



## Response to Public Comments on Draft Permit

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## Introduction

DEQ accepted public comment on the proposed rulemaking from August 17, 2020, until 4 p.m. on October 30, 2020. For public comments received by the close of the public comment period, the following information organizes comments by commenter. The comments are based on draft materials presented during the public comment period that are located online:

<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx>.

DEQ’s response for each follows the summary. Original comments are on file with DEQ and in Attachment E. DEQ changed the proposed permit in response to comments described in the response sections below. In total, there were 390 unique comments from 37 entities. DEQ made modifications based on 143 of the comments.

**Table 1: Commenters on the 1200Z Rulemaking**

Commenter #	Commenter	Acronym
1.	Oregon Industrial Stormwater Group	OISG
2.	Mutual Materials	MUTUAL MATERIALS
3.	Food Northwest	FOOD NORTHWEST
4.	Oregon Business & Industry	OBI
5.	Oregon Association of Clean Water Agencies	ACWA
6.	Boise Cascade Wood Products, LLC	BOISE CASCADE
7.	B&R Auto Wrecking	B&R AUTO WRECKING
8.	Pacific Seafood Group	PSG
9.	B&B Leasing Company	B&B LEASING
10.	Western States Petroleum Association	WSPA

11.	Institute of Scrap Recycling Industries	ISRI
12.	National Salvage Vehicle Reporting Program	NSVRP
13.	Oregon Refuse and Recycling Association	ORRA
14.	Weyerhaeuser	WEYERHAEUSER
15.	City of Eugene	EUGENE
16.	Columbia Riverkeeper, Northwest Environmental Defense Center, Willamette Riverkeeper, Tualatin Riverkeeper, Northwest Environmental Advocates, Earthrise Law Center	ENVIRONMENTAL COMMENTERS
17.	Gresham Sanitary Service	GSS
18.	Santiam Water Control District	SANTIAM WATER CONTROL DIST.
19.	Northwest Container Services	NWCS
20.	Federal Water Quality Coalition and Federal StormWater Association	FWQC-FSWA
21.	Clean Water Services	CWS
22.	Heiberg Garbage & Recycling	HEIBERG
23.	Waste Management	WM
24.	Danone North America	DANONE
25.	City of Portland Bureau of Environmental Services	BES
26.	Oregon Forest & Industries Council	OFIC
27.	Garbarino Disposal & Recycling Service	GARBARINO
28.	Pride Disposal & Recycling Company	PRIDE
29.	Southern Oregon Sanitation	SOS
30.	Boeing	BOEING
31.	City of Springfield	SPRINGFIELD
32.	U.S. EPA Region 10	U.S. EPA REGION 10
33.	Association of American Railroads	AAR
34.	Vigor Industrial LLC	VIGOR INDUSTRIAL
35.	Yakama Nation Fisheries	YAKAMA NATION FISHERIES
36.	LKQ Corporation	LKQ
37.	Automotive Recyclers Association	ARA

## Acronyms

**BMP** Best Management Practices  
**BOD<sub>5</sub>** Biochemical Oxygen Demand (5-day test)  
**CEG** Certified Engineering Geologist  
**CFR** Code of Federal Regulations  
**CWA** Clean Water Act  
**DMR** Discharge Monitoring Report  
**EPA** Environmental Protection Agency  
**EQC** Environmental Quality Commission  
**MS4** Municipal Separate Storm Sewer System  
**MSGP** Multi-Sector General Permit  
**NAS** National Academy of Sciences  
**NEL** Numeric Effluent Limits  
**NPDES** National Pollutant Discharge Elimination System  
**NTBEL** Narrative Technology-based Effluent Limit  
**OAR** Oregon Administrative Rules  
**PAH** Polycyclic Aromatic Hydrocarbons  
**PCB** Polychlorinated Biphenyls  
**PE** Professional Engineer  
**PER** Permit Evaluation Report  
**SCM** Source Control Measures  
**SIC** Standard Industrial Classification (Codes)  
**SWPCP** Stormwater Pollution Control Plan  
**TBEL** Technology-based Effluent Limitations  
**TMDL** Total Maximum Daily Load  
**TSS** Total Suspended Solids  
**WLA** Waste Load Allocation  
**WQBEL** Water Quality-based Effluent Limitations  
**WQC** Water Quality Criteria  
**WQS** Water Quality Standard

# 1. Comments from: Oregon Industrial Stormwater Group

OISG #1

**Description: Metals Benchmark Modeling - Revise proposed statewide benchmarks using appropriate regional or statewide translators**

**Comment:** The proposed statewide benchmarks should be revised to reflect appropriate regional or statewide translators. The Proposed Permit's benchmarks are based on default translators of 1 or very nearly 1. Applying appropriate, region-specific translators results in benchmarks that are in all instances higher—and in most instances substantially higher—than the proposed benchmarks. And in only two instances are the adjusted benchmarks lower than the current permit's benchmarks. Moreover, for the reasons discussed in the following section, the adjusted benchmarks themselves may be lower than necessary to protect water quality.

**Response:** DEQ agrees that the use of EPA default translators is more conservative than necessary in some instances and has reconsidered the use of EPA default metal translators. DEQ has evaluated the potential use of regional translators, and updated the proposed final permit to include regional translators where feasible. Where regional translators were not feasible, EPA's default metal translators were applied. EPA's default translators are widely applicable to, and protective of, a diverse array of waterbodies. Appendix C of the revised permit evaluation report describes the methods used by DEQ in evaluating the appropriateness and the application of regional metal translators in the final proposed permit.

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OISG #2

**Description: Metals Benchmark Modeling - Analyze covariance (ANCOVA) or other appropriate statistical test on all water quality data used in the benchmark analysis for a given region**

**Comment:** Issues that likely cause the benchmarks to be lower than necessary are data was not analyzed for covariance. The analysis used to develop the draft benchmarks does not appear to have evaluated covariance. If there is covariance, the analysis would not be appropriate because the assumption of parameter independence would be violated.

**Response:** DEQ's benchmark methodology was presented and vetted during the rulemaking process by the advisory committee comprised of varied stakeholders. Based on the feedback from the advisory committee, the modeling procedures followed during this permit renewal were the same as previous renewals. Any correlation of specific pollutant concentrations would be different for each of the 184 receiving water bodies covered under the permit. This type of covariance analysis is not practical in the context of a general permit using Monte Carlo modeling. In terms of pollutant correlations of stormwater discharges across the state, the covariance between water quality parameters is rare. The process of determining benchmarks is well defined and all appropriate steps were followed. Permit registrants may apply for an individual permit and provide DEQ with site-specific information appropriate to evaluate permit conditions and monitoring at their site.

**Description: Metals Benchmark Modeling - Examine data to determine if there is adequate data to represent the diversity of water bodies in entire geo-region**

**Comment:** For larger regions (Cascades, Coastal, Eastern, and Willamette Valley), no analysis has been performed to determine if it is appropriate to lump data from different water bodies together into one set. The data in these regions should be examined to determine if there is adequate data to represent the diversity of waterbodies in the entire region. If the data is not adequate, then statewide data should be used instead.

**Response:** The data used in the benchmark modeling process was carefully queried from state and federal databases to ensure it adequately reflected the ambient water quality of surface water within each georegion in Oregon. These data were reviewed for representativeness and any obvious outliers were excluded from the georegional datasets. With respect to the non-detect values, the regression on order statistics (ROS) analysis was used to determine the appropriate distribution and that determination was bounded by the available data for the georegion.

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OISG #4

**Description: Metals Benchmark Modeling - Translate data from dissolved to total or total to dissolved in three places: background water concentrations, assumed effluent concentrations, and water quality criteria calculations**

**Comment:** To convert a dissolved criterion value into a total criterion, the dissolved criterion is divided by a ratio known as a translator. In the absence of relevant data regarding an appropriate translator, a default translator can be used. A default translator generally assumes that more than 95% of the metal in the water body is present in the dissolved form (EPA, 1996), which is a highly conservative assumption in most water bodies. When sufficient data are available, a more appropriate translator can be calculated and used in place of the default translator. Neither a region-specific nor an appropriate conservative default translator were used to derive the draft 1200-Z benchmarks. In the technical analysis, translators should come into play in three places: background water concentrations, assumed effluent concentrations, and water quality criteria calculations. For background water data, the draft benchmark analysis used dissolved data where available, but total concentrations were used without conversion where dissolved data were not available.

**Response:** As described in the comment, DEQ used dissolved metal background data when available. However, when dissolved data were not available, total recoverable data were used instead. While this process is an inherently conservative approach, it was necessary because in some regions, metals data are sparse so that omission of total recoverable data would severely limit the characterization of ambient metals concentration so as to prevent modeling of a benchmark. It is important to note that when the distributions of total recoverable versus dissolved ambient water measurements were compared by region, there was no evidence to suggest that the values of total recoverable metals were unduly biasing the benchmarks. Neither dissolved nor total recoverable metals data were bi-modal or skewed by the inclusion of the total recoverable data. Although it is possible that some benchmark values are more conservative than they would otherwise be as a result of including some of the total recoverable data to calculate them, this was the best approach available to DEQ without sufficient dissolved metals data to generate benchmarks. Furthermore DEQ considered potential bias and found the data distributions that include both dissolved and total recoverable metals in the analysis supported that approach. DEQ

developed and implemented region-specific translators where appropriate and performed the accurate calculations in final total benchmark concentrations. The criteria in effect for clean water act purposes in Oregon are for the dissolve fractions of metals, therefore DEQ does not translate the criteria to a total dissolved equivalent. Benchmarks, where expressed as total recoverable metal, are established based on achieving attainment of the protective dissolved criteria within an acceptable level of risk.

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OISG #5

**Description: Metals Benchmark Modeling - Change the standard deviation of the Columbia Slough copper benchmark from 0.239 µg/L to 0.462 µg/L to correct for the oversight**

**Comment:** This did not change the copper benchmarks concentrations.

**Response:** The permit evaluation report was updated to correct the Columbia Slough copper benchmark standard deviation.

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OISG #6

**Description: Metals Benchmark Modeling - Benchmarks lower than those in the current permit are not needed to protect water quality**

**Comment:** NA

**Response:** It is important that DEQ evaluate the benchmarks using the most recent water quality data. The 2017 benchmark work was performed in 2016. In order to expand the georegions and assess recent ambient data spanning from 2010-2019, it is most appropriate to perform benchmark modeling each permit cycle. The data used in the benchmark modeling process was carefully queried from state and federal databases to ensure it adequately reflected the ambient water quality of surface water within each georegion in Oregon. In addition, based on the comments received to address the conservative nature of EPA's translators, where appropriate, DEQ calculated dissolved to total translator values and revised the final benchmarks and water quality-based effluent limits. This effort to evaluate region background data ensures the discharge concentrations are appropriate and not more stringent than necessary to protect aquatic life.

With respect to the calculation of distribution parameters, the distribution of a theoretical lognormal distribution may be validly computed consistent with the method used by DEQ. Lognormal distribution parameters may be validly computed using different, mathematically equivalent parameterizations which include, but are not limited to, using the maximum likelihood estimate (the method suggested by the commenter), or the arithmetic mean and standard deviation (the method used by DEQ in the draft permit). Different estimated parameters may have differing bias depending on the underlying characteristics of each data set and both the method used by DEQ in the draft permit and the method suggested by the commenter tend to be more biased when applied to smaller or skewed data sets. However, in response to the comment, DEQ has graphically evaluated the application of both methods to the available data and determined the method suggested by the commenter does produce less biased simulated data when applied to the coastal data which were determined to be lognormal, and that the quality of this method when applied to other regions' lognormal data sets was approximately similar to DEQ's method.

Therefore, DEQ has revised all the metals benchmarks based on an application of the requested lognormal distribution parameterization method.

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OISG #7

**Description: Advisory Committee Draft - Retain current sampling schedule requirement**

**Comment:** The current sampling schedule requirement, where two samples are required in each of the first and second halves of the year, should be retained as proposed in the public comment draft. The strong seasonality of rainfall throughout the state as well as the hydrological characteristics present at many industrial sites would make it difficult for most sites to consistently attain samples early in the fall season.

**Response:** Both the draft and final proposed permit retains the same semi-annual sampling frequency as the current permit.

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OISG #8

**Description: Advisory Committee Draft - Adjusted interim numeric effluent limits**

**Comment:** NELs should be adjusted to account for the fact that benchmarks are applied as annual geometric means and the draft NELs are applied as daily maximum values. One approach that ODEQ could consider for adjusting the NELs is to utilize the properties of the lognormal distribution where the geometric mean is equal to a benchmark value and the coefficient of variation is representative of industrial stormwater concentrations.

**Response:** The draft permit released on Aug. 17, 2020, did not include interim numeric effluent limits.

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OISG #9

**Description: Monitoring Waiver - Retain current requirement to submit four consecutive samples**

**Comment:** It would be confusing and overly burdensome to condition a monitoring waiver on the review of five consecutive samples to demonstrate a full year of monitoring data. ODEQ should retain its current requirement to submit four consecutive samples, because the permit only requires four sampling events to satisfy a full year of monitoring.

**Response:** DEQ recognizes that changing the eligibility criteria to apply for a monitoring waiver from four to five consecutive qualifying sample results equal to or below the applicable statewide or sector-specific benchmark concentrations during a full monitoring year is a shift from what has been in the previous permits. The intent is for all existing facilities monitoring waiver requests to include two fall flush sampling events in the geometric mean calculate. Capturing the sample results from two fall monitoring events will better justify a monitoring waiver approval and ensure pollution prevention controls are being maintained. Expanding the criteria beyond the minimum four samples also supports the sufficient number of samples for the geometric mean results to have any statistical meaning.



OISG #10

**Description: Monitoring Waiver - Maintain current position that monitoring waivers, once issued, are valid until the permit expires**

**Comment:** It would be confusing and overly burdensome to automatically invalidate a monitoring waiver during the final permit year, especially where the permittee has been issued a similar waiver during prior permit terms. ODEQ should maintain its current position that monitoring waivers, once issued, are valid until the permit expires. Because all waivers would expire at the end of the permit term in any event, reinstating the monitoring requirement for the final year of the permit term would have little or no value. Limiting the waiver for the final year of the permit term would substantially reduce the value of the waiver to permit registrants without providing any substantially useful data in return. This creates an additional year in the permit term with required monitoring that could not be used as eligible data to establish a monitoring waiver.

**Response:** Stormwater monitoring data is important information for DEQ to evaluate industrial stormwater discharge trends. Reinstating monitoring requirements on July 1, 2025, will provide DEQ with valuable discharge data for future permits and ensure pollution prevention measures continue to be maintained throughout the permit cycle. DEQ retained the requirement that approved monitoring waivers for benchmarks are valid until July 1, 2025. The National Academy of Sciences Report on Improving the MSGP (2019) findings included that quarterly stormwater event samples collected over one year are inadequate to characterize industrial stormwater discharge or describe industrial source control measures performance over the permit term.

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OISG #11

**Description: Permit Coverage and Exclusion from Coverage; Name Change or Transfer - No need for public notice**

**Comment:** This section requires public notice of a SWPCP for a legal name change, even if there are no substantive changes to the SWPCP. Condition I.4.c requires submittal of a new application (and updated SWPCP) and does not allow for changes in operations as part of a permit transfer, so, under (a)(iv), there would, by definition, be no change in operations and therefore no need for public notice.

**Response:** DEQ modified the language in this condition. DEQ does not intend to post a stormwater pollution control plan for a 30-calendar day public notice for a name change or transfer between legal entities when there is no change in operations.

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OISG #12

**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Should not remove allowance for DEQ or agent to approve a corrective action deadline more than 30 days**

**Comment:** The revised Draft permit also removes the allowance for DEQ to approve a longer time frame, which is obviously necessary if long purchasing lead times or construction is required.

**Response:** The proposed final permit retains the 2018 permit language and allowance for an approval from DEQ or agent to extend the deadline to modify and implement control measures.

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OISG #13

**Description: General Comment; Rulemaking - DEQ's departure from its longstanding practice of issuing general NPDES permits as orders will result in less transparency and accountability and may make renewing or modifying the permit more difficult in the future**

**Comment:** From the standpoint of public participation and transparency, the rulemaking process offers no advantages over issuing the permit as an order. The current rulemaking process has provided no additional opportunities for public participation or transparency. Indeed, it has resulted in fewer opportunities because the need to present the permit to the EQC for adoption has truncated the renewal process by several months and prevented the advisory committee from meaningfully discussing the draft permit presented to the public for comment. With respect to accountability, the EQC is DEQ's governing body and can direct DEQ on questions of policy at any time and without a rulemaking process. Having the EQC formally adopt the complex, 142-page permit as a rule based on a DEQ recommendation after the public comment period has ended will not make either the EQC or DEQ more accountable for the permit's content. Furthermore, because a rule, unlike an order, generally does not need to be supported by an evidentiary record, see ORS 183.335(13), 183.400(3), renewing the permit as a rule may in fact make the EQC and DEQ less judicially accountable for the permit. If the 1200-Z permit is renewed as a rule, OAR 340-045-0033(1) provides that a general "permit adopted by rule may be terminated by a later permit issued by order if the later permit covers the same activity and specifically provides for terminating the earlier permit." OISG believes that this would also authorize DEQ to issue an order modifying a general permit adopted by rule. If that belief is incorrect, or if DEQ has any doubts whether it could modify the 1200-Z permit through an order if that became necessary or desirable after it has been adopted by the EQC as a rule, the rule should expressly authorize DEQ to modify the permit by order. Given the permit's length and complexity, DEQ must have the flexibility to modify it without having to ask the EQC to do so through the lengthy and cumbersome rulemaking process.

**Response:** DEQ acknowledges that there are differences in the processes for administrative and judicial review of an agency order versus rulemaking.

DEQ has authority under ORS 468B.050 and OAR 340-045-0033(1) to issue general permits by rule or by order. Historically a number of general permits were adopted through rulemaking while more recently some have been issued by agency order. Due to the large number of permit registrants (860+), substantial policy considerations and broad public interest in this permit, DEQ determined that the rulemaking process is appropriate. Renewing this permit through the rulemaking process provided in the Administrative Procedures Act ensures transparency and a standardized process for all interested in this permit. Additionally the policy decisions regarding the final permit are made by the Environmental Quality Commission.

**Description: Effective Date of the Permit - Support DEQ's proposal to delay the effective date of the permit to July 1, 2021**

**Comment:** The Proposed 1200-Z Permit would be issued by March 30, 2021 in order to respond to the requirements of the settlement agreement that DEQ entered with OISG and other parties, but the permit would not take effect until July 1, 2021. The delayed effective date is consistent with the settlement agreement, which requires only a permit decision on specified issues by March 30, 2021, and it will give DEQ, its agents, and permit registrants time to prepare for implementing the permit. An effective date of July 1 will also align the permit term with the permit's July 1 to June 30 monitoring year, which will further facilitate permit implementation.

**Response:** Thank you for the feedback.

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OISG #15

**Description: Permitted Activities - Should make clear that Schedules E and F are subordinate to other parts of the permit and that Schedule F is subordinate to Schedule E**

**Comment:** Page 2 of the Proposed 1200-Z Permit states: "If conflicts arise between Schedule F or Schedule E and any other schedule of the permit, the requirements in Schedule F or Schedule E may not apply." (Emphasis added.) Using "may" in this context does not resolve any uncertainty regarding which conflicting permit provision applies. Replacing "may not apply" with "do not apply" would make clear that the provisions of Schedules E and F are superseded by any conflicting requirement in other schedules of the permit. The permit should also resolve any conflict between Schedule E and Schedule F. Because Schedule E is the more specific schedule, it should supersede Schedule F.

**Response:** Schedule F is consistent with the general permit provisions required under 40 CFR 122.41. Schedule E replicates sector-specific requirements in accordance with EPA's MSGP. Both Schedules have small edits in order to be relevant to Oregon; however, since these Schedules were adopted from federal requirements DEQ is compelled to retain both Schedules as written and will not significantly revise or resolve any conflicts between the two Schedules. Instead the 1200-Z has included this statement within the permit to alleviate conflicts that may arise.

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OISG #16

**Description: Sheet Flow - The permit can only regulates only "point sources," not "sheet flow" or other uncollected and unchanneled discharges**

**Comment:** There is also no requirement to collect or channel stormwater to transform it into a point source discharge. No authority is cited for the statement that the U.S. Environmental Protection Agency (EPA) requires the permit to regulate sheet flow or other stormwater runoff that is not channeled or collected, nor is any authority cited for the statement that facilities are required to create a point source discharge where there is none. Any such permit requirements would be inconsistent with the Clean Water Act (CWA) and EPA's regulations. A fundamental principle of the CWA is that it regulates only point source discharges.

This is further emphasized by EPA's stormwater regulations, which define "storm water discharge associated with industrial activity" as "the discharge from any conveyance that is used for collecting and conveying stormwater water and that is directly related to manufacturing, processing or raw materials at an industrial plant." 40 C.F.R. § 122.26(b)(14) (emphasis added); see also *Ecological Rights Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 508-10 (9th Cir. 2013) (NPDES permit not required for stormwater that is not "discretely collected and conveyed to waters of the United States"); *Greater Yellowstone Coal. v. Lewis*, 628 F.3d 1143, 1152-53 (9th Cir. 2011) (stormwater runoff that is "not collected or channeled" is not regulated by the CWA). The statements in the evaluation report that suggest that uncollected and unchanneled stormwater runoff is regulated by the NPDES permit program, and that facilities are required to collect and channel runoff are incorrect and a source of ongoing confusion for permit registrants, DEQ agents, and the public. OISG urges DEQ to correct these statements to accurately define the scope and source of its authority to regulate stormwater runoff through an NPDES permit.

**Response:** These comments take issue with the permit requirement that permitted facilities sample and, if necessary, control sheet flow discharging from regulated industrial facilities into waters of the state. Factually this is a specific scenario where an industrial facility deemed to be conducting activities generating stormwater requiring an NPDES permit, has a facility design such that sheets of stormwater directly drain from the facility to waters of the state. Given these facts, such sheet flow is potentially of environmental concern and therefore assessment is required. The requirement to monitor sheet flow is consistent with direction from EPA that once a permit is required the permit registrant must assess all potential industrial stormwater discharge that does not infiltrate. The same approach is taken by other states include neighboring Washington State. Consistent with this, guidance for collecting sheet flow samples is included in EPA's 2009 Industrial Monitoring and Sampling Guide and Washington Department of Ecology's 2015 Stormwater Sampling Manual. Additionally, requiring monitoring of sheet flow from permitted industrial facilities is consistent with the policies of the state of Oregon to prevent pollution as described in ORS 468B.015, 468B.020 and 468B.025. The final permit has been modified to make the requirement to monitor sheet flow clearer in Schedule B and Schedule D, discharge point definition.

To support their position that the permit cannot require registrants to monitor sheet flow commenters cite the prohibition on point source discharge without a permit in Section 301(a) of the Clean Water Act and two Ninth Circuit Court of Appeals cases, arguing that sheet flow is not a point source. Cases considering whether an NPDES permit or Section 401 Certification are required are very fact dependent and therefore must be considered in the context of their facts. The first case cited in this comment is *Ecological Rights Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 508-10 (9th Cir. 2013). This case considered whether runoff from utility poles triggered the requirement to obtain an NPDES permit and found that it did not. The plaintiff claimed that a permit was required for the utility poles in four California Counties. The court considered whether the poles were point sources despite no direct connection to water bodies. The sheet flow being regulated by this permit is directly flowing from permitted facilities into waters of the state.

The second case cited is *Greater Yellowstone Coal. v. Lewis*, 628 F.3d 1143, 1152-53 (9th Cir. 2011). That case considered whether stormwater "seeping" into pits that collected waste rock associated with a mine expansion constituted a point source such that a Section 401 water quality certification was required, and the Court found that they did not. The "seeping" at issue in that case was at a rate less than the surrounding ground and therefore is also very dissimilar to sheet flows from a constructed industrial facility. Additionally, the sheet flow at issue in the permit is not naturally occurring run-off but rather drainage of stormwater directly into waters of the state from a constructed facility. As discussed, the cases cited involved very specific factual situations and provide little guidance on the regulation of sheet flow stormwater from permitted industrial facilities.

**Description: Sources Covered Under this Permit; Table 1 Footnote 1 - Should delete this footnote**

**Comment:** Table 1 of the Proposed 1200-Z Permit identifies the industrial sources eligible for coverage under the permit. These include transportation facilities with specified Standard Industrial Classification codes “that have vehicle maintenance shops . . . , equipment cleaning operations, or airport deicing operations.” For these facilities, proposed footnote 1 to Table 1 states: “Eligibility based on auxiliary operations; however, once covered under this permit all operations are regulated activities.” Requests that DEQ delete footnote 1, which is inconsistent with EPA’s industrial stormwater regulations. Those regulations clearly state: “Only those portions of the [transportation] facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14) (i)-(vii) or (ix)-(xi) of this section are associated with industrial activity.” 40 C.F.R. § 122.26(b)(14)(viii). Expanding the regulating footprint of industrial activities will be more protective of water quality and many uncontrolled source of pollution that are not currently regulated.

**Response:** The proposed final permit language is consistent with 340-045-0015(2) and 40 CFR 122.26 which are the rules that outline the requirements for who must obtain permit coverage. Once a facility is covered under the permit, DEQ may expand the area covered under the permit to regulate stormwater discharge associated with industrial activity from the entire footprint. Based on the wide variety of industrial activities and significant materials associated with industrial activity exposed to stormwater discharge, DEQ has expanded the scope beyond auxiliary operations to protect Oregon’s waters. Washington State Ecology’s industrial stormwater general permit also regulates the entire footprint of industrial facilities.

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OISG #18

**Description: Sources Covered Under this Permit; Table 2 - Should either remove Table 2 or more narrowly and specifically define its extremely broad categories**

**Comment:** Table 2, notwithstanding its label as “additional industrial activities,” lists activities at other, nonindustrial facilities for which DEQ requires an NPDES permit if the facility discharges stormwater to the Columbia Slough or Portland Harbor. The only legal bases for requiring these nonindustrial facilities to obtain an NPDES permit for stormwater discharges are either (1) “controls are needed for the discharge based on wasteload allocations that are part of ‘total maximum daily loads’ (TMDLs) that address the pollutant(s) of concern” or (2) “the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.” 40 C.F.R. § 122.26(a)(9)(i)(C), (D); see 33 U.S.C. § 1342(p)(2)(E). If there are specific nonindustrial facilities that discharge to the Columbia Slough or Portland Harbor for which DEQ has made such findings, a list of these facilities could be attached to, or referenced in, the permit in lieu of Table 2. As stated on the Proposed 1200-Z Permit’s cover page, DEQ could then add to or subtract from the list, as needed, in accordance with 40 C.F.R. § 122.26(a)(9)(i)(C) or (D). This approach would also eliminate the uncertainty regarding the scope of Table 2 created by its broadly and vaguely defined categories.

**Response:** DEQ has reviewed the commenter’s issues and finds the requirement for coverage in Table 2 to be supported by substantial evidence and consistent with applicable regulations. Additionally, DEQ finds the implementation concerns raised to be without merit as evidenced by the fact that the requirement

has already been implemented without issue in the Columbia Slough for more than a decade. The permit defines “industrial activity” as “the categories of industrial activities included in the definition of ‘stormwater discharges associated with industrial activity’ as defined in 40 CFR 122.26(b)(14)(i)-(ix) and (xi) or activities identified by DEQ as a significant contributor of pollutants, such as Table 2.” Thus, DEQ made the determination that these activities represent significant contributors of pollution. DEQ has found that these activities, when conducted at other sites and exposed to stormwater, are shown by 1200-Z monitoring data and stormwater source control evaluations, to result in stormwater discharges containing pollutants also found in the sediment and water column of the Columbia Slough and Portland Harbor. In regard to the federal regulation, the bulk of the activities listed in Table 2 appear in 40 CFR 122.26 (b)(14), which includes the caveat of “includes, but is not limited to.”

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OISG #19

**Description: Sources Covered Under this Permit; Table 2 - Should not require Table 2 facilities without coverage to obtain coverage until notified that coverage is required and have had a reasonable opportunity to apply for and obtain coverage**

**Comment:** Without explanation, the Proposed 1200-Z Permit would remove the current requirement to notify Table 2 facilities without existing permit coverage of the need to apply for coverage. The notice requirement should be retained, and these facilities should be given reasonable time to apply for and obtain a permit after receiving the notice. Otherwise, Table 2 facilities could be unfairly subjected to an enforcement action, including a citizen suit, without knowing that a permit is needed and without a reasonable opportunity to obtain one. For facilities that must obtain an NPDES permit only because of a determination pursuant to 40 C.F.R. § 122.26(a)(9)(i)(C) or (D)—the purported basis for requiring Table 2 facilities to obtain a permit—EPA’s regulations allow the facility to apply for permit coverage within 180 days after receipt of notice that permit coverage is required. See 40 C.F.R. § 122.26(a)(9)(iii). Proposed 1200-Z Permit conditions I.2.a.ii and iii should be revised to allow facilities 180 days, rather than 60, to apply for permit coverage.

**Response:** During the 2017 renewal, DEQ identified all the current facilities without coverage under the 1200-Z in the Portland Harbor area eligible for coverage based on expansion of Table 2 industrial activities. DEQ expects this effort has captured the facilities needing coverage and therefore, there is no need to continue the permit language from the 2018 reissuance that required DEQ or agent notification for new applicants. The new application for permit coverage requires immediate submission of a complete application for existing facilities with stormwater discharges associated with industrial activities identified in Table 1 or Table 2 operating without coverage under any NPDES permit.

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OISG #20

**Description: Permit Coverage and Exclusion from Coverage - Notice of permit assignment should be contained in a specific, dated electronic document that identifies all applicable monitoring requirements, discharge limits, and discharge benchmarks.**

**Comment:** Proposed 1200-Z Permit state that DEQ or its agent will notify permit registrants of assignment under the permit and applicable monitoring requirements. The form of the notice and the means by which it will be sent, however, are not specified. Suggested revisions to Proposed 1200-Z Permit conditions I.2.b.ii, I.3.a, I.3.d, A.4.b.ii, A.7.c.ii, A.11.f.i, B.2, B.3, and B.4 to clarify the content of

the notice. The form of the notice and the means by which it will be sent—provided that it is contained in a specific, dated document that is readily and publicly accessible—may be best determined by DEQ as it develops and gains experience with its electronic reporting and online document systems.

**Response:** DEQ’s regulatory programs are in the process of modernizing to the new online system called “Your DEQ Online.” DEQ will connect with industrial stormwater permit registrants to help them transition into using this new system once it is available. Because DEQ’s agents will not be included in the first phase of implementation of “Your DEQ Online,” the communications strategy for each facility will depend on where it is located. At this time in the renewal process the permit language specific to permit monitoring requirements communication must be broad to meet electronic reporting requirements and DEQ’s agents phased use of “Your DEQ Online.” All existing permit registrants will receive mailed notice of permit coverage after the permit is renewed. Agents will notify existing and new permit registrants of specific monitoring requirements through a mailing in the same manner currently used until such time they transition to the electronic system. For existing and new permit registrants within DEQ jurisdictions, “Your DEQ Online” will provide an easy and intuitive online system for connecting to DEQ, including upcoming reporting obligations. DEQ or agent will provide each facility with sampling requirements, pollutant concentrations and monitoring frequency based on applicants’ site information. Monitoring parameters include applicable statewide benchmarks, sector-specific benchmarks (primary and co-located), impairment monitoring and numeric effluent limits.

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OISG #21

**Description: Permit Coverage and Exclusion from Coverage; Existing Facilities covered under the 2017 1200-Z NPDES General Permit - Should have at least 60 days after receipt of notice of permit coverage assignment to update their SWPCPs for existing permit registrants**

**Comment:** Condition I.3.a of the Proposed 1200-Z Permit requires existing permit registrants to submit an updated SWPCP to DEQ no later than August 31, 2021, but it does not identify a deadline by which DEQ will provide notice of permit coverage assignment under the renewed permit, including applicable monitoring and other requirements. Although DEQ expects to provide the notice well in advance of August 31, it will not be practicable for the permit registrant to update its SWPCP by then if the notice is delayed for any reason. OISG has suggested a revision to condition I.3.a that would require the updated SWPCP to be submitted by August 31 or within 60 days of receipt of the notice of assignment, whichever is later.

**Response:** Once the permit is issued, DEQ will communicate information regarding the permit renewal as soon as possible. Updating a facilities’ SWPCP is not dependent upon receipt of notice of permit coverage under the renewed permit. Updating a facilities’ SWPCP may begin as soon as the permit is finalized and issued. Based on anticipated rulemaking adoption by the end of March 2021, as required under the Consent Decree, all existing facilities will have five months to update their SWPCP. DEQ does not require the SWPCP to include specific monitoring requirements. DEQ understands that more than 60 days may be needed to revise the SWPCP for some facilities. The 2017 permit allowed just short of five months for updating the SWPCP, which is consistent with the timeline in the proposed final permit.

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Proposed 1200-Z Permit would prohibit the use of temporary covers, such as tarps, but no justification for this change is provided in the draft evaluation report. There will undoubtedly be both short-term and long-term circumstances in which permanent structures are not feasible, but tarps or other temporary covers would minimize exposure. A permit registrant should not be put in the position of choosing a less environmentally protective solution—no cover at all—if a permanent structure is not practicable.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to minimize exposure and to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure.

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OISG #23

**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Should not require control measures to be specified in the SWPCP for achieving numeric technology-based limits**

**Comment:** Condition A.2.a of the Proposed 1200-Z Permit would require permit registrants to develop and include in the SWPCP best management practices and other control measures to achieve the permit's numeric technology-based effluent limits. This would place an unnecessary and inappropriate burden on permit registrants. Best management practices and other narrative controls are required under 40 C.F.R. § 122.44(k) when it is not feasible to apply numeric limits. They are not needed to enforce numeric discharge limits. If a numeric discharge limit is not met, that itself is a violation of the permit.

**Response:** 40 CFR 122.44(k)(2-4) states BMPs may be established for the control of stormwater discharges when numeric effluent limitations are infeasible, or when the practices are reasonable to achieve effluent limitations and standards or to carry out the purposes and intent of the Clean Water Act. DEQ has determined the Control Measures section under Schedule A.2 apply to best technologically available and economically practicable and achievable controls for meeting both narrative and numeric TBELs. As with water quality-based effluent limits, the permit structure allows for the permit registrant to choose control measures to meet the numeric effluent limits, but these must be documented in the SWPCP.

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OISG #24

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not require implementation of narrative technology-based effluent limits that provide no further reduction in pollutant discharge mass or concentration for facilities that have installed systems to treat, infiltrate, or divert at least 100 percent of the runoff from the applicable design storm**



**Comment:** The 1200-Z permit's narrative technology-based effluent limits (BMPs) were developed for industrial facilities that do not have active or passive treatment systems. Treatment systems are required only in response to certain discharge benchmark exceedances. Many permit registrants, however, have elected to invest in expensive stormwater treatment systems precisely because of the impracticability or ineffectiveness of some of the BMPs required by Schedules A.1 and E, particularly at large, complex sites. Facilities that have installed systems to treat, infiltrate, or divert at least 100 percent of the runoff in a drainage basin from the applicable design storm should not be required to continue implementing all the required BMPs in that drainage basin, provided that the facility can justify in its SWPCP why implementing a specific BMP would provide no further substantial reduction in pollutant discharge mass or concentration.

**Response:** DEQ disagrees with the comment. Failure to implement reasonable BMPs to minimize the pollutant loading to stormwater that may be discharged to a receiving water may result in additional pollutant loading to the receiving water. Increased pollutant concentrations to a treatment system are likely to result in increased pollutant concentrations in the treated stormwater. Further, there are practical limitations on the design of pollutant control systems, such as the application of a design storm event. Stormwater runoff that exceeds the design capacity of the stormwater system, or otherwise is discharged due to unforeseen circumstances, may be discharged directly to the surface water. The application of reasonable BMPs minimizes the pollutant loading under these occurrences.

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OISG #25

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not be subject to an enforcement action for violating the narrative technology-based effluent limits**

**Comment:** A permit registrant should not be subject to an enforcement action for violating the narrative technology-based effluent limits if it has explained in its SWPCP how it will implement the limits, has submitted the SWPCP to DEQ, has timely made any changes to the SWPCP directed by DEQ, and has complied with the SWPCP. Translating a general permit's necessarily vague and subjective narrative technology-based effluent limits into facility-specific stormwater controls requires professional and policy judgments that only DEQ can ultimately make. A permit registrant should not be subject to an enforcement action, including a citizen suit, for violating the narrative limits when it has (1) prepared an SWPCP that explains how it will implement the narrative limits, (2) submitted the SWPCP to DEQ or its agent, (3) made any changes in the SWPCP that DEQ or its agent has directed, and (4) fully complied with the relevant provisions of the SWPCP. Permit registrant should not be subject to an enforcement action when these conditions have been met.

**Response:** DEQ appreciates the input. The draft permit language did not read as intended. DEQ has revised the wording to meet the intent: "Failure to implement any narrative technology-based effluent limits in Schedule A.1 and Schedule E, and other control measures or operational practices described in the SWPCP is a permit violation."

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OISG #26

**Description: Water Quality Standards - Should not be subject to an enforcement action for violating the narrative prohibition on causing or contributing to a water quality standards**

**exceedance if it has submitted its SWPCP to DEQ, has timely made any changes to the SWPCP directed by DEQ, and has complied with the SWPCP**

**Comment:** Determining whether a stormwater discharge causes or contributes to an excursion from instream water quality standards requires not only ambient water quality data that a permit registrant is unlikely to have, but also legal and policy judgments that ultimately only DEQ can make. Moreover, if the water quality standard at issue is a narrative standard, such as the “creation of . . . conditions that are deleterious to fish or other aquatic life . . . may not be allowed,” OAR 340-041-0007(10), the application of the standard itself would require legal and policy judgments that only DEQ would be in a position to make. A permit registrant should not be held retroactively liable for compliance with requirements that it could not itself have determined at the time of discharge. If DEQ determines that additional controls are needed to achieve water quality standards, it has ample authority under the Proposed 1200-Z Permit, including conditions A.3.c and d, to require revisions to the SWPCP or an individual NPDES permit.

**Response:** DEQ may not allow exceedances of water quality standards in OAR 340-041 in a NPDES permit, including narrative water quality standards. The proposed final 1200-Z permit is consistent with state water quality goals.

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OISG #27

**Description: Water Quality Standards - Should require a water quality standards corrective action report only when notified by DEQ and allow more than 24 hours to investigate and more than 30 days to submit corrective action report**

**Comment:** Because a permit registrant generally will not be able to determine when a water quality standards exceedance has occurred, it should be required to respond to a potential exceedance only when notified by DEQ and should, with DEQ’s approval, be allowed more than 24 hours to investigate the exceedance and more than 30 days to submit a report identifying corrective actions; the required response should also include an evaluation, where appropriate, of whether the permit registrant’s stormwater discharges are contributing to an exceedance and require corrective action. (Condition A.3.b). Permit condition A.3.b requires a permit registrant, “at any time [it] becomes aware” that its discharge “causes or contributes to an exceedance of instream water quality standards,” to investigate within 24 hours “the conditions that triggered the exceedance” and whether additional stormwater control measures are needed “to ensure compliance with this permit.” The permit registrant must also within 30 days of the discovery submit to DEQ a “Water Quality Standards Corrective Action Report” that documents the results of the investigation, corrective actions taken or to be taken, and any necessary revisions to the SWPCP. Identifying precisely when it became “aware” of such an exceedance for purposes of initiating such short response deadlines will almost always be impossible for the same reason. Furthermore, investigating the cause of a water quality standards exceedance and whether revisions to the SWPCP are needed will invariably require more than 24 hours. The permit should give DEQ the authority to allow more time when that is warranted. Finally, the permit should not assume, before the completion of the required investigation, that there has been a definitive determination that the permit registrant has caused or contributed to an excursion from water quality standards.

**Response:** DEQ did not make the suggested change and disagrees with the commenter that only notification by DEQ should trigger a Water Quality Standards Report investigation and reporting.

**Description: Narrative Water Quality-based Effluent Limits - Specific requirements for discharges to impaired waters should apply in lieu of the general narrative water quality-based effluent limits in condition A.3**

**Comment:** To avoid ambiguities and internal inconsistencies in the permit, it is essential that the permit make clear that the specific requirements for discharges to impaired waters set forth in the permit apply in lieu of the general water quality requirements of condition A.3. Schedule A.4; Discharges to Impaired Waters condition requires discharges to impaired waters to also comply with the permit’s general narrative water quality-based effluent limits in condition A.3. Especially troubling is proposed condition A.4.a.iii, which states that “monitoring results of qualifying sample[s] that exceed water quality criteria, Table 6, . . . may be used in conjunction with other information to demonstrate a violation of this permit as an exceedance of water quality standards.” Another potential inconsistency is found in proposed condition A.4.b.i, which states that discharges to an impaired waterbody with a TMDL must “comply with all applicable requirements of TMDLs with wasteload allocations for industrial stormwater discharges,” but which then states that these discharges must also comply with the general water quality standards requirements in condition A.3. The discharges should comply with the specific requirements of the TMDL, not the general requirements of Schedule A.3.

**Response:** The requirements of Schedule A.4 do not apply in lieu of Schedule A.3—both are applicable to discharges to impaired water bodies without a TMDL. Schedule A.4 states: “Existing permit registrants to an impaired water without a TMDL . . . , must comply with Schedule A.3 . . .” Absent of a TMDL, registrants must discharge at levels consistent with the applicable narrative and/or numeric water quality standards to avoid causing or contributing to an exceedance of water quality standards.

Maintaining compliance with Schedule A.4.b.i for existing dischargers with TMDL is not inconsistent with complying with Schedule A.3. An approved TMDL is designed to return a waterbody to a non-impaired status. A permit registrant discharging in conformance with approved TMDL conditions and any associated industrial stormwater wasteload allocation is in conformance with Schedule 3. An existing discharger to an impaired waterbody with an approved TMDL must comply with both Schedule A.3 and A.4.b.

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OISG #29

**Description: Stormwater Discharge; Statewide and Sector-Specific Benchmarks - Revise benchmark exceedance language; should further clarify the significance and consequences of a benchmark exceedance**

**Comment:** The Proposed 1200-Z Permit, like the current permit, unequivocally states: “Benchmarks are guide concentrations, not numeric effluent limits. A benchmark exceedance, therefore, is not a permit violation.” These benchmarks are not based on any evaluation of the discharge concentrations that are achievable if the permit registrant complies with the narrative technology-based effluent limits in condition A.1 and Schedule E of the permit. Therefore, it is incorrect to say that a discharge in excess of the benchmark reflects a failure to implement the permit’s required stormwater controls. Rather, a benchmark exceedance indicates only a general risk of more than 10 percent that the discharge may have contributed to the exceedance of a water quality criterion. The risk is a general risk because the benchmark is derived from regional water quality data, rather than from information regarding the specific discharge and receiving water conditions. Schedule A.5 should be revised to read: To clarify that

a benchmark exceedance is not itself a violation of the permit's narrative effluent limits, OISG requests that Proposed 1200-Z Permit condition A.5.a be revised to read as follows: Benchmarks are screening concentrations, an exceedance of which requires further evaluation of a facility's stormwater controls and implementation of any additional or revised controls in accordance with this permit. Benchmarks are not numeric effluent limits. A benchmark exceedance, therefore, is not a permit violation and does not by itself indicate a violation of any other permit condition, including the permit's narrative technology-based effluent limits in Schedules A.1 and E and narrative water quality-based effluent limits in Schedule A.3.

**Response:** DEQ has determined the language at Schedule A.5 is sufficiently clear that benchmarks are not numeric effluent limitations, or are exceedances of a benchmark a permit violation in and of themselves. Further, Schedule A.14.c states: "Where corrective action is triggered by an event that does not itself constitute a violation, such as a benchmark exceedance, there is no permit violation associated with the triggering event provided that the permit registrant takes the corrective action within the deadlines identified in this permit." Schedule A.11 and 12 describe benchmark exceedances as "triggering events" which necessitate the registrant undertake corrective actions and reporting requirements. DEQ did make some small edits to this section for clarity.

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OISG #30

**Description: Stormwater Discharge; Statewide and Sector-Specific Benchmarks - Remove language: "benchmark monitoring shall assist the permit registrant in determining whether site controls are effectively reducing pollutant concentrations in stormwater discharges"**

**Comment:** This statement is misleading and should be removed. Because discharge benchmarks are not based on an evaluation of the discharge concentrations that are achievable by implementing the stormwater controls required by the permit, exceeding a benchmark is not itself an indication that the facility's controls are ineffective.

**Response:** DEQ disagrees that the statement is misleading. Discharge monitoring, including for parameters for which benchmarks have been established, are often an effective aid in assessing a registrant's success or lack of success in meeting water quality standards. When benchmarks are not met and new controls must be implemented, monitoring data provides DEQ and the registrant with a baseline to assess the effectiveness of new controls. The proposed final permit revised the language to now read: "The permit registrant must determine whether site controls are effectively reducing pollutant concentrations in stormwater discharges, or if maintenance or implementation of additional controls is necessary when a benchmark is exceeded."

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OISG #31

**Description: General Comment - Should revise references to "corrective action" to "response action" when the reference is not to the correction of a permit violation, but to the water quality standards evaluation required by condition A.3 or the Tier 1, 1.5, and 2 benchmark exceedance evaluations required by conditions A.11 and A.12**

**Comment:** To avoid the implication that the water quality standards evaluation required by condition A.3 and the benchmark exceedance evaluations required by conditions A.11 and A.12 are triggered by permit violations, the permit's references to these required evaluations should be changed from "corrective

action” to “response action.” These references occur in proposed conditions A.3.b, A.4.a.ii, A.6.a, A.11, A.12, A.14, B.8.a.i.(3), and B.15, and the requested revisions are shown in the attached Appendix A. The permit’s references to “corrective action” should be reserved for those instances in which a permit violation is corrected.

**Response:** DEQ appreciates comment though did not implement this recommendation. DEQ has used the term “corrective action” for multiple permit terms and has determined that permit registrants understand what it means, which is key for permit implementation. Changing the terms regarding long-standing requirements in the permit is not necessary.

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OISG #32

**Description: Tier 1 and Tier 1.5 Corrective Action Response based on Exceedances of Benchmarks - Revise exemptions to clarify that the response action exemption for mass reduction devices applies to Tiers 1.5 and 2, as well as Tier 1**

**Comment:** Schedule A.11.e.ii. A Tier 1, 1.5, or 2 response action is not required for stormwater monitoring results from properly maintained mass reduction measures installed at or above DEQ-approved design capacity.

**Response:** DEQ did not retain Tier 1.5 requirement in the proposed final permit. However, the proposed final permit did change the language to clarify Tier 1 and Tier 2 corrective action response requirements for properly maintained mass reduction measures installed at or above DEQ-approved designed storm capacity exceeds benchmarks.

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OISG #33

**Description: Mass Reduction Measures; Re-certifying by a PE or CEG - Revise infiltration testing requirement**

**Comment:** OISG requests that the condition be revised to read: “Infiltration testing or other information or analysis to confirm intended performance metrics.”

**Response:** DEQ added “or other information” to the requirement in acknowledgment that infiltration testing on a built system may be difficult. Certification of adequacy of control measures is necessary to account for site/facility changes over time, potential operational changes, and determination if existing control measures remain viable and effective. The use of a PE or CEG ensures the ongoing ability of existing mass reduction measures to meet their intended function. DEQ or agent will approve or deny re-certification with 60 days of receipt. If a re-certification fails to meet the requirements, stormwater sampling must continue.

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OISG #34

**Description: SWPCP Required Elements - Remove proposal to develop an operation and maintenance plan for all passive stormwater treatment systems**

**Comment:** Because of the large number of devices that might be characterized as “passive treatment systems,” developing and implementing an operation and maintenance plan for each of these systems would be unduly burdensome. Moreover, the current permit already requires the SWPCP to identify “routine maintenance standards” for passive treatment systems. Given the nature of these systems, the benefit of also requiring an operation and maintenance plan for them is not apparent or explained in the draft evaluation report.

**Response:** DEQ declined to make the suggested change as it is imperative that all treatment used at facilities have an appropriate operation and maintenance plan for the treatment systems in place and that the plans are implemented.

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OISG #35

**Description: Tier 1 Corrective Action Response - Clarify Tier I response action must be completed within 30 days only when it is practicable to do so**

**Comment:** The proposed condition, however, is ambiguous regarding whether Tier 1 response actions are required to be completed within 30 days, regardless of the practicability of doing so. Language change proposal Schedule A.11.d.i: If practicable, implement required response actions before the next storm event or no later than 30 calendar days after receiving the monitoring results or completing the monthly visual inspection (as applicable), whichever comes first. If permit registrant does not complete the required response action within this time frame, a justification for why it was not practicable to complete the required response actions within this time must be documented in the Tier 1 Report, and the required response actions must be completed as soon as practicable.

**Response:** DEQ did not make the suggested change because the existing permit language is sufficient to provide flexibility if needed. When monitoring results exceed benchmark(s), permit registrants must perform Tier 1 corrective action response swiftly to mitigate continued pollution in discharge.

Schedule A.11.d.i: “Implement Tier 1 corrective actions before the next storm event, if possible, or no later than 30 calendar days after receiving the monitoring results or completing the monthly visual inspection, whichever comes first. If the permit registrant fails to complete the corrective action within this timeframe, an explanation must be documented in the Tier 1 Report, and corrective actions must be completed as soon as practicable.”

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OISG #36

**Description: Tier 1.5; Appendix B - Revise its proposal to require permit registrants to only consider, not implement, the Appendix B controls**

**Comment:** DEQ has not evaluated whether every facility covered by the 1200-Z permit can practicably implement every stormwater control specified in Appendix B for the facility’s major industrial group, much less implement those controls within 60 days. Moreover, many of the Appendix B controls are generic measures that are not targeted to specific pollutants and that may do little or nothing to reduce the concentrations of the pollutant or pollutants that triggered Tier 1.5. EPA itself has not substantially evaluated the controls and does not propose to require them “where it would be counterproductive to the implementation of another control measure, or not result in any reduction in the discharge of the pollutant

of concern.” Appendix B contains a useful list of industry-specific controls for permit registrants to consider.

**Response:** DEQ did not include Tier 1.5 and associated Appendix B in the proposed final permit. The industrial-specific checklists will be recommended guidance for permit registrants that have benchmark exceedances as part of a Tier 1 corrective action response, thus will not be mandatory. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. The industrial-specific checklist items are strongly encouraged to be considered by permit registrants; however, DEQ acknowledges that it is not an exhaustive list of measures that may be selected and implemented.

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OISG #37

**Description: Tier 1.5 Corrective Action Response - Permit should at least authorize DEQ to approve requests not to implement controls that the permit registrant can demonstrate are not practicable or effective for the pollutants that triggered Tier 1.5**

**Comment:** Permit registrants should not be required to implement the Appendix B controls or justify not implementing them. But at the very least the permit should allow permit registrants to not implement controls if they can demonstrate that the controls are (1) not technologically available and economically practicable and achievable in light of best industry practice or (2) would not substantially reduce the discharge of the pollutant or pollutants that exceeded the benchmark. EPA’s proposed MSGP itself would not require the controls to be implemented “where it would be counterproductive to the implementation of another control measure, or not result in any reduction in the discharge of the pollutant of concern.”

**Response:** DEQ modified the proposed final permit to exclude Appendix B but retained the industrial-specific checklists as an optional recommended technical assistance tool for permit registrants that have benchmark exceedances. Completion and implementation of the measures will not be compulsory; however, will be strongly encouraged. The industrial-specific checklist contains universal operational and source control measures in addition to sector specific operational and source control measures to provide recommendations to all industrial sectors covered under the permit. Even though the industrial-specific checklists items may be considered by a permit registrant, DEQ acknowledges that it is not an exhaustive list of controls that may be selected and implemented by each facility.

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OISG #38

**Description: Tier 1.5 Corrective Action Response - Should relieve permit registrants of Tier 1.5 if voluntarily implement Tier 2 instead**

**Comment:** Proposed 1200-Z Permit condition A.11.f.vii provides that a “permit registrant can be relieved of Tier 1.5 if Tier 2 corrective action is mathematically certain based on the geometric mean calculation.” But because Tier 2 is determined by the geometric mean of all qualifying samples during the applicable monitoring year, it is not clear under what circumstances a facility would be “mathematically certain” to trigger Tier 2. A permit registrant, however, should be relieved of Tier 1.5 requirements if it notifies DEQ that it will voluntarily implement a Tier 2 response within 60 days of receiving the monitoring results that triggered Tier 1.5.

**Response:** The proposed final permit does not contain Tier 1.5 requirements.

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OISG #39

**Description: Tier 2 - OISG supports limiting Tier 2 requirements to exceedances of statewide benchmarks**

**Comment:** Limiting Tier 2 requirements to exceedances of applicable statewide benchmarks, as under the current 1200-Z permit, is appropriate. The statewide metals benchmarks, in particular, have been established based on a state- or region-specific assessments of the discharge concentrations that pose more than a minimal general risk of contributing to an exceedance of applicable instream water quality criteria. Although proposed Table 11 contains Oregon geo-region hardness values for applying the Schedule E benchmarks, no comparable statistical assessment has been used to derive these benchmarks.

**Response:** DEQ appreciates the comment. DEQ revised Table 11 in the proposed final permit to include hardness based metals concentrations applicable to Schedule E, rather than the georegion median hardness values. DEQ conformed to the proper formulas and calculations used in Endnote E and Endnote F, from Table 30: Aquatic Life Water Quality Criteria for Toxic Pollutants and also applied regional translators where appropriate.

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OISG #40

**Description: Tier 2 - Should allow the permit registrant to demonstrate that the discharge concentrations likely to be achieved will meet both control technology and water quality requirement, even if Tier 2 report will not achieve the goal of meeting the benchmark**

**Comment:** The benchmarks are not based on determinations of the discharge concentrations that can be feasibly achieved or that will not cause or contribute to a water quality standards exceedance in the specific receiving waters for the discharge. If the Tier 2 measures are not likely to achieve the goal of meeting the relevant benchmark, the permit should expressly allow the permit registrant to demonstrate that the discharge concentrations likely to be achieved will meet both control technology and water quality requirements.

Allow permit registrants that are subject to Tier 2 to demonstrate that additional treatment or control measures that would be required to meet the subject benchmarks are not technologically available or economically practicable, and that such measures are not necessary to avoid exceedances of instream water quality standards for the pollutants in question. This would further clarify that benchmark exceedances are not equivalent to a violation of water quality standards and would avoid subjecting permit registrants to more stringent effluent limits than those articulated in the permit's narrative technology-based effluent limits.

**Response:** DEQ disagrees with this comment. DEQ has developed risk-based benchmarks to be protective of water quality under reasonable and conservative discharge assumptions throughout Oregon. This methodology provides permit registrants with the flexibility to implement an adaptive management approach, yet still be protective of water quality. DEQ acknowledges that exceedances of these benchmarks are not guaranteed to result in instream exceedances of applicable water quality standards. However, an exceedance of these benchmarks has an increased risk to cause or contribute to instream



exceedances of applicable water quality standards if not appropriately addressed under DEQ's 1200-Z general permit. DEQ finds that discharges that are unable to meet the established benchmarks are required to install treatment and source control with the goal of achieving the benchmark in accordance with Tier 2 corrective action response. DEQ declines to add additional flexibility under the general permit framework, as the Tier 2 corrective action requirements have been in the permit for three permit cycles and has proven to be effective in reducing pollutants concentrations into Oregon's receiving waters.

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OISG #41

**Description: Tier 2 Background Waiver - Allow permit registrants additional time to collect and analyze data in support of a Tier 2 background waiver request**

**Comment:** The deadline for submitting a Tier 2 background waiver request is the December 31 immediately following the monitoring year that triggered Tier 2 requirements (i.e., the monitoring year ending the preceding June 30). Because a background waiver request will generally need to be supported by monitoring data in addition to the data required to be collected pursuant to the permit, collecting and analyzing all the needed data will often be impossible by the December 31 deadline, particularly given that there may not be sufficient rainfall to collect samples until the late autumn immediately preceding the deadline.

**Response:** Deadlines may be extended with DEQ or agent approval.

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OISG #42

**Description: Tier 2 - Specify a response time if DEQ disapproves original Tier 2 response submittal within a revised plan must be submitted**

**Comment:** Proposed 1200-Z Permit condition A.12.i.ii provides that DEQ will notify the permit registrant within 60 days of receipt whether its Tier 2 response is approved or denied. The permit, however, does not make any provision for the permit registrant to submit a revised Tier 2 response in the event that the original timely response is denied. To clarify the permit registrant's obligations in the event of a denial, OISG requests that the permit require the permit registrant to submit a revised response within 90 days of receipt of the denial, unless DEQ approves a later date.

**Response:** DEQ or the agent will establish a re-submittal deadline in any denial responses issued based on site-specific factors.

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OISG #43

**Description: Water Quality-based Effluent Limits - Restrict pH limits only high or low pH, depending on the basis for the impairment listing**

**Comment:** If DEQ nonetheless believes that numeric effluent limits are necessary, the limits should be consistent with the basis for the pH impairment. Where the impairment is solely due to pH values in excess of the pH criteria range, the numeric effluent limit should include only a maximum pH limit. In

those circumstances, a discharge with a pH below the criteria range could not contribute to the impairment. Similarly, where the impairment is solely due to pH values below the pH criteria range, the numeric effluent limit should include only a minimum pH limit.

**Response:** The applicable water standards in OAR 340-041-0101 through 340-041-0350 establish pH as range between which hydrogen ion concentrations must fall. If any two consecutive monitoring results at each monitoring point falls outside the basin-specific range for pH, the permit registrant will be subject to numeric water quality-based effluent limitations for pH consistent with entirety of the applicable pH water quality standards, rather than a portion of the applicable standards. Establishing limitations for only a portion of the standard would be inconsistent with the water quality standard as a whole. Permit registrants may be granted a two-year compliance schedule if needed.

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OISG #44

**Description: Water Quality-based Effluent Limits; pH - Allow a two-year compliance schedule for numeric water quality-based effluent limits for pH**

**Comment:** Finally, if numeric pH limits are included in the permit, the limits should be triggered on terms similar to those for triggering numeric discharge limits for copper, lead, and zinc, and permit registrants that are subject to the limits should be given the same two-year schedule for coming into compliance with the limits as the permit provides for the metals limits. Nothing in the draft evaluation report suggests that permit registrants would be able to immediately comply with a numeric pH discharge limit, particularly a low pH limit that is higher than the pH of rainwater.

**Response:** DEQ has reconsidered the approach used for pH based on comments and a review of the available data. Based on available data for dischargers to impaired waters, up to 25 percent of applicable dischargers may be in immediate noncompliance with the minimum pH limits. Based on this finding, DEQ has revised the permit to manage pH similarly to copper, lead and zinc, and allow for a compliance schedule of up to two years if two consecutive monitoring results falls outside the basin-specific pH range.

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OISG #45

**Description: Impaired Waters - Revise permit to clarify E. coli and total iron are not numeric discharge limits, but are discharge concentrations that trigger the application of the permit's narrative water quality-based effluent limits for these pollutants**

**Comment:** NA

**Response:** Section 1.5 of the permit evaluation report states: “[e]xceedances of E. coli and total iron for discharges to Category 5: 303(d) listed waters consists of escalation to narrative water quality-based effluent limit.” DEQ has clarified in the permit and permit evaluation report that these are monitoring thresholds. However, the proposed final permit does not describe these values as effluent limitations, but rather impairment monitoring, and states their exceedance triggers establishment of narrative effluent limitations.

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**Description: Narrative Water Quality-based Effluent Limits - Require implementation of the specified controls only to the extent practicable**

**Comment:** For discharges to waters listed as impaired for E. coli and total iron.

**Response:** Permit registrant's discharge to Category 5: 303(d) listed waters must ensure their discharges do not cause or contribute to an excursion of instream water quality standards in OAR 340-041. Where feasible, DEQ has included time schedules and other reasonable flexibility for registrants to meet narrative WQBELs. The proposed final permit also expanded the implementation deadline to complete narrative water quality-based effluent limits from 60 days to 90 days. Permit registrants discharging to Category 5 impaired waters are required to use an effective adaptive management approach to comply with standards. However, if consecutive exceedances of the impairment concentrations occur, specific narrative water quality-based effluent limits are required to address potential sources of stormwater runoff contamination.

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OISG #47

**Description: Tier 2 - Should not require sampling at all discharge points that make up a substantially similar group after Tier 2 implementation**

**Comment:** Substantially similar discharges must continue to be recognized, as provided in Schedule B.6.c.ii. While the Draft 1200-Z Permit does grant DEQ or DEQ's agent the ability to waive the requirement to monitor all substantially similar discharge points after Tier 2 implementation, this creates too much uncertainty because approvals can take a long time to be granted and/or may be rejected on an inconsistent basis without an opportunity to timely appeal that decision. It is appropriate in the permit to use monitoring at a 'representative discharge point' to assess the effectiveness of Tier 2 corrective actions, and thereafter, at the relevant 'substantially similar discharge' monitoring point. The justification for the exemption does not change because of a benchmark exceedance at the discharge point that is sampled. Moreover, because Tier 2 responses must be applied to all substantially similar discharge points, the discharge points should remain similar after the implementation of those responses.

**Response:** DEQ disagrees with this suggestion. The proposed final permit requires sampling at substantially similar discharge points post Tier 2 installation because the treatment or source control measures have changed and the permit registrant must demonstrate substantially similar effluent once again.

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OISG #48

**Description: Discharges to Impaired Waters - Needs to state which 303(d) list – a date is needed**

**Comment:** NA

**Response:** DEQ will use the EPA-approved 303(d) list that is in effect at the time of permit assignment. The proposed final permit has clarified this intent.

OISG #49

**Description: Mass Reduction Measures: General Comment - Consider any mass load reduction device installed voluntarily under exemptions**

**Comment:** In some instances, the permit refers to exemptions (such as those in Schedule A.11.e.ii) or other considerations afforded to mass reduction devices that were “installed during previous permit cycles in response to Tier 2 corrective action.” However, in other instances, the permit does not clearly state that some considerations are afforded to mass reduction devices that were installed proactively or independent of triggering Tier 2 corrective action. What about facilities intermittently struggled to meet benchmarks and has now made the decision to install a mass load reduction device in a proactive effort to avoid Tier 2 requirements in the future, would those devices then qualify for the exemptions outlined in Schedule A.11.e.ii and Schedule A.12.h.i? The permit should encourage permittees to make proactive improvements to their facilities to attempt to avoid Tier 2 corrective action. As written, the permit may dissuade entities from making necessary and beneficial improvements until they have triggered Tier 2 corrective action requirements.

**Response:** Schedule A.6 regarding the re-certification of mass reduction waiver provision has been revised to add: “For mass reduction measures installed during previous permit cycles that reduced the mass of the pollutants discharged at or above DEQ-approved design storm capacity not in response to Tier 2 mass reduction waiver, the permit registrant must meet Schedule A.6.a-d and submit, retroactively, to DEQ or agent a Tier 2 mass reduction waiver checklist.” DEQ or agent will approve or deny the certification requirements and retroactive submittal of the Tier 2 mass reduction waiver checklist, since the mass reduction device did not have prior approval before being built. For all mass reduction devices that meet the re-certification deadline of December 31, 2021, DEQ or agent will communicate to the permit registrant qualification related to the exemptions outlined in the other Schedules of the permit.

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OISG #50

**Description: Benchmark Georegions - Request that DEQ provide definitions for each of these geographic regions**

**Comment:** Columbia Slough and Portland Harbor are defined in Schedule D.3. However, the other 5 geographic regions are not defined. The only tool offered to permittees currently to identify which geographic region they might be assigned to was found within the Permit Evaluation Report on page 46. One way that DEQ could better define the regions is through use of GPS coordinates. Without clear definitions, it would be nearly impossible for a permittee to establish justification for why they assert that they are placed in a different geographic region than what’s been assigned by DEQ.

**Response:** DEQ has a searchable map for regulators, facilities and public use that provides certainty of georegion based on the locations of where facilities discharge enters the receiving water. Depending on the receiving water location, DEQ or our agent will communicate with each facility regarding monitoring requirements based on the appropriate georegion.

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OISG #51

**Description: Mass Reduction Measures: General Comment - OISG strongly supports the Proposed 1200-Z Permit's waiver provisions for mass reduction devices**

**Comment:** NA

**Response:** DEQ appreciates the input.

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OISG #52

**Description: General Comment; Rulemaking - Concerns about the draft 1200-Z Permit and the utility of issuing the permit by rule**

**Comment:** As a threshold procedural matter, we would ask the DEQ to return to its longstanding practice of issuing general NPDES permits as orders rather than sending them through the formal notice-and-comment rulemaking process. There is no clear evidence that DEQ's historical practice in this regard is or was deficient, and we do not believe that the agency's decision to move to formal rulemaking provides any tangible benefits over the issuance of general NPDES permits as orders. DEQ has stated that this procedural change was intended to increase opportunity for public engagement and to improve transparency in the process, but it is not clear how the formal rulemaking process is superior to DEQ's historical practice in this regard.

**Response:** DEQ has authority under ORS 468B.050 and OAR 340-045-0033(1) to issue general permits by rule or by order. Historically a number of general permits were adopted through rulemaking while more recently some have been issued by agency order. Due to the large number of permit registrants (860+) and the substantive policy changes considered in this permit renewal, DEQ determined that renewing the 1200- Z permit by the rule is appropriate. Renewing this permit through the rulemaking process provided in the Administrative Procedures Act ensures transparency and a standardized process. Additionally, the policy decisions regarding the final permit are made by the Environmental Quality Commission.

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OISG #53

**Description: Inspections; Visual Observation - Remove "sample collection required" applicable to suspended and settleable solids**

**Comment:** It is unclear what is meant by "sample collection required." For what must the sample be analyzed, if anything? The draft evaluation report suggests that the sample would be collected and analyzed only for suspended and settleable solids if they are observed. There is no direction on how the sample is to be analyzed, how the permittee should respond to the results or how to report the results.

**Response:** The proposed final permit clarifies the requirements for visual observations to observe signs of pollutants, must be done by collecting a sample in a clean glass or plastic container and "observing" the sample in a well-lit area. However, the sampling collection procedures are not required to be consistent with 40 CFR 136. The permit evaluation report deleted any requirements to use an Imhoff Cone for settleable solids evaluation and the proposed final permit no longer requires visual observation for settleable solids. During a monthly discharge event, the permit registrant must collect a sample of discharge and look for the presence of pollution. The visual observations are only required during a

discharge event and may be performed at the same time the facility collects a sample to send to the analytical laboratory. Visual observations however, must be performed on all discharge points. For those facilities that have more discharge points than monitoring points, the facility staff must pull more samples than just those they intend to send to the lab. The permit does include an exemption for exceptionally large facilities. This brings the 1200-Z permit in accordance with EPA's MSGP requirements regarding visual assessment.

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OISG #54

**Description: Sources Covered Under this Permit; Table 2 - Recommends adding a footnote to Table 2 that states, "Eligibility based on activities exposed to stormwater in Table 2; however, once a facility is covered under this permit all discharges associated with industrial activity are regulated activities"**

**Comment:** The portion of the sentence that states, "...and are regulated for existing facilities covered under Table 1" is unclear. Based on the example given in the draft NPDES Industrial Stormwater Permit Evaluation Report No. 1200-Z (PER), recommends removing this portion of the sentence as it is redundant with footnote 1 in Table 1.

**Response:** DEQ revised the proposed final permit in response to comment. The intent is explained in the permit evaluation report.

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OISG #55

**Description: Benchmark Georegion - Request the Columbia River pH benchmark be retained at 5.5 to 9.0 s.u.**

**Comment:** The Proposed 1200-Z Permit would revise the existing 5.5 to 9.0 pH benchmark for discharges to the Columbia River to 6.0 to 9.0. The pH discharge benchmarks for the rest of the state would be 5.5 to 9.0. The evaluation report does not explain why only discharges to the Columbia River would have a narrower range. Although the pH criteria range for the river is slightly narrower (7.0-8.5) than the 6.5 to 8.5 criteria range that applies in many other Oregon freshwater streams, the enormous flow of the river in relation to industrial stormwater discharge flows makes it extraordinarily unlikely that a discharge pH of 5.5 would contribute to a pH criteria exceedance in the river.

**Response:** The Columbia River basin pH water quality standard range in OAR 340-041-0104 is 7.0-8.5 s.u. The pH benchmarks factual record states the Columbia Slough benchmark has traditionally been lower based on the TMDL. Also, previous permit evaluation reports cite natural conditions to account for the wider pH benchmark ranges. DEQ finds that is more appropriate to evaluate pH benchmarks in a general permit applicable to water quality standards looking at the basin-specific criteria. The Columbia River pH benchmark is more restrictive than the other georegion pH benchmarks because the Columbia River Mainstem pH range is more restrictive. The benchmarks allow for a wider range to account for variability of stormwater discharges.

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OISG #56

**Description: Benchmarks - Support DEQ proposal to remove the discharge benchmark for oil and grease**

**Comment:** NA

**Response:** DEQ appreciates the input.

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OISG #57

**Description: Benchmark - Should retain the biochemical oxygen demand (BOD) discharge benchmark for the Columbia Slough should remain at 33 mg/L.**

**Comment:** The current BOD discharge benchmark for the Columbia Slough of 33 mg/L is based on the 1998 Columbia Slough TMDL. The Proposed 1200-Z Permit would reduce the benchmark to 24 mg/L based on an increase in the amount of industrial-zoned land within the Columbia Slough watershed. But even with the increase in industrial-zoned land since the TMDL for the slough was established, actual BOD loadings have not increased, and there is ample room in the TMDL reserve to continue accommodating a benchmark of 33 mg/L. The fact that many facilities are capable of meeting the proposed benchmark is not a sufficient justification to impose a burden on others in the absence of a water quality need for a reduction. If BOD loadings were to increase during the next permit term, DEQ could revisit whether there is a need to reduce the benchmarks when the permit is renewed in 2026.

**Response:** DEQ disagrees with the comment. PG Environmental evaluated relevant BOD data and GIS information for the Columbia Slough watershed to determine if the 33 mg/L BOD benchmark was consistent with the Columbia Slough TMDL and current land use. Based on allocation modeling and current loading in response to increased industrial-zoned acreage since the calculations were performed in 1998, DEQ determined that reducing the benchmark to 24 mg/L as to retain the reserve capacity intended in the TMDL.

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OISG #58

**Description: Impaired Pollutants - Should clarify that impairment pollutant monitoring is required only for the impairment pollutants listed in proposed condition B.5.b.i.**

**Comment:** Proposed 1200-Z Permit condition B.5.i states that impairment pollutant monitoring is required only for pH, total copper, total lead, total zinc, total iron, and bacteria (E. coli, fecal coliform, and enterococcus). As DEQ has explained in the draft evaluation report and during the advisory committee, these are the only Oregon water quality impairments to which industrial stormwater discharges may be a significant contributor. Several proposed permit provisions, however, create ambiguity regarding whether monitoring for other impairment pollutants. The Proposed 1200-Z Permit has been designed to address only the specific impairment pollutants listed in condition B.5.b.i, including establishing numeric and narrative effluent limits for these pollutants.

**Response:** DEQ clarified the proposed final permit in regards to impairment monitoring. Permit registrants must comply with water quality-based effluent limits for pH, copper, lead, zinc, iron and E. coli when impairment monitoring exceeds the concentrations and thresholds established in the permit.

The proposed final permit retains the same provision in the current permit, that DEQ or agent may require additional monitoring based on a site-specific conditions.

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OISG #59

**Description: Sampling Procedures - Should allow switching between grab and composite sampling without DEQ approval**

**Comment:** OISG requests that DEQ remove this prohibition. The permit and relevant regulations allow both types of samples (except composite sampling for pH and bacteria), and OISG is not aware of any reason why all samples within a monitoring year must be collected using the same method. Put another way, under what circumstances would DEQ deny a request to switch methods during the sampling year? Whether a sample is a grab sample or a composite sample, it is intended to accurately represent the discharge concentration. Switching between one method and the other from sample to sample would not misrepresent the discharge concentration.

**Response:** In order for DEQ to properly evaluate sample results reported in a Discharge Monitoring Report, DEQ must be aware of the sample procedures being used at the facility. DEQ declined to make this change.

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OISG #60

**Description: Sampling Procedures - Revise industrial stormwater should be sampled as it flows offsite before it combines with stormwater, wastewater, or other waters from outside the facility**

**Comment:** Proposed 1200-Z Permit condition B.6.b.vii provides: “The permit registrant shall, to the extent practicable, sample stormwater associated with industrial activity as it flows off-site before it combines with stormwater, wastewater or other waste permitted streams, or areas outside the facility or mixes with any surface water.” OISG requests that the emphasized word “or” be changed to “from,” so that the condition addresses sampling after industrial stormwater has commingled with stormwater, wastewater, or other waters from outside the facility.

**Response:** DEQ disagrees with the proposed edit as the proposed final permit language is appropriate regarding sampling.

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OISG #61

**Description: Monitoring Waiver - Changes in the existing monitoring waiver program appear to be based on a general desire to restrict waivers, rather than to address any specific need for additional monitoring data**

**Comment:** Both the current and Proposed 1200-Z Permit include extensive discharge monitoring requirements. Compliance with these requirements is expensive, not only for sampling and analysis, but also for personnel and other administrative costs associated with managing and implementing the required monitoring program. Because of these costs, monitoring waivers provide an important incentive to permit



registrants to achieve discharge benchmarks. The Proposed 1200-Z Permit, however, would make it substantially more difficult to obtain monitoring waivers and would reduce the value of the waiver by reducing the period for which the waiver is effective. The reasons for these proposals are not clearly identified in the draft evaluation report. The report refers to the National Academy of Sciences' review of EPA's stormwater program, which encourages more monitoring of stormwater discharges. But the discharge monitoring requirements in Oregon's 1200-Z permit are far more robust than those of EPA's MSGP.

**Response:** The change to the monitoring waiver provision is consistent with EPA's final permit and the recommendations of the National Academy of Sciences Report. More monitoring data will assist DEQ with future permit renewals by informing decisions based on stormwater discharge characteristics. DEQ has decreased the impairment monitoring sampling requirement based on PG Environmental's analyses of stormwater data, decreasing monitoring costs. In addition, reinstating monitoring will ensure permit registrants are performing appropriate maintenance and housekeeping procedures at their site.

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OISG #62

**Description: Monitoring Waiver; Impairment Pollutants - Should change the criteria for a waiver to less than one-half the applicable concentration in Table 6 and within 0.3 or more standard units for pH**

**Comment:** For the impairment pollutants regulated by the Proposed 1200-Z Permit, the analytical detection limits are generally far less than the Table 6 concentrations and, particularly for metals, potentially less than background concentrations. This would make obtaining four consecutive non-detect sample results extremely difficult, and perhaps impossible. Moreover, requiring three full years of sample results to support a waiver request would make the waiver effective for no more than two years of the five-year permit term.

**Response:** DEQ disagrees with the comment and has retained the threshold for requesting a monitoring waiver for impairment pollutants based on sample results four consecutive non-detect results. Prior to a permit registrant becoming eligible for a monitoring waiver to impaired waters, DEQ must ensure the discharge does not further impacted a Category 5 impaired receiving water that does not have any assimilative capacity. DEQ's condition is consistent with EPA's final MSGP permit.

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OISG #63

**Description: Inspections - Should not be required to include an evaluation of the adequacy of the existing SWPCP**

**Comment:** The permit requires monthly inspections to include a determination whether the control measures in the SWPCP "are adequate to reduce pollutants," and condition B.11.h.iv would require the inspection report to document "[a]ny additional control measures needed to comply with the permit." These requirements should be removed because they go far beyond the scope of a monthly stormwater inspection. A monthly inspection can and should evaluate whether control measures match those in the SWPCP and whether they need maintenance, but a monthly inspection cannot reasonably be expected to evaluate whether the control measures in the SWPCP are "adequate to reduce pollutants" or whether additional control measures are needed to comply with the permit.

OISG #64

**Description: Inspections - Clarify if the need for a response is identified during the monthly inspection, the response should be initiated immediately, but need not be completed immediately**

**Comment:** If the need for a response is identified during the inspection, immediately take or initiate all reasonable steps to temporarily address the issue that prompted the response until a permanent response is complete.” The requested revisions are intended to clarify what temporary measures are needed and when the temporary measures must be completed. Because it will often be impossible to immediately complete even all reasonable temporary measures, the permit should require only that measures be initiated immediately.

**Response:** DEQ’s draft and proposed final permit includes a definition of “immediately” in Schedule D that correlates to EPA’s regulatory meaning of immediately.

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OISG #65

**Description: Definition; Background - background pollutants should include pollutants in run-on from neighboring sources that are not associated with activities for which a stormwater discharge permit is required**

**Comment:** Proposed 1200-Z Permit condition D.3.b would define “background pollutants” to exclude “pollutants in run-on from neighboring sources that are not naturally occurring.” Because run-on from neighboring sources that is not associated with industrial activity or with activities for which a stormwater discharge permit is required (such as Table 2 facilities) is not regulated, permit registrants should not be responsible for pollutants in such run-on merely because it crosses their property. In many instances, the permit registrant may have no legal or practical ability to prevent such run-on.

**Response:** The commenter’s suggested change is not consistent with Oregon Administrative Rules, federal regulation or DEQ’s determination of eligible background exemptions, thus DEQ did not include it in the proposed final permit.

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OISG #66

**Description: Schedule E - Should allow to substitute site-specific hardness data for the geo-region hardness values**

**Comment:** Some of the geo-region median hardness values in Table 11 are extraordinarily low, which will result in extremely low benchmarks. Moreover, many of the regions contain a diverse range of waterbodies and hardness values. Permit registrants should be allowed to develop and use site-specific hardness values with the approval of DEQ.

**Response:** The proposed final permit moved the hardness values into the permit evaluation report. DEQ declined to accommodate site-specific hardness in a general permit. Permit registrants may request coverage under an individual permit if they would prefer NPDES coverage that accounts for individual site conditions.

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OISG #67

**Description: Numeric Effluent Limits; Technology-based Effluent Limit - OISG supports DEQ's determination not to include additional numeric technology-based effluent limits in the permit**

**Comment:** OISG supports DEQ's determination that such additional numeric limits are not currently justifiable because of the wide variety and variability of industrial stormwater discharges covered by the permit and by the lack of adequate supporting data.

**Response:** DEQ appreciates the comment.

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OISG #68

**Description: General Comment - OISG encourages DEQ to begin a collaborative process for the next renewal of the 1200-Z permit soon after this permit is issued and well before it expires in 2026**

**Comment:** From the beginning of the industrial stormwater program in the early 1990s, DEQ has had a robust general industrial stormwater permit and has developed and included in the permit many innovative concepts. The last two renewals of the 1200-Z permit have been rushed affairs that have not allowed DEQ or interested parties sufficient time to develop, discuss, and refine permit concepts and terms. OISG recognizes DEQ's limited stormwater program resources and the competing claims on those resources. These constraints are all the more reason to begin a collaborative process among all interested parties for renewing the permit soon after this permit is issued.

**Response:** DEQ appreciates the input.

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OISG #69

**Description: Cover Page - Should change to make the resolve conflict between Schedule E and Schedule F**

**Comment:** Because Schedule E is the more specific schedule, it should prevail. Using "may" in this context creates uncertainty. Replacing "may not apply" with "do not apply" would make clear that the provisions of Schedules E and F are superseded by any conflicting requirement in other schedules of the permit.

**Response:** Schedule F are conditions applicable to all permits from 40 CFR 122.41. These same general conditions are included in every NPDES permit issued in Oregon. DEQ adopts Schedule E from EPA and therefore, there may be conflicts between both conditions, though the permit is clear which permit requirements are applicable when or if there are conflicts. DEQ declines to make the suggested edit.

OISG #70

**Description: Coastal Georegion - Recommend ODEQ begin collecting additional water quality data with lower detection limits (e.g., 1 µg/L)**

**Comment:** NA

**Response:** Thank you for the recommendation.

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OISG #71

**Description: Coastal Georegion - Should re-evaluate the background data for the development of the Coastal zinc benchmark**

**Comment:** The coastal ambient zinc and hardness data used to develop benchmark calculations may not have been sufficiently representative of dissolved zinc water quality in the coastal region. Some of the data now used in the analysis should be re-evaluated, and in other cases DEQ should endeavor to collect additional data at lower detection limits for use in future permit renewals, or consider using a pooled state-wide data to establish benchmarks.

**Response:** Zinc data used in background calculations and the hardness data used in zinc criteria calculations should represent the range, variability, and central tendency of a diversity of waters present in the Coastal georegion. DEQ's methods and procedures were designed to ensure data used in the analysis was of sufficiently high quality, and the statistical procedures used were selected to minimize uncertainty related to the presence of non-detect data. In instances where uncertainty could not be entirely minimized, DEQ utilized reasonable and conservative methods and assumptions designed to be protective of water quality.

DEQ has determine the available data is sufficiently representative of the underlying zinc water quality conditions in the coastal georegion. However, if the available data were to be insufficient for a specific region or sub-region, it is unlikely pooled data from other regions of the state would be adequate to establish protective benchmarks using risk-based Monte Carlo modeling.

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OISG #72

**Description: Coastal Georegion - Coastal data may not have been sufficiently representative due to outliers and laboratory quality assurance issues**

**Comment:** There is no clear analysis of data quality or outliers for the zinc or hardness data sets. Outliers can significantly impact the estimated parameters of the theoretical distributions used to represent ambient water quality and therefore the calculated benchmarks. The influence of outliers is even more pronounced when there are high percentages of non-detects because the detected values are used to theoretically estimate the values below detection. Given the diversity of water bodies in the Coastal region and the small number of detected data points at many of the monitoring locations, all detected values should be scrutinized for quality and representativeness. If ODEQ does not have the resources to

do this level of due diligence at this time, statewide benchmarks should continue to be used until more representative data for the Coastal region can be collected.

**Response:** The data used in the benchmark modeling process was carefully queried from state and federal databases to ensure it adequately reflected the ambient water quality of surface water within each georegion in Oregon. These data were reviewed for representativeness and any obvious outliers were excluded from the georegional datasets. Stations located on estuarine water which are subject to saltwater criteria were excluded from the Coastal freshwater benchmarks analysis. With respect to the non-detect values, the regression on order statistics analysis was used to determine the appropriate distribution and that determination was bounded by the available data for the georegion.

OISG #73

**Description: Coastal Georegion - Questionable boundaries of the coastal georegion**

**Comment:** The inclusion of central southern Oregon as part of the Coastal region is questionable due to the different climate, geology, and land uses of this region. ODEQ should provide evidence that the regional boundaries are applicable to hardness and zinc data for all seven regions.

**Response:** DEQ’s georegions are directly derived from EPA Level III Ecoregion units. The coastal georegion includes the Klamath mountains based on EPA ecoregions that are areas where ecosystems (and the type, quality, and quantity of environmental resources) are generally similar. DEQ disagrees that the georegional definition should be based purely on an analysis of water quality data for a single parameter. The use of the ecoregion structure allows DEQ to capture a variety of landscape-level phenomena and long-term trends which contribute to water quality. Basing the definition purely on analysis of the similarity zinc water quality data is unnecessarily limiting and is inadequate to capture the variety of shared phenomena within a regional landscape which contribute to water quality. DEQ has incorporated risk-based benchmarks into the proposed final permit and the analysis ensures georegional benchmarks are protective of a wide-range of water bodies present in a similar georegional landscape.

EPA Level-III Ecoregion <sup>1</sup>	CU-BLM Physiographic Region
Coast Range Klamath Mountains	Coastal
Willamette Valley	Willamette Valley
Columbia River Mainstem	Columbia River Mainstem
Cascades	Cascades
Blue Mountains Columbia Plateau Eastern Cascades Slopes and Foothills Northern Basin and Range Snake River Plain	Eastern

<sup>1</sup> U.S. EPA Level III and IV Ecoregions of the Continental United States – Definitions  
[ftp://newftp.epa.gov/EPADDataCommons/ORD/Ecoregions/us/Eco\\_Level\\_III\\_descriptions.doc](ftp://newftp.epa.gov/EPADDataCommons/ORD/Ecoregions/us/Eco_Level_III_descriptions.doc)

**Description: Coastal Georegion - Assumption of minimum zinc values and the manner in which zinc distribution parameters were estimated produced biased estimates of the theoretical zinc distribution**

**Comment:** Due to the presence of values below the method detection limit, there is no basis for using a minimum zinc threshold in the Monte Carlo analysis for the Coastal region. The method detection limit is the minimum value that can be detected and distinguished from a blank sample. Therefore, the possibility of a concentration of zero cannot be ruled out when non-detect values are present in a data set. ODEQ should set the minimum boundary to zero for all regions and parameters where the empirical data set contains values below the method detection limit.

**Response:** DEQ's benchmark methodology was presented and vetted during the rulemaking process by the advisory committee comprised of varied stakeholders. The modeling procedures followed during this permit renewal were the same as previous renewals. Placing bounds on the extreme values of the Monte Carlo simulation is a reasonable and conservative assumption to ensure results are both realistic and protective of water quality.

With respect to the lognormal distribution parameters they may be validly computed using different, mathematically equivalent parameterizations which include, but are not limited to, using the maximum likelihood estimate (the method suggested by the commenter), or the arithmetic mean and standard deviation (the method used by DEQ for the draft permit). Different estimated parameters may have differing bias depending on the underlying characteristics of each data set and both the method used by DEQ in the draft permit and the method suggested by the commenter tend to be more biased when applied to smaller or skewed data sets. However, in response to the comment, DEQ has graphically evaluated the application of both methods to the available data and determined the method suggested by the commenter does produce less biased simulated data when applied to the coastal data which were determined to be lognormal, and that the quality of this method when applied to other regions' lognormal data sets was approximately similar to DEQ's method. Therefore, DEQ has revised all benchmarks, including for coastal georegion for zinc, based on an application of the requested lognormal distribution parameterization method.

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OISG #75

**Description: Coastal Georegion - Revised benchmarks to reflect appropriate dissolved to total translation**

**Comment:** The use of total metals concentrations without converting to dissolved concentrations biases the assumed distribution of ambient water quality. Also, effluent concentrations used for establishing the benchmark should be dissolved concentrations before mixing with the ambient water quality and comparing to water quality criteria, which is also expressed as a dissolved concentration. Then, the resulting dissolved benchmark should be converted to a total metals benchmark for inclusion in the permit. ODEQ should correct this part of the analysis by correctly utilizing an appropriate translator value.

**Response:** As described in the comment, DEQ used dissolved metal background data when available. However, when dissolved data were not available, total recoverable data were used instead. While this process is an inherently conservative approach, it was necessary because in some regions, metals data are

sparse so that omission of total recoverable data would severely limit the characterization of ambient metals concentration so as to prevent modeling of a benchmark. It is important to note that when the distributions of total recoverable versus dissolved ambient water measurements were compared by region, there was no evidence to suggest that the values of total recoverable metals were unduly biasing the benchmarks. Neither dissolved nor total recoverable metals data were bi-modal or skewed by the inclusion of the total recoverable data. Although it is possible that some benchmark values are more conservative than they would otherwise be as a result of including some of the total recoverable data to calculate them, this was the best approach available to DEQ without sufficient dissolved metals data to generate benchmarks. Furthermore DEQ considered potential bias and found the data distributions that include both dissolved and total recoverable metals in the analysis supported that approach. DEQ developed and implemented region-specific translators where appropriate and performed the accurate calculations in final total benchmark concentrations. The criteria in effect for clean water act purposes in Oregon are for the dissolve fractions of metals, therefore DEQ does not translate the criteria to a total dissolved equivalent. Benchmarks, where expressed as total recoverable metal, are established based on achieving attainment of the protective dissolved criteria within an acceptable level of risk.

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OISG #76

**Description: Coastal Georegion - Should revise benchmark to reflect appropriate regional or statewide translators**

**Comment:** Default metals translators are based on water used for laboratory toxicity tests and should only be used when more representative data are not available. As more representative data are available from water bodies in Oregon, a non-default metals translator should be used in the development of the benchmarks. Since the Coastal region has a limited number of detected concentrations, a statewide translator is most appropriate at this time.

**Response:** DEQ agrees that the use of EPA default translators is more conservative than necessary in some instances and has reconsidered the use of EPA default metal translators. DEQ evaluated the potential use of regional translators and updated the permit to include regional translators where feasible. Where regional translators were not feasible, EPA's default metal translators were applied. EPA's default translators are widely applicable to, and protective of, a diverse array of waterbodies. Appendix B of the revised permit evaluation report describes the methods used by DEQ in evaluating the appropriateness and the application of regional metal translators.

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OISG #77

**Description: Permit coverage and exclusion from coverage; new discharger - Should move provide analytical sampling results to own section**

**Comment:** NA

**Response:** All conditions regarding eligibility for coverage if discharge into a Category 5 receiving water body have been separated in the proposed final permit.

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**Description: Permit Coverage and Exclusion from coverage - Change application submission to 180 calendar days for existing facility needing coverage**

**Comment:** The revisions reflect the deadlines in EPA’s rule, 40 C.F.R. § 122.26(a)(9)(iii). As proposed by DEQ, the condition would not even allow DEQ or its agent to extend the 60-day deadline in appropriate cases. Because a complete application must include a stormwater pollution control plan (SWPCP), 60 days would generally be insufficient, particularly for a large facility or a small business with an unsophisticated operator.

**Response:** DEQ disagrees that a significant contributor of pollutants should be given 180 days to submit an application.

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OISG #79

**Description: Permit Coverage and exclusion from coverage: Existing Facilitates - Should contain a deadline for DEQ permit assignment**

**Comment:** The proposed permit does not contain a deadline by which DEQ will provide notice of assignment, including monitoring requirements and applicable benchmarks and numeric effluent limits. If the permit registrant does not receive this information well before August 31, 2021, it will not be practicable for it to submit the updated SWPCP by then.

**Response:** Existing permit registrants will be aware of final permit conditions upon adoption by EQC. This will give facilities approximately 5 months to submit a revised SWPCP.

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OISG #80

**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Should include unless DEQ or agent approve a later date**

**Comment:** Applicable to Schedule A.2.f: If modifications to the control measures are necessary to meet technology-based effluent limits in this permit, the permit registrant must implement the modifications before the next storm event if practicable or no later than 30 calendar days from discovering the violation. Changes required by DEQ’s or its agent’s interpretation of these subjective requirements may take much longer than 30 days to implement.

**Response:** DEQ made the suggested change.

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OISG #81

**Description: Water Quality Standards - Recommend required response should be triggered only by notice from DEQ or its agent**



**Comment:** Determining precisely when it became “aware” of such an exceedance for purposes of initiating such a short response deadline will almost always be impossible for the same reason. Revising the condition as requested would not absolve permit registrants from immediate notification and response requirements in the event of a spill or other release of oil or hazardous substances.

**Response:** The proposed final permit includes being informed of the determination by DEQ as one of the triggering events.

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OISG #82

**Description: Numeric Effluent Limits; TMDL - Should establish any requirements to comply with an applicable TMDL in assignment notice**

**Comment:** Any requirements needed to comply with an applicable TMDL should be established in the notice of permit assignment so that DEQ, its agent, the permit registrant, and the public all have a common understanding of whether and how the requirements apply to the permit registrant.

**Response:** DEQ included this suggestion and clarified that any TMDL requirements for an existing discharger will include a 30 calendar day public notice period on the revised SWPCP in the permit assignment communication. This was an oversight as the current permit includes this requirement.

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OISG #83

**Description: Narrative Water Quality-based Effluent Limits - Clarity for iron sources can be sealed**

**Comment:** NA

**Response:** DEQ made the suggested change.

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OISG #84

**Description: Narrative Water Quality-based Effluent Limits - Should allow DEQ or agent to approve a longer period when warranted**

**Comment:** NA

**Response:** DEQ declined to make this change. If sample results trigger narrative water-quality based effluent limits for iron, the permit registrant must reduce pollutants into Category 5: 303(d) listed impaired water bodies. This designation of surface waters that have no assimilative capacity for discharges over the water quality criteria. DEQ has increased the implementation deadline from 60 calendar days to 90 calendar days in the proposed final permit.

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## 2. Comments from: Mutual Materials

### MUTUAL MATERIALS #1

**Description: Monitoring Waiver - Retain current requirement to submit four consecutive samples**

**Comment:** It would be confusing and overly burdensome to condition a monitoring waiver on the review of five consecutive samples to demonstrate a full year of monitoring data. ODEQ should retain its current requirement to submit four consecutive samples, because the permit only requires four sampling events to satisfy a full year of monitoring.

**Response:** DEQ recognizes that changing the eligibility criteria to apply for a monitoring waiver from four to five consecutive qualifying sample results equal to or below the applicable statewide or sector-specific benchmark concentrations during a full monitoring year is a shift from what has been in the previous permits. The intent is for all existing facilities monitoring waiver requests to include two fall flush sampling events in the geometric mean calculate. Capturing the sample results from two fall monitoring events will better justify a monitoring waiver approval and ensure pollution prevention controls are being maintained. Expanding the criteria beyond the minimum four samples also supports the sufficient number of samples for the geometric mean results to have any statistical meaning.

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### MUTUAL MATERIALS #2

**Description: Monitoring Waiver - Maintain current position that monitoring waivers, once issued, are valid until the permit expires**

**Comment:** It would be confusing and overly burdensome to automatically invalidate a monitoring waiver during the final permit year, especially where the permittee has been issued a similar waiver during prior permit terms. ODEQ should maintain its current position that monitoring waivers, once issued, are valid until the permit expires. Because all waivers would expire at the end of the permit term in any event, reinstating the monitoring requirement for the final year of the permit term would have little or no value. Limiting the waiver for the final year of the permit term would substantially reduce the value of the waiver to permit registrants without providing any substantially useful data in return. This creates an additional year in the permit term with required monitoring that could not be used as eligible data to establish a monitoring waiver.

**Response:** Stormwater monitoring data is important information for DEQ to evaluate industrial stormwater discharge trends. Reinstating monitoring requirements on July 1, 2025, will provide DEQ with valuable discharge data for future permits and ensure pollution prevention measures continue to be maintained throughout the permit cycle. DEQ retained the requirement that approved monitoring waivers for benchmarks are valid until July 1, 2025. The National Academy of Sciences Report on Improving the MSGP (2019) findings included that quarterly stormwater event samples collected over one year are inadequate to characterize industrial stormwater discharge or describe industrial source control measures performance over the permit term.

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### 3. Comments from: Food Northwest

FOOD NORTHWEST #1

**Description: General comment - Draft rule**

**Comment:** There are numerous grammatical and spelling errors and some sections were difficult to understand due to missing words or incomplete sentences.

**Response:** The comment was not specific enough to make changes, but DEQ did edit the proposed final permit.

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FOOD NORTHWEST #2

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Not practical permit condition to prevent all pollutants for which the waterbody is impaired from exposure to stormwater**

**Comment:** The requirement to “prevent all pollutants for which the waterbody is impaired from exposure to stormwater” is not practical especially for zinc and bacteria. Any mobile transportation at or near a facility will leave zinc residues on road surfaces. Wildlife can be a source of bacteria in stormwater discharges. Managing and preventing such sources is not realistic.

**Response:** Discharges of a pollutant from point sources that contribute to an impairment and are not accounted for in an applicable TMDL are not permissible. To provide flexibility where possible, the proposed final permit allows new dischargers an opportunity to demonstrate that additional loading of the pollutant to the impaired waterbody will not occur. Under Condition I of the permit, a new discharger to an impaired water without a TMDL for certain parameters must meet one of four conditions. For example, a registrant might “provide other technical information that demonstrates the discharge is not expected to cause or contribute to an exceedance of water quality standards at the point of discharge...”

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FOOD NORTHWEST #3

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Not practical to “provide technical demonstrations that the pollutant(s) for which the waterbody is impaired are not present at the site”**

**Comment:** This section requires registrants to “provide technical demonstrations that the pollutant(s) for which the waterbody is impaired are not present at the site.” Demonstrating a negative is not possible.

**Response:** DEQ disagrees with comment. It is possible for a thorough investigation of the site to demonstrate pollutants are not present using a scientific or engineering analysis of pollutant exposure and transport pathways on the site. For example, an applicant discharging to a zinc impaired waterbody might demonstrate that all potential sources of zinc exposure on-site remain continuously under cover, and other areas exposed to precipitation (e.g., roofs, roads, other work areas) do not contain zinc (e.g., roof does not use corrugated metal panels containing zinc), or is zinc likely to be introduced to the site by circumstances which one would reasonably anticipate.

FOOD NORTHWEST #4

**Description: Permit Coverage and Exclusion from Coverage; Name Change or Transfer - No need for public notice**

**Comment:** This section requires public notice of a SWPCP for a legal name change, even if there are no substantive changes to the SWPCP. Condition I.4.c requires submittal of a new application (and updated SWPCP) and does not allow for changes in operations as part of a permit transfer, so, under (a)(iv), there would, by definition, be no change in operations and therefore no need for public notice.

**Response:** DEQ modified the language in this condition. DEQ does not intend to post a stormwater pollution control plan for a 30-calendar day public notice for a name change or transfer between legal entities when there is no change in operations.

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FOOD NORTHWEST #5

**Description: Narrative Technology-based Effluent Limits (TBELs) - Many of these narrative limits are subjective**

**Comment:** This section presents Narrative Technology-based Effluent Limits (TBELs). Many of these narrative limits are subjective. For example, the terms “minimize” and “to the extent... practicable” are used without definition. However, in Schedule A.2.e, the new Draft specifies that “Failure to meet the technology-based effluent limits in Schedule A.1 and Schedule E, is a permit violation.” Due to the subjective nature of many of the narrative TBELs, the new condition of Schedule A.2.e presents an unreasonable burden on permittees to defend the subjective determination that they have done everything to the extent practicable to minimize pollution.

**Response:** Minimize is defined in Schedule D. Schedule A.2.e now reads: “Failure to implement any narrative technology-based effluent limits in Schedule A.1 and Schedule E, and other control measures or operational practices described in the SWPCP is a permit violation.” The proposed final permit framework requires each facility to design and implement a stormwater pollution control plan and implement the plan to prevent pollutant discharge.

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FOOD NORTHWEST #6

**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Not reasonable to implement corrective action before next storm event if practicable or no later than 30 calendar days**

**Comment:** Requires a facility to implement corrective actions before the next storm event “if practicable” and no later than 30 calendar days. Before the next storm event could mean within days, and “if practicable” again requires an unreasonable burden to defend a subjective determination. With regards to the 30 calendar days requirement, if any purchase or construction of materials or infrastructure is required, it is not reasonable to expect that can be completed within 30 days. Equipment lead times are

typically 60 to 120 days, and construction requires identification of qualified contractors, contracting, procurement, scheduling, and the actual construction work, which can also require 60 to 120 days.

**Response:** DEQ revised this condition and retained the 2018 permit allowance for the permit registrant to obtain DEQ or agent approval when the corrective action cannot be implemented before the next storm event or no later than 30 calendar days from discovery.

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#### FOOD NORTHWEST #7

**Description: Discharges to Impaired Waters; Existing Dischargers to Impaired Waters with a TMDL - Requirement appears to prohibit discharge if TMDL does not include specific waste load allocation**

**Comment:** If a TMDL does not include a specific waste load allocation (WLA) for stormwater from a facility, this requirement appears to prohibit discharge. Unless DEQ is certain that all relevant facilities discharging stormwater to water bodies with TMDLs have received WLA's, this requirement could cause significant hardship.

**Response:** A facility discharging to a waterbody with an applicable TMDL must meet any applicable wasteload allocation. A TMDL may provide an allocation specifically to a facility, or a wasteload allocation for all industrial stormwater (or other applicable category such as urban stormwater) set forth in the TMDL and as implemented in the permit. If the applicable TMDL does not establish an industrial stormwater as a source such that no wasteload allocation is provided, the compliance with the terms and conditions of the permit is presumed consistent with the TMDL.

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#### FOOD NORTHWEST #8

**Description: Mass Reduction Measures; Re-certifying by a PE or CEG - Unnecessary burden on the permittee**

**Comment:** This requires facilities that have taken mass reduction measures in the past, even if it was in a Tier 2 corrective action that was prepared by a P.E., to re-hire a P.E. to re-evaluate and certify the system. This is an unnecessary burden on the permittee, particularly if the permittee is meeting all other permit requirements, benchmarks, etc. EPA regulation 40 CFR 122.44(i)(4) only requires an annual report certified by a corporate officer.

**Response:** Re-certification of the adequacy of control measures is necessary to account for site/facility changes over time, potential operational changes, and determination if existing control measures remain viable and effective, especially related to mass reduction devices. The use of a PE or CEG ensures the ongoing ability of existing mass reduction measures to meet their intended function.

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#### FOOD NORTHWEST #9

**Description: Numeric Effluent Limits; TMDL - If a TMDL does not include a specific waste load allocation (WLA) for stormwater from a facility, this requirement appears to prohibit discharge**

**Comment:** If a TMDL does not include a specific waste load allocation (WLA) for stormwater from a facility, this requirement appears to prohibit discharge. Unless DEQ is certain that all relevant facilities discharging stormwater to water bodies with TMDLs have received WLA's, this requirement could cause significant hardship.

This comment is applicable to Schedule A.4.b: Existing Discharger to an Impaired Water with a TMDL (based on EPA-approved TMDLs as of March 31, 2021): i. Must comply with all applicable requirements of TMDLs with wasteload allocations for industrial stormwater discharges. Permit registrant must comply with Schedule A.3.

**Response:** A facility discharging to a waterbody with an applicable TMDL must meet any applicable wasteload allocation. A TMDL may provide an allocation specifically to a facility, or a wasteload allocation for all industrial stormwater (or other applicable category such as urban stormwater) set forth in the TMDL and as implemented in the permit. If the applicable TMDL does not establish an industrial stormwater as a source such that no wasteload allocation is provided, the compliance with the terms and conditions of the permit is presumed consistent with the TMDL.

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FOOD NORTHWEST #10

**Description: Preparation and Implementation of SWPCP - Not include control measure or BMP when the narrative TMDL is not applicable to the facility**

**Comment:** This requirement should include a provision for not including a control measure or BMP when the narrative TMDL is not applicable to the facility.

This comment is applicable to Schedule A.8.c: The SWPCP must include control measures/BMPs that implement each narrative technology-based effluent limit to eliminate or reduce the potential to contaminate stormwater and prevent exceedance of instream water quality standards.

**Response:** The comment unclear, thus DEQ did not make the suggested change.

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FOOD NORTHWEST #11

**Description: SWPCP Revisions - Add provision to allow for changing monitoring points in response to another permit requirement or DEQ requirement, as long as DEQ has been notified, even if DEQ has not yet approved the change**

**Comment:** This requirement does not allow changes to monitoring points until DEQ or agent have approved the SWPCP revision; however, it is conceivable that there could be a conflicting requirement to change a monitoring point and that this could occur before DEQ approves a SWPCP revision. A provision should be added to allow for changing monitoring points in response to another permit requirement or DEQ requirement, as long as DEQ has been notified, even if DEQ has not yet approved the change.

**Response:** DEQ declined to make the change because DEQ or agent review and approval of all proposed changes in monitoring points is important to ensure permit compliance.

**Description: Tier 1 and Tier 1.5 Corrective Action Response based on Exceedances of Benchmarks - Wording is not clear/missing words**

**Comment:** The following language seems to be missing words/is not clear: “qualifying sample of any applicable statewide benchmarks.”

Comment applicable to Schedule A.11.b.i: If the permit registrants’ monitoring results exceeds a qualifying sample of any applicable statewide benchmarks in Table 4 of this permit or sector-specific benchmarks in Schedule E.

**Response:** DEQ appreciates the comment and has made the suggested change. The proposed final permit now reads: “If qualifying sample results exceed any applicable statewide benchmark(s) in Table 4 of this permit or any sector-specific benchmarks in Schedule E.” Qualifying samples are collected at least 14-days apart and are analyzed using approved methods (see Schedule F) to satisfy the Quality Assurance/Quality Control requirements of the method, as defined in Schedule D.

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FOOD NORTHWEST #13

**Description: Tier 1.5 Corrective Action Response - Submission requirements should come before implementation requirements**

**Comment:** Requires implementation of controls before submission of the checklist, but submission requirements are discussed in Schedule A.11.f.iii. Submission requirements should be discussed first to avoid confusion.

**Response:** The proposed final permit does not include Tier 1.5 requirements.

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FOOD NORTHWEST #14

**Description: Water Quality-based Effluent Limits - Review this section by a technical editor**

**Comment:** This section is missing words/is worded awkwardly, as is much of the rest of Schedule A.13. This section should be reviewed by a technical editor.

**Response:** DEQ revised this section of the proposed final permit to improve readability.

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FOOD NORTHWEST #15

**Description: Benchmarks Technological Feasibility - Recommends that ODEQ take a holistic review of benchmark values**

**Comment:** The Rulemaking Advisory Committee members were concerned that DEQ was proposing lower benchmarks than DEQ had previously determined were technologically achievable and that DEQ should not set benchmarks that cannot be met with readily available technology. Thus, the benchmarks

are essentially an “end-of-pipe” water quality standard discharge limit not accounting for any dilution that can occur. DEQ needs to take a holistic review of benchmark values; the values need to consider what control measures can be achieved, background conditions, and water quality criteria.

**Response:** DEQ hired PG Environmental to assess the benchmark methodology used in the 1200-Z permit. It was determined that the technological feasibility evaluation was not robust enough and did not evaluate the discharge quality from the best performing sites. DEQ has built in flexibility into the risk-based modeling to account for the intermittent nature of stormwater discharge. The metals benchmarks in the proposed final permit are based on a well-vetted and technically sound modeling methodology that builds in a dilution of 5 and sets the benchmark at a 10 percent probability of exceeding the water quality criterion.

DEQ anticipates that a robust evaluation of the technological feasibility of the benchmarks would result in concentrations would be even more restrictive than the risk-based water quality concentrations established in the proposed final permit. As outlined in the federal process for technological feasibility, the appropriate evaluation would include a selection of model technologies and defined performance standards and DEQ would set benchmarks at a concentration based on the best performing treatment capabilities.

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FOOD NORTHWEST #16

**Description: Columbia River Georegion - Clarify the Columbia River benchmarks apply to registrants that discharges to the Columbia River**

**Comment:** Statewide Benchmarks should clarify that if a registrant discharges to the Columbia River in eastern Oregon, the Columbia River benchmarks apply and not the Eastern benchmarks. There is some confusion regarding this.

**Response:** DEQ has a searchable map for regulators, facilities and public use. The searchable map will provide certainty of the georegion for each facility based on the location of where the discharge enters the receiving water. Depending on the receiving water location, DEQ or our agent will clearly communicate with each facility regarding monitoring requirements based on the appropriate georegion. Direct discharges into the Columbia River will be assigned the Columbia River georegion.

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FOOD NORTHWEST #17

**Description: Water Quality-based Effluent Limits - It is not clear the basis for the copper benchmark concentration based on 10th percentile of geo-regional data**

**Comment:** In table 6, the basis for the copper benchmark concentration is cited as the “Biotic Ligand Model based on 10th percentile of geo- regional data”, but it is not clear why the 10th percentile is used.

**Response:** The proposed benchmarks are based on a limit that would correspond to a 10% exceedance probability of the criteria for hardness-based metals and copper. The 10% is built into the benchmark procedure and is a risk-based target.



**Description: Schedule E; Saltwater benchmarks - There does not appear to be a general way for saltwater benchmarks to apply to a facility other than through the Sector specific requirements in Schedule E, for example water quality-based effluent limits for saltwater dischargers**

**Comment:** NA

**Response:** The proposed final permit includes saltwater impairment concentrations/numeric water quality-based effluent limits for copper, lead and zinc. DEQ used a similar modeling methodology to the freshwater benchmarks. Because the saltwater acute aquatic life criteria is set and does not depend on the Biotic Ligand Model or hardness, there are some differences. The saltwater benchmarks were evaluated separately from the freshwater coastal georegion.

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FOOD NORTHWEST #19

**Description: Sampling frequency - Add provision to provide for four sampling events per year based on storm events for facilities located in arid climates in eastern Oregon**

**Comment:** These facilities should not be held to the same schedule requirement for monitoring frequency as areas on the western side of the state, rather than based on whether or not an area is designated as having drought conditions and providing detailed meteorological data (which may not be available).

**Response:** Both state and federal law include regulations that must be in general permits. Oregon Administrative Rule (340-045-0033) and 40 CFR 122.28(2)(i)(D), both require general permits include the same or similar monitoring requirements, effluent limitations and operating conditions for all categories. The 1200-Z allows permit registrants to submit a request for a monitoring variance when the minimum frequency of samples is not met due to no storm events of sufficient magnitude to produce run-off during regular business hours of operation and safe conditions.

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FOOD NORTHWEST #20

**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Should not remove allowance for DEQ or agent to approve a corrective action deadline more than 30 days**

**Comment:** The revised Draft permit also removes the allowance for DEQ to approve a longer time frame, which is obviously necessary if long purchasing lead times or construction is required.

**Response:** The proposed final permit retains the 2018 permit language and allowance for an approval from DEQ or agent to extend the deadline to modify and implement control measures.

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FOOD NORTHWEST #21

**Description: Metals Benchmark Concentration Reduction - DEQ has dramatically reduced benchmarks for lead and zinc in this permit, which may completely invalidate past investments made in treatment infrastructure**

**Comment:** DEQ has dramatically reduced benchmarks for lead and zinc in this permit, which may completely invalidate past investments made in infrastructure to treat for these compounds. It may not be possible to identify a source of for these compounds which are ubiquitous in the environment. For example, zinc is present in tires and copper is present in brake pads, and for facilities located adjacent to heavily trafficked roads the source of zinc and/or copper could be dust from tire wear from the road. This source would be difficult to identify and impossible to mitigate. Facilities should not be required to treat stormwater that is contaminated by offsite sources of pollutants.

**Response:** All prior investments will continue to benefit facilities in meeting more stringent benchmarks by reducing in pollutant levels in industrial stormwater. Depending on the location of any given facility, some of the benchmarks are less stringent than in the prior permit. The reductions are based on a well-vetted and technically sound modeling methodology that builds in a dilution of 5 and sets the benchmark at a 10 percent probability of exceeding the water quality criterion. Tier 2 corrective action responses are only applicable to statewide benchmarks exceedances. The proposed final permit includes a provision that exempts current permit registrants with a Tier 2 corrective action deadline of June 30, 2021, or later from additional Tier 2 corrective action responses at those discharge points and for the specific pollutant during the next 5 year permit cycle. The permit also contains provisions to address off-site sources of contamination, including represented sampling and background exemptions.

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FOOD NORTHWEST #22

**Description: Schedule E; Sector U - Unclear condition in Schedule E that facilities that discharge to the Pacific Ocean (or estuarine waters) will be assigned saltwater benchmarks, Sector U does not contain saltwater benchmarks**

**Comment:** Some facilities covered under Sector U discharge into the Pacific Ocean. Schedule B.5 and Schedule E states that facilities that discharge to the Pacific Ocean (or estuarine waters) will be assigned saltwater benchmarks. However, Sector U does not define saltwater benchmarks for Food and Kindred Products. The chronic water quality criteria for copper for saltwater is 0.0031 mg/L. The Permit Evaluation Report (Section 14) cites a constant dilution factor of 5. It appears the saltwater benchmark for copper should be 0.0155 mg/L instead of 0.0048 mg/L.

**Response:** The proposed final permit includes saltwater benchmark concentrations for copper, lead and zinc using the same methodology as the freshwater benchmarks (dilution factor of 5 and 10 percent exceedance probability). Those benchmarks will be applied to facilities discharging to the Pacific Ocean instead of the freshwater metals benchmarks.

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FOOD NORTHWEST #23

**Description: General Comment - Facilities should not be required to treat stormwater that is contaminated by offsite sources of pollutants**

**Comment:** NA

**Response:** Permit registrants are responsible for the quality of their discharges, regardless of what may be added as a result of run-on from other sources or legacy/anthropomorphic sources of pollutants. EPA's long-standing position, consistent with the Clean Water Act and EPA's permitting regulations, is that operators are responsible for the quality of their discharges, regardless of what may be added as a result of run-on from other sources. The Clean Water Act does not allow EPA or states to set a site-specific criteria equal to the natural background since doing so could increase the level of pollutants in the water body that might be above the natural background, which would not be protective of aquatic life, at a minimum.

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## 4. Comments from: Oregon Business & Industry

OBI #1

### **Description: Metals Benchmark Modeling - Revise proposed statewide benchmarks using appropriate regional or statewide translators**

**Comment:** The proposed statewide benchmarks should be revised to reflect appropriate regional or statewide translators. The Proposed Permit's benchmarks are based on default translators of 1 or very nearly 1. Applying appropriate, region-specific translators results in benchmarks that are in all instances higher—and in most instances substantially higher—than the proposed benchmarks. And in only two instances are the adjusted benchmarks lower than the current permit's benchmarks. Moreover, for the reasons discussed in the following section, the adjusted benchmarks themselves may be lower than necessary to protect water quality.

**Response:** DEQ agrees that the use of EPA default translators is more conservative than necessary in some instances and has reconsidered the use of EPA default metal translators. DEQ has evaluated the potential use of regional translators, and updated the proposed final permit to include regional translators where feasible. Where regional translators were not feasible, EPA's default metal translators were applied. EPA's default translators are widely applicable to, and protective of, a diverse array of waterbodies. Appendix C of the revised permit evaluation report describes the methods used by DEQ in evaluating the appropriateness and the application of regional metal translators in the proposed final permit.

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OBI #2

### **Description: Metals Benchmark Modeling - Analyze covariance (ANCOVA) or other appropriate statistical test on all water quality data used in the benchmark analysis for a given region**

**Comment:** Issues that likely cause the benchmarks to be lower than necessary are data was not analyzed for covariance. The analysis used to develop the draft benchmarks does not appear to have evaluated covariance. If there is covariance, the analysis would not be appropriate because the assumption of parameter independence would be violated.

**Response:** DEQ's benchmark methodology was presented and vetted during the rulemaking process by the advisory committee comprised of varied stakeholders. Based on the feedback from the advisory committee, the modeling procedures followed during this permit renewal were the same as previous renewals. Any correlation of specific pollutant concentrations would be different for each of the 184

receiving water bodies covered under the permit. This type of covariance analysis is not practical in the context of a general permit using Monte Carlo modeling. In terms of pollutant correlations of stormwater discharges across the state, the covariance between water quality parameters is rare. The process of determining benchmarks is well defined and all appropriate steps were followed. Permit registrants may apply for an individual permit and provide DEQ with site-specific information appropriate to evaluate permit conditions and monitoring at their site.

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OBI #3

**Description: Metals Benchmark Modeling - Translate data from dissolved to total or total to dissolved in three places: background water concentrations, assumed effluent concentrations, and water quality criteria calculations**

**Comment:** To convert a dissolved criterion value into a total criterion, the dissolved criterion is divided by a ratio known as a translator. In the absence of relevant data regarding an appropriate translator, a default translator can be used. A default translator generally assumes that more than 95% of the metal in the water body is present in the dissolved form (EPA, 1996), which is a highly conservative assumption in most water bodies. When sufficient data are available, a more appropriate translator can be calculated and used in place of the default translator. Neither a region-specific nor an appropriate conservative default translator were used to derive the draft 1200-Z benchmarks. In the technical analysis, translators should come into play in three places: background water concentrations, assumed effluent concentrations, and water quality criteria calculations. For background water data, the draft benchmark analysis used dissolved data where available, but total concentrations were used without conversion where dissolved data were not available.

**Response:** As described in the comment, DEQ used dissolved metal background data when available. However, when dissolved data were not available, total recoverable data were used instead. While this process is an inherently conservative approach, it was necessary because in some regions, metals data are sparse so that omission of total recoverable data would severely limit the characterization of ambient metals concentration so as to prevent modeling of a benchmark. It is important to note that when the distributions of total recoverable versus dissolved ambient water measurements were compared by region, there was no evidence to suggest that the values of total recoverable metals were unduly biasing the benchmarks. Neither dissolved nor total recoverable metals data were bi-modal or skewed by the inclusion of the total recoverable data. Although it is possible that some benchmark values are more conservative than they would otherwise be as a result of including some of the total recoverable data to calculate them, this was the best approach available to DEQ without sufficient dissolved metals data to generate benchmarks. Furthermore DEQ considered potential bias and found the data distributions that include both dissolved and total recoverable metals in the analysis supported that approach. DEQ developed and implemented region-specific translators where appropriate and performed the accurate calculations in final total benchmark concentrations. The criteria in effect for clean water act purposes in Oregon are for the dissolve fractions of metals, therefore DEQ does not translate the criteria to a total dissolved equivalent. Benchmarks, where expressed as total recoverable metal, are established based on achieving attainment of the protective dissolved criteria within an acceptable level of risk.

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OBI #4

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Proposed 1200-Z Permit would prohibit the use of temporary covers, such as tarps, but no justification for this change is provided in the draft evaluation report. There will undoubtedly be both short-term and long-term circumstances in which permanent structures are not feasible, but tarps or other temporary covers would minimize exposure. A permit registrant should not be put in the position of choosing a less environmentally protective solution—no cover at all—if a permanent structure is not practicable.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to minimize exposure and to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure.

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OBI #5

**Description: Water Quality-based Effluent Limits - Restrict pH limits only high or low pH, depending on the basis for the impairment listing**

**Comment:** If DEQ nonetheless believes that numeric effluent limits are necessary, the limits should be consistent with the basis for the pH impairment. Where the impairment is solely due to pH values in excess of the pH criteria range, the numeric effluent limit should include only a maximum pH limit. In those circumstances, a discharge with a pH below the criteria range could not contribute to the impairment. Similarly, where the impairment is solely due to pH values below the pH criteria range, the numeric effluent limit should include only a minimum pH limit.

**Response:** The applicable water standards in OAR 340-041-0101 through 340-041-0350 establish pH as range between which hydrogen ion concentrations must fall. If any two consecutive monitoring results at each monitoring point falls outside the basin-specific range for pH, the permit registrant will be subject to numeric water quality-based effluent limitations for pH consistent with entirety of the applicable pH water quality standards, rather than a portion of the applicable standards. Establishing limitations for only a portion of the standard would be inconsistent with the water quality standard as a whole. Permit registrants may be granted a two-year compliance schedule if needed.

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OBI #6

**Description: Water Quality-based Effluent Limits; pH - Allow a two-year compliance schedule for numeric water quality-based effluent limits for pH**

**Comment:** Finally, if numeric pH limits are included in the permit, the limits should be triggered on terms similar to those for triggering numeric discharge limits for copper, lead, and zinc, and permit registrants that are subject to the limits should be given the same two-year schedule for coming into compliance with the limits as the permit provides for the metals limits. Nothing in the draft evaluation report suggests that permit registrants would be able to immediately comply with a numeric pH discharge limit, particularly a low pH limit that is higher than the pH of rainwater.

**Response:** DEQ has reconsidered the approach used for pH based on comments and a review of the available data. Based on available data for dischargers to impaired waters, up to 25 percent of applicable dischargers may be in immediate noncompliance with the minimum pH limits. Based on this finding, DEQ has revised the permit to manage pH similarly to copper, lead and zinc, and allow for a compliance schedule of up to two years if two consecutive monitoring results falls outside the basin-specific pH range.

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OBI #7

**Description: Benchmark Modeling - DEQ lacks a technical basis to set “Water Quality Criteria” and “Benchmarks” at the same overly restrictive levels**

**Comment:** The basis for setting benchmarks, including the underlying data set and use of default translators, is flawed. For Portland Harbor, DEQ has used the same data set to establish water quality criteria at the benchmark concentration for copper. Water quality criteria are set less than benchmark concentrations for lead and zinc. This effectively makes benchmark exceedances for copper (which are not permit violations) violations of water quality criteria which can trigger numeric effluent limits for one or two exceedances. DEQ has not justified the basis for these limits as necessary to protect the receiving waterbodies.

**Response:** DEQ disagrees. Permit evaluation report describes the rationale for the establishment of water quality-based effluent limitations and states that “[limits] are required for permit registrants that are identified as discharging pollutants at concentrations that may contribute to an exceedance of water quality criteria.” As described in Appendix A of the permit evaluation report, DEQ used a risk-based calculation method to estimate the likelihood of a range of benchmarks to result in non-compliance with water quality criteria in non-impaired waterbodies. The model assumes a conservative waterbody assimilative capacity (i.e., the ability to dilute the effluent within the waterbody). The copper benchmark and impairment monitoring concentrations are derived using the site-specific criteria, Biotic Ligand Model. The Biotic Ligand Model determines copper toxicity for a given set of conditions by using measurements of ten different water quality parameters that affect copper toxicity to aquatic organisms. Therefore, it is appropriate to use the same copper concentrations for the benchmark and a water quality-based effluent limit. DEQ recalculated the benchmark concentrations and the impairment concentrations using regional translators where appropriate. For discharges to Category 5: 303(d)-listed waterbodies, the registrant will be subject to numeric WQBELs based on sample results for pH, copper, lead, or zinc when the triggers in Schedule A.13 exceed the concentrations.

The proposed final permit recalculated the monitoring concentrations and the impairment monitoring concentrations are either equal to the benchmarks, as is the case of copper, or more stringent than the benchmarks. DEQ also applied regional translators where appropriate. The model used to calculate the benchmark assumes a conservative waterbody assimilative capacity (i.e., the ability to dilute the effluent within the waterbody).

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OBI #8

**Description: Narrative Technology-based Effluent Limits (TBELs); Waste Chemicals and Material Disposal - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Tarping has also been removed from Draft 1200-Z Permit language as a cover for waste containers. Facilities are constrained by the containers provided to it by third party vendors, such as Waste Management or local municipal utilities. Registrants should be allowed to use tarps as an effective control measure.

Waste Disposal comments: Requiring lids on all waste containers and drop boxes is not reasonable for many reasons. Often, customers do not want or cannot use boxes with lids, the lids are easily damaged and costly to install and repair, and makes the movement, loading, and transport of these containers more difficult for the drivers. Temporary tarps are a fraction of the cost and have none of the repair costs associated with a permanently installed lid. We recommend that DEQ continue to allow the use of tarps as covers, allowing for “properly secured and maintained temporary covers that fully protect from exposure to storm water.” If the tarps are applied correctly and maintained in good condition, they serve as an effective way to limit exposure of materials to storm water.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. Neither EPA nor Washington State Ecology allow the use of tarps to meet these narrative technology-based effluent limits. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure. As emphasized in the comment from several waste management companies, proper maintenance is crucial when using tarps. The proposed final permit requires permit registrants to cover all waste contained in bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to these pollutants; this includes scrap and waste materials.

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OBI #9

**Description: Benchmark - Agree with DEQ’s approach to remove of Oil and Grease as a Statewide Benchmark Pollutant based on the conclusion that oil and grease numeric benchmarks are not a good indicator of pollution**

**Comment:** NA

**Response:** DEQ appreciates the input.

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OBI #10

**Description: Sampling Procedures - Agree with DEQ’s approach adjusting the monitoring frequency to reflect that stormwater samples must be collected 72 hours apart (rather than the currently required 14 days)**

**Comment:** NA

**Response:** DEQ appreciates the input; however, the proposed final permit retained sample collection must be 14-days apart instead of 72 hours apart.

**Description: Benchmark Georegion - Should be clearer about where each of these regions are in OR**

**Comment:** Should include a map.

**Response:** DEQ has a searchable map for regulators, facilities and public use. The searchable map will provide certainty of georegion as long as the facility is aware of the location its facilities discharge enters the receiving water. Depending on the receiving water location, DEQ or our agent will clearly communicate with each facility regarding monitoring requirements based on the appropriate georegion.

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OBI #12

**Description: Water Quality-based Effluent Limits; pH - Scant evidence that industrial stormwater contribute meaningfully to waters that are impaired for pH**

**Comment:** Considering that pH impairments generally occur during the dry season when stormwater discharges are at a low ebb, we do not think that numeric pH discharge limits for discharges to impaired waters are warranted or necessary. In fact, given that most pH impairments result from high pH values, the fact that stormwater runoff consists of rainwater – which has a lower pH than most water quality criteria – it is counterintuitive that such discharges would contribute to such impairments.

**Response:** As a component of its reasonable potential analysis for pH, described in the permit evaluation report, DEQ analyzed 1200-Z Discharge Monitoring Reports dating from January 2000 through December 2018. The discharge data was cross-referenced with Oregon's 303(d) list for pH impaired waterbodies to restrict the analysis to relevant discharges. Based on an analysis of this dataset, DEQ determined there is sufficient evidence to find reasonable potential for discharges of pH to cause or contribute to an excursion above or below the applicable water quality standards in impaired waterbodies.

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OBI #13

**Description: General Comment; Rulemaking - Interactive dialogue between DEQ, permittees and other stakeholders has been precluded as a result of the abbreviated timeline caused by the procedural requirements associated with a rulemaking**

**Comment:** NA

**Response:** The 1200-Z permit renewal process was not truncated due to the rulemaking process. It was longer than a typical permit renewal process done as a Department Order. The rulemaking process included an advisory committee comprised of industry representatives, environmental interests, consultants and the City of Portland's Bureau of Environmental Services. Each of the six advisory committee meetings were open to the public in accordance with Oregon's public records regulations and DEQ provided ample time during each meeting for anyone who was interested in providing public input. DEQ posted the meeting agenda and associated meeting materials at least one week prior to each advisory committee meeting and an email was sent out to all who signed up to receive updates on this rulemaking with a link to all of the meeting information. Each meeting included presentations and technical



discussions, all which is included in the permit renewal rulemaking record. The public comment period on the draft permit was open for 74 days. During that timeframe, DEQ hosted a meeting that included a presentation on the draft permit and a question and answer opportunity. The rulemaking record includes all of the communications conducted throughout the process, including: updates through the 1200-Z newsletters and GovDelivery notices.

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OBI #14

**Description: General Comment; Term of Current Permit - Delay proposed permit implementation until the current expiration date of July 31, 2022**

**Comment:** Current 1200-Z permit cycle is cut short. DEQ has, without reasonable basis, shaved a full year off the originally published 5-year permit cycle. Businesses rely on the stated permit cycle to achieve compliance through adaptive management efforts.

**Response:** 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 was filed in Multnomah County Circuit Court by the Columbia Riverkeeper and the Northwest Environmental Defense Center.

As a result, 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 summary, DEQ committed to: • 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.

As such, DEQ is legally bound to issue the final permit by March 30, 2021. The proposed final permit's effective date is July 1, 2021. The effective date aligns with the stormwater reporting year, allows permit registrants time to update the site specific stormwater pollution control plans and other implementation measures as needed. This timeframe also takes into consideration the Tier 2 implementation requirements under the current permit.

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OBI #15

**Description: Stormwater Discharge; Benchmarks and Limits - Reduced benchmarks and water quality-based discharge limits are too abrupt**

**Comment:** The new benchmarks and discharge limits in the proposed 1200-Z are dramatically lower, without providing any reasonable time to achieve them, i.e., through progressive implementation of Tier 1 and 2 adaptive management measures. Any lower benchmarks or discharge limits should be implemented over time, e.g., via a compliance schedule.

**Response:** DEQ's proposed final permit allows a two-year compliance schedule for facilities to make the necessary site improvements prior to compliance with new water quality-based effluent limits. The

benchmarks are based on a well-vetted and technically sound modeling methodology that builds in a dilution of 5 and sets the benchmark at a 10 percent probability of exceeding the water quality criterion. In addition, the permit provides for adaptive management measures in response to benchmark exceedances. DEQ also evaluated the potential use of regional translators, and updated the permit to include regional translators where feasible. Where regional translators were not feasible, EPA's default metal translators were applied. EPA's default translators are widely applicable to, and protective of, a diverse array of waterbodies.

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OBI #16

**Description: Metals Benchmark Concentration Reduction - Conflicts with long-term investments in Tier 2 measures**

**Comment:** Permit registrants have invested substantial time and money in planning and implementing Tier 2 measures to achieve the benchmarks set in the current permit. DEQ's abrupt moving of the goalpost makes those investments potentially pointless and undermines a permit registrant's ability to plan for future Tier 2, or other, corrective actions. It is not clear how the new benchmarks and proposed water quality-based discharge limits will apply to facilities that have already made investments in, installed, (or will install prior to June 31, 2021) Tier 2 treatment systems to address the benchmarks in the current permit.

**Response:** All prior investments will continue to benefit facilities in meeting more stringent benchmarks by reductions in pollutant levels. Depending on a facilities location, some of the benchmarks are less stringent than in the prior permit. The reductions are based on a well-vetted and technically sound modeling methodology that builds in a dilution of 5 and sets the benchmark at a 10 percent probability of exceeding the water quality criterion. Tier 2 corrective action response is only applicable to statewide benchmarks exceedances. The permit includes a provision that exempts current permit registrants with a Tier 2 corrective action deadline of June 30, 2021, or later from additional Tier 2 corrective action responses at those discharge points and for the specific pollutant during the next 5 year permit cycle. The proposed impairment monitoring targets and escalating water quality-based effluent limits are only applicable to discharges into Category 5: 303(d) listed waters defined by surface waters not meeting water quality standards.

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OBI #17

**Description: Water Quality-based Effluent Limits - Provide registrants with a process to provide a technical explanation/appeal prior to imposing permanent effluent limits**

**Comment:** Automatic triggers for strict "Numeric Effluent Limits" (NELs) are overly stringent and contrary to the adaptive management approach in prior permits. The proposed 1200-Z permit imposes automatic triggers for numeric effluent limits (instead of benchmarks) in 303(d) listed waterbodies when a facility has two consecutive exceedances of the applicable criteria, or a single exceedance is greater than two-times the applicable criteria. Further, this approach fails to account for anomalies that sometimes occur in complex stormwater systems (or offsite impacts) which might cause exceedance aberrations that are not reflective of the overall effectiveness of the stormwater controls.

**Response:** DEQ has determined that the triggering event for establishment of numeric WQBELs (which is applicable to discharges to 303(d)-listed waters and restricted to pH, total copper, lead, and zinc) provides permit registrants with reasonable opportunity for adaptive management, while still meeting DEQ's obligation to establish WQBELs consistent with applicable water quality standards (see 40 CFR 122.44(d)(1)(iii) and (vii)).

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OBI #18

**Description: Water Quality-based Effluent Limits; pH - pH of rainwater is lower than most water quality criteria**

**Comment:** NA

**Response:** Contact between precipitation and on-site materials is likely to materially alter the constituents of the rainwater by the time it reaches the discharge point. The permit registrant is responsible for ensuring the discharge meets permit requirements. Category 5: 303(d) list designation of surface waters have no assimilative capacity for discharges over the water quality criteria.

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OBI #19

**Description: Applicable Water Quality Criteria; Table 6 - Clarify if registrant must meet all of the water quality discharge criteria under Table 6 if the Category 5: 303(d) listed water is listed for only one of the metals**

**Comment:** DEQ should specify that the Statewide benchmarks otherwise apply. Draft 1200-Z Permit should be revised to clarify whether a Registrant must comply with all parameters listed in Table 6 or only those applicable to a facility based on impairment category in the 2018/2020 Integrated Report.

**Response:** Each discharge is subject to Category 5 impairment listings specific to the receiving water and individual pollutants. For example, if the receiving river has a Category 5 impairment listing for zinc, that discharge point is subject to impairment requirements for zinc and will not be required to monitor for the zinc statewide benchmark. Impairment monitoring requirements would only apply to the specific impairment, in this case zinc. Schedule B.6 outlines the monitoring requirements by pollutant parameters, including monitoring requirements for same parameter. If a discharge point is subject to impaired monitoring or numeric water quality-based effluent limit for a parameter that also has a benchmark, the permit registrant will not be subject to benchmark monitoring at that discharge point.

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OBI #20

**Description: General Comment - Should provide on-site technical assistance from the stormwater program**

**Comment:** In the event that DEQ cannot offer site visits, a second option would be for permit staff to be available to answer general compliance questions. Facilities are committed to complying with the

provisions of the permit, but particularly smaller facilities are severely disadvantaged and unprepared for the cost and time it takes to obtain a permit and comply with its terms.

**Response:** Without additional resources, DEQ cannot do the work to establish and implement a technical assistance program. DEQ and agents answer general compliance questions and does presentations on permit topics at meetings when requested. DEQ is committed to continue to provide technical assistance newsletters and documents posted on our website. We are always open to feedback on topics that would be helpful cover in our newsletters and fact sheets.

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OBI #21

**Description: Tier 2 - Revise geometric mean evaluation based on at least three qualifying samples results during a full reporting year**

**Comment:** Schedule A.12.e.i. suggested change: “The geometric mean of qualifying sample results collected during any full reporting year (see Schedule D.3, Definitions), at each monitored point(s) exceeds the applicable statewide benchmark in Table 4 based on at least three qualifying samples during that reporting year.”

**Response:** DEQ did not to make this suggested change. If DEQ made this change it would be possible for facilities to elect to accept an enforcement action for failure to collect the minimum required samples rather than risk exceeding the geometric mean in a full reporting year and therefore triggering a Tier 2 corrective action response, which is not appropriate.

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OBI #22

**Description: General Comment - Incumbent upon DEQ to issue a permit that provides a reasonable compliance path without applying unnecessary and overly stringent technical assumptions that lead to unachievable benchmarks and massive new investments in treatment technology**

**Comment:** Permit holders need regulatory certainty, time to comply with abrupt and extremely stringent shifts, and permit requirements that do not unduly burden businesses with additional effort and cost, given the already substantial challenges with complying with the current permit.

**Response:** DEQ set this permit renewal rulemaking process to be transparent and technically robust. DEQ appointed a diverse advisory committee and hired PG Environmental, a national NPDES permitting expert, to work through the settlement terms and provide a draft permit for discussion during the 6th advisory committee meeting. DEQ’s goal was to use the input from the advisory committee to develop a high quality, implementable and legally defensible 1200-Z industrial stormwater general permit that is appropriate for Oregon.

The proposed final 1200-Z permit incorporates consistently applied and vetted benchmark methodology, technically sound permit conditions backed up by the public rulemaking record while still maintaining an adaptive management approach to ensure protection of Oregon’s waters. The permit does include more stringent provisions for discharges into impaired waters for the pollutants shown to have a reasonable potential to impact waterways impaired for those pollutants based on several years of stormwater data.

## 5. Comments from: Oregon Association of Clean Water Agencies

ACWA #1

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Not practical permit condition to prevent all pollutants for which the waterbody is impaired from exposure to stormwater**

**Comment:** The requirement to “prevent all pollutants for which the waterbody is impaired from exposure to stormwater” is not practical especially for zinc and bacteria. Any mobile transportation at or near a facility will leave zinc residues on road surfaces. Wildlife can be a source of bacteria in stormwater discharges. Managing and preventing such sources is not realistic.

**Response:** Discharges of a pollutant from point sources that contribute to an impairment and are not accounted for in an applicable TMDL are not permissible. To provide flexibility where possible, the proposed final permit allows new dischargers an opportunity to demonstrate that additional loading of the pollutant to the impaired waterbody will not occur. Under Condition I of the permit, a new discharger to an impaired water without a TMDL for certain parameters must meet one of four conditions. For example, a registrant might “provide other technical information that demonstrates the discharge is not expected to cause or contribute to an exceedance of water quality standards at the point of discharge...”

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ACWA #2

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Not practical to “provide technical demonstrations that the pollutant(s) for which the waterbody is impaired are not present at the site”**

**Comment:** This section requires registrants to “provide technical demonstrations that the pollutant(s) for which the waterbody is impaired are not present at the site.” Demonstrating a negative is not possible.

**Response:** DEQ disagrees with comment. It is possible for a thorough investigation of the site to demonstrate pollutants are not present using a scientific or engineering analysis of pollutant exposure and transport pathways on the site. For example, an applicant discharging to a zinc impaired waterbody might demonstrate that all potential sources of zinc exposure on-site remain continuously under cover, and other areas exposed to precipitation (e.g., roofs, roads, other work areas) do not contain zinc (e.g., roof does not use corrugated metal panels containing zinc), or is zinc likely to be introduced to the site by circumstances which one would reasonably anticipate.

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ACWA #3

**Description: Applicable Water Quality Criteria; Table 6 - Should be expressed as dissolved, not total, with the exception of iron**

**Comment:** Water quality criteria for copper, lead and zinc should be expressed as dissolved, not total. OAR 340-041, Table 30, provides water quality criteria for metals, including copper, iron, lead, and zinc. All the metals criteria, with the exception of iron, are expressed as dissolved concentrations. In the draft permit, Schedule A.13.b and Schedule B.4, including Table 6 refer to “total” copper, lead, zinc and other metals in describing water quality criteria or pollutants of concern. These should all be changed to “dissolved” in describing water quality criteria.

**Response:** 40 CFR 122.54(c) requires all permit limits, standards, or prohibitions be expressed in terms of “total recoverable metal”. This assures that regardless of the characteristics of the receiving water, the resulting percentage of the metal that is dissolved after mixing with the receiving water will not exceed the applicable dissolved criteria and will be protective of aquatic life. The proposed final permit and the permit evaluation report were revised to clarify that benchmarks and impairment concentrations, as well as WQBELs, have been converted from the dissolved metal concentrations to total recoverable metal concentrations. The table’s that include impairment monitoring and escalating water quality-based effluent limits have been renamed appropriately and footnotes added to indicate when regional translators were applied.

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ACWA #4

**Description: Pollutant Parameters - Should only state “DEQ” can grant coverage**

**Comment:** Schedule B.5.b.iv: Before granting coverage under this permit, DEQ or agent will identify the impairment pollutants for which the permit registrant is required to monitor. The agent does not grant coverage, this should only state “DEQ”.

**Response:** Schedule B.6.b.iv now reads: “DEQ or agent will specify and communicate impairment pollutant(s) monitoring requirement to the permit registrant.”

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ACWA #5

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Should be re-written to make abundantly clear what new dischargers would cause or contribute to water quality standard violations is prohibited from permit coverage**

**Comment:** As currently drafted, this Condition is confusing and does not ensure that new permittees would not cause or contribute to violations of water quality standards. Condition I.1.a now states that a new discharger must meet one of the conditions in sub-parts I.1.a.(i-iv). But only sub-parts (i) (preventing impairment pollutants from exposure) and (ii) (demonstrating that impairment pollutants are not present) are then presented as alternatives to each other, separated by an “or.” DEQ may intend for sub-part (iv) (providing data and other information demonstrating that discharges are not expected to cause or contribute to a water quality standard exceedance) to be a third alternative to (i) and (ii), but that is not clear in the draft Permit. Sub-part (iii), which as written would allow a new discharger to obtain coverage by simply “Provid[ing] any analytical sampling results of stormwater discharge for any impairment pollutants. New dischargers are obligated to provide all sampling results.”

**Response:** Condition I.1.a now reads: “A new discharger to an impaired water without a Total Maximum Daily Load (TMDL), based on the EPA-approved Category 5: 303(d) list in effect at the time of permit

application for pH, copper, lead, zinc, iron, and E. coli that correspond to the specific pollutant(s) for which the water body is impaired must meet one of the following conditions to obtain coverage under this permit:

- i. Prevent exposure to stormwater for pH, copper, lead, zinc, iron and E. coli that correspond to the specific pollutant(s) for which the water body is impaired. Document the procedures taken to prevent exposure in the Stormwater Pollution Control Plan (SWPCP).
  - ii. Provide technical demonstrations that sources of pH, copper, lead, zinc, iron and E.coli that correspond to the specific pollutant(s) for which the water body is impaired are not present at the site and document these findings and considerations in the SWPCP.
  - iii. Provide DEQ or agent stormwater discharge analytical sampling results to demonstrate the discharge of stormwater is not expected to cause or contribute to an exceedance of water quality standards for pH, copper, lead, zinc, iron and E. coli that correspond to the specific pollutant(s) for which the water body is impaired at the point of discharge and retain in the SWPCP.
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ACWA #6

**Description: Sources Covered Under this Permit; Table 1 Footnote 1 - Should replace “all operations” with all “industrial activities”**

**Comment:** Since this provision has the potential to greatly increase the scope of regulated activities, the term “auxiliary operations” needs to be defined to support consistent application. Since only industrial activities are regulated under this permit, the words “all operations” should be replaced with “all industrial activities.”

**Response:** DEQ has made this recommended change.

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ACWA #7

**Description: General Comment - Instead of “bacteria” the permit should reference the criteria indictor (e.g. E. coli)**

**Comment:** NA

**Response:** In the proposed final permit, the appropriate criteria is specified where necessary and the term “bacteria” is used elsewhere as appropriate.

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ACWA #8

**Description: General Comment - pH is a characteristic of water, not a pollutant, so exposure to pH cannot be eliminated**

**Comment:** NA

**Response:** The proposed final permit requirements ensure authorized discharges maintain a pH range consistent with applicable water quality standards, but are not intended to eliminate the discharge of dissociated hydrogen ions (measured as pH).

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ACWA #9

**Description: Monitoring Frequency - Recommend the monitoring frequency and DMR reporting frequency be the same**

**Comment:** Quarterly DMR submissions (every three months), yet the monitoring period is six months in duration incongruent compliance schedules are confusing for permit registrants, significantly increase the amount of paperwork produced and reviewed, and provide little, if any benefit to water quality.

**Response:** DEQ discussed this topic during the advisory committee meetings. One of the short-term changes incorporated in 2018 reissuance of the permit from the Settlement Agreement included changing Discharge Monitoring Report submittal from annually to quarterly. This change resulted in a different sampling frequency from the reporting requirement. DEQ decided to retain the semi-annual sampling frequency timeframe to allow facilities more flexibility around sample collection.

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ACWA #10

**Description: Agent - Clarify DEQ's expectation of agents**

**Comment:** Numerous places throughout the permit include the phrase "DEQ or agent" to describe either where the permit applicant or registrant should submit information, or to establish a responsibility for a task. The first instance occurs at Condition I.1.b, which requires DEQ or agent to determine whether the conditions for granting coverage to new discharges to impaired waters have been satisfied. It will be important to have clear expectations and understand DEQs oversight role with the agents.

**Response:** The permit has been revised to clearly state that DEQ is responsible for granting permit coverage. The roles and responsibilities of agents are outlined in the agreements between DEQ and each agent. DEQ provides trainings and direction to agents throughout the permit cycle and promptly responses to any questions, need for direction or concerns received.

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ACWA #11

**Description: General Comment - Clarification of roles and expectations of agents**

**Comment:** Throughout the permit, applicants and registrants are required to submit specified materials to DEQ or agent by a certain date, unless DEQ or Agent approves a later date. Is this meant to imply that DEQ could approve later submittal of materials to an agent, or must the agent so approve?

**Response:** The clause, "DEQ or agent" refers to DEQ's delegation of certain local government or special districts to implement portions of the permit. See Schedule D.4 in the permit. Permit registrants communicate directly to the agents for all topics regarding permit implementation. This means permit



registrants in agent's jurisdictions will submit materials to the agents for approval and if needed request any approval for extensions to deadlines also from the agent.

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ACWA #12

**Description: Agent - DEQ needs to provide guidance to ensure statewide consistency on identifying monitoring requirements**

**Comment:** NA

**Response:** DEQ provides training and implementation guidance to the agents throughout the permit cycle. DEQ will provide our staff and agents with a Geocortex map with many layers including, georegions, DEQ basins, Category 5; 303(d) list impairment pollutants, and 1200-Z facility locations to ensure clarity and consistency. The map will also be available for public use. DEQ will provide direction to help agents identify monitoring requirements and as always will respond to questions and requests.

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ACWA #13

**Description: Water Quality Standards - Clarify its expectations of agent determination and communication to registrants regarding water quality exceedances**

**Comment:** Schedule A.3, Water Quality Standards, requires registrants to take specified corrective action if DEQ or agent determines that the registrant's discharge causes or contributes to a water quality exceedance. To be effective, the DEQ or agent determination must be communicated to the registrant. The draft permit is unclear as to whether the registrant must receive DEQ or agent approval of a submitted corrective action plan.

**Response:** If at any time a permit registrant discovers a discharge caused or contributed to an exceedance of instream water quality standards, they must act expeditiously. No later than 24-hours after an exceedance is discovered or they are notified by DEQ or agent, an investigation must attempt to find the conditions that caused the exceedance. The report will require the agent and DEQ to discuss and ultimately determine if the discharge can continue to be covered under the general permit. Communication will occur as it currently does where the agents communicate with permit registrants they administer the permit for and DEQ does the same.

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ACWA #14

**Description: Water Quality Standards - Delete "before the next storm event, if possible, or no later than 30 calendar days after discovery, whichever comes first"**

**Comment:** This is a vague and confusing requirement that agents will need to interpret and apply. To make this requirement enforceable, the phrase "whichever comes first" should be deleted, or a simple 30-day deadline should apply.

**Response:** If at any time a permit registrant discovers a discharge caused or contributed to an exceedance of instream water quality standards, they must act expeditiously. No later than 24-hours after they discover or they are notified by DEQ or agent, an investigation must attempt to find the conditions that caused the likely permit violation. Corrective action must be taken as soon as possible, certainly before the next storm event possibly causes or contributes to another exceedance of water quality standards. DEQ requires the permit registrant to be cognizant of precipitation events in this situation. The required report will outline the date of the discovery and date the corrective action(s) is taken.

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ACWA #15

**Description: Water Quality Standards - Recommend revise Schedule A.3 to separate actions that DEQ and agents can legally take**

**Comment:** Agents do not have the authority to revoke general permit coverage and require an individual permit. It is also questionable whether an agent could impose a compliance schedule, since DEQ handles permit compliance matters. This paragraph needs to be rewritten to separate those actions that DEQ and agents can legally take.

**Response:** Schedule A.3 has been revised for appropriateness based on authority.

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ACWA #16

**Description: Mass Reduction Measures; Re-certifying by a PE or CEG - Unclear if submittal require DEQ or agent review or approval**

**Comment:** NA

**Response:** The proposed final permit now reads: "DEQ or agent will notify permit registrant within 60 days from receipt if mass reduction certification is approved or denied."

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ACWA #17

**Description: Sheet flow - Should clarify expectations for industrial stormwater discharged in the form of sheet flow**

**Comment:** The October 2018 NPDES Permit Evaluation Report No. 1200-Z, the September 2020 public notice draft NPDES Permit Evaluation Report No. 1200-Z, and DEQ Water Quality Division's fact sheet titled "Managing Stormwater: Sheet Flow" all state that when sheet flow is exposed to industrial materials or significant materials and discharges to waters of the state, the EPA requires that those discharges be regulated under DEQ's NPDES 1200-Z permit. However, there is no clear language in the permit itself to indicate how these types of discharges are to be regulated under the permit. Further, the inclusion of "collected and concentrated" language in the definition of Discharge Point, Schedule D.3.h., can be read to exclude sheet flow from being a discharge point. To aid in consistent implementation by permit registrants, and regulatory oversight by DEQ and agents, the permit requirement should be clearly stated.

**Response:** DEQ added clarity related to sheet flow to the proposed final permit in two provisions. Under Schedule B, the following language was added: “Discharges from discharge points with shallow overland/sheet flows may need to be concentrated to obtain a sample.” The phrase “collected and concentrated” was deleted from the definition of discharge point in Schedule D.

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ACWA #18

**Description: General Comment - Should clarify that effluent limits in relationship to water quality criteria**

**Comment:** Numeric effluent limits and water quality criteria are not the same, since numeric limits are properly expressed as total recoverable metal concentration, while water quality criteria use the dissolved fraction only. DEQ should clarify in the PER their assumptions related to the translator and note that, for the purposes of the benchmark, they have made simplifying assumptions relating the benchmarks to the criteria. DEQ should clearly express the rationale for using total instead of dissolved metals in the associated fact sheet.

**Response:** DEQ acknowledges water quality criteria for metals are expressed as dissolved. However for practical reasons, dissolved criteria are translated to total for the purposes of evaluated if discharges are likely to cause or to contribute to an exceedance of the criteria in the receiving water. 40 CFR 122.54(c) requires all permit limits, standards, or prohibitions be expressed in terms of “total recoverable metal”. This ensures that regardless of the characteristics of the receiving water, the resulting percentage of the metal that is dissolved after mixing with the receiving water will not exceed the applicable dissolved criteria and will be protective of aquatic life. DEQ revised the impairment/WQBEL monitoring table in the permit to clarify that metals are expressed as total recoverable metal concentrations. Section 3.8.1 of the permit evaluation report discusses the rationale for expressing metals as total recoverable. DEQ revised the application of EPA metal translators to provide for regional metal translators where appropriate. Appendix C of the permit evaluation report describes the application of translators for metals.

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ACWA #19

**Description: Authorized Non-Stormwater Discharges - Need to be consistent with MS4 Phase I permits**

**Comment:** The authorized non-stormwater discharges in the draft 1200-Z General Permit are inconsistent with those allowed in draft Phase I MS4 permits. Since the MS4 provides that non-stormwater discharges allowed under “another NPDES permit” (presumably including a 1200-Z) are allowed, it is important to understand whether the authorization of some otherwise illicit discharges in the 1200-Z was intentional. DEQ should resolve these inconsistencies between the MS4 Phase I permit and the 1200-Z permit.

**Response:** 40 CFR 122.26 defines illicit discharge as: “any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities.” The 1200-Z permit conditions are consistent with federal regulations, state rules and statutes. Industrial facilities permitted under the 1200-Z permit may only discharge authorized non-stormwater discharges, stormwater and non-contaminated groundwater as outlined in that permit. Those allowable discharges have been determined to be appropriate specifically as it relates to industrial

stormwater. The allowable discharges in other NPDES permits are appropriately developed and regulated specific to the pollutant source(s) associated with those permits. The 1200-Z permit and the MS4 permits are not inconsistent, but instead serve different purposes, and appropriately address different potential pollutant sources. DEQ is always available to answer questions that any agent or MS4 community has about the 1200-Z permit and differences regarding the allowable discharges included in other NPDES permits.

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ACWA #20

**Description: General Comment - Should address the potential impact of flow control and hydromodification on receiving stream water quality**

**Comment:** To avoid conflict with these standards, the 1200-Z permit should require registrants to comply with the local MS4 jurisdiction's requirements for development and redevelopment. To address hydromodification impacts on water quality, MS4 permits require the prioritization of on-site retention and infiltration approaches to control stormwater runoff. While these approaches are prioritized, site conditions (such as contaminated soils) may justify other approaches, which would be identified during the local development permitting process. MS4 permittees have incorporated these requirements and processes into their development standards, which apply to the construction and redevelopment of industrial facilities, including those covered by the 1200-Z General Permit.

**Response:** DEQ aligns 1200-Z and MS4 stormwater permit requirements and goals where appropriate. However, federal rules dictate that water quality-based standards and applicable technology-based standards guide the development of the 1200-Z permits; whereas, the Maximum Extent Practicable standard guides the development of MS4 permits. DEQ regards hydro-modification and post-construction stormwater quality development standards most appropriately addressed and implemented by the MS4 land use authority at varying geographic scales.

Further, DEQ has determined it is infeasible to include specific requirements in the 1200-Z that address other obligations the permit registrant may be subject from municipal jurisdictions since each MS4 manages flow control and hydro-modification specific to the waterways each discharges into. General permits are intended to cover a broad range of dischargers operating with similar conditions. Site-specific requirements of the nature proposed in the comment are more appropriate to individual NPDES permits.

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ACWA #21

**Description: Mass Reduction Measures - Schedule A.6.d is unclear; should it require implementation instead of maintenance?**

**Comment:** NA

**Response:** The provision is applicable to built systems operating under approved mass reduction waiver from treatment as a Tier 2 corrective action response or a system that can meet all requirements of the re-certification. Thus, any improvements and/or corrective actions identified by the re-certification report would require maintenance on an existing structure.

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**Description: Cover Page - Should change to make the resolve conflict between Schedule E and Schedule F**

**Comment:** Because Schedule E is the more specific schedule, it should prevail. Using “may” in this context creates uncertainty. Replacing “may not apply” with “do not apply” would make clear that the provisions of Schedules E and F are superseded by any conflicting requirement in other schedules of the permit.

**Response:** Schedule F are conditions applicable to all permits from 40 CFR 122.41. These same general conditions are included in every NPDES permit issued in Oregon. DEQ adopts Schedule E from EPA and therefore, there may be conflicts between both conditions, though the permit is clear which permit requirements are applicable when or if there are conflicts. DEQ declines to make the suggested edit.

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## **6. Comments from: Boise Cascade Wood Products, LLC**

BOISE CASCADE #1

**Description: Monitoring Waiver - Maintain current position that monitoring waivers, once issued, are valid until the permit expires**

**Comment:** It would be confusing and overly burdensome to automatically invalidate a monitoring waiver during the final permit year, especially where the permittee has been issued a similar waiver during prior permit terms. ODEQ should maintain its current position that monitoring waivers, once issued, are valid until the permit expires. Because all waivers would expire at the end of the permit term in any event, reinstating the monitoring requirement for the final year of the permit term would have little or no value. Limiting the waiver for the final year of the permit term would substantially reduce the value of the waiver to permit registrants without providing any substantially useful data in return. This creates an additional year in the permit term with required monitoring that could not be used as eligible data to establish a monitoring waiver.

**Response:** Stormwater monitoring data is important information for DEQ to evaluate industrial stormwater discharge trends. Reinstating monitoring requirements on July 1, 2025, will provide DEQ with valuable discharge data for future permits and ensure pollution prevention measures continue to be maintained throughout the permit cycle. DEQ retained the requirement that approved monitoring waivers for benchmarks are valid until July 1, 2025. The National Academy of Sciences Report on Improving the MSGP (2019) findings included that quarterly stormwater event samples collected over one year are inadequate to characterize industrial stormwater discharge or describe industrial source control measures performance over the permit term.

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**Description: Permit Coverage and Exclusion from Coverage - Notice of permit assignment should be contained in a specific, dated electronic document that identifies all applicable monitoring requirements, discharge limits, and discharge benchmarks.**

**Comment:** Proposed 1200-Z Permit state that DEQ or its agent will notify permit registrants of assignment under the permit and applicable monitoring requirements. The form of the notice and the means by which it will be sent, however, are not specified. Suggested revisions to Proposed 1200-Z Permit conditions I.2.b.ii, I.3.a, I.3.d, A.4.b.ii, A.7.c.ii, A.11.f.i, B.2, B.3, and B.4 to clarify the content of the notice. The form of the notice and the means by which it will be sent—provided that it is contained in a specific, dated document that is readily and publicly accessible—may be best determined by DEQ as it develops and gains experience with its electronic reporting and online document systems.

**Response:** DEQ’s regulatory programs are in the process of modernizing to the new online system called “Your DEQ Online.” DEQ will connect with industrial stormwater permit registrants to help them transition into using this new system once it is available. Because DEQ’s agents will not be included in the first phase of implementation of “Your DEQ Online,” the communications strategy for each facility will depend on where it is located. At this time in the renewal process the permit language specific to permit monitoring requirements communication must be broad to meet electronic reporting requirements and DEQ’s agents phased use of “Your DEQ Online.” All existing permit registrants will receive mailed notice of permit coverage after the permit is renewed. Agents will notify existing and new permit registrants of specific monitoring requirements through a mailing in the same manner currently used until such time they transition to the electronic system. For existing and new permit registrants within DEQ jurisdictions, “Your DEQ Online” will provide an easy and intuitive online system for connecting to DEQ, including upcoming reporting obligations. DEQ or agent will provide each facility with sampling requirements, pollutant concentrations and monitoring frequency based on applicants’ site information. Monitoring parameters include applicable statewide benchmarks, sector-specific benchmarks (primary and co-located), impairment monitoring and numeric effluent limits.

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BOISE CASCADE #3

**Description: Permit Coverage and Exclusion from Coverage; Existing Facilities covered under the 2017 1200-Z NPDES General Permit - Should have at least 60 days after receipt of notice of permit coverage assignment to update their SWPCPs for existing permit registrants**

**Comment:** Condition I.3.a of the Proposed 1200-Z Permit requires existing permit registrants to submit an updated SWPCP to DEQ no later than August 31, 2021, but it does not identify a deadline by which DEQ will provide notice of permit coverage assignment under the renewed permit, including applicable monitoring and other requirements. Although DEQ expects to provide the notice well in advance of August 31, it will not be practicable for the permit registrant to update its SWPCP by then if the notice is delayed for any reason. OISG has suggested a revision to condition I.3.a that would require the updated SWPCP to be submitted by August 31 or within 60 days of receipt of the notice of assignment, whichever is later.

**Response:** Once the permit is issued, DEQ will communicate information regarding the permit renewal as soon as possible. Updating a facilities’ SWPCP is not dependent upon receipt of notice of permit coverage under the renewed permit. Updating a facilities’ SWPCP may begin as soon as the permit is finalized and issued. Based on anticipated rulemaking adoption by the end of March 2021, as required

under the Consent Decree, all existing facilities will have five months to update their SWPCP. DEQ does not require the SWPCP to include specific monitoring requirements. DEQ understands that more than 60 days may be needed to revise the SWPCP for some facilities. The 2017 permit allowed just short of five months for updating the SWPCP, which is consistent with the timeline in the proposed final permit.

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BOISE CASCADE #4

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Proposed 1200-Z Permit would prohibit the use of temporary covers, such as tarps, but no justification for this change is provided in the draft evaluation report. There will undoubtedly be both short-term and long-term circumstances in which permanent structures are not feasible, but tarps or other temporary covers would minimize exposure. A permit registrant should not be put in the position of choosing a less environmentally protective solution—no cover at all—if a permanent structure is not practicable.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to minimize exposure and to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure.

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BOISE CASCADE #5

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not be subject to an enforcement action for violating the narrative technology-based effluent limits**

**Comment:** A permit registrant should not be subject to an enforcement action for violating the narrative technology-based effluent limits if it has explained in its SWPCP how it will implement the limits, has submitted the SWPCP to DEQ, has timely made any changes to the SWPCP directed by DEQ, and has complied with the SWPCP. Translating a general permit's necessarily vague and subjective narrative technology-based effluent limits into facility-specific stormwater controls requires professional and policy judgments that only DEQ can ultimately make. A permit registrant should not be subject to an enforcement action, including a citizen suit, for violating the narrative limits when it has (1) prepared an SWPCP that explains how it will implement the narrative limits, (2) submitted the SWPCP to DEQ or its agent, (3) made any changes in the SWPCP that DEQ or its agent has directed, and (4) fully complied with the relevant provisions of the SWPCP. Permit registrant should not be subject to an enforcement action when these conditions have been met.

**Response:** DEQ appreciates the input. The draft permit language did not read as intended. DEQ has revised the wording to meet the intent: "Failure to implement any narrative technology-based effluent limits in Schedule A.1 and Schedule E, and other control measures or operational practices described in the SWPCP is a permit violation."

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**Description: SWPCP Required Elements; Map - Remove proposal to identify on the site map “areas where pesticides, herbicides, soil binders, and fertilizers are applied”**

**Comment:** Proposed 1200-Z Permit condition A.10.b.i(9) would require the SWPCP site map to identify “areas where pesticides, herbicides, soil binders, and fertilizers are applied.” Requests the removal of this proposed requirement. It would be burdensome to map the specific areas of application, particularly for infrequent uses, and it would also clutter the site map, making it difficult to use. Moreover, because the permit already requires the SWPCP to include a description of these “significant materials” and their use, it is unclear what would be gained by including this information on the site map.

**Response:** DEQ did not include this requirement in the proposed final permit.

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BOISE CASCADE #7

**Description: SWPCP Required Elements - Remove proposal to develop an operation and maintenance plan for all passive stormwater treatment systems**

**Comment:** Because of the large number of devices that might be characterized as “passive treatment systems,” developing and implementing an operation and maintenance plan for each of these systems would be unduly burdensome. Moreover, the current permit already requires the SWPCP to identify “routine maintenance standards” for passive treatment systems. Given the nature of these systems, the benefit of also requiring an operation and maintenance plan for them is not apparent or explained in the draft evaluation report.

**Response:** DEQ declined to make the suggested change as it is imperative that all treatment used at facilities have an appropriate operation and maintenance plan for the treatment systems in place and that the plans are implemented.

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BOISE CASCADE #8

**Description: Tier 1.5; Appendix B - Revise its proposal to require permit registrants to only consider, not implement, the Appendix B controls**

**Comment:** DEQ has not evaluated whether every facility covered by the 1200-Z permit can practicably implement every stormwater control specified in Appendix B for the facility’s major industrial group, much less implement those controls within 60 days. Moreover, many of the Appendix B controls are generic measures that are not targeted to specific pollutants and that may do little or nothing to reduce the concentrations of the pollutant or pollutants that triggered Tier 1.5. EPA itself has not substantially evaluated the controls and does not propose to require them “where it would be counterproductive to the implementation of another control measure, or not result in any reduction in the discharge of the pollutant of concern.” Appendix B contains a useful list of industry-specific controls for permit registrants to consider.

**Response:** DEQ did not include Tier 1.5 and associated Appendix B checklist in the proposed final permit. The industrial-specific checklists will be recommended guidance for permit registrants that have



benchmark exceedances as part of a Tier 1 corrective action response, thus will not be mandatory. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. The industrial-specific checklist items are strongly encouraged to be considered by permit registrants; however, DEQ acknowledges that it is not an exhaustive list of measures that may be selected and implemented.

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BOISE CASCADE #9

**Description: Applicable Water Quality Criteria; Table 6 - Should be expressed as dissolved, not total, with the exception of iron**

**Comment:** Water quality criteria for copper, lead and zinc should be expressed as dissolved, not total. OAR 340-041, Table 30, provides water quality criteria for metals, including copper, iron, lead, and zinc. All the metals criteria, with the exception of iron, are expressed as dissolved concentrations. In the draft permit, Schedule A.13.b and Schedule B.4, including Table 6 refer to “total” copper, lead, zinc and other metals in describing water quality criteria or pollutants of concern. These should all be changed to “dissolved” in describing water quality criteria.

**Response:** 40 CFR 122.54(c) requires all permit limits, standards, or prohibitions be expressed in terms of “total recoverable metal”. This assures that regardless of the characteristics of the receiving water, the resulting percentage of the metal that is dissolved after mixing with the receiving water will not exceed the applicable dissolved criteria and will be protective of aquatic life. The proposed final permit and the permit evaluation report were revised to clarify that benchmarks and impairment concentrations, as well as WQBELs, have been converted from the dissolved metal concentrations to total recoverable metal concentrations. The table’s that include impairment monitoring and escalating water quality-based effluent limits have been renamed appropriately and footnotes added to indicate when regional translators were applied.

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BOISE CASCADE #10

**Description: Narrative Technology-based Effluent Limits (TBELs); Housekeeping - Remove “Document the defined schedule”**

**Comment:** Some of the items listed in the condition, e.g., litter pick-up, keeping materials orderly and labeled, proper maintenance of vehicles do not lend themselves to a defined schedule. Vehicles (forklifts) are maintained based on hours of usage, which fluctuates, and litter pick-up occurs on an as needed basis.

**Response:** When a housekeeping measure is conducted on an as needed basis, the stormwater pollution control plan may indicate such. To the best of the facilities ability, defined schedules of housekeeping measures must be included within the SWPCP. If some housekeeping such as maintenance of forklifts is based on hours of usage, the SWPCP must provide the known defined metric. The proposed final permit requires the SWPCP to include known maintenance schedules and frequency of housekeeping measures, rather than keeping “document the defined schedule” in the narrative TBEL section.

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**Description: Discharges to Impaired Waters - Should remove language “must comply with Schedule A.3”**

**Comment:** Schedule A.4.a.i requires discharges to impaired waters to also comply with the permit’s general narrative water quality-based effluent limits in condition A.3. The reference to condition A.3 is confusing and is unclear on whether the general provisions supersede the permit’s specific provisions for discharges to impaired waters. The permit’s specific requirements for discharges to impaired waters should apply in lieu of the general narrative water quality-based effluent limits in condition A.3.

**Response:** DEQ disagrees that the permit’s specific requirements for discharges to impaired waters should apply in lieu of the general narrative water quality-based effluent limits in Schedule A.3. Schedule A.3 requires that discharges that cause or contribute to an instream exceedance of water quality standards implement appropriate measures to address these pollutant contributions, and provides for the potential of additional monitoring to evaluate the effectiveness of pollutant controls. This is not in conflict with any permit provisions for discharges to impaired waters. Without further explanation provided in the comment regarding what confusion exists or which parts of the permit may be in conflict or otherwise be superseded, DEQ is unable to further address this comment.

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BOISE CASCADE #12

**Description: Tier 1.5; Appendix B - Request DEQ wait for EPA to finalize their Appendix Q prior to including it**

**Comment:** This addition is burdensome. Also, of concern with Appendix B is that many of the SCM’s are addressed in other media regulations and programs, e.g., Air permits, SPCC, State Fire Marshall reporting, Universal Waste. It appears that implementation of this document is stepping outside the boundaries of stormwater controls. There are 22 pages for Sector A - Timber Products Facilities. Many are not applicable and may not have anything to do with the pollutant that triggered the Tier 1.5 and may be managed under another more appropriate program. If these activities are conducted in doors and will not influence stormwater runoff, the permittee should have the flexibility not to implement those Appendix B controls.

**Response:** DEQ modified the proposed final permit and associated industrial-specific checklists to be an optional recommended technical assistance tool for permit registrants that have benchmark exceedances. EPA did not include Appendix Q in the final MSGP. Thus, DEQ did not including include Tier 1.5 or Appendix B in the proposed final permit. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. The site operational and source control measures within the industrial-specific checklists are strongly encouraged to be considered as part of the Tier 1 corrective action responses; however, DEQ acknowledges that it is not an exhaustive list of controls that could be selected and implemented.

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**Description: Tier 2 - Should allow for a combination of source controls and/or treatment measures, with the goal of achieving the benchmark(s) in this permit**

**Comment:** As it states in this condition, the goal is to meet the benchmark(s) thus it should not matter if the method for reaching benchmarks is by control or treatment. Permittee's should be allowed flexibility to choose the best method of achieving the benchmark(s) for our facilities. If an outfall already had treatment in place but still required Tier 2, the facility was required to upgrade the treatment whether that action was beneficial to the Tier 2 corrective action plan or not, or could just control be applied, it had to include treatment too.

**Response:** There are many factors that may play a role when a permit registrant's monitoring results continue to exceed the geometric mean at a monitoring point that already has a form of treatment. Some of these factors may include poor or incorrect maintenance, incorrectly sized system or control measures, increased pollutant loading or perhaps even the wrong choice of treatment. The definition of treatment measures in the permit means, Best Management Practices that are intended to remove pollutants from stormwater. These measures include: settling basins, oil/water separation equipment, detention/retention basins, media filtration devices, electrocoagulation, constructed wetlands and bioswales. The proposed final permit requires Tier 2 corrective action response to include some form of treatment.

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BOISE CASCADE #14

**Description: Metals Benchmark Concentration Reduction - Significantly lowered in some regions and the cost to comply may be massive**

**Comment:** Boise Cascade supports the Oregon Forest and Industries Council (OFIC) comments on this subject and requests the Department evaluate the Geosyntec report submitted with their comments to ensure that the lowered benchmarks are justified.

**Response:** DEQ thoroughly evaluated all the comments received during the comment period. The specific responses to comments on Geosyntec reports are included in this response to comments. The rationale for expanding the georegions is to establish regionally appropriate water quality-based effluent limits and benchmarks to protect water quality. DEQ is confident in the final benchmarks are achievable and protective of water quality.

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BOISE CASCADE #15

**Description: Inspections; Visual Observation - Remove "sample collection required" applicable to suspended and settleable solids**

**Comment:** It is unclear what is meant by "sample collection required." For what must the sample be analyzed, if anything? The draft evaluation report suggests that the sample would be collected and analyzed only for suspended and settleable solids if they are observed. There is no direction on how the sample is to be analyzed, how the permittee should respond to the results or how to report the results.

**Response:** The proposed final permit clarifies the requirements for visual observations to observe signs of pollutants, must be done by collecting a sample in a clean glass or plastic container and “observing” the sample in a well-lit area. However, the sampling collection procedures are not required to be consistent with 40 CFR 136. The permit evaluation report deleted any requirements to use an Imhoff Cone for settleable solids evaluation and the proposed final permit no longer requires visual observation for settleable solids. During a monthly discharge event, the permit registrant must collect a sample of discharge and look for the presence of pollution. The visual observations are only required during a discharge event and may be performed at the same time the facility collects a sample to send to the analytical laboratory. Visual observations however, must be performed on all discharge points. For those facilities that have more discharge points than monitoring points, the facility staff must pull more samples than just those they intend to send to the lab. The permit does include an exemption for exceptionally large facilities. This brings the 1200-Z permit in accordance with EPA’s MSGP requirements regarding visual assessment.

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BOISE CASCADE #16

**Description: Inspections - Remove ambiguous and confusing language “Any additional control measures needed to comply with the permit”**

**Comment:** Applicable to Schedule B.11.h.iv.: “Any additional control measures needed to comply with the permit”

**Response:** While EPA’s 2015 and draft 2020 permit includes this language, DEQ recognizes this requirement may be too broad and has removed the provision from the final permit.

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## 7. Comments from: B&R Auto Wrecking

B&R AUTO WRECKING #1

**Description: General Comment - Urge DEQ to postpone incorporating the pending federal draft into Oregon’s framework until the entire EPA permit is finalized and subsequently adopted**

**Comment:** NA

**Response:** EPA’s final MSGP was issued in mid-January 2021. DEQ used the final MSGP to revise the 1200-Z where appropriate.

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B&R AUTO WRECKING #2

**Description: General Comment - Strong belief that many of the proposed rule changes would negatively impact the environment, as well as employee and public safety**

**Comment:** NA

**Response:** The federal Clean Water Act provides the framework for the industrial stormwater discharge general permit conditions. DEQ's water quality permitting program goals are to ensure Oregon's waters are protected for fish and other aquatic life, recreation, drinking, agriculture, industry and other beneficial uses.

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B&R AUTO WRECKING #3

**Description: General Comment - Proposed changes included in the draft will inhibit environmentally conscious recyclers to do their best work, leaving the door wide-open for "bad actors" to thrive**

**Comment:** NA

**Response:** This comment did not have enough specificity to address the draft or final permit conditions.

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## 8. Comments from: Pacific Seafood Group

PSG #1

**Description: Permit Coverage and Exclusion from Coverage; Name Change or Transfer - No need for public notice**

**Comment:** This section requires public notice of a SWPCP for a legal name change, even if there are no substantive changes to the SWPCP. Condition I.4.c requires submittal of a new application (and updated SWPCP) and does not allow for changes in operations as part of a permit transfer, so, under (a)(iv), there would, by definition, be no change in operations and therefore no need for public notice.

**Response:** DEQ modified the language in this condition. DEQ does not intend to post a stormwater pollution control plan for a 30-calendar day public notice for a name change or transfer between legal entities when there is no change in operations.

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PSG #2

**Description: Narrative Technology-based Effluent Limits (TBELs) - Many of these narrative limits are subjective**

**Comment:** This section presents Narrative Technology-based Effluent Limits (TBELs). Many of these narrative limits are subjective. For example, the terms "minimize" and "to the extent... practicable" are used without definition. However, in Schedule A.2.e, the new Draft specifies that "Failure to meet the technology-based effluent limits in Schedule A.1 and Schedule E, is a permit violation." Due to the subjective nature of many of the narrative TBELs, the new condition of Schedule A.2.e presents an unreasonable burden on permittees to defend the subjective determination that they have done everything to the extent practicable to minimize pollution.

**Response:** Minimize is defined in Schedule D. Schedule A.2.e now reads: “Failure to implement any narrative technology-based effluent limits in Schedule A.1 and Schedule E, and other control measures or operational practices described in the SWPCP is a permit violation.” The proposed final permit framework requires each facility to design and implement a stormwater pollution control plan and implement the plan to prevent pollutant discharge.

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PSG #3

**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Not reasonable to implement corrective action before next storm event if practicable or no later than 30 calendar days**

**Comment:** Requires a facility to implement corrective actions before the next storm event “if practicable” and no later than 30 calendar days. Before the next storm event could mean within days, and “if practicable” again requires an unreasonable burden to defend a subjective determination. With regards to the 30 calendar days requirement, if any purchase or construction of materials or infrastructure is required, it is not reasonable to expect that can be completed within 30 days. Equipment lead times are typically 60 to 120 days, and construction requires identification of qualified contractors, contracting, procurement, scheduling, and the actual construction work, which can also require 60 to 120 days.

**Response:** DEQ revised this condition and retained the 2018 permit allowance for the permit registrant to obtain DEQ or agent approval when the corrective action cannot be implemented before the next storm event or no later than 30 calendar days from discovery.

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PSG #4

**Description: Discharges to Impaired Waters; Existing Dischargers to Impaired Waters with a TMDL - Requirement appears to prohibit discharge if TMDL does not include specific waste load allocation**

**Comment:** If a TMDL does not include a specific waste load allocation (WLA) for stormwater from a facility, this requirement appears to prohibit discharge. Unless DEQ is certain that all relevant facilities discharging stormwater to water bodies with TMDLs have received WLA’s, this requirement could cause significant hardship.

**Response:** A facility discharging to a waterbody with an applicable TMDL must meet any applicable wasteload allocation. A TMDL may provide an allocation specifically to a facility, or a wasteload allocation for all industrial stormwater (or other applicable category such as urban stormwater) set forth in the TMDL and as implemented in the permit. If the applicable TMDL does not establish an industrial stormwater as a source such that no wasteload allocation is provided, the compliance with the terms and conditions of the permit is presumed consistent with the TMDL.

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**Description: Mass Reduction Measures; Re-certifying by a PE or CEG - Unnecessary burden on the permittee**

**Comment:** This requires facilities that have taken mass reduction measures in the past, even if it was in a Tier 2 corrective action that was prepared by a P.E., to re-hire a P.E. to re-evaluate and certify the system. This is an unnecessary burden on the permittee, particularly if the permittee is meeting all other permit requirements, benchmarks, etc. EPA regulation 40 CFR 122.44(i)(4) only requires an annual report certified by a corporate officer.

**Response:** Re-certification of the adequacy of control measures is necessary to account for site/facility changes over time, potential operational changes, and determination if existing control measures remain viable and effective, especially related to mass reduction devices. The use of a PE or CEG ensures the ongoing ability of existing mass reduction measures to meet their intended function.

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PSG #6

**Description: Numeric Effluent Limits; TMDL - If a TMDL does not include a specific waste load allocation (WLA) for stormwater from a facility, this requirement appears to prohibit discharge**

**Comment:** If a TMDL does not include a specific waste load allocation (WLA) for stormwater from a facility, this requirement appears to prohibit discharge. Unless DEQ is certain that all relevant facilities discharging stormwater to water bodies with TMDLs have received WLA's, this requirement could cause significant hardship.

This comment is applicable to Schedule A.4.b: Existing Discharger to an Impaired Water with a TMDL (based on EPA-approved TMDLs as of March 31, 2021): i. Must comply with all applicable requirements of TMDLs with wasteload allocations for industrial stormwater discharges. Permit registrant must comply with Schedule A.3.

**Response:** A facility discharging to a waterbody with an applicable TMDL must meet any applicable wasteload allocation. A TMDL may provide an allocation specifically to a facility, or a wasteload allocation for all industrial stormwater (or other applicable category such as urban stormwater) set forth in the TMDL and as implemented in the permit. If the applicable TMDL does not establish an industrial stormwater as a source such that no wasteload allocation is provided, the compliance with the terms and conditions of the permit is presumed consistent with the TMDL.

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PSG #7

**Description: Preparation and Implementation of SWPCP - Not include control measure or BMP when the narrative TMDL is not applicable to the facility**

**Comment:** This requirement should include a provision for not including a control measure or BMP when the narrative TMDL is not applicable to the facility.

This comment is applicable to Schedule A.8.c: The SWPCP must include control measures/BMPs that implement each narrative technology-based effluent limit to eliminate or reduce the potential to contaminate stormwater and prevent exceedance of instream water quality standards.

**Response:** The comment unclear, thus DEQ did not make the suggested change.

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PSG #8

**Description: SWPCP Revisions - Add provision to allow for changing monitoring points in response to another permit requirement or DEQ requirement, as long as DEQ has been notified, even if DEQ has not yet approved the change**

**Comment:** This requirement does not allow changes to monitoring points until DEQ or agent have approved the SWPCP revision; however, it is conceivable that there could be a conflicting requirement to change a monitoring point and that this could occur before DEQ approves a SWPCP revision. A provision should be added to allow for changing monitoring points in response to another permit requirement or DEQ requirement, as long as DEQ has been notified, even if DEQ has not yet approved the change.

**Response:** DEQ declined to make the change because DEQ or agent review and approval of all proposed changes in monitoring points is important to ensure permit compliance.

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PSG #9

**Description: Tier 1 and Tier 1.5 Corrective Action Response based on Exceedances of Benchmarks - Wording is not clear/missing words**

**Comment:** The following language seems to be missing words/is not clear: “qualifying sample of any applicable statewide benchmarks.”

Comment applicable to Schedule A.11.b.i: If the permit registrants’ monitoring results exceeds a qualifying sample of any applicable statewide benchmarks in Table 4 of this permit or sector-specific benchmarks in Schedule E.

**Response:** DEQ appreciates the comment and has made the suggested change. The proposed final permit now reads: “If qualifying sample results exceed any applicable statewide benchmark(s) in Table 4 of this permit or any sector-specific benchmarks in Schedule E.” Qualifying samples are collected at least 14-days apart and are analyzed using approved methods (see Schedule F) to satisfy the Quality Assurance/Quality Control requirements of the method, as defined in Schedule D.

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PSG #10

**Description: Tier 1.5 Corrective Action Response - Submission requirements should come before implementation requirements**



**Comment:** Requires implementation of controls before submission of the checklist, but submission requirements are discussed in Schedule A.11.f.iii. Submission requirements should be discussed first to avoid confusion.

**Response:** The proposed final permit does not include Tier 1.5 requirements.

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PSG #11

**Description: Water Quality-based Effluent Limits - Review this section by a technical editor**

**Comment:** This section is missing words/is worded awkwardly, as is much of the rest of Schedule A.13. This section should be reviewed by a technical editor.

**Response:** DEQ revised this section of the proposed final permit to improve readability.

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PSG #12

**Description: Water Quality-based Effluent Limits - It is not clear the basis for the copper benchmark concentration based on 10th percentile of geo-regional data**

**Comment:** In table 6, the basis for the copper benchmark concentration is cited as the “Biotic Ligand Model based on 10th percentile of geo- regional data”, but it is not clear why the 10th percentile is used.

**Response:** The proposed benchmarks are based on a limit that would correspond to a 10% exceedance probability of the criteria for hardness-based metals and copper. The 10% is built into the benchmark procedure and is a risk-based target.

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PSG #13

**Description: Schedule E; Saltwater benchmarks - There does not appear be a general way for saltwater benchmarks to apply to a facility other than through the Sector specific requirements in Schedule E, for example water quality-based effluent limits for saltwater dischargers**

**Comment:** NA

**Response:** The proposed final permit includes saltwater impairment concentrations/numeric water quality-based effluent limits for copper, lead and zinc. DEQ used a similar modeling methodology to the freshwater benchmarks. Because the saltwater acute aquatic life criteria is set and does not depend on the Biotic Ligand Model or hardness, there are some differences. The saltwater benchmarks were evaluated separately from the freshwater coastal georegion.

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**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Should not remove allowance for DEQ or agent to approve a corrective action deadline more than 30 days**

**Comment:** The revised Draft permit also removes the allowance for DEQ to approve a longer time frame, which is obviously necessary if long purchasing lead times or construction is required.

**Response:** The proposed final permit retains the 2018 permit language and allowance for an approval from DEQ or agent to extend the deadline to modify and implement control measures.

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PSG #15

**Description: Metals Benchmark Concentration Reduction - DEQ has dramatically reduced benchmarks for lead and zinc in this permit, which may completely invalidate past investments made in treatment infrastructure**

**Comment:** DEQ has dramatically reduced benchmarks for lead and zinc in this permit, which may completely invalidate past investments made in infrastructure to treat for these compounds. It may not be possible to identify a source of for these compounds which are ubiquitous in the environment. For example, zinc is present in tires and copper is present in brake pads, and for facilities located adjacent to heavily trafficked roads the source of zinc and/or copper could be dust from tire wear from the road. This source would be difficult to identify and impossible to mitigate. Facilities should not be required to treat stormwater that is contaminated by offsite sources of pollutants.

**Response:** All prior investments will continue to benefit facilities in meeting more stringent benchmarks by reducing in pollutant levels in industrial stormwater. Depending on the location of any given facility, some of the benchmarks are less stringent than in the prior permit. The reductions are based on a well-vetted and technically sound modeling methodology that builds in a dilution of 5 and sets the benchmark at a 10 percent probability of exceeding the water quality criterion. Tier 2 corrective action responses are only applicable to statewide benchmarks exceedances. The proposed final permit includes a provision that exempts current permit registrants with a Tier 2 corrective action deadline of June 30, 2021, or later from additional Tier 2 corrective action responses at those discharge points and for the specific pollutant during the next 5 year permit cycle. The permit also contains provisions to address off-site sources of contamination, including represented sampling and background exemptions.

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PSG #16

**Description: Schedule E; Sector U - Unclear condition in Schedule E that facilities that discharge to the Pacific Ocean (or estuarine waters) will be assigned saltwater benchmarks, Sector U does not contain saltwater benchmarks**

**Comment:** Some facilities covered under Sector U discharge into the Pacific Ocean. Schedule B.5 and Schedule E states that facilities that discharge to the Pacific Ocean (or estuarine waters) will be assigned saltwater benchmarks. However, Sector U does not define saltwater benchmarks for Food and Kindred Products. The chronic water quality criteria for copper for saltwater is 0.0031 mg/L. The Permit

Evaluation Report (Section 14) cites a constant dilution factor of 5. It appears the saltwater benchmark for copper should be 0.0155 mg/L instead of 0.0048 mg/L.

**Response:** The proposed final permit includes saltwater benchmark concentrations for copper, lead and zinc using the same methodology as the freshwater benchmarks (dilution factor of 5 and 10 percent exceedance probability). Those benchmarks will be applied to facilities discharging to the Pacific Ocean instead of the freshwater metals benchmarks. Estuarine waters will be assigned the most stringent benchmark between the freshwater and saltwater.

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PSG #17

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not be subject to an enforcement action for violating the narrative technology-based effluent limits**

**Comment:** A permit registrant should not be subject to an enforcement action for violating the narrative technology-based effluent limits if it has explained in its SWPCP how it will implement the limits, has submitted the SWPCP to DEQ, has timely made any changes to the SWPCP directed by DEQ, and has complied with the SWPCP. Translating a general permit's necessarily vague and subjective narrative technology-based effluent limits into facility-specific stormwater controls requires professional and policy judgments that only DEQ can ultimately make. A permit registrant should not be subject to an enforcement action, including a citizen suit, for violating the narrative limits when it has (1) prepared an SWPCP that explains how it will implement the narrative limits, (2) submitted the SWPCP to DEQ or its agent, (3) made any changes in the SWPCP that DEQ or its agent has directed, and (4) fully complied with the relevant provisions of the SWPCP. Permit registrant should not be subject to an enforcement action when these conditions have been met.

**Response:** DEQ appreciates the input. The draft permit language did not read as intended. DEQ has revised the wording to meet the intent: "Failure to implement any narrative technology-based effluent limits in Schedule A.1 and Schedule E, and other control measures or operational practices described in the SWPCP is a permit violation."

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PSG #18

**Description: General Comment - Facilities with industrial stormwater and individual wastewater permits, DEQ should view all discharges holistically and permit all discharges under an individual NPDES wastewater permit**

**Comment:** DEQ's apparent intent to attach new, separate stormwater permits to previously permitted facilities should be reviewed. Regulating a portion of the stormwater with the wastewater and a separate portion without the wastewater is redundant and unnecessary and breaks with historical precedent. It also makes for unnecessary administrative complexity. DEQ should view all discharge from such facilities holistically and wherever possible address permitting concerns under a single permit.

**Response:** In many cases, facilities in Oregon that are regulated under NPDES permits for wastewater and stormwater have separate discharge quality and discharge points. For those facilities, it is appropriate to have separate permit coverage for the wastewater and stormwater to ensure each discharge meets current regulations and has clear, consistent requirements. This is consistent with how sites are managed

by EPA and other states that have more than one NPDES permit. In addition, combining the permits can add complexity and potential costs since the monitoring and reporting requirements for stormwater and wastewater are very different.

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PSG #19

**Description: General Comment - The entire permit should be reviewed by a technical editor**

**Comment:** There are numerous grammatical errors and some sections are difficult to understand due to missing words or incomplete sentences.

**Response:** DEQ revised the draft permit in many areas based on comments received. Without specifics, DEQ was unable to make edits in response to this comment.

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PSG #20

**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Schedule A.2.e.i is an incomplete sentence**

**Comment:** NA

**Response:** The permit does not contain Schedule A.2.e.i. There was insufficient information in this comment to assess potential changes to the permit.

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PSG #21

**Description: General Comment; Definitions - The permit does not define “qualifying sample”**

**Comment:** NA

**Response:** The draft permit, as well as the 2018 permit and past iterations of the permit, defines qualifying sample in Schedule D, Definitions.

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PSG #22

**Description: General Comment - Facilities should not be required to treat stormwater that is contaminated by offsite sources of pollutants**

**Comment:** NA

**Response:** Permit registrants are responsible for the quality of their discharges, regardless of what may be added as a result of run-on from other sources or legacy/anthropomorphic sources of pollutants. EPA’s long-standing position, consistent with the Clean Water Act and EPA’s permitting regulations, is that operators are responsible for the quality of their discharges, regardless of what may be added as a result of

run-on from other sources. The Clean Water Act does not allow EPA or states to set a site-specific criteria equal to the natural background since doing so could increase the level of pollutants in the water body that might be above the natural background, which would not be protective of aquatic life, at a minimum.

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## 9. Comments from: B&B Leasing Company

B&B LEASING #1

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not be subject to an enforcement action for violating the narrative technology-based effluent limits**

**Comment:** A permit registrant should not be subject to an enforcement action for violating the narrative technology-based effluent limits if it has explained in its SWPCP how it will implement the limits, has submitted the SWPCP to DEQ, has timely made any changes to the SWPCP directed by DEQ, and has complied with the SWPCP. Translating a general permit's necessarily vague and subjective narrative technology-based effluent limits into facility-specific stormwater controls requires professional and policy judgments that only DEQ can ultimately make. A permit registrant should not be subject to an enforcement action, including a citizen suit, for violating the narrative limits when it has (1) prepared an SWPCP that explains how it will implement the narrative limits, (2) submitted the SWPCP to DEQ or its agent, (3) made any changes in the SWPCP that DEQ or its agent has directed, and (4) fully complied with the relevant provisions of the SWPCP. Permit registrant should not be subject to an enforcement action when these conditions have been met.

**Response:** DEQ appreciates the input. The draft permit language did not read as intended. DEQ has revised the wording to meet the intent: "Failure to implement any narrative technology-based effluent limits in Schedule A.1 and Schedule E, and other control measures or operational practices described in the SWPCP is a permit violation."

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B&B LEASING #2

**Description: SWPCP Required Elements; Map - Remove proposal to identify on the site map "areas where pesticides, herbicides, soil binders, and fertilizers are applied"**

**Comment:** Proposed 1200-Z Permit condition A.10.b.i(9) would require the SWPCP site map to identify "areas where pesticides, herbicides, soil binders, and fertilizers are applied." Requests the removal of this proposed requirement. It would be burdensome to map the specific areas of application, particularly for infrequent uses, and it would also clutter the site map, making it difficult to use. Moreover, because the permit already requires the SWPCP to include a description of these "significant materials" and their use, it is unclear what would be gained by including this information on the site map.

**Response:** DEQ did not include this requirement in the proposed final permit.

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**Description: Narrative Technology-based Effluent Limits (TBELs); Waste Chemicals and Material Disposal - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Tarping has also been removed from Draft 1200-Z Permit language as a cover for waste containers. Facilities are constrained by the containers provided to it by third party vendors, such as Waste Management or local municipal utilities. Registrants should be allowed to use tarps as an effective control measure.

Waste Disposal comments: Requiring lids on all waste containers and drop boxes is not reasonable for many reasons. Often, customers do not want or cannot use boxes with lids, the lids are easily damaged and costly to install and repair, and makes the movement, loading, and transport of these containers more difficult for the drivers. Temporary tarps are a fraction of the cost and have none of the repair costs associated with a permanently installed lid. We recommend that DEQ continue to allow the use of tarps as covers, allowing for “properly secured and maintained temporary covers that fully protect from exposure to storm water.” If the tarps are applied correctly and maintained in good condition, they serve as an effective way to limit exposure of materials to storm water.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. Neither EPA nor Washington State Ecology allow the use of tarps to meet these narrative technology-based effluent limits. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure. As emphasized in the comment from several waste management companies, proper maintenance is crucial when using tarps. The proposed final permit requires permit registrants to cover all waste contained in bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to these pollutants; this includes scrap and waste materials.

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B&B LEASING #4

**Description: Mass Reduction Measures: General Comment - Consider any mass load reduction device installed voluntarily under exemptions**

**Comment:** In some instances, the permit refers to exemptions (such as those in Schedule A.11.e.ii) or other considerations afforded to mass reduction devices that were “installed during previous permit cycles in response to Tier 2 corrective action.” However, in other instances, the permit does not clearly state that some considerations are afforded to mass reduction devices that were installed proactively or independent of triggering Tier 2 corrective action. What about facilities intermittently struggled to meet benchmarks and has now made the decision to install a mass load reduction device in a proactive effort to avoid Tier 2 requirements in the future, would those devices then qualify for the exemptions outlined in Schedule A.11.e.ii and Schedule A.12.h.i? The permit should encourage permittees to make proactive improvements to their facilities to attempt to avoid Tier 2 corrective action. As written, the permit may dissuade entities from making necessary and beneficial improvements until they have triggered Tier 2 corrective action requirements.

**Response:** Schedule A.6 regarding the re-certification of mass reduction waiver provision has been revised to add: “For mass reduction measures installed during previous permit cycles that reduced the mass of the pollutants discharged at or above DEQ-approved design storm capacity not in response to

Tier 2 mass reduction waiver, the permit registrant must meet Schedule A.6.a-d and submit, retroactively, to DEQ or agent a Tier 2 mass reduction waiver checklist.” DEQ or agent will approve or deny the certification requirements and retroactive submittal of the Tier 2 mass reduction waiver checklist, since the mass reduction device did not have prior approval before being built. For all mass reduction devices that meet the re-certification deadline of December 31, 2021, DEQ or agent will communicate to the permit registrant qualification related to the exemptions outlined in the other Schedules of the permit.

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B&B LEASING #5

**Description: Narrative Water Quality-based Effluent Limits - Clarity on the timeline facilities will be granted to install these additional source and operational controls is concerning**

**Comment:** The measures necessary to comply with Schedule A.13.h will potentially be significant for some sectors, specifically the solid waste industry, who provides a vital public service to our communities.

**Response:** Permit registrants that trigger this condition will now have 90 calendar days, instead of 60 calendar days that was in the draft permit, from receiving the monitoring results to implement the narrative water quality-based effluent limits to the extent practicable. Schedule A.13 Water Quality-based Effluent Limit section of the proposed final permit applies to stormwater discharge into 303(d) list receiving waters where data indicates a designated use is not supported or a water quality standard is not attained and a TMDL is needed. Schedule A.13.k reads: “If the permit registrant is unable to comply with the numeric or narrative water quality-based effluent limits, it is a permit violation and permit coverage may be revoked under this general permit and coverage required under an individual permit.”

As part of the rulemaking, DEQ hired PG Environmental a technical expert in NPDES permitting to conduct an impairment analyses with the following objective to summarize pollutant trends of industrial stormwater discharges exceeding reference concentrations into impaired waters. Based on technical work DEQ identified industrial stormwater data exceeded water quality criteria or reference concentration for pH, copper, lead, zinc, iron and E. coli. This informed the narrative effluent limit framework for E. coli and iron in response to monitoring results exceeding two consecutive times the impairment concentrations in the permit. Because these two pollutants tend to be more ubiquitous in our environment and are difficult to treat, DEQ proposed to establish narrative limits water quality-based effluent limits instead of setting water quality-based numeric limit for E. coli and iron. DEQ will make the determination after site controls are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health. OAR 340-045-0033(10)(c) grants DEQ the authority that any facility must obtain an individual permit when “the discharge or activity is a significant contributor of pollution or creates other environmental problems.” DEQ will communicate and provide the facility with its findings if coverage under the general permit is revoked. DEQ expects these appropriate mandatory control measures in the form of narrative water quality-based effluent limits will reduce loading into these Category 5 impaired waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303 (d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source.

**Description: Narrative Water Quality-based Effluent Limits - DEQ needs to have reasonable expectations of what small businesses can do, and they need to provide appropriate timelines to these businesses to be able to develop and implement a plan to comply**

**Comment:** Our understanding of this section of the draft permit is that if a permittee cannot comply with this section of the permit and meet all water quality criteria, they will lose coverage under the general permit and have to obtain an individual permit, at great expense. But it's not clear how long a site has to bring their results into compliance, or if DEQ can work with the permittee to create solutions to meet the criteria.

**Response:** DEQ will make the determination after site controls or treatment are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health at any site. DEQ will communicate and provide the facility with its findings if coverage under the general permit may be revoked. DEQ expects these appropriate mandatory control measures in the form of water quality-based narrative limits will reduce pollutant loading into these Category 5 waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303 (d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source. OAR 340-045-0033(10) describes the terms for revocation under the general permit:

"The Director may refuse to authorize or renew coverage, or may revoke existing coverage under a general permit, as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit.

- (a) The procedures for denying a permit in OAR 340-045-0050 and for permit revocation in OAR 340-045-0060 apply.
- (b) Any interested person may petition the Director to take action under this section.
- (c) The grounds for requiring an individual permit include the following:
  - (A) The discharge or activity is a significant contributor of pollution or creates other environmental problems;
  - (B) The permittee failed to comply with, or is not currently in compliance with, the terms and conditions of the general permit, submitted false information, or the permittee is in violation of any applicable law;
  - (C) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;
  - (D) For NPDES general permits, effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit;
  - (E) Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either temporarily or permanently reducing or eliminating the authorized discharge is necessary; or
  - (F) Any other relevant factors.



B&B LEASING #7

**Description: Benchmark Georegion - Should be clearer about where each of these regions are in OR**

**Comment:** Should include a map.

**Response:** DEQ has a searchable map for regulators, facilities and public use. The searchable map will provide certainty of georegion as long as the facility is aware of the location its facilities discharge enters the receiving water. Depending on the receiving water location, DEQ or our agent will clearly communicate with each facility regarding monitoring requirements based on the appropriate georegion.

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B&B LEASING #8

**Description: Benchmark Technological Feasible - Should seriously reconsider the benchmarks by evaluating what's technologically feasible and financially reasonable for industries**

**Comment:** The reduced benchmarks will be difficult, and in some cases impossible, to meet. This sets small businesses up for failure.

**Response:** DEQ hired PG Environmental to assess the benchmark methodology used in the 1200-Z to ensure the methodology is appropriate and protects water quality. It was determined that the technological feasibility evaluation was not robust enough and did not evaluate the discharge quality from the best performing sites. DEQ has built in flexibility into the risk-based modeling to account for the intermittent nature of stormwater discharge. DEQ anticipates that a full evaluation of the technological feasibility of the benchmarks was completed, the resulting concentrations would be even more restrictive than the risk-based water quality concentrations established in the proposed final permit. As outlined in the federal process for technological feasibility, the appropriate evaluation would include a selection of model technologies and defined performance standards and set a benchmark at a concentration based best treatment capabilities.

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## 10. Comments from: Western States Petroleum Association

WSPA #1

**Description: Metals Benchmark Modeling - Revise proposed statewide benchmarks using appropriate regional or statewide translators**

**Comment:** The proposed statewide benchmarks should be revised to reflect appropriate regional or statewide translators. The Proposed Permit's benchmarks are based on default translators of 1 or very nearly 1. Applying appropriate, region-specific translators results in benchmarks that are in all instances higher—and in most instances substantially higher—than the proposed benchmarks. And in only two

instances are the adjusted benchmarks lower than the current permit's benchmarks. Moreover, for the reasons discussed in the following section, the adjusted benchmarks themselves may be lower than necessary to protect water quality.

**Response:** DEQ agrees that the use of EPA default translators is more conservative than necessary in some instances and has reconsidered the use of EPA default metal translators. DEQ has evaluated the potential use of regional translators, and updated the proposed final permit to include regional translators where feasible. Where regional translators were not feasible, EPA's default metal translators were applied. EPA's default translators are widely applicable to, and protective of, a diverse array of waterbodies. Appendix C of the revised permit evaluation report describes the methods used by DEQ in evaluating the appropriateness and the application of regional metal translators in the proposed final permit.

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WSPA #2

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Proposed 1200-Z Permit would prohibit the use of temporary covers, such as tarps, but no justification for this change is provided in the draft evaluation report. There will undoubtedly be both short-term and long-term circumstances in which permanent structures are not feasible, but tarps or other temporary covers would minimize exposure. A permit registrant should not be put in the position of choosing a less environmentally protective solution—no cover at all—if a permanent structure is not practicable.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to minimize exposure and to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure.

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WSPA #3

**Description: Water Quality-based Effluent Limits - Restrict pH limits only high or low pH, depending on the basis for the impairment listing**

**Comment:** If DEQ nonetheless believes that numeric effluent limits are necessary, the limits should be consistent with the basis for the pH impairment. Where the impairment is solely due to pH values in excess of the pH criteria range, the numeric effluent limit should include only a maximum pH limit. In those circumstances, a discharge with a pH below the criteria range could not contribute to the impairment. Similarly, where the impairment is solely due to pH values below the pH criteria range, the numeric effluent limit should include only a minimum pH limit.

**Response:** The applicable water standards in OAR 340-041-0101 through 340-041-0350 establish pH as range between which hydrogen ion concentrations must fall. If any two consecutive monitoring results at each monitoring point falls outside the basin-specific range for pH, the permit registrant will be subject to numeric water quality-based effluent limitations for pH consistent with entirety of the applicable pH water quality standards, rather than a portion of the applicable standards. Establishing limitations for only

a portion of the standard would be inconsistent with the water quality standard as a whole. Permit registrants may be granted a two-year compliance schedule if needed.

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WSPA #4

**Description: Water Quality-based Effluent Limits; pH - Allow a two-year compliance schedule for numeric water quality-based effluent limits for pH**

**Comment:** Finally, if numeric pH limits are included in the permit, the limits should be triggered on terms similar to those for triggering numeric discharge limits for copper, lead, and zinc, and permit registrants that are subject to the limits should be given the same two-year schedule for coming into compliance with the limits as the permit provides for the metals limits. Nothing in the draft evaluation report suggests that permit registrants would be able to immediately comply with a numeric pH discharge limit, particularly a low pH limit that is higher than the pH of rainwater.

**Response:** DEQ has reconsidered the approach used for pH based on comments and a review of the available data. Based on available data for dischargers to impaired waters, up to 25 percent of applicable dischargers may be in immediate noncompliance with the minimum pH limits. Based on this finding, DEQ has revised the permit to manage pH similarly to copper, lead and zinc, and allow for a compliance schedule of up to two years if two consecutive monitoring results falls outside the basin-specific pH range.

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WSPA #5

**Description: Tier 1.5; Appendix B - Remove Appendix B from in the 1200-Z**

**Comment:** The controls are included only in EPA's proposed MSGP, and DEQ itself has not evaluated whether the controls can be practicably implemented by every facility covered under the permit, much less implement them within 60 days. Moreover, many of the Appendix B controls are generic measures that are not targeted to specific pollutants and that may do little or nothing to reduce the concentrations of the pollutant or pollutants that triggered Tier 1.5. EPA also has not substantially evaluated the practicability or effectiveness of the controls and does not propose to require them "where it would be counterproductive to the implementation of another control measure, or not result in any reduction in the discharge of the pollutant of concern."

**Response:** The proposed final permit does not include Tier 1.5 or Appendix B. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. The industrial-specific checklists are strongly encouraged to be considered as part of the Tier 1 corrective action responses.

DEQ recognizes that there are a variety of best management practices for industries to implement and will consider appropriate related sources to improve checklists for industry best practices in the future.

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## 11. Comments from: Institute of Scrap Recycling Industries

ISRI #1

**Description: Tier 1.5; Appendix B - Remove Appendix B from in the 1200-Z**

**Comment:** The controls are included only in EPA’s proposed MSGP, and DEQ itself has not evaluated whether the controls can be practicably implemented by every facility covered under the permit, much less implement them within 60 days. Moreover, many of the Appendix B controls are generic measures that are not targeted to specific pollutants and that may do little or nothing to reduce the concentrations of the pollutant or pollutants that triggered Tier 1.5. EPA also has not substantially evaluated the practicability or effectiveness of the controls and does not propose to require them “where it would be counterproductive to the implementation of another control measure, or not result in any reduction in the discharge of the pollutant of concern.”

**Response:** The proposed final permit does not include Tier 1.5 or Appendix B. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. The industrial-specific checklists are strongly encouraged to be considered as part of the Tier 1 corrective action responses.

DEQ recognizes that there are a variety of best management practices for industries to implement and will consider appropriate related sources to improve checklists for industry best practices in the future.

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## 12. Comments from: National Salvage Vehicle Reporting Program

NSVRP #1

**Description: Tier 1.5; Appendix B - Should not require Sector M in Appendix B to remove or deploy airbags prior to crushing or other maintenance activities**

**Comment:** In our opinion the best alternative would be to either have a good, needed un-deployed airbag removed for resale by a recycler, or to have the recycler leave unsaleable airbags intact on the vehicle so when the vehicle is processed by a shredder the resultant waste is safely contained by the shredder as part of their containment processing. Alternatively, airbags can be removed intact when practical under OEM sponsored airbag recovery programs by a recycler. Airbags were to be deployed, then the containers are fully breached, and as a result in the case of heavy rain, the residual chemicals are then in a position to be washed onto the ground and they would become a source of stormwater runoff. This language is effectively guiding a business to engage in activities that increase safety risks and should be avoided from being made as a requirement or recommendation by a government agency. Requiring the deployment of airbags as a means of minimizing stormwater runoff pollution will likely cause significant increases in workplace injury or death.

**Response:** The proposed final permit does not include Appendix B or Tier 1.5. DEQ made significant edits in response to specific comment received (including the removal or deployment of airbags) and will recommend the industrial-specific checklists are used as an optional technical assistance tool in response to benchmark exceedances.

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NSVRP #2

**Description: General Comment - Recommend DEQ modify the Proposed Permit to reflect current standards under federal law and wait until next permit period to adopt EPA's 2020 MSGP**

**Comment:** ARA recognizes that DEQ is currently in the imperfect position of having to issue a revised 1200-Z permit in the middle of the normal five-year permit renewal and revision period due to a 2018 the consent judgment. However, just because DEQ is required to issue a revised 1200-Z permit prior to the originally anticipated end date of 2022, DEQ should not adopt the EPA's proposed draft BMP/SCMs contained in the Proposed Permit's Appendix B. The provisions contained in the EPA's Proposed 2020 MSGP should not be adopted by DEQ in their Proposed Permit until the EPA issues its final permit.

**Response:** DEQ did not adopt EPA's draft Appendix Q sector-specific checklists by reference in the final 1200-Z permit. The checklists have been revised and included as an option under Tier 1 corrective action response, as sector-specific technical assistance.

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## 13. Comments from: Oregon Refuse and Recycling Association

ORRA #1

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not be subject to an enforcement action for violating the narrative technology-based effluent limits**

**Comment:** A permit registrant should not be subject to an enforcement action for violating the narrative technology-based effluent limits if it has explained in its SWPCP how it will implement the limits, has submitted the SWPCP to DEQ, has timely made any changes to the SWPCP directed by DEQ, and has complied with the SWPCP. Translating a general permit's necessarily vague and subjective narrative technology-based effluent limits into facility-specific stormwater controls requires professional and policy judgments that only DEQ can ultimately make. A permit registrant should not be subject to an enforcement action, including a citizen suit, for violating the narrative limits when it has (1) prepared an SWPCP that explains how it will implement the narrative limits, (2) submitted the SWPCP to DEQ or its agent, (3) made any changes in the SWPCP that DEQ or its agent has directed, and (4) fully complied with the relevant provisions of the SWPCP. Permit registrant should not be subject to an enforcement action when these conditions have been met.

**Response:** DEQ appreciates the input. The draft permit language did not read as intended. DEQ has revised the wording to meet the intent: "Failure to implement any narrative technology-based effluent limits in Schedule A.1 and Schedule E, and other control measures or operational practices described in the SWPCP is a permit violation."

ORRA #2

**Description: Narrative Technology-based Effluent Limits (TBELs); Waste Chemicals and Material Disposal - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Tarping has also been removed from Draft 1200-Z Permit language as a cover for waste containers. Facilities are constrained by the containers provided to it by third party vendors, such as Waste Management or local municipal utilities. Registrants should be allowed to use tarps as an effective control measure.

Waste Disposal comments: Requiring lids on all waste containers and drop boxes is not reasonable for many reasons. Often, customers do not want or cannot use boxes with lids, the lids are easily damaged and costly to install and repair, and makes the movement, loading, and transport of these containers more difficult for the drivers. Temporary tarps are a fraction of the cost and have none of the repair costs associated with a permanently installed lid. We recommend that DEQ continue to allow the use of tarps as covers, allowing for “properly secured and maintained temporary covers that fully protect from exposure to storm water.” If the tarps are applied correctly and maintained in good condition, they serve as an effective way to limit exposure of materials to storm water.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. Neither EPA nor Washington State Ecology allow the use of tarps to meet these narrative technology-based effluent limits. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure. As emphasized in the comment from several waste management companies, proper maintenance is crucial when using tarps. The proposed final permit requires permit registrants to cover all waste contained in bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to these pollutants; this includes scrap and waste materials.

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ORRA #3

**Description: Tier 1.5; Appendix B - Confusing, impractical, financially burdensome and overwhelming for our small business**

**Comment:** The term “all applicable” is not clear in this section either. For example, several items on the checklists may not be reasonable or feasible for a permittee to implement for several reasons, such as expense, permitting restrictions, availability of products from vendors, seasonality of construction, etc. Does “applicability” take into consideration feasibility, reasonability, or practicality? The current wording does not suggest those considerations can be made by a permittee or DEQ.

**Response:** DEQ modified the proposed final permit and associated industrial-specific checklists to be an optional recommended technical assistance tool for permit registrants that have benchmark exceedances. Therefore, the final draft permit does not include Appendix B. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups.

ORRA #4

**Description: Tier 1.5 - Abbreviations are used and not defined, and there are no instructions or examples provided in the Appendix for permittees to refer to, so it is not fully clear what DEQ's expectation is for their use**

**Comment:** We are extremely concerned about the addition of Tier 1.5 Corrective Actions as described in the draft permit.

**Response:** DEQ modified the proposed final permit and associated industrial-specific checklists to be an optional but recommended technical assistance tool for permit registrants that have benchmark exceedances. The proposed final permit does not include Appendix B. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. The operational and source control measures within the industrial-specific checklists are strongly encouraged to be considered as part of the Tier 1 corrective action responses; however, DEQ acknowledges that it is not an exhaustive list of controls that could be selected and implemented.

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ORRA #5

**Description: Tier 1.5 Corrective Action Response - This is unreasonable, extremely costly, and potentially unnecessary to achieve compliance with the permit**

**Comment:** As an example, the checklist for Sector N is 27 pages long and contains 204 items. The wording in Schedule A.11.f.ii. suggests that it is DEQ's expectation that all 204 items are "implemented upon submission of the checklists". A permittee may delay or offer an alternative schedule of implementation under this section, but nonetheless would be required to complete "all applicable" source control and operational measures. Does this mean that a permittee cannot identify several promising source control measures on the checklist, implement them, and determine if they are sufficient to bring their sample results below benchmark? Must a facility truly implement all 204 items to comply? The wording in this section of the permit suggests so.

**Response:** Based on comments received regarding the application of Tier 1.5 requirements and the appropriateness of the Appendix B checklists across all the industrial sectors, DEQ has removed the mandatory use of the Appendix B checklist and Tier 1.5 from the proposed final permit. Upon review of the Appendix B checklist, DEQ acknowledges that the requirements may not be appropriate for numerous facilities within various industries. Instead, the industrial-specific checklists have been revised to reduce duplicative requirements and are incorporated into Tier 1 corrective response as a tool for permit registrants. Nevertheless, DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. DEQ recommends the universal checklists and applicable sector-specific checklist appropriate to the facilities SIC codes be considered, but as such permit registrants may identify and implement the measures they determine will reduce pollutant sources exposed to stormwater.

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**Description: Benchmark - Agree with DEQ’s approach to remove of Oil and Grease as a Statewide Benchmark Pollutant based on the conclusion that oil and grease numeric benchmarks are not a good indicator of pollution**

**Comment:** NA

**Response:** DEQ appreciates the input.

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ORRA #7

**Description: Sampling Procedures - Agree with DEQ’s approach adjusting the monitoring frequency to reflect that stormwater samples must be collected 72 hours apart (rather than the currently required 14 days)**

**Comment:** NA

**Response:** DEQ appreciates the input; however, the proposed final permit retained sample collection must be 14-days apart instead of 72 hours apart.

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ORRA #8

**Description: General Comment - Add Appendix A and B to permits Table of Contents**

**Comment:** NA

**Response:** DEQ did not retain Appendix B as part of the proposed final permit. Appendix A was added to the Table of Contents and incorporated into the permit.

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ORRA #9

**Description: Narrative Technology-based Effluent Limits (TBELs) - Are other types of “temporary” covers acceptable if they’re more durable than a tarp (i.e., homemade structures, wood or sheet metal coverings, etc.)?**

**Comment:** Does DEQ assert that “roof or buildings” are the only option to provide cover? These types of covers may be viewed as “temporary” in comparison to a building with a foundation, and may require less capital investment and permitting efforts, but would serve the same purpose as a “roof or building” that is not deemed “temporary.”

**Response:** DEQ modified the permit to reflect the comment. The proposed final permit reads: “properly secured temporary covers such as tarps.” These temporary covers must be built well or if a facility chooses to use tarps they must be properly secured with hardware or grommets. It is not recommended to use tarps without grommets.



ORRA #10

**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Clarify if modifications to the control measures are applicable to both the BMPs in Schedule A.1, and Schedule E of the permit**

**Comment:** The word “narrative” should be included in the new language added on Page 16, Schedule A.2.e, as it is in the preceding sentence in this section, and in Schedule A.8.d, for consistency and accuracy.

**Response:** DEQ revised the sections referenced for consistency and accuracy.

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ORRA #11

**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Clarify what “other information” means to demonstrate a violation**

**Comment:** Applicable to Schedule A.4.a.iii: The permit registrants’ monitoring results of qualifying sample that exceed water quality criteria, Table 6, (see Schedule D.3, Definitions) may be used in conjunction with other information to demonstrate a violation of this permit as an exceedance of water quality standards.

**Response:** The permit does not contain a specific convention for sample collection to establish that a discharge violated instream water quality standards. This analysis will occur on a case-by-case basis depending on the specific water quality criteria and the associated beneficial use(s).

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ORRA #12

**Description: Mass Reduction Measures: General Comment - Consider any mass load reduction device installed voluntarily under exemptions**

**Comment:** In some instances, the permit refers to exemptions (such as those in Schedule A.11.e.ii) or other considerations afforded to mass reduction devices that were “installed during previous permit cycles in response to Tier 2 corrective action.” However, in other instances, the permit does not clearly state that some considerations are afforded to mass reduction devices that were installed proactively or independent of triggering Tier 2 corrective action. What about facilities intermittently struggled to meet benchmarks and has now made the decision to install a mass load reduction device in a proactive effort to avoid Tier 2 requirements in the future, would those devices then qualify for the exemptions outlined in Schedule A.11.e.ii and Schedule A.12.h.i? The permit should encourage permittees to make proactive improvements to their facilities to attempt to avoid Tier 2 corrective action. As written, the permit may dissuade entities from making necessary and beneficial improvements until they have triggered Tier 2 corrective action requirements.

**Response:** Schedule A.6 regarding the re-certification of mass reduction waiver provision has been revised to add: “For mass reduction measures installed during previous permit cycles that reduced the

mass of the pollutants discharged at or above DEQ-approved design storm capacity not in response to Tier 2 mass reduction waiver, the permit registrant must meet Schedule A.6.a-d and submit, retroactively, to DEQ or agent a Tier 2 mass reduction waiver checklist.” DEQ or agent will approve or deny the certification requirements and retroactive submittal of the Tier 2 mass reduction waiver checklist, since the mass reduction device did not have prior approval before being built. For all mass reduction devices that meet the re-certification deadline of December 31, 2021, DEQ or agent will communicate to the permit registrant qualification related to the exemptions outlined in the other Schedules of the permit.

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ORRA #13

**Description: SWPCP Required Elements; Map - Recommend revise permit to read “approximate” areas where pesticides, herbicides, soil binders, and fertilizers are applied**

**Comment:** Solid waste facilities are required to implement pest control practices, which often require movement and relocation of bait boxes or other pesticide measures. Identifying the exact location of these items on a map and updating that map every time a pest control company needs to move them will be difficult and burdensome to permittees.

**Response:** DEQ did not include this requirement in the proposed final permit.

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ORRA #14

**Description: Tier 1 and Tier 1.5 Corrective Action Response based on Exceedances of Benchmarks - Conflicting language regarding preparation of Tier 1 Reports**

**Comment:** Contradictory text in the following language, request DEQ amend. Schedule A.11.e.i: “Prior to completion of Tier 1.5 and Tier 2, a Tier 1 corrective action response is not required for the same pollutant and monitoring point. Tier 1 corrective action resets upon completion of other tiers” Schedule A.11.f.i: "If the permit registrants’ monitoring results from two consecutive qualifying samples exceeds any applicable statewide benchmark in Table 4 or sectors specific benchmarks in Schedule E, in addition to Tier 1 corrective action the permit registrant must at a minimum, implement and maintain the prescriptive source and operational controls specified by major industrial group in Appendix B with the goal of meeting benchmarks.

**Response:** Tier 1.5 has not been retained in the proposed final permit. Prior to completion of Tier 2, a Tier 1 corrective action response is not required for the same pollutant and monitoring point.

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ORRA #15

**Description: Tiered Corrective Action - Confusing and leads to many questions regarding implementation**

**Comment:** There are many specific problems with timing of Tier 1.5 and Tier 2 outlined in the comment. Pride Disposal questions why the concept of a Tier 1.5 was not introduced prior to the final draft permit that was issued for public comment? We request that DEQ revise the permit to provide a permit registrant

an opportunity to justify why a checklist item is not feasible or will not result in a measurable reduction, as the proposed MSGP allows. We also request that DEQ remove the “all applicable” requirement to allow a permittee to choose which operational or source control measures to implement first, and allow for a reasonable amount of time for permittees to determine if additional operational or source control measures from the checklist are necessary.

**Response:** DEQ has been delegated the NPDES program from EPA, therefore we must consider all MSGP conditions at the federal level when renewing the 1200-Z permit. EPA’s proposed 2020 industrial stormwater permit was released early 2020. DEQ discussed the proposed provision and National Academies Report on the MSGP during advisory committee meetings. Specifically, Appendix Q was discussed at the April 16, 2020 meeting. EPA did not include Appendix Q in the final MSGP. In response, DEQ decided to not include Appendix B or Tier 1.5 in the proposed final 1200-Z permit. EPA will maintain their existing industrial stormwater fact sheet series as guidance. DEQ opted to revise the industrial-specific checklists and provide them as an optional technical assistance tool as part of a Tier 1 corrective action response.

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ORRA #16

**Description: Tier 2 - Request revise language more clearly specify that such a facility is relieved from Tier 2 evaluation for the entire permit term**

**Comment:** Applicable to Schedule A.12.a: Facilities with Tier 2 installation deadline of June 30, 2021, or later in response to a Tier 2 corrective action response triggered under previous permit, are relieved from Tier 2 evaluation for the same pollutant(s) and monitoring point(s) that previously triggered Tier 2. Request language read: Facilities with Tier 2 installation deadline of June 31, 2021, or later in response to a Tier 2 corrective action response triggered under previous permit, are relieved from Tier 2 evaluation for the same pollutant(s) and monitoring point(s) that previously triggered Tier 2 for the entire permit term (July 1, 2021 through June 30, 2026)

**Response:** DEQ made this suggested change in the proposed final permit. DEQ added “during this permit cycle” to the provision referenced in the comment.

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ORRA #17

**Description: Tier 2 - Clarify intent of language “Tier 2 geometric mean evaluation and Tier 2 corrective action response is not required more than once a permit term for the same pollutant(s) and monitoring point(s)”**

**Comment:** NA

**Response:** DEQ reviewed the suggestion and determined the permit language is clear. There are two exemptions from Tier 2 corrective action response in the proposed final permit: 1) Permit registrants subject to a Tier 2 installation deadline of June 30, 2021, or later in response to a Tier 2 corrective action response triggered under the previous permit, are not required to conduct Tier 2 evaluation for the same pollutant(s) and monitoring point(s) during this permit cycle and 2) Tier 2 geometric mean evaluation and Tier 2 corrective action response is not required more than once a permit term for the same pollutant(s) and monitoring point(s).

ORRA #18

**Description: Water Quality-based Effluent Limits - Request use consistent language in referring to impairment pollutants for clarity**

**Comment:** We understand this section to be applicable to the Impairment Pollutants listed in Table 6. However, the term “impairment pollutant” is not included anywhere in this section of the permit.

**Response:** The proposed final permit now includes the term, “impairment concentrations” for clarity.

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ORRA #19

**Description: Columbia Slough Georegion - Clarify if E. coli for the Columbia Slough, listed as a statewide benchmark pollutant in Table 4, also constitutes a water quality-based effluent limit**

**Comment:** NA

**Response:** The Columbia Slough discharges will be required to sample for E. coli as a statewide benchmark only. The most recent 2018/2020 Integrated Report assessment has separated the Columbia Slough into two watershed assessment units. One of the assessment units (AU ID: OR\_WS\_170900120201\_02\_104554.1) was assessed as Category 2: Meeting criteria for E. coli, while the other watershed unit (AU ID: OR\_WS\_170900120201\_02\_104554.1) incorrectly included E. coli as Category 5: Impaired, when the proper impairment status is Category 4A, for water bodies where a TMDL will result in the water body meeting water quality standards and supporting its beneficial uses has been approved. The 1998 Columbia Slough TMDL included bacteria allocations which targeted at the freshwater E. coli standard (126/406). DEQ and agents will apply the correct impairment category for discharges into the Columbia Slough. Thus, permitted facilities that discharge into the Columbia Slough will not be subject to E. coli impairment monitoring and escalating narrative water quality-based effluent limits.

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ORRA #20

**Description: Narrative Water Quality-based Effluent Limits - If permit registrant is subject to revocation of general permit coverage, is there a conservation between DEQ and the permittee to notification of revocation?**

**Comment:** If the permittee submits a plan to install treatment, but the timeline would follow a Tier 2 corrective action, would DEQ continue coverage under the general permit until the treatment system could be implemented?

**Response:** DEQ will make the determination after site controls or treatment are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health. DEQ will communicate and provide the facility with its findings if coverage under the general permit may be revoked. DEQ expects these appropriate mandatory control measures in the form of water quality-based narrative limits will reduce pollutant loading into these Category 5 impaired

waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303(d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source.

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ORRA #21

**Description: Narrative Water Quality-based Effluent Limits - Clarity on the timeline facilities will be granted to install these additional source and operational controls is concerning**

**Comment:** The measures necessary to comply with Schedule A.13.h will potentially be significant for some sectors, specifically the solid waste industry, who provides a vital public service to our communities.

**Response:** Permit registrants that trigger this condition will now have 90 calendar days, instead of 60 calendar days that was in the draft permit, from receiving the monitoring results to implement the narrative water quality-based effluent limits to the extent practicable. Schedule A.13 Water Quality-based Effluent Limit section of the proposed final permit applies to stormwater discharge into 303(d) list receiving waters where data indicates a designated use is not supported or a water quality standard is not attained and a TMDL is needed. Schedule A.13.k reads: “If the permit registrant is unable to comply with the numeric or narrative water quality-based effluent limits, it is a permit violation and permit coverage may be revoked under this general permit and coverage required under an individual permit.”

As part of the rulemaking, DEQ hired PG Environmental a technical expert in NPDES permitting to conduct an impairment analyses with the following objective to summarize pollutant trends of industrial stormwater discharges exceeding reference concentrations into impaired waters. Based on technical work DEQ identified industrial stormwater data exceeded water quality criteria or reference concentration for pH, copper, lead, zinc, iron and E. coli. This informed the narrative effluent limit framework for E. coli and iron in response to monitoring results exceeding two consecutive times the impairment concentrations in the permit. Because these two pollutants tend to be more ubiquitous in our environment and are difficult to treat, DEQ proposed to establish narrative limits water quality-based effluent limits instead of setting water quality-based numeric limit for E. coli and iron. DEQ will make the determination after site controls are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health. OAR 340-045-0033(10)(c) grants DEQ the authority that any facility must obtain an individual permit when “the discharge or activity is a significant contributor of pollution or creates other environmental problems.” DEQ will communicate and provide the facility with its findings if coverage under the general permit is revoked. DEQ expects these appropriate mandatory control measures in the form of narrative water quality-based effluent limits will reduce loading into these Category 5 impaired waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303 (d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source.

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ORRA #22

**Description: Narrative Water Quality-based Effluent Limits - Request timeline of implementation within 60 days add “unless DEQ or agent approve a later date”**

**Comment:** If significant capital investments are required to meet water quality criteria, this timeline may prove difficult to meet. If a permittee can show good cause as to why more time is needed, the permit should provide for this circumstance.

**Response:** DEQ agrees and modified Schedule A.13.k to now read: “The permit registrant must complete the narrative water quality-based effluent limits no later than 90 calendar days from receiving monitoring results of the triggering event...”

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ORRA #23

**Description: Benchmark Georegions - Request that DEQ provide definitions for each of these geographic regions**

**Comment:** Columbia Slough and Portland Harbor are defined in Schedule D.3. However, the other 5 geographic regions are not defined. The only tool offered to permittees currently to identify which geographic region they might be assigned to was found within the Permit Evaluation Report on page 46. One way that DEQ could better define the regions is through use of GPS coordinates. Without clear definitions, it would be nearly impossible for a permittee to establish justification for why they assert that they are placed in a different geographic region than what’s been assigned by DEQ.

**Response:** DEQ has a searchable map for regulators, facilities and public use that provides certainty of georegion based on the locations of where facilities discharge enters the receiving water. Depending on the receiving water location, DEQ or our agent will communicate with each facility regarding monitoring requirements based on the appropriate georegion.

EPA Level-III Ecoregion <sup>1</sup>	CU-BLM Physiographic Region
Coast Range Klamath Mountains	Coastal
Willamette Valley	Willamette Valley
Columbia River Mainstem	Columbia River Mainstem
Cascades	Cascades
Blue Mountains Columbia Plateau Eastern Cascades Slopes and Foothills Northern Basin and Range Snake River Plain	Eastern

<sup>1</sup> U.S. EPA Level III and IV Ecoregions of the Continental United States – Definitions  
[ftp://newftp.epa.gov/EPADDataCommons/ORD/Ecoregions/us/Eco\\_Level\\_III\\_descriptions.doc](ftp://newftp.epa.gov/EPADDataCommons/ORD/Ecoregions/us/Eco_Level_III_descriptions.doc)

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ORRA #24

**Description: Definition; Storm Event - Recommend the following revision to definition of storm event: “Storm event means an event that produces a measurable amount of precipitation and**

**results in an actual discharge, and that follows the preceding storm event by at least 72 hours (3-days).”**

**Comment:** NA

**Response:** DEQ has revised the definition in the proposed final permit.

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ORRA #25

**Description: Schedule E; Sector L - Remove E. coli as a sector-specific benchmark**

**Comment:** Align with the EPA MSGP (current and proposed) Sector L requirements that does not include E. coli as sector-specific benchmark. Other considerations for the removal of E. coli include the uncertainty of E. coli as an appropriate indicator parameter for landfills because of possible multiple sources and potential false positives with quantifying results with the standard microbiology test methods (i.e., other bacteria species can be detected/quantified in the E. coli analytical test). E. coli should only be applied to a Sector L facility if the receiving water is impaired for E. coli per Schedule B.4 of the proposed final permit.

**Response:** DEQ acknowledges the potential for multiple sources E. coli at a landfill. Oregon’s bacteria water quality standards applies to all human, domesticated animal and wildlife fecal indicator bacteria. Sources not associated with fecal sources are not subject to regulation. Landfills may perform biochemical speciation to identify non-fecal sources in stormwater discharge.

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ORRA #26

**Description: Schedule E; Sector L - Agree with reclassifying E. coli as a sector-specific benchmark for non-hazardous landfill sector (Sector L) rather than a statewide benchmark as previously classified in past permits**

**Comment:** NA

**Response:** DEQ appreciates the comment.

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ORRA #27

**Description: Tier 2 - Recommend revise Tier 2 corrective action to allow for more flexibility or exemptions for permittees who triggered a Tier II for E. coli under the past or current permits**

**Comment:** If the reclassification of E. coli from statewide benchmark to sector-specific is retained in the final permit, recommended Schedule A.12 be revised or expanded to allow for more flexibility or exemptions for permittees who triggered a Tier II for E. coli under the past or current permits when E. coli was a statewide benchmark for landfills and not a sector-specific benchmark. For example, if a Tier II that was triggered for E. coli by a permittee under the current, then the permittee has a deadline for implementation by June 30, 2021. This Tier II requirement should no longer be required, and an

alternative (e.g., Tier 1.5 or narrative-based approach similar to impairment parameter program) should be available given that only statewide benchmark trigger Tier IIs and not sector-specific benchmarks.”

**Response:** DEQ strives to improve each iteration of the permit. DEQ finds that E. coli is appropriate in Schedule E for Sector L and Treatment Works. DEQ is unable to provide flexibility or reduce any requirements or enforceable deadlines set forth in the current permit based on proposed changes in a future permit cycle.

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ORRA #28

**Description: Narrative Water Quality-based Effluent Limits - DEQ needs to have reasonable expectations of what small businesses can do, and they need to provide appropriate timelines to these businesses to be able to develop and implement a plan to comply**

**Comment:** Our understanding of this section of the draft permit is that if a permittee cannot comply with this section of the permit and meet all water quality criteria, they will lose coverage under the general permit and have to obtain an individual permit, at great expense. But it’s not clear how long a site has to bring their results into compliance, or if DEQ can work with the permittee to create solutions to meet the criteria.

**Response:** DEQ will make the determination after site controls or treatment are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health at any site. DEQ will communicate and provide the facility with its findings if coverage under the general permit may be revoked. DEQ expects these appropriate mandatory control measures in the form of water quality-based narrative limits will reduce pollutant loading into these Category 5 waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303 (d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source. OAR 340-045-0033(10) describes the terms for revocation under the general permit:

"The Director may refuse to authorize or renew coverage, or may revoke existing coverage under a general permit, as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit.

- (a) The procedures for denying a permit in OAR 340-045-0050 and for permit revocation in OAR 340-045-0060 apply.
- (b) Any interested person may petition the Director to take action under this section.
- (c) The grounds for requiring an individual permit include the following:
  - (A) The discharge or activity is a significant contributor of pollution or creates other environmental problems;
  - (B) The permittee failed to comply with, or is not currently in compliance with, the terms and conditions of the general permit, submitted false information, or the permittee is in violation of any applicable law;



- (C) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;
- (D) For NPDES general permits, effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit;
- (E) Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either temporarily or permanently reducing or eliminating the authorized discharge is necessary; or
- (F) Any other relevant factors.

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ORRA #29

**Description: Benchmark Georegion - Provide more clarity on facilities that may qualify for two separate geographic regions**

**Comment:** For example, a facility in Astoria that discharges to the Columbia River may be appropriately assigned under the Columbia River geographic region, but based on the map provided on Page 46 of the Permit Evaluation Report, said facility may be incorrectly categorized within the Coastal geographic region.

**Response:** DEQ has a searchable map for regulators, permit registrants, consultants and public use. The searchable map provides certainty of the appropriate georegion based on the location of where the discharge enters the receiving water at each facility. DEQ or our agent will clearly communicate with each facility regarding monitoring requirements based on the appropriate georegion, depending on discharge locations. Direct discharges into the Columbia River will be assigned the Columbia River georegion.

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ORRA #30

**Description: Benchmark Georegion - Should be clearer about where each of these regions are in OR**

**Comment:** Should include a map.

**Response:** DEQ has a searchable map for regulators, facilities and public use. The searchable map will provide certainty of georegion as long as the facility is aware of the location its facilities discharge enters the receiving water. Depending on the receiving water location, DEQ or our agent will clearly communicate with each facility regarding monitoring requirements based on the appropriate georegion.

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## 14. Comments from: Weyerhaeuser

WEYERHAEUSER #1

**Description: General Comment; Term of Current Permit - Should extend the implementation deadline for all more-stringent requirements at least up to the original July 31, 2022 permit expiration**

**Comment:** The Evaluation Reports for both versions of the permit specify that the permit expires after five years. Nowhere in the reissued permit or Evaluation Report is there an indication that DEQ intended or was required to reissue the permit prior to the specified July 31, 2022 expiration date, which would cause permittees to forfeit more than a year of permit coverage authorized by both the 2017 and 2018 versions of the permit. Yet the proposed permit will go into effect July 1, 2021, more than a year before the current permit expires. Because the new permit includes more stringent requirements, the early reissuance has a material adverse effect on permit registrants. If DEQ is, in fact, required to reissue the permit before it expires, it should extend the implementation deadline for all more-stringent requirements at least up to the original July 31, 2022 permit expiration.

**Response:** 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 was filed in Multnomah County Circuit Court by the Columbia Riverkeeper and the Northwest Environmental Defense Center.

As a result, 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 summary, DEQ committed to: • 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.

As such, DEQ is legally bound to issue the final permit by March 30, 2021. The final permit's effective date is July 1, 2021. The effective date aligns with the stormwater reporting year, allows permit registrants time to update the site specific stormwater pollution control plans and other implementation measures as needed. This timeframe also takes into consideration the Tier II implementation requirements under the prior permit.

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WEYERHAEUSER #2

**Description: Monitoring Waiver - Strongly recommend that DEQ add language that preserves already-approved monitoring waivers through the period specified in the waiver approvals already issued by DEQ, July 31, 2022**

**Comment:** DEQ and its agents have approved numerous monitoring waivers, all of which expressly waive specified monitoring requirements through July 31, 2022. The waiver approval letters reference several reasons that may require resumption of monitoring, or revocation of the waiver. But none of underlying permit) expires.

The proposed permit (Condition 8.e, page 40 of Redline) specifies the duration of approved waivers in much the same manner that the current permit specifies that approved waivers are valid for the remainder of the permit term (Schedule B, Condition 4.e, page 26 of 129). Each of the 129 pages of the current permit shows an expiration date of July 31, 2022, so the intended duration of approved monitoring

waivers is clear. DEQ's apparent willingness to cut more than a year from already approved waivers gives all permit registrants reason to question whether DEQ will stand behind commitments it makes in the proposed permit that define the duration of approved waivers for the upcoming permit cycle.

**Response:** The permit is clear regarding monitoring waivers approved under the proposed final 2021 permit, reinstatement of monitoring is required on July 1, 2025. The schedule under the 2017 permit was set for a five-year term, but the permit renewal is occurring early due to the Consent Decree filed in Multnomah Circuit Court. DEQ and agent's customary procedure when granting a monitoring waiver is to clearly communicate an expiration date of the waiver equal to the permit expiration date. As a delegated NPDES permitting authority, DEQ must follow federal regulation. 40 CFR 122.44 (2)(ii) states: "a monitoring waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger." DEQ issued waiver approvals notices with following based on the federal requirements presuming the 2018 permit would be in effect until its expiration July 22, 2022. However, once assigned coverage under the 2021 permit, all existing facilities must reinstate stormwater discharge monitoring beginning July 1, 2021.

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WEYERHAEUSER #3

**Description: Monitoring Waiver - Revise Schedule B.8.a.i**

**Comment:** The revised language includes what appears to be jumbled wording. It reads "When the benchmark monitoring results has been achieved...." We believe DEQ intended this sentence to mean "When the monitoring results show the benchmark has been achieved..." We recommend this sentence be reworded to more clearly indicate its intended meaning.

**Response:** DEQ revised Schedule B.9.a.i to read: "When the benchmark concentrations have been achieved during a full reporting year, as demonstrated by:"

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WEYERHAEUSER #4

**Description: Monitoring Waiver - Should make available the data it used to support changing waiver criteria from 4 to 5 samples**

**Comment:** Before proceeding with this change, DEQ should make available the data it used to support the proposed change, and explain how it defines the vague terms "appropriate sample size" and "this type of calculation". The proposed permit increases that to five consecutive samples (Condition 8, page 39 of Redline). DEQ's only explanation for the change (Evaluation Report page 39) is that five samples is a more appropriate sample size for this type of calculation. DEQ doesn't explain what it means by the terms "appropriate sample size", or "this type of calculation", and more significantly, doesn't provide data supporting the change, or indicate whether a data analysis was even conducted prior to proposing the change.

**Response:** The comment is regarding the use of five samples for calculating a geometric mean to demonstrate consistency with benchmark values, and allowing the permit registrant to obtain a monitoring waiver. The waiver is intended to provide regulatory relief and reduce costs to permit registrants that are unlikely to exceed benchmarks. Based on DEQ's assessment of benchmark monitoring data across the industrial categories, as discussed in the advisory committee meeting on November 13, 2019, the

pollutant concentrations in industrial stormwater have extremely high variability. Given the high amount of variability, a greater number of samples provides higher confidence the calculated geometric mean will be representative of pollutant concentrations over the long-term. Moving from four samples to five samples provides 20 percent greater data at a relatively low cost to base this conclusion on and increases the confidence in the final determination to provide a monitoring waiver. Similarly, the use of five samples for calculating a geometric mean is consistent with data handling practices often employed for other environmental data with calculated geometric means, such as indicator bacteria. Thus, given the variability of pollutant concentrations in stormwater, the increased confidence in the geometric mean being representative, and being consistent with other environmental data handling practices for calculating geometric means, DEQ finds five samples is a more appropriate for this type of calculation and determination to provide a monitoring waiver.

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WEYERHAEUSER #5

**Description: General Comment - Retain written notification requirement by DEQ**

**Comment:** The current 1200-Z permit includes many conditions where DEQ is required to provide the permittee or other parties permit-related notifications or responses “in writing”. The proposed permit deletes all requirements that DEQ provide written notifications and responses without indicating how DEQ intends to communicate with permittees (and other stakeholders), if not in writing. There are references in the proposal documents to a future “Your DEQ Online” system, but the proposal does not indicate whether this not-yet-deployed system is the intended means by which DEQ will communicate important permit-related information. Given that DEQ does not yet have a working electronic document management system that all permitted sites can actually use, we recommend permit language requiring written notices from DEQ be retained, until such time as alternatives are well-established and proven.

**Response:** Regardless of the mechanism used for communicating, DEQ and agent will provide clear communication with permit registrants to ensure facilities are aware of important monitoring requirements, document submissions and corrective action deadlines. DEQ’s electronic system, Your DEQ Online, is scheduled to be active prior to the permit’s effective date of July 1, 2021. DEQ’s agents will not be transitioning to the electronic system on the same schedule. Once Your DEQ Online is active, most communication and Discharge Monitoring Reports will shift from “paper” to “electronic.” The permit language must be broad in order to address all the various communications between DEQ and their facilities and agents and their facilities during the permit term.

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WEYERHAEUSER #6

**Description: Monitoring Waiver - Inconsistency between two parts of the permit condition is obvious, to the detriment of the permit registrant**

**Comment:** Under the proposed permit DEQ would no longer be required to provide the permit registrant a written approval or denial for monitoring waiver requests. However, the condition retains the requirement that until written approval of the monitoring waiver is received, the permit registrant must continue monitoring. Schedule B.8.d, an example of a problem with DEQ’s deletion of “in writing” language.

**Response:** The permit has been revised to remove the word “written” and now the condition reads: “Until approval of the monitoring waiver is received, the permit registrant must continue monitoring.” DEQ and the agents will continue to have a clear and comprehensive procedures for monitoring waiver reviews and communication. The goal is to review each waiver in a timely manner keeping in mind monitoring costs; however, due to the development of the new “Your DEQ Online” electronic reporting system, DEQ’s process for communicating will change once permit registrants have accounts set up in the system.

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WEYERHAEUSER #7

**Description: General Comment - Should eliminate ambiguities in references to quarters and years by always referring to “reporting quarter”, “reporting year”, “calendar year”, or other terms that aren’t easily confused**

**Comment:** The 1200-Z permit includes many references to “reporting quarter” and “reporting year” (the July 1 through June 30 period) and variants of those terms. However, the proposed permit includes other references to “quarter”, “year”, or specific years (e.g., 2025) without descriptors to indicate if DEQ is referring to a reporting year or quarter, or a calendar year or quarter. For example, pages 40 and 41 of the Redline include two references to “1st quarter of 2025”. It isn’t clear if this refers to the quarter beginning January 1, 2025, or the [1st reporting] quarter that begins July 1, 2025. For the benefit of every stakeholder, DEQ should eliminate ambiguities in references to quarters and years by always referring to “reporting quarter”, “reporting year”, “calendar year”, or other terms that aren’t easily confused. While the definitions section of the permit defines “Full Reporting Year” it does not define “quarter” or any other calendar-derived terms that appear in the permit. We recommend addition of definitions for every calendar-related term that appears in the permit.

**Response:** The permit has been revised to reference to the appropriate timeframes with specific dates when appropriate. The draft permit was consistent in using the term “full reporting year” referring to July 1 to June 30. The terms “quarter, calendar month and calendar days” are defined in Schedule F, Schedule E of the permit and are used appropriately within the permit. The term calendar day is used consistently in the permit to refer to a certain number of calendar days from the triggering event.

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WEYERHAEUSER #8

**Description: Narrative Technology-based Effluent Limits (TBELs); Housekeeping - Revise added requirement to “Document the defined schedule” to along the lines of “Document the schedule for all housekeeping measures that are conducted on a schedule”**

**Comment:** Condition 1.g in Schedule A (page 13 in Redline) includes the added requirement to “Document the defined schedule”. This presupposes that all housekeeping measures covered by this requirement are scheduled. The condition begins with “Routinely clean...” suggesting (accurately) that cleaning should be done when in the course of routine operation it is observed that housekeeping measures are needed.

**Response:** DEQ appreciates the comment. If there is not a defined schedule utilized for a housekeeping control measure, the SWPCP may state that, or indicate the known timeframes. The condition as written implies documentation of defined schedules and does not require documentation of those housekeeping

measures that do not have a defined schedule. Whenever plausible the SWPCP must define the schedule by the appropriate metric.

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WEYERHAEUSER #9

**Description: Substantially Similar Discharge Points; Corrective Action - Recommend that this condition be reworded to indicate corrective actions must be implemented as determined to be needed at all substantially similar discharge points**

**Comment:** Schedule A, Condition 11.c.iv. s a new condition requiring that applicable corrective action responses be assessed and implemented on all substantially similar discharge points. We interpret this condition to require implementation of corrective actions on substantially similar discharge points as determined in the assessment to be appropriate for each substantially similar discharge point. Conditions at each discharge point are different, so just because corrective action is needed at one monitoring point does not automatically mean all substantially similar discharge points require the same corrective action.

**Response:** Substantially similar discharge points are exempted from monitoring requirements when a permit registrant can prove through past monitoring or an analysis of industrial activities, site characteristics, significant materials, and management practices and activities that the sampling results from the equivalent monitored discharge points represent the quality from substantially similar unmonitored discharge points. DEQ or agent's approval of a substantially similar determination is contingent upon the very principle that substantially similar discharge points of stormwater quality is representative of the monitored analytical results. In addition, 40 CFR 122.21(g)(7)(i) outlines: "When an applicant has two or more discharge points with substantially similar effluents, the Director may allow the applicant to test only one discharge point and report that the quantitative data also apply to the substantially similar discharge points." The condition the commenter refers to regarding Tier 1 corrective actions, requires the permit registrant to assess and implement the appropriate corrective action response at all substantially similar discharge points associated with the monitoring point that exceeded the benchmark(s). Tier 1 responses allows discretion by the permit registrant to apply additional control measures or other changes necessary based on corrective action review.

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WEYERHAEUSER #10

**Description: SWPCP Required Elements; General Comment - Should write SWPCPs section to include a consolidated list of required elements**

**Comment:** In order for a Plan to be effective and efficient to implement it should be well-organized. The Permit's specifications for SWPCPs make it almost impossible to develop an efficient Plan because of the permit's repetitive and unorganized listing of elements that have to be addressed in the Plan. The condition begins by requiring the Plan to explain how the site will comply with the Narrative Technology-based Effluent limits that appear in a different condition. There is needless repetition between Narrative Technology-based Effluent limits and SPWPC Required Elements. This is counterproductive.

**Response:** Permit registrants and new applicants are required to complete and submit a SWPCP checklist that outlines a plan structure and ensures each plan includes the required elements as required by the permit. The checklist is to help both the person developing the plan and the person reviewing the plan for

completeness. The permit condition in Schedule A, SWPCP Required Elements, contains all that must be in the plan. This plan must include the narrative technology-based effluent limits (NTBELs) reference in Schedule A.1. The 1200-Z permit must retain the current structure to comply with NPDES permit regulations. The required elements in stormwater pollution control plans must address each of the NTBELs within the permit.

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## 15. Comments from: City of Eugene

EUGENE #1

**Description: General Comment - Positive modifications are being proposed partly due to including industry representatives, third-party environmental advocacy organization representatives, and a municipal representative/Agent in the permit development process**

**Comment:** NA

**Response:** DEQ appreciates the input.

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EUGENE #2

**Description: General Comment - Appreciates the work the DEQ has done to implement electronic reporting and feels that this programmatic modification, once operational, will help clarify permit requirements and increase the efficiency of administering and complying with the permit**

**Comment:** NA

**Response:** DEQ appreciates this support.

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EUGENE #3

**Description: Tier 1.5 - Supports this approach as permit requirements are clearly listed and the business is required to concisely state how they are meeting these requirements in Appendix B**

**Comment:** NA

**Response:** Based on comments received regarding the application of Tier 1.5 requirements and the appropriateness of the Appendix B checklists across all the industrial sectors, DEQ removed the mandatory use of the Appendix B checklists and removed Tier 1.5 from the proposed final permit. Upon review of the Appendix B checklist, DEQ acknowledges that the requirements may not be appropriate for numerous facilities within various industries. Instead, the industrial-specific checklists has been revised to reduce duplicative requirements and incorporated into Tier 1 as a tool for permit registrants.

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**Description: General Comment - Encourage DEQ to add the SWPCP checklist as an Appendix**

**Comment:** NA

**Response:** DEQ must maintain documents such as the SWPCP checklist outside of the permit in order to make edits as needed throughout the permit cycle.

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EUGENE #5

**Description: Inspections; Visual Observation - Supports the requirement to complete a Tier I report if the inspection identifies evidence of stormwater pollution**

**Comment:** NA

**Response:** DEQ appreciate the input.

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EUGENE #6

**Description: Inspections - Recommends requiring a certification statement (40 CFR 122.22) and submittal of inspection forms**

**Comment:** As these inspections are a type of required monitoring and failure to properly conduct this monitoring could result in Class I violations, the City recommends requiring a certification statement (40 CFR 122.22) on the monthly form and for the forms to be submitted to the DEQ or Agent on an established frequency.

**Response:** The federal requirement under 40 CFR 122.41(k) states that the certification statement must be included all applications, reports, or other information that is submitted to DEQ or agent. Since inspection reports are retained on-site with facility records, the certification statement is not required. The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance is a punishable offense under law.

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EUGENE #7

**Description: Inspections; Visual Observation - Recommends removing requirement for visual observation during “normal business hours of operation”**

**Comment:** We’ve seen with the most recent public health emergency, sites may quickly change their normal business hours of operation or otherwise become unstaffed. Oftentimes when this occurs, industrial materials are left in areas exposed to stormwater and BMPs are not properly maintained.



**Response:** DEQ did not make this suggested change. Regular business hours of operation means those timeframes when the facility is engaged in its primary production process, with personnel that have completed the required SWPCP training. This definition does not restrict or prevent a facility from performing the required monthly visual observations even when there is a change in business hours. The permit includes reduced monitoring and visual observation provisions appropriate for unstaffed or inactive sites; however, the site must eliminate exposure to industrial activities during those times.

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EUGENE #8

**Description: Sampling Procedures; pH - Recommends requiring photographic documentation of pH meter calibration and analysis**

**Comment:** Considering the prevalence of digital cameras, the City of Eugene recommends requiring photographic documentation of pH meter calibration and analysis. The City would like straight forward ways of assessing compliance with permit requirement.

**Response:** Permit requirements for this general permit must be written to accommodate every different circumstance at more than 860 permitted facilities statewide. DEQ will not require photographic documentation of pH meter calibration and analysis during this permit term as this may not be practical for all permit registrant and DEQ finds the proposed final permit conditions get to the same outcome. All applications, report or information, including Discharge Monitoring Reports, submitted to DEQ or agent must be signed and certified in accordance with 40 CFR 122.22. DEQ requires pH field notes submission at time monitoring is reported. Documentation of proper pH calibration must retained with records on site.

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EUGENE #9

**Description: Monitoring Variance -Recommends that DEQ modify the language in this section to clarify that samples must be collected when possible**

**Comment:** In the event required monitoring was unable to be performed due to site characteristics or meteorological conditions, it is suggested that a formal variance request is submitted that includes supporting information (rainfall data, drought declarations, etc.) and requiring pictures to be submitted of the outfall/monitoring locations on days with heavy rainfall to, demonstrate that sample collection was attempted but was not possible.

**Response:** The permit is clear that a monitoring variance must be submitted when a facility missed samples due to no storm events of sufficient magnitude to produce run-off during regular business hours of operation and safe conditions. The reasons may include site characteristics or meteorological conditions or simply not enough rainfall to produce a discharge event. It is up to the permit registrant to document the details in a monitoring variance request when discharge reporting indicates less than the minimum sampling frequency was achieved.

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**Description: Water Quality-based Effluent Limits; pH - Apply pH numeric effluent limits only to direct discharges to Category 5 impaired waters for pH**

**Comment:** While we agree that pH monitoring is a valuable indicator of stormwater contamination, pH is a characteristic of water and should not be viewed in the same manner as a quantifiable contaminant (i.e. Zn in mg/L). While the pH can be measured in standard units, this measurement does not provide information about the buffering capacity and it is impossible to determine if the pH would be problematic without additional information. In addition, the size of the site in relation to the drainage basin (if the discharge is comingled) is not taken into account when determining the allowable pH range for a receiving stream.

**Response:** The discharge of pH is a pollutant with applicable water quality standards defined in OAR 340-041-0021 and -0101 through -0350. pH may have direct toxic effects in the receiving water, but may also influence the toxicity of other pollutants which are affected by the degree of hydrogen ion dissociation. DEQ has determined there is reasonable potential for discharges of pH to cause or contribute to an excursion above or below the applicable standard in waterbodies which are impaired for pH. As such, discharges into Category 5: 303(d) listed receiving waters may be subject to WQBELs as required by 40 CFR 122.44(d)(i) where “limitations must control all pollutants or pollutant parameters...may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard.”

Impairment monitoring for pH are not effluent limitations and their exceedance does not constitute a permit violation. Given the uncertainties regarding available assimilative capacity and buffering capacity of the receiving water, DEQ has established pH numeric water quality-based effluent limits when two consecutive qualifying sample results collected at each monitoring point falls outside the basin-specific range for pH. This is a conservative assumption designed to ensure the maintenance of water quality standards in diverse array of receiving waters throughout the state typically covered under a general permit.

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EUGENE #11

**Description: Monitoring Frequency - Recommend the monitoring frequency and DMR reporting frequency be the same**

**Comment:** Quarterly DMR submissions (every three months), yet the monitoring period is six months in duration incongruent compliance schedules are confusing for permit registrants, significantly increase the amount of paperwork produced and reviewed, and provide little, if any benefit to water quality.

**Response:** DEQ discussed this topic during the advisory committee meetings. One of the short-term changes incorporated in 2018 reissuance of the permit from the Settlement Agreement included changing Discharge Monitoring Report submittal from annually to quarterly. This change resulted in a different sampling frequency from the reporting requirement. DEQ decided to retain the semi-annual sampling frequency timeframe to allow facilities more flexibility around sample collection.

**Description: Background Conditions - Do not support the subtraction method for determining background concentration**

**Comment:** The draft permit requires monitoring locations to be representative of the industrial stormwater discharge generated onsite and as such, offsite flow must be separated or otherwise diverted. If monitoring must occur prior to comingling, this provision should be removed. It should also be noted that the subtraction method does not take the percentage of offsite flow as it related to total flow into consideration and is therefore not justifiable. Additionally, current DEQ guidance emphasizes that the intent of natural/background conditions is to only account for environmental conditions that existed prior to modern human impacts (i.e. iron naturally present in native soils). The subtraction method described in Schedule 8.8 subsection iii does not address the pollutant contribution from onsite native soils, which appears to be the intent of this permit provision.

**Response:** DEQ's proposed final permit retains the background concentrations calculation allowance based on the 2017 permit language, not the subtraction method in the draft permit. EPA's MSGP permit does not include the subtraction method either.

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EUGENE #13

**Description: Monitoring Waiver - Recommend DEQ not allow monitoring waivers for TSS analysis**

**Comment:** One of the most efficient methods for ensuring that BMPs are properly maintained is to review analytical monitoring data. While the City recognizes that a waiver can be an incentive for registrants to meet permit conditions, it also eliminates our ability as an Agent to assess compliance in this regard. As total suspended solids (TSS) is a relatively low cost analysis to conduct and an excellent indicator of the adequacy of BMP maintenance, we recommend that DEQ not allow waivers to be issued for TSS analysis.

**Response:** DEQ declined to make this type of substantial change to the monitoring requirements without first evaluating the concept during the advisory committee meetings and throughout the public rulemaking process. DEQ will consider this recommendation throughout the upcoming permit term for the next permit renewal.

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**16. Comments from: Columbia Riverkeeper,  
Northwest Environmental Defense Center,  
Willamette Riverkeeper, Tualatin Riverkeepers,  
Northwest Environmental Advocates,  
Earthrise Law Center**

ENVIRONMENTAL COMMENTERS #1

**Description: General Comment - The Environmental Commenters appreciate DEQ's efforts to prepare this draft permit in a timely manner, and to comply with the terms of the Settlement Agreement and Consent Judgment entered in Columbia Riverkeeper v. Or. Dept. of Env'tl. Quality, Case No. 17CV42254 (Mult. Co. Circuit Court Aug. 17, 2018)**

**Comment:** NA

**Response:** DEQ appreciates the feedback.

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#### ENVIRONMENTAL COMMENTERS #2

**Description: General Comment - Believe this draft 1200-Z Permit represents an important step forward in protecting Oregon's waters from industrial stormwater pollution**

**Comment:** This is particularly true of DEQ's inclusion of numeric water quality-based effluent limits for dischargers to impaired waters—an inclusion we believe is required by the Clean Water Act. We thank DEQ for taking this step and encourage the agency to continue its efforts to strengthen the 1200-Z Permit.

**Response:** DEQ appreciates the input.

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#### ENVIRONMENTAL COMMENTERS #3

**Description: General Comment; Rulemaking - Concerns about the draft 1200-Z Permit and the utility of issuing the permit by rule**

**Comment:** As a threshold procedural matter, we would ask the DEQ to return to its longstanding practice of issuing general NPDES permits as orders rather than sending them through the formal notice-and-comment rulemaking process. There is no clear evidence that DEQ's historical practice in this regard is or was deficient, and we do not believe that the agency's decision to move to formal rulemaking provides any tangible benefits over the issuance of general NPDES permits as orders. DEQ has stated that this procedural change was intended to increase opportunity for public engagement and to improve transparency in the process, but it is not clear how the formal rulemaking process is superior to DEQ's historical practice in this regard.

**Response:** DEQ has authority under ORS 468B.050 and OAR 340-045-0033(1) to issue general permits by rule or by order. Historically a number of general permits were adopted through rulemaking while more recently some have been issued by agency order. Due to the large number of permit registrants (860+) and the substantive policy changes considered in this permit renewal, DEQ determined that renewing the 1200- Z permit by the rule is appropriate. Renewing this permit through the rulemaking process provided in the Administrative Procedures Act ensures transparency and a standardized process. Additionally, the policy decisions regarding the final permit are made by the Environmental Quality Commission.

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#### ENVIRONMENTAL COMMENTERS #4

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Should keep Condition I.1.a. as written**

**Comment:** Applicable to Condition I.1.a: A new discharger to an impaired water without a Total Maximum Daily Load (TMDL), based on the EPA-approved Category 5: 303(d) list for pH, copper, lead, zinc, iron, and bacteria must meet one of the following conditions to obtain coverage under this permit and document in applicant's Stormwater Pollution Control Plan (SWPCP) justification of compliance by: i. Prevent all pollutants for which the waterbody is impaired from exposure to stormwater; or ii. Provide technical demonstrations that the pollutant(s) for which the waterbody is impaired are not present at the site. iii. Provide any analytical sampling results of stormwater discharge for any impairment pollutants. New dischargers are obligated to provide all sampling results. iv. If unable to demonstrate impairment pollutant(s) will not be present in discharge, provide data and other technical information that demonstrates that the discharge is not expected to cause or contribute to an exceedance of the water quality standard for which the waterbody is impaired at the point of discharge.

We applaud DEQ for including the following important new provisions. Although they may draw adverse comments from various 1200-Z permittees or other entities advocating on their behalf, we urge DEQ to keep these terms and conditions in the final 1200-Z Permit.

**Response:** DEQ appreciates the input.

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ENVIRONMENTAL COMMENTERS #5

**Description: Water Quality Standards - Should keep Schedule A.3.a as written**

**Comment:** Applicable to Schedule A.3.a: The permit registrant must not cause or contribute to an exceedance of instream water quality standards as established in OAR 340-041. This condition is essential to comply with federal NPDES regulations, including 40 C.F.R. § 122.4(i), and it appropriately puts the burden on the applicant to demonstrate that its expected additional pollutant load will not further pollute state waters. That provision expressly prohibits permittees from causing or contributing to an exceedance of instream water quality standards. This important condition provides both DEQ and the public a means of ensuring compliance with water quality standards in instances where neither DEQ nor the permittee have yet made the effort to calculate numeric WQBELs for the permitted discharge—a common occurrence, especially with general permits. It also provides both DEQ and the public with an effective enforcement mechanism where sampling results indicate that instream exceedances of water quality standards are occurring.

**Response:** Schedule A.3.a water quality standards provision remains in the proposed final permit.

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ENVIRONMENTAL COMMENTERS #6

**Description: Water Quality-based Effluent Limits - Should keep all Schedules and provisions imposing suite of WQBELs for discharges pH, copper, lead, zinc, E. coli, and iron to waters that are impaired for those pollutants**

**Comment:** These new WQBELs are amply supported by the factual record (including the analysis prepared by PG Environmental and shared with the 1200-Z Advisory Committee) and are fully consistent

with the Clean Water Act and its implementing regulations. See 33 U.S.C. § 1313(b)(1)(C); 40 C.F.R. §§ 122.2(d), (i) and 122.44(d)(1). For the first time ever in the 1200-Z Permit more closely in line with analogous industrial stormwater general permits issued by the States of Washington and California establishing Water Quality-based effluent limits, (Schedules A.13, B.3., and B.4., and Tables 5 and 6) a strong step forward that will not only protect water quality and aquatic life in Oregon.

**Response:** DEQ appreciates the input. DEQ's proposed final permit has revised the WQBELs in relation to pH. The draft permit included instantaneous compliance with numeric WQBELs for pH based on direct application of the basin-specific water quality criteria ranges in OAR 340-041-0101 through 340-041-0350. After further analysis based on comments received, DEQ determined that a two-year compliance schedule is appropriate to allow permit registrants to upgrade facilities as needed prior monitoring escalating to a numeric water quality-based effluent limit for pH. This is the same approach the draft permit proposed for exceedances of impairment monitoring for total copper, total lead and total zinc. The evaluation of impairment data by PG Environmental showed up to 25 percent of applicable dischargers may be in immediate noncompliance with the minimum pH limits. Based on this findings, DEQ has revised the proposed final permit to approach pH similarly to copper, lead and zinc, and allow for a compliance schedule of up to two years if two consecutive monitoring results falls outside the basin-specific pH range to ensure the appropriate site controls can be evaluated and implemented.

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#### ENVIRONMENTAL COMMENTERS #7

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Should be re-written to make abundantly clear what new dischargers would cause or contribute to water quality standard violations is prohibited from permit coverage**

**Comment:** As currently drafted, this Condition is confusing and does not ensure that new permittees would not cause or contribute to violations of water quality standards. Condition I.1.a now states that a new discharger must meet one of the conditions in sub-parts I.1.a.(i-iv). But only sub-parts (i) (preventing impairment pollutants from exposure) and (ii) (demonstrating that impairment pollutants are not present) are then presented as alternatives to each other, separated by an "or." DEQ may intend for sub-part (iv) (providing data and other information demonstrating that discharges are not expected to cause or contribute to a water quality standard exceedance) to be a third alternative to (i) and (ii), but that is not clear in the draft Permit. Sub-part (iii), which as written would allow a new discharger to obtain coverage by simply "Provid[ing] any analytical sampling results of stormwater discharge for any impairment pollutants. New dischargers are obligated to provide all sampling results."

**Response:** Condition I.1.a now reads: "A new discharger to an impaired water without a Total Maximum Daily Load (TMDL), based on the EPA-approved Category 5: 303(d) list in effect at the time of permit application for pH, copper, lead, zinc, iron, and E. coli that correspond to the specific pollutant(s) for which the water body is impaired must meet one of the following conditions to obtain coverage under this permit:

- i. Prevent exposure to stormwater for pH, copper, lead, zinc, iron and E. coli that correspond to the specific pollutant(s) for which the water body is impaired. Document the procedures taken to prevent exposure in the Stormwater Pollution Control Plan (SWPCP).
- ii. Provide technical demonstrations that sources of pH, copper, lead, zinc, iron and E.coli that correspond to the specific pollutant(s) for which the water body is impaired are not present at the site and document these findings and considerations in the SWPCP.

- iii. Provide DEQ or agent stormwater discharge analytical sampling results to demonstrate the discharge of stormwater is not expected to cause or contribute to an exceedance of water quality standards for pH, copper, lead, zinc, iron and E. coli that correspond to the specific pollutant(s) for which the water body is impaired at the point of discharge and retain in the SWPCP.

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ENVIRONMENTAL COMMENTERS #8

**Description: Permit Coverage and Exclusion from coverage; New Discharger - Provide guidance as to how a new discharger may demonstrate that its discharge will not cause or contribute to a water quality exceedance**

**Comment:** If Condition I.1.a is re-organized as outlined above, then if a new discharger to an impaired water cannot show that impairment pollutants will not be present in discharge, it has another showing it can make to obtain Permit coverage. Per (current) sub-part (iv), a facility has the option of providing “data and other technical information” to demonstrate its discharge is not expected to cause or contribute to a water quality standard exceedance. It is critical that such a showing be supported by appropriate information and findings. As such, DEQ should provide additional guidance as to what “data and other technical information” would suffice to make such a demonstration.

**Response:** DEQ agrees that any demonstration under this condition be supported by appropriate information and findings. This condition refers to a scientific or engineering analysis of pollutant exposure and transport pathways on the site. It does not require the use of analytical sampling results, as this method is addressed in Condition I. For example, a permit registrant discharging to a zinc impaired waterbody might demonstrate use of passive or active treatment to remove potential sources of zinc in discharge, direct specific area of the site stormwater discharge with zinc exposure to sanitary sewer, or show that zinc is likely not to be introduced to the site by circumstances which one would reasonably anticipate.

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ENVIRONMENTAL COMMENTERS #9

**Description: Permit Coverage and Exclusion from coverage; New Discharger - Compliance with the terms and conditions of the permit should not be presumed consistent with an applicable TMDL**

**Comment:** Most TMDLs in Oregon do not include wasteload allocations for industrial stormwater. In most instances this is not because DEQ has determined that industrial stormwater is not a contributor to the impairment, but rather because DEQ has not been able or willing to assess and quantify the extent of the industrial stormwater contribution to the impairment. For those impaired waters covered by an existing TMDL but lacking a wasteload allocation for industrial stormwater, DEQ must devise a mechanism to replace its “presumption” of compliance with a real-world assessment of the stormwater discharge’s contribution to the impairment. In most cases, this may well require revision of the TMDL to include wasteload allocations for stormwater.

**Response:** DEQ agrees that new dischargers that do not have an applicable WLA for a TMDL cannot increase pollutant loading of the impairing pollutant. The requirements established in Condition I.1 of the permit prevent increased pollutant loading from new dischargers to impaired waterbodies. The proposed

final permit does not allow new dischargers to increase pollutant loading to impaired waters, and is thus consistent with all TMDLs.

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#### ENVIRONMENTAL COMMENTERS #10

**Description: Discharges to Impaired Waters - Should remove language “must comply with Schedule A.3”**

**Comment:** This Permit requirement is unnecessary, because all permit registrants must comply with Schedule A.3, which prohibits causing or contributing to a water quality standard exceedance and outlines actions to be taken if such an exceedance occurs. The language in Schedule A.4.a.i only introduces ambiguity, and could be interpreted to imply that some permittees are not required to comply with Schedule A.3.

**Response:** DEQ agrees that all permit registrants are subject to Schedule A.3. There is not any text in the permit that suggests that some discharges may be excluded which would result in ambiguity. DEQ determined the clarifying text under discharges to impaired waters is warranted to ensure discharges are consistent with applicable water quality standards.

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#### ENVIRONMENTAL COMMENTERS #11

**Description: Discharges to Impaired Waters - Remove language “may” be used in conjunction with other information” to make clear that monitoring results alone are sufficient to demonstrate an exceedance of water quality standards**

**Comment:** Permit Schedule A.4.a.iii states that a discharger to an impaired water’s monitoring results showing exceedance of water quality criteria “may be used in conjunction with other information” to demonstrate a water quality standard exceedance (and violation of Schedule A.3.a). This quoted language is inappropriate and unnecessary. When a water of the state is impaired for a certain pollutant, that water has no further assimilative capacity for the impaired pollutant. As a result, a discharge to that water containing an impairment pollutant concentration higher than the relevant acute criteria will necessarily result in that discharge causing or contributing to a violation of the water quality standard. Schedule A.4.a.iii’s inclusion of the phrase “may be used in conjunction with other information” is ambiguous, and incorrectly suggests that monitoring results alone are insufficient to establish permit violations.

**Response:** A qualifying sample demonstrating an exceedance of a water quality criteria in an impaired water is sufficient for DEQ to determine a violation has occurred. However, DEQ has the latitude to consider relevant information; including background concentrations (see Schedule D definitions).

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#### ENVIRONMENTAL COMMENTERS #12

**Description: Discharges to Impaired Waters - Clarity needed, provision “Impairment pollutant monitoring and subsequent requirements” should reference all relevant sections of the permit**



**Comment:** Schedule A.4.a.iv references “Impairment pollutant monitoring and subsequent requirements” that apply to facilities discharging to Category 5 listed impaired waters. For clarity, this provision should reference all of the relevant impairment pollutant monitoring requirements and pollutant criteria in Schedule B, as well as the impaired waters exceedance responses in Schedule A.13.

**Response:** DEQ revised the permit to address this comment.

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## ENVIRONMENTAL COMMENTERS #13

### **Description: Compliance Schedule; Numeric Effluent Limits - Two-year compliance schedule is not appropriate for all permittees that trigger numeric WQBELs**

**Comment:** As currently drafted, the 1200-Z Permit includes a default two-year compliance schedule following the relevant triggering event for every permittee subject to the new numeric limits. Schedule A.13.c states “Permit registrants will be allowed a two-year compliance schedule in accordance with Schedule C” after the numeric criteria for total copper, total lead, or total zinc becomes applicable (emphasis added). Environmental Commenters acknowledge that for some 1200-Z permittees, a two-year compliance schedule may be appropriate, subject to DEQ making the appropriate findings for that permittee. But DEQ’s own permit fact sheet makes clear that such a schedule will not be appropriate for all permittees triggering the new numeric limits, stating “In many cases, registrants will be able to immediately comply with the final effluent limits, and the compliance schedule will not be applicable.” In short, DEQ has not made the required findings that the maximum two-year compliance schedule is necessary and appropriate for all 1200-Z permittees who trigger numeric effluent limitations for total copper, total lead, and total zinc. In fact, DEQ’s findings show just the opposite—that these determinations should be made on a case-by-case basis once a facility’s discharges trigger numeric limits. Schedule A.13.c and Schedule C should be modified to make clear that when the numeric limitations become applicable DEQ will determine, on a case-by- case basis, (1) whether a compliance schedule is appropriate for a given permittee, and (2) the length of any compliance schedule granted. . This determination should be adequately supported in the administrative record, and based in part on relevant information submitted by the permittee.

**Response:** Permit registrants able to immediately comply with water quality-based numeric effluent limitations (as demonstrated by monitoring results) must do so and do not qualify for a compliance schedule. The Schedule C Compliance Schedule applies to permit registrants who are not able to immediately comply with water quality-based numeric effluent limitations. The compliance schedule provides a maximum of 24-months to achieve compliance and does not preclude registrants from achieving compliance at an earlier date if able. It is not feasible to evaluate the necessary time period to reach compliance on a case-by-case basis, and DEQ has determined 24-months is a reasonable and conservative time-period for registrants to complete Table 10 milestones and achieve an ability to comply with numeric effluent limitations.

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## **17. Comments from: Gresham Sanitary Service**

GSS #1

**Description: Benchmarks Technological Feasibility - Recommends that ODEQ take a holistic review of benchmark values**

**Comment:** The Rulemaking Advisory Committee members were concerned that DEQ was proposing lower benchmarks than DEQ had previously determined were technologically achievable and that DEQ should not set benchmarks that cannot be met with readily available technology. Thus, the benchmarks are essentially an “end-of-pipe” water quality standard discharge limit not accounting for any dilution that can occur. DEQ needs to take a holistic review of benchmark values; the values need to consider what control measures can be achieved, background conditions, and water quality criteria.

**Response:** DEQ hired PG Environmental to assess the benchmark methodology used in the 1200-Z permit. It was determined that the technological feasibility evaluation was not robust enough and did not evaluate the discharge quality from the best performing sites. DEQ has built in flexibility into the risk-based modeling to account for the intermittent nature of stormwater discharge. The metals benchmarks in the proposed final permit are based on a well-vetted and technically sound modeling methodology that builds in a dilution of 5 and sets the benchmark at a 10 percent probability of exceeding the water quality criterion.

DEQ anticipates that a robust evaluation of the technological feasibility of the benchmarks would result in concentrations would be even more restrictive than the risk-based water quality concentrations established in the proposed final permit. As outlined in the federal process for technological feasibility, the appropriate evaluation would include a selection of model technologies and defined performance standards and DEQ would set benchmarks at a concentration based on the best performing treatment capabilities.

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GSS #2

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Proposed 1200-Z Permit would prohibit the use of temporary covers, such as tarps, but no justification for this change is provided in the draft evaluation report. There will undoubtedly be both short-term and long-term circumstances in which permanent structures are not feasible, but tarps or other temporary covers would minimize exposure. A permit registrant should not be put in the position of choosing a less environmentally protective solution—no cover at all—if a permanent structure is not practicable.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to minimize exposure and to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure.

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GSS #3

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not be subject to an enforcement action for violating the narrative technology-based effluent limits**

**Comment:** A permit registrant should not be subject to an enforcement action for violating the narrative technology-based effluent limits if it has explained in its SWPCP how it will implement the limits, has submitted the SWPCP to DEQ, has timely made any changes to the SWPCP directed by DEQ, and has complied with the SWPCP. Translating a general permit’s necessarily vague and subjective narrative technology-based effluent limits into facility-specific stormwater controls requires professional and policy judgments that only DEQ can ultimately make. A permit registrant should not be subject to an enforcement action, including a citizen suit, for violating the narrative limits when it has (1) prepared an SWPCP that explains how it will implement the narrative limits, (2) submitted the SWPCP to DEQ or its agent, (3) made any changes in the SWPCP that DEQ or its agent has directed, and (4) fully complied with the relevant provisions of the SWPCP. Permit registrant should not be subject to an enforcement action when these conditions have been met.

**Response:** DEQ appreciates the input. The draft permit language did not read as intended. DEQ has revised the wording to meet the intent: “Failure to implement any narrative technology-based effluent limits in Schedule A.1 and Schedule E, and other control measures or operational practices described in the SWPCP is a permit violation.”

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GSS #4

**Description: SWPCP Required Elements; Map - Remove proposal to identify on the site map “areas where pesticides, herbicides, soil binders, and fertilizers are applied”**

**Comment:** Proposed 1200-Z Permit condition A.10.b.i(9) would require the SWPCP site map to identify “areas where pesticides, herbicides, soil binders, and fertilizers are applied.” Requests the removal of this proposed requirement. It would be burdensome to map the specific areas of application, particularly for infrequent uses, and it would also clutter the site map, making it difficult to use. Moreover, because the permit already requires the SWPCP to include a description of these “significant materials” and their use, it is unclear what would be gained by including this information on the site map.

**Response:** DEQ did not include this requirement in the proposed final permit.

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GSS #5

**Description: Narrative Technology-based Effluent Limits (TBELs); Waste Chemicals and Material Disposal - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Tarping has also been removed from Draft 1200-Z Permit language as a cover for waste containers. Facilities are constrained by the containers provided to it by third party vendors, such as Waste Management or local municipal utilities. Registrants should be allowed to use tarps as an effective control measure.

Waste Disposal comments: Requiring lids on all waste containers and drop boxes is not reasonable for many reasons. Often, customers do not want or cannot use boxes with lids, the lids are easily damaged and costly to install and repair, and makes the movement, loading, and transport of these containers more difficult for the drivers. Temporary tarps are a fraction of the cost and have none of the repair costs associated with a permanently installed lid. We recommend that DEQ continue to allow the use of tarps as covers, allowing for “properly secured and maintained temporary covers that fully protect from exposure

to storm water.” If the tarps are applied correctly and maintained in good condition, they serve as an effective way to limit exposure of materials to storm water.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. Neither EPA nor Washington State Ecology allow the use of tarps to meet these narrative technology-based effluent limits. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure. As emphasized in the comment from several waste management companies, proper maintenance is crucial when using tarps. The proposed final permit requires permit registrants to cover all waste contained in bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to these pollutants; this includes scrap and waste materials.

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GSS #6

**Description: Mass Reduction Measures: General Comment - Consider any mass load reduction device installed voluntarily under exemptions**

**Comment:** In some instances, the permit refers to exemptions (such as those in Schedule A.11.e.ii) or other considerations afforded to mass reduction devices that were “installed during previous permit cycles in response to Tier 2 corrective action.” However, in other instances, the permit does not clearly state that some considerations are afforded to mass reduction devices that were installed proactively or independent of triggering Tier 2 corrective action. What about facilities intermittently struggled to meet benchmarks and has now made the decision to install a mass load reduction device in a proactive effort to avoid Tier 2 requirements in the future, would those devices then qualify for the exemptions outlined in Schedule A.11.e.ii and Schedule A.12.h.i? The permit should encourage permittees to make proactive improvements to their facilities to attempt to avoid Tier 2 corrective action. As written, the permit may dissuade entities from making necessary and beneficial improvements until they have triggered Tier 2 corrective action requirements.

**Response:** Schedule A.6 regarding the re-certification of mass reduction waiver provision has been revised to add: “For mass reduction measures installed during previous permit cycles that reduced the mass of the pollutants discharged at or above DEQ-approved design storm capacity not in response to Tier 2 mass reduction waiver, the permit registrant must meet Schedule A.6.a-d and submit, retroactively, to DEQ or agent a Tier 2 mass reduction waiver checklist.” DEQ or agent will approve or deny the certification requirements and retroactive submittal of the Tier 2 mass reduction waiver checklist, since the mass reduction device did not have prior approval before being built. For all mass reduction devices that meet the re-certification deadline of December 31, 2021, DEQ or agent will communicate to the permit registrant qualification related to the exemptions outlined in the other Schedules of the permit.

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GSS #7

**Description: Narrative Water Quality-based Effluent Limits - Clarity on the timeline facilities will be granted to install these additional source and operational controls is concerning**

**Comment:** The measures necessary to comply with Schedule A.13.h will potentially be significant for some sectors, specifically the solid waste industry, who provides a vital public service to our communities.

**Response:** Permit registrants that trigger this condition will now have 90 calendar days, instead of 60 calendar days that was in the draft permit, from receiving the monitoring results to implement the narrative water quality-based effluent limits to the extent practicable. Schedule A.13 Water Quality-based Effluent Limit section of the proposed final permit applies to stormwater discharge into 303(d) list receiving waters where data indicates a designated use is not supported or a water quality standard is not attained and a TMDL is needed. Schedule A.13.k reads: “If the permit registrant is unable to comply with the numeric or narrative water quality-based effluent limits, it is a permit violation and permit coverage may be revoked under this general permit and coverage required under an individual permit.”

As part of the rulemaking, DEQ hired PG Environmental a technical expert in NPDES permitting to conduct an impairment analyses with the following objective to summarize pollutant trends of industrial stormwater discharges exceeding reference concentrations into impaired waters. Based on technical work DEQ identified industrial stormwater data exceeded water quality criteria or reference concentration for pH, copper, lead, zinc, iron and E. coli. This informed the narrative effluent limit framework for E. coli and iron in response to monitoring results exceeding two consecutive times the impairment concentrations the permit. Because these two pollutants tend to be more ubiquitous in our environment and are difficult to treat, DEQ proposed to establish narrative limits water quality-based effluent limits instead of setting water quality-based numeric limit for E. coli and iron. DEQ will make the determination after site controls are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health. OAR 340-045-0033(10)(c) grants DEQ the authority that any facility must obtain an individual permit when “the discharge or activity is a significant contributor of pollution or creates other environmental problems.” DEQ will communicate and provide the facility with its findings if coverage under the general permit is revoked. DEQ expects these appropriate mandatory control measures in the form of narrative water quality-based effluent limits will reduce loading into these Category 5 impaired waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303 (d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source.

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GSS #8

**Description: Narrative Water Quality-based Effluent Limits - DEQ needs to have reasonable expectations of what small businesses can do, and they need to provide appropriate timelines to these businesses to be able to develop and implement a plan to comply**

**Comment:** Our understanding of this section of the draft permit is that if a permittee cannot comply with this section of the permit and meet all water quality criteria, they will lose coverage under the general permit and have to obtain an individual permit, at great expense. But it’s not clear how long a site has to bring their results into compliance, or if DEQ can work with the permittee to create solutions to meet the criteria.

**Response:** DEQ will make the determination after site controls or treatment are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health at any site. DEQ will communicate and provide the facility with its findings if coverage under the general permit may be revoked. DEQ expects these appropriate mandatory control

measures in the form of water quality-based narrative limits will reduce pollutant loading into these Category 5 waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303 (d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source. OAR 340-045-0033(10) describes the terms for revocation under the general permit:

"The Director may refuse to authorize or renew coverage, or may revoke existing coverage under a general permit, as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit.

- (a) The procedures for denying a permit in OAR 340-045-0050 and for permit revocation in OAR 340-045-0060 apply.
- (b) Any interested person may petition the Director to take action under this section.
- (c) The grounds for requiring an individual permit include the following:
  - (A) The discharge or activity is a significant contributor of pollution or creates other environmental problems;
  - (B) The permittee failed to comply with, or is not currently in compliance with, the terms and conditions of the general permit, submitted false information, or the permittee is in violation of any applicable law;
  - (C) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;
  - (D) For NPDES general permits, effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit;
  - (E) Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either temporarily or permanently reducing or eliminating the authorized discharge is necessary; or
  - (F) Any other relevant factors.

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GSS #9

**Description: Benchmark Georegion - Should be clearer about where each of these regions are in OR**

**Comment:** Should include a map.

**Response:** DEQ has a searchable map for regulators, facilities and public use. The searchable map will provide certainty of georegion as long as the facility is aware of the location its facilities discharge enters the receiving water. Depending on the receiving water location, DEQ or our agent will clearly communicate with each facility regarding monitoring requirements based on the appropriate georegion.

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## 18. Comments from: Santiam Water Control District

SANTIAM WATER CONTROL DIST. #1

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Require applicants seeking to discharge into district (irrigation) owned facilities to first obtain written permission from the district operating the receiving facilities**

**Comment:** This requirement will afford districts the opportunity to evaluate the pollutants in the proposed stormwater discharges and gauge the impact of increases in stormwater flows. The districts may then enter into agreements with dischargers to address liabilities surrounding water quality and increased stormwater flows.

**Response:** DEQ has determined that the recommended permit condition is not appropriate in this NPDES 1200-Z permit. A complete application for coverage already requires a Land Use Compatibility Statement (LUCS) indicating that the proposed activities are compatible with the local government's acknowledged comprehensive plan. The authorization provided by the 1200-Z permit is limited to authorizing the discharges covered under the permit for purposes of the Clean Water Act and state water quality laws.

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SANTIAM WATER CONTROL DIST. #2

**Description: Permit Coverage and Exclusion from Coverage; Existing Facilities Covered under the 2017 1200-Z NPDES General Permit - Require applicants for renewal of 1200-Z permits to again obtain written permission from the district (irrigation) prior to permit renewal**

**Comment:** This will allow the parties (districts and dischargers) to revise stormwater discharge agreements to accommodate and meet evolving regulatory obligations.

**Response:** DEQ has determined that the recommended permit condition is not appropriate in this NPDES 1200-Z permit. A complete application for coverage already requires a Land Use Compatibility Statement (LUCS) indicating that the proposed activities are compatible with the local government's acknowledged comprehensive plan. The authorization provided by the 1200-Z permit is limited to authorizing the discharges covered under the permit for purposes of the Clean Water Act and state water quality laws.

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## 19. Comments from: Northwest Container Services

NWCS #1

**Description: Benchmarks Technological Feasibility - Recommends that ODEQ take a holistic review of benchmark values**

**Comment:** The Rulemaking Advisory Committee members were concerned that DEQ was proposing lower benchmarks than DEQ had previously determined were technologically achievable and that DEQ should not set benchmarks that cannot be met with readily available technology. Thus, the benchmarks are essentially an “end-of-pipe” water quality standard discharge limit not accounting for any dilution that can occur. DEQ needs to take a holistic review of benchmark values; the values need to consider what control measures can be achieved, background conditions, and water quality criteria.

**Response:** DEQ hired PG Environmental to assess the benchmark methodology used in the 1200-Z permit. It was determined that the technological feasibility evaluation was not robust enough and did not evaluate the discharge quality from the best performing sites. DEQ has built in flexibility into the risk-based modeling to account for the intermittent nature of stormwater discharge. The metals benchmarks in the proposed final permit are based on a well-vetted and technically sound modeling methodology that builds in a dilution of 5 and sets the benchmark at a 10 percent probability of exceeding the water quality criterion.

DEQ anticipates that a robust evaluation of the technological feasibility of the benchmarks would result in concentrations would be even more restrictive than the risk-based water quality concentrations established in the proposed final permit. As outlined in the federal process for technological feasibility, the appropriate evaluation would include a selection of model technologies and defined performance standards and DEQ would set benchmarks at a concentration based on the best performing treatment capabilities.

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NWCS #2

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Proposed 1200-Z Permit would prohibit the use of temporary covers, such as tarps, but no justification for this change is provided in the draft evaluation report. There will undoubtedly be both short-term and long-term circumstances in which permanent structures are not feasible, but tarps or other temporary covers would minimize exposure. A permit registrant should not be put in the position of choosing a less environmentally protective solution—no cover at all—if a permanent structure is not practicable.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to minimize exposure and to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure.

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NWCS #3

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not be subject to an enforcement action for violating the narrative technology-based effluent limits**

**Comment:** A permit registrant should not be subject to an enforcement action for violating the narrative technology-based effluent limits if it has explained in its SWPCP how it will implement the limits, has submitted the SWPCP to DEQ, has timely made any changes to the SWPCP directed by DEQ, and has



complied with the SWPCP. Translating a general permit's necessarily vague and subjective narrative technology-based effluent limits into facility-specific stormwater controls requires professional and policy judgments that only DEQ can ultimately make. A permit registrant should not be subject to an enforcement action, including a citizen suit, for violating the narrative limits when it has (1) prepared an SWPCP that explains how it will implement the narrative limits, (2) submitted the SWPCP to DEQ or its agent, (3) made any changes in the SWPCP that DEQ or its agent has directed, and (4) fully complied with the relevant provisions of the SWPCP. Permit registrant should not be subject to an enforcement action when these conditions have been met.

**Response:** DEQ appreciates the input. The draft permit language did not read as intended. DEQ has revised the wording to meet the intent: "Failure to implement any narrative technology-based effluent limits in Schedule A.1 and Schedule E, and other control measures or operational practices described in the SWPCP is a permit violation."

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NWCS #4

**Description: SWPCP Required Elements; Map - Remove proposal to identify on the site map "areas where pesticides, herbicides, soil binders, and fertilizers are applied"**

**Comment:** Proposed 1200-Z Permit condition A.10.b.i(9) would require the SWPCP site map to identify "areas where pesticides, herbicides, soil binders, and fertilizers are applied." Requests the removal of this proposed requirement. It would be burdensome to map the specific areas of application, particularly for infrequent uses, and it would also clutter the site map, making it difficult to use. Moreover, because the permit already requires the SWPCP to include a description of these "significant materials" and their use, it is unclear what would be gained by including this information on the site map.

**Response:** DEQ did not include this requirement in the proposed final permit.

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NWCS #5

**Description: Mass Reduction Measures: General Comment - Consider any mass load reduction device installed voluntarily under exemptions**

**Comment:** In some instances, the permit refers to exemptions (such as those in Schedule A.11.e.ii) or other considerations afforded to mass reduction devices that were "installed during previous permit cycles in response to Tier 2 corrective action." However, in other instances, the permit does not clearly state that some considerations are afforded to mass reduction devices that were installed proactively or independent of triggering Tier 2 corrective action. What about facilities intermittently struggled to meet benchmarks and has now made the decision to install a mass load reduction device in a proactive effort to avoid Tier 2 requirements in the future, would those devices then qualify for the exemptions outlined in Schedule A.11.e.ii and Schedule A.12.h.i? The permit should encourage permittees to make proactive improvements to their facilities to attempt to avoid Tier 2 corrective action. As written, the permit may dissuade entities from making necessary and beneficial improvements until they have triggered Tier 2 corrective action requirements.

**Response:** Schedule A.6 regarding the re-certification of mass reduction waiver provision has been revised to add: "For mass reduction measures installed during previous permit cycles that reduced the

mass of the pollutants discharged at or above DEQ-approved design storm capacity not in response to Tier 2 mass reduction waiver, the permit registrant must meet Schedule A.6.a-d and submit, retroactively, to DEQ or agent a Tier 2 mass reduction waiver checklist.” DEQ or agent will approve or deny the certification requirements and retroactive submittal of the Tier 2 mass reduction waiver checklist, since the mass reduction device did not have prior approval before being built. For all mass reduction devices that meet the re-certification deadline of December 31, 2021, DEQ or agent will communicate to the permit registrant qualification related to the exemptions outlined in the other Schedules of the permit.

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NWCS #6

**Description: Narrative Water Quality-based Effluent Limits - Clarity on the timeline facilities will be granted to install these additional source and operational controls is concerning**

**Comment:** The measures necessary to comply with Schedule A.13.h will potentially be significant for some sectors, specifically the solid waste industry, who provides a vital public service to our communities.

**Response:** Permit registrants that trigger this condition will now have 90 calendar days, instead of 60 calendar days that was in the draft permit, from receiving the monitoring results to implement the narrative water quality-based effluent limits to the extent practicable. Schedule A.13 Water Quality-based Effluent Limit section of the proposed final permit applies to stormwater discharge into 303(d) list receiving waters where data indicates a designated use is not supported or a water quality standard is not attained and a TMDL is needed. Schedule A.13.k reads: “If the permit registrant is unable to comply with the numeric or narrative water quality-based effluent limits, it is a permit violation and permit coverage may be revoked under this general permit and coverage required under an individual permit.”

As part of the rulemaking, DEQ hired PG Environmental a technical expert in NPDES permitting to conduct an impairment analyses with the following objective to summarize pollutant trends of industrial stormwater discharges exceeding reference concentrations into impaired waters. Based on technical work DEQ identified industrial stormwater data exceeded water quality criteria or reference concentration for pH, copper, lead, zinc, iron and E. coli. This informed the narrative effluent limit framework for E. coli and iron in response to monitoring results exceeding two consecutive times the impairment concentration in the permit. Because these two pollutants tend to be more ubiquitous in our environment and are difficult to treat, DEQ proposed to establish narrative limits water quality-based effluent limits instead of setting water quality-based numeric limit for E. coli and iron. DEQ will make the determination after site controls are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health. OAR 340-045-0033(10)(c) grants DEQ the authority that any facility must obtain an individual permit when “the discharge or activity is a significant contributor of pollution or creates other environmental problems.” DEQ will communicate and provide the facility with its findings if coverage under the general permit is revoked. DEQ expects these appropriate mandatory control measures in the form of narrative water quality-based effluent limits will reduce loading into these Category 5 impaired waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303 (d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source.

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NWCS #7

**Description: Narrative Water Quality-based Effluent Limits - DEQ needs to have reasonable expectations of what small businesses can do, and they need to provide appropriate timelines to these businesses to be able to develop and implement a plan to comply**

**Comment:** Our understanding of this section of the draft permit is that if a permittee cannot comply with this section of the permit and meet all water quality criteria, they will lose coverage under the general permit and have to obtain an individual permit, at great expense. But it's not clear how long a site has to bring their results into compliance, or if DEQ can work with the permittee to create solutions to meet the criteria.

**Response:** DEQ will make the determination after site controls or treatment are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health at any site. DEQ will communicate and provide the facility with its findings if coverage under the general permit may be revoked. DEQ expects these appropriate mandatory control measures in the form of water quality-based narrative limits will reduce pollutant loading into these Category 5 waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303 (d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source. OAR 340-045-0033(10) describes the terms for revocation under the general permit:

"The Director may refuse to authorize or renew coverage, or may revoke existing coverage under a general permit, as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit.

- (a) The procedures for denying a permit in OAR 340-045-0050 and for permit revocation in OAR 340-045-0060 apply.
- (b) Any interested person may petition the Director to take action under this section.
- (c) The grounds for requiring an individual permit include the following:
  - (A) The discharge or activity is a significant contributor of pollution or creates other environmental problems;
  - (B) The permittee failed to comply with, or is not currently in compliance with, the terms and conditions of the general permit, submitted false information, or the permittee is in violation of any applicable law;
  - (C) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;
  - (D) For NPDES general permits, effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit;
  - (E) Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either temporarily or permanently reducing or eliminating the authorized discharge is necessary; or
  - (F) Any other relevant factors.

**Description: Benchmark Georegion - Should be clearer about where each of these regions are in OR**

**Comment:** Should include a map.

**Response:** DEQ has a searchable map for regulators, facilities and public use. The searchable map will provide certainty of georegion as long as the facility is aware of the location its facilities discharge enters the receiving water. Depending on the receiving water location, DEQ or our agent will clearly communicate with each facility regarding monitoring requirements based on the appropriate georegion.

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## 20. Comments from: Federal Water Quality Coalition and Federal StormWater Association

FWQC-FSWA #1

**Description: Sources Covered Under this Permit; Table 1 Footnote 1 - Should delete this footnote**

**Comment:** Table 1 of the Proposed 1200-Z Permit identifies the industrial sources eligible for coverage under the permit. These include transportation facilities with specified Standard Industrial Classification codes “that have vehicle maintenance shops . . . , equipment cleaning operations, or airport deicing operations.” For these facilities, proposed footnote 1 to Table 1 states: “Eligibility based on auxiliary operations; however, once covered under this permit all operations are regulated activities.” Requests that DEQ delete footnote 1, which is inconsistent with EPA’s industrial stormwater regulations. Those regulations clearly state: “Only those portions of the [transportation] facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14) (i)-(vii) or (ix)-(xi) of this section are associated with industrial activity.” 40 C.F.R. § 122.26(b)(14)(viii). Expanding the regulating footprint of industrial activities will be more protective of water quality and many uncontrolled source of pollution that are not currently regulated.

**Response:** The proposed final permit language is consistent with 340-045-0015(2) and 40 CFR 122.26 which are the rules that outline the requirements for who must obtain permit coverage. Once a facility is covered under the permit, DEQ may expand the area covered under the permit to regulate stormwater discharge associated with industrial activity from the entire footprint. Based on the wide variety of industrial activities and significant materials associated with industrial activity exposed to stormwater discharge, DEQ has expanded the scope beyond auxiliary operations to protect Oregon’s waters. Washington State Ecology’s industrial stormwater general permit also regulates the entire footprint of industrial facilities.

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FWQC-FSWA #2

**Description: Water Quality-based Effluent Limits - Restrict pH limits only high or low pH, depending on the basis for the impairment listing**

**Comment:** If DEQ nonetheless believes that numeric effluent limits are necessary, the limits should be consistent with the basis for the pH impairment. Where the impairment is solely due to pH values in excess of the pH criteria range, the numeric effluent limit should include only a maximum pH limit. In those circumstances, a discharge with a pH below the criteria range could not contribute to the impairment. Similarly, where the impairment is solely due to pH values below the pH criteria range, the numeric effluent limit should include only a minimum pH limit.

**Response:** The applicable water standards in OAR 340-041-0101 through 340-041-0350 establish pH as range between which hydrogen ion concentrations must fall. If any two consecutive monitoring results at each monitoring point falls outside the basin-specific range for pH, the permit registrant will be subject to numeric water quality-based effluent limitations for pH consistent with entirety of the applicable pH water quality standards, rather than a portion of the applicable standards. Establishing limitations for only a portion of the standard would be inconsistent with the water quality standard as a whole. Permit registrants may be granted a two-year compliance schedule if needed.

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FWQC-FSWA #3

**Description: General Comment - No provisions should be adopted based on EPA's actions with regard to that permit until the final permit is issued**

**Comment:** NA

**Response:** DEQ's permit always has and will continue to be reflect Oregon specific needs and processes. DEQ has delegated authority to implement the NPDES permitting program in Oregon (except on tribal lands). That means that the final permit must include certain provisions to ensure the permit meets the federal requirements. EPA's final MSGP was issued in mid-January 2021 and DEQ revised the 1200-Z as appropriate.

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FWQC-FSWA #4

**Description: Tier 1.5; Appendix B - EPA's draft Appendix Q – which DEQ has now incorporated as its own Appendix B – is completely unworkable, and is a significant step backwards from EPA's prior guidance**

**Comment:** NA

**Response:** EPA's final MSGP did not include Appendix Q from the draft MSGP, thus, DEQ did not include Appendix B in the proposed final permit. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. The operational and source control measures within the industrial-specific checklists are strongly encouraged to be considered as part of the Tier 1 corrective action responses; however, DEQ acknowledges that it is not an exhaustive list of controls that could be selected and implemented.

**Description: Benchmarks - Benchmarks are far more conservative than is needed to protect against any aquatic toxicity issues posed by bioavailable metals levels in discharges**

**Comment:** These benchmarks are expressed as total metals levels, even though the relevant water quality criteria are expressed in the dissolved form. This issue was specifically recognized by the National Academy of Sciences in its recent report on industrial stormwater permitting (which was undertaken at the request of EPA, pursuant to the above-discussed MSGP settlement agreement). The NAS report acknowledges that dissolved metals are more biologically available than particulate-bound metals; therefore, dissolved metal concentrations provide a more useful means of evaluating potential impact to aquatic life. As a result of this proposed policy (and the very conservative dissolved-total translators used by DEQ the benchmarks are far more conservative than is needed.

**Response:** 40 CFR 122.54(c) requires all permit limits, standards, or prohibitions be expressed in terms of “total recoverable metal”, therefore DEQ has translated dissolved metals criteria to total recoverable when establishing benchmarks and numeric effluent limitations. This ensures that regardless of the characteristics of the receiving water, the resulting percentage of the metal that is dissolved after mixing with the receiving water will not exceed the applicable dissolved criteria and will be protective of aquatic life.

However, DEQ has reconsidered the universal application of EPA’s default metal translators and has applied regional translators, where appropriate. The determination and application of regional translators is discussed in Appendix C of the permit evaluation report.

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FWQC-FSWA #6

**Description: Water Quality-based Effluent Limits; pH - Subject stormwater discharges to pH limits broadly would result in numerous instances of permit noncompliance**

**Comment:** Given that rainwater is naturally acidic, it makes no sense to impose binding pH limits on stormwater discharges – again, except for those particular situations where the nature of the industrial operation makes it likely that low-pH or high-pH constituents will be present in stormwater from industrial activities at those sites.

**Response:** The Clean Water Act (CWA) and its implementing regulations require the state permitting authority to establish numeric and/or narrative WQBELs that are consistent with the attainment or maintenance of water quality standards. When reasonable potential has been established for a pollutant of concern, 40 CFR 122.44(d)(1)(iii) states “the permit must contain effluent limitations for that pollutant.” Regulations pertaining to the establishment of WQBELs in 40 CFR 122.44(d)(1)(vii) states WQBELs shall ensure that “the level of water quality to be achieved by limits on point sources...complies with all applicable water quality standards.”

Contact between precipitation and on-site materials is likely to materially alter the constituents of the rainwater by the time it reaches the discharge point. The 2018/2020 Integrated Report included an extensive evaluation of 303(d) list in Oregon, resulting in many water bodies impaired for pH being delisted. DEQ has also modified the proposed final permit to allow a two-year compliance schedule for facilities that cannot meet the basin-specific pH range water quality-based effluent limit.

## 21. Comments from: Clean Water Services

CWS #1

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Not practical permit condition to prevent all pollutants for which the waterbody is impaired from exposure to stormwater**

**Comment:** The requirement to “prevent all pollutants for which the waterbody is impaired from exposure to stormwater” is not practical especially for zinc and bacteria. Any mobile transportation at or near a facility will leave zinc residues on road surfaces. Wildlife can be a source of bacteria in stormwater discharges. Managing and preventing such sources is not realistic.

**Response:** Discharges of a pollutant from point sources that contribute to an impairment and are not accounted for in an applicable TMDL are not permissible. To provide flexibility where possible, the proposed final permit allows new dischargers an opportunity to demonstrate that additional loading of the pollutant to the impaired waterbody will not occur. Under Condition I of the permit, a new discharger to an impaired water without a TMDL for certain parameters must meet one of four conditions. For example, a registrant might “provide other technical information that demonstrates the discharge is not expected to cause or contribute to an exceedance of water quality standards at the point of discharge...”

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CWS #2

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Not practical to “provide technical demonstrations that the pollutant(s) for which the waterbody is impaired are not present at the site”**

**Comment:** This section requires registrants to “provide technical demonstrations that the pollutant(s) for which the waterbody is impaired are not present at the site.” Demonstrating a negative is not possible.

**Response:** DEQ disagrees with comment. It is possible for a thorough investigation of the site to demonstrate pollutants are not present using a scientific or engineering analysis of pollutant exposure and transport pathways on the site. For example, an applicant discharging to a zinc impaired waterbody might demonstrate that all potential sources of zinc exposure on-site remain continuously under cover, and other areas exposed to precipitation (e.g., roofs, roads, other work areas) do not contain zinc (e.g., roof does not use corrugated metal panels containing zinc), or is zinc likely to be introduced to the site by circumstances which one would reasonably anticipate.

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CWS #3

**Description: Permit Coverage and Exclusion from Coverage; Name Change or Transfer - No need for public notice**

**Comment:** This section requires public notice of a SWPCP for a legal name change, even if there are no substantive changes to the SWPCP. Condition I.4.c requires submittal of a new application (and updated SWPCP) and does not allow for changes in operations as part of a permit transfer, so, under (a)(iv), there would, by definition, be no change in operations and therefore no need for public notice.

**Response:** DEQ modified the language in this condition. DEQ does not intend to post a stormwater pollution control plan for a 30-calendar day public notice for a name change or transfer between legal entities when there is no change in operations.

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CWS #4

**Description: Sources Covered Under this Permit - Facilities may discharge stormwater to a conveyance system that discharges to surface waters of the state - Should require approval of the local authority that manages the MS4 and be in compliance with local regulations**

**Comment:** The proposed permit does not address stormwater discharges to the MS4 for which the discharge will occur in. On page 1 under “Sources Covered Under this Permit” facilities may discharge stormwater to a conveyance system that discharges to surface waters of the state. Authorizing stormwater discharges to an MS4 should also be upon the approval of the local authority that manages the MS4 and be in compliance with local regulations. This is not addressed in this proposed permit and the allowed discharge may be in conflict with the local MS4 Permit.

**Response:** Operators are already required to comply with local requirements including local notification requirements, thus another approval in addition to the required Land Use Compatibility statement is not necessary. The proposed final permit conditions are consistent with federal regulations and state rules and statutes. The “Your DEQ Online” electronic reporting system will allow MS4 operators to view discharge data and other relevant reports at any time.

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CWS #5

**Description: Permit Coverage and Exclusion from Coverage; Name Change or Transfer - Should make it clear DEQ is “acknowledging the facility name change”**

**Comment:** The permit states DEQ will approve the name change. The DEQ does not have the authority to approve a business name.

**Response:** In this case, a name change or transfer of permit coverage is the activity DEQ performs and the name of the form required when a permitted facility requesting the permitted entities’ name be changed in DEQ records thus, there is no need for DEQ to change the permit language. The instructions are clear that the Secretary of State’s Corporate Division is responsible for approving a name change and correctly reads: “Please note that for name changes, DEQ prefers to process your request after the name has been legally changed to avoid incorrectly modifying its files should the change not occur.” The name must be a legal, active name registered with the Oregon Secretary of State - Corporation Division unless otherwise exempt by regulation...”



**Description: Authorized Non-Stormwater Discharges - Should be stated (Condition I.6 and Schedule A.1.k) that the 1200-Z permit registrant will additionally need to comply with local regulations regarding the discharge of non-stormwater to the MS4, even if they are authorized by this permit**

**Comment:** The permit authorizing non-stormwater discharges to the MS4 may be in conflict with the local MS4s permit and local codes for allowable non-stormwater discharges. The MS4 Phase 2 General Permit and Phase 2 Individual Permit both have allowable non-stormwater discharges with the condition that the MS4 permittee does not find the discharge a significant source of pollution. In the cases where a MS4 may have made such a determination, and the MS4 permittee has implemented local codes or conditional best management practices, the 1200z permittee may not be allowed to discharge these as listed in the proposed permit.

**Response:** NPDES permit registrants are already required to comply with local requirements including local notification requirements since a Land Use Compatibility Statement signed by the local jurisdiction is required for all permit registrants. These conditions are consistent with federal regulations and state rules and statues. The Your DEQ Online electronic reporting system will allow MS4 operators to view discharge data and other relevant reports at any time. In addition, 40 CFR 122.26 defines illicit discharge to mean: “any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities.” This means DEQ has determined authorized non-stormwater discharges under the 1200-Z permit are appropriate regardless of the allowable discharges in an MS4 permit.

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CWS #7

**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Should review section related to use of “may” instead of “must”**

**Comment:** Uses the language “may” instead of “must” in the requirement to consider the age of the facility and equipment. This should be a requirement not a suggestion, as control measures must be implemented in order to control pollution related discharges. Again this section has a mix of language being that it is either a requirement or not. The DEQ “may require actions to meet” and then followed by “failure to meet”. The DEQ must implement corrective actions when standards are not being met by the permittee, and the permittee must implement corrective actions in order to comply with standards.

**Response:** DEQ has reviewed the section and the use of may is consistent with federal regulations.

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CWS #8

**Description: Water Quality Standards - Should use “excursion” instead of “exceedance” and notify the local jurisdiction or MS4 included in the 24-hour discovery period**

**Comment:** There should also be notification to the DEQ and the local jurisdiction or MS4 included in the 24-hour discovery period. If the 1200-Z facility is cause and contributing to a water quality standard

excursion then in turn so might the MS4 if the 1200-Z permittee is discharging to the MS4. The local MS4 needs to know when there is an excursion or exceedance.

**Response:** DEQ revised the proposed final permit to use the term “exceedance” rather than “excursion” since exceedance is clearer term and is consistent with other NPDES stormwater permits in Oregon. DEQ encourages each MS4 to determine what communication is appropriate regarding discharges to their MS4 and to work with the entities that discharge to ensure that communication occurs.

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CWS #9

**Description: Discharges to Impaired Waters - Needs to state which 303(d) list – a date is needed**

**Comment:** NA

**Response:** DEQ will use the EPA-approved 303(d) list that is in effect at the time of permit assignment. The proposed final permit has clarified this intent.

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CWS #10

**Description: Discharges to Impaired Waters - Revise section on watershed units; language is unclear**

**Comment:** Applicable to Schedule A.4.a.iv: Impairment pollutant monitoring and subsequent requirements apply to facilities that discharge directly into a Category 5 listed: 303(d) listed waters or indirectly through a storm sewer system or other conveyance. When the facility discharge enters an impaired watershed unit, the listing will only be applied if there is a hydrologic connection between the receiving water and assessment water body causing the impairment. Not sure what the DEQ is asking. Suggest it be re-drafted to be cleaner.

**Response:** In 2016, DEQ undertook a major effort to update and improve the Integrated Report process. One change included the classification of the smallest streams in Oregon, into manageable units for assessment purposes referred to as, watershed units. Because this newly adopted methodology is distinct from previous Integrated Reports, the permit needs to include the decision criteria for facilities that discharge into impaired watershed units for impairment monitoring purposes.

If the stormwater discharges into a distinctly different stream than where the data is collected with no hydrological connection to the streams used in the assessment within the Watershed Assessment Unit, no impairment monitoring will be required.

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CWS #11

**Description: Applicable Water Quality Criteria; Table 6 - Should be expressed as dissolved, not total, with the exception of iron**

**Comment:** Water quality criteria for copper, lead and zinc should be expressed as dissolved, not total. OAR 340-041, Table 30, provides water quality criteria for metals, including copper, iron, lead, and zinc.

All the metals criteria, with the exception of iron, are expressed as dissolved concentrations. In the draft permit, Schedule A.13.b and Schedule B.4, including Table 6 refer to “total” copper, lead, zinc and other metals in describing water quality criteria or pollutants of concern. These should all be changed to “dissolved” in describing water quality criteria.

**Response:** 40 CFR 122.54(c) requires all permit limits, standards, or prohibitions be expressed in terms of “total recoverable metal”. This assures that regardless of the characteristics of the receiving water, the resulting percentage of the metal that is dissolved after mixing with the receiving water will not exceed the applicable dissolved criteria and will be protective of aquatic life. The proposed final permit and the permit evaluation report were revised to clarify that benchmarks and impairment concentrations, as well as WQBELs, have been converted from the dissolved metal concentrations to total recoverable metal concentrations. The table’s that include impairment monitoring and escalating water quality-based effluent limits have been renamed appropriately and footnotes added to indicate when regional translators were applied.

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CWS #12

**Description: Applicable Water Quality Criteria; Table 6 - Should express E. coli as “organisms” instead of “counts”**

**Comment:** NA

**Response:** Both “organisms” and “counts” are considered equivalent for this parameter, however OAR 340-041 uses the “organisms per 100 mL” convention. DEQ made this change in the proposed final permit to use the same convention as OAR 340-041 (i.e., “organisms per 100 mL”).

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CWS #13

**Description: Benchmark Georegions - Request that DEQ provide definitions for each of these geographic regions**

**Comment:** Columbia Slough and Portland Harbor are defined in Schedule D.3. However, the other 5 geographic regions are not defined. The only tool offered to permittees currently to identify which geographic region they might be assigned to was found within the Permit Evaluation Report on page 46. One way that DEQ could better define the regions is through use of GPS coordinates. Without clear definitions, it would be nearly impossible for a permittee to establish justification for why they assert that they are placed in a different geographic region than what’s been assigned by DEQ.

**Response:** DEQ has a searchable map for regulators, facilities and public use that provides certainty of georegion based on the locations of where facilities discharge enters the receiving water. Depending on the receiving water location, DEQ or our agent will communicate with each facility regarding monitoring requirements based on the appropriate georegion.

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Should be re-written to make abundantly clear what new dischargers would cause or contribute to water quality standard violations is prohibited from permit coverage**

**Comment:** As currently drafted, this Condition is confusing and does not ensure that new permittees would not cause or contribute to violations of water quality standards. Condition I.1.a now states that a new discharger must meet one of the conditions in sub-parts I.1.a.(i-iv). But only sub-parts (i) (preventing impairment pollutants from exposure) and (ii) (demonstrating that impairment pollutants are not present) are then presented as alternatives to each other, separated by an “or.” DEQ may intend for sub-part (iv) (providing data and other information demonstrating that discharges are not expected to cause or contribute to a water quality standard exceedance) to be a third alternative to (i) and (ii), but that is not clear in the draft Permit. Sub-part (iii), which as written would allow a new discharger to obtain coverage by simply “Provid[ing] any analytical sampling results of stormwater discharge for any impairment pollutants. New dischargers are obligated to provide all sampling results.”

**Response:** Condition I.1.a now reads: A new discharger to an impaired water without a Total Maximum Daily Load (TMDL), based on the EPA-approved Category 5: 303(d) list in effect at the time of permit application for pH, copper, lead, zinc, iron, and E. coli that correspond to the specific pollutant(s) for which the water body is impaired must meet one of the following conditions to obtain coverage under this permit:

- iv. Prevent exposure to stormwater for pH, copper, lead, zinc, iron and E. coli that correspond to the specific pollutant(s) for which the water body is impaired. Document the procedures taken to prevent exposure in the Stormwater Pollution Control Plan (SWPCP).
- v. Provide technical demonstrations that sources of pH, copper, lead, zinc, iron and E.coli that correspond to the specific pollutant(s) for which the water body is impaired are not present at the site and document these findings and considerations in the SWPCP.
- vi. Provide DEQ or agent stormwater discharge analytical sampling results to demonstrate the discharge of stormwater is not expected to cause or contribute to an exceedance of water quality standards for pH, copper, lead, zinc, iron and E. coli that correspond to the specific pollutant(s) for which the water body is impaired at the point of discharge and retain in the SWPCP.

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CWS #15

**Description: General Comment - Recommend DEQ evaluate its approach to permitting industrial stormwater discharges**

**Comment:** As an initial matter, it seems DEQ is committed to regulating the discharge of industrial stormwater through the 1200-Z Permit. The large size and complexity needed to cover the great diversity of industrial sources indicates that alternative permitting strategies may be warranted.

**Response:** Thank you for the input. DEQ is always open to feedback on our permitting program. DEQ was unable to contemplate a different permitting strategy to regulate industrial stormwater during this permit renewal due to the timeframes and commitments associated with the permit renewal process. DEQ already differs from the federal permitting framework by separating the sand and gravel mining and asphalt and concrete batch plants regulation into the 1200-A industrial stormwater general permit.

CWS #16

**Description: Agent - Concerned about clarifying the expectations in the 1200-Z permit to help ensure consistent interpretation between DEQ, agents, and permit registrants**

**Comment:** The requirements on permit registrants could translate into a substantially increased workload for District staff at a time when resources are already severely strained. In particular, the expectations on agents to determine compliance with the permit could be greatly increased. The District wants to ensure that it focuses its efforts on maximizing the environmental benefits of the permit.

**Response:** DEQ provides training and implementation guidance to agents throughout the permit cycle and always promptly responds to any questions or concerns from agents. DEQ goal is to protect water quality and the proposed final 1200-Z does that appropriately for industrial stormwater discharges. DEQ will assist agents and all permit registrants with permit compliance through overall technical assistance and responses to discrete requests.

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CWS #17

**Description: Permit Coverage and Exclusion from Coverage - New application for permit coverage requirements and limitation of coverage section are inconsistent**

**Comment:** Condition I.2.c, page 6: There appears to be an inconsistency between this condition and Condition I.7.f, page 9. To remove the inconsistency, consider revising Condition I.7.f to include “or cease discharge.”

**Response:** DEQ did not make the suggested change. New applicants have the option to cease coverage and no longer fall under the National Pollutant Discharge Elimination System permitting requirements. Ceasing discharge is not a limitation of coverage and is not appropriate in this Condition.

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CWS #18

**Description: Narrative Technology-based Effluent Limits; Spill Prevention and Response Procedure - Consider revising text to require implementation and documentation**

**Comment:** Applicable to: Schedule A.1.h.iii. Document the following: (1) Procedures for plainly labeling containers that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur as required by local, state, and federal rules; (2) Preventative measures, such as barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling; (3) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills and other releases. Make the methods and procedures available to appropriate personnel. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures. Have the necessary clean-up material on-site and readily available; and (4) Procedures for notification of appropriate facility personnel, DEQ or agent, and the Oregon Emergency Response System (1-800-452-0311), when a spill may endanger health or the environment. Contact information must be in locations that are readily accessible and available.

**Response:** DEQ has made the recommended change to the proposed final permit.

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CWS #19

**Description: Tier 1 and Tier 1.5 Corrective Action Response based on Exceedances of Benchmarks - Delete phase “qualifying sample of”**

**Comment:** Schedule A.11.b.i: “If the permit registrants’ monitoring results exceeds a qualifying sample of any applicable statewide benchmarks in Table 4 of this permit or sector-specific benchmarks in Schedule E.” The phrase “a qualifying sample of” appears extraneous and could be deleted

**Response:** Qualifying sample is defined in Schedule D to mean samples that are collected at least 14-days apart, are analyzed using approved methods (see Schedule F), and satisfy the Quality Assurance/Quality Control requirements of the method. If a sample result does not meet this definition of qualifying sample it may not be used for permit compliance. The term is important for clarity. Tier I triggering event provision has been revised for clarity. Tier 1.5 was not retained in the proposed final permit.

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CWS #20

**Description: Applicable Water Quality Criteria; Table 5 - Consider including that DEQ will use the data for water quality characterization purposes only, as “report only” terminology may be confusing**

**Comment:** Schedule B.5.b.ii: Registrants may find the term “as report only” confusing when monitoring for additional impairment pollutants. Consider including that DEQ will use the data for water quality characterization purposes only if that is the intent.

**Response:** DEQ revised the tables and added context to the permit that fecal coliform and enterococcus data collection will be used to characterization purposed only. DEQ previously used E. coli as a surrogate for fecal coliform and enterococcus monitoring in the industrial stormwater permits. It is important for future permit terms in considering the appropriate benchmarks for fecal coliform and enterococcus and to properly evaluate discharges impacts on water quality, that permit registrants analyze stormwater samples for the proper bacteria indicators.

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CWS #21

**Description: Pollutant Parameters; Impairment Pollutants - Consider adding that an impairment parameter will be considered not to be present when impairment monitoring results are reported as non-detect**

**Comment:** More information is needed when determining if an impairment parameter is present.

**Response:** DEQ did not make this suggested change as data will be considered on a case-by-case basis. The 1200-Z language reflects EPA’s MSGP condition.

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**Description: Definition; Design Storm - Consider defining “design storm” in Schedule D.3**

**Comment:** NA

**Response:** Design storm criteria is outlined in the Tier 2 checklist. The generic definition means a prescribed hyetograph and total precipitation amount (for a specific duration recurrence frequency) used to estimate runoff for a hypothetical storm for the purposes of analyzing existing drainage, designing new drainage facilities or assessing other impacts of a proposed project on the flow of surface water. A hyetograph is a graph of percentages of total precipitation for a series of time steps representing the total time during which the precipitation occurs. This definition or one similar would not provide specifics related design capacity requirement for treatment purposes.

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CWS #23

**Description: Sources Covered Under this Permit - Should change to make discharges of stormwater to a sanitary conveyance system ineligible for coverage**

**Comment:** This factor should be limited to facilities that discharge stormwater to a sanitary sewer system. In addition, some facilities discharge some stormwater to the sanitary system and the rest to the MS4. The entire facility should not be precluded from coverage for the portion that is discharged to the MS4.

**Response:** DEQ appreciates the comment. The 1200-Z is a NPDES general permit that authorizes stormwater associated with industrial activities to enter waters of the state. It is not necessary to clarify the distinction that a source must be covered under the permit if some of the stormwater discharges and some of the stormwater is sent to sanitary sewer system.

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CWS #24

**Description: Sources Covered Under this Permit; Table 1 Footnote 1 - Should replace “all operations” with all “industrial activities”**

**Comment:** Since this provision has the potential to greatly increase the scope of regulated activities, the term “auxiliary operations” needs to be defined to support consistent application. Since only industrial activities are regulated under this permit, the words “all operations” should be replaced with “all industrial activities.”

**Response:** DEQ has made this recommended change.

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CWS #25

**Description: General Comment - Instead of “bacteria” the permit should reference the criteria indicator (e.g. E. coli)**

**Comment:** NA

**Response:** In the proposed final permit, the appropriate criteria is specified where necessary and the term “bacteria” is used elsewhere as appropriate.

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CWS #26

**Description: General Comment - pH is a characteristic of water, not a pollutant, so exposure to pH cannot be eliminated**

**Comment:** NA

**Response:** The proposed final permit requirements ensure authorized discharges maintain a pH range consistent with applicable water quality standards, but are not intended to eliminate the discharge of dissociated hydrogen ions (measured as pH).

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CWS #27

**Description: General Comment - Memorialize that in every instance “DEQ or agent approve a later date” it should require that the determination was in writing**

**Comment:** An email would work, but some documentation would seem appropriate. It should also be clarified (either in the permit or PER) whether DEQ can approve later dates for facilities in agent jurisdictions.

**Response:** Regardless of the mechanism used for communicating, DEQ and agents will provide clear communication with permit registrants to ensure facilities are aware when their request for extensions from deadlines are approved. DEQ’s electronic system, Your DEQ Online, is scheduled to be functional and implemented prior to July 1, 2021, the permit’s effective date. DEQ’s agents will not be transitioning to the electronic system right away. Once Your DEQ Online is active, most communication will shift from “paper” to “electronic.” The permit language must be broad in order to address all the various communications between DEQ and their facilities and agents and their facilities during the permit term. DEQ did add language in the permit evaluation report to make it clear that permit registrants can expect approval of additional time from permit deadlines in some form of written communication, whether it is an email, letter, or through Your DEQ Online.

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CWS #28

**Description: Permit Coverage and Exclusion from Coverage; New Application - Must state obtaining a permit is required**

**Comment:** Applicable to Condition I.2.c: If coverage is denied or the applicant does not wish to be regulated by this permit, the applicant must apply for an individual permit in accordance with OAR 340-045-0030 or cease discharge. This provision must clearly state that obtaining a permit will be required,



even if the discharge is allowed to continue with the application. Merely applying for the permit is not sufficient. Obtaining No Exposure Certification may also be an option, in addition to ceasing discharge.

**Response:** DEQ finds the provision is sufficiently clear. State and federal water quality regulations unmistakably require permit coverage for stormwater discharges associated with industrial activities.

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CWS #29

**Description: Permit Coverage and Exclusion from coverage; Existing Facilities - Monitoring requirements should include a designation of the monitoring year**

**Comment:** NA

**Response:** The proposed 1200-Z no longer requires Tier 2 corrective action based on the second-year of coverage, thus the designation of monitoring year is no longer needed in the permit. Tier 2 geometric mean evaluation will be required after each full reporting year of data, July 1 - June 30.

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CWS #30

**Description: Agent - Clarify DEQ's expectation of agents**

**Comment:** Numerous places throughout the permit include the phrase "DEQ or agent" to describe either where the permit applicant or registrant should submit information, or to establish a responsibility for a task. The first instance occurs at Condition 1, 1.b, which requires DEQ or agent to determine whether the conditions for granting coverage to new discharges to impaired waters have been satisfied. It will be important to have clear expectations and understand DEQs oversight role with the agents.

**Response:** The permit has been revised to clearly state that DEQ is responsible for granting permit coverage. The roles and responsibilities of agents are outlined in the agreements between DEQ and each agent. DEQ provides trainings and direction to agents throughout the permit cycle and promptly responds to any questions, need for direction or concerns received.

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CWS #31

**Description: Agent - DEQ needs to provide guidance to ensure statewide consistency on identifying monitoring requirements**

**Comment:** NA

**Response:** DEQ provides training and implementation guidance to the agents throughout the permit cycle. DEQ will provide our staff and agents with a Geocortex map with many layers including, georegions, DEQ basins, Category 5; 303(d) list impairment pollutants, and 1200-Z facility locations to ensure clarity and consistency. The map will also be available for public use. DEQ will provide direction to help agents identify monitoring requirements and as always will respond to questions and requests.

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**Description: Water Quality Standards - Delete “before the next storm event, if possible, or no later than 30 calendar days after discovery, whichever comes first”**

**Comment:** This is a vague and confusing requirement that agents will need to interpret and apply. To make this requirement enforceable, the phrase “whichever comes first” should be deleted, or a simple 30-day deadline should apply.

**Response:** If at any time a permit registrant discovers a discharge caused or contributed to an exceedance of instream water quality standards, they must act expeditiously. No later than 24-hours after they discover or they are notified by DEQ or agent, an investigation must attempt to find the conditions that caused the likely permit violation. Corrective action must be taken as soon as possible, certainly before the next storm event possibly causes or contributes to another exceedance of water quality standards. DEQ requires the permit registrant to be cognizant of precipitation events in this situation. The required report will outline the date of the discovery and date the corrective action(s) is taken.

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CWS #33

**Description: Authorized Non-Stormwater Discharges - Need to be consistent with MS4 Phase I permits**

**Comment:** The authorized non-stormwater discharges in the draft 1200-Z General Permit are inconsistent with those allowed in draft Phase I MS4 permits. Since the MS4 provides that non-stormwater discharges allowed under “another NPDES permit” (presumably including a 1200-Z) are allowed, it is important to understand whether the authorization of some otherwise illicit discharges in the 1200-Z was intentional. DEQ should resolve these inconsistencies between the MS4 Phase I permit and the 1200-Z permit.

**Response:** 40 CFR 122.26 defines illicit discharge as: “any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities.” The 1200-Z permit conditions are consistent with federal regulations, state rules and statutes. Industrial facilities permitted under the 1200-Z permit may only discharge authorized non-stormwater discharges, stormwater and non-contaminated groundwater as outlined in that permit. Those allowable discharges have been determined to be appropriate specifically as it relates to industrial stormwater. The allowable discharges in other NPDES permits are appropriately developed and regulated specific to the pollutant source(s) associated with those permits. The 1200-Z permit and the MS4 permits are not inconsistent, but instead serve different purposes, and appropriately address different potential pollutant sources. DEQ is always available to answer questions that any agent or MS4 community has about the 1200-Z permit and differences regarding the allowable discharges included in other NPDES permits.

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CWS #34

**Description: Permit Coverage and Exclusion from coverage - Does this provision exempt construction at landfills, etc. from needing coverage under a 1200-C?**

**Comment:** NA

**Response:** According to EPA’s permitting record construction of new cells to be routine landfill operations that are covered by the landfill’s industrial storm water general permit. A landfill is a constantly evolving facility which is constructed over its operating life as received wastes are spread, compacted, and covered. Most landfills contain one or more separate “units,” planned final waste containment areas. Active units continue to receive wastes until they have reached disposal capacity. When capacity is reached, a unit is capped with a final cover, and additional wastes must be placed in other active units. As a result, a landfill may consist of multiple inactive and active units at various stages of completion. This type of soil disturbance does not require 1200-C permit coverage.

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CWS #35

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should revise perform all cleaning operation indoors, as it contradicts with authorized non-stormwater discharges**

**Comment:** NA

**Response:** DEQ resolved the conflict in the proposed final permit.

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CWS #36

**Description: Water Quality Standards - Recommend clarify agent’s role**

**Comment:** Agents do not have the authority to revoke 1200-Z permit coverage or impose compliance schedules; enforcing 1200-Z permits is a DEQ role. The statement regarding revocation of coverage and compliance schedules should be in a separate sentence that applies to DEQ only. It is not clear how agents would impose additional monitoring or site control on a general permit registrant.

**Response:** DEQ’s proposed final permit was reviewed by the Office of Compliance and Enforcement and the permit conditions are consistent with the roles of the agents.

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CWS #37

**Description: Tier 2 - Does this mean that every monitored point must exceed the benchmark to trigger Tier 2, or does exceedance at any monitored point trigger Tier 2?**

**Comment:** NA

**Response:** The proposed final permit clarifies that the triggering event is specific to sample results collected at each monitoring point exceeding the geometric mean for each pollutant.

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**Description: Monitoring Waiver - Clarify meeting the pH benchmark criteria would not qualify all Tier 2 parameters for a monitoring waiver**

**Comment:** NA

**Response:** The section of the permit was revised for clarity.

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CWS #39

**Description: Additional Monitoring - Should constitute a permit modification subject to public notice and comment if additional monitoring requirements are required**

**Comment:** The District is concerned that unilateral changes could be made to the 1200-Z permit without the opportunity for comment.

**Response:** Any change to required monitoring in response to impaired waters or water quality standards provision in the permit requires a public notice. DEQ is transitioning to “Your DEQ online,” a web-based electronic reporting format that will be assessable to the public. If additional monitoring requirements are added, DEQ will notify the permit registrant reasons for the monitoring, locations and pollutants to be monitored, frequency and period of monitoring, sample types and reporting requirements.

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CWS #40

**Description: Definition; Significant Materials - Should revise definition for consistent interpretation and clarity**

**Comment:** “TSCA” is the Toxic Substances Control Act; it’s unclear why it is included in this list. This definition should be drafted so that registrants, agents and DEQ can consistently and reliably determine if a material is significant.

**Response:** Significant materials is defined under 40 CFR 122.26. DEQ determined the federal definition is appropriate. DEQ added TSCA to the definition to ensure contaminated sites minimize exposure of pollutant pathways from previous operations.

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CWS #41

**Description: Definition; Regular Business Hours - Should delete the provision that trained personnel must be present for sampling**

**Comment:** The presence of trained personnel on site should not be necessary to determine regular business hours. If sampling is only required during regular business hours, this provision further reduces the opportunity to meet sampling requirements and increases the need for agents to process monitoring variance requests.

**Response:** The permit states that sampling is required only during regular business hours. Lack of trained staff is not considered an adequate reason for a missed sample. It is the permit registrant's responsibility to ensure that trained staff are available for sampling during regular business hours. If the minimum frequency of samples is not fulfilled within a full reporting year, a permit registrant must submit a monitoring variance. A monitoring variance approval would not include lack of trained staff during a discharge event.

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## 22. Comments from: Heiberg Garbage & Recycling

HEIBERG #1

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not be subject to an enforcement action for violating the narrative technology-based effluent limits**

**Comment:** A permit registrant should not be subject to an enforcement action for violating the narrative technology-based effluent limits if it has explained in its SWPCP how it will implement the limits, has submitted the SWPCP to DEQ, has timely made any changes to the SWPCP directed by DEQ, and has complied with the SWPCP. Translating a general permit's necessarily vague and subjective narrative technology-based effluent limits into facility-specific stormwater controls requires professional and policy judgments that only DEQ can ultimately make. A permit registrant should not be subject to an enforcement action, including a citizen suit, for violating the narrative limits when it has (1) prepared an SWPCP that explains how it will implement the narrative limits, (2) submitted the SWPCP to DEQ or its agent, (3) made any changes in the SWPCP that DEQ or its agent has directed, and (4) fully complied with the relevant provisions of the SWPCP. Permit registrant should not be subject to an enforcement action when these conditions have been met.

**Response:** DEQ appreciates the input. The draft permit language did not read as intended. DEQ has revised the wording to meet the intent: "Failure to implement any narrative technology-based effluent limits in Schedule A.1 and Schedule E, and other control measures or operational practices described in the SWPCP is a permit violation."

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HEIBERG #2

**Description: SWPCP Required Elements; Map - Remove proposal to identify on the site map "areas where pesticides, herbicides, soil binders, and fertilizers are applied"**

**Comment:** Proposed 1200-Z Permit condition A.10.b.i(9) would require the SWPCP site map to identify "areas where pesticides, herbicides, soil binders, and fertilizers are applied." Requests the removal of this proposed requirement. It would be burdensome to map the specific areas of application, particularly for infrequent uses, and it would also clutter the site map, making it difficult to use. Moreover, because the permit already requires the SWPCP to include a description of these "significant materials" and their use, it is unclear what would be gained by including this information on the site map.

**Response:** DEQ did not include this requirement in the proposed final permit.

HEIBERG #3

**Description: Narrative Technology-based Effluent Limits (TBELs); Waste Chemicals and Material Disposal - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Tarping has also been removed from Draft 1200-Z Permit language as a cover for waste containers. Facilities are constrained by the containers provided to it by third party vendors, such as Waste Management or local municipal utilities. Registrants should be allowed to use tarps as an effective control measure.

Waste Disposal comments: Requiring lids on all waste containers and drop boxes is not reasonable for many reasons. Often, customers do not want or cannot use boxes with lids, the lids are easily damaged and costly to install and repair, and makes the movement, loading, and transport of these containers more difficult for the drivers. Temporary tarps are a fraction of the cost and have none of the repair costs associated with a permanently installed lid. We recommend that DEQ continue to allow the use of tarps as covers, allowing for “properly secured and maintained temporary covers that fully protect from exposure to storm water.” If the tarps are applied correctly and maintained in good condition, they serve as an effective way to limit exposure of materials to storm water.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. Neither EPA nor Washington State Ecology allow the use of tarps to meet these narrative technology-based effluent limits. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure. As emphasized in the comment from several waste management companies, proper maintenance is crucial when using tarps. The proposed final permit requires permit registrants to cover all waste contained in bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to these pollutants; this includes scrap and waste materials.

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HEIBERG #4

**Description: Mass Reduction Measures: General Comment - Consider any mass load reduction device installed voluntarily under exemptions**

**Comment:** In some instances, the permit refers to exemptions (such as those in Schedule A.11.e.ii) or other considerations afforded to mass reduction devices that were “installed during previous permit cycles in response to Tier 2 corrective action.” However, in other instances, the permit does not clearly state that some considerations are afforded to mass reduction devices that were installed proactively or independent of triggering Tier 2 corrective action. What about facilities intermittently struggled to meet benchmarks and has now made the decision to install a mass load reduction device in a proactive effort to avoid Tier 2 requirements in the future, would those devices then qualify for the exemptions outlined in Schedule A.11.e.ii and Schedule A.12.h.i? The permit should encourage permittees to make proactive improvements to their facilities to attempt to avoid Tier 2 corrective action. As written, the permit may dissuade entities from making necessary and beneficial improvements until they have triggered Tier 2 corrective action requirements.

**Response:** Schedule A.6 regarding the re-certification of mass reduction waiver provision has been revised to add: “For mass reduction measures installed during previous permit cycles that reduced the mass of the pollutants discharged at or above DEQ-approved design storm capacity not in response to Tier 2 mass reduction waiver, the permit registrant must meet Schedule A.6.a-d and submit, retroactively, to DEQ or agent a Tier 2 mass reduction waiver checklist.” DEQ or agent will approve or deny the certification requirements and retroactive submittal of the Tier 2 mass reduction waiver checklist, since the mass reduction device did not have prior approval before being built. For all mass reduction devices that meet the re-certification deadline of December 31, 2021, DEQ or agent will communicate to the permit registrant qualification related to the exemptions outlined in the other Schedules of the permit.

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#### HEIBERG #5

**Description: Narrative Water Quality-based Effluent Limits - Clarity on the timeline facilities will be granted to install these additional source and operational controls is concerning**

**Comment:** The measures necessary to comply with Schedule A.13.h will potentially be significant for some sectors, specifically the solid waste industry, who provides a vital public service to our communities.

**Response:** Permit registrants that trigger this condition will now have 90 calendar days, instead of 60 calendar days that was in the draft permit, from receiving the monitoring results to implement the narrative water quality-based effluent limits to the extent practicable. Schedule A.13 Water Quality-based Effluent Limit section of the proposed final permit applies to stormwater discharge into 303(d) list receiving waters where data indicates a designated use is not supported or a water quality standard is not attained and a TMDL is needed. Schedule A.13.k reads: “If the permit registrant is unable to comply with the numeric or narrative water quality-based effluent limits, it is a permit violation and permit coverage may be revoked under this general permit and coverage required under an individual permit.”

As part of the rulemaking, DEQ hired PG Environmental a technical expert in NPDES permitting to conduct an impairment analyses with the following objective to summarize pollutant trends of industrial stormwater discharges exceeding reference concentrations into impaired waters. Based on technical work DEQ identified industrial stormwater data exceeded water quality criteria or reference concentration for pH, copper, lead, zinc, iron and E. coli. This informed the narrative effluent limit framework for E. coli and iron in response to monitoring results exceeding two consecutive times the impairment concentration in the permit. Because these two pollutants tend to be more ubiquitous in our environment and are difficult to treat, DEQ proposed to establish narrative limits water quality-based effluent limits instead of setting water quality-based numeric limit for E. coli and iron. DEQ will make the determination after site controls are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health. OAR 340-045-0033(10)(c) grants DEQ the authority that any facility must obtain an individual permit when “the discharge or activity is a significant contributor of pollution or creates other environmental problems.” DEQ will communicate and provide the facility with its findings if coverage under the general permit is revoked. DEQ expects these appropriate mandatory control measures in the form of narrative water quality-based effluent limits will reduce loading into these Category 5 impaired waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303 (d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source.

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**Description: Narrative Water Quality-based Effluent Limits - DEQ needs to have reasonable expectations of what small businesses can do, and they need to provide appropriate timelines to these businesses to be able to develop and implement a plan to comply**

**Comment:** Our understanding of this section of the draft permit is that if a permittee cannot comply with this section of the permit and meet all water quality criteria, they will lose coverage under the general permit and have to obtain an individual permit, at great expense. But it's not clear how long a site has to bring their results into compliance, or if DEQ can work with the permittee to create solutions to meet the criteria.

**Response:** DEQ will make the determination after site controls or treatment are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health at any site. DEQ will communicate and provide the facility with its findings if coverage under the general permit may be revoked. DEQ expects these appropriate mandatory control measures in the form of water quality-based narrative limits will reduce pollutant loading into these Category 5 waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303 (d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source. OAR 340-045-0033(10) describes the terms for revocation under the general permit:

"The Director may refuse to authorize or renew coverage, or may revoke existing coverage under a general permit, as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit.

- (a) The procedures for denying a permit in OAR 340-045-0050 and for permit revocation in OAR 340-045-0060 apply.
- (b) Any interested person may petition the Director to take action under this section.
- (c) The grounds for requiring an individual permit include the following:
  - (A) The discharge or activity is a significant contributor of pollution or creates other environmental problems;
  - (B) The permittee failed to comply with, or is not currently in compliance with, the terms and conditions of the general permit, submitted false information, or the permittee is in violation of any applicable law;
  - (C) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;
  - (D) For NPDES general permits, effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit;
  - (E) Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either temporarily or permanently reducing or eliminating the authorized discharge is necessary; or
  - (F) Any other relevant factors.



HEIBERG #7

**Description: Benchmark Georegion - Should be clearer about where each of these regions are in OR**

**Comment:** Should include a map.

**Response:** DEQ has a searchable map for regulators, facilities and public use. The searchable map will provide certainty of georegion as long as the facility is aware of the location its facilities discharge enters the receiving water. Depending on the receiving water location, DEQ or our agent will clearly communicate with each facility regarding monitoring requirements based on the appropriate georegion.

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HEIBERG #8

**Description: Benchmark Technological Feasible - Should seriously reconsider the benchmarks by evaluating what's technologically feasible and financially reasonable for industries**

**Comment:** The reduced benchmarks will be difficult, and in some cases impossible, to meet. This sets small businesses up for failure.

**Response:** DEQ hired PG Environmental to assess the benchmark methodology used in the 1200-Z to ensure the methodology is appropriate and protects water quality. It was determined that the technological feasibility evaluation was not robust enough and did not evaluate the discharge quality from the best performing sites. DEQ has built in flexibility into the risk-based modeling to account for the intermittent nature of stormwater discharge. DEQ anticipates that a full evaluation of the technological feasibility of the benchmarks was completed, the resulting concentrations would be even more restrictive than the risk-based water quality concentrations established in the proposed final permit. As outlined in the federal process for technological feasibility, the appropriate evaluation would include a selection of model technologies and defined performance standards and set a benchmark at a concentration based best treatment capabilities.

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## 23. Comments from: Waste Management

WM #1

**Description: Schedule E; Sector L - Recommend that the frequency description of this permit condition be revised to read "at least once per week" rather than "at least once every 7 days"**

**Comment:** Changing this language to describe the inspection frequency to at least once per week will provide more flexibility for operating sites to meet this requirement given the potential challenges with scheduling and staffing due to holidays, vacations, sick time, etc. We believe that this minor change in language will allow operating landfills to continue to meet the intent of the Sector L inspection requirements without diminishing the objective of this requirement to ensure the protection of the environment.

**Response:** Schedule E is adopted from EPA's MSGP. DEQ adopted this portion of the permit in its entirety, which contains several references to requirements once every so many days. Since DEQ would need to consider timeframe changes uniformly throughout all the sectors and due to time constraints to issue the permit by March 31, 2021, DEQ is unable to make the requested edits Schedule E during this permit renewal.

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## 24. Comments from: Danone North America

DANONE #1

**Description: Water Quality-based Effluent Limits; pH - Maintain current pH range of 5.5 to 9.0 for the Willamette Basin discharges into 303(d) listed waters**

**Comment:** Currently, industrial facilities subject to the existing General Permit discharging to this portion of the Willamette River are permitted to discharge stormwater within a pH range of 5.5 and 9.0. Appendix A (incorporating OAR 340-041-0101 through 340-041-0350), would have the effect of requiring industrial stormwater discharged to the Willamette Basin to be within a narrower pH range of 6.5 to 8.5. Rainwater in our region is naturally acidic, usually around a pH of 5.3, which is significantly less than the lower end of the pH range proposed in the draft General Permit for 303(d) listed waters in the Willamette Basin, according USGS. DEQ would require permittees discharging to these waters to collect and treat rainwater for pH that falls on to their sites, even if its processes or operations did not cause the lower pH values. This could result in millions of dollars in excess treatment costs for industrial facilities in Oregon, or other significant administrative costs to seek waivers.

**Response:** The Willamette River was delisted for pH in the 2018/2020 Integrated Report approved by EPA due to meeting the delisting requirements based on DEQ's new assessment methodology. There are a couple watershed units and smaller HUC12 stream segments in the Willamette Basin on the Category 5: 303(d) list for pH. DEQ evaluated the 2018/2020 303(d) list when assessing WQBEL methodology during the advisory committee process. Pollutants on the Category 5: 303(d) list designation are for surface waters have no assimilative capacity for discharges over the water quality criteria.

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## 25. Comments from: City of Portland Bureau of Environmental Services

BES #1

**Description: Monitoring Frequency - Recommend the monitoring frequency and DMR reporting frequency be the same**

**Comment:** Quarterly DMR submissions (every three months), yet the monitoring period is six months in duration incongruent compliance schedules are confusing for permit registrants, significantly increase the amount of paperwork produced and reviewed, and provide little, if any benefit to water quality.

**Response:** DEQ discussed this topic during the advisory committee meetings. One of the short-term changes incorporated in 2018 reissuance of the permit from the Settlement Agreement included changing Discharge Monitoring Report submittal from annually to quarterly. This change resulted in a different sampling frequency from the reporting requirement. DEQ decided to retain the semi-annual sampling frequency timeframe to allow facilities more flexibility around sample collection.

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BES #2

**Description: Background Conditions - Do not support the subtraction method for determining background concentration**

**Comment:** The draft permit requires monitoring locations to be representative of the industrial stormwater discharge generated onsite and as such, offsite flow must be separated or otherwise diverted. If monitoring must occur prior to comingling, this provision should be removed. It should also be noted that the subtraction method does not take the percentage of offsite flow as it related to total flow into consideration and is therefore not justifiable. Additionally, current DEQ guidance emphasizes that the intent of natural/background conditions is to only account for environmental conditions that existed prior to modern human impacts (i.e. iron naturally present in native soils). The subtraction method described in Schedule 8.8 subsection iii does not address the pollutant contribution from onsite native soils, which appears to be the intent of this permit provision.

**Response:** DEQ's proposed final permit retains the background concentrations calculation allowance based on the 2017 permit language, not the subtraction method in the draft permit. EPA's MSGP permit does not include the subtraction method either.

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BES #3

**Description: Schedule E; Sector P - Incorrectly states that Table E.P-1 identifies benchmarks that apply to... Sector M**

**Comment:** For the purposes of this comment, AAR assumes that ODEQ intended to apply these benchmarks to Sector P, in line with the other provisions of that section.

**Response:** DEQ revised the permit to correct this oversight.

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BES #4

**Description: Sources Covered Under this Permit; Table 1 Footnote 1 - All registrants discharges associated with industrial activity should be addressed by the permit once a facility has coverage**

**Comment:** To protect water quality, all of a permittee's discharges associated with industrial activity should be addressed by the permit once a facility has coverage. In BES' experience, potential pollutants associated with industrial activity exist outside of the auxiliary operations that require coverage at facilities with the associated primary SIC codes.

**Response:** DEQ retained footnote 1 in the proposed final permit.

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BES #5

**Description: Sources Covered Under this Permit; Table 2 - Recommends adding a footnote to Table 2 that states, “Eligibility based on activities exposed to stormwater in Table 2; however, once a facility is covered under this permit all discharges associated with industrial activity are regulated activities”**

**Comment:** The portion of the sentence that states, “...and are regulated for existing facilities covered under Table 1” is unclear. Based on the example given in the draft NPDES Industrial Stormwater Permit Evaluation Report No. 1200-Z (PER), recommends removing this portion of the sentence as it is redundant with footnote 1 in Table 1.

**Response:** DEQ revised the proposed final permit in response to comment. The intent is explained in the permit evaluation report.

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BES #6

**Description: Permit Coverage and Exclusion from coverage; New Discharger - Recommends the sentence that states, “...the EPA-approved Category 5: 303(d) list for pollutants must meet one of the following conditions...”**

**Comment:** To be protective of water quality and prevent recontamination of sediment at State and Federal clean-up sites, new dischargers should be required to meet Condition I.1.a.i.-iv. for all pollutants on the EPA-approved Category 5: 303(d) list. Upland sources of legacy pollutants may still be present at industrial sites and with the limited impairment pollutant monitoring in the proposed permit, there is no mechanism within the permit to ensure new dischargers are not discharging impairment pollutants including legacy pollutants at or above the associated water quality standard. DEQ must ensure new discharges are not expected to cause or contribute to an exceedance of a water quality standard prior to issuing coverage under the permit. In addition, as written, Condition I.1.a.i.-iii. are applicable to all impairment pollutants and therefore contradict Condition I.1.a.

**Response:** Statements in Condition I.1.a.i.-ii and b were revised to clarify that monitoring of impairments pollutants is limited to pH, copper, lead, zinc, iron, and E. coli. During the rulemaking process, DEQ examined this topic at the advisory committee meeting #5. PG Environmental, DEQ’s contracted technical support for this rulemaking, determined based on data review from Jan. 2000 to Dec. 2018 that discharges into Category 5: 303(d) listed waters new discharger provision could be limit impairment pollutants shown to have a reasonable potential to cause or contribute to a water quality exceedance. A new discharger must ensure discharges are not expected to cause or contribute to an exceedance of a water quality standard prior to issuing coverage under the permit.

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**Description: General Comment - Recommends that “public notice” be changed to “public review period” to be consistent with other references throughout the permit**

**Comment:** NA

**Response:** DEQ appreciates the comment and has revised the permit to make reference to the public notice period consistent throughout the permit and permit evaluation report.

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BES #8

**Description: Narrative Technology-based Effluent Limits (TBELs) - Recommend the sentence that states, “Procedures for plainly labeling...” be revised to state: “Plainly label containers...”**

**Comment:** Applicable to Schedule A.1.h.iii(1): “Procedures for plainly labeling containers that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur as required by local, state, and federal rules;”

If labeling of containers that could be susceptible to spillage or leakage is the intent of the narrative effluent limit, a requirement for labeling is more forthright than a requirement to have a procedure to properly label them.

**Response:** The permit language was changed to reflect the intent of the Spill Prevention and Response Procedure; requiring: “At a minimum, the permit registrant must conduct spill prevention and response measures including the following: iii. Plainly label containers to encourage proper handling and facilitate proper response if spills or leaks occur as required by local, state and federal rules;...”

The proposed final permit requires the SWPCP to summarize: “procedures for preventing and responding to spills and clean-up, documentation and notification procedures.”

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BES #9

**Description: Preparation and Implementation of SWPCP - Add “or within 30 days upon discovery” to Schedule A.8.e**

**Comment:** Applicable to Schedule A.8 language: “If the permit registrant fails to implement the control measures in the SWPCP, they must take corrective actions and implement the measures before the next storm event if practicable, unless otherwise approved by DEQ or agent.” Propose to revise to: “If the permit registrant fails to implement the control measure in the SWPCP, they must take corrective action and implement the measures before the next storm event if practicable or within 30 days upon discovery unless otherwise approved by DEQ or agent.”

**Response:** DEQ revised the permit to reflect the suggested language.

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**Description: SWPCP Required Elements; Map - Recommend add “areas of known or discovered significant materials from previous operations” to Schedule A.10.b.i**

**Comment:** Having this information on the map will aid in compliance inspections.

**Response:** DEQ made this change in the proposed final permit.

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BES #11

**Description: Narrative Technology-based Effluent Limits (TBELs) - Recommend add a “s” to source control in Schedule A.10.b.vii**

**Comment:** NA

**Response:** DEQ revised the permit to correct this oversight.

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BES #12

**Description: Narrative Technology-based Effluent Limits (TBELs) - Recommends the sentence that states, “Schedule B.6” instead of “Schedule B.5”**

**Comment:** NA

**Response:** DEQ revised the permit to correct this oversight.

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BES #13

**Description: Tier 1 and Tier 1.5 Corrective Action Response based on Exceedances of Benchmarks - Recommend add: “and Visual Observations” to the section language “Tier 1 and Tier 1.5 Corrective Action Response based on Exceedance of Benchmarks”**

**Comment:** “Tier 1 and Tier 1.5 Corrective Action Response based on Exceedance of Benchmarks and Visual Observations.” This addition better reflects the requirements in this permit section.

**Response:** DEQ made this suggested change in the proposed final permit.

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BES #14

**Description: Tier 1.5 - Recommend adding an explicit requirement to this section to apply to discharge points deemed substantially similar to the monitoring point(s) that triggered Tier 1.5**

**Comment:** This will provide consistency with Schedule A.11.c.iv.

**Response:** DEQ did not to retain Tier 1.5 condition in the proposed final permit.

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BES #15

**Description: Tier 1.5 - Recommend deleting Schedule A.11.f.v**

**Comment:** Applicable to language: “If after implementing industrial specific checklist(s) in Appendix B the geometric mean of qualifying samples results collected at the same monitoring point exceeds applicable statewide benchmark in Table 4 in any subsequent full reporting year, permit registrants will be in Tier 2 status pursuant to Schedule A.12.e.”

Section as it is unnecessary and conflicts with Schedule A.11.f.vii and Schedule A.12.e. Schedule A.12 sufficiently covers when a Tier 2 evaluation is required. Schedule A.11.f.v reads as though permit registrants do not evaluate for Tier 2 until a full monitoring year after Tier 1.5 has been implemented. Schedule A.11.f.vii seemingly contradicts this by allowing an exemption from Tier 1.5 if Tier 2 is mathematically certain. In addition, Schedule A.12.e. Indicates Tier 2 can be triggered during any full reporting year.

**Response:** The proposed final permit does not include Tier 1.5.

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BES #16

**Description: Tier 1.5 - Recommend deleting “pollutant and” from Schedule A.11.f.vii**

**Comment:** Applicable to language: “Tier 1.5 is not required more than once a permit term for the same pollutant and monitoring point, although checklist(s) include some on-going operational or source controls.”

Revise to read: “Tier 1.5 is not required more than once a permit term for the same monitoring point...” Appendix B checklists are not pollutant specific and completion for a monitoring point drainage area addresses all pollutants.

**Response:** The proposed final permit does not include Tier 1.5.

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BES #17

**Description: Tier 2 - Recommend revise Schedule A.11.f.vii from “is” to “are”**

**Comment:** Change language to read: “Tier 2 geometric mean evaluation and Tier 2 corrective action response are not required more than once...”

**Response:** DEQ made this suggested edit.

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**Description: Tier 2 - Recommend revise Schedule A.12.c to add “the”**

**Comment:** Revise language to read: “The permit registrant must use all qualifying samples collected during the full reporting year...”

**Response:** DEQ made the suggested edit.

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BES #19

**Description: Tier 2 - Recommend revise Schedule A.12.g.iii(2) for implementation clarity add “Substantially similar discharges points must be sampled for the parameters that triggered Tier 2”**

**Comment:** Applicable to language: “Substantially similar discharge points must be sampled.”

**Response:** DEQ revised the permit in response to suggested edit.

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BES #20

**Description: Narrative Water Quality-based Effluent Limits - Recommend editing Schedule A.13.g to “Narrative water quality-based effluent limits must be completed and documented within 60 calendar days...”**

**Comment:** Applicable to language: “Narrative water quality-based effluent limits must be completed within 60 calendar days from receiving monitoring results and continue as required. SWPCP revision are required as specified in Schedule A.9. Documentation of completion may be implied; however, this requirement should be stated as such in order to be enforceable.”

Documentation of completion may be implied; however, this requirement should be stated as such in order to be enforceable.

**Response:** Schedule A.13.g now reads: “SWPCP revisions documenting completion are required as specified in Schedule A.9.” Documentation of water quality-based narrative effluent limit implementation completion will be incorporated within the SWPCP. Schedules of on-going defined requirements must also be defined and documented in the SWPCP. Documentation of completion related to continued scheduled source control measures, such as storm line cleaning must be recorded on the inspection reports that are kept on site. Inspection reports will be reviewed during regulatory inspections to verify compliance.

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BES #21

**Description: Statewide Benchmarks - Recommend revising “See Schedule B.6.c.ii and iii for exception”**

**Comment:** Schedule B.6.c.i is also an applicable exception.



**Response:** DEQ made the suggested edit

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BES #22

**Description: Benchmark - Support removal of oil and grease benchmark**

**Comment:** BES supports the removal of oil and grease as a statewide benchmark parameter. This monitoring requirement is redundant with the requirement to visually observe stormwater discharges monthly for the presence of visible sheen. A visual monitoring indicator for the presence of oil and grease is preferable to analytical testing for feasibility and pollution prevention. The approved analytical methods per 40 CFR part 136 require oil and grease samples to be collected directly in the glass bottle provided by the laboratory, which can make sample collection difficult for many permit registrants. In addition, the approved analytical methods require the use of n-hexane as the extraction solvent. Eliminating oil and grease from the sampling requirements would have the overall environmental benefit of reducing the amount of toxic solvent used to complete the analysis.

**Response:** DEQ appreciates this input.

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BES #23

**Description: Pollutant Parameters; Impairment Pollutants - Reconsider limiting the monitoring required for dischargers to impaired water without a Total Maximum Daily Load (TMDL) to pH, copper, lead, zinc iron and bacteria forms**

**Comment:** DEQ should require new dischargers to monitor for all impairment pollutants based on the EPA-approved Category 5: 303(d) list for at least one reporting year (4 events) and continued monitoring for permits registrants in areas of known sediment contamination with ongoing cleanup investigations, remedial actions, or long-term monitoring. This is consistent with both the Portland Harbor Joint Source Control Manual (DEQ-EPA, 2005) and DEQ's Stormwater Cleanup Guidance (2010). If the limited monitoring is approved and incorporated, the ability to assess and align the contaminants of concern at State or Federal sediment cleanup sites and prevent sediment recontamination with TMDLs and water quality goals is lost. The City understands that DEQ's rationale for the proposed monitoring reduction is based on an analysis of historic 1200-Z data and a lack of exceedances for all parameters but pH, copper, lead, zinc, iron and bacteria forms. We are concerned that this analysis may be based on an inadequate data set. For example, if the analyses for PCBs is based on Aroclors, laboratory detection limits are likely elevated above risk-based screening or clean-up criteria. For State and Federal Cleanup Programs, stormwater is frequently required to be analyzed for PCB congeners or low-levels of pesticides to achieve detection limits equivalent to risk-based screening levels or calculated recontamination screening levels.

**Response:** The number of 1200-Z new dischargers into Portland Harbor is likely to be minimal and, therefore, this change will not materially impact the understanding of data on stormwater discharges to areas of sediment contamination. The 1200-Z permit is not the only avenue for requiring monitoring of stormwater. DEQ's Guidance for Evaluating the Stormwater Pathway at Upland Sites is applicable statewide, as warranted, and is intended to investigate, control and demonstrate effectiveness of controls on contaminants in stormwater discharges. The assumption that detecting low levels of contaminants in stormwater discharge equates to sediment recontamination or other harm is not appropriate. This is because the assumption does not consider volumes of stormwater and levels of associated solids

discharged compared to volumes and concentrations of receiving water any existing sediment contamination, all of which are also needed to determine pollutant loading and potential harms to sediment and the water column. While DEQ's Cleanup program has relied on 1200-Z monitoring of stormwater discharged to areas of known sediment contamination to provide assurance of consistently low levels of sediment contaminants of concern, the evaluation of historical 1200-Z data includes either non-detections or 5 percent or less exceedances for all impairment monitoring, except copper and iron, in the Portland Harbor area. Copper has been delisted in Portland Harbor moving to Category 2, attaining waters, and iron exceedances are subject to narrative water quality-based effluent limits in the proposed final permit. In addition, most contaminants of concern are associated with solids and lowered TSS benchmarks for discharges to sediment contaminated areas are anticipated to continue to control those contaminants. Finally, in lieu of developing TMDLs for PCBs, pesticides and other contaminants found in sediment in Portland Harbor, DEQ continues to support EPA's sediment remediation of Portland Harbor as an effective alternate pollution control (Category 4b), for which DEQ will subsequently petition EPA for delisting of the relevant parameters.

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BES #24

**Description: Pollutant Parameters; Impairment Pollutants - Requests that DEQ consider requiring analytical detection limits that are consistent with cleanup levels relevant to impaired water bodies**

**Comment:** NA

**Response:** Because DEQ has limited the amount of impairment pollutants required to be sampled, this comment is no longer relevant. If DEQ assigns additional monitoring under the allowed permit provision, the concentration will be consistent with NPDES permitting procedures and water quality standards.

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BES #25

**Description: Pollutant Parameters; Impairment Pollutants - Provide details on how much data is required to trigger the exemption and define the phrase "not present" in the discharge (i.e., non-detect value)**

**Comment:** Applicable to language: "Permit registrants must meet Schedule B.5.b.i. unless the permit registrant: (1) Provides monitoring data demonstrating that the pollutant(s) for which the waterbody is impaired are not present in the discharge.

BES recommends revising this section for clarity. Alternatively, BES recommends deleting this condition and having permit registrants conduct monitoring until a monitoring waiver can be achieved. It is BES' recollection that this permit condition was added to the current permit to alleviate the analytical testing costs associated with pesticides, PCBs and PAHs for sites that had adequately demonstrated these pollutants were not present in their discharges via monitoring under previous iterations of the permit. Monitoring for these pollutants is no longer required under the permit and this condition will not be applied consistently as written.

**Response:** DEQ did not make this suggested change, as data results will be considered on a case-by-case basis. The 1200-Z language reflects EPA's MSGP condition.

BES #26

**Description: Sheet Flow - Recommends adding “Discharges from discharge points with shallow overland/sheet flows may need to be further concentrated to obtain a sample” to Schedule B.6.a**

**Comment:** This condition will help to clarify the requirement to sample sheet flow discharges associated with industrial activity as described in the PER and DEQ’s fact sheet titled, “Water Quality Division Managing Stormwater: Sheet Flow.”

**Response:** DEQ made edits to the proposed final permit based on the comment.

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BES #27

**Description: Monitoring Variance - Add clarity language that permit registrant must submit site-specific information to support the lack of discharge**

**Comment:** BES recommends adding a clarifying statement that Schedule B.7.a.i and B.7.a.ii in and of themselves are not acceptable to support a monitoring variance and that the permit registrant must submit site-specific information to support the lack of discharge. As written, the language is misleading.

**Response:** The proposed final permit is clear that a monitoring variance can only be requested for missed samples due to no storm events of sufficient magnitude to produce run-off during regular business hours of operation and safe conditions. DEQ also provides a fact sheet titled, “1200-Z Stormwater Permit Monitoring Variance Request,” on our website’s industrial stormwater page to outline that the list of supporting data can only be used to substantiate no discharge during a 6-month period. The criteria without site specific information does not constitute acceptable conditions to request a monitoring variance.

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BES #28

**Description: Monitoring Waiver; Impairment Pollutants - Change condition to read: “When impairment monitoring results indicate non-detect for four consecutive samples, or the geometric mean of five consecutive qualifying samples is at or below the water quality criteria in Table 6”**

**Comment:** Applicable to Schedule B.8.a.ii: “When impairment monitoring results indicate non-detect for four consecutive samples, or after three full reporting years all sample results are at or below the water quality criteria in Table 6.”

Some impairment pollutant parameters are unlikely to result in a non-detect value but can still be well below the criteria in Table 6 (e.g., iron and E. coli). As written, permit registrants with parameters unlikely to result in a non-detect value would only be eligible for a monitoring waiver for one reporting year due to the condition to reinstate monitoring the first quarter of 2025.

**Response:** DEQ finds that the criteria for discontinuing impairment monitoring must be more stringent than the conditions for benchmark monitoring waivers. Category 5: 303(d) list designation of surface

waters have no assimilative capacity for discharges over the water quality criteria. The draft permit incorporated EPA's MSGP requirements. However, since the 1200-Z requires all permit registrants to reinstate monitoring on July 1, 2025, DEQ determined impairment monitoring waiver requests after two full reporting years without an exceedance is appropriate. This change provides permit registrants with a two year exemption from impairment sampling, equivalent to that allowed in EPA's MSGP.

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BES #29

**Description: Monitoring Waiver - Request DEQ verify the intent of reinstating and revocation of monitoring waivers applicable to impairment**

**Comment:** NA

**Response:** Impairment monitoring will be eligible for a monitoring waiver request when impairment monitoring results indicate non-detect for four consecutive samples, or after two full reporting years when all sample results are at or below the impairment monitoring concentrations. A permit registrant will be eligible for a monitoring waiver for pH for impairment monitoring after two full reporting years all sample results are within the pH range in Appendix A of the proposed final permit. All impairment monitoring must be reinstated on July 1, 2025. During the last year of the permit cycle, permit registrants monitoring results are subject to escalating water quality-based effluent limit provisions in the permit. For those facilities subject to impairment monitoring based on discharge to Category 5: 303(d) list receiving waters, if the permit establishes monitoring for impairment and benchmark for the same pollutants, the facility will not be subject to benchmark monitoring for that pollutant. Therefore, the permit registrant will use the impairment monitoring waiver criteria for eligibility to discontinuing sampling, not the benchmark monitoring waiver criteria.

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BES #30

**Description: Monitoring Waiver - Schedule B.8.g. mis-numbered**

**Comment:** NA

**Response:** DEQ corrected the oversight.

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BES #31

**Description: Monitoring Waiver - Revise "1st quarter of 2025" with "July 1, 2025"**

**Comment:** NA

**Response:** DEQ made the suggested change.

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**Description: Definition; Discharge Point - Recommend definition be revised to remove “collected and concentrated”**

**Comment:** The definition as proposed does not clearly express that overland/sheet flow is a form of conveyance that creates a unique discharge point that is regulated by the permit; in fact, some may incorrectly read the proposed definition to exclude overland/sheet flow from being a discharge point regulated by the permit. This seems to conflict with DEQ’s intent expressed elsewhere. Specifically, the PER and DEQ’s fact sheet titled “Water Quality Division Managing Stormwater: Sheet Flow” explicitly state that sheet flow is a discharge point regulated under the permit; however, the permit does not explicitly state this or use the term sheet flow. If the definition of Discharge Point is not revised, BES recommends that DEQ include explicit permit language to indicate that a location where sheet flow leaves a facility is a discharge point regulated under the permit so that permit holders do not have to rely on the PER and DEQ’s fact sheet titled “Water Quality Division Managing Stormwater: Sheet Flow” to understand the permit requirements.

**Response:** DEQ has revised the definition as recommended in the comment in the proposed final permit. Schedule D.3.h now reads: Discharge Point means the location where stormwater flows discharge from the facility; including the location where any sheet flow leaves a facility such that the first receiving waterbody into which the discharge flows, either directly or through a separate storm sewer system, is a waters of the state.

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BES #33

**Description: Definition; Monitoring Point - Recommend correcting typo and adding “means”**

**Comment:** Applicable to Schedule D.3.t: “Monitoring Point for the purpose of this permit the location where stromwater discharge is sampled.”

**Response:** DEQ corrected the oversight in the proposed final permit.

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BES #34

**Description: Schedule E; Sector M - Recommends revise heading as follows “Motor Vehicle Parts, Used”**

**Comment:** NA

**Response:** DEQ corrected the oversight in the proposed final permit.

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BES #35

**Description: Schedule E; Sector M and N - Recommend include mercury as an additional benchmark monitoring requirement due to mercury’s prevalence in the industrial activities at specific facilities in these sectors**

**Comment:** Demolition debris is often sold to scrap metal facilities and may include old mercury thermostats, pumps and other mercury-containing equipment. In addition, mercury switch removal from scrap vehicles is not mandatory per state or federal regulations and the removal and recycling of mercury switches is often not done. Many operators are not familiar with the hazardous and universal waste requirements surrounding proper storage and recycling.

**Response:** DEQ appreciates the City of Portland's recommendation based on field experience. However, since DEQ has adopted Schedule E from EPA without significant edits to specific sectors monitoring requirements and due to time constraints between the final MSGP and the proposed final 1200-Z permit DEQ is unable to make the suggested edits Schedule E during this permit renewal.

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BES #36

**Description: Schedule E; Sector N - Require mercury benchmark monitoring for facilities that receive or process scrap metal**

**Comment:** NA

**Response:** DEQ appreciates the City of Portland's recommendation based on field experience. However, since DEQ has adopted Schedule E without significant edits to specific sectors monitoring requirements from EPA and due to time constraints between the final MSGP and the final proposed 1200-Z permit, DEQ is unable to make suggested edits Schedule E during this permit renewal.

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BES #37

**Description: Schedule E; Sector N - Recommends include PCB and hexavalent chromium (Cr (VI)) as an additional benchmark monitoring requirement for certain facilities, specifically those that receive or process scrap metal**

**Comment:** From BES' experience, these facilities continue to receive old scrap transformers, many of which once contained PCB oil, and PCB fluorescent light ballasts. Material handling activity can lead to PCB contamination in stormwater. Torch cutting is a common processing method for non-ferrous scrap metal recycling facilities and can produce heavy smoke that may contaminate ground surfaces with Cr (VI), which can then contaminate stormwater.

**Response:** DEQ appreciates the City of Portland's recommendation based on field experience. However, since DEQ has adopted Schedule E without significant edits to specific sectors monitoring requirements from EPA and due to time constraints between the final MSGP and the final proposed 1200-Z permit, DEQ is unable to make suggested edits Schedule E during this permit renewal.

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BES #38

**Description: Schedule E; Sector P - Total mercury benchmark monitoring is not necessary**

**Comment:** The PER indicates that this inclusion is based on EPA’s 2020 proposed monitoring. EPA added this monitoring based on the National Academies of Sciences’ study for which recommended mercury be added to benchmark monitoring for this sector based on information from Toxic Release Inventory (TRI) data; however, mercury emissions reported in TRI data are generally indicative of air emissions from total releases from the transportation industry, not representative of emissions at a stormwater discharge point(s) on the facility itself. Mercury emitted from sources in this sector is transported into the atmosphere and deposited in water. BES believes that requiring facilities to sample stormwater on their site will likely not yield useful data. Removing mercury as a sector benchmark will help to reduce the burden of increased monitoring for operators in Sector P.

**Response:** Since DEQ has adopted Schedule E without significant edits to specific sectors monitoring requirements from EPA and due to time constraints between EPA’s final MSGP and the final proposed 1200-Z permit, DEQ is unable to make suggested edits Schedule E during this permit renewal.

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BES #39

**Description: Schedule E; Sector R - Incorrectly states that Table E.R-1 identifies benchmarks that apply to... Sector M**

**Comment:** NA

**Response:** DEQ corrected this oversight.

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BES #40

**Description: Schedule E; Sector Y - Incorrectly states that Table E.Y-3 identifies benchmarks that apply to... Sector M**

**Comment:** NA

**Response:** DEQ corrected this oversight.

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BES #41

**Description: Appendix A - Add title and correct typo**

**Comment:** “1200-Z Stormwater Permit Rulemaking Public Notice Appendix A Water Quality-Based Effluent Limits for pH.” Typo includes Ph instead of pH.

**Response:** DEQ corrected the oversight in the proposed final permit.

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**Description: Tier 1.5; Appendix B - Suggest since the permit refers to Appendix B as a “checklist” the title should reference “checklist”**

**Comment:** NA

**Response:** DEQ acknowledges the comment. The industrial-specific checklists now has several references to “checklist” in the title sections, table of contents, and headers that accurately reflect it as such. The operational and source control measures within the industrial-specific checklists are strongly encouraged to be considered as part of the Tier 1 corrective action responses; however, DEQ acknowledges that it is not an exhaustive list of controls that could be selected and implemented. Also, the proposed final permit now references DEQ’s industrial stormwater webpage as the location to find the technical assistance tool. The permit also added a definition to Schedule D. If a permit registrant chooses to use and implement the checklists, the objective is to assist in reducing pollutant sources exposed to stormwater. The universal checklists are intended for all industrial sectors covered under this permit as well as sector-specific checklists for each major industrial group.

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BES #43

**Description: Tier 1.5; Appendix B - Revise the checklist to remove redundant source control measures with narrative technology-based effluent limits (TBELs)**

**Comment:** NA

**Response:** DEQ acknowledges that redundancies exist between the permit and industrial-specific checklists. DEQ has revised the language to reduce these redundancies. DEQ broke the industrial-specific checklists into sections including universal control measures appropriate for all industrial sectors and sector-specific control measures checklists appropriate for each major industrial group. DEQ cross-checked all the narrative technology-based effluent limits (TBELs) contained in Schedule A.1 of the permit to ensure they were not repeated in the industrial-specific checklists.

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BES #44

**Description: Tier 1.5; Appendix B - Need guidance on the level of review and enforcement expected in association with Tier 1.5 Appendix B submittals**

**Comment:** For example, one SCM under Sector M states “Ship mercury switches to End of Live Vehicle Solutions (ELVS). This is not a regulatory requirement outside of Appendix B; therefore, if a permit-holder does not do this, how will DEQ or the agent evaluate the rationale for why this is not being done on a consistent basis?”

**Response:** The site operational and source control measures within the industrial-specific checklists are strongly encouraged to be considered as part of the Tier 1 corrective action responses; however, DEQ acknowledges that it is not an exhaustive list of controls that could be selected and implemented. DEQ and agents will evaluate Tier 1 reports and completion and implementation of industrial-specific checklists during inspections.



BES #45

**Description: Tier 1.5; Appendix B - Supports a more prescriptive approach in response to benchmark exceedances and ultimately supports the use of the Appendix B Mandatory Stormwater Source and Operational Control Measures (SCMs)**

**Comment:** Provided several recommendations and concerns regarding Appendix B.

**Response:** DEQ modified the proposed final permit to remove Appendix B and will provide the industrial-specific checklist as a recommended optional tool for permit registrants that have benchmark exceedances and thus will not be compulsory; however, will be strongly encouraged. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations specific to each major industrial group.

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BES #46

**Description: Tier 1.5; Appendix B - Recommend making the checklist fillable PDFs and requiring electronic submission only**

**Comment:** Permit holders will need to print the checklist applicable to their sector which generate a significant amount of paper due to the considerable number of SCMs in Appendix B. These submittals will also result in a paperwork burden for DEQ and the agents.

**Response:** The proposed final permit does not include Appendix B. DEQ made significant edits and will recommend the industrial-specific checklists are used as an optional technical assistance tool in response to benchmark exceedances. Tier 1 reports and the optional industrial-specific checklists will be retained on site. During this permit cycle DEQ will launch its new electronic online platform, Your DEQ Online, transitioning from paper-based documents to fully electronic.

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BES #47

**Description: Tier 1.5; Appendix B - Sector M propose to revise language**

**Comment:** Instead of the checklist requiring: “Remove all mercury switches as soon as possible making sure not to puncture the mercury container during removal.” BES suggests revised language: “Remove all mercury switches as soon as possible and place in labeled, lidded bucket for universal waste recycling.” The mercury is contained in a heavy plastic outer shell and a metal bullet-like structure and not able to be punctured.

**Response:** The proposed final permit does not include Tier 1.5 or Appendix B. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. The industrial-specific checklists are strongly encouraged to be considered as part of the Tier 1 corrective action responses. DEQ recognizes that there

are a variety of best management practices for industries to implement and will consider appropriate related sources to improve checklists for industry best practices in the future. The checklists include language specific to mercury switch removal and proper storage.

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BES #48

**Description: Tier 1.5; Appendix B - Sector M recommends replace “hazardous” waste with “universal” waste and suggest mercury switches to be recycled**

**Comment:** Revise checklist to read: “Manage mercury switches as universal waste. Containers should be labeled with labeled as Universal Waste-spent mercury switches to be recycled” if they are to be recycled. Universal waste regulations apply to hazardous waste if it is recycled.

**Response:** The proposed final permit does not include Appendix B or Tier 1.5. DEQ made significant edits in response to specific comment received and recommends the industrial-specific checklists be used as an optional technical assistance tool in response to benchmark exceedances. DEQ incorporated the suggested change into the checklists.

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## 26. Comments from: Oregon Forest & Industries Council

OFIC #1

**Description: Metals Benchmark Modeling - Revise proposed statewide benchmarks using appropriate regional or statewide translators**

**Comment:** The proposed statewide benchmarks should be revised to reflect appropriate regional or statewide translators. The Proposed Permit’s benchmarks are based on default translators of 1 or very nearly 1. Applying appropriate, region-specific translators results in benchmarks that are in all instances higher—and in most instances substantially higher—than the proposed benchmarks. And in only two instances are the adjusted benchmarks lower than the current permit’s benchmarks. Moreover, for the reasons discussed in the following section, the adjusted benchmarks themselves may be lower than necessary to protect water quality.

**Response:** DEQ agrees that the use of EPA default translators is more conservative than necessary in some instances and has reconsidered the use of EPA default metal translators. DEQ has evaluated the potential use of regional translators, and updated the proposed final permit to include regional translators where feasible. Where regional translators were not feasible, EPA’s default metal translators were applied. EPA’s default translators are widely applicable to, and protective of, a diverse array of waterbodies. Appendix C of the revised permit evaluation report describes the methods used by DEQ in evaluating the appropriateness and the application of regional metal translators in the proposed final permit.

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**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Should not remove allowance for DEQ or agent to approve a corrective action deadline more than 30 days**

**Comment:** The revised Draft permit also removes the allowance for DEQ to approve a longer time frame, which is obviously necessary if long purchasing lead times or construction is required.

**Response:** The proposed final permit retains the 2018 permit language and allowance for an approval from DEQ or agent to extend the deadline to modify and implement control measures.

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OFIC #3

**Description: Effective Date of the Permit - Support DEQ's proposal to delay the effective date of the permit to July 1, 2021**

**Comment:** The Proposed 1200-Z Permit would be issued by March 30, 2021 in order to respond to the requirements of the settlement agreement that DEQ entered with OISG and other parties, but the permit would not take effect until July 1, 2021. The delayed effective date is consistent with the settlement agreement, which requires only a permit decision on specified issues by March 30, 2021, and it will give DEQ, its agents, and permit registrants time to prepare for implementing the permit. An effective date of July 1 will also align the permit term with the permit's July 1 to June 30 monitoring year, which will further facilitate permit implementation.

**Response:** Thank you for the feedback.

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OFIC #4

**Description: Sheet Flow - The permit can only regulates only "point sources," not "sheet flow" or other uncollected and unchanneled discharges**

**Comment:** There is also no requirement to collect or channel stormwater to transform it into a point source discharge. No authority is cited for the statement that the U.S. Environmental Protection Agency (EPA) requires the permit to regulate sheet flow or other stormwater runoff that is not channeled or collected, nor is any authority cited for the statement that facilities are required to create a point source discharge where there is none. Any such permit requirements would be inconsistent with the Clean Water Act (CWA) and EPA's regulations. A fundamental principle of the CWA is that it regulates only point source discharges.

This is further emphasized by EPA's stormwater regulations, which define "storm water discharge associated with industrial activity" as "the discharge from any conveyance that is used for collecting and conveying stormwater water and that is directly related to manufacturing, processing or raw materials at an industrial plant." 40 C.F.R. § 122.26(b)(14) (emphasis added); see also *Ecological Rights Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 508-10 (9th Cir. 2013) (NPDES permit not required for stormwater that is not "discretely collected and conveyed to waters of the United States"); *Greater Yellowstone Coal. v. Lewis*, 628 F.3d 1143, 1152-53 (9th Cir. 2011) (stormwater runoff that is "not collected or channeled"

is not regulated by the CWA). The statements in the evaluation report that suggest that uncollected and unchanneled stormwater runoff is regulated by the NPDES permit program, and that facilities are required to collect and channel runoff are incorrect and a source of ongoing confusion for permit registrants, DEQ agents, and the public. OISG urges DEQ to correct these statements to accurately define the scope and source of its authority to regulate stormwater runoff through an NPDES permit.

**Response:** These comments take issue with the permit requirement that permitted facilities sample and, if necessary, control sheet flow discharging from regulated industrial facilities into waters of the state. Factually this is a specific scenario where an industrial facility deemed to be conducting activities generating stormwater requiring an NPDES permit, has a facility design such that sheets of stormwater directly drain from the facility to waters of the state. Given these facts, such sheet flow is potentially of environmental concern and therefore assessment is required. The requirement to monitor sheet flow is consistent with direction from EPA that once a permit is required the permit registrant must assess all potential industrial stormwater discharge that does not infiltrate. The same approach is taken by other states include neighboring Washington State. Consistent with this, guidance for collecting sheet flow samples is included in EPA's 2009 Industrial Monitoring and Sampling Guide and Washington Department of Ecology's 2015 Stormwater Sampling Manual. Additionally, requiring monitoring of sheet flow from permitted industrial facilities is consistent with the policies of the state of Oregon to prevent pollution as described in ORS 468B.015, 468B.020 and 468B.025. The proposed final permit has been modified to make the requirement to monitor sheet flow clearer in Schedule B and Schedule D, discharge point definition.

To support their position that the permit cannot require registrants to monitor sheet flow commenters cite the prohibition on point source discharge without a permit in Section 301(a) of the Clean Water Act and two Ninth Circuit Court of Appeals cases, arguing that sheet flow is not a point source. Cases considering whether an NPDES permit or Section 401 Certification are required are very fact dependent and therefore must be considered in the context of their facts. The first case cited in this comment is *Ecological Rights Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 508-10 (9th Cir. 2013). This case considered whether runoff from utility poles triggered the requirement to obtain an NPDES permit and found that it did not. The plaintiff claimed that a permit was required for the utility poles in four California Counties. The court considered whether the poles were point sources despite no direct connection to water bodies. The sheet flow being regulated by this permit is directly flowing from permitted facilities into waters of the state.

The second case cited is *Greater Yellowstone Coal. v. Lewis*, 628 F.3d 1143, 1152-53 (9th Cir. 2011). That case considered whether stormwater "seeping" into pits that collected waste rock associated with a mine expansion constituted a point source such that a Section 401 water quality certification was required, and the Court found that they did not. The "seeping" at issue in that case was at a rate less than the surrounding ground and therefore is also very dissimilar to sheet flows from a constructed industrial facility. Additionally, the sheet flow at issue in the permit is not naturally occurring runoff but rather drainage of stormwater directly into waters of the state from a constructed facility. As discussed, the cases cited involved very specific factual situations and provide little guidance on the regulation of sheet flow stormwater from permitted industrial facilities.

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OFIC #5

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Proposed 1200-Z Permit would prohibit the use of temporary covers, such as tarps, but no justification for this change is provided in the draft evaluation report. There will undoubtedly be both short-term and long-term circumstances in which permanent structures are not feasible, but tarps or other temporary covers would minimize exposure. A permit registrant should not be put in the position of choosing a less environmentally protective solution—no cover at all—if a permanent structure is not practicable.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to minimize exposure and to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure.

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OFIC #6

**Description: Stormwater Discharge; Statewide and Sector-Specific Benchmarks - Revise benchmark exceedance language; should further clarify the significance and consequences of a benchmark exceedance**

**Comment:** The Proposed 1200-Z Permit, like the current permit, unequivocally states: “Benchmarks are guide concentrations, not numeric effluent limits. A benchmark exceedance, therefore, is not a permit violation.” These benchmarks are not based on any evaluation of the discharge concentrations that are achievable if the permit registrant complies with the narrative technology-based effluent limits in condition A.1 and Schedule E of the permit. Therefore, it is incorrect to say that a discharge in excess of the benchmark reflects a failure to implement the permit’s required stormwater controls. Rather, a benchmark exceedance indicates only a general risk of more than 10 percent that the discharge may have contributed to the exceedance of a water quality criterion. The risk is a general risk because the benchmark is derived from regional water quality data, rather than from information regarding the specific discharge and receiving water conditions. Schedule A.5 should be revised to read: To clarify that a benchmark exceedance is not itself a violation of the permit’s narrative effluent limits, OISG requests that Proposed 1200-Z Permit condition A.5.a be revised to read as follows: Benchmarks are screening concentrations, an exceedance of which requires further evaluation of a facility’s stormwater controls and implementation of any additional or revised controls in accordance with this permit. Benchmarks are not numeric effluent limits. A benchmark exceedance, therefore, is not a permit violation and does not by itself indicate a violation of any other permit condition, including the permit’s narrative technology-based effluent limits in Schedules A.1 and E and narrative water quality-based effluent limits in Schedule A.3.

**Response:** DEQ has determined the language at Schedule A.5 is sufficiently clear that benchmarks are not numeric effluent limitations, or are exceedances of a benchmark a permit violation in and of themselves. Further, Schedule A.14.c states: “Where corrective action is triggered by an event that does not itself constitute a violation, such as a benchmark exceedance, there is no permit violation associated with the triggering event provided that the permit registrant takes the corrective action within the deadlines identified in this permit.” Schedule A.11 and 12 describe benchmark exceedances as “triggering events” which necessitate the registrant undertake corrective actions and reporting requirements. DEQ did make some small edits to this section for clarity.

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OFIC #7

**Description: Stormwater Discharge; Statewide and Sector-Specific Benchmarks - Remove language: "benchmark monitoring shall assist the permit registrant in determining whether site controls are effectively reducing pollutant concentrations in stormwater discharges"**

**Comment:** This statement is misleading and should be removed. Because discharge benchmarks are not based on an evaluation of the discharge concentrations that are achievable by implementing the stormwater controls required by the permit, exceeding a benchmark is not itself an indication that the facility's controls are ineffective.

**Response:** DEQ disagrees that the statement is misleading. Discharge monitoring, including for parameters for which benchmarks have been established, are often an effective aid in assessing a registrant's success or lack of success in meeting water quality standards. When benchmarks are not met and new controls must be implemented, monitoring data provides DEQ and the registrant with a baseline to assess the effectiveness of new controls. The proposed final permit revised the language to now read: "The permit registrant must determine whether site controls are effectively reducing pollutant concentrations in stormwater discharges, or if maintenance or implementation of additional controls is necessary when a benchmark is exceeded."

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OFIC #8

**Description: Tier 1 Corrective Action Response - Clarify Tier I response action must be completed within 30 days only when it is practicable to do so**

**Comment:** The proposed condition, however, is ambiguous regarding whether Tier 1 response actions are required to be completed within 30 days, regardless of the practicability of doing so. Language change proposal Schedule A.11.d.i: If practicable, implement required response actions before the next storm event or no later than 30 calendar days after receiving the monitoring results or completing the monthly visual inspection (as applicable), whichever comes first. If permit registrant does not complete the required response action within this time frame, a justification for why it was not practicable to complete the required response actions within this time must be documented in the Tier 1 Report, and the required response actions must be completed as soon as practicable.

**Response:** DEQ did not make the suggested change because the existing permit language is sufficient to provide flexibility if needed. When monitoring results exceed benchmark(s), permit registrants must perform Tier 1 corrective action response swiftly to mitigate continued pollution in discharge.

Schedule A.11.d.i: "Implement Tier 1 corrective actions before the next storm event, if possible, or no later than 30 calendar days after receiving the monitoring results or completing the monthly visual inspection, whichever comes first. If the permit registrant fails to complete the corrective action within this timeframe, an explanation must be documented in the Tier 1 Report, and corrective actions must be completed as soon as practicable."

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OFIC #9

**Description: Tier 1.5; Appendix B - Revise its proposal to require permit registrants to only consider, not implement, the Appendix B controls**

**Comment:** DEQ has not evaluated whether every facility covered by the 1200-Z permit can practicably implement every stormwater control specified in Appendix B for the facility's major industrial group, much less implement those controls within 60 days. Moreover, many of the Appendix B controls are generic measures that are not targeted to specific pollutants and that may do little or nothing to reduce the concentrations of the pollutant or pollutants that triggered Tier 1.5. EPA itself has not substantially evaluated the controls and does not propose to require them "where it would be counterproductive to the implementation of another control measure, or not result in any reduction in the discharge of the pollutant of concern." Appendix B contains a useful list of industry-specific controls for permit registrants to consider.

**Response:** DEQ did not include Tier 1.5 and associated Appendix B checklist in the proposed final permit. The industrial-specific checklists will be recommended guidance for permit registrants that have benchmark exceedances as part of a Tier 1 corrective action response, thus will not be mandatory. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. The industrial-specific checklist items are strongly encouraged to be considered by permit registrants; however, DEQ acknowledges that it is not an exhaustive list of measures that may be selected and implemented.

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OFIC #10

**Description: Tier 2 - Should allow the permit registrant to demonstrate that the discharge concentrations likely to be achieved will meet both control technology and water quality requirement, even if Tier 2 report will not achieve the goal of meeting the benchmark**

**Comment:** The benchmarks are not based on determinations of the discharge concentrations that can be feasibly achieved or that will not cause or contribute to a water quality standards exceedance in the specific receiving waters for the discharge. If the Tier 2 measures are not likely to achieve the goal of meeting the relevant benchmark, the permit should expressly allow the permit registrant to demonstrate that the discharge concentrations likely to be achieved will meet both control technology and water quality requirements.

Allow permit registrants that are subject to Tier 2 to demonstrate that additional treatment or control measures that would be required to meet the subject benchmarks are not technologically available or economically practicable, and that such measures are not necessary to avoid exceedances of instream water quality standards for the pollutants in question. This would further clarify that benchmark exceedances are not equivalent to a violation of water quality standards and would avoid subjecting permit registrants to more stringent effluent limits than those articulated in the permit's narrative technology-based effluent limits.

**Response:** DEQ disagrees with this comment. DEQ has developed risk-based benchmarks to be protective of water quality under reasonable and conservative discharge assumptions throughout Oregon. This methodology provides permit registrants with the flexibility to implement an adaptive management approach, yet still be protective of water quality. DEQ acknowledges that exceedances of these benchmarks are not guaranteed to result in instream exceedances of applicable water quality standards. However, an exceedance of these benchmarks has an increased risk to cause or contribute to instream exceedances of applicable water quality standards if not appropriately addressed under DEQ's 1200-Z general permit. DEQ finds that discharges that are unable to meet the established benchmarks are required to install treatment and source control with the goal of achieving the benchmark in accordance with Tier 2

corrective action response. DEQ declines to add additional flexibility under the general permit framework, as the Tier 2 corrective action requirements have been in the permit for three permit cycles and has proven to be effective in reducing pollutants concentrations into Oregon's receiving waters.

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OFIC #11

**Description: Water Quality-based Effluent Limits - Restrict pH limits only high or low pH, depending on the basis for the impairment listing**

**Comment:** If DEQ nonetheless believes that numeric effluent limits are necessary, the limits should be consistent with the basis for the pH impairment. Where the impairment is solely due to pH values in excess of the pH criteria range, the numeric effluent limit should include only a maximum pH limit. In those circumstances, a discharge with a pH below the criteria range could not contribute to the impairment. Similarly, where the impairment is solely due to pH values below the pH criteria range, the numeric effluent limit should include only a minimum pH limit.

**Response:** The applicable water standards in OAR 340-041-0101 through 340-041-0350 establish pH as range between which hydrogen ion concentrations must fall. If any two consecutive monitoring results at each monitoring point falls outside the basin-specific range for pH, the permit registrant will be subject to numeric water quality-based effluent limitations for pH consistent with entirety of the applicable pH water quality standards, rather than a portion of the applicable standards. Establishing limitations for only a portion of the standard would be inconsistent with the water quality standard as a whole. Permit registrants may be granted a two-year compliance schedule if needed.

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OFIC #12

**Description: General Comment; Rulemaking - Concerns about the draft 1200-Z Permit and the utility of issuing the permit by rule**

**Comment:** As a threshold procedural matter, we would ask the DEQ to return to its longstanding practice of issuing general NPDES permits as orders rather than sending them through the formal notice-and-comment rulemaking process. There is no clear evidence that DEQ's historical practice in this regard is or was deficient, and we do not believe that the agency's decision to move to formal rulemaking provides any tangible benefits over the issuance of general NPDES permits as orders. DEQ has stated that this procedural change was intended to increase opportunity for public engagement and to improve transparency in the process, but it is not clear how the formal rulemaking process is superior to DEQ's historical practice in this regard.

**Response:** DEQ has authority under ORS 468B.050 and OAR 340-045-0033(1) to issue general permits by rule or by order. Historically a number of general permits were adopted through rulemaking while more recently some have been issued by agency order. Due to the large number of permit registrants (860+) and the substantive policy changes considered in this permit renewal, DEQ determined that renewing the 1200- Z permit by the rule is appropriate. Renewing this permit through the rulemaking process provided in the Administrative Procedures Act ensures transparency and a standardized process. Additionally, the policy decisions regarding the final permit are made by the Environmental Quality Commission.



OFIC #13

**Description: Water Quality-based Effluent Limits; pH - Scant evidence that industrial stormwater contribute meaningfully to waters that are impaired for pH**

**Comment:** Considering that pH impairments generally occur during the dry season when stormwater discharges are at a low ebb, we do not think that numeric pH discharge limits for discharges to impaired waters are warranted or necessary. In fact, given that most pH impairments result from high pH values, the fact that stormwater runoff consists of rainwater – which has a lower pH than most water quality criteria – it is counterintuitive that such discharges would contribute to such impairments.

**Response:** As a component of its reasonable potential analysis for pH, described in the permit evaluation report, DEQ analyzed 1200-Z Discharge Monitoring Reports dating from January 2000 through December 2018. The discharge data was cross-referenced with Oregon’s 303(d) list for pH impaired waterbodies to restrict the analysis to relevant discharges. Based on an analysis of this dataset, DEQ determined there is sufficient evidence to find reasonable potential for discharges of pH to cause or contribute to an excursion above or below the applicable water quality standards in impaired waterbodies.

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OFIC #14

**Description: Coastal Georegion - Particularly concerned with the coastal zinc benchmark given the degree to which it has been reduced**

**Comment:** If the zinc benchmark is not adjusted, to significantly adversely impact a substantial number of our members’ facilities. It really is not possible to overstate how problematic DEQ’s proposed benchmark value is for the wood products industry. We request that the agency revise this value as recommended by Geosyntec in its completed report (submitted by OISG).

**Response:** The comment appears to reference the memorandum, “Review of ODEQ Draft 1200-Z Coastal Zinc Benchmark” (Oct. 2020, Geosyntec Consultants). The memo presents several criticisms relevant to the comment: (1) a critique of data quality control procedures and statistical controls used in the risk-based benchmark derivation method, and (2) an objection to DEQ’s use of EPA’s default metal translators with a presentation of alternative region-specific translators developed by Geosyntec.

The memo identifies several purported limitations of DEQ’s benchmark development method: (1) DEQ provides insufficient supporting analysis to ensure background data is representative of each georegion and of sufficient quality for use in the analysis. (2) Covariance in parameter concentration should be quantified and incorporated into the simulations. (3) Biasing factors may have been introduced into the parameter distribution analysis. DEQ has reviewed the data quality and analysis procedures utilized in the benchmark derivation process and determined they were appropriate and the benchmarks derived are protective of water quality. Use of the risk-based methods described in Attachment A of the permit evaluation report justify the use of benchmarks which are less stringent than benchmarks derived from more conventional methods (e.g., direct application of water quality criteria as benchmarks, or steady-state mass balance calculations), while still being protective of water quality.

DEQ has reconsidered the universal application of EPA’s default metal translators in the benchmark analysis. Regional translators have been determined and implemented as specified in Appendix C of the

revised permit evaluation report. However, upon consideration of a regional translator for the Coastal georegion, the translator indicates a ratio of total recoverable to dissolved very close to 1:1 and will not impact the default translator previously used. The risk-based modeling estimated these benchmark values will result in an acceptable (low) probability of causing or contributing to degradation of state waters. DEQ calculated a saltwater benchmark for zinc using the acute aquatic life criteria and the same methodology as used in the freshwater modeling. The zinc saltwater benchmark concentration for marine water discharges in the proposed final permit is 0.46 mg/L.

With respect to the calculation of distribution parameters, the distribution of a theoretical lognormal distribution may be validly computed consistent with the method used by DEQ. Lognormal distribution parameters may be validly computed using different, mathematically equivalent parameterizations which include, but are not limited to, using the maximum likelihood estimate (the method suggested by the commenter), or the arithmetic mean and standard deviation (the method used by DEQ in the draft permit). Different estimated parameters may have differing bias depending on the underlying characteristics of each data set and both the method used by DEQ in the draft permit and the method suggested by the commenter tend to be more biased when applied to smaller or skewed data sets. However, in response to the comment, DEQ has graphically evaluated the application of both methods to the available data and determined the method suggested by the commenter does produce less biased simulated data when applied to the coastal data which were determined to be lognormal, and that the quality of this method when applied to other regions' lognormal data sets was approximately similar to DEQ's method. Therefore, DEQ has revised all the metals benchmarks, including for coastal georegion for zinc, based on an application of the requested lognormal distribution parameterization method.

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OFIC #15

**Description: Metals Benchmark Modeling - Revisit the unnecessarily conservative benchmarks that have been set**

**Comment:** Consider the negative impact that such changes would doubtlessly have on facilities that would have to make major technological investments to comply with such parameters. The cost to permittees of compliance with these revised values would be massive, and such cost is frankly not justified by the marginal additional protection that would be afforded to the state's waters.

**Response:** The benchmarks are based on a well-vetted and technically sound modeling methodology that builds in a dilution of 5 and sets the benchmark at a 10 percent probability of exceeding the water quality criterion. DEQ finds the benchmarks concentrations are protective of water quality as they are derived from Oregon's acute aquatic life water quality standards and the reductions are justified. DEQ performed several additional analyses related to the benchmark work between the end of public notice and the proposed final permit. Many of the final benchmarks used region translators appropriate to ensure aquatic life and beneficial uses are not impacted while also ensuring the concentrations are not overly conservative. DEQ is confident the benchmarks are achievable and will be protective of water quality.

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## 27. Comments from: Garbarino Disposal & Recycling Service

GARBARINO #1

**Description: Benchmarks Technological Feasibility - Recommends that ODEQ take a holistic review of benchmark values**

**Comment:** The Rulemaking Advisory Committee members were concerned that DEQ was proposing lower benchmarks than DEQ had previously determined were technologically achievable and that DEQ should not set benchmarks that cannot be met with readily available technology. Thus, the benchmarks are essentially an “end-of-pipe” water quality standard discharge limit not accounting for any dilution that can occur. DEQ needs to take a holistic review of benchmark values; the values need to consider what control measures can be achieved, background conditions, and water quality criteria.

**Response:** DEQ hired PG Environmental to assess the benchmark methodology used in the 1200-Z permit. It was determined that the technological feasibility evaluation was not robust enough and did not evaluate the discharge quality from the best performing sites. DEQ has built in flexibility into the risk-based modeling to account for the intermittent nature of stormwater discharge. The metals benchmarks in the proposed final permit are based on a well-vetted and technically sound modeling methodology that builds in a dilution of 5 and sets the benchmark at a 10 percent probability of exceeding the water quality criterion.

DEQ anticipates that a robust evaluation of the technological feasibility of the benchmarks would result in concentrations would be even more restrictive than the risk-based water quality concentrations established in the proposed final permit. As outlined in the federal process for technological feasibility, the appropriate evaluation would include a selection of model technologies and defined performance standards and DEQ would set benchmarks at a concentration based on the best performing treatment capabilities.

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GARBARINO #2

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Proposed 1200-Z Permit would prohibit the use of temporary covers, such as tarps, but no justification for this change is provided in the draft evaluation report. There will undoubtedly be both short-term and long-term circumstances in which permanent structures are not feasible, but tarps or other temporary covers would minimize exposure. A permit registrant should not be put in the position of choosing a less environmentally protective solution—no cover at all—if a permanent structure is not practicable.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to minimize exposure and to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure.

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not be subject to an enforcement action for violating the narrative technology-based effluent limits**

**Comment:** A permit registrant should not be subject to an enforcement action for violating the narrative technology-based effluent limits if it has explained in its SWPCP how it will implement the limits, has submitted the SWPCP to DEQ, has timely made any changes to the SWPCP directed by DEQ, and has complied with the SWPCP. Translating a general permit’s necessarily vague and subjective narrative technology-based effluent limits into facility-specific stormwater controls requires professional and policy judgments that only DEQ can ultimately make. A permit registrant should not be subject to an enforcement action, including a citizen suit, for violating the narrative limits when it has (1) prepared an SWPCP that explains how it will implement the narrative limits, (2) submitted the SWPCP to DEQ or its agent, (3) made any changes in the SWPCP that DEQ or its agent has directed, and (4) fully complied with the relevant provisions of the SWPCP. Permit registrant should not be subject to an enforcement action when these conditions have been met.

**Response:** DEQ appreciates the input. The draft permit language did not read as intended. DEQ has revised the wording to meet the intent: “Failure to implement any narrative technology-based effluent limits in Schedule A.1 and Schedule E, and other control measures or operational practices described in the SWPCP is a permit violation.”

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GARBARINO #4

**Description: SWPCP Required Elements; Map - Remove proposal to identify on the site map “areas where pesticides, herbicides, soil binders, and fertilizers are applied”**

**Comment:** Proposed 1200-Z Permit condition A.10.b.i(9) would require the SWPCP site map to identify “areas where pesticides, herbicides, soil binders, and fertilizers are applied.” Requests the removal of this proposed requirement. It would be burdensome to map the specific areas of application, particularly for infrequent uses, and it would also clutter the site map, making it difficult to use. Moreover, because the permit already requires the SWPCP to include a description of these “significant materials” and their use, it is unclear what would be gained by including this information on the site map.

**Response:** DEQ did not include this requirement in the proposed final permit.

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GARBARINO #5

**Description: Mass Reduction Measures: General Comment - Consider any mass load reduction device installed voluntarily under exemptions**

**Comment:** In some instances, the permit refers to exemptions (such as those in Schedule A.11.e.ii) or other considerations afforded to mass reduction devices that were “installed during previous permit cycles in response to Tier 2 corrective action.” However, in other instances, the permit does not clearly state that some considerations are afforded to mass reduction devices that were installed proactively or independent of triggering Tier 2 corrective action. What about facilities intermittently struggled to meet benchmarks and has now made the decision to install a mass load reduction device in a proactive effort to avoid Tier 2

requirements in the future, would those devices then qualify for the exemptions outlined in Schedule A.11.e.ii and Schedule A.12.h.i? The permit should encourage permittees to make proactive improvements to their facilities to attempt to avoid Tier 2 corrective action. As written, the permit may dissuade entities from making necessary and beneficial improvements until they have triggered Tier 2 corrective action requirements.

**Response:** Schedule A.6 regarding the re-certification of mass reduction waiver provision has been revised to add: “For mass reduction measures installed during previous permit cycles that reduced the mass of the pollutants discharged at or above DEQ-approved design storm capacity not in response to Tier 2 mass reduction waiver, the permit registrant must meet Schedule A.6.a-d and submit, retroactively, to DEQ or agent a Tier 2 mass reduction waiver checklist.” DEQ or agent will approve or deny the certification requirements and retroactive submittal of the Tier 2 mass reduction waiver checklist, since the mass reduction device did not have prior approval before being built. For all mass reduction devices that meet the re-certification deadline of December 31, 2021, DEQ or agent will communicate to the permit registrant qualification related to the exemptions outlined in the other Schedules of the permit.

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GARBARINO #6

**Description: Narrative Water Quality-based Effluent Limits - Clarity on the timeline facilities will be granted to install these additional source and operational controls is concerning**

**Comment:** The measures necessary to comply with Schedule A.13.h will potentially be significant for some sectors, specifically the solid waste industry, who provides a vital public service to our communities.

**Response:** Permit registrants that trigger this condition will now have 90 calendar days, instead of 60 calendar days that was in the draft permit, from receiving the monitoring results to implement the narrative water quality-based effluent limits to the extent practicable. Schedule A.13 Water Quality-based Effluent Limit section of the proposed final permit applies to stormwater discharge into 303(d) list receiving waters where data indicates a designated use is not supported or a water quality standard is not attained and a TMDL is needed. Schedule A.13.k reads: “If the permit registrant is unable to comply with the numeric or narrative water quality-based effluent limits, it is a permit violation and permit coverage may be revoked under this general permit and coverage required under an individual permit.”

As part of the rulemaking, DEQ hired PG Environmental a technical expert in NPDES permitting to conduct an impairment analyses with the following objective to summarize pollutant trends of industrial stormwater discharges exceeding reference concentrations into impaired waters. Based on technical work DEQ identified industrial stormwater data exceeded water quality criteria or reference concentration for pH, copper, lead, zinc, iron and E. coli. This informed the narrative effluent limit framework for E. coli and iron in response to monitoring results exceeding two consecutive times the impairment concentration in the permit. Because these two pollutants tend to be more ubiquitous in our environment and are difficult to treat, DEQ proposed to establish narrative limits water quality-based effluent limits instead of setting water quality-based numeric limit for E. coli and iron. DEQ will make the determination after site controls are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health. OAR 340-045-0033(10)(c) grants DEQ the authority that any facility must obtain an individual permit when “the discharge or activity is a significant contributor of pollution or creates other environmental problems.” DEQ will communicate and provide the facility with its findings if coverage under the general permit is revoked. DEQ expects these appropriate mandatory control measures in the form of narrative water quality-based effluent limits will

reduce loading into these Category 5 impaired waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303 (d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source.

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GARBARINO #7

**Description: Narrative Water Quality-based Effluent Limits - DEQ needs to have reasonable expectations of what small businesses can do, and they need to provide appropriate timelines to these businesses to be able to develop and implement a plan to comply**

**Comment:** Our understanding of this section of the draft permit is that if a permittee cannot comply with this section of the permit and meet all water quality criteria, they will lose coverage under the general permit and have to obtain an individual permit, at great expense. But it's not clear how long a site has to bring their results into compliance, or if DEQ can work with the permittee to create solutions to meet the criteria.

**Response:** DEQ will make the determination after site controls or treatment are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health at any site. DEQ will communicate and provide the facility with its findings if coverage under the general permit may be revoked. DEQ expects these appropriate mandatory control measures in the form of water quality-based narrative limits will reduce pollutant loading into these Category 5 waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303 (d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source. OAR 340-045-0033(10) describes the terms for revocation under the general permit:

"The Director may refuse to authorize or renew coverage, or may revoke existing coverage under a general permit, as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit.

- (a) The procedures for denying a permit in OAR 340-045-0050 and for permit revocation in OAR 340-045-0060 apply.
- (b) Any interested person may petition the Director to take action under this section.
- (c) The grounds for requiring an individual permit include the following:
  - (A) The discharge or activity is a significant contributor of pollution or creates other environmental problems;
  - (B) The permittee failed to comply with, or is not currently in compliance with, the terms and conditions of the general permit, submitted false information, or the permittee is in violation of any applicable law;
  - (C) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;

- (D) For NPDES general permits, effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit;
- (E) Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either temporarily or permanently reducing or eliminating the authorized discharge is necessary; or
- (F) Any other relevant factors.

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GARBARINO #8

**Description: Benchmark Georegion - Should be clearer about where each of these regions are in OR**

**Comment:** Should include a map.

**Response:** DEQ has a searchable map for regulators, facilities and public use. The searchable map will provide certainty of georegion as long as the facility is aware of the location its facilities discharge enters the receiving water. Depending on the receiving water location, DEQ or our agent will clearly communicate with each facility regarding monitoring requirements based on the appropriate georegion.

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## 28. Comments from: Pride Disposal & Recycling Company

PRIDE #1

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not be subject to an enforcement action for violating the narrative technology-based effluent limits**

**Comment:** A permit registrant should not be subject to an enforcement action for violating the narrative technology-based effluent limits if it has explained in its SWPCP how it will implement the limits, has submitted the SWPCP to DEQ, has timely made any changes to the SWPCP directed by DEQ, and has complied with the SWPCP. Translating a general permit's necessarily vague and subjective narrative technology-based effluent limits into facility-specific stormwater controls requires professional and policy judgments that only DEQ can ultimately make. A permit registrant should not be subject to an enforcement action, including a citizen suit, for violating the narrative limits when it has (1) prepared an SWPCP that explains how it will implement the narrative limits, (2) submitted the SWPCP to DEQ or its agent, (3) made any changes in the SWPCP that DEQ or its agent has directed, and (4) fully complied with the relevant provisions of the SWPCP. Permit registrant should not be subject to an enforcement action when these conditions have been met.

**Response:** DEQ appreciates the input. The draft permit language did not read as intended. DEQ has revised the wording to meet the intent: "Failure to implement any narrative technology-based effluent limits in Schedule A.1 and Schedule E, and other control measures or operational practices described in the SWPCP is a permit violation."

PRIDE #2

**Description: Narrative Technology-based Effluent Limits (TBELs); Waste Chemicals and Material Disposal - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Tarping has also been removed from Draft 1200-Z Permit language as a cover for waste containers. Facilities are constrained by the containers provided to it by third party vendors, such as Waste Management or local municipal utilities. Registrants should be allowed to use tarps as an effective control measure.

Waste Disposal comments: Requiring lids on all waste containers and drop boxes is not reasonable for many reasons. Often, customers do not want or cannot use boxes with lids, the lids are easily damaged and costly to install and repair, and makes the movement, loading, and transport of these containers more difficult for the drivers. Temporary tarps are a fraction of the cost and have none of the repair costs associated with a permanently installed lid. We recommend that DEQ continue to allow the use of tarps as covers, allowing for “properly secured and maintained temporary covers that fully protect from exposure to storm water.” If the tarps are applied correctly and maintained in good condition, they serve as an effective way to limit exposure of materials to storm water.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. Neither EPA nor Washington State Ecology allow the use of tarps to meet these narrative technology-based effluent limits. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure. As emphasized in the comment from several waste management companies, proper maintenance is crucial when using tarps. The proposed final permit requires permit registrants to cover all waste contained in bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to these pollutants; this includes scrap and waste materials.

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PRIDE #3

**Description: Tier 1.5; Appendix B - Confusing, impractical, financially burdensome and overwhelming for our small business**

**Comment:** The term “all applicable” is not clear in this section either. For example, several items on the checklists may not be reasonable or feasible for a permittee to implement for several reasons, such as expense, permitting restrictions, availability of products from vendors, seasonality of construction, etc. Does “applicability” take into consideration feasibility, reasonability, or practicality? The current wording does not suggest those considerations can be made by a permittee or DEQ.

**Response:** DEQ modified the proposed final permit and associated industrial-specific checklists to be an optional recommended technical assistance tool for permit registrants that have benchmark exceedances. Therefore, the final draft permit does not include Appendix B. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups.



PRIDE #4

**Description: Tier 1.5 - Abbreviations are used and not defined, and there are no instructions or examples provided in the Appendix for permittees to refer to, so it is not fully clear what DEQ's expectation is for their use**

**Comment:** We are extremely concerned about the addition of Tier 1.5 Corrective Actions as described in the draft permit.

**Response:** DEQ modified the proposed final permit and associated industrial-specific checklists to be an optional but recommended technical assistance tool for permit registrants that have benchmark exceedances. The proposed final permit does not include Appendix B. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. The operational and source control measures within the industrial-specific checklists are strongly encouraged to be considered as part of the Tier 1 corrective action responses; however, DEQ acknowledges that it is not an exhaustive list of controls that could be selected and implemented.

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PRIDE #5

**Description: Tier 1.5 Corrective Action Response - This is unreasonable, extremely costly, and potentially unnecessary to achieve compliance with the permit**

**Comment:** As an example, the checklist for Sector N is 27 pages long and contains 204 items. The wording in Schedule A.11.f.ii. suggests that it is DEQ's expectation that all 204 items are "implemented upon submission of the checklists". A permittee may delay or offer an alternative schedule of implementation under this section, but nonetheless would be required to complete "all applicable" source control and operational measures. Does this mean that a permittee cannot identify several promising source control measures on the checklist, implement them, and determine if they are sufficient to bring their sample results below benchmark? Must a facility truly implement all 204 items to comply? The wording in this section of the permit suggests so.

**Response:** Based on comments received regarding the application of Tier 1.5 requirements and the appropriateness of the Appendix B checklists across all the industrial sectors, DEQ has removed the mandatory use of the Appendix B checklist and Tier 1.5 from the proposed final permit. Upon review of the Appendix B checklist, DEQ acknowledges that the requirements may not be appropriate for numerous facilities within various industries. Instead, the industrial-specific checklists have been revised to reduce duplicative requirements and are incorporated into Tier 1 corrective response as a tool for permit registrants. Nevertheless, DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. DEQ recommends the universal checklists and applicable sector-specific checklist appropriate to the facilities SIC codes be considered, but as such permit registrants may identify and implement the measures they determine will reduce pollutant sources exposed to stormwater.

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**Description: Benchmark - Agree with DEQ’s approach to remove of Oil and Grease as a Statewide Benchmark Pollutant based on the conclusion that oil and grease numeric benchmarks are not a good indicator of pollution**

**Comment:** NA

**Response:** DEQ appreciates the input.

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PRIDE #7

**Description: Sampling Procedures - Agree with DEQ’s approach adjusting the monitoring frequency to reflect that stormwater samples must be collected 72 hours apart (rather than the currently required 14 days)**

**Comment:** NA

**Response:** DEQ appreciates the input; however, the proposed final permit retained sample collection must be 14-days apart instead of 72 hours apart.

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PRIDE #8

**Description: General Comment - Add Appendix A and B to permits Table of Contents**

**Comment:** NA

**Response:** DEQ did not retain Appendix B as part of the proposed final permit. Appendix A was added to the Table of Contents and incorporated into the permit.

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PRIDE #9

**Description: Narrative Technology-based Effluent Limits (TBELs) - Are other types of “temporary” covers acceptable if they’re more durable than a tarp (i.e., homemade structures, wood or sheet metal coverings, etc.)?**

**Comment:** Does DEQ assert that “roof or buildings” are the only option to provide cover? These types of covers may be viewed as “temporary” in comparison to a building with a foundation, and may require less capital investment and permitting efforts, but would serve the same purpose as a “roof or building” that is not deemed “temporary.”

**Response:** DEQ modified the permit to reflect the comment. The proposed final permit reads: “properly secured temporary covers such as tarps.” These temporary covers must be built well or if a facility chooses to use tarps they must be properly secured with hardware or grommets. It is not recommended to use tarps without grommets.

PRIDE #10

**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Clarify if modifications to the control measures are applicable to both the NTBELs in Schedule A.1, and Schedule E of the permit**

**Comment:** The word “narrative” should be included in the new language added on Page 16, Schedule A.2.e, as it is in the preceding sentence in this section, and in Schedule A.8.d, for consistency and accuracy.

**Response:** DEQ revised the sections referenced for consistency and accuracy.

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PRIDE #11

**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Clarify what “other information” means to demonstrate a violation**

**Comment:** Applicable to Schedule A.4.a.iii: The permit registrants’ monitoring results of qualifying sample that exceed water quality criteria, Table 6, (see Schedule D.3, Definitions) may be used in conjunction with other information to demonstrate a violation of this permit as an exceedance of water quality standards.

**Response:** The permit does not contain a specific convention for sample collection to establish that a discharge violated instream water quality standards. This analysis will occur on a case-by-case basis depending on the specific water quality criteria and the associated beneficial use(s).

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PRIDE #12

**Description: Mass Reduction Measures: General Comment - Consider any mass load reduction device installed voluntarily under exemptions**

**Comment:** In some instances, the permit refers to exemptions (such as those in Schedule A.11.e.ii) or other considerations afforded to mass reduction devices that were “installed during previous permit cycles in response to Tier 2 corrective action.” However, in other instances, the permit does not clearly state that some considerations are afforded to mass reduction devices that were installed proactively or independent of triggering Tier 2 corrective action. What about facilities intermittently struggled to meet benchmarks and has now made the decision to install a mass load reduction device in a proactive effort to avoid Tier 2 requirements in the future, would those devices then qualify for the exemptions outlined in Schedule A.11.e.ii and Schedule A.12.h.i? The permit should encourage permittees to make proactive improvements to their facilities to attempt to avoid Tier 2 corrective action. As written, the permit may dissuade entities from making necessary and beneficial improvements until they have triggered Tier 2 corrective action requirements.

**Response:** Schedule A.6 regarding the re-certification of mass reduction waiver provision has been revised to add: “For mass reduction measures installed during previous permit cycles that reduced the

mass of the pollutants discharged at or above DEQ-approved design storm capacity not in response to Tier 2 mass reduction waiver, the permit registrant must meet Schedule A.6.a-d and submit, retroactively, to DEQ or agent a Tier 2 mass reduction waiver checklist.” DEQ or agent will approve or deny the certification requirements and retroactive submittal of the Tier 2 mass reduction waiver checklist, since the mass reduction device did not have prior approval before being built. For all mass reduction devices that meet the re-certification deadline of December 31, 2021, DEQ or agent will communicate to the permit registrant qualification related to the exemptions outlined in the other Schedules of the permit.

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PRIDE #13

**Description: SWPCP Required Elements; Map - Recommend revise permit to read “approximate” areas where pesticides, herbicides, soil binders, and fertilizers are applied**

**Comment:** Solid waste facilities are required to implement pest control practices, which often require movement and relocation of bait boxes or other pesticide measures. Identifying the exact location of these items on a map and updating that map every time a pest control company needs to move them will be difficult and burdensome to permittees.

**Response:** DEQ did not include this requirement in the proposed final permit.

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PRIDE #14

**Description: Tier 1 and Tier 1.5 Corrective Action Response based on Exceedances of Benchmarks - Conflicting language regarding preparation of Tier 1 Reports**

**Comment:** Contradictory text in the following language, request DEQ amend. Schedule A.11.e.i: “Prior to completion of Tier 1.5 and Tier 2, a Tier 1 corrective action response is not required for the same pollutant and monitoring point. Tier 1 corrective action resets upon completion of other tiers” Schedule A.11.f.i: "If the permit registrants’ monitoring results from two consecutive qualifying samples exceeds any applicable statewide benchmark in Table 4 or sectors specific benchmarks in Schedule E, in addition to Tier 1 corrective action the permit registrant must at a minimum, implement and maintain the prescriptive source and operational controls specified by major industrial group in Appendix B with the goal of meeting benchmarks.

**Response:** Tier 1.5 has not been retained in the proposed final permit. Prior to completion of Tier 2, a Tier 1 corrective action response is not required for the same pollutant and monitoring point.

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PRIDE #15

**Description: Tiered Corrective Action - Confusing and leads to many questions regarding implementation**

**Comment:** There are many specific problems with timing of Tier 1.5 and Tier 2 outlined in the comment. Pride Disposal questions why the concept of a Tier 1.5 was not introduced prior to the final draft permit that was issued for public comment? We request that DEQ revise the permit to provide a permit registrant

an opportunity to justify why a checklist item is not feasible or will not result in a measurable reduction, as the proposed MSGP allows. We also request that DEQ remove the “all applicable” requirement to allow a permittee to choose which operational or source control measures to implement first, and allow for a reasonable amount of time for permittees to determine if additional operational or source control measures from the checklist are necessary.

**Response:** DEQ has been delegated the NPDES program from EPA, therefore we must consider all MSGP conditions at the federal level when renewing the 1200-Z permit. EPA’s proposed 2020 industrial stormwater permit was released early 2020. DEQ discussed the proposed provision and National Academies Report on the MSGP during advisory committee meetings. Specifically, Appendix Q was discussed at the April 16, 2020 meeting. EPA did not include Appendix Q in the final MSGP. In response, DEQ decided to not include Appendix B or Tier 1.5 in the proposed final 1200-Z permit. EPA will maintain their existing industrial stormwater fact sheet series as guidance. DEQ opted to revise the industrial-specific checklists and provide them as an optional technical assistance tool as part of a Tier 1 corrective action response.

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PRIDE #16

**Description: Tier 2 - Request revise language more clearly specify that such a facility is relieved from Tier 2 evaluation for the entire permit term**

**Comment:** Applicable to Schedule A.12.a: Facilities with Tier 2 installation deadline of June 30, 2021, or later in response to a Tier 2 corrective action response triggered under previous permit, are relieved from Tier 2 evaluation for the same pollutant(s) and monitoring point(s) that previously triggered Tier 2. Request language read: Facilities with Tier 2 installation deadline of June 31, 2021, or later in response to a Tier 2 corrective action response triggered under previous permit, are relieved from Tier 2 evaluation for the same pollutant(s) and monitoring point(s) that previously triggered Tier 2 for the entire permit term (July 1, 2021 through June 30, 2026)

**Response:** DEQ made this suggested change in the proposed final permit. DEQ added “during this permit cycle” to the provision referenced in the comment.

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PRIDE #17

**Description: Tier 2 - Clarify intent of language “Tier 2 geometric mean evaluation and Tier 2 corrective action response is not required more than once a permit term for the same pollutant(s) and monitoring point(s)”**

**Comment:** NA

**Response:** DEQ reviewed the suggestion and determined the permit language is clear. There are two exemptions from Tier 2 corrective action response in the proposed final permit: 1) Permit registrants subject to a Tier 2 installation deadline of June 30, 2021, or later in response to a Tier 2 corrective action response triggered under the previous permit, are not required to conduct Tier 2 evaluation for the same pollutant(s) and monitoring point(s) during this permit cycle and 2) Tier 2 geometric mean evaluation and Tier 2 corrective action response is not required more than once a permit term for the same pollutant(s) and monitoring point(s).

PRIDE #18

**Description: Water Quality-based Effluent Limits - Request use consistent language in referring to impairment pollutants for clarity**

**Comment:** We understand this section to be applicable to the Impairment Pollutants listed in Table 6. However, the term “impairment pollutant” is not included anywhere in this section of the permit.

**Response:** The proposed final permit now includes the term, “impairment concentrations” for clarity.

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PRIDE #19

**Description: Columbia Slough Georegion - Clarify if E. coli for the Columbia Slough, listed as a statewide benchmark pollutant in Table 4, also constitutes a water quality-based effluent limit**

**Comment:** NA

**Response:** The Columbia Slough discharges will be required to sample for E. coli as a statewide benchmark only. The most recent 2018/2020 Integrated Report assessment has separated the Columbia Slough into two watershed assessment units. One of the assessment units (AU ID: OR\_WS\_170900120201\_02\_104554.1) was assessed as Category 2: Meeting criteria for E. coli, while the other watershed unit (AU ID: OR\_WS\_170900120201\_02\_104554.1) incorrectly included E. coli as Category 5: Impaired, when the proper impairment status is Category 4A, for water bodies where a TMDL will result in the water body meeting water quality standards and supporting its beneficial uses has been approved. The 1998 Columbia Slough TMDL included bacteria allocations which targeted at the freshwater E. coli standard (126/406). DEQ and agents will apply the correct impairment category for discharges into the Columbia Slough. Thus, permitted facilities that discharge into the Columbia Slough will not be subject to E. coli impairment monitoring and escalating narrative water quality-based effluent limits.

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PRIDE #20

**Description: Narrative Water Quality-based Effluent Limits - If permit registrant is subject to revocation of general permit coverage, is there a conservation between DEQ and the permittee to notification of revocation?**

**Comment:** If the permittee submits a plan to install treatment, but the timeline would follow a Tier 2 corrective action, would DEQ continue coverage under the general permit until the treatment system could be implemented?

**Response:** DEQ will make the determination after site controls or treatment are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health. DEQ will communicate and provide the facility with its findings if coverage under the general permit may be revoked. DEQ expects these appropriate mandatory control measures in the form of water quality-based narrative limits will reduce pollutant loading into these Category 5 impaired

waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303(d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source.

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PRIDE #21

**Description: Narrative Water Quality-based Effluent Limits - Clarity on the timeline facilities will be granted to install these additional source and operational controls is concerning**

**Comment:** The measures necessary to comply with Schedule A.13.h will potentially be significant for some sectors, specifically the solid waste industry, who provides a vital public service to our communities.

**Response:** Permit registrants that trigger this condition will now have 90 calendar days, instead of 60 calendar days that was in the draft permit, from receiving the monitoring results to implement the narrative water quality-based effluent limits to the extent practicable. Schedule A.13 Water Quality-based Effluent Limit section of the proposed final permit applies to stormwater discharge into 303(d) list receiving waters where data indicates a designated use is not supported or a water quality standard is not attained and a TMDL is needed. Schedule A.13.k reads: "If the permit registrant is unable to comply with the numeric or narrative water quality-based effluent limits, it is a permit violation and permit coverage may be revoked under this general permit and coverage required under an individual permit."

As part of the rulemaking, DEQ hired PG Environmental a technical expert in NPDES permitting to conduct an impairment analyses with the following objective to summarize pollutant trends of industrial stormwater discharges exceeding reference concentrations into impaired waters. Based on technical work DEQ identified industrial stormwater data exceeded water quality criteria or reference concentration for pH, copper, lead, zinc, iron and E. coli. This informed the narrative effluent limit framework for E. coli and iron in response to monitoring results exceeding two consecutive times the impairment concentration in the permit. Because these two pollutants tend to be more ubiquitous in our environment and are difficult to treat, DEQ proposed to establish narrative limits water quality-based effluent limits instead of setting water quality-based numeric limit for E. coli and iron. DEQ will make the determination after site controls are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health. OAR 340-045-0033(10)(c) grants DEQ the authority that any facility must obtain an individual permit when "the discharge or activity is a significant contributor of pollution or creates other environmental problems." DEQ will communicate and provide the facility with its findings if coverage under the general permit is revoked. DEQ expects these appropriate mandatory control measures in the form of narrative water quality-based effluent limits will reduce loading into these Category 5 impaired waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303 (d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source.

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PRIDE #22

**Description: Narrative Water Quality-based Effluent Limits - Request timeline of implementation within 60 days add "unless DEQ or agent approve a later date"**

**Comment:** If significant capital investments are required to meet water quality criteria, this timeline may prove difficult to meet. If a permittee can show good cause as to why more time is needed, the permit should provide for this circumstance.

**Response:** DEQ agrees and modified Schedule A.13.k to now read: “The permit registrant must complete the narrative water quality-based effluent limits no later than 90 calendar days from receiving monitoring results of the triggering event...”

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PRIDE #23

**Description: Benchmark Georegions - Request that DEQ provide definitions for each of these geographic regions**

**Comment:** Columbia Slough and Portland Harbor are defined in Schedule D.3. However, the other 5 geographic regions are not defined. The only tool offered to permittees currently to identify which geographic region they might be assigned to was found within the Permit Evaluation Report on page 46. One way that DEQ could better define the regions is through use of GPS coordinates. Without clear definitions, it would be nearly impossible for a permittee to establish justification for why they assert that they are placed in a different geographic region than what’s been assigned by DEQ.

**Response:** DEQ has a searchable map for regulators, facilities and public use that provides certainty of georegion based on the locations of where facilities discharge enters the receiving water. Depending on the receiving water location, DEQ or our agent will communicate with each facility regarding monitoring requirements based on the appropriate georegion.

EPA Level-III Ecoregion <sup>1</sup>	CU-BLM Physiographic Region
Coast Range Klamath Mountains	Coastal
Willamette Valley	Willamette Valley
Columbia River Mainstem	Columbia River Mainstem
Cascades	Cascades
Blue Mountains Columbia Plateau Eastern Cascades Slopes and Foothills Northern Basin and Range Snake River Plain	Eastern

<sup>1</sup> U.S. EPA Level III and IV Ecoregions of the Continental United States – Definitions  
[ftp://newftp.epa.gov/EPADDataCommons/ORD/Ecoregions/us/Eco\\_Level\\_III\\_descriptions.doc](ftp://newftp.epa.gov/EPADDataCommons/ORD/Ecoregions/us/Eco_Level_III_descriptions.doc)

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PRIDE #24

**Description: Definition; Storm Event - Recommend the following revision to definition of storm event: “Storm event means an event that produces a measurable amount of precipitation and**



**results in an actual discharge, and that follows the preceding storm event by at least 72 hours (3-days).”**

**Comment:** NA

**Response:** DEQ has revised the definition in the proposed final permit.

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PRIDE #25

**Description: Narrative Water Quality-based Effluent Limits - DEQ needs to have reasonable expectations of what small businesses can do, and they need to provide appropriate timelines to these businesses to be able to develop and implement a plan to comply**

**Comment:** Our understanding of this section of the draft permit is that if a permittee cannot comply with this section of the permit and meet all water quality criteria, they will lose coverage under the general permit and have to obtain an individual permit, at great expense. But it's not clear how long a site has to bring their results into compliance, or if DEQ can work with the permittee to create solutions to meet the criteria.

**Response:** DEQ will make the determination after site controls or treatment are implemented based on subsequent stormwater discharge data quality if an individual permit is needed to further protect aquatic life and human health at any site. DEQ will communicate and provide the facility with its findings if coverage under the general permit may be revoked. DEQ expects these appropriate mandatory control measures in the form of water quality-based narrative limits will reduce pollutant loading into these Category 5 waters to ensure the protection water quality and continue eligibility under the 1200-Z. Receiving waters on the Category 5: 303 (d) list are impaired and threatened waters that have no assimilating capacity for additional pollutant input from any permitted or non-permitted source. OAR 340-045-0033(10) describes the terms for revocation under the general permit:

"The Director may refuse to authorize or renew coverage, or may revoke existing coverage under a general permit, as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit.

- (a) The procedures for denying a permit in OAR 340-045-0050 and for permit revocation in OAR 340-045-0060 apply.
- (b) Any interested person may petition the Director to take action under this section.
- (c) The grounds for requiring an individual permit include the following:
  - (A) The discharge or activity is a significant contributor of pollution or creates other environmental problems;
  - (B) The permittee failed to comply with, or is not currently in compliance with, the terms and conditions of the general permit, submitted false information, or the permittee is in violation of any applicable law;
  - (C) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;

- (D) For NPDES general permits, effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit;
- (E) Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either temporarily or permanently reducing or eliminating the authorized discharge is necessary; or
- (F) Any other relevant factors.

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PRIDE #26

**Description: Benchmark Georegion - Provide more clarity on facilities that may qualify for two separate geographic regions**

**Comment:** For example, a facility in Astoria that discharges to the Columbia River may be appropriately assigned under the Columbia River geographic region, but based on the map provided on Page 46 of the Permit Evaluation Report, said facility may be incorrectly categorized within the Coastal geographic region.

**Response:** DEQ has a searchable map for regulators, permit registrants, consultants and public use. The searchable map provides certainty of the appropriate georegion based on the location of where the discharge enters the receiving water at each facility. DEQ or our agent will clearly communicate with each facility regarding monitoring requirements based on the appropriate georegion, depending on discharge locations. Direct discharges into the Columbia River will be assigned the Columbia River georegion.

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PRIDE #27

**Description: Benchmark Georegion - Should be clearer about where each of these regions are in OR**

**Comment:** Should include a map.

**Response:** DEQ has a searchable map for regulators, facilities and public use. The searchable map will provide certainty of georegion as long as the facility is aware of the location its facilities discharge enters the receiving water. Depending on the receiving water location, DEQ or our agent will clearly communicate with each facility regarding monitoring requirements based on the appropriate georegion.

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## 29. Comments from: Southern Oregon Sanitation

SOS #1

**Description: Benchmarks Technological Feasibility - Recommends that ODEQ take a holistic review of benchmark values**

**Comment:** The Rulemaking Advisory Committee members were concerned that DEQ was proposing lower benchmarks than DEQ had previously determined were technologically achievable and that DEQ should not set benchmarks that cannot be met with readily available technology. Thus, the benchmarks are essentially an “end-of-pipe” water quality standard discharge limit not accounting for any dilution that can occur. DEQ needs to take a holistic review of benchmark values; the values need to consider what control measures can be achieved, background conditions, and water quality criteria.

**Response:** DEQ hired PG Environmental to assess the benchmark methodology used in the 1200-Z permit. It was determined that the technological feasibility evaluation was not robust enough and did not evaluate the discharge quality from the best performing sites. DEQ has built in flexibility into the risk-based modeling to account for the intermittent nature of stormwater discharge. The metals benchmarks in the proposed final permit are based on a well-vetted and technically sound modeling methodology that builds in a dilution of 5 and sets the benchmark at a 10 percent probability of exceeding the water quality criterion.

DEQ anticipates that a robust evaluation of the technological feasibility of the benchmarks would result in concentrations would be even more restrictive than the risk-based water quality concentrations established in the proposed final permit. As outlined in the federal process for technological feasibility, the appropriate evaluation would include a selection of model technologies and defined performance standards and DEQ would set benchmarks at a concentration based on the best performing treatment capabilities.

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SOS #2

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Proposed 1200-Z Permit would prohibit the use of temporary covers, such as tarps, but no justification for this change is provided in the draft evaluation report. There will undoubtedly be both short-term and long-term circumstances in which permanent structures are not feasible, but tarps or other temporary covers would minimize exposure. A permit registrant should not be put in the position of choosing a less environmentally protective solution—no cover at all—if a permanent structure is not practicable.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to minimize exposure and to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure.

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SOS #3

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not be subject to an enforcement action for violating the narrative technology-based effluent limits**

**Comment:** A permit registrant should not be subject to an enforcement action for violating the narrative technology-based effluent limits if it has explained in its SWPCP how it will implement the limits, has submitted the SWPCP to DEQ, has timely made any changes to the SWPCP directed by DEQ, and has complied with the SWPCP. Translating a general permit's necessarily vague and subjective narrative technology-based effluent limits into facility-specific stormwater controls requires professional and policy judgments that only DEQ can ultimately make. A permit registrant should not be subject to an enforcement action, including a citizen suit, for violating the narrative limits when it has (1) prepared an SWPCP that explains how it will implement the narrative limits, (2) submitted the SWPCP to DEQ or its agent, (3) made any changes in the SWPCP that DEQ or its agent has directed, and (4) fully complied with the relevant provisions of the SWPCP. Permit registrant should not be subject to an enforcement action when these conditions have been met.

**Response:** DEQ appreciates the input. The draft permit language did not read as intended. DEQ has revised the wording to meet the intent: "Failure to implement any narrative technology-based effluent limits in Schedule A.1 and Schedule E, and other control measures or operational practices described in the SWPCP is a permit violation."

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SOS #4

**Description: SWPCP Required Elements; Map - Remove proposal to identify on the site map "areas where pesticides, herbicides, soil binders, and fertilizers are applied"**

**Comment:** Proposed 1200-Z Permit condition A.10.b.i(9) would require the SWPCP site map to identify "areas where pesticides, herbicides, soil binders, and fertilizers are applied." Requests the removal of this proposed requirement. It would be burdensome to map the specific areas of application, particularly for infrequent uses, and it would also clutter the site map, making it difficult to use. Moreover, because the permit already requires the SWPCP to include a description of these "significant materials" and their use, it is unclear what would be gained by including this information on the site map.

**Response:** DEQ did not include this requirement in the proposed final permit.

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SOS #5

**Description: Narrative Technology-based Effluent Limits (TBELs); Waste Chemicals and Material Disposal - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Tarping has also been removed from Draft 1200-Z Permit language as a cover for waste containers. Facilities are constrained by the containers provided to it by third party vendors, such as Waste Management or local municipal utilities. Registrants should be allowed to use tarps as an effective control measure.

Waste Disposal comments: Requiring lids on all waste containers and drop boxes is not reasonable for many reasons. Often, customers do not want or cannot use boxes with lids, the lids are easily damaged and costly to install and repair, and makes the movement, loading, and transport of these containers more difficult for the drivers. Temporary tarps are a fraction of the cost and have none of the repair costs associated with a permanently installed lid. We recommend that DEQ continue to allow the use of tarps as covers, allowing for "properly secured and maintained temporary covers that fully protect from exposure

to storm water.” If the tarps are applied correctly and maintained in good condition, they serve as an effective way to limit exposure of materials to storm water.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. Neither EPA nor Washington State Ecology allow the use of tarps to meet these narrative technology-based effluent limits. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure. As emphasized in the comment from several waste management companies, proper maintenance is crucial when using tarps. The proposed final permit requires permit registrants to cover all waste contained in bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to these pollutants; this includes scrap and waste materials.

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SOS #6

**Description: Tier 1.5; Appendix B - Confusing, impractical, financially burdensome and overwhelming for our small business**

**Comment:** The term “all applicable” is not clear in this section either. For example, several items on the checklists may not be reasonable or feasible for a permittee to implement for several reasons, such as expense, permitting restrictions, availability of products from vendors, seasonality of construction, etc. Does “applicability” take into consideration feasibility, reasonability, or practicality? The current wording does not suggest those considerations can be made by a permittee or DEQ.

**Response:** DEQ modified the proposed final permit and associated industrial-specific checklists to be an optional recommended technical assistance tool for permit registrants that have benchmark exceedances. Therefore, the final draft permit does not include Appendix B. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups.

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SOS #7

**Description: Tier 1.5 - Abbreviations are used and not defined, and there are no instructions or examples provided in the Appendix for permittees to refer to, so it is not fully clear what DEQ’s expectation is for their use**

**Comment:** We are extremely concerned about the addition of Tier 1.5 Corrective Actions as described in the draft permit.

**Response:** DEQ modified the proposed final permit and associated industrial-specific checklists to be an optional but recommended technical assistance tool for permit registrants that have benchmark exceedances. The proposed final permit does not include Appendix B. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. The operational and source control measures within the industrial-specific checklists are strongly encouraged to be considered as part of the Tier 1

corrective action responses; however, DEQ acknowledges that it is not an exhaustive list of controls that could be selected and implemented.

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SOS #8

**Description: Tier 1.5 Corrective Action Response - This is unreasonable, extremely costly, and potentially unnecessary to achieve compliance with the permit**

**Comment:** As an example, the checklist for Sector N is 27 pages long and contains 204 items. The wording in Schedule A.11.f.ii. suggests that it is DEQ's expectation that all 204 items are "implemented upon submission of the checklists". A permittee may delay or offer an alternative schedule of implementation under this section, but nonetheless would be required to complete "all applicable" source control and operational measures. Does this mean that a permittee cannot identify several promising source control measures on the checklist, implement them, and determine if they are sufficient to bring their sample results below benchmark? Must a facility truly implement all 204 items to comply? The wording in this section of the permit suggests so.

**Response:** Based on comments received regarding the application of Tier 1.5 requirements and the appropriateness of the Appendix B checklists across all the industrial sectors, DEQ has removed the mandatory use of the Appendix B checklist and Tier 1.5 from the proposed final permit. Upon review of the Appendix B checklist, DEQ acknowledges that the requirements may not be appropriate for numerous facilities within various industries. Instead, the industrial-specific checklists have been revised to reduce duplicative requirements and are incorporated into Tier 1 corrective response as a tool for permit registrants. Nevertheless, DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. DEQ recommends the universal checklists and applicable sector-specific checklist appropriate to the facilities SIC codes be considered, but as such permit registrants may identify and implement the measures they determine will reduce pollutant sources exposed to stormwater.

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SOS #9

**Description: Tier 1.5 Corrective Action Response - Corrective action 60-day submission timeline is unreasonable**

**Comment:** Given the vast length of some checklists and the capital-intensive items they include, a 60-day submission timeline stated in Schedule A.11.f.iii. is unreasonable, especially when considering the language in Schedule A.11.f.ii. stating that all measures must be implemented upon submission of the checklist.

**Response:** The proposed final permit does not include Tier 1.5 or Appendix B checklists. The permit registrant must act swift when there is evidence of pollution in the discharge. DEQ recommends that the industrial-specific checklists be used as an optional tool in response to a benchmark exceedance. DEQ considers the Tier 1 corrective action response schedule reasonable, even if the permit registrants chooses to complete and implement the industrial-specific checklists. However, DEQ acknowledges that some measures may take more time than 30 calendar days to implement as required in a Tier 1 response, therefore, the permit allows documentation of delays and alternative schedules as needed.

SOS #10

**Description: Tier 2 - Clarify intent of triggering Tier 1.5 and Tier 2 more than once per permit term**

**Comment:** “Tier 2 geometric mean evaluation and Tier 2 corrective action response is not required more than once a permit term for the same pollutant(s) and monitoring point(s).” Is a permittee permitted to evaluate all samples collected in the first year of permit coverage for purposes of Tier 2 corrective action? It is also unclear how this provision pertains to the language in Schedule A.11.e.v, given the wording of Schedule A.12.b. For example, if a permittee did not trigger Tier 2 corrective actions in the first two years of permit coverage, an evaluation of either year’s data would have satisfied the wording in Schedule A.12.b. However, if in year 3 of permit coverage they trigger Tier 1.5 corrective actions, would they then be subject to the potential of triggering Tier 2 as outlined in Schedule A.11.e.v.?

**Response:** Tier 1.5 was not retained as outlined in the draft permit. Tier 2 geometric mean evaluation is required for each discharge point at the end of a full reporting year, July 1 - June 30. Once a permit registrant’s monitoring results trigger Tier 2 corrective action, the permit registrant is no longer required to perform a Tier 2 geometric mean evaluation or Tier 2 corrective action response for the same pollutant(s) and monitoring point(s) for the subsequent full reporting years. The commenter is correct that the draft language was not clear with the intent related to Schedule A.12.b and the proposed final permit now reads: “Once a monitoring point triggers Tier 2 corrective action response for a pollutant, in subsequent full reporting years a Tier 2 geometric mean evaluation and Tier 2 corrective action response are not required more for the same pollutant(s) and monitoring point(s).”

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SOS #11

**Description: Permit Evaluation Report - Should be clearer about these new geographic regions (georegions)**

**Comment:** It is extremely difficult to understand where facilities will be categorized in the new geographic regions based on what we can see in the permit. DEQ should be clearer about where each of these regions are in Oregon. Without legal descriptions it is left up to one person’s opinion that could be challenged to what region we are in.

**Response:** DEQ has a searchable map for regulators, facilities and public use. The searchable map will provide certainty of georegion based on locations where each facilities discharge enters the receiving waters. Depending on the receiving water location, DEQ or our agent will clearly communicate with each facility regarding monitoring requirements based on the appropriate georegion.

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SOS #12

**Description: Benchmark Metals Reductions - Reduced benchmarks, specifically zinc, will be difficult and in some cases impossible to meet**

**Comment:** With the reduction happening in some areas by 50%, (Cascades and Coastal zones) it seems odd that the zinc benchmark is also not reducing in the Portland Area. Without any other explanation this seems to favor the larger companies located in those areas while hurting the smaller companies located in the Coastal and Cascade ranges. DEQ should seriously reconsider not changing the benchmarks.

**Response:** DEQ has reviewed the data quality and analysis procedures utilized in the benchmark derivation process and determined they were appropriate and the benchmarks derived are protective of water quality. Use of the risk-based methods described in Attachment A of the permit evaluation report justify the use of benchmarks which are less stringent than benchmarks derived from more conventional methods (e.g., direct application of water quality criteria as benchmarks, or steady-state mass balance calculations), while still being protective of water quality.

DEQ has reconsidered the universal application of EPA's default metal translators in the benchmark analysis. Regional translators have been determined and implemented as specified in Appendix C of the revised permit evaluation report. However, upon consideration of a regional translator for the Coastal georegion, the translator indicates a ratio of total recoverable to dissolved very close to 1:1 and will not impact the default translator previously used. The risk-based modeling estimated these benchmark values will result in an acceptable (low) probability of causing or contributing to degradation of state waters. DEQ calculated a saltwater benchmark for zinc using the acute aquatic life criteria and the same methodology as used in the freshwater modeling. The zinc saltwater benchmark concentration for marine water discharges in the proposed final permit is 0.46 mg/L.

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SOS #13

**Description: Mass Reduction Measures: General Comment - Consider any mass load reduction device installed voluntarily under exemptions**

**Comment:** In some instances, the permit refers to exemptions (such as those in Schedule A.11.e.ii) or other considerations afforded to mass reduction devices that were "installed during previous permit cycles in response to Tier 2 corrective action." However, in other instances, the permit does not clearly state that some considerations are afforded to mass reduction devices that were installed proactively or independent of triggering Tier 2 corrective action. What about facilities intermittently struggled to meet benchmarks and has now made the decision to install a mass load reduction device in a proactive effort to avoid Tier 2 requirements in the future, would those devices then qualify for the exemptions outlined in Schedule A.11.e.ii and Schedule A.12.h.i? The permit should encourage permittees to make proactive improvements to their facilities to attempt to avoid Tier 2 corrective action. As written, the permit may dissuade entities from making necessary and beneficial improvements until they have triggered Tier 2 corrective action requirements.

**Response:** Schedule A.6 regarding the re-certification of mass reduction waiver provision has been revised to add: "For mass reduction measures installed during previous permit cycles that reduced the mass of the pollutants discharged at or above DEQ-approved design storm capacity not in response to Tier 2 mass reduction waiver, the permit registrant must meet Schedule A.6.a-d and submit, retroactively, to DEQ or agent a Tier 2 mass reduction waiver checklist." DEQ or agent will approve or deny the certification requirements and retroactive submittal of the Tier 2 mass reduction waiver checklist, since the mass reduction device did not have prior approval before being built. For all mass reduction devices that meet the re-certification deadline of December 31, 2021, DEQ or agent will communicate to the permit registrant qualification related to the exemptions outlined in the other Schedules of the permit.



## 30. Comments from: Boeing

BOEING #1

### **Description: Monitoring Waiver - Retain current requirement to submit four consecutive samples**

**Comment:** It would be confusing and overly burdensome to condition a monitoring waiver on the review of five consecutive samples to demonstrate a full year of monitoring data. ODEQ should retain its current requirement to submit four consecutive samples, because the permit only requires four sampling events to satisfy a full year of monitoring.

**Response:** DEQ recognizes that changing the eligibility criteria to apply for a monitoring waiver from four to five consecutive qualifying sample results equal to or below the applicable statewide or sector-specific benchmark concentrations during a full monitoring year is a shift from what has been in the previous permits. The intent is for all existing facilities monitoring waiver requests to include two fall flush sampling events in the geometric mean calculate. Capturing the sample results from two fall monitoring events will better justify a monitoring waiver approval and ensure pollution prevention controls are being maintained. Expanding the criteria beyond the minimum four samples also supports the sufficient number of samples for the geometric mean results to have any statistical meaning.

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BOEING #2

### **Description: Narrative Technology-based Effluent Limits (TBELs) - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Proposed 1200-Z Permit would prohibit the use of temporary covers, such as tarps, but no justification for this change is provided in the draft evaluation report. There will undoubtedly be both short-term and long-term circumstances in which permanent structures are not feasible, but tarps or other temporary covers would minimize exposure. A permit registrant should not be put in the position of choosing a less environmentally protective solution—no cover at all—if a permanent structure is not practicable.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to minimize exposure and to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure.

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BOEING #3

### **Description: Narrative Technology-based Effluent Limits (TBELs); Waste Chemicals and Material Disposal - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Tarping has also been removed from Draft 1200-Z Permit language as a cover for waste containers. Facilities are constrained by the containers provided to it by third party vendors, such as

Waste Management or local municipal utilities. Registrants should be allowed to use tarps as an effective control measure.

Waste Disposal comments: Requiring lids on all waste containers and drop boxes is not reasonable for many reasons. Often, customers do not want or cannot use boxes with lids, the lids are easily damaged and costly to install and repair, and makes the movement, loading, and transport of these containers more difficult for the drivers. Temporary tarps are a fraction of the cost and have none of the repair costs associated with a permanently installed lid. We recommend that DEQ continue to allow the use of tarps as covers, allowing for “properly secured and maintained temporary covers that fully protect from exposure to storm water.” If the tarps are applied correctly and maintained in good condition, they serve as an effective way to limit exposure of materials to storm water.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. Neither EPA nor Washington State Ecology allow the use of tarps to meet these narrative technology-based effluent limits. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure. As emphasized in the comment from several waste management companies, proper maintenance is crucial when using tarps. The proposed final permit requires permit registrants to cover all waste contained in bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to these pollutants; this includes scrap and waste materials.

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BOEING #4

**Description: Inspections; Visual Observation - Do not support adding complexity and time requirements of the monthly visual inspections by requiring the collection of a sample**

**Comment:** Visual inspections are conducted by walking the site, and the need to carry sampling equipment complicates this process; or adds time to the activity by requiring the person conducting the inspection to retrieve sampling equipment to complete the inspection. Instead, the permit could require that the inspection process needs to provide the necessary visibility to determine the presence of oils or turbidity in the discharge.

**Response:** The proposed final permit retains the need to collect a sample in order to perform visual observation for the presence of pollutants. However, the sampling collection procedures are not required to be consistent with 40 CFR 136. This brings the 1200-Z permit in accordance with EPA’s MSGP provision on visual assessment.

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BOEING #5

**Description: Inspection; Visual Observation - Request that the terminology be changed to be aligned with other inspection/sampling requirements, if visual monitoring without sample collection is insufficient**

**Comment:** NA

**Response:** The 1200-Z visual observations requirements have been updated in accordance with EPA's MSGP. In order to perform visual observation accurately, monthly inspections must include sample collection from a discharge event, when there is a discharge during the month.

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#### BOEING #6

**Description: Inspection; Visual Observation - Request that the required monthly visual inspection sample collection be at the approved sampling location**

**Comment:** The language calls out for the collection of samples from "discharge points". The issue with using the term "discharge point" is that it implies the actual location of discharge rather than the approved sampling location. The "discharge point" could be located offsite (as is the case with our facility) which can significantly increase the amount of time and complexity (acquiring access) to collect the sample.

**Response:** The proposed final permit requires visual observation at all discharge points, not only monitoring points, unless DEQ or agent has approved a reduced frequency due to substantially similar discharge point at an exceptionally large facility. Representative sampling requirements include: "the permit registrant shall, to the extent practicable, sample stormwater associated with industrial activity as it flows off-site before it combines with stormwater, wastewater or other waste permitted streams, or areas outside the facility or mixes with any surface water."

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#### BOEING #7

**Description: Schedule F; B6 - Request revising language**

**Comment:** In this paragraph it would be helpful if the paragraph read " . . . An overflow of sewage, including a sewage backup . . ." as sites may have on-site wastewater such as cooling tower blow-down and the terminology in paragraph B6.a(2) could imply non-sewage discharges are also subject to 24 hour reporting.

**Response:** DEQ is unable to make clarifying edits to the General Conditions, Schedule F, since these conditions are required to be in all permits by federal regulation 40 CFR 122.41.

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## 31. Comments from: City of Springfield

#### SPRINGFIELD #1

**Description: General Comment - Retain written notification requirement by DEQ**

**Comment:** The current 1200-Z permit includes many conditions where DEQ is required to provide the permittee or other parties permit-related notifications or responses "in writing". The proposed permit deletes all requirements that DEQ provide written notifications and responses without indicating how DEQ intends to communicate with permittees (and other stakeholders), if not in writing. There are references in the proposal documents to a future "Your DEQ Online" system, but the proposal does not

indicate whether this not-yet-deployed system is the intended means by which DEQ will communicate important permit-related information. Given that DEQ does not yet have a working electronic document management system that all permitted sites can actually use, we recommend permit language requiring written notices from DEQ be retained, until such time as alternatives are well-established and proven.

**Response:** Regardless of the mechanism used for communicating, DEQ and agent will provide clear communication with permit registrants to ensure facilities are aware of important monitoring requirements, document submissions and corrective action deadlines. DEQ's electronic system, Your DEQ Online, is scheduled to be active prior to the permit's effective date of July 1, 2021. DEQ's agents will not be transitioning to the electronic system on the same schedule. Once Your DEQ Online is active, most communication and Discharge Monitoring Reports will shift from "paper" to "electronic." The permit language must be broad in order to address all the various communications between DEQ and their facilities and agents and their facilities during the permit term.

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SPRINGFIELD #2

**Description: Sources Covered Under this Permit - Facilities may discharge stormwater to a conveyance system that discharges to surface waters of the state - Should require approval of the local authority that manages the MS4 and be in compliance with local regulations**

**Comment:** The proposed permit does not address stormwater discharges to the MS4 for which the discharge will occur in. On page 1 under "Sources Covered Under this Permit" facilities may discharge stormwater to a conveyance system that discharges to surface waters of the state. Authorizing stormwater discharges to an MS4 should also be upon the approval of the local authority that manages the MS4 and be in compliance with local regulations. This is not addressed in this proposed permit and the allowed discharge may be in conflict with the local MS4 Permit.

**Response:** Operators are already required to comply with local requirements including local notification requirements, thus another approval in addition to the required Land Use Compatibility statement is not necessary. The proposed final permit conditions are consistent with federal regulations and state rules and statutes. The "Your DEQ Online" electronic reporting system will allow MS4 operators to view discharge data and other relevant reports at any time.

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SPRINGFIELD #3

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - What are the criteria that the DEQ will use to determine if an individual permit is necessary in lieu of the General permit?**

**Comment:** DEQ should state the criteria to be consistent throughout the State.

**Response:** Oregon Administrative Rules 340-045-0033(10)(c) outlines the criteria for requiring an individual permit:

- (A) The discharge or activity is a significant contributor of pollution or creates other environmental problems;

- (B) The permittee failed to comply with, or is not currently in compliance with, the terms and conditions of the general permit, submitted false information, or the permittee is in violation of any applicable law;
- (C) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;
- (D) For NPDES general permits, effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit;
- (E) Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either temporarily or permanently reducing or eliminating the authorized discharge is necessary; or
- (F) Any other relevant factors.

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SPRINGFIELD #4

**Description: Permit Coverage and Exclusion from Coverage; Name Change or Transfer - Should make it clear DEQ is “acknowledging the facility name change”**

**Comment:** The permit states DEQ will approve the name change. The DEQ does not have the authority to approve a business name.

**Response:** In this case, a name change or transfer of permit coverage is the activity DEQ performs and the name of the form required when a permitted facility requesting the permitted entities’ name be changed in DEQ records thus, there is no need for DEQ to change the permit language. The instructions are clear that the Secretary of State’s Corporate Division is responsible for approving a name change and correctly reads: “Please note that for name changes, DEQ prefers to process your request after the name has been legally changed to avoid incorrectly modifying its files should the change not occur.” The name must be a legal, active name registered with the Oregon Secretary of State - Corporation Division unless otherwise exempt by regulation...”

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SPRINGFIELD #5

**Description: Authorized Non-Stormwater Discharges - Should be stated (Condition I.6 and Schedule A.1.k) that the 1200-Z permit registrant will additionally need to comply with local regulations regarding the discharge of non-stormwater to the MS4, even if they are authorized by this permit**

**Comment:** The permit authorizing non-stormwater discharges to the MS4 may be in conflict with the local MS4s permit and local codes for allowable non-stormwater discharges. The MS4 Phase 2 General Permit and Phase 2 Individual Permit both have allowable non-stormwater discharges with the condition that the MS4 permittee does not find the discharge a significant source of pollution. In the cases where a MS4 may have made such a determination, and the MS4 permittee has implemented local codes or conditional best management practices, the 1200z permittee may not be allowed to discharge these as listed in the proposed permit.

**Response:** NPDES permit registrants are already required to comply with local requirements including local notification requirements since a Land Use Compatibility Statement signed by the local jurisdiction is required for all permit registrants. These conditions are consistent with federal regulations and state rules and statutes. The Your DEQ Online electronic reporting system will allow MS4 operators to view discharge data and other relevant reports at any time. In addition, 40 CFR 122.26 defines illicit discharge to mean: “any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities.” This means DEQ has determined authorized non-stormwater discharges under the 1200-Z permit are appropriate regardless of the allowable discharges in an MS4 permit.

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SPRINGFIELD #6

**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Should review section related to use of “may” instead of “must”**

**Comment:** Uses the language “may” instead of “must” in the requirement to consider the age of the facility and equipment. This should be a requirement not a suggestion, as control measures must be implemented in order to control pollution related discharges. Again this section has a mix of language being that it is either a requirement or not. The DEQ “may require actions to meet” and then followed by “failure to meet”. The DEQ must implement corrective actions when standards are not being met by the permittee, and the permittee must implement corrective actions in order to comply with standards.

**Response:** DEQ has reviewed the section and the use of may is consistent with federal regulations.

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SPRINGFIELD #7

**Description: Water Quality Standards - Should use “excursion” instead of “exceedance” and notify the local jurisdiction or MS4 included in the 24-hour discovery period**

**Comment:** There should also be notification to the DEQ and the local jurisdiction or MS4 included in the 24-hour discovery period. If the 1200-Z facility is cause and contributing to a water quality standard excursion then in turn so might the MS4 if the 1200-Z permittee is discharging to the MS4. The local MS4 needs to know when there is an excursion or exceedance.

**Response:** DEQ revised the proposed final permit to use the term “exceedance” rather than “excursion” since exceedance is clearer term and is consistent with other NPDES stormwater permits in Oregon. DEQ encourages each MS4 to determine what communication is appropriate regarding discharges to their MS4 and to work with the entities that discharge to ensure that communication occurs.

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SPRINGFIELD #8

**Description: Discharges to Impaired Waters - Needs to state which 303(d) list – a date is needed**

**Comment:** NA

**Response:** DEQ will use the EPA-approved 303(d) list that is in effect at the time of permit assignment. The proposed final permit has clarified this intent.

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SPRINGFIELD #9

**Description: Discharges to Impaired Waters - Revise section on watershed units; language is unclear**

**Comment:** Applicable to Schedule A.4.a.iv: Impairment pollutant monitoring and subsequent requirements apply to facilities that discharge directly into a Category 5 listed: 303(d) listed waters or indirectly through a storm sewer system or other conveyance. When the facility discharge enters an impaired watershed unit, the listing will only be applied if there is a hydrologic connection between the receiving water and assessment water body causing the impairment. Not sure what the DEQ is asking. Suggest it be re-drafted to be clearer.

**Response:** In 2016, DEQ undertook a major effort to update and improve the Integrated Report process. One change included the classification of the smallest streams in Oregon, into manageable units for assessment purposes referred to as, watershed units. Because this newly adopted methodology is distinct from previous Integrated Reports, the permit needs to include the decision criteria for facilities that discharge into impaired watershed units for impairment monitoring purposes.

If the stormwater discharges into a distinctly different stream than where the data is collected with no hydrological connection to the streams used in the assessment within the Watershed Assessment Unit, no impairment monitoring will be required.

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SPRINGFIELD #10

**Description: Tier 2 Background Waiver - Not clear who the request is directed to DEQ or agent; request from whom?**

**Comment:** NA

**Response:** The permit is clear that the Tier 2 corrective action responses including Tier 2 reports, Tier 2 mass reduction waivers and Tier 2 background waivers must be submitted to DEQ or agent no later than December 31 (six months after the end of the full reporting year that triggered Tier 2 on June 30) unless DEQ or agent approves a later date, depending on regulating jurisdiction.

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SPRINGFIELD #11

**Description: Applicable Water Quality Criteria; Table 6 - Should be expressed as dissolved, not total, with the exception of iron**

**Comment:** Water quality criteria for copper, lead and zinc should be expressed as dissolved, not total. OAR 340-041, Table 30, provides water quality criteria for metals, including copper, iron, lead, and zinc. All the metals criteria, with the exception of iron, are expressed as dissolved concentrations. In the draft

permit, Schedule A.13.b and Schedule B.4, including Table 6 refer to “total” copper, lead, zinc and other metals in describing water quality criteria or pollutants of concern. These should all be changed to “dissolved” in describing water quality criteria.

**Response:** 40 CFR 122.54(c) requires all permit limits, standards, or prohibitions be expressed in terms of “total recoverable metal”. This assures that regardless of the characteristiSPRINGFIELD of the receiving water, the resulting percentage of the metal that is dissolved after mixing with the receiving water will not exceed the applicable dissolved criteria and will be protective of aquatic life. The proposed final permit and the permit evaluation report were revised to clarify that benchmarks and impairment concentrations, as well as WQBELs, have been converted from the dissolved metal concentrations to total recoverable metal concentrations. The table’s that include impairment monitoring and escalating water quality-based effluent limits have been renamed appropriately and footnotes added to indicate when regional translators were applied.

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SPRINGFIELD #12

**Description: Applicable Water Quality Criteria; Table 6 - Should express E. coli as “organisms” instead of “counts”**

**Comment:** NA

**Response:** Both “organisms” and “counts” are considered equivalent for this parameter, however OAR 340-041 uses the “organisms per 100 mL” convention. DEQ made this change in the proposed final permit to use the same convention as OAR 340-041 (i.e., “organisms per 100 mL”).

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SPRINGFIELD #13

**Description: Pollutant Parameters - Should only state “DEQ” can grant coverage**

**Comment:** Schedule B.5.b.iv: Before granting coverage under this permit, DEQ or agent will identify the impairment pollutants for which the permit registrant is required to monitor.  
The agent does not grant coverage, this should only state “DEQ”.

**Response:** Schedule B.6.b.iv now reads: “DEQ or agent will specify and communicate impairment pollutant(s) monitoring requirement to the permit registrant.”

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SPRINGFIELD #14

**Description: Monitoring Waiver; Revocation - Need to add Schedule reference to identify which “above section”**

**Comment:** Schedule B.8.h. simply states that DEQ or agent may revoke based on “above conditions” – what above section is DEQ referring to? Need to add section/schedule number to identify which “above section”.

**Response:** DEQ added reference to applicable “above condition” identifying Schedule B.9.f.i.1-5.



SPRINGFIELD #15

**Description: Compliance Schedule; Numeric Effluent Limits - Revise Schedule C.1 to give the complete reference of overseeing Schedule**

**Comment:** Schedule C.1. Lists a Schedule if monitoring results exceed as specified in Schedule 13.b.i or ii, but does not list the overseeing Schedule; is it “Schedule A”?

**Response:** DEQ revised Schedule C.1 to read: “...Schedule A.13...”

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SPRINGFIELD #16

**Description: Compliance Schedule; Numeric Effluent Limits - Shouldn't the agent also be notified?**

**Comment:** In reference to Schedule C.1.b: Permit registrant shall submit status reports to DEQ or agent within 14 days of each action due date. Status reports shall include the following information...

**Response:** This section does list agent's notification, as applicable. There was insufficient information in this comment to assess potential changes to the permit.

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SPRINGFIELD #17

**Description: General Comment - Clarification on roles and expectations of agent's role**

**Comment:** Throughout the permit, applicants and registrants are required to submit specified materials to DEQ or agent by a certain date, unless DEQ or Agent approves a later date. Is this meant to imply that DEQ could approve later submittal of materials to an agent, or must the agent so approve?

**Response:** The clause, “DEQ or agent” refers to DEQ's delegation of certain local government or special districts to implement portions of the permit. See Schedule D.4 in the permit. Permit registrants communicate directly to the agents for all topiSPRINGFIELD regarding permit implementation. This means permit registrants in agent's jurisdictions will submit materials to the agents for approval and if needed request any approval for extensions to deadlines also from the agent.

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SPRINGFIELD #18

**Description: Water Quality Standards - Recommend revise Schedule A.3 to separate actions that DEQ and agents can legally take**

**Comment:** Agents do not have the authority to revoke general permit coverage and require an individual permit. It is also questionable whether an agent could impose a compliance schedule, since DEQ handles permit compliance matters. This paragraph needs to be rewritten to separate those actions that DEQ and agents can legally take.

**Response:** Schedule A.3 has been revised for appropriateness based on authority.

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## 32. Comments from: U.S. EPA Region 10

U.S. EPA REGION 10 #1

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Provide examples of acceptable technical demonstration for this Condition “provide technical demonstrations that the pollutant(s) for which the waterbody is impaired are not present at the site”**

**Comment:** NA

**Response:** This condition refers to a scientific or engineering analysis of pollutant exposure and transport pathways on the site. It does not require the use of analytical sampling results, as this method is addressed in Condition I.1.a.iii. For example, a permit registrant discharging to a zinc impaired waterbody might demonstrate use of passive or active treatment to remove potential sources of zinc in discharge, direct specific area of the site stormwater discharge with zinc exposure to sanitary sewer, or show the parameter is likely not to be introduced to the site by circumstances which one would reasonably anticipate.

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U.S. EPA REGION 10 #2

**Description: Mass Reduction Waivers - Clarify what waiver records need to be retained in the SWPCP**

**Comment:** This also applies to Schedule A.6 - Mass Reduction Measures

**Response:** The draft permit requires the mass reduction measures certification to be retained under Schedule B.15: Records Retention. DEQ requires all mass reduction measures operation and maintenance specifications to be maintained within the SWPCP. The mass reduction measures certification must be submitted to DEQ through the electronic “Your DEQ Online” system, and to the Agents in writing, making it available to the public and maintained with facility records for 3 years in accordance with federal requirements.

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U.S. EPA REGION 10 #3

**Description: Mass Reduction Measures - Encourage inclusion of guidance or occasional sampling to show the mass reductions are still operational and the waiver is still applicable**

**Comment:** If sampling is no longer required once waivers are granted, it will be unclear if the mass reduction measures continue to function throughout the permit term.

**Response:** DEQ is requiring a professional engineer or certified engineering geologist to certify these systems are operational once a permit term. The certification is sufficient to determine if the controls are functioning appropriately. Additional sampling will not result in information that can be used to

determine if the reduction measures are functioning as designed since the required sampling targets are based on concentration rather than mass. 40 CFR 122.44 states, “federal requirements to report monitoring results for stormwater discharges associated with industrial activity... shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge.” At a minimum, a permit for such a discharge must require an annual report inspection and certification be signed in accordance with 40 CFR 122.22. The inspection must identify areas contributing to a stormwater discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. The permit complies with this federal requirement and goes beyond by providing a stamped certification by an Oregon registered professional engineer (PE) or Oregon certified engineering geologist (CEG) to validate the mass reduction measures are operating as designed.

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U.S. EPA REGION 10 #4

**Description: Tier 2 - Retain and clarify language what to do if you do not meet a “full reporting year” quantity of samples**

**Comment:** We think that clarification from current permit is still needed: “If fewer than four qualifying samples were collected during the second monitoring year of permit coverage, qualifying sample results from the previous monitoring year may be used to obtain four.”

**Response:** This request is not appropriate for the Tier 2 framework as outlined in the proposed final permit. Tier 2 geometric mean evaluation is required to be calculated and reported on each August 15 DMR submittal. Using monitoring data that was used during a previous year geometric mean calculation to obtain four sample results would skew the calculation.

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U.S. EPA REGION 10 #5

**Description: Schedule E - Need to update the Aluminum benchmarks to reflect new water quality standard adoption**

**Comment:** NA

**Response:** Schedule E includes the appropriate aluminum concentrations based on EPA’s recent water quality standard adoption. The U.S. EPA has established new water quality criteria for aluminum to protect aquatic life in Oregon, but the rule was not final at the time of permit issuance. Therefore, DEQ was unable to calculate georegion-specific aluminum concentrations.

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U.S. EPA REGION 10 #6

**Description: General Comment - Add page numbering aligning with the Schedules**

**Comment:** If possible, some page numbering that indicates which part of the permit a reader is in – Schedule A, Schedule D, etc. – would be helpful.

**Response:** DEQ declined to make this change.

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## 33. Comments from: Association of American Railroads

AAR #1

### **Description: Monitoring Waiver - Retain current requirement to submit four consecutive samples**

**Comment:** It would be confusing and overly burdensome to condition a monitoring waiver on the review of five consecutive samples to demonstrate a full year of monitoring data. ODEQ should retain its current requirement to submit four consecutive samples, because the permit only requires four sampling events to satisfy a full year of monitoring.

**Response:** DEQ recognizes that changing the eligibility criteria to apply for a monitoring waiver from four to five consecutive qualifying sample results equal to or below the applicable statewide or sector-specific benchmark concentrations during a full monitoring year is a shift from what has been in the previous permits. The intent is for all existing facilities monitoring waiver requests to include two fall flush sampling events in the geometric mean calculate. Capturing the sample results from two fall monitoring events will better justify a monitoring waiver approval and ensure pollution prevention controls are being maintained. Expanding the criteria beyond the minimum four samples also supports the sufficient number of samples for the geometric mean results to have any statistical meaning.

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AAR #2

### **Description: Monitoring Waiver - Maintain current position that monitoring waivers, once issued, are valid until the permit expires**

**Comment:** It would be confusing and overly burdensome to automatically invalidate a monitoring waiver during the final permit year, especially where the permittee has been issued a similar waiver during prior permit terms. ODEQ should maintain its current position that monitoring waivers, once issued, are valid until the permit expires. Because all waivers would expire at the end of the permit term in any event, reinstating the monitoring requirement for the final year of the permit term would have little or no value. Limiting the waiver for the final year of the permit term would substantially reduce the value of the waiver to permit registrants without providing any substantially useful data in return. This creates an additional year in the permit term with required monitoring that could not be used as eligible data to establish a monitoring waiver.

**Response:** Stormwater monitoring data is important information for DEQ to evaluate industrial stormwater discharge trends. Reinstating monitoring requirements on July 1, 2025, will provide DEQ with valuable discharge data for future permits and ensure pollution prevention measures continue to be maintained throughout the permit cycle. DEQ retained the requirement that approved monitoring waivers for benchmarks are valid until July 1, 2025. The National Academy of Sciences Report on Improving the MSGP (2019) findings included that quarterly stormwater event samples collected over one year are

inadequate to characterize industrial stormwater discharge or describe industrial source control measures performance over the permit term.

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AAR #3

**Description: Sources Covered Under this Permit; Table 1 Footnote 1 - Should delete this footnote**

**Comment:** Table 1 of the Proposed 1200-Z Permit identifies the industrial sources eligible for coverage under the permit. These include transportation facilities with specified Standard Industrial Classification codes “that have vehicle maintenance shops . . . , equipment cleaning operations, or airport deicing operations.” For these facilities, proposed footnote 1 to Table 1 states: “Eligibility based on auxiliary operations; however, once covered under this permit all operations are regulated activities.” Requests that DEQ delete footnote 1, which is inconsistent with EPA’s industrial stormwater regulations. Those regulations clearly state: “Only those portions of the [transportation] facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14) (i)-(vii) or (ix)-(xi) of this section are associated with industrial activity.” 40 C.F.R. § 122.26(b)(14)(viii). Expanding the regulating footprint of industrial activities will be more protective of water quality and many uncontrolled source of pollution that are not currently regulated.

**Response:** The proposed final permit language is consistent with 340-045-0015(2) and 40 CFR 122.26 which are the rules that outline the requirements for who must obtain permit coverage. Once a facility is covered under the permit, DEQ may expand the area covered under the permit to regulate stormwater discharge associated with industrial activity from the entire footprint. Based on the wide variety of industrial activities and significant materials associated with industrial activity exposed to stormwater discharge, DEQ has expanded the scope beyond auxiliary operations to protect Oregon’s waters. Washington State Ecology’s industrial stormwater general permit also regulates the entire footprint of industrial facilities.

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AAR #4

**Description: Applicable Water Quality Criteria; Table 6 - Should be expressed as dissolved, not total, with the exception of iron**

**Comment:** Water quality criteria for copper, lead and zinc should be expressed as dissolved, not total. OAR 340-041, Table 30, provides water quality criteria for metals, including copper, iron, lead, and zinc. All the metals criteria, with the exception of iron, are expressed as dissolved concentrations. In the draft permit, Schedule A.13.b and Schedule B.4, including Table 6 refer to “total” copper, lead, zinc and other metals in describing water quality criteria or pollutants of concern. These should all be changed to “dissolved” in describing water quality criteria.

**Response:** 40 CFR 122.54(c) requires all permit limits, standards, or prohibitions be expressed in terms of “total recoverable metal”. This assures that regardless of the characteristics of the receiving water, the resulting percentage of the metal that is dissolved after mixing with the receiving water will not exceed the applicable dissolved criteria and will be protective of aquatic life. The proposed final permit and the permit evaluation report were revised to clarify that benchmarks and impairment concentrations, as well as WQBELs, have been converted from the dissolved metal concentrations to total recoverable metal

concentrations. The table's that include impairment monitoring and escalating water quality-based effluent limits have been renamed appropriately and footnotes added to indicate when regional translators were applied.

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AAR #5

**Description: General Comment - Urge DEQ to postpone incorporating the pending federal draft into Oregon's framework until the entire EPA permit is finalized and subsequently adopted**

**Comment:** NA

**Response:** EPA's final MSGP was issued in mid-January 2021. DEQ used the final MSGP to revise the 1200-Z where appropriate.

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AAR #6

**Description: Benchmarks - Benchmarks are far more conservative than is needed to protect against any aquatic toxicity issues posed by bioavailable metals levels in discharges**

**Comment:** These benchmarks are expressed as total metals levels, even though the relevant water quality criteria are expressed in the dissolved form. This issue was specifically recognized by the National Academy of Sciences in its recent report on industrial stormwater permitting (which was undertaken at the request of EPA, pursuant to the above-discussed MSGP settlement agreement). The NAS report acknowledges that dissolved metals are more biologically available than particulate-bound metals; therefore, dissolved metal concentrations provide a more useful means of evaluating potential impact to aquatic life. As a result of this proposed policy (and the very conservative dissolved-total translators used by DEQ the benchmarks are far more conservative than is needed.

**Response:** 40 CFR 122.54(c) requires all permit limits, standards, or prohibitions be expressed in terms of "total recoverable metal", therefore DEQ has translated dissolved metals criteria to total recoverable when establishing benchmarks and numeric effluent limitations. This ensures that regardless of the characteristics of the receiving water, the resulting percentage of the metal that is dissolved after mixing with the receiving water will not exceed the applicable dissolved criteria and will be protective of aquatic life.

However, DEQ has reconsidered the universal application of EPA's default metal translators and has applied regional translators, where appropriate. The determination and application of regional translators is discussed in Appendix C of the permit evaluation report.

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AAR #7

**Description: General Comment - Permit conditions based on draft 2018/2020 Integrated Report and EPA's proposed 2020 MSGP**

**Comment:** ODEQ is basing permit conditions on two documents that are still in unapproved draft form: EPA's 2020 draft MSGP and ODEQ's draft 2018/2020 Integrated Report. EPA's MSGP provides a critical basis for Oregon's 1200-Z Permit, and ODEQ's Integrated Report provides the basis for applying water quality-based Numeric Effluent Limits ("NELs").

**Response:** EPA approved Oregon's the 2018/2020 Integrated Report on Nov. 12, 2020 and is currently used for Clean Water Act implementation in Oregon. DEQ acknowledges that EPA's MSGP was a draft with the draft 1200-Z was out for comment. However, EPA's final 2020 MSGP was issued mid-January 2021, and the 1200-Z was revised as needed to be consistent with federal stormwater regulations.

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AAR #8

**Description: Sources Covered Under this Permit - Should follow EPA's determinations regarding the scope of permit coverage**

**Comment:** Table 2 of the draft 1200-Z Permit lists industrial activities exposed to stormwater that require permit coverage regardless of SIC code where stormwater drains to the Portland Harbor portion of the Willamette River or the Columbia Slough. It is the experience of AAR that these activities may be subjectively defined by state or local field inspectors to affect permit coverage. For example, the term "storage" (in Table 2, items 2 and 3) has been inconsistently and mistakenly applied by inspectors to materials and equipment that are clearly in transit or otherwise frequently moved and used (e.g. trailers and shipping containers), which would result in an unnecessary expansion of the footprint of permit coverage at a facility. The permit development report lacks any discussion as to the basis or information upon which ODEQ is relying for the proposed expansion of coverage. ODEQ's proposed expansion of coverage was not even included in the September public meeting held to describe the new permit and changes to the permit. To provide insufficient public notice on the proposed expansion of coverage or the basis for doing so is not consistent with the State Administrative Procedures Act. AAR requests that ODEQ clearly define the activities in Table 2 to prevent arbitrary assignment of permit coverage.

**Response:** Facilities that discharge stormwater into the Columbia Slough or Portland Harbor that is exposed to any of the industrial activities listed in Table 2 is not a new requirement. Table 2 industrial activities have been covered under the 1200-COLS, DEQ's specific general permit for discharges to the Columbia Slough, since 1999. In 2017 DEQ rolled the 1200-COLS into the 1200-Z and expanded Table 2 to dischargers into Portland Harbor, impacting a small number of sites that were without individual NPDES permit coverage or weren't already covered under the 1200-Z. Extensive upland source control investigation and permit monitoring in Portland Harbor and the Columbia Slough confirm the presence of the same contaminants in stormwater discharged from sites that conduct these activities as the contaminants impairing water and sediment in Portland Harbor and the Columbia Slough.

The permit defines "industrial activity" as "the categories of industrial activities included in the definition of 'stormwater discharges associated with industrial activity' as defined in 40 CFR 122.26(b)(14)(i)-(ix) and (xi) or activities identified by DEQ as a significant contributor of pollutants, such as Table 2." Thus, DEQ made the determination that these activities represent significant contributors of pollution. DEQ has found that these activities, when conducted at other sites and exposed to stormwater, are shown by 1200Z monitoring data and stormwater source control evaluations, to result in stormwater discharges containing pollutants also found in the sediment and water column of the Columbia Slough and Portland Harbor. In regard to the federal regulation, the bulk of the activities listed in Table 2 appear in 40 CFR 122.26 (b)(14), which includes the caveat of "includes, but is not limited to."

AAR #9

**Description: Schedule E; Sector P - Incorrectly states that Table E.P-1 identifies benchmarks that apply to... Sector M**

**Comment:** For the purposes of this comment, AAR assumes that ODEQ intended to apply these benchmarks to Sector P, in line with the other provisions of that section.

**Response:** DEQ revised the permit to correct this oversight.

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AAR #10

**Description: Schedule E; Sector P - Remove sector-specific benchmark monitoring requirements for Sector P from the draft 1200-Z Permit**

**Comment:** Assuming that AAR's interpretation of Schedule E is correct and the benchmarking provisions apply to Sector P, AAR notes that beginning with the original 1995 MSGP issued by EPA, benchmark monitoring has not been required for Sector P. This makes sense because Sector P has been determined to engage in relatively low-risk industrial activities. Therefore, only visual monitoring has been required in EPA's MSGP. Furthermore, lead and mercury are not parameters with sources particularly associated with the transportation industry. The addition of lead and mercury as sector-specific monitoring parameters for Sector P mirrors changes in EPA's (still draft) 2020 MSGP.

**Response:** DEQ has adopted Schedule E without significant edits to specific sectors monitoring requirements from EPA. DEQ's proposed final permit was completed after the review of the final MSGP. Benchmark monitoring for Sector P was not included since EPA did not retain monitoring requirements that were published in the proposed 2020 MSGP.

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AAR #11

**Description: General Comment - Background provision should be abandoned**

**Comment:** To account for the presence of background concentrations of benchmark parameters in stormwater discharge, the benchmark limits for many of the pollutants listed must be revised. ODEQ explains in its draft permit that its measure of background pollutants "include substances that are naturally occurring in soils or groundwater," but do not reflect "legacy pollutants from earlier activity on the site, or pollutants in run-on from neighboring sources that are not naturally occurring." These exclusions from the definition of "background levels" will result in frequent benchmark failures with unnecessary increases in corrective actions and costs to a party not associated with the exceedances. Moreover, a facility seeking to employ ODEQ's proposed "background waiver" would incur significant costs associated with extensive sampling and the collection or preparation of "peer-reviewed literature studies"



to demonstrate that the facility is not contributing to the exceedances observed. Alternatively, ODEQ could set a standard background correction for its benchmark levels using non-industrial stormwater runoff data from The National Stormwater Quality Database (NSDQ), rather than subtracting the generic “background levels” as proposed in the Proposed Permit. Notably, it can be difficult to find suitable background stormwater runoff locations, particularly in urban or suburban settings.

**Response:** The definition of “background pollutants” at Schedule D.3.b is intended to limit considerations of background to substances that are naturally occurring in soils or groundwater. Legacy pollutants from prior activities at sites or pollutants in run-on from neighboring sources that are not naturally occurring do not meet this condition and are explicitly within the definition. Statewide benchmarks were developed to reflect Oregon’s waters’ regional characteristics. Schedule E sector-specific benchmarks were developed to account for specific pollutants likely to be mobilized from industrial sectors or activities. DEQ has a natural background waiver fact sheet posted on the industrial stormwater permit website regarding this topic. The proposed final permit does not include a subtraction method in determining background levels. DEQ recognizes a background determination may be difficult based on the definition in OAR 340-042-0030(1): “Background Sources” include all sources of pollution or pollutants not originating from human activities.

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AAR #12

**Description: Monitoring Waiver; Impairment Pollutants - No substantive explanation as to why monitoring waiver criteria for impairment parameters were set to an even higher bar**

**Comment:** Monitoring waiver criteria for impairment parameters were set to an even higher bar in the draft 1200-Z Permit without a substantive explanation as to why the change is warranted. The criteria are:  
1. Four consecutive results are non-detect (no detection limit specified, although detection limits generally must be at least below the relevant screening criteria), or

2. Three full monitoring years without a numeric effluent limit exceedance.

Note that since pH does not have a “non-detect” result, a waiver for pH monitoring at a facility where pH is an impairment parameter would require three full monitoring years of results within the pH numeric effluent limit.

**Response:** Pollutants on the Category 5: 303(d) list represent a designation of surface waters that have no assimilative capacity for discharges over the water quality criteria. Therefore, the criteria for requesting a monitoring waiver from impairment monitoring must be more stringent than the criteria for benchmarks. DEQ revised the proposed final permit related to discontinuing pH impairment monitoring after two full reporting years are within the range as specified in Appendix A. The draft permit incorporated EPA’s MSGP requirements. However, since the 1200-Z requires all permit registrants to reinstate monitoring on July 1, 2025, DEQ has determined that impairment monitoring waiver requests after two full reporting years without an exceedance are allowable. This change provides permit registrants with a two year exemption from impairment sampling, equivalent to that allowed in EPA’s MSGP.

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AAR #13

**Description: Water Quality-based Effluent Limits - Proposed Numeric Effluent Limit values for metals are unrealistically low and may be unnecessary in some regions**

**Comment:** AAR requests that DEQ remove copper and zinc NELs from the Portland Harbor region since data show that surface water concentrations in the receiving water are not exceeding water quality-based limits. At the very least, DEQ should consider setting metals NELs for all regions to values that industries might reasonably attain. For these NEL values, runoff from purely residential activities would cause an exceedance which (if covered by the Proposed Permit) could eventually lead to permit violations. NELs which cause an exceedance for purely residential runoff set unrealistic expectations for industrial stormwater compliance. If the metals NELs in the draft 1200-Z Permit are instituted, one can reasonably expect that not only will the vast majority of permittees exceed at least one of the NELs, but expense and effort in addressing the exceedances will be unsuccessful and result in costly permit violations.

**Response:** The permit establishes benchmarks for copper, lead and zinc applicable to discharges to the Portland Harbor Superfund area. The Portland Harbor area of the Willamette River has been delisted for copper or lead in the 2018/2020 Integrated Report. Discharges into the Portland Harbor will be subject to narrative WQBELs for iron, but not numeric WQBELs for copper, lead or zinc.

The proposed final permit does not include numeric effluent limitations for copper, lead and zinc unless the permit registrant triggers establishment of numeric effluent limitations pursuant to Schedule A.13 and discharges into a Category 5: 303(d) listed receiving water.

The Clean Water Act (CWA) and its implementing regulations require the state permitting authority to establish numeric and/or narrative water quality-based effluent limitations (WQBELs) which are consistent with the attainment or maintenance of water quality standards, and are not based on ability-to-comply for individual dischargers. When reasonable potential has been established for a pollutant of concern, 40 CFR 122.44(d)(1)(iii) states “the permit must contain effluent limitations for that pollutant”. Regulations pertaining to the establishment of WQBELs in 40 CFR 122.44(d)(1)(vii) states WQBELs shall ensure that “the level of water quality to be achieved by limits on point sources...complies with all applicable water quality standards.”

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AAR #14

**Description: Compliance Schedule; Numeric Effluent Limits - Request extension of the action milestones in Section C.2 to a more reasonable and attainable timeframe**

**Comment:** These milestones, however, include potential structural or treatment control measures, which in many cases are not available on the market as an “off-the-shelf” solution. Implementation of structural treatment control measures will necessarily require engineering, planning, and review, some of which may be extensive depending on the size and complexity of the facility, conveyance, and discharge. Capital planning, which may require budget adjustments and related approvals, must be factored into the deadlines. The Proposed Timelines for Compliance Action Milestones are Not Feasible.

**Response:** The applicable regulations for compliance schedules are established in 40 CFR 122.47 and OAR 340-041-0061(12). OAR 340-041-0061(12) specifically states that compliance schedules in an NPDES permit is allowed only for water quality based effluent limits that are newly applicable to the permit and must be consistent with the provisions in 40 CFR 122.47, including the requirement that water quality criteria must be achieved as soon as possible. DEQ clarified that the interim milestones may be extended based on approval by DEQ or agent. DEQ has determined that two years represents a conservative and reasonable time period for permit registrants discharging industrial stormwater to comply with numeric water quality-based effluent limits. Interim milestones are consistent with DEQ’s compliance schedules Internal Management Directives and provide flexibility for the wide variability of

permit registrants and operations covered under this permit yet are sufficiently specific to ensure and evaluate progress towards achieving compliance with applicable final effluent limits. In cases where the two-year timeframe is not feasible for a registrant and exceedances continue, the exceedances will be a permit violation and the permit registrant may need to seek coverage under an individual permit.

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AAR #15

**Description: Compliance Schedule; Numeric Effluent Limits - Request include language allowing DEQ to approve extending the response action implementation deadline akin to the current language that allows DEQ to approve delaying Schedule C response actions**

**Comment:** Schedule C.1.b.ii allows ODEQ to approve delays in required actions but does not allow for ODEQ to approve extending the response action implementation deadline to account for potential response action roadblocks out of the permittee's control.

**Response:** The applicable regulations for compliance schedules are established in 40 CFR 122.47 and OAR 340-041-0061(12). OAR 340-041-0061(12) specifically states that compliance schedules in an NPDES permit is allowed only for water quality based effluent limits that are newly applicable to the permit and must be consistent with the provisions in 40 CFR 122.47, including the requirement that water quality criteria must be achieved as soon as possible. In May 2007, the Director of EPA's Office of Wastewater Management issued a memorandum that clarified the federal requirements for compliance schedules specified in 40 CFR 122.47 as they relate to WQBELs. This memorandum clarifies that compliance schedules must have a final effluent and date for achievement specified in the permit, and that time frame be as soon as possible. DEQ has determined that two years represents a conservative and reasonable time period for permit registrants discharging industrial stormwater to comply with final effluent limits. In cases where the two-year timeframe is not feasible for a permit registrant and exceedances of the numeric water quality-based effluent limits set to protect impaired waters continue after two years, any exceedance will be a permit violation.

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AAR #16

**Description: General Comment - Rulemaking vs. Agency Order**

**Comment:** What the rulemaking process lacks that the historical process provided, however, is operational flexibility to the agency to review and modify the permit without having to go back through the entire rulemaking process. By moving forward with rulemaking, the agency is sacrificing the nimble flexibility that would enable it to respond to unforeseen technical or operational shortcomings that would hinder the permit's effectiveness. Therefore, we would ask the DEQ to add language to the rule that would clearly and unambiguously preserve the ability of the agency to modify the permit by order, moving forward, and to return to that process for future permit modifications.

**Response:** Oregon Administrative Rule 340-045-0033 provides that DEQ has authority to adopt a general permit as an order following adoption by rule. Therefore it is not necessary to address this in the permit.

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AAR #17

**Description: General Comment; Term of Current Permit - Delay proposed permit implementation until the current expiration date of July 31, 2022**

**Comment:** Current 1200-Z permit cycle is cut short. DEQ has, without reasonable basis, shaved a full year off the originally published 5-year permit cycle. Businesses rely on the stated permit cycle to achieve compliance through adaptive management efforts.

**Response:** 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 was filed in Multnomah County Circuit Court by the Columbia Riverkeeper and the Northwest Environmental Defense Center.

As a result, 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 summary, DEQ committed to: • 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.

As such, DEQ is legally bound to issue the final permit by March 30, 2021. The proposed final permit's effective date is July 1, 2021. The effective date aligns with the stormwater reporting year, allows permit registrants time to update the site specific stormwater pollution control plans and other implementation measures as needed. This timeframe also takes into consideration the Tier 2 implementation requirements under the current permit.

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## 34. Comments from: Vigor Industrial LLC

VIGOR INDUSTRIAL #1, Public Hearing Oral Comment

**Description: Tier 2 - Should include an express waiver for permittees engaged in Tier II corrective action under the current permit**

**Comment:** The design and implementation of our new treatment system is based on meeting the existing benchmarks and completing Tier II corrective actions before ending the permit term. Interrupting the permit cycle and introducing a new permit, undermines our reasonable expectations and investment in the Tier II technologies. The new permit does not address how Vigor is supposed to accommodate. Tier II compliance under the existing permit, along with the introduction of the water quality-based effluent limits under the new permit. The new statewide benchmarks and WQBEL should not apply to bigger or other permittees who are already heavily invested and involved in Tier II corrective actions. Oregon DEQ should include an express waiver for permittees engaged in Tier II corrective action under the current permit.

**Response:** All prior investments will continue to benefit facilities in meeting more stringent benchmarks by reductions in pollutant levels. The Portland Harbor benchmarks are less stringent than in the prior permit, except for copper. The benchmarks are based on a well-vetted and technically sound modeling methodology that builds in a dilution of 5 and sets the benchmark at a 10 percent probability of exceeding

the water quality criteria. Tier 2 corrective action response is only applicable to statewide benchmarks exceedances. The permit includes a provision that exempts current permit registrants with a Tier 2 corrective action deadline of June 30, 2021, or later from additional Tier 2 corrective action responses at those discharge points and for the specific pollutant during the next 5 year permit cycle. The proposed impairment monitoring targets and escalating water quality-based effluent limits are only applicable to discharges into Category 5: 303(d) listed waters defined by surface waters not meeting water quality standards. If the treatment system is not achieving the intended goal, the permit registrant must do more to protect water quality.

#### VIGOR INDUSTRIAL #1

##### **Description: Metals Benchmark Modeling - Revise proposed statewide benchmarks using appropriate regional or statewide translators**

**Comment:** The proposed statewide benchmarks should be revised to reflect appropriate regional or statewide translators. The Proposed Permit's benchmarks are based on default translators of 1 or very nearly 1. Applying appropriate, region-specific translators results in benchmarks that are in all instances higher—and in most instances substantially higher—than the proposed benchmarks. And in only two instances are the adjusted benchmarks lower than the current permit's benchmarks. Moreover, for the reasons discussed in the following section, the adjusted benchmarks themselves may be lower than necessary to protect water quality.

**Response:** DEQ agrees that the use of EPA default translators is more conservative than necessary in some instances and has reconsidered the use of EPA default metal translators. DEQ has evaluated the potential use of regional translators, and updated the proposed final permit to include regional translators where feasible. Where regional translators were not feasible, EPA's default metal translators were applied. EPA's default translators are widely applicable to, and protective of, a diverse array of waterbodies. Appendix C of the revised permit evaluation report describes the methods used by DEQ in evaluating the appropriateness and the application of regional metal translators in the proposed final permit.

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#### VIGOR INDUSTRIAL #2

##### **Description: Metals Benchmark Modeling - Examine data to determine if there is adequate data to represent the diversity of water bodies in entire geo-region**

**Comment:** For larger regions (Cascades, Coastal, Eastern, and Willamette Valley), no analysis has been performed to determine if it is appropriate to lump data from different water bodies together into one set. The data in these regions should be examined to determine if there is adequate data to represent the diversity of waterbodies in the entire region. If the data is not adequate, then statewide data should be used instead.

**Response:** The data used in the benchmark modeling process was carefully queried from state and federal databases to ensure it adequately reflected the ambient water quality of surface water within each georegion in Oregon. These data were reviewed for representativeness and any obvious outliers were excluded from the georegional datasets. With respect to the non-detect values, the regression on order statistics (ROS) analysis was used to determine the appropriate distribution and that determination was bounded by the available data for the georegion.

### VIGOR INDUSTRIAL #3

**Description: Metals Benchmark Modeling - Translate data from dissolved to total or total to dissolved in three places: background water concentrations, assumed effluent concentrations, and water quality criteria calculations**

**Comment:** To convert a dissolved criterion value into a total criterion, the dissolved criterion is divided by a ratio known as a translator. In the absence of relevant data regarding an appropriate translator, a default translator can be used. A default translator generally assumes that more than 95% of the metal in the water body is present in the dissolved form (EPA, 1996), which is a highly conservative assumption in most water bodies. When sufficient data are available, a more appropriate translator can be calculated and used in place of the default translator. Neither a region-specific nor an appropriate conservative default translator were used to derive the draft 1200-Z benchmarks. In the technical analysis, translators should come into play in three places: background water concentrations, assumed effluent concentrations, and water quality criteria calculations. For background water data, the draft benchmark analysis used dissolved data where available, but total concentrations were used without conversion where dissolved data were not available.

**Response:** As described in the comment, DEQ used dissolved metal background data when available. However, when dissolved data were not available, total recoverable data were used instead. While this process is an inherently conservative approach, it was necessary because in some regions, metals data are sparse so that omission of total recoverable data would severely limit the characterization of ambient metals concentration so as to prevent modeling of a benchmark. It is important to note that when the distributions of total recoverable versus dissolved ambient water measurements were compared by region, there was no evidence to suggest that the values of total recoverable metals were unduly biasing the benchmarks. Neither dissolved nor total recoverable metals data were bi-modal or skewed by the inclusion of the total recoverable data. Although it is possible that some benchmark values are more conservative than they would otherwise be as a result of including some of the total recoverable data to calculate them, this was the best approach available to DEQ without sufficient dissolved metals data to generate benchmarks. Furthermore DEQ considered potential bias and found the data distributions that include both dissolved and total recoverable metals in the analysis supported that approach. DEQ developed and implemented region-specific translators where appropriate and performed the accurate calculations in final total benchmark concentrations. The criteria in effect for clean water act purposes in Oregon are for the dissolve fractions of metals, therefore DEQ does not translate the criteria to a total dissolved equivalent. Benchmarks, where expressed as total recoverable metal, are established based on achieving attainment of the protective dissolved criteria within an acceptable level of risk.

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### VIGOR INDUSTRIAL #4

**Description: Advisory Committee Draft - Retain current sampling schedule requirement**

**Comment:** The current sampling schedule requirement, where two samples are required in each of the first and second halves of the year, should be retained as proposed in the public comment draft. The strong seasonality of rainfall throughout the state as well as the hydrological characteristics present at

many industrial sites would make it difficult for most sites to consistently attain samples early in the fall season.

**Response:** Both the draft and proposed final permit retains the same semi-annual sampling frequency as the current permit.

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#### VIGOR INDUSTRIAL #5

**Description: Monitoring Waiver - Maintain current position that monitoring waivers, once issued, are valid until the permit expires**

**Comment:** It would be confusing and overly burdensome to automatically invalidate a monitoring waiver during the final permit year, especially where the permittee has been issued a similar waiver during prior permit terms. ODEQ should maintain its current position that monitoring waivers, once issued, are valid until the permit expires. Because all waivers would expire at the end of the permit term in any event, reinstating the monitoring requirement for the final year of the permit term would have little or no value. Limiting the waiver for the final year of the permit term would substantially reduce the value of the waiver to permit registrants without providing any substantially useful data in return. This creates an additional year in the permit term with required monitoring that could not be used as eligible data to establish a monitoring waiver.

**Response:** Stormwater monitoring data is important information for DEQ to evaluate industrial stormwater discharge trends. Reinstating monitoring requirements on July 1, 2025, will provide DEQ with valuable discharge data for future permits and ensure pollution prevention measures continue to be maintained throughout the permit cycle. DEQ retained the requirement that approved monitoring waivers for benchmarks are valid until July 1, 2025. The National Academy of Sciences Report on Improving the MSGP (2019) findings included that quarterly stormwater event samples collected over one year are inadequate to characterize industrial stormwater discharge or describe industrial source control measures performance over the permit term.

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#### VIGOR INDUSTRIAL #6

**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Should not remove allowance for DEQ or agent to approve a corrective action deadline more than 30 days**

**Comment:** The revised Draft permit also removes the allowance for DEQ to approve a longer time frame, which is obviously necessary if long purchasing lead times or construction is required.

**Response:** The proposed final permit retains the 2018 permit language and allowance for an approval from DEQ or agent to extend the deadline to modify and implement control measures.

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#### VIGOR INDUSTRIAL #7

**Description: Metals Benchmark Concentration Reduction - DEQ has dramatically reduced benchmarks for lead and zinc in this permit, which may completely invalidate past investments made in treatment infrastructure**

**Comment:** DEQ has dramatically reduced benchmarks for lead and zinc in this permit, which may completely invalidate past investments made in infrastructure to treat for these compounds. It may not be possible to identify a source of for these compounds which are ubiquitous in the environment. For example, zinc is present in tires and copper is present in brake pads, and for facilities located adjacent to heavily trafficked roads the source of zinc and/or copper could be dust from tire wear from the road. This source would be difficult to identify and impossible to mitigate. Facilities should not be required to treat stormwater that is contaminated by offsite sources of pollutants.

**Response:** All prior investments will continue to benefit facilities in meeting more stringent benchmarks by reducing in pollutant levels in industrial stormwater. Depending on the location of any given facility, some of the benchmarks are less stringent than in the prior permit. The reductions are based on a well-vetted and technically sound modeling methodology that builds in a dilution of 5 and sets the benchmark at a 10 percent probability of exceeding the water quality criterion. Tier 2 corrective action responses are only applicable to statewide benchmarks exceedances. The proposed final permit includes a provision that exempts current permit registrants with a Tier 2 corrective action deadline of June 30, 2021, or later from additional Tier 2 corrective action responses at those discharge points and for the specific pollutant during the next 5 year permit cycle. The permit also contains provisions to address off-site sources of contamination, including represented sampling and background exemptions.

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VIGOR INDUSTRIAL #8

**Description: Narrative Technology-based Effluent Limits (TBELs) - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Proposed 1200-Z Permit would prohibit the use of temporary covers, such as tarps, but no justification for this change is provided in the draft evaluation report. There will undoubtedly be both short-term and long-term circumstances in which permanent structures are not feasible, but tarps or other temporary covers would minimize exposure. A permit registrant should not be put in the position of choosing a less environmentally protective solution—no cover at all—if a permanent structure is not practicable.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to minimize exposure and to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure.

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VIGOR INDUSTRIAL #9

**Description: Tier 1.5; Appendix B - Revise its proposal to require permit registrants to only consider, not implement, the Appendix B controls**

**Comment:** DEQ has not evaluated whether every facility covered by the 1200-Z permit can practicably implement every stormwater control specified in Appendix B for the facility's major industrial group,



much less implement those controls within 60 days. Moreover, many of the Appendix B controls are generic measures that are not targeted to specific pollutants and that may do little or nothing to reduce the concentrations of the pollutant or pollutants that triggered Tier 1.5. EPA itself has not substantially evaluated the controls and does not propose to require them “where it would be counterproductive to the implementation of another control measure, or not result in any reduction in the discharge of the pollutant of concern.” Appendix B contains a useful list of industry-specific controls for permit registrants to consider.

**Response:** DEQ did not include Tier 1.5 and associated Appendix B checklist in the proposed final permit. The industrial-specific checklists will be recommended guidance for permit registrants that have benchmark exceedances as part of a Tier 1 corrective action response, thus will not be mandatory. DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. The industrial-specific checklist items are strongly encouraged to be considered by permit registrants; however, DEQ acknowledges that it is not an exhaustive list of measures that may be selected and implemented.

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VIGOR INDUSTRIAL #10

**Description: Water Quality-based Effluent Limits - Restrict pH limits only high or low pH, depending on the basis for the impairment listing**

**Comment:** If DEQ nonetheless believes that numeric effluent limits are necessary, the limits should be consistent with the basis for the pH impairment. Where the impairment is solely due to pH values in excess of the pH criteria range, the numeric effluent limit should include only a maximum pH limit. In those circumstances, a discharge with a pH below the criteria range could not contribute to the impairment. Similarly, where the impairment is solely due to pH values below the pH criteria range, the numeric effluent limit should include only a minimum pH limit.

**Response:** The applicable water standards in OAR 340-041-0101 through 340-041-0350 establish pH as range between which hydrogen ion concentrations must fall. If any two consecutive monitoring results at each monitoring point falls outside the basin-specific range for pH, the permit registrant will be subject to numeric water quality-based effluent limitations for pH consistent with entirety of the applicable pH water quality standards, rather than a portion of the applicable standards. Establishing limitations for only a portion of the standard would be inconsistent with the water quality standard as a whole. Permit registrants may be granted a two-year compliance schedule if needed.

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VIGOR INDUSTRIAL #11

**Description: Tier 2 Corrective Action Implementation Deadline - Support the implementation date moving from June 30 to September 30**

**Comment:** Moving the Tier 2 corrective action implementation deadline from June 30 to September 30 will allow facilities to take advantage of the dry weather months of July through September for construction of any necessary storm water treatment measures.

**Response:** DEQ appreciates the comment.

VIGOR INDUSTRIAL #12

**Description: Tier 1.5 - Inclusion of the Tier 1.5 Corrective Action is a step in the right direction; requirement provides additional guidance and opportunities for facilities to implement improvements to source control and operational controls**

**Comment:** However, the implementation schedule should be adjusted and clarified as described in separate comment so the benefits of Tier 1.5 actions can be fairly evaluated before requiring Tier 2 measures.

**Response:** DEQ appreciates the comment. The proposed final permit does not include Appendix B or Tier 1.5. However, DEQ made significant edits and recommends that the industrial-specific checklists are used as an optional technical assistance tool in response to benchmark exceedances.

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VIGOR INDUSTRIAL #13

**Description: General Comment; Term of Current Permit - Should retain current permit's expiration date and 5-year duration; revised permit should not take effect until July 2022**

**Comment:** DEQ has cut a full year off of the originally published 5-year permit cycle. Businesses rely on the stated permit cycle to achieve compliance through adaptive management efforts, including ongoing improvements to best management practices and implementation of Tier 1 and Tier 2 corrective actions. Shortening the published permit cycle undercuts substantial efforts undertaken by facilities to achieve permit requirements and improve storm water quality. Facilities, including Vigor, invest considerable time, effort, and capital to study, permit, and construct such infrastructure upgrades. DEQ should not disincentives such investments in storm water improvements by truncating the permit cycle (including, as noted below, changing the compliance goalposts). In addition, DEQ should retain the current 1200-Z Permit schedule to allow for USEPA to complete its review and approval of 2018/2020 Integrated Report and forecast clear permit requirements to the regulated community.

**Response:** 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 was filed in Multnomah County Circuit Court by the Columbia Riverkeeper and the Northwest Environmental Defense Center.

As a result, 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 summary, DEQ committed to: • 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.

As such, DEQ is legally bound to issue the final permit by March 30, 2021. The proposed final permit's effective date is July 1, 2021. The effective date aligns with the stormwater reporting year, allows permit registrants time to update the site specific stormwater pollution control plans and other implementation

measures as needed. This timeframe also takes into consideration the Tier II implementation requirements under the prior permit.

EPA's MSGP was finalized mid-January 2021 and EPA approved DEQ's 2018/2020 Integrated Report on Nov. 12, 2020.

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VIGOR INDUSTRIAL #14

**Description: Metals Benchmark Concentration Reduction - Lower benchmark changes are too abrupt and changing benchmarks mid-stream conflicts with long-term investments in Tier 2 corrective action measures**

**Comment:** New benchmarks and new water quality criteria in the Draft 1200-Z Permit are dramatically lower than the current 1200-Z Permit, without providing any reasonable time to achieve them, i.e., through progressive implementation of Tier 1 and 2 corrective action and adaptive management measures. Facilities covered under the Draft 1200-Z Permit cannot be expected to plan, design, secure funding, and implement storm water improvements necessary to meet dramatically lower standards in such a short time period. With the abrupt change and lowering of permit benchmarks, Vigor's electrocoagulation system will have to be entirely re-evaluated to determine if it can achieve the new compliance metrics. This is contrary to the long-term adaptive management approach, which has resulted in substantial reductions of pollutants in storm water runoff in Oregon. If there is a technical basis for lowering benchmarks then facilities should have a much longer lead time before being forced into mandatory water quality-based effluent limitations.

**Response:** Adaptive management is still the permit's corrective action framework in response to benchmark exceedances. Prior investments will continue to benefit facilities in meeting more stringent benchmarks. Impairment monitoring are only applicable to discharges into Category 5: 303(d) listed waters defined by surface waters not meeting water quality standards for copper, lead, zinc, iron, pH, and fecal indicators bacteria. Surface waters impaired for these pollutants have no assimilative capacity for discharges over the water quality criteria. If a facility is unable to keep the discharge concentrations under the impairment monitoring, further controls are needed to reduce pollutant levels. Narrative and/or numeric water quality-based effluent limits will be required for facilities. For these facilities, permit registrants would have a two-year compliance schedule to install needed controls to meet the numeric water quality-based effluent limits. Some of the benchmarks are less stringent than in the prior permit. All benchmarks are based on a well-vetted and technically sound modeling methodology that builds in a dilution of 5 and sets the benchmark at a 10 percent probability of exceeding the water quality criterion.

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VIGOR INDUSTRIAL #15

**Description: Water Quality-based Effluent Limits - Development is on a rushed timeline and automatic triggers for strict "numeric effluent limits" are overly oppressive and contrary to adaptive management**

**Comment:** The Draft 1200-Z Permit is using 2012 Category 5 303(d) listings to determine whether facilities will be forced into effluent limitations - without providing any clear permit mechanism to reverse course when the 2018/2020 Integrated Report is issued. DEQ "anticipates action" on the 2018/2020 Integrated Report by USEPA this fall or winter. This is a significant omission because the

2018/2020 Integrated Report will remove certain metals from the Category 5 303(d) list, based on improvement in water quality since 2012, and, accordingly, certain triggers for effluent limitations will be moot. Accordingly, it is inappropriate for DEQ to release the Draft 1200-Z Permit for public comment, let alone issue a new permit that includes major regulatory changes to water quality-based effluent limits and numeric effluent limits before the 2018/2020 Integrated Report (which will reflect the actual ambient water quality conditions) has been approved by the lead regulatory agency. If DEQ intends to keep the Draft 1200-Z Permit issuance schedule, the new permit should provide a clear and automatic provision which updates the water quality-based effluent limits Registrants are required to comply with based on the most recent data and up to date Category 5: 303(d) listings for receiving waters in the 2018/2020 Integrated Report.

**Response:** DEQ disagrees with this comment. The 2018/2020 Integrated Report was approved on Nov. 12, 2020, by EPA. DEQ will use the 303(d) list that is in effect at time of permit assignment to establish impairment monitoring.

The Clean Water Act (CWA) and its implementing regulations require the state permitting authority to establish numeric and/or narrative WQBELs that are consistent with the attainment or maintenance of water quality standards. When reasonable potential has been established for a pollutant of concern, 40 CFR 122.44(d)(1)(iii) states “the permit must contain effluent limitations for that pollutant”. Regulations pertaining to the establishment of WQBELs in 40 CFR 122.44(d)(1)(vii) states WQBELs shall ensure that “the level of water quality to be achieved by limits on point sources...complies with all applicable water quality standards.”

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VIGOR INDUSTRIAL #16

**Description: Applicable Water Quality Criteria; Table 6 - Clearly define if sampling for all parameters in Table 6 are required or only if receiving water is a Category 5: 303(d) listed waterbody**

**Comment:** Table 6 includes Portland Harbor water quality criteria for copper, lead, and zinc, but Portland Harbor is not a Category 5: 303(d) listed waterbody in the 2018/2020 Integrated Report for these metals. Table 6 should be revised to include only those waterbodies that are Category 5: 303(d) listed based on the most current data (i.e., 2018/2020 Integrated Report) rather than rely on outdated 2012 data.

**Response:** The impairment provisions and subsequent impairment monitoring requirements will be based on the Category 5: 303(d) list that is in effect at the time of assignment. For existing facilities, the EPA-approved 2018/2020 Integrated Report will be used for monitoring assignment during the permit term. The permit includes all potential impairment concentrations in recognition that DEQ is currently working on updates for the 2022 Integrated Report. DEQ or agent will specify and communicate impairment monitoring requirements.

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VIGOR INDUSTRIAL #17

**Description: Water Quality-based Effluent Limits - Triggers are too restrictive and lack any mechanism for Registrants to more fully and fairly evaluate the sampling results**

**Comment:** The Draft 1200-Z imposes automatic triggers for numeric effluent limits (instead of benchmarks) in Category 5: 303(d) listed waterbodies when a facility has just two exceedances of a water quality-based effluent limit, or a single exceedance that is two-times the water quality-based effluent limit. First, benchmark exceedances do not mean that a water quality violation has occurred; but DEQ has also set the “water quality criteria” (“WQC”) for many parameters to effectively the same levels as benchmarks, even though there is no demonstration that such an exceedance would actually cause an ambient water quality violation. Further, the “one strike” or “two strike” approach fails to account for discharge anomalies that sometimes occur in complex storm water systems (including from offsite impacts) which might cause exceedance blips that are not reflective of the overall effectiveness of the storm water controls. DEQ needs to provide permit registrants with a process to provide a technical explanation/appeal prior to imposing permanent effluent limits.

**Response:** DEQ is obligated to establish WQBELs for pollutants discharged at levels which will cause or contribute to an excursion above water quality standards (see 40 CFR 122.44(d)(1)(i)). By definition, an impaired water body has no assimilative capacity for the impaired parameter. In the proposed final permit, DEQ utilized a 10 percent risk threshold in reasonable potential analyses of discharge data collected over an 18-year period. The selection of the 10 percent risk threshold is a conservative value designed to be protective of applicable criteria and its maximum allowable exceedance frequency. DEQ determined the use of triggers for WQBELs into impaired waterbodies is warranted and provides permit registrants sufficient opportunity for adaptive management. The triggering event(s) are not a violation of the permit by themselves. If the triggering event(s) are anomalous and non-reoccurring, then all subsequent discharges are not subject WQBELs and will continue to sample in accordance to impairment monitoring provisions. Registrants with consecutive exceedances of impairment concentrations must undertake pollution control activities to ensure compliance with effluent limitations.

DEQ discussed approaches for establishing WQBELs in multiple advisory committee meetings that occurred between May 7, 2019 and June 17, 2020. During these meetings, procedures for identifying pollutants of concern that should be subject to WQBELs were discussed, as well as methods and considerations for establishing WQBELs for various types of pollutants. DEQ developed a methodology for assessing the appropriateness of establishing water quality-based effluent limitations (WQBELs) on a statewide basis for industrial stormwater discharges to impaired waters for which there is no EPA-approved TMDL.

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VIGOR INDUSTRIAL #18

**Description: Benchmark Modeling - DEQ lacks a technical basis to set “Water Quality Criteria” and “Benchmarks” at the same overly restrictive levels**

**Comment:** The basis for setting benchmarks, including the underlying data set and use of default translators, is flawed. For Portland Harbor, DEQ has used the same data set to establish water quality criteria at the benchmark concentration for copper. Water quality criteria are set less than benchmark concentrations for lead and zinc. This effectively makes benchmark exceedances for copper (which are not permit violations) violations of water quality criteria which can trigger numeric effluent limits for one or two exceedances. DEQ has not justified the basis for these limits as necessary to protect the receiving waterbodies.

**Response:** DEQ disagrees. Permit evaluation report describes the rationale for the establishment of water quality-based effluent limitations and states that “[limits] are required for permit registrants that are identified as discharging pollutants at concentrations that may contribute to an exceedance of water

quality criteria.” As described in Appendix A of the permit evaluation report, DEQ used a risk-based calculation method to estimate the likelihood of a range of benchmarks to result in non-compliance with water quality criteria in non-impaired waterbodies. The model assumes a conservative waterbody assimilative capacity (i.e., the ability to dilute the effluent within the waterbody). The copper benchmark and impairment monitoring concentrations are derived using the site-specific criteria, Biotic Ligand Model. The Biotic Ligand Model determines copper toxicity for a given set of conditions by using measurements of ten different water quality parameters that affect copper toxicity to aquatic organisms. Therefore, it is appropriate to use the same copper concentrations for the benchmark and a water quality-based effluent limit. DEQ recalculated the benchmark concentrations and the impairment concentrations using regional translators where appropriate. For discharges to Category 5: 303(d)-listed waterbodies, the registrant will be subject to numeric WQBELs based on sample results for pH, copper, lead, or zinc when the triggers in Schedule A.13 exceed the concentrations.

The proposed final permit recalculated the monitoring concentrations and the impairment monitoring concentrations are either equal to the benchmarks, as is the case of copper, or more stringent than the benchmarks. DEQ also applied regional translators where appropriate. The model used to calculate the benchmark assumes a conservative waterbody assimilative capacity (i.e., the ability to dilute the effluent within the waterbody).

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VIGOR INDUSTRIAL #19

**Description: Tier 1.5; Appendix B - Includes use of tarping as a mandatory stormwater source and operational control measures**

**Comment:** Many sites, including Vigor, are dynamic; and permanent roofed structures are not feasible from a practical or economical basis. For example, Vigor recently had to remove a long propeller shaft and bring it from the dry docks to the uplands. Use of tarping was an effective measure to prevent exposure to the elements. The tarping was inspected during rain events to ensure it prevented storm water from coming in contact with pollutant generating surfaces.

**Response:** DEQ made significant edits to the industrial-specific checklists including streamlining the format to contain universal source control measures applicable to all sites, in addition to sector-specific source control measures to provide recommendations for specific major industrial groups. In addition, based on comments received DEQ has retained the use of tarps as a temporary measure in the narrative technology-based effluent limits section, as long as they are well secured.

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VIGOR INDUSTRIAL #20

**Description: Narrative Technology-based Effluent Limits (TBELs); Waste Chemicals and Material Disposal - Should not prohibit the use of tarps or other temporary covers**

**Comment:** Tarping has also been removed from Draft 1200-Z Permit language as a cover for waste containers. Facilities are constrained by the containers provided to it by third party vendors, such as Waste Management or local municipal utilities. Registrants should be allowed to use tarps as an effective control measure.

Waste Disposal comments: Requiring lids on all waste containers and drop boxes is not reasonable for many reasons. Often, customers do not want or cannot use boxes with lids, the lids are easily damaged and costly to install and repair, and makes the movement, loading, and transport of these containers more difficult for the drivers. Temporary tarps are a fraction of the cost and have none of the repair costs associated with a permanently installed lid. We recommend that DEQ continue to allow the use of tarps as covers, allowing for “properly secured and maintained temporary covers that fully protect from exposure to storm water.” If the tarps are applied correctly and maintained in good condition, they serve as an effective way to limit exposure of materials to storm water.

**Response:** The proposed final permit allows the use of properly secured temporary covers such as tarps. These control measures to address Waste Chemicals and Material Disposal must be maintained properly to ensure they are functioning at all times. Neither EPA nor Washington State Ecology allow the use of tarps to meet these narrative technology-based effluent limits. It is imperative for each facility to be diligent when performing required maintenance of temporary covers to prevent failure. As emphasized in the comment from several waste management companies, proper maintenance is crucial when using tarps. The proposed final permit requires permit registrants to cover all waste contained in bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to these pollutants; this includes scrap and waste materials.

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VIGOR INDUSTRIAL #21

**Description: Control Measures for Numeric and Narrative Technology-based Effluent Limits (TBELs) - Clarify when the 30 calendar day deadline starts; “implement corrective action before next storm event if practicable or no later than 30 calendar days”**

**Comment:** DEQ should also include clarification for the start of the 30 calendar-day clock, such as “30 calendar days from discovering the violation,” as is described in the current 1200-Z Permit.

**Response:** DEQ revised the permit condition to include “from discovering the violation” to ensure clarity on the start of the 30 days.

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VIGOR INDUSTRIAL #22

**Description: SWPCP Required Elements; Map - Should not require prescriptive labeling for substantially similar discharge points with an “SS”**

**Comment:** Language in this section should be revised less restrictively to: “indicate if any discharge points are ‘substantially similar’ and not being monitored.” For most facilities, monitoring points are already clearly labeled, and all discharge points are labeled with a unique identification number based on previous 1200-Z Permits. Maps can indicate substantially similar discharges in numerous ways. For example, Vigor’s site maps utilize color codes for drainage areas that are substantially similar and clearly indicate the monitoring point for each substantially similar group. The Draft 1200-Z Permit modifications should not try to constrain how required elements are presented on site maps when so much detail is required. Prescriptive labeling requirements can result in cluttered or confusing maps.

**Response:** DEQ did not include this requirement in the proposed final permit.

VIGOR INDUSTRIAL #23

**Description: Tier 1.5 - Clarify how triggering Tier 1.5 corrective action may impact Tier 2 corrective action**

**Comment:** For example, a facility may trigger Tier 1.5 corrective action at the first half of a monitoring year, implement Tier 1.5 corrective actions, and achieve sample results below benchmarks for the second half of a monitoring year, but still be pushed into Tier 2 corrective action if the annual geometric mean exceeds the benchmark. Once Tier 1.5 corrective action is required, the permit should provide waivers for requirements to implement Tier 2 corrective action, if Tier 1.5 corrective actions prove effective.

**Response:** Based on comments received regarding the application of Tier 1.5 requirements and the appropriateness of the Appendix B checklists across all the industrial sectors, DEQ removed the mandatory use of the Appendix B checklists and Tier 1.5 from the proposed final permit. Upon review of the Appendix B checklist, DEQ acknowledges that the requirements may not be appropriate for numerous facilities within various industries. Instead, the industrial-specific checklists have been revised to reduce duplicative requirements and are not incorporated into Tier 1 corrective action response as a tool for permit registrants.

DEQ notes that Schedule A.12 of the proposed Permit allowed for registrants to claim exemptions for Tier 2 corrective action requirements based on mass reduction or background waivers. Once Tier 2 is triggered, the corrective action response must include treatment and not just source and operational controls used during a Tier 1 corrective action response.

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VIGOR INDUSTRIAL #24

**Description: Tier 2 - Should not require sampling at all discharge points that make up a substantially similar group after Tier 2 implementation**

**Comment:** Substantially similar discharges must continue to be recognized, as provided in Schedule B.6.c.ii. While the Draft 1200-Z Permit does grant DEQ or DEQ's agent the ability to waive the requirement to monitor all substantially similar discharge points after Tier 2 implementation, this creates too much uncertainty because approvals can take a long time to be granted and/or may be rejected on an inconsistent basis without an opportunity to timely appeal that decision. It is appropriate in the permit to use monitoring at a 'representative discharge point' to assess the effectiveness of Tier 2 corrective actions, and thereafter, at the relevant 'substantially similar discharge' monitoring point. The justification for the exemption does not change because of a benchmark exceedance at the discharge point that is sampled. Moreover, because Tier 2 responses must be applied to all substantially similar discharge points, the discharge points should remain similar after the implementation of those responses.

**Response:** DEQ disagrees with this suggestion. The proposed final permit requires sampling at substantially similar discharge points post Tier 2 installation because the treatment or source control measures have changed and the permit registrant must demonstrate substantially similar effluent once again.

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**Description: Water Quality-based Effluent Limits - Revise and clarify, Schedule A.13.b: “If either of the following events occur based on sample results for total copper, total lead, or total zinc, and the permit registrant that discharges into Category 5: 303(d) listed waters for that pollutant, the permit registrant must comply with an effluent limit, established by DEQ, that equal to the applicable water quality criteria specified in Table 6 shall become effective for the remainder of the permit term”**

**Comment:** The sentence is incomplete and needs to be revised and clarified.

**Response:** Schedule A.13 has been revised to be consistent with the rest of permit terminology.

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VIGOR INDUSTRIAL #26

**Description: Sampling Procedures: Representative Sampling - Adjust overflow sampling requirements**

**Comment:** Schedule B.6.vi: Stormwater flows may combine into a common on-site treatment facility, discharge in excess of the design storm must be sampled as required to meet the minimum monitoring frequency. It is impractical, both from a technical and economic standpoint, to size systems to treat excess volumes from rare and infrequent events that exceed the approved design storm capacity. If a Registrant meets design storm requirements for treatment system sizing (and that design storm becomes part of the permit), discharges in excess of the design storm should not be required to be sampled. It may be reasonable to ask Registrants to notify DEQ when an overflow event occurs but requiring sampling of events exceeding the design storm is contrary to the inclusion of a design storm in the 1200-Z Permit in the first place. Such sampling would inevitably skew the annual discharge data based on an anomalous event (which, we note, is likely occurring during a very high volume/flow period without taking into account the diminished impact based on dilution in the receiving waterbody).

**Response:** An overflow is defined in Schedule F.B6 as: “any spill, release or diversion of sewage including: (1) An overflow that results in a discharge to waters of the state; and (2) An overflow of wastewater, including a wastewater backup into a building (other than a backup caused solely by a blockage or other malfunction in a privately owned sewer or building lateral), even if that overflow does not reach waters of the state.”

Schedule F.B3 refers to a bypass as: “intentional diversion of waste streams from any portion of the treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, provided the diversion is to allow essential maintenance to assure efficient operation.”

DEQ does not consider stormwater discharge from a treatment system in excess of the design storm as either an upset or a bypass as defined in the General Conditions, Schedule F of the permit. The sampling requirements in the permit include: four times a year, once a quarterly, 14-days apart and during the first 12-hours of the discharge event. It is up to the permit registrant to sample the minimum frequency as required. The permit states in Schedule B: “Stormwater flows may combine into a common on-site treatment facility, discharges in excess of the design storm capacity must be sampled as required to meet the minimum monitoring frequency.”

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**Description: Monitoring Waiver - Revise the permit to state end dates, it is unclear when the monitoring waiver ends**

**Comment:** Language is unclear if the monitoring waiver ends at the beginning of the fifth reporting year or at the end of the final reporting year/permit term. The 1200-Z Permit Evaluation Report indicates waivers will end at the conclusion of the final reporting year/permit term (as it has in past).

**Response:** The permit evaluation report has been edited to make it clear that all monitoring waivers approved under the proposed final permit will expire on July 1, 2025. All discharge monitoring must resume on July 1, 2025, through the end this permit cycle June 30, 2026. Existing facilities renewed to the next iteration of the 1200-Z are always required to monitor discharge until the monitoring waiver criteria has been met again. Essentially, this will provide DEQ will 2-full years of data, 1 year at the end of a permit cycle and 1 year at the beginning of a permit cycle, to inform stormwater discharge trends and future permit conditions.

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VIGOR INDUSTRIAL #28

**Description: Inspections; Visual Observation - Allow approval of adjustments to visual monitoring requirements**

**Comment:** Vigor currently has multiple discharge points, some of which are inaccessible during high Willamette River stages or require boat access. Under the current 1200-Z Permit, a facility may receive authorization to inspect select basins on a rotating quarterly basis and this should be maintained under the new permit. There should be explicit language in the permit to allow for DEQ or DEQ's agent to approve alternative inspection frequency and methodology.

**Response:** The 2018 permit has explicit language regarding this topic and the proposed final permit retains this allowance. The specific permit language reads: "For exceptionally large facilities where monthly inspections of all areas or visual observation at all substantially similar discharge points are infeasible, DEQ or agent may approve a modified inspection frequency."

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VIGOR INDUSTRIAL #29

**Description: Sampling Procedures - Clarify language for timing for monitoring vs. storm event**

**Comment:** The Draft 1200-Z Permit defines a storm event as a precipitation event that results in a measurable amount of precipitation and that follows the preceding storm event by at least 72 hours. DEQ should revise or clarify how this definition impacts monitoring within the first 12 hours of a storm and the requirement of 72 hours of separation between monitoring events. If the intent of the Draft 1200-Z Permit is to require a 72-hour dry period prior to a monitoring event, this will severely impact the number of qualifying storm water events that can be monitored. A more reasonable approach is to define a storm event as a precipitation event that is preceded by an antecedent dry period of 24 hours.

**Response:** The proposed final permit retained the current requirement that samples must be collected at least 14-days apart. Storm event means a precipitation event that results in a measurable amount of

precipitation (i.e., a storm event that results in an actual discharge). Allowing 14-days between monitoring events ensures that discharge samples are from different storm events. EPA's MSGP requires monitoring must be performed no sooner than 72-hours between storm events. In other words, there must be at least 3-days of no measureable storms between sample collection. To the commenter's point, if facility must wait for a 3-day dry period between sampling events it may be difficult certain times of the year in Oregon, especially on the coast. DEQ reviewed historic rain data indicating it is possible to collect two samples in a 6-month period with 3-days of no measurable precipitation in-between; but requiring a 72-hour separation between storm events would create unneeded complexity around sampling and weather tracking for little benefit.

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VIGOR INDUSTRIAL #30

**Description: Tier 1.5 Corrective Action Response - Corrective action 60-day submission timeline is unreasonable**

**Comment:** Given the vast length of some checklists and the capital-intensive items they include, a 60-day submission timeline stated in Schedule A.11.f.iii. is unreasonable, especially when considering the language in Schedule A.11.f.ii. stating that all measures must be implemented upon submission of the checklist.

**Response:** The proposed final permit does not include Tier 1.5 or Appendix B checklists. The permit registrant must act swift when there is evidence of pollution in the discharge. DEQ recommends that the industrial-specific checklists be used as an optional tool in response to a benchmark exceedance. DEQ considers the Tier 1 corrective action response schedule reasonable, even if the permit registrants chooses to complete and implement the industrial-specific checklists. However, DEQ acknowledges that some measures may take more time than 30 calendar days to implement as required in a Tier 1 response, therefore, the permit allows documentation of delays and alternative schedules as needed.

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VIGOR INDUSTRIAL #31

**Description: Applicable Water Quality Criteria; Table 6 - Clarify if registrant must meet all of the water quality discharge criteria under Table 6 if the Category 5: 303(d) listed water is listed for only one of the metals**

**Comment:** DEQ should specify that the Statewide benchmarks otherwise apply. Draft 1200-Z Permit should be revised to clarify whether a Registrant must comply with all parameters listed in Table 6 or only those applicable to a facility based on impairment category in the 2018/2020 Integrated Report.

**Response:** Each discharge is subject to Category 5 impairment listings specific to the receiving water and individual pollutants. For example, if the receiving river has a Category 5 impairment listing for zinc, that discharge point is subject to impairment requirements for zinc and will not be required to monitor for the zinc statewide benchmark. Impairment monitoring requirements would only apply to the specific impairment, in this case zinc. Schedule B.6 outlines the monitoring requirements by pollutant parameters, including monitoring requirements for same parameter. If a discharge point is subject to impaired monitoring or numeric water quality-based effluent limit for a parameter that also has a benchmark, the permit registrant will not be subject to benchmark monitoring at that discharge point.

## 35. Comments from: Yakama Nation Fisheries

YAKAMA NATION FISHERIES #1, Public Hearing Oral Comment

### **Description: Numeric Effluent Limits; Technology-based Effluent Limit - Should introduce numeric TBELs to the permit**

**Comment:** a 2018 settlement agreement called for ODEQ to develop numeric technology-based effluent limits for certain contaminants if possible, if not possible use benchmarks. The new permit does not include new numeric TBELs, only benchmarks, but it does not seem to comply with the conditions in the settlement agreement which laid out where benchmarks could be used instead of effluent limits. Those were identified as ODEQ would need to evaluate geographic and sector specific TBELs, temporal averages and site specific TBELs. Our comment would be that TBELs should have been introduced in the permit, not just benchmarks, and we don't see how the permit is compliant with the settlement agreement which calls for TBELs, not just benchmarks.

**Response:** As stated in Section 3.2.1 of the permit evaluation report, significant data gaps prevent adequate evaluation of feasible pollutant reductions throughout industries sufficient to establish numeric technology-based limits across industries. The high variability of effluent quality and unknown efficacy of appropriate control measures prevent has resulted in DEQ not proposing uniform numeric TBELs for stormwater in this rulemaking. Section 3.2.1 explains that current data has extremely high variability that would result in TBELs that are not protective of water quality and are significantly less effective than the proposed measures in the final draft permit. It is likely that this high variability is a result of varying treatment technologies, material handling practices, housekeeping measures, rainfall intensities, runoff coefficients, runoff volumes and intensities, site size, various levels of operation and maintenance of BMPs and treatment controls, and many other factors that are impractical to fully account for across industries. DEQ lacks, and would need sufficient data to account for all significant variabilities, many of which are not immediately apparent at this time due to the vast differences not only between industries, but also within industries. Further, DEQ would need sufficient data to evaluate the feasibility of the implementation of the various treatment technologies and BMPs throughout the industries. As illustrated in DEQ's November 13, 2019, Advisory Committee Meeting #3, the process EPA used for charactering a single industry (i.e., Airport Deicing) began in 1997 and was not completed until 2012. For coalbed methane EPA began studying the industry in 2007 and did not complete an economic analysis for the industry until 2013, at which point EPA determined that while effective technologies exist and may be affordable for some sites, these technologies are not economically achievable for the industry as a whole, and were thus inappropriate to establish effluent limitation guidelines for.

Further, if it were feasible to account for all significant variables and identify pollutant control measures for individual industries, due to the need to select feasible pollutant control measures that can be implemented throughout an industry and account for variable site conditions and rainfall intensity and duration, it is not certain that the characterization would result in numeric TBELs that are any more protective than the current requirements in Oregon. DEQ finds that the use of an adaptive management approach for each site is not only practical, but is likely to be the most effective approach.

DEQ continually attempts to increase its understanding of stormwater pollutant reduction capabilities for each permit renewal through a number of available resources. Stormwater data submitted consistent with the permit, multi-sector general permits issued by other states, EPA's multi-sector general permit, and other reliable sources that characterize stormwater pollutant reduction capabilities and practices for

industries are reviewed for each permit renewal. As the industries are better characterized, the potential for better pollutant reduction characterization exists and will be considered during subsequent permit renewals.

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YAKAMA NATION FISHERIES #2, Public Hearing Oral Comment

**Description: Water Quality-based Effluent Limits - Should be more numeric WQBELs added for each applicable pollutant where there are impaired waters.**

**Comment:** DEQ to adopt a methodology for calculating WQBELs and there has been a few added to the new permit, but we are going to be commenting that there should be more numeric WQBELs added for each applicable pollutant where there are impaired waters.

**Response:** DEQ discussed approaches for establishing water quality-based effluent limits (WQBELs) in multiple advisory committee meetings that occurred between May 7, 2019 and June 17, 2020. During the meetings, procedures for identifying pollutants of concern that should be subject to WQBELs were discussed, as well as methods and considerations for establishing WQBELs for various types of pollutants. DEQ developed a methodology for assessing the appropriateness of establishing WQBELs on a statewide basis for industrial stormwater discharges to impaired waters for which there is no EPA-approved TMDL. Section 3.8.1 in the permit evaluation report describes the data analysis performed by PG Environmental for DEQ for identifying pollutants present at a statewide level that have reasonable potential to cause or contribute to an exceedance above water quality standards. For iron and E. coli stormwater discharge that exceed the impairment concentrations in accordance with Schedule A.13, DEQ established an adaptive management strategy which utilizes narrative WQBELs. Under Schedule A.13 for pH, copper, lead and zinc numeric WQBELs will come into effect equal to impairment concentrations for monitoring points that exceeds the targets. The pH numeric WQBEL is set at the water quality criteria established at each basin-specific range. DEQ use median regional translators, where appropriate, to calculate the georegion concentrations.

YAKAMA NATION FISHERIES #1

**Description: Permit Evaluation Report - Benefit from technical editing**

**Comment:** Many sentences are unclear and should be revised by someone with expertise in technical writing. Though someone familiar with the permit jargon may be able to understand what was intended, the permit and the report both lack clarity and lend themselves to misinterpretation.

**Response:** Thank you for the input.

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YAKAMA NATION FISHERIES #2

**Description: Water Quality-based Effluent Limits - Lacks methodology for calculating or deriving numeric water quality-based effluent limits (WQBELs)**

**Comment:** Although the Settlement Agreement called for ODEQ to “develop a methodology for calculating or deriving numeric water quality-based effluent limits (WQBELs) on a site-specific, watershed-specific, or statewide basis for discharges to impaired waters for which there is no EPA-

approved TMDL, and shall make such methodology available to the Parties and the public”, the new permit does not contain such WQBELs except for a handful of pollutants.

**Response:** DEQ discussed approaches for establishing water quality-based effluent limits (WQBELs) in multiple advisory committee meetings that occurred between May 7, 2019 and June 17, 2020. During the meetings, procedures for identifying pollutants of concern that should be subject to WQBELs were discussed, as well as methods and considerations for establishing WQBELs for various types of pollutants. DEQ developed a methodology for assessing the appropriateness of establishing WQBELs on a statewide basis for industrial stormwater discharges to impaired waters for which there is no EPA-approved TMDL. Section 3.8.1 in the permit evaluation report describes the data analysis performed by DEQ for identifying pollutants present at a statewide-level which have reasonable potential to cause or contribute to an exceedance above water quality standards. For iron and E. coli that demonstrated reasonable potential to exceed water quality criteria, DEQ established an adaptive management strategy which utilizes impairment monitoring and narrative WQBELs. Under Schedule A.13 for pH, copper, lead and zinc numeric WQBELs will become effective equal to impairment monitoring concentrations when sample results exceeds the targets. pH numeric WQBEL is set at the water quality criteria established at each basin-specific range. DEQ used regional translators, where appropriate, to calculate the georegion concentrations.

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YAKAMA NATION FISHERIES #3

**Description: Water Quality-based Effluent Limits - Should develop a numeric WQBELs develop for each applicable pollutant**

**Comment:** NA

**Response:** 40 CFR 122.44(d)(1)(i) requires limitations to be established to control all pollutants that are discharged at a level that causes, has reasonable potential to cause, or to contribute to an excursion above the applicable water quality standard. WQBELs are not required for all parameters but only for those pollutants that meet the reasonable potential standard. In the proposed final permit, DEQ utilized a 10 percent risk threshold in reasonable potential analyses of discharge data collected over an 18-year period. In general, acute aquatic life criteria were the applicable water quality criteria applied in the permit. The selection of the 10 percent risk threshold is a conservative value designed to be protective of applicable criteria and its maximum allowable exceedance frequency.

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YAKAMA NATION FISHERIES #4

**Description: Numeric Effluent Limits; Technology-based Effluent Limit - Describe how ODEQ conducted evaluation to develop geographic and sector- specific TBELs, temporal averages, and site-specific TBELs**

**Comment:** Although the Settlement Agreement called for ODEQ to develop numeric technology- based effluent limits (TBELs) for certain contaminants if possible and benchmarks if TBELs are not possible, the new permit does not include new numeric TBELs, only benchmarks. The Settlement Agreement lays out specific conditions under which benchmarks can be selected instead of effluent limits: ODEQ needs to evaluate geographic and sector- specific TBELs, temporal averages, and site-specific TBELs. Please describe if ODEQ conducted these evaluations or plans to.

**Response:** As stated in Section 3.2.1 of the permit evaluation report, significant data gaps prevent adequate evaluation of feasible pollutant reductions throughout industries sufficient to establish numeric technology-based limits across industries. The high variability of effluent quality and unknown efficacy of appropriate control measures prevent has resulted in DEQ not proposing uniform numeric TBELs for stormwater in this rulemaking. Section 3.2.1 explains that current data has extremely high variability that would result in TBELs that are not protective of water quality and are significantly less effective than the proposed measures in the final draft permit. It is likely that this high variability is a result of varying treatment technologies, material handling practices, housekeeping measures, rainfall intensities, runoff coefficients, runoff volumes and intensities, site size, various levels of operation and maintenance of BMPs and treatment controls, and many other factors that are impractical to fully account for across industries. DEQ lacks, and would need sufficient data to account for all significant variabilities, many of which are not immediately apparent at this time due to the vast differences not only between industries, but also within industries. Further, DEQ would need sufficient data to evaluate the feasibility of the implementation of the various treatment technologies and BMPs throughout the industries. As illustrated in DEQ's November 13, 2019, Advisory Committee Meeting #3, the process EPA used for charactering a single industry (i.e., Airport Deicing) began in 1997 and was not completed until 2012. For coalbed methane EPA began studying the industry in 2007 and did not complete an economic analysis for the industry until 2013, at which point EPA determined that while effective technologies exist and may be affordable for some sites, these technologies are not economically achievable for the industry as a whole, and were thus inappropriate to establish effluent limitation guidelines for.

Further, if it were feasible to account for all significant variables and identify pollutant control measures for individual industries, due to the need to select feasible pollutant control measures that can be implemented throughout an industry and account for variable site conditions and rainfall intensity and duration, it is not certain that the characterization would result in numeric TBELs that are any more protective than the current requirements in Oregon. DEQ finds that the use of an adaptive management approach for each site is not only practical, but is likely to be the most effective approach.

DEQ continually attempts to increase its understanding of stormwater pollutant reduction capabilities for each permit renewal through a number of available resources. Stormwater data submitted consistent with the permit, multi-sector general permits issued by other states, EPA's multi-sector general permit, and other reliable sources that characterize stormwater pollutant reduction capabilities and practices for industries are reviewed for each permit renewal. As the industries are better characterized, the potential for better pollutant reduction characterization exists and will be considered during subsequent permit renewals.

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#### YAKAMA NATION FISHERIES #5

**Description: Sources Covered Under this Permit; Table 2 - Explain the meaning of the last phrase of that paragraph "and are regulated for existing facilities covered under Table 1"**

**Comment:** That final phrase seems redundant with the first phrase of the sentence, so it is unclear how to interpret it.

**Response:** The proposed final permit does not include this provision. However, DEQ requires the regulation of all industrial activities exposed to stormwater discharge under Table 2 and as defined in Schedule D under stormwater associated with industrial activity and (40 CFR 122.26(b)(14)) under this general permit.

YAKAMA NATION FISHERIES #6

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Conditions for new dischargers to an impaired water without a Total Maximum Daily Load (TMDL), based on the EPA-approved Category 5: 303(d) list too long and difficult to interpret**

**Comment:** Permit states: “A new discharger to an impaired water without a Total Maximum Daily Load (TMDL), based on the EPA-approved Category 5: 303(d) list for pH, copper, lead, zinc, iron and bacteria must meet one of the following conditions to obtain coverage under this permit and document in applicant’s Stormwater Pollution Control Plan (SWPCP) justification of compliance by:” (followed by a list of conditions). This sentence is too long and difficult to interpret. Do these conditions apply only to waters impaired for these specific pollutants and not to waters impaired for other pollutants? Are there any requirements for waters impaired for other pollutants? We recommend these conditions should apply to all impaired waters.

**Response:** DEQ has revised the text to improve clarity, as provided below. DEQ has narrowed the list of applicable pollutants requiring demonstration to pollutants of concern for industrial stormwater. For additional pollutants, Schedule A.3 specifically prohibits a permit registrant from causing or contributing to an exceedance of instream water quality standards for all pollutants with applicable criteria established in OAR 340-041. Condition I requires that if at any time of permit application the applicant cannot demonstrate that discharge will not causes or contributes to an exceedance of instream water quality standards, the permit applicant will not meet the eligibility for permit coverage determined by DEQ or agent. This is consistent with federal regulations.

DEQ hired technical support from PG Environmental during this renewal and rulemaking. One of the many tasks PG Environmental completed was to analyze all analytical stormwater data from discharges into over 180 water bodies throughout Oregon for exceedance trends. In doing this work PG Environmental summarized exceedances of 10 percent or more within each water body, sector and specific pollutant. Stormwater data reported on 1200-Z Discharge Monitoring Report forms between January 2000 and December 2018 were evaluated. Once the exceedances trends were known, DEQ further evaluated those trends against the 2018/2020 Integrated Report and performed quality checks on the analyses. Based on reasonable potential of exceeding the concentrations by more than 10 percent, the impaired list of pollutants for industrial stormwater is pH, copper, lead, zinc, iron and E. coli. The proposed final permit retains the current provision that DEQ or agent may assign additional impairment monitoring when necessary based on the effective 303(d) list and the application materials submitted. DEQ has required impairment monitoring for all pollutants that correspond to discharges into 303(d) listed water bodies since 2012. After evaluating robust stormwater discharge data, DEQ finds continued monitoring for all impairment pollutants is not warranted because the data results trends show industrial stormwater discharges are not exceeding water quality standards.

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YAKAMA NATION FISHERIES #7

**Description: Sources Covered Under this Permit; Table 2 - Confirm facilities with the additional industrial activities in Table 2 that discharge into the Columbia Slough or Portland Harbor are required to obtain permit coverage under the NPDES 1200-Z or individual permit, since permit uses “eligible”**



**Comment:** Permit states that facilities with the additional industrial activities in Table 2 that discharge into the Columbia Slough or Portland Harbor are eligible to obtain permit coverage under the NPDES 1200-Z. Please confirm- are they required to obtain this permit coverage (or an individual permit, at their discretion)? As written, the permit seems to imply that they have the option but no requirement. We recommend this should be phrased as a requirement.

**Response:** Federal regulations at 40 CFR 122.26(b)(14)(i)-(xi) require stormwater discharges associated with specific categories of industrial activity to be covered under NPDES permits. DEQ has expanded this requirement to facilities that discharge stormwater into the Columbia Slough or Portland Harbor that is exposed to any of the industrial activities listed in Table 2. The permit also states on page 2: “Unless specifically authorized by this permit, by regulation issued by EPA, by another NPDES permit, or by Oregon Administrative Rule, any other direct or indirect discharge to waters of the state is prohibited, including non-stormwater discharges to an underground injection control system.” The word eligible is consistent with EPA’s MSGP, which specifies the sources that are “eligible” to obtain coverage or apply for an individual permit. The permit is also clear in Condition I: “If coverage is denied or the applicant does not wish to be regulated by this permit, the applicant must apply for an individual permit in accordance with OAR 340-045-0030 or cease discharge.” No facilities that discharge stormwater into the Columbia Slough or Portland Harbor that is exposed to any of the industrial activities listed in Table 2 or Table 1 may operate without NPDES coverage.

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YAKAMA NATION FISHERIES #8

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Does not make grammatical sense and section is not clear, words missing**

**Comment:** On page 6 of the redline permit, the phrase “justification of compliance by: Prevent all pollutants...” does not make grammatical sense so it is not clear if some words are missing. Additionally, there is an “or” between the first two conditions, but the “or” between the second and third was deleted, which is inconsistent. Overall, the reader is left uncertain about exactly what is required. Please revise to clarify.

**Response:** The intent of the section is clear; that one of the listed methods must be selected, implemented, and documented in the applicant’s SWPCP; however, the provision below was revised.

- a. A new discharger to an impaired water without a Total Maximum Daily Load (TMDL), based on the EPA-approved Category 5: 303(d) list in effect at the time of permit application for pH, copper, lead, zinc, iron, and E. coli that correspond to the specific pollutant(s) for which the water body is impaired must meet one of the following conditions to obtain coverage under this permit:
  - i. Prevent exposure to stormwater for pH, copper, lead, zinc, iron and E. coli that correspond to the specific pollutant(s) for which the water body is impaired. Document the procedures taken to prevent exposure in the Stormwater Pollution Control Plan (SWPCP).
  - ii. Provide technical demonstrations that sources of pH, copper, lead, zinc, iron and E.coli that correspond to the specific pollutant(s) for which the water body is impaired are not present at the site and document these findings and considerations in the SWPCP.
  - iii. Provide DEQ or agent stormwater discharge analytical sampling results to demonstrate the discharge of stormwater is not expected to cause or contribute to an exceedance of water quality standards for pH, copper, lead, zinc, iron and E. coli that correspond to the specific pollutant(s) for which the water body is impaired at the point of discharge and retain in the SWPCP.

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Clarify: “Provide any analytical sampling results of stormwater discharge for any impairment pollutants. New dischargers are obligated to provide all sampling results”**

**Comment:** Item 1.a.iv on page 6 of the redline permit says new dischargers must “Provide any analytical sampling results of stormwater discharge for any impairment pollutants. New dischargers are obligated to provide all sampling results.” It is unclear what is meant by “all.” For all pollutants and all sampling events? How does this sentence relate to the preceding sentence which says new dischargers must provide “any” analytical sampling results? Please clarify whether this is redundant with the previous sentence or is somehow in addition to that sentence. A new discharger to an impaired water without a Total Maximum Daily Load (TMDL), for pH, copper, lead, zinc, iron, and E. coli on the EPA-approved Category 5: 303(d) list at the time of application must meet one of the following conditions to obtain coverage under this permit: i. Prevent exposure to stormwater for sources of pH, copper, lead, zinc, and E. coli and document in the Stormwater Pollution Control Plan (SWPCP) procedures taken to prevent exposure. ii. Provide technical demonstrations that pH, copper, lead, zinc, iron and E.coli sources are not present at the site and documents in the SWPCP. iii. When available, provide any analytical sampling results of stormwater discharge to demonstrate discharge is not expected to cause or contribute to an exceedance of water quality standards for pH, copper, lead, zinc, iron and E. coli at the point of discharge.

**Response:** The new discharger section was revised to: “A new discharger to an impaired water without a Total Maximum Daily Load (TMDL), based on the EPA-approved Category 5: 303(d) list in effect at the time of permit application for pH, copper, lead, zinc, iron, and E. coli that correspond to the specific pollutant(s) for which the water body is impaired must meet one of the following conditions to obtain coverage under this permit:

- i. Prevent exposure to stormwater for pH, copper, lead, zinc, iron and E. coli that correspond to the specific pollutant(s) for which the water body is impaired. Document the procedures taken to prevent exposure in the Stormwater Pollution Control Plan (SWPCP).
- ii. Provide technical demonstrations that sources of pH, copper, lead, zinc, iron and E.coli that correspond to the specific pollutant(s) for which the water body is impaired are not present at the site and document these findings and considerations in the SWPCP.
- iii. Provide DEQ or agent stormwater discharge analytical sampling results to demonstrate the discharge of stormwater is not expected to cause or contribute to an exceedance of water quality standards for pH, copper, lead, zinc, iron and E. coli that correspond to the specific pollutant(s) for which the water body is impaired at the point of discharge and retain in the SWPCP.

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YAKAMA NATION FISHERIES #10

**Description: Permit Coverage and Exclusion from Coverage; New Discharger - Should not allow new discharges to impaired waters without assessing their impact for discharge into water body if there is a TMDL without a WLA for industrial stormwater**

**Comment:** Page 6 of the redline permit, 1.c.i states that if there is a TMDL without a WLA for industrial stormwater, “the compliance with the terms and conditions of the permit is presumed consistent with the TMDL.” No data are presented to support that presumption. The permit should not allow new discharges to impaired waters without assessing their impact.

**Response:** DEQ agrees that new dischargers that do not have an applicable WLA for a TMDL cannot increase pollutant loading of the impairing pollutant. The requirements established in Condition I.1 of the permit prevent increased pollutant loading from new dischargers to impaired waterbodies, and effectively establishes a WLA of zero for the applicable pollutant. The permit does not provide for new dischargers to increase pollutant loading to impaired waters, and is thus consistent with all TMDLs.

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#### YAKAMA NATION FISHERIES #11

**Description: Water Quality Standards - Recommend providing specific guidance on where the upstream and downstream sampling must occur in order to establish discharge caused or contributed to a water quality standards exceedance**

**Comment:** Page 17 of the redline permit states that the permit registrant must not cause or contribute to an exceedance of instream water quality standards. The permit evaluation report (see comment below) states that “Water quality samples collected from the facilities’ discharge along with samples at upstream and downstream locations in the receiving waterbody are required to establish that a permit registrants’ discharge caused or contributed to a water quality standards exceedance.” However, the permit does not mention the upstream and downstream sampling, nor give guidance on how the water quality sampling results are to be evaluated to establish that the discharge causes or contributes to a water quality exceedance. We recommend providing specific guidance on where the upstream and downstream sampling must occur, who is responsible for conducting the sampling, and the allowable deviation from the upstream concentrations.

**Response:** Although for some water quality standards such as turbidity, upstream and downstream samples must be taken to establish background this is not the case for many established water quality standards. DEQ has revised the permit evaluation report in response to the comment. An exceedance of water quality standards will be determined on a case-by-case basis.

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#### YAKAMA NATION FISHERIES #12

**Description: Tier 2 Background Waiver - Clearly define calculation method to subtract out background contamination**

**Comment:** Page 30 of the redline permit discusses the background waiver. If permittees are to be allowed to subtract out background contamination, the permit should more clearly define the calculation method. Please state that the geometric mean must be calculated first and then background subtracted from the result (do not subtract background from the monitoring results before calculating the geometric mean, which would result in a different, lower number). Please explain the rationale for using the geometric mean rather than another measure of central tendency. In small datasets (such as those expected here, with only a few sampling events), the geometric mean may be a poor representation of the data (Vogel, 2020).

**Response:** DEQ did not retain the calculation method to subtract out background contamination in the proposed final permit.

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**Description: Sampling Procedures - Not explicitly stated to specify any quality assurance requirements or any requirements regarding the analytical methods to be used for monitoring**

**Comment:** The permit does not appear to specify any quality assurance requirements or any requirements regarding the analytical methods to be used for monitoring. ODEQ staff stated in a conversation with Yakama Nation Fisheries that federal requirements will apply, however, this did not appear to be explicitly stated within the permit itself. Please clarify what the requirements are and where they are defined. Many of the monitoring exemptions allow registrants to stop monitoring after a certain number of non-detect results, which could incentivize using less sensitive lab methods with high detection limits. It is important to get low detection limits to the extent possible, since the rulemaking meetings included extensive discussion of limitations on the data and inability to tell what TBELs should be.

**Response:** Schedule F. C3 requires: "Monitoring must be conducted according to test procedures approved under 40 CFR part 136..."

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YAKAMA NATION FISHERIES #14

**Description: Impaired Pollutants - Should ensure that pollutants potentially causing impairments have been evaluated such as water bodies with biological (fish tissue or benthic community) impairments where water quality has not been monitored**

**Comment:** Page 36 of the redline permit states that discharges to impaired waters are exempt from monitoring if no pollutant is specified as causing the impairment. To the extent that pollutants have been adequately monitored in the past and considered in developing the 303(d) list, it is acceptable to focus monitoring on those water bodies where the impairment is related to water quality. However, if there are water bodies with biological (fish tissue or benthic community) impairments where water quality has not been monitored, then this exclusion would represent a loophole. DEQ should ensure that pollutants potentially causing impairments have been evaluated.

**Response:** It is unclear to which regulation the comment is suggesting a loophole exists. Foregoing monitoring of unidentified causative pollutants in water bodies with biological impairments where pollutants and/or sources have not been identified is not a loophole in the proposed final 1200-Z permit. Where the sources of impairments have not been identified, DEQ would not know which pollutants to monitor as the causative pollutant of the underlining issue(s). The permit does not require monitoring for biological communities (biocriteria), including harmful algal blooms and aquatic weeds, where no pollutant including indicator or surrogate pollutants, has been specified as causing the impairment. When additional data becomes available to complete a stressor identification process that will identify the pollutants causing biological impairments, DEQ will update the 303(d) list of impaired waters to identify the pollutants of concern. The current 303 (d) is used to develop permit conditions when NPDES permits are renewed or developed.

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YAKAMA NATION FISHERIES #15

**Description: Monitoring Waiver - The National Academies report recommends that monitoring should be required throughout the entire permit term (National Academies, 2019)**

**Comment:** Page 39 of the redline permit modifies the permit waiver requirement to require five consecutive quarters of compliance before allowing a waiver, however, the possibility remains to skip several years of monitoring. The National Academies report recommends that monitoring should be required throughout the entire permit term (National Academies, 2019). Since the permit term is generally five years, the National Academies report points out that such an approach allows facilities to avoid monitoring approximately four years. Natural variability in wet versus dry years and potential variation in facility practices may mean that the first year of monitoring is unrepresentative. Therefore, the National Academies report recommends at least annual sampling. Columbia Riverkeeper submitted similar comments on ODEQ's 2017 permit, raising concerns that the waiver option incentivizes facilities to focus on compliance only for the first year of their permit to meet monitoring requirements and then relax housekeeping practices over subsequent years (NEDC et al., 2017). While ODEQ and its agents inspect facilities at least once per permit term, these inspections may not be sufficient to ensure concentrations remain low.

**Response:** DEQ appreciates the comment. The National Academy of Sciences report (2019) was commissioned by EPA to evaluate the federal multi-sector general permit. The federal industrial stormwater discharge permit does not currently require any monitoring for several industrial sectors at any time during the 5-year cycle. DEQ's 1200-Z has modified the monitoring waiver provision taking into account the National Academy of Sciences findings concerning waiver allowances. Stormwater discharge data is tremendously important to DEQ when making permit decisions. By revising the monitoring waiver criteria to include more data and no longer granting waivers until the end of the permit cycle, DEQ will obtain more analytical data to evaluate facilities pollution prevention performance. EPA's final MSGP allows monitoring waivers, a shift from their proposed 2020 MSGP released for public comment. In the final MSGP, an operator that does not exceed the annual average for a given parameter is allowed to discontinue monitoring for a total of three years. Although, the timing of the monitoring waiver is different, this is consistent with the proposed final permit.

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YAKAMA NATION FISHERIES #16

**Description: Portland Harbor Georegion - Should add PAH monitoring to the permit requirements for facilities in relevant sectors in the Portland Harbor region, especially since the oil and grease benchmark has been removed**

**Comment:** The National Academies report recommended that sector-specific monitoring requirements should be updated to reflect the classes of contaminants used on site. They identified PAHs as a potential monitoring need for certain industrial sectors (National Academies, 2019). Given that PAHs are driving the need for cleanup in Portland Harbor, including at the Gasco site and Terminal 4, PAH monitoring should be added to the permit requirements for facilities in relevant sectors in the Portland Harbor region, especially since the oil and grease benchmark has been removed.

**Response:** During the early development of EPA's industrial stormwater permitting program, EPA conducted statistical analyses of oil and grease for every industry sector. EPA's MSGP does not require oil and grease benchmark monitoring. Further, DEQ clarifies that there currently are no sectors with specific requirements for monitoring PAHs. DEQ acknowledges that PAHs are driving sediment remediation at the Gasco area of Portland Harbor. However, this remediation driver is due to significant tar and manufactured gas waste in the sediment, and not due to the minimal volumes of stormwater discharged with low concentrations of PAHs. For these reasons, DEQ did not make the requested change.

EPA's final industrial permit requires PAH monitoring for certain industrial sectors. The recommendation from the National Academies of Sciences Report and the subsequent PAH monitoring by EPA is for characterization purposes only. EPA does not establish any concentration thresholds or corrective action requirements associated with PAH monitoring. EPA will use sample results to identify industrial activities with the potential to discharge PAHs in stormwater, and inform future consideration of potential PAH benchmark monitoring for sectors with the potential to discharge PAHs in stormwater. DEQ has several years of monitoring results for PAH from a wide variety of industrial sectors. DEQ has evaluated thousands of PAH individual parameter sample results as part of the rulemaking and has determined monitoring is not warranted based on very low number of exceedances over the course of several years. Additionally, every facility must "employ oil/water separators, booms, skimmers or other methods to eliminate or minimize oil and grease contamination in stormwater discharges" as a narrative TBEL.

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#### YAKAMA NATION FISHERIES #17

**Description: Portland Harbor Cleanup - Account for the source control screening levels in the permit given that they have been determined by the cleanup program to be necessary for protection of the Superfund site - it's important facilities continue to monitor for pollutants of concern for Portland Harbor**

**Comment:** Previous versions of the 1200-Z permit required routine monitoring for cadmium, nickel, chromium, mercury, and PCBs, but in the 2017 and 2018 versions of the permit, ODEQ eliminated the requirement for routine monitoring of these contaminants, and it has not been reinstated in the 2020 version. City of Portland commented on the 2017 permit that the acute water quality criterion for PCBs was not protective of human consumption of fish, and that PCBs should be addressed at lower concentrations to meet Portland Harbor cleanup targets. The city also made a similar comment regarding DDE, noting that ODEQ's cleanup program is using screening levels of 0.000064 µg/L for PCBs and 0.0022 µg/L for DDE to determine where source control is required. The source control program for Portland Harbor had relied on the permitting program for monitoring data. To ensure Portland Harbor Superfund protection, facilities must monitor for sediment copper, lead, zinc, cadmium, nickel, chromium, chlordane, cyanide, hexachlorobenzene, PCBs, iron, aldrin, DDT, DDE, dieldrin, pentachlorophenol, and PAHs in the permit.

**Response:** The 2018 1200-Z permit requires monitoring of cadmium, nickel, chromium, mercury, and PCBs for discharges from some industrial sectors and to waterways impaired for those parameters (including Portland Harbor for mercury and PCBs). DEQ's Portland Harbor Source Control program does not rely exclusively on 1200-Z monitoring when making stormwater source control decisions. Rather, source control investigation and monitoring is guided by DEQ's Guidance for Evaluating the Stormwater Pathway at Upland Sites, which is applied at sites that may or may not be registered under the 1200-Z permit. In 2012 the permit included additional monitoring for cadmium, nickel, chromium, mercury and PCB's. Mercury and PCB monitoring was only required for Sector N: Scrap and Waste Materials, Mercury for auto dismantlers and cadmium, nickel, chromium for all permit registrants. Because the majority of the data received were below water quality criteria, routine monitoring of these pollutants was not included in the 2017 permit. The impairment monitoring results that DEQ evaluated for discharges within the Portland Harbor includes more than 1000 samples for most pollutants listed in the comment. All of that data results at 0-5 percent exceedance for each pollutant type. This means the majority of data shows no exceedance of the impairment concentrations out of more than 1000 sample size. The data indicates continued monitoring of any of the pollutants in the suggested change are not warranted. In addition, the 2018/2020 Integrated Report delisted copper, iron, and lead in the Portland Harbor.

YAKAMA NATION FISHERIES #18

**Description: Permit Evaluation Report - Section 1.0 header with no content**

**Comment:** Was any content accidentally deleted?

**Response:** Thank you for the question. There was nothing deleted, but there was a header formatting issue which have been fixed based on the comment.

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YAKAMA NATION FISHERIES #19

**Description: Permit Evaluation Report - Should explicitly state whether the new permit adds effluent limits or not**

**Comment:** Section 2.3 (page 6) says “DEQ’s general permit mimics the approach EPA has taken with 2020 proposed stormwater general permit, which focuses less on additional narrative technology-based effluent limits...” It is unclear what it means to “focus less” on additional effluent limits. This sentence should instead explicitly state whether the new permit adds effluent limits or not.

**Response:** The permit evaluation report was edited in response to the comment. Section 3.1.2 describes all the changes to narrative technology-based effluent limits in the permit.

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YAKAMA NATION FISHERIES #20

**Description: Permit Evaluation Report - Explain apparent contradiction that new less stringent benchmarks are as protective of water quality as previous benchmarks**

**Comment:** Page 9, first paragraph states that some of the new benchmarks are less stringent than in the 2017 version of the permit, but that they are as protective of water quality as the previous benchmarks. This apparent contradiction requires further explanation. Less stringent is commonly understood to mean less protective.

**Response:** The proposed final benchmarks were developed using the same methodology as the 2017 benchmarks, factoring in updated receiving water characteristics (e.g., background data, dilution, and hardness) to be protective of water quality standards. The updated benchmarks were anticipated to result in similar downstream water quality that is consistent with applicable water quality standards. It should be noted that based on additional comments submitted related to the benchmarks, the previously proposed benchmarks have been revised to account further for metals translators within waterbodies by georegion. Since the metals benchmarks are calculated from the acute aquatic life criterion, the revised benchmarks continue to be protective of the downstream water quality. In addition, the proposed final permit includes benchmarks for specific georegions that have not been included in previous permits. The regional zinc benchmark concentration was changed from 0.090 mg/L to 0.12 mg/L in the 2018 permit as agreed upon by the settlement terms.

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**Description: Permit Evaluation Report - Explain how ODEQ determined oil and grease benchmark is “not a good indicator of pollution”**

**Comment:** Page 9, third paragraph states that ODEQ removed the oil and grease benchmark because it was “not a good indicator of pollution.” Please explain how this was evaluated. Does this mean that it provides false negatives or false positives? In comparison to what other lines of evidence regarding the true level of pollution? Please explain if there are alternate indicators of pollution still included in the permit that would make up for this. This paragraph mentions using visible oil sheen as an indicator. Are there any other chemical indicators that will be required, such as measurement of polycyclic aromatic hydrocarbons (PAHs) or total petroleum hydrocarbons (TPH)?

**Response:** DEQ revised the section in the PER referenced in the comment to clarify that it is infeasible to develop an oil and grease benchmark which reflects a reliable translation of the applicable narrative water quality standard for oil and grease. The applicable narrative criterion (OAR 340-041-0007) states: “[o]bjectionable discoloration, scum, oily sheens, or floating solids, or coating of aquatic life with oil films may not be allowed.” A numeric benchmark which will indicate compliance or non-compliance with the narrative criterion will be highly site and industry-specific. The oil and grease benchmark in the previous permit did not reflect this specificity and may not have been a reliable translation of the narrative standard in all cases.

The relevant sentence of the PER now reads: “DEQ has determined the oil and grease benchmark may not be a reliable indicator of the presence of the pollutant at levels consistent with the applicable water quality standard.”

In addition, CWA section 402(a)(2) obligates the permitting authority to prescribe conditions within permits that assure compliance, including conditions on data and information collection, reporting, and such other requirements deemed necessary. In simple terms, if there is a permit requirement, we need to be able to access compliance. Combined with other monitoring, visual assessments provide a cost effective method to achieve this requirement specified in the CWA. DEQ and EPA find that visual observation of signs of pollution is an appropriate monitoring strategy to prevent the potential of petroleum products in the discharge.

DEQ evaluated stormwater data results for PAH from 2000-2018 and determined continued monitoring is not required as the vast majority of the data was under the concentrations required by the permit.

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YAKAMA NATION FISHERIES #22

**Description: Permit Evaluation Report - More specifics reference needed beyond Section 4.0 to explanation of narrative and numeric water quality-based effluent limits**

**Comment:** The second paragraph of page 10 refers to Section 4.0 of the report. A more specific reference should be provided. This information is not in section 4.0; is it in a different subsection of section 4?

**Response:** There are several sections within Section 3.0 that describe the approach for existing dischargers into impaired waters related to narrative and numeric water quality-based effluent limits. Those include 3.3, 3.4 and 3.8. The permit evaluation report has been revised.



YAKAMA NATION FISHERIES #23

**Description: Permit Evaluation Report - Expand on: “the narrative and numeric water quality-based effluent limitations which have been established for pollutants of concern for discharges to impaired waters where an adaptive management approach is determined to be insufficient”**

**Comment:** The second paragraph of page 10 of the report refers to “the narrative and numeric water quality-based effluent limitations which have been established for pollutants of concern for discharges to impaired waters where an adaptive management approach is determined to be insufficient.” It is not clear what water bodies this applies to. What exactly is the adaptive management approach in this context? What is the process for determining it is insufficient for a specific water body? Are there any such water bodies where an adaptive management approach has been determined to be insufficient, or anywhere ODEQ is currently evaluating to determine whether it is insufficient?

**Response:** When it comes to compliance with water quality-based effluent limits associated with discharges into 303(d) listed water bodies, the permit does not outline the appropriate control measures a facility must use when monitoring results show elevated levels of a pollutant. The structure of the permit relies on each facility to respond by making changes to the industrial site to mitigate pollutant discharges into impaired waters. This is the adaptive management required by the permit registrant. If the permit registrant is unsuccessful and monitoring results continue to exceed the impairment pollutant concentrations that discharge point will be subject to water quality-based effluent limit. Each facility that discharges into a Category 5: 303(d) listed receiving water body for pH, copper, lead, zinc, iron and E. coli will be subject to impairment monitoring and escalating response to exceedances.

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YAKAMA NATION FISHERIES #24

**Description: Permit Evaluation Report - Explain how Columbia Slough TMDL wasteload allocation was applied**

**Comment:** The third paragraph on page 10 refers to a benchmark in this permit based on the Columbia Slough TMDL WLA for industrial wastewater. Explain how the wastewater WLA was applied to industrial stormwater for this permit. Is ODEQ generally applying wastewater WLAs to stormwater?

**Response:** The paragraph in question from the PER reads: “The 1998 EPA-approved Columbia Slough TMDL with specific wasteload allocations calling for a reduction biochemical oxygen demand in industrial stormwater discharge. The permit reflects compliance with the terms and conditions the Columbia Slough TMDL for pollutants approved by EPA on November 25, 1998.”

Schedule D of the permit defines a wasteload allocation as “the portion of receiving water’s loading capacity that is allocated to one of its existing or future point sources of pollution.” Industrial stormwater sources covered under the permit are considered “point sources”, consistent with the terms of the Columbia Slough TMDL and Section 502 of the CWA. The permit implements the wasteload allocation for industrial stormwater established in the Columbia Slough TMDL, and considers changes in land use and water quality since TMDL development. A weighted mean BOD concentration was calculated based on the known land use, updated background concentration, and applicable increased acreage to be compliant with the WLA. A detailed description of the process was provided on April 16, 2020, during an

Advisory Committee Meeting. Both the presentation and meeting summary notes are available at:  
<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx>

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YAKAMA NATION FISHERIES #25

**Description: Permit Evaluation Report - Explain how the impairment list of pollutants was limited to pH, copper, lead, zinc, bacteria and iron; how was mercury impairment in the Willamette considered**

**Comment:** On Page 14 of the report, please define what is meant by “pollutants are limited to pH, copper, lead ...” Does this mean that only those pollutants were considered when developing the 303d list? Or only those pollutants were considered when developing this permit? How was mercury impairment in the Willamette considered?

**Response:** DEQ hired technical support from PG Environmental during this renewal and rulemaking. One of the many tasks PG Environmental completed was to analyze all analytical stormwater data from discharges into over 180 water bodies throughout Oregon for exceedance trends. In doing this work PG Environmental summarized exceedances of 10 percent or more within each water body, sector and specific pollutant. Stormwater data reported on 1200-Z Discharge Monitoring Report forms between January 2000 and December 2018 were evaluated. Once the exceedances trends were known, DEQ further evaluated those trends against the 2018/2020 Integrated Report and performed quality checks on the analyses. Based on reasonable potential of exceeding the concentrations by more than 10 percent, the impaired list of pollutants for industrial stormwater is pH, copper, lead, zinc, iron and E. coli. All of this information and evaluations are found on DEQ’s rulemaking webpage, including meeting presentations by PG Environmental and DEQ and meeting summaries.

DEQ and EPA evaluated stormwater pollutant loads in the Willamette Basin Mercury TMDL approved by EPA. Based on the technical work done in the TMDL to determine the sources of mercury in the Willamette based and Water Quality Management plan, DEQ is not proposing additional requirements on the 1200-Z permit to implement the aggregated stormwater sector wasteload allocation at this time.

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YAKAMA NATION FISHERIES #26

**Description: Permit Evaluation Report - Explain which pollutants permit registrants were required to sample for based on Category 5: 303(d) waters dischargers since 2012**

**Comment:** On Page 14 of the report please revise this sentence for clarity: “Permit registrants have been required to sample for Category 5: 303(d) waters dischargers since 2012.” Please explain which pollutants they were required to sample for. The next sentence refers to “those pollutants” but “those” is missing an antecedent.

**Response:** The PER was revised for clarity. Permit registrants have been required to sample discharges for all impairments on the Category 5: 303(d) list since 2012. For waterbodies with impairments for a

particular pollutant, PG Environmental evaluated all representative data for discharges of that pollutant to the impaired waterbody, regardless of the monitoring type. This means the analyses considered impairment monitoring, but also benchmark monitoring, limit monitoring, and additional monitoring when evaluating impairment trends for the same pollutant. For example, if a facility was assigned impairment monitoring for zinc, PG Environmental used both benchmark and impairment analytical results for zinc in their analyses.

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YAKAMA NATION FISHERIES #27

**Description: Permit Evaluation Report - Add clarity to impairment analysis conducted as part of the rulemaking process write up**

**Comment:** Pages 14-15 describe the impairment analysis conducted as part of the rulemaking process. This description lacks clarity: it mentions “reference concentrations” but doesn’t define whether this term means the same thing as the “impairment concentrations” mentioned earlier in the paragraph. The first paragraph on page 15 mentions “exceeding the concentrations by more than 10 percent” but doesn’t specify if this refers to the impairment concentrations or reference concentrations. It’s also unclear why this paragraph is placed in this section of the report (new discharger to impaired waters), since it seems unrelated to what came before and after.

**Response:** DEQ appreciates the comment. The permit evaluation report has been revised to describe the meaning of “reference concentration” and how the term is used in relation to the impairment analyses conducted by PG Environmental as part of the rulemaking process. To summarize, reference concentration is a term used to designate a target concentration for monitoring impairment purposes. The broad term takes in account several ways an impairment concentration or reference concentration can be derived. Reference concentration establish impairment monitoring target concentrations based on water quality criteria, aquatic or chronic aquatic life or human health, or quantitation limits. Impairment concentration and reference concentration have the same meaning. In the proposed final permit DEQ will only use Oregon’s Table 30: Aquatic Life Water Quality Criteria for Toxic Pollutants and adopted water quality standards for bacteria. Based on reasonable potential of exceeding the concentrations by more than 10 percent, the impaired list for sampling purposes was reduced pH, copper, lead, zinc, iron and E. coli. Impairment monitoring is limited and concentrations are derived from a more simplistic application of the water quality standards as described in the PER; therefore the term reference concentration is no longer needed, thus it is not used. Impairment monitoring concentrations are set within the permit in either in Appendix A for pH Impairment Monitoring and Water Quality-based Effluent Limit Concentrations or Table 5, Table 5A or Table 6.

An in-depth analyses was presented at the rulemaking advisory committee meeting #3 and can be found online at: <https://www.oregon.gov/deq/Rulemaking%20Docs/1200zRuleM3materials.pdf>

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YAKAMA NATION FISHERIES #28

**Description: Permit Evaluation Report - Add clarity to the statement: “under this general permit these pollutants are not considered”**

**Comment:** Page 15, last paragraph of section 3.2 states “under this general permit these pollutants are not considered”. Which pollutants? Earlier in the paragraph, it says “no pollutant, including indicator or

surrogate pollutants, is specified as causing the impairment,” so does “these pollutants” refer to indicator and surrogate pollutants?

**Response:** This statement refers to Condition I.1.f: “Conditions... above do not apply if the waterbody is impaired for: above do not apply if the waterbody is impaired for: i. Biological communities (biocriteria), including harmful algal blooms and aquatic weeds, where no pollutant including indicator or surrogate pollutants, is specified as causing the impairment; or ii. Temperature, habitat and flow modifications.”

This is the list of pollutants not considered under the new discharge determination because industrial stormwater is not identified as a contributor impacting water bodies impaired for these pollutants.

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#### YAKAMA NATION FISHERIES #29

**Description: Permit Evaluation Report - Clarify section 3.3: “Permit coverage between legal entities where there will also be a change in an industrial processes at the site to a new primary industrial sector require a new application”**

**Comment:** Should this refer to “Transfer of permit coverage between legal entities...”? This seems redundant with section 3.6. Please confirm if this is redundant or if there are subtle distinctions being made here.

**Response:** DEQ has made the suggested change to Section 2.3. There is some intentional redundancy in the permit evaluation report. DEQ retained both sentences within Section 2.3, New Application for Permit Coverage and 2.6, Name Change or Transfer of Permit Coverage because they are applicable to each section.

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#### YAKAMA NATION FISHERIES #30

**Description: Permit Evaluation Report - Numeric technology-based effluent limits infeasibility**

**Comment:** Page 19 states that PG Environmental determined there was “insufficient data to reflect pollutant reductions that can be achieved by categories of industrial sources.” What specific data are needed and how does ODEQ plan to obtain this in the future? This report mentions data gaps related to BMPs employed, rainfall data, and industrial activities: will ODEQ require that data to be collected by permittees going forward?

**Response:** As stated in Section 3.2.1 of the permit Evaluation report, significant data gaps prevent adequate evaluation of feasible pollutant reductions throughout industries sufficient to establish numeric technology-based limits across industries. DEQ found the high variability of effluent quality and unknown efficacy of appropriate control measures were two obstacles to setting uniform numeric TBELs for stormwater in this rulemaking. As stated in Section 3.2.1, current data has extremely high variability that would result in TBELs that are not protective of water quality and are significantly less effective than the proposed measures. It is likely that this high variability is a result of varying treatment technologies, material handling practices, housekeeping measures, rainfall intensities, runoff coefficients, runoff volumes and intensities, site size, various levels of operation and maintenance of BMPs and treatment controls, and many other factors that are impractical to fully account for across industries. DEQ would need sufficient data to account for all significant variabilities, many of which are not immediately

apparent at this time due to the vast differences not only between industries, but also within industries. Further, DEQ would need sufficient data to evaluate the feasibility of the implementation of the various treatment technologies and BMPs throughout the industries. As illustrated in DEQ's November 13, 2019, Advisory Committee Meeting, the process EPA used for charactering a single industry (i.e., Airport Deicing) began in 1997 and was not completed until 2012. For coalbed methane EPA began studying the industry in 2007 and did not complete an economic analysis for the industry until 2013, at which point EPA determined that while effective technologies exist and may be affordable for some sites, these technologies are not economically achievable for the industry as a whole, and were thus inappropriate to establish effluent limitation guidelines for.

Further, if it were feasible to account for all significant variables and identify pollutant control measures for individual industries, due to the need to select feasible pollutant control measures that can be implemented throughout an industry and account for variable site conditions and rainfall intensity and duration, it is not certain that the characterization would result in numeric TBELs that are any more protective than the current practices. DEQ and EPA find that the use of an adaptive management approach for each site is not only practical, but is likely to be the most effective approach.

Regarding DEQ's plan to obtain data to better characterize relevant pollutant reduction capabilities within industry, DEQ continually strives to increase its understanding of stormwater pollutant reduction capabilities for each permit renewal through a number of available resources. Stormwater data submitted consistent with the permit, multi-sector general permits issued by other states, EPA's multi-sector general permit, and other reliable sources that characterize stormwater pollutant reduction capabilities and practices for industries are reviewed for each permit renewal. As the industries are better characterized, the potential for better pollutant reduction characterization exists and will be considered during subsequent permit renewals.

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YAKAMA NATION FISHERIES #31

**Description: Permit Evaluation Report - What is the plan for coordination between stormwater and cleanup program?**

**Comment:** Page 20 discusses the need for coordination with ODEQ's cleanup program to address stormwater contact with contaminated soils. What is the plan for coordination?

**Response:** Currently, DEQ has cross-program processes in place to coordinate with DEQ Stormwater program staff, Portland Harbor Stormwater Coordinator and agents with regard to suspected and known contamination on 1200-Z permitted sites. DEQ is also currently undertaking an extensive project to modernize existing environmental data management systems and anticipates that cross-program coordination will be further facilitated by the new system called "Your DEQ Online."

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YAKAMA NATION FISHERIES #32

**Description: Permit Evaluation Report - What does it mean for the permit to "propose" identification of stabilization polymers?**

**Comment:** Does that mean it requires it?

**Response:** Since the permit on public notice was a draft permit with proposed conditions, the permit evaluation report refers to these changes as “proposed” conditions.

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YAKAMA NATION FISHERIES #33

**Description: Permit Evaluation Report - Numeric technology-based effluent limits**

**Comment:** No new numeric TBELs have been added to the permit. Section 4.2.1 states that EPA has established numeric TBELs. Did ODEQ consider adopting these, once it was determined not to be feasible to set state numeric TBELs? Please provide a reference for where those TBELs can be reviewed, so that stakeholders can consider whether they should apply to the 1200-Z permit.

**Response:** All numeric TBELs are adopted by EPA as required in Table 3 of the 1200-Z. EPA’s final MSGP issued mid-January 2021 did not include any new TBELs. EPA utilized a resource-intensive, multi-year study process to develop a limited set of new numeric TBELs. As stated in Section 3.2.1 of the permit evaluation report, undertaking a similar costly, multi-year effort by DEQ was not feasible. DEQ found the variability of effluent quality and unknown efficacy of appropriate control measures were two obstacles to setting uniform numeric TBELs for stormwater in this rulemaking.

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YAKAMA NATION FISHERIES #34

**Description: Permit Evaluation Report - Technologically Feasible**

**Comment:** Section 4.2.2 says “constitute best professional judgement for all pollutants”. Is this an error intended to refer to best practicable control technology?

**Response:** This section (Section 3.1.1) of the PER was revised to be consistent with references in EPA’s current fact sheet.

Consistent with the EPA’s MSGP, the permit contains narrative and numeric technology-based effluent limits that taken as a whole constitute the required levels of technology-based control for the pollutants that may be discharged in industrial stormwater

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YAKAMA NATION FISHERIES #35

**Description: Permit Evaluation Report - Section 4.3 header has only one subsection 4.3.1 - Was anything accidentally deleted here, or are the sections mis-numbered?**

**Comment:** NA

**Response:** DEQ revised the permit evaluation report in this section.

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YAKAMA NATION FISHERIES #36

**Description: Permit Evaluation Report - Water Quality Standards**

**Comment:** Section 4.3.1 states that water quality samples upstream and downstream in the receiving water are required to establish that a discharge caused or contributed to a water quality standards exceedance. Who is responsible for collecting these samples? The permit registrant? DEQ? At what frequency? Please define what constitutes upstream and downstream and the allowable deviation in concentrations, if any. Please refer to any available guidance.

**Response:** The permit does not contain a specific convention for sample collection to establish that a discharge violated instream water quality standards. This analysis will occur on a case-by-case basis depending on the specific water quality criteria and the beneficial use being protected. Monitoring can be performed by DEQ, a facility or an outside party. Oregon Administrative Rules 340-012-0055, classifies reducing the water quality of waters of the state below water quality standards as a Class I violation.

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YAKAMA NATION FISHERIES #37

**Description: Permit Evaluation Report - Define what section 4.5 titled “stormwater discharge” is about and how it relates to/differs from the rest of the report**

**Comment:** Section 4.5 is titled “stormwater discharge”, but this is not a very meaningful title for a report that is all about stormwater.

**Response:** The section headings in the permit evaluation report lines up with the permit headings so the reader can track the report alongside the proposed final permit.

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YAKAMA NATION FISHERIES #38

**Description: Permit Evaluation Report - Why were the WQBELs restricted to those pollutants?**

**Comment:** Page 30 describes the evaluation of stormwater data to develop WQBELs. Effluent limits were only developed for the pollutants that exceeded the reference concentrations more than 10 percent of the time. Why were the WQBELs restricted to those pollutants? We recommend establishing WQBELs for the other pollutants as well.

**Response:** 40 CFR 122.44(d)(1)(i) requires limitations to be established to control all pollutants that are discharged at a level that causes, has reasonable potential to cause, or to contribute to an excursion above the applicable water quality standard. In this permit, DEQ utilized a 10 percent risk threshold in reasonable potential analyses of discharge data collected over an 18-year period. In general, acute aquatic life criterion are the applicable water quality standards applied for the permit. An acute aquatic life criterion has a magnitude which represents a 1-hour average concentration not to be exceeded in the waterbody more frequently than once in every three years. The selection of the 10 percent risk threshold is a conservative value designed to be protective of applicable criteria and its maximum allowable exceedance frequency. In addition to the numeric WQBELs, this permit establishes a narrative provision that requires the permit registrant to not cause or contribute to an exceedance of instream water quality standards. DEQ finds the permit conditions will result in the protection of water quality, and establishing additional numeric limits for additional pollutants is unnecessary at this time.

YAKAMA NATION FISHERIES #39

**Description: Permit Evaluation Report - Not clear how cadmium impairment relates to the sentence on page 30**

**Comment:** Page 30 states: “Cadmium was included as an impairment of concern because there are no Category 5 listings proposed in the 2018/2020 Integrated Report in a location with permitted industrial facilities.” It is not clear how cadmium relates to the rest of the sentence. Further explanation is needed.

**Response:** DEQ revised the statement to: “Cadmium was not included as an impairment of concern because there are no Category 5 listings proposed in the 2018/2020 Integrated Report in a location with permitted industrial facilities.” The beginning of the paragraph states: “Toxic pollutants that were identified as present in industrial discharges at concentrations that exceeded the reference concentrations at a frequency of 10 percent or greater were identified: cadmium, copper, iron, lead, and zinc.” The paragraph structure was revised to help link the two sentences.

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YAKAMA NATION FISHERIES #40

**Description: Permit Evaluation Report - Strongly recommend using chronic criteria in establishment of WQBEL for copper, lead, zinc**

**Comment:** We strongly recommend using the chronic criteria, for reasons described by Columbia Riverkeeper in its comments on DEQ’s 2017 draft 1200-Z permit.

**Response:** In general, DEQ used acute aquatic life criteria to develop permit benchmarks and numeric effluent limitations. In cases where an acute criterion was not applicable, an applicable chronic aquatic life criterion was used and a handful of pollutants in Schedule E are based on Oregon’s human health criteria. Stormwater discharges are wet-weather driven events, and discharges tend to be intermittent and relatively short-term, while concurrent ambient flows tend to be of high magnitude and variable. Acute criteria utilize short averaging periods, better aligned with the magnitude of impacts and duration of precipitation driven discharge events. Chronic criteria are based on 4-day averaging periods which renders them less appropriate for assessing the impact of stormwater discharges on receiving waters.

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YAKAMA NATION FISHERIES #41

**Description: Permit Evaluation Report - Recommend simply using the water quality standards as effluent limits**

**Comment:** The adaptive management approach for WQBELs described on page 30 seems overly convoluted. The water quality standards become the effluent limits if they are exceeded in two consecutive measurements or exceeded by a factor of two. This is unnecessarily complicated. We recommend simply using the standards as effluent limits.

**Response:** DEQ has determined an adaptive management approach is effective in controlling pollution discharged in stormwater from industrial sites, while also providing permit registrants with the flexibility



necessary to address site-specific challenges. Under an adaptive management approach, permit registrants monitor their stormwater discharge, evaluate the effectiveness of their control measures, and take corrective actions to ensure that pollutants exposed to stormwater are controlled to achieve the impairment monitoring in the permit and to protect water quality. DEQ evaluated the methodology use to set WQBELs in WA. State Ecology's industrial stormwater permit, federal regulations, NPDES permit writing manual and any other state-issued industrial stormwater permits that included WQBELs. EPA's permit does not include WQBELs. In the establishment of WQBELs DEQ must consider many factors in addition to the water quality standards. Typical procedures used when calculating WQBELs in individual permits do not translate to a general permit that pertains to over 180 receiving waters throughout Oregon. The meeting materials for DEQ's advisory meeting #5 on April 16, 2020, included an in-depth look at options for establishing water quality-based effluent limits in Oregon's 1200-Z and other states methodologies. Copper, lead and zinc water quality criteria are formula driven standards calculated based on hardness and biotic ligand model, therefore there is no concentrations established in our water quality standards to directly apply as WQBEL. DEQ has created an appropriate framework for WQBELs in a general permit in accordance with federal and state regulations. The only other industrial stormwater permits in the country to contain WQBELs are Washington, California, Hawaii, Idaho and one tribal government under EPA's jurisdiction.

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## 36. Comments from: LKQ Corporation

LKQ #1, Public Hearing Oral Comment

**Description: Tier 1.5 Corrective Action Response; Appendix B - Would like a stakeholder meeting to provide technical expertise**

**Comment:** Highlight that fact that we have serious concerns with the Appendix B, Sector M, specifically deals with the auto dismantling industry.

**Response:** DEQ recognizes that there are a variety of best management practices for industries to implement and will consider appropriate related sources to improve checklists for industry best practices in the future. The proposed final permit does not include Appendix B. DEQ made significant edits and recommends the industrial-specific checklists are used as an optional technical assistance tool in response to benchmark exceedances.

LKQ #1

**Description: General Comment - Urge DEQ to postpone incorporating the pending federal draft into Oregon's framework until the entire EPA permit is finalized and subsequently adopted**

**Comment:** NA

**Response:** EPA's final MSGP was issued in mid-January 2021. DEQ used the final MSGP to revise the 1200-Z where appropriate.

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LKQ #2

**Description: Tier 1.5 - Strong concerns regarding Appendix B, Sector M are unfeasible**

**Comment:** Appendix B – Sector M fails to reflect best practices for our industry and contains inaccuracies that will eventually make compliance unattainable. We respectfully ask DEQ to reverse the proposed rules and convene a stakeholder meeting where auto dismantling operators with technical expertise are granted the opportunity to provide adequate input as to formulate workable guidelines for our industry.

**Response:** DEQ recognizes that there are a variety of best management practices for industries to implement and will consider appropriate related sources to improve checklists for industry best practices in the future. The proposed final permit does not include Appendix B. However, DEQ made significant edits and recommends the industrial-specific checklists are used as an optional technical assistance tool in response to benchmark exceedances.

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## 37. Comments from: Automotive Recyclers Association

ARA #1

**Description: Tier 1.5; Appendix B - Should not require Sector M in Appendix B to remove or deploy airbags prior to crushing or other maintenance activities**

**Comment:** In our opinion the best alternative would be to either have a good, needed un-deployed airbag removed for resale by a recycler, or to have the recycler leave unsaleable airbags intact on the vehicle so when the vehicle is processed by a shredder the resultant waste is safely contained by the shredder as part of their containment processing. Alternatively, airbags can be removed intact when practical under OEM sponsored airbag recovery programs by a recycler. Airbags were to be deployed, then the containers are fully breached, and as a result in the case of heavy rain, the residual chemicals are then in a position to be washed onto the ground and they would become a source of stormwater runoff. This language is effectively guiding a business to engage in activities that increase safety risks and should be avoided from being made as a requirement or recommendation by a government agency. Requiring the deployment of airbags as a means of minimizing stormwater runoff pollution will likely cause significant increases in workplace injury or death.

**Response:** The proposed final permit does not include Appendix B or Tier 1.5. DEQ made significant edits in response to specific comment received (including the removal or deployment of airbags) and will recommended the industrial-specific checklists are used as an optional technical assistance tool in response to benchmark exceedances.

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ARA #2

**Description: General Comment - Recommend DEQ modify the Proposed Permit to reflect current standards under federal law and wait until next permit period to adopt EPA's 2020 MSGP**

**Comment:** ARA recognizes that DEQ is currently in the imperfect position of having to issue a revised 1200-Z permit in the middle of the normal five-year permit renewal and revision period due to a 2018 the consent judgment. However, just because DEQ is required to issue a revised 1200-Z permit prior to the originally anticipated end date of 2022, DEQ should not adopt the EPA's proposed draft BMP/SCMs contained in the Proposed Permit's Appendix B. The provisions contained in the EPA's Proposed 2020 MSGP should not be adopted by DEQ in their Proposed Permit until the EPA issues its final permit.

**Response:** DEQ did not adopt EPA's draft Appendix Q sector-specific checklists by reference in the final 1200-Z permit. The checklists have been revised and included as an option under Tier 1 corrective action response, as sector-specific technical assistance.

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ARA #3

**Description: Tier 1.5; Appendix B - Sector M proposal increase the risks for environmental pollution due to a lack of industry knowledge**

**Comment:** As was expressed in ARA's comments on the Proposed 2020 MSGP, the Best Management Practices and Stormwater Control Measures (BMP/SCM) addressed in Appendix B Sector M of the Proposed Permit evidence a clear lack of industry knowledge. The BMP/SCMs contained in Appendix B Sector M of the Proposed Permit are problematic in that they recommend obsolete and, in some cases, physically dangerous business practices that may lead to injury or death.

**Response:** The proposed final permit does not include Appendix B or Tier 1.5. DEQ made significant edits in response to comments received and recommends that the industrial-specific checklists are used as an optional technical assistance tool in response to benchmark exceedances.

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ARA #4

**Description: Monitoring Frequency - Recommends DEQ move to annual sampling schedule**

**Comment:** ARA is convinced that annual sampling is sufficient to address the risks related to stormwater runoff and industrial contaminates. Under the current permit standard, which requires sampling to take place four times per year, data derived from multiple samples taken within a short period of time from one another does not provide significant value in protecting the environment. ARA believes that annual sampling both ensures compliance with requirements designed to protect the environment while also providing value to permittee businesses. Therefore, under the new Proposed Permit, automotive recyclers are burdened by having to sample events four times per year including the subsequent laboratory costs.

**Response:** DEQ's 1200-Z permit sampling frequency is appropriate to ensure benchmark concentrations are being met further ensuring pollution prevention controls are maintained throughout the year and weather conditions that produce stormwater runoff. The automotive recycling sector, like all sectors, are encouraged to request a monitoring waiver if benchmark results are at or below the geometric mean of the appropriate georegion benchmark target. Sector M must also meet a revised aluminum benchmark based on EPA's calculated concentration in the federal permit. Benchmark targets reflect specific protections required for each georegion based on Oregon's water quality standards or other factors such as stormwater discharge data or cleanup sites designations.

ARA #5

**Description: Reporting Monitoring Data - Only require permittees to submit discharge monitoring reports annually**

**Comment:** DEQ would continue to accomplish its goal of protecting from the risks associated with industrial stormwater discharges while also alleviating some of the current economic and regulatory stresses on small business.

**Response:** DEQ required sample results submission of annual Discharge Monitoring Reports previous to the reissuance of the 1200-Z on October 22, 2018. At that time the permit was revised to reflect the settlement agreement in response to challenges on the permit issued in 2017. One of the changes DEQ agreed to was submission of quarterly DMRs. In 2021, DEQ anticipates transitioning to our new system called, "Your DEQ Online." The new system will allow all permit registrants to submit DMR's electronically, which should help with the administrative work for all involved. While the DEQ administered sites will transition to electronic reporting first, DEQ will work to get the agent administered sites reporting electronically as soon as possible.

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