

# City of Gladstone Erosion Control Enforcement Procedures

*November 20, 2023*

**Background:** Consistent with schedule A.3.d of its National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit, the City of Gladstone must continue to implement and enforce a construction site runoff control program to reduce discharges of pollutants from construction sites in its coverage area. The City of Gladstone must continue to implement its existing construction site runoff program as the new requirements are developed and implemented.

**Purpose:** The purpose of this document is to fulfill requirements of Schedule A.3.d.V of the September 15, 2021 MS4 permit by describing the steps the City will follow in order to implement enforcement procedures in order to implement and enforce a comprehensive program to eliminate discharges into the MS4, to the extent allowable by state laws.

## **Permit Language:**

Schedule A.3.d.V

Enforcement Procedures

The co-permittees must continue to implement and maintain a written escalating enforcement and response procedure for all qualifying construction sites and summarize or reference in the SWMP Document. The procedure must address repeat violations through progressively stricter response, as needed, to achieve compliance. The escalating enforcement and response procedure must describe how the co-permittees will use enforcement techniques to ensure compliance. The enforcement procedures must include timelines for compliance and, when formulating response procedures and penalties should consider factors (or multipliers) such as the type and severity of pollutant discharge, and whether the discharge was intentional or accidental. If the escalating enforcement procedure already in place does not meet these requirements, a revision or update may be submitted with the Annual Report due December 1, 2023, and, if necessary as specified under Schedule A.2.f, added to the SWMP Document at that time.

## **Legal Authority:**

Chapter 16 of the Gladstone Municipal Code relates to erosion control enforcement as follows:

**15.06.080 Abatement and penalties.**

(1) Whenever any work is being done contrary to the provisions of this chapter, the City Administrator or his designee may issue a stop work order as in Section 202(e) of the Oregon State Structural Code and Fire and Life Safety Code.

(2) The city shall abate any violation, or the consequences of any violation, of any provision of this chapter or the terms or conditions of any permit granted thereunder where:

(a) Such violations results, or may result, in a condition which may pose an imminent threat of injury to persons or property; or

(b) Any person, after receiving notice from the city to cease and desist from such violations, fails, refuses or neglects to comply with such notice within 5 days of the date of mailing or personal service of notice; or

(c) Any person, after receiving notice, fails, refuses, or neglects to clean up, repair, correct or otherwise mitigate the effects of a violation within 5 days of the date of mailing or personal service of the notice.

(3) The permit holder and any person violating this chapter shall be jointly and severally liable for all costs and expenses incurred by the city for actions taken pursuant to this section. Costs and expenses shall include, but not be limited to, any and all direct costs and expenses relating to personal salaries and benefits, equipment costs, including operation and maintenance, overhead, rent, interest, fees for experts and consultants, legal costs and expenses including reasonable attorneys fees, costs of delay or other city projects directly attributable to shifts of personnel and equipment to actions taken under this section, claims against the city as a consequence of such violations and procedures associated with collecting monies due hereunder.

(4) Violation of the requirements of this chapter also constitute a Class A Infraction. Each day a violation continues shall constitute a separate offense.

#### **Procedures:**

Gladstone's Erosion Control Enforcement Procedures are escalating and address repeat violations through progressively stricter response, as needed, to achieve compliance. The City intends to address EPSC deficiencies with the lowest level of response needed to gain compliance. However, it may be necessary to begin enforcement at a higher level if the non-compliance is of extreme severity, a repeat violation, is intentional, or is causing or has the potential to cause immediate degradation. Penalties will be administered in such an escalating manner depending on these factors. The below erosion control enforcement procedures describe how the City will use enforcement techniques to ensure compliance.

#### **Level 1: Notice to Correct (NTC)**

If the site has an EPSC deficiency, the Public Works Inspector will communicate deficiencies to the contractor while onsite or via phone or email. The written or verbal NTC will detail the required corrective action and time frame for compliance. Details will be documented by recording an inspection

in the Public Works electronic files or in the Public Works Inspector's daily inspection reports. The NTC will include the following:

- the existence of a violation;
- the actions required to resolve the violation;
- the consequences of continued non-compliance;
- the time by which compliance is to be achieved.

### **Level 2: Notice of Violation (NOV)**

A Notice of Violation NOV may be issued for EPSC noncompliance if previous enforcement actions have not been successful in achieving compliance. The written NOV will detail the required corrective action, time frame for compliance, and potential consequences if compliance is not achieved. Details will be documented by recording an inspection in the Public Works electronic files or in the PWI's daily inspection reports. The Public Works Inspector will conduct a follow-up inspection and document that deficiencies have been corrected or determine if a Stop Work Order is required.

### **Level 3: Stop Work Order**

A stop work order may be issued for EPSC noncompliance if previous enforcement actions have not achieved compliance or there is an imminent risk to waterways. Public Works will coordinate with Code Enforcement to carry out the stop work enforcement process. If a stop work order is unlikely to be effective because work has stopped at the site for other reasons, or a legal determination has been made that the stop work order does not affect the remaining activities at the site, a civil penalty may be issued.

### **Level 4: Civil Penalty**

A civil penalty may be issued for EPSC noncompliance if previous enforcement actions have not achieved compliance or if there is an imminent risk to the watershed, or a violation has caused degradation in the watershed. It may replace or augment a stop work order. Code Enforcement will lead the civil penalty enforcement process with assistance from Public Works. See **Legal Authority** above for enforcement penalty options.

### **Level 5: Abatement**

Abatement may occur per Gladstone Municipal Code Chapter 15.06.080 (see **Legal Authority**) above.