

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 10, 2011
Date

Committee on Economic and Business Development.

After consideration on the merits, the Committee recommends the following:

HB11-1026 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

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

5 PART 8
6 STORM WATER MANAGEMENT SYSTEM
7 ADMINISTRATORS

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

10 (a) THE FEDERAL ACT REQUIRES CONSTRUCTION PROJECT OWNERS
11 AND CONTRACTORS TO CONTROL THE DISCHARGE OF POLLUTANTS
12 RELATED TO STORM WATER RUNOFF AND EROSION DISCHARGED FROM A
13 CONSTRUCTION SITE;

14 (b) THE DEPARTMENT IS THE AUTHORIZED PERMITTING AUTHORITY
15 FOR THE NPDES SYSTEM FOR MOST AREAS WITHIN COLORADO AND,
16 UNDER THAT AUTHORITY, ISSUES STORM WATER DISCHARGE PERMITS TO
17 MS4s, FACILITY OPERATORS, AND CONSTRUCTION SITE OPERATORS;

18 (c) IN TIGHT BUDGETARY TIMES, WHEN THERE ARE INSUFFICIENT
19 RESOURCES FOR COMPLIANCE ASSURANCE AND ASSISTANCE PROGRAMS TO
20 BE ADEQUATELY IMPLEMENTED BY THE REGULATORY AGENCIES, STATE
21 AND MS4 REGULATORS MUST LOOK FOR INNOVATIVE WAYS TO
22 ENCOURAGE INDUSTRY TO ACHIEVE THE GOALS OF THE NPDES;

23 (d) THE CONSTRUCTION INDUSTRY HAS DEVELOPED AN

1 INNOVATIVE PROGRAM TO PROVIDE COMPLIANCE ASSISTANCE AND TO
2 MONITOR AND AUDIT ITSELF TO MEASURE AND FACILITATE COMPLIANCE
3 IMPROVEMENTS;

4 (e) FORMAL DEPARTMENT RECOGNITION OF AN ENVIRONMENTAL
5 MANAGEMENT SYSTEM-BASED INDUSTRY SELF-AUDIT PROGRAM SUCH AS
6 A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR IS NEEDED TO
7 FACILITATE EFFECTIVE PLANNING AND ENCOURAGE INCREASED PROGRAM
8 PARTICIPATION.

9 **25-8-802. Definitions.** AS USED IN THIS PART 8, UNLESS THE
10 CONTEXT OTHERWISE REQUIRES:

11 (1) "ADMINISTRATOR" OR "STORM WATER MANAGEMENT SYSTEM
12 ADMINISTRATOR" MEANS A NONPROFIT ENTITY DESIGNATED BY THE
13 DEPARTMENT TO CONDUCT THE ACTIVITIES REQUIRED UNDER SECTION
14 25-8-803.

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

16 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
17 AND ENVIRONMENT.

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

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

21 (6) "NPDES" MEANS THE NATIONAL POLLUTANT DISCHARGE
22 ELIMINATION SYSTEM.

23 **25-8-803. Designation of storm water management system**

24 **administrator.** (1) UPON APPLICATION OF A QUALIFIED ENTITY IN SUCH
25 FORM AS THE DEPARTMENT MAY REQUIRE, AND UPON THE DEPARTMENT'S
26 APPROVAL OF THE APPLICATION, THE DEPARTMENT SHALL DESIGNATE ONE
27 OR MORE STORM WATER MANAGEMENT SYSTEM ADMINISTRATORS THAT
28 MEET THE CRITERIA OF THIS SECTION. A STORM WATER MANAGEMENT
29 SYSTEM ADMINISTRATOR SHALL OPERATE AS A NONPROFIT ENTITY. ANY
30 ADMINISTRATOR APPLICANT TO THE DEPARTMENT MUST DEMONSTRATE ITS
31 ABILITY TO IMPLEMENT A STANDARDIZED CDPS STORM WATER
32 CONSTRUCTION GENERAL PERMIT COMPLIANCE ASSISTANCE AND
33 ASSURANCE PROGRAM. FURTHER, THE APPLICANT MUST REASONABLY
34 DEMONSTRATE TO THE SATISFACTION OF THE DEPARTMENT THAT THE
35 PROGRAM CONTAINS PROCESSES, PROCEDURES, AND ASSOCIATED
36 TRAINING FOR PARTICIPANTS THAT, WHEN FULLY IMPLEMENTED, WOULD
37 RESULT IN FULL COMPLIANCE WITH THE STORM WATER CONSTRUCTION
38 GENERAL PERMIT ON EACH OF THE PARTICIPANTS' PERMITTED
39 CONSTRUCTION PROJECTS.

40 (2) (a) A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR
41 MUST BE ABLE TO REASONABLY DEMONSTRATE TO THE DEPARTMENT THE

1 ABILITY TO ASSIST ITS PARTICIPATING CONTRACTOR AND OWNER MEMBERS
2 TO MEET ALL OF THE REQUIREMENTS OF A CONSTRUCTION DISCHARGE
3 PERMIT, INCLUDING:

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

6 (II) MAINTAINING COMPLETE AND UPDATED PERMIT
7 DOCUMENTATION AVAILABLE FOR INSPECTION BY REGULATORS ON THE
8 ACTIVE, PERMITTED SITE;

9 (III) COMPLETING ESTABLISHED MINIMUM REQUIREMENTS OF THE
10 STORM WATER MANAGEMENT SYSTEM FOR TRAINING TO MAINTAIN PERMIT
11 COMPLIANCE MANAGER STATUS;

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

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

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

22 (3) (a) THE DEPARTMENT SHALL REQUIRE THAT THE STORM WATER
23 MANAGEMENT SYSTEM ADMINISTRATOR REQUIRE MONTHLY THIRD-PARTY
24 AUDITS OF ALL PROGRAM PARTICIPANTS' PERMITTED CONSTRUCTION
25 PROJECTS TO BE PERFORMED USING STANDARDIZED,
26 DEPARTMENT-APPROVED INSPECTION REPORTING FORMS AND
27 PROCEDURES.

28 (b) THE STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR
29 SHALL WORK WITH THE DEPARTMENT TO ESTABLISH REPORTING
30 REQUIREMENTS ACCEPTABLE TO THE DEPARTMENT WHICH WOULD ALLOW
31 PARTICIPANTS IN THE ADMINISTRATOR'S PROGRAM TO PARTICIPATE IN
32 ENVIRONMENTAL PERFORMANCE RECOGNITION PROGRAMS, INCLUDING
33 THE DEPARTMENT'S ENVIRONMENTAL LEADERSHIP PROGRAM.

34 (4) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR THE
35 EXECUTIVE DIRECTOR'S DESIGNEE MAY SERVE AS A MEMBER OF THE
36 GOVERNING BODY OF EACH STORM WATER MANAGEMENT SYSTEM
37 ADMINISTRATOR.

38 (5) (a) AFTER PROVIDING WRITTEN NOTICE OUTLINING THE
39 DEFICIENCIES OF A STORM WATER MANAGEMENT SYSTEM
40 ADMINISTRATOR'S PROGRAMS AND GIVING THE ADMINISTRATOR SIXTY
41 DAYS TO CURE THOSE DEFICIENCIES, THE DEPARTMENT MAY REVOKE THE

1 DESIGNATION OF A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR.
2 (b) THE DEPARTMENT MAY ALSO REVOKE THE DESIGNATION OF A
3 STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR FOR REPEATED
4 FAILURE TO CURE THE SAME DEFICIENCIES IF THE DEPARTMENT MEETS THE
5 NOTICE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (5).
6 (6) THE DISCLOSURE OF A PARTICIPANT'S SUMMARY OF SELF-AUDIT
7 PERFORMANCE RESULTS TO A STORM WATER MANAGEMENT SYSTEM
8 ADMINISTRATOR IS NOT A DISCLOSURE UNDER SECTIONS 25-1-114.5 AND
9 13-25-126.5, C.R.S., AND IN NO WAY REDUCES THE RIGHTS AVAILABLE TO
10 A PARTICIPANT UNDER THOSE SECTIONS.
11 (7) PARTICIPATION IN A STORM WATER MANAGEMENT SYSTEM
12 ADMINISTRATOR'S PROGRAM BY A HOLDER OF A CONSTRUCTION PERMIT IS
13 STRICTLY VOLUNTARY.
14 **25-8-804. Storm water management system administrator**
15 **audits part of MS4 storm water discharge control program.** (1) THE
16 DEPARTMENT MAY CONSIDER A STORM WATER MANAGEMENT SYSTEM
17 ADMINISTRATOR'S SELF-AUDIT TO BE PART OF THE MS4 REGULATOR'S
18 COMPLIANCE OVERSIGHT PROGRAM CONDUCTED IN THE COURSE OF
19 MEETING THE CDPS REQUIREMENTS FOR DISCHARGE FROM AN MS4 IF THE
20 MS4 REGULATOR FORMALLY PARTICIPATES IN THE ADMINISTRATOR'S
21 PROGRAM THAT CONDUCTED THE SELF-AUDIT.
22 (2) AN MS4 REGULATOR MAY PRIORITIZE INSPECTIONS FOR THOSE
23 NOT PARTICIPATING IN A STORM WATER MANAGEMENT SYSTEM
24 ADMINISTRATOR'S PROGRAM. THIS PART 8 DOES NOT PREVENT ANY
25 INSPECTION BY AN MS4 REGULATOR.
26 (3) UPON DEPARTMENT APPROVAL, MS4S VOLUNTARILY
27 PARTICIPATING IN A STORM WATER MANAGEMENT SYSTEM
28 ADMINISTRATOR'S PROGRAM MAY CHOOSE TO RELY ON ALL, OR PORTIONS
29 OF, THE DESIGNATED ADMINISTRATOR'S PROGRAM TO MEET THE MS4'S
30 OWN PERMIT REQUIREMENTS REGARDING OVERSIGHT OF CONSTRUCTION
31 SITES WHILE STILL MEETING THE MINIMUM MS4 PERMIT REQUIREMENTS.
32 AN MS4 MAY CEASE VOLUNTARY RELIANCE ON AN ADMINISTRATOR'S
33 PROGRAM TO MEET THE MS4'S PERMIT REQUIREMENTS AT ANY TIME IF THE
34 MS4 GIVES REASONABLE NOTICE OF INTENT TO END SUCH RELIANCE TO
35 THE DEPARTMENT AND THE ADMINISTRATOR.
36 (4) PARTICIPATION BY AN MS4 IN A STORM WATER MANAGEMENT
37 SYSTEM ADMINISTRATOR'S PROGRAM IS STRICTLY VOLUNTARY, AND AN
38 MS4 MAY END ITS PARTICIPATION AT ANY TIME.
39 (5) NOTHING IN THIS PART 8 GIVES A STORM WATER MANAGEMENT
40 SYSTEM ADMINISTRATOR REGULATORY AUTHORITY OR THE AUTHORITY TO
41 IMPOSE ANY FINE.

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

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

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

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

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

15 (IV) PROVIDING GRANTS FOR STORM WATER MANAGEMENT BEST
16 PRACTICES TRAINING.

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

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

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