

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

RESOLUTION 12-31

Establishment of Penalties for Enforcement Related to the CDPS MS4 Permit

WHEREAS, the City of Centennial (City) and SEMSWA have entered into an Implementing Intergovernmental Agreement (IIGA), Resolution No. 63, SERIES OF 2007, allowing for the transfer of the Colorado Department of Public Health and Environment (CDPHE) issued Colorado Discharge Permit Systems (CDPS) for Municipal Separate Storm Sewer System – Phase II requirements permit (Permit), from the City to SEMSWA; and

WHEREAS, in accordance with the IIGA, Article I (6), SEMSWA was to adopt rules and regulations as authorized by law pertaining to compliance and enforcement of its Permit Requirements after Permit transfer; further, the City delegated its authority and police powers to SEMSWA to the extent necessary to implement and enforce SEMSWA's rules and regulations as they relate to the SEMSWA Permit requirements in the City; and

WHEREAS, SEMSWA has set forth standards for non-stormwater discharges to the storm drain system as outlined in the Board adopted *Pollution Reduction in Stormwater Discharges through Illicit Discharge, Detection, and Elimination (IDDE) Standards*; and

WHEREAS, in accordance with the Board adopted *Authorization of Enforcement Related to the CDPS MS4 Permit*, SEMSWA has authorized enforcement related to Permit; and

WHEREAS, SEMSWA has established enforcement procedures for the Permit known as *Implementation of Enforcement Procedures Associated with Program 3 – IDDE* and *Implementation Procedures Associated with Programs 4 and 5 – Construction and Post Construction BMPs* (Implementation Procedures) specifying SEMSWA's internal procedures for implementing enforcement related to CDPS MS4 Permit violations in which the escalation and selection of appropriate penalties are outlined; and

WHEREAS, except as otherwise provided herein, it is the general policy of SEMSWA to provide reasonable opportunities for property owners, developers, and contractors to bring properties and or cases into compliance with SEMSWA's CDPS MS4 permit before formal enforcement proceedings are initiated subject to the remedies established herein potentially being imposed from the date of the violation. Permit Penalties for Enforcement are intended to achieve compliance without judicial proceedings or corrective action being taken by SEMSWA directly. The remedies contained herein are available to SEMSWA to enforce the MS4 Permit where SEMSWA identifies a violation and may be imposed whether or not corrective action is being taken or has been taken; and

WHEREAS, any funds collected through the enforcement process as penalties shall only be utilized to repay costs associated with abatement, as further defined in **Exhibit A**, or shall be placed in SEMSWA's emergency clean-fund; and

NOW, THEREFORE, BE IT RESOLVED THAT:

1. SEMSWA hereby establishes allowable penalties for MS4 Permit violations as set forth in the attached Exhibit A.
2. The Board authorizes SEMSWA Staff to utilize the enforcement procedures including the assessment and collection of penalties for violations of the Permit, as set forth in Exhibit A.

SOUTHEAST METRO STORMWATER AUTHORITY
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SEMSWA WATER ACTIVITY ENTERPRISE

Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:
Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

Exhibit A

Establishment of Penalties for Enforcement Related to the CDPS MS4 Permit RESOLUTION 12-31

The penalties contained herein 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. 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 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 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. Any and all of the penalties established herein may be imposed immediately upon a violation occurring even in cases where the violation has ceased or is being abated.

Verbal Warning – Staff may provide a verbal warning and document the warning in writing; such Verbal Warnings shall include a demand to cease-and-desist any violations or potential violations.

Educational Materials – Staff may provide documents intended to educate the public of potential violations. Example documents may be in the form of Fact Sheets, Door Hangers, or the SEMSWA website. Use of Education Materials shall be documented in writing.

Permit Holds – SEMSWA may place a hold on the issuance of permits related to Grading, Erosion, and Sediment Control (GESC), Stormwater Public Improvement Permits (SPIP), and/or Floodplain Development Permits (FPDP) until the potential violation or violation is corrected, or until a court of competent jurisdiction orders that the hold be lifted. In addition, SEMSWA may request that the City place a hold on permits related to platting, construction, expansion, or operation of a use, building, structure, sign, or fence, until any violation has ceased-and-desisted and is corrected. In cases where violations may exist and Permit Holds are utilized, violations will be communicated through a Written Notification.

Revocation of Permits – SEMSWA may revoke permits for violations and/or to address an imminent danger to public health, public safety, or violations that could cause damage to property, loss of life or a violation of a NPDES MS4 Permit until any violation has ceased-and-desisted and is corrected. Unless an injunction is sought, SEMSWA may revoke a permit without seeking a court order in a court of competent jurisdiction permanently revoking the permit if compliance is not achieved in an appropriate amount of time. SEMSWA may request a temporary injunction to extend the temporary revocation of the permit in order to avoid irreparable harm and/or a violation of the MS4 permit ("Permit"). In cases where violations may exist and permit revocation occurs, violations will be communicated through a Written Notification prior to the permit being revoked. Such revocations may result in charging additional fees in an amount consistent with the adopted fee schedule.

Preliminary Notice of Violation (PNOV) – SEMSWA may issue a Preliminary Notice of Violation for violations in writing. PNOVs are intended to document violations with expected corrective actions and remedy timeframes outlined as a means for correction prior to issuance of a Notice of Violation. PNOVs

shall include a request to cease-and-desist any non-complaint actions and may set forth any and all penalties that may be imposed including the date such penalties may begin to be assessed.

Notice of Violation (NOV) – SEMSWA may issue a Notice of Violation for violations in writing. NOVs are intended to document non-compliances with expected corrective actions and remedy timeframes outlined as a means for correction prior to seeking relief in a court action, if necessary. NOVs shall include a request to cease-and-desist any non-complaint actions. NOVs may also be referred to as Notice and Demand, *Written Notice*, *Corrective Action Plan*, or *Compliance Schedule* and may set forth any and all penalties that may be imposed including the date such penalties may begin to be assessed.

Stop Work Orders – SEMSWA shall have the authority to stop any or all construction activities associated with the GESC permit, SPIP, FPDP, or activities related to the Permit, as deemed necessary, by issuing a written stop work order. Stop work orders may be issued for:

1. Any violation of the MS4 permit, or for non-compliance with the requirements contained in the GESC Manual; Stormwater Management Manual (SMM); SPIP; Illicit Discharge, Detection, and Elimination (IDDE) Manual, or other applicable documents.
2. Any violation of any condition of the Public Improvement Agreement (or subdivision improvement agreement) or the approved Construction Drawings, GESC plans or specifications,
3. Failure to obtain any or all permits issued by SEMSWA.
4. Any violation of any other local, state, or federal law pertaining to the work.
5. The existence of any condition or the occurrence of any act that may constitute endangering health, life, safety, water quality, or damage to property.
6. The existence of any condition or the occurrence of any act which may cause damage to property, loss of life or a violation of the Permit.

Compensatory Action – In lieu of enforcement proceedings, penalties, and/or other enforcement remedies, SEMSWA may require violators to properly perform an alternate compensatory action, such as storm drain stenciling, drainageway cleanup, or other appropriate actions in cases where violations have ceased immediately upon their occurrence.

Use of Collateral and Escrow Funds – SEMSWA may utilize collateral and escrow funds to remedy violations in the manner outlined in the GESC Manual and PIA and to specifically recoup costs associated with failures related to the Permit.

Abatement and Restitution – SEMSWA shall have the authority to perform work and expend funds necessary to remedy violations provided the owner or responsible party has been notified of the violation and the owner fails to remedy the deficiency in a timely manner or if the violation could result in immediate and imminent danger to the public health, safety, or welfare or there exists the potential for a violation of the Permit. In such cases when SEMSWA performs work or expends funds, SEMSWA shall demand reimbursement. In the event amounts are unpaid, SEMSWA may file a lien on the property where the violation occurred and the amount owed to SEMSWA shall be the joint and several obligation of any owner of record. In cases where SEMSWA has reasonable cause to believe that there exists, or potentially exists, in or upon any premises any condition that constitutes a violation, SEMSWA shall have the right to enter the premises at any reasonable time to determine if the owner or operator

is complying with the Permit. In the event that the owner or occupant refuses entry after a request to enter has been made, the SEMSWA may seek assistance from a court of competent jurisdiction in obtaining such entry.

In cases where SEMSWA determines it is necessary to perform work associated with violations that pose a risk to water quality, but are not assumed to pose an immediate risk to public health, safety, or welfare and/or a potential violation of the Permit, SEMSWA shall:

1. Attempt to contact the owner or occupant to seek immediate and appropriate voluntary abatement and request that violation cease-and-desist.
2. Where a violation remains unabated following attempted contact, SEMSWA shall document in writing that a condition, activity, or circumstance exists which constitutes a violation. Documentation may include photographs, narratives, illustrations, and other evidence to describe the scope and extent of the violation.
3. Prepare a Written Notice demanding that the potential violation cease-and-desist and outline the potential violation, demand the timely and appropriate abatement, and provide notice of the penalties that may be imposed including the date such penalties may begin to be assessed and that failure to timely and appropriately abate may result in SEMSWA's abatement and/or judicial relief.
4. Should SEMSWA abate the violation, SEMSWA shall deliver to the owner a written description of the circumstances resulting in the abatement or other action together with an itemized invoice or other detailed statement of the cost and expenses incurred by SEMSWA in abating the violation and demand payment within ten (10) days of the owner's receipt of the invoice or statement.
5. Within ten (10) days following the owner's receipt of the invoice or statement of costs and expenses, the owner shall deliver payment in full for the costs and expenses. Failure to timely pay an invoice or statement of costs and expenses of abatement may result in a lien in the amount of unpaid work being recorded on the property where the violation occurred. Each such lien shall have priority over other liens except general taxes and prior special assessments to the extent such priority is not precluded by law.
6. Any amounts owed to SEMSWA and not paid within ten (10) days of the date of notification shall be the joint and several obligation of any owner of record of the property where the violation occurred, on the date the violation arose and all of the successors in interest of such owner.
7. Should the property be vacant, or should SEMSWA not be successful in contacting the property owner, one sign measuring not smaller than two (2) feet by three (3) feet shall be posted on the property at a conspicuous location visible from a traveled thoroughfare. Such sign shall state that the property is subject to enforcement.

For violations that pose a risk to water quality and an immediate risk to public health, safety, or welfare and/or a potential violation of the Permit, SEMSWA may order the immediate and summary abatement of any violation where the following criteria or circumstances are believed to exist:

1. SEMSWA staff believes an immediate and imminent danger to the public health, safety, or welfare may exist and/or a potential violation of the Permit; and
2. Delay associated with abatement of the violation by another method may potentially result in harm or damage to person, property, wildlife, or wildlife habitat, or water quality from the violation.

In such cases, SEMSWA shall:

1. Attempt to contact the owner or occupant to seek immediate and appropriate voluntary abatement and demand that the violation cease-and-desist.
2. SEMSWA may abate all or a portion of the violation as deemed necessary to remedy the violation and to resolve the immediate and imminent danger to the public health, safety, welfare, or water quality resulting from the violation. When summary abatement is authorized, prior notice of such abatement action to the owner, agent, or occupant of the property is not required.
3. Following abatement, SEMSWA shall deliver to the owner a written description of the circumstances resulting in the abatement or other action together with an itemized invoice or other detailed statement of the cost and expenses incurred by SEMSWA in abating the violation and demand for payment within ten (10) days of the owner's receipt of the invoice or statement.
4. Within ten (10) days following the owner's receipt of the invoice or statement of costs and expenses, the owner shall deliver payment in full for the costs and expenses. Failure to timely pay an invoice or statement of costs and expenses of abatement may result in a lien in the amount of unpaid work being recorded on the property where the violation occurred. Each such lien shall have priority over other liens except general taxes and prior special assessments to the extent such priority is not precluded by law.
5. Any amounts owed to SEMSWA and not paid within ten (10) days of the date of notification shall be the joint and several obligation of any owner of record of the property or any portion thereof where the violation occurred, on the date the violation arose and all of the successors in interest of such owner.

Whenever SEMSWA assess against any person or property the cost and expense of abatement of a violation, such costs and expenses shall include all costs actually incurred by SEMSWA and reasonably related to the abatement, including but not limited to an hourly rate for each hour of staff time employed in administering the abatement of the violation, attorney fees and legal costs, equipment charges, contactors and other service personnel expenses charged, transportation and storage charges, trash and hazardous waste disposal charges and fees, insurance, and equipment and services necessary to protect the property and the general public from harm.

Whenever SEMSWA assess against any person or property the cost and expense of abatement of violations, SEMSWA shall be authorized to assess any unpaid and delinquent costs and expenses as a lien against the property where the violation occurred. Each such assessment shall be a lien against the

property where the violation occurred until paid and shall have priority over other liens except general taxes and prior special assessments to the extent such priority is not precluded by law.

Fines and Fees – Fees may be collected in accordance with the adopted Fee Schedule, and are intended to recoup costs associated with SEMSWA’s services as they relate to permit conformance. Examples of SEMSWA fees are GESC and SPIP re-inspection fees.

For violations of the Permit, SEMSWA may assess penalty fines in the amount consistent with **Exhibit B**. In such cases, the following process shall be followed:

1. Attempt to contact owner or occupant to seek immediate and appropriate voluntary abatement.
2. At the same time, SEMSWA will provide the owner or occupant with a written notification (Ticket) noting the possible fine amount and when it will begin to be assessed. The fines, as outlined in **Exhibit B**, have been developed based on the severity of the discharge, and are intended to be a per violation charge.
3. Should the Owner refuse payment of the Ticket within thirty (30) days, SEMSWA may:
 - (a) Send Written Notification with additional charges for late fees; and
 - (b) Record a lien against the property where the violation occurred in the amount of the unpaid and delinquent fines; and /or
 - (c) Seek judicial relief in a court of competent jurisdiction. Such court may also order repayment to SEMSWA for the expenses of enforcement and/or immediate actions to abate the violation.

SEMSWA may establish reasonable and uniform charges for property inspection, preparation and delivery of notices, and other administrative tasks customarily undertaken in the administration of the Permit.

Judicial Relief -In addition to any other remedies provided in local, state or Federal law, SEMSWA may initiate legal action in a court of competent jurisdiction to enjoin, prevent, abate, or remove uses, maintenance activities (or lack thereof), structures, or signs, or other construction, reconstruction, or alterations that are in violation of the MS4 permit. In any court proceeding in which SEMSWA seeks a preliminary injunction, it shall be presumed that it is a real, immediate and irreparable injury to the public; that the public will be irreparably injured by the continuation of the violation unless the violation is enjoined; that SEMSWA requires immediate access to the property where the presumed violation has or may be occurring; and that there is no plain or adequate remedy at law for the violation. SEMSWA may take whatever legal action is deemed appropriate for the abatement or removal of any violation, in the manner provided for by law, and may take other steps including by not limited to applying to a court that has jurisdiction to grant such relief as will abate and remove such use and restrain and enjoin such persons maintaining or using or using property contrary to the provisions of the Permit. In cases where SEMSWA has reasonable cause to believe that there exists, or potentially exists, in or upon any premises any condition that constitutes a violation, SEMSWA shall have the right to enter the premises at any reasonable time to determine if the owner or operator is complying the Permit. In the event that the owner or occupant refuses entry after a request to enter has been made, SEMSWA may seek assistance from a court of competent jurisdiction in obtaining such entry.

Where a violation is believed to have occurred, in cases where SEMSWA may seek judicial relief, SEMSWA shall:

1. Attempt to contact the owner or occupant to seek immediate and appropriate voluntary abatement.
2. SEMSWA may initiate a civil action for judicial enforcement in regard to any violation. Judicial enforcement may also be used to abate a violation declared in accordance with efforts to abate the violation through the delivery of a Written Notification. SEMSWA shall endeavor to advise the Board of Directors of SEMSWA prior to commencing judicial enforcement.
3. If SEMSWA elects to initiate judicial enforcement in a court of competent jurisdiction, no prior notice regarding the violation or abatement need be provided to the defendant other than service of a summons and/or complaint in accordance with the applicable court rules.
4. Upon a finding of a violation by any defendant, the court shall take the following actions and impose the following minimum penalty, unless SEMSWA, through SEMSWA's attorney, requests or consents to a different penalty:
 - (a) Enjoin or otherwise order the defendant to fully abate and remedy the violation within a specified and reasonable period of time; and
 - (b) Fine the defendant for each violation an amount consistent with the Fine Schedule included in **Exhibit B**. No portion of any minimum fine may be suspended or held in abeyance by the court; and
 - (c) Order the defendant to forthwith pay restitution to SEMSWA for the actual costs or loss caused to SEMSWA by the violation(s) including but not limited to administrative expenses, costs to protect the public from the violation, court costs, and attorney fees; and
 - (d) Order foreclosure and sale of the property upon which SEMSWA has recorded its lien to satisfy the lien amount.
5. In addition to the minimum penalty required by this section, the court shall be authorized to:
 - (a) Permanently enjoin the defendant from further engaging in the use of the property in a manner that would constitute a violation;
 - (b) Find the defendant in contempt of court and assess a penalty as specified by the court including a fine and/or imprisonment for failure to abide by, comply with, or conform to any court order or injunction; and/or
 - (c) Impose any other penalty authorized by law.

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Exhibit B
Establishment of Penalties for Enforcement Related to the CDPS MS4 Permit
RESOLUTION 12-31

SEMSWA Fine Schedule Related to Illicit Discharges

Fine Category	Classification	Fine
Level I	Minor Offense ¹	\$150
Level I (a)	Minor Offense ¹	\$300
Level II	Offense with Moderate Impacts ²	\$500
Level III	Offense with Commercial Benefit ³ or Secondary Impacts ⁴	\$1000
Level IV	Offense to Sensitive Areas ⁵ or with Required Mitigation ⁶	\$2250
Level V	Offense with Severe Impacts ⁷	\$10,000

For Level I –Level IV Offenses, the following multiplier(s) may apply:

Second Offense	50%
Third and Subsequent Offenses	100%
Poor Compliance History	25%
Recalcitrant	50%
Untimely Response	25%

The data above is based on SEMSWA’s IDDE Fee Analysis Matrix and IDDE Fee Calculation Worksheet that 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.

¹Minor Offenses in the Level I Fine Category can be defined as those discharges related to residential uses. Minor Impacts in the Level I(a) Fine Category are discharges not related to residential uses. Both Minor Offenses are non-hazardous with quantifiable, limited, and small discharges. Examples of minor Offenses are stockpiled landscape material or dirt that has been transported to the storm system.

²Moderate Impacts can be defined as discharges without specific flow limiting factors or those that require mitigation; however, the mitigation could be fulfilled in an expedited manner without the assistance of an Environmental Contractor. Minor Offenses where the discharges continue to occur after an enforcement has been initiated through a Verbal Warning and/or and a Written Notification. Examples would be dumping oil into an inlet or dumping paint into an outfall.

³Commercial Benefits can be defined as discharges that likely occur for known financial savings as compared to proper and legal disposal methods. Examples would be cooking oil from a restaurant dumped into a storm sewer manhole or a tire repair shop dumping used tires in a drainageway.

⁴Secondary Impacts can be defined as discharges that effect properties outside of the violator’s ownership and/or that require mitigation outside of the discharger’s property.

⁵Sensitive Areas can be defined as impaired waters, wetlands, or quantity and quality control facilities that require mitigation.

⁶Required Mitigation can be defined as discharges that result in consultant or third party environmental cleanup.

⁷Severe Impacts can be defined as toxic and/or hazardous discharges, typically knowingly discharged, into waters of the state with larger quantities of material typically ongoing or over a repeated period of time. These discharges result in calling in first responders for assistance.