U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 8
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
STATEMENT OF BASIS

PERMITTEE:	U.S. Department of Commerce (DoC)
FACILITY NAME AND ADDRESS:	DoC Boulder Laboratories 325 Broadway Boulder, CO 80305
PERMIT NUMBER:	COR-042002
RESPONSIBLE OFFICIAL:	Brian Brass, Chief NIST Boulder Safety, Health and Environment Division (303) 947-6822 brian.brass@nist.gov
FACILITY CONTACT:	David Garrity, Environmental Engineer NIST Boulder Safety, Health and Environment Division (303) 947-4577 david.garrity@nist.gov
PERMIT TYPE:	Federal Facility, Municipal Separate Storm Sewer System (MS4), Permit Renewal
FACILITY LOCATION:	DoC Boulder Laboratories 325 Broadway Boulder, CO 80305 Boulder County, Colorado Latitude: 39.997028, Longitude: -105.261389
DISCHARGE LOCATION(S):	Multiple outfalls to Skunk Creek and stormwater runoff into Anderson Ditch. Also discharges into the City of Boulder's municipal separate storm sewer system (MS4).
RECEIVING WATERS:	Anderson Ditch and Skunk Creek

1. INTRODUCTION

This statement of basis (SoB) is for the issuance of a NPDES permit to the United States Department of Commerce (DoC), for the DoC Boulder Laboratories municipal separate storm sewer system (MS4). The Permit establishes discharge limitations for any discharge of stormwater from the DoC Boulder Laboratories MS4 (Facility). The SoB explains the nature of the discharges, and the EPA's decisions for limiting the pollutants in the stormwater, as well as the regulatory and technical basis for these decisions.

The EPA Region 8 is the permitting authority for Colorado federal facilities.

2. FACILITY BACKGROUND INFORMATION

a. Facility Description

The DoC Boulder Laboratories are a federal facility composed of scientific laboratories including NIST, the National Oceanic and Atmospheric Administration (NOAA), and National Telecommunications and Information Administration (NTIA), located in Boulder, CO. The laboratories perform scientific research and engineering in the fields of electromagnetics, materials reliability, optoelectronics, quantum electronics and physics, time and frequency, earth systems, weather, and telecommunications. NOAA Finance and Administrative Services Offices are also located in Boulder and offer services in acquisition, workforce management, facilities management and information technology to customers located in Boulder and worldwide.

Figure 1: DoC Boulder Laboratories location within Boulder County

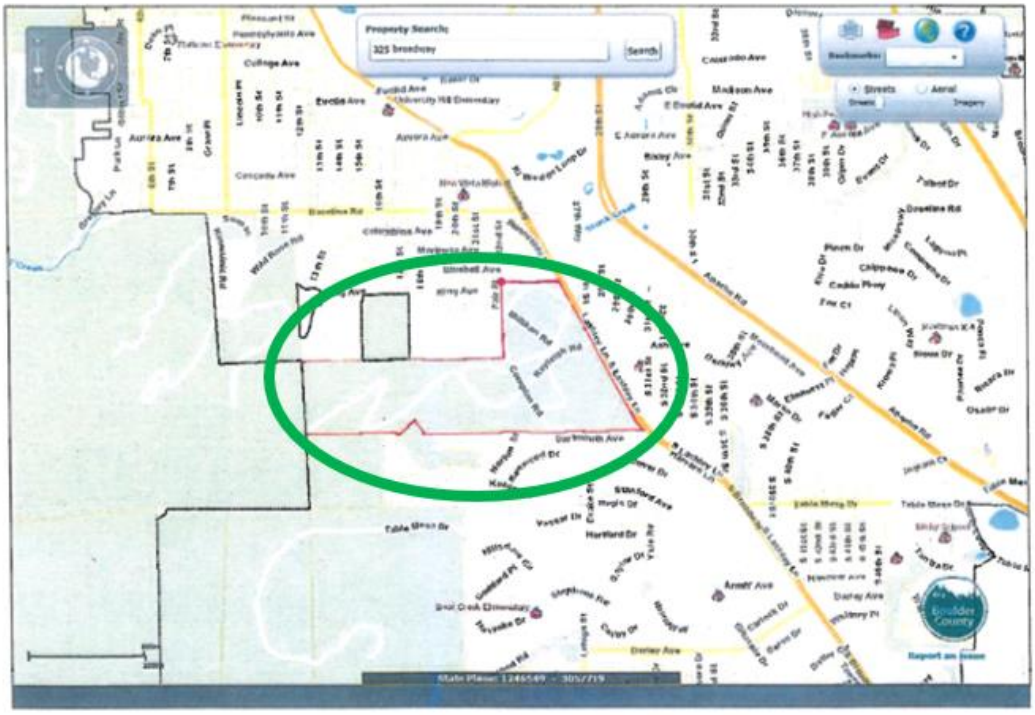


Figure 2: Overview DoC Boulder Laboratories (Google satellite imagery- search 5/4/2023)

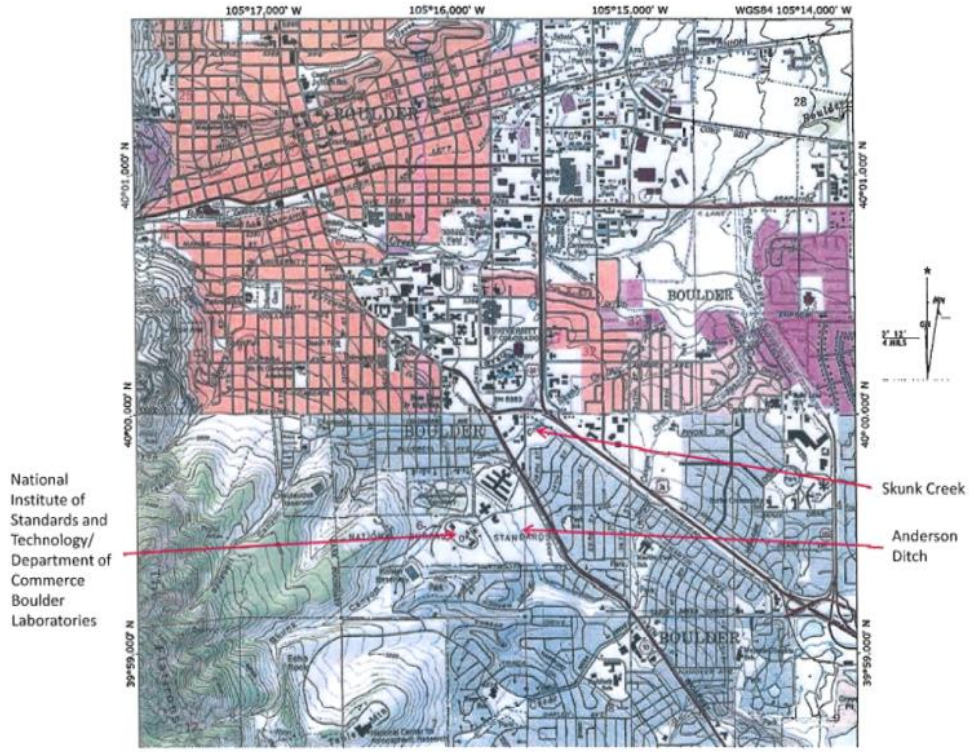
3. WATER QUALITY CONSIDERATIONS

a. Description of Receiving Water

Based on application information, annual reports, previous coverage and EPA inspection reports, Facility discharges depart the property via stormwater runoff to Anderson Ditch, and through MS4 outfalls to Skunk Creek. Anderson Ditch and Skunk Creek flow to Bear Canyon Creek and eventually to Boulder Creek, upstream of South Boulder Creek confluence with Boulder Creek. The Facility's outfalls also discharge into the City of Boulder's MS4.

The Anderson Ditch and Skunk Creek are included in segment COSPBO14 defined by the State of Colorado for the purposes of establishing water quality standards. This segment is described as "All lakes and reservoirs tributary to Boulder Creek from the source to a point immediately above the South Boulder Creek confluence, except as specified in Segment 13. This segment includes Barker and Lakewood Reservoir."

Figure 3: Overview Figures of DoC Boulder Laboratories in relation to Skunk Creek and Anderson Ditch



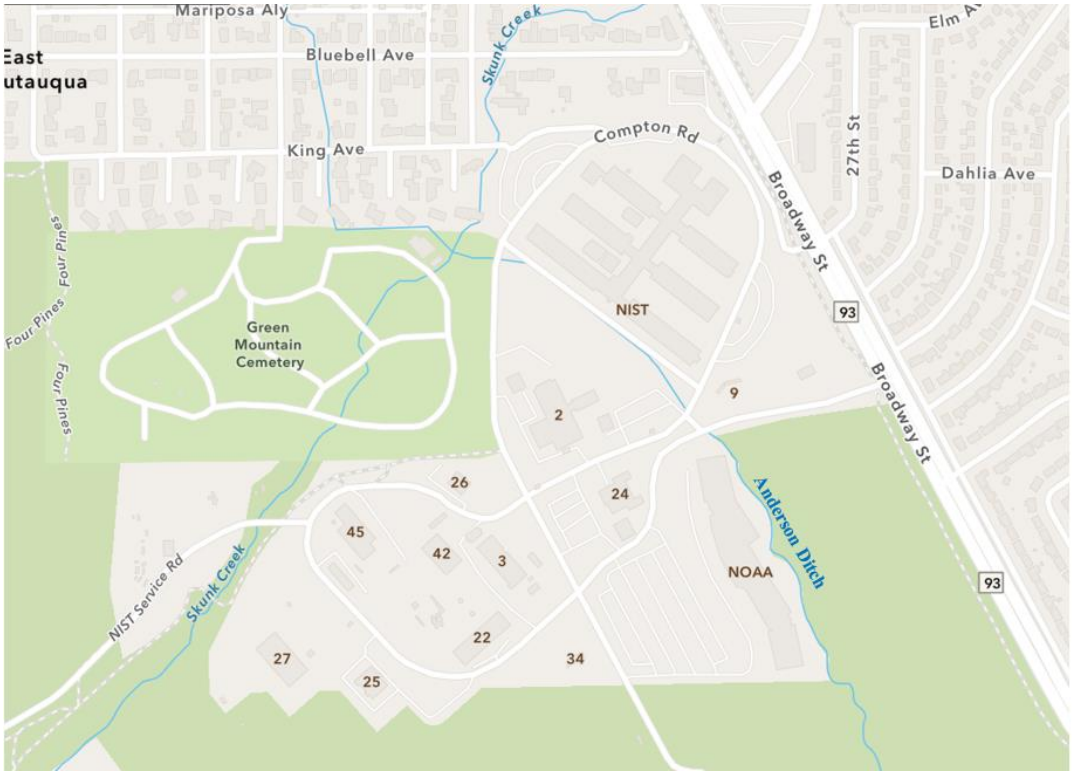
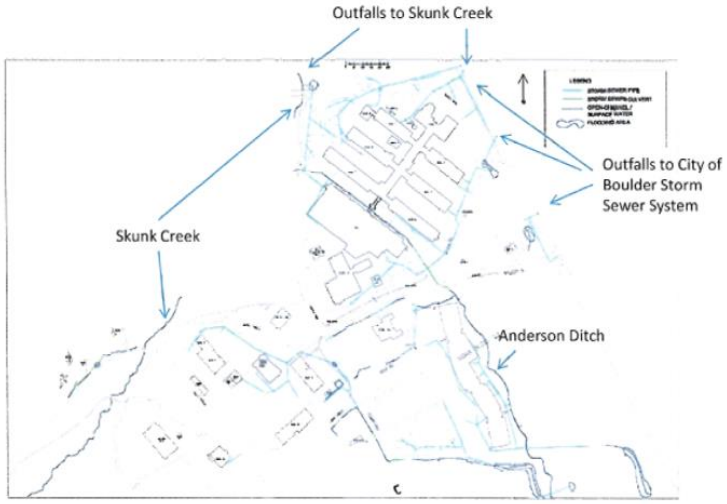


Figure 4: DoC Boulder Laboratories MS4 in relation to Skunk Creek, Anderson Ditch and City of Boulder Storm Sewer System



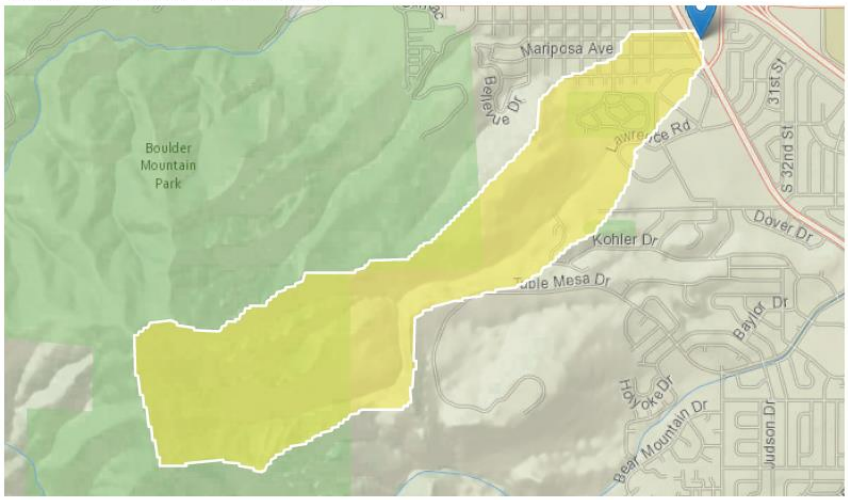
National Institute of Standards and Technology/
Department of Commerce Boulder Laboratories
Developed Areas

Based on the basin characteristic information collected (see Figure 5 of SoB, below), Skunk Creek has a watershed area with very little dilution flow (i.e., a critical low flow at or near zero).

Figure 5. Skunk Creek Watershed Characteristics (https://streamstats.usgs.gov/ss/)

StreamStats Report- Skunk Creek

Region ID: CO
Workspace ID: CO20230721131221942000
Clicked Point (Latitude, Longitude): 39.99810, -105.26168
Time: 2023-07-21 07:12:41 -0600



Low-Flow Statistics Flow Report [9.7 Percent (0.0999 square miles) Mountain Region Min Flow]

Statistic	Value	Unit
7 Day 2 Year Low Flow	0.00221	ft^3/s
7 Day 10 Year Low Flow	0.000382	ft^3/s
7 Day 50 Year Low Flow	0.00273	ft^3/s

Low-Flow Statistics Citations

Capesius, J.P., and Stephens, V. C.,2009, Regional Regression Equations for Estimation of Natural Streamflow Statistics in Colorado: U. S. Geological Survey Scientific Investigations Report 2009-5136, 32 p. (http://pubs.usgs.gov/sir/2009/5136/http://pubs.usgs.gov/sir/2009/5136/)

Water Quality Standards

The receiving waters for this Facility are within the state of Colorado and thus state of Colorado water quality standards (WQS) apply. Colorado Regulation Number 38 provides basic, narrative, and numeric water quality criteria for the specific stream segments affected by the Permit. The receiving waters for the Facility are included in segment COSPBO14: all lakes and reservoirs tributary to Boulder Creek from the source to a point immediately above the South Boulder Creek confluence, except as specified in Segment 13. This segment includes Barker and Lakewood Reservoir.

Water Quality Impairments

The Colorado Department of Public Health 303(d) list of impaired waters (5 CCR 1002-93, Regulation #93) identified Barker Reservior and Silver Lake as waterbodies that are impaired or identified for monitoring and evaluation within segment COSPBO14. Anderson Ditch and Skunk Creek flow to Bear Canyon Creek and eventually to the mainstem of Boulder Creek which includes the following downstream impairments:

- Boulder Creek (segment listed portion: COSPBO09A- Mainstem of Boulder Creek from a point immediately above the confluence with South Boulder Creek to 107th Street) for ammonia (affecting aquatic life use), *E. coli* (affecting recreational use), and total arsenic (affecting water supply use).

However, there were no impaired waters listed within the Facility or immediately downstream of the Facility associated with Anderson Ditch and Skunk Creek. Therefore, since Anderson Ditch and Skunk Creek are not impaired, there is no total maximum daily load (TMDL) and no appropriate waste load allocation (WLA) for this stormwater discharge. Based on this information, the EPA has determined that the Permit will not require pollutant analytical monitoring.

4. PERMIT HISTORY

The previous permit, prior to this renewal, was developed by EPA and effective on October 1, 2014, with an expiration date of September 30, 2019 that was administratively continued. DoC Boulder Laboratories' original renewal permit application was dated March 21, 2019. The EPA deemed the permit application on time and complete and issued an administrative extended permit letter to DoC Boulder Laboratories dated May 6, 2019. Due to the extended period from receipt of the original

permit application and drafting of the renewal Permit, EPA confirmed the original application information accuracy in April 2023, as well as evaluated the most recent annual report submissions for drafting the Permit. All of the limitations and conditions of the administratively extended permit remain fully effective until the renewal Permit is issued and effective. According to records maintained for this Facility, this is at least the 3rd permit issuance for DoC Boulder Laboratories (COR-042002).

5. MAJOR CHANGES FROM PREVIOUS PERMIT

The Phase II stormwater rule was challenged in petitions for review filed by environmental groups, municipal organizations, and industry groups, resulting in a partial remand of the rule. Environmental Defense Center v. U.S. Environmental Protection Agency, 344 F.3d. 832 (9th Cir. 2003) (EDC). The court remanded the Phase II rule's provisions for small MS4 general permits because they lacked procedures for permitting authority review and public notice and the opportunity to request a hearing on Notices of Intent for authorization to discharge under a general permit. In response to the court's remand, EPA revised its Phase II stormwater rules for Phase II permits in 2016 (i.e. Remand Rule). One of the new requirements is that all Phase II MS4 permits have "clear, specific and measurable" conditions. Therefore, all terms and conditions have changed to be "clear, specific and measurable" to comply with the Remand Rule. Additionally, the standard for reducing pollutants to the "maximum extent practicable" (MEP) has been revised (as required by the Remand Rule) to be determined by the permitting authority (EPA) versus the permittee in this proposed permit.

Additionally, EPA added nutrients management terms and conditions to the proposed Permit. In October 2017, the Water Quality Control Commission made changes to Colorado's nutrient management control regulations (Colorado Regulations 85 and 31.17). In response to changing regulations and water quality, both the State of Colorado and EPA have added nutrient provisions to all re-issued Phase II MS4 permits.

In addition to the changes above, the following items were also updated with this renewal permit:

- Utilizing Keep-It-Clean Partnership materials. The previous permit included a requirement for the use of these materials. This renewal is adjusting the language to include it as a recommendation.

- In the Post-Construction Stormwater Management for New Development and Redevelopment section of the previous permit, there was a requirement related to the Water Quality Capture Volume (WQCV) Standard. The Control Measure is designed to provide treatment and/or infiltration of the WQCV and indicated that a volume of 0.6" of precipitation be captured. This has been updated to include a capture volume of 100% of the covered development project, in alignment with updated permitting language for EPA MS4 permits for Colorado federal facilities. See Part 2.5.9.1 of the Permit.

- Permit language regarding the Infiltration Standard has been updated to include that a Control Measure is designed to infiltrate, through practices such as green infrastructure, a quantity of water equal to 70% of what the WQCV would be if all impervious area discharged without infiltration. This update is in alignment with updated permitting language for EPA MS4 permits for Colorado federal facilities. See Part 2.5.9.2 of the Permit.

- The previous permit allowed for the utilization of an Alternative Control Measure Design Standard. With this reissuance, that allowance and the language associated with Alternative Control Measure Design Standards has been removed in alignment with updated permitting language for EPA MS4 permits for Colorado federal facilities.

- With EPA's prioritization of issues related to per- and polyfluoroalkyl substances (PFAS) and PFAS containing chemicals, an additional reopener provision has been added to the Permit if sources of PFAS or PFAS containing chemicals are identified with potential to discharge into the stormwater system. See section 7.15.4 of the Permit.

6. PROPOSED PERMIT LIMITATIONS

a. Technology-Based Limitations

NPDES permit coverage for these discharges is required in accordance with the 1987 Amendments to the Clean Water Act (CWA) and final EPA regulations for Phase II stormwater discharges (64 FR 68722, December 8, 1999). The 1987 Water Quality Act (WQA) amended the Clean Water Act (CWA) by adding section 402(p) which requires that NPDES permits be issued for various categories of stormwater discharges. Section 402(p)(2) requires permits for the following five categories of stormwater discharges:

1. Discharges permitted prior to February 4, 1987;

2. Discharges associated with industrial activity;

3. Discharges from large municipal separate storm sewer systems (MS4s) (systems serving a population of 250,000 or more);

4. Discharges from medium MS4s (systems serving a population of 100,000 or more, but less than 250,000); and

5. Discharges judged by the permitting authority to be significant sources of pollutants or which contribute to a violation of a water quality standard.

The five categories listed above are generally referred to as Phase I of the stormwater program. In Colorado, Phase I MS4 permits have been issued by the Colorado Department of Public Health and Environment (CDPHE) to the cities of Denver, Lakewood, Aurora, Colorado Springs, and the highway system operated by the Colorado Department of Transportation. In Colorado, NPDES permitting authority for Federal Facilities has not been delegated to CDPHE. Therefore, EPA maintains NPDES primacy for those facilities.

Phase II stormwater regulations were promulgated by EPA on December 8, 1999 (64 FR 68722). These regulations set forth the additional categories of discharges to be permitted and the requirements of the program. The additional stormwater discharges to be permitted include:

1. Small MS4s (DoC Boulder Laboratories MS4 is considered a small Phase II MS4);

2. Small construction sites (i.e., sites which disturb one to five acres); and
3. Industrial facilities owned or operated by small municipalities which were temporarily exempted from the Phase I requirements in accordance with the provisions of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991.

The 1987 CWA amendments clarified the fact that industrial storm water discharges are subject to the best available technology (BAT) / best conventional technology (BCT) requirements of the CWA, and applicable water quality standards. For MS4s, the CWA specifies a new technology-related level of control for pollutants in the discharges - control to the maximum extent practicable (MEP). However, the CWA is silent on the issue of compliance with water quality standards for MS4 discharges. In September 1999, the Ninth Circuit Court addressed this issue and ruled that water quality standards compliance by MS4s is discretionary on the part of the permitting authority (Defenders of Wildlife v. Browner, No. 98-71080).

The technology-based limitations for this Permit are largely based on the implementation of a Stormwater Management Plan (SWMP) which addresses six minimum measures. The SWMP and additional measures included in this Permit are the means through which the DoC Boulder Laboratories MS4 complies with the CWA's requirement to control pollutants in the discharges to the maximum extent practicable (MEP) and how the EPA discretionary addresses compliance with the water quality related provisions of the CWA. The EPA considers MEP to be an iterative process in which an initial SWMP is proposed and then periodically upgraded as new BMPs are developed or new information becomes available concerning the effectiveness of existing BMPs (64 FR 68754). The Phase II regulations at 40 CFR §122.34 require the following six minimum pollution control measures to be included in the SWMP:

1. Public Education and Outreach on Storm Water Impacts;
2. Public Involvement/Participation;
3. Illicit Discharge Detection and Elimination;
4. Construction Site Storm Water Runoff Control;
5. Post-Construction Storm Water Management in New Development and Redevelopment; and
6. Pollution Prevention/Good Housekeeping for Municipal Operations.

The regulations specify required elements for each minimum measure and also include guidance which provides additional information recommended for an adequate program. The Permit includes nearly verbatim the required program elements for each minimum measure. The technology-based limitations for these limitations are in Part 2 of the Permit.

This renewal Permit contains conditions which are based on the program elements as specified in the Code of Federal Regulations but are also more specifically tailored to the Facility in an effort to reduce undue burden and to more specifically address the pollutant sources on-site. These conditions were carried forward from the previous permit, derived from the recommendations of the regulations, and/or derived from previous recommendations from the State of Colorado. The rationale for the Facility-specific permit limitations is as follows:

Permit Conditions - Public Education and Outreach on Stormwater Impacts:
The DoC Boulder Laboratories' "public" primarily consists of the Facility's staff workers and contractors. The primary messages to be delivered to the Facility's "public" are to be determined by

the Facility. Since the Facility is within the City of Boulder, a potential source for reference outreach materials related to stormwater is the Boulder Keep-it-Clean-Partnership, which provides education and outreach to comply with the City of Boulder's MS4 permit. However, since much of this outreach is directed to homeowners, the materials may need to be adjusted appropriately with site-specific information that specifies specific practices at the Facility that can be used to reduce potential pollutants in stormwater runoff directly from that site or activity. Since the Facility encompasses a series of research laboratories, proper management of chemicals, cleaning supplies, shipping and receiving areas, and laboratory equipment should be some of the areas that are targeted to avoid the discharge of pollutants generated from these activities into stormwater drainage systems.

Permit Conditions – Public Involvement and Participation
It is important that the Facility meet with neighboring jurisdictions to discuss concerns and/or determine areas for collaboration. Meetings with the City of Boulder are recommended for each of the minimum measures. This communication is critical as the Facility's stormwater infrastructure discharges directly into the Boulder MS4. For the City of Boulder to effectively manage runoff quantity and quality, it is important for them to understand the pollutant sources and anticipated quantities of runoff entering their system. It is also important that DoC, acting as a facility manager for several agency research operations housed with the DoC Boulder Laboratories, effectively communicate the importance of illicit discharge detection and elimination.

Permit Conditions – Illicit Discharge Detection and Elimination
This renewal will continue an illicit discharge screening program, which includes an appropriate inspection schedule for Building #23, Building #21, the equipment yard south of Building #21 (including the storm drain inlet in the northeastern corner), the operations yard and storm drain inlet, and Anderson Ditch as it bisects and exits the Facility. This program shall also address illegal dumping into the storm sewer system and include training for staff on how to respond to reports of illicit discharges.

Permit Conditions – Post-Construction Stormwater Management for New Development and Redevelopment
The purpose of designing control measures based on the Water Quality Capture Volume (WQCV) is to improve discharge water quality and to reduce instream impacts. Capturing and detaining the WQCV reduces these impacts through storage, infiltration, vegetative/soil sequestration, evapotranspiration or a combination of these processes. In the previous permit, this was designated as: "The Control Measure is designed to provide treatment and/or infiltration of the WQCV and indicated that a volume of 0.6" of precipitation be captured." The Water Quality Capture Volume has been updated in this renewal Permit to require that 100% of the covered development project be captured, except that the Permittee may exclude an area not to exceed the lesser of 1,000 square feet or 1% of the covered development project when the Permittee has determined that it is not practicable to capture runoff from portions of the site that will not drain towards Control Measures, and implementation of a separate Control Measure for that portion of the site is not practicable (e.g., driveway access that drains directly to the street).

Additionally, the previous permit requirement indicated an associated Infiltration Standard requirement of infiltration of 0.5" of runoff from all areas of the site (except the permittee could exclude the stormwater runoff from an area not to exceed the lesser of 1,000 square feet or 1% of the

site when the permittee has determined that it is not practicable to capture runoff from portions of the site that will not drain towards Control Measures, and implementation of a separate Control Measure for that portion of the site is not practicable (e.g., driveway access that drains directly to the street)). This renewal Permit language regarding the Infiltration Standard has been updated to include that a Control Measure is designed to infiltrate, through practices such as green infrastructure, a quantity of water equal to 70% of what the WQCV would be if all impervious area discharged without infiltration. This update is in alignment with updated permitting language for EPA MS4 permits for Colorado federal facilities. See Part 2.5.9.2 of the Permit.

Limitations on Permit Coverage

In Part 1.4 of the Permit, there are limitations on the types of discharges that are covered under this Permit. Parts 1.4.3 and 1.4.4 are provided to note that stormwater discharges from regulated construction activities and stormwater discharges from regulated industrial activities are not authorized under this Permit. These types of activities need to be authorized under a separate permit.

Part 1.4 of the Permit also defines several types of non-stormwater discharges which are authorized under this Permit unless the Permittee determines they are significant contributors of pollutants. If the Permittee identifies any of the categories as a significant contributor of pollutants, the Permittee must include the category as an illicit discharge.

7. MONITORING REQUIREMENTS

a. Monitoring

The Phase II stormwater regulations at 40 CFR §122.34(g) require that small MS4s evaluate program compliance, the appropriateness of the BMPs in their SWMPs and progress towards meeting their measurable goals. Monitoring and assessment activities are included as part of each of the minimum measures of the Permit.

b. PFAS Monitoring - Justification for No Monitoring

Based on the EPA's December 5, 2022 guidance memorandum, "Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs" the applicability of PFAS monitoring is recommended for industry categories known or suspected to discharge PFAS as identified in the PFAS Strategic Roadmap. These include industry categories such as the following: organic chemicals, plastics & synthetic fibers (OCPSF); metal finishing; electroplating; electric and electronic components; landfills; pulp, paper and paperboard; leather tanning & finishing; plastics molding & forming; textile mills; paint formulating, and airports. Additionally, the memorandum indicates PFAS monitoring and/or BMPs could be appropriate for remediation sites, chemical manufacturing not covered by OCPSF, military bases, and PFAS-containing firefighting foams for stormwater permits. The Facility is not identified as one of the aforementioned industries, is not known to receive wastes from the aforementioned industries, is not known to use PFAS-containing firefighting foams. Therefore, no PFAS monitoring or PFAS-related BMP implementation has been included in this Permit.

If sources of PFAS or PFAS containing chemicals are identified with potential to discharge into the MS4, the Permit may be reopened (per Part 7.15, Reopener Provision, of the Permit) to include

PFAS monitoring and/or BMPs to confirm and/or address PFAS discharge concerns in alignment with the recommendations in EPA's December 5, 2022 guidance memorandum, "Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs".

8. REPORTING REQUIRMENTS

Annual Report

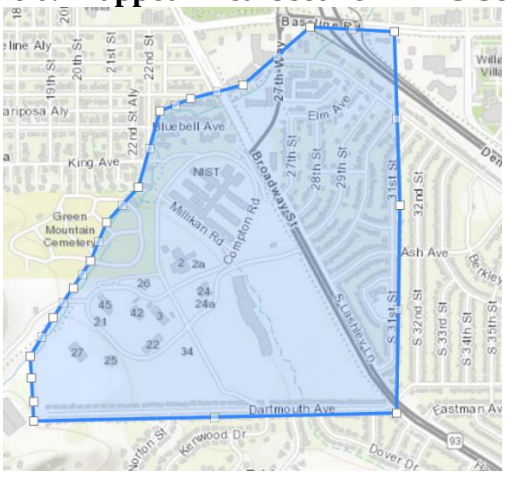
40 CFR 122.34(d)(3) requires small MS4s to submit reports to the EPA. Annual reports are required to allow for regular evaluation of the MS4 program. See Part 5.2 of the Permit for specifics on annual reporting requirements. Reporting language includes the requirement to begin using the NPDES Electronic Reporting Tool (NeT) for electronic submission of annual reports by December 21, 2025, unless the NeT tool is not available until a later date.

9. ENDANGERED SPECIES CONSIDERATIONS

The Endangered Species Act of 1973 requires all Federal Agencies to ensure, in consultation with the U.S. Fish and Wildlife Service (USFWS), that any Federal action carried out by the Agency is not likely to jeopardize the continued existence of any endangered species or threatened species (together, "listed" species), or result in the adverse modification or destruction of habitat of such species that is designated by the FWS as critical ("critical habitat"). See 16 U.S.C. § 1536(a)(2), 50 CFR Part 402. When a Federal agency's action "may affect" a protected species, that agency is required to consult with the FWS, depending upon the endangered species, threatened species, or designated critical habitat that may be affected by the action (50 CFR § 402.14(a)).

The U. S. Fish and Wildlife Information for Planning and Conservation (IPaC) website program (https://ipac.ecosphere.fws.gov/location/index.com) was accessed on 5/4/2023 for EPA's initial determinations and again on 9/29/2023 (to provide supplemental submissions to FWS during informal consultation) to determine federally-listed Endangered, Threatened, Proposed and Candidate Species for the area near the Facility. The IPaC Trust Resource Report findings for the more recent 9/29/2023 listings are provided below. The designated area utilized was taken directly from the IPaC system and focuses on the DoC Boulder Laboratories site and immediate surrounding area within the mapped area (below) of approximately 272.91 acres:

Figure 6: Mapped Area Used for IPAC Search



Before going to public notice, a copy of the draft Permit and this Statement of Basis was sent to the USFWS requesting concurrence with EPA's finding that reissuance of this NPDES Permit "may affect, but is not likely to adversely affect" listed species. Based on an informal consultation with the Colorado FWS field office representative on 9/20/2023, EPA provided additional information and an updated supplemental ESA submission (including updated IPAC species and mapping information), determining that this permitting action has "no affect" for six listed species and "may affect, but is not likely to adversely affect" for two listed species. The justifications and determinations listed below are in alignment with the EPA's subsequent supplemental submission and informal consultation discussions with USFWS.

Table 1: IPaC Federally-listed Threatened and Endangered Species

Species/ Scientific Name	Species Status	Designated Critical Habitat	Determination:	Justification:
Gray Wolf/ Canis lupus	Endangered	There is final critical habitat for this species (published in the Federal Register on March 9, 1978).	No Affect	Based on the information provided in IPAC, this species only needs to be considered in this area if the activity includes a predator management program. The permitted discharge activity for the facility does not include a predator management program. The facility is also located in a highly populated urbanized area where gray wolves would not likely be present and there are no critical habitats at this location.
Preble's Meadow Jumping Mouse/ Zapus hudsonius preblei	Threatened - wherever found	There is final critical habitat for this species (published in the Federal Register on December 15, 2010).	No Affect	This discharge permitting activity does not directly permit habitat disturbing activities and no changes in physical habitat/habitat modifications from permitted stormwater runoff discharges will occur. There are also no critical habitats at this location.
Piping Plover/ Charadrius melodus	Threatened	There is final critical habitat for this species (published in the Federal Register on May 19, 2009). There are no critical habitats at this location.	No Affect	Based on the information provided in IPAC this species only needs to be considered in this area if the project includes water-related activities and/or use (e.g., water development project or water depletion activity) in the N. Platte, S. Platte, and Laramie River Basins which may affect listed species in Nebraska. This permitted activity does not discharge into either of these specified waterbodies and is not a water development project or water depletion activity. There are also no critical habitats at this location.
Whooping Crane/ Grus americana	Endangered	There is final critical habitat for this species (published in the Federal Register on May 15, 1978). There are no critical habitats at this location.	No Affect	Based on the information provided by the FWS field office this species only needs to be considered in this area if the project includes water-related activities and/or use (e.g., water development project or water depletion activity). This permitted activity is not a water development project or water depletion activity. There are also no critical habitats at this location.
Greenback Cutthroat Trout/	Threatened - wherever found	No Critical habitat has been	May affect, but is not likely to adversely affect	Based on the information from IPAC and the FWS field office, this species is more likely found in mountain headwaters/headwater

Oncorhynchus clarkii stomias		designated for this species.		streams. It is also not known to occur in Boulder Creek/South Boulder Creek. Additionally, though the facility stormwater runoff discharge does eventually flow into Boulder Creek/South Boulder Creek (should the species occur there), it flows a substantial distance through a highly urbanized area before reaching these waterbodies, and it cannot be determined what additional sources, other than the facility's stormwater runoff, also enter the flow (i.e., impacts from the facility runoff cannot be specifically determined/isolated). The stormwater runoff discharges are therefore expected to have insignificant and/or discountable effects (i.e., would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur). This facility is also not an existing fishery. EPA has therefore made a "may affect, but is not likely to adversely affect" determination.
Pallid Sturgeon/ Scaphirhynchus albus	Endangered-wherever found	No Critical habitat has been designated for this species.	No Affect	Based on the information provided in IPAC this species only needs to be considered in this area if the project includes water-related activities and/or use (e.g., water development project or water depletion activity) in the N. Platte, S. Platte, and Laramie River Basins which may affect listed species in Nebraska. This permitted activity does not discharge into either of these specified waterbodies and is not a water development project or water depletion activity. There are also no critical habitats at this location.
Monarch Butterfly/ Danaus plexippus	Candidate - wherever found	No Critical habitat has been designated for this species.	No consultation is required for this species.	The monarch butterfly is a candidate species. No consultation is required for this species but was identified in the area by the IPAC search and has been considered in this review).
Ute Ladies'-tresses/ Spiranthes diluvialis	Threatened - wherever found	No Critical habitat has been designated for this species.	May affect, but is not likely to adversely affect	Based on the IPAC information, this species is primarily found in wetlands, moist meadows associated with perennial stream terraces, floodplains, oxbows, alluvial banks, point bars, seasonally flooded river terraces, sub-irrigated or spring-fed abandoned stream channels and valleys, and lakeshores. However, this facility is located in a highly populated urbanized area and these types of habitats were not identified at the facility. There are also no critical habitats at this location. Though the stormwater runoff discharge does eventually flow into Boulder Creek/South Boulder Creek, where this species has been found, the runoff flows a substantial distance through a highly urbanized area, and it cannot be determined what additional sources, other than the facility's stormwater runoff also enter the flow (i.e., impacts from the facility runoff cannot be specifically

				determined/isolated). The stormwater runoff discharges are therefore expected to have insignificant and/or discountable effects (i.e., would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur). Additionally, this permitted activity is not a water development project or water depletion activity, and this permit does not directly permit habitat disturbing activities (i.e., no changes in physical habitat/habitat modifications from permitted stormwater runoff discharges are anticipated to occur). Therefore, EPA has made a "may affect, but not likely to adversely affect" determination.
Western Prairie Fringed Orchid/ Platanthera praeclara	Threatened - wherever found	No Critical habitat has been designated for this species.	No Affect	Based on the IPAC information, the habitat for this species is primarily North American tall grass prairie and is found most often on unplowed, calcareous prairies and sedge meadows. However, this facility is located in a highly populated urbanized area and these types of habitats were not identified at the facility. Additionally, based on the information found on the Nature Serve Explorer website (https://explorer.natureserve.org/) referenced on the IPAC site, there are no known occurrences of this species in Colorado, which includes the immediate area of the facility/stormwater discharge (accessed on 9/29/2023). There are also no critical habitats at this location based on IPAC. Additionally, this permitted activity is not a water development project or water depletion activity, and this permit does not directly permit habitat disturbing activities (i.e., no changes in physical habitat/habitat modifications from permitted stormwater runoff discharges are anticipated to occur).

Migratory Birds:

As related to migratory bird species identified in the IPaC search, those listed for a given area may be present for periods of time at locations covered by the Permit. However, due to the transient nature of these species, it is anticipated that they will have limited contact with Facility discharges. If these species are present, they may use receiving waters for a short period of time however, there are no expected significant adverse changes in water quality in the receiving water from discharges that meet permitted limitations. Therefore, EPA Region 8 has concluded that there will be minimal impacts to migratory bird species from Facility permitted discharges.

Fish Hatcheries/National Wildlife Refuge lands:

There were no fish hatcheries or National Wildlife Refuge land areas identified in the IPaC mapped area.

Based on the IPaC information and informal consultation discussions with the Colorado USFWS field office representative (which occurred September thru October 2023) EPA determined the permitting action has “no affect” or "may affect, but is not likely to adversely affect" the species listed above.

10. NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS

During public notice of this Permit the State Historic Preservation Officer will be contacted to ensure that all historic properties are not negatively affected by the conditions of this Permit.

Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470(f) requires that federal agencies consider the effects of federal undertakings on historic properties. The U.S. National Park Service (U.S. NPS) National Register of Historic Places Focus Database was utilized to determine and evaluate resources of concern (see Table 2) in the DoC Boulder Laboratories location.

The National Register of Historic Places is the official list of the Nation's historic places worthy of preservation. Authorized by the National Historic Preservation Act of 1966, the National Park Service's National Register of Historic Places is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources.

Table 2- U.S. National Park Service (U.S. NPS) National Register of Historic Places Focus Database Listings Near Facility

Title:	Colorado Chautauqua 900 Baseline Rd., Chautauqua Park
National Register Information System ID:	78000830
Areas Of Significance:	EDUCATION COMMUNICATIONS SOCIAL HISTORY
Resource Type:	District
Asset ID:	5c494c9e-c5c8-4297-813f-fef862e5995f

Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470(f) requires that federal agencies consider the effects of federal undertakings on historic properties. The first step in this analysis is to consider whether the undertaking has the potential to affect historic properties, if any are present. See 36 CFR 800.3(a)(1).

Permits where there is no new construction are generally not the type of action with the potential to cause effects on historic properties. Though there is the potential of construction activities occurring at/near the Facility, this Permit does not authorize actual construction work. However, it does provide requirements related to stormwater discharges from construction related activities within the MS4. Based upon the information provided by the NPS database, the EPA does not anticipate any

impacts on listed/eligible historic properties or cultural resources due to this Permit issuance and stormwater discharge related activities from the MS4.

A copy of the proposed Permit will be sent the State Historic Preservation Office (SHPO) for their review during public notice. Any comments received during public notice by the SHPO will be addressed in the final Permit.

11. MISCELLANEOUS

The effective date of the Permit and the Permit expiration date will be determined upon issuance of the Permit. This NPDES Permit shall be effective for a fixed term not to exceed 5 years.

Permit Drafted by: Alysia Tien, U.S. EPA Region 8, 303-312-7021, September 2023

ADDENDUM

AGENCY CONSULTATIONS

Based on informal consultation with the Colorado USFWS field office representative, EPA determined the permitting action has "no affect" or "may affect, but is not likely to adversely affect" the species listed. On October 19, 2023, USFWS concurred with EPA's conclusion that the Permit reissuance may affect but is not likely to adversely affect listed species, as indicated in Section 9. Endangered Species Considerations of the SoB.

The State Historic Preservation Office did not comment on EPA's preliminary determination that the Permit reissuance will not impact any historic properties.

On September 12, 2023, EPA sent a CWA Section 401 certification request to the State of Colorado. The State of Colorado waived Section 401 certification.

PUBLIC NOTICE AND RESPONSE TO COMMENTS

The Permit and statement of basis were public noticed on EPA's website on September 18, 2023. The comment(s) received and the response(s) are provided below.

Comments received from Dave Garrity on 10/18/2023, Department of Commerce Boulder Labs:

- **Comments:**
  The commenter noted the following corrections/updates to naming conventions and wording used in the SoB and Permit:
  - Change "United States Department of Commerce (DoC) NIST- Boulder Laboratories" to "United States Department of Commerce (DoC) Boulder Laboratories". The DoC Boulder Labs is split into two areas-of-responsibility - NIST and GSA/NOAA. (Sections 1.2 and 1.3)
  - Change "NIST Engineering, Maintenance and Supports Services (EMSS) Division" to "NIST Office of Facilities and Property Management (OFPM)". (Section 2.2.7)
  - Change "Contracting Office Technical Representatives (COTRs)" to "Contracting Officer Representatives (CORs)". (Section 2.2.7)
  - Change "NIST-DoC Boulder Laboratories" to "DoC Boulder Laboratories". (Section 2.3.8)

- **Response:**
  The following naming/wording changes have been made to the SoB and Permit to address the items listed in the comments above, for final Permit issuance:
  - Changes were made to switch the naming convention for "United States Department of Commerce (DoC) NIST- Boulder Laboratories" to "United States Department of Commerce (DoC) Boulder Laboratories", for the identified Permit Sections 1.2 and 1.3. Additionally, changes were made to switch the naming convention for "NIST-DoC Boulder Laboratories" to "DoC Boulder Laboratories", for the identified Permit Section

2.3.8. As a natural outgrowth of these comments and to maintain consistency for similar naming conventions used within the SoB and Permit, both documents were updated to remove any jointly affiliated naming conventions for the Facility that indicated both National Institute of Standards and Technology/NIST and the United States Department of Commerce/DoC, replacing them with only United States Department of Commerce/DoC.

- The following requested changes have been made to Section 2.2.7 of the Permit, to update language as follows:
    - Change "NIST Engineering, Maintenance and Supports Services (EMSS) Division" to "NIST Office of Facilities and Property Management (OFPM)".
    - Change "Contracting Office Technical Representatives (COTRs)" to "Contracting Officer Representatives (CORs)".

- **Comment:**
  The commenter had the following inquiry related to the "principal executive officer or ranking elected official" language in the Permit:
  - Who would be the equivalent of a principal executive officer or ranking elected official on a federal facility with no elected officials? (Section 7.7.1)

- **Response:**
  Regarding signatory requirements, 40 CFR 122.22(a)(3) indicates: "For a municipality, State, Federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:
  (i) The chief executive officer of the agency, or
  (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA)."

  In alignment with the regulatory requirement above, the following clarifying language has been added to Section 7.7.1 of the Permit: "For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA)."