

## Stormwater Quality Enforcement Policy

### 1. Duty to Comply

The co-permittees must comply with all conditions of the City of Brighton Erosion and Sediment Control Permit. Any instance of noncompliance constitutes a violation of the City of Brighton Municipal Code and may constitute a violation of state and federal regulations. Violation of the City of Brighton Municipal Code is grounds for enforcement action.

#### **a. Criminal Penalties**

If any person, including but not limited to, the officers and agents of a corporation responsible for its actions or inaction, and the partners or members of a partnership, firm, or joint venture, shall violate or cause the violation of any of the provisions of the *Brighton Municipal Code, Chapter 14*, they and each of them shall be guilty of a separate offense for each and every day or portion thereof during which a violation is committed, permitted, or continues. Upon conviction thereof, any person, including but not limited to such partners, members, officers, or agents, shall be subject to the penalties provided for in Article 1-24 of the City of Brighton Municipal Code. Violations of the Municipal Code allow for incarceration for a period not to exceed 364 days or a monetary penalty not to exceed \$2,650 or both.

#### **b. Civil Penalties**

Any condition caused or permitted to exist in violation of any provision of any law or ordinance of the City shall be deemed a public nuisance and may be summarily abated as such, and each day that such condition continues shall be regarded as a new and separate violation. In addition, in any case of violation of any ordinance of the City and/or failure to comply with any requirement of any law or ordinance of the City, the City, or any person affected by such violation or failure may, in addition to the penalties provided by law, initiate a civil action in the municipal court against the offending party and/or the parents of an offending minor for injunction, mandamus, abatement, recovery of damages, or any other appropriate relief to recover restitution of damages, prevent, enjoin, abate, remove, or eliminate such violation of any law or ordinance of the City.

#### **c. Administrative Penalties**

If a permittee hereunder does not diligently and faithfully complete all work required by the Erosion and Sediment Control Plan (ESCP), or otherwise violates any requirement of the ESCP or the city codes, then the director may take reasonable and necessary corrective measures and charge the reasonable cost and expenses of such measures to the permittee. Such costs may include the actual cost of any work deemed necessary by the director in order to obtain or maintain permit compliance, plus reasonable administrative and inspection costs pursuant to this *Brighton Stormwater Quality Enforcement Policy*. If the total of such costs exceeds the amount of the permittee's performance security, the permittee shall be individually, jointly, and severally responsible for payment of any remaining balance within thirty (30) calendar days of receipt of a reasonably detailed written accounting and invoice from the City.

### 2. Duty to Mitigate

The co-permittees must take all reasonable actions to prevent, minimize and/or abate any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

### 3. Permit Actions

This permit and enforcement policy may be modified from time to time, revoked and reissued, or terminated.

### 4. Property Rights

This permit does not convey any property rights of any sort or any exclusive privilege.

### 5. Regulator Inspection and Entry

The director shall enforce the requirements of this permit and, in the course of carrying out such duties, shall have the authority to enter upon permitted lands and adjacent and abutting lands for inspection purposes. Please see the *\*Brighton Municipal Code, Article 1.20*, for more information pertaining to right of entry. Inspections can take place during any hours of the day and entrance cannot be impeded for any reason.

## 6. Permit Inspections and Records

A qualified stormwater manager must perform inspections of the permitted site every 14 calendar days and within 24 hours after the end of any precipitation or snowmelt event that causes surface erosion **OR** at least once every seven calendar days. Post-storm events may be used to fulfill the 14-day routine inspection requirement. The inspection must be recorded on an approved form. The City may request a copy of the completed inspections for review at any time. The scope of the inspection should, at a minimum, address the following:

- a. the construction site perimeter and discharge points (including discharges into a storm sewer system);
- b. all disturbed areas;
- c. designated haul routes;
- d. locations where vehicles exit the site;
- e. areas used for material/waste storage that are exposed to precipitation;
- f. other areas determined to have a significant potential for stormwater pollution, such as, demolition areas or concrete washout locations, or locations where vehicles enter or leave the site;
- g. Inspect erosion and sediment control measures identified in the SWMP;
- h. Ensure any other structural BMPs that may require maintenance, such as secondary containment around fuel tanks, or the condition of spill response kits; and,
- i. Ensure that the ESCP matches the best management practices installed in the field and vice versa, and any changes in the field need to be reflected on the ESCP within 72 hours of the change.

Failure to perform the required inspections at the stated interval is a permit violation and is grounds for enforcement action. Failure to record the inspection on an approved form is also a permit violation.

## 7. Construction BMPs and Maintenance

Any maintenance or installation needs that are noted during the site inspections must be completed immediately. If pollution sources are noted, they must be removed from the site immediately. If it is infeasible to install or repair control measure immediately after discovering the deficiency, the following information must be documented and kept on record: 1) Describe why it is infeasible to initiate the installation or repair immediately; and 2) Provide a schedule for installing or repairing the control measure and returning it to an effective operating condition as soon as possible. Failing to perform BMP installation and maintenance, or failure to remove a pollution source, is a permit violation and is grounds for enforcement action.

## 8. City Inspections and Remediation

- The City may inspect the construction site at any time and must have access to complete the inspection, any deficiencies noted during the inspection shall be promptly corrected. Failure to correct any deficiency noted during a City inspection is a permit violation and is grounds for enforcement action.
- Landowners and/or contractors are responsible for scheduling a pre-construction meeting with the City of Brighton Stormwater and Environmental Division after the issuance of the City's ESC Permit.

## 9. Enforcement Action

Instances of non-compliance with this permit can be addressed in the following ways. The enforcement actions below are not considered to be in any order or ladder of escalation. The enforcement action will be based on prior instances of non-compliance and the violation that is occurring.

### a. **Monetary Penalty**

The site will be fined for re-inspection of a site until compliance is reached.

### b. **Work performed by City or Contractor**

In the case on non-compliance the City can perform BMP maintenance or installation or hire a contractor to the work. The City will charge the responsible party for the work completed. If the invoice for completed work is not paid in full, the City shall place a lien on the property.

c. ***Municipal Summons (Criminal Action)***

The responsible party or parties shall receive a summons to the Municipal Court of the City of Brighton. The guilt or innocence of a responsible party shall be decided by a Court of Law and/or by a jury of his or her peers. This enforcement action may carry jail time and/or fines enforced by the Court.

d. ***Verbal Notice of Violation and Compliance Order***

A City of Brighton representative will verbally state that the responsible party or parties has violated the permit and direct the party to perform an action. This action must be completed immediately. This action may be to remove a pollution source, install BMPs, maintain BMPs, or some other action.

e. ***Written Notice of Violation and Compliance Order***

The responsible party or parties will receive a written letter stating that they have violated this permit and must perform an action. A compliance schedule will be included in the correspondence. Failure to perform the action listed in the Notice by the date specified will result in further enforcement action. This action may be to remove a pollution source, install BMPs, maintain BMPs, or some other action.

f. ***Stop Work Order***

Whenever the director determines that any activity is occurring that is not in compliance with an approved permit, the written requirements of the director and/or the requirements of this Article, the director may issue a stop work order directing that such activity must immediately cease upon service of such order on the landowner, developer, builder, permittee, or other person responsible for or conducting such activity. Such person shall immediately stop all activity until authorized in writing by the director to proceed. If such responsible person cannot be promptly located, the stop work order shall be posted in a conspicuous place upon the area where the activity is occurring. The order shall state the nature of the violation and shall not be removed until the violation has been cured or written authorization to remove the order has been issued by the director. It shall be unlawful for any person to fail to comply with a stop work order.

g. ***Suspension or Revocation of Permit***

The director may suspend or revoke any permit, such as, but not limited to, right-of-way, grading, building, or ESC permit, for violation of any provision of the *Brighton Municipal Code, Article 14-2*, violation of the permit and/or misrepresentations by the permittee or its agents, employees, or independent contractors.

## **10. Material Spills**

Notwithstanding other requirements of law, as soon as any person responsible for a property, facility or operation, or responsible for emergency response for a property, facility or operation, has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants that may come in contact with stormwater runoff, discharge to the storm drainage system, watercourse or water of the United States, said person shall take all necessary steps to ensure the discovery, containment and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of a nonhazardous pollutant, said person shall notify the Director in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Director within three (3) business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years and made available to the Director upon request.

## **11. Retention of Records**

All records must be kept at the site for three (3) years after the completion of construction activities. These records include the ESCP (all amendments included), all site inspection records, records of all enforcement action taken, and any records of spills or discharges leaving the permitted site.



## **12. Permit Amendments**

The co-permittees must fill out a permit modification form when one of the following occurs:

- a. There is a change in the responsible party, the site contact, or the contractor performing the work.
- b. There is a change in the site area. A map clearly showing the new boundaries must be submitted with the permit modification form.

Failure to perform the required inspections at the stated interval is a permit violation and is grounds for enforcement action. Failure to record the inspection on an approved form is also a permit violation.

## **13. Financial Guarantee Release and Permit Closure**

When the co-permittees believe that the site has reached 70% of pre-disturbance vegetative cover, the permittee shall call the One Stop Customer Service Center (303-655-2017) and request a final ESC permit inspection. If the inspector determines the site has reached the threshold, the financial guarantee shall be released to the person that posted the guarantee. After the site has passed the final ESC inspection, the permit is closed.