

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

RESOLUTION 18-15
Approval of the Enforcement Response Plan

WHEREAS, the Colorado Department of Public Health and Environment (CDPHE) issues and administers discharge permits and other control mechanisms as provided by the Colorado Water Quality Control Act (25-8-101 et seq., CRS, 1973) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.; the "Act"); and

WHEREAS, the Southeast Metro Stormwater Authority (SEMSWA) has been authorized to discharge stormwater associated with their Municipal Separate Storm Sewer (MS4) system in accordance with the Colorado Discharge Permit System (CDPS) General Permit No. COR-080021, effective July 1, 2016 (MS4 Permit), specifically for discharges wholly or partly within the Cherry Creek Reservoir drainage basin; and

WHEREAS, in accordance with the MS4 Permit, CDPHE requires permittees to implement stormwater Control Measures to regulate the introduction or addition of pollutants into SEMSWA's MS4; prohibit illicit connections and discharges to the MS4, and promote public awareness of the hazards involved in the improper discharge of pollutants to the MS4, through the implementation of the Illicit Discharge Detection and Elimination (IDDE) Program, Construction Sites Program; and Post-Construction Stormwater Management for Development and Redevelopment Program (Permit Programs); and

WHEREAS, the CDPHE has set forth a requirement for comprehensive enforcement tools referred to as "Enforcement Response" for the Permit Programs (COR-080021: Section 1.E.2.a.vii; Section 1.E.3.c.vii; and Section 1.E.4.c.viii); and

WHEREAS, SEMSWA is required to implement appropriate written enforcement procedures and actions necessary to meet the MS4 Permit requirements, including 1) the escalation of enforcement as necessary based on the severity of the violation and/or the recalcitrance of the violator to ensure that violations of a similar nature are enforced consistently; 2) processes and sanctions to minimize occurrence of, and obtain compliance from, chronic and recalcitrant violators of Control Measure requirements; and 3) include informal, formal, and judicial enforcement responses; and

WHEREAS, the SEMSWA Enforcement Response Plan has been prepared to meet the requirement of written enforcement procedures and actions necessary to meet MS4 Permit requirements for the Permit Programs.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board adopts the SEMSWA Enforcement Response Plan, as attached hereto as **Exhibit A**.
2. The Board authorizes the use of the SEMSWA Enforcement Response Plan in administering and enforcing the MS4 Permit Illicit Discharge Detection and Elimination (IDDE) Program, Construction Sites Program; and Post-Construction Stormwater Management for Development and Redevelopment Program, within the boundaries of the City of Centennial.
3. The Board authorizes the Executive Director to make any minor non-substantive modifications to the Enforcement Response Plan without prior Board approval.

SOUTHEAST METRO STORMWATER AUTHORITY
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Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:
Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

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SEMSWA Enforcement Response Plan (ERP)

May 2018

INTRODUCTION

The Southeast Metro Stormwater Authority (SEMSWA) has adopted rules and regulations, as authorized by Section 29-1-204.2, C.R.S, as may be amended from time to time, pertaining to compliance with and enforcement of its Municipal Separate Storm Sewer System (MS4) Permit as issued by the Colorado Department of Public Health and the Environment (CDPHE) under their Colorado Discharge Permit System (CDPS).

SEMSWA has been issued a CDPS General Permit COR080021 (Permit) for Stormwater Discharges associated with MS4s that discharge to the Cherry Creek Reservoir Drainage Basin and are located within the SEMSWA Service Area. This document will provide the Enforcement Response Plan (ERP) for a non-compliance or violation of the MS4 Permit, as required by Sections I.E.2a.vii; I.E.3.c.vii, and I.E.4.c.viii as follows: *Implement appropriate written enforcement procedures and actions necessary to meet requirements. The permittee must escalate enforcement as necessary based on the severity of the violation and/or the recalcitrance of the violator to ensure that findings of a similar nature are enforced upon consistently. The permittee must have processes and sanctions to minimize occurrence of, and obtain compliance from, chronic and recalcitrant violators of control measure requirements. Written enforcement procedures must include informal, formal, and judicial enforcement responses.*

DISCUSSION

SEMSWA's MS4 Permit has three Program Areas that require regulatory mechanisms and legal authority, by means of rules and regulations, in order to enforce compliance with the Permit. The three Program Areas are Construction Sites; Post-Construction Stormwater Management for New Development and Redevelopment; and Illicit Discharge, Detection and Elimination (IDDE). SEMSWA's enforcement rules and regulations are authorized by various legal mechanisms, primarily by a series of SEMSWA Board Resolutions that include non-numeric standards for pollution reduction in stormwater discharge, authorization for enforcement, and establishment of penalties for non-compliance.

This ERP documents SEMSWA's enforcement process for violations associated with these three MS4 Permit Program Areas. Additionally, this document will reference the legal mechanism(s) that: 1) establish regulations intended to minimize the introduction or addition of pollutants into State waters through IDDE standards, specifically as it relates to non-stormwater discharges to the storm drain system; 2) authorizes enforcement related to the MS4 Permit; and 3) establishes penalties for enforcement. These resolutions apply to the SEMSWA MS4 (generally described as the City of Centennial boundaries). The legal mechanism(s) is intended to regulate the introduction or addition of pollutants to SEMSWA's MS4, prohibit illicit connections and discharges to the MS4, and promote public awareness of the hazards involved in improper discharge of pollutants into the storm drainage system. An ERP Flow Chart for each Program Area identifies respective regulatory mechanism(s), respective standards, criteria and manuals, and the standard operating procedure (SOP) documents that will clarify the enforcement process for each Program Area (Attachment A, Rules and Regulations Flow Charts).

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The penalties contained in this document, including by reference, represent SEMSWA's comprehensive enforcement toolbox, which generally escalates in severity. Not all enforcement tools will fit a non-compliance issue, and not all remedies will follow the implied order of enforcement tool escalation. These enforcement tools are intended to be utilized in appropriate situations based on the severity of the violation, with a priority placed on achieving compliance through educational opportunities whenever reasonably possible. Cases with high severity, especially those threatening the health, safety and welfare of the public and/or resulting in a potential violation to the MS4 Permit may be escalated to the most effective penalty. No remedy provided shall be exclusive. All remedies may be cumulative and available concurrently. Any action, including an allegation or determination of violation will not preclude or prevent any other action to abate any violation. Any application of these penalties that is a civil action will not prevent the commencement or application of any other allegations brought pursuant to any other provision of law. Any and all of the penalties established herein may be imposed immediately upon a violation occurring even in cases where the violation has ceased and/or is being abated.

REGULATORY MECHANISMS AND LEGAL AUTHORITY

The City of Centennial (City) and SEMSWA entered into an Implementing Intergovernmental Agreement (IIGA), RESOLUTION NO. 63, SERIES OF 2007, allowing for the transfer of the CDPS MS4 Phase II Permit from the City to SEMSWA. In accordance with the IIGA, SEMSWA established programs to administer and enforce on behalf of the City, and the City delegated in the IIGA such police powers as necessary to enable SEMSWA to enforce any and all provisions of the MS4 Permit.

The SEMSWA Board has now adopted their own regulations. Rules and regulations are summarized in the following table, as applicable at the time of the ERP's adoption. These resolutions may be updated from time to time, with up-to-date references documented in the attached Program Area Flowcharts, as applicable. In some instances, City regulations are referenced, specifically as related to IDDE violations where SEMSWA may deem it beneficial to call attention to the City's enforcement process that may involve their Municipal Court system.

Program Area	Regulation	Mechanism
IDDE	Resolution 12-29	Pollution Reduction in Stormwater Discharges through IDDE Standards
	Resolution 12-30	Establishment of the IDDE Manual
	2012-O-19	City Ordinance Pertaining to IDDE
	Section 1-4-10	Municipal Code Pertaining to Penalties
	Section 13-1-320	Municipal Code Pertaining to IDDE Violations
Construction	Resolution 10-42, 18-13	Adoption of the GESC Manual
	Resolution 18-14	Adoption of the Compliance Assurance Enforcement Fee
Post Construction	Resolution 12-14	Adoption of the SMM
IDDE, Construction, Post Construction	Resolution 12-30	Authorization for Enforcement
	Resolution 12-31	Establishment of Penalties and Enforcement
Construction, Post Construction	Resolution 16-30	Establishment of Fees
Post Construction	Resolution 07-32	Long Term Operation and Maintenance

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Resolutions Establishing Criteria, Standards, and Procedure Manuals

As highlighted in the table, the SEMSWA Board adopted the Grading, Erosion, and Sediment Control (GESC) Manual pursuant to RESOLUTION No. 42, Series of 2010 and the Stormwater Management Manual (SMM) pursuant to RESOLUTION No. 14, Series of 2012, to set forth the standards and criteria for the Construction Sites and Post-Construction Stormwater Management Program Areas, respectively, that were previously authorized by City Ordinances. In addition, SEMSWA has established an IDDE Manual specifically outlining the standards, criteria, and procedures associated with the IDDE Program Area, as referenced in RESOLUTION NO. 30, Series of 2012.

POLLUTION RESTRICTIONS, PROHIBITIONS AND REDUCTIONS

The purpose and intent of the ERP is to ensure the health, safety, and general welfare of citizens, and to protect and enhance the water quality of watercourses and water bodies in a manner pursuant to and consistent with the MS4 Permit, applicable state laws, and the Federal Clean Water Act regulating non-stormwater discharges to the storm drain system. This can, in part, be achieved through effective, clear, and defensible enforcement processes, that are documented in referenced SOPs.

SEMSWA RIGHT TO ENTER

Should SEMSWA have reasonable cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of Resolution 12-29 (Pollution Reduction in Stormwater Discharges through IDDE Standard), SEMSWA has the right to enter for inspections upon private property in the same manner and by the same means as visitors to the property.

SEMSWA may also seek the assistance from the City, in accordance with Section 12-1-480, Right-of-Entry, in the Municipal Code.

EXEMPTIONS

The prohibitions set forth in Resolution 12-29 and this ERP will not apply to any non-stormwater discharge which is permitted under a NPDES permit, or another CDPS permit; or any non-stormwater discharge for which an authorization, or formal commitment to not pursue enforcement actions against the discharger under a policy or waste discharge order, is issued and administered under the authority of the CDPHE; or non-stormwater discharges that are otherwise exempted by law.

NON-COMPLIANCE PENALTIES

The remedies contained in this ERP for non-compliance enforcement actions are authorized primarily within Resolutions 12-31, 16-30, and 18-14, and are available to SEMSWA to enforce regulations where SEMSWA identifies a non-compliance and may be imposed whether or not corrective action is being taken or has been taken. The remedies established with these Resolutions and documented herein may be imposed from the date of the non-compliance. No remedy provided shall be exclusive, as additional remedies are discussed herein. All remedies may be cumulative and available concurrently.

Except as otherwise provided in this ERP, in cases where a non-compliance may result in a risk to public health, safety or welfare, it is the general policy of SEMSWA to provide reasonable opportunities for

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property owners, contractors, or others subject to non-compliance enforcement to bring the non-compliance action or activity into compliance with SEMSWA's regulations prior to corrective actions being taken by SEMSWA directly (see *Abatement and Restitution SOP* and *Use of Property Lien SOP*) or initiation of judicial proceedings (see *Judicial Relief SOP*).

SEMSWA's non-compliance penalties are authorized through Resolutions 12-31, 16-30, and 18-14 and consist of the following, in general order of escalation in terms of the level of SEMSWA Inspector oversight and the complexity of the violation and associated corrective action:

- Verbal Warning
- Educational Materials
- Compliance Assistance Re-Inspection Fees
- Permit Holds (may require coordination with the City)
- Preliminary Notice of Violation Warning Letter
- Compliance Assurance Enforcement Penalty Fees
- Notice of Violation
- Revocation of Permits
- Stop Work Order
- Fines and Fees
- Use of Collateral and Escrow Funds
- Abatement and Restitution Property Lien
- Use of Property Lien
- Judicial Relief

Enforcement remedies that are exercised by the SEMSWA Inspector at the construction site level of interaction range from Verbal Warnings to Stop Work Order (see *Non-Compliance Penalties SOP*). Escalated non-compliance penalties that entail legal considerations, financial institution involvement, and regulatory record-keeping have separate SOPs for the penalty process, and benefit from additional discussion below.

Fees and Fines

Fines and Fees is an enforcement tool that is most commonly used for IDDE non-compliance violations (see *Fines and Fees SOP*). Unlike many construction and post-construction non-compliance issues, IDDE violations often are not associated with construction sites that have approved plans and permits. As such, there are limited tools that can be used concurrent with an IDDE violation to ensure timely compliance. For this reason, Fines and Fees as a non-compliance penalty is intended to discourage non-compliant behaviors and encourage responsible parties to correct and remedy a violation to avoid additional, more substantial fines; direct abatement actions by SEMSWA; and any judicial proceedings. In addition, the Fines and Fees penalties were developed to address the impact of the violation, with a multiplier intended to address recalcitrance, repeat offenders, and untimely responses.

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Use of Collateral and Escrow Funds

SEMSWA is authorized to use collateral and escrow funds through Resolution 12-31, and in accordance with applicable terms and conditions outlined in the GESC Permit, associated with the implementation of construction control measures, and in the Public Improvement Agreement (PIA), executed to ensure the construction of a permanent post-construction control measure facility(s), as permitted with a Stormwater Public Improvement Permit (SPIP). This enforcement remedy precedes SEMSWA's direct involvement in abatement of a violation and involves the execution of a collateral draw. The mere proposal to use this remedy may be sufficient to achieve compliance, such that this remedy may prove to be an uncommon occurrence. The use of Collateral and Escrow Funds for an active construction site with a GESC Permit is for final stabilization of the site and not for temporary GESC control measures that serve to facilitate any on-going construction. The use of Collateral and Escrow Funds for a development site with a PIA and SPIP Permit is for completing installation and obtaining final acceptance of the permanent water quality control measure for the site. SEMSWA's purpose in using this escalated non-compliance penalty is not to aid the site development process, but to collect monies to meet the requirements of the MS4 Permit to mitigate pollutants leaving a site (*see Use of Collateral and Escrow SOP*).

Abatement and Restitution

SEMSWA is authorized to abate and provide restitution as authorized through Resolution 12-31, in accordance with the Stormwater Maintenance Agreement, specific to Post Construction permanent control measures as authorized through Resolution 07-32; and in accordance with the IDDE Manual authorized through Resolutions 12-29 and 12-30 to prohibit illicit discharges to the MS4. SEMSWA may also elect to utilize the City's Abatement Process through coordination with the City, as authorized in the Municipal Code Section 13-1-410. This enforcement tool assumes SEMSWA's direct involvement in abatement of a violation. While available to use, the Abatement and Restitution enforcement remedy will be infrequent at active construction sites, as there are more effective enforcement tools available for permitted sites. The quick response through SEMSWA direct actions afforded by this enforcement tool and the ability to back charge for corrective actions make this an effective remedy for IDDE violations when the Fines and Fees enforcement tool has not achieved compliance (*see Abatement and Restitution SOP*).

Property Lien

SEMSWA is authorized to lien a property through Resolution 12-31, and in accordance with applicable terms and conditions outlined in the GESC Permit, associated with the implementation of construction control measures; in accordance with the PIA and SPIP, executed to ensure the implementation of a post construction permanent control measure; in accordance with the Operations and Maintenance Agreement authorized through Resolution 07-32 for Post Construction Control Measures; and in accordance with the IDDE Manual, authorized through Resolution 12-29 and 12-30 to prohibit illicit discharges to the MS4. The use of the Property Lien enforcement tool will be a rare circumstance to cure a violation, when previous enforcement remedies have not resulted in compliance. SEMSWA's purpose in using this escalated penalty is to focus attention of the property owner on their responsibility to correct the violation and meet the requirements of the MS4 Permit (*see Use of Property Lien SOP*).

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Judicial Relief

SEMSWA will utilize the Judicial Relief enforcement tool as authorized through Resolution 12-31 when previous enforcement has been ignored, not completed, or additional non-compliances have occurred at a site. Judicial relief through the City of Centennial or Arapahoe County courts is an effective tool for compliance and will only be used in cases where other enforcement tools have been exhausted. Judicial Relief will be considered the last step to achieve compliance with the MS4 Permit (see *Judicial Relief SOP*).

IMPLEMENTATION

All enforcement processes will take place in a measured, documented, and well thought out step-by-step process, and only after SEMSWA staff has identified the potential infraction and documented the type, extent, and nature of the violation. Enforcement is not taken lightly, nor as a matter of course for a project; it can be a very serious undertaking, commensurate with the gravity of potential injury to the public's health, safety, and welfare, and the significance of an impending MS4 Permit violation.

SOPs have been prepared to document the inspection processes for the two MS4 Permit Program Areas where enforcement may be necessary to ensure that plans and permits have been followed, including Construction Site inspections (see *Construction Sites Inspection Program SOP*), and Post-Construction Stormwater Management control measure inspections (see *Post-Construction Inspections Program SOP*). An SOP has also been prepared to document the enforcement resulting from the investigative process for the IDDE Program Area where enforcement may be necessary to remove illicit connections and trace and eliminate improper discharges (see *IDDE Investigations Program SOP*). Enforcement implementation specific to these Program Area activities are described in the respective SOPs, and in a stand-alone SOP detailing the real-time site level enforcement options available to the SEMSWA Inspector (see *Non-Compliance Penalties SOP*).

Once enforcement has escalated beyond the actions available to the SEMSWA Inspector for real-time site corrections to meet plan and permit requirements, additional SOPs have been prepared to provide uniform actions and consistent penalties for enforcement options involving the use of Fees and Fines, Collateral and Escrow Funds, and Abatement and Restitution direct measures; for the use of Property Liens; and for situations requiring Judicial Relief. These SOPs are highlighted here as a reference for enforcement implementation actions and constitute the enforcement tools available to SEMSWA to be used to achieve compliance with the MS4 Permit.

Construction Site Enforcement

Inspections are performed in accordance with the referenced GESC Inspection Program SOP and are governed by requirements contained in the SEMSWA GESC Manual, and as are further contained on approved GESC Plans/Report and GESC Permit, as applicable. Violations can be procedural, or based on a lack of functioning control measures at the site, leaving open the potential for an imminent discharge, or an actual discharge due to a loss of control at the site. Inspection results are provided to the Contractor, including as applicable, Verbal Warnings of non-compliance, additional instructions for compliance, and next steps to get the site compliant. Each of these may lead to enforcement, and the severity of the penalty is based on the site history, the field conditions at the time of the inspection, the implication of an MS4 Permit violation, and the threat posed to the public's health, safety and welfare. Two enforcement fee processes have been developed for Construction Site Enforcement through the

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GESC Permit Program. The Compliance Assistance Re-Inspection Fee process (Resolution 16-30) and the Compliance Assurance Enforcement Penalty Fee process (Resolution 18-14) both utilize monetary penalties to achieve site compliance and represent an escalation from general overall control measure compliance at a site to more specific and time-sensitive source control measure compliance. These monetary enforcement tools typically result in a high degree of compliance since the assistance component of the Re-inspection fee allows for contractor educational opportunities and the specificity of the source control remedies of the Compliance Assurance Penalty fees allows for Contractor participation. The Compliance Assurance Penalty fee assessment is preceded by discussion of potential Permit Holds with the Owner and City staff and/or the issuance of a Pre-Notice of Violation Warning Letter for the site that details the non-compliance items and requires a written corrective action schedule from the Contractor. If the non-compliance issues are resolved, the enforcement is complete without any Compliance Assurance Penalty fees; if the Contractor does not meet their own schedule of corrective actions, then the Penalty fees are formalized and assessed.

Escalation of Enforcement

If the Compliance Assurance Penalty Fees have not achieved the compliance necessary, subsequent and/or concurrent violations may result in the issuance of a Notice of Violation (NOV), Revocation of Permits, or, in extreme non-compliant situations, a Stop Work Order (SWO). If a site is non-compliant to the point of a SWO, the entire approach to GESC controls at the site must be re-evaluated. This means that all construction work on site for the purposes of development must stop; the GESC Permit is revoked and a new GESC Permit application must be submitted, including new GESC Permit fees. At this point, the GESC plan and report process begins anew, including payment of new GESC review fees. Under a SWO, no work can be accomplished at the site, other than Inspector-approved GESC corrective actions, until a GESC Permit is re-issued. The entirety of the Construction Inspection process, including enforcement, is outlined in the GESC Inspection Program SOP. In cases where a non-compliance occurs where violations have previously occurred on the site, or a site exhibits extreme poor field conditions at the time of the inspection, and/or a threat is posed to the public's health, safety and welfare, enforcement may escalate in a manner determined to best gain compliance.

Additional Enforcement Tools

Several other enforcement tools are available to SEMSWA, depending on the site conditions, record of compliance, and other mitigating circumstances. It may be that the additional monetary enforcement fees and stopping all work with a SWO may not be appropriate or an effective tool for a site. For this reason, additional tools generally listed in order of escalation, that can be utilized include Fines and Fees, Use of Collateral and Escrow Funds, Abatement and Restitution, Property Lien, and Judicial Relief. These enforcement remedies will be utilized as appropriate, following the requirements as stated within this ERP and supporting GESC Inspection Program SOP, and in accordance with the referenced respective SOPs.

Post Construction Stormwater Management Enforcement

Inspections of Post Construction control measures are performed in accordance with the referenced Post Construction Stormwater Management Program SOP and per the approved Construction

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Drawings (CD's). Compliance is governed by requirements contained in the SEMSWA Stormwater Management Manual (SMM), and the Stormwater Public Improvement Permit (SPIP), as applicable.

Post-Construction Stormwater Management Enforcement falls within two categories: during active site construction, and after construction when the permanent post-construction control measure associated with the project has received Final Acceptance by SEMSWA.

Sites Under Construction

The Post-Construction Stormwater Management Program Area of the MS4 Permit includes a requirement for SEMSWA to perform inspection activities to ensure that proper permanent post-construction control measures are constructed and implemented in accordance with the approved CD's and sites have a functional permanent control measure at the end of construction. Inspections are performed in accordance with the referenced Post Construction Program Inspection SOP, and non-compliance can be procedural or a result of incorrect installation based on actual field conditions noted at the time of inspection that, if not acted upon, will result in a non-compliant permanent control measure that does not meet the approved CD's and SMM. Identified deficiencies will be considered violations and will require corrective action. The SEMSWA Inspector has discretion, within the guidelines of the Post Construction Program Inspection SOP and this ERP document, to match the non-compliance with an appropriate Compliance Assistance Re-inspection fee, as authorized in Resolution 16-30, if the non-compliance is during active construction.

SEMSWA will not use the Compliance Assurance Enforcement Penalty Fee process for a permanent control measure facility inadequacy. The Compliance Assurance process for Post Construction permanent control measure facility will be a remove-and-replace policy for those facility installations that are defective and non-functioning in accordance with the approved CD's and SMM.

Escalation of Enforcement

If the Compliance Assistance Re-Inspection Fees have not achieved the compliance necessary, subsequent violations may result in discussions with the City and Owner regarding Permit Holds, and/or the issuance of a Pre-Notice of Violation Warning Letter, Compliance Assurance remove-and-replace, an NOV, or, in extreme non-compliant situations, a SWO. If a permanent control measure is non-compliant to the point of a SWO, the entire approach to the permanent post-construction control measure facility being constructed under the SPIP must be re-evaluated. This means that the development construction work at the site must stop to concentrate on the correct installation of the permanent control measure. If the permanent control measure facility design is in question and requires revision, the SPIP plan and report process will be revised and the review and approval process initiated, including payment of new review fees; the SPIP Permit is revoked and a new SPIP Permit may be issued, including new SPIP Permit fees. Under this extreme scenario, development construction work, other than the permanent control measure facility, cannot re-commence at the site until a new SPIP is approved, issued and review and permit fees received.

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Additional Enforcement Tools

Several other enforcement tools are available to SEMSWA Inspectors, depending on the site conditions, record of compliance, and other mitigating circumstances. It may be that the additional monetary enforcement fees and stopping all work with a SWO may not be appropriate or an effective tool for a site. For this reason, additional tools generally listed in order of escalation, that can be utilized include Fines and Fees, Use of Collateral and Escrow Funds, Abatement and Restitution, Use of a Property Lien, and Judicial Relief. These enforcement tools will be utilized as appropriate, following the requirements as stated within this ERP document and the Post Construction Program Inspection SOP, and in accordance with the referenced respective SOPs.

Post Construction Stormwater Management After Construction

The Post-Construction Stormwater Management Program Area of the MS4 Permit includes a requirement for SEMSWA to perform inspection activities to ensure permanent control measures are maintained and operate in accordance with the approved CD's and As-Built's, as applicable, after construction is complete and the facility has received Final Acceptance.

Inspections are performed in accordance with the referenced Post Construction Program Inspection SOP. Non-compliance can be procedural or a result of identified inadequacy of the permanent control measure, based on an inspection of the facility in relation to the approved CD's and As-Built's, as applicable. Identified deficiencies will be considered violations and will require corrective action. The Inspector has discretion, within the guidelines of the Post Construction Program Inspection SOP and this ERP, to match the non-compliance with an appropriate action. Typical enforcement will include Verbal Warning, Educational Materials, Fines and Fees, Abatement and Restitution, Property Liens, and Judicial Action. These enforcement penalties are generally listed in order of escalation and will be utilized as appropriate, following the requirements as stated within this ERP, the Post Construction Program Inspection SOP, and in accordance with the referenced respective SOPs.

Illicit Discharge Detection and Elimination

The IDDE Program Area of the MS4 Permit includes a requirement for SEMSWA to map the storm system, prohibit illicit discharges to the MS4, access properties where non-compliance may be occurring (or may have occurred), and require the non-compliance(s) to cease and provide mitigation, as necessary. Additionally, a large part of the IDDE program is to promote public awareness of the hazards involved in the improper discharge of pollutants into the storm drainage system. Removal and/or elimination of the illicit discharge may require utilization of any or all of the non-compliance enforcement tools as contained in this ERP document and the referenced supporting SOPs outlined herein.

Because there can be varied sources of illicit discharges to the storm sewer system, there are different kinds of actions SEMSWA may take to remove those sources and prevent future illicit discharges. The IDDE Manual, authorized in Resolution 12-30, discusses the options for compliance assistance and enforcement for illegal connections to homes and businesses, and responding to and preventing illegal dumping. There is a range of ways in which the SEMSWA may facilitate the removal and potential mitigation of illegal connections between homes or businesses and the storm sewer system, and the

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elimination of illicit discharges. SEMSWA will use judgment about what mix of compliance assistance and enforcement actions is appropriate in a given situation. Typically, SEMSWA responds to the discovery of an illegal connection and/or illicit discharge in a graduated manner, beginning with efforts to obtain voluntary compliance and escalating to increasingly severe enforcement actions if compliance is not obtained.

Voluntary Compliance

Often, a homeowner or business owner is not aware of the existence of illegal connections between their building(s) and the storm sewer system. In these cases, providing the responsible party with information about the connection, its environmental consequences, the applicable regulations, and how to remedy it may be enough to secure voluntary compliance. The cost of removing the connection and reconnecting it to the appropriate system can be an obstacle to voluntary compliance, however. At that point, enforcement tools may be required.

Similarly, a homeowner or business owner may not be aware of an illicit discharge incident, its environmental consequences, and the applicable regulations. A discussion about how to remedy it may be enough to secure voluntary compliance. The cost of removing or eliminating the illicit discharge may be an obstacle to voluntary compliance, however. At that point, enforcement tools may be required.

IDDE Enforcement

It is the general policy of SEMSWA to provide reasonable opportunities for property owners, property managers, and hired contractors to bring properties or sites into compliance with SEMSWA's CDPS MS4 permit before formal enforcement proceedings are initiated. Penalties for enforcement are intended to achieve compliance without corrective actions being taken by SEMSWA directly or initiating judicial proceedings. The remedies contained in Resolution 12-31 are available to SEMSWA to enforce the MS4 Permit where SEMSWA identifies an IDDE non-compliance and may be imposed whether or not corrective action is being taken or has been taken.

Any and all of the penalties established for IDDE non-compliance may be imposed immediately upon a violation occurring even in cases where the violation has ceased or is being abated. Typical enforcement will include Verbal Warning, Educational Materials, Fines and Fees, Abatement and Restitution, Property Liens, and Judicial Relief. These penalties are generally listed in order of anticipated escalation and will be utilized as appropriate, following the requirements as stated within this ERP, the IDDE Program Investigation SOP, and in accordance with the referenced Fines and Fees SOP, Abatement and Restitution SOP, Use of Property Lien SOP, and Judicial Relief SOP. All IDDE non-compliance remedies may be cumulative and available concurrently. Any action including an allegation or determination of an IDDE non-compliance shall not preclude or prevent any other action to abate any violation. Any application of these penalties that is in the nature of a civil action shall not prevent the commencement or application of any other allegations brought pursuant to any other provision of law.

IDDE Enforcement Escalation

The majority of IDDE non-compliance investigations can be resolved with Verbal Warnings that provide an educational component to assist the violator with understanding the role of the IDDE non-

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compliance in potential impacts to the stormwater system, and consequently, the ecosystem. Educational outreach that accompanies the Verbal Warning has proven to be suitable for a major portion of the illicit discharge incidents and allows SEMSWA to close out the investigation satisfactorily. Compensatory actions (see *Fines and Fees SOP*) may be appropriate for a small percentage of IDDE investigation resolutions, where the non-compliance is a one-off incident, has ceased upon occurrence, and can be satisfactorily resolved without formal fees or fines. Compensatory actions that promote behavior change have a strong potential to reduce pollutants to the MS4.

Formally assessed Fines and Fees are one of the escalation enforcement tools for an IDDE violation. SEMSWA's IDDE Fee Analysis Matrix and IDDE Fee Calculation Worksheet (Resolution 12-31, Exhibit B) takes into account environmental and compliance factors as they relate to potential severity. Each Fine Level represents a "not to exceed" amount for each violation. Abatement and Restitution enforcement will be used for any IDDE non-compliance that poses an immediate and imminent danger to public health and safety, and/or the level of non-compliance with the MS4 permit requires specific and timely action. The use of a Property Lien after abatement costs have been established or expended may be the most straightforward at the least cost enforcement action to focus a property owner's attention on the violation and gain compliance at a property. Judicial relief may be sought if a real, imminent and irreparable injury to the public is presumed to have the potential to occur by the IDDE violation. Each of these escalating enforcement tools have accompanying referenced SOPs.

These tools are intended to be used in appropriate situations based on the severity of the IDDE violation, with a priority placed on achieving removal or elimination of the illicit discharge through educational opportunities whenever reasonably possible. Cases with high severity, especially those threatening the health, safety and welfare of the public and/or resulting in a potential violation to the MS4 permit may be escalated to the most effective penalty. No remedy provided shall be exclusive.

SEMSWA may also utilize the City Municipal Code, Section 13-1-320, with coordination of the City, for the enforcement of IDDE violations.





