

DEQ

APR 20 2010

Water Quality

**National Pollutant Discharge Elimination
System**

Memorandum of Agreement

**Between the State of Oregon and
United States Environmental Protection Agency
Region 10**

Table of Contents

SECTION 1.0	GENERAL	1
SECTION 2.0	SCOPE OF AUTHORIZATION	2
SECTION 3.0	PROGRAM RESPONSIBILITIES	3
3.01	ODEQ Responsibilities	3
3.02	EPA's Responsibilities	5
3.03	Jurisdiction Over Permits	6
SECTION 4.0	PERMIT REVIEW AND ISSUANCE	8
4.01	Receipt of New Permit Applications by the ODEQ	8
4.02	Permit Reissuance	8
4.03	EPA Review of Draft and Proposed Permits, Permit Modifications, and Permit Revocations and Reissuances	8
4.04	Waiver of Permit Review by EPA	8
4.05	Public Participation	11
4.06	Issuance of Permits or Notice to Deny	12
4.08	Major Discharger List	13
4.09	Administrative or Court Action	14
4.10	Variances	14
4.11	Appeals	14
SECTION 5.0	PRETREATMENT PROGRAM	15
5.01	General	15
5.02	Program Responsibility	15
5.03	National Pretreatment Standards Categorical Standards ~ 40 CFR §403.6(a)	16
5.04	Removal Credits and POTW Pretreatment Program Approvals ~ 40 CFR §403.7	17
5.05	Variances from Categorical National Pretreatment Standards for Fundamentally Different Factors (FDF) ~ 40 CFR §403.13	17
5.06	Effective Integration of Pretreatment Enforcement Activities into the Oregon NPDES Program	17
5.07	Miscellaneous	18
SECTION 6.0	COMPLIANCE MONITORING	19
6.01	Compliance Review	19
6.02	Facility Compliance Inspections	19
6.03	Compliance Tracking	21
6.04	Miscellaneous Compliance Activities	21
SECTION 7.0	ENFORCEMENT	23
7.01	Timely Enforcement Responsibility	23
7.02	EPA's Oversight and Enforcement Authority	24
7.03	Enforcement Miscellaneous	25
SECTION 8.0	REPORTING AND TRANSMITTAL OF INFORMATION ON OREGON NPDES REGULATED FACILITIES	26
8.01	ODEQ to EPA	26
8.02	EPA to ODEQ	27
SECTION 9.0	PROGRAM REVIEW	28
SECTION 10.0	COMPUTATION OF TIME	30

SECTION 11.0	REFERENCE DOCUMENTS.....	31
SECTION 12.0	APPROVAL AND EFFECTIVE DATE.....	32

List of Tables

TABLE 1.	ODEQ TO EPA RESPONSIBILITIES.....	26
TABLE 2.	EPA TO ODEQ RESPONSIBILITIES.....	27

Abbreviations and Acronyms

CFR	Code of Federal Regulation
CWA	Clean Water Act
DMR	Discharge Monitoring Report
EPA	United States Environmental Protection Agency
FDF	Fundamentally Different Factor
ICIS-NPDES	Integrated Compliance Information System-National Pollutant Discharge Elimination System
IMD	Internal Management Directive
IU	Industrial User
MGD	Million Gallons per Day
MSGP	Multi-Sector General Permit
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
OAG	Oregon Attorney General
OAR	Oregon Administrative Rule
OCMP	Oregon Coastal Management Plan
ODEQ	Oregon Department of Environmental Quality
ORS	Oregon Revised Statute
PCS	Permit Compliance System
POTW	Publicly Owned Treatment Works
PPA	Performance Partnership Agreement
QA	Quality Assurance
QNCR	Quarterly Noncompliance Report
RCAC	Regional Citizens' Advisory Council
SHPO	State Historic Preservation Office
SIU	Significant Industrial User
SNC	Significant Noncompliance
State Resource Agencies	Oregon Department of Agriculture (Natural Resources Division) and Department of Fish and Wildlife

Section 1.0 General

This Memorandum of Agreement (hereinafter, this agreement or MOA) establishes policies, responsibilities, and procedures pursuant to 40 CFR Part 123 and defines the manner in which the National Pollutant Discharge Elimination System (NPDES) Program will be administered by the State of Oregon Department of Environmental Quality (hereinafter, ODEQ) and reviewed by Region 10 of the United States Environmental Protection Agency (hereinafter, EPA). The original MOA between EPA and ODEQ was approved September 26, 1973. On March 2, 1979, EPA approved a modification of that MOA which transferred to ODEQ the authority to regulate federal facilities under the NPDES program. In addition, there were two other modifications to the 1973 MOA: (1) ODEQ received the pretreatment program authority on March 12, 1981, and (2) ODEQ received the general permit program authority on February 23, 1982. In 1984, EPA Region 10 and ODEQ signed an additional MOA that purportedly replaced the 1973 MOA and its modifications. By its terms, the 1984 MOA stated that it would not become effective until the Administrator of EPA approved it. The Administrator of EPA never approved the MOA. Therefore, it is unclear whether the MOA is in effect. Even assuming that it is in effect, this MOA replaces all other previous NPDES MOAs and MOA amendments between ODEQ and EPA previously entered into.

The ODEQ DIRECTOR and the REGIONAL ADMINISTRATOR hereby agree that this agreement applies to permits or portions of permits issued by ODEQ pursuant to Oregon Revised Statutes (ORS) and the Oregon Administrative Rules (OAR) for discharges of any pollutant by any person to waters of the United States as these terms are defined in the Clean Water Act. The ODEQ DIRECTOR and the REGIONAL ADMINISTRATOR hereby agree to maintain a high level of cooperation and coordination between the ODEQ and EPA in a partnership to assure successful and effective administration of the Oregon NPDES Program. In this partnership, EPA will provide to ODEQ, as EPA resources allow, technical and other assistance on Oregon NPDES permit matters, as requested.

ODEQ will administer the Oregon NPDES Program in accordance with CWA §402 and the applicable federal regulations promulgated thereunder, this agreement, and applicable state legal authority.

The strategies and priorities for issuance, compliance monitoring, and enforcement of permits, as established in this agreement, may be set forth in more detail in the bi-annual Performance Partnership Agreement. This agreement and the Performance Partnership Agreement regarding the Oregon NPDES Program must be consistent. However, the basic requirements of this agreement will override any other Oregon NPDES-related agreement(s) entered into between ODEQ and EPA, as required by 40 CFR §123.24(c).

Section 2.0 Scope of Authorization

The ODEQ DIRECTOR and the REGIONAL ADMINISTRATOR agree that EPA has granted authority to ODEQ to administer the NPDES permitting, compliance, and enforcement programs for individual and general permits, federal facilities, as well as for the pretreatment, and stormwater programs in Oregon. ODEQ does not have NPDES Program authority for facilities located in Indian Country, facilities operating outside state waters (three miles offshore), or for biosolids (sewage sludge) permitting, compliance, or enforcement as part of the Oregon NPDES Program. EPA retains NPDES authority over tribal facilities and biosolids generation, use, and disposal.

ODEQ will continue to implement the Oregon NPDES Program in accordance with CWA §402(n) and in accordance with 40 CFR §123.1(g)(2). EPA will continue to be the permitting authority for tribal lands and biosolids generation, use, and disposal. In their respective roles, each will be responsible for: accepting applications; drafting permits and fact sheets; public noticing draft permits and review; preparing a response to comments; issuing permits; conducting inspections, audits, and reviews of various reports; and initiation of compliance and enforcement actions, as necessary.

Section 3.0 Program Responsibilities

3.01 ODEQ Responsibilities

In accordance with the priorities and procedures established in this agreement and the Performance Partnership Agreement, (PPA) ¹ the ODEQ must:

1. Develop and maintain the legal authority and, to the maximum extent possible, the resources required to carry out all aspects of the Oregon NPDES Program, including revisions to the state's program legal authority, as provided for at 40 CFR Part 123.
2. Ensure that EPA is kept fully informed and up to date regarding:
 - a) Draft and final significant policy and program documents i.e., Internal management directives (IMD), and enforcement guidance.
 - b) Draft and final statutes and rules related to the Oregon NPDES Program which are initiated by ODEQ.
 - c) New Oregon case law, settlement agreements, and remands of rules that ODEQ is aware of or a party to that relates to the Oregon NPDES Program.
 - d) Draft and final technical guidance and policies that pertain to the Oregon NPDES Program.
3. Ensure that any proposed revision of the Oregon NPDES Program is submitted to EPA for approval, pursuant to 40 CFR §123.62(b).
4. Revise the Oregon NPDES Program as needed to conform to new federal regulations, including revisions to state regulations, within one year of the date of promulgation of the new federal regulations as provided in 40 CFR § 122.62(e). However, if ODEQ is required to amend or enact a statute in order to make the required revision, the revision must be made within 2 years of the date of promulgation of the new federal regulations as provided in 40 CFR § 122.62(e).
5. Process permit applications in a timely manner and issue, reissue, modify, deny, or revoke and reissue, or terminate all Oregon NPDES permits. EPA will share national guidance with Oregon on EPA's NPDES program priorities. Oregon should consider these priorities in determining their program activities.
6. Develop and maintain a *Continuing Planning Process* document per 40 CFR §130.5. Activities to maintain current planning processes will be identified in the annual Performance Partnership Agreement.
7. Maintain an effective program to carry out the pretreatment responsibilities outlined in Section 5.0 (Pretreatment Program) of this agreement.

¹ Performance Partnership Agreement (PPA) per 35 CFR § 102 are a negotiated agreement between EPA and the State agency that set out jointly developed goals, objectives, and priorities; the strategies to be used in meeting them; the roles and responsibilities of the State and EPA; and the measures to be used in assessing progress. In Oregon the PPA is negotiated every two years and describes the EPA's and ODEQ's mutual and separate program priorities.

8. Comprehensively evaluate and assess compliance with schedules, effluent limitations, and other conditions in the permits, as outlined in Section 6.0 (Compliance Monitoring) of this agreement.
9. Maintain a vigorous program of taking timely and appropriate enforcement actions in accordance with the CWA, Oregon Statutes, and Oregon Administrative Rules (as outlined in Section 7.0 of this agreement).
10. Following the State retention schedule, maintain an adequate public file of Oregon permits that is easily accessible to EPA. The file must allow for evaluation of every permit for a minimum of the previous five years or until such permit is reissued. Such files must include copies of or access to electronic copies of:
 - Permit application
 - Public notice
 - Fact sheet or statement of basis on preliminary draft permit and draft permit
 - Preliminary (Applicant Review) draft and draft permit
 - Studies supporting permit decisions (e.g. mixing zone, wasteload allocation, total maximum daily load, site specific analysis, or in stream sampling data)
 - Comments received on the preliminary (Applicant Review) draft permit
 - Public comments received on the draft permit
 - Response to comments received on draft permit
 - Comments received on the proposed final permit
 - Proposed final permit
 - Final (issued) permit or final order of denial
 - Fact sheet or statement of basis reflecting the final (issued) permit
 - Discharge monitoring reports
 - Annual reports from permittees, if required
 - Compliance schedule reports
 - All inspection reports
 - All enforcement actions
 - Stormwater related documents, including stormwater management plans and pollution prevention plans received by ODEQ
 - Requests for hearings, motions for reconsideration and rehearing, and any order issued by the ODEQ
 - All pretreatment related documents, including the permittee's Pretreatment Program and annual reports, as applicable
 - Other pertinent information and correspondence
11. Input all nationally required data elements for all permitted facilities (minors, majors, stormwater, pretreatment, and CAFO's into the national database (currently PCS and eventually ICIS)).
12. Submit to EPA the information described in Section 8.0 (reporting and transmittal of information on Oregon NPDES regulated facilities) of this agreement, the Performance Partnership Agreement (PPA), and applicable

portions of 40 CFR Part 123. Additionally, upon request by the Regional Administrator or designee, the ODEQ shall submit specific information and allow access to files necessary to evaluate the ODEQ's administration of the Oregon NPDES program.

13. Make available to EPA any information obtained or used by ODEQ under the Oregon NPDES Program upon request without restriction due to claims of confidentiality unless otherwise required by law. ODEQ will determine if information submitted by an applicant under a claim of confidentiality is confidential (i.e., confidential business information) in accordance with state law and identify the material accordingly. EPA will be informed of any confidential information that is transmitted to EPA. EPA shall treat such claims as confidential in accordance with 40 CFR Part 2, Subpart B and 40 CFR §122.7.

3.02 EPA's Responsibilities

In accordance with the priorities and procedures established in this agreement and the Performance Partnership Agreement, EPA must:

1. Commit to funding ODEQ to the maximum extent possible, as allowed by law and within existing budget requirements and priorities to support Oregon NPDES Program activities.
2. Where no effective effluent guidelines or standards exist for a discharge, provide available technical information, to the extent information is available to EPA Region 10, to assist ODEQ in writing permit terms and conditions. For example, EPA may provide contractor reports, draft development documents, and available permits and effluent data from similar facilities.
3. Provide draft and final copies of permits for facilities that EPA retains authority over when the discharge may affect state waters.
4. At ODEQ's request, and as EPA resources allow, provide technical support and assistance to ODEQ, as negotiated via the Performance Partnership Agreement.
5. Subject to applicable confidentiality considerations at EPA's discretion, provide ODEQ with the following:
 - a) EPA contractor reports; draft and final EPA development documents; and draft, proposed, and final effluent limitation guidelines regulations.
 - b) Draft and final settlement agreements between litigants and EPA that concern the interpretation or modification of effluent limitation guidelines regulations for various industry categories that may affect the Oregon NPDES Program or water quality standards and planning program.
 - c) Draft, proposed, and final versions of EPA regulations, technical guidance, policies, and procedures that pertain to: implementation of the Oregon NPDES Wastewater Discharge Authorization Program and Compliance and Enforcement Program; changes in National Enforcement

Priorities and associated strategies; and the water quality standards and planning program.

6. Provide ODEQ with the opportunity for meaningful involvement in program development activities and program initiatives. EPA will keep ODEQ informed, to the extent allowed by the law, of the development of national NPDES program policy statements, strategies, performance measures, and related guidance and provide for input by ODEQ, when appropriate.
7. As outlined in Section 9.0 (Program Review) of this agreement, oversee ODEQ's administration of the Oregon NPDES Program on an ongoing basis for consistency with: the CWA; this agreement; the Performance Partnership Agreement; all applicable regulations promulgated pursuant to the CWA; and any other Oregon NPDES relevant agreements between ODEQ and EPA. EPA may consider, as a part of its assessment, review of permits, reports, and enforcement actions submitted by ODEQ and may also consider comments from permittees, the public, and federal and local agencies concerning ODEQ's administration of the Oregon NPDES Program. Any such comments to EPA will be brought to the attention of the ODEQ by written correspondence if the person commenting has not previously communicated the comment to ODEQ.
8. Input all required data into EPA's national CWA NPDES database (currently PCS and eventually ICIS), for the facilities EPA retains permanent authority over.
9. Retain authority for the federal biosolids program, which includes permitting, compliance, and enforcement.

3.03 Jurisdiction Over Permits

ODEQ assumes authority [subject to EPA's oversight and enforcement authority pursuant to CWA §§402(d) and (i)] for permitting, compliance, and enforcement activities of the Oregon NPDES Program, including administration of the Stormwater Program, Pretreatment Program, CAFO program, and federal facilities, as originally authorized in the 1973 MOA and its amendments cited above in Section 1:0. ODEQ and EPA will transmit and receive information regarding the Oregon NPDES Program in accordance with 40 CFR §123.41, 123.42, and 123.43.

1. ODEQ must:
 - a) Assume permitting, compliance, and enforcement authority for facilities, with the exception of: Indian country, outside State waters (3 miles offshore), and the federal biosolids program.
 - b) Ensure compliance for all Oregon facilities subject to NPDES.
 - c) Retain the right to take and enforce state law at facilities with EPA-issued NPDES permits.
2. ODEQ may include permit requirements from State statutes, rules, and policies on biosolids and other state programs. ODEQ will ensure no

permit or fact sheet references federal biosolids regulations, standards, or requirements of non-approved programs - other than EPA-approved language.

3. EPA will retain permitting, compliance, and enforcement authority for facilities located in Indian Country and facilities operating outside state waters (three miles offshore). EPA will also retain authority over the federal biosolids permitting, compliance, and enforcement.
4. EPA must process appeals, modifications requests, and variance requests pertaining to permits issued by EPA and that EPA retains authority over. EPA must copy ODEQ on all correspondence and permitting decisions.
5. ODEQ and EPA must coordinate permitting, compliance monitoring, and enforcement activities for those industries and permits where the agencies have dual jurisdiction. The coordination outlined in other sections of this agreement may be expanded in other formal agreement(s). Except as provided in this and other agreements, EPA may not defer to ODEQ on any EPA statutory or regulatory authority, obligation, duty, or procedure including permitting, compliance, and enforcement.
6. If an EPA objection over a state proposed Oregon NPDES permit is not resolved, then EPA must assume permitting, compliance, and enforcement authority for that facility, pursuant to federal law. At the end of the permit term, ODEQ will be responsible for permitting, compliance, and enforcement.
7. Upon request, EPA will assist ODEQ in ensuring compliance at federal facilities as resources allow.

Section 4.0 Permit Review and Issuance

ODEQ is responsible for drafting, providing public notice, issuing, reissuing, authorizing, modifying, denying, revoking and reissuing, or terminating Oregon NPDES permits in accordance with this agreement, the CWA, the regulations promulgated thereunder at 40 CFR Parts 122-123, and applicable state statutes and rules

For the purposes of the Oregon NPDES Program, “preliminary (applicant review) draft permit” means a document prepared prior to public notice. A “draft permit” means a document prepared by ODEQ for public notice and comment indicating ODEQ’s tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A “proposed final permit” means a document prepared after the close of the public comment and, when applicable, any public hearing. A “final permit” means the issued permit.

4.01 Receipt of New Permit Applications by ODEQ

Within thirty (30) days after receipt of a complete permit application, ODEQ will enter all required information into the current EPA national CWA NPDES database.

4.02 Permit Reissuance

All expiring Oregon NPDES permits for which timely and complete permit renewal applications have been submitted must be reissued on or before their expiration date. If such timely reissuance is not possible, the permit may be administratively continued beyond its expiration date in accordance with state law, but in no event will the expired permit be modified. An administratively extended permit remains in effect and enforceable until such time as the ODEQ permit is revised or reissued.

4.03 EPA Informal Review of Permit Documents

ODEQ may consult with EPA before issuing any permit or permit modification to ensure that the permit will comply with the federal Clean Water Act, ODEQ must transmit to EPA appropriate portions of working documents in connection with these consultations. During informal review of a permit, EPA may request to review the proposed final permit.

4.04 EPA Review of Draft and Proposed Permits, Permit Modifications, and Permit Revocations and Reissuances

1. Unless waived pursuant to Section 4.04 of this agreement, EPA will review and comment on draft permits, permit modifications, and revocations and reissuances rather than proposed final permits. A proposed final permit need not be prepared by ODEQ and transmitted to EPA for review unless: ODEQ proposes to issue a permit which differs from the draft permit reviewed by EPA, EPA has objected to the draft permit, there is significant public comment, or EPA requests in writing to review the proposed final permit.

ODEQ will not proceed to issue a permit if there are unresolved EPA objections to the permit.

2. For the purposes of this Section, EPA's review of permit modifications, revocations, or reissuances will follow the same procedures as outlined for the review of a draft individual permit or draft general permit, as appropriate.
3. ODEQ will notify EPA electronically of draft individual permits available for public review. At EPA's request, ODEQ will transmit electronically to EPA one copy of the complete permit application, the public notice, the draft individual permit, the fact sheet associated with the draft permit, and an Ocean Discharge Criteria Evaluation pursuant to 40 CFR § 125.122(b), if applicable, for formal review. Upon request by EPA, ODEQ will provide EPA with copies of documents related to or supporting the draft permit.
4. Within thirty (30) days of EPA's receipt of a draft individual permit, the REGIONAL ADMINISTRATOR or designee will send to ODEQ written comments on, objections to, or recommendations with respect to the draft permit. Upon request, EPA shall have an additional sixty (60) days in which to provide comments.

A notification of objection by EPA during the initial thirty (30) day period need only set forth the general nature of the objection(s) pursuant to 40 CFR § 123.44. If a general objection is filed within the thirty (30) day period, EPA shall have the remainder of ninety (90) days from the date EPA received the draft permit to supply specific grounds for objection. Notwithstanding the foregoing, EPA and the ODEQ may mutually agree to extend EPA's review time on a particular permit to the full ninety (90) days without filing a general objection during the initial period. Nothing in this agreement waives EPA's right to submit a general objection to the permit and request the full ninety (90) days to review a draft permit to provide a specific objection. EPA shall also send a copy of any comments, objections, or recommendations to the permit applicant.

ODEQ may proceed with the permit issuance process if: 1) the REGIONAL ADMINISTRATOR or designee does not make general comments, objections, or recommendations in writing or extend its review time as provided above within thirty (30) days of receipt of the draft individual permit; and 2) no significant public comment on the draft permit is received during the public review period.

5. At the time a draft general permit is available for public review, ODEQ must transmit to the REGIONAL ADMINISTRATOR or designee one copy of the public notice, draft general permit, the fact sheet associated with the draft general permit, and an Ocean Discharge Criteria Evaluation, if applicable, for formal review. Within ninety (90) days of EPA's receipt of a draft general permit, the REGIONAL ADMINISTRATOR or designee may submit in writing to ODEQ comments upon, objections to, or recommendations with respect to the draft general permit. If EPA does not object to the draft general permit in writing within ninety (90) days of

receipt and no significant public comment on the general permit is received during the public review period, then ODEQ may proceed to issue the general permit.

6. In the event EPA files a general objection to a draft individual or general permit, EPA shall have ninety (90) days from the date of EPA's receipt of a draft permit to submit in writing to ODEQ the specific grounds for objection, including:
 - a) A statement of the reason for the objection (including the Section of the CWA or regulations that support the objection--EPA's objection to the issuance of a proposed final permit must be based upon one or more of the grounds listed in 40 CFR §123.44(c)); and
 - b) The actions that EPA requests must be taken by ODEQ to eliminate the objection (including the effluent limitations and conditions that the permit would include if it were issued by EPA).
7. Prior to notifying ODEQ of an objection based upon any of the grounds set forth in 40 CFR §123.44(c), EPA:
 - a) Must consider all data transmitted pursuant to 40 CFR §123.43.
 - b) May, if the information provided is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, request ODEQ to transmit to EPA the complete record of the permit proceedings before ODEQ, or any portions of the record that EPA determines are necessary for review. If this request is made within thirty (30) days of receipt of ODEQ's submittal under 40 CFR §123.43, it shall constitute an interim objection to the issuance of the permit, and the full period of time specified in paragraphs 4 or 5 of this Section, as appropriate, for EPA's review shall recommence when EPA has received the requested information.
 - c) May, in its discretion, and to the extent feasible within the period of time available under paragraphs 4 or 5 of this Section, as appropriate, afford to the public an opportunity to comment on the basis for the objection.
8. Within ninety (90) days of receipt by ODEQ of an objection by EPA, ODEQ or any interested person may request that a public hearing be held by EPA on the objection in accordance with 40 CFR §§123.44(e) and (f). Following the public hearing, EPA must reaffirm the original objection, modify the terms of the objection, or withdraw the objection and must notify ODEQ of the decision.
9. If ODEQ does not submit a revised permit that meets EPA's objections within ninety (90) days of the notice of objection [or thirty (30) days following EPA's reaffirmation of the original objection or modification of the objection following a public hearing on the objection], EPA may issue the permit. Following the issuance of an EPA-issued permit, authority to reissue the permit reverts to ODEQ.

10. EPA may request to review any application for coverage under a general permit. ODEQ will provide a copy of the application to EPA within five (5) days of EPA's request. Within twenty (20) days after receipt of the application for coverage, EPA will notify ODEQ of any formal objections to the applicant's suitability for coverage under the general permit.
11. Following the close of the public comment period on a draft permit, a proposed final permit will be prepared, a response to comments developed, and the fact sheet revised as appropriate to reflect the proposed final permit. ODEQ may issue the permit without further review by EPA unless:
 - a) The proposed final permit differs from the draft permit reviewed by EPA (unless the changes are insignificant, and EPA agrees that additional review is not needed);
 - b) EPA has objected to such draft permit as outlined in paragraphs 4 or 5 and 6 of this Section;
 - c) Significant unresolved public comments have been received, or
 - d) EPA requests in writing to review the proposed final permit
12. If any exceptions listed in subparagraphs a through d in paragraph 11 occur, then ODEQ will send to EPA one copy of the proposed final permit, copies of the written public comments received, including hearing records, and a response to comments prepared under OAR 340-045-0035(8). EPA may comment upon, object to, or make recommendations to the proposed final permit pursuant to the process set forth in Paragraphs 4 through 9, above.
13. An electronic copy of the final issued permit, fact sheet revised to reflect the issued, response to comments, and Ocean Discharge Criteria Evaluation, if applicable, must be transmitted to EPA regardless of whether EPA has waived review of the permit in accordance with Section 4.05.
14. ODEQ must notify EPA whenever it intends to terminate or revoke and reissue an issued Oregon NPDES permit. ODEQ must transmit to EPA a copy of any permit that it proposes to modify or revoke and reissue with the proposed changes clearly identified. The procedures in this section must be followed with respect to modifications by ODEQ of any issued permit and, for purposes of this agreement, each permit proposed to be modified must follow the same procedures as a new permit, except for permits that undergo minor modifications, as described in OAR 340-045-0040 and 0035.

4.05 Waiver of Permit Review by EPA

1. On an annual basis, ODEQ will transmit to EPA an annual Permit Issuance Plan that will identify the permits ODEQ intends to issue during the upcoming year. EPA waives the right to review, object to, or comment on the sufficiency of preliminary draft permits, draft permits, proposed final permits (to the extent that they must be submitted to EPA), and final (issued) permits for all discharges or proposed discharges, with the exceptions of the categories described below:
 - a) discharges into the territorial sea;

- b) discharges proposed to be regulated by general permits;
 - c) discharges from Publicly Owned Treatment Works (POTWs) with a daily average discharge that exceeds one million gallons per day (MGD), as listed in Appendix D;
 - d) discharges of uncontaminated cooling water with a daily average discharge that exceeds 500 MGD;
 - e) discharges from any major discharger;
 - f) discharges from any discharger within any of the industrial categories listed to 40 CFR Part 122;
 - g) discharges from any other sources with a daily average discharge that exceeds 0.5 MGD, except that EPA may waive review of permits for discharges of non-process wastewater regardless of flow;
 - h) POTWs required to have a Pretreatment Program;
 - i) discharges that may affect the waters of another state or Indian lands.
2. With the exception of major dischargers under a general permit, EPA waives its right to review applications to register for coverage for minor discharges under a general permit.
 3. EPA reserves the right to terminate the waivers in this Section, in whole or in part, at any time. Any such termination shall be made in writing to ODEQ.
 4. The foregoing waiver does not authorize the issuance of permits which do not comply with applicable provisions of federal laws, regulations, effluent guidelines, Oregon statutes, or Oregon rules. The waiver shall not relinquish the right of EPA to petition ODEQ for review of any action or inaction.
 5. ODEQ biosolids permit requirements, and ODEQ compliance and enforcement program activities are not subject to EPA oversight or review other than may be specified in this or other agreements.

4.06 Public Participation

The public notification provided in the permit process must be consistent with the provisions in 40 CFR Part 124 applicable to state programs and with OAR 340-045-0027.

1. Permit applications, public notices, preliminary draft permits, draft permits, fact sheets or statements of basis, proposed final permits, and final issued permits will be made available to any person upon request and upon payment of applicable state duplicating fees.
2. ODEQ will prepare and distribute copies of all public notices and fact sheets in accordance with OAR 340, division 45, Federal guidance is found in 40 CFR §124.8. and 40 CFR §124.10, respectively. Unless otherwise waived by the specific organization, ODEQ will provide to the following organizations copies of all public notices as required by 40 CFR 124.10: the National Marine Fisheries Service and the US Fish and Wildlife Service,

State Historical Preservation Office (SHPO), state resource agencies, adjacent States and Indian Tribes (only for permits which affect them).

3. The public notice and comment procedures required by Oregon statute or rule will be followed with respect to all permit modifications to final issued permits. In the event ODEQ initiates a minor permit modification ODEQ will transmit the final minor modification to EPA, the applicant, and all persons who received notice of the permit issuance. In other cases, public notice of the permit modification application is given in the same manner as for initial permit applications.
4. Notification of a final issued permit will be posted on ODEQ's web page and transmitted to persons who commented on the draft permit during the public review period or requested notification of ODEQ's final action.
5. ODEQ must provide an opportunity for judicial review in state court of the final approval or denial of a permit that is sufficient to provide for, encourage, and assist public participation in the permitting process in accordance with 40 CFR §123.30.

4.07 Issuance of Permits or Notice to Deny

1. *Issue.* If the final determination is to issue the permit, the permit will be forwarded to the permit applicant, along with a transmittal letter conveying ODEQ's decision. A copy of the final issued permit will be transmitted to EPA in accordance with the schedule contained in Section 8.0 of this agreement.
2. *Deny.* If the final determination is to deny the permit, notice of intent to deny must be given to EPA and the applicant.

4.08 Major Discharger List

ODEQ and EPA will input current data into EPA's national CWA NPDES database on the major facilities for which each agency is responsible.

1. A domestic major discharger is a facility mutually defined by ODEQ and EPA as a major discharger based on a design treatment plant flow of at least 1.0 MGD, an approved Pretreatment Program, a high potential for violation of water quality standards, or poses a potential or actual threat to human health or the environment.
2. A nondomestic major discharger is a facility mutually defined by ODEQ and EPA as a major discharger based on the *Oregon NPDES Permit Rating Work Sheet* that is based on EPA's NPDES Permit Rating Work Sheet, plus any additional dischargers that, in the opinion of ODEQ and EPA, have a high potential for violation of water quality standards.

4.09 Administrative or Court Action

If the terms of any permit, including any permit for which review has been waived by EPA, are affected in any manner by an administrative or court action, ODEQ must immediately transmit to EPA a copy of the permit with changes identified and must

allow for EPA to make written objections to the changed permit in accordance with Section 4.04. For purposes of this paragraph only, 'changed permit' shall replace 'draft permit' in Section 4.04, unless the court modifies the permit directly in which case ODEQ must transmit the permit along with the changes.

4.10 Variances

Consistent with time limitations contained in the most recently amended CWA, ODEQ must conduct an initial review of all requests for fundamentally different factors, for variances under sections 301(c), (g), (i), (k), and 316(a) of the CWA, and for modifications to federal effluent limitations established under section 302 of the CWA.

1. With regard to sections 301(i) and (k) and 316(a) variances ODEQ may deny or approve the request. ODEQ must send a copy of the determination to the requester and EPA.
2. With regard to fundamentally different factors and section 301(c) and (g) variances, and section 302 of the CWA modifications, ODEQ may deny the request, and such determination shall be forwarded to the requester and EPA. If ODEQ determines that factors do exist that may warrant such a variance, it shall send the request and recommendations to EPA. If EPA denies a variance request, ODEQ must so notify the requester. If EPA approves a variance request, ODEQ must prepare a draft permit factoring in the variance.

4.11 Appeals

1. ODEQ will provide EPA with a copy of all formal judicial, administrative law or EQC decisions, as well as any formal settlement agreements that ODEQ enters into, that impact ODEQ's ability to implement the Oregon NPDES Program in accordance with federal requirements.
2. *Stay of Permit.* When the ODEQ makes a determination to stay a permit, in whole or in part, the ODEQ will notify EPA.

Section 5.0 Pretreatment Program

5.01 General

This Section defines ODEQ and EPA responsibilities to establish, implement, and enforce the National Pretreatment Program, pursuant to OAR 340-045-0063, CWA §307 and CWA §402. ODEQ will apply and enforce the pretreatment regulations as required by 40 CFR Part 403, and EPA will oversee ODEQ Pretreatment Program operations consistent with 40 CFR Part 403 regulations and this agreement.

As ODEQ issues, reissues, or modifies permits in accordance with Section 4.0 of this agreement, ODEQ will include appropriate pretreatment conditions in those issued, reissued, or modified permits.

The EPA must retain authority over tribal facilities consistent with 40 CFR Part 403.

5.02 Program Responsibility

ODEQ shall implement its approved pretreatment program including the following responsibilities:

1. Enforce as appropriate against discharges prohibited by ORS Chapter 468B and Oregon Administrative Rule 340-045-0063, and 40 CFR §403.5 (Prohibited Discharges).
2. Seek civil and criminal penalties and injunctive relief (including a temporary restraining order), as appropriate, for noncompliance by a POTW with pretreatment conditions incorporated into the POTW permit and for noncompliance with National Pretreatment Standards by Industrial Users (IUs), as set forth in 40 CFR §403.8(f)(1)(vi).
3. Review, approve, or deny a POTW Pretreatment Program in accordance with the procedures at 40 CFR §§403.8, 403.9 and 403.11. Review and approve program modifications, as specified in 40 CFR §403.18.
4. Incorporate POTW Pretreatment Program conditions in a permit issued to a POTW, as required in 40 CFR §403.8 and CWA §402(b)(8); require compliance by a POTW with the incorporated permit conditions; and require compliance by IUs with National Pretreatment Standards.
5. Require POTWs to develop and enforce local limits, as necessary, as set forth in 40 CFR §403.5(c).
6. Develop and enforce local limits, including BMPs as necessary, where there are categorical users discharging to a POTW without an approved Pretreatment Program.
7. Require industrial reports, as outlined in 40 CFR §403.12.
8. Ensure continuing compliance:
 - a) of a POTW with pretreatment conditions incorporated into the POTW permit through review of monitoring reports submitted to the ODEQ by the POTW, as required by 40 CFR §403.12; and

- b) by IUs with National Pretreatment Standards through the review of self-monitoring reports submitted to the POTW or to ODEQ by the IUs, as required by 40 CFR §403.12.
- 9. Carry out inspection, surveillance, and monitoring procedures that will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment conditions incorporated into the POTW permit.
- 10. Carry out inspection, surveillance, and monitoring procedures that will determine, independent of information supplied by the Significant Industrial Users (SIUs), whether a representative sample of the SIUs is in compliance with National Pretreatment Standards.
- 11. As specified in Section 5.05 of this agreement, review and recommend approval or denial to EPA of requests for Fundamentally Different Factors variances submitted by an IU in accordance with the criteria and procedures set forth in 40 CFR §403.13 and enforce related conditions in the POTW's Oregon NPDES permit.
- 12. Review and, as appropriate, approve POTW requests for authority to modify categorical pretreatment standards to reflect removal of pollutants by a POTW, in accordance with 40 CFR §§403.7, 403.9, and 403.11.
- 13. Identify a POTW required to develop a Pretreatment Program, in accordance with 40 CFR §403.8(a); notify the POTW of the need to develop a POTW Pretreatment Program; and, provide technical and legal assistance to a POTW to develop a Pretreatment Program. In the absence of a required POTW Pretreatment Program, ODEQ must carry out the activities set forth in 40 CFR §403.8(f)(2).
- 14. Sample and analyze influent and effluent of a POTW to identify, independent of information supplied by the POTW, compliance or noncompliance with pollutant removal levels set forth in the POTW permit.
- 15. Investigate evidence of violations of pretreatment conditions set forth in the POTW permit by taking samples and acquiring other information, as needed.

5.03 National Pretreatment Standards Categorical Standards ~ 40 CFR §403.6(a)

Pursuant to 40 CFR §403.6(a), ODEQ must review requests from IUs for industrial category or subcategory determinations received within sixty (60) days after the effective date of a National Pretreatment Standard for a subcategory under which an IU believes itself to be included. ODEQ will prepare a written determination and justification as to whether the IU does or does not fall within that particular subcategory. ODEQ must forward its findings, a copy of the request, and necessary supporting information to EPA for concurrence. If EPA does not modify or object to ODEQ's proposed findings within sixty (60) days after receipt thereof, ODEQ will take agency action to approve or deny the request.

5.04 Removal Credits and POTW Pretreatment Program Approvals ~ 40 CFR §403.7

Pursuant to 40 CFR §403.7, ODEQ must review and approve a POTW application for removal credits for IUs who are or may be subject to National Pretreatment Standards in the future. ODEQ findings, the application, and supporting information must be submitted by ODEQ to EPA for review. No removal credits request must be approved by ODEQ if, during the thirty (30) day (or extended) evaluation period provided for in 40 CFR §403.11(b)(1)(ii) and any hearing held pursuant to 40 CFR §403.11(b)(2), EPA objects in writing to the approval of such a submission, per 40 CFR §403.11(d).

5.05 Variances from Categorical National Pretreatment Standards for Fundamentally Different Factors (FDF) ~ 40 CFR §403.13

Pursuant to 40 CFR §403.13, ODEQ will make an initial finding on all requests from IUs for variances from categorical National Pretreatment Standards for fundamentally different factors (FDFs), and in cases where ODEQ supports the variance, submit its findings, the FDF request, and supporting information to EPA for concurrence. ODEQ will not grant a FDF request until written concurrence has been received from EPA. ODEQ may deny requests for FDF without EPA concurrence.

5.06 Effective Integration of Pretreatment Enforcement Activities into the Oregon NPDES Program

1. ODEQ's enforcement response procedures and time frames will be adequate and timely to ensure compliance. Response procedures include reporting all regulated POTWs (including minor POTWs with approved Pretreatment Programs) on the quarterly noncompliance report (QNCR) when reportable noncompliance and significant noncompliance criteria (SNC) are met. The procedures will include taking appropriate enforcement action including when a POTW fails to submit approvable Pretreatment Programs, has violations of pretreatment requirements, or fails to submit timely reports.
2. ODEQ will initiate appropriate enforcement action against a POTW for failure to adequately enforce against its IUs. ODEQ will ensure that POTWs comply with the public participation requirements of 40 CFR Part 25 in the enforcement of National Pretreatment Standards and comply with enforcement procedures of Section 7.01 #2. These procedures must include provision for at least annual public notification in a newspaper(s) of general circulation within the jurisdiction(s) served by the POTW of IUs that, at any time during the previous 12 months, were in significant noncompliance with applicable pretreatment requirements, in 40 CFR §403.8(f)(2)(viii).
3. Where a POTW is not the primary control authority, ODEQ will be directly responsible to have the procedures in place for categorical and significant non-categorical IUs in accordance with 40 CFR §403.8(f)(2). ODEQ must exercise its enforcement procedures to enforce against violations of the pretreatment program.

4. ODEQ will take appropriate action against a permittee with a Pretreatment Program that is in noncompliance with 40 CFR Part 403. Noncompliance includes:
 - a) Failure to meet milestones in enforceable schedules for submitting a required local Pretreatment Program,
 - b) Violations of effluent limits, and
 - c) Delinquent POTW pretreatment reports.

5.07 Miscellaneous

Nothing in this AGREEMENT is intended to affect any pretreatment requirement, including any standards or prohibitions, established by state or local law. However, EPA and ODEQ agree that ODEQ is obligated to ensure that the state or local requirements are no less stringent than any set forth in the National Pretreatment Program or other requirements or prohibitions established under the CWA or federal regulations. Also, that the compliance assurance program for the pretreatment program is "adequate" as defined in 40 CFR Part 123.26

Section 6.0 Compliance Monitoring

ODEQ and EPA will implement the principles of the *EPA / State Agency Agreement on Compliance Assurance Principles* to coordinate their respective compliance assurance and enforcement planning efforts to complement the Performance Partnership Agreement process. Periodically and annually through the PPA process, EPA and ODEQ will establish program direction taking into account the current Federal and State priorities. ODEQ agrees to maintain a vigorous program to identify noncompliance and initiate timely, appropriate, and effective actions to return the discharger to compliance.

For purposes of this agreement the term "compliance monitoring" refers to all efforts to assure full compliance with Oregon NPDES permit conditions and program requirements. These efforts include DMR, report, and file review; complaint response; inspections; and inspection follow-up. Compliance monitoring will focus on discharges to waters of the United States for all activities covered by Oregon NPDES Program, including facilities authorized to discharge under an individual or general permit, indirect discharges to a POTW, CAFO facility and unpermitted discharges. Compliance monitoring is in accordance with the priorities and time frames for compliance tracking, as established in this agreement and as further negotiated through the Performance Partnership Agreement. ODEQ will operate a timely and effective compliance monitoring system including entry of required data to the EPA national CWA NPDES database (currently PCS and eventually ICIS) where batch uploads will occur at a minimum of every 14 days and/or manual data entry into the EPA National CWA NPDES database within 14 days of receipt of the data or an event occurrence.

6.01 Compliance Review

1. ODEQ will require all Oregon NPDES facility permittees to use ODEQ approved DMR formats
2. ODEQ will promptly review DMRs and other compliance information as they are submitted for all major dischargers pursuant to 40 CFR Part 123.45.
3. ODEQ will conduct timely and substantive review and maintain complete records of all material relating to the compliance status of an Oregon NPDES permittee, including DMRs, Compliance Schedule Reports, Compliance Inspection Reports, enforcement documents, and any other reports that a permittee may be required to submit under the terms and conditions of an Oregon NPDES permit, state certification of an NPDES permit, approved Pretreatment Program (when applicable), state administrative actions, or state court order.
4. ODEQ will evaluate a permittee's compliance status based on the review of material submitted, as well as results of a site inspection, if conducted. The evaluation will take into account the frequency, severity, circumstances, and analytical error to determine the appropriate enforcement response to noncompliance.

6.02 Facility Compliance Inspections

1. *General.* ODEQ will conduct field activities to determine the status of compliance with permit and pretreatment requirements, including sampling and

nonsampling inspections. The different types of compliance inspections are described in the Program Description, Section 9.1.4 and will be conducted in accordance with EPA's *NPDES Compliance Inspection Manual* (July 2004), 40 CFR §123.26(d), EPA's *Compliance Monitoring Strategy for the Core Program and Wet Weather Sources* (October 17, 2007) which is developed annually and the current Performance Partnership Agreement.

2. *Inspections.* ODEQ and EPA will, as part of the Performance Partnership Agreement, define the scope of compliance inspections to be undertaken by ODEQ. For the purposes of this agreement, a 'compliance inspection' includes, but is not limited to the following list: a compliance evaluation, compliance sampling, performance audit, biomonitoring, toxic sampling, diagnostic, reconnaissance, follow-up, construction site and industrial facility stormwater, combined sewer overflow, sanitary sewer overflow, CAFO inspections, audits, aerial photography, case follow up, and pretreatment program inspections. In addition:
 - a) ODEQ must give EPA adequate notice and opportunity to participate in its scheduled inspection activities. As agreed to in the Performance Partnership Agreement, ODEQ will inform EPA of the inspections it has scheduled for the coming year. The ODEQ will update "PCS", and eventually ICIS-NPDES with inspection and enforcement results for inspections ODEQ conducts.
 - b) EPA retains the right to perform inspections of any permittee at any time but will notify ODEQ to give it an opportunity to participate and will otherwise keep ODEQ informed of its plans and results. EPA will enter inspection information into the national database of record, currently PCS, and eventually, ICIS-NPDES for those inspections that it leads or oversees. EPA must provide the inspection and enforcement information to ODEQ to enter the data into an Oregon state database.
 - c) EPA and ODEQ agree that inspection schedules are enforcement confidential. Both agencies agree to maintain their confidentiality using available legal authorities, to inform each other of any requests for their disclosure, and to coordinate with each other in responding to any such requests. EPA and ODEQ retain the right to withhold its respective inspection schedules in the event of any disclosure.
3. *Inspection Schedules.* ODEQ and EPA will develop targets in the Performance Partnership Agreement for the number of compliance inspections to be performed annually by ODEQ. The targets may be modified with the concurrence of ODEQ and EPA. ODEQ and EPA agree to negotiate alternative inspection schedules via the Performance Partnership Agreement. An alternative schedule includes, for example, allowing substitution of two minor facility inspections for one major facility inspection when a major facility has demonstrated long-term permit compliance. Furthermore, ODEQ may revise inspection schedules in the future in response to revisions made to EPA's *Compliance Monitoring Strategy for the Core Program and Wet Weather Sources* (October 17th, 2007) and in accordance with Federal and State program direction and priorities.

4. *Reporting Schedule.* ODEQ must forward to EPA, any Oregon NPDES inspection reports upon request. When EPA conducts an inspection on an Oregon NPDES facility and representatives of ODEQ are not present, EPA must forward a copy of the inspection report to the ODEQ upon request unless the report is enforcement confidential.

6.03 Compliance Tracking

1. In accordance with the Oregon NPDES Program Description, this agreement, and as required in 40 CFR §123.26, ODEQ must operate a compliance tracking system so that staff will be capable of determining that:
 - a) Self-monitoring reports required by permit and/or pretreatment management requirements are submitted in a timely manner,
 - b) Submitted reports are complete and accurate,
 - c) Permit conditions and/or pretreatment management requirements (when applicable) are met, and
 - d) The data are accurately entered into "PCS", and eventually ICIS-NPDES.
2. ODEQ's compliance program will track the submittal of all reports on date-related permit conditions or other schedules in effect pursuant to the permit (e.g., required reports, Notices of Violation, Administrative Orders, Consent Agreements, and court orders). ODEQ must conduct a timely and substantive review of all date-related permit conditions and reports and will consider possible enforcement actions for failure to submit required reports.
3. EPA will be responsible to enter data into EPA's national CWA NPDES database for the facilities it retains authority over e.g., tribal facilities..

6.04 Miscellaneous Compliance Activities

1. *Citizen Complaint and Follow-up.* ODEQ must maintain procedures to receive and ensure proper consideration of information submitted by the public about alleged Oregon NPDES Program violations and maintain a system to track and evaluate the complaints received from the public. Public complaints received by EPA shall be referred to ODEQ as soon as reasonably possible. ODEQ must maintain either a physical or electronic record of the initial contact, assignment, investigation, and final disposition of Oregon NPDES-related complaints received from the public. This record shall be made available to EPA and the public pursuant to applicable state and federal law. Complaints received by ODEQ or referred to ODEQ by EPA under anonymity or confidentiality will be handled in accordance with the Oregon Public Records Act (Oregon revised statutes Chapter 192). If EPA receives either an anonymous or confidential public complaint, EPA will refer to ODEQ only those portions of the complaint. EPA and ODEQ will closely coordinate follow-up of such complaints.

2. *Information Requests.* Whenever EPA or ODEQ requests information concerning a specific discharger and the requested information is available from the files, that information will be provided to the requesting agency within a reasonable time, unless EPA or ODEQ determines the information is confidential.
3. *Laboratory Quality Assurance.* ODEQ will ensure that laboratories serving dischargers in Oregon comply with the Discharge Monitoring Report-Quality Assurance (DMR-QA) Program. ODEQ will review and approve a laboratory's quality assurance plan.
4. *Emergency Pollution Incidents.* Upon receipt of information relating to an actual or threatened pollution incident that may result in significant endangerment to human health or the environment, EPA or ODEQ will pass the information along to the other party to this agreement immediately by telephone or other equally effective means of communication.

Section 7.0 Enforcement

7.01 Timely Enforcement Responsibility

1. *Enforcement Action Against Violators.*
 - a) ODEQ, subject to EPA's oversight and enforcement authority, will take timely and appropriate enforcement action against persons in violation of compliance schedules, effluent limitations, all other permit conditions, and against persons discharging from a point source without a NPDES permit in violation of CWA Section 402.
 - b) ODEQ will take timely and appropriate enforcement action against an industrial user (IU) in violation of pretreatment requirements. ODEQ enforcement is not necessary in situations where a POTW with an approved Pretreatment Program has taken timely and appropriate enforcement action against the IU. This includes violations detected by ODEQ employees or assignees, as well as through other information provided to ODEQ. This responsibility encompasses violations whether detected by ODEQ or EPA.
 - c) When determining whether enforcement action is appropriate, ODEQ must consider the EPA CWA penalty policy, as established in the *Interim Clean Water Act Settlement Penalty Policy* (March 1, 1995) and any other revisions, addendums, and supplemental guidance (e.g. *Supplemental Guidance to the Interim Clean Water Act Settlement Penalty Policy* (March 1, 1995) for *Violations of the Construction Storm Water Requirements*, February 5, 2008) that EPA has adopted (or issued) and previously supplied to ODEQ.
 - d) The ODEQ agrees to implement the enforcement procedures described in the Oregon NPDES Program Description, Chapter 9.0; the Performance Partnership Agreement; and, applicable state and federal statutes, EPA regulations, and ODEQ rules, and, when appropriate, EPA guidance or policy statements..
2. *Enforcement Procedures.* ODEQ's enforcement program will include, but is not limited to the ability to:
 - a) Track the timeliness of permittee program submissions and the permittees compliance with compliance schedules.
 - b) Review DMR compliance data from permittees and all compliance reporting requirements of the pretreatment monitoring programs to determine the level and frequency of all violations and to evaluate instances of noncompliance by all major and minor permittees.
 - c) Review DMR compliance data and apply the Technical Review Criteria to Determine Significant Non Compliance (SNC) in accordance with Federal and State program direction and priorities, including the EPA National Program Managers' Guidance.
 - d) Review all inspection reports to determine what, if any, enforcement action may be necessary.
 - e) Apply initial compliance and/or escalated formal enforcement to address identified violations according to specific time frames, consistent with Federal and State program direction and priorities, including the EPA

National Program Managers' Guidance. Upon request, provide to EPA a copy of any enforcement follow-up when issued, ranging from a Compliance Letter to administrative or judicial action.

- f) Maintain a chronological summary of all violations.
3. *For violations* which if not abated, will endanger or cause damage to human health or the environment, ODEQ will maintain, and when appropriate promptly use, the authority to issue administrative orders prohibiting persons from taking unauthorized actions relating to the NPDES program that endanger or cause damage to public health or the environment. In addition, ODEQ, as appropriate, will use its authority under ORS 468.035 and 468.100 to request that the Oregon Department of Justice seek temporary restraining orders or injunctions, or both, against such persons when it appears that administrative orders are, or might be, ineffective.
4. ODEQ must keep records to demonstrate that:
 - a) enforcement procedures result in appropriate initial and follow-up enforcement actions are applied in a consistent and timely manner;
 - b) formal enforcement actions clearly define what the permittee is expected to do, and the reasonably certain date for such action; and,
 - c) the assessment of a civil penalty, when appropriate, is based on consideration of established factors and is an amount appropriate to the violation.
5. As required by 40 CFR §123.45 and as set forth in this agreement and the Performance Partnership Agreement; and consistent with the information tracking requirements of ICIS-NPDES, ODEQ will provide EPA with information on the compliance status of facilities, enforcement activities completed, and cases filed in court.

7.02 EPA's Oversight and Enforcement Authority

1. This agreement is not meant to restrict or limit EPA's oversight and enforcement authorities under the CWA. Any discussion of EPA or ODEQ roles and responsibilities is intended to guide EPA and ODEQ personnel to carry out an effective partnership, but is not meant to make ODEQ EPA's agent for purposes of enforcement or to restrict or limit EPA's direct enforcement authority under the CWA. Thus, EPA reserves the right to bring federal enforcement action under the CWA in response to any violation of the CWA.
2. If EPA determines that ODEQ has not taken timely enforcement action against a violator and/or that the enforcement action has not been appropriate, EPA may proceed with any or all enforcement options available under CWA §309. EPA generally will not proceed with federal civil enforcement until ODEQ has been given at least thirty (30) days' notice to take appropriate enforcement action. Such notification will be made through a written communication to the ODEQ DIRECTOR. Notwithstanding the above, nothing shall be construed as limiting EPA's authority under CWA §309 and 40 CFR §503.

3. This agreement does not create any rights in law or equity for any person not a party to this agreement. Any failure by EPA or ODEQ to follow any provision(s) of this agreement shall not affect the validity of any inspection or enforcement action and shall not constitute a defense to any violation of the CWA.
4. ODEQ may request EPA to initiate federal enforcement action when the ODEQ has been unable to achieve compliance through state remedies.
5. ODEQ may request EPA to participate in conferences and/or discussions in the pursuit of enforcement actions against a federal facility which may lead to formal filing of an enforcement action by ODEQ against a federal facility
6. EPA will coordinate with ODEQ on EPA's Tribal, off-shore, 301(h), and biosolids permitting, compliance and enforcement activities through the permit and inspection planning processes, and by providing a copy to ODEQ when EPA issues an enforcement document.

7.03 Enforcement Miscellaneous

1. ODEQ will not oppose intervention-by-right in any civil or administrative action to obtain remedies on the basis that the intervenor's interest is adequately represented by ODEQ.

Section 8.0 Reporting and Transmittal of Information on Oregon NPDES Regulated Facilities

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. State certification of NPDES permits that EPA retains legal jurisdiction over that discharge to state waters. 2. One copy of all permit applications; draft permits and permit modifications, including fact sheets; Ocean Discharge Criteria Evaluation, if applicable; and as applicable, new source/new discharger determination, except those for which EPA has waived review. 3. Documents related to or supporting the draft permit or permit modification. 4. One copy of an applicant's NOI to be covered by a general permit. 5. One copy of all Oregon NPDES-related public notices. 6. Copies of permit applications, draft permits, draft permit modifications, fact sheets, statements of basis, documents related to or supporting the draft permit or permit modification, new source/new discharger determination (as applicable), written comments received, hearing records, ODEQ's response to comments on draft permits, proposed final permits, and revised fact sheet to reflect changes to the proposed final permit (if applicable) for which EPA has waived review. 7. One copy of the written comments received, hearing records, and ODEQ's response to comments on draft permits, except for those EPA has waived review. 8. One copy of the proposed final permit and revised fact sheet to reflect changes to the proposed final permit, if applicable, except those permits EPA waived review of, or EPA has reviewed and approved a draft permit that has not changed as a result of public comment. 9. One copy of all final issued permits, including all minor and major modifications 10. A list of facilities scheduled for a compliance inspection, including the inspection dates. 11. Copies of inspection reports and transmittal letters for facilities authorized under Oregon NPDES (majors and minors). 12. Proposed revisions to the schedule of compliance inspections. 13. Input of required data into a national data base to enable EPA to prepare narrative reports for major permittees, as specified in 40 CFR §123.45(a) 14. Input of required data in a national data base to enable EPA to prepare a statistical summary report on the number of major permittees with two or more violations, as specified in 40 CFR §123.45(b) 15. Input of required data in a national data base to enable EPA to prepare a statistical summary report on all non major dischargers listing the number of noncompliances, enforcement actions, and extensions of compliance deadlines, as specified in 40 CFR §123.45(c). 16. Copies of all enforcement actions ranging from Compliance Letters to administrative and judicial actions for major and minor facilities. 17. Copies of the correspondence to carry out the Pretreatment Program, including: <ol style="list-style-type: none"> a. Categorical pretreatment determinations made under Section 5.03 b. Initial removal credit determinations made under Section 5.04 c. Initial determinations on pretreatment FDF under Section 5.05 18. When the ODEQ is the control authority, copies of inspection reports of SIUs, reporting results from SIUs, noted SIU violations, and enforcement action against SIUs. 19. Identification of any revisions to the Oregon NPDES Program necessary to preserve compliance with new or revised federal NPDES Program requirements and a timetable for completing such revisions. | <p>Draft certification prior to public notice. Final certification at time of permit issuance.</p> <p>When transmitted to the applicant and when placed on public notice</p>
<p>Upon request.</p> <p>Upon request and within 5 days of request</p> <p>As issued</p> <p>Upon request</p>
<p>When draft response to comments is completed</p>
<p>Upon request or when transmitted to the applicant for an individual permit or when posted on ODEQ web page for a general permit</p>
<p>As issued</p>
<p>Annually, as negotiated in the Performance Partnership Agreement</p> <p>Upon request</p>
<p>As revisions occur.</p> <p>With 14 days of receipt of applicant information</p>
<p>Semi-annually at the same time as the 1st and 3rd quarter QNCRs (federal fiscal year)</p>
<p>Annually within 60 days following the end of the federal fiscal year -- due November 30</p>
<p>Upon request.</p>
<p>As issued</p>
<p>Within 60 days of inspection or receipt of information</p>
<p>Annually with the Performance Partnership Agreement</p> |
|--|---|

8.01 ODEQ to EPA

Table 1. ODEQ to EPA Responsibilities

ODEQ will transmit the following documents to EPA when indicated:

- | | |
|--|--|
| 20. Notification of any ODEQ, legislative, or court action that may affect Oregon NPDES Program. | Within 10 days when ODEQ becomes aware |
| 21. Copies of court decisions/actions affecting the permit issuance, compliance, and enforcement process. | Within 15 days of receipt by ODEQ |
| 22. Information of any situation posing a substantial endangerment to the health, welfare, or the environment resulting from the actual or threatened direct or indirect discharge of pollutants into waters of the United States. | Immediately |

8.02 EPA to ODEQ

Table 2. EPA to ODEQ Responsibilities

EPA will transmit the following to ODEQ when indicated:

- | | |
|---|--|
| Copies of information pertaining to dischargers EPA retains jurisdiction over, including facilities located in Indian Country, biosolids facilities, and facilities operating outside state waters (three miles offshore), including: NOI, draft permit, fact sheet, CWA §401 certification, public notice, and hearing records | When received from applicant or drafted by EPA |
| EPA will verbally discuss the inspections it intends to conduct independently and jointly with ODEQ. | Annually, as negotiated in the Performance Partnership Agreement |
| EPA will verbally discuss the proposed revisions to the schedule of compliance inspections. | As revisions occur |
| Copies of approval of a Pretreatment Program for a municipality under its jurisdiction. | As issued |
| Notification to ODEQ of observed deficiencies resulting from EPA oversight inspections. | As performed |
| Copies of all inspection reports and transmittal letters for NPDES facilities, excluding those that EPA considers enforcement confidential upon request. | Upon request |
| Copies of all enforcement actions against violators, including letters, notices of violation, administrative orders, judicial filings, and settlements. | As issued |
| Notification of the commencement of federal enforcement and copies of final actions. | As issued |
| Draft and final reviews of the Oregon NPDES Program, including the Pretreatment Program. | As performed |
| 20. Copies of court decisions/actions affecting the permit issuance, compliance, or enforcement processes. | Within 15 days of receipt by EPA |
| 1. Notification of citizen complaints. | Upon receipt |
| 2. Draft and final or revised EPA laws that affect NPDES programs. | As EPA becomes aware |
| 3. Draft and final or revised EPA guidance related to NPDES program implementation. | As EPA becomes aware |

Section 9.0 Program Review

ODEQ and EPA are responsible for ensuring that the Oregon NPDES Program is consistent with all requirements of this agreement, the annual Performance Partnership Agreement, and applicable sections of the CWA and the regulations promulgated thereunder, including 40 CFR Parts 122-125 and 403. To fulfill this responsibility:

1. EPA must review the information transmitted between ODEQ and EPA to assure that all the requirements of Section 8.0 of this agreement are met.
2. EPA must meet with ODEQ officials, as set forth in the Performance Partnership Agreement, to review ODEQ's data handling (including both manual and automated data processing), permit processing, compliance monitoring, and enforcement procedures.
3. EPA officials shall meet with ODEQ, as requested by EPA, to conduct an audit which shall consist, in part, of examining in detail ODEQ files and documentation of selected facilities to determine whether:
 - a) permits are processed and issued consistently with federal requirements;
 - b) capability exists to discover permit violations when they occur;
 - c) ODEQ's Pretreatment Program and CAFO program are compliant;
 - d) ODEQ's compliance reviews are timely;
 - e) ODEQ's selection of enforcement actions is appropriate;
 - f) ODEQ's enforcement actions are both timely and effective;
 - g) ODEQ's data management for all required data elements is adequate, and,
 - h) ODEQ's public participation policies, practices, and procedures are satisfactory.
4. EPA must notify ODEQ thirty (30) days in advance of the program audit so that appropriate ODEQ officials may be available to discuss with EPA individual circumstances and problems. A copy of the draft audit report shall be transmitted to ODEQ when available for ODEQ's review and comment prior to EPA's issuing a final audit report.
5. ODEQ must keep EPA fully informed of any known legislative or court action that acts to amend, rescind, or repeal any part of ODEQ's authority to administer the Oregon NPDES Program or that may affect ODEQ's ability to implement the Oregon NPDES Program. ODEQ agrees to monitor bills proposed in Oregon Legislature and to promptly notify EPA of any legislative action that proposes to repeal or enact any statute, regulation, rule, directive, or policy, including the state Water Quality Standards, that may affect implementation of the Oregon NPDES Program. ODEQ will send any notification under this paragraph to the EPA Office of Water and Watersheds and the Office of Regional Counsel. EPA reserves the right to initiate procedures to withdraw the Oregon NPDES Program if the Oregon Legislature enacts any legislation that is less stringent than the CWA or its regulations required. ODEQ must notify EPA prior to taking any action to:

- a) propose or effect any substantial amendment, rescission, or repeal of any statute, regulation, rule, directive, or policy that has been approved by EPA in connection with the Oregon NPDES Program;
 - b) propose or enact any statute, or adopt any rule, directive, or policy that affects the implementation of the Oregon NPDES Program, including water quality standards; or,
 - c) modify program approval documents.
6. If an amendment, rescission, or repeal of any statute, rule, directive, or policy described in paragraph 5.a) of this Section occurs for any reason, including action of the Oregon Legislature or a court, ODEQ must within ten (10) days of such event notify the REGIONAL ADMINISTRATOR and must transmit a copy of the text of such revision to the REGIONAL ADMINISTRATOR.
 7. If there are revisions to the CWA and the regulations that implement it, ODEQ must seek any amendments to its statutes, rules, or program authorization necessary to preserve and maintain compliance with NPDES program requirements within the shortest reasonable time frame, but in no event longer than the time frames set out in 40 CFR §123.62(e). During the negotiation of the Performance Partnership Agreement, ODEQ and EPA must discuss the status and schedule of necessary revisions to the Oregon NPDES Program that are required as a result of any changes to the CWA and the regulations promulgated thereunder, as well as related guidance documents.
 8. EPA may initiate withdrawal proceedings under 40 CFR §123.64 on its own initiative or in response to a petition from an interested person alleging failure of ODEQ to comply with the requirements of 40 CFR Part 123, as set forth in 40 CFR §123.63. EPA must notify ODEQ in writing of these inconsistencies or other deficiencies prior to the initiation of withdrawal proceedings. ODEQ must respond in writing within thirty (30) days. EPA shall inform ODEQ in writing whether noted inconsistencies or deficiencies have been rectified. If the inconsistencies or deficiencies have not been corrected, EPA may proceed with withdrawal proceedings, pursuant to 40 CFR §123.64.
 9. Nothing in this agreement limits EPA's authority to take action under the CWA.
 10. Nothing in this agreement requires ODEQ to take any action that is less stringent than or inconsistent with the CWA.
 11. Nothing in this agreement establishes an agency relationship or privity between EPA and ODEQ. No waiver of sovereign immunity is implied or assumed in this agreement.
 12. Nothing in this agreement constitutes or creates any rights or valid defenses to regulated parties in violation of an environmental statute, regulation, rule or permit, including, without limitation, any defense to an enforcement action taken by ODEQ or EPA.
 13. Nothing in this agreement requires ODEQ to take any action that is not authorized by state law.

Section 10.0 Computation of Time

In computing of any period prescribed by this agreement, the day from which the designated period of time begins to run is not included. The last day of the period is included unless it is a state or federal legal holiday, in which case the period extends until the next day that is not a state or federal legal holiday.

Section 11.0 Reference Documents

The following documents referenced in the MOA will be consulted to implement the Oregon NPDES Program. Overtime, the documents may be updated or, in the case of EPA guidance documents, replaced with guidance documents prepared by ODEQ. The Reference Documents list will be periodically updated to reflect the most current documents in use to implement the Oregon NPDES Program.

Compliance Assurance Program Evaluation Principles. USEPA Seattle WA. March 24, 1998.

Enforcement and Compliance Strategy. USEPA Region 10, Seattle, WA. March 1997.

Environmental Protection Agency, Compliance Monitoring Strategy for the Core Program and Wet Weather Sources. USEPA. (October 17, 2007).

EPA /State Agency Agreement on Compliance Assurance Principles. USEPA. May 1997.

Final FY07 Update to Office of Enforcement Compliance Assurance (OECA), National Program Managers' Guidance. USEPA. April 2006.

Interim Clean Water Act Settlement Penalty Policy. USEPA. March 1, 1995.

NPDES Compliance Inspection Manual. Office of Enforcement and Compliance Assurance, EPA 305-X-03-004. USEPA. July 2004.

Oregon Administrative Rules (OAR) 340-045

EPA National Program Priorities – Updated annually

Section 12.0 Approval and Effective Date

This Memorandum of Agreement shall take effect upon approval by the ODEQ Director and the REGIONAL ADMINISTRATOR of the Environmental Protection Agency, Region 10.

In witness whereof, the parties execute this agreement:

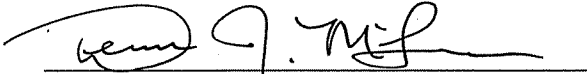
FOR THE STATE OF OREGON:



Dick Pedersen, Director
Oregon Department of Environmental Quality

4/5/10
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:



Dennis J. McLerran, Regional Administrator
EPA, Region 10

4/13/10
Date