Maintenance Inspection Program Administrative Rules

ENB – 4.31

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ENVIRONMENTAL SERVICES
CITY OF PORTLAND

working for clean rivers

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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. "**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.

B. **"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.

C. **"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

Persons subject to enforcement action may request reconsideration of a BES decision or enforcement actions through administrative review and may subsequently appeal to the Code Hearings Officer as described in the BES Enforcement Rules (PPD item ENB-4.15). In addition to the administrative review criteria in ENB-4.15 Section 9, the following criteria apply to the MIP program:

A. Reviewable Items. Administrative review may be requested for the following:

1. BES's determination of a violation of PCC Chapter 17.38 or these rules;
2. The level of required SMF or source control maintenance; or
3. The timeline for submitting documentation of maintenance, rehabilitation, or redesign.

B. Non-Reviewable Items. Persons subject to enforcement may *not* request administrative review or appeal the following:

1. Required SMF and source control maintenance;
2. Requirements to operate and maintain SMFs and source controls in accordance with permit design standards; and
3. Summary abatement costs.

C. BES Evaluation. The MIP-specific criteria of Section 13.A will be used in addition to general criteria found in the BES Enforcement Rules (PPD item ENB-4.15) to make a final determination on an administrative review request.