



Environmental Bulletin



CONSTRUCTION

Revised Title: Permitting of Related Construction Activities and Facilities
(107.25(c) and 208.04(c)) during project construction

Original Title: Permitting of Construction Support Activities and Facilities

Bulletin #: 21-001

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Issued by: Jean Cordova, CDOT Water Quality Section Manager

TO: All CDOT project design and field personnel

SUBJECT: To clarify how to implement and permit Common Plan of Development areas per 107.25(c) and 208.04(c) CDOT specifications for compliance with the April 2019 SCP and associated modifications.

The Colorado Department of Public Health and Environment (CDPHE) - Water Quality Control Division (the Division) renewed the Colorado Discharge Permit System - Stormwater Construction Permit (SCP), COR-400000, effective April 1st, 2019. Owners and operators of those permitted projects are now identified as co-permittees on the SCP. The permit defines Owner as "The party that has overall control of the activities and that has funded the implementation of the construction plans and specifications. **This is the party with ownership of, a long term lease of, or easements on the property on which the construction activity is occurring** (e.g., the developer)." The SCP also maintains the requirement that all projects, throughout the State, that disturb one or more acres of land or are part of a "common plan of development" that disturbs one or more acres of land, need to have a SCP.

In accordance with the SCP, a common plan of development is:

"A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules, but remain related. The Division has determined that "contiguous" means construction activities located in close proximity to each other (within ¼ mile). Construction activities are considered to be "related" if they share the same development plan, builder or contractor, equipment, storage areas, etc."

Also in accordance with the SCP, related construction activities or facilities may include soil disturbing activities such as staging areas, equipment and material storage areas (MSAs), stockpiles, borrow areas, batch plants and haul roads that are used specifically for a construction project.

This has raised the question, if a related construction project activity or facility is determined to be a "common plan of development" and is not located within the project's limits of construction (LOC), who is responsible for permitting that area when needed? This bulletin has been prepared to respond to that question and provide guidance on permitting of related construction activities or facilities during construction. Refer to the examples and flowchart at the bottom of this bulletin for additional clarification.



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Project related activities or facilities that are greater than ¼ mile from the LOC *are not* considered a “common plan of development.” If the related activity or facility is less than 1 acre of disturbance it will not require SCP coverage. Any project related activities or facilities greater than ¼ mile away and exceeding 1 acre of disturbance will require separate SCP coverage. Per CDOT specification 107.25(c) and 208.4(c), the Contractor has the sole responsibility for any necessary permits or agreements.

Project related activities and facilities located within ¼ mile of the LOC *are* considered a “common plan of development.” If the original construction project disturbance area PLUS the related construction disturbance area are *less than* one acre of disturbance, then the CDOT 107.25 and 208.04(c) for projects less than one acre shall be followed. If the original construction project disturbance area PLUS the related construction disturbance area are *one or more* acres of disturbance, *both* areas will require SCP coverage. See Example 1 below.

If the original project already has a SCP, then the related construction activity or facility will also need its own separate SCP. The contractor has the sole responsibility to develop all necessary plans and documents, clearances, applications, agreements, permits, etc. to secure necessary stormwater permit coverage from all applicable regulating authorities, per specification 107.25(c) and 208.04(c). **When applying for a SCP**, CDPHE requests that CDOT contractors identify in their application that they are part of a larger CDOT project. This should be done under “D. Legal Description”. There are two checkboxes and the Contractor should check the 2nd box titled “Facility additional description info”. An additional description box will open and the contractor should note that they are part of a CDOT project along with the project name. This will notify CDPHE permit staff that this area is part of a common plan of development. See Example 2 below.

If the original project does not already have a SCP then **CAUTION**, BOTH the original project area and the related area will each need a SCP. A Contract Modification Order is required and additional project amendments, specialty clearances and a change to CDOT specifications are needed. ***This option is not a preferred option and will likely cause project delays.*** See Example 3 below.

Project Examples:

Example 1: CDOT is building a roadway extension and the total LOD for that extension is 0.8 acres. The contractor has selected a 0.5 acre location for a stockpile area that is 1.0 miles from any point on the LOD boundary. This is NOT considered a common plan of development because even though the sites are related and the total acreage exceeds 1.0, they are not located within ¼ mile of each other and neither project needs a CDPS-SCP.

Example 2: CDOT is building a roadway extension and the total Limits of Disturbance (LOD) for that extension is 1.2 acres therefore the project already has a CDPS-SCP. The advertised plans do not include the MSA within the LOC. The contractor has selected a location for the MSA that is 0.5 acres and is within ¼ mile of any point on the LOD boundary, but outside CDOT ROW. Both areas are now considered a common plan of development. The new MSA area is required to get a CDPS-SCP where the operator is also the owner.

Example 3: CDOT is building a roadway extension and the total LOD for that extension is 0.8 acres, but the plans do not include the MSA within the LOC. The contractor has selected a location for the MSA that is 0.5 acres and is within ¼ mile of any point on the LOD boundary. Both areas are now considered a common plan of development because they are located within ¼ mile from each other



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and a CDPS-SCP is now required because the total area is over 1 acre. Both areas will now require a permit. This scenario is not recommended.

Note: If the related construction activities or facilities are within a Municipal Separate Storm Sewer System (MS4) area, additional requirements may be needed to comply with CDOT or Local Agency MS4 permits. Any project areas that span multiple MS4 jurisdictions must have an agreement with those agencies to document whose MS4 construction requirements apply.

The intent of this bulletin is to clarify that CDOT will not be named as either the Owner or Operator on any permit for land outside CDOT's right of way and control. All areas that require permitting outside CDOT's control should be permitted with the Contractor's name as owner and operator. This is to reduce potential compliance risk to CDOT for related areas not under CDOT's control. The below flow chart summarizes the information provided in this bulletin. Please contact the CDOT Region Water Pollution Control Manager or Jean Cordova (HQ - Water Quality Section Manager) at 303-512-4053 or jean.cordova@state.co.us for more information on any of the above requirements.

COMMON PLAN OF DEVELOPMENT PROCESS FLOW CHART

