



Board Summary Memo

To: Board of Directors
From: Lanae Raymond, Director, Environmental Resources Division (ERD)
Date: April 12, 2018
Re: MS4 Permit items for Discussion
Board Meeting Date: April 18, 2018

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Purpose

This Summary Memo will provide the Board with background information about two Municipal Separate Storm Sewer System (MS4) Permit items that ERD will schedule for Board action at the May Board Meeting. These items include:

1. A Resolution to authorize and adopt updates to the current Grading, Erosion and Sediment Control (GESC) Manual, and
2. Two (2) Resolutions necessary to meet the requirement for comprehensive enforcement tools referred to as "Enforcement Response", documented in MS4 Permit COR080000, Section I.E.2.a.vii, Section I.E.3.c.vii, and Section 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

GESC Manual

The Grading, Erosion and Sediment Control Manual (GESC Manual) describes the permitting program adopted by SEMSWA, to promote environmentally sound construction practices in the City of Centennial. The development, implementation, and enforcement of the SEMSWA GESC Permit Program is mandated by both the Federal Government (Clean Water Act) and the State of Colorado (Control Regulations 61 and 72). The goal of the GESC Permit Program is to implement effective erosion and sediment control measures as a standard for land disturbance activities, and to reduce erosion and sedimentation during construction activities. The original Grading, Erosion and Sediment Control (GESC) Manual, published in 2005, was an adaptation of the Douglas County GESC Manual, which at the time was a state-of-the-art approach to erosion and sediment control.

The updated edition of the SEMSWA GESC Manual is a recognition of several critical components, in the effort to control sediment and construction waste pollutants from land disturbance sites, which are:

1. The Denver Metro area's increased utilization of GESC concepts at construction sites, and the technical advances that brings;
2. The construction industry's continuous improvement in the field application of erosion and sediment control measures;
3. The increasing acceptance of GESC principles by the development community to protect the natural resources their development can potentially impact;

4. The expanding knowledge of the development Design Engineer professionals who use their expertise to prepare the GESC Plan/Report for implementation;
5. SEMSWA's acknowledgement of a Contractor's knowledge of what will work at their site, in tandem with refining what erosion, sediment and waste controls will meet requirements in a cost-effective manner; and
6. SEMSWA's development of streamlined permit approaches and recognition of selected land disturbance activities under an acre that do not have the potential to adversely impact drainage patterns, or the drainageway.

The original 2005 GESC Manual was a very valuable tool to manage SEMSWA's Construction Sites Control program requirements of the MS4 Permit. The 2005 Manual told the compelling story of land disturbance impacts on waterways, the need for controls to be in place at a site, and the role of SEMSWA, Developers, Engineers, Contractors and Regulators in GESC compliance, in a reader-friendly format with pictures, graphics, and call-outs.

While this comprehensive approach was considered very important in the early days of GESC implementation, it has been over 10 years since SEMSWA started regulating per the GESC Manual. This span of time has seen much formal and informal interaction between SEMSWA and land owners, SEMSWA staff and development Design Engineers, and the SEMSWA Inspectors and Contractors. **This collaboration has evolved GESC practices, such that the updated GESC Manual can now leave story-telling behind and concentrate on simply stating the GESC requirements, and provide a more cost-effective, streamlined permitting approach.** This evolution has resulted in a trimmed manual that SEMSWA staff hopes will provide an easier reference for Design Engineers in the office and Contractors in the field.

Enforcement Response

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 Illicit Discharge, Detection and Elimination (IDDE); Construction Sites; and Post-Construction Stormwater Management for New Development and Redevelopment. 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 discharges, the authorization for enforcement, and the establishment of penalties that may be used in enforcement for non-compliance.

SEMSWA staff have prepared an Enforcement Response Plan (ERP) that will meet the intent of the MS4 Permit 'Enforcement Response' requirement for the Board's consideration with a goal of adoption in May. Additionally, this document will reference the legal mechanisms 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 Permit; and
3. Establishes penalties for enforcement.

The legal mechanisms are 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 the improper discharge of pollutants into the storm drainage system.

The penalties contained in ERP, including those by reference, represent SEMSWA's comprehensive enforcement toolbox, which generally escalates in severity. These 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.

For Construction Sites, SEMSWA inspectors initiate any non-compliance process with Compliance Assistance in the form of a Re-inspection fee that offsets the cost of additional site inspections at non-compliant sites. The Re-inspection fee, during the initial stages of construction, definitively connects specific site GESC issues to proper construction techniques and adequate Control Measures, and is educational in nature.

However, even with the responsibilities laid out; sufficient details from plans and written inspections on what needs to be installed and maintained at a site; and payment of Re-inspection fees, the Compliance Assistance approach is sometimes not sufficient to ensure a compliant, stable site. A stabilized site means that adequate Control Measures are in place to control erosion, reduce the loss of soil from a construction site and therefore minimize offsite impacts, such as a discharge of sediment to the MS4 and state waters. Because some sites require enforcement escalation to meet stabilization requirements, Staff have developed a Compliance Assurance Enforcement Fee approach, including a Penalty Fine and Fee Schedule, for the Board's consideration, with a goal of adoption in May. The Compliance Assurance approach is to be implemented when Compliance Assistance enforcement processes (Re-Inspection Fees) have not achieved the level of compliance necessary to have an appropriately stabilized site during construction.

The GESC Compliance Assurance Enforcement Fee approach, including the Penalty Fine and Fee Schedule, is one of the enforcement remedies that will be included by reference in the ERP. The Compliance Assurance approach was developed with the following goals in mind:

1. **To encourage compliance with both the GESC Permit and with the Contractor's own State Construction Permit requirements.** The Contractor has even more at stake with non-conformance with its State Permit.
2. **To drive the construction site to stabilization, by shifting the focus from sediment control to site source controls.** The emphasis during Compliance Assurance shifts to appropriate use of BMPs for control of erosion and construction wastes at the source, including site management, instead of merely stopping it at the perimeter with sediment control measures.
3. **To directly tie the escalating enforcement to the line item Control Measures on the GESC inspection report.** SEMSWA clearly identifies systemic inadequacies in erosion and waste control by assigning a cost of non-compliance with specific line items of the inspection report. This direct tie-in to the inspection item reinforces the importance of each Control Measure and its role in erosion, sediment, and waste control, and improves the overall GESC program consistency.
4. **To make the cost associated with a Compliance Assurance enforcement fee significant enough to provide an incentive to focus on erosion/waste control and stabilization.** Each Control Measure has been assessed for its significance in re-establishing control of a site and driving stabilization, and a monetary value established based on almost 10 years' experience with GESC practices.

Controlling potential sediment discharges at the source is the most effective way to manage construction site erosion and sedimentation, resulting in a 'stabilized' site at a point in time. Since each erosion, construction site, waste, and sediment control measure has a role in re-establishing control of a site and ensuring stabilization, the Compliance Assurance Penalty Fine and Fee Schedule assigns a monetary penalty depending on the importance of the non-compliant control measure. The most successful site compliance efforts over the 10 years of GESC implementation have been a function of firmly and appropriately focusing the Contractor's attention back to the compliance issues, while keeping the project moving forward toward final stabilization.

Next Steps

SEMSWA staff will be submitting three (3) Resolutions for the Board to consider in May that either develop, revise or strengthen the formal mechanisms to enforce our MS4 Programs, including:

Program Area	Resolution	Intent
Construction Sites	#1: 2018 GESC Manual Adoption	SEMSWA has authority to enforce the GESC Permit Program to reduce erosion and sedimentation resulting from construction activities.
IDDE; Construction Sites; Post-Construction Stormwater Management	#2: Authorization for Enforcement Response Plan related to the CDPS MS4 Permit	SEMSWA has authority to enforce on IDDE, GESC, and Post Construction violations through penalty action(s) . The Resolution defines the enforcement mechanisms used by SEMSWA to achieve compliance with Permit requirements.
Construction Site Controls	#3: GESC Compliance Assurance Enforcement Fee: Penalty Fine and Fee Schedule	SEMSWA authorizes the enforcement through penalty fines and fees necessary to enforce the GESC Permit Program requirements and achieve construction site stabilization, if Re-inspection fees cannot return a site to compliance.