to MS4 Permit requirements is not an efficient use of limited MS4 resources. Projects not subject to the requirements of this permit would not be tracked to show they were not subject to the permit requirements. |
|  | | | | Definitions | | | |
| I.J.1.  Definition  Applicable Construction Activity  I.J.6.  Definition  Construction Activity | | *Applicable Construction Activity: Construction activities with land disturbance (surface disturbing and associated activities) of one or more acres, or disturbing less than one acre if that construction activity is part of a larger common plan of development or sale that would disturb, or has disturbed one or more acres, unless excluded in Part I.E.3.a.i. Applicable construction activities include the land disturbing activity and all activities and materials associated with the construction project and located at, or contiguous to, the land disturbing activities.*    *Construction Activity: Construction Activity refers to ground surface disturbing and associated activities (land disturbance), which include, but are not limited to, clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads, staging areas, stockpiling of fill materials, and borrow areas. Construction does not include routine maintenance to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. Activities to conduct repairs that are not part of regular maintenance or for replacement are construction activities and are not routine maintenance. Repaving activities where underlying and/or surrounding soil is cleared, graded, or excavated as part of the repaving operation are typically construction activities unless they are an excluded project under Part I.E.4.a.i. Construction activity is from initial ground breaking to final stabilization regardless of ownership of the construction activities.* | | Please consolidate and/or ensure all definitions are consistent.  Please delete *and located at, or contiguous to, the land disturbing activities.* It does not provide clarity and, if the Division’s definition of contiguous is applied, could imply a much broader scope than Regulation 61 provides.  From Regulation 61: Stormwater discharge associated with small construction activity means the discharge of stormwater from construction activities, including clearing, grading, and excavating, that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.  Please remove "*Repaving activities where underlying and/or surrounding soil is cleared, graded, or excavated as part of the repaving operation are typically construction activities unless they are an excluded project under Part I.E.4.a.i."* | | No. Fact Sheet definition for **Applicable Construction Activity and Construction activity** are unchanged.  These comments have been partially incorporated into the permit. 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. | Applicable Construction Activity is discussed in I.E.3. and defined in I.J.1 ApplicableConstruction Activity as well as I.J.6. Construction Activity. It is confusing and unnecessary to define the same concept with some variation in three places in the permit.  The discussion in Regulation 61 states, "Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility." If repaving activity meets this intent, it is not a construction activity per Regulation 61. |
| I.J.5.  Definitions  Common Plan of Development or Sale  I.J.36.  Definitions  Part of a Larger Common Plan of Development or Sale | | *A facility where multiple separate and distinct but related construction activities may be taking place at different times on different schedules, are located are in a contiguous area, and are subject to a consistent plan for long-term development. Consistent with EPA guidance, “contiguous” is interpreted to mean construction activities located in close proximity to each other (within ¼ mile). Construction activities are considered to be “related” if they share the same development plan, builder or contractor, equipment, storage areas, etc.*  *A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules, but remain related.* | | Please consolidate and/or ensure all definitions are consistent. It is confusing to refer to Common Plan of Development as a facility and Part of a Larger Common Plan of Development as an area.  Please remove the discussion of “related” in the permit. | | No, Reworked slightly: Fact Sheet definition:  **Common Plan of Development or Sale**: A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules, but remain related. The Division has determined that “contiguous” means construction activities located in close proximity to each other (within ¼ mile). Construction activities are considered to be “related” if they share the same development plan, builder or contractor, equipment, storage areas, etc.  Factsheet no longer has “related” as a definition.  Fact Sheet Attachment A comment:  These comments have not been incorporated into the permit. A common plan of development or sale is an area and this term is used in the definition of an applicable construction activity. | Part of a Larger Common Plan of Development or Sale is defined in three places in the permit.  The term “related” doesn’t add clarification and could broaden what an applicable construction activity is beyond the intent of the Regulation.  The Division has issued guidance through other permits regarding final stabilization and removing areas from larger common plans of development. A discussion in the fact sheet would be beneficial. |
| I.J.25.  Definitions  Land Disturbing Activity  and  I.E.3. | | *Any activity that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads, staging areas, stockpiling of fill materials, and borrow areas. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity.* | | For the purpose of the Construction section of the permit, please reword the definition of Land Disturbing activity.  EPA uses the term “earth-disturbing activities, such as the clearing, grading, and excavation of land.” | | No.  Comments in Attachment A indicate:  This comment has not been incorporated into the permit. The division has determined that land disturbing activities includes staging areas and access roads. Since projects include many activities, the term “activities” will continue to be used. Note that routine maintenance activities, including some repairs, are not considered construction activities. | EPA’s definition from EPA Construction General Permit, Appendix A – Definitions and Acronyms is preferable, as it focuses on actual earth disturbing activities, such as grading and clearing, and not on changes to soil cover, which could be interpreted to imply changes to landscaping. |