

BES Title 10 Discharge Enforcement Administrative Rules ENB – 4.30

~~December 2020~~ August 2022



ENVIRONMENTAL SERVICES
CITY OF PORTLAND
working for clean rivers

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These are the administrative rules for the Bureau of Environmental Services (BES) Title 10 Discharge Enforcement Program.

1. Applicability

These rules pertain to ground-disturbing activities that do not require a City development permit but discharges that violate Portland City Code (PCC) Title 10 (Erosion and Sediment Control) or the City of Portland Erosion and Sediment Control Manual (ESCM), and that which are administered and enforced by BES, as established by under PCC 10.10.030.

2. Purpose

These rules are implemented in conjunction with the BES Enforcement Program Administrative Rules (PPD item ENB-4.15) and implement the following BES program goals:

- A. Control or prevent pollution at the source and comply with pollution control best-management practice (BMP) requirements in the ESCM;
- B. ~~Educate property owners and other persons about their responsibilities to p~~ Prevent and control erosion, pollution and sediment-laden runoff from discharging to the Storm Drainage System their properties; and
- C. Comply with the provisions of the City's National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Discharge permit, NPDES Wastewater Discharge Permit, and its Underground Injection Control (UIC) Water Pollution Control Facility (WPCF) permit.

3. Definitions

Certain terms used in these rules are defined in PCC Title 10 and by the following:

- A. **“Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger's particular situation because of factors that, in the challenger's view, distinguish it from similar situations.
- B. **“Storm Drainage System”** See PCC 10.20.010 (Definitions).
- C. **“Visible and or Measurable Standard”** See PCC 10.20.010 (Definitions). ~~means a standard for assessing violations that is based on:~~
 1. ~~The offsite deposition of more than one-half cubic foot of mud, dirt, sediment or similar material onto public streets or into the City storm sewer or drainage system; or~~
 2. ~~Evidence of on-site erosion such as concentrated flows of water over bare soils or turbid or sediment-laden flows, the runoff from which is not filtered or captured on the site.~~

4. Regulatory Authority



- A. **Primary Authority.** PCC Section 10.10.030 A.3 authorizes BES to take enforcement action as specified in PCC Chapter 10.70.
- B. **Relationship to Other City Regulations.** These rules may be enforced in combination with other City rules and regulations. In some cases, BES may use other or additional discharge or other Code enforcement authorities to address Title 10 violations.

5. Violation Investigations

The City may investigate possible violations in accordance with the procedures specified in the BES Enforcement Administrative Rules (ENB-4.15).

6. Violation Classification

Violation classes are described in the BES Enforcement Administrative Rules (ENB- 4.15) and include the following specific violations and criteria.

~~A. Violations.~~ BES may assess multiple violations for non-compliance with PCC Title 10, Chapter 17.34, ~~or Chapter 17.39 or Chapter 17.32.~~

A. Class I Violations. Class I violations include:

- ~~1. Releases of large amounts of sediments or pollutants that pose a substantial threat to public health and safety, property, or the environment; or from sites for which site development permits are not required.~~
2. Failure, or refusal to comply with BES enforcement rules, or the ESCM; or
3. Failure to correct ineffective erosion, sediment, and pollution control measures after being required to do so by the Director.

B. Class II Violations. Class II violations include:

1. Failure to install ~~required~~ adequate BMPs per the ESCM;
2. Tracking, depositing, discharging or flushing sediments, pollutants, or construction- related material into the City right-of-way ROW or the City sStorm sewer or dDrainage sSystem; or
3. Failure to install vegetative or other soil covers.

C. Class III Violation. Class III violations include:

1. Incorrect installation of a ~~required~~ an adequate BMP per the ESCM; or
2. BMPs that are inadequate to control or prevent discharges ~~or are non-functional; or~~
3. Inadequate maintenance of ~~required~~ BMPs per the ESCM.
- ~~4. Failure to post required hotline signage onsite;~~
- ~~5. Vegetative or other soil covers are installed, but are inadequate to prevent or stop erosion.~~

D. Warning Notice (WN) Violations. A warning notice may be issued for a minor deviation from the regulations or violations that result in no visible or measurable impacts to the Storm Drainage System. ~~de minimis discharges of visible sediment.~~



7. Enforcement Tools

Enforcement tools are described in the BES Enforcement Administrative Rules (ENB- 4.15). In addition, BES may issue a stop work order as described in PCC 10.70.030. Orders may only be lifted by the BES Environmental Compliance ~~Manager~~Officer.

8. Penalties and Cost Recovery

Penalties will be assessed as described in the BES Enforcement Rules (ENB-4.15) and all applicable BES staff guidance. Violation of a stop work order will be penalized as a compliance order violation per ENB 4-15. In accordance with ~~BES Enforcement Rules (ENB-4.15)~~, BES may recover all City costs related to the abatement of a violation and all outstanding penalties from the person(s) assessed a violation.

9. Administrative Review and Appeal

A person subject to a BES enforcement action brought under PCC Title 10 or these rules may request reconsideration of a BES decision through administrative review as described in this Section. Administrative review and appeal of an enforcement action is also governed by BES Enforcement Program Administrative Rules, ENB-4.15. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

- A. **Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.
- B. **Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:
 1. BES's authority to recover costs for City abatement of a violation of these rules or of associated City Code;
 2. BES's determination of the cost to the bureau of staff time, materials, supplies, services, equipment, other assets, administrative costs, overhead, etc., unless the person seeking administrative review alleges a mathematical error in how BES calculated a cost; ~~and or~~
 3. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.
- C. **BES Evaluation.** BES will use authorizing City Code, the provisions of these rules and ENB-4.15, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review.



- D. **Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

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