



# City of Portland

## Bureau of Development Services

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### PERMANENT RULE

**RELATING TO**

**Title 10 – Erosion and Sediment Control  
Erosion and Sediment Control Manual**

**FOR INFORMATION CONTACT**

**Mike Liefeld  
(503-865-6554)**

**PPD No. \_\_\_\_\_**

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**TITLE            Erosion and Sediment Control Manual Enforcement**

**AUTHORITY**

Portland City Code (PCC)

**CITATIONS**

**NPDES MS4  
1200-C Permits**

**PCC 3.30.040**

PCC 3.30.040 sets out the requirements for BDS to adopt administrative rules as follows:

- Adopt administrative rules, policies, procedures and forms for enforcement
- Establish and impose enforcement fees and penalties for non-compliance
- Establish enforcement priorities
- Gain compliance as set forth in subsection 3.30.040.D.

**PCC Title 10  
PCC Chapters 17.38 and 17.39**

**FINDINGS FOR ADOPTION**

1. Portland City Code Section 3.30.045 delegates the authority to adopt and administer administrative rules appropriate to perform the duties of the Bureau of Development Services (BDS) set forth in Section 3.30.010 and prescribes procedures for administrative rulemaking.
- 2.
- 3.
- 4.
5. In accordance with Section 3.30.045, BDS published a notice of public hearing in *The Oregonian* on \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, 2022 and in *The Daily Journal of Commerce* on \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, 2022. BDS also posted notice of the hearing and made the draft amendments to the administrative rule available on the BDS website. BDS then held a public hearing to receive comments on the draft administrative rule on \_\_\_\_\_, 2022, and held the record open until 5:00 p.m. on \_\_\_\_\_, 2022. Written and oral/No written or oral public comments were received on the proposed amendments. The effective date is more than 30 days after the last date of the required notices.

**CONCLUSION**

As provided in Portland City Code Section 3.30.040, the Director of BDS hereby adopts the Permanent Administrative Rule.

**ADOPTED:** \_\_\_\_\_  
**Rebecca Esau, Director**

**[date]** \_\_\_\_\_

# Administrative Rule

## Title 10 and Erosion and Sediment Control Manual Enforcement Administrative Rule

### I. Purpose and Scope

The purpose and intent of this Administrative Rule is to establish an escalated enforcement process for violations of Portland City Code (PCC) Title 10 and the City of Portland Erosion and Sediment Control Manual (ESCM). This Administrative Rule applies to all ground disturbing and pollutant generating activities regulated by the Bureau of Development Services (BDS) as set forth in PCC 10.10.030.A.

### II. Violations

A. The following actions will constitute a violation of Title 10 or the ESCM:

1. Any failure, refusal or neglect to comply with any requirement of PCC Title 10 or the ESCM.
2. Allowing or causing a condition related to erosion and sediment control during the construction process that threatens to injure public health, the environment, or public or private property.
3. Failure to correct ineffective erosion, sediment and pollutant control measures after being required to do so by the Director.

B. Each specific incident and each day of non-compliance will be considered a separate violation of Title 10, the ESCM, or this Administrative Rule.

### III. BDS Permit Inspection Fees and Fines

General. Non-compliance with PCC Title 10 or the ESCM will be subject to additional Inspection Fees and Fines when the activity is proceeding under an issued BDS permit requiring erosion control inspections. Other enforcement actions outlined in this Administrative Rule may also be utilized at the discretion of the Director.

Violations. When a violation of Title 10 or the ESCM is confirmed, BDS will issue a Permit Inspection Correction Notice.

Correction Notice. The Permit Inspection Correction Notice will state the Title 10 and/or ESCM violation(s) and list a timeline for compliance and BDS re-inspection. Failure to make corrections by the timeline in the Correction Notice will result in assessment of additional fees or fines. The written Correction Notice will be provided on-site at the conclusion of the inspection and emailed to the contractor or owner, if no contractor is listed on the permit. Correction Notices will list assessed re-inspection fees or fines.

Correction Notice Timelines for Compliance. Timelines for required corrections are based on the severity of the violation and potential for environmental harm if correction is not made. Generally, the following Correction Notice timelines will apply:

- Discharge (or imminent discharge) off-site or discharge to the City's stormwater system as outlined in PCC 17.38 and 17.39 – compliance should occur immediately, but not more than 24 hours after the Correction Notice is posted on the site
- Violations during wet season (October 1 – April 30) – compliance required within 3 business days of Correction Notice being posted on the site
- Violations at Special Sites (as defined ESCM 2.1.3) – compliance required within 3 business days of Correction Notice being posted on the site
- All other violations – compliance required within 5 business days of the Correction Notice being posted on the site

Inspection Fees and Fines. If corrections are not made, Re-Inspection Fees and Fines will be assessed based on the categories below. Inspection Fees and Fines will be assessed as additional permit fees and must be paid prior to requesting additional permit inspections. The amount of Inspection Fees and Fines are set forth in the BDS Enforcement Fee and Penalty Schedule adopted by the City Council annually.

Recurring Violations. Fine amounts will double for contractors who have previously received fines for #200, #205, or #210 inspection categories within the past 12 month period.

Correction Notice Appeals. The issuance of a Correction Notice and assessment of Inspection Fees and Fines may be appealed by requesting an Administrative Review (see Section VII below.)

#### **#200 - Pre-Construction Erosion Control Inspection (ESCM Section 2.6.2)**

##### **When #200 Inspections are requested PRIOR to beginning Ground Disturbing activity**

#200 Inspection Result Not Approved – No fee \*

- 1st Reinspection – No fee \*
- 2<sup>nd</sup> Reinspection – BDS Reinspection fee \*
- Subsequent Reinspection – BDS Reinspection fee \*

\*= Offsite discharge

Discharge from permitted site = additional \$200

Discharge from permitted site that enters the City's stormwater system – see PCC 17.38 and 17.39 enforcement provisions

##### **When #200 Inspections are requested AFTER beginning Ground Disturbing activity**

#200 Inspection Result Approved - \$100

#200 Inspection Result Not Approved - \$200

- 1<sup>st</sup> Reinspection - \$200 \*
- 2<sup>nd</sup> Reinspection - \$400 \*
- Subsequent Reinspection - \$600 \*

\*= Offsite discharge

Discharge from permitted site = additional \$200

Discharge from permitted site that enters the City's stormwater system – see PCC 17.38 and 17.39 enforcement provisions

**#205 – Interim Erosion Control Inspection (includes contractor requested, BDS scheduled, and complaint referrals) (ESCM Section 2.6.3)**

**1<sup>st</sup> #205 Inspection**

Violations Category 1: Not Approved with perimeter control, stabilized entry/exit, temporary stabilization, inlet protection, sediment in ROW, Pollutant Containment, disturbance beyond limits in environmental zones

#205 Inspection Result Not Approved – No fee \* \*

- 1<sup>st</sup> Reinspection - \$200 \*
- 2<sup>nd</sup> Reinspection - \$400 \*
- Subsequent Reinspection - \$600 \*

\*= Offsite discharge

Discharge from permitted site = additional \$500

Discharge from permitted site that enters the City's stormwater system – see PCC 17.38 and 17.39 enforcement provisions

Violation Category 2: Not Approved violations not included above

#205 Inspection Result Not Approved – No fee \*

- 1<sup>st</sup> Reinspection - \$100 \*
- 2<sup>nd</sup> Reinspection - \$200 \*
- Subsequent Correction Reinspection Not Approved - \$300 \*

\*= Offsite discharge

Discharge from permitted site = additional \$500

Discharge from permitted site that enters the City's stormwater system – see PCC 17.38 17.39 enforcement provisions

When #205 Inspection Result is Not Approved containing violations in both categories, Violation Category 1 will be assessed.

**2<sup>nd</sup> and Subsequent 205 Inspection(s)**

Violations Category 1: Not Approved with perimeter control, stabilized entry/exit, temporary stabilization, inlet protection, sediment in ROW, Pollutant Containment, disturbance beyond limits in environmental zones

#205 Inspection Result Not Approved - \$400 \*

- 1<sup>st</sup> Reinspection – Stop Work Order (SWO) and SWO fee (daily)
- 2<sup>nd</sup> Reinspection – SWO, SWO Fee, Civil Penalty
- Subsequent Reinspection - SWO, SWO Fee, Civil Penalty \*

\*= Offsite discharge

Discharge from permitted site = additional \$500

Discharge from permitted site that enters the City's stormwater system – see PCC 17.38 and 17.39 enforcement provisions

Violation Category 2: Not Approved violations not included above

#205 Inspection Result Not Approved - \$200

- 1<sup>st</sup> Reinspection - \$200 \*
- 2<sup>nd</sup> Reinspection - \$300 \*
- Subsequent Correction Reinspection Not Approved - \$400 \*

**#210 – Permanent Erosion Control Inspection & #509 (ESCM Section 2.6.4)**

No Violations

- Not approved #210 – No fee
- 1<sup>st</sup> Reinspection – No fee
- 2<sup>nd</sup> Reinspection – BDS Reinspection fee
- Subsequent Correction Reinspection – BDS Reinspection fee

Violations Confirmed (removal of sediment controls prior to final stabilization, discharges to ROW, washing sediment from site)

- Not approved #210 - \$200 \*
- 1<sup>st</sup> Reinspection - \$200 \*
- 2<sup>nd</sup> Reinspection - \$400 \*
- Subsequent Correction Reinspection - \$600 \*

\*= Offsite discharge

Discharge from permitted site = additional \$200

Discharge from permitted site that enters the City's stormwater system – see PCC 17.38 and 17.39 enforcement provisions

**IV. Stop Work Orders.**

General. When necessary in order to obtain compliance with PCC Title 10, the ESCM, or this Administrative Rule, the Director or designee may issue a Stop Work Order requiring that all work, except work directly related to the elimination of the violation, be immediately and

completely stopped. When the Director or designee issues a Stop Work Order, activity subject to the Order may not resume until such time as the Director give specific approval in writing.

Notice. Stop Work Orders must be in writing and will include:

1. Date of Order;
2. Permit number, where applicable;
3. Site address, legal description or project location that is subject to the Stop Work Order;
4. A description of violations observed; and
5. The conditions under which work may resume.

Stop Work Order Service. The Stop Work Order will be posted at a conspicuous location at the job site. It is unlawful for any person to remove, obscure, mutilate or otherwise damage a Stop Work Order. A copy of the Order will either be personally delivered or sent to the contractor and property owner (and any person authorized to act on the owner's behalf, if identified) by email or regular first-class mail. When an emergency condition exists, the Director or designee may issue a Stop Work Order orally, for immediate cessation of work with written posting and mailed notice to follow.

Effective date. A Stop Work Order will be effective upon posting.

Stop Work Order Penalty. A penalty, as set forth in the Enforcement Fee and Penalty Schedule adopted by the City Council, may be imposed when a Stop Work Order is issued, and may be assessed daily for each day the violation or condition giving rise to the Order continues.

Work without Permit. Work commenced without a required issued permit will also be subject to a Stop Work Order and Stop Work Order penalty when ground disturbing activity has occurred.

Stop Work Order Appeals. Issuance of a Stop Work Order may be appealed by requesting an Administrative Review (see Section VIII below).

## **V. Citations and Civil Penalties**

General. In order to ensure compliance with PCC Title 10 or the ESCM, all citations will include calculated civil penalties, which may be assessed as part of escalated enforcement. Such civil penalties are in addition to, and not in lieu of, any other Fees and Fines assessed as part of an action to enforce PCC Title 10, the ESCM, or this Administrative Rule.

Violations. When a violation of PCC Title 10 or the ESCM is confirmed, BDS may issue a citation to the responsible party. For the purposes of this Administrative Rule, the responsible party will be the property owner(s) as shown in the county assessment and taxation records for the property.

Citation Notice. The citation will state the section of PCC Title 10 or the ESCM violated, all Fees and Fines imposed, the civil penalty imposed, and the corrective action(s) required.

Citation Service. A citation may be personally delivered to the responsible party or may be served by Registered or Certified Mail to the responsible party. For purposes of this Administrative Rule, service by Registered or Certified Mail is complete and effective when a correctly addressed notice is certified or registered and deposited with the US Postal Service. A copy of the citation will also be delivered to any person authorized to act on the owner's behalf, as identified in the permit records.

Civil Penalties. For each violation, BDS may assess a civil penalty up to \$1,000 per day. Each day a violation exists will be considered a separate violation. The Director will consider the following criteria in determining the amount of any civil penalty to be assessed under this Section:

- a. The nature and extent of the person's involvement in the violation;
- b. The benefits, economic, financial, or otherwise, accruing or likely to accrue as a result of the violation;
- c. Whether the violation was isolated and temporary, or repeated and continuous;
- d. The magnitude and seriousness of the violation;
- e. The City's costs for investigating and remedying the violation;
- f. Whether any criminal charges have been issued against the person; and
- g. Any relevant, applicable evidence bearing on the nature and seriousness of the violation.

Corrections not made. If corrections are not made and the violation(s) continue, BDS may impose additional citations or pursue other enforcement remedies as authorized under PCC 3.30.040.

Civil Penalties Double. Civil penalties must be paid and received by the Bureau of Development Services – Enforcement Program within 15 calendar days of the date on the citation, or within 15 calendar days of the final Administrative Review by the Director or the published decision of a citation appealed to the City Code Hearings Officer pursuant to Section VII below, unless the City Code Hearings Officer specifies a different date. If the civil penalty is not paid within 15 calendar days, as specified above, the civil penalty(ies) indicated on the citation will double and the unpaid citation amount may, at the discretion of the Director, be recorded as a property lien in the Docket of City Liens.

Citation Appeals. Issuance of a citation may be appealed by requesting an Administrative Review (see Section VIII below).

## **VI. Voluntary Compliance Agreement.**

General. When a violation of PCC Title 10, the ESCM, or this Administrative Rule has occurred, as an enforcement option, the Director may enter into a Voluntary Compliance Agreement with the responsible party.



Contents. A Voluntary Compliance Agreement must set forth the actions to be taken by the responsible party to correct violations of PCC Title 10, the ESCM, or this Administrative Rule, actions to mitigate the impacts of violations, and a schedule for corrective actions and a final completion date.

Effect of Agreement.

1. A Voluntary Compliance Agreement is not enforceable by a third party. By entering into a Voluntary Compliance Agreement, the responsible party waives the right to an appeal under PCC Section 10.70.060.
2. The Director may reduce or waive civil penalties if the responsible party performs all the terms of the Voluntary Compliance Agreement. The Director may not waive civil penalties in any case where the responsible party is a repeat violator. If the responsible party fails to perform according to the terms of the Voluntary Compliance Agreement, the Director will assess civil penalties from the date the violation occurred for each violation addressed in the Agreement.
3. Subject to the approval of the Director, the responsible party may elect to substitute in-kind services for up to 90% of the amount of all assessed penalties. The Director will determine the actions that can be deemed in-kind services.

**VII. Administrative Review**

General. Whenever the responsible party has been given a notice (Correction Notice, Stop Work Order, or citation) pursuant to this Rule and has been directed to make any correction or to perform any act, and the responsible party believes the finding of the notice was in error, the responsible party may request to have the notice reviewed by the Director. If a review is sought, the responsible party must submit a written request to the Director within 15 calendar days of the date of the notice. Such review must be conducted by the Director or designee. The responsible party requesting such review must also be given the opportunity to present evidence to the Director regarding the Correction Notice, Stop Work Order, or citation. Following a review, the Director will issue a written determination.

The Director's written determination may be appealed to the Code Hearings Officer in accordance with Portland City Code Chapter 22.10. Nothing in this Section will limit the authority of the Director to initiate a code enforcement proceeding under Title 22.

**VIII. Responsibility**

The Bureau of Development Services is responsible for managing and implementing this Rule.

**IX. History**

Date Adopted: \_\_\_\_\_, **2022**  
Effective Date: \_\_\_\_\_, **2022**