

Administrative Rules for Discharges to the City Storm Sewer and Drainage System

(ENB – 4.13)

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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)
Discharges to the Storm Sewer and Drainage System.*

1. Applicability

These rules apply to any current or requested discharge into the City's storm sewer and drainage system that is regulated under Portland City Code (PCC) Chapter 17.39.

2. Purpose

These rules are implemented in conjunction with the BES Administrative Enforcement Rules, Portland Policy Documents (PPD) Item ENB-4.15, and support the following City and BES Stormwater Discharge Program goals:

- A. Facilitate and ensure compliance with applicable PCC provisions, rules, and policies;
- B. Prevent harm to human health, public safety, the environment, and City assets;
- C. Maintain City compliance with all state and federal environmental regulations, programs, and permits, including the City's:
 - 1. National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Discharge Permit; and
 - 2. Water Pollution Control Facilities (WPCF) Permit for Class V Underground Injection Control (UIC) systems.

3. Definitions

Certain terms used in these rules are defined in PCC Chapter 17.04, PCC Chapter 17.39, the City's *Stormwater Management Manual (SWMM)* (PPD Item ENB-4.01), and by the following:

- A. **"Containment"** means a structural control measure or device designed to capture and temporarily store potentially contaminated stormwater or process wastewater not appropriate for discharge to City systems without pollution, flow or volume reduction BMPs.
- B. **"Directive"** means an order or official instruction by BES.
- C. **"Facility Operator"** means a business or property owner, their designee, site tenant, or any contractor or firm with designated responsibility for site operation and maintenance.
- D. **"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.
- E. **"Sewer Access Permit"** means written permission from BES for a facility operator or discharger to enter or access a particular component of the City's storm sewer and drainage system.
- F. **"Source Control Plan"** means a written plan approved by BES that is intended to be implemented by a facility to manage, reduce or eliminate pollutants prior to discharge to the City's storm sewer and drainage system

4. Regulatory Authority

- A. **Authorities.** PCC Section 3.13.040 authorizes BES to implement these rules. PCC Chapter 17.39 authorizes BES to:

1. Prohibit or limit discharges to the City's storm sewer and drainage system;
2. Require a discharge to be managed for volume, discharge rate or pollutant concentrations prior to discharge;
3. Require that a discharge be diverted to the sanitary or combined sewers (by prohibiting discharge to the storm system and authorizing, if appropriate, the discharge in accordance with the requirements of PCC Chapter 17.34);
4. Require site modifications to prevent spills, discharges, or other material from entering the City's storm sewer and drainage system; and
5. Investigate potential violations in response to citizen complaints, referrals from City staff or other agencies, or discoveries made during inspections conducted by the City or others.

B. Relationship to the City's *Stormwater Management Manual (SWMM) Portland Planning Document item ENB-4.01.* These rules may be applied simultaneously with the *SWMM* to control discharges from development and to manage post development discharges from sites.

5. Inspections and Site Entry

To the extent permitted by law, BES representatives may enter a facility to determine compliance with these rules, PCC Chapter 17.39, BES discharge permits, or BES discharge authorizations issued under these rules. Denial of access may require the City to seek an administrative warrant to obtain entry for facility inspection and sampling. Types of inspections that may require entry include but are not limited to the following:

- A. Spill and Materials Release Investigations.** Investigate the suspected source of a discharge.
- B. Verification of Connection.** Verify or investigate sewer and drainage system connections to the City system.
- C. Permit or Authorization Compliance Inspections.** Confirm compliance with BES discharge permits or authorizations issued under PCC Chapter 17.39.
- D. Sample Collection.** Collect or observe the collection of samples as outlined in Section 7.

6. Spills and Releases

Facility operators or dischargers must comply with the following in the case of a spill or unauthorized release.

- A. Notification.** Provide verbal notification immediately upon discovery of a spill or release via telephone to the BES Spill hotline (503-823-7180). The notification must include:
 1. A description of the material discharged, including whether the spill or release was a liquid or solid;
 2. The estimated amount and duration of the spill or release;
 3. The discharge point to the City's storm sewer and drainage system;
 4. Steps taken to cease and control the spill or release, and
 5. Contact information, including phone number, of the party responsible for the spilled or released material.

- B. Spill Response.** Cease, control, and clean up the spill or release in accordance with PCC Chapter 17.39 or as detailed in a City or other permit, discharge authorization, associated spill control measures plan, or as otherwise directed by BES staff.
- C. Sewer Access.** Obtain a sewer access permit from BES as required by PCC Chapter 17.32 prior to any cleanup or repair of the City’s storm sewer and drainage system caused by any spill or release.
- D. Reporting.** Submit written reports to BES within five days of the spill or release, unless otherwise required by BES, and include the following details of the spill or release:
 - 1. All requirements listed in Section 6.A above;
 - 2. Any corrections to information provided in the verbal report made in 6.A;
 - 3. All steps taken to clean up the spill or release;
 - 4. All steps taken or proposed to eliminate and prevent recurrence of the spill or release; and
 - 5. Documents associated with the cleanup.

7. Sample Collection and Evaluation

BES may collect samples or direct the facility operator or discharger to collect samples as a condition of approval of a discharge permit or authorization or as a requirement of a discharge permit or authorization requirement.

A. BES Sample Collection:

- 1. BES may collect liquid or solids samples from an onsite stormwater drainage system, stormwater management device, or any other structure that discharges, has discharged, or has the potential to discharge to the City’s storm sewer and drainage system.
- 2. BES will provide, upon request, copies of analytical results and split samples to the facility operator or discharger.

B. Facility Operator or Discharger Sample Collection:

- 1. **Triggers for Sampling.** The facility operator or discharger must collect samples when directed by BES. Samples may be required, but are not limited to, the following situations:
 - a. Pollutant concentrations of a discharge are unknown;
 - b. Determining impacts from a spill or release;
 - c. Changes to the site or facility operations that may effect offsite discharges;
 - d. Determining compliance with PCC 17.39, these rules, or a BES discharge permit or authorization;
 - e. Determining if a discharge may have caused, will cause or have the potential to cause a violation to the City's NPDES MS4 or WPCF UIC permits; or
 - f. Requesting termination of a BES discharge permit.
- 2. **Sampling Protocols and Procedures.** BES may require the use of specific sampling procedures and analytical protocols to comply with a City discharge permit or authorization, PCC Chapter 17.39, or these rules;

3. **Analytical Results.** The facility operator or discharger must provide to BES analytical results from samples taken as required by discharge permit or authorization or as directed.
4. **Sewer access permit required.** The facility operator or discharger must obtain a sewer access permit from BES as required by PCC Chapter 17.32 prior to accessing the City's storm sewer and drainage system.
5. **Sampling manhole or access point requirements.** The facility operator or discharger may be required by permit, discharge authorization, or compliance order to install and maintain a sampling manhole or other approved sampling access point to characterize a discharge to the City's storm sewer and drainage system. The manhole or access point must be installed in accordance with Administrative Rules for Monitoring Access Structures (ENB-4.35).
 - a. **Applicability.** BES may require installation of a sampling manhole or access point when:
 - i. A representative sample of the discharge cannot be obtained from any other onsite location; or
 - ii. An existing sample location is not readily accessible to BES personnel.
 - b. **Design Standards.** Sampling manholes and access points must be designed to allow observation, sampling, and measurement of any discharges before they enter the City's storm sewer and drainage system.
 - c. **Installation.** Sampling manholes and access points must be:
 - i. Installed in accordance with a BES-approved design,
 - ii. Installed at a BES-approved location, and

C. Sample Results Evaluation. BES will evaluate sampling results utilizing:

1. The lowest applicable NDPES or UIC benchmarks, limits, or other applicable standard or guidance values; and
2. Applicable state water quality criteria described in OAR 340-041-0033 for discharges to a location with known or suspected contamination (e.g., Portland Harbor) via the City's storm sewer and drainage system.

8. BES Discharge Permits and Authorizations

A facility operator or discharger may be required under PCC Section 17.39.060 to obtain a BES discharge permit or authorization for discharges. Issuance of a discharge permit or authorization does not exempt the facility operator or discharger from the prohibitions of PCC Section 17.39.040. Discharge sampling may be required and evaluated as described in Section 7.B.1 above.

A. Applicability. Circumstances under which a facility operator or discharger may be required to obtain a discharge permit or authorization include but are not limited to:

1. Facilities that discharge or could discharge pollutants through stormwater runoff due to an exposure of site activities or materials to rainfall, including those with:
 - a. Industrial or manufacturing operations, facilities on sites with known or suspected contamination, and areas where industrial activity has taken place in the past and materials remain and are exposed to stormwater; and

- b. Material handling and storage, loading and unloading, transportation, or conveyance of any raw material, intermediate products, final product, by-product, or waste product.
 - 2. Non-stormwater discharges that are allowed under the City’s MS4 and WPCF permits but may require BMPs to reduce or eliminate potential pollutants and manage the flow volume and release rate. Nonstormwater discharges can include the following:
 - a. Water line, fire main, or fire hydrant flushing.
 - b. Uncontaminated pumped groundwater.
 - c. Discharges from potable water sources.
 - d. Startup flushing discharges from groundwater wells.
 - e. Discharges from potable groundwater monitoring wells.
 - f. Draining and flushing of municipal potable water storage reservoirs.
 - g. Air conditioning condensate.
 - h. Discharges from impounded stormwater.
 - i. De-chlorinated swimming pool discharges.
 - j. De minimis washing activities.
 - k. Discharges of treated water from site investigations.
 - l. Discharges from removal and remedial actions selected or approved by Oregon DEQ pursuant to ORS Chapter 465.
 - 3. Any facility operation or discharge that has the potential to harm or interfere with the City’s storm sewer and drainage system.
 - 4. Any facility operation or discharge that has the potential to cause or contribute to a prohibited discharge or a known or potential violation of water quality standards in receiving waters or a known or potential violation of the City's NPDES MS4 or WPCF UIC permits.
- B. Application Submittal and Review.** BES Discharge permits and authorizations must be submitted and approved prior to discharge.
1. **Types of Discharge Request.**
 - a. **Discharge Authorization Request.** Applies to dischargers or facility operators requesting approval for non-routine or one-time discharges.
 - b. **Discharge Permit Request and Application.** Applies to dischargers or facility operators requesting approval continuous or routine discharges. Requests for such discharges must include a BES discharge permit application.
 2. **Submittal.** A facility operator or discharger must submit a discharge request or a completed permit application, any required sampling results as outlined in Section 7, and any required source control plans or measures as outlined in Section 9.
 3. **Review and Approval or Denial.** Permit applications will be reviewed and approved or denied in accordance with PCC Chapter 17.39 and these rules. A discharge permit or authorization may be denied for the following reasons:
 - a. Incomplete or inaccurate permit application.
 - b. The discharges are, in the determination of BES, incapable of sufficient treatment.

- c. Insufficient or inappropriate source control plans or measures.
- d. Discharges exceed or have the potential to exceed the water quality criteria used to evaluate sampling results in Section 7.C.

C. Fees.

1. The following fees are due at the time of application for BES discharge permits and discharge authorizations:
 - a. **Discharge Authorization.** A \$50 fee will be charged for the review and issuance of discharge authorization requests.
 - b. **Discharge Permit.** A \$250 fee will be charged for the review and issuance of a BES discharge permit and permit renewal applications.
2. Volume charges, as provided in PCC Chapter 17.36 and PPD Item ENB-4.20 (Sewer and Drainage Rates and Charges), may apply.

D. Permit Modification or Termination.

1. **Facility Operator or Discharger Request for Modification or Termination.** A facility operator or discharger may request, and BES will consider, modification or termination of a discharge permit or authorization only in the following situations:
 - a. The potential to discharge pollutants is eliminated;
 - b. Onsite practices or the handling of solid or liquid raw materials or waste products that could result in prohibited discharges cease;
 - c. Non-stormwater discharges that are allowed under the City’s NPDES MS4 and WPCF UIC permits but that may require BMPs to reduce or eliminate potential pollutants and manage the flow volume and release rate are eliminated;
 - d. The discharge no longer has the potential to violate these rules; or
 - e. The discharge ceases.
2. **BES-Initiated Modification or Termination.** BES may, on its own initiative, modify or terminate a discharge permit or authorization for situations including those listed in Section D.1 or as provided in the discharge permit or authorization.

E. Permit Renewal. The discharge permittee must apply for permit renewal 30 days prior to permit expiration. Upon receipt of a permit renewal application BES may administratively extend the current permit.

F. NPDES and WPCF Requirements. BES discharge permits and authorizations are not intended to supersede or replace any federal or state NPDES or WPCF permitting requirements.

9. Source Control Plans or Measures

As a component of a BES discharge permit or authorization, or to comply with PCC Chapter 17.39, facility operators and dischargers may be required to prepare, submit and implement source control plans or install and implement source control measures.

A. Source Control Plans. Source control plans include, but are not limited to:

1. *Stormwater Pollution Control Plan (SWPCP)* which describes measures to eliminate, reduce and control the level of pollutants in stormwater runoff.

2. *Accidental Spill and Prevention Plan (ASPP)* which describes measures to prevent the release of prohibited or deleterious materials and to document spill response procedures.
3. *BMP Plan* describes actions to reduce or eliminate pollutants and the hydrologic impacts associated with a discharge.

B. Source Control Plan Elements. A source control plan must contain information as required by BES, including some or all of the following:

1. Title page and associated general information, such as plan date(s), facility operator or company name, type of business, site address, and contact information;
2. Descriptions of materials, processes, activities, and pollutants of concern that have the potential to contaminate associated discharges;
3. Site plans, maps, or engineered drawings showing:
 - a. Buildings, pervious and impervious areas;
 - b. Drainage patterns, drainage and discharge structures and piping, outfalls and connections to the City's storm system;
 - c. Pollution prevention or reduction measures for areas used for outdoor manufacturing, storage and handling of solid or liquid raw materials and waste products;
 - d. Location(s) of sampling location(s), spill prevention supplies, or any other pertinent features relevant to the discharge(s) of concern;
4. A description of the BMPs, preventive maintenance, employee education, inspection requirements and control measures installed and implemented to meet the requirements of these rules;
5. Notification procedures in the event of a spill or release;
6. Identification of the point(s) where sampling will occur and associated description of the monitoring frequency, required testing procedures and monitored pollutants as deemed necessary by the City;
7. Description of the type and source of discharge and discharge characteristics, such as volume(s) and duration(s) of the discharge and identification of the immediate and ultimate receiving system(s) and waters of the state.

C. Plan Preparation, Submittal and Implementation

Requirements and schedules may include, but are not limited to:

1. **Plan Development.** A source control plan must be prepared by a person knowledgeable about the potential discharge of concern and the associated facility.
2. **Plan Submittal.** A complete and accurate source control plan must be submitted within 30 days of the initial notification of the requirement to obtain a discharge permit or authorization, unless otherwise specified by BES.
3. **Plan Implementation.** The facility operator or discharger must implement the source control plan and any subsequent revisions to the plan. Failure to implement any of the control measures or practices described in the plan constitutes a violation of PCC Chapter 17.39 and these rules.

4. **Plan Updates.** The source control plan must be kept current and updated as necessary to reflect any changes to site conditions that have the potential to alter or impact the nature of the discharge(s) of concern. Revisions to the plan must be submitted within 30 days of the change(s), unless otherwise specified by BES.

D. Installation, Implementation and Maintenance of Source Control Measures.

Facility operators and dischargers may be required to install and implement source control measures and BMPs to meet the conditions of PCC Chapter 17.39 or to obtain and comply with a discharge permit or authorization or a BES directive.

1. **Documentation.** BES may require that the installation, implementation, and maintenance of measures be documented as described in a source control plan in accordance with Sections 9.A and 9.B above.
2. **Installation.** Source control measures and BMPs must be installed in accordance with a BES-approved design.
3. **Operation and Maintenance.** Drainage and treatment structures and source control measures must be operated and maintained in a manner that ensures pollutant removal and volume disposal effectiveness and long-term functionality.

E. Requirement to Comply

Failure to prepare, submit and implement required source control plans or to install and implement source control measures constitutes a violation of PCC Chapter 17.39, these rules, and the associated discharge permit or authorization.

10. Reporting Requirements

BES may require submittal of the following reports:

- A. **Monitoring Reports.** BES may require that monitoring reports be submitted to comply with these rules per the schedule established in the BES discharge permit or authorization. All monitoring results must be submitted and must include:
 1. A summary of monitoring data and laboratory analysis reports;
 2. Quality assurance and quality control (QA/QC) documentation for sample collection and laboratory analysis;
 3. Identification of any exceedance, unanticipated result, or outlier of permitted or authorized discharge concentrations or limits and potential reason, if applicable;
 4. Descriptions of site operational changes or BMPs implemented to address any exceedances, if applicable; and
 5. Additional information about sampling conditions and laboratory methods must be made available to BES upon request.
- B. **Other Reports.** BES may require that other reports be submitted per the schedule in the discharge permit or authorization. Reports may be required to include, but are not limited to:
 1. BMP maintenance documentation; and
 2. Modifications to BMPs or onsite processes to reduce pollutants or the volume of discharges to the City storm sewer and drainage system.
- C. **Records Retention.** Facility operators and dischargers are required by PCC Section 17.39.100 to track, document and maintain compliance records.

11. Violations

A. Violations. Failure to comply with the provisions of PCC Chapter 17.39 or these rules is a violation.

B. Violation Classifications. Violations will be assessed as described in the BES Enforcement Rules (PPD Item ENB-4.15) and these rules. Below are general descriptions of violations by classification:

1. *Class I Violations.* A Class I violation is one that has a high degree of deviation from the regulations or that poses a substantial threat to human health and safety, property, or the environment. The following are examples of Class I violations:
 - a. Failing to coordinate with or take corrective action as directed by City staff during an emergency response to a spill or release of a prohibited discharge that has entered the City's storm sewer and drainage system.
 - b. Refusal to comply with these rules.
 - c. An introduction of unpermitted materials into a public system.
2. *Class II Violations.* A Class II violation is one that has a moderate degree of deviation from the regulations or that poses a significant threat to human health and safety, property, or the environment. The following are examples of Class II violations:
 - a. Releasing or spilling a prohibited discharge to the City's storm sewer and drainage system.
 - b. Failing to provide notification of a spill or release of a prohibited discharge as required by the PCC, rule or City discharge permit or authorization.
 - c. Failing to install or implement source control measures as required by the City.
 - d. Failing to conduct monitoring or sampling activities as required to comply with a BES discharge permit, authorization, or directive.
3. *Class III Violations.* A Class III violation is one that is not a class I or class II violation, is a minor deviation from the regulations, or poses a minimal threat to human health and safety, property, or the environment. The following are examples of Class III violations:
 - a. Failing to obtain or apply for a BES discharge permit or authorization for a discharge that poses a risk to the City's storm sewer and drainage system.
 - b. Submitting late or incomplete reports, records, sampling data, or plans required by a BES discharge permit, authorization, or directive.
 - c. Failure to retain or provide required records.
 - d. A de minimis discharge.
4. *Warning Notice Violations.*
 - a. A warning notice may be issued for a minor reporting or operational violation arising from a minor deviation from the regulations or violations that result in no observable or measurable impacts to the City's storm sewer and drainage system or receiving waters.
 - b. Issuance of a warning notice does not exempt the facility operator or discharger from escalating enforcement actions when the underlying violation has not been addressed.

12. Enforcement Tools

Enforcement tools are described in PCC 17.39 and BES Enforcement Rules (PPD Item ENB-4.15).

13. Penalties and Cost Recovery

Penalties will be assessed as described in the BES Enforcement Rules (PPD Item ENB-4.15).

14. Administrative Review and Appeal

A person 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. Requirements to apply for a discharge permit or authorization;
2. Requirements for the implementation and maintenance of Source Control plans and measures;
3. BES's authority to recover costs for City abatement of a violation of these rules or of associated City Code;
4. 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
5. 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 final 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.