



## Sanitary Sewer Overflows in Oregon



## Overview

EPA and DEQ disagree on how to address SSOs in permits.

- Disagreement is longstanding.
- Came to a head in 2007 over Tillamook permit.
- DEQ elected to stop issuing permits until issue is resolved.



## Difference Between DEQ and EPA

EPA's position:

- Overflows have to meet secondary treatment standards.
- DEQ should exercise enforcement discretion when they occur.

DEQ's practice:

- Prohibit SSOs unless they are the result of a major storm event.



## Timeline

1996: DEQ adopted the Bacteria Rule.

Jan 2001: The federal SSO rule was proposed but not finalized.

Sept. 2007: EPA issued general objections to Tillamook permit.

Oct 2007: DEQ begins revising Schedule F – General Conditions

Dec. 2007: EPA submitted detailed comments.

June 2008: EPA submitted additional detailed comments on Schedule F.

Aug. 2008: EPA and DEQ reached agreement on all issues in Schedule F except overflow language.



## Timeline (con't)

Jan. 2009: DEQ provided EPA with a bundle of 7 permits that demonstrate the range of permits and facilities that would be affected by an outright prohibition on SSOs.

May 2009: EPA provided DEQ with detailed objections to the permits.

July 2009: DEQ agreed to address most of EPA's concerns.



## Summary of EPA's Objections

Objections common to all permits:

- SSO Provisions
- pH Effluent Limit Analysis
- Monitoring and Reporting Requirement Modification Procedures
- Definition of Severe Property Damage
- State Environmental Crimes Provision



## Resolution of SSO Issue: Possible Options

1. (Preferred) Develop approach for permitting SSOs for non-continuous discharges to comply with secondary treatment standards. Require permit holders to develop CMOM programs. (long term solution)
2. Prohibit overflows and exercise enforcement discretion consistent with the Bacteria Rule. The Bacteria Rule prohibits SSOs unless they occur as a result of a major storm event. (short term solution)



## Enforcement Discretion

When an agency exercises enforcement discretion in response to a permit violation, it can choose to do one of the following:

- Not take any enforcement
- Not take formal enforcement action
- Not assess a civil penalty against a permittee



## Affirmative Defense

Often the law (a statute, regulation, or case law) will define situations in which an agency cannot impose penalties for conduct that is technically a violation.

If the law requires the permittee to allege and prove that the defense exists, this is called an affirmative defense.

An affirmative defense affords greater protection to a permittee from third party lawsuits than does DEQ's exercise of enforcement discretion.



## Resolution of SSO Issue: Possible Options (con't)

3. Exercise enforcement discretion when there is "no feasible alternative" and provide mechanism for municipalities to establish an affirmative defense when overflows are "beyond the reasonable control" of the operator.
4. Treat SSOs like CSOs, and include permit limits for SSOs based on Best Professional Judgment. These permit limits would be consistent with EPA's Nine Minimum Controls for CSOs.



## CMOM\* Overview

The 2001 proposed SSO rule lists the elements of a CMOM program as follows:

- Goals, Organization and Legal Authority
- Measures and Activities
- Design and Performance Provisions
- Monitoring, Measuring and Modification
- Overflow Response Planning
- Program Audit

\*Capacity, Management, Operation and Maintenance



## CMOM Overview (con't)

An alternative summary of CMOM Elements from Wisconsin:

- Management Plan
- Overflow Response Plan
- System Evaluation and Capacity Assurance Plan (SECAP) [if peak flows are a problem]
- Communication Plan
- Audit Plan



## Where We Are Now

- Alternative approaches regarding SSOs have been developed with input from ACWA.
- DEQ met with EPA on July 17th
- DEQ will request a hearing on one of the 7 permits.
- DEQ still seeking to develop a long term solution to the SSO issue, though nearly all other issues have been resolved.
- EPA Region 10 has developed some revised Schedule F language to implement the enforcement discretion option.



## EPA's Permit Language Regarding Overflows

Overflows are prohibited. The Department may exercise enforcement discretion regarding overflow events. In exercising its enforcement discretion, the Department may consider various factors, including the adequacy of the conveyance system's capacity and the magnitude, duration and return frequency of storm events.