



STORMWATER FACT SHEET – CONSTRUCTION

Contents

A.	Introduction	1
B.	Obtaining Regulatory Coverage	2
1.	Do you need a Permit?	2
a.	Applying for a Permit	3
b.	Options: Small Construction Sites.....	3
i.	Qualifying Local Programs	3
ii.	R-Factor Waiver	3
2.	Who May Apply?	4
C.	Permit Requirements	4
D.	Local Stormwater Requirements	5
E.	Amending Your Permit Certification	5
F.	Ending Your Permit Coverage	6
G.	Multiple Owner/Developer Sites	7
1.	Permit Coverage	7
2.	Permit Compliance	8
H.	Sale of Residence to Homeowners.....	10
I.	Construction Dewatering	10
J.	Concrete Washout	10

A. INTRODUCTION



Look for this symbol throughout this guide for brief summaries of the most important information you need to know about stormwater permitting for construction activities. Then read further if you want more details.

In 1992, the State of Colorado stormwater regulation went into effect to control municipal and industrial stormwater discharges, based on EPA regulations. The regulation is meant to reduce the amount of pollutants entering streams, rivers, lakes, and wetlands as a result of runoff from residential, commercial and industrial areas. The State regulation (5 CCR 1002-61) covers discharges from specific types of industries including construction sites, and storm sewer systems for certain municipalities. In Colorado, the program is under the Colorado Department of Public Health & Environment, Water Quality Control Division (the Division). The Colorado program is referred to as the Colorado Discharge Permit System (CDPS), and regulated stormwater discharges from construction activities are covered under the CDPS General Permit for Stormwater Discharges Associated with Construction Activities (the Stormwater Construction Permit).

Construction activities produce many different kinds of pollutants which may cause stormwater contamination problems. The main pollutant of concern at construction sites is sediment. Grading activities remove grass, rocks, pavement and other protective ground covers, resulting in the exposure of underlying soil to the elements. The soil is then easily picked up by wind and/or washed away by rain or snowmelt. Sediment runoff rates from construction sites are typically 10 to 20 times greater than those from agricultural lands, and 1,000 to 2,000 times greater than those from forest lands. During a short period of time, construction activity can contribute more sediment to streams than would normally be deposited over several decades, causing physical, chemical, and biological harm to our State’s waters. The added sediment chokes the river channel and covers the areas where fish spawn and plants grow.

Excess sediment can cause a number of other problems for water bodies, such as increased difficulty in filtering drinking water, and clouding the waters, which can kill plants growing in the river and suffocate fish. A number of pollutants, such as nutrients, are absorbed onto sediment particles and also are a source of pollution associated with sediment discharged from construction sites.



In addition, construction activities often require the use of toxic or hazardous materials such as fuel, fertilizers, pesticides and herbicides, and building materials such as asphalt, sealants and concrete, which may also pollute stormwater. These materials can be harmful to humans, plants and aquatic life.

This Fact Sheet provides general guidance for compliance with the CDPS permitting requirements for stormwater discharges from construction activities. The Division reserves the right to interpret the permitting requirements on a case-by-case basis, as necessary.

B. OBTAINING REGULATORY COVERAGE FOR CONSTRUCTION SITES

 You **must** obtain permit coverage (or an R-Factor waiver) to discharge stormwater from any construction activity that disturbs at least 1 acre of land (or is part of a larger common plan of development or sale that will disturb at least 1 acre).

The owner or operator **must** apply for coverage under the Stormwater Construction Permit at least 10 days prior to the start of construction activities. The application is available from the Division's web page.

1) Do you need to obtain coverage under the Stormwater Construction Permit?

Construction Sites that disturb one acre or greater, or are part of a larger common plan of development disturbing one acre or greater, are covered under Colorado's stormwater permitting requirements. Generally, permit coverage is required, as discussed in Part B.1.a, below. However, additional options may exist if your project or plan of development will disturb less than 5 acres (Small Construction Site), as discussed in Part B.1.b, below. If permit coverage is required, or a waiver applied for, it must be maintained until the site is finally stabilized.

Is it part of a larger common plan of development or sale?

"A common plan of development or sale" is a site where multiple separate and distinct construction activities may be taking place at different times on different schedules. Examples include: 1) phased projects and projects with multiple filings or lots, even if the separate phases or filings/lots will be constructed under separate contracts or by separate owners (e.g., a project where developed lots are sold to separate builders); 2) a development plan that may be phased over multiple years, but is still under a consistent plan for long-term development; and 3) projects in a contiguous area that may be unrelated but still under the same contract, such as construction of a building extension and a new parking lot at the same facility. If the project is part of a common plan of development or sale, **the disturbed area of the entire plan must be used in determining permit requirements.**

Disturbance associated with utilities, pipelines, or roads that are constructed for the purpose of serving a facility, are considered together with that facility to be part of a common plan of development. However, adjacent construction of trunk lines or roads that are part of a regional network and not directly associated with the facility construction, are not usually considered to be part of the common plan for that facility. Note that permit coverage or an R-Factor waiver is still required for each individual project (facility or adjacent construction activity) that disturbs one or more acres.

What is the total estimated area of disturbance?

The area of disturbance is the total area at the site where any construction activity is expected to result in disturbance of the ground surface. This includes any activity that could increase the rate of erosion, including, but not limited to, clearing, grading, excavation, and demolition activities, installation of new or improved haul roads and access roads, staging areas, heavy vehicle traffic areas, stockpiling of fill materials, and borrow areas. Construction does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility.

"Finally Stabilized" means that all ground surface disturbing activities at the site have been completed, and all disturbed areas have been either built on, paved, or a uniform vegetative cover has been established with an individual plant density of at least 70 percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. Re-seeding alone **does not** qualify.



What are the requirements for recommencing construction activities at a later date at a site that has been completely stabilized and the permit terminated?

If a common plan of development is completely stabilized such that the entire common plan of development meets the definition of finally stabilized and permit coverage for that common plan of development has been terminated (the permittee has submitted a notice of termination to the division and the division has confirmed that the certification has been inactivated), then a new determination of “common plan of development” shall be made for any future construction activities conducted by a different owner(s)/developer(s) that occur within the previously permitted area to determine if permit coverage is needed.

However, if the original owner/developer of a common plan of development, that achieved final stabilization and terminated permit coverage, is the one who is restarting construction activities within that development, then any construction activity they are engaged in would be considered part of the original larger common plan of development and therefore require permit coverage if one acre or greater. Note that if the site has never been finally stabilized, then this does not apply as the original development is considered ongoing.

a) Applying for a permit

Application for coverage under the Stormwater Construction Permit must be made at least 10 days prior to the start of construction activities, unless the site is a Small Construction Site that qualifies for an alternative option discussed in B.1.b, below. An application, which includes guidance on developing a Stormwater Management Plan (SWMP), is available from the Division. The SWMP must be completed prior to application. See Section C, “Permit Requirements,” for further information. If your application is complete, it will be processed and your permit certification mailed to you.

The Stormwater Construction Permit certification must be inactivated once the site has been finally stabilized, in order to end permit coverage and billing. An inactivation form is supplied with the permit certification.

b) Additional Options for Small Construction Sites (at least 1 acre, but less than 5 acres of disturbance)

The following options may apply to Small Construction Sites that disturb less than 5 acres, and are not part of a larger common plan of development exceeding 5 acres. (Regardless of which option applies at the State level, all local requirements must still be met as discussed in Section D, below.)

The options discussed under Parts b.i and b.ii below are not available for Large Construction Sites.

i) Obtain coverage under a State-designated Qualifying Local Program (For Small Construction Sites Only)

The Division may designate a local municipality’s stormwater quality control program as a Qualifying Local Program. This means that the local program’s requirements are at least as stringent as the State permit. In this case, it is not required for the owner or operator to apply for permit coverage under the Stormwater Construction Permit. The local municipality will be responsible for notifying you that you do not need to apply for State coverage, if this is an option. You can also view a list of the few municipalities with Qualifying Local Programs at the Division’s web page (see first page for web address).

The local program must have been formally designated by the Division to qualify. Most municipalities have some type of local program and may require permits and fees. However, simply having a local program in place does not necessarily mean that it is a qualifying program and that the Division’s Stormwater Construction Permit application is not required.

The current designated Qualifying Local Programs in Colorado are the Cities of Durango, Golden, and Lakewood.

ii) Apply for coverage under the R-Factor Waiver (Available for Small Construction Sites only)

The R-Factor waiver allows a site owner or operator to apply for a waiver from coverage under the Division’s Stormwater Construction Permit, if the R-Factor, calculated using the State-approved method, is less than 5 during the period of construction. The R-Factor is a way to measure erosion potential based on the length of the project and time of year. An application with instructions for using the State-approved method is available from the Division’s web page (see first page for web address).

In general, the only projects that will qualify for the waiver are projects that are completely stabilized within a month or two after the start of construction. That means that projects relying on seeding for revegetation will usually not qualify for the waiver, because the vegetation must be established before the



site is considered stabilized. During the spring and summer months, when Colorado experiences the bulk of its rainfall, many projects will not qualify at all for the waiver. In addition, the Division will not grant waivers for construction sites located in areas where snow cover exists at, or up gradient of, the site for extended periods of time, if the construction site will potentially remain active and unstabilized during spring runoff.

This waiver does not relieve the operator or owner from complying with the requirements of local agencies, such as meeting local stormwater quality requirements, including those required by a Qualifying Local Program as discussed in Section B.1.b.i, above.

2) Who may apply for permit coverage?

The Permit applicant must be a legal entity that meets the definition of the owner and/or operator of the construction site, in order for this application to legally cover the activities occurring at the site. The applicant must have day-to-day supervision and control over activities at the site and implementation of the SWMP. Although it is acceptable for the applicant to meet this requirement through the actions of a contractor, as discussed in the examples below, the applicant remains liable for violations resulting from the actions of their contractor and/or subcontractors. Examples of acceptable applicants include:

- **Owner or Developer** - An owner or developer who is operating as the site manager or otherwise has supervision and control over the site, either directly or through a contract with an entity such as those listed below.
- **General Contractor or Subcontractor** - A contractor with contractual responsibility and operational control (including SWMP implementation) to address the impacts construction activities may have on stormwater quality.
- **Other Designated Agents/Contractors** - Other agents, such as a consultant acting as construction manager under contract with the owner or developer, with contractual responsibility and operational control (including SWMP implementation) to address the impacts construction activities may have on stormwater quality.

An entity conducting construction activities at a site may be held liable for operating without the necessary permit coverage if the site does not have a permit certification in place that is issued to an owner and/or operator. For example, if a site (or portion of a site) is sold or the contractor conducting construction activities changes, the site's permit certification may end up being held by a permittee (e.g., the previous owner or contractor) who is no longer the current owner and/or operator. In this case, the existing permit certification will no longer cover the new operator's activities, and a new certification must be issued, or the current certification transferred. See Section F, below, for additional guidance on scenarios with multiple owners and/or operators.

Utilities, Other Subcontractors, etc.: A separate permit certification is not needed for subcontractors, such as utility service line installers, where the permittee or their contractor is identified as having the operational control to address any impacts the subcontractor's activities may have on stormwater quality. Although separate permit coverage may not be needed in some cases, these entities are not exempt from the stormwater regulations for all of their projects and may still be held liable if their activities result in the discharge of pollutants.

Leases: When dealing with leased land or facilities, the lessee shall be considered the "owner" for the purposes of stormwater permitting if they are responsible for the activities occurring at the site.

C. PERMIT REQUIREMENTS



The primary requirement of the Stormwater Construction Permit is the development and implementation of a Stormwater Management Plan (SWMP). The permit application includes guidance that must be followed for development and implementation of the SWMP. Permit requirements are the same for both Small and Large Construction Sites.

The Stormwater Construction Permit requires dischargers to control and eliminate the sources of pollutants in stormwater through the development and implementation of a Stormwater Management Plan (SWMP). The purpose of a SWMP is to identify possible pollutant sources that may contribute pollutants to stormwater, and identify Best Management Practices (BMPs) that, when implemented, will reduce or eliminate any possible water quality impacts. For construction activities, the most common pollutant source is sediment. Other pollutant sources include fuels, fueling practices and chemicals/materials stored on site, concrete washout, etc. BMPs encompass a wide range of practices, both structural and non-structural in nature, and may include silt fence, sediment ponds, vehicle tracking



controls, good housekeeping, inspection and maintenance schedules, training, etc.

The SWMP is not submitted with the permit application unless requested. An up-to-date copy of the SWMP **must be kept on site**, for use by the operator, and so that Division, EPA, or local inspectors can review it during an inspection. If an office location is not available at the site, the SWMP must be managed so that it is available at the site when construction activities are occurring (e.g., by keeping the SWMP in a superintendent's vehicle.)

Further information concerning the contents of the SWMP can be found in Appendix A of the application, "Preparing a Stormwater Management Plan." This document and others can be obtained from the Division's web site or by contacting the Division (see first page for address information).

D. LOCAL STORMWATER REQUIREMENTS FOR CONSTRUCTION



Where local requirements exist for stormwater management, an owner/operator must comply with both the Division's and the local agency's requirements.

In addition to the requirement to obtain and comply with the Division's Stormwater Construction Permit, it is possible that additional government agencies (i.e., cities, counties, and special districts) may impose local requirements to control the discharge of pollutants from construction activities. An owner or operator of a construction activity must comply with the Stormwater Construction Permit requirements discussed in this Fact Sheet, even if they are also covered by a local program's requirements. (However, in the case of a Qualifying Local Program, as discussed in Section B.1.b.ii, some administrative requirements for the Stormwater Construction Permit may be simplified.)

Likewise, the Stormwater Construction Permit does not pre-empt or supersede the authority of local agencies to prohibit, restrict, or control discharges of stormwater. Where a local program places additional restrictions on stormwater management at a construction site within its jurisdiction, the owner/operator must comply with those stricter requirements in addition to the Division's permitting requirements. For example, although the Division allows several options for permitting at multiple owner/operator sites, a local authority may restrict these options and require specific procedures to be followed for who maintains permit coverage and authority for stormwater discharges.

MS4 Permits

Many cities, counties, and special districts are covered by a Municipal Separate Storm Sewer System (MS4) permit. These permits require the governmental entity to implement various programs to improve stormwater quality in their jurisdiction. Included in these permits is the requirement to implement a program to manage the discharge of pollutants from construction sites within their jurisdiction. Therefore, if a construction site located within the jurisdiction of one of these government entities does not properly manage stormwater at that site, the government entity may be in violation of their permit in addition to the construction site owner and operator.

E. AMENDING YOUR PERMIT CERTIFICATION



This section is only applicable if the limited information on the construction project submitted in the two-page application form changes. In such case, it may be necessary to provide the Division with revised information.

If the information provided by the permittee in their **two-page application form** is no longer accurate, the permittee must provide the revised information to the Division. This includes such items as the planned total disturbed acreage, and the project legal description or map originally submitted with the application. (Note: it is not necessary to revise the anticipated final stabilization date, since the information provided was only an estimate). To revise this information, provide a letter to the Division's Stormwater Program (see the contact information on page 1) that includes the revised information. The Division will not respond to this letter, so you are advised to obtain delivery confirmation from your postal service to confirm receipt.

When the Stormwater Management Plan is revised, as required by the Stormwater Construction Permit, it is not necessary to notify the Water Quality Control Division. When BMPs or other site details discussed in the SWMP are modified, the SWMP must be updated to accurately reflect the actual field conditions. Examples include, but are not



limited to, removal of BMPs, addition of BMPs, modification of BMP design specifications, and changes in items included in the site map and/or description. However, this information is not submitted to the Division, unless requested.

F. ENDING YOUR PERMIT COVERAGE



A Stormwater Construction Permit certification remains active until inactivated, or transferred or reassigned to a new responsible party. Forms for inactivation, transfer or reassignment of a permit certification can be obtained from the Division's web site or by contacting the Division (see first page for address information).

1) Inactivation notice

Permit coverage for a site that has been finally stabilized in accordance with the SWMP (see definition in Section B.1, above), may be inactivated by submitting a completed **Inactivation Notice** form. This form contains a certification statement that must be signed in accordance with the General Requirements of the permit.

Also, the permittee may inactivate permit coverage at sites where all areas have been removed from their permit coverage, by one or more of the methods below:

- reassignment of permit coverage (see Section F.3);
- sale to homeowner(s) (see Section H); and/or
- amendment by the permittee, as discussed in Section E, above for areas where permit coverage has been obtained by a new operator (see Part G.1, below) or the area is returned to agricultural use (see the Division's Oil and Gas Construction Fact Sheet).

In these cases the permittee would no longer have any land covered under their permit certification, and therefore there would be no areas remaining to finally stabilize. Submittal of an Inactivation Notice is still required and must discuss how the above conditions have been met.

2) Transfer of permit

Permit coverage for a construction site may be transferred to a new entity when responsibility for stormwater discharges at the site changes from the permittee to the new entity. To transfer permit coverage, the permittee must submit a completed **Notice of Transfer and Acceptance of Terms** form that is signed in accordance with the General Requirements of the permit.

If the new entity will not complete their portion of the transfer form, the permit certification may be inactivated if the permittee has no legal responsibility for the construction activities at the site, requests inactivation in written correspondence to the Division, and submits a completed Inactivation Notice form.

3) Reassignment of permit

Permit coverage for a specific portion of a permitted site may be reassigned to a new entity when a permittee no longer has control of that portion of the site, and wishes to transfer coverage of that portion to a second party. To reassign permit coverage for a specific portion of a permitted site, the permittee must submit a completed **Notice of Reassignment of Permit Coverage** form that is signed in accordance with the General Requirements of the permit.

If the new entity will not complete their portion of the reassignment form, the specific portion of the site may be removed from permit coverage if the permittee has no legal responsibility for the construction activities at the portion of the site, and a written request (including contact information for the new entity) is submitted to the Division.

G. PERMITTING FOR DEVELOPMENTS WITH MULTIPLE OWNERS AND/OR OPERATORS



For situations where multiple entities meet the definition of owners and/or operators for different portions of a development (e.g., a single development with multiple lots being owned and operated by separate entities), extra care must be taken to ensure that proper permit coverage is maintained and that stormwater management practices are correctly documented and implemented.

Local stormwater quality programs may have differing requirements for who must maintain permit coverage, and what actions must occur when permitted areas and/or activities change. Construction site owners and operators must ensure



that their actions do not result in violations of local program requirements. Refer to Section D for additional information.

1) Permit Coverage for Multiple Owner/Operator Development



When a portion of a permitted site is sold to a new owner, a permit certification must be in place that is held by an entity meeting the definition of owner and/or operator of the sold area (see the discussion in Section B.2, above). This may be accomplished in one of the following ways:

- a) **Coverage Under the Existing Certification** - Activities at the sold area may continue to be covered under an existing permit certification for the project if the current permittee meets the definition of operator for the sold area. To meet the definition of operator, the current permittee must have contractual responsibility and operational control to address the impacts that construction activities at the sold area may have on stormwater runoff (including implementation of the SWMP for the sold area). Therefore, a legally binding agreement must exist assigning this responsibility to the current permit holder on behalf of the new owner and/or operator for the sold area. It is not necessary to notify the Division in such case. However, documentation of the agreement must be available upon request, and the SWMP must be maintained to include all activities covered by the Stormwater Construction Permit.

Example: Developer Dan sells a lot to Builder Bob. Developer Dan is currently covered by a permit certification that covers a larger area, which includes the sold lot. Developer Dan and Builder Bob may enter into a contract that assigns the responsibility for permit coverage and stormwater management to Developer Dan for Builder Bob's lot. Developer Dan is also responsible for making sure his SWMP includes the activities on the sold lot. Developer Dan's permit certification will continue to cover construction activities on Builder Bob's lot.

- b) **New Certification Issued - Reassignment** - A new permit certification may be issued to the new owner and/or operator of the sold area. The existing permittee and the new owner and/or operator must complete the Reassignment Form (available from the Division's web page, see page 1) to remove the sold area from the existing permit certification and cover it under a certification issued to the owner and/or operator of the sold area. Both entities must have SWMPs in place that accurately reflect their current covered areas and activities.

Example: Developer Dan sells a lot to Builder Bob. Developer Dan is currently covered by a permit certification that covers a larger area, which includes the sold lot. For this example, Developer Dan and Builder Bob must jointly submit the Reassignment Form. Builder Bob will be issued a new permit certification for his lot and the lot will be removed from Developer Dan's permit coverage. Prior to submittal of the Reassignment Form, Developer Dan must revise his SWMP to reflect the changes in his covered area and activities, and Builder Bob must develop his own SWMP to cover the area and activities he will obtain coverage for.

- c) **Amend Existing Permit Certifications** - In some cases, both parties (the original owner/operator and the new owner/operator of an area undergoing transfer of ownership or operation) will already both be permit holders for their portions of the overall project (i.e., at least two permit certifications are issued for the project and cover both the party wishing to reassign coverage and the party wishing to accept coverage). When an additional area is transferred between the two parties, the permittees may simply amend their permit certifications instead of completing the Reassignment Form. Both parties must separately complete the procedures discussed in Section E to amend their permit coverage, removing the applicable area(s) from the original owner/operator's permit coverage, and adding the area(s) to the new owner/operator's permit coverage. The requests must cite both permit certification numbers. (Note: this request may be submitted jointly if it is signed by both entities). This option will likely be used in cases where a developer and an owner have already submitted a Reassignment Form, as discussed in Part b, above, where an initial transfer of lots has occurred, and then additional lots are transferred at a later date. Both entities must have SWMPs in place that accurately reflect their current covered areas and activities.

Example: Developer Dan sells a lot to Builder Bob. Developer Dan is currently covered by a permit certification that covers a larger area, which includes the sold lot. In addition, Builder Bob also holds a permit certification for other portions of the development which he already owns, and Builder Bob wishes to cover his new lot under this certification. Developer Dan submits a request to remove the lot from his permit certification and provides Builder Bob's permit certification number that the lot will now be covered under. Builder Bob also submits a request to modify his permit certification to add the lot, and provides Developer Dan's permit



certification number under which the lot was previously covered. Developer Dan and Builder Bob must revise their SWMPs to reflect the changes in their covered area and activities.

2) Permit Compliance for Multiple Owner/Operator Development



As a permittee, the most important concept for projects where multiple entities are involved is: if activities within your permitted area result in pollution of stormwater, you are the entity responsible for ensuring that those pollutants are properly managed.



Permittees are responsible for complying with the Stormwater Construction Permit requirements for the areas and activities for which they have permit coverage, and for all BMPs they are relying on to comply with the permit. Properly addressing and documenting the responsibility of various parties at a construction site will help protect an entity from liability in the case where another party's actions result in failure of BMPs.

a) Pollutants from Outside the Permitted Area:



A permittee may be held liable for pollutants that pass into and are then discharged from their permitted area or that result from another entity's activities. Specifically, a permittee may have responsibility to ensure proper implementation of BMPs to control stormwater discharges from their permitted area, even if another entity is contributing pollutants.

The Stormwater Construction Permit requires the permittee to ensure the implementation of BMPs which will be used to control the pollutants in stormwater discharges associated with construction activity from their permitted area. Therefore, a permittee may be responsible for adequately implementing and maintaining BMPs that are providing treatment for pollutants originating outside of their permitted area or from another entity's activities. An example is when a permittee's property is being used by a separate entity for construction activities (e.g., loading and unloading, site access, materials storage, etc.), or BMPs located on the permittee's property are being relied on to treat stormwater runoff from another site.

This scenario is common when a developer sells off lots to a builder. As a practical matter, what most often occurs is that the developer must allow the builder to use the developer's infrastructure (e.g., roads, storm drains, ponds, etc.) for activities and BMPs that cannot realistically be limited to the builder's property. In this case, the developer remains a liable party (in addition to the builder) to ensure that proper stormwater management is implemented for the project. Permit coverage may instead be assigned to the builder for this infrastructure, if the builder has been designated as the operator of the area for stormwater quality purposes (See Section B.2). However, this may not always be practical when multiple builders are operating in an area or when the developer is still performing their own construction activities.

Refer to the Liability and Example sections, below, for further guidance.

b) BMPs Located Outside the Permitted Area:



If a permittee will be relying on BMPs that are outside of the area they own and/or operate, the specific actions listed below must be taken to ensure compliance with the Stormwater Construction Permit. The permittee is responsible for ensuring the proper management all pollutants from their permitted area. Even if the BMP are implemented by another party, the permittee may still be liable if their pollutants are eventually discharged.

The permittee is responsible for ensuring the operation and maintenance of all BMPs that are used to control pollutants that originate from their activities, even if the BMPs are located outside of the area owned and/or operated by the permittee. For example, a builder may only have ownership of a single lot, but may have to rely on BMPs that are located off of their lot and on a developer's property to adequately manage stormwater runoff, such as inlet protection that is on the developer's streets. If a permittee will rely on BMPs that are outside the area that they own and/or operate, the following measures must be taken:

- i) Any off-site BMPs must be documented in the permittee's SWMP. This includes structural BMPs (e.g., inlet protection and sediment ponds) and non-structural BMPs (e.g., concrete wash out areas and street sweeping). By including the BMPs in the SWMP, the permittee can effectively include the practices under



their permit coverage. In such cases, the same off-site BMPs may actually be included in two or more parties' SWMPs.

- ii) The permittee must have adequate permission from the land and/or BMP owner(s) to utilize the off-site conveyances and BMPs and to ensure proper maintenance and operation. The permittee must be able to provide evidence of this agreement upon request.
- iii) The off-site BMPs must be operated and maintained in accordance with the SWMP(s) and must control the discharge of pollutants. It may be necessary to enter into agreements with other parties to ensure operation and maintenance of these BMPs. Regardless of who actually carries out the operation and maintenance of a BMP, all permittees who make use of the BMP to control pollutants from their construction activities remain liable if the BMP is not adequately operated and maintained.
- iv) All BMPs must be located prior to discharge to surface waters or municipally-owned storm sewer systems.

Liability: In the above examples, to reduce liability, the developer and builder should communicate on stormwater management issues and document who will be responsible for specific BMPs (e.g., who will maintain inlet protection and implement street sweeping). If BMPs are not being adequately implemented by the party defined as responsible, the other party should take the necessary action to ensure pollutants originating from, or passing through, their permitted area are properly controlled. It is recommended that stormwater management responsibilities be addressed in contracts or other legal agreements between applicable owners and operators for construction sites where one party's actions may impact another party's permit compliance. These legal agreements will both help define roles and responsibilities at a multi owner/operator site, and also may be used to seek damages from a contractor if monetary penalties are issued to a permittee for permit violations.

Example: Developer Dan sells a lot to Builder Bob. Following the procedures discussed in Section G.1.b or c, above, Builder Bob obtains separate permit coverage for his new lot, ending at the curb line. Because the site infrastructure is being utilized by several different builders at the project, Developer Dan maintains permit coverage for the streets, storm drain system, and a large retention pond that is designed and implemented as a BMP to manage pollutants from construction activities at the development (including Builder Bob's lot). In addition to the large pond, inlet protection is also being used to protect storm sewer inlets located on Developer Dan's roads, and street sweeping is occurring to control sediment tracked onto Developer Dan's roads.

Builder Bob is relying on the pond, inlet protection, and street sweeping to manage pollutants from his lot, and therefore has included the BMPs in his SWMP, as discussed in Section G.2.b, above. The BMPs are also included in Developer Dan's SWMP because they are being used to control pollutants from property he still maintains control over, as discussed in Section G.2.a, above. In addition, Developer Dan and Builder Bob enter into a contract that clearly defines Developer Dan as being responsible for implementing and maintaining the infrastructure BMPs (i.e., the pond, inlet protection, and street sweeping BMPs), and requires Builder Bob to implement additional BMPs on his lots, such as vehicle tracking control and construction waste management.

If the infrastructure BMPs are not properly operated and maintained, or discharges of sediment and/or other pollutants from Builder Bob's lot are not properly controlled and overwhelm the infrastructure BMPs, both Developer Dan and Builder Bob may be in violation of their permits. Therefore, Builder Bob and Developer Dan must both remain diligent in ensuring that conditions of their contract are being met and BMPs operated by both parties continue to be implemented in accordance with their SWMPs.

H. SALE OF RESIDENCE TO HOMEOWNERS



Residential lots that have been conveyed to a homeowner and that meet the specific criteria below do not require coverage under the Stormwater Construction Permit.

In this case, the conveyed lot may be removed from coverage under the permittee's certification, and the permittee is no longer responsible for meeting the terms and conditions of this permit for the conveyed lot, including the requirement to transfer or reassign permit coverage. The permittee remains responsible for eventual inactivation of the original certification (see Part F, above). The criteria for these lots are as follows:

- 1) The lot has been sold to the homeowner(s) for private residential use;
- 2) the lot is less than one acre of disturbed area;
- 3) all construction activity conducted by the permittee on the lot is completed;



- 4) a certificate of occupancy (or equivalent) has been awarded to the homeowner; and
- 5) the SWMP has been amended to indicate the lot is no longer covered by permit.

Lots not meeting all of the above criteria require continued permit coverage. However, the permit coverage for the conveyed lot may be transferred or reassigned to a new owner or operator (see Parts F and G.1, above).

I. CONSTRUCTION DEWATERING



Construction dewatering water can **NOT** be discharged to surface waters or to storm sewer systems without separate permit coverage. The discharge of Construction dewatering water to the ground, under the specific conditions listed below, may be allowed by the Stormwater Construction Permit when appropriate BMPs are implemented.

Two options are available for managing uncontaminated Construction Dewatering water on a construction site. Construction Dewatering water discharged from the project site, to surface waters or to storm sewer systems, is considered a process water and requires an industrial process water permit. Applications for dischargers engaged in the dewatering of uncontaminated groundwater from a construction site are available from the Division's web site or by contacting the Division (see first page for address information).

Alternatively, Construction Dewatering water may be discharged to the ground if all of the following conditions are met:

- 1) The discharge and the BMPs are included in the SWMP;
- 2) Adequate BMPs are included to control stormwater pollution;
- 3) The discharge does not leave the site as surface runoff or to surface waters/storm sewer systems; and
- 4) The groundwater being pumped is not contaminated so as to exceed State groundwater standards.

If the above conditions are not met, a separate permit (see above) is needed for discharges to the ground and/or surface waters.

Further information concerning Construction Dewatering, including what constitutes contamination of groundwater, can be found in the Stormwater Construction Permit and Rationale. These documents and others can be obtained from the Division's web site or by contacting the Division (see first page for address information).

J. CONCRETE WASHOUT



Concrete Washout water can **NOT** be discharged to surface waters or to storm sewer systems without separate permit coverage. The discharge of Concrete Washout water to the ground, under the specific conditions listed below, may be allowed by the Stormwater Construction Permit when appropriate BMPs are implemented.

Concrete Washout water from washing of tools and concrete mixer chutes may be discharged to the ground if all of the following conditions are met:

- 1) The source is identified in the SWMP;
- 2) Adequate BMPs are included in the SWMP to prevent pollution of groundwater; and
- 3) These discharges do not leave the site as surface runoff or to surface waters/storm sewer systems.

The use of the washout site should be temporary (less than 1 year), and the washout site should be not be located in an area where shallow groundwater may be present, such as near natural drainages, springs, or wetlands.

Concrete washout water must not be discharged to state surface waters or to storm sewer systems. Also, on-site permanent disposal of concrete washout waste is not authorized by this permit.

Further information concerning Concrete Washout can be found in the Stormwater Construction Permit and Rationale. These documents can be obtained from the Division's web site at www.coloradowaterpermits.com.

