



PLANNING AND DEVELOPMENT SERVICES

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Planning & Development Services Building Division Policy

Title: Erosion and Sediment Control (ESC) Enforcement Response Policy

Code Name: Boise City Code – Title 9, Chapter 14, Construction Site Erosion Control

Code Sections: 9-14-2-1: GENERAL REQUIREMENTS AND PROHIBITIONS
9-14-3-3: CITY INSPECTIONS
9-14-3-4: ADMINISTRATIVE ENFORCEMENT
9-14-3-7: CIVIL ACTIONS FOR VIOLATIONS
9-14-3-10: ACTS RESULTING IN VIOLATION OF FEDERAL LAWS AND REGULATIONS

Code Language:

9-14-2-1: GENERAL REQUIREMENTS AND PROHIBITIONS

D. Compliance Required: All construction activity commenced pursuant to an approved erosion control plan or permit must at all times comply with the conditions of the erosion control plan or permit. The permit holder is responsible for ensuring their contractor(s), subcontractor(s), utility trenching subcontractor(s), and all other persons entering the site abide by the conditions of the permit. The permit holder's signature or that of his authorized agent on the permit shall constitute an agreement by the permit holder to accept responsibility for meeting the conditions of the permit.

9-14-3-3: CITY INSPECTIONS:

All construction activities which require a permit under this chapter shall be subject to the inspection provisions provided herein.

A. Authority: The City maintains the right to inspect any site of construction activity that has been issued a permit under this chapter or is required to have a permit issued under this chapter.

9-14-3-4: ADMINISTRATIVE ENFORCEMENT:

In addition to any other remedies under this chapter, a person or permit holder in violation of this chapter may be subject to administrative enforcement procedures. The administrative enforcement procedures are not a prerequisite to any other remedy under this chapter and if administrative enforcement is undertaken, any of the following procedures may be utilized regardless of the order in which they appear in this section.

9-14-3-7: CIVIL ACTIONS FOR VIOLATIONS:

A. Action Taken By City: The Environmental Protection Agency requires, as mandated by the NPDES permit, that the City adopt and employ a scheme of civil and administrative penalties. Therefore, pursuant to this Federal requirements and Idaho Code section 50-302(2), the City may enforce any provision of this chapter through civil penalties.

C. Penalties Specified: Civil penalties will not exceed two hundred dollars (\$200.00) for the first offense and not more than one thousand dollars (\$1,000.00) for each offense thereafter. (Ord. 48-14, 12-16-2014, eff. 1-1-2015)

9-14-3-10: ACTS RESULTING IN VIOLATION OF FEDERAL LAWS AND REGULATIONS:

Any person who violates any provision of this chapter, any provision of any permit issued pursuant to this chapter, or discharges any pollutant or causes pollution, or violates a cease and desist order or any requirement or prohibition, may also be in violation of Federal laws or regulations, and may be subject to the sanctions of those laws or regulations, including civil or criminal penalties, notwithstanding any legal action taken by the City. (Ord. 48-14, 12-16-2014, eff. 1-1-2015)

Definitions/Key Terms:

BMPs – BEST MANAGEMENT PRACTICES: Physical, structural and/or managerial practices that, when used alone or in combination, control activities, including, but not limited to, site runoff, spillage and leaks, and waste disposal, and prevent or reduce the discharge of pollutants directly or indirectly to waters of the State or U.S. BMPs may include schedules of activities, prohibition of practices, design standards, educational activities, and treatment requirements.

Corrections Required – The inspection status result indicating a site needs to conduct housekeeping, BMP maintenance, or other corrective action to maintain compliance with ESC permit requirements.

Enforcement Response Policy (ERP) – Describes potential response to violations with appropriate educational or enforcement responses. The ERP addresses repeat violations through progressively stricter responses, as needed, to achieve compliance. to the extent allowable under Idaho state law.

General Inspection – Automatically scheduled inspection according to the permit's site priority and issue date/previously completed inspection.

Inspection Prioritization Frequency – Prior to issuance, each ESC permit is assigned a site priority of low, medium, or high based on the site characteristics of location, type of use, area of disturbance and risk of stormwater pollution. Low risk sites have a frequency of 35 days, medium sites have a frequency of 21 days, and High are inspected at a 14-day frequency.

Inspection Result – The overall inspection result which is either Pass, Corrections Required, or Significant Violation. For Site Preparation and Site Final inspections, if requirements are not met, the result may be Not Ready.

MS4 – Municipal Separate Storm Sewer System, the public stormwater system that discharges to stormwater facilities or the Boise River and its tributaries.

Parcel hold – Hold placed on parcel which prevents all building division inspections and applications from being completed in order. Does not require site to stop work.

Pass – The inspection result indicating a site is in compliance with the ESC permit requirements, BMPs are implemented and there are no current requests or violations at the site from the inspector.

Responsible Person (RP) – Any foreman, superintendent, project manager or other person with operational control over site activities and day to day operational control over plan requirements and permit conditions at the site of any construction activity. A person or persons possessing a current and valid Boise City Certificate of Training, as provided for in section 9-14-2-7 of this chapter, shall be directly in charge of all sites of construction activity regulated by this chapter.

Significant Violation – The inspection result if a serious offense resulting in polluted stormwater discharging from the construction site to the MS4 or adjacent surface water. Concrete washout violations, excessive trackout, failure or lack of BMPs, and multiple unresolved Corrections Required are also considered grounds for a significant violation inspection result.

Special site fee (Violation Fee) – Administrative cost and monetary penalty for enforcement action taken that may be assessed to sites with a significant violation inspection result. Fees shall be assessed in accordance with the Erosion and Sediment Control Fee Schedule as adopted by the City Council.

Special Investigation fee – Hourly administrative cost assessed for inspector spending extra time investigating and documenting/implementing escalated enforcement responses.

Scope of Policy:

This policy provides a written escalating enforcement response for all construction projects required to obtain an Erosion and Sediment Control Permit within the City of Boise jurisdiction. This policy complies with the US EPA National Pollutant Discharge Elimination System permit #IDS027561 Boise/Garden City Area MS4 requirement 3.3.6 to maintain and implement a construction site runoff control Enforcement Response Policy (ERP).

The code language listed above for Boise City Code 9-14 Construction Site Erosion Control provides legal basis for escalated enforcement response to the extent allowable under Idaho state law.

Policy:

Erosion and Sediment Control Inspectors are authorized to inspect all construction activities which require a City of Boise ESC permit, and based on the inspection result will initiate this ERP accordingly. During a site inspection the inspector looks for violations/pollution sources and determines if the site has properly implemented BMPs to prevent stormwater runoff pollution. General Inspections are scheduled according to the site's inspection prioritization frequency. The inspection prioritization system is described in detail in the Stormwater Management Program Plan. An inspector will also inspect a site at any time if a construction site pollution complaint is received. After completing the initial inspection and entering the inspection result, the inspector will then conduct follow up compliance inspections and implement escalated enforcement responses as needed to gain compliance at the site and prevent pollution. The inspection and enforcement response components are detailed below.

I. Inspections:

1. **Initial Inspections:** A general or complaint-driven ESC inspection is conducted, and the inspection result and comments are automatically emailed to the permit contacts (includes Responsible Person) from the City of Boise Permit Desk. The inspection result options are:
 - ❖ Pass – No violations observed, no corrections requested by inspector. The site will continue to be inspected per the pre-set frequency of either 35 days (low-priority), 21 days (medium-priority), or 14 days (high-priority).
 - ❖ Corrections Required – Inspector issues request(s) that BMPs maintenance and/or housekeeping be completed based on site observations. The inspector may also request to improve or enhance BMP activities. In addition to the automated inspection email, the inspector notifies onsite project contact(s)/Responsible Person of the corrections required and a compliance deadline no greater than 14 days after the inspection. The inspector may also provide BMP information and educate on corrective recommendations. No fine or penalty is issued with this result.
 - ❖ Significant Violation A serious offense or active pollution is observed during site inspection and the inspector issues correction requests to mitigate the violation. The inspector notifies the onsite project contact(s)/Responsible Person of the corrections required and a compliance deadline no greater than 7 days after the inspection. The inspector will document the violation(s) with time stamped pictures. This inspection result may be accompanied with Special Site fee (Violation Fee), Special Investigation Fee and/or parcel hold.
2. **Follow-up Compliance Inspections:** A follow-up compliance inspection is automatically scheduled for 14 days after a Correction Required result, and 7 days after a Significant Violation result.
 - ❖ A site issued Corrections Required that has failed to complete the requests, may receive one compliance extension with a Corrections Required result. Otherwise, a Significant Violation result will be issued if corrections have not been completed after two prior inspections and a re-inspection fee assessed. If corrections have been completed and BMPs are in compliance, the site will receive a Pass result and regularly scheduled General Inspections will resume.
 - ❖ A site issued Significant Violation that has failed to complete the required corrective actions or payment of fines may either be issued another Significant Violation result with a reinspection fee or the inspector may escalate the enforcement by issuing a Notice of Violation (NOV), depending on the severity of the violation and impact on the environment. The inspector will document the violation(s) with time stamped pictures. If the requested corrections have been completed, BMPs are in compliance, and there are no outstanding fees, the site will receive a Pass result and regularly scheduled General Inspections will resume.

II. Escalating Enforcement Responses:

1. **Verbal Enforcement-** A verbal warning will be given, or verbal inquiry will be used to obtain additional information regarding a potential violation or to resolve an infrequent violation.
 - ❖ The initial attempt to contact a permit holder or responsible person will serve as the beginning of enforcement action. If a call or email is not answered, the inspector will conduct a site visit.
2. **Inspection Enforcement** – If a site receives a Significant Violation result during an inspection, based on the circumstances and severity of violation/pollution, the inspector may issue special site fee(s), investigation fees, and a parcel hold. If during a second compliance follow-up inspection corrections have not been completed a reinspection fee may be issued.
3. **Notice of Violation (NOV)** – An official document on City of Boise letterhead provided directly to the permittee/Responsible Person when Significant Violations have not been resolved.
 - ❖ An NOV will be issued when there is active exposure of pollutants to stormwater runoff, repeated or unaddressed corrections associated with a Significant Violation inspection result. The NOV is written document delivered to the ESC permit contacts that includes project identifiers, a statement summarizing the violation, references to specific Construction Site Erosion Control ordinance violations, the corrective actions required to restore compliance, any fees assessed, and the compliance deadline. The inspector will document the violation(s) with time stamped pictures. An NOV may also include a Parcel Hold or Stop Work Order until compliance has been achieved.
 - ❖ The NOV also notifies the site that if continued or subsequent violation(s) are discovered, the City may issue civil penalties.
 - ❖ If no reasonable effort at corrective action is made, or if necessitated by emergency, the Director or authorized enforcement agent may cause the corrective action to be performed and shall assess the actual and administrative costs of such performance.
 - ❖ Where applicable, sites that are issued an NOV may also be referred to Idaho Department of Environmental Quality (IDEQ) for Construction General Permit (CGP) violation.
4. **Initiation of Civil Penalties** A site that has been issued an NOV that has continued, or subsequent violations related to the initial violation may be assessed civil penalties per Boise City Code 9-14-3-7.
 - ❖ 1st offence \$200 – The permittee will be provided a written notice regarding the initiation of civil penalties and notice regarding subsequent civil penalties.

- ❖ Repeat offences \$1,000 – Once a site has had civil penalties initiated, a notice will be attached to that project's parcel stating that the site is under civil penalties. If the site has an inspection result of Significant Violation and the violation is directly related to the previously issued NOV, an automatic \$1,000 civil penalty will be assessed.
 - ❖ Where applicable, sites that are issued an NOV may also be referred to IDEQ for CGP violation.
5. **Stop Work Order/Permit revocation.** If the above enforcement measures do not result in site compliance, the ESC permit may be revoked, and a Stop Work Order enforced on all related permits on the parcel. The project will need to halt all work and resubmit an ESC permit application and provide updated submittal requirements. Sites that do not comply with a Stop Work Order will be referred to the City Attorney's office for criminal prosecution per 9-14-3-5: VIOLATIONS CONSTITUTE MISDEMEANORS.

Intent:

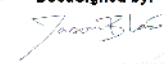
To establish a written ERP that authorizes ESC Inspectors to implement escalating enforcement measures that require construction sites to be in compliance with the Construction Site Erosion Ordinance.

This ERP has been developed as a tool for ESC Inspectors to use when identifying, investigating, and determining the appropriate response to a specific violation of these local stormwater regulations and any related state and federal violations. It will also present the range and time frames of available enforcement responses and identify (by title) the official(s) responsible for each response.

The procedures within this ERP have been developed with the following objectives in mind:

- o Prevent pollutants from entering the MS4 that may cause a threat to the public health, safety, welfare and the environment.
- o Prevent the degradation of groundwater quality.
- o Establish appropriate enforcement action based on the nature and severity of the violation.
- o Promote consistent and timely use of enforcement and escalation.
- o Ensure that violators return to compliance in a timely manner.
- o Recover costs incurred by the city due to non-compliance and promote compliance through education and compliance assistance and, if necessary, penalties.

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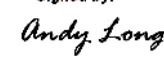

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Jason Blais
Building Official

1/28/2025

Effective Date

Signed by:


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Andrew Long
Erosion Control Coordinator

Date Retired