

Municipal Separate Storm Sewer System (MS4) Phase I Individual Permit Renewals

A summary of comments and response to comments received for four proposed MS4 Phase I permit renewals for the following entities: City of Eugene, City of Salem, Multnomah County, and the Gresham Group (i.e., Cities of Gresham and Fairview).

Overview

Comment Period The public comment period for the MS4 Phase I permit renewal began October 8, 2010 and closed on November 19, 2010. DEQ held five public hearings on the MS4 permit renewals: Portland (November 10), Gresham (November 15), Oregon City (November 16), Eugene (November 17), and Salem (November 18). Six people attended the Portland hearing, three people attended the Gresham hearing, two people attended the Oregon City hearing, one person attended the Eugene hearing, and one person attended the Salem hearing. One person providing oral comment at the Gresham hearing, and no oral comments were provided at the other four hearings. Twenty-three sets of written comments were received during this period.

Process of summarizing comments and providing responses Due to the similar nature of many comments, comments are summarized in categories and responses are provided. To focus on the comment rather than the commenter, numbers are cited in the summaries that reference the commenter(s).

List of Commenters The list of people providing comment and their corresponding reference number(s) follow at the end of this memo.

Organization of comments and responses Comments and responses are organized into categories:

- Schedule A: Controls and Limitations for MS4 Discharges
- Schedule B: Monitoring, Annual Report, and Permit Renewal Application
- Schedule D: Special Conditions
- Schedule F: NPDES Permit General Conditions for MS4s
- General Comments

Schedule A: Controls and Limitations for MS4 Stormwater Discharges

Comment #1 Not all non-stormwater is prohibited from being discharged from the MS4. Modify Schedule A.1 to reflect this. (17)

Response DEQ retained the proposed permit language. The permit language was retained to be consistent with CWA Sect. 402(p)(3)(B)(ii), which states “effectively prohibit non-stormwater discharges into the storm sewers”. Schedule A.1. identifies the non-stormwater discharges that are authorized by the permit.

The permit only authorizes non-stormwater discharges to the MS4 in accordance with the non-stormwater discharge list provided in 40 CFR 122.26 (d)(2)(iv)(B)(1), based on

an authorization under another applicable federal or state permit, or for discharges DEQ has considered to be de minimis based on a review, analysis and implementation of effective BMPs (e.g., charity car wash) that reduce the discharge of pollutants to the Maximum Extent Practicable. Specifically, the Department reviewed an evaluation of non-stormwater discharges submitted by the [co]permittee with the permit renewal application. This evaluation examined if the non-stormwater discharges identified in Schedule A.4.a.xii. were being adequately addressed by the [co]permittee's Best Management Practices (BMPs). The evaluation conducted by the [co]permittee identified categories of non-stormwater discharges, and examined whether a non-stormwater discharge occurred within the jurisdictional area, whether the non-stormwater discharge required a BMP to reduce the discharge of pollutants, and what effective BMP was implemented to reduce the pollutants, if needed.

Comment #2 The Maximum Extent Practicable (MEP) standard is not sufficient to ensure clean, plentiful water. (5)

Response The MEP is the standard the United States Congress identified in section 402 of the Clean Water Act [33 U.S.C. 1342(p)(3)(B)] as the applicable standard for municipal stormwater discharges. DEQ acknowledges the reasonable and available standard (ORS468B.020) applies to the MS4 permits and is considered met with the MEP standard.

Comment #3 The new requirements and aggressive timelines were identified without conducting a specific analysis of resources. More input related to implementation timelines or use of timelines identified in the Stormwater Management Plans (SWMP) reflects the Maximum Extent Practicable (MEP) standard as identified by the [co]permittee. (17,21)

Response DEQ, as the permitting authority, is responsible for developing and issuing National Pollutant Discharge Elimination System (NPDES) permits with appropriate requirements and conditions that meet all applicable federal and state laws. In the development of the MS4 permit conditions, DEQ considered a variety of sources of information when determining the appropriate permit requirements and associated implementation timelines. This information included related information submitted by the [co]permittee with the permit renewal application or based on permit renewal discussions, a review of applicable federal and state laws, scientific literature and municipal stormwater permits issued by other permitting authorities, dialogue with USEPA Headquarters and Region 10 staff, and conversations with Washington Department of Ecology staff. Ultimately, the permit conditions and requirements reflect the Best Professional Judgment by the permit writer who has multiple years of experience with MS4 program implementation and oversight.

Comment #4 Explain why BMPs identified in the Stormwater Management Plan (SWMPs) reflect all known, available and reasonable controls, and the reduction of pollutants to the Maximum Extent Practicable (MEP). (1,8)

Response The conditions identified in the permit and the BMPs identified in the SWMP establish the requirements DEQ has determined to meet the MEP standard. DEQ interprets the MEP standard to require all controls that are reasonable and available. In DEQ's review and analysis of information related to permit development, DEQ considered information submitted by the [co]permittee with the permit renewal application, a review of applicable federal and state laws, scientific literature and municipal stormwater permits

issued by other permitting authorities, dialogue with USEPA Headquarters and Region 10 staff, and conversations with Washington Department of Ecology staff.

As noted in the response to Comment #2, DEQ acknowledges the reasonable and available standard in ORS 468B.020. This standard is different from the state of Washington's "All known, available, and reasonable methods of prevention, control, and treatment"(AKART) standard.

The permit conditions and BMPs identified in the SWMP also generally reflect an understanding that municipal program development is an ongoing, iterative process, an approach that has been identified and supported by USEPA. The municipal stormwater program development and implementation process has included the following efforts: a) the identification of candidate BMPs and selection criteria used to prioritize BMPs; b) establishment of performance measures; c) estimates of pollutant load reductions; d) an analysis of the reduction of 303(d) listed pollutants; e) a review of non-stormwater discharges; f) a MEP evaluation focusing on program effectiveness, local applicability and program resources; g) a review and analysis of environmental monitoring data and scientific literature; h) a water quality trend analysis; and, i) the application of adaptive management.

Comment #5 Incorporation of Low Impact Development (LID) and the measurement of Effective Impervious Area (EIA) represent the reduction of pollutants to the MEP, and should be mandated by the permits. (1,5,7,8)

Response DEQ acknowledges the benefits of approaches to improving stormwater quality that seek to mitigate the impacts of increased runoff and pollution associated with urbanized areas, such as LID. As a result, DEQ has incorporated permit conditions to require LID or similar approaches, and expects the [co]permittee will apply this approach to all aspects of municipal stormwater management, as appropriate. However, DEQ also understands that specific strategies associated with LID or similar approaches may not always be appropriate. As a result, DEQ expects the [co]permittee to be judicious in its approach to incorporating and requiring LID or similar approaches into its stormwater management program, and document the rationale for the approach the [co]permittee has taken.

There are several approaches to evaluating and measuring the reduction of stormwater pollutants, including environmental monitoring, pollutant load reduction modeling, water quality trend analysis, measurable goals, and the use of surrogates, such as EIA. Although DEQ supports the use of EIA as one approach the [co]permittee can use to evaluate the reduction of pollutants, DEQ has incorporated other permit conditions that will be used to evaluate the reduction of pollutants to the MEP, including a TMDL wasteload attainment assessment.

Comment #6 Update the date the Stormwater Management Plan was submitted by the City of Salem to August 13, 2010. (25)

Response DEQ updated the date to August 13, 2010 to reflect the date of submittal of the SWMP that was public noticed.

Comment #7 The Illicit Discharge Detection & Elimination (IDDE) program is not a new permit requirement. The reasons for delaying the documentation of the enforcement response

plan and pollutant parameter action levels until June 30, 2012 is unclear. DEQ should specify pollutant parameter and action levels for the [co]permittee. (2)

Response Although the requirements to detect, remove and eliminate illicit discharges based on an enforceable code or ordinance is not new, the requirements to document an enforcement response plan and pollutant parameter action levels are new. As a result, DEQ determined the [co]permittee will need time to clarify and refine how it addresses enforcement, including the stepped enforcement procedures it may follow or reflecting the enforcement response based on the severity of the illicit discharge, and identify appropriate pollutant parameter actions levels. DEQ anticipates that documenting the enforcement response procedure will provide clarity to the general public and lead to consistent enforcement response actions by focusing enforcement resources on the most important violations and violators, and substantially reduce the number of reoccurring violations or repeat offenders.

DEQ provided the [co]permittee with the flexibility to identify pollutant parameter action levels appropriate for its jurisdiction. DEQ determined the flexibility was necessary to address any local characteristics (e.g., land use, geology, groundwater flows) that may impact the expected water quality associated with stormwater discharges while still triggering additional investigation into the source of a suspected illicit discharge. However, DEQ anticipates the [co]permittee will identify action levels similar to other jurisdictions, particularly those located within the same watershed, based on sound scientific rationale and the generally accepted understanding of stormwater, such as IDDE guidance developed by Center for Watershed Protection.

DEQ also re-evaluated the amount of time that will be needed to document the enforcement procedures, and determined that since enforcement of the illicit discharge ordinance or code is required at permit issuance, submittal of the enforcement response plan with the first annual report (e.g., November 1, 2011) during the permit term would be an adequate amount of time to document a detailed procedure.

Comment #8 It is unclear how non-stormwater discharges authorized by the permit will be determined to be a significant source of pollutants in the future, and what legal authority DEQ has to exempt (or authorize) non-stormwater discharges. (1,2)

Response The permit only authorizes non-stormwater discharges to the MS4 in accordance with the non-stormwater discharge list provided in 40 CFR 122.26 (d)(2)(iv)(B)(1), based on an authorization under another applicable federal or state permit, or for discharges DEQ has considered to be de minimis based on a review, analysis and implementation of effective BMPs (e.g., charity car wash) that reduce the discharge of pollutants to the Maximum Extent Practicable. Specifically, the Department reviewed an evaluation of non-stormwater discharges submitted by the [co]permittee with the permit renewal application. This evaluation examined if the non-stormwater discharges identified in Schedule A.4.a.xii. were being adequately addressed by the [co]permittee's Best Management Practices (BMPs). The evaluation conducted by the [co]permittee identified categories of non-stormwater discharges, and examined whether a non-stormwater discharge occurred within the jurisdictional area, whether the non-stormwater discharge required a BMP to reduce the discharge of pollutants, and what effective BMP was implemented to reduce the pollutants, if needed.

DEQ expects the [co]permittee will use a variety of sources of information to determine

if a non-stormwater discharge is a significant source of pollutants, including non-stormwater discharges that may have previously considered de minimis. The information may include, but is not limited to, dry-weather screening investigations, pollutant parameter action levels, environmental monitoring required by Schedule B, tracking measurements and related measurable goals, information obtained by the [co]permittee based on its adaptive management approach, and other information based on scientifically-sound principles.

Comment #9 Illicit discharges must be removed promptly. Appropriate timeframe for removal of an illicit discharge has not been defined, and creates an open-ended and discretionary system. (1,2)

Response DEQ agrees that illicit discharges must be eliminated promptly, but acknowledges that technical or logistical issues may impact the manner and timeframe an illicit discharge can reasonably be eliminated. Considering that the range, scope, severity, complexity and financial impact of illicit discharges may vary greatly, DEQ has identified general expectations and process for eliminating an illicit discharge in a timely manner. The requirements include a timeframe for the completion of an action plan intended to address complex illicit discharge issues, and further clarifies that the illicit discharge must be eliminated as soon as practicable.

Comment #10 Annual dry-weather illicit discharge outfall screening may not be an effective frequency to properly detect illicit discharges, and should be conducted on a more frequent basis. (1,2,7)

Response DEQ considers dry-weather inspections an important element to an ongoing, comprehensive Illicit Discharge Detection and Elimination (IDDE) program to ensure illicit discharges do not turn into catastrophic discharges to receiving waterbodies. However, DEQ also considered the cost and benefit of conducting dry-weather outfall screening at a more frequent interval. Based on this examination, DEQ determined that other IDDE permit requirements (e.g., maintaining a complaint response system), implementation of preventative management strategies (e.g., examining for sanitary cross-connections during building occupancy inspections, sanitary sewer dye-testing), and conducting other activities and actions associated with other MS4 permit requirements (e.g., catch basin cleaning to address pollution prevention for municipal operations requirements) provide additional opportunity for illicit discharges to be adequately identified by general public and municipal staff. As a result, IDDE education and outreach will continue to be important in ensuring that the appropriate stormwater staff is notified of an illicit discharge in a timely manner.

Comment #11 The Illicit Discharge Detection and Elimination (IDDE) permit language is overly prescriptive, and limits adaptation. (13)

Response DEQ developed IDDE permit language that reflects its determination of the IDDE-related actions and activities necessary to reduce pollutants to the Maximum Extent Practicable (MEP). The IDDE permit requirements describe expectations for identifying illicit discharges and eliminating such discharges in an expeditious manner, but also provide the [co]permittee with the flexibility to identify and address complex and unusual illicit discharges through the development of pollutant parameter action levels, an illicit discharge response procedure, or an action plan.

In addition to IDDE permit requirements in Schedule A.4.a., DEQ has also reviewed the Best Management Practices (BMPs) the [co]permittee proposed in its Stormwater Management Plan (e.g., closed-circuit television inspections of new stormwater pipes). DEQ considers the BMPs identified in the SWMP as a reflection of how the [co]permittee has developed its comprehensive IDDE approach to adapt to illicit discharges within its jurisdiction. Furthermore, DEQ expects the [co]permittee will continue to use adaptive management to evaluate, revise and implement BMPs that effectively prohibit non-stormwater discharges to its MS4.

Comment #12 The permit requirement related to the development and implementation of an illicit discharge response plan was not incorporated into Schedule A.4.a.vii., as reflected in other MS4 permits that were public noticed (e.g., Portland Group, Gresham Group) or described in the response to applicant review comments DEQ provided to the [co]permittee on October 15, 2010. (22,25)

Response DEQ acknowledges this oversight when Schedule A.4.a.vii. permit language was revised prior to public notice of the City of Eugene and City of Salem MS4 permit. DEQ has determined that this permit language clarifies permit language that was included in the permits that were public noticed, and is appropriate for the City of Salem and City of Eugene MS4 permits.

Comment #13 A threshold or definition of ‘contribute a significant pollutant load’ is not described, including whether a commercial facility can contribute to stormwater pollution. DEQ should describe what constitutes a ‘significant pollutant load’. It is also unclear how previous industrial stormwater-related requirements (i.e., hazardous waste treatment, disposal and recovery facilities and section 313 of SARA Title III) are addressed. Inspections of industrial facilities are supported. (1,2,11,16)

Response DEQ has incorporated clarifying permit language to ensure that the [co]permittee continue to implement a program to address stormwater discharges from industrial facilities (including 1200-Z permitted facilities, hazardous waste treatment, disposal and recovery facilities, municipal landfills, and SARA Title III facilities), as required by the existing permit. However, DEQ expects the [co]permittee will update its strategy to inspect and control discharges from industrial facilities by January 1, 2013, by identifying and incorporating new industrial and commercial facilities the [co]permittee has identified as contributing a significant pollutant load or that require an industrial stormwater permit (i.e., 1200-Z). DEQ expects that the [co]permittee will implement its updated strategy by January 1, 2013.

DEQ has not identified a threshold or defined ‘significant pollutant load’ since the basis for contributing a significant pollutant load depends on a number of factors, including the pollutant of concern, waterbody characteristics, MS4 location in watershed, number of other potential pollutant sources, number, type and location of BMPs, and type of industrial or commercial facility. As a result, the Department has included clarifying permit language that requires the [co]permittee to identify its rationale for how it has identified a commercial or industrial facility as a significant contributor of pollutants. Ultimately, DEQ expects the [co]permittee will use the results of screening its new and existing commercial and industrial facilities, environmental monitoring results, complaint investigations, dry-weather screening activities, pollutant parameter action levels, and other information gathered through the adaptive management process, such as a review of applicable and reputable scientific research, to identify commercial and

industrial facilities that contribute a significant pollutant load.

Comment #14 Enforcement and prevention of illicit discharges are important. Public notice of egregious illicit discharges may be an appropriate. (11)

Response DEQ agrees public notice of egregious illicit discharges may be an appropriate and effective approach to reducing and eliminating illicit discharges. DEQ encourages each [co]permittee to consider such a strategy in the documentation of its enforcement response procedures.

Comment #15 Combine Schedule A.4.b.i. and Schedule A.4.b.ii. as a result of their process relationship. (25)

Response DEQ agrees that there is a process relationship between these two requirements; however, permit language was added to Schedule A.4.b.i. to clarify that existing and new commercial facility must also be screened to determine if there is the potential to contribute a significant pollutant load. As a result, the requirements from Schedule A.4.b.ii. were not combined with Schedule A.4.b.i since Schedule A.4.b.ii. requirement only applies to facilities that may be subject to 1200-Z industrial stormwater requirements.

Comment #16 DEQ has a role in reviewing, rejecting or approving construction site runoff ordinances, and must not delay adoption of enforceable ordinance until January 1, 2014. (2)

Response As the permitting authority, DEQ agrees that it has a role and responsibility in reviewing, rejecting or approving construction site runoff ordinances. The permit conditions require the [co]permittee to continue to implement its current construction site runoff program, including enforcing previously established ordinances. These programs often already establish a minimum threshold that is less than the one acre of disturbance required by the DEQ construction site permit (i.e., 1200-C General Permit). The January 1, 2014 date applies to construction site runoff programs, including the revision of enforceable ordinances, which do not already require construction site activities that disturb an area of land as low as 1,000 sf to meet the construction site runoff program requirements. The January 1, 2014 was established to allow adequate time to update and revise the ordinance, and conduct education and outreach to new individuals who may be impacted by the reduction in the minimum threshold.

Comment #17 Construction site inspections need to be conducted more frequently, and inspections should occur in all areas of a construction site. Responsibility to perform on-site inspections is unclear. (1,7)

Response The [co]permittee is responsible for conducting construction site inspections at a frequency and in site locations to ensure the erosion prevention and sediment control (EPSC) plans are properly implemented, including all the areas identified in Schedule A.4.c.v. The frequency of the inspections, as identified in the stormwater management plan or related document that was reviewed by DEQ, reflects a range of the [co]permittee's program resources, and includes pre-, during, and post- land disturbing activities inspections.

Comment #18 Use of sediment fence in clay soils should be banned. (5)

Response DEQ expects the erosion prevention and sediment controls approved by the [co]permittee for use on a site-specific basis will be designed, implemented and maintained to prevent adverse impacts to water quality and minimize the transport of construction-related contaminants to waters of the state. DEQ expects sediment fence will only be approved and used in site-specific situations where it is effective to meet this requirement.

Comment #19 A lower minimum threshold will require homeowners to address erosion control in 2014. Conducting education and outreach related to erosion control should occur. (5)

Response DEQ expects the [co]permittee will conduct construction site runoff education and outreach as part of education and outreach program requirements, as appropriate.

Comment #20 Recommend that a third party, independent consultant or entity conduct the education and outreach effectiveness evaluation. (2)

Response The current permit condition would allow for a third party, independent consultant or entity to conduct the education and outreach evaluation. DEQ does not consider it appropriate to mandate to a [co]permittee that a third party, independent consultant or other entity should be responsible for conducting a permit requirement.

Comment #21 Revise the Permit Evaluation Report (PER) to reflect that the Education and Outreach effectiveness evaluation should focus on assessing changes in targeted behaviors and should not translate to pollutant reduction estimates. (13,16)

Response DEQ disagrees that the PER should be revised to remove or modify reference to the expectation that an effectiveness evaluation should “provide a reasonable estimate of pollutant reductions”. DEQ has acknowledged in the PER that conducting the effectiveness evaluation may be difficult, particularly when identifying and isolating factors that may influence the effectiveness of an education and outreach program are considered. However, DEQ has referenced recent guidance from the Center for Watershed Protection related to designing a quantitative study to monitor public education programs.¹ DEQ encourages the [co]permittee to use this guidance or any other approach based on sound scientific principles to identify a reasonable estimate of pollutant load reductions that can be associated with education and outreach efforts.

Comment #22 Urban ecology, landscape and soil practices should be added to the list of required training for [co]permittee employees. (5)

Response The list associated with training referenced in Schedule A.4.d.vii. represents the type of municipal operations that must be addressed through stormwater pollution prevention and reduction training. DEQ has clarified in the Permit Evaluation Report that topics such as Low Impact Development, urban ecology, water-sensitive landscape designs, and other water quality-related topics must be incorporated into training of municipal staff, where appropriate. In addition, DEQ anticipates this training will engage municipal staff across municipal departments.

¹ Center for Watershed Protection. 2008. Monitoring to Demonstrate Environmental Results: Guidance to Develop Local Stormwater Monitoring Studies Using Six Example Study Designs. Center for Watershed Protection: Ellicott City, MD. pg.SD5-1to SD5-17.

Comment #23	The City of Eugene’s education and outreach program needs to ensure older audiences are reached. Other options, such as television commercial and cooperatives with wide-reaching effects, must be considered. (9)
Response	The Education and Outreach conditions require the City of Eugene to target specific audiences to promote pollutant source control and a reduction of pollutants in stormwater discharges. The permit condition allows the City of Eugene to target older audiences, and DEQ anticipates the City of Eugene will use effective means to reach the targeted audiences based on identified stormwater quality issues or pollutants of concern.
Comment #24	The general public should have the opportunity to participate in all aspects of the BMP revision and update process, and public involvement groups should be allowed to meet public participation and involvement requirements. The requirement must establish an acceptable time and scope for public participation. (1,2,5,13)
Response	<p>DEQ agrees that an effective municipal stormwater management program encourages public participation in the development, implementation and modification of the reducing pollutants. Although every aspect of stormwater program development, implementation and modification may not be appropriate for direct public involvement or participation, DEQ has revised the proposed permit language to provide clarity that the [co]permittee must include provisions in their public involvement and participation approach to receive and consider public comments related to the annual report, all SWMP revisions, and permit renewal application.</p> <p>Ultimately, DEQ encourages each [co]permittee to find approaches, where appropriate, to leverage limited resources while effectively addressing permit conditions. This includes use of public involvement groups. The permit does not limit the use of public involvement groups to address public participation and involvement requirements, but DEQ would expect a [co]permittee would establish a mechanism to coordinate, track and verify success when using this type of coordinated approach to ensure permit requirements were being met, such as annual reporting, SWMP updates, permit renewal application, and the monitoring plan.</p>
Comment #25	Implementation of the [co]permittee’s stormwater program is not appropriate for public involvement and participation, and should be removed as a permit condition. (17)
Response	DEQ disagrees that public involvement and participation related to the implementation of the municipal stormwater program is inappropriate. Although every aspect of implementing a stormwater program may not be appropriate for direct public involvement or participation, at least one [co]permittee has identified at least one activity that involves the public in the direct implementation of a municipal stormwater program (i.e., storm drain stenciling/marketing).
Comment #26	Has DEQ engaged USEPA in funding a joint Low Impact Development (LID) development and implementation similar to Washington? (2)
Response	DEQ has not engaged USEPA to fund a joint LID development and implementation process. However, DEQ will consider, as appropriate, the results of the Washington Department of Ecology’s LID-related efforts funded by USEPA Region 10, and other similar efforts, when iteratively developing Oregon’s municipal stormwater program.

Comment #27	Define predevelopment hydrologic function, Green Infrastructure (GI) and Low Impact Development (LID) in the permit. (2,5)
Response	DEQ has included a definition of LID and GI in the permit to provide additional clarity. DEQ did not define predevelopment hydrologic function since the predevelopment hydrologic function is related to the site-site specific conditions of the property being developed. Furthermore, DEQ identifies the natural surface hydrologic function as a closely-related post-construction program condition, which DEQ believes provides additional clarity to its expectation related to the meaning of predevelopment hydrologic function. As a result, DEQ expects the predevelopment hydrologic function the [co]permittee incorporates into its ordinance, code or enforceable design manual will target natural conditions or, at least, site-specific hydrologic function prior to urbanization.
Comment #28	Basin-scale Low Impact Development (LID) requirements must be established. (2)
Response	DEQ disagrees that Basin-scale LID requirements must be established, but that such requirements may be appropriate in some circumstances, and will be considered as part of the TMDL process.
Comment #29	The state of Washington is taking a more protective approach to incorporating Low Impact Development (LID) in its municipal stormwater program, and therefore, Oregon is not requiring the reduction of pollutants to the Maximum Extent Practicable (MEP). (2)
Response	<p>In recognition of the difficulties regulating discharges from municipal separate storm sewers, USEPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. USEPA envisioned that the evaluative process the permitting authority would undertake to address the MEP standard would “...consider such factors as condition of receiving waters, specific local concerns, and other aspects included in a comprehensive watershed plan. Other factors may include MS4 size, climate, implementation schedules, current ability to finance the program, beneficial uses of receiving water, hydrology, ecology, and capacity to perform operation and maintenance.”² DEQ considered the factors applicable to [co]permittee in Oregon to determine what constitutes the MEP standard. The post-construction permit requirements, including LID-related requirements, reflect DEQ’s analysis of the aforementioned factors, and its determination of what constitutes the MEP standard in Oregon.</p> <p>DEQ acknowledges that the state of Washington’s municipal stormwater program, administered by Department of Ecology, is more evolved than Oregon’s municipal stormwater program. This is partly due to the availability of resources, which has allowed DOE to develop an applicable hydrologic model and stormwater manual.</p>
Comment #30	Post-construction requirements to capture and treat stormwater will not address substantial impacts of unnaturally high, flashy runoff flows on urban streams. Post-construction performance standards should be based on capture and treatment of 90% of the annual average runoff volume. Capturing and treating 80% of the annual average

² December 8, 1999 Federal Register, Vol. 64, No. 235, Page 68754.

runoff volume does not protect water quality. (1,3,4,5)

Response DEQ determined all of the post-construction performance standards identified in Schedule A.4.f.i. are necessary to collectively address the substantial water quality impacts associated with high, flashy runoff flows on urban streams. One of the specific performance standards DEQ identified is the capture and treatment of 80% annual average runoff volume. This performance standard is based upon a review of the requirements currently employed by the MS4 Phase I jurisdictions. Essentially, this 80% annual average runoff volume can be represented by a design storm in the Willamette Valley between a one and two inch/24-hour storm event (e.g., City of Gresham = 1.2inch/24hrs). To help verify this performance standard was appropriate for reducing pollutants to the MEP, DEQ examined technical guidance for federal projects under Section 438 of the Energy Independence and Security Act. In this USEPA technical guidance, EPA identified the 95th percentile storm event as the post-construction performance standard. This translates to a one-inch/24 hrs. storm event in the Portland area.³ As a result, DEQ concluded that capture and treatment of the 80% annual average runoff volume would be appropriate at this time.

Comment #31 Review and minimization of LID barriers was already completed by the Phase I [co]permittee. Codes and development standards that require LID must be adopted. (1,2,4)

Response The Department acknowledges that many of the [co]permittee may have already completed a similar review to address the state's Land Use laws. As a result, this condition also requires that if a code or development standard barrier is brought to the attention of the [co]permittee in the future, the [co]permittee will minimize or eliminate the barrier within three years of becoming aware of the barrier.

Comment #32 The post-construction minimum threshold is inappropriate (i.e., too high). (1,4,5)

Response DEQ disagrees. DEQ identified a minimum threshold that reflects an evaluation conducted by the [co]permittee and reviewed by DEQ. Each evaluation was based on the goal to identify a minimum threshold that would cover an estimated 90% of all new or replaced impervious surfaces within the [co]permittee's jurisdiction, which has been associated with biological impairment in a watershed. DEQ also considered factors such as minimum lot sizes, distribution of land uses, average impervious area associated with single-family dwellings, development patterns, additional resource needs, and the overall benefit/cost of establishing a particular minimum threshold. If a [co]permittee did not conduct an evaluation, the Department assigned the lowest minimum threshold identified by another MS4 Phase I [co]permittee.⁴

Comment #33 Post-construction provisions allow the [co]permittee to reference another document to meet the permit requirements, so the length of time to require an updated design manual must be reduced, which is supported by USEPA Region 10. Will DEQ review the stormwater design manuals to ensure compliance with the permit requirements? DEQ

³ USEPA. Dec. 2009. "Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act". EPA 841-B-09-001. Office of Water : Washington D.C.

⁴ Department of Environmental Quality memo. Guidelines for Determining the Post-Construction Impervious Area Minimum Threshold for the Municipal Separate Storm Sewer System (MS4) Phase I Permits. June 3, 2009.

	should assist the [co]permittee in the development of a regional stormwater manual. (1,4)
Response	DEQ intends to review the stormwater design manuals to ensure compliance with the permit. Although the [co]permittee may reference another manual, DEQ determined that each [co]permittee should have the opportunity and adequate time to develop appropriate ordinances, codes, and enforceable design manuals that consider the unique factors (e.g. soils, geology, landslide hazards) associated with it jurisdiction. DEQ encourages collaboration and coordination for appropriate elements of the design manual, and DEQ anticipates maintaining an ongoing discussion with the [co]permittee through the permit term.
Comment #34	Post-development stormwater runoff duration must be included in Schedule A.4.f.i.2. (5)
Response	DEQ has added runoff duration to this requirement to be consistent with Schedule A.4.f.iii.
Comment #35	Retention is often understood as infiltration. The term retention should be replaced with ‘infiltration and evapotranspiration’. (4,5)
Response	DEQ agrees that infiltration may be confused with being the only approach to retaining stormwater. DEQ has clarified the Permit Evaluation Report by describing approaches to retaining stormwater to include infiltration, evapotranspiration and capture/reuse.
Comment #36	A description of the procedures the [co]permittee will follow when addressing post-construction project compliance must include inspection and enforcement procedures. Permit language similar to Construction Site Runoff Control that states “Include ordinance or other enforceable regulatory mechanism that require...” should be included. (8)
Response	DEQ clarified the requirements in Schedule A.4.f.vi. by incorporating permit language to describe inspection and enforcement procedures. Schedule A.4.f.iii. requires the [co]permittee to develop or reference an enforceable post-construction manual or equivalent document that addresses the post-construction permit conditions, including implementation of Low Impact Development, Green Infrastructure or an equivalent planning, design, and construction approach.
Comment #37	A list of non-structural practices that can be used in place of structural practices where limiting factors exist should be included in Schedule A.4.f.v. Poorly-drained or low permeable soils should not be included as site limiting factors. Particular attention to Low Impact Development (LID) techniques that are inappropriate or impractical for industrial sites must be given. (3,5)
Response	DEQ did not include the list requested. The permit requires the [co]permittee’s post-construction site runoff program prioritize and include implementation of Low Impact Development (LID), optimize on-site retention, and reduce post-development runoff volume, duration and rates by January 1, 2014. These conditions will often necessitate the use of non-structural stormwater practices on a site-by-site basis.

In addition, DEQ expects the [co]permittee will identify the appropriateness of on-site stormwater practices for areas of poorly-drained, low permeable soils, or where industrial land use-related pollutants may be of concern. However, where site conditions limit implementation of on-site stormwater practices, DEQ expects the off-site stormwater quality management requirements the [co]permittee identifies will still address the water quality conditions identified in Schedule A.4.f.i.

Comment #38 Pesticides identified by Salmon Safe should be banned. (5)

Response USEPA Office of Pesticide and Oregon Department of Agriculture (ODA) have the authority to register and restrict the use of pesticides in the U.S. and in Oregon under Federal Insecticide, Fungicide, Rodenticide Act (FIFRA). DEQ does not have statutory authority to ban these pesticides as part of the Municipal Separate Storm Sewer System (MS4) permit requirements. However, DEQ is working with ODA and other state agencies to identify pesticides of most concern to water quality, and developing strategies to reduce pesticide concentrations in surface water and groundwater. Many of the priority pesticides identified by these agencies are also on the Salmon Safe list.

Comment #39 Consider the potential for duplicative permit coverage that could result from the tentative issuance of a Pesticide General Permit and the issuance of the municipal stormwater permit requirements. (16,24,25)

Response DEQ considered clarifying the permit conditions in Schedule A.4.g.ii. to incorporate requirements that would allow the applicable [co]permittee to avoid obtaining coverage under a Pesticide General Permit that DEQ is currently developing. However, due to the municipal stormwater permit reissuance timing, DEQ is not modifying the permit condition in Schedule A.4.g.ii.

Comment #40 Did stormwater management facilities and controls exist in previous permit iterations? If so, why is implementation of the structural stormwater controls operation and maintenance delayed until January 1, 2013? An assessment and update of [co]permittee-owned or operated stormwater structural controls needs to be completed using the LID approach. (1)

Response The [co]permittee previously evaluated flood control structures for water quality and to determine if retrofitting the structures was feasible. In addition, the [co]permittee was required to provide a description of the maintenance activities and maintenance schedule associated with structural controls. Historically, the [co]permittee typically described its catch basin cleaning, stormwater pipe cleaning, and other similar types of activities to address [co]permittee-owned structural controls, and may have created the legal authority to inspect and require effective operation and maintenance of privately-owned facilities to address this requirement.

DEQ expanded on and clarified these previous requirements by adding a general requirement that a structural stormwater control program be implemented by January 1, 2013 to verify that both [co]permittee-owned and privately-owned structural facilities and controls are inventoried, mapped, inspected, operated and maintained. DEQ identified January 1, 2013 as the date to provide the [co]permittee adequate time to update its legal authority, as necessary, to develop a strategy to inventory, map and inspect, both [co]permittee-owned and privately-owned structural stormwater facilities, and continue inspection and maintenance or begin inspection of structural stormwater

facilities accordingly. DEQ anticipates the [co]permittee will consider appropriate modifications to [co]permittee-owned structural stormwater facilities based on applicable Low Impact Development principles as part of the development of its stormwater retrofit strategy.

Comment #41 Revise permit to require interim actions to address hydromodification, and allow the hydromodification assessment, post-construction stormwater management and stormwater retrofit strategy to be incorporated into a holistic basin approach. (2, 13)

Response DEQ developed the hydromodification permit conditions to reflect and account for the current local hydromodification focus or knowledge, and to recognize that there are existing knowledge gaps or uncertainties. As a result, DEQ has determined that identification of specific interim hydromodification actions is infeasible until the hydromodification assessment is complete.

DEQ expects the hydromodification assessment will serve as the foundation for future hydromodification permit requirements. DEQ anticipates the hydromodification assessment will assist in the development of the post-construction performance standards, and may be used to inform the development of the [co]permittee's stormwater retrofit strategy. As a result, DEQ considers it appropriate to address hydromodification, retrofitting and post-construction in a holistic approach, and the approach can be identified in a single, broad document.

Comment #42 Modify date to identify retrofit project from November 1, 2012 to November 1, 2013. (25)

Response The date for identifying the retrofit project was modified to better align the identification with the completion of the stormwater retrofit strategy and hydromodification assessment. DEQ expect each project will still be completed or implemented during the permit term.

Comment #43 More than one retrofit project should be required during the permit term, and criteria for the project (such as size, capital expense, pollutant reduction) should be identified. (2,8)

Response Although DEQ has only required a minimum of one project be completed during this permit term, DEQ expects the [co]permittee will consider and implement or construct additional projects during this permit term based on the implementation of its adaptive management approach. DEQ expects the retrofit project will achieve pollutant reductions to ensure adequate progress towards the applicable TMDL WLAs, and the [co]permittee will consider the cost and the expected pollutant load reduction when considering the appropriate retrofit project.

Comment #44 Permit should require a reliable measure of EIA within 3 years of permit issuance.

Response There are several approaches to evaluating and measuring the reduction of stormwater pollutants, including environmental monitoring, pollutant load reduction modeling, water quality trend analysis, measurable goals, and the use of surrogates, such as EIA. Although DEQ supports the use of EIA as one approach the [co]permittee can use to evaluate the reduction of pollutants, DEQ has incorporated other permit conditions that will be used to evaluate the reduction of pollutants to the MEP, including a TMDL wasteload attainment assessment.

Schedule B: Monitoring, Annual Report, and Permit Renewal Application

Comment #45 Did DEQ consider recommendations contained in the “Urban Stormwater Management in the United States” report? Revise monitoring requirements to improve effectiveness of monitoring. Conduct a statistical power analysis to determine the adequacy of the monitoring frequency in assessing progress during the permit term. (1,2,8,10)

Response DEQ reviewed and incorporated many of the suggestions included in the referenced National Research Council (NRC) report that was release in October 2008. DEQ also expanded on the recommendations, as reflected in the monitoring requirements, based on discussions with DEQ’s Agency Toxics Coordinator, DEQ laboratory staff, USEPA, and with several authors contributing to the NRC report.

Within the structure of the municipal stormwater monitoring program requirements, the [co]permittee must address six monitoring objectives. DEQ acknowledges that addressing the six monitoring objectives will typically require a different monitoring strategy or project design, and resource availability limits the number of sample events, sample locations and pollutant parameters that can reasonably and cost-effectively collected and analyzed during a permit term.

By requiring that each environmental monitoring project, activity or task be based on a monitoring plan that describes the essential elements of a Quality Assurance Project Plan (Schedule B.2.d.), DEQ anticipates the monitoring program will provide additional transparency into the collection, analysis, assessment, and use of monitoring data, ultimately improving the effectiveness of the environmental monitoring. Also, DEQ determined the [co]permittee will need additional time subsequent to permit issuance to incorporate Table B-1 requirements into a monitoring plan in accordance with Schedule B.2.d. DEQ expects the [co]permittee will prepare and submit the monitoring plan for DEQ approval by May 1, 2010.

The minimum environmental monitoring requirements identified in Table B-1 are a based on DEQ’s review of the [co]permittee’s proposed monitoring program. DEQ also considered the extensive resources necessary to conduct a monitoring program to produce quality data, and the importance to appropriately balance the expenditure of limited program resources between implementation and verification of program effectiveness. The monitoring requirements reflect a commitment that the environmental monitoring will contribute to addressing the six monitoring objectives, continue to build datasets that improve the statistical validity of the data, and improve knowledge for the adaptive management of the stormwater programs.

Comment #46 Modify Table B-1 to reflect that the monitoring frequency is per reporting year. (22)

Response The monitoring requirements become effective with the approval of the monitoring plan, no later than July 1, 2011. The annual monitoring requirements in Table B-1 will align with the annual reporting year.

Comment #47 DEQ should affirm that BMP effectiveness may not be amenable to analysis through environmental monitoring (e.g., illicit discharge detection & elimination, education and

	outreach, pollution prevention). (13)
Response	DEQ acknowledges conducting evaluations of specific non-structural BMPs may be difficult, particularly when identifying and isolating factors that may influence the effectiveness of the BMP. DEQ has referenced a recent Center for Watershed Protection and University of Alabama report as one example that provides guidance related to this monitoring issue. ⁵ DEQ also anticipates as the [co]permittee develops the monitoring plan element for each task, the [co]permittee will identify and acknowledge the specific assumptions and rationale of the monitoring approach chosen for BMP effectiveness to clarify the monitoring limitations that may be encountered by the [co]permittee.
Comment #48	Various modifications to Schedule B were not included in accordance with DEQ's comments described in the applicant review response to comment. (16,22,23,25)
Response	DEQ acknowledges this oversight, and has modified the permit language to reflect DEQ's comments and to align with requirements in other municipal stormwater permits that were public noticed.
Comment #49	The use of EPA-approved methods for parameters, such as ortho-phosphorus and metals, may not be the most appropriate analytical procedure for stormwater or instream monitoring. (17,22)
Response	The requirements in Schedule B.3.c-e. currently require that EPA-approved analytical methods (found in 40 CFR 136) be used, and the requirements already allow for other analytical methods to be used, as appropriate.
Comment #50	Instream and biological monitoring may not be the most efficient method for [co]permittee to measure and understand the effectiveness of its stormwater management program. (14)
Response	DEQ considers instream and biological monitoring as important elements of a comprehensive monitoring program, and thus are reflected in the six monitoring program objectives. DEQ considers instream and biological monitoring to be an informative and a cost-effective approach to evaluating long water quality improvements associated with MS4 program effectiveness.
Comment #51	Requiring an agreement for coordinated monitoring may hamper monitoring coordination, and formal agreements should be left to the discretion of the [co]permittee. (14,15,16,17)
Response	DEQ disagrees that establishing an agreement prior to conducting coordinated monitoring will impact coordinated monitoring efforts. DEQ expects each [co]permittee that participates in coordinated monitoring must have an agreed upon understanding of how the monitoring requirements each [co]permittee is responsible for is being addressed.
Comment #52	Requiring the [co]permittee to consider additional pesticide pollutant parameters for

⁵ Center for Watershed Protection. 2008. Monitoring to Demonstrate Environmental Results: Guidance to Develop Local Stormwater Monitoring Studies Using Six Example Study Designs. Center for Watershed Protection: Ellicott City, MD. pg.SD5-1to SD5-17.

monitoring should be removed or clarified. The option to consider additional pollutant parameters must be allowed, since the list provided does not reflect pesticides typically detected in stormwater and may not reflect Oregon Department of Agriculture's pesticide use reporting information. (13,14,15,16,23)

Response DEQ disagrees that a consideration of additional pesticide monitoring, including providing rationale, should be removed. DEQ provided additional clarifying language in the Permit Evaluation Report, and expects to continue dialogue with the [co]permittee as the monitoring plans are prepared to address the pesticide monitoring requirements.

Comment #53 Allowing monitoring plan modification for staff turnover is inappropriate. Unclear justification for allowing entire monitoring plan modification rather than simply adjusting monitoring during period of abnormal conditions. (1)

Response DEQ agrees that allowing monitoring plan modification for staff turnover is inappropriate. DEQ expects the [co]permittee will have contingency plans in place in the event staffing issues occur.

The minimum environmental monitoring requirements in Table B-1 must be conducted by the [co]permittee, unless and until DEQ approves modifications following proper permit modification procedures. In addition, each environmental monitoring activity, task or project must be based on the requirements identified in Schedule B.2.d. These requirements are based on the essential elements of a Quality Assurance Project Plan, and guide the collection of a robust datasets.

For this reason, DEQ does not anticipate that a [co]permittee will modify its entire monitoring plan to address a discrete circumstance beyond the control of the [co]permittee. For example, a [co]permittee may have obtained access to a representative monitoring location located on private property, only to be denied access to the location at some later date. DEQ anticipates in this example that the [co]permittee would only need to modify the monitoring plan to describe the new location for the environmental monitoring activity, task or project.

Comment #54 Monitoring data should be submitted on a quarterly basis. (2)

Response DEQ did not find additional value in requiring monitoring data to be submitted on a quarterly basis due to DEQ's limited resources to review and analyze this data.

Schedule D: Special Conditions

Comment #55 Permits should contain numeric effluents where feasible to do so, based on recent USEPA guidance (Nov. 12, 2010), and should be enforceable. (1,2,4,8)

Response DEQ has determined that numeric effluent limits are not feasible. DEQ, however, has established enforceable BMP-based effluent limits.

Comment #56 Incorporate clarifying language that the SWMP evaluation is due with the Permit Renewal Application Package. (16)

Response	The requirements to evaluate the SWMP are included in Schedule B.6.
Comment #57	No demonstration that Best Management Practices (BMPs) required by the permit will be sufficient to implement applicable Wasteload Allocation (WLA). (1)
Response	The BMPs in this permit will make progress towards achieving the WLA to the maximum extent practicable. In addition, the permit requires the [co]permittee to complete a wasteload allocation attainment assessment that will inform how quickly a wasteload allocation can be achieved. The TMDLs do not expect that the waste load allocations for stormwater will be met within this permit term.
Comment #58	Permit does not consider consequences or repercussions for failing to meet the WLA. (1)
Response	The BMPs in this permit will make progress achieving the WLA to the maximum extent practicable. In addition, the permit requires the [co]permittee to complete a wasteload allocation attainment assessment that will inform how quickly a waste load allocation can be achieved. The TMDLs do not expect that the waste load allocations for stormwater will be met within this permit term.
Comment #59	Permit provisions that allow [co]permittee to identify BMPs that will target TMDL WLAs at a later date, after permit issuance, violate section 402(o) of the CWA. (1)
Response	DEQ disagrees. Pre-existing narrative limits and conditions have been maintained or strengthened. No limits in the new permit are less stringent.
Comment #60	Unclear if DEQ will respond to requests for SWMP revisions. Please include 60-day response to comment in the permit language. (16, 17, 25)
Response	DEQ expects to respond to requests for SWMP revisions as soon as possible, and does not expect the timeframe to extend beyond 60 days. Therefore, the permit language was not modified.
Comment #61	Delete Schedule.D.3.e., as it does not apply to the City of Eugene or Salem. (22,25)
Response	DEQ agrees. Schedule D.3.e. applies to Multnomah County, and therefore the permit condition was removed.
Comment #62	Allowing benchmarks above TMDL WLAs to be set by the [co]permittee affords too much discretion and self-regulation. (1)
Response	DEQ disagrees. The use of benchmarks where numeric effluent limits are not feasible is supported by EPA's Nov. 22, 2002, Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Stormwater Sources and NPDES permit requirements Based On Those WLAs" and the Nov. 12, 2010 revision to this memo.
Comment #63	How will BMP ineffectiveness be determined resulting in the allowance of benchmark instead of implementing additional or revised BMPs. (1)

Response The benchmarks are based on the implementation of the permit conditions and BMPs identified in the SWMP. DEQ will determine effectiveness in meeting the benchmark based on [co]permittee compliance with the permit conditions, including implementation of Schedule A permit conditions and its SWMP, and the completion of a pollutant load reduction evaluation and the water quality trend analysis.

Comment #64 If a TMDL benchmark is established and the [co]permittee continues to fall short of the WLA, is a new benchmark established? If so, how will the [co]permittee achieve the WLA, even to MEP? (1)

Response A TMDL benchmark must establish reasonable progress towards the applicable WLA. Permit conditions in Schedule D.3.d. require the [co]permittee to address any shortfall in achieving the anticipated pollutant load previously established (i.e., benchmark), but also establish a new benchmark (i.e., pollutant load reduction) that shows additional progress above and beyond the previous benchmark.

Comment #65 What is the purpose of the adaptive management requirement, and why is the description not required prior to permit issuance? No assurance adaptive management will occur since no timeframe or standards was provided. Adaptive management should focus on maximizing efficiency and effectiveness. (1,14)

Response The purpose of the adaptive management requirement is to assist the [co]permittee in managing its municipal stormwater programs to address the variability in stormwater quality, complexities related to local resource issues, and the ongoing insights and improvements to stormwater management. DEQ expects more effective feedback, improved ‘learning’, and process transparency will result from the [co]permittee documenting, and implementing, its adaptive management approach, which will improve the efficiency and effectiveness of the programs. However, DEQ determined that [co]permittee required adequate time subsequent to permit issuance to review and consider all of the permit requirements to ensure the [co]permittee focuses its adaptive management approach appropriately.

DEQ included in the permit requirements what the adaptive management approach must include, and also clarified that the adaptive management approach should be conducted, at a minimum, on an annual basis.

Comment #66 Clarify what activities are not considered SWMP revisions. (15,16,23)

Response DEQ included clarifying language in the PER to provide examples of the type of activities that may not require SWMP revisions.

Comment #67 DEQ must require a full assessment of the potential impact of MS4 water quality limited waterbodies. Revisions to SWMPs that reflect updated 303(d) lists release during the permit term are necessary. (2)

Response DEQ has revised Schedule D.2 to require the [co]permittee to evaluate the effectiveness of BMPs in addressing and reducing 303(d) listed pollutants, submit a report summarizing the results of this review, and modify the SWMPs, if necessary, to reduce these pollutants to the MEP.

Comment #68 Add statement to permit that revisions to SWMP are part of adaptive management, and

are not considered permit conditions. Requirement to notify the Department of additions to the SWMP is overly burdensome, punitive and will not enhance requirements or objectives of the permit. (16,17,21,25)

Response The SWMP is incorporated into the permit by reference; therefore, the actions and activities identified in the SWMP are permit conditions subject to permit modification process in accordance with Oregon Administrative Rule 340-045-0040 and 0055. As a result, DEQ did not remove requirement to notify DEQ prior to adding BMPs to the SWMP.

Schedule F: NPDES Permit General Conditions for MS4s

Comment #70 Schedule F.A.6. generally prohibits toxic pollutants, and this general prohibition must be translated into specific effluent limits for MS4 dischargers. (2)

Response DEQ disagrees. The conditions in the permit require the [co]permittee to reduce pollutants to the MEP, including toxics. Schedule F requirements are general conditions for all NPDES permits, as required by USEPA.

General Comments

Comment #71 DEQ incorrectly asserts that the CWA prohibition on anti-backsliding does not apply to MS4 permits. (1,2)

Response DEQ conducted an anti-backsliding analysis and determined that the MS4 permit will satisfy federal and Oregon law by requiring controls that effectively prohibit non-stormwater discharges and that reduce the discharge of pollutants in stormwater to the maximum extent practicable. This renewal permit includes provisions that are expected to result in a municipal stormwater management program that is more effective in reducing pollutants to the maximum extent practicable than the program established under the previous permit. The prohibition on backsliding prohibits permit renewal with less stringent limits. This permit, SWMP and other narrative limits have been preserved or strengthened. DEQ removed referenced statement from the Permit Evaluation Report.

Comment #72 No assurance that total impervious or effective impervious area in any subwatershed is decreasing, and therefore there is no assurance that pollutant loading from the developed areas is decreasing. (8)

Response DEQ disagrees. A reduction of total impervious area or effective impervious area in a subwatershed is not the only method that can be used to determine pollutant loading reductions.

Comment #73 The anti-degradation policy is not applicable to MS4 permits. (1,16)

Response DEQ believes it is unclear whether the Antidegradation Policy in OAR 340-041-0004 applies to MS4 permits given that the Antidegradation Policy is part of the state's WQS, and the permit already requires controls to the MEP and the effective prohibition of non-

stormwater discharges. DEQ has performed an antidegradation review pursuant to the rule, however, and concluded that the measurable future discharge load authorized by the renewal permit does not exceed the discharge load allowed under the existing permit.

Comment #74	Permit does not require timely, on-the-ground changes to address the considerable contribution to water pollution in Oregon from municipal stormwater sources. The permit includes lenient language and fails to provide meaningful standards for effective enforcement. The permit should include clear, specific and measurable performance standards. (1,2)
Response	DEQ reviewed and revised the permit to make the permit conditions more specific and measurable. In Schedule D, DEQ also included requirements that clarified the SWMP measurable goals to ensure the goals were specific. DEQ has included many new or updated permit conditions that DEQ anticipates will further reduce pollutants to the Maximum Extent Practicable. For example, the combination of regulations to minimize new sources of pollution from new developments based on post-construction requirements, and reduce pollution from existing developments based on retrofit requirements, are expected to result in a net decrease in stormwater pollution discharges to the MS4 during the permit term.
Comment #75	A table describing implementation dates for new requirements should be included. (16)
Response	DEQ agrees, and has included an implementation table in Schedule A and Schedule D.
Comment #76	Substantial improvements have been made that address recommendations in the Stormwater Solutions report. The permit requirements are complimentary to Metro's policies and activities. Permit and Permit Evaluation Report appear both thorough and inclusive of elements that will help reduce pollution from stormwater point sources. (4,6,9)
Response	In its comprehensive efforts to improve the MS4 permits as part of this iterative MS4 permitting process, DEQ has conducted many activities. These activities include: a) conducting a review of the permit renewal application, which included such information as the BMP effectiveness in addressing non-stormwater discharges, b) reviewing SWMPs and related program documents, d) evaluating the water quality trend analysis and pollutant load reduction model results, e) reviewing scientific journals and research studies, and f) discussing stormwater management approaches, techniques, controls and strategies with local and national stormwater experts.
Comment #77	DEQ should identify grant funding and other assistance to the local jurisdictions to ensure permit requirements are implemented. (6)
Response	DEQ appreciates the importance of funding and technical assistance in developing and implementing an effective stormwater management program. DEQ will continue to seek grant funding opportunities and provide technical and other guidance, as appropriate.
Comment #78	Various grammatical, spelling and editing to Permit Evaluation Report (PER) is needed. (12,16,17,22,23)

Response	DEQ reviewed and addressed the grammatical, spelling and editing errors and issues in the permit and PER, as appropriate.
Comment #79	Request the implementation dates for the City of Eugene reflect the historic annual report due date of December 1 rather than November 1, which is applicable to other [co]permittees. (22)
Response	DEQ acknowledges this oversight, and has changed the implementation date to December 1 to reflect the historical due date established for the City of Eugene's MS4 annual report submittal.
Comment #80	Revise 'sources covered' under Gresham permit to include areas that will be annexed during the permit term, and include the 'major receiving waterbodies' in areas that will be annexed during the permit term or where the waterbodies were not included due to an apparent oversight. (1,16,25)
Response	DEQ acknowledges the City of Gresham submitted a LUCS and conducted an analysis of areas that will be annexed during the permit term, and regrets this oversight. DEQ has specifically identified these areas in the 'sources covered' section of the permit, and has incorporated PER language to address this and the submittal of a LUCS.
Comment #81	Non-existent or deferred implementation deadlines offer little to no incentive to reduce pollutants to the MEP, and provide no opportunity to comment about appropriateness and lawfulness. (1,8,16)
Response	In the development of implementation dates for new or substantially revised permit conditions, DEQ considered a variety of factors. The implementation dates reflect the Department's consideration and analysis of the resources (personnel, financial, time) needed to complete each action or activity, the current status and future capacity of the local MS4 stormwater management programs and DEQ's municipal stormwater program, and discussions with USEPA Region 10 and other state's stormwater programs. The implementation dates ultimately reflect the Best Professional Judgment of the permit writer.

Ref #	Last Name	First Name	Organization	Address	City	State/Zip
1	Hawley	Andrew	Northwest Environmental Defense Center	10015 S.W. Terwilliger Blvd.	Portland	OR 97219
2	Goldberg	Lauren	Columbia Riverkeeper	724 Oak Street	Hood River	OR 97031
3	Tonry	Claire	StormwaterRx	122 SE 27 th Ave.	Portland	OR 97214
4	Huntsinger	Teresa	Oregon Environmental Council	222 NW Davis St. Suite 309	Portland	OR 97209
5	Cahill	Mary	Green Girl Land Development Solutions	www.greengirlpdx.com		
6	Jordan	Michael	Metro	600 NE Grand Ave.	Portland	OR 97232
7	Swan	Kimberly	Clackamas River Water Providers	14275 S. Clackamas River Dr.	Oregon City	OR 97045
8	Wegener	Brian	Tualatin Riverkeeper	12360 SW Main St.	Tigard	OR 97223
9	Tan	Robert		uoregon.edu		
10	Williams	Hope		uoregon.edu		
11	Meyer	Ben		uoregon.edu		
12	Quirke	Doug		ocwap.org		
13	Baumgartner	Robert	Clean Water Services	2550 SW Hillsboro Highway	Hillsboro	OR 97123
14	Moore	Jeff	Oregon Department of Transportation			
15	Gillaspie	Janet	Oregon Association of Clean Water Agencies	537 SE Ash, Suite 12	Portland	OR 97214
16	Fancher	Steve	City of Gresham	1333 NW Eastman Parkway	Gresham	OR 97030
17	Plataki Parkin Graham Rappoid Lewis Boyce	Boris Gary Guy Kerry John Pete	Clackamas County cities			
18	Seifried	Robin	Cable Huston	1001 Sw Fifth Ave. Suite 2000	Portland	OR 97204
19	Boyce	Pete	City of Gladstone			
20	Kraushaar	Nancy	Oregon City	625 Center St	Oregon City	OR 97045
21	Graham Boone Gilbey	Guy Evan David	City of Lake Oswego	380 A Avenue	Lake Oswego	OR 97034
22	Walch	Therese	City of Eugene	99 East Broadway, Suite 400	Eugene	OR 97401
23	Marriott	Dean	City of Portland	1120 SW Fifth Ave., Room 1000	Portland	OR 97204
24	Peoples	Kim	Multnomah County	1620 SE 109 th Ave	Portland	OR 97233
25	Nottage	Jon	City of Salem	1410 20 th St. SE, Bldg #2	Salem	OR 97302