



**Colorado Discharge Permit System (CDPS)
 Fact Sheet for Modification 4
 Permit Number COS000005
 COLORADO DEPARTMENT OF TRANSPORTATION**

**Permit Writer: Mary Welch
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I. TYPE OF PERMIT

- A. Type of Modification:** Modification 4
- B. Discharge To:** Surface Water

II. FACILITY INFORMATION

- A. SIC Code:** 9511-Air, Water, and Solid Waste Management. Several SIC codes apply to specific municipal activities (sewerage systems 4952, water supply 4941, automotive repair shops 7539, transportation services 4789). Note that there is not a clear SIC code for a Municipal Separate Storm Sewer System (MS4), therefore the 9511 code is applied.
- B. Facility Location:** Various Locations - See Part I.A.3 of the Permit

III. SCOPE OF MODIFICATION REQUEST

- The permittee requested modification of Part I.E.2.a.iv(A), to allow for other CDOT budgets in meeting expenditure requirements in Part I.E.2.iv(A)2).
- The permittee requested modification of Part I.E.2.a.iv(A)1) to clarify that eligible expenditures may include purchase of right-of-way, environmental planning, and completing clearances. This includes moving “environmental planning” as was previously allowed under Part I.E.iv(A)6) to Part I.E.2.a.iv(A)1).
- The permittee requested modification of Part I.E.2.a.iv(A)2) from a minimum expenditure requirement of 80% of the mitigation pool on 3-year rolling average to \$15.6 million on a rolling 3-year average from other CDOT budgets.
- The permittee requested that I.E.iv(A)3) be removed from the permit due to redundancy with suggested





rewording to Part I.E.2.a.iv(A)1).

- The permittee requested Part I.E.2.a.iv(A)5) be modified to slightly reword.
- The permittee requested consistently referring to Permanent Water Quality Pool throughout the permit, and omitting the term “mitigation” from permit references to “Permanent Water Quality Mitigation Pool”.
- The permittee requested modification of the compliance schedule in Part I.H., Table 2, Permit Condition Part I.E.2.a.iv(A)2) from September 1, 2016 to January 1, 2017.
- The permittee requested modification of annual reporting requirements in Part I.I, corresponding to the changes requested in other parts.
- The permittee requested that the modification be retroactive to August 15, 2019 when the modification was first requested.

IV. CHANGES MADE AS A RESULT OF THE MODIFICATION

- The division has modified Part I.E.2.a.iv(A)2) to allow CDOT to substitute expenditures from other CDOT budgets for expenditures from the mitigation pool. The purpose of the mitigation pool is to associate costs with implementation of control measures to the maximum extent practicable. As described in the July 28, 2015 fact sheet, CDOT tracked costs over a three year period to estimate that 6.5 million was spent installing permanent water quality control measures. The current permit requires CDOT to establish a pool for installing permanent control measures. The permit requires CDOT to contribute 6.5 million per year to the pool and spend 80% of the pool on a 3-year rolling average. Since issuance of the current permit, CDOT has found that projects funded by the mitigation pool can take several years to complete. This is beyond the three year period CDOT used to estimate the annual average expenditure of 6.5 million per year. In light of spending delays, CDOT often uses other budgets outside the pool to fund control measures to satisfy requirements of Part I.E.2.a. Aside from the funding source, these projects would otherwise meet the requirements of the permanent water quality mitigation pool. In order to balance the requirements to install control measures with requirements to meet pool expenditure requirements, CDOT periodically reimburses other budgets from the mitigation pool. CDOT has indicated that this is problematic because in order to comply with permit requirements for fund expenditures they might need to interrupt or postpone a mitigation pool’s project in order to make these reimbursements.

CDOT has therefore requested additional flexibility by allowing non-pool sources to satisfy the permit expenditure requirements in Part I.E.2.a.iv (Permanent Water Quality Control Management). More specifically, the permittee requested that expenditure requirements for the permanent water quality mitigation pool be extended to include payments made from other CDOT budgets besides the pool.

The division is modifying the permit to allow expenditures from other CDOT budgets to meet expenditure requirements because this will enable more efficient implementation of permanent water quality control measures. The modification restricts qualifying expenditures to the same permit requirements that apply to funds spent from the mitigation pool.

- CDOT requested that Part I.E.2.a.iv(A)2) permit be modified to require a fixed amount of 15.6 million instead of 80% of the pool over a 3-year rolling average. The division agrees to modifying Part I.E.2.a.iv(A)2) to simplify and allow for more flexibility to cover longer term projects. The existing permit specifies that 80% of the pool must be spent over a 3-year rolling average. This amount is calculated from the pool’s balance on any given date on and following September 1, 2016 and is based on the previous three years. The minimum expenditure requirement would therefore vary based on a daily balance, that is,





$$\text{minimum expenditure} = \frac{\text{amount spent during the previous three year period}}{\text{amount contributed to the pool during the previous three year period}} \times 0.8$$

CDOT requested to change Part I.E.2.a.iv to require 15.6 million dollars be spent on a 3-year rolling average. This proposal was derived as follows:

$$6.5 \text{ million/yr. contributions required under the existing permit} \times 3 \text{ years} = 19.5 \text{ million}$$

$$19.5 \text{ million} \times 80\% = 15.6 \text{ million}$$

Note that this calculation assumes 80% of the pool contribution, rather than 80 percent of the pool balance is spent over three years. The division is modifying the permit to address CDOT’s request because the division believes the added flexibility will help carry out more projects that take longer to complete. Although 15.6 million over three years is less than the existing minimum expenditure requirement, the accounting flexibility allowed by the modification is anticipated to result in CDOT expenditures to install control measures required by the permit that exceed this amount. Because contributions must eventually be spent on permanent water quality control measures, control measures will continue to be installed to the maximum extent practicable. Furthermore, this allowance is consistent with the original average expenditure estimations of 6.5 million over the three year study period. Upon further discussion, CDOT and the division agreed that the requirement to spend 15.6 million must be met as a minimum total expenditure over three years, rather than a 3-year rolling average as originally requested.

- CDOT has requested that the period for calculating expenditures be changed to a calendar year basis in order to align with the annual report period. The existing permit includes a compliance schedule date of September 1, 2016 for complying with the rolling 3-year annual average. On or after this date, for a given day the average expenditures over the previous three years must equal 80% of the contributions over the same period. The division agrees that modifying the dates of calculating expenditures would simplify compliance determination. The permit is therefore modified in Part I.E.2.a.iv(A)2) such that, beginning in 2020, for reporting of the three year total expenditures CDOT must calculate expenditures annually on a calendar year basis. As follows, for the period of January 1, 2018 through December 31, 2020, CDOT must spend 15.6 million from the pool or other CDOT budgets for permanent water quality control measures. CDOT is then required to spend 15.6 million between January 1, 2019 through December 31, 2021, and similarly for each year thereafter. Rather than expressing the requirement as a rolling average the permit requires 15.6 million total spent over the previous three years, to be calculated and documented once per calendar year.
- CDOT requested additional language to clarify that eligible pool expenditures may include those for purchase of right-of-way, environmental planning, and completing clearances. As described in the July 31 Fact Sheet:

[t]The data gathered included costs for permanent water quality control measure design and construction, right-of-way purchase, construction engineering, and other associated indirect costs such as environmental support, business office financial support efforts, and management oversight.

CDOT’s proposed language to allow funds for purchase of right-of-way and completing clearances directly related to permanent water quality control measures is consistent with the basis of the estimated average of 6.5 million over a rolling 3 year period. Moreover, Part I.E.2.a.iv(A)6) of the existing permit, which, allows pool funds to be spent on environmental planning is moved into this requirement to improve concision.

- Permanent Water Quality Control Management, Recordkeeping. Parts I.E.2.b.iv. and related documentation in I.E.2.a.iv(A)3). Recordkeeping requirements are changed to reflect new funding sources. In particular, the





permit requires separate documentation of pool expenditures versus other budget expenditures. This information can be used by CDOT and the division to discern trends in funding sources.

- The division has incorporated some of the permittee's suggested permit language to improve clarity and concision. The division provided additional language edits to ensure clarity.
- The division modified the annual reporting language in Part I.I.1.g.ii(F) to require reporting of information necessary to determine compliance with modifications in Part I.E.2.a.iv.

V. REQUESTED CHANGES NOT MADE TO THE PERMIT

- The division did not use all suggested language proposed by the permittee. The division retained terms consistent with the previous permit and edited suggested language for concision. For example, the permittee suggested omitting the term "Mitigation". The division does not believe the name change is necessary and may create inconsistency among other permit file documents. In addition, the permittee introduced a new acronym of "PWQ". This acronym is not used in other parts of the permit, therefore the division is not including it in the modified permit.
- Compliance Schedule. CDOT requested that the compliance schedule due date for Part I.E.2.a.iv(A)2) be changed from "Started September 1, 2016" to "Starting January 1, 2017" in order for dates to correspond to the annual report period. The division did not modify the compliance schedule because it is not necessary for the main content of the modification. However, the division included new language in Part I.E.2.a.iv(A)2) specifying periods for calculating compliance. See Part V, third bullet.
- CDOT requested to change the requirement to spend 80 percent of the mitigation pool as a 3-year rolling average to a requirement to spend 15.6 million dollars on a 3-year rolling average. The division agrees with CDOT's overall approach to the modification, but has included more precise language to describe the expenditure requirements. In particular, the permit is modified to require CDOT spend a *total* of 15.6 million dollars over the course of three years, to be calculated at the end of each calendar year. See Part V, third bullet.
- Retroactive Modification. In a January 28 email, CDOT requested that the modification be retroactive to the request date of August 15, 2019. Regulation 61.8(8)(e) states that "Except for minor modifications, the terms of the existing permit govern and are enforceable until the newly issued permit is formally modified or revoked and reissued following public notice." Pursuant to this direction, the division is not making the modification retroactive.

VII. OPPORTUNITIES FOR ADMINISTRATIVE ADJUDICATION

Once the final modified permit is issued, the applicant or any other person affected or aggrieved by the Division's final determination on the modification may demand an adjudicatory hearing within thirty (30) calendar days of the date of issuance on the conditions subject to modification, under 5 CCR 1002-61 (Colorado Discharge Permit System Regulations), Regulations 61.7 and 61.8(8)(g). Any request must comply with the Water Quality Control Act, 24-4-101, C.R.S., et seq. and the Water Quality Control Commission's regulations, including Regulation 61.7 and 5 CCR 1002-21 (Procedural Rules), Regulation 21.4(B). Failure to contest any term and condition of the permit in this request for an adjudicatory hearing constitutes consent to the condition by the permittee.





VIII. PUBLIC NOTICE COMMENTS

Comments from CDOT:

CDOT also attached a PDF of the draft permit with comment bubbles asking the below or similar questions. It can be found in the permit file.

Comment: Page 19 - Part I.E.2.a.iv.A. "Other CDOT Budgets used to fund control measures that meet the requirements of Part I.E.3.a.iii and iv...." This should be **I.E.2.a.iii and iv**. 1.E.3. is the Illicit Discharge program.

Response: This comment has been incorporated into the permit.

Comment: Page 23 - I.E.2.b.iv.C.5. - What is the purpose of tracking features or line items of the control measure that were paid for from other sources "that do not count towards meeting the requirements in Part 1.E.2.a.iv(A)"? If a feature or line item does not meet the Permanent Water Quality Mitigation Pool and Permanent Water Quality Program requirements, what is the benefit of tracking these items? Can you please provide an example of the expenses that would be tracked?

Response: The comment has been incorporated into the permit. The division removes proposed language in Part I.E.2.b.iv(C)5).

Comment: Page 25 - 1.E.2.c.iv. - Should a reference to the "other budgets" be included here?

Response: This comment has been incorporated into the permit.

