

DEQ Response to Comments

City of Bend NPDES MS4 Phase II Individual Permit
December 15, 2021



Water Quality Permitting

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maintaining and enhancing
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Department of
Environmental
Quality

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Overview

The public comment period for the proposed permit was from October 20, 2021 to November 29, 2021.

The following individuals or entities submitted written comments during the public comment period:

List of Commenters		
#	Commenter	Affiliation
1	Wendy Edde	City of Bend
2	Jim Oberlander	Individual
3	Kathleen Roche	Individual

Similar comments are categorized below with DEQ's response following the comment. Original comments are on file with DEQ.

Oregon DEQ City of Bend MS4 Phase II Individual Permit Public Comment Categories:

Antidegradation

Comment from Kathleen Roche:

The antidegradation policy in OAR 340-041-0026 requires that degradation of existing water quality be prevented unless necessary for economic and social benefit. Based on living in Bend for over 10 years and observations while walking about as well as 40 years of experience in environmental effects observation and prediction, I want to bring the following to your attention regarding the conditions and operations regarding the storm sewers of the City of Bend.

There are amazing amounts trash and human goo (discarded food, other discarded liquids etc.) that get into the stormwater sewers – due to the (my observations) infrequent cleaning of streets and parking lots and lack of water quality awareness.

Inevitably, there is tire dust that washes off of streets and parking lots that ends up in the storm sewers. Frequent wet and dry cleaning of streets and parking lots would at least reduce this tire dust entering the storm sewers. This is especially true for Bend because of the intermittent nature of the precipitation.

Obviously, organic material, consisting of leaves and other various yard waste material gets into the storm sewer. These materials also often block storm sewer drains and contribute to the accumulation of trash and goo. More frequent street and parking lot cleaning would help to reduce these materials and their presence in storm water.

In the winter, snow, ice and deicing materials get into storm sewers in excessive amounts due to no collection of snow at land based locations. Snow is just pushed around. Deicing materials are used continuously during below freezing periods (months long) then flushed through natural melting into storm sewer drains. Snow and ice are not collected and placed into designated collection areas for slow melting and soil based treatment. Low toxicity deicing materials are not required within the city area. These would reduce the accumulation of more toxic materials into storm water runoff.

There is no use of designated overflow areas to collect rain and/or snow melt and allow for slow release into ground water – instead there are pulses of contaminated water into storm sewers and streams and rivers.

There are no “Do Not Dump” markings on storm sewers to encourage folks not to dump toxics into storm sewers.

There is no apparent designation of riparian zones, so that land use activities and landscape management chemicals can directly enter streams and rivers.

Implementation of more frequent street and parking lot cleaning, designation of overflow areas and snow collection areas, encouraging/requiring low toxicity deicing materials, identification and enforcement of riparian zones and placement of “Do Not Dump” markings on storm sewers to encourage folks not to dump toxics into storm sewers would all serve to reduce the degradation of water as it reaches streams and rivers.

DEQ Response:

DEQ appreciates your comments. This permit requires the City of Bend to meet the permit standard which is to reduce the discharge of the pollutants to the maximum extent practicable, to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act. This MS4 must “reduce pollutants in discharges to the maximum extent practicable, including management practices, control techniques, and system, design and engineering methods...” as required by section 402(p)(3)(B)(iii) of the CWA. To meet this requirement the permittee is required to implement best management practices (BMPs) based on the permit measures as allowed by 40 CFR 122.44(k). The stormwater management program document (SWMP) is what the City uses to document the BMPs it implements to meet the permit conditions. This NPDES MS4 phase II individual permit contains six minimum measures that address your comments. The permit standard is predominantly met by implementation of a stormwater management program that includes the six minimum measure requirements. These measures are:

1. Public Education and Outreach
2. Public Involvement and Participation
3. Illicit Discharge Detection and Elimination
4. Construction Site Runoff Control
5. Post-Construction Site Runoff Control
6. Pollution Prevention and Good Housekeeping

For each measure and topic listed above, there are specific requirements, deadlines for developing and implementing the measures to ensure the measures are effective. Please see sections Schedule A.3, Schedule B and Schedule D of the permit for the details regarding each requirement as well as the specifics regarding the details for the stormwater management program. In addition, each permit condition has an implementation schedule that requires the permittee to track and assess implementation of each of the requirements and report on in each annual report.

The City of Bend regularly sweeps the streets and cleans catch basins as required by the pollution prevention and good housekeeping measure. The City’s most recent annual stormwater report indicates that the sweeping program “collected 6,887 cubic yards of material and traveled 28,492 miles¹.” The City also appropriately educates the public as required by the public education and outreach and public involvement

¹ City of Bend 2020-2021 MS4 Annual Report p. 90. Accessed on December 7, 2021.

<https://www.bendoregon.gov/government/departments/utilities/stormwater/about-stormwater/annual-reports>

and participation measures. As reported in the 2021 MS4 annual report², the City recently had two volunteers place “Don’t Pollute Flows to Waterways” markers on storm drains. Furthermore, the City is required to implement an Illicit Discharge Detection and Elimination Program to assist the City with locating and eliminating discharges into the MS4. The MS4 program relies on public involvement and DEQ encourages you to reach out to City of Bend Stormwater program directly with concerns and ideas as well as to report illicit discharges as you see them. Illicit discharges³ can be reported via phone or through the City’s website at the following link: <https://www.bendoregon.gov/government/departments/utilities/stormwater>. The webpage also contains a link to the Public Advisory Group where residents can get involved with the MS4 program. Finally, the most recent permit contains requirements for winter operations and maintenance under the pollution prevention and good housekeeping measure in schedule A.3.f.v. This is a new requirement from the previous permit iteration and will inform DEQ about the current winter maintenance practices in the City. Future permit iterations will use the information that is learned to improve practices and make positive differences for the surface water quality in Bend.

The Permit Evaluation Report (PER) also appropriately addresses antidegradation on page 12:

DEQ determined that existing water quality will not be degraded by the issuance of this permit. The stormwater discharges authorized by this permit have been ongoing since the federal regulations requiring an NPDES permit were adopted. This permit is expected to reduce the current level of pollution discharged from small MS4s. DEQ expects the pollution reduction measures implemented by permitted small MS4s to offset any expansion of stormwater conveyance systems and outfalls. These permit requirements to implement a broad range of pollution reduction measures, including measures to address impacts from new development and significant redevelopment are expected to reduce the amount of pollution discharged. The permit does not set numeric discharge limits. The law recognizes that stormwater discharges are highly variable in nature and difficult to control due to topography, land use and weather differences (e.g., intensity and duration of storms). The goal of the permit is a net reduction in pollutant loading over the five-year permit term. Over the five-year permit term, the permit registrant will implement and/or enhance an identified range of stormwater management control programs to minimize stormwater pollution discharges from existing residential, commercial, and industrial developments. Therefore, the issuance of this permit will protect and improve existing water quality and is consistent with DEQ’s antidegradation policy.

Based on the information above, DEQ did not make any changes to the draft permit based on these comments.

Schedule A.1.b Water Quality Standards

Comments from the City of Bend:

Reference Language, page 4:

Schedule A. Effluent Limitations, Conditions, and Stormwater Management Program, 1. Authorized Discharges, b. Water Quality Standards ... “If the permittee or DEQ determines that a pollutant in the permittee’s MS4 discharge is causing or contributing to an exceedance of an applicable water quality standard based on site-specific credible evidence, the permittee must take the following corrective actions ...iii. Within

² City of Bend 2020-2021 MS4 Annual Report. Accessed on December 7, 2021.<https://www.bendoregon.gov/government/departments/utilities/stormwater/about-stormwater/annual-reports>

³ City of Bend’s Illicit Discharge Controls. Accessed on December 7, 2021.

<https://www.bendoregon.gov/home/showpublisheddocument/2289/636077448417870000>

60 days of becoming aware of or being notified of the exceedance, the permittee must submit a report to DEQ that documents the following....”

Should a notification pertain to an existing known long-term issue wherein corrective actions are scheduled or underway and a report has already been produced, the City requests some ability to reference an existing report as applicable rather than having to redo all the actions and resubmit another report. This option may be clarified in the PERS or subsequent implementation guidance but would have the potential to allow more resources to go to actual correction rather than repetitive report filing.

DEQ Response:

If there is a long-term issue that is being addressed and for which a report is already available, a copy of that report can be provided to DEQ or referenced in future notifications. The following language has been added to page 18 of the PER for additional clarification:

If a required notification pertains to an existing known long-term issue wherein corrective actions are scheduled or underway and a report has already been produced, the City may provide DEQ with the existing report to maximize efficiency.

Schedule A.2.c SWMP Document

Comments from the City of Bend:

Reference Language, pages 7-8

Schedule A. Effluent Limitations, Conditions, and Stormwater Management Program,

2. Permittee’s Responsibilities,

c. SWMP Document “...The SWMP Document is due to DEQ on November 1, 2023.... The permittee must implement the approved SWMP Document.

f. Review and Modification of the SWMP Document (outlines process that does not require DEQ approval)

3. Stormwater Management Program Control Measures,

Table 1. SWMP Control Measures Implementation Schedule (implementation deadline for Public Education and Outreach, and Public Involvement and Participation are listed as November 1, 2022.)

Consider clarifying these dates and sections. The permittee needs to implement the approved SWMP Document in A.2.c. but can review and modify it without DEQ approval in f. As written these two subsections present a bit of a conflict unless the changes in f. are merely additions. But otherwise confusion exists as to whether section A.2.c. trumps section A.2.f. or visa versa?

1) DEQ Response:

The initial SWMP requires approval by DEQ and must be submitted by the deadline of the second annual report. Modifications to the SWMP may be made at any time after that as detailed in schedule A.2.f. but must be submitted to DEQ with the subsequent annual report. DEQ will provide comments on the modifications and require the permittee to make adjustments as necessary.

Also, the implementation dates for public education and involvement tasks in A.3. Table 1 predate the submittal date for the SWMP Document. The City suggests having the SWMP Document due prior to the

public education/involvement implementation date to allow DEQ staff adequate time for review/approval of the tasks needing to be implemented.

2) DEQ Response:

DEQ agrees with the comment and has extended the implementation deadline for the public education and outreach and public involvement and participation measures to November 1, 2023 to coincide with the deadline for the SWMP draft. The SWMP currently in effect at the time of this permit renewal must continue to be implemented until the updated SWMP has been submitted to DEQ. The SWMP is due by November 1, 2023 but may be submitted to DEQ sooner if completed before the deadline.

Finally, we suggest the wording in subsection A.2.c. regarding the SWMP Document be changed to "...is due to DEQ by November 1, 2023" rather than the current "...is due to DEQ on November 1, 2023" to allow for submittal prior to the November 1, 2023 deadline.

3) DEQ Response:

DEQ modified the text as requested.

Schedule B Monitoring and Reporting Requirements

Comment from Jim Oberlander:

Water quality monitoring of bacteria in the Deschutes River – specifically along the stretch of popular summer river floating – should be greatly increased. This is about protecting public health. Ideally, this work should be coordinated between local health, DEQ, and Bend Parks. Increased sampling needs to occur during periods of high use, i.e. hot weekend summer afternoons. The river float zone is realistically a public swimming pool. Additionally, water fowl and possible sewage system failures(s) could impact the float corridor with fecal material. I know bacteria testing is unpopular, but residents and visitors deserve the water quality assurances.

DEQ Response:

DEQ appreciates your comment. Phase II MS4s are required by CWA Section 33U.S.C.1342(p)(3)(B)(iii) to reduce pollutants discharged from their conveyance systems to the maximum extent practicable (MEP). Specifically, operators of regulated small MS4s must implement a comprehensive stormwater management program to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act. As referenced in condition B.3 of the PER: "...federal regulations governing the NPDES permit program for small MS4s do not require monitoring of effluent from stormwater outfalls or ambient water quality monitoring of receiving streams." The CWA also clarifies that each state may choose how to appropriately manage the discharge of pollutants to MEP including: "...and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." DEQ has chosen to manage the permittee's discharge of pollutants by defining clear, specific, and measurable NPDES permit requirements in this MS4 Phase II permit. DEQ has not made any changes to the permit based on this comment.

However, even though monitoring is not a required component of the permit, DEQ and the City of Bend are currently collecting monitoring data from several locations within the City of Bend. DEQ is required by the federal Clean Water Act (CWA) to assess the surface waters of the state to determine if pollutants are

exceeding state water quality standards. DEQ is required to submit a report on the status of its surface waters every two years and has chosen to create an Integrated Report that combines the requirements for a status update (CWA section 305(b)) and an updated list of impaired waters (CWA section 303(b)). As stated in the 2018/2020 EPA Approved DEQ Integrated Report, DEQ must⁴:

...report on the quality of its surface waters every two years. Oregon surface waters are assessed to determine if they contain pollutants at levels that exceed protective water quality standards. The result of these analyses and conclusions is called the “Integrated Report” because it combines the requirements of Clean Water Act section 305(b) to develop a status report and the section 303(d) requirement to develop a list of impaired waters.

The Integrated Report assigns a Category to all assessed waterbody segments. DEQ uses data to evaluate the most common beneficial uses, such as aquatic life, drinking water or recreation. If waterbodies exceed protective water quality standards they are placed on the 303(d) List of impaired waters. Placing a waterbody on the 303(d) list initiates the prioritization and development of a Total Maximum Daily Load (TMDL). DEQ assesses all readily available data and information using the Methodology for Oregon’s 2018 Water Quality Report and List of Water Quality Limited Waters. The 303(d) list portion of the Integrated Report is submitted to the U.S. EPA for final approval

The monitoring data assessed in the most recently EPA approved 2018/2020 report shows that the Deschutes River in Bend is attaining the standards set for E.coli. Bend’s own monitoring program details on page 62 of the City of Bend Ambient River Water Quality Monitoring: 2008-2020 Deschutes River and Tumalo Creek Report⁵:

Between 2018 and 2020, monthly maximums of E. coli ranged greatly from no detections to 88 MPN/00 mL in the Deschutes River and from no detections to 53.7 MPN/100 mL in Tumalo Creek. No exceedances were reported for the subject parameter and criteria were met during the current study period through 2020. It is recommended that field notes accompany sample collections to document presence of flora or fauna that could be contributing E. coli.

Additional information about the Integrated Report as well as DEQ’s related responsibilities can be found on in the 2018/2020 Integrated Report⁶. This report can be found on DEQ’s website at: <https://geo.maps.arcgis.com/apps/MapJournal/index.html?appid=f2e8fd446c404661ae6a435a9b7a19a9>. DEQ also recommends that you reach out to the Upper Deschutes Watershed Council and the local Stormwater Public Advisory Group to inquire about volunteer monitoring opportunities specifically in the Old Mill reach of the Deschutes that you are interested in. DEQ may also be able to provide support through our DEQ Volunteer Monitoring Coordinator.

⁴ Oregon DEQ 2018/2020 EPA Approved Integrated Report. Accessed December 7, 2021.

<https://geo.maps.arcgis.com/apps/MapJournal/index.html?appid=f2e8fd446c404661ae6a435a9b7a19a9>

⁵ City of Bend Ambient River Water Quality Monitoring: 2008-2020 Deschutes River and Tumalo Creek Report

⁶ Oregon DEQ 2018/2020 EPA Approved Integrated Report. Accessed December 7, 2021.

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