



Oregon Department of Environmental Quality

Permit Evaluation Report

For Oregon Department of Transportation's National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Individual Permit

Oregon Department of
Transportation
NPDES MS4 Phase I Permit
Permit Evaluation Report
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Final Action

Issuance of National Pollutant Discharge Elimination System individual permit for stormwater discharges from Oregon Department of Transportation's (ODOT's) municipal separate storm sewer system to surface waters of the state.

Permit Category

MS4 Phase I Individual Permit, per Oregon Administrative Rule 340-045-0027, Category III.

Sources Covered Under the Permit

This permit authorizes the municipal separate storm sewer system associated with ODOT owned and/or operated roads, water quality facilities, maintenance yards, rest areas, and other facilities located in ODOT highway right-of-way to discharge stormwater to surface waters of the state.

Source Location

Statewide

Coverage and Eligibility

The effective date of the permit is September 1, 2020. This permit is issued in accordance with Oregon Administrative Rule 340-045-0040. The permit covers ODOT's municipal separate storm sewer system discharges that have a potential to discharge pollutants to waters of the state, or conveyance systems that eventually discharge to waters of the state. The permittee must submit a renewal application 180 days before this permit's expiration date to maintain coverage under this permit.

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Summary of Permit Action

ODOT owns and operates a storm sewer system that serves its road and highway system, and other facilities statewide. Pursuant to ORS Chapter 468B.050, 33 USC§ 1342, and 40 CFR §§122.26 and 122.30-35, ODOT is required to obtain a National Pollutant Discharge Elimination System (NPDES) Permit for its municipal separate storm sewer system (MS4). As requested by ODOT through its initial and subsequent NPDES permit applications, the permit authorizes MS4 discharges on a jurisdiction-wide basis from all portions of the ODOT MS4 throughout the State of Oregon.

ODOT’s previous permit was issued on June 9, 2000 and expired on May 31, 2005. The previous permit was administratively extended when the permit renewal application was submitted in 2004. The permit action renews ODOT’s National Pollutant Discharge Elimination System (NPDES) permit to allow and regulate the discharge of stormwater runoff from the area within its jurisdiction.

This Permit Evaluation Report describes the basis and methodology used in developing the permit.

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1.0 Introduction

This Permit Evaluation Report explains the Department of Environmental Quality's (DEQ's) rationale for the permit conditions in the ODOT MS4 Phase I Individual Permit. This document contains no enforceable conditions. Instead, it provides more information on the permit conditions, and the basis by which they were formed.

DEQ is proposing to issue this NPDES individual permit for stormwater discharges from ODOT's MS4 to waters of the state. In order to reduce the pollutants in urban runoff from entering waters of the state, the permit establishes conditions, prohibitions, and management practices applicable to discharges of stormwater from ODOT's MS4. Specifically, ODOT must continue to implement a comprehensive stormwater management program to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, protect water quality, and to satisfy the applicable water quality requirements of the Clean Water Act.

The MS4 permit program is an important element of DEQ's water quality program. The requirements are based on Section 402(p) of the Clean Water Act, 33.U.S.C. §1342(p), and the U.S. Environmental Protection Agency's regulations permitting municipal stormwater discharges (40 CFR § 122.26 and 123.25; see also 55 FR 47990 [Nov. 16, 1990]; 64 FR 68722 [Dec. 8, 1999] and 81 FR 89320 [Dec. 9, 2016]).

The permit covers all existing and new stormwater discharges from ODOT's statewide MS4.

1.1 Overview

1.1.1 History

The permit is issued pursuant to state law and implements applicable federal and state law. The federal requirements specific to NPDES permits for municipal stormwater systems are set out in 33 USC § 1342(p)(3)(B) and 40 CFR §§ 122.26, 122.30-35, and 123.35. ORS 468.065 and ORS 468B.050 provide specific state authority for the permits. In addition, ORS 468B.035 authorizes the implementation of the federal Clean Water Act (CWA) and regulations adopted under the Act.

Oregon Department of Transportation (ODOT) owns and/or operates a storm sewer system that serves its highway system, associated facilities, rest areas, and maintenance yards.

ODOT owned and/or operated facilities drain runoff from the ODOT right of way into virtually every watershed basin in the state of Oregon. These basins are subdivided into subbasins. The ODOT MS4 discharges to waters of the state throughout Oregon.

The initial permit was issued on June 9, 2000 and has been administratively extended since its expiration on May 31, 2005. ODOT submitted a permit renewal application in 2004, which aided in the formation of this permit renewal. In addition, extensive coordination occurred between the DEQ and ODOT in preparation for this permit. This synchronization included over 35 meetings, multiple iterations of permit plans and timelines, and commitments from both agencies to work together as productively as possible. This coordination will ensure the successful implementation of ODOT's stormwater management program in compliance with this permit for this term, and provides the building blocks for future permit terms as well. The permit renews the 2000 NPDES MS4 Phase I permit. This is the first renewal of ODOT's NPDES MS4 Phase I permit.

DEQ considered the following in writing this permit:

(A) DEQ materials:

1. Administratively Extended ODOT MS4 Individual Permit
2. ODOT Permit Application
3. MS4 Phase II General Permit
4. Multnomah County Phase I Individual MS4 Permit
5. Portland Group Phase I Individual MS4 Permit
6. 1200-CA General Construction Stormwater Permit (Government Agencies)
7. All Oregon TMDL Water Quality Management Plans
8. Correspondence with other water quality programs

(B) ODOT materials:

1. Previously submitted MS4 Annual Reports
2. Routine Road Maintenance: Water Quality and Habitat Guide Best Management Practices (hereafter referred to as the “Blue Book”)
3. Highway Division Hydraulics Design Manual (hereafter referred to as the Hydraulics Manual)
4. Erosion Control Manual: Guidelines for Developing and Implementing Erosion and Sediment Control
5. Environmental Management System (EMS)
6. Standard Specifications
7. Boilerplate Special Specifications
8. Spill Prevention, Control, and Countermeasure (SPCC) Program
9. Operation and Maintenance Guides
10. Winter Maintenance Strategy
11. Correspondence with technical assistance staff

(C) EPA materials:

1. MS4 Permit Improvement Guide
2. NPDES Permit Review Checklist and Checklist Companion
3. Correspondence with EPA Region 10

(D) Other state materials:

1. Washington Department of Transportation NPDES State Waste Discharge Municipal Stormwater Permit and Stormwater Management Plan
2. California Department of Transportation (Caltrans) Phase I MS4 Permit

1.1.2 Stormwater Program Accomplishments

Although the permit has been in administrative extension since 2005, ODOT has continued to create and maintain other programs that aid in compliance with its permit, as well as improving the overall water quality within Oregon. These include:

- (A) Extensive intergovernmental coordination throughout Oregon

- (B) Blue Book
- (C) Hydraulics Manual
- (D) Erosion Control Manual: Guidelines for Developing and Implementing Erosion and Sediment Control
- (E) Environmental Management System (EMS)
- (F) Standard Specifications
- (G) Spill Prevention, Control, and Countermeasure (SPCC) Program
- (H) Water Quality Facility Program
- (I) Operation and Maintenance (O&M) Manuals
- (J) HazMat Program Procedures Guidebook Manual

ODOT has continued to submit Annual Reports, detailing its activities related to stormwater under the umbrella of construction, post-construction, illicit discharge detection and elimination, winter maintenance, public outreach and education, and public involvement. This permit builds upon these already established practices, clarifies the municipal stormwater requirements of ODOT, and establishes a permit that is implementable.

1.2 Legal and Policy Analysis

1.2.1 Antibacksliding Review

This Phase I MS4 Individual Permit requires the permittee to control pollutants discharged through its MS4 to the maximum extent practicable, to protect water quality, and to satisfy the applicable water quality requirements of the Clean Water Act. This MS4 Phase I Individual Permit requires the permittee to implement a comprehensive stormwater management program (SMP) as the primary mechanism to achieve the maximum extent practicable standard required to reduce pollutants in its MS4 discharges.¹

The SMP Document (SMPD) requirements in the permit (when compared to DEQ's previously issued individual permits) reflect DEQ's decision to identify the "*controls necessary to reduce the discharge of pollutants from the MS4 to the MEP*" within the permit itself. Accordingly, the permit contains clear, specific, and measureable provisions to prescribe the continued implementation of specific tasks, BMPs, BMP design requirements, performance requirements, adaptive management requirements, schedules for implementation, as well as maintenance, and frequency of actions as required minimum control measures that must be met. Although such provisions are expressed differently than the comparable provisions in DEQ's previously issued individual permits, DEQ has determined that the provisions in this permit are, in all cases, at least as stringent as those established in the previous individual permits.

1.2.2 Antidegradation Review

Under Oregon's antidegradation policy found at OAR 340-041-0004, DEQ must demonstrate that, when issuing a permit, the discharge will not result in a lowering of water quality from the ambient condition and that it protects existing and designated beneficial uses. DEQ is required to make this demonstration as required under Oregon's Antidegradation Policy for Surface Waters found in OAR 340-041-0004.

The stormwater controls required in the ODOT MS4 Phase I permit are expected to result in discharges that will comply with Oregon's water quality standards. Therefore, the permit limits and requirements will protect the more sensitive of all existing beneficial uses.

¹ See 40 CFR § 122.44(k).

DEQ determined that existing water quality would not be degraded by the issuance of this permit. The stormwater discharges authorized by this permit have been ongoing since the federal regulations requiring an NPDES permit were adopted. This permit is expected to reduce the current level of pollution discharged from ODOT's stormwater-related facilities. DEQ expects the pollution reduction measures implemented by ODOT's MS4 over the term of the permit to offset any expansion of stormwater conveyances systems and outfalls because of the permit requirement to implement a broad range of pollution reduction measures, including measures to address impacts from new development and significant redevelopment. The permit does not set numeric discharge limits. The law recognizes that stormwater discharges are highly variable in nature and difficult to accurately characterize, due to topography, land use, and weather differences (e.g., intensity and duration of storms). The goal of the permit is a net reduction in pollutant loadings over the five-year permit term. Over the five-year permit term, ODOT will implement and/or enhance an identified range of stormwater management control programs to minimize stormwater pollution discharges from existing ODOT-managed transportation infrastructure and facilities. Therefore, the issuance of this permit will protect and improve existing water quality and is consistent with DEQ's antidegradation policy.

1.2.3 Water Quality Limited Waters and Total Maximum Daily Loads

Any waterbody that does not, and/or is not, expected to meet the applicable state water quality standards is described as "impaired" or as a "water quality-limited segment." Section 303(d) of the CWA requires states to identify impaired waterbodies within the state and develop Total Maximum Daily Load (TMDL) management plans for those impaired waterbodies. TMDLs define both wasteload allocations (WLAs) for point sources and load allocations (LAs) for non-point sources that specify how much of a particular pollutant can be discharged from both regulated and unregulated sources, respectively, such that the waterbody will again meet state water quality standards. Oregon's 2018/2020 Integrated Report and 303(d) list contains the water quality-limited waterbodies with and without a TMDL.²

For MS4 discharges to waterbodies subject to a TMDL and/or listed on DEQ's 303(d) list, ODOT must comply with requirements in accordance with 122.44(d)(1)(vii)(A)-(B).

1.2.4 State Statutory Permit Requirements

All water quality permits must meet the requirements of state law. Oregon statutes in general give the Environmental Quality Commission and DEQ broad authority to impose permit requirements needed to prevent, abate, or control water pollution. See ORS 468B.010, 468B.015, 468B.020, and 468B.110. However, direct statutory requirements applicable to discharge permits are more limited. ORS 468B.020 (2)(b) directs DEQ to require the use of all available and reasonable methods necessary to protect water quality and beneficial uses. At a minimum, NPDES permits for regulated MS4s must require the operator to develop, implement, and enforce a SMP designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the applicable water quality requirements under the Clean Water Act. The SMP must include, at a minimum, the stormwater control measures set forth in the federal regulations at 40 CFR § 122.26(d)(2)(iv).

² Oregon DEQ's 2018/2020 Integrated Report is available online at: oregon.gov/deq/wq/pages/2018-integrated-report.aspx

2.0 Permit Coverage and Exclusions

2.1 Cover Page

The cover page provides information about ODOT, description of the stormwater eligible for coverage, major receiving stream information, permit approval authority, and a description of permitted activities. As described, the permit covers existing and new discharges of stormwater from the MS4. The permit does not cover any stormwater discharges to underground injection control systems. Discharges to underground injection control systems are regulated under a separate set of rules derived from the federal Safe Drinking Water Act. With the exception of the allowable non-stormwater discharges identified, the permit prohibits all non-stormwater discharges.

In accordance with state and federal law, NPDES permits will be effective for a fixed term not to exceed five years. This permit will be effective September 1, 2020 and expire on August 31, 2025.

2.1.1 Receiving Water Information

Section 301(b)(1)(C) of the Clean Water Act and regulations at 40 CFR § 122.44 require the NPDES permitting authority to develop limitations in permits necessary to meet water quality standards. A state's water quality standards are composed of use classifications, numeric and/or narrative water quality criteria, and an anti-degradation policy. The use classification system designates the beneficial uses for each waterbody, such as drinking water supply, contact recreation, and aquatic life. The numeric and narrative water quality criteria are the amount of any pollutant deemed acceptable by the state to support the beneficial use classification of each waterbody. The anti-degradation policy represents a three-tiered approach to maintain and protect various levels of water quality and uses.

DEQ authorizes municipal stormwater discharges to surface waters of the state from facilities owned and/or operated by ODOT as listed in Applicability and Notification Requirements section of the permit.

The front page of the permit refers to the Total Maximum Daily Load (TMDL) that establishes wasteload allocations (WLAs) for urban stormwater in basins and subbasins described in Attachment 1 of the permit. The methods by which the permittee is required to address TMDLs will be described once its statewide TMDL Implementation Plan has been updated (Schedule D.2 of the permit).

2.1.2 Sources Covered by this Permit

The permit covers ODOT's owned and/or operated roads, maintenance yards, rest areas, and other facilities located in the ODOT highway right of way throughout the state of Oregon that discharge stormwater to waters of the state.

2.1.3 Permitted Activities

See cover page.

3.0 Applicability and Notification Requirements

This section of the permit describes coverage area and renewal requirements.

4.0 Schedule A – Effluent Limitations, Conditions, & Stormwater Management Program

4.1 Condition A.1- Authorized Discharges

The ODOT MS4 Phase I Individual Permit conditionally authorizes stormwater discharges, and certain types of non-stormwater discharges, provided ODOT complies with the terms and conditions of the ODOT MS4 Phase I Individual Permit.

4.1.1 Condition A.1.a - Requirement to Reduce the Discharge of Pollutants

The permit for ODOT’s discharges must include terms and conditions to reduce the discharge of pollutants from the MS4 to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. ODOT must control pollutants in its MS4 discharges through the following “minimum control measures” outlined in the permit: public education and outreach, public participation and involvement, illicit discharge detection and elimination, construction site runoff control, post construction runoff control, and pollution prevention and good housekeeping. In addition, this permit addresses ODOT’s stormwater retrofit strategy, winter maintenance, and data compilation and mapping as they relate to stormwater discharges.

4.1.2 Condition A.1.b - Water Quality Standards

ODOT’s compliance with the permit conditions, demonstrated through the effective implementation of the required control measures in the permit, will result in discharges that are controlled as necessary to meet applicable water quality standards.

If ODOT becomes aware, or DEQ determines, that a discharge is causing or contributing to a water quality standards excursion, ODOT is required to take immediate corrective actions within 48 hours of discovering the situation to evaluate the cause of the exceedance. Within 30 calendar days, ODOT must notify DEQ in writing that the exceedance is occurring. Within 60 calendar days of discovering the excursion, ODOT must evaluate the effectiveness of the control measures on-site, and identify in a report the corrective actions taken thus far or to be done to ensure that the discharge does not continue to cause an exceedance of water quality standards in the future. ODOT must then submit the report to DEQ. ODOT must implement the corrective actions in accordance with any schedule approved by DEQ.

DEQ may require ODOT to implement additional control measures if a discharge causes or contributes to an exceedance of water quality standards, or if DEQ determines that the discharge will cause or have reasonable potential to cause or contribute to a violation of any applicable water quality standards.

4.1.3 Condition A.1.c – Limitations of Coverage

The permit limits ODOT’s authorization to discharge stormwater associated with industrial or construction activity (as defined in 40 CFR §§ 122.26(b)(14) and (15)) by authorizing such discharges only when they are authorized by the appropriate general NPDES permit, or a separate individual permit (as necessary).

DEQ encourages infiltration of stormwater, but this permit does not authorize the discharge of stormwater to a UIC system. Any owner or operator of any type of Class V underground injection control system must permit through Rule Authorization, a General Permit, or through a Water Pollution Control Facilities individual permit, and must comply with 40 CFR § 144-146, and other measures required in Oregon’s UIC rules (see OAR 340-044).

4.1.4 Condition A.1.d – Allowable Non-Stormwater Discharges

Certain types of discharges unrelated to precipitation events (i.e., non-stormwater discharges), listed in permit Schedule A.1.d, are conditionally allowed to enter into, and thus discharge from, ODOT's MS4. Such allowable non-stormwater discharges cannot be sources of pollution to the waters of the state. ODOT is responsible for the quality of the discharge from its MS4, and therefore has an interest in locating and discontinuing any uncontrolled non-stormwater discharges into its MS4. As described later in this evaluation report (permit Schedule A.3.c.), ODOT must prohibit all other non-stormwater discharges into its MS4.

4.2 Condition A.2- Permittee's Responsibilities

4.2.1 Condition A.2.a – Coordination Among Other Public Entities

ODOT is responsible for compliance with the terms and conditions outlined in the ODOT MS4 Individual Permit related to its MS4 and associated discharges. Implementation of the permit can be shared with other entities. For instance, ODOT may develop an agreement with a city adjacent to its MS4 to implement certain minimum measures within ODOT's jurisdiction. ODOT, if relinquishing implementation responsibility to another entity, must ensure that the minimum measures (or portions thereof) are at least as stringent as required by the permit.

ODOT remains ultimately responsible for compliance with the permit obligations in the event the other entity fails to implement the control measure (or any component thereof).

4.2.2 Condition A.2.b – Maintain Adequate Legal Authority

The permit requires ODOT to maintain adequate legal authority to implement and enforce the required SMP control measures as allowed and authorized pursuant to applicable state law.³ Without adequate legal authority or other mechanisms to control what enters or discharges from the MS4, ODOT cannot perform vital stormwater management functions, such as performing inspections, requiring installation and proper operation of pollutant control measures within its jurisdiction, and/or enforcing such requirements. ODOT must utilize all relevant regulatory mechanisms available to it pursuant to applicable state law to control pollutants into and from the MS4.

As a state agency, ODOT has a different type of legal authority from municipalities. ODOT must summarize its legal authorities to control pollutants in its SMPD as required in Schedule A.2.b. The SMPD must describe how ODOT imposes its requirements, and/or use cooperative agreements with neighboring jurisdictions, to implement the required stormwater control measures based on its unique legal powers under state law.

4.2.3 Condition A.2.c – Stormwater Management Program Document

NPDES permits for MS4 discharges require the operator to implement and enforce a SMP designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.

ODOT is required to annually update a written SMPD.⁴ The SMPD summarizes the physical characteristics of the MS4, and describes how ODOT conducts the required SMP control measures within its jurisdiction. The SMPD

³ See: 40 CFR §§ 122.26(d)(2)(i), 122.34(b)(3)(ii)(B), (b)(4)(ii)(A), and (b)(5)(ii)(B)); *MS4 Permit Improvement Guide*, April 2010. EPA 833-R-10-001.

⁴ 40 CFR § 122.34(b) and *NPDES Municipal Separate Storm Sewer System General Permit Remand, Final Rule* (81 FR 89320, Dec. 9, 2016). *The final rule at § 122.34(b) requires each permit to require the permittee to develop a "written storm water management program document or documents that, at a minimum, describes in detail how the permittee intends to comply with the permit's requirements for each minimum control measure."*

should also describe ODOT’s unique implementation issues such as cooperative or shared responsibilities with other entities.

The requirement for ODOT to develop a SMPD is an enforceable condition of the permit. In general, because the contents of a SMPD are not enforceable permit terms, unless specifically required by the permit, ODOT may create and revise the SMPD as necessary to describe how ODOT meets any permit requirements during the permit term. Updates to the SMPD may therefore occur without DEQ review and approval of each change as a permit modification.⁵

4.2.4 Condition A.2.d,e – SMP Information, Metrics, and Resources

ODOT is required to track indicator metrics and information to document and report on SMP implementation progress. ODOT demonstrates compliance with Schedule A.2.d by fully implementing the requirements of this permit, and through each MS4 Annual Report per Schedule B.

The permit does not specify staffing or funding levels, thus providing flexibility and incentive for ODOT to adopt the most efficient methods to comply with the permit requirements. DEQ encourages ODOT to establish stable funding sources to support ongoing SMP implementation, and to enter into cooperative working relationships with other MS4s.

4.3 Condition A.3 - SMP Control Measures

Schedule A.3 of the permit contains clear, specific, and measurable requirements. For each minimum control measure, specific tasks, BMPs, design requirements, performance requirements, adaptive management requirements, schedules for implementation and maintenance, and/or frequency of actions are outlined. The specific actions and ongoing activities that comprise the minimum control measure are referred to as SMP components. The permit balances implementation flexibility with establishing clear, specific, and measurable permit requirements.

ODOT must demonstrate that it has met the respective compliance dates through the submittal of the MS4 Annual Reports (see Schedule B), and through submittal of the permit renewal application.

ODOT must coordinate with DEQ and provide justification in its MS4 Annual Report if it is unable to meet an implementation deadline.

SMP Control Measures Implementation Schedule

SMP Control Measures	Implementation Deadline
Public Education and Outreach	June 1, 2022
Public Involvement and Participation	June 1, 2022
Illicit Discharge Detection and Elimination	June 1, 2022
Construction Site Runoff Control	June 1, 2022
Post-Construction Site Runoff	June 1, 2023

⁵ NPDES Municipal Separate Storm Sewer System General Permit Remand, Final Rule (81 FR 89320, Dec. 9, 2016).

Pollution Prevention and Good Housekeeping	June 1, 2021
Winter Maintenance Program	June 1, 2022
Stormwater Retrofit Strategy	June 1, 2024

4.3.1 Condition A.3.a – Public Education and Outreach

ODOT is required to address the public education and outreach requirements in 40 CFR §122.34(b)(1). ODOT has conducted a public education and outreach program, as part of its compliance efforts with its prior MS4 permit. DEQ encourages cooperative outreach efforts between communities to continue this effort and intends for the terms and conditions of the permit to inspire additional cross-area or collaborative outreach and education efforts to reach constituents within ODOT’s coverage area.

This condition establishes the implementation deadline of June 1, 2022 for ODOT. Once effective, ODOT must update or continue its existing public education and outreach program and incorporate new program components as necessary.

The goal of the education and outreach program is to reduce the behaviors and practices that cause or contribute to adverse stormwater impacts on receiving waters. The program should promote specific actions to increase audience understanding of how to reduce pollutant discharges in stormwater runoff and prevent illicit discharge from entering the MS4 impacting receiving waters.

ODOT is required to distribute and/or offer a minimum of two educational messages or activities each year of permit coverage, including messages related to construction. The education activities should be focused on the target audiences and the target topics.

The permit requires ODOT to track public education and outreach activities during the permit term. The permittee is required to maintain records of its education and outreach activities. ODOT is expected to keep track of items implemented. For example, ODOT should track what activities are implemented, when the activity occurred and number of people that participated.

The intent of this measurable goal is to document and evaluate the success of the program, by both the permittee and by DEQ, to better focus future education and outreach in subsequent permits.

4.3.2 Condition A.3.b – Public Involvement and Participation

This section of the permit addresses the public involvement and participation requirements consistent with 40 CFR § 122.34(b)(2).

This condition establishes the implementation deadline of June 1, 2022 for ODOT. ODOT must update or continue its existing public involvement and participation program, and impose new program components, as necessary.

ODOT is required to maintain and promote at least one publicly accessible website to provide relevant SMP information to the public. Relevant SMP information includes ODOT’s SMPD, links to relevant public education material, MS4 and other Annual Reports, and easily identifiable (and up to date) contact information such that members of the public may easily call or email to report spills or illicit discharges, and/or ask questions, etc.

ODOT will continue to create, or partner with locally relevant agency/groups for, public involvement opportunities during the permit term, if opportunities are available.

ODOT is also required to maintain records of its public involvement participation activities, and assess the program's progress in every MS4 Annual Report through the permit term.

4.3.3 Condition A.3.c – Illicit Discharge Detection and Elimination

This section of the permit requires ODOT to maintain the ability to prohibit, detect, and eliminate illicit discharges from the MS4, and respond to spills within the MS4 Coverage Area. Stormwater discharges are different from illicit discharges. Stormwater discharges include all pollutants that stormwater picks up while flowing to the MS4. Illicit discharges are not from precipitation events. Illicit discharges are the addition of pollutants to the MS4 because of anthropogenic activities.

ODOT will prohibit non-stormwater discharges into the MS4 (except those conditionally allowed by Schedule A.1.d) to the extent allowable under state law. ODOT must implement follow-up procedures as appropriate and actions to ensure compliance. The procedures must also define the range of illicit discharges covered including, but not limited to the following:

- (A) Septic, sewage, and dumping or disposal of liquids or materials other than stormwater into the MS4;
- (B) Discharges of washwater resulting from the hosing or cleaning of gas stations, auto repair garages, or other types of automotive services facilities;
- (C) Discharges resulting from the cleaning, repair, or maintenance of any type of equipment, machinery, or facility, including motor vehicles, cement-related equipment, and port-a-potty servicing, etc.;
- (D) Discharges of washwater from mobile operations, such as mobile automobile or truck washing, steam cleaning, power washing, and carpet cleaning, etc.;
- (E) Discharges of washwater from the cleaning or hosing of impervious surfaces in municipal, industrial, commercial, or residential areas (including parking lots, streets, sidewalks, driveways, patios, plazas, work yards and outdoor eating or drinking areas, etc.) where detergents are used and spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed);
- (F) Discharges from material storage areas, which contain chemicals, fuels, grease, oil, or other hazardous materials from material storage areas;
- (G) Discharges of pool or fountain water containing chlorine, biocides, or other chemicals; discharges of pool or fountain filter backwash water;
- (H) Discharges of sediment, unhardened concrete, pet waste, vegetation clippings, or other landscape or construction-related wastes;
- (I) Discharges of trash, paints, stains, resins, or other household hazardous wastes; and
- (J) Discharges of food-related wastes (grease, restaurant kitchen mat and trash bin washwater, etc.).

ODOT has implemented an IDDE program and spill response program since the initial issuance of its individual MS4 permit in 2000. An IDDE program, including the enforcement and tracking of such a program, is necessary to avoid illicit discharges or improper disposal. ODOT will coordinate with DEQ when illicit discharges occur. As a transportation agency, with a distinct mission and unique agency structure within the context of the state of Oregon, limitations exist on ODOT's enforcement abilities for illicit discharges. ODOT is allowed to enforce on infrastructure-related illicit connections. The permit requires ODOT to develop an enforcement and response

procedure statewide. The permit requirement is designed to ensure clarity and consistency in response actions across ODOT districts and regions by focusing resources on the most important violations and violators.

DEQ has also included permit requirements to demonstrate improved communication between permittees to encourage consistency and timely responses to illicit discharges. For example, this permit condition requires ODOT to notify and coordinate with the authority with jurisdictional oversight if the source of an illicit discharge originates outside of the jurisdictional area of ODOT.

Sources of illicit discharges are often intermittent or mobile, yet the frequency or severity of such discharges can have lasting effects on water quality. The nature, extent, and conclusions of each inspection should be recorded with the original complaint to provide a full picture of each incident. This record provides detailed information about the types and locations of discharges, their possible sources, and other information pertinent to targeting future inspection, outreach, and education activities. Additionally, accurate and complete documentation of an incident will provide better evidence to support potential citation or civil penalty cases when needed.

ODOT must have systems and protocols in place to track calls from the public, and direct reports of discharges/dumping to appropriate staff and/or emergency response authorities. Staff assigned to handle calls should be trained in stormwater issues and emergency response to gather and transfer accurate information to responders. Conducting an investigation as soon as possible after the initial complaint report is crucial to the success of this program.

DEQ maintains that ongoing field screening activities play an important role in a comprehensive illicit discharge detection and elimination program. ODOT currently instructs its crews to conduct road patrols, in order to regularly observe stormwater-related facilities. Road patrols are conducted more frequently in areas of high traffic or of resource concern. Issues are addressed immediately or scheduled appropriately. Allowing ODOT to be more efficient with time, these screenings will occur through routine maintenance inspections, and general observations and road patrols. These screenings will allow appropriately trained staff to quickly determine whether an illicit discharge is present at a given site.

Each employee involved in the program must have training in screening for illicit discharges. Training should be conducted for each employee at least once per permit term.

The program's progress will be tracked and documented. Each MS4 Annual Report should include a summary of all activities involving illicit discharge.

4.3.4 Condition A.3.d – Construction Site Runoff Control

ODOT must continue to implement a program that prevents and/or controls the discharge of pollutants in stormwater runoff from construction sites. Construction sites that disturb one acre or more of land are covered by the current construction stormwater general NPDES permit. However, the construction site runoff control requirements in this permit are needed to demonstrate that ODOT controls ground-disturbing construction site discharges into its MS4, regardless of size.

ODOT operates its program under many regulatory requirements, including but not limited to the Clean Water Acts Section 404 Permits and accompanying Clean Water Act Section 401 Certifications (administered by DEQ), and the Federal Aid Highway Programmatic (FAHP). ODOT describes the FAHP⁶ as:

⁶ See webpage at <https://www.oregon.gov/odot/GeoEnvironmental/Pages/ESA.aspx>.

The Federal Aid Highway Programmatic (more completely, the “Endangered Species Act Programmatic Biological Opinion and Magnuson-Stevens Act Essential Fish Habitat Response for the Federal-Aid Highway Program in the State of Oregon”) is a pair of ESA biological opinions (Opinions), which we collectively refer to as “the FAHP.” These Opinions were issued by National Marine Fisheries Service and US Fish and Wildlife Service to authorize take to species and habitat within their respective jurisdictions by projects wholly or partially funded by the Federal Highway Administration (FHWA). Other than maintenance projects, the great majority of ODOT projects are funded in this manner. These authorizations are limited and conditioned upon FHWA (through ODOT) implementing certain best management practices and design criteria for all covered activities that effect ESA-listed fish and their critical habitat.

ODOT has erosion and sediment control programs in place already, documented in the Hydraulics Manual; Erosion Control Manual: Guidelines for Developing and Implementing Erosion and Sediment Control, the Blue Book, Standard Specifications, and other relevant special provisions for temporary stormwater management.

The main elements of the permit conditions in this section include requiring the implementation and maintenance of BMPs and preventing or controlling site construction wastes from discharging offsite through the documentation and upkeep of existing ODOT programs. DEQ expects ODOT will describe, within its SMPD, the actions and activities ODOT will implement to ensure the discharge of pollutants in stormwater runoff from construction sites is prevented and controlled accordingly. ODOT will describe how it will ensure the development and implementation of construction site plans that appropriately incorporate Low Impact Development/Green Infrastructure, or an equivalent planning, design, and construction approach. This concept also ties into ODOT’s Retrofit Program, discussed in Section 4.3.8, below.

Each ODOT employee or contractor involved in the program must have training in Erosion and Sediment Control Plan enforcement of ODOT’s requirements. More specialized training is required for ODOT employees and contractors who conduct plan review and site inspections. Training opportunities will continue to be provided by ODOT annually.

The program’s progress will be tracked and documented. Each MS4 Annual Report should include a summary of all activities involving Construction Site Runoff.

4.3.5 Condition A.3.e – Post-Construction Site Runoff Control

This permit condition requires ODOT to continue to control and manage its post-construction site runoff. ODOT operates its program under many regulatory mechanisms, including but not limited to the Clean Water Act Section 404 Permits and accompanying Clean Water Act Section 401 Certifications (administered by DEQ), Endangered Species Act (ESA) Biological Opinions (BOs) including the Federal Aid Highway Programmatic (FAHP), local ordinances and/or permits, and others.

Urbanization’s negative impact on water quality with its creation of impervious surfaces is well established.⁷ EPA’s research shows a linkage between low total or effective impervious surface area and changes in stream biotic assemblages. Moreover, through Endangered Species Act Section 7 Biological Opinion, the National Marine Fisheries Service requires post-construction site runoff controls when the Army Corps of Engineers permits stormwater, transportation, and utility projects creating new impervious surfaces. This permit includes

⁷ U.S. EPA. The Causal Analysis/Diagnosis Decision Information System Volume 2: Sources, Stressors and Responses.

requirements to look for opportunities that include both non-engineered and engineered stormwater controls in existing development.

This condition requires ODOT to continue to prioritize the use of the Low Impact Development/Green Infrastructure (or equivalent) approach to stormwater management, where possible, to minimize of the creation of impervious surfaces and minimize stormwater volume. This condition requires ODOT to continue to prioritize green infrastructure when engineered stormwater controls are needed to remove pollutants from stormwater or to further reduce stormwater volume prior to discharging.

ODOT currently implements post-construction stormwater management under many different regulatory mechanisms, which DEQ, and other regulatory agencies, have deemed sufficient and effective in retaining and/or treating stormwater. ODOT incorporates the technical standards required by the permit through its FAHP, as well as through its Hydraulics Manual, the Blue Book, Environmental Management System (EMS), O&M Manuals, the Water Quality Facility Program, and any other relevant special specifications for post-construction stormwater management.

Because ODOT is a transportation agency, its MS4 is distinct from many other Phase I MS4s in terms of impervious surface. Most of ODOT's MS4 consists of roads and other linear impervious surfaces. When ODOT initiates a project that will result in ground disturbance, its regional permits prescribe a treatment standard threshold based on the total amount of impervious surface, including both the new impervious surface, and the redevelopment of the pre-project impervious surface. During its negotiations for these regional permits, this over-treatment was the most pragmatic solution to estimating impervious area, as it allows for a more efficient regulatory process during project initiation. This results in more treatment than would normally occur, and cleaner discharge into the waterways.

ODOT is also unique in its approach to stormwater controls. As a transportation system, with other regulatory requirements to meet, hydromodification impacts have been characterized. DEQ determined that the treatment standards that ODOT follows as part of other regulations are sufficient to mitigate ODOT's impacts on water quality, as they relate to erosion, sedimentation and/or alteration of stormwater flow, volume, and duration. Therefore, no formal hydromodification assessment was previously, or is anticipated to be conducted.

The permit condition allows for alternative mitigation or treatment alternatives where appropriate. ODOT may apply an alternate standard if that alternative is deemed to be equally protective, or more protective, to the onsite stormwater management design standard as articulated in this permit.

The operation and management of ODOT-owned stormwater management facilities is currently addressed in ODOT's Blue Book, EMS, and facility-specific O&M Manuals or facility-type O&M Guides, and is summarized in ODOT's SMPD. Stormwater facility information will be compiled electronically in the future through the MS4 Data Compilation effort described in Section 7.1 below.

Each ODOT employee or contractor involved in the program must have training in post-construction site runoff, and O&M practices. More specialized training is required for ODOT employees and contractors that conduct reviews of plans or evaluate compliance with long-term O&M requirements. Training should be conducted for each type of participant at least once per permit term.

The program's progress will be tracked and documented. Each MS4 Annual Report should include a summary of all activities involving Post-Construction Site Runoff.

4.3.6 Condition A.3.f – Pollution Prevention and Good Housekeeping

Municipal operation and maintenance is an integral part of any SMP, and, when coupled with good housekeeping and pollution prevention principles, reduces the risk of water quality problems from MS4 discharges. These provisions require the implementation of an operation and maintenance program that includes a staff-training component, and articulates as its goal the prevention or reduction of pollutant runoff from municipal operations.

ODOT is required to ensure compliance with this condition by June 1, 2021.

This permit condition outlines the requirements for ODOT to continue implementing its EMS Program, inspect and clean catch basins on an as-needed basis, implement the Integrated Vegetation Management Plan (IVM Plan), control litter, and ensure appropriate materials disposal.

This permit condition requires ODOT employees to receive appropriate training once per permit term.

This permit condition requires that ODOT maintain records of its Pollution Prevention and Good Housekeeping program and summarize activities in the MS4 Annual Report.

4.3.7 Condition A.3.g – Winter Maintenance Program

As climate conditions continue to change, so must the approaches taken to ensure the safety and security of people and the environment. ODOT will continue to implement a winter maintenance program to provide safe roadways for commuters. DEQ seeks to establish reporting requirements for winter maintenance material use and storage, as a way to understand if, how, and where they impact water resources in Oregon. This permit condition is not intended to conflict with other permit conditions or regulatory mechanisms.

In this permit, ODOT is required to implement the EMS program, which directs ODOT maintenance yards on proper storage of winter materials, including solid salt, deicers (such as MgCl₂), sand, and gravel. ODOT is required to utilize its Blue Book to ensure proper use of these materials.

ODOT conducted a pilot project (entitled *Assessing the Impact of the ODOT Winter Salt Pilot Project on Neighboring Streams and Groundwater*) on select stretches of highway in Oregon, to determine how to integrate the use of salt with the snow-fighting tools that were already being implemented. The results of the pilot should be finalized during the permit term. The permit condition specifies that DEQ will receive a copy of these results. This study will likely result in many more studies to understand how winter maintenance practices impact waterways in Oregon. ODOT created the Winter Maintenance Strategy as a living document to adaptively manage its current winter maintenance materials practices, and will share this document with DEQ and the public as it is updated. DEQ is working to understand the effect that salt and other winter materials have on waterways throughout Oregon, and will work collaboratively with ODOT to continue research and employ the best available technologies.

The goal of the winter maintenance condition in the permit is to begin to understand how these materials impact our environment. As more municipalities integrate salt into existing winter maintenance programs, more information will be available to analyze statewide trends and effects. As a result, DEQ will be able to make determinations for the future. More detail on winter maintenance data is provided in Section 7.1.

This permit condition requires ODOT to provide appropriate training opportunities annually, such that winter operation and maintenance activities are conducted properly and with attention to potential water quality impacts.

This permit condition requires that ODOT maintain records of its Winter Maintenance program and summarize activities in the MS4 Annual Report.

4.3.8 Condition A.3.h – Stormwater Retrofit Strategy

The historic focus of stormwater management in urban areas in Oregon was generally related to drainage problems and flooding. As a result, water quality impacts caused by urbanization and the related stormwater quality management issues have increasingly been documented. Stormwater retrofits help improve water quality by providing stormwater treatment in locations where practices previously did not exist or were ineffective. DEQ acknowledges that it may take decades or longer to address the water quality impacts from existing infrastructure.

In the past, ODOT implemented a retrofit strategy that included the elements required in this permit. All planned phases were executed, but no new priorities were identified at that time. This permit condition acts as a formal inclusion of this program to ODOT's SMP. This permit condition reflects changes in both ODOT and DEQ policies and practices since the issuance of the last permit. It requires ODOT to begin developing a stormwater retrofit strategy, including objectives and rationale. In addition, the permit requirements direct ODOT to develop a Stormwater Retrofit Strategy Document to summarize current efforts and costs and evaluate new stormwater control measures. ODOT is also required to begin identifying high priority retrofit areas, preferred stormwater control measures or approaches, and provide an estimated timeline and cost if the retrofit strategy were to be implemented.

DEQ acknowledges that ODOT will be gathering information on its MS4 for the first part of the permit term (See Section 7.1 below or Schedule D.1 in the permit). ODOT must, at minimum, begin work on the development and implementation of a comprehensive stormwater retrofit strategy. DEQ also acknowledges that there are many projects slated for implementation during the permit term, through the Statewide Transportation Improvement Program (STIP). ODOT's aim is to prioritize the implementation of projects that would not otherwise be funded through the STIP.

DEQ expects ODOT's efforts to address this permit condition will reflect current status, with the understanding that the development and implementation of a retrofit strategy will require an ongoing, systematic evaluation, modification, and implementation over multiple NPDES permit cycles. The retrofit strategy plan will be used in the development of stormwater retrofit requirements in subsequent permits, and the plan will be adjusted as new information, costs, opportunities, technology, and timelines become available.

DEQ expects ODOT will consider a variety of issues and concepts in developing the stormwater retrofit strategy. This includes how stormwater quality problems or pollutants of concern will be targeted (such as applicable TMDL wasteload allocations); consideration of local development factors and existing conditions; and potential to complement other resource, restoration, or municipal planning efforts, where applicable. DEQ anticipates ODOT will incorporate Low Impact Development, Green Infrastructure or an equivalent planning, design and construction approach in the development of its retrofit strategy.

This permit condition requires that ODOT maintain records of its Stormwater Retrofit program and summarize activities in the MS4 Annual Report.

5.0 Schedule B — Monitoring and Reporting Requirements

5.1 Condition B.1,2 – Compliance Evaluation and MS4 Annual Report

ODOT is required to submit an evaluation of its progress toward implementing the SMPD control measures and its conditions described in Schedule A, as well as any applicable Special Conditions described in Schedule D. This will be included in the MS4 Annual Report submitted to DEQ by June 1 each year, beginning in 2021.

ODOT's first MS4 Annual Report under the new permit conditions will include a reporting period of January 1, 2020 - December 31, 2020 but will have a longer report preparation period. This will allow ODOT to provide a more comprehensive annual report under the new permit conditions.

5.2 Condition B.3 – Applicable Monitoring Requirements

If ODOT conducts monitoring during the permit term, it will submit any monitoring data taken at outfalls in an impaired waterbody or a waterbody with an approved TMDL to DEQ.

5.3 Condition B.4 – Submissions

ODOT will submit its MS4 Annual Report in both unbound hard copy with a wet signature, and electronic copy. Once ODOT receives instructions to submit electronically, via e-Reporting, it will not be required to submit a hard copy, but may be required to adjust its format at a later date. The current address to submit the MS4 Annual Reports and related submittals is provided in the permit.

5.4 Condition B.5 —Recordkeeping

This section describes ODOT's responsibilities to retain information pertaining to this permit. Records must be retained for a period of at least five years from the permit compliance action date, or for the term of the permit, whichever is longer. ODOT must have these records made available to DEQ and the public.

6.0 Schedule C – Compliance Schedule

A compliance schedule was not specified for this permit.

7.0 Schedule D – Special Conditions

7.1 Condition D.1 – MS4 Data Compilation

In order to understand the impacts of stormwater on the waters in Oregon, it is important to obtain and compile information about what, where, and when stormwater pollutants enter waterways. This is especially important for ODOT, as its MS4 is statewide.

ODOT has been collecting data since the previous permit was released in 2000, for many different purposes. As a result, data is not stored in a single collective database, but instead, spread across multiple regions, districts, and programs. The purpose and goal of this condition of the permit is to compile stormwater-related data to help ODOT and DEQ understand the ODOT MS4 on a jurisdiction-wide basis. ODOT will consolidate information on outfalls, conveyances, stormwater controls, and water quality facilities to one digital location for use in better understanding stormwater discharges from the ODOT system. The compilation must also include information

from past monitoring efforts, and other data and/or research opportunities. This process will also aid in identifying data needs for the Stormwater Retrofit Strategy and future TMDL implementation plan updates. Periodic meetings with DEQ and ODOT may occur, as appropriate, to discuss the progress of the data compilation effort.

With regard to winter maintenance materials and its impact on water quality, both the data that ODOT can contribute, and the data that DEQ needs to be able to make determinations, are both unclear at the time of issuance of this permit. Therefore, rather than requiring any additional specific data submission, the requirement is to continually coordinate with DEQ, and contribute data or ideas on relevant data when opportunities present themselves throughout the permit term. The permit only provides ideas for potential data sources that may prove useful for understanding water quality with respect to winter maintenance.

Once this data compilation process is complete, ODOT will produce a report that identifies gaps in geography or subject areas. This will be submitted to DEQ with the permit renewal application (the fourth MS4 Annual Report, due June 1, 2024).

Because this data compilation effort will be complete before the permit expiration date, ODOT and DEQ can then collaborate on how to close data gaps identified in the analysis. ODOT provided some suggested additional potential data types to collect in its SMPD.

ODOT will track the progress toward implementing this permit condition in each MS4 Annual Report.

7.2 Condition D.2 – Requirements for Discharges to Impaired Waterbodies

ODOT will be updating its statewide TMDL plan by June 1, 2023, and it will include all approved and applicable TMDLs that are approved by EPA before the effective date of this permit. Applicable TMDLs include those where ODOT is listed as a designated management agency (DMA) or otherwise responsible for discharges of listed pollutants in a given waterbody. The table in Attachment 1 of the permit shows which TMDLs apply to ODOT at the time of permit issuance.

8.0 Schedule F – Standard Conditions

The general conditions that are applicable to all NPDES permits are included in this section. They address operation and maintenance, monitoring and record-keeping, and reporting requirements. DEQ recognizes that some of these conditions do not readily apply to municipal stormwater discharges. However, the stormwater permits are NPDES permits, and these conditions are required for all such permits. Where a conflict exists, the general conditions included in this section are superseded by the conditions in Schedules A and D.