

**MEMORANDUM OF UNDERSTANDING  
ODOT and DEQ**

This Memorandum of Understanding (MOU) is made and entered into by and between the State of Oregon by and through its Department of Transportation, hereinafter referred to as "ODOT", and the State of Oregon, acting by and through its Department of Environmental, hereinafter referred to as "DEQ", both herein referred to individually or collectively referred to as the "Party" or "Parties".

This MOU is entered into to document the intention and conditions of the Parties to protect water quality while efficiently implementing ODOT and DEQ missions.

**RECITALS**

- I. By the authority granted in Oregon Revised Statute (ORS) 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
- II. The mission of DEQ is to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water. The mission of ODOT is to provide a safe, efficient transportation system that supports economic opportunity and livable communities for Oregonians.
- III. The purpose of this MOU is:
  - a. Establish a framework where ODOT and DEQ work collaboratively, cooperatively and effectively together to serve all Oregonians by restoring, protecting and enhancing Oregon's water quality while providing a safe and efficient transportation system that supports economic opportunity and livable communities for Oregonians.
  - b. Promote a joint understanding of the respective roles, responsibilities, and authorities of each agency, in an effort to improve interagency relationships that better serve Oregonians.
  - c. Jointly develop a comprehensive means of effectively managing and permitting water conveyed from ODOT's system.

**TERMS AND CONDITIONS**

- I. Objectives. The Parties intend to:
  - a. With DEQ assistance, enhance ODOT's ability to be an environmental leader through project design, construction and maintenance activities that are effective, sustainable and comply with water quality laws, rules and permit conditions.

- b. Identify how ODOT can meet conditions of the Jobs and Transportation Act with respect to water quality.
- c. Identify practicable strategies to reduce ODOT's cost, workload and level of effort to comply with water quality laws administered by DEQ.
- d. Develop an ODOT statewide water quality management plan (WQMP) to meet multiple state and federal water quality regulations, laws, and water quality permit conditions, including the Clean Water Act and the Safe Drinking Water Act. The statewide WQMP will contain:
  - 1. Water quality and permit requirements for all Clean Water Act National Pollutant Discharge Elimination System (NPDES) permits issued to ODOT,
  - 2. State Water Pollution Control Facilities (WPCF) permits for underground injection activities and management of wastewater,
  - 3. A description of how ODOT intends to meet Total Maximum Daily Load (TMDL) and impaired water body regulations, including a TMDL implementation plan required of designated management agencies, and
  - 4. A description of how ODOT intends to comply with water quality certification requirements for the U.S. Army Corps of Engineers nationwide or other general permit.
- e. Enhance inter-agency relationships and information exchange when water quality issues arise during highway project development, construction, and maintenance.
- f. Provide a process for ODOT and DEQ to effectively communicate responsibilities, regulatory requirements, and implementation strategies for programs/plans to achieve the common mission of both agencies to protect Oregon's water quality while simultaneously providing a safe and efficient transportation system.
- g. Establish protocols and accountability for respectful inter-personal communication and improve the ability of both agencies to resolve issues efficiently within the context of consistent interpretation, direction and implementation of water quality regulations.
- h. Establish a tiered and timely elevation process to resolve disagreements, professional difference of opinion, and other disputes that may arise through implementation of this MOU.
- i. Provide a procedure for both Parties to work collaboratively to meet the rules and statutes of the Jobs and Transportation Act, including streamlining the permitting process and considering the use of environmental performance standards, while continuing to meet water quality regulatory requirements.

- j. Provide a framework for both Parties to work collaboratively to develop and employ a common set of best management practices to meet multiple water quality regulatory requirements.
- k. Ensure that both Parties hold each other and their respective agencies accountable for meeting the purpose, objective and terms of this MOU.

## II. Agency Operations

- a. Both ODOT and DEQ have Commissions that guide each agency, direct agency priorities, and establish state transportation and water quality policy, respectively. DEQ and ODOT agree to inform their respective Commissions of this MOU.
- b. ODOT's transportation system is linear, crosses multiple watersheds and water bodies, and generally operates within narrow right-of-way limits; these situations may limit ODOT's options for managing stormwater and implementing practices for protecting water quality.
- c. ODOT has various avenues available for DEQ to work collaboratively, cooperatively and effectively with ODOT on water quality issues that will also promote a common understanding of ODOT operational needs:
  - 1. ODOT, complying with the Oregon Jobs and Transportation Act, Section 18, implements environmental performance standards, developed in collaboration with regulators, on transportation projects.
  - 2. ODOT will develop policy and public documents with stakeholder input to assure statewide consistency and standardization of the project development process, and to ensure that pertinent regulations, permits, and safety design standards are met during highway project development, construction, and maintenance.
  - 3. ODOT requires agency contractors to follow ODOT policy, manuals, and permits via standard contract specifications and project specific special provisions.
  - 4. ODOT will develop and provide training for ODOT personnel and its contractors. When appropriate ODOT develops training jointly with DEQ to ensure a shared understanding of water quality protection and implementation of best management practices as part of ODOT's mission.
  - 5. ODOT agrees to jointly develop and provide training and guidance with governmental agencies that are responsible for protecting various aspects of the environment, with the understanding that DEQ has the authority to set and enforce water quality standards.

6. ODOT will work jointly with DEQ early in project development or when maintenance actions may impact water quality to ensure a common understanding of water quality protection strategies that are appropriate for the linear nature and right-of-way constraints of the transportation system.
  7. ODOT will allow for early involvement and collaboration with DEQ on meeting water quality requirements in the project development process.
  8. Some ODOT facilities contain on-site septic wastewater systems that are permitted individually.
  9. ODOT, as a condition of its Municipal Separate Storm Sewer System (MS4) permit, reports illicit discharges to the ODOT highway system to DEQ, but ODOT does not have the authority to enforce water quality regulations. ODOT will refer needed enforcement of water quality regulations to DEQ.
- d. DEQ, through its regulatory authorities and agency operations, has various opportunities to work collaboratively, cooperatively and effectively with ODOT to promote a common understanding of DEQ regulatory requirements:
1. DEQ operates in a regulatory framework that is developed via public rulemaking and a permit issuance process.
  2. DEQ has discretion to ensure that rules are implemented in an effective manner and that they meet the intent of the law; this occurs through conference, conciliation, collaboration and voluntary compliance, or enforcement as set forth in DEQ's enforcement guidance.
  3. DEQ will consider ODOT a stakeholder partner in the development of water quality rules and permits that may impact ODOT and its transportation system.
  4. DEQ forms advisory committees to seek stakeholder input prior to rulemaking and permit development and will ensure that ODOT is notified in advance of opportunities to participate in these activities.
  5. When DEQ reviews ODOT guidelines and manuals, DEQ will provide timely input to ODOT as to whether they meet the intent of water quality laws, rules, policies, and permit conditions.
  6. DEQ is an authorized agency for implementing federal water quality regulations, and state water quality rules developed by DEQ must be at least as stringent as federal regulations; many DEQ rules are more stringent than federal regulations.

7. DEQ treats most ODOT roadside ditches as conveyance and treatment systems to address water quality. Additionally, DEQ considers the discharge point of these ditches as point sources. Consequently, when a roadside ditch intercepts groundwater or a surface water body, the roadside ditch becomes waters of the state by statute.
8. When a stormwater treatment facility intercepts groundwater, the intercepted groundwater becomes surface waters of the state by statute.
9. Stormwater treatment facilities that do not intercept groundwater and discharge to surface water or infiltrate into the ground surface are not waters of the state.

### III. MOU Implementation

- a. ODOT and DEQ will develop a joint communication plan that describes the following in detail:
  1. The process to ensure timely receipt of approvals, reports, notifications, technical reviews, and other communications required to facilitate this MOU.
  2. The process to resolve professional differences of opinion.
  3. Definitions of common terms used in agency operations.
  4. An appropriate elevation protocol for accountability and performance management standards for ODOT and DEQ managers and staff working under this MOU.
  5. Steps that will be taken to implement the state policy that mandates a respectful workplace free of discrimination and harassment (Department of Administrative Services Statewide Policy # 50.010.01).
- b. Accountability
  1. ODOT and DEQ have defined roles and responsibilities as state agencies.
  2. Both agencies will hold each other and their respective agencies accountable via internal lines of authority and interagency transparency.
  3. Each process, plan, and agreement made under this MOU will include clear roles and responsibilities, lines of authority and communication, and elevation protocols for disputes, conflicts and professional differences of opinion.
  4. ODOT and DEQ will meet annually to review this MOU and sub-agreements, such as an Inter-governmental Agreement (IGA) for technical support, to evaluate the functionality of the agreements and to revise them as necessary.

5. ODOT and DEQ "line managers" will meet at least quarterly to ensure that conditions of this MOU are being met, and that resolution of disputes, conflicts or professional differences of opinion are resolved in a timely manner or elevated for resolution.

#### IV. Current ODOT Practices/Processes to Meet Water Quality Regulations

##### a. Clean Water Act section 401 water quality certifications

1. ODOT operates under a MS4 permit issued by DEQ in 2000 that has been administratively extended since 2005.
2. In cooperation with DEQ, ODOT has developed and periodically updates internal guidance (ODOT Geo-Environmental Technical Bulletin GE09-02(B)) that identifies thresholds and parameters for water quality mitigation requirements.
3. Clean Water Act Section 401 Water Quality Certifications with post-construction stormwater management plans are required for projects authorized under Corps 404 permits.
  - i. For U.S. Army Corps of Engineers (Corps) nationwide or other general permits when stormwater management plans are needed, ODOT develops the plans to meet the ODOT Statewide WQMP developed under this MOU, reviews them internally for quality control, batches them and sends them to DEQ at least bi-monthly.
  - ii. For individual 401 certifications, ODOT submits an individual stormwater management plan specific to the individual project to DEQ for review and approval.
4. ODOT brings DEQ into the early design phase of projects, and DEQ provides technical assistance to ODOT regarding 401 Certification water quality concerns, including post-construction stormwater management.

##### b. NPDES Construction Permit

1. ODOT construction contracts operate under one of five region-based NPDES 1200-CA permits that have been administratively extended since January 1, 2006.
2. ODOT contract standard specifications and special provisions contain the terms and conditions of the general 1200-CA permit.
3. ODOT is responsible for the preparation of erosion and sediment control plans for each project covered under the 1200-CA permit.

4. ODOT may request, or DEQ may determine, that an NPDES 1200-C general stormwater construction permit is needed for a specific project.

#### V. Streamlining Process Overview

- a. In accordance with the 2007 Jobs and Transportation Act that directs ODOT and natural resources agencies to streamline transportation project permitting, DEQ and ODOT agree to a programmatic permitting process, except where a particular project is not eligible for a programmatic permitting approach.
- b. In response to an overall increase in environmental regulations and a tightening in state budgets, ODOT and DEQ agree to engage in creative problem-solving to find operational and regulatory efficiencies, such as using one standard document to meet multiple regulatory requirements.
- c. Gaps in staffing, funding, and procedures at ODOT have resulted in challenges with water quality requirements and a backlog of needed water quality inventory and monitoring.
- d. DEQ and ODOT recognize that most of the permit requirements outlined in the MS4 permit are identical or nearly identical to requirements in other stormwater permits. Therefore, coordinated permit conditions are needed to implement a streamlined water quality plan that meets multiple requirements.
- e. Future operations aimed at improving efficiencies:
  1. DEQ will ensure that ODOT is notified of opportunities to comment on permits and rules that affect or may affect ODOT, and ensure that ODOT has the opportunity to participate on DEQ advisory committees as a stakeholder.
  2. ODOT will ensure that DEQ is notified of opportunities to comment on ODOT policies and public documents that may affect DEQ regulated resources, and ensure that DEQ has the opportunity to participate on ODOT advisory committees as a stakeholder.
  3. DEQ will provide technical assistance to ODOT in the development of guidance under the current MS4 permit and legal settlements to meet water quality requirements for Corps nationwide permits.
  4. ODOT must have MS4, UIC, 1200-C/CA, wastewater permits, and 401 water quality nationwide certifications, as well as TMDL implementation plans to meet DEQ water quality requirements; all will be addressed under a single statewide WQMP.
  5. ODOT's MS4 permit should provide a means to incorporate common areas of stormwater management for MS4, UIC and construction permits, as well as

- meet 401 certification requirements for post-construction stormwater management.
6. DEQ and ODOT agree to work toward reducing project-by-project desk review and approvals for post-construction stormwater management and erosion control by reaching agreement on programmatic that address program-wide implementation of water quality best management practices, and by placing more emphasis on providing technical assistance in the field during and after construction rather than on project-by-project plan reviews.
  7. ODOT's MS4 permit will include permit requirements under the 1200-CA permit; these include new federal requirements for projects that involve greater than ten (10) acres of disturbed ground (Effluent Limitation Guidelines). ODOT's MS4 permit will also outline performance measures for erosion control during construction and maintenance activities.
  8. ODOT monitoring efforts will be addressed in a two-pronged approach: (1) conduct research projects to monitor the effectiveness of best management practices and the effect of various highway operations on water quality, and (2) undertake characterization monitoring where the sample site will take into consideration monitoring requirements of TMDL, NPDES and UIC.
  9. Rather than monitor on a project by project basis, ODOT will monitor to evaluate the effectiveness of preferred program outcomes and to provide feedback for program improvement. The appropriate monitoring protocol required to obtain the necessary program feedback will be negotiated between ODOT and DEQ via the permit process for the MS4 and UICs.
  10. ODOT and DEQ will agree on the list of pollutants that ODOT contributes to the highway system and is responsible for treating and the list of pollutants derived from other sources that ODOT is not responsible for treating.
  11. ODOT and DEQ will agree on lists for: (1) pollutants that ODOT will test for and where and when testing will occur, and (2) high priority pollutants that ODOT will manage for and where management will occur; these lists will be developed before finalizing the MS4, UIC, and TMDL permits.
  12. ODOT and DEQ will agree on effective best management practices through technical assistance.
  13. ODOT and DEQ will work jointly to clarify water quality requirements and enhancements, and develop a document template that will be used to notify ODOT that permit conditions or required actions meet water quality regulations.

14. When issued by DEQ to ODOT, UIC permits will cover both existing and future ODOT-owned UICs.
15. As new water quality regulations are developed, DEQ will work closely with ODOT to provide ample time for ODOT to update contract specifications, policy, and guidance documents.
16. DEQ will defer to other resource and regulatory agencies for their expertise in determining whether ODOT is meeting the intent of other regulations involving water quality.
17. ODOT will evaluate its current TMDL plan and update it as appropriate. Best management practices will be adjusted as needed and incorporated into the revised MS4 permit.

#### VI. Communication and Accountability

- a. ODOT and DEQ agree to establish in an IGA a tiered elevation process to resolve differences of professional opinion or other disputes that may arise during implementation of this MOU.
- b. ODOT and DEQ agree that "Line Managers" will meet at least quarterly to discuss MOU implementation, up-coming ODOT projects and major maintenance actions, and proactively resolve areas of potential disagreements between respective agency staff.
- c. ODOT and DEQ agree that "Senior Managers" will meet at least annually to discuss implementation of this MOU and any Inter-governmental Agreements, discuss where revisions may be necessary, and identify long-range project planning to ensure timely and successful project implementation.

#### VII. Terms of Agreement

- a. ODOT and DEQ agree to address water quality, including quantity, in a holistic manner that also provides for a safe highway system.
- b. ODOT and DEQ agree to utilize the WQMP as a key instrument to integrate and streamline multiple permitting processes.
- c. ODOT and DEQ agree that the WQMP will meet most of the NPDES and SDWA permitting requirements, including Nationwide 401 water quality certifications.
- d. ODOT and DEQ agree that MS4 and UIC permits will be developed concurrently to the extent practicable to crosswalk requirements.

- e. ODOT and DEQ will prioritize work, which will be outlined in an Interagency Agreement scope of work.
- f. Prior to DEQ and ODOT entering into subsequent agreements for water quality, ODOT and DEQ will be responsible for reviewing this master MOU.
- g. This MOU shall become effective when all required signatures have been obtained and shall remain in effect for twenty (20) years, at which time this MOU shall automatically terminate.
- h. The terms of this MOU shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written agreement signed by the Parties.
- i. The terms of this MOU may be amended or terminated by mutual written consent of the Parties.
- j. The foregoing MOU is a nonbinding proposal and is not and should not be construed as a commitment by either Party. Notwithstanding the signing or delivery of the MOU, any past, present or future actions; or approvals by either Party based upon this MOU, neither Party is under any legal obligation with respect to the intentions outlined above and no binding commitment of any nature whatsoever will be implied.
- k. This MOU may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this MOU so executed shall constitute an original.

THE PARTIES, by execution of this MOU, hereby acknowledge that their signing representatives have read this MOU, understand it, and agree to its terms and conditions.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

Signature Page to Follow

STATE OF OREGON, by and through its  
Department of Environmental Quality

By Duh Pedersen by Jim Hannul  
Title Director  
Date 2-15-11

**APPROVAL RECOMMENDED**

By Jim Hannul  
Title Deputy Director  
Date 2-15-11

**DEQ Contact:**

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STATE OF OREGON, by and through its  
Department of Transportation

By [Signature]  
Director  
Date 2-16-11

**APPROVAL RECOMMENDED**

By [Signature]  
Geo-Environmental Section Manager  
Date 15 Feb 2011