

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 11-0187.01 Bart Miller

HOUSE BILL 11-1026

HOUSE SPONSORSHIP

Gerou,

SENATE SPONSORSHIP

Jahn,

House Committees

Economic and Business Development
Appropriations

Senate Committees

Business, Labor and Technology
Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE DESIGNATION OF STORM WATER MANAGEMENT**
102 **SYSTEM ADMINISTRATORS, AND MAKING AN APPROPRIATION**
103 **THEREFOR.**

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

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.

SENATE
3rd Reading Unam ended
April 20, 2011

SENATE
Am ended 2nd Reading
April 19, 2011

HOUSE
3rd Reading Unam ended
March 1, 2011

HOUSE
Am ended 2nd Reading
February 28, 2011

- (department), upon application, to designate one or more 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**

1 ADMINISTRATORS

2 25-8-801. Definitions. AS USED IN THIS PART 8, UNLESS THE
3 CONTEXT OTHERWISE REQUIRES:

4 (1) "ADMINISTRATOR" OR "STORM WATER MANAGEMENT SYSTEM
5 ADMINISTRATOR" MEANS A NONPROFIT ENTITY DESIGNATED BY THE
6 DIVISION TO CONDUCT THE ACTIVITIES REQUIRED UNDER THIS PART 8.

7 (2) "ADVISORY BOARD" MEANS AN OVERSIGHT GROUP,
8 ESTABLISHED AS A REQUIRED ELEMENT WITHIN EACH STORM WATER
9 MANAGEMENT SYSTEM ADMINISTRATOR'S PROGRAM, THAT IS MADE UP OF
10 VOLUNTEERS REPRESENTING INDUSTRY SECTOR STAKEHOLDERS ACTIVE IN
11 THE PROGRAM INCLUDING NONPROFIT ADMINISTRATOR REPRESENTATIVES,
12 PARTICIPANTS, PARTICIPATING MS4S, AND THIRD-PARTY AUDITORS.
13 WHILE ACTING IN THE CAPACITY OF A BOARD OF DIRECTORS, THE
14 ADVISORY BOARD HAS THE AUTHORITY TO ESTABLISH ALL PROGRAM
15 POLICIES AND PROCEDURES, COLLECT AND MAINTAIN PROGRAM RECORDS,
16 COMPILE ANNUAL PARTICIPANT PERFORMANCE SUMMARY REPORTS, AND
17 TAKE ALL NECESSARY ACTIONS TO MAINTAIN THE DEPARTMENT'S
18 DESIGNATION OF THE ADMINISTRATOR.

19 (3) "CDPS" MEANS THE COLORADO DISCHARGE PERMIT SYSTEM.

20 (4) "CDPS MS4 PERMIT" MEANS A CDPS PERMIT FOR STORM
21 WATER DISCHARGES ASSOCIATED WITH AN MS4.

22 (5) "CDPS STORM WATER CONSTRUCTION PERMIT" MEANS A CDPS
23 PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION
24 ACTIVITIES.

25 (6) "MS4" MEANS A MUNICIPAL SEPARATE STORM SEWER SYSTEM.

26 (7) "MS4 PERMITTEE" MEANS A GOVERNMENTAL ENTITY WITH A
27 CDPS PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH AN MS4.

1 (8) "PARTICIPANT" MEANS A PERSON THAT IS REQUIRED TO OBTAIN
2 A CDPS STORM WATER CONSTRUCTION PERMIT FROM THE DIVISION AND
3 THAT VOLUNTEERS TO PARTICIPATE IN A STORM WATER MANAGEMENT
4 SYSTEM PROGRAM ADMINISTERED BY A STORM WATER MANAGEMENT
5 SYSTEM ADMINISTRATOR.

6 (9) "SWMP" MEANS A STORM WATER MANAGEMENT PLAN AS
7 DEFINED IN THE CDPS PERMIT FOR STORM WATER DISCHARGES
8 ASSOCIATED WITH CONSTRUCTION ACTIVITIES.

9 (10) "THIRD-PARTY AUDITOR" MEANS A PERSON WHO MEETS THE
10 PROFESSIONAL QUALIFICATIONS DEFINED IN THE ADMINISTRATOR'S
11 WRITTEN PROGRAM AND WHO OPERATES INDEPENDENTLY FROM, AND IS
12 NOT AN EMPLOYEE OF, ANY PARTICIPANT OR MS4 IN THE
13 ADMINISTRATOR'S PROGRAM.

14 **25-8-802. Storm water management system administrator.**

15 (1) A NONPROFIT ENTITY MAY APPLY TO BE A STORM WATER
16 MANAGEMENT SYSTEM ADMINISTRATOR BY COMPLETING AN APPLICATION
17 IN SUCH FORM AS THE DIVISION MAY REQUIRE. THE DIVISION MAY
18 DESIGNATE ONE OR MORE STORM WATER MANAGEMENT SYSTEM
19 ADMINISTRATORS. TO BE DESIGNATED AS AN ADMINISTRATOR, THE
20 APPLICANT MUST DEMONSTRATE TO THE SATISFACTION OF THE DIVISION
21 THAT:

22 (a) THE APPLICANT HAS IN PLACE A STANDARDIZED COMPLIANCE
23 ASSISTANCE AND ASSURANCE PROGRAM THAT CONTAINS PROCESSES,
24 PROCEDURES, AND ASSOCIATED TRAINING FOR PARTICIPANTS THAT, WHEN
25 FULLY IMPLEMENTED BY THE PROGRAM PARTICIPANTS, WOULD RESULT IN
26 FULL COMPLIANCE WITH THE REQUIREMENTS OF THE APPLICABLE CDPS
27 STORM WATER CONSTRUCTION PERMIT. THE COMPLIANCE ASSISTANCE

1 AND ASSURANCE PROGRAM SHALL ASSURE, AT A MINIMUM, THAT EACH
2 PARTICIPANT:

3 (I) MAINTAINS A QUALIFIED PERMIT COMPLIANCE MANAGER IN
4 ACCORDANCE WITH THE CDPS STORM WATER CONSTRUCTION PERMIT AND
5 THE ADMINISTRATOR'S WRITTEN POLICIES;

6 (II) MAINTAINS COMPLETE AND UPDATED PERMIT
7 DOCUMENTATION AVAILABLE FOR INSPECTION AT THE PERMITTED
8 FACILITY;

9 (III) COMPLETES ESTABLISHED MINIMUM REQUIREMENTS FOR
10 TRAINING TO MAINTAIN PERMIT COMPLIANCE MANAGER STATUS; AND

11 (IV) COMPLIES WITH ALL APPLICABLE TERMS AND CONDITIONS
12 REQUIRED BY ANY MS4 PERMITTEE WITH JURISDICTION OVER THE
13 PARTICIPANT'S CONSTRUCTION ACTIVITIES;

14 (b) THE APPLICANT ENSURES THAT A THIRD-PARTY AUDIT OF EACH
15 PARTICIPANT FACILITY OPERATING UNDER A CDPS STORM WATER
16 CONSTRUCTION PERMIT IS COMPLETED ON A MONTHLY BASIS USING
17 STANDARDIZED INSPECTION REPORTING FORMS AND PROCEDURES
18 APPROVED BY THE DIVISION. THIRD-PARTY AUDIT REPORTS MUST INCLUDE
19 STANDARDIZED COMPLIANCE PERFORMANCE MEASUREMENT AND SCORING
20 CLEARLY DEMONSTRATING THE FOLLOWING:

21 (I) THE ADEQUACY OF IMPLEMENTATION OF EACH ASPECT OF THE
22 ADMINISTRATOR'S STORM WATER MANAGEMENT SYSTEMS;

23 (II) THE ADEQUACY OF THE SWMP IN MEETING ALL APPLICABLE
24 PERMIT REQUIREMENTS DEFINED IN THIS PART 8; AND

25 (III) THE ADEQUACY OF EACH STORM WATER MANAGEMENT
26 PRACTICE USED TO IMPLEMENT THE SWMP;

27 (c) THE APPLICANT MAINTAINS RECORDS OF ITS COMPLIANCE

1 ASSISTANCE AND ASSURANCE PROGRAM, INCLUDING A LIST OF
2 PARTICIPANTS AND EACH PARTICIPANT FACILITY, AND MONTHLY REQUIRED
3 THIRD-PARTY AUDITS, IN A FORM APPROVED BY THE DIVISION;

4 (d) THE APPLICANT HAS FULLY IMPLEMENTED THE COMPLIANCE
5 ASSISTANCE AND ASSURANCE PROGRAM WITH A SUFFICIENT NUMBER OF
6 PARTICIPANTS TO DEMONSTRATE THE ADEQUACY OF THE PROGRAM FOR
7 ONE YEAR PRIOR TO SUBMITTAL OF AN APPLICATION FOR DESIGNATION AS
8 AN ADMINISTRATOR;

9 (e) THE APPLICANT MAINTAINS AN ADVISORY BOARD THAT MEETS
10 REGULARLY, BUT NOT LESS THAN QUARTERLY, AND SUCH MEETINGS ARE
11 OPEN TO THE PUBLIC; AND

12 (f) THE APPLICANT HAS A WRITTEN STORM WATER MANAGEMENT
13 PROGRAM THAT INCLUDES:

14 (I) AN ORGANIZATIONAL CHART DEFINING RELATIONSHIPS AMONG
15 STAKEHOLDERS, INCLUDING THE ROLES AND RESPONSIBILITIES OF EACH;

16 (II) ADVISORY BOARD MAKE-UP AND ASSOCIATED POLICIES AND
17 PROCEDURES;

18 (III) PARTICIPANT POLICIES AND PROCEDURES, INCLUDING
19 PERFORMANCE STANDARDS AND MEASUREMENT METHODOLOGY;

20 (IV) THIRD-PARTY AUDITOR POLICIES AND PROCEDURES; AND

21 (V) OTHER POLICIES AND PROCEDURES THE DIVISION MAY REQUIRE
22 TO DEMONSTRATE A COMPLETE AND FUNCTIONAL PROGRAM.

23 (2) UPON THE DIVISION'S APPROVAL OF THE APPLICATION, THE
24 DIVISION SHALL DESIGNATE THE APPLICANT AS A STORM WATER
25 MANAGEMENT SYSTEM ADMINISTRATOR. THE APPLICANT SHALL
26 MAINTAIN A COMPLIANCE ASSISTANCE AND ASSURANCE PROGRAM,
27 INCLUDING REQUIRING THIRD-PARTY AUDITS AND RECORD KEEPING,

1 CONSISTENT WITH THE REQUIREMENTS OF THIS PART 8.

2 (3) A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR
3 SHALL PROVIDE TO THE DIVISION ON AT LEAST A YEARLY BASIS A
4 SUMMARY REPORT THAT DESCRIBES IN DETAIL SIGNIFICANT PROGRAM
5 ACCOMPLISHMENTS AND CHANGES AND THAT ADEQUATELY
6 DEMONSTRATES THE OVERALL PERFORMANCE OF THE ADMINISTRATOR'S
7 PROGRAM IN IMPROVING PARTICIPANT COMPLIANCE WITH THE
8 PARTICIPANTS' STORM WATER PERMITS. THE DIVISION SHALL MAKE THE
9 YEARLY ADMINISTRATOR SUMMARY REPORT AVAILABLE TO THE PUBLIC.

10 (4) TO THE EXTENT PERMITTED BY FEDERAL LAW, THE DIVISION
11 MAY REDUCE COMPLIANCE OVERSIGHT ACTIVITIES FOR FACILITIES
12 AUTHORIZED TO DISCHARGE UNDER A CDPS STORM WATER
13 CONSTRUCTION PERMIT PARTICIPATING IN A STORM WATER MANAGEMENT
14 SYSTEM ADMINISTRATOR PROGRAM BASED ON A DETERMINATION BY THE
15 DIVISION THAT THE PARTICIPANTS OR THE PARTICIPANT FACILITIES HAVE
16 A DEMONSTRATED RECORD OF REDUCED POTENTIAL FOR OCCURRENCES OF
17 NONCOMPLIANCE AND REDUCED RISK OF NEGATIVE IMPACTS ON RECEIVING
18 WATERS. THIS PART 8 DOES NOT PROHIBIT OR RESTRICT ANY COMPLIANCE
19 OVERSIGHT, INCLUDING INSPECTIONS, BY THE DIVISION.

20 (5) THE DIVISION MAY REVOKE THE DESIGNATION OF AN
21 ADMINISTRATOR FOR EVIDENCE OF REPEATED FAILURE TO MEET THE
22 REQUIREMENTS OF THIS PART 8.

23 (6) THE DISCLOSURE OF ANY INFORMATION RELATED TO A
24 PARTICIPANT'S THIRD-PARTY AUDIT TO AN ADMINISTRATOR IS NOT A
25 DISCLOSURE UNDER SECTION 25-1-114.5.

26 (7) PARTICIPATION IN A STORM WATER MANAGEMENT SYSTEM
27 ADMINISTRATOR PROGRAM BY A HOLDER OF A CDPS STORM WATER

1 CONSTRUCTION PERMIT IS STRICTLY VOLUNTARY, AND A PARTICIPANT MAY
2 END ITS PARTICIPATION AT ANY TIME UPON WRITTEN NOTICE TO THE
3 ADMINISTRATOR.

4 (8) THE ADMINISTRATOR MAY WORK WITH THE DIVISION TO
5 ESTABLISH REPORTING REQUIREMENTS ACCEPTABLE TO THE DIVISION THAT
6 WOULD ALLOW PARTICIPANTS IN THE ADMINISTRATOR'S PROGRAM TO
7 PARTICIPATE IN ENVIRONMENTAL PERFORMANCE RECOGNITION
8 PROGRAMS, INCLUDING THE DEPARTMENT'S ENVIRONMENTAL LEADERSHIP
9 PROGRAM.

10 **25-8-803. Storm water management system administrator**
11 **audits to support MS4 permittees' programs.** (1) MS4 PERMITTEES
12 MAY CHOOSE TO WORK WITH ANY ADMINISTRATOR TO ASSIST THE MS4
13 PERMITTEE IN COMPLYING WITH THE TERMS AND CONDITIONS OF THE MS4
14 PERMITTEE'S CDPS MS4 PERMIT. AN MS4 PERMITTEE MAY UTILIZE ALL,
15 OR PORTIONS OF, THE STORM WATER MANAGEMENT SYSTEM
16 ADMINISTRATOR'S PROGRAM AS PART OF THE MS4 PERMITTEE'S PROGRAM
17 FOR OVERSIGHT OF CONSTRUCTION SITES TO DEMONSTRATE COMPLIANCE
18 WITH THE REQUIREMENTS OF THE MS4 PERMITTEE'S CDPS PERMIT FOR
19 STORM WATER DISCHARGES ASSOCIATED WITH AN MS4.

20 (2) THE DIVISION MAY CONSIDER THIRD-PARTY AUDITS
21 CONDUCTED PURSUANT TO A STORM WATER MANAGEMENT SYSTEM
22 ADMINISTRATOR'S PROGRAM TO BE PART OF THE MS4 PERMITTEE'S
23 COMPLIANCE OVERSIGHT PROGRAM REQUIRED BY ITS CDPS MS4 PERMIT
24 IF THE MS4 PERMITTEE FORMALLY UTILIZES THE STORM WATER
25 MANAGEMENT SYSTEM ADMINISTRATOR'S PROGRAM THAT CONDUCTED
26 THE AUDIT, AND THE MS4 PERMITTEE IMPLEMENTS PROCEDURES TO
27 DEMONSTRATE AND REPORT TO THE DIVISION, UPON DIVISION REQUEST,

1 THAT THE ADMINISTRATOR'S PROGRAM IS MEETING THE REQUIREMENTS
2 FOR THIRD-PARTY AUDITS IN SECTION 25-8-802 (1) AND (3) FOR
3 PARTICIPANT CONSTRUCTION ACTIVITIES LOCATED WITHIN THE
4 JURISDICTION OF THE MS4 PERMITTEE.

5 (3) AN MS4 PERMITTEE MAY REDUCE COMPLIANCE OVERSIGHT
6 ACTIVITIES FOR FACILITIES AUTHORIZED TO DISCHARGE UNDER A CDPS
7 STORM WATER CONSTRUCTION PERMIT THAT ARE OPERATED BY
8 PARTICIPANTS IN A STORM WATER MANAGEMENT SYSTEM
9 ADMINISTRATOR'S PROGRAM BASED ON A DETERMINATION BY THE MS4
10 PERMITTEE THAT THE PARTICIPANTS OR PARTICIPANT FACILITIES HAVE A
11 DEMONSTRATED RECORD OF REDUCED POTENTIAL FOR OCCURRENCES OF
12 NONCOMPLIANCE AND REDUCED RISK OF NEGATIVE IMPACTS ON RECEIVING
13 WATERS. THIS PART 8 DOES NOT PROHIBIT OR RESTRICT ANY COMPLIANCE
14 OVERSIGHT, INCLUDING INSPECTIONS, BY AN MS4 PERMITTEE.

15 (4) MODIFICATION OF THE MS4 PERMITTEE'S PROGRAM IS SUBJECT
16 TO DIVISION APPROVAL IN ACCORDANCE WITH THE REQUIREMENTS OF THE
17 APPLICABLE CDPS MS4 PERMIT.

18 (5) AN MS4 PERMITTEE'S USE OF A STORM WATER MANAGEMENT
19 SYSTEM ADMINISTRATOR'S PROGRAM IS STRICTLY VOLUNTARY, AND AN
20 MS4 PERMITTEE MAY END ITS USE OF THE PROGRAM AT ANY TIME UPON
21 WRITTEN NOTICE TO THE ADMINISTRATOR.

22 (6) NOTHING IN THIS PART 8 GRANTS REGULATORY AUTHORITY TO
23 A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR OR THE
24 AUTHORITY TO IMPOSE ANY FINE.

25 (7) NOTHING IN THIS PART 8 PREEMPTS OR SUPERSEDES ANY
26 AUTHORITY OF AN MS4 PERMITTEE, OR ANY OTHER LOCAL AGENCY.

27 (8) NOTHING IN THIS PART 8 REMOVES, REDUCES, OR TRANSFERS

1 THE RESPONSIBILITY FOR COMPLIANCE WITH AN MS4 PERMIT FROM THE
2 MS4 PERMITTEE.

3 SECTION 2. 25-8-608 (1.7) (a) (II) and (1.7) (a) (III), Colorado
4 Revised Statutes, are amended, and the said 25-8-608 (1.7) is further
5 amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

6 25-8-608. Civil penalties - rules - fund created. (1.7) (a) The
7 department shall expend moneys in the water quality improvement fund
8 for the following purposes:

9 (II) Providing grants for storm water projects or to assist with
10 planning, design, construction, or repair of domestic wastewater treatment
11 works; or

12 (III) Providing the nonfederal match funding for nonpoint source
13 projects under 33 U.S.C. sec. 1329; OR

14 (IV) PROVIDING GRANTS FOR STORM WATER MANAGEMENT
15 TRAINING AND BEST PRACTICES TRAINING TO PREVENT OR REDUCE THE
16 POLLUTION OF STATE WATERS.

17 SECTION 3. Appropriation. In addition to any other
18 appropriation, there is hereby appropriated to the department of public
19 health and environment for allocation to the water quality control
20 division, for the fiscal year beginning July 1, 2011, the sum of ninety-nine
21 thousand four hundred thirty-six dollars (\$99,436) and 0.6 FTE, or so
22 much thereof as may be necessary, for the implementation of this act. Of
23 said sum, forty-nine thousand four hundred thirty-six dollars (\$49,436)
24 and 0.6 FTE shall be from cash funds from the water quality control fund
25 created in section 25-8-502 (1) (c), Colorado Revised Statutes, and fifty
26 thousand dollars (\$50,000) shall be from cash funds from the water
27 quality improvement fund created in section 25-8-608 (1.5), Colorado

1 Revised Statutes.

2 **SECTION 4. Act subject to petition - effective date -**

3 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day

4 following the expiration of the ninety-day period after final adjournment

5 of the general assembly (August 10, 2011, if adjournment sine die is on

6 May 11, 2011); except that, if a referendum petition is filed pursuant to

7 section 1 (3) of article V of the state constitution against this act or an

8 item, section, or part of this act within such period, then the act, item,

9 section, or part shall not take effect unless approved by the people at the

10 general election to be held in November 2012 and shall take effect on the

11 date of the official declaration of the vote thereon by the governor.

12 (2) The provisions of this act shall apply to the regulation of storm

13 water on or after the applicable effective date of this act.