

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0187.01 Bart Miller

HOUSE BILL 11-1026

HOUSE SPONSORSHIP

Gerou,

SENATE SPONSORSHIP

(None),

House Committees

Economic and Business Development

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE DESIGNATION OF STORM WATER MANAGEMENT
102 SYSTEM ADMINISTRATORS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries.>)

For purposes of facilitating compliance with the federal national pollutant discharge elimination system (NPDES) by construction project owners and contractors, the bill:

- ! Requires the department of public health and environment (department), upon application, to designate one or more

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- storm water management system administrators;
- ! Establishes criteria for designation and revocation of designation as a storm water management administrator, which must operate as a nonprofit entity;
- ! Requires that the executive director of the department or the executive director's designee sit on the governing body of any designated storm water management system administrator;
- ! Specifies that third-party audits conducted under and maintained by a storm water management system administrator for a participant meeting standards established by the department are treated as a voluntary self-evaluation and an environmental audit report and a voluntary disclosure of information under Colorado environmental laws;
- ! Specifies that the department may consider a department-approved storm water management system administrator's audit part of a municipal separate storm sewer systems (MS4) regulator's oversight program conducted in the course of the MS4 meeting permit requirements of the department, if the MS4 formally participates in the storm water management system administrator that conducted the audit;
- ! To the extent allowed by federal law, authorizes the department and MS4 to prioritize inspections for those not participating in a department-approved storm water management system administrator; and
- ! Makes audits conducted by or submitted to a department-approved storm water management system administrator within an MS4's jurisdiction open to inspection by the MS4 if the MS4 participates in the department-approved storm water management system administrator.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Article 8 of title 25, Colorado Revised Statutes, is
 3 amended BY THE ADDITION OF A NEW PART to read:

4 **PART 8**
 5 **STORM WATER MANAGEMENT SYSTEM**
 6 **ADMINISTRATORS**

1 **25-8-801. Legislative declaration.** (1) THE GENERAL ASSEMBLY
2 FINDS, DETERMINES, AND DECLARES THAT:

3 (a) THE FEDERAL ACT REQUIRES CONSTRUCTION PROJECT OWNERS
4 AND CONTRACTORS TO CONTROL THE DISCHARGE OF POLLUTANTS
5 RELATED TO STORM WATER RUNOFF AND EROSION DISCHARGED FROM A
6 CONSTRUCTION SITE;

7 (b) THE DEPARTMENT IS THE AUTHORIZED PERMITTING AUTHORITY
8 FOR THE NPDES SYSTEM FOR MOST AREAS WITHIN COLORADO AND,
9 UNDER THAT AUTHORITY, ISSUES STORM WATER DISCHARGE PERMITS TO
10 MS4S, FACILITY OPERATORS, AND CONSTRUCTION SITE OPERATORS;

11 (c) IN TIGHT BUDGETARY TIMES, WHEN THERE ARE INSUFFICIENT
12 RESOURCES FOR COMPLIANCE ASSURANCE AND ASSISTANCE PROGRAMS TO
13 BE ADEQUATELY IMPLEMENTED BY THE REGULATORY AGENCIES, STATE
14 AND MS4 REGULATORS MUST LOOK FOR INNOVATIVE WAYS TO
15 ENCOURAGE INDUSTRY TO SELF-REGULATE TO ACHIEVE THE GOALS OF THE
16 NPDES;

17 (d) THE CONSTRUCTION INDUSTRY HAS DEVELOPED AN
18 INNOVATIVE PROGRAM TO PROVIDE COMPLIANCE ASSISTANCE AND TO
19 MONITOR AND AUDIT ITSELF TO MEASURE AND FACILITATE COMPLIANCE
20 IMPROVEMENTS;

21 (e) BETWEEN 2005 AND 2010, OVER FIVE THOUSAND FIVE
22 HUNDRED SELF-AUDITS HAVE BEEN PERFORMED ON CONSTRUCTION SITES
23 BY THE CONSTRUCTION INDUSTRY SECTOR. DURING THIS SAME PERIOD
24 THE STATE HAS PERFORMED LESS THAN TWO HUNDRED INSPECTIONS PER
25 YEAR WITHIN THE SAME INDUSTRY SECTOR.

26 (f) THE DEPARTMENT DOES NOT HAVE THE RESOURCES TO ACCEPT
27 AND REVIEW THE SELF-AUDITS GENERATED BY THE CONSTRUCTION

1 INDUSTRY, ALTHOUGH, PURSUANT TO SECTION 13-25-126.5, C.R.S., THOSE
2 PERFORMING SELF-AUDITS HAVE THE RIGHT TO IMMUNITY AGAINST FINES
3 FOR SELF-REPORTING IF THEY CHOOSE TO SUBMIT SELF-AUDITS TO THE
4 DEPARTMENT;

5 (g) THIS PART 8 IS ENACTED TO FURTHER THE POLICY CONTAINED
6 IN SECTION 13-25-126.5, C.R.S., OF ENCOURAGING VOLUNTARY
7 COMPLIANCE WITH ENVIRONMENTAL LAWS AND ENCOURAGING
8 VOLUNTARY ENVIRONMENTAL SELF-EVALUATION;

9 (h) THE DESIGNATION OF A STORM WATER MANAGEMENT SYSTEM
10 ADMINISTRATOR WILL:

11 (I) SIGNIFICANTLY REDUCE THE DEMAND ON COLORADO'S
12 ENFORCEMENT AND ASSISTANCE RESOURCES WHILE IMPROVING
13 COMPLIANCE WITH THE LAW;

14 (II) PERMIT STATE AND LOCAL REGULATORS TO COST-EFFECTIVELY
15 DIRECT THEIR LIMITED ENFORCEMENT RESOURCES TOWARD THOSE
16 OUTSIDE THE STORM WATER MANAGEMENT SYSTEM OR THOSE NOT
17 MEETING PERMIT COMPLIANCE EXPECTATIONS; AND

18 (III) INCREASE THE CONSISTENCY OF LOCAL AND STATE
19 GOVERNMENT INSPECTION STANDARDS, PERMITTING MORE
20 PREDICTABILITY, CONSISTENCY, AND COMPLIANCE WITH THE FEDERAL
21 ACT;

22 (i) FORMAL DEPARTMENT RECOGNITION OF AN ENVIRONMENTAL
23 MANAGEMENT SYSTEM-BASED INDUSTRY SELF-AUDIT PROGRAM SUCH AS
24 A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR IS NEEDED TO
25 FACILITATE EFFECTIVE PLANNING AND ENCOURAGE INCREASED PROGRAM
26 PARTICIPATION.

27 **25-8-802. Definitions.** AS USED IN THIS PART 8, UNLESS THE

1 CONTEXT OTHERWISE REQUIRES:

2 (1) "ADMINISTRATOR" OR "STORM WATER MANAGEMENT SYSTEM
3 ADMINISTRATOR" MEANS A NONPROFIT ENTITY DESIGNATED BY THE
4 DEPARTMENT TO CONDUCT THE ACTIVITIES REQUIRED UNDER SECTION
5 25-8-803.

6 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
7 AND ENVIRONMENT.

8 (3) "MS4" MEANS A MUNICIPAL SEPARATE STORM SEWER SYSTEM.

9 (4) "MS4 REGULATOR" MEANS A GOVERNMENTAL ENTITY WITH
10 PERMIT RESPONSIBILITY FOR AN MS4.

11 (5) "NPDES" MEANS THE NATIONAL POLLUTANT DISCHARGE
12 ELIMINATION SYSTEM.

13 **25-8-803. Designation of storm water management system**

14 **administrator.** (1) UPON APPLICATION OF A QUALIFIED ENTITY IN SUCH
15 FORM AS THE DEPARTMENT MAY REQUIRE, THE DEPARTMENT SHALL
16 DESIGNATE ONE OR MORE STORM WATER MANAGEMENT SYSTEM
17 ADMINISTRATORS THAT MEET THE CRITERIA OF THIS SECTION. A STORM
18 WATER MANAGEMENT SYSTEM ADMINISTRATOR SHALL OPERATE AS A
19 NONPROFIT ENTITY. ANY STORM WATER MANAGEMENT SYSTEM
20 ADMINISTRATOR APPLICANT TO THE DEPARTMENT MUST DEMONSTRATE ITS
21 ABILITY TO IMPLEMENT A STANDARDIZED PERMIT COMPLIANCE PROGRAM
22 IN ACCORDANCE WITH THE ENVIRONMENTAL MANAGEMENT SYSTEM
23 PROVISIONS OF ARTICLE 6.6 OF THIS TITLE THAT INCLUDES PROCESSES,
24 PROCEDURES, AND ASSOCIATED TRAINING FOR PARTICIPANTS THAT, WHEN
25 FULLY IMPLEMENTED, WOULD RESULT IN FULL COMPLIANCE WITH THE
26 PERMIT AND THAT ALLOWS FOR STANDARDIZED INTERNAL AND
27 THIRD-PARTY AUDITING OF SUCH PROGRAM PROCESSES AND PROCEDURES

1 TO MEASURE THE LEVEL OF PROGRAM IMPLEMENTATION BY EACH
2 PARTICIPANT, TO THE SATISFACTION OF THE DEPARTMENT.

3 (2) A STORMWATER MANAGEMENT SYSTEM ADMINISTRATOR MUST
4 BE ABLE TO REASONABLY DEMONSTRATE TO THE DEPARTMENT THE
5 ABILITY TO ASSIST ITS PARTICIPATING CONTRACTOR AND OWNER MEMBERS
6 TO MEET ALL OF THE REQUIREMENTS OF A DISCHARGE PERMIT, INCLUDING:

7 (a) MAINTAINING A QUALIFIED PERMIT COMPLIANCE MANAGER PER
8 THE TERMS OF THE PARTICIPANT'S DISCHARGE PERMIT;

9 (b) MAINTAINING COMPLETE AND UPDATED PERMIT
10 DOCUMENTATION AVAILABLE FOR INSPECTION BY REGULATORS ON THE
11 ACTIVE, PERMITTED SITE; AND

12 (c) COMPLETING ESTABLISHED MINIMUM REQUIREMENTS OF THE
13 STORM WATER MANAGEMENT SYSTEM FOR TRAINING TO MAINTAIN PERMIT
14 COMPLIANCE MANAGER STATUS.

15 (3) (a) THE DEPARTMENT SHALL REQUIRE THAT THE STORM WATER
16 MANAGEMENT SYSTEM ADMINISTRATOR REQUIRE MONTHLY THIRD-PARTY
17 AUDITS OF ALL PROGRAM PARTICIPANTS TO BE PERFORMED USING
18 STANDARDIZED, DEPARTMENT-APPROVED INSPECTION REPORTING FORMS
19 AND PROCEDURES.

20 (b) ANY THIRD-PARTY AUDIT SUBMITTED TO A STORM WATER
21 MANAGEMENT SYSTEM ADMINISTRATOR BY ANY PROGRAM PARTICIPANT
22 SHALL BE OPEN TO INSPECTION BY THE DEPARTMENT.

23 (4) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR THE
24 EXECUTIVE DIRECTOR'S DESIGNEE IS A MEMBER OF THE GOVERNING BODY
25 OF EACH STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR.

26 (5) TO THE EXTENT PERMITTED BY FEDERAL LAW, THE
27 DEPARTMENT SHALL PRIORITIZE INSPECTIONS ON PERMITTEES NOT

1 PARTICIPATING IN A STORM WATER MANAGEMENT SYSTEM
2 ADMINISTRATOR. THIS SUBSECTION (5) DOES NOT PREVENT INSPECTIONS
3 IN ACCORDANCE WITH SECTION 25-6.6-105.

4 (6) AFTER PROVIDING WRITTEN NOTICE OUTLINING THE
5 DEFICIENCIES OF A STORM WATER MANAGEMENT SYSTEM
6 ADMINISTRATOR'S PROGRAMS AND GIVING THE ADMINISTRATOR SIXTY
7 DAYS TO CURE THOSE DEFICIENCIES, THE DEPARTMENT MAY REVOKE THE
8 DESIGNATION OF A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR.

9 (7) THIRD-PARTY AUDITS CONDUCTED UNDER, AND MAINTAINED
10 BY, A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR SHALL BE
11 TREATED AS A VOLUNTARY SELF-EVALUATION AND AN ENVIRONMENTAL
12 AUDIT REPORT, AS DEFINED IN SECTION 13-25-126.5 (2) (b) AND (2) (e),
13 C.R.S., AND SHALL BE TREATED AS A VOLUNTARY DISCLOSURE OF
14 INFORMATION UNDER SECTION 25-1-114.5, IF CORRECTION OCCURS WITHIN
15 THE TIME REQUIRED BY THE PERMIT, NOTWITHSTANDING THE TWO-YEAR
16 PROVISION IN SECTION 25-1-114.5. THE DEPARTMENT SHALL ESTABLISH
17 PERFORMANCE STANDARDS FOR PARTICIPANTS IN A STORM WATER
18 MANAGEMENT SYSTEM ADMINISTRATOR'S PROGRAM. IF A PARTICIPANT
19 FALLS BELOW THE STANDARDS ESTABLISHED UNDER THIS SUBSECTION (7),
20 THE PARTICIPANT IS NOT ELIGIBLE FOR ITS THIRD-PARTY AUDITS TO BE
21 PRIVILEGED AS SPECIFIED IN THIS SUBSECTION (7). NOTHING IN THIS
22 SUBSECTION (7) PREVENTS A PARTICIPANT'S THIRD-PARTY AUDITS FROM
23 OTHERWISE BEING PRIVILEGED UNDER SECTIONS 13-25-126.5 (2) (b) AND
24 (2) (e) AND 25-1-114.5, C.R.S.

25 **25-8-804. Storm water management system administrator**
26 **audits part of MS4 storm water discharge control program.** (1) THE
27 DEPARTMENT MAY CONSIDER A STORM WATER MANAGEMENT SYSTEM

1 ADMINISTRATOR'S AUDIT TO BE PART OF THE MS4 REGULATOR'S
2 COMPLIANCE OVERSIGHT PROGRAM CONDUCTED IN THE COURSE OF
3 MEETING THE DEPARTMENT'S PERMIT REQUIREMENTS IF THE MS4
4 REGULATOR FORMALLY PARTICIPATES IN THE STORM WATER
5 MANAGEMENT SYSTEM ADMINISTRATOR'S PROGRAM THAT CONDUCTED
6 THE AUDIT.

7 (2) AN MS4 REGULATOR MAY PRIORITIZE INSPECTIONS FOR THOSE
8 NOT PARTICIPATING IN A STORM WATER MANAGEMENT SYSTEM
9 ADMINISTRATOR'S PROGRAM. THIS PART 8 DOES NOT PREVENT ANY
10 INSPECTION BY AN MS4 REGULATOR.

11 (3) A PROGRAM AUDIT CONDUCTED BY OR SUBMITTED TO A STORM
12 WATER MANAGEMENT SYSTEM ADMINISTRATOR WITHIN AN MS4
13 REGULATOR'S JURISDICTION IS OPEN TO INSPECTION BY THAT MS4
14 REGULATOR IF THE MS4 REGULATOR IS A PARTICIPANT IN THE STORM
15 WATER MANAGEMENT SYSTEM ADMINISTRATOR'S PROGRAM.

16 **SECTION 2. Act subject to petition - effective date -**
17 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
18 following the expiration of the ninety-day period after final adjournment
19 of the general assembly (August 10, 2011, if adjournment sine die is on
20 May 11, 2011); except that, if a referendum petition is filed pursuant to
21 section 1 (3) of article V of the state constitution against this act or an
22 item, section, or part of this act within such period, then the act, item,
23 section, or part shall not take effect unless approved by the people at the
24 general election to be held in November 2012 and shall take effect on the
25 date of the official declaration of the vote thereon by the governor.

26 (2) The provisions of this act shall apply to the regulation of storm
27 water on or after the applicable effective date of this act.