

**National Pollution Discharge Elimination System (NPDES) Permit for
Stormwater Discharges**

Permit Evaluation Report and Fact Sheet

for:

City of Philomath

ODEQ File Number: 112241

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SUMMARY OF PERMIT ACTION

The Oregon Department of Environmental Quality (ODEQ) proposes to issue a NPDES permit authorizing the discharge of stormwater from all municipal separate storm sewer system (MS4) outfalls owned and operated by the applicant listed above. The requirements are based on Section 402(p) of the Clean Water Act, 33.U.S.C. §1342(p), and the federal Environmental Protection Agency's (EPA) regulations for MS4 discharges.

The permit requires the implementation of a municipal stormwater management program (SWMP) to the maximum extent practicable, and outlines the six (6) minimum control measures that form the basis of the SWMP. Annual reporting is required to provide information on the status of the SWMP implementation.

BACKGROUND

EPA promulgated "Phase II" of the National Pollutant Discharge Elimination System stormwater regulations in 1999. They were published in the Federal Register on December 8, 1999 (64 Fed. Reg. 68722). These regulations include permitting requirements for "small" municipal separate storm sewer systems (MS4s). In the regulations, EPA designated a subset of MS4s subject to permitting requirements and groups of other MS4s that states must evaluate for inclusion in the permitting program. ODEQ did not propose to designate any MS4s in addition to those designated by the federal regulations. In addition, several federally designated MS4s applied for and received a waiver for Phase II permit requirements. Specifically, the regulations state that any MS4 jurisdiction within an Urbanized Area, as defined by the U.S. Census Bureau in the 2000 Census, is automatically designated for inclusion in the NPDES Phase II permit program. Urbanized Areas (UAs) are those that have a total population of at least 50,000 and a population density of at least 1,000 persons per square mile. Two types of waivers are included in the federal rules for jurisdictions within UAs if specified criteria are met. One waiver is for communities with populations under 1,000. The other waiver is for communities with populations between 1,000 and 10,000, and includes more rigorous conditions than the first. The waiver criteria are described in Chapter 40 of the Code of Federal Regulations §122.32.

The Phase II MS4 permit requirements apply to 18 communities in Oregon. Small MS4s are allowed to jointly develop and implement a Stormwater Management Program plan with other nearby MS4s that must also obtain permit coverage. The list of actions and associated time table for developing the plan may also be submitted jointly with the application.

STATE STATUTORY PERMIT REQUIREMENTS

All water quality permits must meet the requirements of state law. Oregon statutes in general give the Environmental Quality Commission and the Department broad authority to impose permit requirements needed to prevent, abate, or control water pollution. See ORS 468B.010, 468B.015, 468B.020, and 468B.110. However, direct statutory requirements applicable to discharge permits are more limited. ORS 468B.020(2)(b) directs ODEQ to require the use of all available and reasonable methods necessary to protect water quality and beneficial uses. ODEQ interprets this requirement to be no more restrictive than the federal directive that requires MS4 permits to control pollutants to the maximum extent practicable. The Department further has determined that the permit conditions and the requirement to control discharges to the maximum extent practicable appropriately addresses Oregon's environmental policies and adequately protects the health, safety and welfare of Oregon citizens. ORS 468B.050 also requires that discharge permits specify applicable effluent limits. The Department has determined that the effluent

limits applicable to this permit are the effective prohibition on non-stormwater discharges and the requirement to control stormwater discharges to the maximum extent practicable.

The NPDES permit program has been designated as a program affecting land use for purposes of ORS 197.180; OAR 340-018-0030(5); OAR 660-031-0012(2)(b)(D). Accordingly, the Department will not issue a new NPDES permit unless it has received a land use compatibility statement (LUCS), or otherwise made a determination that the permit complies with the state-wide land use goals and is consistent with local comprehensive plans and land use regulations. ODEQ requested and received LUCSs from the local governments with land use jurisdiction in the areas covered by the permit. The incorporated LUCSs demonstrate that the jurisdictions have acknowledged comprehensive plan provisions and land use regulations that are applicable to the permit and that the permit is consistent with those provisions and regulations.

ANTIDEGRADATION REVIEW

The antidegradation policy in OAR 340-041-0026 requires that degradation of existing water quality be prevented unless necessary for economic and social benefit. The Department believes that existing water quality will not be degraded by the issuance of this permit. The stormwater discharges authorized by this permit have been on-going since the federal regulations requiring an NPDES permit were adopted. This permit will reduce the current level of pollution discharged from small MS4s. The Department also expects the pollution reduction measures implemented by permitted small MS4s to offset any expansion of stormwater conveyances systems and outfalls because of the permit requirement to implement a broad range of pollution reduction measures, including measures to address impacts from new development and significant redevelopment. The permit does not set numeric discharge limits. The law recognizes that stormwater discharges are highly variable in nature and difficult to control due to topography, land use and weather differences (e.g., intensity and duration of storms). Through an adaptive management process, the co-permittees are required to regularly review and refine their best management practices to reduce pollutants to the maximum extent practicable. The goal of the permit is a net reduction in pollutant loadings over the five-year permit term. Over the five-year permit term, a range of programs will be implemented and enhanced to minimize stormwater pollution discharges from existing residential, commercial, and industrial developments. Therefore, the issuance of this permit will protect and improve existing water quality and is consistent with the Department's antidegradation policy.

COVER PAGE

The cover page of the permit outlines the type of discharges eligible for permit coverage. The permit covers existing and new discharges of stormwater from the municipal separate storm sewer system. The permit does not cover any stormwater discharged to underground injection control (UIC) systems. Some municipalities discharge stormwater to both surface waters and into the ground via UICs. Discharges to UICs are regulated through a separate set of rules derived from the Safe Drinking Water Act. Unless otherwise addressed in an individual permit, UIC discharges must be addressed through a Water Pollution Control Facilities (WPCF) permit or in some alternate manner specified in Oregon's UIC rules.

The cover page of the permit also includes information about the receiving stream(s) to which the permittee's MS4 discharges stormwater. In addition, a reference is made to the Total Maximum Daily Load (TMDL) that establishes wasteload allocations (WLAs) for urban stormwater in receiving streams within the permittee's jurisdiction. This reference does not trigger any permit requirements or represent numeric effluent limits. Rather, it is simply designed to acknowledge the existence of the TMDL and

WLAs. The methods by which the permittee is required to address TMDL are described in Schedule D of the permit.

Upon issuance, the cover page will also include the expiration date that will not exceed five years from the date of issuance.

SCHEDULE A – DISCHARGE LIMITATIONS AND STORMWATER MANAGEMENT PROGRAM

The permit does not set numeric discharge limits. The law recognizes that stormwater discharges are highly variable in nature and difficult to control due to topography, land use and weather differences (e.g., intensity and duration of storms). Through an adaptive management process, the permittees are required to regularly review and refine their best management practices to reduce pollutants to the maximum extent practicable. The principal mechanism for controlling discharges is the development and implementation of a stormwater management plan (SWMP).

CONDITION 1 –DISCHARGE LIMITATIONS

This condition prohibits non-stormwater discharges into the MS4 that are not otherwise authorized, or listed in this condition as discharges that do not need to be addressed by the permittee’s illicit discharge program. This permit condition is in accordance with 40 CFR 122.26(d)(2)(iv)(B)(1).

The types of discharges that are listed as allowable are largely derived from the standard list used by the U.S. Environmental Protection Agency (EPA). The one new type of allowable non-stormwater discharge added by the Department relates to discharges from contaminated clean-up sites occurring under the authority of a state or federally-approved clean-up order. Currently, state and federal site clean up statutes provide such sites with permit waivers if they follow all substantive requirements of those permits. Therefore, clean-up orders issued by ODEQ or EPA ensure that any discharges from these sites meet any limitations and controls that would otherwise be included in an NPDES permit prior to discharge into the MS4. The intent of referencing these types of discharges in the permit is to explicitly acknowledge the Department’s acceptance of the legitimacy of the clean-up waivers.

CONDITION 2 - STORMWATER MANAGEMENT PROGRAM PLAN REQUIREMENTS

Condition 2 specifies the required elements of a Stormwater Management Plan. The primary elements of the plan include best management practices (BMPs) to be implemented for the six minimum measures, measurable goals for each of the BMPs and associated interim milestones, and the designation of persons responsible for implementing the various BMPs. However, the other important SWMP element the Department is requiring is a description of the rationale the permittee used to determine the BMPs selected for implementation and the measurable goals selected to evaluate program progress. Explaining how and why these BMPs and goals were selected will ensure the MS4 makes an effort to link its planned actions with local conditions. This information will also assist the Department in evaluating the efficacy of the permittee’s stormwater management program.

CONDITION 3 – ADAPTIVE MANAGEMENT

The intent of Condition 3 is to provide a detailed description of the adaptive management process to be followed by the permittee. The adaptive management process is the established method for achieving the maximum extent practicable (MEP) standard. The permit requires several specific types of evaluations that are tied directly to on-going improvements to the SWMP to ensure MEP continues to be met. The adaptive management process summary in Condition 3 describes how the link between these evaluations and subsequent improvements is to occur. The permit allows for the revisions to the Stormwater Management Plan (SWMP) through an adaptive management process [see Schedule A(6)(d)]. Such revisions are expected to improve the overall effectiveness of the SWMP and not contribute to increased degradation. The permit also requires the use of adaptive management to focus and refine SWMP elements to address TMDL wasteload allocation(s) over the course of this permit cycle [see Schedule D(2)(b)].

CONDITION 4 – MINIMUM CONTROL MEASURES

The permit requires the development, implementation and enforcement of a SWMP designed to reduce pollutants to the MEP. Federal regulations (40 CFR § 122.34) require the six minimum control measures described in Condition 4. For each measure, the regulations specify certain required activities that must be implemented, and provide guidance on other BMPs to include in an adequate SWMP. The regulations and guidance documents provide more specific information on how to meet the intent of the permit requirements for each of the minimum measures. EPA has also developed separate guidance documents to assist in developing SWMP activities and determining appropriate measurable goals to be included in the SWMP. They can be viewed on EPA's website at: <http://cfpub.epa.gov/npdes/stormwater/phase2.cfm>.

CONDITION 5 – SHARING RESPONSIBILITY

Implementation of the SWMP plan can be shared with other entities. For instance, a county government responsible for a portion of the Urbanized Area adjacent to a city may develop an agreement with this city to implement certain minimum measures within the county's jurisdiction. The MS4 ceding implementation responsibility to another entity must ensure that the minimum measures (or portions thereof) are at least as stringent as required by the permit. Additionally, to maintain a record of accountability, the MS4 must maintain a written record of the agreement with the other entity. The permittee is ultimately responsible for the fulfillment of any of the responsibilities it shares with another entity, and is liable for any inadequate program implementation. This liability for delegated activities applies to situations where a permittee is sharing SWMP responsibilities with other permitted small MS4s, or where the permittee develops an inter-local agreement with an entity which is not covered by the permit.

CONDITION 6 – REVIEWING AND UPDATING STORMWATER MANAGEMENT PROGRAMS

The SWMP is a set of structural and nonstructural actions and activities used by the permittee to reduce the discharge of pollutants to the maximum extent practicable. Minor changes and adjustments to the various SWMP elements are expected and may be necessary to more successfully adhere to the goals and requirements of the permit. One of the purposes of this section of the permit is to specify the procedures for making changes to the SWMP. A distinction is made between adding new components and replacing (or removing) components of the SWMP.

SWMP Updates Proposed by Permittee:

If the permittee proposes to add new BMPs to the plan, they can do so at any time. The permittee must notify the Department of any updates in the next Annual Report(s). However, if they plan to replace or remove BMPs, the permittee must submit a request to the Department with a written justification for the change. The Department then has the option of approving or denying the request. The proposed changes will automatically become effective 60 days after submittal of the request if the permittee does not receive denial notification from the Department.

SWMP Changes Proposed by Department:

The Department may also initiate changes to the SWMP based on concerns about water quality impacts of stormwater, a need to maintain compliance with federal or state regulations, or information demonstrating that certain BMPs are no longer appropriate. The Department must submit the requested changes in writing to the permittee, and provide the permittee with an opportunity to propose alternatives.

Permit Modifications:

Most changes to the SWMP are considered a part of adaptive management and do not require modification of this permit unless the Department determines that the magnitude of proposed SWMP revisions substantially change the nature or scope of the SWMP. The Department will conduct this permit modification process in accordance with OAR 340-045-0040 and 0055.

Transfer of Ownership, Operational Authority, or Responsibility for SWMP Implementation:

The Department does not intend to require a permit modification should the co-applicants annex additional lands or accept the transfer of operational authority over portions of the MS4. Implementation of appropriate SWMP elements for these additions is required. The permittee must provide a plan for implementing the SWMP in all affected areas, including an implementation schedule, to the Department within 90-days of any such additions or transfers.

SCHEDULE B – MONITORING & REPORTING REQUIREMENTS

CONDITION 1 – MINIMUM MONITORING REQUIREMENTS

The federal regulations governing the NPDES permit program for small MS4s do not require monitoring of effluent from stormwater outfalls or ambient water quality monitoring of receiving streams. However, this type of monitoring is one method an MS4 can use to evaluate its SWMP and determine progress in achieving measurable goals. This condition of the permit describes the minimum requirements for conducting water quality or effluent monitoring if an MS4 chooses to pursue this method of program evaluation.

CONDITION 2 – ANNUAL REPORTING REQUIREMENTS

The annual report submitted by small MS4 permittees must include information on a number of items, including progress toward achieving measurable goals. The federal regulations and this permit allow each permitted small MS4 to develop measurable goals and metrics for tracking progress towards those goals. As mentioned above, one of those goals could be improved water quality that is measured through ambient water quality or effluent monitoring. However, other goals could be more activity related, such as achieving a certain number of construction site inspections each year. The Department can review and

comment on the measurable goals as part of its evaluation of the SWMP plan, but neither the Department nor EPA mandates specific types of goals or measurement tools.

CONDITION 3 – PERMIT RENEWAL SUBMITTAL

To continue permit coverage for stormwater discharges, the permittee must submit a permit renewal application 180 days prior to the permit expiration date. Condition 3 describes the information that must be provided in the renewal application. Renewal applications must contain an evaluation of the adequacy of the SWMP in reducing pollutants to the maximum extent practicable, an updated SWMP and, where applicable, the permittee must develop and propose to the Department specific performance measures and pollutant load reduction benchmarks information required when Total Maximum Daily Loads have been established for local receiving waters [see Schedule D.2].

SCHEDULE C – COMPLIANCE CONDITIONS AND SCHEDULES

CONDITION 1 –INITIAL IMPLEMENTATION OF STORMWATER MANAGEMENT PROGRAM

The permit requires that implementation of the SWMP begin no later than 180 days from permit issuance. However, since permittees must fully implement the SWMP plan within the five-year permit cycle, they may begin implementation of certain stormwater best management practices (BMPs) immediately. If the Department requests changes to the plan as a result of the public review process, the implementation of those affected BMPs may be adjusted (if necessary) to reflect the revised SWMP.

CONDITION 2 –FULL IMPLEMENTATION OF STORMWATER MANAGEMENT PROGRAM

The permit requires permittees to fully implement the SWMP plan within the five-year permit cycle.

SCHEDULE D – SPECIAL CONDITIONS

CONDITION 1 –LEGAL AUTHORITY

The federal regulations governing the NPDES permit program for small MS4s require the enforcement of a stormwater management program designed to reduce the discharge of pollutants to the maximum extent practicable. Specifically, the permittee must ensure that appropriate mechanisms are in place to enforce the stormwater programs addressing the “Illicit Discharge Detection and Elimination”, “Construction Site Runoff Control” and “Post-Construction Stormwater Management in New Development and Redevelopment” minimum control measures. The objective of this condition is to ensure the permittee can legally implement all components of the permit, and thus, reduce pollutants to the maximum extent practicable.

CONDITION 2 –TOTAL MAXIMUM DAILY LOAD (TMDL) REQUIREMENTS

ODEQ believes that issuing the permit to municipalities discharging to water bodies for which TMDLs have not been completed is appropriate because the permit will result in reduction of pollutants (also see the Anti-Degradation Review, above). To the extent that water quality standards are not being met, the Department determines that implementation of the measures set out in the proposed permit will reduce the

relevant waste load contributions to the maximum extent practicable as required by federal law. Schedule D, Condition 3 of the permit addresses the requirements once a TMDL has been completed and approved. Specifically, if a waste load allocation (WLA) has been assigned to urban stormwater, the permittee is required to develop and propose to the Department specific performance measures and pollutant load reduction benchmarks, as described in Schedule D(2)(a). Performance measures and pollutant load reduction benchmarks are to be developed over the course of this permit cycle and must be submitted to the Department as part of the permit renewal application described in Schedule B(3). If the permittee reduces applicable pollutant discharges for the parameters listed in the TMDL to the maximum extent practicable, this reduction is deemed to be adequate progress toward achieving assigned TMDL wasteload allocations during this first 5-year permit period.

SCHEDULE F – GENERAL CONDITIONS

Schedule F includes the general conditions that are applicable to all NPDES permits. They address operation and maintenance, monitoring and record keeping, and reporting requirements. The Department recognizes that a majority of these conditions do not apply to stormwater discharges. Many specifically address industrial and domestic wastewater treatment facilities. However, the stormwater permits are NPDES permits and these conditions are required for all such permits. Such conditions as those outlining signatory and record-keeping requirements are relevant to all NPDES permits, including stormwater discharge permits. Where a direct conflict exists, the general conditions included in Schedule F are superseded by the conditions in Schedules A and D.