

MS4 RENEWAL PERMIT UPDATE



December
2013

- **December 16, 2013: Public Testimony Meeting for those not providing written comments**
- **December 18, 2013: SEMSWA meeting with Division staff re our comments**
- **January 10, 2104: comments due to Division**
- **Division review & response to comments: January thru April+ (estimated)**
- **Permit issuance: unknown**

PERMIT TIMELINE

Division indicated at a local conference presentation December 4th that they are willing to grant another year Administrative Extension for the Permit to provide the Division ample time to 'get it right', meaning our existing permit may be in effect possibly up to March 10, 2015.



- ☐ SEMSWA staff reviewing and commenting through Colorado Stormwater Council Work Groups for each permit program
- ☐ CSC has compiled a total of 60 pages of comments; over 50% are on language used, because 'words do make a difference'
- ☐ Major issues identified by Council
 - ☐ Prescriptive permit, going away from individual MS4 Maximum Extent Practicable (MEP) to Division established MEP; more of a 'one-size-fits-all' for all 60 state MS4s
 - ☐ Documentation and organizational efforts are extreme and do not have a nexus to improving WQ; reason given for new requirements is that the Division wants easier audits
 - ☐ Some of the major changes to permit do not meet the intent of Regulation 61 which establishes the State's regulatory approach to implementing the Federal Clean Water Act, nor do they provide for actual protection of water quality (recordkeeping is a good example)

PERMIT REVIEW PROCESS TO DATE

SEMSWA internal review by WQ and Land Development staff; by WQ staff participating in CO Stormwater Council work groups and CCBWQA TAC



- ☐ Division has made this permit reflect the 'average of the best existing' MS4 programs which does not allow gradual changes to the permit for everyone to catch up – no one MS4 has the 6 "best" programs; they put resources where they feel it is needed for their community. Even the "best" MS4s will be out of compliance day 1 in one or more of the program areas
- ☐ Monitoring requirement for TMDL development is not justified, is the Division's responsibility, and should not be part of an MS4 General Permit
- ☐ Senate Bill 73 - in response to the industrial stormwater permit renewal process - specifically C.R.S.25-8-503.5 obligations are not met, specifically 1) clear explanation of the proposed changes in a Statement of Basis and Purpose; 2) provide sufficient evidence to support the proposed changes and justify how the new requirements would improve water quality; 3) consider a Cost Benefit Analysis (CBA)
- ☐ CSC is conducting their own CBA for several of the new requirements that they feel puts an unreasonable cost burden on MS4s, including recordkeeping, prescriptive processes and monitoring
- ☐ CSC has hired legal firm to comment on renewal permit

CSC GENERAL COMMENTS CONTINUED

SEMSWA has strong Programs 4 (GESD) and 5 (Permanent BMPs) because of Cherry Creek Control Reg. and strong IDDE because of ACSO and County MOU cooperation, but Education & Outreach (1) and Municipal Operations (6) are adequate and probably not the "best of the best"

- SEMSWA's GESC program and Permanent BMP approach is effective, meets intent of Reg 61 and Reg 72, and should be an acceptable alternative to renewal permit requirements
- SEMSWA IDDE Manual/Process is effective, meets intent of Regulation 61 and 72, and should be an acceptable alternative
- SEMSWA Regional WQ Approach meets Reg 72 water quality protection goals; MS4 permit should not be more stringent (drinking water)
- Renewal Permit is more stringent in some aspects than Reg 72 and 85 (nutrients), which have had strong WQ Commission involvement
- Additional comments on definitions, language, and onerous recordkeeping
 - Land use agencies have definitions in code that need to be recognized and maintained
 - Centralized database for IDDE is onerous
 - All BMP references if changed to 'Control Measure' in regulatory mechanisms would be significant effort

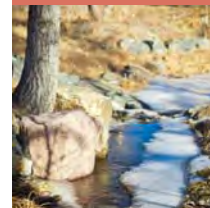
SEMSWA ISSUES WITH THE PERMIT

Less impact to SEMSWA than majority of MS4s because of the commitment early on by AC and City to implement comprehensive Best Management Practices for key program areas, like construction site controls (GESC) and post-construction controls required by Cherry Creek Control Reg 72.

- ❑ The selected MS4s that did not have a program sufficient to meet Regulation 61 should have been worked with in some manner, not let it build up to an entire permit revision in order to make sure the Division can now enforce what most of us have been doing for 2 permit terms
- ❑ SEMSWA would be out of compliance day 1 w/ recordkeeping, really?
- ❑ MEP, using Best Management Practices as a strategy, was provided to Phase IIs to acknowledge that stormwater is not a point source and cannot be regulated with numeric criteria or Effluent Limitation Guidelines (ELGs). The State is moving from BMPs to 'Control Measures that achieve effluent limitations' and "practice-based effluent limits"; all of this is deviating from the practical/reasonable cost/improves water quality implementation strategies we have been known for, especially in the Cherry Creek basin
- ❑ Allow 'equivalent area' approach and WQ trading/exchanges for Permanent BMPs, especially roadways: doing something for WQ is better than doing nothing and much better than onerous tracking of BMP exclusions to see what impervious area was 'missed'
- ❑ Allow MS4-specific alternative standards based on real data, studies and on-the-ground experience
- ❑ This overly prescriptive permit only benefits an audit, not WQ; Permits should be made simpler, not more complex, as regulating agencies are already tainted by process overload with no commensurate results

GENERAL COMMENTS

Just a few moments to whine about the permit ☺



- Prepare Comment Letter to Division by January 10th
- Keep strengthening programs to meet our resource goals
- Write our Program Descriptions to leave no doubt we have equivalent programs that meet intent of 61
- Be ready to “sell” what we do now as effective and equivalent



NEXT STEPS

It's kind of a "wait and see" scenario after comments are turned in. The WQ Group and SEMSWA staff in general are solution finders, not just problem identifiers, so our approach will be to outsmart the system to meet what SEMSWA and our ratepayers need for improving water quality. ☺

QUESTIONS?

