



Board Study Session Memo

To: Board of Directors
From: Lanae Raymond and Ashley Byerley, WQ Program
Date: July 19, 2012
Re: MS4 Permit Audit/Questionnaire
Board Meeting Date: July 25, 2012

Topic

This Study Session will provide the Board with an understanding of the strategic plan and timeline for the completion of the CDPHE (Division) Questionnaire due to be completed by all MS4's by October 15th.

Background

As mentioned at previous Board meetings, the Division prepared this Questionnaire based on 10 audits and 11 construction screenings conducted since 2010. The Division noted common findings regarding non-compliance with their interpretation of Permit requirements and used them to develop a Questionnaire to determine if the MS4 is in compliance with the Permit. The Questionnaire is a set of YES/NO questions regarding three program areas of the Permit: Program 3, Illicit Discharge Detection and Elimination (IDDE); Program 4, Grading, Erosion and Sediment Control (GESC), and Program 5, Permanent Water Quality BMPs. NO answers generally indicate non-compliance with a specific permit requirement.

The Division's stated goal of the Questionnaire is to gather information to clarify the current permit requirements and to begin the development of a clear and enforceable renewal permit in 2013. The Division believes that some permit requirements and audit report findings have been unclear, and they acknowledged that each MS4 had differing interpretations of the Permit requirements. The Questionnaire/audit is a way to ensure that the Permittee has the benefit of the Division's interpretation of Permit requirements.

The process is intended to proactively identify and correct noncompliance items prior to the Division conducting full audits for those MS4s not yet audited by the Division, including SEMSWA. By addressing these compliance items with all MS4s at the same time, it is the Division's stated intent that the compliance oversight process be more equitable and allow for increased compliance assistance and collaboration than would occur by addressing MS4 compliance one at a time.

Ultimately, the information from the Questionnaire will be used by the Division during the MS4 Permit renewal process, now scheduled for December 2013, to craft a permit with clear expectations, standards of performance, and requirements. The MS4s are in favor of this goal as well.

Discussion

SEMSWA staff have completed a draft of the Questionnaire, and have determined that our interpretation of several areas has varied from the Division's. Our variations in Program 3 and Program 5 have fallen in line with other MS4 interpretations, and as such, we are working with the Colorado Stormwater Council to uniformly address several of these items. Not surprisingly, our GESC Program 4 remains an implementable program from the Division's perspective, with only minor administrative changes necessary. All programs require optimizing enforcement capabilities, to be addressed through governing board resolutions.

Staff has developed a strategic plan and timeline in order to provide answers in the Questionnaire that will indicate compliance with the Permit. Several elements in either SEMSWA's Permit program documents or the formal 'mechanisms to prohibit and enforce' require modification or development prior to the October 15th deadline including the following:

| Program Area | Proposed Action | Proposed Implementation |
|----------------------|---|---|
| Program 3 | SEMSWA Board Resolution #1: SEMSWA prohibits discharges that violate Permit | <u>SEMSWA Resolution</u> authorizing “Pollution Reduction in Stormwater Discharges through the IDDE Program” ...i.e. “You cannot illegally discharge”. Previously, this authorization was only under the City’s Ordinance. |
| Programs 3, 4, and 5 | SEMSWA Board Resolution #2: SEMSWA has authority to enforce the Permit and violations of it | <u>SEMSWA Resolution</u> documenting the enforcement mechanism delegated to SEMSWA from the City, recognizing the permit requirements for enforcement through adoption of the GESC Manual and Stormwater Management Manual (SMM) and the use of an internal IDDE Manual, and authorizing SEMSWA to enforce the Permit through penalty action(s) |
| Programs 3, 4, and 5 | SEMSWA Board Resolution #3: SEMSWA adopts enforcement procedures | <u>SEMSWA Resolution</u> authorizing the legal steps/enforcement tools we use to enforce the permit requirements through the enforcement process contained in Implementation documents. |
| Program 5 | SEMSWA Board Resolution #4: Remove non-conforming variance processes in SMM | <u>Revision to SMM</u> to include only those Program 5 variances that are compliant with permit requirements. No exemptions from Water Quality are allowed; staff have determined appropriate permanent BMPs for all added impervious situations so there will be no exemptions. |
| Program 3 | City Council: Repeal and Re-enact City Ordinance re IDDE | Updated City IDDE Ordinance to prohibit discharges that incorporates permit clarifications identified in the Questionnaire |
| Program 3, 4 and 5 | SEMSWA staff: Implementation Procedures | <u>Revision of internal IDDE Manual</u> to establish a set of internal procedures for SEMSWA staff to conduct and enforce IDDE program and <u>Prepare Enforcement Implementation Procedures for GESC and Permanent BMPs</u> to implement enforcement tools |

Next Steps

Staff will finalize the Resolutions for the August 22nd Board Meeting and Public Hearing for consideration and possible adoption by the Board. During September, Staff will finalize the Enforcement Implementation Procedures documents, and will present a Study Session at the September 26th Board Meeting on the documents. Staff will prepare the Final Questionnaire for submittal on October 12th.

Additionally, Staff briefed the City regarding the requested City IDDE Ordinance revision at a DRC meeting on July 17th. A meeting with City and SEMSWA legal staff has been scheduled for July 25th. Future meetings and City Council hearings to consider the IDDE Ordinance are still yet to be determined and scheduled.