



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS  
GOVERNOR

MELANIE LOYZIM  
COMMISSIONER

March 16, 2022

Mr. Scott Morelli  
City Manager  
25 Cottage Road  
South Portland, Maine 04116-9422  
e-mail: [smorelli@southportland.org](mailto:smorelli@southportland.org)

**RE: Municipal Separate Storm Sewer System (MS4) General Permit #MER041000  
Proposed Draft - MER041018**

Dear Mr. Morelli:

Enclosed is a **proposed draft** Department Order granting coverage for the City of South Portland under the Municipal Separate Storm Sewer System (MS4) General Permit, #MER041000, issued by the Department on October 15, 2020 and revised on November 23, 2021. The Department proposes to issue this Department Order as a final document after opportunity for your review and comment. By transmittal of this letter, you are provided with an opportunity to comment on the proposed draft document. If it contains errors or does not accurately reflect present or proposed conditions, please respond to this Department so that changes can be considered.

Beginning today, Wednesday, March 16, 2022, the Department is making the draft Department Order available for a 30-day public comment period. All comments on the proposed draft Department Order must be received in the Department of Environmental Protection office on or before the close of business on **Monday, April 18, 2022**. Failure to submit comments in a timely fashion will result in the final permit document being issued as drafted.

Comments in writing should be submitted to my attention at the following address:

Maine Department of Environmental Protection  
Bureau of Water Quality  
Division of Water Quality Management  
17 State House Station  
Augusta, ME 04333-0017  
[gregg.wood@maine.gov](mailto:gregg.wood@maine.gov)

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

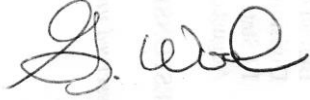
BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143

If you have any questions regarding the matter, please feel free to call me at 287-7693.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Wood". The signature is fluid and cursive, with the first name "G." and the last name "Wood" clearly distinguishable.

Gregg Wood  
Division of Water Quality Management  
Bureau of Water Quality

Enc.

cc: Alison Moody, DEP/SMRO  
Damien Houlihan, USEPA  
Newton Tedder, USEPA

Lori Mitchell, DEP/CMRO  
Nathan Chien, USEPA

Holliday Keen, DEP/CMRO  
Richard Carvalho, USEPA



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION  
AUGUSTA, ME 04333

**DEPARTMENT ORDER  
IN THE MATTER OF**

CITY OF SOUTH PORTLAND	)	MUNICIPAL SEPARATE STORM
SOUTH PORTLAND, CUMBERLAND COUNTY, ME.	)	SEWER SYSTEM
MER041018	)	MER041000
	)	<b>GENERAL PERMIT COVERAGE</b>
<b>March 16, 2022 Proposed Draft</b>	<b>APPROVAL</b> )	<b>RENEWAL</b>

The Department of Environmental Protection (Department/DEP) has considered the Notice of Intent submitted by the CITY OF SOUTH PORTLAND (City/permittee), with supportive data, agency review comments and other related materials on file for coverage under the Municipal Separate Storm Sewer System (MS4) General Permit, #MER041000, issued by the Department on October 15, 2020 and revised on November 23, 2021, and FINDS THE FOLLOWING FACTS.

The permittee submitted a Notice of Intent (NOI) with an initial Stormwater Management Plan (SWMP) to the Department on March 31, 2021 that were made available for a 30-day public comment period on the Department's website at <https://www.maine.gov/dep/comment/comment.html?id=4463193>. No public comments were received on the NOI or the initial SWMP. The Department has reviewed the initial SWMP document and made the determination that the document is consistent with and fully articulates what is required to meet the MS4 GP standard. Pursuant to Part IV(B) of MS4 GP issued by the Department on October 15, 2020 and revised on November 23, 2021, the permittee must update the initial SWMP within 60 days of the effective date of this DEP permittee specific order or within 60 days of the final resolution to an appeal of this DEP permittee specific order. The final plan must be submitted to the Department and will be posted on the Department's website.

The permittee must fully implement all actions, schedules and milestones established in the March 31, 2021 initial SWMP and any revisions to the initial SWMP reflected in the final plan.

The permittee has agreed to comply with all terms and conditions of the MS4 General Permit, #MER041000, dated October 15, 2020 and revised on November 23, 2021. Operated in accordance with the Municipal Separate Storm Sewer System (MS4) General Permit, #MER041000, the discharges identified by the permittee will not have a significant adverse effect on water quality or cause or contribute to the violation of the water quality standards of the receiving water.

## **Impaired Waters**

To meet the standards of the MS4 GP for impaired waters, the permittee must implement the following terms and conditions:

The City's MS4 discharges point sources to five streams classified as Urban Impaired in DEP's Chapter 502. They are Barberry Creek, Kimball Brook, Red Brook, Long Creek and Trout Brook. The Department separately regulates Long Creek (and its numerous tributaries) under another permitting process.

**On or before July 1, 2023**, the permittee solely or in conjunction with other entities, will develop and begin implementing an Education & Outreach (E&O) Plan that helps residents and businesses comply with the City's fertilizer ordinance and adopt organic land care practices for the Barberry Creek, Kimball Brook, Red Brook and Trout Brook watersheds. Elements of the E&O Plan must include, but not be limited to, the following:

- a) Update Grow Healthy South Portland (GHSP) website and Sustainability Department's Facebook page to include new information/content on ordinance requirements and organic land care BMPs as well as:
  - i) Adapt or link to existing content from other organizations, such as the Cumberland County Soil and Water Conservation District (CCSWCD), Maine Cooperative Extension, Maine Organic Farmers and Gardeners Association (MOFGA), etc., for use on the GHSP website (with appropriate attribution).
  - ii) Develop series of "how-to" videos and FAQs.
- b) Work with CCSWCD to develop a retailer tool kit for placement at various establishments throughout the City.
  - i) Create a 2-page info sheet for staff training.
  - ii) Develop signs for product shelves and register/checkout.
  - iii) Develop laminated FAQ sheets to hang with rings at strategic locations.
- c) Publish a series of articles in the South Portland Sentry describing various aspects of the ordinance and organic land care considerations (e.g., importance of healthy soils and soil testing, how to properly apply fertilizers, organic land care practices, etc.).
- d) Develop a trifold brochure summarizing ordinance and organic land care principles for dissemination at various locations throughout the City.
- e) Collaborate with CCSWCD and other potential partners such as Cultivating Community, MOFGA, Friends of Casco Bay, etc., on a series of workshops and events (including YardScaping).
- f) Continue implementing demonstration projects highlighting organic land care practices and explore grant opportunities to expand these efforts.

**On or before July 1 2024 and each year thereafter**, and as directed by the Council, City staff and the Landcare Management Advisory Committee (LMAC) must expand the scope of the City's Landcare Management Ordinance beyond lawns and performance turf (i.e., athletic fields) to include other land use types that also receive fertilizers (e.g., ornamental gardens, landscape features, vegetable gardens, etc.). Tasks to expand the scope shall include, but not be limited to:

- a) Review relevant scientific literature and similar ordinances from elsewhere to inform development of ordinance provisions in South Portland.
- b) Consult with land care professionals, government agency staff (e.g., Dept. of Agriculture and Forestry), academics and NGOs for input on ordinance provisions.
- c) Draft ordinance language for review by City's Corporation Counsel.
- d) Present draft ordinance language to Council for consideration.
- e) Revise ordinance if/as needed based on Council input and return to Council for reconsideration.
- f) Implement revised ordinance following Council approval using similar approach to Item #1 above.

Results of implementation of the E&O plan must be documented in the permittee's annual report required by Special Condition G, *Annual Compliance Report*, of MS4 GP #MER041000 referenced above.

**Beginning calendar year 2022**, the permittee must implement the following chloride reduction practices for the Barberry Creek, Kimball Brook, Red Brook, and Trout Brook watersheds.

- a. At least one representative from the City must attend an annual regional training or roundtable to learn about new chloride reduction techniques coordinated by the ISWG or another organization.
- b. The permittee, solely or in combination with others, must
  - Beginning July 1, 2022 and alternating years thereafter until it passes, provide educational outreach to legislators regarding limited liability legislation and at least two other organizations representing firms that conduct application of chloride on private property;
  - In years when limited liability legislation has not passed and is not active for procedural reasons, the City will provide winter maintenance education and outreach to the public using two tools from Appendix D Table 5 of the City's Stormwater Management Plan.
  - The first year after legislation passes, the City must provide awareness of its passage in the form of a presentation to the Council.
  - Beginning the second and subsequent years after passage, the City must educate property managers, private contractors, and/or the public on winter maintenance practices to maintain public safety and protect the environment using two tools from Appendix D Table 5 of the City's Stormwater Management Plan.

Results of implementation of the chloride reduction practices must be documented in the permittee's annual report required by Special Condition G, *Annual Compliance Report*, of MS4 GP #MER041000 referenced above.

**On or before July 1, 2023**, the City, solely or in combination with other entities, must develop and submit a water quality monitoring plan to the Department for review, that identifies monitoring site locations and parameters for Barberry Creek, Kimball Brook, Red Brook and Trout Brook. For Red Brook, the plan must include at least one site in Scarborough and one site in South Portland to assist in characterizing current conditions in each municipality's portion of the watershed. It will also identify the seasons and time periods over which the sampling plan will be implemented (e.g., water quality data collection during late winter/early spring snow melt conditions and mid-late summer base flow conditions).

**On or before July 1, 2024 and each year thereafter**, the City, solely or in combination with others, must implement the water quality monitoring plans for Barberry Creek, Kimball Brook, Red Brook and Trout Brook using applicable elements of the DEP's Quality Assurance Project Plan (QAPP) and/or Sampling & Analysis Plan (SAP). Monitoring results for each year must be included in the must be documented in the permittee's annual report required by Special Condition G, *Annual Compliance Report*, of MS4 GP #MER041000 referenced above.

**On or before July 1, 2027**, the City, solely or in combination with others, must summarize the water quality data collected for eventual use in updates to the Red Brook and Trout Brook Watershed Management Plans. For Barberry Creek, the City must summarize the water quality data collected to date and after consultation with the Department make a final determination on whether a Watershed Management Plan is to be developed.

**On or before July 1, 2023**, if City cannot fully implement one of the three primary BMPs (Landcare Management Ordinance Implementation, Chloride Minimization Program and Water Quality Monitoring Program), it must conduct site visits in each of the four UIS watersheds to evaluate current conditions and the potential for retrofits or impervious cover disconnection opportunities. At a minimum the following sites must be visited:

- a) **Barberry Creek:** Dartmouth Street and Hemco Road. Alternately, given Hannaford's stated commitment to sustainability, the City must contact them to explore strategically installing a stormwater treatment system on their expansive parcel if the other location is infeasible.
- b) **Kimball Brook:** Stillman Street at Pilgrim Road. This area includes the portion of the watershed with the most extensive stormwater drainage network and therefore has the greatest potential for retrofit opportunities. The area draining Pilgrim Road in particular represents a sizeable portion of development in the watershed.
- c) **Red Brook:** John Roberts Road (two potential locations). This area is essentially the only portion of the watershed in South Portland with stormwater infrastructure in the public ROW for which the City has maintenance responsibilities. Therefore, it has the greatest potential for retrofit opportunities. Preliminary investigations (including catchment delineations) have already identified at least two locations for possible projects.
- d) **Trout Brook:** Brown Elementary School parking lot; Fessenden Road culvert crossing (two potential locations); Ocean Street at Bellaire Road. The first three locations have already been investigated preliminarily (including catchment delineations) and are good potential retrofit candidates. The Ocean Street location may also prove to be promising.

If the City cannot fully implement one of the three primary BMPs, it must write a memo summarizing the results of the evaluations and must select the sites for design. The City will report on the recommended projects in the annual report required by Special Condition G, *Annual Compliance Report*, of MS4 GP #MER041000 referenced above.

**On or before July 1, 2026**, if the City cannot fully implement one of the three primary BMPs (Landcare Management Ordinance Implementation, Chloride Minimization Program and Water Quality Monitoring Program) and provided funding is available, it must implement at least two (2) retrofits or impervious cover disconnection projects in the Barberry Creek, Kimball Brook, Red Brook and Trout Brook watersheds. Beginning the same date and continuing each year thereafter, the permittee must begin inspections and maintenance of the projects completed. All inspections must be documented in the annual compliance report required pursuant to Special Condition G, *Annual Compliance Report*, of MS4 permit #MER041000, issued by the Department on October 15, 2020 and revised on November 23, 2021.

THEREFORE, the Department GRANTS the CITY OF SOUTH PORTLAND, coverage under the Municipal Separate Storm Sewer System (MS4) General Permit, #MER041000, issued by the Department on October 15, 2020 and revised on November 23, 2021, subject to the terms and conditions therein.

DONE AND DATED AT AUGUSTA, MAINE, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_  
Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

The Notice of Intent was received by the Department on \_\_\_\_\_ March 31, 2021 \_\_\_\_\_.

The Notice of Intent was accepted by the Department on \_\_\_\_\_ April 5, 2021 \_\_\_\_\_.

Date filed with Board of Environmental Protection: \_\_\_\_\_

This Order prepared by GREGG WOOD, BUREAU OF WATER QUALITY