

1 **BES Enforcement Program**  
2 **Administrative Rules**

3 **ENB – 4.15**

4 ~~July 2019~~ August 2020



ENVIRONMENTAL SERVICES  
CITY OF PORTLAND

working for clean rivers

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20 *These are the administrative rules for the Bureau of Environmental Services*  
21 *Enforcement Program.*  
22

## 1. Applicability

These rules describe Bureau of Environmental Services (BES) procedures for assessing violations of Portland City Code (PCC) provisions, administrative rules and permits related to the following:

- A. Stormwater Management Manual [Portland Policy Document (PPD) item ENB-4.01];
- B. Sanitary Discharge and Pretreatment Program Administrative Rules (PPD item ENB-4.03);
- C. Sewer Development Services Program (PPD item ENB-4.07);
- D. Erosion and Sediment Control Manual (PPD item ENB-4.10);
- E. Septage Hauler Program (PPD item ENB-4.12);
- F. Administrative Rules for Discharges to the City Storm Sewer and Drainage System (PPD item ENB-4.13);
- G. Sewer and Drainage Facilities Design Manual (PPD item ENB-4.14);
- H. BES Public Works Enforcement Program Administrative Rules (PPD item ENB-4.22);
- I. Extra Strength Charge Program Administrative Rules (PPD item ENB-4.25);
- J. Fats, Oils and Grease Removal Program Administrative Rules (PPD item ENB-4.26);
- K. BES Title 10 Discharge Enforcement Program Administrative Rules (PPD item ENB-4.30);
- L. Maintenance Inspection Program Administrative Rules (PPD item ENB-4.31);
- M. BES Sub-Meter Program Administrative Rules (PPD item ENB-4.32);
- N. Source Control Manual (PPD item ENB-4.34); and
- O. Administrative Rules for Monitoring Access Structures (PPD item ENB-4.35).

## 2. Purpose

These rules establish BES's decision-making criteria for assessing violations and penalties and the process for appealing enforcement actions and associated penalties, including administrative review and appeal to the City Code Hearings Officer. These rules support the following City program goals:

- A. Facilitate and ensure compliance with relevant BES codes, rules and policies;
- B. Prevent harm to human health, public safety, the environment, and City assets;
- C. Facilitate and ensure immediate response actions to stop violations and limit impacts;
- D. Deter future violations;
- E. Maintain City compliance with all state and federal environmental regulations, programs, and permits; and

1 F. Conduct enforcement in a fair, equitable, and appropriate manner.

### 2 **3. Definitions**

3 These rules rely on a number of program-specific terms as defined in PCC Title 17  
4 and below:

- 5 **A. "Compliance Order (CO)"** means a formal City order directing an individual, a  
6 business, or other entity to take specific corrective actions within a required  
7 timeframe to resolve a violation. Once the CO conditions are met and all fees and  
8 penalties paid, the original violation will be considered resolved.
- 9 **B. "Corrective Action"** means modifications required to bring a site or activity into  
10 compliance with BES regulations.
- 11 **C. "Cost Recovery"** means payment to the City of all reasonable costs incurred by  
12 the City which are attributable to or associated with a violation or other damage  
13 or impact to City systems.
- 14 **D. "Education and Technical Assistance"** means non-financial assistance provided  
15 by BES to a resident or business to ensure compliance with City regulations. This  
16 is not considered an enforcement action but may accompany enforcement.
- 17 **E. "Enforcement Action"** means the issuance of a Warning Notice, Notice of  
18 Violation, Compliance Order, or Notice of Termination, and any associated  
19 actions. An enforcement action may also include assessment of penalties or cost  
20 recovery.
- 21 **F. "Facial Challenge"** means a challenge to a requirement that is based on an  
22 argument that the requirement cannot be applied fairly or reasonably in any  
23 situation. By contrast, an as-applied challenge is one based on an argument that a  
24 requirement should not be applied to the challenger's particular situation  
25 because of factors that, in the challenger's view, distinguish it from similar  
26 situations.
- 27 **G. "Notice of Investigation"** means a written notice from BES alerting site  
28 operators and owners to an investigation of a potential violation.
- 29 **H. "Notice of Termination (NT)"** means written notification of the City's intent to  
30 terminate facility or site access to the public sewer and drainage system for  
31 causes not limited to repeat violations of the PCC, failure to comply with a CO,  
32 or damage to the City's system.
- 33 **I. "Notice of Violation (NOV)"** means written notification of violations and  
34 failures to meet the conditions of a Compliance Order. Unlike warning notices,  
35 NOV's carry a penalty.
- 36 **J. "Repeat violation"** means a violation that (1) is a violation of the same sub-  
37 section of the PCC and occurs at the same site as a previous violation or (2) is  
38 caused by the same person at a different site within 12 months of a previous  
39 violation.

- 1 **K. “Voluntary Compliance Agreement (VCA)”** means a negotiated agreement with  
2 the-City in which a person commits to required actions to achieve compliance  
3 with permit or program requirements during site modifications or a change of  
4 operations. The VCA will include required actions, implementation schedules for  
5 compliance, and consequences of failure to comply with the VCA. VCAs may be  
6 used to document approved variance actions.
- 7 **L. “Warning Notice (WN)”** means a written violation notice that documents  
8 violations. Warning notices may be issued for violations as defined in each  
9 individual program’s rule set. This enforcement action carries no penalties.  
10 Warning notices may be issued for repeat violations.

#### 11 **4. Regulatory Authority**

12 These rules are authorized by PCC Section 3.13.040 and implement the enforcement  
13 sections of the following:

- 14 **A.** PCC Title 10, Erosion and Sediment Control Regulations  
15 **B.** PCC Chapter 17.32, Public Sewer System and Drainage Improvement Permits  
16 **C.** PCC Chapter 17.34, Sanitary Discharges  
17 **D.** PCC Chapter 17.35, Septage Hauler Permitting Program  
18 **E.** PCC Chapter 17.38, Drainage and Water Quality  
19 **F.** PCC Chapter 17.39, Storm System Discharges

#### 20 **5. Violation Investigations**

21 BES may investigate possible PCC violations in response to citizen complaints,  
22 referrals from City staff or other agencies, or discoveries made during inspections  
23 conducted by BES or others.

- 24 **A. Complaint or Referral Response.** BES will respond to or refer a complaint in a  
25 timely manner. BES will investigate a complaint, determine if a violation exists,  
26 and respond to a complainant with relevant findings. If BES determines that a  
27 violation is not governed by these rules, BES staff will contact the appropriate  
28 bureau or agency, if any.
- 29 **B. Violation and Penalty Assessment.** Based on the investigation, BES staff may  
30 assess a violation, suggest corrective actions, and assess a penalty. Enforcement  
31 notices will be mailed to the property owner and the person found to be in  
32 violation, if different. Notices will contain procedures for requesting  
33 administrative review and appeal per Sections 9 and 10 of these rules.
- 34 **C. Final Determinations.** A person who receives a violation notice other than a  
35 warning notice will receive a BES final determination regarding the violation  
36 after:
- 37 1. The review and appeal periods specified in BES enforcement notices have  
38 passed; or

- 1 2. BES conducts an administrative review per a request as described in Section  
2 9.

## 3 **6. Violation Classification**

4 Violations are classified based on the degree of deviation from BES's regulations or  
5 the degree to which it jeopardizes human health, safety, or welfare or the  
6 environment. The violation classes are as follows:

- 7 **A. Class I Violations.** A class I violation is one that has a high degree of deviation  
8 from the regulations or that poses a substantial threat to human health and  
9 safety, property, or the environment. Examples include a spill of toxic or  
10 otherwise hazardous materials, an introduction of unpermitted materials into a  
11 public system, or removal of or damage to a public improvement that requires  
12 immediate repair. Refusal to comply with these rules is also a class I violation.
- 13 **B. Class II Violations.** A class II violation is one that has a moderate degree of  
14 deviation from the regulations or that poses a significant threat to human health  
15 and safety, property, or the environment.
- 16 **C. Class III Violations.** A class III violation is one that is not a class I or class II  
17 violation, is a minor deviation from the regulations, or poses a minimal threat to  
18 human health and safety, property, or the environment. Examples include a first-  
19 time reporting failure, non-performance of general site or BMP maintenance, a de  
20 minimis discharge, and failure to retain or provide required records.
- 21 **D. Warning Notice Violation.** A warning notice will be sent for a minor reporting  
22 or operational violation arising from a minor deviation from City regulations.

## 23 **7. Enforcement Tools**

24 The following enforcement tools may be used by BES staff. Failure to take required  
25 corrective actions may result in escalating enforcement and increased penalty  
26 assessments.

- 27 **A. Notice of Investigation.**
- 28 **B. Warning Notice (WN).**
- 29 **C. Notice of Violation (NOV).**
- 30 **D. Voluntary Compliance Agreements (VCAs).** Voluntary Compliance  
31 Agreements do not preclude BES from taking enforcement action under other  
32 statutory provisions if other violations or deficiencies are discovered.
- 33 **E. Compliance Order (CO).** A compliance order may be used in conjunction with  
34 an NOV. Noncompliance with a CO will result in additional NOVs, a revised  
35 CO, and escalating enforcement and penalties.
- 36 **F. Withholding Services.** To the extent allowed under the PCC, BES may withhold  
37 plan review, permitting or other administrative services from the site owner or  
38 operator for failure to remedy a violation.

- 1 **G. Notice of Termination (NT).**  
2 **H. BES Abatement.** BES may address a continuing violation or emergency on  
3 public or private property through summary abatement after providing parties  
4 with reasonable notice as circumstances allow. These parties will be responsible  
5 for all costs associated with the abatement per Section 8.B and for maintaining to  
6 BES's satisfaction any remedy installed or required by BES.  
7 **I. Legal Action.** The City may file suit in any court of competent jurisdiction for  
8 any failure of a person to take required corrective action.  
9 **J. Referral to Other Agencies.** The City may refer civil and criminal violations to  
10 federal, state, or local agencies as appropriate.

## 11 **8. Penalties and Cost Recovery**

- 12 **A. Penalties.** Each individual violation may carry a penalty in an amount  
13 determined by the relevant program's administrative rules. Penalties are  
14 determined based on a penalty algorithm that assigns a numerical score for each  
15 applicable criteria listed below.  
16 **1. Penalty Determination.** BES may assess penalties commensurate with the  
17 severity of the violation based on:  
18 **a.** Harm or potential harm to public health, safety or the environment. BES  
19 will assess the severity of the violation or the degree to which a violation  
20 jeopardizes human health, safety, or welfare or the environment.  
21 **b.** System impacts. BES will assess impacts to City sewer or drainage assets,  
22 systems, or operational processes when such impacts do not require  
23 immediate repairs by the property owner or full cost recovery for City  
24 repairs.  
25 **c.** Violation history and unresolved violations. BES will consider a person's  
26 history of violations.  
27 **d.** Actions taken to remedy a violation. BES will consider the cooperativeness  
28 and timeliness of responses to violations.  
29 **e.** Violation types. Violation types include, but are not limited to:  
30 **i.** Denial of entry. Denying lawful entry to BES staff investigating a  
31 pollution complaint or inspecting for compliance with BES  
32 requirements will constitute a separate violation with a maximum per-  
33 violation daily penalty as determined by the PCC.  
34 **ii.** Falsification of records. Falsifying monitoring data or reports or  
35 tampering with meters, samplers, or other data collectors will  
36 constitute a separate violation and will result in a maximum per-  
37 violation daily penalty as determined by the PCC.

1           iii. Repeat violation. BES may assess repeat violations up to twice the total  
2           penalty for a single violation. Increased penalties will continue to be  
3           assessed for every occurrence of a repeat violation.

4           iv. Failure to construct to an engineering standard or specification. Failure  
5           to comply with the engineering and construction standards of the  
6           City's Standard Construction Specifications, the Sewer and Drainage  
7           Facility Design Manual, or the Stormwater Management Manual, as  
8           applicable, may be a violation.

9           v. Improper or inadequate maintenance. Failure to develop, update, or  
10          implement a required operations and maintenance plan.

11          vi. Knowing violations. A person who can be shown to have had previous  
12          knowledge of City requirements may be assessed a penalty based on  
13          determination of previous knowledge. Previous knowledge may be  
14          inferred from past or present discharge permits or authorizations, City  
15          of Portland building- or development-related permits or approvals, or  
16          the provision of public outreach materials that cite the PCC or  
17          administrative rules.

18          2. **Daily penalty assessments.** BES may assess penalties per violation and per  
19          day and may apply a multiplier for each day that a violation continues. This  
20          includes, but is not limited to:

21           a. Violations that must be rectified immediately to protect public health and  
22           safety or the environment; and

23           b. Failure to comply with a CO.

24          3. **Escalating penalties.** Failure to meet corrective action requirements by the  
25          due dates specified in NOV, VCAs or other agreements will be subject to  
26          increased levels of enforcement and penalty for continued non-compliance.

27          B. **Cost Recovery.** BES may recover all City costs related to the abatement of a  
28          violation and all outstanding penalties from the person(s) assessed a violation.  
29          Liens may be imposed on the subject property or properties in accordance with  
30          the provisions of PCC Chapter 22.06. BES may recover costs related to:

31           1. Staff time for City personnel, including the City's legal counsel, through all  
32           stages of the City's response to a violation;

33           2. Sampling, analyses and the use of pollution control supplies and equipment;

34           3. Use of contracted professional and labor services;

35           4. Repair or replacement of City infrastructure, including pavement; and

36           5. Penalties related to enforcement against the City by another regulatory  
37           agency as a result of the violation.

## 9. Administrative Review

A person may request reconsideration of a BES decision through administrative review as described in this Section. All enforcement notices will include information on requesting BES administrative review. 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 an enforcement notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. BES's authority to impose penalties for a violation of law;
2. BES's authority to recover costs for City abatement of a violation of these rules or associated City Code;
3. 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 the cost;
4. 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; and
5. Other items that are specified as non-reviewable in program-specific BES administrative rules.

**C. BES Evaluation.** BES will use authorizing City Code, the provisions of these and program-specific rules, 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. BES may adjust the penalty or type of enforcement action, including rescinding the original enforcement action.

**D. Final Determination.** BES will issue to the requestor a written final determination within 10-15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation~~an extension is agreed to by all parties.~~ The final

**Commented [LG1]:** Proposed changes provide consistency with provisions already in other BES rules which were revised in July 2019.



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1 determination will provide information about the process for filing an appeal to  
2 the CHO.

DRAFT