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HOUSE BILL 11-1026

BY REPRESENTATIVE(S) Gerou, Fischer, Gardner B., Looper,
Schafer S., Wilson, Waller;
also SENATOR(S) Jahn.

CONCERNING THE DESIGNATION OF STORM WATER MANAGEMENT SYSTEM
ADMINISTRATORS, AND MAKING AN APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

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

PART 8
STORM WATER MANAGEMENT SYSTEM
ADMINISTRATORS

25-8-801. Definitions. AS USED IN THIS PART 8, UNLESS THE
CONTEXT OTHERWISE REQUIRES:

(1) "ADMINISTRATOR" OR "STORM WATER MANAGEMENT SYSTEM
ADMINISTRATOR" MEANS A NONPROFIT ENTITY DESIGNATED BY THE DIVISION
TO CONDUCT THE ACTIVITIES REQUIRED UNDER THIS PART 8.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) "ADVISORY BOARD" MEANS AN OVERSIGHT GROUP, ESTABLISHED AS A REQUIRED ELEMENT WITHIN EACH STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR'S PROGRAM, THAT IS MADE UP OF VOLUNTEERS REPRESENTING INDUSTRY SECTOR STAKEHOLDERS ACTIVE IN THE PROGRAM INCLUDING NONPROFIT ADMINISTRATOR REPRESENTATIVES, PARTICIPANTS, PARTICIPATING MS4S, AND THIRD-PARTY AUDITORS. WHILE ACTING IN THE CAPACITY OF A BOARD OF DIRECTORS, THE ADVISORY BOARD HAS THE AUTHORITY TO ESTABLISH ALL PROGRAM POLICIES AND PROCEDURES, COLLECT AND MAINTAIN PROGRAM RECORDS, COMPILE ANNUAL PARTICIPANT PERFORMANCE SUMMARY REPORTS, AND TAKE ALL NECESSARY ACTIONS TO MAINTAIN THE DEPARTMENT'S DESIGNATION OF THE ADMINISTRATOR.

(3) "CDPS" MEANS THE COLORADO DISCHARGE PERMIT SYSTEM.

(4) "CDPS MS4 PERMIT" MEANS A CDPS PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH AN MS4.

(5) "CDPS STORM WATER CONSTRUCTION PERMIT" MEANS A CDPS PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES.

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

(7) "MS4 PERMITTEE" MEANS A GOVERNMENTAL ENTITY WITH A CDPS PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH AN MS4.

(8) "PARTICIPANT" MEANS A PERSON THAT IS REQUIRED TO OBTAIN A CDPS STORM WATER CONSTRUCTION PERMIT FROM THE DIVISION AND THAT VOLUNTEERS TO PARTICIPATE IN A STORM WATER MANAGEMENT SYSTEM PROGRAM ADMINISTERED BY A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR.

(9) "SWMP" MEANS A STORM WATER MANAGEMENT PLAN AS DEFINED IN THE CDPS PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES.

(10) "THIRD-PARTY AUDITOR" MEANS A PERSON WHO MEETS THE PROFESSIONAL QUALIFICATIONS DEFINED IN THE ADMINISTRATOR'S WRITTEN PROGRAM AND WHO OPERATES INDEPENDENTLY FROM, AND IS NOT AN EMPLOYEE OF, ANY PARTICIPANT OR MS4 IN THE ADMINISTRATOR'S

PROGRAM.

25-8-802. Storm water management system administrator.

(1) A NONPROFIT ENTITY MAY APPLY TO BE A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR BY COMPLETING AN APPLICATION IN SUCH FORM AS THE DIVISION MAY REQUIRE. THE DIVISION MAY DESIGNATE ONE OR MORE STORM WATER MANAGEMENT SYSTEM ADMINISTRATORS. TO BE DESIGNATED AS AN ADMINISTRATOR, THE APPLICANT MUST DEMONSTRATE TO THE SATISFACTION OF THE DIVISION THAT:

(a) THE APPLICANT HAS IN PLACE A STANDARDIZED COMPLIANCE ASSISTANCE AND ASSURANCE PROGRAM THAT CONTAINS PROCESSES, PROCEDURES, AND ASSOCIATED TRAINING FOR PARTICIPANTS THAT, WHEN FULLY IMPLEMENTED BY THE PROGRAM PARTICIPANTS, WOULD RESULT IN FULL COMPLIANCE WITH THE REQUIREMENTS OF THE APPLICABLE CDPS STORM WATER CONSTRUCTION PERMIT. THE COMPLIANCE ASSISTANCE AND ASSURANCE PROGRAM SHALL ASSURE, AT A MINIMUM, THAT EACH PARTICIPANT:

(I) MAINTAINS A QUALIFIED PERMIT COMPLIANCE MANAGER IN ACCORDANCE WITH THE CDPS STORM WATER CONSTRUCTION PERMIT AND THE ADMINISTRATOR'S WRITTEN POLICIES;

(II) MAINTAINS COMPLETE AND UPDATED PERMIT DOCUMENTATION AVAILABLE FOR INSPECTION AT THE PERMITTED FACILITY;

(III) COMPLETES ESTABLISHED MINIMUM REQUIREMENTS FOR TRAINING TO MAINTAIN PERMIT COMPLIANCE MANAGER STATUS; AND

(IV) COMPLIES WITH ALL APPLICABLE TERMS AND CONDITIONS REQUIRED BY ANY MS4 PERMITTEE WITH JURISDICTION OVER THE PARTICIPANT'S CONSTRUCTION ACTIVITIES.

(b) THE APPLICANT ENSURES THAT A THIRD-PARTY AUDIT OF EACH PARTICIPANT FACILITY OPERATING UNDER A CDPS STORM WATER CONSTRUCTION PERMIT IS COMPLETED ON A MONTHLY BASIS USING STANDARDIZED INSPECTION REPORTING FORMS AND PROCEDURES APPROVED BY THE DIVISION. THIRD-PARTY AUDIT REPORTS MUST INCLUDE STANDARDIZED COMPLIANCE PERFORMANCE MEASUREMENT AND SCORING CLEARLY DEMONSTRATING THE FOLLOWING:

(I) THE ADEQUACY OF IMPLEMENTATION OF EACH ASPECT OF THE ADMINISTRATOR'S STORM WATER MANAGEMENT SYSTEMS;

(II) THE ADEQUACY OF THE SWMP IN MEETING ALL APPLICABLE PERMIT REQUIREMENTS DEFINED IN THIS PART 8; AND

(III) THE ADEQUACY OF EACH STORM WATER MANAGEMENT PRACTICE USED TO IMPLEMENT THE SWMP.

(c) THE APPLICANT MAINTAINS RECORDS OF ITS COMPLIANCE ASSISTANCE AND ASSURANCE PROGRAM, INCLUDING A LIST OF PARTICIPANTS AND EACH PARTICIPANT FACILITY, AND MONTHLY REQUIRED THIRD-PARTY AUDITS, IN A FORM APPROVED BY THE DIVISION;

(d) THE APPLICANT HAS FULLY IMPLEMENTED THE COMPLIANCE ASSISTANCE AND ASSURANCE PROGRAM WITH A SUFFICIENT NUMBER OF PARTICIPANTS TO DEMONSTRATE THE ADEQUACY OF THE PROGRAM FOR ONE YEAR PRIOR TO SUBMITTAL OF AN APPLICATION FOR DESIGNATION AS AN ADMINISTRATOR;

(e) THE APPLICANT MAINTAINS AN ADVISORY BOARD THAT MEETS REGULARLY, BUT NOT LESS THAN QUARTERLY, AND SUCH MEETINGS ARE OPEN TO THE PUBLIC; AND

(f) THE APPLICANT HAS A WRITTEN STORM WATER MANAGEMENT PROGRAM THAT INCLUDES:

(I) AN ORGANIZATIONAL CHART DEFINING RELATIONSHIPS AMONG STAKEHOLDERS, INCLUDING THE ROLES AND RESPONSIBILITIES OF EACH;

(II) ADVISORY BOARD MAKE-UP AND ASSOCIATED POLICIES AND PROCEDURES;

(III) PARTICIPANT POLICIES AND PROCEDURES, INCLUDING PERFORMANCE STANDARDS AND MEASUREMENT METHODOLOGY;

(IV) THIRD-PARTY AUDITOR POLICIES AND PROCEDURES; AND

(V) OTHER POLICIES AND PROCEDURES THE DIVISION MAY REQUIRE TO DEMONSTRATE A COMPLETE AND FUNCTIONAL PROGRAM.

(2) UPON THE DIVISION'S APPROVAL OF THE APPLICATION, THE DIVISION SHALL DESIGNATE THE APPLICANT AS A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR. THE APPLICANT SHALL MAINTAIN A COMPLIANCE ASSISTANCE AND ASSURANCE PROGRAM, INCLUDING REQUIRING THIRD-PARTY AUDITS AND RECORD KEEPING, CONSISTENT WITH THE REQUIREMENTS OF THIS PART 8.

(3) A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR SHALL PROVIDE TO THE DIVISION ON AT LEAST A YEARLY BASIS A SUMMARY REPORT THAT DESCRIBES IN DETAIL SIGNIFICANT PROGRAM ACCOMPLISHMENTS AND CHANGES AND THAT ADEQUATELY DEMONSTRATES THE OVERALL PERFORMANCE OF THE ADMINISTRATOR'S PROGRAM IN IMPROVING PARTICIPANT COMPLIANCE WITH THE PARTICIPANTS' STORM WATER PERMITS. THE DIVISION SHALL MAKE THE YEARLY ADMINISTRATOR SUMMARY REPORT AVAILABLE TO THE PUBLIC.

(4) TO THE EXTENT PERMITTED BY FEDERAL LAW, THE DIVISION MAY REDUCE COMPLIANCE OVERSIGHT ACTIVITIES FOR FACILITIES AUTHORIZED TO DISCHARGE UNDER A CDPS STORM WATER CONSTRUCTION PERMIT PARTICIPATING IN A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR PROGRAM BASED ON A DETERMINATION BY THE DIVISION THAT THE PARTICIPANTS OR THE PARTICIPANT FACILITIES HAVE A DEMONSTRATED RECORD OF REDUCED POTENTIAL FOR OCCURRENCES OF NONCOMPLIANCE AND REDUCED RISK OF NEGATIVE IMPACTS ON RECEIVING WATERS. THIS PART 8 DOES NOT PROHIBIT OR RESTRICT ANY COMPLIANCE OVERSIGHT, INCLUDING INSPECTIONS, BY THE DIVISION.

(5) THE DIVISION MAY REVOKE THE DESIGNATION OF AN ADMINISTRATOR FOR EVIDENCE OF REPEATED FAILURE TO MEET THE REQUIREMENTS OF THIS PART 8.

(6) THE DISCLOSURE OF ANY INFORMATION RELATED TO A PARTICIPANT'S THIRD-PARTY AUDIT TO AN ADMINISTRATOR IS NOT A DISCLOSURE UNDER SECTION 25-1-114.5.

(7) PARTICIPATION IN A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR PROGRAM BY A HOLDER OF A CDPS STORM WATER CONSTRUCTION PERMIT IS STRICTLY VOLUNTARY, AND A PARTICIPANT MAY END ITS PARTICIPATION AT ANY TIME UPON WRITTEN NOTICE TO THE ADMINISTRATOR.

(8) THE ADMINISTRATOR MAY WORK WITH THE DIVISION TO ESTABLISH REPORTING REQUIREMENTS ACCEPTABLE TO THE DIVISION THAT WOULD ALLOW PARTICIPANTS IN THE ADMINISTRATOR'S PROGRAM TO PARTICIPATE IN ENVIRONMENTAL PERFORMANCE RECOGNITION PROGRAMS, INCLUDING THE DEPARTMENT'S ENVIRONMENTAL LEADERSHIP PROGRAM.

25-8-803. Storm water management system administrator audits to support MS4 permittees' programs. (1) MS4 PERMITTEES MAY CHOOSE TO WORK WITH ANY ADMINISTRATOR TO ASSIST THE MS4 PERMITTEE IN COMPLYING WITH THE TERMS AND CONDITIONS OF THE MS4 PERMITTEE'S CDPS MS4 PERMIT. AN MS4 PERMITTEE MAY UTILIZE ALL, OR PORTIONS OF, THE STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR'S PROGRAM AS PART OF THE MS4 PERMITTEE'S PROGRAM FOR OVERSIGHT OF CONSTRUCTION SITES TO DEMONSTRATE COMPLIANCE WITH THE REQUIREMENTS OF THE MS4 PERMITTEE'S CDPS PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH AN MS4.

(2) THE DIVISION MAY CONSIDER THIRD-PARTY AUDITS CONDUCTED PURSUANT TO A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR'S PROGRAM TO BE PART OF THE MS4 PERMITTEE'S COMPLIANCE OVERSIGHT PROGRAM REQUIRED BY ITS CDPS MS4 PERMIT IF THE MS4 PERMITTEE FORMALLY UTILIZES THE STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR'S PROGRAM THAT CONDUCTED THE AUDIT, AND THE MS4 PERMITTEE IMPLEMENTS PROCEDURES TO DEMONSTRATE AND REPORT TO THE DIVISION, UPON DIVISION REQUEST, THAT THE ADMINISTRATOR'S PROGRAM IS MEETING THE REQUIREMENTS FOR THIRD-PARTY AUDITS IN SECTION 25-8-802 (1) AND (3) FOR PARTICIPANT CONSTRUCTION ACTIVITIES LOCATED WITHIN THE JURISDICTION OF THE MS4 PERMITTEE.

(3) AN MS4 PERMITTEE MAY REDUCE COMPLIANCE OVERSIGHT ACTIVITIES FOR FACILITIES AUTHORIZED TO DISCHARGE UNDER A CDPS STORM WATER CONSTRUCTION PERMIT THAT ARE OPERATED BY PARTICIPANTS IN A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR'S PROGRAM BASED ON A DETERMINATION BY THE MS4 PERMITTEE THAT THE PARTICIPANTS OR PARTICIPANT FACILITIES HAVE A DEMONSTRATED RECORD OF REDUCED POTENTIAL FOR OCCURRENCES OF NONCOMPLIANCE AND REDUCED RISK OF NEGATIVE IMPACTS ON RECEIVING WATERS. THIS PART 8 DOES NOT PROHIBIT OR RESTRICT ANY COMPLIANCE OVERSIGHT, INCLUDING INSPECTIONS, BY AN MS4 PERMITTEE.

(4) MODIFICATION OF THE MS4 PERMITTEE'S PROGRAM IS SUBJECT TO DIVISION APPROVAL IN ACCORDANCE WITH THE REQUIREMENTS OF THE APPLICABLE CDPS MS4 PERMIT.

(5) AN MS4 PERMITTEE'S USE OF A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR'S PROGRAM IS STRICTLY VOLUNTARY, AND AN MS4 PERMITTEE MAY END ITS USE OF THE PROGRAM AT ANY TIME UPON WRITTEN NOTICE TO THE ADMINISTRATOR.

(6) NOTHING IN THIS PART 8 GRANTS REGULATORY AUTHORITY TO A STORM WATER MANAGEMENT SYSTEM ADMINISTRATOR OR THE AUTHORITY TO IMPOSE ANY FINE.

(7) NOTHING IN THIS PART 8 PREEMPTS OR SUPERSEDES ANY AUTHORITY OF AN MS4 PERMITTEE, OR ANY OTHER LOCAL AGENCY.

(8) NOTHING IN THIS PART 8 REMOVES, REDUCES, OR TRANSFERS THE RESPONSIBILITY FOR COMPLIANCE WITH AN MS4 PERMIT FROM THE MS4 PERMITTEE.

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

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

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

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

(IV) PROVIDING GRANTS FOR STORM WATER MANAGEMENT TRAINING AND BEST PRACTICES TRAINING TO PREVENT OR REDUCE THE POLLUTION OF STATE WATERS.

SECTION 3. Appropriation. In addition to any other

appropriation, there is hereby appropriated, to the department of public health and environment for allocation to the water quality control division, for the fiscal year beginning July 1, 2011, the sum of ninety-nine thousand four hundred thirty-six dollars (\$99,436) and 0.6 FTE, or so much thereof as may be necessary, for the implementation of this act. Of said sum, forty-nine thousand four hundred thirty-six dollars (\$49,436) and 0.6 FTE shall be from cash funds from the water quality control fund created in section 25-8-502 (1) (c), Colorado Revised Statutes, and fifty thousand dollars (\$50,000) shall be from cash funds from the water quality improvement fund created in section 25-8-608 (1.5), Colorado Revised Statutes.

SECTION 4. Act subject to petition - effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

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

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

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CHIEF CLERK OF THE HOUSE
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Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO