

STATE OF COLORADO

John W. Hickenlooper, Governor
Christopher E. Urbina, MD, MPH
Executive Director and Chief Medical Officer

WATER QUALITY CONTROL COMMISSION

<http://www.cdphe.state.co.us/op/wqcc/index.html>

4300 Cherry Creek Dr. South
Denver, Colorado 80246-1530
Phone (303) 692-3463
Fax (303) 691-7702



Colorado
Department
of Public Health
and Environment

NOTICE OF PUBLIC RULEMAKING HEARING BEFORE THE COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of the adoption of revisions to Cherry Creek Reservoir Control Regulation, Regulation #72 (5 CCR 1002-72).

The revisions to Regulation #72 proposed by the Cherry Creek Basin Water Quality Authority, along with a proposed Statement of Basis, Specific Statutory Authority, and Purpose, are attached to this notice as Exhibit 1. Anyone with questions regarding this proposal may contact Chuck Reid, 303-265.7914, chuck.reid@cliftonlarsenallen.com.

Proposed new language is shown with double-underlining and proposed deletions are shown with ~~strikeouts~~. Any alternative proposals related to the revisions proposed in Exhibit 1 and developed in response to those proposed revisions, will also be considered.

HEARING SCHEDULE:

DATE: Tuesday, October 9, 2012
TIME: 2:00 p.m.
PLACE: Florence Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

PUBLIC PARTICIPATION ENCOURAGED:

The Commission encourages all interested persons to provide their opinions or recommendations regarding the matters to be addressed in this rulemaking hearing, either orally at the hearing or in writing prior to or at the hearing. Although oral testimony from those with party status (see below) and other interested persons will be received at the hearing, the time available for such oral testimony may be limited. Written submissions prior to the hearing are encouraged, so that they can be distributed to the Commission for review prior to the hearing. Written submissions by interested members of the public that do not have party status or mailing list status (see below) should be sent in such a manner as to be received in the Colorado Department of Public Health and Environment's (Department's) mail room by September 26, 2012.

Oral testimony at the hearing should primarily summarize written material previously submitted. The hearing will emphasize Commission questioning of parties and other interested persons about their written prehearing submittals. Introduction of written material at the hearing by those with party status or mailing list status (see below) generally will not be permitted. The Commission requests that all interested persons submit to the Commission Office any available information that may be relevant in considering the noticed proposals.

PARTY STATUS/MAILING LIST STATUS:

Participation as a "party" to this hearing or acquisition of "mailing list status," will require compliance with section 21.3(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). Mailing list status will allow receipt of all party documents.

It is not necessary to acquire party status or mailing list status in order to testify or comment. **For each request for party status or mailing list status, please provide the organization's name, a contact person, mailing address, phone number, fax number and email address if available.** Written party status or mailing list status requests are due in the Commission Office on or before:

DATE: Tuesday, July 24, 2012
TIME: 5:00 p.m.

A single copy of the party status or mailing list status request may be transmitted as an email attachment to cdphe.wqcc@state.co.us, submitted by fax to 303-691-7702, mailed or otherwise conveyed so as to be received in the Department's mail room no later than this deadline. PLEASE NOTE that, as indicated below, parties will have the option of distributing materials to other parties electronically, except in instances where a party has requested receiving hard copies of documents. Therefore, **anyone requesting party or mailing list status that wishes to receive hard copies of documents instead of emailed copies should so indicate in the party status/ mailing list status request so that this information can be included on the list distributed by the Commission Office.**

PREHEARING STATEMENTS:

PLEASE NOTE that for this hearing two separate deadlines for prehearing statements are established: (1) An original and 13 copies of an initial **Prehearing Statement from the City of Boulder, as proponent of the revisions proposed in Exhibit 1 attached to this notice**, including written testimony and exhibits providing the basis for the proposals, must be received in the Department's mail room no later than **July 31, 2012**; and (2) an original and 13 copies of a **Responsive Prehearing Statement**, including any exhibits, written testimony, and alternative proposals of the Water Quality Control Division or **anyone seeking party status and intending to respond to the proponent's proposals** must be received in the Department's mail room no later than **August 28, 2012**.

For each deadline, the required number of hard copies of documents must be received in the Department's mail room by the specified deadline. These requirements are not satisfied by electronic transmission of a facsimile copy or copies. However, **parties are also strongly encouraged to email a copy of their written documents to the Commission Office**, so that materials received can be posted on the Commission's web site. (Please email to cdphe.wqcc@state.co.us.) In addition, copies of these documents must be mailed

or hand-delivered by the specified dates to all persons requesting party status or mailing list status, and to the Attorney General's Office representatives for the Commission and the Water Quality Control Division, in accordance with a list provided by the Commission Office following the party status/ mailing list status deadline. **Alternatively, parties may email documents to those with party status or mailing list status by the specified dates,** except to those that the list distributed by the Commission Office identifies as requesting hard copies.

Also **note** that the Commission has prepared a document entitled **Information for Parties to Water Quality Control Commission Rulemaking Hearings**. A copy of this document will be mailed or emailed to all persons requesting party status or mailing list status. It is also posted on the Commission's web site at <http://www.cdphe.state.co.us/op/wqcc/PubPart/hbappc.pdf>. Following the suggestions set forth in this document will enhance the effectiveness of parties' input for this proceeding. **Please note the request that all parties submit two-sided copies of all hearing documents on three-hole punch paper.**

MAILING LIST STATUS COMMENTS:

Those requesting mailing list status shall provide written testimony, if any testimony is to be offered for the hearing, by the above deadline for responsive prehearing statements – i.e., **August 28, 2012**. Copies shall be submitted and distributed in the same manner as noted above for prehearing statements.

PREHEARING CONFERENCE:

DATE: Wednesday, September 12, 2012
TIME: 2:30 p.m.
PLACE: Board Room, Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado

Attendance at the prehearing conference is mandatory for all persons requesting party status. An opportunity may be available to participate in this prehearing conference by telephone. Persons wishing to participate by telephone should notify the Commission Office as early as possible.

REBUTTAL STATEMENTS:

Written rebuttal statements responding to the prehearing statements due on August 28, 2012 may be submitted by the City of Boulder, the Division and anyone seeking party status or mailing list status. Any such rebuttal statements must be received in the Department's mail room by **September 26, 2012**. An original and 13 copies of written rebuttal statements must be received in the Department's mail room by this deadline, and submission of an emailed copy as noted above is strongly encouraged. In addition, copies of these documents must be mailed or hand-delivered by that date to all those requesting party status or mailing list status, and to the Attorney General's Office representatives for the Commission and Division. **Alternatively, parties may email documents to those with party status or mailing list status by this deadline,** except to those that the list distributed by the Commission Office identifies as requesting hard copies. No other written materials will be accepted following this deadline except for good cause shown.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202, 25-8-203, 25-8-204 and 25-8-402, C.R.S. provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the Commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

NOTIFICATION OF POTENTIAL MATERIAL INJURY TO WATER RIGHTS:

In accordance with section 25-8-104(2)(d), C.R.S., any person who believes that the actions proposed in this notice have the potential to cause material injury to his or her water rights is requested to so indicate in the party status request submitted. In order for this potential to be considered fully by the Commission and the other agencies listed in the statute, persons must fully explain the basis for their claim in their prehearing statement which is due in the Department's mail room on the date specified above. This explanation should identify and describe the water right(s), and explain how and to what degree the material injury will be incurred.

Dated this 14th day of June 2012 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Paul D. Frohardt, Administrator

EXHIBIT 1
CHERRY CREEK BASIN WATER QUALITY AUTHORITY

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

CHERRY CREEK RESERVOIR CONTROL REGULATION

5 CCR 1002-72

. . .

72.7 STORMWATER PERMIT REQUIREMENTS

1. Definitions

- (a) "Owner," for the purposes of this section of the regulation only, means the owner or authorized representative of the facility or construction project.
- (b) "Permittee," for the purposes of this section of the regulation only, means the Municipal Separate Storm Sewer System or MS4 that has been issued a stormwater discharge permit by the Division.
- (c) "Large lot single family development" for the purpose of this section of the regulation only, means a land disturbance greater than one acre on a single-family residential lot with an area greater than or equal to two and one-half acres in size and having a total site imperviousness, including, but not limited to roadways, building footprints, and driveways, less than ten percent gross density.
- ~~(d)~~ "Excluded Roadway Project" for the purpose of this section of the regulation only, means activities associated with the maintenance, repair, preservation, and associated minor modifications to roadways, and associated appurtenant features, that do not permanently expand the original footprint of the roadway and does not increase the impervious area.
- ~~(de)~~ "Rural road construction and maintenance" for the purpose of this section of the regulation only, means land disturbances greater than one acre for rural residential roads and rural collector roads that serve or are adjacent to large lot single family developments. Rural Roads are typically characterized by having parallel ditches for conveyance of storm runoff, rather than curb and gutter. Although urban roadways sometimes use roadside ditches for runoff conveyance, they are not classified as rural roads. In the context of this regulation, the word road does not include temporary haul roads used for construction purposes. Construction activities occurring within a Census Designated Urbanized Area are excluded from this definition.
- ~~(ef)~~ "Tier 1 development and redevelopment" for the purpose of this section of the regulation only, means any land disturbance less than one acre that is developed independently of a larger common plan of development or sale, and which results in less than 500 square feet of imperviousness for new development or 500 square feet of increased imperviousness for redevelopment.
- ~~(fg)~~ "Tier 2 development and redevelopment" for the purpose of this section of the regulation only, means any land disturbance less than one acre that is developed independently of

a larger common plan of development or sale, and which results in more than 500 square feet but less than 5,000 square feet of imperviousness for new development, or more than 500 square feet and less than 5,000 square feet of increased imperviousness for redevelopment, including disturbances of existing impervious areas.

(g~~h~~) "Tier 3 development and redevelopment" for the purpose of this section of the regulation only, means any land disturbance greater than one acre, or which results in more than 5,000 square feet of imperviousness for new development or 5,000 square feet of increased imperviousness for redevelopment, including disturbances of existing impervious areas.

(h~~i~~) "Trails" for the purpose of this section of the regulation only, means permanent access areas constructed primarily for the purpose of recreation but also provide access for operations and maintenance. This includes trails that consist, for at least some portion of the trail, of sidewalks adjacent to roadways.

2. The following requirements, at a minimum, shall be incorporated into any Stormwater Permit issued to a Municipal Separate Storm Sewer System (MS4) in the Cherry Creek watershed, in addition to the requirements included in Regulation #61 (5 CCR 1002-61). Permittees may also incorporate requirements into their programs that are more restrictive than those outlined in this control regulation.

At a minimum, the MS4 permit will require that the regulated MS4 develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Colorado Water Quality Control Act (25-8-101 et seq., C.R.S.). Implementation of BMPs consistent with the applicable MS4 requirements included in Regulation #61 (5 CCR 1002-61) and the requirements of the subsection herein constitute compliance with the standard of reducing pollutants to the MEP.

- (a) Public education and outreach on stormwater impacts. The permittee must implement a public education program that includes the following:
- (1) Distribution of educational materials or equivalent outreach focused on residential, industrial, agricultural, and/or commercial sources that have the potential to contribute significant nutrient concentrations to State waters at a rate that could result in or threaten to result in exceedance of the chlorophyll a standard in Cherry Creek Reservoir. Examples of sources that may need to be addressed by the MS4's program include chemical deicing, retailers with outdoor storage of fertilizers, concentrated agricultural activities such as turf farms and landscape plant facilities, and animal feeding operations.
- (b) Construction site stormwater runoff control.
- (1) Regulated Activities. The permittee must develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to the MS4 from construction activities that disturb land, including, but not limited to, the following:
 - (i) Clearing, grading, or excavation of land;
 - (ii) Construction, including expansion or alteration, of a residential, commercial or industrial site or development; and
 - (iii) Construction of public improvements and facilities such as roads, transportation corridors, airports, and schools.

- (2) Individual Homes. Individual Home Construction, including any Land Disturbance or Development for a single home, not including Land Disturbance for roads, road gutters or road improvements, that disturb less than one acre of land and where the Owner of the single home holds a permit for construction of only one dwelling within the subdivision, if any, containing the single home, must be required to meet the requirements of section 72.7.2(b)(5)(i)(D), but is not required to meet the other requirements in section 72.7.2(b) of this regulation.
- (3) Exclusions.
- (i) Automatic Exclusions. The permittee may exclude the following activities from the requirements in section 72.7.2(b) of this regulation.
- (A) Agricultural Activities (i.e., agricultural and silvicultural activities generating nonpoint source discharges, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not CAFOs. This exclusion does not extend to the construction of facilities or other activities generating stormwater runoff associated with industrial (i.e., construction) activity);
- (B) Emergency and routine repair and maintenance operations for all underground utilities;
- (C) Land Disturbances at residential or commercial subdivisions that already have adequate Construction BMPs and Post-construction BMPs installed and operating for the entire subdivision, approved in compliance with this regulation, and where the original owner who obtained approval retains legal authority; and
- (D) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility (maintenance operations performed by the permittee may still be covered under the Municipal Operations minimum control measure).
- (E) Emergency operations related to flood, fire, or other force majeure.
- (ii) Authorized Exclusions. The permittee may exclude the following activities from the requirements in section 72.7.2(b) of this regulation, if authorized through a developed procedure for determination that water quality is adequately protected without imposing the requirements. This procedure may either be on a site-specific basis, upon submission by the owner of a written request for exemption to the permittee, or, if the determination can be simplified to allow for determination by the owner, through certification by the owner to the permittee that the waiver criteria have been met.
- (A) Construction of a sidewalk or driveway; and
- (B) Underground utility construction including the installation and maintenance of all utilities under hard surfaced roads, streets, or sidewalks, provided such land disturbance activity is confined to the area which is hard surfaced and provided that stormwater

runoff and erosion from soil and materials stockpiles are confined and will not enter the drainage system.

- (iii) Additional Exclusions. The permittee may allow for additional automatic and/or authorized exclusions, with approval of the Division, when it can be reasonably shown that excluding the activity will not pose an increased threat to water quality, or that the cost of administering the program for a specific activity with low risk of stormwater pollution outweighs the benefits to water quality. The Division reserves the right to not allow any additional exclusions.
- (4) Submittal requirements.
 - (i) An Erosion and Sediment Control Plan describing permittee-approved construction BMPs For Land Disturbance regulated by this program must be submitted to and, following adequate review, approved by the permittee prior to the commencement of Land Disturbances.
- (5) Required Construction BMPs.
 - (i) The following requirements for construction BMPs to be implemented prior to the commencement of Land Disturbances must be included in the permittee's program.
 - (A) Phase Construction. Owner shall schedule construction activities to minimize the total amount of soil exposed, including stockpiles, at any given time in order to reduce the period of accelerated soil erosion. Areas of Land Disturbance equal to 40 acres or greater must not be exposed for more than 30 consecutive days without temporary or permanent stabilization.

The Permittee may allow authorized exemptions to the 40-acre limit for removal and storage of cut material where geotechnical limitations restrict the use of temporary or permanent stabilization of the stored material (e.g. swelling soils, rock).

The Permittee may allow authorized exemptions to the 40-acre limit when the Owner can demonstrate that the 40-acre limit is physically and/or financially impracticable. For sites granted this exemption, a phasing and earthwork quantities plan shall be submitted to and, following adequate review, approved by the Permittee prior to the commencement of land disturbance activities. Submittal requirements include:

 - (I) Phasing Plan showing cut and fill volumes and locations for each Phase and project totals.
 - (II) Earthwork Quantity Plan showing cut and fill volumes and locations for each phase and project totals,
 - (III) Erosion Control Plan showing specific erosion and sediment controls for each phase.
 - (B) Reduce Stormwater Runoff Flow to Non-Erosive Velocities when practicable using BMPs, which include, but are not limited to:

Swales,
Roadside swales,
Slope diversion dikes,
Terracing/Contouring,
Slope drains, and/or
Check dams.

- (C) Protect State Waters Located on Construction Sites from Erosion and Sediment Damages resulting from Land Disturbance, using BMPs such as, but not limited to:

Waterway crossing protection,
Outlet protection,
Temporary diversions, and/or
Bank stabilization.

- (D) Control Sediment before it Leaves a Construction Site

- (I) All stormwater runoff from Disturbed Areas must be managed by at least one sediment entrapment BMP before the stormwater exits the site, such as, but not limited to:

Silt fence,
Filter strips,
Sediment basins,
Straw bale barriers, and/or
Inlet protection.

- (II) Vehicle Tracking. Owners must prevent deposition of sediment off-site by controlling vehicle tracking onto paved surfaces, using BMPs such as, but not limited to:

Grates, and/or
Vehicle tracking control pads.

- (ii) The following construction BMPs must be required within 14 days after the commencement of Land Disturbances. Schedules for requiring stabilization and revegetation may be modified by the permittee to allow for physical considerations, including, but not limited to constraints on establishing vegetation due to weather, such as temporary excessive soil moisture conditions, adverse to stabilization or revegetation goals.

- (A) Stabilize soils. All Disturbed Areas that remain exposed and where construction activities are not taking place for longer than 14 days shall be stabilized to protect the soils from erosion, using BMPs such as, but not limited to:

Mulching,
Erosion control mats, blankets, and nets,
Seeding,
Soil Binders,
Cover crops, and/or
Soil Roughening.

- (B) Re-vegetate Disturbed Areas. Within 14 days after construction activity has temporarily or permanently ceased, owners must plant temporary and, where applicable, permanent vegetative cover on Disturbed Areas.
 - (I) Temporary Revegetation. Owners must provide temporary revegetation on all Disturbed Areas that will be exposed prior to completion of Land Disturbance activities. When seeding is not practicable (e.g., growing season constraints) the permittee may allow for temporary stabilization until planting is practicable.
 - (II) Permanent Revegetation. Owners must provide permanent revegetation and/or stabilized landscaping on all Disturbed Areas that will be exposed for more than two years or for an indeterminate amount of time.
- (iii) Inspection/Operation and Maintenance.
 - (A) Inspection.
 - (I) The owner must be held responsible for inspection of construction BMPs at the following times and intervals at a minimum:
 - After installation of any Construction BMP;
 - After any runoff event; and
 - At least every 14 days.
 - (II) For sites where construction activities are completed but final stabilization has not been achieved due to a vegetative cover that has been planted but has not become established, the permittee may allow for the owner to reduce inspection frequency to once per month.
 - (B) Operation and Maintenance. The owner must be held responsible for operation and maintenance of BMPs, and must make any necessary repairs to BMPs immediately after a defect or other needed repair is discovered.
- (c) Post-construction stormwater management in new development and redevelopment.
 - (1) Regulated Activities. The permittee must develop, implement, and enforce a program that ensures that a combination of structural and/or nonstructural controls are in place that would prevent or minimize water quality impacts to the MS4 from new development and redevelopment projects ~~completed projects requiring coverage under part 72.7.2(b)(1) of this regulation.~~
 - (2) Provisions for specific BMPs or equivalent protection included in Section 72.7, that for the purpose of reducing nutrient concentrations to Cherry Creek Reservoir go beyond the requirements in the Colorado Discharge Permit Regulations, Regulation #61, for post-construction BMPs, do not need to be required prior to discharge to a State water as long as BMPs are in place to control stormwater runoff from new development and/or redevelopment in

compliance with Regulation #61 (5 CCR 1002-61) and a regional facility(ies) is(are) in place to control phosphorus concentrations to Cherry Creek Reservoir, that result in pollutant removal in compliance with parts 72.7.2(b)(c)(6), 72.7.2(b)(c)(7), and/or 72.7.2(b)(c)(8) of this regulation.

- (3) Individual Homes. Individual Home Construction, including development for a single home, not including for roads, road gutters or road improvements, that disturb less than one acre of land during construction and where the Owner of the single home holds a permit for construction of only one dwelling within the subdivision, if any, containing the single home is not required to meet the requirements in section 72.7.2(c) of this regulation.
- (4) Exclusions.
 - (i) Automatic Exclusions. The permittee may exclude the following activities from the requirements in Section 72.7.2(c) of this regulation:
 - (A) Agricultural Activities (i.e., agricultural and silvicultural activities generating nonpoint source discharges, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not CAFOs. This exclusion does not extend to the construction of facilities or other activities generating stormwater runoff associated with industrial construction activity);
 - (B) Emergency and routine repair and maintenance operations for all underground utilities;
 - (C) Land Disturbances at residential or commercial subdivisions that already have adequate Post Construction BMPs installed and operating for the entire subdivision, approved in compliance with this regulation, and with adequate capacity to treat any additional discharges;
 - (D) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility (maintenance operations performed by the permittee may still be covered under the Municipal Operations minimum control measure);
 - (E) Emergency operations related to flood, fire, or other force majeure that maintain the original line and grade, hydraulic capacity, or original purpose of the facility; ~~and~~
 - (F) Land disturbance to undeveloped land that will remain undeveloped following disturbance and will be reclaimed in accordance with subsection 72.7.2(b)(5)(ii)(B);~~±~~
 - (G) Excluded Roadway Projects;
 - (H) Large Lot single family development using Runoff Reduction Practices; and
 - (I) Underground utility construction, provided that stormwater runoff and erosion from soil and material stockpiles are confined and will not enter the drainage system.

- (ii) Authorized Exclusions. The permittee may exclude the following activities from the requirements in Section 72.7.2(c) of this regulation on a site-specific basis, upon submission by the owner of a written request for exemption to the permittee and following adequate review and determination by the permittee that a permit is not needed to insure adequate protection of water quality:
 - (A) Construction of a sidewalk or driveway;
 - ~~(B) Underground utility construction, including the installation and maintenance of all utilities under hard surfaced roads, streets, or sidewalks, provided such land disturbance activity is confined to the area which is hard surfaced, and provided that stormwater runoff and erosion from soil and material stockpiles are confined and will not enter the drainage system;~~
 - ~~(B)~~ Rural road construction and maintenance, provided that the permittee requires post-construction BMPs specific to this activity;
 - ~~(D) Large Lot single family development, provided that permittee requires post-construction BMPs specific to this activity; and~~
 - ~~(E)~~ Trails construction provided that permittee requires post-construction BMPs specific to this activity.
 - (iii) Additional Exclusions. The permittee may allow for additional automatic and/or authorized exclusions, with approval of the Division, when it can be reasonably shown that excluding the activity will not pose an increased threat to water quality, or that the cost of administering the program for a specific activity with low risk of stormwater pollution outweighs the benefits to water quality. The Division reserves the right to not allow any additional exclusions.
- (5) Submittal requirements.
- (i) Post-construction BMP Plan. ~~For projects regulated by this program, a~~ A post-construction BMP Plan must be submitted to and, following adequate review, approved by the permittee prior to the commencement of Land Disturbances.
 - (ii) Inspection and Maintenance. The Post-construction BMP Plan must also contain, at a minimum, the following information to address long term operation and maintenance of Post-construction BMPs:
 - (A) Procedures for maintenance and inspection protocols to ensure continued effectiveness of BMPs, and commitments from responsible agency/Owner to maintain Post-construction BMPs.
 - (B) Procedures for dedication by easements or other legal means for access at the Post-construction BMP sites for operation, maintenance, and inspection of Post-construction BMPs.
- (6) Post-construction BMPs.

- (i) For all development and redevelopment, the permittee must require the installation, operation, and maintenance of Post-construction BMPs as follows:
 - (A) For all Tier 3 development and redevelopment, the permittee must require installation of post-construction BMPs that provide a WQCV designed to capture and treat, at a minimum, the 80th percentile runoff event. All BMPs must be designed in accordance with good engineering practices and the permittee may require additional design restrictions.
 - (B) For all Tier 2 development and redevelopment, the permittee must require the installation, operation, and maintenance of Post-construction BMPs and/or hydrologic conditions at the site that meet one or more of the following criteria:
 - (I) The WQCV storm event is assumed not to leave the site, as demonstrated by suitable hydrologic analysis;
 - (II) Runoff is discharged as sheet flow across a grass buffer area, designed in accordance with Urban Drainage Flood Control District Volume 3 requirements.
 - (III) Runoff is discharged from the site through a grass swale in combination with implementation of Minimize Directly Connected Impervious Areas (MDCIA) practices.
 - (IV) Runoff is discharged from the site through a constructed wetland channel.
 - (V) Runoff is discharged across undisturbed and vegetated land a minimum distance of 50 feet or 3 times the distance criteria for grass buffers, whichever is greater, with a slope not exceeding 4 percent over that distance;
 - (VI) Allowed discharge of a storm event adequately protects water quality, as demonstrated by a hydrologic analysis accepted by permittee; or
 - (VII) Alternative BMPs and/or site condition requirements may be used if they are shown to have comparable or better nutrient removal characteristics for the given use, in comparison to the above listed BMPs/site condition requirements, when properly designed and implemented. These BMPs/ site condition requirements must be determined to be acceptable by the permittee on a case-by-case basis, or, if appropriate, may be added to the menu of acceptable BMPs.
 - (C) For all Tier 1 development and redevelopment, the permittee need not require installation of post-construction BMPs.
- (ii) Approved BMPs. One or more of the following BMPs shall be required to meet the WQCV. All BMPs must be designed in accordance with good engineering practices; the permittee may provide additional design

restrictions. Alternative BMPs may be used if they are shown to have comparable or better nutrient removal characteristics for the given use, in comparison to the above-listed BMPs, when properly designed and implemented. These BMPs must be determined to be acceptable by the permittee on a case-by-case basis, or, if appropriate, may be added to the menu of acceptable BMPs.

- (A) Constructed wetland channel, in conjunction with extended detention basin, retention pond, constructed wetlands basin, porous pavement detention, porous landscape detention, or sand filter extended detention watershed.
- (B) Grass swale in combination with porous pavement detention or porous landscape detention.
- (C) Constructed wetland channel preceded by modular block porous pavement.
- (D) MDCIA. This combination BMP of MDCIA in conjunction with extended detention watershed retention pond, constructed wetlands basin, porous pavement detention, porous landscape detention, or sand filter extended detention basin. At a minimum, for MDCIA, all impervious areas at the development must flow over grass buffer strips before reaching a stormwater conveyance system.
- (E) Extended-Detention Basins (Dry Ponds).
- (F) Retention Ponds (Wet Ponds).
- (G) Constructed Wetlands Basin.
- (H) Porous Pavement Detention.
- (I) Porous Landscape Detention.
- (J) Sand Filter Extended Detention Basin.
- (K) Runoff Reduction Practices. A combination of planning techniques to reduce runoff peaks, volumes, and pollutant loads from urbanizing areas that includes low impact development (LID) strategies and MDCIA to reduce unnecessary impervious areas and route runoff from impervious surfaces over permeable areas to slow runoff and promote onsite storage and infiltration. The effectiveness of this BMP to reduce peak flows, volumes, and pollutant loads shall be demonstrated by site-specific calculations and analysis approved by the MS4.

~~Alternative BMPs may be used if they are shown to have comparable or better nutrient removal characteristics for the given use, in comparison to the above listed BMPs, when properly designed and implemented. These BMPs must be determined to be acceptable by the permittee on a case-by-case basis, or, if appropriate, may be added to the menu of acceptable BMPs.~~

- (iii) WQCV Alternatives. The permittee may allow alternative BMPs that do not use the WQCV approach or are in combination with the WQCV, if they are shown to have comparable or better nutrient concentration reduction characteristics for the given use when properly designed, implemented, and maintained. These BMPs must be determined to be acceptable by the permittee on a case-by-case basis, or, if appropriate, may be added to the menu of acceptable BMPs. Specifically, the permittee may allow for the owner to use stream bank stabilization at the development site, and conservation of open space through clustering of development or setbacks from drainage ways, to reduce the need for the WQCV for the whole site.
 - (iv) Operation and Maintenance. The permittee must develop a program that requires owners to be responsible for operation and maintenance of BMPs and requires that they provide sufficient legal access, by dedicating easements for the sites of the permanent BMPs and access thereto for the Owner/agency responsible for operation and maintenance, the permittee, and for inspections, operation, and maintenance.
- (7) Additional BMP Requirements. In addition to other requirements in this regulation for post-construction BMPs, the permittee must develop, implement, and enforce a program that ensures that permanent controls are in place at completed projects at the following: those facilities requiring coverage under both part 72.7.2(c)(1) of this regulation and Regulation #61, section 61.3(2)(e)(iii); and from other designated commercial and industrial facilities as discussed below. The program must address any stormwater pollutant sources at these facilities that may require unique management strategies. The permittee shall:
- (i) Develop a program to designate commercial facilities on a case-by-case basis or by addition of a general commercial sector, based on a determination that they have a significant potential to contribute nutrient concentrations to State waters at a rate higher than typical for other commercial or industrial land uses (e.g., stores with outdoor fertilizer storage, facilities with deicing operations).
 - (ii) The Permittee must require Owners to satisfy additional special Post-construction BMP requirements designed to prevent or reduce the amount of pollutants generated and/or released from the area of Land Disturbance, which include but are not limited to:
 - (A) Covering or enclosing activity in buildings or roofs;
 - (B) Providing secondary containment area to collect leaks and spills of fuels, lubricants, and other chemicals;
 - (C) Segregating or diverting stormwater runoff away from or around pollutant generating activity; and
 - (D) Routing site drainage to recycling or otherwise preventing direct discharge of vehicle or equipment wash-water.
- (8) Stream Preservation Areas. The following requirements provide special standards and procedures for Land Disturbances in Stream Preservation Areas, which include Cherry Creek Reservoir, all of Cherry Creek State Park, drainage

and discharges to the park within 100 feet of the park boundary; lands overlying the Cherry Creek 100-year floodplain; and all lands within the 100-year floodplain of Cherry Creek tributaries, as defined by the Urban Drainage and Flood Control District.

- (i) Additional BMP Requirements. For Tier 2 and Tier 3 New Development and Redevelopment in Stream Preservation Areas, the permittees must, in addition to meeting all the Post-construction BMP requirements in section 72.7.2(c)(6) and/or (7), require owners to implement BMPs that promote filtration, or infiltration where appropriate, to treat the WQCV for all runoff from the developed areas within the Stream Preservation Area. Examples of such BMPs include, but are not limited to:
 - (A) constructed wetland basins;
 - (B) sand filter basins;
 - (C) porous landscape detention; and
 - (D) porous pavement detention.
- (ii) Authorized Exclusions. The permittee may exclude the following activities from the requirements in section 72.7.2(c)(8)(i) where the disturbance is the result of implementation of an approved BMP, in accordance with requirements in section 72.7.2.(c), unless the post-construction BMP is required for new development.

Construction of roadway, highway, and underground utility crossings, provided construction BMPs are implemented as required in section 72.7.2(b) and post-construction BMPs are implemented as required in Section 72.7.2(c).

Rural road construction and maintenance, except for a land disturbance associated with a rural road within a Stream Preservation Area, and provided that permittee requires post-construction BMPs specific to this activity.

Those automatic and authorized exclusions defined in section 72.7.2(c)(4).

.....

PROPOSED BY
CHERRY CREEK BASIN WATER QUALITY AUTHORITY

72.28 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY AND PURPOSE: OCTOBER 9, 2012 RULEMAKING; EFFECTIVE DECEMBER 31, 2012

The provisions of 25-8-202(1)(c), and (2) and 25-8-205, C.R.S. provide the specific statutory authority for adoption of these regulatory amendments. The Commission also adopted, in compliance with 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

In this rulemaking, changes were made to Section 72.7 Stormwater Permit Requirements only. These changes were recommended by the Cherry Creek Basin Water Quality Authority to incorporate revised water quality control strategies based on recent studies, information and conditions. The Authority has express statutory authority to develop and revise such strategies under C.R.S. 25-8.8-111(1)(a).

The adopted changes clarify specific areas that are covered by stormwater requirements and provide consistency between State and Federal stormwater requirements. The changes are based on experience the Authority has gained in recent years, will improve the effectiveness of its Regulation 72 stormwater program, and address limited situations where the Commission believes certain BMPs are not practicable. Regulation 72 was modified to clarify that post-construction stormwater controls for new development and redevelopment can include structural and/or non-structural controls, as may be appropriate for the local situation. Use of non-structural BMPs in some cases may provide for a more effective and efficient solution to meet the overall goal of controlling pollutants and is consistent with the requirements in Regulation 61. Specifically, a new non-structural BMP, "Runoff Reduction Practices," was added to Regulation 72.7.2(c)(6), and the Large Lot Single Family Development provision that incorporates this BMP is now automatically excluded from additional post-construction BMP requirements under Regulation 72. The Commission finds that the implementation of Runoff Reduction Practices to Large Lot Single Family Development will result in infiltration of the Water Quality Capture Volume and thus not require other Regulation 72 structural post-construction BMPs and associated administrative requirements.

Similarly, the Commission has determined that it is also appropriate to exclude a limited subset of roadway projects, as defined at 72.7.1(d), from Regulation #72 post-construction requirements that it finds are not practicable for these projects. This is not intended to exclude roadway de-icing operations and drainage improvements associated with roadway maintenance. These activities would not be expected to cause increased stormwater quality impacts, as compared to pre-project conditions, as the original footprint for Excluded Roadway Projects would not be changed, and there would be no additional runoff due to the limitation on no increase in impervious area.

Typographical errors and cross- references were also corrected. Clarifications were made to several definitions, and language was added to ensure that Regulation 72 is consistent with the language of Regulation 61.

These changes are not intended to define "new development and redevelopment" as used in Regulation 61, nor to modify MS4 permit construction program requirements or permit requirements defined in Regulation 61. The Commission supports the ongoing efforts between the Division and the MS4 community to define "new development and redevelopment" in accordance with Regulation 61.