

MS4 Permit Enforcement Guidance Document

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Introduction

Arapahoe County (County) has adopted rules and regulations, as authorized by law, 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 the Colorado Discharge Permit System (CDPS).

The Southeast Metro Stormwater Authority (SEMSWA) was formed in September 2006 to provide stormwater management in the unincorporated portions of Arapahoe County. The County and SEMSWA formed a Partnership that supports a comprehensive and integrated approach to water quality protection in the County's MS4 Permit area. SEMSWA, as the County referral agency, reviews and comments on the design and operation of control measures for land disturbance and land development projects, to ensure they meet Permit requirements. The County and SEMSWA jointly developed implementing Standard Operating Procedure (SOP) documents for each MS4 Permit program area that provide the basis for implementation, enforcement, and administration of the permit requirements. Under a Memorandum of Agreement (MOU), the County utilizes SEMSWA staff to implement, administer, and coordinate the County's MS4 Permit as more specifically set forth in the approved SOP documents. The County remains legally responsible for complying with and enforcing the requirements of the MS4 permit as set forth in the MOU.

Discussion

The County's MS4 Permit has three Program Areas that require regulatory mechanisms and legal authority to enforce compliance with the MS4 Permit. The three Program Areas are Construction Sites; Post-Construction Stormwater Management; and Illicit Discharge, Detection and Elimination (IDDE).

This Enforcement Response Plan (ERP) documents the County enforcement process for non-compliance associated with these three MS4 Program Areas. It documents 1) the regulatory authority that establishes regulations for pollution reduction in stormwater discharges through IDDE standards, specifically as it relates to non-stormwater discharges to the storm drain system; 2) enforcement related to the MS4 Permit; and 3) the penalties for enforcement. These regulatory mechanisms apply to all water entering the storm system within the MS4 Permit boundary of the County, unless specifically exempted. The regulatory mechanisms are intended to regulate the introduction of pollutants to the County'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 this document represent the County's comprehensive enforcement toolbox, which generally escalates in severity. These tools are intended to be used 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 in the nature of 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

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herein may be imposed immediately upon a violation occurring even in cases where the violation has ceased or is being abated.

Regulatory Mechanism and Authority

Ordinance and Statutes

Ordinance [2012-01](#), “AN ORDINANCE CONCERNING THE DETECTION AND ELIMINATION OF ILLEGAL DISCHARGES TO STORM DRAINAGE SYSTEM AND PROVIDING ENFORCEMENT PROCEDURES AND PENALTY PROVISION FOR VIOLATIONS” prohibits illicit discharge to the MS4 as well as provides enforcement procedures and actions. In addition, the County has established an IDDE Plan specifically outlining the standards, criteria, and procedures associated with the IDDE Program Area in the MS4 Permit

Section 18-4-511 of the Colorado Revised Statutes (C.R.S.), states, “Any person who deposits, throws or leaves any litter on any public or private property or in any waters commits littering.” Litter is defined as “all rubbish, waste material, refuse, garbage, trash, debris or other foreign substances, solid or liquid, of every form, size, kind and description.” Public or private property includes, but is not limited to, “the right-of-way of any road or highway, any body of water or watercourse, including frozen areas or the shores of beaches thereof, any park, playground or building, any refuge, conservation or recreation area, and any residential farm or ranch properties or timberlands.”

Littering is a Class 2 Petty Offense punishable, upon conviction, by a mandatory fine of not less than \$20 nor more than \$500 upon a first conviction, by a mandatory fine of not less than \$50 nor more than \$1000 upon a second conviction, and by a mandatory fine of not less than \$100 nor more than \$1000 upon a third or subsequent conviction.

Section 30-15-401(1)(a)(V)(A), Colorado Revised Statutes (C.R.S.), authorizes Arapahoe County through the adoption of an ordinance in accordance with Part 4 of Article 15, Title 30, C.R.S. to do all acts and make all regulations which may be necessary or expedient, in addition to the authority under Section 18-4-511, C.R.S., to restrain, fine, and punish persons for dumping rubbish on private or public property.

Arapahoe County Sheriff’s Office is responsible for the criminal enforcement of the provisions of CRS 18-4-511 and is available for consultation on the use of this statute or Ordinance [12-01](#) to enforce the County’s IDDE measure, and, as the enforcing party, will be notified of any infractions so they can investigate and bring enforcement actions to the situation.

Land Development Code

The Board of County Commissioners (BOCC) adopted the Grading, Erosion, and Sediment Control (GESC) Manual and the Stormwater Management Manual (SMM) to set forth the standards and criteria for the Construction Sites and Post-Construction Stormwater Management Program Areas.

The latest approval of the “Grading, Erosion and Sediment Control (GESC) Requirements” (adopted [3-12-2013 via resolution 130206](#)) are part of the Arapahoe County Land Development Code (Section 12-200).

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Enforcement responsibility for violations of the GESC Manual is outlined in Section 12-207:

A. The Board of County Commissioners, acting through the PWD Director, shall enforce the provision of these regulations.

B. Failure to comply with any term, condition, limit, deadline or other provision of the GESC Manual or GESC permit or the failure to obtain a GESC permit as required by these regulations constitutes a zoning violation subject to enforcement action by the County.

The Arapahoe County Stormwater Management Manual (adopted 3-12-2013 via resolution 130206) documents stormwater criteria and design standards for the County. These criteria and design standards are also part of the Arapahoe County Land Development Code, as amended. Section 16-103.09 of the LDC requires an Operation and Maintenance Manual/Maintenance Agreement for all permanent water quality control measures approved and constructed by anyone in the County. The requirements of the Stormwater Management Manual may be enforced as zoning violations under the Land Development Code.

The Land Development Code also contains the County's zoning resolution which prohibits the use of any land within the unincorporated territory of the County for the outdoor storage or collection of junk, trash, rubbish or refuse, including inoperable vehicles and dismantled machinery. The Arapahoe County Zoning Administrator and staff are responsible for enforcing these zoning requirements, and this enforcement is complimentary to the above mentioned provisions of 18-4-511, C.R.S. for private property.

Pollution Restrictions, Prohibitions and Reductions

The purpose and intent of the ERP is to ensure the health, safety, and general welfare of citizens, and 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-storm water discharges to the storm drain system. In accordance with Ordinance 12-01, the LDC, and as related in this ERP, the following restrictions, prohibitions, and reductions are mandated for the County MS4 Permit area:

Direct Release of Pollutants

No person will discharge, cause to be discharged, or permit to be discharged into the MS4 or watercourses any direct or indirect release of pollutants to the storm drainage system, except as exempted by the County's MS4 Permit and MS4 Program documents. Discharges may not result in a non-compliance with the County's MS4 Permit.

Illicit Connections

The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

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Threatened Discharges

Pollutants that are no longer contained in a pipe, tank or other container are considered to be threatened discharges and require cleanup.

Suspected Releases

Notwithstanding other requirements of law, as soon as any person responsible for any premises, facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the MS4, or waters of the State, that person will take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of a release of hazardous materials said person will immediately notify emergency response agencies of the occurrence.

Private Property Ownership Along a Drainageway

Every person owning property through which a drainageway passes, will keep and maintain that part of drainageway within the property reasonably free of trash, debris, other pollutants and other obstacles that would pollute or contaminate the flow of water through the drainageway.

County Right to Enter

Should the County have reasonable cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of **Ordinance 12-01** and the LDC, the County has the right to enter for inspections upon private property in the same manner and by the same means as visitors to the property. Unless posted against trespassing or gated, such entry will customarily involve reaching the front or primary entrance to the property via the driveway, sidewalk, or path. If a private property is undeveloped or vacant and is not posted in a manner that would indicate the owner's prohibition of such access or if the County has obtained the consent of a person who purports to be in possession of the property or authorized to consent to entry, the County has the right to enter upon all or any portion of private property should emergency conditions dangerous to the public health, safety, or welfare, or a potential MS4 Permit Violation are reasonably believed to exist upon such property or upon property which is accessible from the entered property.

The Ordinance also provides for application to a court of appropriate jurisdiction for an administrative entry and seizure warrant permitting access to private property upon a showing by the County that a violation exists, that the owner was notified of the violation and failed to correct the violation. The administrative entry and seizure warrant procedure also provides for court ordered authority to take steps necessary to abate the any condition which causes or contributes to a violation and to restore the premises. Finally, upon information made after reasonable investigation that a violation or threatened violation exists, law enforcement would also have the option of seeking a criminal warrant to enter upon property to obtain evidence upon a presentation to a court of appropriate jurisdiction of sufficient evidence to establish probable cause of the criminal violation.

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Exemptions

The prohibitions set forth in **Ordinance 12-01**, the LDC, and this ERP will not apply to any non-stormwater discharge which is permitted under a NPDES permit, 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, provided that the discharger is in full compliance with all requirements of the policy or order, and other applicable laws and regulations.

In addition, per the County **Ordinance 12-01** the following non-stormwater discharges are allowed discharges within the County: water line flushing; landscape irrigation or lawn watering; diverted stream flows; irrigation return flow; rising ground waters; uncontaminated ground water infiltration (as defined at 40 C.F.R. 35.2005(2)); uncontaminated pumped ground water (Note: Discharges containing groundwater that comes into contact with construction activity is not considered “uncontaminated” due to the potential for sediment content); spring water; flows from riparian habitats and wetlands; discharges from potable water sources water line flushing in accordance with the division’s Low Risk Policy Discharge Guidance: Potable Water; discharges from potable water sources in accordance with the Division’s Low Risk Discharge Guidance: Potable Water; water from foundation drains; air conditioning condensation; water from crawl space pumps or footing drains; individual residential car washing; dechlorinated swimming pool discharges in accordance with the division’s Low Risk Discharge Guidance: Swimming Pools; and water incidental to street sweeping (including associated side walks and medians) and that is not associated with construction; dye testing in accordance with the manufacturers recommendations; stormwater runoff with incidental pollutants; agricultural stormwater runoff.

Non-compliance Penalties

Except as otherwise provided in this ERP, it is generally the practice of the County to allow property owners, developers, and contractors a reasonable opportunity to bring properties and or cases into compliance with the County’s CDPS MS4 permit requirements before formal or judicial enforcement proceedings are initiated. Penalties identified in this ERP are intended to achieve compliance without judicial proceedings or corrective action being taken by the County or their authorized agent directly. The remedies contained in this ERP and authorized by **Ordinance 12-01** and the LDC are available to the County to enforce the MS4 Permit requirements where the County or their authorized agent identifies a violation and may be imposed whether corrective action is being taken or has been taken. The remedies established in **Ordinance 12-01** and the LDC and documented herein, subject to any limitations of state law, can be imposed from the date of the violation. Penalties are generally listed in order of escalation used by the County to achieve compliance with **Ordinance 12-01** or the LDC.

Verbal Warning/Education – 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. Enforcement for all violations generally begin with this penalty. The goal of a verbal warning is to:

- 1) Eliminate the illicit discharge or non-compliant activity
- 2) Support behavior-change through the educational outreach provided.

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Education is the first step in almost all IDDE, GESC Permit, and PIP Permit violations and generally, Educational Material is provided with the Verbal Warning.

Educational Material – Staff may provide documents intended to educate the public of potential violations. Example documents may be in the form of Fact Sheets, Brochures, Door Hangers, and/or other reference materials as appropriate, provided directly to the violator, emailed at a later date, or via the County website or SEMSWA website. The use of Education Material will be documented in writing.

Penalty Fees – Penalty Fees may be collected in accordance with the adopted County Fee Schedule, as amended. Examples of County fees are the GESC Permit Fee and Re-inspection Fee.

Permit Holds – The County may place a hold on the issuance of permits related to land disturbance /or applicable public Improvement) until the potential violation or actual violation is corrected, or until a court of competent jurisdiction orders that the hold be lifted. In addition, the County may place a hold on permits or inspections related to platting, construction, inspection, expansion, or operation of a use, building, structure, sign, or fence, as allowed, appropriate, and consistent with the LDC, until a violation has ceased-and-desisted and is corrected. In cases where violations may exist and Permit Holds are used, violations will be communicated through a Written Notification.

This penalty is an effective method for resolution of sites with long-standing or numerous permit violations that require escalation from typical GESC and public improvement remedies as detailed later in this document, and/or an uncooperative Contractor, where the Owner has a desire to take the next step in the development site completion process, be it a Temporary Certification of Occupancy (TCO) or Certification of Occupancy (CO) that is needed.

Preliminary Notice of Violation (PNOV) – The County may issue a Preliminary Notice of Violation (PNOV) for violations of the MS4 Permit. The PNOV will be in writing. PNOVs are intended to document non-compliance, with expected corrective actions and remedy timeframes outlined as a means for correction, prior to issuance of a Notice of Violation, which may involve notification to other agencies. PNOVs will include a request to cease-and-desist any non-compliant actions and may set forth any and all penalties that may be imposed including the date such penalties may begin to be assessed.

This penalty is especially effective for resolution of construction sites with numerous GESC Permit violations and/or an uncooperative Contractor unwilling or unable to conform to the requirements of the GESC Program. The documented corrective actions and remedy timeframes provide a solid approach for a return to compliance and successful construction methodology at a development site. Additionally, this pre-emptive written notice documenting the violation, with a cease-and desist request, expected corrective actions, and a removal timeframe is an effective enforcement tool for an IDDE violation at a construction or development site as well as on other properties.

Notice of Violation (NOV) – This is an escalated penalty from the PNOV and is especially effective for resolution of construction sites with numerous and egregious GESC Permit violations that were not solved with a PNOV, and/or a recalcitrant Contractor unwilling or unable to conform to the requirements of the GESC Program when time is of the essence. The documented corrective actions and remedy timeframes provide a very prescriptive approach for a return to compliance. It will be the

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County's decision whether the NOV circumstances should be reported to CDPHE for assistance with determination of corrective actions and assistance with enforcement actions.

This formal written notice process, with State agency notification options, provides authenticity to the severity of an IDDE violation, both when compliance was not obtained with a PNOV. The documented corrective actions and removal/elimination timeframe provide a very prescriptive approach for a return to compliance in the face of a violation that may pose irreparable harm and/or a violation of the MS4 permit. The NOV provides the next step in enforcement process for at a construction or development site as well as on other properties.

Revocation of Permits – The County 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, or impacts to the health, safety, and welfare of the public, or a violation of the MS4 Permit. The revocation may remain in force until any violation has ceased-and-desisted and is corrected. In connection with a Stop work Order under the GESC Manual, the County may revoke a permit without seeking a court order in a court of competent jurisdiction and revoking the permit, if compliance is not achieved in an appropriate amount of time. The County may request a temporary restraining order and preliminary and permanent injunction through court proceedings as necessary to prevent immediate and/or irreparable harm to property or to the public health, safety, or welfare that would be caused by reason of a violation of the MS4 permit. [\(CR civil procedure 65.\)](#) ^[CP1] In cases where violations may exist and a permit revocation is required, violations will be communicated through a Written Notification prior to the permit being revoked. Such actions may result in charging additional fees in an amount consistent with the adopted County fee schedule, as may be amended.

This penalty is an effective method for resolution of construction sites with long-standing or numerous GESC Permit and PIP Permit violations. The revocation disallows any development site land disturbance work to be done that has the potential to discharge sediment to the MS4, as no work is allowed unless a GESC Permit is issued. This penalty also disallows any development site work to be done to install permanent Control Measures required, as no work is allowed on the permanent Control Measure unless a public improvement permit is issued.

Stop Work Orders – The County has the authority to stop any or all construction activities associated with the GESC permit, public improvements or any non-compliant activity related to the MS4 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; the SMM; public improvements; IDDE Plan, or other applicable documents.
2. Any violation of any condition of the Subdivision Improvement Agreement (SIA) or the approved Construction Drawings, GESC plans or specifications.
3. Failure to obtain any or all permits issued by the County.
4. Any violation of any other local, state, or federal law pertaining to the activity.
5. The existence of any condition or the occurrence of any act that may constitute endangering public health, life, or safety, negatively impacting water quality, or damage to property.
6. The existence of any condition or the occurrence of any act which may cause damage to property, impacts to public health, safety and welfare, or a violation of the Permit.

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A Stop Work Order for an IDDE violation will take into consideration the existence of any condition that may constitute endangering public health, life, or safety, or a violation of the MS4 Permit. This can be a very effective tool for those critical instances where all work at a site stops so that the Contractor has the ability to focus all attention to correct, remove, and/or eliminate the IDDE issue. When a Stop Work Order is issued, the GESC permit for that project is revoked and upon correction the Contractor must apply for reinstatement of the permit. Failure to abide with a Stop Work Order is a violation of the Land Development Code and subject to criminal and/or civil penalties in accordance with State law, CRS 30-28-124 and 30-28-124.5.

A Stop Work Order can be a very effective tool for those critical instances where all development work at a site stops so that the Contractor has the ability to focus all attention to GESC issues or permanent Control Measure issues.

Use of Collateral and Escrow Funds – The County may utilize collateral and escrow funds to remedy violations in the manner outlined in the GESC Manual and/or contained in the PIP/SIA, to specifically recoup costs associated with failures or violations requiring abatement related to the MS4 Permit, including GESC Permit, public improvements, or IDDE violations.

Judicial Relief/Abatement and Restitution -In addition to any other remedies provided in local, state or Federal law, the County 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 situations where there is an immediate threat to public health or safety, a temporary restraining order may be sought in court to suspend potentially threatening activities and preserve the status quo pending a preliminary injunction. In any court proceeding in which the County seeks a temporary restraining order and a preliminary injunction, it will proceed on the presumption and present evidence that the violation presents 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 the County 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.

The County may take whatever legal action is deemed appropriate for the abatement or removal of any MS4 Permit violation, in the manner provided for by law, and may take other steps, including but 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 in manners contrary to the provisions of the MS4 Permit. In cases where the County has reasonable cause to believe that there exists, or potentially exists, in or upon any premises any condition that constitutes a GESC, Post Construction, Stormwater Management Manual and Agreement, or IDDE Program violation, in accordance with law, the County has the right to enter the premises at any reasonable time to determine if the owner or operator is complying with the MS4 Permit. In the event that the owner or occupant refuses entry after a request to enter has been made, the County may obtain an administrative warrant under the Ordinance or seek the right of entry under rules of discovery from a court of competent jurisdiction to obtain such entry. Under the SMM and easement agreements, the County also has the right of access to the storm drain facilities for inspection and maintenance purposes and as necessary to abate a threat of imminent harm.

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Where a violation is believed to have occurred, in cases where the County may seek judicial relief, the process will include the following components:

1. An attempt to contact the owner or occupant to seek immediate and appropriate voluntary abatement.
2. Make a determination to initiate a civil and/or criminal action for judicial enforcement in regard to any violation. Under the Stormwater Ordinance both civil and criminal remedies are authorized.
3. If the County 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 is expected take the following actions and impose the following minimum penalty, unless the County, 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 in an amount consistent with the Fee Schedule approved by the Board of County Commissioners; and
 - c. Order the defendant to forthwith pay restitution to the County for the actual costs or loss caused to the County by the violation(s), including but not limited to, administrative expenses, costs to protect the public from the violation, court costs, and attorney fees.
5. In addition to the minimum penalty required by this section, the court is 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.

IMPLEMENTATION

All enforcement proceedings will take place in a documented process, and only after County staff has verified the potential infraction and documented the type, extent, and nature of the violation, accompanied by a determination of the severity of the violation. Enforcement is not taken lightly, or 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.

Construction Site Enforcement

The Construction Site Program Area of the MS4 Permit requires the County to inspection activities to ensure proper control measures are in place and adequate to mitigate the discharge of sediment and/or pollutants during land disturbance activities. Inspections are performed in accordance with the GESC Inspection Program SOP and are governed by requirements contained in the County GESC Manual. Violations can be procedural, or based on a lack of control at the site leaving open the potential for an

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imminent discharge, or the loss of control at the site with an actual discharge. Each of these leads to enforcement, and the severity of the penalty is based on the Inspector’s awareness of the site history, the field conditions at the time of the inspection, and the threat posed to the public’s health, safety, and welfare.

Procedural violations would seem to be less severe, but actually, one of the more serious violations within the GESC Program is commencing land disturbance activities without a GESC permit and the accompanying approved GESC plan that lays out for the Contractor the correct way to control sediment discharges at the site during all phases of construction. Loss of control at a site leading to a sediment discharge from the site would appear to be the most serious violation, but in fact, with the GESC Program’s layered control measure approach, this may be a one-time breakthrough of an interior sediment control measure that was contained by the downstream inlet protection control measure. Immediate street cleanup and maintenance of the inlet BMP can mitigate this direct threat, while the lack of a GESC Plan and Permit leaves an entire disturbed site with the potential for sediment releases. For this reason, the Inspector has discretion, within the guidelines of the GESC Inspection Program SOP, to match the violation with the appropriate enforcement penalty.

Implementation of Construction Site Enforcement Tools

Per requirements in the MS4 Permit, the following are the types of escalating enforcement responses the County will take in response to common violations and time periods within which responses will take place.

Table 1: Time-frame for Common Violations

Common Violation	Enforcement Tools Used (in order of general escalation)	Time-frame for initial enforcement action
Construction commencing without site plan review in accordance with the MS4 Permit	Penalty Fee, Judicial Enforcement	Within 24-48 hours
Control measures not maintained in operational condition at time of permittee inspection, including sites that have temporarily shut down construction activities.	Verbal Warning, Educational Material, Penalty Fee, PNOV/NOV, Permit Hold/Inspection Hold, Stop Work Order, Permit Revoked, Judicial Enforcement	Within 24-48 hours
Uncorrected finding(s) from previous inspections.	Penalty Fee, PNOV/NOV, Permit Hold/Inspection Hold, Stop Work Order, Permit Revoked, Judicial Enforcement	Within 24-48 hours
Failure to implement a control measure for a pollutant source or inadequate control measure resulting in a discharge of pollutants from the applicable construction site or to the MS4.	Penalty Fee, PNOV/NOV, Permit Hold/Inspection Hold, Stop Work Order, Permit Revoked, Judicial Enforcement	Within 24-48 hours

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Penalty Re-Inspection Fees

Non-compliance notification at a site during an inspection can either be verbal instructions from the County Inspector to the GESC Manager, and/or included on an inspection report as a deficiency, labeled as “Poor,” and provided to the Contractor/GESC Manager. These violations will require a follow-up inspection by the County Inspector, and specific instructions regarding the time frame for the follow-up will be given at the time of the inspection. If corrections have not been completed satisfactorily during the follow-up inspection, and additional inspections are needed, Penalties Fees are assessed per the County Fee Schedule. A \$160 re-inspection fee will be assessed for the first re-inspection. Corrections not made in full after this initial re-inspection will require subsequent inspection and will be assessed **additional re-inspection fees.**

Escalation of Enforcement

If the Compliance Assurance Enforcement Fees have not achieved the compliance necessary, subsequent violations may result in the issuance of a Pre-Notice of Violation (PNOV), of a Notice of Violation (NOV) 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 is eventually issued, including new GESC Permit fees; and the GESC plan and report process begin anew, including re-assessment of review and permit 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.

Additional Enforcement Tools

Additional tools may be used after the Compliance Assistance Re-inspection Fee process is exhausted, depending on the site conditions, record of compliance, and other mitigating circumstances. Even with the GESC responsibilities laid out by the Inspector; sufficient details from plans and written inspections on what needs to be installed and maintained at a site; and payment of Re-inspection Fees, it may be that the a PNOV or NOV will not be the best solution for compliance. Additionally, stopping development work with a SWO, and notifications to the State that may occur for the NOV and SWO escalation of enforcement, may also not be appropriate tools for a particular site. For this reason, additional tools that can be utilized include Permit Holds, Revocation of Permits, Use of Collateral Funds, Abatement and Restitution, and Judicial Relief. These will be utilized as appropriate, following the requirements as stated within this Guidance Document.

Post-Construction Stormwater Management Enforcement

Violations can be procedural or a result of identified 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 BMP that will not adequately treat stormwater runoff. A non-functioning permanent BMP will potentially affect the health, safety or welfare of people and/or the environment. Since the charge of the County is to provide oversight for the installation of post-construction BMPs to treat runoff from impervious surfaces, these identified deficiencies will be considered violations and will require corrective

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action. The Inspector has discretion, within the guidelines of the Permanent BMP Inspection Program SOP and this ERP, to use the Re-inspection Fee.

The Re-Inspection Fee process will utilize monetary fee escalation to achieve permanent BMP installation compliance. The compliance assurance process for permanent BMPs may be a remove and replace policy for those installations that are defective and non-functioning.

Penalty Re-Inspection Fees

Notification can either be verbal instructions from the County Inspector to the Site Superintendent, and/or included on an inspection report as a deficiency, labeled as “Poor”, and provided to the Contractor. These violations will require a follow-up inspection by the County Inspector, and specific instructions regarding the time frame for the follow-up will be given at the time of the inspection. If corrections have not been completed satisfactorily during the follow-up inspection, and additional inspections are needed, Re-Inspection Fees will be assessed. A \$160 re-inspection fee will be assessed for the first re-inspection. Corrections not made in full after this initial re-inspection will require subsequent inspection and will be assessed additional re-inspection fees.

Escalation of Enforcement

If the Compliance Assistance Re-inspection Fees have not achieved the compliance necessary, subsequent violations may result in the issuance of a Pre-Notice of Violation (PNOV), of a Notice of Violation (NOV) or, in extreme non-compliant situations, a Stop Work Order (SWO). If a permanent control measure is non-compliant to the point of a SWO, the entire approach to the permanent control measures being constructed under the PIP 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 measures. If the permanent control measure design is in question and requires revision, the public improvement plan and report process will be revised and the review and approval process initiated, including re-assessment of review and permit fees; the public improvement permit is revoked and a new public improvement permit is eventually issued, including new public improvement permit fees. Under this extreme scenario, development construction work other than the permanent control measure cannot re-commence at the site if impervious surface is present until a new public improvement permit is approved and issued.

For sites with a permanent control measures that has been accepted, the first step is education followed by the tools available within the Judicial Process section.

Additional Enforcement Tools

Additional tools may be used after the Re-inspection Fee process is exhausted, depending on the site conditions, record of compliance, and other mitigating circumstances. Even with the public improvement responsibilities laid out by the Inspector and sufficient details from plans, written inspections on what needs to be installed and maintained at a site, and collection of Re-Inspection fees, it may be that the additional monetary fees will not be the best solution for compliance. Additionally, stopping all development work with a SWO, and notifications to the State that may occur for the NOV and SWO escalation of enforcement, may also not be appropriate tools for a particular site. For this reason,

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additional tools that can be utilized include Permit Holds, Revocation of Permits, Use of Collateral Funds, Abatement and Restitution, and Judicial Relief. These will be utilized as appropriate, following the requirements as stated within this ERP.

Refer to **Table I: Time-frame for Common Violations** for time-frames to respond to common violations.

Illicit Discharge Detection and Elimination

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 document.

Because there are various sources of illicit discharges to the storm sewer system, there are different actions the County may have to take to remove those sources and prevent future illicit discharges. The IDDE Plan 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 County may wish to handle the removal of illegal connections between homes or businesses and the storm sewer system, and the elimination of illicit discharges. The County will use judgment about what mix of compliance assistance and enforcement actions is appropriate in a given situation. Typically, the County 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, home or business owners are not aware of the existence of illegal connections between their buildings and the storm sewer systems. 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 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, escalating enforcement may be required.

IDDE Enforcement

It is the general policy of the County to provide reasonable opportunities for property owners, developers, and contractors to bring properties into compliance with the County's MS4 permit before formal enforcement proceedings are initiated. Permit penalties for enforcement are intended to achieve compliance without judicial proceedings or corrective action being taken by the County.

Most IDDE enforcement is limited to Verbal Warnings that provide an educational component to assist the violator with understanding the role of the IDDE violation in potential impacts to the stormwater system and consequently the ecosystem. Educational Material that accompanies the Verbal Warning will

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be suitable for a major portion of the illicit discharge incidents and will allow the County to close out the investigation. Compensatory actions may be appropriate for a small percentage of IDDE investigation resolutions, where the violation has ceased upon occurrence and compensatory actions that promote behavior change have a strong potential to reduce pollutants to the MS4. When these enforcement tools are not effective or suitable for an IDDE violation, PNOV, NOV, Stop Work, and Use of Collateral will be evaluated for appropriateness as remedies under the IDDE Program.

Judicial relief through Abatement and Restitution enforcement will be used for any IDDE violation that poses an immediate and imminent danger to public health and safety, and/or the level of violation of the MS4 permit requires specific and timely action. In addition, criminal enforcement is an available option for IDDE violations under the Stormwater Ordinance and may be available through applicable federal or state pollution laws through CDPHE and the Colorado Attorney General or the U.S. EPA.

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 most effective penalty. No remedy provided shall be exclusive. All IDDE violation remedies may be cumulative and available concurrently. Any action including an allegation or determination of an IDDE 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 for IDDE violations may be imposed immediately upon a violation occurring even in cases where the violation has ceased or is being abated.

Typically, IDDE violation issues can be addressed on a site during construction via their GESC Permit or public improvement permit requirements, with the Construction Site and Post Construction enforcement tools as described in this document. However, if issuing an IDDE violation at a site with GESC and/or public improvement permits is more straightforward than tying it to a GESC or public improvement permit violation, this enforcement tool may be used for an IDDE violation at the site, within the parameters discussed in this section, and in this document.