

**First Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 11-0187.01 Bart Miller

**HOUSE BILL 11-1026**

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**HOUSE SPONSORSHIP**

**Gerou,**

**SENATE SPONSORSHIP**

**(None),**

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**House Committees**

Economic and Business Development  
Appropriations

**Senate Committees**

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**A BILL FOR AN ACT**

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

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**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.

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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 ACHIEVE THE GOALS OF THE NPDES;

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

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

25           **25-8-802. Definitions.** AS USED IN THIS PART 8, UNLESS THE  
26 CONTEXT OTHERWISE REQUIRES:

27           (1) "ADMINISTRATOR" OR "STORM WATER MANAGEMENT SYSTEM

1 ADMINISTRATOR" MEANS A NONPROFIT ENTITY DESIGNATED BY THE  
2 DEPARTMENT TO CONDUCT THE ACTIVITIES REQUIRED UNDER SECTION  
3 25-8-803.

4 (2) "CDPS" MEANS THE COLORADO DISCHARGE PERMIT SYSTEM.

5 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH  
6 AND ENVIRONMENT.

7 (4) "MS4" MEANS A MUNICIPAL SEPARATE STORM SEWER SYSTEM.

8 (5) "MS4 REGULATOR" MEANS A GOVERNMENTAL ENTITY WITH  
9 CDPS PERMIT RESPONSIBILITIES FOR DISCHARGES FROM AN MS4.

10 (6) "NPDES" MEANS THE NATIONAL POLLUTANT DISCHARGE  
11 ELIMINATION SYSTEM.

12 **25-8-803. Designation of storm water management system**

13 **administrator.** (1) UPON APPLICATION OF A QUALIFIED ENTITY IN SUCH  
14 FORM AS THE DEPARTMENT MAY REQUIRE, AND UPON THE DEPARTMENT'S  
15 APPROVAL OF THE APPLICATION, THE DEPARTMENT SHALL DESIGNATE ONE  
16 OR MORE STORM WATER MANAGEMENT SYSTEM ADMINISTRATORS THAT  
17 MEET THE CRITERIA OF THIS SECTION. A STORM WATER MANAGEMENT  
18 SYSTEM ADMINISTRATOR SHALL OPERATE AS A NONPROFIT ENTITY. ANY  
19 ADMINISTRATOR APPLICANT TO THE DEPARTMENT MUST DEMONSTRATE ITS  
20 ABILITY TO IMPLEMENT A STANDARDIZED CDPS STORM WATER  
21 CONSTRUCTION GENERAL PERMIT COMPLIANCE ASSISTANCE AND  
22 ASSURANCE PROGRAM. FURTHER, THE APPLICANT MUST REASONABLY  
23 DEMONSTRATE TO THE SATISFACTION OF THE DEPARTMENT THAT THE  
24 PROGRAM CONTAINS PROCESSES, PROCEDURES, AND ASSOCIATED  
25 TRAINING FOR PARTICIPANTS THAT, WHEN FULLY IMPLEMENTED, WOULD  
26 RESULT IN FULL COMPLIANCE WITH THE STORM WATER CONSTRUCTION  
27 GENERAL PERMIT ON EACH OF THE PARTICIPANTS' PERMITTED

1 CONSTRUCTION PROJECTS.

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

7 (I) MAINTAINING A QUALIFIED PERMIT COMPLIANCE MANAGER IN  
8 ACCORDANCE WITH THE TERMS OF THE PARTICIPANT'S DISCHARGE PERMIT;

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

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

15 (IV) COMPLYING WITH LOCAL MS4 PERMIT REQUIREMENTS; AND

16 (V) DEMONSTRATING THAT THIRD-PARTY INSPECTORS  
17 CONDUCTING SELF-AUDITS UNDER AN ADMINISTRATOR'S PROGRAM ARE  
18 QUALIFIED AND ARE INSPECTING IN ACCORDANCE WITH THE STANDARDS  
19 OF THE STATE AND MS4 CONSTRUCTION PERMITS.

20 (b) AN APPLICANT FOR DESIGNATION AS A STORM WATER  
21 MANAGEMENT SYSTEM ADMINISTRATOR MUST DEMONSTRATE TO THE  
22 DEPARTMENT AT LEAST ONE YEAR OF FULL PROGRAM IMPLEMENTATION,  
23 ADMINISTRATION, AND RECORD-KEEPING THAT MEETS ALL OF THE  
24 REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (2).

25 (3) (a) THE DEPARTMENT SHALL REQUIRE THAT THE STORM WATER  
26 MANAGEMENT SYSTEM ADMINISTRATOR REQUIRE MONTHLY THIRD-PARTY  
27 AUDITS OF ALL PROGRAM PARTICIPANTS' PERMITTED CONSTRUCTION

1 PROJECTS TO BE PERFORMED USING STANDARDIZED,  
2 DEPARTMENT-APPROVED INSPECTION REPORTING FORMS AND  
3 PROCEDURES.

4 (b) THE STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR  
5 SHALL WORK WITH THE DEPARTMENT TO ESTABLISH REPORTING  
6 REQUIREMENTS ACCEPTABLE TO THE DEPARTMENT WHICH WOULD ALLOW  
7 PARTICIPANTS IN THE ADMINISTRATOR'S PROGRAM TO PARTICIPATE IN  
8 ENVIRONMENTAL PERFORMANCE RECOGNITION PROGRAMS, INCLUDING  
9 THE DEPARTMENT'S ENVIRONMENTAL LEADERSHIP PROGRAM.

10 (4) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR THE  
11 EXECUTIVE DIRECTOR'S DESIGNEE MAY SERVE AS A MEMBER OF THE  
12 GOVERNING BODY OF EACH STORM WATER MANAGEMENT SYSTEM  
13 ADMINISTRATOR.

14 (5) (a) AFTER PROVIDING WRITTEN NOTICE OUTLINING THE  
15 DEFICIENCIES OF A STORM WATER MANAGEMENT SYSTEM  
16 ADMINISTRATOR'S PROGRAMS AND GIVING THE ADMINISTRATOR SIXTY  
17 DAYS TO CURE THOSE DEFICIENCIES, THE DEPARTMENT MAY REVOKE THE  
18 DESIGNATION OF A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR.

19 (b) THE DEPARTMENT MAY ALSO REVOKE THE DESIGNATION OF A  
20 STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR FOR REPEATED  
21 FAILURE TO CURE THE SAME DEFICIENCIES IF THE DEPARTMENT MEETS THE  
22 NOTICE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (5).

23 (6) THE DISCLOSURE OF A PARTICIPANT'S SUMMARY OF SELF-AUDIT  
24 PERFORMANCE RESULTS TO A STORM WATER MANAGEMENT SYSTEM  
25 ADMINISTRATOR IS NOT A DISCLOSURE UNDER SECTIONS 25-1-114.5 AND  
26 13-25-126.5, C.R.S., AND IN NO WAY REDUCES THE RIGHTS AVAILABLE TO  
27 A PARTICIPANT UNDER THOSE SECTIONS.

1 (7) PARTICIPATION IN A STORM WATER MANAGEMENT SYSTEM  
2 ADMINISTRATOR'S PROGRAM BY A HOLDER OF A CONSTRUCTION PERMIT IS  
3 STRICTLY VOLUNTARY.

4 **25-8-804. Storm water management system administrator**  
5 **audits part of MS4 storm water discharge control program.** (1) THE  
6 DEPARTMENT MAY CONSIDER A STORM WATER MANAGEMENT SYSTEM  
7 ADMINISTRATOR'S SELF-AUDIT TO BE PART OF THE MS4 REGULATOR'S  
8 COMPLIANCE OVERSIGHT PROGRAM CONDUCTED IN THE COURSE OF  
9 MEETING THE CDPS REQUIREMENTS FOR DISCHARGE FROM AN MS4 IF THE  
10 MS4 REGULATOR FORMALLY PARTICIPATES IN THE ADMINISTRATOR'S  
11 PROGRAM THAT CONDUCTED THE SELF-AUDIT.

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

16 (3) UPON DEPARTMENT APPROVAL, MS4S VOLUNTARILY  
17 PARTICIPATING IN A STORM WATER MANAGEMENT SYSTEM  
18 ADMINISTRATOR'S PROGRAM MAY CHOOSE TO RELY ON ALL, OR PORTIONS  
19 OF, THE DESIGNATED ADMINISTRATOR'S PROGRAM TO MEET THE MS4'S  
20 OWN PERMIT REQUIREMENTS REGARDING OVERSIGHT OF CONSTRUCTION  
21 SITES WHILE STILL MEETING THE MINIMUM MS4 PERMIT REQUIREMENTS.  
22 AN MS4 MAY CEASE VOLUNTARY RELIANCE ON AN ADMINISTRATOR'S  
23 PROGRAM TO MEET THE MS4'S PERMIT REQUIREMENTS AT ANY TIME IF THE  
24 MS4 GIVES REASONABLE NOTICE OF INTENT TO END SUCH RELIANCE TO  
25 THE DEPARTMENT AND THE ADMINISTRATOR.

26 (4) PARTICIPATION BY AN MS4 IN A STORM WATER MANAGEMENT  
27 SYSTEM ADMINISTRATOR'S PROGRAM IS STRICTLY VOLUNTARY, AND AN

1 MS4 MAY END ITS PARTICIPATION AT ANY TIME.

2 (5) NOTHING IN THIS PART 8 GIVES A STORM WATER MANAGEMENT  
3 SYSTEM ADMINISTRATOR REGULATORY AUTHORITY OR THE AUTHORITY TO  
4 IMPOSE ANY FINE.

5 (6) NOTHING IN THIS PART 8 LIMITS THE AUTHORITY OF AN MS4 TO  
6 IMPLEMENT AN MS4'S PERMIT AND DOES NOT SUPERSEDE THE MS4'S  
7 REQUIREMENTS.

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

11 **25-8-608. Civil penalties - rules - fund created.** (1.7) (a) The  
12 department shall expend moneys in the water quality improvement fund  
13 for the following purposes:

14 (II) Providing grants for storm water projects or to assist with  
15 planning, design, construction, or repair of domestic wastewater treatment  
16 works; ~~or~~

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

19 (IV) PROVIDING GRANTS FOR STORM WATER MANAGEMENT BEST  
20 PRACTICES TRAINING.

21 **SECTION 3. Act subject to petition - effective date -**  
22 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day  
23 following the expiration of the ninety-day period after final adjournment  
24 of the general assembly (August 10, 2011, if adjournment sine die is on  
25 May 11, 2011); except that, if a referendum petition is filed pursuant to  
26 section 1 (3) of article V of the state constitution against this act or an  
27 item, section, or part of this act within such period, then the act, item,



1 section, or part shall not take effect unless approved by the people at the  
2 general election to be held in November 2012 and shall take effect on the  
3 date of the official declaration of the vote thereon by the governor.

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