

State of Oregon
Department of Environmental Quality

October 1, 2008

**Benjamin Benninghoff, Stormwater Coordinator
Surface Water Management, Water Quality Division**

Subject: PRELIMINARY DRAFT PERMIT TEMPLATE

The Oregon Department of Environmental Quality (ODEQ) Stormwater Program has created a preliminary draft permit template (template) to assist in the development of the Phase I municipal separate storm sewer system (MS4) National Pollutant Discharge Elimination System (NPDES) individual permits set for reissuance in 2009. The template represents the common format and content that ODEQ is considering for the seven Phase I MS4 NPDES individual permits that will be implemented by 33 jurisdictions¹. This template is being provided for informational purposes and to encourage public input as part of this informal public process.

The current Phase I MS4 NPDES individual permits are available for comparison on the ODEQ's website at: www.deq.state.or.us/wq/stormwater/municipalplh1.htm. A technical support memo has also been created to provide background information and rationale for the format, structure and content of the template.

The preliminary draft permit template and technical support memo are living documents, and may change based on continued discussion with the permittees, public input or as additional information may become available. The Phase I MS4 NPDES draft permit for individuals or groups may differ from this template based on specific watershed issues (e.g., Total Maximum Daily Loads), urban area characteristics, or other issues unique to a permittee or co-permittee.

ODEQ will accept informal written comment on this preliminary draft permit template through November 14, 2008. Written comment may be submitted to Benninghoff.Benjamin@deq.state.or.us or mailed to 811 SW 6th Ave., Portland, OR 97402-1390. ODEQ will also be holding two discussion forums to provide another opportunity to provide input. If you have any questions, please contact Benjamin Benninghoff, ODEQ Municipal Stormwater Coordinator at #(503) 229-5185.

Discussion Forums

**October 29, 2008
2:00p.m.-5:00p.m.
1102 Lincoln St., Eugene, OR 97401
Suite 210**

**November 4, 2008
2:00p.m.-5:00p.m.
811 SW 6th Ave., Portland, OR 97204
Floor 10, Rm. EQC-A.**

¹ **City of Portland** including Port of Portland and Multnomah County; **City of Gresham** including City of Fairview and Multnomah County; **Clean Water Services** including Banks, Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, North Plains, Sherwood, Tigard, Tualatin, and Washington County; **Clackamas County** including Clackamas County Service District #1, Gladstone, Happy Valley, Johnson City, Lake Oswego, Milwaukie, Oregon City, River Grove, West Linn, Wilsonville, and Oak Lodge Sanitary District; **City of Salem**; and **City of Eugene**

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)
Preliminary Draft Permit Template

PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, the co-permittee is authorized to implement a stormwater management program to reduce the contribution of pollutants in stormwater to the maximum extent practicable (MEP), to address applicable Total Maximum Daily Load (TMDL) waste load allocations, and to discharge municipal stormwater to waters of the state, in conformance with all the requirements and conditions set forth in the attached schedules. Where conflict exists between specific conditions (found in Schedules A-D) and general conditions (Schedule F), the specific conditions supersede the general conditions.

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SCHEDULE A

Controls and Limitations for Stormwater Discharges from Municipal Separate Storm Sewer Systems

1. Prohibit Non-stormwater Discharges

Except as provided in subsection 4.a.vii, and except as provided by another NPDES permit, non-stormwater discharges into the MS4 are prohibited.

2. Implement the Stormwater Management Plan

Each co-permittee must implement, enforce, and measure the effectiveness of its Department-approved Stormwater Management Plan (SWMP). The SWMPs and any Department-approved amendments thereto, are hereby incorporated into the permit by reference. Each co-permittee is responsible for compliance with this permit only within its jurisdiction, and is not responsible for compliance outside its jurisdiction. The SWMPs are located in DEQ file number XXXXX.

- a. For the [Co-Permittee Name]: The SWMP is the proposed SWMP submitted with the NPDES permit re-application and received by the Department on XXX and any subsequent changes made to the SWMP in accordance with the conditions of this permit.
- b. For the [Co-Permittee Name]: The SWMP is the proposed SWMP submitted with the NPDES permit re-application and received by the Department on XXX and any subsequent changes made to the SWMP in accordance with the conditions of this permit.
- c. For [Co-Permittee Name]: The SWMP is the proposed SWMP submitted with the NPDES permit re-application and received by the Department on XXX and any subsequent changes made to the SWMP in accordance with the conditions of this permit.

3. Reduce Pollutants to the Maximum Extent Practicable

Each co-permittee must reduce the discharge of pollutants from the MS4 to the maximum extent practicable. Compliance with the permit and implementation of the SWMP is deemed to be compliance with this MEP requirement, unless or until the Department reopens the permit as provided in Oregon Administrative Rule (OAR) 340-045-0040 and 0050 to require additional controls.

4. Stormwater Management Program Requirements

Each co-permittee must implement a Stormwater Management Plan (SWMP) that includes management practices, control techniques, and provisions for reducing the discharge of pollutants to the maximum extent practicable as described in subsection a-h.

- a. **Illicit Discharges:** Co-permittees must implement and enforce a program to detect and remove illicit discharges to the MS4. The program must:
 - i. Prohibit, through enforceable ordinance or other regulatory mechanism, non-stormwater discharges into the permittee's MS4.
 - ii. Conduct on-going field screening activities during the term of the permit.
 - iii. Require investigations of portions of the MS4 that, based on the results of field screening or other relevant information, indicate a reasonable potential of contributing illicit discharges or other non-stormwater to the system.
 - iv. Prevent, contain, and respond to spills that may discharge into the MS4.
 - v. Promote public reporting of illicit discharges and maintain a system for documenting and responding to public complaints relating to illicit discharges.
 - vi. Include measurable goals to be achieved during the term of the permit.
 - vii. Unless identified as a significant source of pollutants to waters of the state by any co-permittee or the Department, the following non-stormwater discharges need not be addressed by the co-permittee's illicit discharge program, provided appropriate BMPs, designed to minimize the impacts of such sources, are developed under the SWMP: water line flushing; landscape irrigation; diverted stream flows; rising ground waters; uncontaminated groundwater infiltration; uncontaminated pumped ground water; discharges from potable water sources; start up flushing of groundwater wells; aquifer storage and recovery (ASR) wells; potable groundwater monitoring wells; draining and flushing of municipal potable water storage reservoirs; foundation drains; air conditioning condensate; irrigation water; springs; water from crawl space pumps; footing drains; lawn watering; individual residential car washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; street wash waters; discharges of treated water from investigation, removal and remedial actions selected or approved by the Department pursuant to Oregon Revised Statute (ORS) Chapter 465, the state's environmental cleanup law; and discharges or flows from emergency fire fighting activities where discharges or flows from fire fighting are identified as not significant sources of pollutants to waters of the state.

- b. **Industrial and Commercial Facilities:** Co-permittees must implement a program to limit pollutants in stormwater discharges to the MS4 from facilities that are subject to a Department-issued industrial stormwater NPDES permit. Unless covered under a Memorandum of Agreement with the Department to act as an agent for the industrial stormwater permits, co-permittees must:
 - i. Screen existing and new businesses to determine whether they are subject to an industrial stormwater NPDES permit.
 - ii. Notify the Department of businesses subject to an industrial stormwater NPDES permit within 30 days after businesses are identified.
 - iii. Where co-permittees have identified industrial or commercial areas that they determine are contributing a substantial pollutant loading to the MS4, they must establish priorities, procedures and measurable goals for inspecting and implementing control measures for such discharges.

- c. **Construction Sites:** Co-permittees must implement and enforce a program to reduce pollutants in stormwater runoff to the MS4 from construction activities that result in a land disturbance of more than 1,000 square feet. The program must:
 - i. Include ordinances or other enforceable regulatory mechanism that requires erosion and sediment controls designed to prevent adverse impacts to water quality.
 - ii. Require construction site operators to develop site plans and implement effective erosion and sediment control best management practices.
 - iii. Require construction site operators to prevent or control non-stormwater waste that may cause adverse impacts to water quality such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste.
 - iv. Conduct site plan reviews; perform on-site inspections and follow-up enforcement actions.
 - v. Provide education and training to construction site operators.
 - vi. Include measurable goals to be achieved during the term of the permit.

- d. **Education and Outreach:** Co-permittees must implement an education and outreach program designed to achieve measurable changes in target audience's behaviors. The co-permittees must:
 - i. Distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff.
 - ii. Provide public education on the proper use and disposal of pesticides, herbicides, fertilizers and other household chemicals identified by the co-permittees.
 - iii. Implement or participate in an effectiveness evaluation to measure the success of public education activities during the term of this permit. The effectiveness evaluation shall focus on quantifying changes in targeted behaviors and the results shall be used in adaptively managing the education and outreach program.
 - iv. Include, as appropriate, educational activities, controls such as permits, certifications and other measures for commercial applicators and distributors, and controls for application of pesticides, herbicides and fertilizers in public rights-of-way and at municipal facilities.
 - v. Include training for municipal employees based on training materials available from the Department, Environmental Protection Agency (EPA), or other organizations. The

- training must focus on pollution prevention and reduction from municipal operations and stormwater pollution from activities including but not limited to park and open space maintenance, fleet and building maintenance, new municipal facility construction and related land disturbances, design and construction of street and storm drain systems, and stormwater system maintenance.
- vi. Include measurable goals to be achieved during the term of the permit.
- e. **Public Involvement and Participation:** Co-permittees must adopt a public participation process as a part of their on-going stormwater management program that provides opportunities for the public to participate in the development, implementation and adaptive management of the co-permittee's SWMP. The process must include provisions for receiving and considering public comments on the SWMP and the TMDL pollutant load reduction benchmark evaluation conducted as part of the permit renewal application process. This public involvement and participation requirement does not apply to adding BMPs, and revisions or updates to existing BMPs that do not change the substance of the BMPs.
- f. **Post-Construction Stormwater Management:** Co-permittees must implement and enforce a program to control pollutants in stormwater runoff from new development and redevelopment projects that create or disturb 5,000 square feet or more of impervious surface. The program must ensure that controls are in place to prevent or minimize water quality and quantity impacts. The co-permittees must:
- i. **Water Quality:**
1. Require controls designed to capture and treat a minimum of 80% of the average annual runoff volume from new or replaced impervious surfaces. Calculations must be based on site runoff estimates and rain event characteristics appropriate for the region or locality.
 2. Require controls that include design standards targeted to achieve a minimum of 70% removal of Total Suspended Solids (TSS) when compared to uncontrolled runoff. The 70% removal efficiency specifies only the design requirements and is not intended as a basis for compliance determination of individual stormwater quality controls.
 3. Where site-specific conditions make the 80% capture and 70% TSS removal requirements infeasible, the program must provide for opportunities such as off site mitigation (e.g. banking) or a payment-in-lieu program.
- ii. **Water Quantity:**
1. Review codes and development standards and, where possible, remove barriers to low impact development practices.
 2. Require all new and redevelopment projects that result in the creation or replacement of 5,000 square feet or more of impervious surface to control stormwater discharge rates, volumes, velocities and durations.
 3. Include requirements designed to maintain or restore to the maximum extent practicable predevelopment hydrology with regard to the rate, volume, and duration of flow.

4. Require onsite retention (i.e. flow volume control) facilities and infiltration to the maximum extent practicable as the first priority for best management practices. Where onsite retention and infiltration is infeasible, the program must provide for opportunities such as off site mitigation (e.g. banking) or a payment-in-lieu program.
- g. **Pollution Prevention:**
- i. Operate and maintain public streets, roads and highways in a manner designed to minimize the discharge of stormwater pollutants to the MS4, including pollutants discharged as a result of deicing activities.
 - ii. Include measurable goals to be achieved during the term of the permit.
- h. **Maintenance Activities:** Co-permittees must develop a program to ensure that stormwater facilities and controls are inspected and maintained. The program shall address the following:
- i. Inventory and map the location of public and private stormwater treatment facilities that serve an impervious area greater than 5,000 square feet.
 - ii. Require appropriate maintenance for private stormwater treatment facilities that serve an impervious area greater than 5,000 square feet. Co-permittees will specify the maintenance activities to be performed and when, as well as identify the party legally responsible for facility maintenance.
 - iii. Inspect private facilities or require inspections and reporting by the legally responsible party identified in maintenance agreements.
 - iv. Ensure that inspections and maintenance of public and private facilities are occurring at a frequency that is adequate to maintain effective infiltration, flow control and pollutant removal.
 - v. Develop local requirements to ensure that stormwater treatment facilities are designed to facilitate maintenance.
 - vi. Include measurable goals to be achieved during the term of the permit.

Note: As part of the ongoing discussions regarding permit reissuance, ODEQ will further clarify expectations related to the development and implementation of the maintenance activities (e.g., definitions, BMP type, number of facilities).

5. **Hydromodification and Stormwater Retrofits Assessment**

Co-permittees shall conduct a hydromodification assessment [no later than four years from the issuance date of this permit] and a retrofit assessment [no later than four years from the issuance date of this permit].

- a. **Hydromodification Assessment:** The co-permittees must evaluate the effect of increased stormwater related flows and/or volumes that can lead to stream channel erosion and/or sedimentation. The permittees must use a systematic approach to:
- i. Assess watersheds within the MS4 for stream hydromodification impacts.
 - ii. Prioritize hydromodification control strategies and areas.
 - iii. Develop appropriate management objectives and performance criteria.

Note: As part of the ongoing discussions regarding permit reissuance, ODEQ will further clarify

expectations related to the development and implementation of the hydromodification assessment (e.g., identification of stream channel segments susceptible to channel erosion or sedimentation).

- b. **Stormwater Retrofit Assessment:** The co-permittees must use a systematic approach to:
 - i. Define retrofitting objectives.
 - ii. Identify potential retrofit locations and preferred treatment options.
 - iii. Create a retrofit project priority list.

Note: As part of the ongoing discussions regarding permit reissuance, ODEQ will further clarify expectations related to development and implementation of the stormwater retrofit assessment (e.g., types of BMPs treatment options to consider).

SCHEDULE B

Monitoring and Reporting Requirements

1. Minimum Monitoring Requirements

- a. The co-permittees must conduct the monitoring as described in Tables B-1 and B-2. Modifications to any additional monitoring components contained in the co-permittees' SWMPs are allowed and are considered part of the ongoing adaptive management process required by this permit, per condition D.4.b.ii. The monitoring requirements may be coordinated between the co-permittees and monitoring responsibilities may be assigned to selected co-permittees, via intergovernmental or other agreement.

Table B-1 Monitoring Types and Locations (except pesticides)			
Monitoring Type	Minimum Number of Location(s)	Minimum Monitoring Frequency	Responsible Co-Permittee
MS4 Discharge	3	3 times per year	XXXXXX
Ambient	5	3 times per year	XXXXXX

Table B-2 Minimum Analytical Parameters		
Suite	Parameters	Frequency and Locations
Conventional	Biochemical oxygen demand (BOD5) Total suspended solids (TSS) Hardness	See Table B-1
Field	Temperature Dissolved oxygen (DO) Conductivity pH	See Table B-1
Total Metals	Copper (Cu) Lead (Pb) Zinc (Zn)	See Table B-1
Dissolved Metals	Copper (Cu) Lead (Pb) Zinc (Zn)	See Table B-1
Nutrients	Ammonia nitrogen (NH ₃ -N) Nitrate nitrogen (NO ₃) Total phosphorus (TP) Ortho-phosphorus (O-PO ₄)	See Table B-1
Biological	E. coli	See Table B-1
Pesticides	Either 2,4-D or Glyphosate Diazinon	A minimum of two storm events during permit years 2 and 4 at a minimum of 3 MS4 discharge sampling locations.

- b. Co-permittees must conduct MS4 discharge and in-stream monitoring in such a manner to ensure the following assessments can be made:
 - i. Status of SWMP implementation.
 - ii. Effectiveness of BMPs for specific source controls.
 - iii. Long-term trends in receiving water quality (physical, chemical and biological) associated with stormwater discharges.
 - iv. Long-term progress of the SWMP towards achieving improvements in receiving water quality, including progress towards meeting TMDL pollutant load reduction benchmarks.
 - v. Update total pollutant loading estimates as specified in condition D.3.c.
- c. The following information must be included in the monitoring component of the SWMP:
 - i. Program monitoring:
 - 1. Activities to be monitored.
 - 2. Measurable goals that will be monitored.
 - ii. Environmental monitoring:
 - 1. Monitoring sites.
 - 2. Constituents to be analyzed.
 - 3. Media sampled.
 - 4. Method of monitoring (i.e., grab, composite, or flow-weighted composite).
- d. Protocols for quality assurance/quality control for sample collection and analysis must be consistent with the quality assurance protocols described in the Department's *2004 303(d) List/Delist Data Submittals Minimum Data Requirements*.
- e. Co-permittees must exercise due diligence in collecting and analyzing all samples required by this permit. In the event the co-permittee is unable to collect or analyze any sample or pollutant parameter due to circumstances beyond the co-permittee's control, a written explanation of the circumstances that prevented the collection or analysis must be submitted to the Department in the annual report.

Circumstances beyond the control of the co-permittee may include abnormal climatic conditions (e.g., fewer storms in the annual reporting period than typically are representative of climatic conditions, or the lack of sufficient dry weather in between sampling events.); weather conditions that make the collection or analysis of samples unsafe or impracticable (e.g., storms of such intensity that sampling would present an unreasonable safety risk); or unavoidable equipment failures caused by weather conditions or other conditions beyond the reasonable control of the co-permittee.

2. Annual Reporting Requirement

Co-permittees must submit, by November 1 of each year, a system-wide report for the time period July 1 through June 30. One printed copy and an electronic (preferably PDF format) copy must be submitted to the appropriate Department regional office. Each co-permittee is responsible for the portion of the system-wide report applicable to its jurisdiction. Each annual report must contain:

- a. The status of implementing each SWMP component listed in conditions A.4.a through h and progress in meeting the measurable goals identified in the SWMP.
- b. Results of any public education program effectiveness evaluation conducted during the reporting year and a summary of how the results were or will be used for adaptive management.
- c. A summary of how adaptive management was implemented during the reporting year.
- d. Proposed changes to SWMP components, including new BMPs identified through adaptive management. A timeline and measurable goals for the implementation of new BMPs must also be included.
- e. Proposed changes to SWMP components that are designed to reduce TMDL pollutants to the maximum extent practicable.
- f. A summary of total stormwater program expenditures and funding sources over the reporting fiscal year, and those anticipated in the next fiscal year.
- g. A summary of data, including monitoring data that is accumulated throughout the reporting year and results of any assessments conducted pursuant to conditions B.1.b.i and ii.
- h. Any proposed modifications to the monitoring component of the SWMP that are necessary to ensure adequate data and information are collected to conduct the assessments listed in condition B.1.b.
- i. A summary describing the number and nature of enforcement actions, inspections, and public education programs.
- j. An overview, as related to MS4 discharges, of concept planning, land use changes and new development activities that occurred within the Urban Growth Boundary (UGB) expansion areas during the previous year, and those forecast for the following year.
- k. Results of ongoing field screening and follow-up activities related to illicit discharges.

3. **MS4 Permit Renewal Application Package**

180 days prior to permit expiration, the co-permittees must submit a permit renewal application package to support the proposed SWMP for the renewed permit. One printed copy and an electronic (preferably PDF format) copy shall be submitted to the appropriate DEQ regional office. The application package must evaluate the adequacy of the SWMP in reducing pollutants to the maximum extent practicable. The application package must contain:

- a. A proposed SWMP that includes measurable goals for the implementation of BMPs.
- b. The information and analysis necessary to support the Department's independent determination that the co-permittee's stormwater management program reduces pollution to the maximum extent practicable (MEP). Co-permittees must describe how the management practices, control techniques, and other provisions contained in the proposed SWMP components were evaluated relative to the MEP standard using the following evaluation factors:
 - i. Effectiveness – program elements effectively address stormwater pollutants.
 - ii. Local Applicability – technically feasible considering local soils, geography, etc.
 - iii. Program Resources – program elements are being implemented to the maximum extent practicable given available resources and the permittees stormwater management program priorities.
- c. An updated estimate of total annual stormwater pollutant loads for pollutants listed in Table B.2 of this permit, except for field parameters.

- d. A description of any service area expansions that are anticipated to occur during the following permit term and a finding as to whether or not the expansion is expected to result in a substantial increase in area, intensity or pollutant loads.
- e. A receiving water quality trend analysis that identifies water quality improvement or degradation associated with stormwater discharges.
- f. A fiscal evaluation summarizing program expenditures for the current permit cycle and projected program allocations for next permit cycle based on the proposed SWMP.
- g. Maps showing the location of municipal outfalls, land use and those public and private stormwater treatment facilities that serve an impervious area greater than 5,000 square feet.
- h. A TMDL pollutant load reduction benchmark evaluation describing progress towards meeting any applicable TMDL pollutant load reduction benchmarks identified in the SWMP. This evaluation and associated report shall include, but is not limited to the following:
 - i. An estimate of current pollutant loadings and estimated loadings at or near the end of the permit term, compared with TMDL waste load allocations.
 - ii. A description of the estimated effectiveness of structural stormwater controls.
 - iii. A description of the estimated effectiveness of non-structural stormwater controls, if applicable, and the rationale for the selected approach.
 - iv. A description of how development and redevelopment were accounted for, and the rationale for the selected approach.
 - v. An explanation of the relationship between the TMDL waste load allocations, development and identification of the TMDL pollutant load reduction benchmarks, and how SWMP implementation contributes to the reduction of the TMDL pollutants.
- i. If the co-permittee has failed to meet the estimated pollutant load reductions during the permit term, it must use adaptive management to reassess the SWMP and determine what additional or alternative BMPs are practicable. The co-permittee must update the proposed SWMP to include these BMPs.
- j. If, within three years of the issuance date of this permit, a TMDL is approved by the EPA that assigns a waste load allocation to stormwater within the geographic area covered by this permit, the co-permittee must submit TMDL pollutant load reduction benchmark(s) as part of the permit renewal application package.

SCHEDULE C
Compliance Conditions and Dates

1.

SCHEDULE D

Special Conditions

1. Legal Authority

Each co-permittee must maintain adequate legal authority through ordinance(s), interagency agreement(s) or other means to implement and enforce the provisions of this permit.

2. Total Maximum Daily Loads (TMDLs)

- a. The requirements of this section apply to co-permittee's MS4 discharges to receiving waters with established TMDLs and associated allocations as noted on page 1 of this permit. Pollutant discharges for those parameters listed in the TMDL must be reduced to the maximum extent practicable.
- b. Progress towards reducing TMDL pollutant loads must be evaluated by the co-permittee through the use of TMDL pollutant load reduction benchmark(s), as defined in condition D.5.d. The methodology and rationale used to conduct the benchmark evaluation to determine the TMDL benchmarks shall be described in the SWMP.
- c. The TMDL pollutant load reduction benchmarks shall be identified in the SWMP.
- d. The SWMP shall describe the specific strategy for implementing monitoring, as required in Schedule D (b) iv, designed to enable the co-permittee to gauge the effectiveness of the SWMP in reducing TMDL pollutant loads to the maximum extent practicable.
- e. Per condition B.3.g, progress toward meeting TMDL pollutant load reduction benchmark(s) shall be reported to the Department in the permit renewal application package.

3. 303(d) Listed Pollutants

- a. The requirements of this section apply to receiving waters listed as impaired on the 303(d) list without established TMDL waste load allocations. No later than one year from the issuance date of this permit, the co-permittees must:
 - i. Review the pollutants that are on the 2004/2006 303(d) list that are present in the co-permittee's MS4 discharges and determine whether there is a reasonable likelihood for stormwater from the MS4 to cause or contribute to water quality degradation of receiving waters.
 - ii. Determine whether the BMPs in the existing SWMP are effective in controlling the 303(d) pollutants. If not, describe how the SWMP will be updated to address these pollutants.

4. Adaptive Management

- a. Co-permittees must use adaptive management at least annually to assess and, where necessary, implement alternatives for controlling stormwater pollution to the maximum extent practicable. In addition, adaptive management must be used to:
 - i. Review and revise the SWMP, as needed, including all programs described and implemented through the SWMP.

- ii. Review the SWMP to determine whether programs implemented pursuant to this permit are meeting the measurable goals.
 - iii. Make revisions to SWMP monitoring components.
 - iv. Guide progress toward meeting any applicable TMDL pollutant load reduction benchmarks.
- b. Revisions to the SWMP are considered a part of adaptive management and do not require modification of this permit unless the Department determines that the magnitude of proposed SWMP revisions substantially changes the nature or scope of the SWMP. The co-permittee may change its SWMP during the permit term in accordance with the following procedures:
- i. Changes adding, but not subtracting or replacing, components, controls, or requirements to the SMWP may be made at any time. The co-permittee must notify the Department of such changes in the subsequent annual report.
 - ii. Changes to the SWMP monitoring components designed to meet the requirements of condition B.1.b may be made at any time. The co-permittee must notify the Department of such changes in the subsequent annual report.
 - iii. The co-permittee must submit a written request to the Department to discontinue a BMP specifically identified in the SWMP. A discontinued BMP must be replaced with a BMP that is at least as effective. The co-permittee's request must include the following:
 1. An explanation of why the existing BMP is less effective or infeasible.
 2. Proposed replacement BMP(s) and schedule for implementation.
 3. An explanation of how the new BMP is expected to better achieve the goals of the existing BMP.

Unless denied by the Department within 60 days of submittal, the co-permittee's request will be deemed approved and may be implemented after the 60-day review period has elapsed. If a request is denied, the Department will send the co-permittee a written response giving a reason for the decision.

- iv. Changes requested by the Department will be made in writing, set forth the time schedule for the permittee to develop the changes, and offer the permittee the opportunity to propose alternatives to meet the objective of the requested modification. All changes requested by the Department will be made in accordance with 40 CFR §§124.5, 122.62, or 122.63, as appropriate.

5. Definitions:

- a. **Adaptive Management:** A structured, iterative process designed to refine and improve stormwater programs over time by evaluating results and adjusting actions on the basis of what has been learned. The adaptive management process is the established method for achieving the maximum extent practicable (MEP) standard.
- b. **Best Management Practices (BMPs):** The schedule of activities, controls, prohibition of practices, maintenance procedures and other management practices designed to prevent or reduce pollution. BMPs also include treatment requirements, operating procedures and practices to control stormwater runoff.

- c. **Maximum Extent Practicable (MEP):** The statutory standard that establishes the level of pollutant reductions that operators of regulated MS4s must achieve. This standard is considered met if the conditions of the permit are met and the six minimum measures, outlined in this permit, are implemented (December 8, 1999 Federal Register, Vol. 64, No. 235, Page 68754).
- d. **TMDL Pollutant Load Reduction Benchmark:** A total pollutant load reduction estimate for each parameter or surrogate, where applicable, for which a waste load allocation is established at the time of permit issuance. A benchmark shows the anticipated pollutant load reduction that will be achieved during the permit cycle through the implementation of the SWMP. A benchmark is used to measure the effectiveness of the stormwater management plan in making progress toward the waste load allocation (this estimate may be stated as a range), and is a tool for guiding adaptive management. A benchmark is not a numeric effluent limit; rather it is a goal that is subject to the maximum extent practicable standard.
- e. **Measurable Goals:** BMP design objectives or targets that quantify the progress of SWMP implementation and the performance of BMPs. Measurable goals are quantitative, prospective and, wherever possible, describe *what* the co-permittee intends to do and *when* they intend to do it.
- f. **Waters of the State:** Lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction.

SCHEDULE F
NPDES Permit General Conditions
for Municipal Separate Storm Sewer Systems

SECTION A. STANDARD CONDITIONS

1. Duty to Comply with Permit

The co-permittees must comply with all conditions of this permit. Failure to comply with any permit condition is a violation of the Clean Water Act and Oregon Revised Statutes (ORS) 468B.025, and 40 Code of Federal Regulations (CFR) §122.41(a), and grounds for an enforcement action. Failure to comply is also grounds for the Department to modify, revoke, or deny renewal of a permit.

2. Penalties for Water Pollution and Permit Condition Violations

- a. ORS 468.140 allows the Department to impose civil penalties up to \$10,000 per day for violation of a term, condition, or requirement of a permit. Additionally 40 CFR §122.41(a) provides that any person who violates any permit condition, term, or requirement may be subject to a federal civil penalty not to exceed \$32,500 per day for each violation.
- b. Under ORS 468.943 and 40 CFR §122.41(a), unlawful water pollution, if committed by a person with criminal negligence, is punishable by a fine of up to \$25,000 imprisonment for not more than one year, or both. Each day on which a violation occurs or continues is a separately punishable offense.
- c. Under ORS 468.946, a person who knowingly discharges, places, or causes to be placed any waste into the waters of the state or in a location where the waste is likely to escape or be carried into the waters of the state is subject to a Class B felony punishable by a fine not to exceed \$200,000 and up to 10 years in prison. Additionally, under 40 CFR §122.41(a) any person who knowingly discharges, places, or causes to be placed any waste into the waters of the state or in a location where the waste is likely to escape into the waters of the state is subject to a federal civil penalty not to exceed \$100,000, and up to 6 years in prison.

3. Duty to Mitigate

The co-permittees must take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment. In addition, upon request of the Department, the permittee must correct any adverse impact on the environment or human health resulting from noncompliance with this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

4. Duty to Reapply

If any or all of the co-permittees wish to continue an activity regulated by this permit after the expiration date of this permit, the co-permittee must apply to have the permit renewed. The application must be submitted at least 180 days before the expiration date of this permit.

The Department may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date.

5. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:

- a. Violation of any term, condition, or requirement of this permit, a rule, or a statute
- b. Obtaining this permit by misrepresentation or failure to disclose fully all material facts
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge
- d. The permittee is identified as a Designated Management Agency or allocated a waste load under a Total Maximum Daily Load (TMDL)
- e. New information or regulations
- f. Modification of compliance schedules
- g. Requirements of permit reopener conditions
- h. Correction of technical mistakes made in determining permit conditions
- i. Determination that the permitted activity endangers human health or the environment
- j. Other causes as specified in 40 CFR §§122.62, 122.64, and 124.5

The filing of a request by the co-permittee for a permit modification, revocation or reissuance, termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition. The permittee must comply with all terms, conditions of the permit pending approval.

6. Toxic Pollutants

The co-permittee must comply with any applicable effluent standards or prohibitions established under Oregon Administrative Rules (OAR) 340-041-0033 for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

7. Property Rights and Other Legal Requirements

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege, or authorize any injury to persons or property or invasion of any other private rights, or any infringement of federal, tribal, state, or local laws or regulations.

8. Permit References

Except for effluent standards or prohibitions established under OAR 340-041-0033 for toxic pollutants and standards for sewage sludge use or disposal established under Section 405(d) of the Clean Water Act, all rules and statutes referred to in this permit are those in effect on the date this permit is issued.

9. Permit Fees

The co-permittee must pay the fees required by Oregon Administrative Rules.

SECTION B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The co-permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittees only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this permit.

3. Removed Substances

Solids or other pollutants removed in the course of maintaining the MS4 must be disposed of in such a manner as to prevent any pollutant from such materials from entering waters of the state, causing nuisance conditions, or creating a public health hazard.

SECTION C. MONITORING AND RECORDS

1. Representative Sampling

Sampling and measurements taken as required under this Permit must be representative of the volume and nature of the monitored discharge. All samples must be taken at the monitoring points specified in this permit, and shall be taken, unless otherwise specified, before the effluent joins or is diluted by any other waste stream, body of water, or substance. Monitoring points may not be changed without notification to and the approval of the Department.

2. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit or subsequent permit actions.

3. Penalties of Tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit may, upon conviction, be punished by a fine of not more than \$10,000 per violation, imprisonment for not more than two years, or both. If a conviction of a person is for a violation committed after a first conviction of such person, punishment is a fine not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or both.

4. Additional Monitoring by the Co-permittees

If the co-permittees monitor any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this

monitoring must be included in the calculation and reporting of the data submitted in annual reports required by Schedule B. Such increased frequency must also be indicated.

5. Retention of Records

The co-permittees must retain records of all monitoring information, including: all calibration, maintenance records, all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Department at any time.

6. Records Contents

Records of monitoring information must include:

- a. The date, exact place, time, and methods of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

7. Inspection and Entry

The co-permittees must allow the Department representative upon the presentation of credentials to:

- a. Enter upon a co-permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and
- d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by state law, any substances or parameters at any location within the MS4.

SECTION D. REPORTING REQUIREMENTS

1. Planned Changes

The permittee must comply with OAR chapter 340, division 52, "Review of Plans and Specifications" and 40 CFR §122.41(1)(l). Except where exempted under OAR chapter 340, division 52, no construction, installation, or modification involving disposal systems, treatment works, sewerage systems, or common sewers may be commenced until the plans and specifications are submitted to and approved by the Department. The permittee must give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility.

2. Anticipated Noncompliance

The co-permittees must give advance notice to the Department of any planned changes in the permitted facility or activities that may result in noncompliance with permit requirements.

3. Transfers

This permit may be transferred to a new co-permittee(s) provided the transferee(s) acquires a property interest in the permitted activity and agrees in writing to fully comply with all the terms and conditions of the permit and the rules of the Commission. No permit may be transferred to a third party without prior written approval from the Department. The Department may require modification, revocation, and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act (see 40 CFR §122.61; in some cases, modification or revocation and reissuance is mandatory). The co-permittees must notify the Department when a transfer of property interest takes place that results in a change of co-permittee(s).

4. Compliance Schedule

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date. Any reports of noncompliance must include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.

5. Duty to Provide Information

The co-permittees must furnish to the Department within a reasonable time any information that the Department requests to determine compliance with this permit. The co-permittees must also furnish to the Department, upon request, copies of records required to be kept by this permit.

Other Information: When a co-permittee becomes aware that it has failed to submit any relevant facts or has submitted incorrect information in a permit application or any report to the Department, it must promptly submit such facts or information.

6. Signatory Requirements

All applications, reports or information submitted to the Department must be signed and certified in accordance with 40 CFR §122.22.

7. Falsification of Information

Under ORS 468.953, any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, is subject to a Class C felony punishable by a fine not to exceed \$100,000 per violation and up to 5 years in prison. Additionally, according to 40 CFR §122.41(k)(2), any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a federal civil penalty not to exceed \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

SECTION E. DEFINITIONS

1. *CFR* means Code of Federal Regulations.
2. *Clean Water Act* or *CWA* means the Federal Water Pollution Control Act enacted by Public Law 92-500, as amended by Public Laws 95-217, 95-576, 96-483 and 97-117; 33 U.S.C. 1251 et seq.
3. *Department* means Department of Environmental Quality.
4. *Director* means Director of the Department of Environmental Quality.
5. *Flow-Weighted Composite Sample* means a sample formed by collection and mixing discrete samples taken periodically and based on flow.
6. *Grab Sample* means an individual discrete sample collected over a period of time not to exceed 15 minutes.
7. *Illicit Discharges* means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.
8. *Major Outfall* means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activities (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).
9. *mg/L* means milligrams per liter.
10. *mL/L* means milliliters per liter.
11. *MS4* means a municipal separate storm sewer system.
12. *Municipal Separate Storm Sewer* means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):
 - a. Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of sewage, industrial wastes, stormwater or other wastes, including special districts under State Law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian Tribal organization, or a designated and approved management agency under §208 of the CWA that discharges to waters of the United States;
 - b. Designed or used for collection or conveying stormwater;
 - c. Which is not a combined sewer; and
 - d. Which is not part of a Publicly Owned Treatment Works (POTW) as defined by 40 CFR §122.2.
13. *Outfall* means a point source as defined by 40 CFR §122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.
14. *Permit* means the NPDES municipal separate storm sewer system (MS4) permit specified herein, authorizing the co-permittees listed on Page 1 of this permit to discharge from the MS4.
15. *Stormwater* means stormwater runoff, snowmelt runoff, and surface runoff and drainage.
16. *Year* means calendar year except where otherwise defined.