
Date: Jan. 6, 2021

To: Environmental Quality Commission

From: Richard Whitman, Director
Justin Green, Water Quality Administrator
Christine Svetkovich, Water Quality Manager

Subject: Item H: 1200-Z Industrial Stormwater Discharge Permit Renewal Rulemaking (Informational)
Jan. 21-22, 2021, EQC meeting

Why this is important DEQ will inform the commission about the work associated with the 1200-Z Industrial Stormwater Discharge Permit Renewal Rulemaking in preparation for proposed action by EQC in March 2021.

Additional information for this rulemaking is on the DEQ Website:
<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx>.

Prior EQC involvement This is the first water quality general permit that DEQ is renewing by rule since the authorizing statute Oregon Revised Statute 468B.050 was updated in 2005 to explicitly allow for general permits to be issued by order or rule. Prior to 2005, many general permits were adopted by the commission as rules.

Background DEQ's 1200-Z industrial stormwater general permit regulates stormwater discharges from industrial facilities that may reach Oregon waterways directly or through conveyance system such as ditches or storm drains. There are currently over 860 facilities from tenbroad industrial categories throughout Oregon with permit coverage. There is a separate general permit, the 1200-A industrial stormwater general permit that regulates the discharge of stormwater associated with sand and gravel mining activities, which is not included in this rulemaking.

The current permit framework requires all facilities to monitor their stormwater, develop and keep up-to-date a pollution control plan specific to their facility, and install additional pollution controls if sampling does not meet targets. The permit also has specific requirements for different industrial activities based on Standard Industrial Code, which are based on the federal industrial stormwater general permit.

In August 2017, DEQ renewed the 1200-Z industrial stormwater general permit for a five-year term. DEQ subsequently received a petition to reconsider the permit from the Oregon Industrial Stormwater Group, a diverse group of permitted industries. In addition, a petition for review of the permit was filed in Multnomah County Circuit Court by Columbia Riverkeeper and the Northwest Environmental Defense Center.

On August 17, 2018, DEQ entered into a Consent Judgement and a Settlement Agreement with Northwest Environmental Defense Center, Columbia Riverkeeper, and Oregon Industrial Stormwater Group, as an intervener regarding the 1200-Z industrial stormwater general permit renewal. In this agreement DEQ committed to the following milestones:

- By October 31, 2018, issue a final revised 1200-Z permit in accordance with ORS 183.484(4) that affirms or modifies the 1200-Z issued on August 1, 2017;
- By October 30, 2020, release for public review and comment a revised draft 1200-Z permit and;
- By March 30, 2021, issue a final revised 1200-Z permit along with written responses to public comments received on the draft revised 1200-Z permit.

On October 22, 2018, DEQ reissued the 1200-Z, incorporating several short-term changes from the Settlement Agreement signed by the parties in August 2018. The remaining terms of Settlement Agreement are being considered as DEQ works on the permit renewal. In summary, DEQ committed to the following procedural and substantive changes:

- A process for considering numeric technology-based effluent limitations, or, alternatively, numeric technology-based benchmarks for the pollutants copper, lead, zinc, and total suspended solids;
- A process to consider one or more proposed site-specific, TMDL-specific, or state-wide numeric water quality-based effluent limitations, related to industrial stormwater discharges into impaired waters (waters that are not meeting one or more standards); and
- Development of appropriate monitoring and reporting requirements to ensure and verify compliance at discharge point(s) identified in each permit registrant's stormwater pollution control plan.

DEQ established an advisory committee to provide input on the elements of the 1200-Z industrial stormwater general permit renewal associated with the

Settlement Agreement. The advisory committee met six times between May 2019 and June 2020. DEQ sought input on the evaluations, methodologies, and appropriate scale for considering numeric water quality-based effluent limitations for impaired waters and numeric technology-based effluent limitations or benchmarks for copper, lead, zinc, and total suspended solids. The advisory committee also considered appropriate monitoring and reporting requirements in relation to effluent limitations or benchmarks.

DEQ is being assisted in this permit renewal rulemaking by PG Environmental, a contractor that has national expertise in industrial stormwater regulations, federal regulations, and the Clean Water Act. PG Environmental helped with a number of the data analyses and associated work for methodologies, the appropriate scale of numeric effluent limits versus benchmarks, and many other technical elements that informed the draft permit. PG Environmental is also assisting DEQ with responses to some of the comments received on the draft permit.

DEQ used the input from the advisory committee to develop the draft 1200-Z industrial stormwater general permit released for public comment from August 17 to October 30, 2020. During the public comment period, DEQ hosted a public meeting on September 29, 2020, to present the proposed changes in the draft permit and answer questions, and held a public hearing on October 30, 2020. DEQ is evaluating the comments received and is working on a final permit to recommend to the EQC in March 2021.

One of the main areas of feedback DEQ received comments on during the public review period is regarding the proposed new framework for managing elevated levels of certain impairment pollutants. The proposed permitting framework requires facilities with industrial stormwater discharges into waters that are not meeting standards for copper, lead, zinc, iron, pH or bacteria, but do not yet have a TMDL in place (a plan identifying what pollution reductions will occur in order to meet standards), to increase measures or controls for these pollutants. For stormwater discharges into impaired waters for pH, facilities would have a water quality-based effluent limit. For the other pollutants, the proposed permitting framework would also result in narrative or numeric water quality-based effluent limits for facilities after two consecutive samples above the water quality criteria or one sample two times above the water quality criteria. For these facilities, permit registrants would have a two-year compliance schedule to install needed controls to meet the numeric

effluent limit. The comments DEQ received on these proposals ranged from concerns regarding the general framework and including effluent limits in a stormwater permit, to the proposed numeric effluent levels for some of the pollutants and the compliance schedule timeline.

Another area of the proposed permit that DEQ received a number of comments on are the proposed benchmarks for copper, lead and zinc. DEQ evaluates water quality data and establishes benchmarks based a well-vetted, technically sound modeling procedure each permit cycle. The 1200-Z permit relies on each facility to adjust pollution prevention controls in response to visual signs of pollution or elevated monitoring results. Permit registrants use established benchmark concentration as targets that trigger additional pollution prevention controls within this adaptive management approach. The proposed permit lowers some of the metals benchmarks in some areas of Oregon based on the technical analyses completed. The comments DEQ received regarding the proposed benchmark limits for copper, lead and zinc include the increased costs to comply with the lower benchmarks without sufficient time to achieve them, concerns that past pollution reduction investments are not accounted for, and that the draft benchmark concentrations are more conservative than needed to protect water quality.

**EQC
involvement**

DEQ presented an information item on this rulemaking in November 2019, and intends to bring a rule proposal for commission action at the March 2021 EQC meeting.

Reported prepared by Krista Ratliff
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