

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION

Chief Engineer
4201 E. Arkansas Ave. #262
Denver, CO 80222
(303) 757-9206
(303) 757-9656 Fax



Date: March 27, 2006

To: Region Transportation Directors, Professional Engineer III's, Resident Engineers, Environmental Protection Branch Manager and Region Program Environmental Managers, Maintenance Superintendents

From: Craig Siracusa, Chief Engineer *C Siracusa*

Subject: Construction Activity Stormwater Discharge Permit
Policy Memo 27

The Colorado Department of Transportation (CDOT) is authorized under permit, Colorado Discharge Permit System (CDPS) General Permit, from the Colorado Department of Public Health and Environment (CDPHE) to discharge stormwater associated with construction activities in accordance with the conditions of the permit. In May and June of 2005 CDPHE inspected 12 of CDOT's projects around the state. During the inspections the Inspector spoke with CDOT project representatives, reviewed each project's stormwater records, and conducted a physical inspection of each project. In November of 2005 CDPHE issued a Notice of Violation/Cease and Desist Order (NOV) against 10 of the CDOT projects inspected. The NOV reported CDOT had violated four sections of the CDPS permit. The violations were in relationship to the preparing of Stormwater Management Plan (SWMP), amending the SWMP, Best Management Practices (BMPs) and site inspections. The inspections were to be done at a minimum every 14 days and after any precipitation or snowfall event that causes surface erosion and once per month for sites that construction activities have been completed. The NOV ordered CDOT to implement measures to comply with the terms and conditions of the CDPS General Permit.

The measures that CDOT has adopted include the issuance of the new SWMP plans that were to be implemented on all active construction projects and all projects under design, AD or awaiting award that had SWMP's included in the plans or have a CDPS permit by March 1, 2006 per Construction Bulletin # 2006-3. CDOT provided written certification to CDPHE stating that this had been implemented. Some of the other measures include ensuring BMP's are in place, inspections are being conducted, cleanup of any sediment buildup originating from the cited projects and development of detailed design criteria and procedures for implementing and maintenance of BMP's utilized on construction sites. CDOT was also ordered to submit a proposal for CDPHE review and comment describing how CDOT will ensure each stormwater management system, at each CDOT construction site is adequately staffed, trained, implemented and supervised.

The CDPS General Permit Application, states in the instructions for "Signature of Applicant" that "in the case of a municipal, state or other public facility" that either a "principal executive officer, ranking elected official or other duly authorized employee" sign the application. The application included a Stormwater Management Plan Certification that must be signed along with the application itself. The application instructions further state "This certification includes an acknowledgement that the applicant understands that the permit coverage, and therefore the applicants liability, will be for the entirety of the construction project described and applied for, until such time as the applicant is amended or certification is transferred, inactivated, or expired". By signing the certification the signer certifies "under penalty of law that a complete Stormwater Management Plan as described in Appendix A of this application, has been prepared for my activity. Based on my inquiry of the person or persons who manage the system, or those people directly responsible for gathering information, the SWMP is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for falsely certifying the completion of said SWMP, including the possibility of fine and imprisonment for knowing violations". By signing the application the signer "certifies under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for false information, including fine and imprisonment".

According to the Attorney General's Office, CDOT employees will have individual immunity from liability for acts or omissions in the scope of their employment unless the acts or omission are "willful and wanton". This means that penalties assessed by CDPHE will be against CDOT, unless, for example, the employee gives a direct instruction to violate the Water Quality Control Act.

For CDOT the duly authorized employee to sign the SWMP Certification and Application shall be the Resident Engineer in charge of the construction project or the Maintenance Superintendent in charge of the maintenance project. For construction projects the Resident Engineer shall make every effort to close the permit or the permit will be transferred to the Maintenance Superintendent upon Final Acceptance of the construction project. A letter, signed by both the Resident Engineer in charge of the construction project and the Maintenance Superintendent taking responsibility for post construction permit requirements, to CDPHE Water Quality Control division giving the permit # and the name and contact info for the new responsible party is required.

The Region Program Environmental Manager (RPEM) will review all SWMP plans prior to advertisement and ensure that that they are complete. The RPEM's signature on the clearance to advertise will signify that they have reviewed and concur with the completeness of the SWMP.

The Environmental Programs Branch will ensure that sufficient and up to date guidance is available for the preparers of the SWMP.

The Project Engineer assigned to the administration of the Construction project will ensure that the terms of the permit have been complied with during construction. The Project Engineer will notify the Resident Engineer when there is an incident of non-compliance.

As the construction project nears completion the Project Engineer shall schedule a review of the erosion control features and documentation. The Resident Engineer, Regional Environmental Planning Manager, Regional Hydraulics Engineer, Maintenance Superintendent (or designated representative) and the Contractors Erosion Control Supervisor shall attend this review. The timing of this review will be when, at the judgment of the Project Engineer, the project is sufficiently completed as that no further construction operations will effect permit requirements but sufficient Contractor equipment and work force remains to do "punch list" type work on erosion control features. After the issues identified in the review have been resolved and the project "Final Acceptance" letter has been written by the Project Engineer and if the permit can not be closed the Maintenance Superintendent shall accept the transfer of the CDPS Permit from the Resident Engineer.