



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. _____

TITLE Erosion and Sediment Control Enforcement Administrative Rule

AUTHORITY

Portland City Code (PCC) Title 10 (Erosion and Sediment Control Regulations) provides the Bureau of Development Services (BDS) with authority to regulate ground-disturbing activities related to construction and other uses in order to reduce erosion and discharges of sediment and pollutants.

PCC Sections 3.30.040.A. and B. and Section 3.30.045 provide authority for the Director of BDS to adopt administrative rules, policies, and procedures to enforce applicable code provisions and to establish and impose enforcement fees and penalties for non-compliance, and to establish enforcement priorities, as set forth in subsection 3.30.040.A.

CITATIONS AND CODE REFERENCES

- **National Pollution Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit**
- **PCC 3.30.040 (Administrative Rulemaking Procedures)**
- **PCC Title 10 (Erosion and Sediment Control Regulations)**
- **PCC Chapters 17.34 (Sanitary Discharges); 17.38 (Drainage and Water Quality); and 17.39 (Storm System Discharges)**
- **City of Portland Erosion and Sediment Control Manual**
- **City of Portland Stormwater Management Manual (SWMM)**
- **City of Portland Source Control Manual (SCM)**

**EXHIBIT D – EROSION AND SEDIMENT CONTROL
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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. BDS worked with the Bureau of Environmental Services (BES) on updating PCC Title 10 and the Erosion and Sediment Control Manual and drafting this administrative rule to comply with the City’s NPDES MS4 Permit and clarify requirements for regulating ground-disturbing activities related to construction that reduce erosion and discharges of sediment and pollutants.
3. In late 2019, BDS published a draft of this rule, along with drafts of the proposed revisions to Title 10 and the Erosion and Sediment Control Manual, to seek public comment on these documents. BDS received only three public comments, none of which sought substantive amendments to the draft documents.
4. 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 September ____, 2022 [or note if no public hearing was requested], and held the record open until 5:00 p.m. on September 16, 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

- A. 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.
- B. Violations. When a violation of Title 10 or the ESCM is confirmed, BDS will issue a Permit Inspection Correction Notice.
- C. Correction Notice. The Permit Inspection Correction Notice will reference the Title 10 and/or ESCM violation(s) and provide 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 include assessed re-inspection fees or fines.

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- D. 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.
- E. Inspection Fees and Fines. If corrections are not made, Re-Inspection Fees and Fines will be assessed. 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.
- F. 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.
- G. 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.)

BDS PERMIT INSPECTION FEES/FINES/PENALTIES
#200 - Pre-Construction Erosion Control Inspection (ESCM Section 2.6.2)

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

<ul style="list-style-type: none"> • Initial #200 Inspection result <u>Not</u> Approved • 1st Reinspection • 2nd and Subsequent Reinspection(s) 	No fee* No fee* Reinspection fee*
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When #200 Inspections are requested AFTER beginning Ground Disturbing activity

<ul style="list-style-type: none"> • Initial #200 Inspection result Approved • Initial #200 Inspection result <u>Not</u> Approved • 1st Reinspection • 2nd Reinspection • Subsequent Reinspection(s) 	\$100* \$200* \$200* \$400* \$600*
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**#205 – Interim Erosion Control Inspection (s)
(includes contractor requested and BDS scheduled inspections, and complaint referrals) (ESCM Section 2.6.3)**

Category 1 Violations (Major)

*Downslope Perimeter Control missing or inadequate
Stabilized Site Entry/Exit missing or inadequate
No Temporary Stabilization on steep lots
Inlet Protection Missing or Inadequate
Significant Sediment in ROW
Improper Concrete Waste management*

Category 2 Violations (Minor)

*Missing Erosion Control Signage
Unavailable or Unmaintained Site Logs
Any minor, technical Violation not listed in Category 1*

- Initial #205 Inspection result Not Approved
- 1st Reinspection
- 2nd Reinspection
- Subsequent Reinspection(s)

- 2nd & Subsequent #205 Inspection(s) Not Approved
- 1st Reinspection
- 2nd Reinspection Not Approved = Stop Work Order
- Subsequent Correction Reinspection(s) Not Approved =
Stop Work Order & Civil Penalty

Category 1 Violation(s)	Category 2 Violation(s)
No fee*	No fee*
\$200*	\$100*
\$400*	\$200*
\$600*	\$300*
\$200*	\$100*
\$400*	\$200*
SWO fee*	\$400*
SWO fee*	SWO fee*

NOTE: If Violations are found from both Categories at the time of inspection, the fee rates for Category 1 violations will be used.

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

#210 Inspection with no cited violations

- Initial #210 Inspection result Not Approved
- 1st Reinspection
- 2nd Reinspection
- Subsequent Correction Reinspection(s)

No fee*	No fee*
No fee*	No fee*
Reinspection fee*	Reinspection fee*
Reinspection fee*	Reinspection fee*

#210 Inspection with cited violations

- Initial #210 Inspection result Not Approved
- 1st Reinspection
- 2nd Reinspection
- Subsequent Correction Reinspection(s)

No fee*	No fee*
\$200*	\$100*
\$400*	\$200*
\$600*	\$300*

*** Verified OFFSITE DISCHARGE from a Permitted Site:** Discharge Fines are in addition to permit fees/fines when applicable.

In addition, any Offsite Discharge from a permitted site also enters the City's Stormwater system you will be subject to PCC 17.38 and 17.39 enforcement provisions by BES.

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• First verified Offsite Discharge	\$200
• 2nd verified Offsite Discharge	\$500
• 3rd and Subsequent verified Offsite Discharge(s) - per occurrence	\$1,000

IV. Stop Work Orders.

- A. 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 gives specific approval in writing.
- B. 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.
- C. 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.
- D. Effective date. A Stop Work Order will be effective upon posting.
- E. 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.
- F. 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.
- G. Stop Work Order Appeals. Issuance of a Stop Work Order may be appealed by requesting an Administrative Review (see Section VII below).

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V. Citations and Civil Penalties

- A. 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.
- B. 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.
- C. 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.
- D. 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.
- E. 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:
1. The nature and extent of the person's involvement in the violation;
 2. The benefits, economic, financial, or otherwise, accruing or likely to accrue as a result of the violation;
 3. Whether the violation was isolated and temporary, or repeated and continuous;
 4. The magnitude and seriousness of the violation;
 5. The City's costs for investigating and remedying the violation;
 6. Whether any criminal charges have been brought against the person; and
 7. Any relevant, applicable evidence bearing on the nature and seriousness of the violation.
- F. 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.

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- G. Civil Penalties Double. Civil penalties must be paid and received by the Bureau of Development Services – Property Compliance Division 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 as described in Paragraph I below.

- H. Citation Appeals. Issuance of a citation may be appealed by requesting an Administrative Review (see Section VII below).
- I. Fees, Fines, and Penalties Assessed as Lien. If the responsible party fails to pay any fee, fine, or penalty described in this Rule, the Bureau of Development Services will file a statement of such fees, fines, or penalties with the Revenue Division. Upon receipt of the statement, the Revenue Division will mail an assessment notice to the property owner. The notice will include the amount due, plus 10 percent charges to cover the administrative costs of the Revenue Division. At the same time the notice is mailed by the Revenue Division, the Revenue Division will enter the amount due or the amount of the unpaid balance, plus charges to cover the administrative cost of the Revenue Division, in the Docket of City Liens, which will thereafter constitute a lien against the property. The Responsible Party will be billed monthly for the full amount of the recorded fee, fine, or civil penalty owing, plus additional charges to cover the administrative costs of the Revenue Division. The property owner is responsible for paying all liens assessed against the property.

VI. Voluntary Compliance Agreement.

- A. 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.
- B. 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.
- C. 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 administrative review under PCC Section 10.70.070.
 2. The Director may reduce or waive civil penalties if the responsible party performs all of the terms of the Voluntary Compliance Agreement. The Director may not waive civil penalties in any case where the responsible

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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

- A. 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.
- B. Appeal. 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: **November 1, 2022**