



COLORADO
Department of Transportation
Office of the Chief Engineer

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MEMORANDUM

DATE: DECEMBER 18; 2019 (ORIGINALLY ISSUED MARCH 28, 2016)
TO: REGION TRANSPORTATION DIRECTORS, PROGRAM ENGINEERS, RESIDENT ENGINEERS,
REGION ENVIRONMENTAL PROGRAM ENGINEERS
FROM: STEPHEN HARELSON, CHIEF ENGINEER/DIRECTOR OF STORMWATER COMPLIANCE
SUBJECT: EPA AUDIT FINDING - COMPLIANCE WITH SPECIFICATION 208.09 - REISSUED (with minor changes)

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This Chief Engineer Memorandum is being reissued to announce stormwater management process changes initiated by the findings of an Environmental Protection Agency (EPA) audit and follow-up inspection. A Construction Bulletin was issued under separate cover to provide more detailed information to address the EPA audit findings and achieve program compliance (issued October 20, 2016).

The EPA conducted an audit of the CDOT Municipal Separate Storm Sewer System (MS4) Stormwater Permit from March 30 - April 2, 2015, and conducted a follow up inspection from April 8 - 10, 2019. The audit and inspection were part of EPA's "Municipal Infrastructure National Enforcement Initiative" and included statewide documentation review and field inspections of applicable program areas.

The audit report was delivered to CDOT by EPA on September 30, 2015. CDOT reviewed the findings and, in early December 2015, provided preliminary responses back to EPA addressing the audit findings and implementing corrective actions. The follow-up inspection report was delivered to CDOT by EPA on June 24, 2019, and noted continued areas of noncompliance. A response to the 2019 followup inspection was provided to the EPA on July 23, 2019 and, as part of our response, CDOT agreed to reissue this memorandum to facilitate continued compliance with our MS4 permit.

We are actively pursuing the corrective actions/recommendations stipulated by the EPA to document compliance throughout our program. It is our hope that by moving forward on addressing these corrective actions we can get our program in compliance that much sooner. The one finding and specific change I would like to address in this memorandum is EPA's audit finding relating to CDOT's regulatory authority described in Specification 208.09; specifically, the failure to implement the stipulations of issuing Liquidated Damages (LDs) and Stop Work Orders. This specification applies to all projects regardless of the type of contracting mechanism.

As documented in ESCAN, the percentage of findings corrected within the allotted timeframe is reported in the Department's Lead/Lag performance measure report. The ESCAN report indicates that CDOT is not achieving the stated goals regarding water quality erosion and sediment control inspections. This metric is viewed by CDOT executive management as instrumental to the performance success of permit compliance and avoidance of project Stop Work Orders or LDs which affect project schedule and costs.



Here is where I need your assistance in ensuring that CDOT properly administers erosion control on all CDOT projects and remains in compliance on this issue:

- Understand and follow Specification 208.09 as this is our regulatory authority. Therefore, compliance with this Specification is commensurate with compliance with the Construction Program in accordance with the MS4 permit.
- Understand that versions of Specification 208.09 applicable for projects advertised on or after April 21, 2016 changes "may" to "will" with respect to the CDOT Project Engineer issuing 105(s), LDs and Stop Work Orders. Note the new escalation procedure stated in the Specification (included in all projects with AD on or after April 21, 2016) if the contractor fails to address the finding.
- Recognize that with the issuance of revised Specification 208.09 in 2017 and again in 2018, there may be different versions of this Specification in use. The version of the Specification you are using for your project will determine if you are to follow the Specification as written, or if you are to apply the interpretation of the Specification as noted in the following bullet.
- Interpret "may" as "will" in Specification 208.09 if a project was advertised before April 21, 2016. Project Engineers will issue LDs and/or Stop Work Orders and require the Contractor to submit a Corrective Action Plan. The EPA finding relating to CDOT's regulatory authority noted that CDOT was not following the Specification in issuing Stop Work Orders after the corrections were not completed within 48 hours and/or discharges into state waters. Documenting your decisions/actions can make the difference in demonstrating meeting compliance for those challenging times where the Contractor is doing their best to address the situation. For any assistance, contact your Region Water Quality Pollution Control Manager (RWPCM).
- Track all actions in ESCAN, CDOT's computer application used to track Headquarters and Region inspections that are required by the Colorado Department of Health and Environment (CDPHE), the CDOT Construction Manual, and our Specifications. ESCAN reporting is important because CDOT depends on these queries as proof of compliance and assurance that we are following our procedures. If Headquarters or Region inspections resulting in corrective actions are not reported in the ESCAN tool - Corrective Action Response Log (CARL), the report will show the finding as not completed within the required timeframe, even if the Project Engineer and the Contractor have come to an agreement about the fix.
- Note that ESCAN has been updated to include the new deferment process, which has been written into Specification 208.09 for projects advertised on or after April 21, 2019. The deferment process allows for a period of time (to be determined by PE, RWPCM and Contractor) that penalties will be suspended, temporarily, for extraordinary circumstances where it is impossible to meet the deadline. **Note, a deferment does NOT preclude the Contractors obligation to stay in compliance with their stormwater construction permit and to implement corrective actions as soon as possible, immediately in most cases.** A deferment only suspends penalties. If using the former version of ESCAN (ESCAN 1.0), close out the finding upon implementation of an alternative corrective action and document the final completion date for the approved final corrective actions that are justified in requiring more than 48 hours of time to complete in the notes.



- Use ESCAN to track the CDOT Form 105(s) associated with compliance to the MS4 process and stormwater related Form 105(s). This importance is based on how CDOT tracks compliance on project sites and the need for this information to be readily accessible within the ESCAN software for our Lead/Lag performance measures, the required CDPHE Annual Report, compliance within CDOT MS4 Program, and the ability to flag those projects that are out of compliance and address internally in a timely manner.
- Issue inspection form 105(s) related to water quality the same day as the inspection report is issued. This ensures that the timelines related to Specification 208.09 are synced with the ESCAN/CARL program.

Thank you all in advance in assisting with these important compliance issues. More information will be forthcoming related to addressing the EPA findings. Know that this information is important and we need everyone to do their part by following the Specifications and the process to keep the program in compliance. Please share this Memorandum with all of your design and construction staff and also consultants working on CDOT projects.

