

**DEQ Agreement No. Mult110410
Multnomah County No. 4710000385**

**Intergovernmental Agreement
Between
The State of Oregon, Department of Environmental Quality
And
Multnomah County
For
Construction Activities Automatically Covered by NPDES 1200-C**

Effective Date: The most recent date in Section XI Signatures after all signatures are completed.
Expiration Date: November 30, 2015.

DEQ Contact:
Erich Brandstetter
brandstetter.erich@deq.state.or.us
Phone: 503-229-5047

Multnomah County Contact:
Chuck Beasley
charles.beasley@multco.us
Phone: 503-988-5050

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INTERGOVERNMENTAL AGREEMENT

Construction Activities Automatically Covered by NPDES 1200-C

I. PARTIES

The parties to this Intergovernmental Agreement (Agreement) are the State of Oregon, by and through its Department of Environmental Quality (DEQ), and Multnomah County (County), acting by and through its elected officials.

II. AUTHORITY

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

III. PURPOSE

- A. This Agreement sets forth minimum requirements to ensure eligibility of owners or operators of construction activities within unincorporated portions of the County for automatic coverage under NPDES Stormwater Discharge General Permit No. 1200-C issued by DEQ on December 1, 2010.
- B. DEQ and County recognize that:
 - 1. DEQ, pursuant to ORS Chapter 468B, is the state agency primarily responsible for preventing water pollution in the state from most sources. DEQ is authorized by the federal Clean Water Act to issue NPDES permits including the 1200-C permit for construction stormwater.
 - 2. Schedule A, Condition I of the 1200-C Permit, provides that registration for coverage under the 1200-C Permit is not required for certain types of construction activities in certain local jurisdictions, including unincorporated portions of the County, that already have construction stormwater programs that include plan review, ordinances, site inspections and enforcement, and may include issuance of a local permit and local fees in lieu of DEQ fees for the 1200-C Permit.
 - 3. County local ordinance properly establishes erosion and sediment control requirements designed to adequately implement stormwater pollution prevention practices.
 - 4. DEQ has reviewed County's erosion and sediment control inspection program, and its standard operating procedures, and determined that County's program meets the requirements EPA has placed on DEQ through the Performance Partnership Agreement between EPA and DEQ.

5. County and DEQ wish to ensure that construction activities otherwise eligible for automatic permit coverage under the 1200-C Permit will retain such eligibility for such construction activities that occur within unincorporated portions of the County.
6. ORS 468.035(1)(c) and ORS 468B.020 authorize DEQ to cooperate with other agencies and political subdivisions of the state with respect to matters pertaining to the control of water pollution.

IV. DEFINITIONS

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

- A. **General Permit** – as defined in OAR 340-045-0010(7) means a Permit that provides coverage 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 1200-C General Permit for Stormwater Discharges from Construction Activities (Permit)** – as adopted by reference in OAR 340-045-0033(10)(i) means the general Permit for stormwater runoff from construction activities including clearing, grading, excavation, and stockpiling activities that will result in the disturbance of one or more acres of land or one acre or more over a period of time whether in a single or in a multiphase project. Also included are activities that disturb less than one acre if part of a larger common plan of development.
- D. **Permit Registrant** – means the owner or operator of the construction activity regulated by this permit who has submitted an application and received notice of registration under this general permit by DEQ or Agent. Owners or operators of automatically covered construction activities are not permit registrants.
- E. **Owner or operator** – means the owner or operator of any “facility or activity” subject to regulation under the NPDES program. Owners or operators may be individuals or other legal entities. Owners or operators of automatically covered construction activities are not permit registrants. Operator for the purpose of this permit and in the context of stormwater associated with construction activity, means any party associated with a construction project that meets either of the following two criteria:
 1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
 2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with an erosion and sediment control plan (ESCP) for the site or other permit conditions (for example, they are authorized to direct workers at a site to carry out activities required by the ESCP or comply with other permit conditions).

- F. ***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.
- G. ***Stormwater*** – as defined by 40 CFR §122.26(b)(13) means stormwater runoff, snowmelt runoff, and surface runoff and drainage.
- H. ***Waters of the State*** – as defined in ORS 468B.005(8) means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters 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.

The Parties agree as follows:

V. COUNTY RESPONSIBILITIES

County shall:

1. Implement the erosion and sediment control program as described in County local ordinance, and applicable local regulations or policies, if any. County will issue grading and erosion control permits for all unincorporated portions of the County which include areas outside the MS4 Phase I NPDES permit boundary. County will maintain this erosion and sediment control program, and notify DEQ in the event of any changes or elimination of the program.
2. Address erosion and sediment control ordinance and permit violations by enforcement consistent with County local ordinance, and applicable local regulations or policies, if any.
3. Refer to DEQ violations of the permit (sites over one acre but less than five acres or part of a common plan of development) that meet the following criteria:
 - a. Repeat or chronic violators;
 - b. Willful violators;
 - c. Recalcitrant violators;
 - d. Violations where there is significant environmental harm (for example, where there is a large discharge to sensitive habitat); or
 - e. Situations where there was a large economic benefit resulting from noncompliance.
4. Provide all relevant information when referring permit violations to DEQ.

5. Provide a copy of the applicable provisions of the 1200-C permit to those seeking automatic coverage (DEQ to provide this) so operators will know whether their sites meet the requirements for automatic coverage.
6. Report annually the locations (address) and the sizes of the sites covered under the local ordinance.
7. Provide information annually about how many inspections of sites covered under the local ordinance were conducted by County.
8. Notify DEQ if proposed changes in ordinances, standard operating procedures or guidance documents at the local level have the potential to cause a reduction in inspections or enforcement.
9. Notify DEQ of resolution of complaints DEQ forwarded to County.

VI. DEQ RESPONSIBILITIES

DEQ shall:

1. Allow construction activities that will disturb less than five acres within unincorporated portions of the County to be automatically covered under the 1200-C Permit without applying to register under the permit, as long as applicable 1200-C Permit conditions (Schedule A, Part 1, Paragraphs 3 through 6) are met.
2. Retain the right to require application and registration of specific construction activities at DEQ's discretion.
3. Retain the right to take enforcement action regarding stormwater-related violations involving the following:
 - a. Repeat or chronic violators
 - b. Willful violators
 - c. Recalcitrant violators
 - d. Violations where there was significant environmental harm (for example, a large discharge to sensitive habitat)
 - e. Situations where there was a large economic benefit for noncompliance
4. Notify existing 1200-C permit holders if they become automatically covered.

VII. LIMITATIONS

- A. Nothing in this Agreement shall be construed to limit or modify the authority of the County 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 is subject to the statutes of the State of Oregon and the rules and regulations adopted thereunder.

- B. Nothing in this Agreement shall prevent County from implementing and administering stormwater management plans and best management practices as required for compliance with County ordinances.
- C. 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.

VIII. AMENDMENTS AND TERMINATION

- A. This Agreement may be modified at any time by mutual written agreement of the parties.
- B. Upon 30 calendar days of written notice, either party 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.

IX. NOTIFICATIONS

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

X. INDEMNITY

- A. DEQ will indemnify and hold County harmless for legal expenses related to a challenge to the Permit, the registration or refusal to register an applicant under the Permit, or the revocation of coverage for a registrant under the Permit.
- B. To the extent Permitted by Article XI, sections 9 and 10 of the Oregon Constitution, and within the limits of liability established in the Oregon Torts Claims Act, DEQ shall defend, indemnify, and save County, its officers, and employees harmless from any and all claims, actions, costs or damages caused by DEQ.
- C. Except as provided in paragraph A above, to the extent Permitted by Article XI, Sections 9 and 10 of the Oregon Constitution, and within the limits of liability established in the Oregon Torts Claims Act, County shall defend, indemnify, and save DEQ, its officers, and employees harmless from any and all claims, actions, costs or damages caused by County.

XI. SIGNATURES

IN WITNESS WHEREOF, County and DEQ have caused this Agreement to be executed by its duly authorized representatives as signatories below.

FOR MULTNOMAH COUNTY, OREGON

Acting by and through its elected officials:

By _____
Jeff Cogen, Chair
Board of County Commissioners

Date: _____

REVIEWED:

HENRY H. LAZENBY, JR.,
COUNTY ATTORNEY FOR
MULTNOMAH COUNTY, OREGON

By /s/ Jed Tomkins
Jed Tomkins
Assistant County Attorney

Date: November 30, 2010

FOR OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Nina DeConcini
Regional Division Administrator
Northwest Region

_____ Date: _____

Approved as to form:

By _____
Neil J. Mullane, Administrator
DEQ Water Quality Division

Date: _____