

Maintenance Inspection Program Administrative Rules

ENB – 4.31

July 2019



ENVIRONMENTAL SERVICES
CITY OF PORTLAND

working for clean rivers

TABLE OF CONTENTS		Page
1.	Applicability	2
2.	Purpose	2
3.	Definitions	2
4.	Regulatory Authority	2
5.	Operations and Maintenance Plans and Revisions	2
6.	Inspections	3
7.	Onsite Stormwater System and SMF Modifications	3
8.	Reporting Requirements	4
9.	Violation Investigations	4
10.	Violation Classifications	4
11.	Enforcement Tools	5
12.	Penalties and Cost Recovery	5
13.	Administrative Review and Appeal	5

These are administrative rules for the Bureau of Environmental Services (BES) Maintenance Inspection Program (MIP).

1. Applicability

These rules apply to stormwater management facilities (SMFs) and source controls required by public works permits or the City's *Stormwater Management Manual (SWMM)* Portland Policy Document (PPD) item ENB-4.01.

2. Purpose

These rules regulate source controls and SMF operation and maintenance (O & M) and implement the applicable requirements of Portland City Code (PCC) Chapter 17.38. These rules are implemented in conjunction with the BES Enforcement Program Administrative Rules (PPD item ENB-4.15) and support the following City program goals:

- Control or prevent pollution at the source.
- Minimize potential negative water quality and flow impacts to the City's sanitary, combined or storm sewer and drainage system.
- Ensure that SMFs are operated and maintained in accordance with the City's pollution prevention and stormwater management goals.

3. Definitions

Terms used in these rules are defined in PCC Chapter 17.04, PCC Chapter 17.38 and the City's *SWMM*. These rules use the following additional definitions:

- A. **"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.
- B. **"Facility operator"** means the business or property owner, their designee, site tenant, or any contractor or firm with designated responsibility for site operation and maintenance.
- C. **"Onsite Stormwater System"** means the stormwater conveyance, treatment and drainage system that is located within a property's boundaries and provides stormwater management for that property.
- D. **"Source Control"** means a structural measure required by the SWMM to prevent or control the release or potential release of pollutants generated by certain site characteristics and uses.

4. Regulatory Authority

- A. **Primary Authority.** PCC Section 3.13.040 authorizes BES to implement PCC Chapter 17.38.
- B. **Relationship to Other City Regulations.** These rules may be enforced in combination with other City rules and regulations. In some cases, BES may use other Code enforcement authorities to address PCC Chapter 17.38 violations.

5. Operations and Maintenance Plans and Revisions

- A. **Operations and Maintenance (O & M) Plans Required.** SMFs and source controls that require O & M plans are identified in the *SWMM*. Facility operators must submit O & M plans to BES for review and approval and then record the plans with the county.
- B. **Compliance with O & M Plans.** SMFs and source controls must be operated and maintained in accordance with the site's O & M plan.

- C. O & M Plan Revisions.** BES may require a new O & M plan if a site with an approved O & M plan is modified as described in Section 7.A of these rules. Revised O & M plans must be recorded with the county.
- D. O & M Plan Recording.** Original and revised O & M plans must be recorded with the county and filed with BES.
- 1. Shared facilities.** An O & M plan must be recorded against each property that uses a shared facility.
 - 2. Property subdivision or consolidation.** When a property is subdivided or consolidated with an adjoining property, the owner of each property that will benefit from the SMF must record an individual O & M plan. However, the owner of the property specified in the O & M plan in effect prior to the subdivision or consolidation will remain responsible for the obligations in that O & M plan if subsequent property owners fail to record individual O & M plans or refuse to perform their obligations. BES may enforce the terms of any O & M plan pertaining to a property.
 - 3. SWMM cover form required.** Facility operators must use the latest *SWMM* cover form for recording O & M plans with the county.
 - 4. O & M plan requirements.** New and revised O & M plans must meet the current *SWMM* O & M plan requirements. A revised O & M plan must include the original O & M plan's recorded number and a statement that the revised plan either amends or supersedes the current recorded O & M plan.

6. Inspections

To the extent permitted by law, City representatives may enter a facility to determine compliance with these rules, O & M plans, the *SWMM*, and PCC Chapter 17.38. Denial of access may require the City to seek an administrative warrant to obtain entry for facility inspection and sampling. BES staff may enter a site for the following purposes:

- A. Site Inspection.** Inspect onsite SMFs and source controls for compliance with applicable requirements and the facility's O & M plan.
- B. Sample Collection.** Collect, or observe the facility operator collect, a stormwater or sediment sample. The facility operator may request split samples or copies of analytical results from BES. Samples are subject to the provisions of PCC Chapter 17.34, PCC Chapter 17.39, and the Stormwater Discharge Program Rules (PPD item ENB-4.13).
- C. Verification of Connection.** Verify or investigate sewer and drainage system connections to the City system.

7. Onsite Stormwater System, SMF, or Source Control Modifications

Onsite stormwater systems, SMFs, and source control modifications, either proposed by the facility operator or required by BES resulting from a site inspection or other site visit, are subject to City review and approval. The City may require the facility operator to obtain a development or other permit and to file and record a new O & M plan for modifications that deviate from permitted site plans or that do not meet *SWMM* design standards.

- A. City review and approval.** Variations from permitted activities or onsite modifications subject to City review and approval may include, but are not limited to:
 - 1.** Failure to install a required SMF or source control;
 - 2.** Failure to place an SMF or source control in the location shown on the site's O & M plan;

3. Installation of a new or replacement SMF or source control of a type different from that shown on the site's O & M plan;
4. Failure to install an SMF or source control that meets *SWMM* sizing requirements;
5. Increasing the amount of impervious area or volume of stormwater managed by an SMF in excess of the SMF's capacity;
6. Installation of additional stormwater system components (e.g., inlets, catchbasins, downspouts);
7. Failure to ensure that the SMF discharge point corresponds with that shown on the site's O & M plan; or
8. Failure to ensure that the stormwater disposal destination corresponds with that shown on the site's O & M plan.

8. Reporting Requirements

A facility operator must provide BES staff with copies of SMF and source control maintenance records within 30 days of a BES request unless an extension is requested and granted. Required records may include but are not limited to:

- A. Maintenance logs, as required by PCC Chapter 17.38;
- B. Invoices, maintenance reports, or other records of SMF maintenance by outside contractors;
- C. Photos or other documentation of maintenance; and
- D. Records relating to proper management, reuse, or disposal of sediment, debris or solids generated by maintenance.

9. Violation Investigations

The City may investigate possible PCC violations in accordance with the procedures specified in the BES Enforcement Program administrative rules (PPD item ENB-4.15).

10. Violation Classifications

Failure to comply with PCC Chapter 17.38 or these rules is a violation. BES enforcement is based on a violation's class. Violation classes are defined in the BES Enforcement Administrative Rules (PPD item ENB-4.15).

A. Violation Classifications.

1. *Class I Violations.* There are no program-specific Class I violations for the MIP program. The standard Class I violations of the BES Enforcement Program administrative rules (PPD item ENB-4.13) do apply.
 2. *Class II Violations.* Class II violations include failure to install or removal of required SMFs or source control measures.
 3. *Class III Violations.* Class III violations include modification of an SMF, onsite drainage system, or source control facility or system component, including vegetation, without a permit or prior BES approval.
 4. *Warning Notice (WN) Violations.* A warning notice will be issued for inadequate maintenance of a required SMF or source control.
- B.** When the City sewer or drainage system is impacted by an off-site MIP violation, such violations will also be cited as an illicit discharge and enforced under the Stormwater Discharge Enforcement or Sanitary Discharge and Pretreatment Program rules (ENB-4.13 and ENB-4.03 respectively, under separate header).

11. Enforcement Tools

BES enforcement tools are defined in the BES Enforcement Administrative Rules (PPD item ENB-4.15). In addition, BES may refer violations to Bureau of Development Services Code Enforcement if SMFs or source controls were not installed in accordance with approved building or development permits.

12. Penalties and Cost Recovery

Penalties will be assessed and costs recovered as described in the BES Enforcement Rules (PPD item ENB-4.15).

13. Administrative Review and Appeal

A person subject to enforcement action 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. A requirement stated in these rules or associated City Code to maintain an SMF or source control;
 2. Requirements to operate and maintain SMFs and source controls in accordance with permit design standards;
 3. BES's authority to recover costs for the City's summary abatement of a violation;
 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, 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 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.