CoP#30001293
DEQ Agreement #

Intergovernmental Agreement
Between
The State of Oregon, Department of Environmental Quality
And
The City of Portland
For
Administration of National Pollutant Discharge Elimination System (NPDES)
1200-Z, 1200-COLS and 1200-A General Permits
For
Stormwater Discharges from Industrial Activities

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## INTERGOVERNMENTAL AGREEMENT

## NPDES 1200-Z, 1200-COLS and 1200-A Permit Administration

### I. PARTIES

The parties to this Intergovernmental Agreement (Agreement) are the State of Oregon, by and through its Department of Environmental Quality (DEQ) and the City of Portland (the City).

### II. AUTHORITY

A. The parties are authorized to enter into this Agreement under ORS 190.110, 468.035, 468.060, 468B.010 and 468B.020.

B. The parties agree that this Agreement supersedes the Agreement, "Memorandum of Agreement between the Oregon Department of Environmental Quality and the City of Portland, Bureau of Environmental Services for the Administration of NPDES General Permits #1200-Z, #1300-J, and future NPDES General Permits for Industrial Storm Water," dated December 7, 1999.

### III. PURPOSE

A. In accordance with ORS 190.110, 468B.020 and 468.035, this Agreement sets forth the roles and responsibilities of DEQ and the City for administering the NPDES 1200-Z, 1200-COLS and 1200-A General Permits.

B. DEQ and the City recognize that:

1. DEQ, through ORS Chapter 468B, has been designated the state agency primarily responsible for preventing water pollution in the state from most sources. DEQ is authorized by the United States Environmental Protection Agency (EPA) to issue the 1200-Z, 1200-COLS and 1200-A permits.

2. ORS 468.035(1)(c) authorizes DEQ to cooperate with other agencies and political subdivisions of the state with respect to matters pertaining to the control of water pollution.

3. The City's NPDES Municipal Separate Storm Sewer System (MS4) Permit requires, in part, the City to implement a program to monitor and control pollutants to its municipal separate storm sewer system from industrial facilities.

4. The City has an existing framework for working directly with the industrial community to implement stormwater pollution prevention practices.

5. The City will administer the 1200-Z, 1200-COLS and 1200-A (asphalt mix batch plants or concrete batch plants only) permits on behalf of DEQ for industrial activities discharging stormwater to the City's municipal storm sewer system. By administering the 1200-Z, 1200-COLS and 1200-A (asphalt mix batch plants or concrete batch plants only) permits for industrial activities discharging stormwater to the City's MS4, the City will fulfill several program elements, but not all, of its MS4 permit requirements.

6. The City will also administer the 1200-Z, 1200-COLS and 1200-A (asphalt mix batch plants or concrete batch plants only) permits on behalf of DEQ for industrial activities discharging to other non-city storm systems within the City. Non-city storm systems refer to systems which are not a municipal storm sewer system

7. DEQ has ultimate authority in the administration of the 1200-Z, 1200-COLS and 1200-A permits and may retain oversight of specific permits.

8. DEQ and the City will strive to present a consistent approach in implementing the permit program as described in this Agreement.

**The Parties agree as follows:**

## IV. THE CITY'S RESPONSIBILITIES

A. PERMIT ADMINISTRATION – The City shall:

1. New Applications:

a. Provide information to the regulated community on how to apply for the permit. The City shall use DEQ application forms. The City shall also use DEQ's guidance materials if applicable.

b. Review the DEQ application form, Land Use Compatibility Statement (LUCS) and Stormwater Pollution Control Plan (SWPCP) for completeness and accuracy.

c. Use the checklist provided by DEQ, or an equivalent to review the SWPCP to determine whether the applicant's plan meets the requirements in Schedule A, conditions 1 and 3 of the permit. If any of these materials are incomplete, the City shall notify the applicant of the items that need to be completed. The City shall use its best professional judgment based on experience, site conditions, and understanding of industry standards in determining whether proposed site controls are appropriate for the site. The City is not required to perform an engineering review of any proposed site control in a SWPCP. The City's determination that the SWPCP includes site controls that are appropriate for the site does not constitute a warranty that employing the site controls will result in meeting the storm water discharge benchmarks.

d. After determining that the application materials are complete and accurate and meet the requirements of Schedule A, conditions 1 and 3 of the permit, the City shall:

(1) Forward a copy of the completed application form and the SWPCP to the DEQ Regional Office for public notice and comment processing.

(2) If public comments are received:

i. Review public comments if requested by DEQ.

ii. Assist DEQ with developing a response to comments.

iii. If additional information is required or changes must be made to the application or SWPCP, the City shall inform the applicant that this information is required before registration will be granted under the permit.

(3) Consult with DEQ on permit registration decisions.

i. If registration is granted by DEQ, the City will notify applicants in writing after receiving the DEQ file number that registration is granted under the permit and include a copy of the permit with the DEQ file number.

ii. If registration will be denied pursuant to OAR 340-045-0033(10), the City shall coordinate with DEQ.

2. Renewal Applications

   a. For facilities that will renew coverage for the next permit cycle, prior to the end of the five-year permit term, coordinate with DEQ on renewing permit registrants' coverage under the new permit.

3. General Administration

   a. Upon receipt of a No Exposure Certification prepared by a permit registrant, assess if registrant is exempt from permit coverage. This assessment may be based on reviewing the certification to ensure it meets the requirements in the Permit Coverage and Exclusion Section of the permit and conducting an inspection of the facility. Respond to the permit registrant within 30 days of the receipt of the certification if deemed necessary. For facilities that are registered under the permit and quality for the No Exposure Certification, notify DEQ when certifications are granted and forward Notice of Termination forms as described below.

   b. Upon receipt of Name Change or Permit Transfer forms, assess if the information provided is complete and accurate.

      (1) If a permit registrant has submitted an updated SWPCP with the Transfer form, review these changes.

      (2) For facilities that intend to change industrial processes and submit new application materials, follow Section IV.A.1 above.

      (3) Forward the forms and fees to DEQ. Forward any information on changes in site ownership or operations that may require transfer of permit registration to DEQ as soon as practical.

   c. Upon receipt of request for permit termination, determine if information provided by permit registrant is complete and accurate. Forward the request to DEQ for final determination.

   d. Provide DEQ with all necessary permit records in its possession and testimony of its staff, if requested, in the event that permit coverage is denied or revoked and an applicant or permit registrant requests a contested case hearing and or seeks judicial review.

B. COMPLIANCE MONITORING AND INVESTIGATIONS – The City shall:

1. Respond first to complaints associated with stormwater discharges from permitted industrial sources and investigate any suspected violations.

2. Inspect permitted facilities during the five-year permit term. Specifically, review the permit registrant's SWPCP, any subsequent Action Plans, DMR forms and other permit conditions to assess compliance with the permit.

3. Review annual Discharge Monitoring Report (DMR) forms to determine compliance with Schedule B of the permit.

   a. For sources that fail to submit a DMR or submit a late DMR, follow Section C below.

b. Annually by October 1, forward a copy of the DMR forms or the monitoring data electronically to DEQ. Upon receipt of late DMRs, forward forms to DEQ or provide information electronically.

c. In the fourth year of permit coverage, coordinate with DEQ to determine the permit registrants whose geometric mean of the last four samples exceeded the benchmarks. This determination may be based on the geometric calculations provided by permit registrants in the DMRs and any additional review of this data conducted by the City.

4. Review requests for monitoring waivers and sampling variances based on Schedule B of the permit and respond to permit registrants if deemed necessary.

5. Review any Action Plans prepared by permit registrants to determine if they meet Schedule A of the permit. For Action Plans that are prepared in response to benchmark exceedances per Schedule A.9 (1200-Z) or Schedule A.8 (1200-COLS) of the permit, this determination may be based on whether the Action Plan provides sufficient detail regarding the cause of the benchmark exceedance(s) and corrective actions that will be taken to address the exceedance(s). Respond to permit registrant as set forth in the permit. The City's approval of an Action Plan does not constitute a warrant that implementing the Action Plan will result in meeting the storm water discharge benchmarks.

C. COMPLIANCE AND ENFORCEMENT – the City shall:

1. When permit violations are discovered or in instances where a facility has failed to obtain permit coverage use best professional judgment to assist facilities in achieving compliance with permit.

2. For facilities that discharge to the City's MS4, follow locally established compliance and enforcement procedures. Issue noncompliance letters identifying permit violations and required follow-up measures needed to achieve compliance. Where appropriate assess civil penalties as provided by City code. The City will notify DEQ of permit violations and include the enforcement action taken by the City.

3. In instances where the City does not have enforcement authority, solicit voluntary compliance including issuing notice of noncompliance letters that identify permit violations and follow-up measures needed to achieve compliance. Where voluntary compliance is not achieved within twelve (12) months, the City will refer permit violations to DEQ with supporting documentation. The City's notice of noncompliance letters or other documentation may be used by DEQ to escalate enforcement in lieu of DEQ sending a warning letter.

4. The City, where applicable, may request that DEQ revoke a permit registrant's coverage under the permit for any reason set forth in OAR 340-045-0033(10) or OAR 340-045-0060(2) or (3). The City shall make the request in writing, stating the reasons for the revocation. The City shall cooperate with DEQ, where applicable, in the revocation process, whether initiated by the City or DEQ.

D. INFORMATION MANAGEMENT – the City shall:

1. Establish and maintain the following records: the application forms, a copy of the letter notifying the applicant of permit coverage, current SWPCP and any subsequent Action Plans, inspection reports, DMR forms, No Exposure Certifications, compliance assistance, complaint responses, transfer and termination forms and any other correspondence related to the permit from the permit registrant or the City.

2. Make all materials available for the public upon request pursuant to applicable public records laws.

3. Retain these records for seven years after the expiration date of the permit.

E. PROGRAM REPORTS AND IMPLEMENTATION MEETINGS:

1. The City shall provide DEQ by November 1st of each year information regarding the number of sources that received coverage under the permit, the number of permitted facilities inspected and the number and nature of enforcement actions taken in the prior fiscal year (July 1-June 30). The City may use information provided in its MS4 annual reports.

2. DEQ and the City will meet at a minimum of one time per year to exchange information regarding permit administration, implementation, technical field issues, and training and guidance needs.

3. In addition to these meetings, the City may meet or communicate with DEQ as needed. DEQ and the City may accompany each other on inspections to exchange technical knowledge, practices and procedures.

## V. DEQ RESPONSIBILITIES

A. PERMIT ADMINISTRATION – DEQ shall:

1. Provide the City with the necessary forms including application forms, Land Use Compatibility Statement (LUCS) forms, SWPCP forms, DMR forms, and Name Change and/or Permit Transfer forms.

2. Registration

   a. Assist the City in reviewing permit application forms when requested.

   b. Conduct the public notice and comment process by posting notice on DEQ's website and making the applications and SWPCPs available at a DEQ regional office near the project for public viewing. In addition, DEQ shall:

      (1) Review any comments received and within seven calendar days forward comments to the City.
      (2) Coordinate with the City to develop a response to the comment(s). Draft a response to comment document and send the City a copy of the response.

   c. Make the final determination whether to issue coverage to an applicant under the permit. This determination shall be made in consultation with the City and shall be based on the City's review of application materials and SWPCP and determination that the materials are complete and the SWPCP meets the permit conditions. DEQ may refuse to authorize or renew coverage pursuant to OAR 340-045-0033(10) and shall consult with the City before notifying the applicant.

   d. Provide the DEQ file number to the City for notifying applicants that registration has been granted under the permit.

3. Based on the fourth year DMR forms, notify permit registrants whose geometric mean of the last four samples collected exceed benchmark(s) that their coverage under the permit shall be revoked.

4. Prior to the end of the five-year permit term, coordinate with the City on renewing permit registrants' coverage under the new permit and provide the City with a list of current permit registrants needing to renew permit coverage. Send out the renewal applications nine months before the end of the permit term. DEQ shall renew applicants under the new permit and notify the City that coverage has been granted and forward a copy of the face page of the permit and transmittal letter to the City.

5. Provide the City with advice, assistance, training, and program guidance and policy to ensure that the program is being implemented consistently. Specifically, provide state-wide guidance and training regarding SWPCP review and permit implementation, including a checklist to use to review SWPCPs; technical advice on Best Management Practices and other field issues; and other information as determined by DEQ. In addition, the City shall have an opportunity to comment on guidance materials and make recommendations. The City shall use these materials once mutually agreed upon. The City may propose to modify these materials after adoption, subject to approval by DEQ.

6. Provide the City with an Internal Management Procedures document that specifies administrative procedures that are not described in this Agreement.

7. Conduct a contested case hearing if permit coverage is denied or revoked and an applicant or permit registrant appeals this action.

8. Assist the City in determining permit registrant compliance with the permit when requested.

9. Upon receipt of DEQ Permit Transfer, Name Change and Notice of Termination forms, DEQ shall forward forms to the City for review.

10. Upon receipt of Action Plans for permit registrants within the City's jurisdiction, DEQ shall forward the Action Plans to the City for review.

B. COMPLIANCE MONITORING AND INVESTIGATIONS – DEQ shall:

1. Co-conduct inspections with the City when requested. Notify the City if DEQ needs to enter a permitted site within the City's jurisdiction to complete an inspection.

2. Refer all stormwater pollution complaints received on industrial sources covered by this agreement to the City for investigation and follow-up.

3. Notify the City if DEQ needs to enter a permitted site within the City's jurisdiction to take any samples.

C. COMPLIANCE AND ENFORCEMENT – DEQ shall:

1. Provide the City with guidance materials regarding DEQ's enforcement procedures.

2. Follow up on complaints and violations referred by the City and conduct enforcement actions, including issuing civil penalties or department orders as appropriate per DEQ's enforcement procedures.

3. Provide the City with updates of enforcement actions for facilities referred to DEQ, and provide the City with copies of enforcement correspondence.

4. Not undertake independent formal enforcement actions for permit violations, except if violations pose an imminent threat to human health or the environment, or if the City unreasonably fails to take appropriate enforcement actions, or if the City refers violations to DEQ for independent formal enforcement action.

D. PROGRAM IMPLEMENTATION MEETINGS:

1. DEQ and the City shall meet a minimum of one time per year to exchange information regarding permit administration and implementation issues, policy issues, technical field issues and training and guidance needs.

2. In addition to these meetings, DEQ and the City may meet or communicate as needed. DEQ and the City may accompany each other on inspections to exchange technical knowledge, practices and procedures.

## VI. COLLECTION, TRANSFER AND DISTRIBUTION OF PERMIT FEES

A. NEW PERMIT APPICATION FEES:

1. The City shall collect new permit application fees, including first year annual fee, with permit applications. Fees collected must be based on the fees established by the Environmental Quality Commission and in effect at the time the application is submitted. Checks for application fees must be made payable to the City. If the application is incomplete or the fees incorrect, return the application and fees to the applicant.

2. The City shall retain 75% of the new application fees, including first year annual fee, per applicant that is registered under the permit. DEQ shall be entitled to the remaining 25% of the new application fee, including first year annual fee.

3. The City shall contact DEQ regional staff if the City's contact person for receiving fees from DEQ changes.

B. ANNUAL FEES

1. DEQ shall invoice and collect the annual fee (except for the first year) for permit registrants.

2. DEQ shall retain 25% of the annual fee for permit registrant. The City shall be entitled to the remaining 75% of the annual fees.

3. DEQ shall forward the net fees collected and owed to the City on a quarterly basis for annual fees collected in the prior calendar quarter by January 31, April 30, July 31, and October 31 of each year to: City of Portland, Industrial Stormwater Program, 6543 N Burlington Avenue, Portland OR 97203.

   DEQ will send the City a check for 75% of the annual fees collected each quarter, less the 25% of application fees owed to DEQ (Net payment = 75% annual fees to City – 25% application fees owed DEQ). (See VI.A.2 and VI.B.2)

   a. DEQ will not forward annual fees for permit registrants who have not paid fee invoices. If DEQ is unable to collect the annual fee that has been invoiced, DEQ may ask the City to assist in the collection of delinquent payments.

   b. DEQ shall provide quarterly reports to the City listing annual fees paid, new applicants, and outstanding payments with the quarterly fee payments.

C. REFUNDS:

1. DEQ shall refund fees in whole or in part, if either DEQ or the City:

a. Determines that permit coverage shall not be required; or concludes that the wrong application has been filed; and

b. DEQ has deposited the DEQ-established fees.

2. The City shall refund fees in whole or in part, if either DEQ or the City:

a. Determines that permit coverage will not be required; or concludes that the wrong application has been filed; and

b. The City has deposited fees.

D. TRANSFER FEES

1. DEQ shall retain any transfer fees received from permit registrants, or that have been forwarded from the City. The City will forward transfer fees to DEQ upon receipt.

## VII. DISPUTE RESOLUTION

A. FORMAL DISPUTES

1. In the event DEQ and the City have irreconcilable differences at the technical staff level, both agencies shall make a good-faith effort to resolve the disagreement within 14 days of either party's dispute as follows:

2. The City shall prepare a written objection.

3. By the end of the 14-day period after receipt of written objection, DEQ's regional Water Quality Manager shall provide the City with a written statement of DEQ's position.

4. If the City disagrees with DEQ's position, then the City shall provide its position and rationale in writing to the appropriate regional Administrator of DEQ. The final decision of the DEQ Regional Administrator shall be binding.

B. EXAMPLES

1. Examples of issues open to discussion include the following: rule interpretation; type of permit issued; type of compliance assistance action taken; necessary detail in the SWPCP; acceptable resolution of notices of noncompliance or permit violations, etc.

2. Issues such as permit application requirements and final permit conditions may not be open to dispute.

## VIII. LIMITATIONS

A. Nothing in this Agreement shall be construed to limit or modify the authority of the City or DEQ or to bind either party to perform beyond their respective authorities or in excess of available budget appropriations. Each and every provision of this Agreement shall be subject to the statutes of the State of Oregon and the rules and regulations adopted there under.

B. Nothing in this Agreement shall prevent the City as the manager of an NPDES MS4 jurisdiction from implementing and administering Stormwater management plans and best management practices (BMP) as required for compliance with the City's MS4 NPDES permit.

C. Except as provided in Section V.C.4 nothing in this Agreement shall restrict DEQ's inspection or enforcement authority.

D. Nothing in this Agreement shall constitute or create a valid defense to regulated parties operating in violation of environmental regulations, statutes, or permits.

## IX. INDEMNITY

A. To the extent permitted by Article XI, Section 7 of the Oregon Constitution, and within the limits of and subject to the restrictions in the Oregon Torts Claim Act (ORS 30.260 through 30.300), DEQ shall indemnify and hold the City harmless for legal expenses related to a challenge to the general permit, the registration or refusal to register an applicant under the general permit for stormwater discharges, or the revocation of coverage for a registrant under the general permit for stormwater discharges.

B. To the extent permitted by Article XI, Section 7 of the Oregon Constitution, and within the limits of and subject to the restrictions in the Oregon Torts Claims Act (ORS 30.260 through 30.300), DEQ shall defend and indemnify and hold the City, its officers and employees harmless from any and all claims, actions, costs or damages arising out of DEQ's activity under this Agreement; however, DEQ shall not be required to defend or indemnify the City for any such liability arising out of the wrongful acts of the City, its officers, employees or agents.

C. To the extent permitted by Article XI, Section 9 of the Oregon Constitution, and within the limits of and subject to the restrictions in the Oregon Torts Claims Act (ORS 30.260 through 30.300), the City shall defend and indemnify, and hold DEQ, its officers, and employees harmless from any and all claims, actions, costs or damages arising out of the City's activity under this Agreement; however, the City shall not be required to defend or indemnify DEQ for any such liability arising out of the wrongful acts of DEQ, its officers, employees or agents.

## X. AMENDMENTS AND TERMINATION

A. This Agreement may be modified at any time by mutual written agreement of the parties.

B. Either party upon 30-calendar day's written notice may terminate this Agreement.

C. This Agreement shall be in effect upon signature by all parties and shall remain in effect unless terminated earlier, extended, or modified by written agreement.

D. This Agreement is not intended for the benefit of any third parties.

## XI. NOTIFICATIONS

A. The City will provide up-to-date changes in contact information (e.g. names, titles, email and mailing addresses, fax and telephone numbers, etc.) of City staff responsible for implementation of this Agreement to the appropriate DEQ regional office.

B. DEQ will provide up-to-date changes in contact information lists (e.g. names, titles, email and mailing addresses, fax and telephone numbers, etc.) of DEQ staff responsible for implementation of this agreement to the appropriate City staff.

## XII. DEFINITIONS

The following definitions apply to the terms used in this Agreement:

A. **General Permit** – as defined in OAR 340-045-0010(8) means a permit issued to a category of qualifying sources pursuant to OAR 340-045-0033(5) in lieu of individual permits being issued to each source.

B. **National Pollutant Discharge Elimination System Permit (NPDES)** – as defined in OAR 340-045-0010(9) means a waste discharge permit issued in accordance with requirements

and procedures of the National Pollutant Discharge Elimination System authorized by Section 402 of the Federal Clean Water Act and by OAR 340-045.

C. **NPDES General Permit for Stormwater Discharges (1200-Z)** – as adopted by reference in OAR 340-045-0033(10)(m) means the general permit for storm water runoff that may discharge to surface waters or conveyance systems leading to surface waters from industrial activities; see Sources Covered section of permit for a specific list of activities. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR 122.26(g).

D. **NPDES General Permit for Stormwater Discharges (1200-COLS)** – as adopted by reference in OAR 340-045-0033(10)(1) means the general permit for storm water runoff that may discharge to surface waters in the Columbia Slough watershed or conveyance systems leading to surface waters in the Columbia Slough watershed from industrial activities; see Sources Covered section of permit for a specific list of activities. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR 122.26(g).

E. ***NPDES General Permit for Stormwater Discharges* (1200-A)** – as adopted by reference in OAR 340-045-0033(11)(h) means the general permit for storm water runoff that may discharge to surface waters or conveyance systems leading to surface waters from sand, gravel, and non-metallic quarrying and mining in Standard Industrial Classification (SIC) 14, asphalt mix batch plants and concrete bath plants. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR 122.26(g).

F. **Permit Registrant** – means a person with coverage for their industrial activities under the NPDES 1200-Z pursuant to ORS 468B.050 and the Federal Clean Water Act as promulgated under OAR 340-045. The permit registrant is the owner or operator of any site subject to regulation under the NPDES program as defined by 40 CFR § 122.2. The operator is often the owner, developer, industrial contractor, subcontractors, government entity, or another agent of the owner.

G. **Pollution or Water Pollution** – as defined by ORS 468B.005(3) means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

H. **Stormwater** – as defined by 40 CFR § 122.26(b)(13) means stormwater runoff, snowmelt runoff and surface runoff associated with a storm event.

I. **Waters of the State** – as defined in ORS 468B.005(8) and OAR 340-045-0010(17) include lakes, bays, ponds, impounding reservoirs, 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 which do not combine or effect a junction with natural surface or underground waters) which are wholly or partially within or bordering the state or within its jurisdiction.

**XIII. SIGNATURES**

IN WITNESS WHEREOF Portland and DEQ have caused this Agreement to be executed by its duly authorized representative as of the date hereinabove first written.

Approved as to form:

City Attorney

CITY OF PORTLAND

Commissioner-in-Charge

APPROVED AS TO FORM

CITY ATTORNEY

By: Auditor

Approved as to form:

Neil Mullane, Water Quality Division Administrator

DEPARTMENT OF ENVIRONMENTAL QUALITY

4/22/10

Nina DeConcini, Northwest Region Administrator