

Settlement Agreement

This Settlement Agreement and Release of Claims (“Settlement Agreement”) is made by and between the State of Oregon, acting by and through its Department of Environmental Quality (“DEQ”), and Columbia Riverkeeper and Northwest Environmental Defense Center (“CRK/NEDC”) and Oregon Industrial Stormwater Group (“OISG”) (collectively referred to as the “Parties”). Both CRK/NEDC and OISG filed challenges to the National Pollutant Discharge Elimination System Permit No. 1200-Z Industrial Stormwater General Permit (“1200-Z Permit”), dated August 1, 2017. CRK/NEDC filed a petition for judicial review of 1200-Z Permit in the Circuit Court for Multnomah County pursuant to ORS 183.484, and OISG intervened in the action. *Columbia Riverkeeper v. Oregon Department of Environmental Quality*, No. 17CV42254. OISG also petitioned for reconsideration of the 1200-Z Permit pursuant to ORS 183.484. In response to both petitions, DEQ withdrew the 1200-Z Permit for reconsideration. The parties have agreed to resolve the matter without further litigation. The parties have agreed to enter a Consent Judgment that, without limitation, requires DEQ to issue an order on reconsideration by October 31, 2018 that affirms or modifies the 1200-Z Permit; reissuance of the 1200-Z Permit by March 30, 2021; and the dismissal of the pending petition for judicial review. Separately, the Parties agree to the actions described in sections A-D of this Settlement Agreement:

A. SHORT-TERM CHANGES TO THE 1200-Z PERMIT

1. The Parties agree that the following revisions to the 1200-Z Permit are appropriate.

a. Replace “Permit Coverage,” Condition 1 with the following language:

“New Discharger to Impaired Waters.

1. New Discharger to Impaired Waters (see Schedule D.3.)

a. A new discharger to an impaired water (as defined in Schedule D) without a Total Maximum Daily Load (TMDL), based on EPA-approved 303(d) list (Category 5) that is in effect on May 1, 2017, for pollutant(s) must meet one of the following conditions to obtain coverage under this permit:

- i. Prevent all pollutants for which the waterbody is impaired from exposure to stormwater and document in the Stormwater Pollution Control Plan (SWPCP) procedures taken to prevent exposure on-site; or
- ii. Document in SWPCP that the pollutant(s) for which the waterbody is impaired are not present at the site; or
- iii. 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 to the waterbody if the pollutant(s) for which the waterbody is impaired are likely to be present at the site and DEQ has not issued a TMDL for the pollutant(s).

- b. Prior to granting permit coverage to a new discharger to impaired waters without a TMDL, DEQ or agent will make a determination and document that one of the conditions in paragraph 1.a. has been satisfied.
 - c. A new discharger that is unable to meet one of the conditions in paragraph 1.a. is ineligible for coverage under this permit; either the discharge must cease or the new discharger will be required to obtain coverage under an individual NPDES permit.
 - d. A new discharger to an impaired water with a TMDL (based on EPA-approved TMDLs as of May 1, 2017) may receive permit coverage under this permit under one of the following circumstances:
 - i. If the TMDL does not establish industrial stormwater wasteload allocations, then the new discharge may be authorized by this Permit. Compliance with the terms and conditions of the permit is presumed to be consistent with the TMDL.
 - ii. If the TMDL establishes industrial stormwater wasteload allocations, and if DEQ or its agent determines that there are sufficient remaining wasteload allocations in the TMDL to allow for the new industrial stormwater discharge, then the new discharge may be authorized by this Permit.
 - e. If a new discharge to impaired waters is authorized by DEQ under this permit, DEQ or its agent will establish any additional monitoring, site controls or compliance schedules as necessary.
 - f. Instead of granting permit coverage to a new discharge under paragraph 1.d., DEQ may determine that coverage under an individual NPDES permit is necessary.
 - g. Conditions 1.a through 1.f. above do not apply if the waterbody is impaired for:
 - i. Biological communities and no pollutant, including indicator or surrogate pollutants, is specified as causing the impairment; or
 - ii. Temperature, hydrologic modifications, or impaired hydrology.
- b. Replace Schedule A.5.b. (Existing Discharger to an Impaired Water with a TMDL) with the following language:**

An Existing Discharger must comply with all applicable requirements of the EPA-approved TMDL(s). If a TMDL establishes wasteload allocation(s) for industrial stormwater discharges, DEQ will list the registrant's requirements to comply with this condition in the permit assignment letter. If DEQ or agent determines that additional monitoring, site controls or compliance schedules are necessary to comply with applicable TMDL wasteload allocations for industrial stormwater discharges, DEQ or agent will include such requirements in the permit assignment letter.

c. Revise Schedule A.10.a.v. (currently incorrectly numbered as a second Schedule A.10.a.iv) as follows:

v. The Tier I report must be kept on site, and a copy provided to DEQ or agent upon request. In the event of an exceedance of a reference concentration for any impairment pollutant identified in the permit assignment letter, the Tier I report must be submitted to DEQ or agent no later than 60 calendar days after receiving monitoring results.

d. Replace Schedule B.1.b. with the following language:

b. Impairment Pollutants.

- i. Permit applicants that discharge to impaired waterbodies, based on the EPA-approved 303(d) list (Category 5) that is in effect as of May 1, 2017, (see Schedule D.3, Definitions), must monitor for the impairment pollutant(s) identified in the permit assignment letter for which a standard analytical method exists (see 40 CFR Part 136).
- ii. Before granting coverage under this permit, DEQ or agent will identify in the permit assignment letter the impairment pollutant(s) that the applicant is required to monitor and reference concentrations for these pollutants. Reference concentrations reflect the approved acute aquatic life criterion for the pollutant when applicable. If there is not an acute criterion for the pollutant, DEQ or agent will use an applicable chronic criterion. If there is not a chronic criterion for the pollutant, DEQ or agent will use an applicable human health criterion.

(1) If the pollutant for which the waterbody is impaired is suspended solids, turbidity or sediment/sedimentation, permit registrants must monitor for Total Suspended Solids (TSS).

(2) If the pollutant for which the waterbody is impaired is expressed in the form of an indicator or surrogate pollutant, permit registrants must monitor for that indicator or surrogate pollutant.

- (3) No impairment pollutant monitoring is required when a waterbody's impairment is due to one of the following:
 - A. Biological communities, if no pollutant, including an indicator or surrogate pollutant, is specified as causing the impairment; or
 - B. Temperature, hydrologic modifications, or impaired hydrology.

iii. Permit registrants must meet Schedule B.1.b.i. unless the permit registrant:

- (1) Prevents all pollutants for which the waterbody is impaired from being exposed to stormwater, and documents in the SWPCP those procedures it has taken to prevent exposure on site; or
- (2) Provides monitoring data demonstrating that the pollutant(s) for which the waterbody is impaired are not present in the discharge.

e. Amend Schedule B, Table 5 (“Monitoring Frequency”) as follows:

All applicable statewide benchmarks in Schedule A.9; any applicable sector-specific benchmarks in Schedule E and any applicable impairment pollutants	Four times per year: Two samples between January 1 and June 30, and two samples between July 1 and December 31
Any applicable numeric effluent limitations based upon Effluent Limitation Guidelines (see Schedule A.2. and Schedule E)	Two times per year: One sample between January 1 and June 30, and one sample between July 1 and December 31

f. Revise Schedule B.8.a. “Reporting Monitoring Data” as follows:

a. Paper Submissions

- i. Permit registrant must submit all monitoring results required in this permit via DEQ-approved Discharge Monitoring Report (DMR) forms until directed by DEQ to do otherwise.
 - (1) DMRs are due quarterly as outlined in Table 6 for samples taken during the preceding calendar quarter.
 - (2) Report must include the laboratory results from the testing laboratory, including minimum detection level, Quality Assurance/Quality Control and analytical methods for the parameters analyzed.

- (3) Submit pH field notes and chain of custody.
 - (4) Report non-detections as directed by DEQ. In calculating the geometric mean, use one-half of the detection level for non-detections.
 - (5) Report all sample results from discharge points.
 - (6) The permit registrant must sign and certify submittals of Discharge Monitoring Reports, any additional reports, and other information in accordance with the requirements of Section D8 within Schedule F of this permit.
- ii. Until directed by DEQ to begin electronic submission, paper DMR forms must be received by the due dates in Table 6, regardless of whether semi-annual monitoring has been satisfied in the 1st or 3rd quarter.
 - iii. Permit registrant must report Tier II geometric mean benchmark evaluation on the 4th quarter DMR after the second monitoring year of permit coverage.

Table 6: DMR Submission Deadlines

Reporting Quarters	Months	DMR Due Dates
1 st	July-September	November 15
2 nd	October-December	February 15 [*]
3 rd	January-March	May 15
4 th	April-June	August 15 [*]

*Variance request may be submitted semi-annually as applicable

g. Revise Schedule B.8.iii.1 as follows:

- (1) The permit registrant must submit a Discharge Monitoring Report to DEQ or agent as outlined in Table 6. Report the sampling results for the samples taken during the preceding calendar quarter and include the laboratory results from the testing laboratory, including minimum detection level, QA/QC and analytical methods for the parameters analyzed.

h. Revise the third sentence of Schedule A.11.a., as follows:

“The permit registrant must report this information in the 4th quarter Discharge Monitoring Report due on August 15 of the second monitoring year of permit coverage.”

i. Revise the second sentence of Schedule B.3.a., as follows:

“Variance request are due on February 15 and August 15. Each request must state no discharge on the Discharge Monitoring Report and provide supporting data and analysis demonstrating why the monitoring did not occur.”

k. Revise Schedule B.11, Table 6:

Revise the due date for the submission of monitoring results as follows: “No later than February 15, May 15, August 15, and November 15 for the preceding calendar quarter” Revise the Table number to “Table 7: Reporting.”

1. Revise Schedule B.11, Table 7: Sample results exceed applicable statewide or sector specific benchmark...Remove “or reference concentration.” Add to the table:

Sample results exceed applicable impairment reference concentrations	Schedule A.10.a.v	Tier I report	No later than 60 calendar days after receiving monitoring results
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l. Add Schedule E to the disclaimer on page 2 of the permit:

“Should 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.”

m. Table 1. Change: Sector 29:

“Asphalt Paving and Roofing Materials and Lubricants” to “Petroleum Refining and Related Industries.”

n. Table 1.

Strike “including 2911,” from the description of SIC code 28. Strike the exclusion for SIC code 3479 from the description of SIC code 34. In Sector AA of Schedule E, add 3479 Nitrate plus Nitrite Nitrogen benchmark sampling.

o. Minimize Exposure TBEL – chemical solid or chemical liquid. Revise Schedule A.1.a.iii. to add the word “chemical” before “liquid,” so that it reads:

“Store all hazardous substances (see Schedule D.3, Definitions), petroleum/oil liquids, and other chemical solid or chemical liquid materials that have the potential”

- p. **Allow for more than one site map for SWPCP. Revise Schedule A.7.b.i. as follows:**

“Site map(s) includes the following:”

- q. **Substitute “waters of the state” for “waters of the U.S” on page 31 in the definition of Discharge Point.**
- r. **Change header date from July 1, 2017 to August 1, 2017 starting on Schedule E – Sector D. Add to the title page and headers a revision date for these revisions.**
- s. **Tier II mass waiver – add “or has implemented” and “or has resulted” to account for previous infiltration devices. Revise Schedule A.11.k.i. to add “or has implemented” to the first sentence, so that it will read:**

“A permit registrant may request a mass reduction waiver from the requirements in Schedule A.11.j above if the permit registrant implements or has implemented volume reduction measures, such as low impact development practices, that will or has resulted in reductions of the mass load of pollutants in the discharge below the mass equivalent of the applicable statewide benchmarks in Schedule A.9 of this permit.”

- t. **Specify specific notification language for Table 2 facilities under New Application for Permit Coverage Requirements in section 2.a. of the “Permit Coverage and Exclusion from Coverage” schedule of the permit by revising existing section 2.a.ii., adding a new section 2.a.iii., renumbering existing section 2.a.iii. as section 2.a.iv. and revising it, and renumbering the remaining sections of section 2.a., so that the first four sections of section 2.a. will read as follows:**

2. New Application for Permit Coverage Requirements

- a. The following conditions apply to:
 - i. New facility: Submit a complete application to DEQ or agent (see Schedule D.4 for description of agent) at least 60 calendar days before initiating the activity that requires permit coverage, unless DEQ or agent approved a later date.
 - ii. Existing facility with stormwater discharges associated with industrial activities identified in Table 1 and operating without coverage under any NPDES permit for those discharges: Immediately submit a complete application to DEQ or agent, unless DEQ or agent approved a later date.

- iii. Existing facility with stormwater discharges associated with industrial activities identified in Table 2 operating without coverage under any NPDES permit for those discharges: No later than 60 calendar days from written notification by DEQ or agent that permit coverage is required, submit a complete application to DEQ or agent.
- iv. Existing facility that is designated by the Director as needing a stormwater permit pursuant to 40 CFR §122.26(a)(9)(i)(D): No later than 60 calendar days of being notified by DEQ that permit coverage is required, submit a complete application to DEQ or agent.
- u. Sector AB on page 116 is mislabeled as “Fabricated Metal Products” and will be correctly relabeled as “Transportation Equipment, Industrial or Commercial Machinery.”**
- v. In Schedule A.9, Table 4: Statewide Benchmarks, the “Regional” benchmark for Total Zinc will be changed from 0.090 mg/L to 0.12 mg/L.**
- w. Representative/ Commingled Sampling: The following language revises the existing permit language based on stormwater sampling requirements contained in EPA’s Multi-Sector General Permit. Schedule B.2.b of the permit will be revised to read as follows:**

b. Representative Sample

- i. Samples must be representative of the discharge.
- ii. Monitoring locations must be identified in the SWPCP.
- iii. Stormwater discharges regulated by this permit include stormwater run-on that commingles with stormwater discharges associated with industrial activity.
- iv. If discharges authorized by this permit commingle with discharges authorized under a separate NPDES permit, any required sampling of the authorized discharges must be performed at a point before they mix with other waste streams, to the extent practicable. When combined flows are unavoidable, sampling must include all permitted parameters.
- v. Authorized non-stormwater discharges under condition 8 of this permit must be sampled when commingled with stormwater discharges associated with industrial activity.

- vi. Stormwater flows may combine into a common on-site treatment facility.
- vii. 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 streams from another facility or mixes with any surface water.

x. Strike Schedule A.1.a.ix. and modify the first sentence of condition A.1.d to read:

“Stabilize exposed areas, including areas where industrial activity has taken place in the past and significant materials remain, and contain runoff using structural and nonstructural controls to minimize erosion of soil at the site and sedimentation.”

y. Modify Schedule A.1.f. to read as follows:

“Minimize generation of dust and off-site tracking and discharge of soil, particulates, and raw, final or waste materials.”

B. PROCESS FOR CONSIDERING PROPOSED NUMERIC TBELS FOR THE REISSUED 1200-Z PERMIT

1. DEQ will convene and host periodic meetings of the Parties or their representatives for the purpose of discussing and developing proposed technology-based effluent limitations (“TBELs”) or, alternatively, technology-based benchmarks or other narrative conditions for inclusion in the future revised 1200-Z Permit.
2. DEQ will continue to refine its analysis of industrial stormwater effluent data for the purpose of determining proposed numeric TBELs for copper, lead, zinc, and TSS. As part of this analysis, DEQ agrees to:
 - a. Incorporate into its analysis those DMR data that become available following the July 31, 2018, annual reporting deadline under the current 1200-Z Permit;
 - b. Analyze, to the extent feasible, the relationship between copper, lead, zinc, and TSS concentrations and (a) geographic region; (b) industry sector; and (c) the installation and use of active and passive treatment systems and/or specific BMPs;
 - c. Consider and respond to the comments and other information submitted by the other Parties or their representatives.
3. DEQ will identify the control technologies that represent the best available technology economically achievable (“BAT”) for copper, lead, and zinc, and the best conventional

pollutant control technology (“BCT”) for TSS. These could include operational, structural, and treatment controls.

4. DEQ will consider and evaluate, to the extent feasible, those factual materials, interim and final recommendations, and other proceedings of the National Academies of Science project entitled “Improving the Next-Generation EPA Multi-Sector General Permit for Industrial Stormwater Discharges” (PIN No. DELS-WSTB-16-03).
5. Determination of Numeric TBELs or, in the Alternative, Technology-based Benchmarks for Copper, Lead, Zinc, and TSS:
 - a. Based upon the analysis under Paragraphs 1 through 4 of this Appendix B, and upon consideration of the data and information submitted by the Parties, DEQ shall make one of the following determinations for each of the pollutants copper, lead, zinc, and TSS:
 - i. A numeric TBEL is consistently achievable and justifiable and can be reached at a reasonable cost by Oregon industrial facilities subject to the 1200-Z Permit using treatment technologies or BMPs that are generally affordable, feasible, and readily available; or
 - ii. A numeric TBEL is not consistently achievable and justifiable or cannot be reached at a reasonable cost by Oregon industrial facilities subject to the 1200-Z Permit using treatment technologies or BMPs that are generally affordable, feasible, and readily available, and therefore a numeric benchmark is more appropriate for the given pollutant.
 - b. DEQ’s determinations under paragraph 5.a. shall consider the variability of stormwater discharge concentrations and flows, as well as the range of stormwater discharges that would be subject to the numeric TBEL or technology-based benchmark.
 - c. Any methodology developed by DEQ to calculate or otherwise derive any numeric TBEL or technology-based benchmark under this Agreement shall be shared with the Parties or their designated representatives.
 - d. If DEQ makes a determination under paragraph 5.a.i., it shall include in the draft 1200-Z Permit released for public comment on or before October 30, 2020, pursuant to paragraph 6 of the consent judgment in Case No. Case No. 17CV42254, one or more proposed numeric TBELs for the relevant pollutant(s), along with appropriate monitoring and reporting requirements sufficient to ensure compliance with the TBELs.
 - e. DEQ shall only make a finding under paragraph 5.a.ii. for a given pollutant if it first makes a finding that includes the following factors:

- i. Whether inclusion or phased implementation of one or more alternative numeric TBELs, established on a geographic or sector-specific basis upon consideration of the factors set forth in 40 C.F.R. § 125.3(c)(2), would be consistently achievable and justifiable for all or a subset of Oregon dischargers and allow for a finding under paragraph 5.a.i.;
- ii. Whether expression of the numeric TBEL as an average (i.e., quarterly or annual average) would make the TBEL consistently achievable and justifiable for all or a subset of Oregon dischargers and allow for a finding under paragraph 5.a.i.; and
- iii. Whether allowing facilities an opportunity to request an alternative TBEL on a site-specific basis would make the TBEL consistently achievable and justifiable for all or a subset of Oregon dischargers and allow for a finding under paragraph 5.a.i.

C. PROCESS FOR CONSIDERING PROPOSED NUMERIC WQBELS FOR THE REISSUED 1200-Z PERMIT

1. DEQ will convene and host periodic meetings of the Parties or their representatives for the purpose of discussing and developing proposed water quality-based effluent limitations (“WQBELs”) and other provisions related to impaired waters for inclusion in the reissued 1200-Z Permit.
2. DEQ will continue to refine its analysis of industrial stormwater effluent data for the purpose of determining proposed numeric WQBELs and other permit requirements for impairment pollutants and other pollutants as may be necessary on a TMDL, watershed or state-wide basis. As part of this analysis, DEQ agrees to:
 - a. Evaluate industrial stormwater discharge data showing exceedances of the reference concentration for impairment pollutants on a site-specific, sector-specific, and/or watershed-specific basis, as appropriate;
 - b. Assess whether a state-wide numeric WQBEL for any pollutants should be included in the future revised 1200-Z Permit as a required condition for discharges to impaired waters, considering the information reflected in Table 6 of the 2015 Industrial Stormwater General Permit issued by Washington’s Department of Ecology;
 - c. Include any wasteload allocations for industrial stormwater expressed in any EPA-approved TMDLs as outlined in the TMDL documents;
 - d. Assess whether discharges of impairment pollutants to impaired waters should be required to submit additional information as part of their Stormwater Pollution Control Plan, including a proposal for active or passive treatment when appropriate, as a condition of permit coverage; and

- e. Consider and respond to the comments and other information submitted by the other Parties or their representatives.
3. With respect to industrial stormwater discharges to impaired waters without an EPA-approved TMDL: DEQ will develop a methodology for calculating or deriving numeric 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.
 4. With respect to industrial stormwater discharges to impaired waters covered by future TMDLs: DEQ's stormwater and TMDL program staff will develop a methodology to ensure that:
 - a. Industrial stormwater discharges are adequately assessed as part of the TMDL development process and, wherever appropriate, an industrial stormwater WLA is included in each TMDL; and
 - b. Implementation of any industrial stormwater WLAs is addressed in each TMDL and, if appropriate, the permit assignment letter. Implementation requirements may include numeric WQBELs, BMPs, or other appropriate conditions.

D. INCLUSION OF PROPOSED NUMERIC TBELS AND WQBELS IN THE DRAFT RESISSUED 1200-Z PERMIT

The revised draft 1200-Z Permit released for public review and comment under paragraph 6 of the consent judgment in Case No. Case No. 17CV42254 shall include the following provisions:

1. One or more proposed numeric TBELs or, alternatively, proposed numeric technology-based benchmarks for the pollutants copper, lead, zinc, and TSS, as determined by DEQ under Section B of this Settlement Agreement;
2. One or more proposed site-specific, TMDL-specific, or state-wide numeric WQBELs, as determined by DEQ under Section C of this Settlement Agreement, if DEQ determines that such WQBELs are appropriate for inclusion in the Permit; and
3. Such monitoring and reporting requirements that DEQ determines are necessary to ensure and verify compliance, at discharge point(s) identified in each Covered Facility's stormwater pollution control plan, with numeric TBELs, WQBELs, or benchmarks included in the Permit.

E. GENERAL PROVISIONS

1. Governing Law; Jurisdiction; Venue. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Action") between the parties shall be brought and conducted solely and exclusively within the Circuit Court of the State of Oregon for Multnomah County. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise.

2. Entire Agreement. This Agreement contains and constitutes the entire agreement and understanding of the parties regarding the matters covered herein, notwithstanding any and all prior negotiations, discussions, undertakings or agreements made in arriving at this Agreement. There are no representations, agreements, or inducements between the parties regarding the matters covered herein except as set forth expressly and specifically in this Agreement.

3. No Admission. The Parties agree that this Agreement is not to be construed as an admission or proof of any liability or fault whatsoever on the part of any Party. This Agreement does not establish a precedent in the settlement of any current or future claim, or other dispute among the parties, and shall not be admissible as evidence in any future arbitration, administrative or court proceeding other than a proceeding to enforce the terms of this Agreement.

4. No Waiver; Severability. This Agreement does not waive any right that may not legally be waived. If any provision contained in this Agreement shall for any reason be held to be invalid, illegal, void, or unenforceable in any respect, such provision shall be deemed modified so as to constitute a provision conforming as nearly as possible to such invalid, illegal, void, or unenforceable provision while still remaining valid and enforceable, and the remaining terms or provisions of this Agreement shall not be affected.

5. Voluntary Agreement; Represented Parties. By the signatures below, the parties acknowledge that they have read and know the contents of this Agreement, that they fully understand the Agreement's terms, and that they enter the Agreement voluntarily for the purpose of making a full compromise and settlement. Each of the parties further represents they have consulted or has had the opportunity to consult with legal counsel of its choice concerning the legal effect of this Agreement before signing it, and that each party executes this Agreement voluntarily. Further, the persons executing and delivering the Agreement represent and warrant that they are fully authorized to do so, and that the execution of delivery of the Agreement is lawful and voluntary.

6. No Contra Proferentum; This Agreement was jointly drafted and approved by all Parties. Any rule that would otherwise require any ambiguities in this Agreement to be interpreted against the drafter(s) is hereby expressly waived.

7. Force Majeure. The Parties recognize that the obligations included in Agreement could be delayed by an event of Force Majeure. Such situations include, but are not limited to, a government shut-down or currently unforeseen catastrophic environmental events requiring

immediate or time-consuming response by DEQ. Should a delay occur due to such circumstances, any resulting failure by DEQ to meet the timelines set forth in Agreement shall not constitute a failure to comply with the terms of this Agreement. If an event of Force Majeure occurs, the parties will meet and make a good faith effort to renegotiate the timelines set forth in this Agreement.

8. Compliance with Laws. No provision in this Agreement shall be interpreted as or constitute a commitment or requirement that DEQ take action in contravention of the Oregon Administrative Procedures Act or any other law or regulation, either substantive or procedural. No provision of this Consent Judgment shall be interpreted as or constitute a commitment or requirement that DEQ pay funds in contravention of any applicable provision of law.

9. Funding. Nothing in this Agreement will be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. DEQ will make diligent efforts to obtain necessary funding, appropriations, limitations, allotments, or other expenditure authority.

10. Counterparts. This Settlement Agreement may be executed in counter-parts or in multiple originals. A photocopy or electronic transmission of this Settlement Agreement, once executed, shall be deemed an original.

For Petitioners Columbia Riverkeeper, Northwest
Environmental Defense Center, and Mark Riskedahl: