

# **BES Clean River Rewards Stormwater Discount Program Administrative Rules**

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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 Clean River Rewards Stormwater Discount Program.*

## **1. Applicability**

All current City of Portland stormwater fee ratepayers are eligible for receiving discounts for onsite stormwater management facilities. Rewards include discounts on current, active and eligible utility accounts.

## **2. Purpose**

Clean River Rewards fulfills a commitment made by Council with the adoption of stormwater rate reforms in April 2000. The Council established three fundamental goals for Clean River Rewards:

- Provide itemized stormwater bills so that ratepayers are better informed about the uses of stormwater management charges.
- Provide an opportunity for ratepayers to control the size of their stormwater bill by taking actions to manage stormwater runoff onsite.

Additionally, Clean River Rewards achieves the following Bureau of Environmental Services (BES) policy goals:

- Increase the equity, fairness and controllability of stormwater management charges;
- Advance City environmental policies and commitments set forth in the Clean River Plan, City Response to the Endangered Species Act, Sustainable Development Policies, Stormwater Management Manual and Stormwater NPDES municipal permit; and
- Protect and enhance the long-term financial stability of the stormwater utility by promoting private stormwater management and reducing the operating and maintenance demands of public facilities.

## **3. Definitions**

The following definitions apply to terms and concepts used by the Clean River Rewards that are not specifically defined in the *Stormwater Management Manual* or Chapters 17.04 or 17.36 of the Portland City Code:

- A. Active Utility Account** means the account maintained by the City to bill charges for stormwater management services that is active on the date the City processes a registration for Clean River Rewards.
- B. Clean River Rewards** means discounts applied to the onsite component of stormwater management charges and calculated based on the extent and effectiveness of onsite stormwater management as set forth in these rules.
- C. Commercial Property** means property used in whole or part for commercial enterprises involving the sale or exchange of goods and services.
- D. Customer Information System (CIS)** means the computerized billing system used by the City to account for stormwater management charges.
- E. Developed Area** means the area of real property which (1) does not allow stormwater to percolate into the ground, such as permanent, temporary and mobile

structures, parking areas, private drives, sidewalks, pathways and other paved surfaces; or (2) is covered by pervious paving materials and systems.

- F. **Discount Award** means the product derived by multiplying the discounted area times the onsite component of the stormwater management rate times the discount rate.
- G. **Discount Percentage** means the percentage used to calculate the value of the Clean River Rewards discount. The percentage represents the portion of developed area served by private onsite stormwater management techniques; and the effectiveness of the stormwater management.
- H. **Discounted Area** means that portion of developed area served by private onsite stormwater management systems that meet the eligibility requirements for Clean River Rewards.
- I. **Industrial Property** means property used in whole or part for the production or manufacture of goods for sale or exchange.
- J. **Institutional Property** means property used for the provision of goods and services by governmental and non-profit organizations.
- K. **Multi-Family Residential Property** means property occupied by three or more dwelling units as defined by the Code of the City of Portland, including condominium developments and other developed properties served by a shared system of private stormwater management.
- L. **Offsite Stormwater Management Rate** means the stormwater management rate for that portion of stormwater utility costs allocated to runoff from public streets and rights of way, as well as the costs of watershed management and other environmental services, as determined by the annual cost-of-service ratemaking study of the stormwater utility. The offsite component is 65% of the stormwater management rate based on the basic revenue requirements of the stormwater utility.
- M. **Onsite Stormwater Management Rate** means the stormwater management rate for that portion of stormwater utility costs allocated to runoff from private property, as determined by the annual cost-of-service ratemaking study of the stormwater utility. The onsite component is 35% of the stormwater management rate based on the basic revenue requirements of the stormwater utility.
- N. **Paved Areas** means the portion of land covered by:
  - 1. Materials such as asphalt, concrete, cement, or other materials that prevent stormwater runoff from infiltrating into the ground; or
  - 2. Pervious paving materials and systems. Paved areas include driveways, patios, walkways (other than public sidewalks), and storage and parking areas.
- O. **Riparian Property** means property that discharges stormwater directly into the Willamette River, Columbia River, or Columbia Slough, without use of City stormwater management facilities. This definition does not include properties that discharge to any other surface water body, stream, creek or drainage way.
- P. **Roof Areas** means the coverings of buildings and other elevated structures on property, composed of impervious materials, eco-roofs, or roof gardens.

**Q. Single-Family Residence** means a residential structure consisting of no more than two (2) living units as defined for land use planning purposes by the Code of the City of Portland. This category includes detached single-family homes and duplexes.

#### **4. Eligibility Requirements**

A ratepayer must comply with the following eligibility requirements to receive and retain Clean River Rewards:

- A. Ratepayer Account is Current.** The ratepayer's utility account must be active and current. For accounts with delinquencies, the ratepayer must be maintaining a formal payment arrangement with the City to eliminate such delinquencies.
1. The ratepayer must not have any delinquent industrial permit, seepage fees or other regulatory charges due and payable to the City or other public agency.
  2. Once granted, the discount award applies to the active utility account identified on the discount registration form. The discount will be discontinued when the active utility account is closed. Subsequent ratepayers at the property must register to receive Clean River Rewards. The previous discounts will not transfer automatically to subsequent ratepayers.
- B. Ratepayer Must Register.** The ratepayer must complete a discount registration form. The form may be printed or downloaded, and may be filed by mail, fax, email, or over the Internet. See the Clean River Rewards Program Website <http://www.portlandonline.com/bes/index.cfm?c=41976> for sample documents and additional instructions.
1. The ratepayer's registration must accurately describe the property's private stormwater management facilities as they exist on the date the discount registration was filed with BES.
  2. The ratepayer, property owner or personal representative must notify BES of any changes to property improvements, stormwater facilities or tree canopy that would alter the ratepayer's discount registration.
- C. Private Stormwater Facilities are Legal.** Private stormwater management facilities must be properly located, sized, and maintained in an operating condition. The City must be granted limited access to private property to inspect private stormwater facilities as set forth in Section 8.
1. Private stormwater management facilities must comply with all applicable City building, plumbing and stormwater requirements, stormwater discharge permits, benchmark standards of stormwater permits and facility registration requirements. The City may waive this requirement for stormwater management facilities that were installed prior to November 1, 2006 if such facilities are operating effectively and do not threaten or harm the subject property, neighboring property, City facilities or the environment
  2. The ratepayer must provide, upon request, records of maintenance performed on private stormwater facilities. The City will rely on these records to confirm on-going and regular maintenance and operation of private stormwater facilities.

## 5. Calculating Discounts

BES will calculate discounts based on the extent and effectiveness of private stormwater management efforts. Two distinct calculation methods are used one for each class of ratepayer. The total value of full, partial and supplemental discounts will not exceed 100% of the onsite portion of the stormwater management charge. The City will not grant discounts when stormwater is discharged off of the subject property to a City sewer, storm sewer or drainage system.

**A. Single-Family Residences.** BES calculates discounts based solely on the private onsite management of stormwater discharged from roof areas and calculated as follows:

1. A full discount when all roof drainage is fully retained on the property. Eco-roofs will be valued in the same manner as retention facilities.
2. A partial discount of 67% of the full potential discount when private onsite stormwater management detains or partially retains stormwater discharges from roof areas.
3. A supplemental discount of 25% of the full potential discount when the total developed area is less than 1,000 square feet.
4. A supplemental discount of 8% of the full potential discount when there are four or more trees on the property taller than 15 feet. This supplemental discount does not include street trees such as trees planted in an adjacent public right-of-way.

**B. Commercial, Industrial, Institutional and Multi-Family Properties.** BES calculates discounts based on the extent and effectiveness of private onsite systems to control the pollution, flow rate and disposal of stormwater runoff from all developed areas. Equal weight will be given to each of these three components of stormwater management. The effectiveness of each stormwater facility will be based on separate sizing standards for pollution reduction, flow rate and disposal control as determined by BES. Ratepayers must provide the size or capacity of the onsite stormwater management facilities and the amount of developed areas served by each facility type. See the Clean River Rewards Program Website <http://www.portlandonline.com/bes/index.cfm?c=41976> for sample documents and additional information.

## 6. Adjustments to Customer Billing Accounts

BES adjusts stormwater management charges for ratepayers who receive Clean River Rewards as follows. The ratepayer must comply with all eligibility requirements before BES grants discounts.

- A.** BES grants discounts based on a discount percentage that reflects the extent and effectiveness of private onsite stormwater management. The discount percentage is derived from information provided in the discount registration using methods described in Section 5. The discount total is expressed as a credit adjustment to the active utility account.
1. For eligible single-family and duplex residential ratepayers, the discount percentage from Section 5.A. is multiplied by the onsite component of the stormwater management charge.

2. For all other ratepayers, the discount is the product of multiplying the discount percentage from Section 5.B, developed area used for calculating stormwater managements charges, the onsite component of the stormwater management rate (expressed as a per diem) and the number of days in the account's billing period.
- B. The discount will begin with the billing cycle in effect when a complete discount registration is received and processed by BES.
- C. In situations where compliance action is taken per Section 8:
  1. BES determines the effective date for discontinuing a discount award pursuant to procedures set forth in Sections 4, 9 and 10.
  2. BES adjusts customer accounts to recover discount awards as set forth in Section 8. Adjustments will appear as a lump sum amount added to customer billing accounts.
    - a. The City may recover awarded discounts if a major violation per Section 8 has not been remedied within 90 days of the initial inspection.
- D. The Director grants limited authority to customer service representatives of the City to make minor adjustments to utility accounts in response to demands raised by ratepayers regarding Clean River Rewards. The customer service representative will fully document the amount and date of the adjustments, and the nature of the ratepayer's demand. When ratepayer demands exceed the limitations of this authority, customer service representatives will refer ratepayers to the administrative review process provided in Section 9.

## **7. Notices**

BES provides written notice to participating ratepayers of City actions taken to initiate, discontinue or recover Clean River Rewards or take enforcement actions against customer accounts.

- A. Notice will be sent by regular first-class mail, addressed to the ratepayer of record as described on the applicable customer billing account. Notice will be considered given when mailed by BES.
- B. A notice includes the type of action, the effective date of the action, the customer billing account, the financial impact to the ratepayer, the basis of the action, the procedure for requesting administrative review of the action, and the deadline for requesting administrative review.
- C. BES mails notices of discount awards to active ratepayers within 10 working days of posting a discount registration.
- D. BES mails notices of actions to discontinue or recover Clean River Rewards at least 20 days prior to taking the proposed action.
- E. BES retains an electronic and/or paper record of all notices. The electronic record will include the ratepayer name, mailing address, type of action, effective date of action and date of mailing.
- F. BES will give notice of the findings and recommendations of a site compliance inspection within 20 working days of the date of the inspection. The notice will contain the date and time of the inspection, the name of the inspector, specific

findings, recommendations and remedies, inspection and re-inspection dates, a description of the process for requesting administrative review of the findings and the deadline for filing a request for administrative review.

## **8. Enforcement**

BES may verify the accuracy of ratepayer applications and perform site inspections to determine compliance with eligibility requirements set forth in Section 4.

**A. Inspections.** BES selects properties for site inspections based on factors that address threats to public health and safety, advance Clean River Rewards goals and objectives, strengthen other City inspection functions, respond to nuisance complaints, or increase overall program efficiencies. BES will conduct site inspections in a manner that minimizes disruption of the uses of property, and avoids compromising the privacy of ratepayers, owners and tenants. The inspection will be limited to the stormwater management facilities located in, on or adjacent to buildings, in paved areas and in landscaped areas. An inspector will enter a building only if required to complete an inspection of stormwater facilities, and under observation of the ratepayer, property owner or personal representative as appropriate.

1. *Notice of Inspection.* BES mails written notice at least 20 days prior to a site inspection by regular first-class mail, addressed to the ratepayer of record as described on the applicable customer billing account. Additional notice will be given to the owner of the property, if different from the ratepayer. Notice will also be sent to the Occupant at the property address.
  - a. Notice will include the date and approximate time of the inspection, the name of the inspector, the purpose for the inspection, and a summary of the rules governing compliance and site inspections (Sections 4 and 7).
2. The inspection will be conducted on the date and at the time identified in the notice to the ratepayer, owner and occupant, unless changed by mutual agreement of the parties.
3. Prior to conducting an inspection, BES reviews and collects public documents that relate to the stormwater management. These documents may be maintained on file to support further actions taken by the Bureau.
4. At the time of the site inspection, the ratepayer, property owner or personal representative will provide records of all maintenance performed on private stormwater facilities, and any other records requested by the inspector to ascertain the location, design, construction, operation, maintenance and performance of onsite stormwater management facilities.
5. If the inspector is unable to gain access to the property or the inspection date has been changed by mutual agreement BES will set a second inspection date and give notice as set forth in subsection 7.B. The notice requirement may be waived if the inspector and ratepayer, property owner or personal representative arrange an inspection date by telephone or direct personal contact. In such cases, the inspector will document the arrangement by making a note in the file.

6. BES conduct an inspection if caused by the ratepayer or property owner, will constitute a violation of the eligibility requirements of the program, resulting in enforcement actions.
7. During site inspections, city staff may provide the ratepayer or property owner a copy of the Clean River Reward registration form, and oral notification of compliance and if necessary, recommendations or requirements to bring site into compliance depending on nature of the violation.
8. The inspector will prepare a written report including findings and recommendations for enforcement actions, if appropriate. Recommendations will be based on objective criteria concerning the accuracy of the discount registration, and the safe and effective functioning and maintenance of onsite stormwater management facilities.
  - a. Site conditions should match impervious area measurements on the application of the site plus or minus 10%;
  - b. Trees contributing to the discount must be on private property, not in ROW or City easements, and be at least 15-feet tall;
  - c. Facility and activity area types must be consistent with definitions found in the Stormwater Solutions Handbook; and
  - d. Facility construction date should be plus or minus two years from listed permit date in City permit listings (if listed).
  - e. Facilities must be safe and appear to be functioning effectively.
    - (1) No ponding water is observed if beyond 36 hours since the last rainstorm;
    - (2) Runoff either completely infiltrates onsite or flows to an approved disposal points such as a stream, pipe or drainage ditch; and
    - (3) Facility is sufficiently set back from property lines and building foundations.
  - f. The facility is operated and maintained in accordance with the O & M plan currently on file with BES and the maintenance issues listed on the O & M templates found in the Stormwater Management Manual. O & M plans may be filed voluntarily and are required by building permits for development after 1999.

**B. Violations and Remedies.** The inspector will use best professional judgment when assessing minor and major violations of these rules.

1. **Minor Violation** Minor violations have a de minimus impact to the environment and the stormwater utility, are easily preventable and can be corrected with minimal effort. Staff will attempt to resolve minor violations with oral notification and technical assistance. Minor violations include:
  - a. Minor errors in registration, including mistakes in the type or number of stormwater management facility installed or percentage of impervious area treated. The City will correct such errors requiring the ratepayer to re-register and adjusting discount awards based on the corrected registration.



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- (b) Damage to property and structures;
  - (c) Excessive ponding or retention; and
  - (d) Blocking egress routes, interfering with loading zones or other access routes.
- e. If a property owner delays or obstructs inspection following at least two telephone and two written requests for setting an appointment for inspection, discount will be suspended until inspection is allowed. In addition, BES may recover awarded discounts.
  - f. The City will require the ratepayer to remedy major violations within 90 days of the initial inspection. In cases of imminent danger to life, health or the environment, BES may require more speedy resolution of an issue.
  - g. The ratepayer is responsible for all damages caused by the violations of City stormwater policies and regulations. Staff will follow enforcement penalty and cost recovery as directed by the Stormwater Discharge Enforcement Administrative Rules.
3. **Corrective action.** In cases of imminent threat to public health and safety or potential damage to adjacent properties or City systems, BES may take corrective action to reduce risks to public and environmental safety. Examples can include but are not limited to bare soils eroding into neighboring property; significant flow volumes impounded in unsupported structures; or roadway undermining from high rate flows. Corrective action to come into compliance with the City Code is the sole responsibility of the violator.

## 9. **Administrative Review**

The Director will provide an opportunity for ratepayers to request an administrative review before actions are taken to deny a discount registration, adjust or discontinue an existing discount, or recover previously granted discounts.

**A. Written Request for Administrative Review.** The ratepayer must request an administrative review in writing. The Director may develop specific reporting forms for this purpose.

1. The request must be sent to:

Clean River Rewards Program Manager  
City of Portland, Bureau of Environmental Services  
1120 SW 5<sup>th</sup> Avenue, Room 1000  
Portland, OR 97204

2. The request must be received within 20 days of the date of the notice of the action generating the review request. If no request is received, the recommended action will take effect without further delay.
3. The request must state the proposed action to be reviewed, the specific objections to the action, information to support a claim that the proposed action violates City Code or administrative rules, and specific remedies sought to correct the proposed action.

4. The Clean River Rewards Program Manager will review the request for administrative review based on a copy or summary of the discount registration, the inspection report, the ratepayer's request and any attachments, specific responses to each objection or claim, and recommended actions.
5. *Final determination.* The final determination will state the specific objections of the ratepayer, findings in support of the final determination, specific reference to the pertinent administrative rule(s), the specific interpretation of the rule, and specific remedies. BES will maintain a complete record of all determinations for reference and use in reviewing ratepayer objections.

## **Appendix A: STAFF REPORT**

### **Purpose**

Clean River Rewards addresses the program goals through changes in the City's ratemaking and billing systems. Clean River Rewards takes full advantage of an unprecedented opportunity to increase public understanding of Portland's stormwater challenges and the continuing need for stormwater rate reform.

### **Program History**

Clean River Rewards was created in recognition of the rising costs of stormwater management. The City expects program costs and utility charges to rise steadily for the foreseeable future in response to three unavoidable forces:

- Evolving regulatory demands;
- Evolving science about the impacts of urban landscapes on our water resource; and
- Evolving engineering solutions to the meet the challenges raised by regulation and scientific inquiry.

By promoting private participation, the City intends to transform our urban landscape that will return value many times greater than the costs of Clean River Rewards.

Benefits will include high quality drinking water reserves, cleaner air, a reduced heat-island effect, lower carbon emissions, improved habitat for wildlife, increased recreational opportunities, a healthier lifestyle, and a place where future generations will have direct access to clean rivers and streams.

BES developed and adopted an initial set of administrative rules in 2001. BES subjected the rules to an analysis of stormwater facilities sizing requirements by independent engineering consultants; evaluations by the Stormwater Advisory Committee, Portland Utilities Review Board and Utility Review Team of the Office of Management and Finance; review by City Council staff and executive directors of neighborhood coalitions; public access and review via the Internet and presentations at three formal public information meetings and hearings.

### **Regulatory History**

Clean River Rewards is the product of more than seven years of open, public and exhaustive deliberations by at least three distinct City Councils, dozens of interested stakeholders groups, neighborhood coalition offices and neighborhood associations, and thousands of stormwater ratepayers. The following is a summary of Council action on the program:

- May 19, 1999 - Council initiates a yearlong effort to reform water, sanitary sewer, stormwater management and utility account service charges in response to growing ratepayer complaints about fairness and affordability. (Resolution No. 35796).
- April 6, 2000 - Council identifying a set of utility rate reforms that included discounted stormwater management charges for private onsite stormwater management. (Resolution No. 35876)
- September 27, 2000 -Council limits stormwater discounts to 35% of basic stormwater management charges. The limitation reflected Council's goal of differentiating the

costs of managing runoff from private properties from the costs of managing runoff from public streets and rights-of-way. (Resolution No. 35927)

- December 13, 2000 - Council establishes the basic elements of a stormwater discount program. Council reached its final decisions following 13 months of deliberations including 35 presentations to neighborhood and business associations, reviews by three independent citizen advisory committees, and five public hearings. City Council postponed final implementation of the program pending the installation of a stable utility billing system that was capable of supporting the stormwater discount program and 2001 suspended it again. (Ordinance No. 175160 and Ordinance No. 175160,)
- June 4, 2003 -Council expands the stormwater discount program to include limited retroactive credits for ratepayers who installed stormwater management facilities prior to the start of the program and placed a limit equal to 12 months of stormwater discounts. (Resolution No. 36142)
- From July through October 2005, Commissioner Sam Adams conducted three community forums and numerous meetings with neighborhood and business association representatives before offering a comprehensive set of program principles for Council consideration. (Resolution No. 36361 on November 30, 2005).
- On November 30, 2006, the Director of Environmental Services adopts interim administrative rules. The rules were further refined through the development of business practices, systems design and development, focus group analysis, community workshops and staff training conducted by BES from January through October 2006.

## **Guiding Principles**

Environmental Services implements Clean River Rewards consistent with the following guiding principles:

- Provide access, information and technical assistance. City outreach and technical assistance efforts will include information about the importance of stormwater to the quality of life in Portland, City efforts to protect water resources, and ways that citizens can advance environmental and public health goals.
- Provide incentives and discounts are available to all eligible City ratepayers regardless of property class, use or location.
- Take aggressive steps to inform every ratepayer about the stormwater discount program, requirements to qualify, methods for managing stormwater runoff onsite, and the process for registering property. Outreach activities done to date include direct mailings, bill stuffers, newspaper articles and ads, the use of other media, cooperative efforts with community partners, the Internet and door-to-door canvassing if required in targeted areas.
- Provide program information, brochures, registration forms and other program materials will use language and art that are clear and understandable to ratepayers who are unfamiliar with City stormwater policies and programs, and stormwater management techniques.

## **Determine Ratepayer Eligibility for Stormwater Discounts**

The stormwater discount is awarded to the ratepayer for stormwater management facilities that serve the property described on the registration form. The ratepayer cannot transfer discount eligibility from one property to another. Similarly, the discount eligibility of a given property does not transfer from one ratepayer to another without the filing of a signed discount registration form.

In order to be eligible for stormwater discounts, the registrant should have a current City utility account, or be honoring special arrangements to eliminate any billing delinquencies. The registrant should have the authority to grant BES access to the property to conduct an inspection of stormwater facilities. If the ratepayer does not have such authority, the registration form should be co-signed by the person so empowered.

City Council reserves the right to alter eligibility requirements to meet changing regulatory requirements and legal commitments, and to protect the long-term financial stability of the stormwater utility.

## **Calculating Stormwater Discounts**

Stormwater discounts are limited to the onsite component, 35% of the basic stormwater management charge. The City will make stormwater discounts available through June 30, 2017. Further continuation of the program is subject to City Council approval.

The City will not grant discounts when stormwater is discharged off of the subject property to a City sewer, storm sewer or drainage system.

The City will consider the amount of tree canopy on private property when calculating a stormwater discount. The calculation will be based on the number of trees taller than 15 feet located on the property. The calculation will exclude trees located in the public right-of-way.

Unless otherwise obligated by public records laws, BES will limit the use of registration documents to activities required to administer Clean River Rewards.

## **Inspections**

A signed registration form will give BES authority to perform limited, announced inspections of property to determine the eligibility of the onsite stormwater management facilities, and the accuracy of the stormwater discount calculation. The City will schedule the inspections at a date and time that is mutually acceptable to all parties. The City will offer the ratepayer at least one opportunity to reschedule to a mutually agreeable date and time.

Within 30 days following a site inspection, BES will provide the ratepayer with a report of the Bureau's findings and recommendations, and the procedures to be used by the ratepayer to request an administrative review.