



Industrial Stormwater General Permit 1200-Z

Response to Comments

March and June 2017 Comment Periods

List of Commenters

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3	Kennedy Jenk Consultants	Greg Bryden
4	Valmont Coatings	Sally Buck
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7	Columbia Corridor Association	Corky Collier
8	City Of Salem, Oregon	Heather Dimke
9	City Of Hillsboro, Oregon	Rob Dixon
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14	Galvanizers Company	Craig Hamilton
15	Northwest Environmental Defense Center, Columbia Riverkeeper, Northwest Environmental Advocates	Andrew Hawley, Lauren Goldberg
16	BNSF Railway Company	Ryan Hibbs
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18	City Of Gresham	Torrey Lindbo
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21	Clean Water Services	Jody Newcomer, Robert P. Baumgartner
22	Linde LLC	Matthew Nusinov
23	Pacific Power	Emily Pelletier
24	Gullywasher, LLC	Jeff Pettey
25	The Northwest Food Processers	Craig Smith
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30	Working Waterfront Coalition	Ellen Wax
31	City Of Eugene	Jonathan Wilson
32	Vigor	Tammie Wilson
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34	City Of Portland Environmental Services	Rachele Altman
35	Northwest Food Processors Association	Pamela Barrow
36	Oregon Refuse & Recycling Association	Willie Tiffany
37	Roseburg Forest Products Co.	Kristana Becherer
38	Weyerhaeuser Company	Jack Carter
39	SCS Engineers	Jason Davendonis
40	Department Of Defense	Lauren Dempsey
41	Pierce Fittings	Donald P. Eagan
42	Daniel Scarpine	Aquarius Environmental
43	Integral Consulting Inc.	Craig Heimbucher
44	Western Wood Preservers Institute	Sharla Moffett
45	Hillsboro Chamber Comments	Deanna Palm
46	Kennedy/Jenks Consultants	Sheila Sahu
47	OMNICON Environmental Management	Fred Scalise
48	Oregon Association Of Clean Water Agencies (ACWA)	Susie Smith
49	Albany Area Chamber Of Commerce	Janet Steele
50	Xerox Corporation	Ashley Threlfall
51	Selmet Inc	Judy Turner
52	NWPPA	Kathryn VanNatta
53	Shadybrook Lumber Products, Inc.	Chris McClung
54	The Boeing Company	Tracy Thorson
55	Bimbo Bakeries USA	Dennis Sample
56	Private Citizens	See Appendix

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1200-COLS			
1	34	<p>BES also has a similar comment directly related to industrial stormwater discharges to the Columbia Slough. In addition to PCBs, DDE is a major risk driver in Columbia Slough due to fish ingestion. The proposed permit has no PCB or DDE benchmarks, and no sampling of PCBs or DDE is required in Columbia Slough (because the Slough has TMDLs for these compounds).</p> <p>DEQ's Environmental Cleanup Program has required the City and other parties in the Columbia Slough to use a screening level value (SLV) for total PCBs of 0.000064 µg/L and an SLV for DDE of 0.00022 µg/L to assess whether source control may be required. However, the median stormwater PCB concentration of 0.048 µg/L reported in Table 10 of DEQ's 1200-Z Permit Evaluation and Overview is 750 times DEQ's stormwater SLV for total PCBs derived for the protection of human ingestion of fish, and DOE was not evaluated in the 1200-Z Permit Evaluation and Overview.</p> <p>It is not clear that the permit will be protective of the slough and the City's conveyance system in this area. The City encourages DEQ to consider developing additional mechanisms, which may be programmatic changes moving forward, to address industrial stormwater discharges in the Columbia Slough, particularly as DEQ clarifies stormwater targets needed to protect human health (e.g., fish tissue) and the environment for sediment (e.g., recontamination).</p>	<p>DEQ has expanded permit coverage in Portland Harbor and lowered the TSS benchmark for discharges in both the Portland Harbor and Columbia Slough. In part, this is intended to support remedial action of sediment and improve water quality in these waterways by further reducing solids and associated contaminants. In addition, source control evaluations will continue at sites in these areas under DEQ's Guidance for Evaluating the Stormwater Pathway at Upland Sites. DEQ's cleanup program will ensure that individual site evaluations consider relevant cleanup levels for PCBs and other contaminants of concern and strive to meet analytical detection limits comparable to those values. As sediment remedial actions occur in these waterways, DEQ intends to continue evaluating data from permit monitoring and other sources, in coordination with EPA, the City and other partners, toward determinations of remedy success, recontamination prevention and water quality improvement. Data and information obtained during the 2017 permit cycle will inform these efforts and allow development of effective approaches, whether through permits or other mechanisms.</p>
2	34	<p>BES previously commented that the compounds contributing most to risks from fish ingestion in the Portland Harbor and Columbia Slough, such as PCBs and DDT, have no benchmarks in the proposed permit. In addition, the impairment reference concentration for PCBs in the Harbor are greater than the in-water cleanup levels for the Site, and greater than almost all samples collected in Portland Harbor that are represented in the stormwater PCB curves in Appendix E of DEQ's Guidance for Evaluating the Stormwater Pathway at Upland Sites.</p> <p>While the City understands that reducing the TSS benchmark in the proposed 1200-Z permit can reduce stormwater pollutant concentrations (e.g., PCBs), it is not clear whether the TSS benchmark in the permit will be protective of the river or the slough and the City's conveyance system</p>	<p>This Permit protects and maintains beneficial uses with best management practices. Consistent with statewide narrative criteria in OAR 340-041-0007, the permit conditions directly require the facilities control Total Suspended Solids, color and odor, through erosion control measures, visual observations and sampling. Many of the other permit conditions translate into controlling sediments and toxic pollutants that negatively impact beneficial uses. Data and information associated with the permit will be used to evaluate the effectiveness of the permit conditions.</p>

No.	Commenter ID	Comment	DEQ Response
		for bioaccumulative pollutants, especially given the low concentrations at which bioaccumulative compounds may pose health risks. The City encourages DEQ to consider developing additional mechanisms, which may be programmatic changes moving forward, to address industrial stormwater discharges in Portland Harbor and Columbia Slough."	
3	42	COLS benchmarks - How does raising benchmarks lead to continued anti-degradation of the Columbia Slough? DEQ's argument which appears based on the number of permitted facilities as no net change and being adsorbed in the water body's assimilative capacity. The Columbia Slough flow is mostly urban runoff, and in my opinion it doesn't really have much assimilative capacity. In the overview document, DEQ boasts the benchmarks 'have become more stringent over time' and that use of 'less than 10% of the assimilative capacity', yet DEQ proposes to lower only the TSS benchmark and raise the copper, lead, and zinc benchmarks. How does the proposal compare with just leaving the benchmarks the same? How is raising the benchmarks consistent with anti-degradation requirements? I understand significant time was spent on Monte Carlo simulations, but I believe some of the underlying assumptions are flawed if raising the benchmarks maintains water quality.	To address these comments, DEQ re-calculated the benchmarks and re-posted the entire permit and permit evaluation report for an additional 35-day public comment period which ended on June 19, 2017. DEQ has determined that the benchmark values in the final permit are reasonable and do maintain water quality standards in Oregon.
4	42	COLS E.coli Benchmark - My understanding is E.coli was originally added to the COLS permit to identify potential sewer cross connections or failing septic systems. Given numerous city projects to build out and improve the sewage infrastructure, I believe this is mostly a non-issue. The majority of the facilities I have evaluated for E. coli exceedances have documented the primary E.coli source is wildlife (particularly sites with environmental buffers and habitat areas). However, when those sites have applied to DEQ for background waivers, they have been rejected. I suggest DEQ strongly consider the purpose of E.coli testing in the permit and consider that numerous methods are available (including DNA testing) to establish wildlife as a root cause. There is little a facility can or should do to mitigate wildlife impacts when habitat and environmental buffers are generally beneficial to the Slough.	E. coli is a concern that can be controlled when it is derived from controllable sources such as human sewage and animals that are kept in a controlled environment or on a site that could be controlled. Wildlife would be considered as a natural background source but only after investigation has shown that the source of E. coli is from wildlife and the concentration in an undisturbed watershed is below the corresponding benchmark. A natural background determination needs to be completed and submitted to DEQ it agent with the appropriate information. Facilities have the option to pursue an individual permit that takes into account specific conditions at a facility and receiving water characteristics. And a monitoring waiver is available under Schedule B for all parameters.
Antidegradation			
5	20	DEQ must demonstrate how downstream waters be protected with the varying benchmarks. For example, the Columbia Slough has a lower	The benchmarks were based on georegion boundaries, which is not the same as watershed boundaries. The georegions are classified related to the

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		benchmark than the Columbia River benchmark. It is unclear how the downstream Columbia Slough benchmark will be met.	climate, vegetation, and geology. The georegions determine what benchmark applies to a discharge located there, but are not for identifying contributing flow areas. A stream can originate in the Coastal Ecoregion and still flow to the Willamette. Watershed-based permitting is a process that emphasizes addressing all stressors within a hydrologically defined drainage basin, rather than individual pollutant sources on a discharge-by-discharge basis. Watershed-based permitting can encompass a variety of activities ranging from synchronizing permits within a basin to developing water quality-based effluent limits using a multiple discharger modeling analysis. Since the benchmarks are not effluent limits or instream values, but indicators that actions need to be taken to control pollutant in discharge, it can be difficult to determine downstream impacts with this data, especially if a facility discharges to a municipal stormwater sewer system with multiple discharges. As such, it is appropriate to require the benchmark sample to be taken <i>at</i> the point of discharge, and not instream after the discharge has mixed with any receiving water.
6	15	<p>DEQ Must Conduct a Lawful Antidegradation Review before it may issue a permit it must demonstrate that discharges will not lower water quality from the existing condition. Despite this acknowledgement, DEQ has wholly failed to make this showing.</p> <p>DEQ claims that “[i]f an assignment of new permit coverage would result in use of greater than 10% of assimilative capacity for any pollutant, DEQ may require a Tier 2 antidegradation review or may require more stringent benchmarks to ensure that there is no lowering of water quality.” It is unclear how DEQ would assess compliance with this standard, or where in the permit it has retained the authority to implement lower benchmarks for a new facility.</p>	The purpose of the Antidegradation Policy is to guide decisions that affect water quality such that unnecessary further degradation from new or increased point and nonpoint sources of pollution is prevented, and to protect, maintain, and enhance existing surface water quality to ensure the full protection of all existing beneficial uses. The relevant provisions of the antidegradation policy are triggered only when a proposed permit renewal would authorize total waste loads that are greater than those allowed under the existing permit. DEQ has incorporated all federal Effluent Guidelines for each appropriate industry category. In addition, the current permit imposes more stringent or the same benchmark values to the previous permit and OAR 340-045- 033(10) gives DEQ the authority to deny permit coverage to an applicant or revoke a permit registrant's coverage under the permit and require an operator to apply for and obtain an individual permit.
7	15	DEQ asserts that the permit is consistent with the antidegradation policy because there “are a relatively consistent number of facilities operating under the permits at any time.” Specifically, DEQ notes “since July 2011, the number of facilities under each permit has not varied over $\pm 3.5\%$ of their respective averages.” Based on this, DEQ concludes “to the extent that there is any additional load from a net increase in facilities, it will be offset by the lowered benchmarks concentrations and the higher level of	Because DEQ required the same or more stringent benchmarks and permit registrants must select, develop, adopt and improve source and treatment control, the permit was deemed to not cause a lowering of water quality for the purpose of antidegradation review and these industrial stormwater discharges were expected to have reduced pollutant concentrations entering receiving waters. Recent review of discharge monitoring data has confirmed this, indicating that:

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		<p>corrective actions in the new permits.”</p> <p>Regardless, the number of permittees is not the correct measure of the potential impact to the environment. The size and types of facilities, the amount of impervious area, the types and concentration of pollutants, and the controls and measures implemented at the new facilities all are much more important factors in determining whether the permit conditions will protect existing water quality.</p>	<ul style="list-style-type: none"> • Median concentrations, 75th percentile concentrations, and the percent of samples over the benchmark has generally been decreasing for all statewide benchmark parameters (total suspended solids, copper, lead, zinc). • Median concentrations of statewide benchmark parameters were nearly always below benchmarks. <p>In recent years, 75th percentile concentration of nearly all statewide benchmark parameters were below benchmarks. This indicates that most sample results are below benchmark concentrations. Very little post-Tier II data are available at this time. DEQ anticipates that this data will demonstrate further reductions in concentrations.</p>
8	15	<p>"DEQ Must Conduct a Lawful Antidegradation Review. As DEQ notes in the permit evaluation report, before it may issue a permit it must demonstrate that discharges will not lower water quality from the existing condition. Despite this acknowledgement, DEQ has wholly failed to make this showing).</p> <p>The draft permit will unquestionably result in a measurable change in water quality as compared to water not impacted by anthropogenic sources.</p> <p>First, DEQ has not implemented these standards. Instead, DEQ appears to conflate compliance with water quality criteria with compliance with the Antidegradation policy. Specifically, DEQ claims that “[b]enchmarks in the permit are established to ensure that water quality standards are met in receiving waters and designated beneficial uses are protected.” Even if were true, which in many instances it is not, DEQ provides no evidence of how it reaches this conclusion.</p> <p>Second, DEQ claims that “[b]enchmarks in DEQ’s industrial stormwater general permits have become more stringent over time” and “[t]hus, for permit coverage that has already been assigned, there will be no lowering of water quality.” This statement is also not accurate. As noted elsewhere, in several instances DEQ is proposing to raise the benchmarks in this permit. In those cases where DEQ has proposed to raise the benchmarks for some toxics, it is in fact more likely than not the proposed permit will result in the degradation of some waters.</p> <p>Third, DEQ states that it “considers that use of less than 10% of</p>	<p>OAR 340-045-0033 gives DEQ the authority to develop general permits for certain categories of minor discharge sources or minor activities where individual NPDES or WPCF permits are not necessary to adequately protect the environment. Before the Director can issue a general permit, the following conditions must be met:</p> <p>(a) There must be several minor sources or activities that involve the same or substantially similar types of operations.</p> <p>(b) The sources or activities must have the potential to discharge or dispose of the same or similar types of wastes.</p> <p>(c) The general permit must require the same or similar monitoring requirements, effluent limitations and operating conditions for the categories.</p> <p>(d) The category of sources or activities would be more appropriately controlled under a general permit than an individual permit.</p> <p>The general permit allows DEQ to cover a wide range of industry under one permit. The court in <i>NRDC v. Train</i>, 396 F.Supp. 1393 (D.D.C. 1975) <i>aff’d</i>, <i>NRDC v. Costle</i>, 568 F.2d 1369 (D.C.Cir. 1977), has acknowledged the administrative burden placed on the Agency by requiring permits for a large number of storm water discharges. The courts have recognized EPA’s discretion to use certain administrative devices, such as area permits or general permits, to help manage its workload. In addition, the courts have recognized flexibility in the type of permit conditions that can be established, including the use of requirements for best management</p>

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		<p>assimilative capacity in a receiving water is considered de minimis and not a lowering of water quality and is thus not subject to a Tier 2 antidegradation review.” This conclusion is confounding. This standard is not found in DEQ’s regulations or even guidance. Thus, it is inapplicable here. Moreover, it appears to conflict with DEQ’s regulations that state:</p> <p>Oregon’s water quality management policies and programs recognize that Oregon’s water bodies have a finite capacity to assimilate waste. Unused assimilative capacity is an exceedingly valuable resource that enhances in-stream values and environmental quality in general. Allocation of any unused assimilative capacity should be based on explicit criteria.”</p>	practices.
9	15	<p>DEQ Must Conduct a Lawful Antidegradation Review. OAR 340-041-0004(9)(c). There is no explanation of how DEQ developed its new 10 percent, de minimus standard, articulated here. Moreover, nothing in DEQ’s proposed permit demonstrates how DEQ proposes to assess remaining assimilative capacity of the waters into which each of the permittees intends to discharge. Remaining assimilative capacity is not a fact that can be assumed; it must be measured and evaluated.</p>	<p>DEQ has imposed equivalent or more stringent benchmarks; thus, for permits that have already been assigned, there will be no lowering of water quality. In addition the number of facilities have stayed fairly static over time.</p> <p>DEQ considers that use of less than 10% of assimilative capacity in a receiving water is considered de minimis and not a lowering of water quality and is thus not subject to a Tier 2 antidegradation review. If an assignment of a new permit would result in use of greater than 10% of assimilative capacity for any pollutant, DEQ may require a Tier 2 antidegradation review, may require more stringent benchmarks to ensure that there is no lowering of water quality, or may require the applicant to apply for an individual permit.</p>
10	15	<p>DEQ Must Conduct a Lawful Antidegradation Review.</p> <p>Moreover, DEQ claims that “[i]f an assignment of new permit coverage would result in use of greater than 10% of assimilative capacity for any pollutant, DEQ may require a Tier 2 antidegradation review or may require more stringent benchmarks to ensure that there is no lowering of water quality.” It is unclear how DEQ would assess compliance with this standard, or where in the permit it has retained the authority to implement lower benchmarks for a new facility.</p>	See above response.
11	15	<p>DEQ’s “less than 10% of assimilative capacity” standard also runs counter to analogous attempts by Ecology to use risk analysis and dilution assumptions to develop permit targets. For example, in comments submitted by NMFS on the Washington Industrial Stormwater Permit,</p>	<p>The benchmark calculation methodology was determined practicable during a lengthy advisory committee process and lawsuit settlement under the 2011/2012 permits.</p>

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		<p>NMFS states:</p> <p>The proposed permit targets for the Industrial permit are based on a water quality risk evaluation that examines the risk of exceeding acute water quality standards (Herrera Environmental Consultants 2009). For this analysis, Ecology determined that the proposed benchmarks and action levels should be considered based on a dilution factor of 5 and a 10 percent risk for exceeding the applicable water quality standard for each metal. While this may be a viable approach for setting benchmark levels across a broad range of facility types and receiving waters, it is not an approach that provides adequate protection for listed salmon. We cannot accurately assume that a dilution factor of 5 will always be provided where listed salmon are present. Nor can we accurately assume that a 10 percent risk of exceeding applicable water quality standards will not have adverse effects on listed fish, particularly when we know that current water quality standards for some pollutants (particularly copper and zinc) already exceed levels that result in adverse effects for listed salmon and steelhead. Therefore, we do not believe more than minor detrimental effects to listed salmon and steelhead will be avoided.</p>	<p>The pollutant reduction efforts will focus on the most effective stormwater controls, such as source control, end-of-pipe treatment, and education/outreach efforts, including a reduction and disconnection of impervious surfaces.</p> <p>In addition, the reduction in TSS and metals will further benefit fish habitat and support improved water quality.</p>
12	15	<p>DEQ Must Conduct a Lawful Antidegradation Review. Finally, DEQ asserts that the permit is consistent with the antidegradation policy because there “are a relatively consistent number of facilities operating under the permits at any time.” Specifically, DEQ notes “[s]ince July 2011, the number of facilities under each permit has not varied over ± 3.5% of their respective averages.” Based on this, DEQ concludes “[t]o the extent that there is any additional load from a net increase in facilities, it will be offset by the lowered benchmarks concentrations and the higher level of corrective actions in the new permits.” Again, as discussed, this conclusion cannot be supported when DEQ has in fact proposed to increase benchmarks in some instances. Regardless, the number of permittees is not the correct measure of the potential impact to the environment. The size and types of facilities, the amount of impervious area, the types and concentration of pollutants, and the controls and measures.</p>	<p>The size and type of pollutant concentrations are addressed by Tier II corrective action response. Facilities for which sampling results are not meeting benchmarks, must install source control and treatment technologies to control pollutant discharge. Since the number of facilities has remained relatively consistent, and the previous permit established Tier II corrective action to exceedances requirements based on stormwater data, reduction in industrial stormwater pollution is clearly shown. The 2017 permit will continue to require Tier II corrective action for industrial stormwater discharges unable to meet the benchmark targets.</p>
Backsliding			
13	15	For the new permit, DEQ calculated new water quality criteria-based	The benchmark values have not been lowered in the final permit.

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		<p>benchmarks. These values ranged from 0.009 mg/L to 0.052 mg/L, with the Columbia Slough at 0.040 mg/L. For all regions where the value derived was above 0.020 mg/L, including the Slough, DEQ appears to have set the new benchmarks at these values. This is troubling for a number of reasons.</p> <p>First, this is textbook backsliding. EPA’s regulations prohibit the weakening of any standards or conditions contained in existing permits. See 40 C.F.R. § 122.44(1)(1). The exception to this otherwise strict prohibition is found when the permit would otherwise qualify for a modification under 40 C.F.R. §122.62. As none of those circumstances applies here with regard to these regions, DEQ may not relax the benchmark for copper.</p>	
14	44	<p>"We are concerned, however, that without language directed at facility-specific discharge benchmarks to address antibacksliding requirements for our sector, the inclusion of wood preserving facilities in the general permit would not be helpful to existing facilities. In its current form, the 1200-Z permit would be available only to new facilities. We believe this problem could be easily address by including facility-specific benchmarks in a permit coverage assignment letter. We submit the following language, proposed by Michael Campbell representing the OISG, as a reasonable approach to resolving this issue:</p> <p>“A.14. Effluent Limitations Necessary to Comply with Antibacksliding Requirements</p> <p>When approving a permit registration application for discharges that were previously authorized under an individual NPDES permit, DEQ shall include in the permit coverage assignment letter any additional effluent limitations needed to comply with the antibacksliding requirements in subsection 402(o) of the Clean Water Act, 33 U.S.C. §1342(o). The permit assignment letter shall also specify any additional monitoring, recordkeeping, or reporting requirements for any such effluent limitations. The permit registrant shall comply with any requirements added by DEQ pursuant to this section.”</p> <p>We believe this language would address the antibacksliding requirements while simultaneously allowing existing wood preserving facilities to obtain coverage under the 1200-Z permit. Further, we believe this would</p>	<p>If wood treaters are covered under an individual permit, it is true that this may prohibit coverage under the 1200-Z general permit due to anti-backsliding requirements in subsection 402(o) of the Clean Water Act. DEQ cannot simply add a condition or incorporate effluent limits under the general permit without performing the appropriate characterization of effluent and receiving water as done when developing an individual permit. These steps include: evaluating site specific effluent concerns in stormwater discharge, determining allowance of mixing zone or dilution, modeling site specific characteristics, and identify receiving water critical conditions.</p> <p>Wood preservers currently covered under individual permits may apply for coverage under the 1200-Z and will be analyzed based on application materials if a facility is eligible for coverage.</p>

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		not only be advantageous to our manufacturers, but would also aid DEQ in achieving greater efficiency, particularly in view of the significant backlog of NPDES permit renewals."	
15	46	<p>Oregon Department of Environmental Quality (DEQ) should provide documentation that anti-backsliding requirements are applicable to each of the permit-specific receiving waterbodies (Columbia River, Columbia Slough, and Portland Harbor) in which the benchmarks are being held to values of the current permit and not their modeled values. This documentation could be completed per DEQ's Antidegradation Policy Implementation for each waterbody, or a similar review, which clearly identifies that the higher modeled concentrations (i.e., a relaxation of effluent limitations) would not be acceptable per CWA Section 303 and 402 regulations.</p> <p>The current Permit Evaluation Report identifies that benchmarks cannot be reduced or eliminated unless DEQ can demonstrate that they are no longer needed to provide environmental protection (Section 3.7.6.4). The modeled benchmarks (Section 3.7.7.1) for certain parameters are greater than the existing permit benchmarks, including:</p> <ul style="list-style-type: none"> • Total zinc for the Columbia River modeled at 0.274 mg/L and proposed limit at the existing permit benchmark concentration of 0.120 mg/L. • Total zinc for the Columbia Slough modeled at 0.368 mg/L and proposed limit at the existing permit benchmark concentration of 0.240 mg/L. <p>Given that the impacts of the difference in the modeled and existing permit benchmarks are significant in terms of the socioeconomic resources required for stormwater management and environmental protection, we ask that DEQ document for public understanding, using tools it has already developed in its existing antidegradation policy guidance document, as to why a lowering of effluent limitations is impermissible.</p>	<p>The permit contains a narrative water quality-based effluent limit to ensure that discharges are controlled as necessary to meet applicable water quality standards. Any new applications for discharge to impaired waters must do one of the following:</p> <ol style="list-style-type: none"> 1. Prevent all exposure to stormwater of the impaired parameters; 2. Document that the impaired parameters are not present at the site; <u>or</u> 3. Demonstrate that the discharge is not expected to cause or contribute to an exceedance of the water quality standard for the impaired parameters. <p>Multiple factors may be considered in determining whether water quality standards have been attained or not. In general, discharges to impaired waters should not exceed the water quality criterion for any impairing pollutant at the point of discharge because presumably there would be no mixing zone for that pollutant (since the water is already impaired). Impairment generally means there is no assimilative capacity in the receiving water. EPA regulations prohibit dilution as a valid control measure to meet water quality standards unless the circumstances in 40 CFR Part 125.3(f) have been met on a case-by-case basis.</p>
Benchmarks			
16	1, 4, 5, 11, 12, 14, 15, 18, 19, 20,	DEQ received several comments pertaining to benchmark development during the draft permit's first public comment period ending March 20, 2017. Several commenters request that DEQ re-calculate the metal	To address these comments, DEQ re-calculated the benchmarks and re-posted the entire permit and permit evaluation report for an additional 35-

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	21, 24, 26, 31, 32, 33, 34, 35, 36, 37, 41, 42, 45, 49, 50, 51, 53, 55	benchmarks, evaluate the calculated benchmarks for technical feasibility, update the Permit Evaluation Report, and re-post the entire permit for a second public notice.	day public comment period which ended on June 19, 2017.
17	1, 51, 53, 55	While some sources of zinc on point source and can be addressed by BMPs, other sources are ubiquitous (e.g., wind-blown deposition from ubiquitous sources such as highways and roadways (tire and brake dust), residential properties (moss removers), etc.), and therefore are outside of the control of an industrial facility. An overly conservative benchmark value such as this would likely require all industrial storm water dischargers to install expensive storm water treatment systems, even if they manage all their onsite sources of zinc, at great expense.	DEQ has determined that the benchmark values are reasonable. For the metals benchmarks, risk based modeling estimated benchmark values that would result in an acceptable (low) probability of causing or contributing to degradation of state waters, a 10% exceedance rate of the acute aquatic life criteria. Concurrently, DEQ developed technology based metal benchmarks utilizing discharge monitoring data submitted by the facilities under the prior 1200-Z and 1200-COLS permits and passive treatment system data from the International Stormwater BMP Database. The technology based analyses were conducted to increase the likelihood that facilities will succeed in meeting the metals benchmark and utilize treatment technologies that are feasible. Additionally, the benchmarks are based on regionally specific information, for lead and zinc a regional hardness value was used (similar to the previous permit) and for copper the BLM uses regional factors (not just hardness).
18	1, 21, 55	It may also be helpful to compare the proposed benchmarks to those already in use in Washington and California, these benchmarks are substantially higher than those in the Proposed 1200-Z Permit.	The benchmark analyses for Oregon were done using Oregon specific data, so regardless of how different or similar the benchmarks are to other states, they are appropriate for industrial stormwater discharges Oregon waterways.
19	1	The modeled ODEQ concentration where a 10% probability of exceeding the applicable water quality standard was 0.090 mg/Kg; however, the concentration ODEQ is suggesting to use for the Willamette Valley is 3X lower than this concentration.	<p>DEQ re-calculated the benchmarks and re-posted the entire permit and permit evaluation report for an additional 35-day public comment period which ended on June 19, 2017.</p> <p>DEQ expanded ambient monitoring data used to evaluate metals based on separate georegions and the biotic ligand model for copper. The methodology was similar to the previous permit using water quality model and a 10% probability of exceeding the acute aquatic life criterion. Then a technological feasibility analysis identified an achievable and justifiable benchmark at a reasonable cost for Oregon industrial facilities.</p>

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20	1, 53, 55		<p>To address these comments, DEQ re-calculated the benchmarks and re-posted the entire permit and permit evaluation report for an additional 35-day public comment period which ended on June 19, 2017.</p> <p>The variables in the modeled risk based benchmarks for lead and zinc is a function of the total hardness modeled for each geo-region. As illustrated in the permit evaluation report, Portland Harbor has a mean total hardness of 26.02 µg/L with a standard deviation of 4.25 µg/L, while the Willamette Valley geo-region has a mean total hardness of 56.25 µg/L with a standard deviation of 43.33 µg/L. These variations, while predominately the same waterbody, is a function of flow (i.e., quantity of water), a more uniform or homogenous waterbody downstream, and the inherent variability in modeling for approximately 180 miles of the Willamette River in the Willamette geo-region versus approximately 10 miles of the Willamette River in the Portland Harbor geo-region.</p>
21	6	<p>And lastly we continue to have concern regarding the lower benchmark. We are listening to the workshop on the modeling. We are currently complying with the benchmark that is listed on the current permit and we work very hard to make that happen. Our site we actually have cartridge filters we have oil water separator we have changed roofs we have changed gutters and many other best management practices to keep us under the .12mg/L we would be just slightly probably going to trickle back in to this 0.09 mg/L and I think when we are evaluating wither this is achievable in terms of this new benchmark, they did not take into consideration of facilities that already have a much lower presence of this pollutant in the site. When you try to treat this last 1% or last percentage of something obviously it's not cost effective and there are a lot of faculties that are still working on this meeting the current standards why are we penalizing the facilities that have met this standard and work hard to make it happen.</p>	<p>DEQ has determined that the benchmark values are reasonable. For the metals benchmarks, risk based modeling estimated benchmark values that would result in an acceptable (low) probability of causing or contributing to degradation of state waters, a 10% exceedance rate of the acute aquatic life criteria. Concurrently, DEQ developed technology based metal benchmarks utilizing discharge monitoring data submitted by the facilities under the current 1200-Z and 1200-COLS permits and passive treatments system data from the International Stormwater BMP Database. The technology based approach was to increase the likelihood that facilities will succeed in meeting the metals benchmark and utilizes treatment technologies that feasible.</p> <p>As part of the technical feasibility analysis, DEQ evaluated discharge monitoring report data from 2011 - 2016 submitted by the facilities. This was to assess relevant industrial facility stormwater metals discharge concentrations, it is likely that few facilities had implemented Tier II corrective actions (i.e., treatment BMPs), As a result, this analysis would not show the effects of Tier II corrective actions. While DEQ's analysis of the discharge monitoring data indicates that most facilities should be able to meet the benchmarks with passive treatment, DEQ acknowledges that some benchmarks will be challenging for some facilities to meet using passive treatment alone, specifically if they have previously installed passive</p>

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			<p>treatment systems.</p> <p>Additionally, DEQ recognizes that certain facilities may obtain an individual permit to address site specific concerns or benchmarks that are not achievable. It should be noted that the inability to reach benchmarks is not a permit violation. Rather, not following through with corrective actions is a permit violation.</p>
22	11	<p>The graphs provided by DEQ in the Permit Evaluation and Overview Report show that the 75th percentile of industrial sites overseen by an Agent of DEQ is above the current 1200- Z benchmark for zinc of 120µg/L. Furthermore, none of the 75th percentile meets the proposed benchmark of 27µg/L. Reducing the zinc benchmark by a factor of 4.5 times the current benchmark will impact industry drastically and will likely punitively effect every permit holder within the Willamette Valley.</p> <p>Even with the current benchmark of 120µg/L for zinc, DEQ's data shows that roughly 55% of permit holders overseen by DEQ agents are not able to meet the current benchmark with Tier II implementation. Permit holders that have implemented treatment methods from multiple vendors have expressed that they do not work as claimed. At this point, removal of zinc from stormwater is a fledging technological effort with very little historical data or ability to prove treatment efficiency prior to installation. This results in industry spending significant sums of money to install, monitor, and continually upgrade their treatment processes in an effort to consistently meet benchmark concentrations.</p> <p>With this proposed decrease in concentration, most of the treatment options selected during the current permit cycle will not be capable of meeting the new benchmarks, and will have to be discarded or vastly upgraded. This will cost industry millions of dollars in technology that may not meet proposed benchmarks. This may lead to enhanced pump-and-treat systems at every outfall if operational BMPs are not sufficient to meet the proposed benchmarks.</p>	<p>DEQ re-calculated the benchmarks and re-posted the entire permit and permit evaluation report for an additional 35-day public comment period which ended on June 19, 2017. In the final permit and permit evaluation report, DEQ has determined that the benchmark values are reasonable. It should be noted that if a facility received a monitoring waiver for sampling, this may have had a significant impact on the charts presented in the first draft of the permit evaluation report.</p> <p>DEQ acknowledges the comment pertaining to concerns regarding the treatment systems, as previously noted DEQ evaluated discharge monitoring report data from 2011 - 2016 submitted by the facilities and developed benchmarks that are technically feasible.</p> <p>DEQ acknowledges the comment pertaining to concerns regarding the treatment systems in place currently.</p>
23	15	<p>It is abundantly clear the approach to regulating copper pursued by DEQ is patently unlawful. As noted above, for every permit DEQ must first determine what technology based limits it must impose on each discharger. After that analysis is complete, DEQ must then determine if any more stringent limitations are necessary to ensure compliance with</p>	<p>By setting the benchmark at an attainable level, DEQ encourages adoption of appropriate and effective pollution control technologies that protect, or where necessary, improve in water quality.</p> <p>Also, a recent evaluation of water quality data indicated that Oregon waters</p>

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		<p>water quality standards. Based on the answers to those two questions, DEQ must set the permit terms to reflect the more protective of the two suites of controls. Here, DEQ turns this fundamental principle on its head. Specifically, the draft permit is proposed copper limits appear to be based on the weaker of the two potential standards.</p>	<p>meet water quality criteria for copper. Therefore, it is reasonable to expect that the more stringent requirements of the permit will be protective of water quality.</p> <p>DEQ has developed a permit consistent with State water quality goals. Facilities are required to ensure that stormwater discharge does not cause or contribute to an exceedance of instream water quality standards in OAR 340-041, including the narrative standards and aquatic life and human health criteria. The benchmark values in the permit for the zinc and lead are based on a water quality model and a 10% exceedance rate of the acute aquatic life criteria.</p>
24	15	<p>DEQ has not explained why it proposes to establish benchmarks for only three metals. In 1997, DEQ provided an unsatisfactory reason for establishing benchmarks for only copper, lead, and zinc. Prior to that time, DEQ did in fact establish benchmarks for several additional heavy metals, including cadmium, mercury, and nickel. See DEQ, NPDES General Storm Water Discharge Permits, 1200 Series Renewal Fact Sheet (Jan. 31, 1997). In 1997, DEQ removed many of these benchmarks, asserting that its retention of only three metals was consistent with EPA’s “Executive Summary, Results of the Nationwide Urban Runoff Program,” written in December, 1983. DEQ claimed that EPA’s Urban Runoff Report found that copper, lead, and zinc were “the most prevalent priority pollutants” in urban runoff, and that this report justified DEQ’s decision to eliminate benchmarks for several pollutants. This rationale is unsupported as the CWA and its implementing regulations require DEQ to regulate all pollutants that are discharged from a point source. See 40 C.F.R. § 122.44(d)(1)(i)</p>	<p>DEQ’s 1200-Z permit is based on EPA’s MSGP permit and includes all of the sector specific requirements. Effluent guidelines are not always established for every pollutant present in a point source discharge. In many instances, EPA promulgates effluent guidelines for an indicator pollutant. Industrial facilities that comply with the effluent guidelines for the indicator pollutant will also control other pollutants (e.g., pollutants with a similar chemical structure). For example, EPA may choose to regulate only one of several metals present in the effluent from an industrial category, and compliance with the effluent guidelines will ensure that similar metals present in the discharge are adequately controlled. Suspended sediment is well known as a major carrier of nutrients and metals and all discharge must be sampled for TSS.</p> <p>EPA’s regulations specifically provide that effluent limitations can be expressed as BMPs where “numeric effluent limitations are infeasible” and/or where “[t]he practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.” 40 CFR 122.44(k)(3) and (4). EPA stated in its November 2014 stormwater/TMDL memo that industrial stormwater permits “should contain clear, specific, and measurable elements associated with BMP implementation (e.g., schedule for BMP installation, frequency of a practice, or level of BMP performance), as appropriate, and should be supported by documentation that implementation of selected BMPs will result in achievement of water quality standards.</p>
25	15	<p>As discussed above, DEQ has the duty to ensure that the permittees will use the appropriate technology to reduce or eliminate the discharge of</p>	<p>DEQ has developed a permit consistent with State water quality goals. Facilities are required to ensure that stormwater discharge does not cause or</p>

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		<p>pollutants from industrial facilities. Here, DEQ has done the analysis and reduced this technology-based requirement to a numeric limit, 0.020 mg/L. Again, the imposition of the appropriate technology-based effluent limits is of primary importance under the NPDES permitting program. It would be wholly inconsistent with the statutory and regulatory scheme to fail to impose the necessary technology based limits. Thus, where DEQ has defined the appropriate limits, it must include those limits in the permit.</p>	<p>contribute to an exceedance of instream water quality standards in OAR 340-041, including the narrative standards and aquatic life and human health criteria. The benchmark values in the permit for the zinc and lead are based on a water quality model and a 10% exceedance rate of the acute aquatic life criteria.</p>
26	15	<p>Turning to the other regions where DEQ determined the water quality based benchmark was below 0.020 mg/L, DEQ's re-imposition of the technology-based benchmark is patently illegal. Again, as discussed above, after the permitting authority determines the appropriate technology based limits, it must impose "any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards . . . necessary to [a]chieve water quality standards . . ." 40 C.F.R. § 122.44(d). There is no justification for DEQ's decision to ignore this explicit requirement. NRDC at 579 (a water-quality based effluent limit cannot be based on merely incorporating the requirements of a technology-based limit).</p>	<p>This permit does not allow discharges that cause or contribute to an in-stream water quality standard violation. Industrial stormwater dischargers must meet technology based effluent limits that are set based on achievable performance in addition to BMPs required in the permit. These requirements are in place so that a discharge meets water quality standards.</p>
27	15	<p>In the previous iteration of the permit, DEQ refused to establish a water quality-based limit for copper, claiming that the dischargers would not be able to meet the requirements. This is not a lawful excuse for not including required permit limits. Not only is DEQ poised to repeat this mistake, it has gone one step further and has proposed to use the calculated water-quality based limit to abandon its technology-based limit for several areas in the state.</p> <p>... DEQ refused to set a water quality-based copper benchmark because it believed that "[a]ffordable and feasible treatment technologies are not readily available to meet the modeling results for copper of 6 µg/L for the 1200-Z permit." Instead, DEQ "[d]eveloped a technology based benchmark to increase the likelihood that facilities will succeed in meeting the new copper benchmark." That benchmark was set at 0.020 mg/L. The 1200-COLS permit included a water quality based benchmark of 0.036 mg/L.</p>	<p>DEQ has developed a permit consistent with State water quality goals. Facilities are required to ensure that stormwater discharge does not cause or contribute to an exceedance of instream water quality standards in OAR 340-041, including the narrative standards and aquatic life and human health criteria. The benchmark values in the permit for the zinc and lead benchmarks are based on a water quality model and a 10% exceedance rate of the acute aquatic life criteria. DEQ has determined that the benchmark values are reasonable. For the metals benchmarks, risk based modeling estimated benchmark values that would result in an acceptable (low) probability of causing or contributing to degradation of state waters, a 10% exceedance rate of the acute aquatic life criteria. Concurrently, DEQ developed technology based metal benchmarks utilizing discharge monitoring data submitted by the facilities under the current 1200-Z and 1200-COLS permits and passive treatments system data from the International Stormwater BMP Database. The technology based approach increased the likelihood that facilities will succeed in meeting the metals benchmarks and utilize treatment technologies that are feasible.</p>

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			Additionally, the benchmarks are based on regionally specific information, for lead and zinc a region hardness value was used (similar to the previous permit) and for copper the BLM uses regional factors (not just hardness).
28	15, 21	<p>As DEQ notes, the water quality standard for copper was recently revised based on the biologic ligand model (“BLM”). To account for this change, DEQ claims to have begun the process of conducting “risk-based modeling” to develop water quality based copper benchmark concentrations. For this process, DEQ has divided the state into five georegions--Cascades, Coastal, Columbia River, Eastern, and Willamette Valley--and the Columbia Slough and Portland Harbor. DEQ then selected a subset of the available water quality data in those areas to run the BLM. Specifically, DEQ excluded information from “sites in remote mountain areas, or in areas that are primarily agricultural,” as these areas “would not be representative of industrial stormwater receiving waters.” After these areas were removed, DEQ was left with water quality data from sites on major rivers, sites on smaller creeks and channels in developed areas, and sites on smaller creeks and channels “that didn’t fit into the above categories.” DEQ, however, excluded information from this last category, claiming “statistical summaries of important parameters” demonstrated that “water quality in the first two categories was very similar, but different from water quality in the [final] categor[y].” What these differences were and why that warranted exclusion was not explained.</p> <p>DEQ’s restrictive analysis is troubling for several reasons. First, the draft permit, if issued, will be available to all eligible industrial facilities throughout the state. There is no limitation that those facilities be located only on major rivers or small creeks or channels in developed areas. As a result, by excluding other areas from the analysis, DEQ has likely drafted a permit that is not truly protective of water quality. Second, DEQ fails to explain how its analysis and proposed copper limits address the fact that the water quality on small streams and channels in undeveloped areas was “different.” By expressly excluding these areas from the calculations, DEQ has failed to ensure that these waterbodies will be protected under this permit. As a result, DEQ cannot proceed until it has completed a thorough analysis of the potential receiving waters, and developed permit conditions that will ensure compliance with WQSs in all situations.</p>	<p>The site selection process for the permit renewal was chosen to ensure that no sites would unfairly bias the analysis.</p> <p>DEQ did not exclude any sites expressly because they were high mountain streams. The site selection process used in this permit renewal was more inclusive than in previous permit cycles and the previous 2017 public noticed draft. All waterways, with the exception of estuaries, were considered when acquiring data. If small streams and channels in undeveloped areas were not included in any given area, it was due to a lack of data. DEQ utilized the available data and analyzed thoroughly. The final permit does reflect potential permit conditions across the state, including “sites in remote mountain areas, or in areas that are primarily agricultural.”</p>

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29	15	<p>Finally, DEQ calculation of BAT for copper fails to comply with the statutory and regulatory requirements. Again, the BAT standard sets a high bar. Congress fully expected that, for any given category of dischargers, application of BAT would result in the closure of some facilities. <i>American Iron & Steel Institute v. EPA</i>, 526 F.2d 1027, 1051-1052 (3d Cir. 1975) (“Congress clearly contemplated that cleaning up the nation’s waters might necessitate the closing of some marginal plants.”). Nor is the average performer within a category of dischargers representative of BAT. “[R]ather than establishing the range of levels in reference to the average of the best performers in an industrial category, the range should, at a minimum, be established with reference to the best performer in any industrial category.” <i>American Paper Institute</i>, 543 F.2d at 346 (emphasis added). See also <i>American Meat Institute v. EPA</i>, 526 F.2d 442, 462-463 (7th Cir. 1975); <i>American Frozen Food Institute</i>, 539 F.2d at 120-21.5</p>	<p>Technologically achievable benchmarks based on BMP data and a comparison to industrial discharge data determine a reasonable and attainable target for industry. This is consistent with EPA setting limits based on performance of specific technologies. By using passive filtration, DEQ has met BAT by looking at cost, availability and eliminating non-water quality environmental impacts, including energy requirements.</p> <p>The Clean Water Act requires facilities to meet technology based effluent limits. DEQ’s 1200-Z permit is based to EPA’s Multi-Sector General permit (MSGP). The effluent limits in the MSGP correspond to required levels of technology-based control under the CWA (i.e., Best Practicable control Technology currently available for all pollutants (BPT), Best Conventional pollutant control Technologies for conventional pollutants (BCT) and Best Available Technology economically achievable for toxic pollutants (BAT)).</p> <p>EPA establishes national effluent guidelines for specific industrial groups. One of the major strategies of the Clean Water Act (CWA) in making “reasonable further progress toward the national goal of eliminating the discharge of all pollutants” is to require effluent limitations based on the capabilities of the technologies available to control those discharges. Technology-based effluent limitations (TBELs) aim to prevent pollution by requiring a minimum level of effluent quality that is attainable using demonstrated technologies for reducing discharges of pollutants or pollution into the Oregon’s waters. TBELs in this permit are expressed in a narrative form. EPA interprets the CWA to allow Best Management Practices (BMPs) in the place of numeric TBELs when numeric limits are infeasible. EPA has stated, that it is not always feasible to develop numeric TBELs for industrial stormwater due to the variability of stormwater discharge and the BMPs employed at the industrial sites.</p>
30	15	<p>Here, DEQ appears to search for a technology that all facilities could implement and uses that as the basis for the technology-based limit. Specifically, DEQ’s analysis targeted ensuring that 75% of the facilities could meet the limit. This clearly misstates the goal of the BAT analysis. In addition, DEQ limited its analysis to only “media filters” as the control technology assessed. In doing so DEQ ignored the many other treatment options, including but not limited to biofilters, bioretention, detention basins, porous pavement, retention ponds, wetland basins, and wetland</p>	<p>DEQ evaluated currently available information on stormwater BMPs and has determined that the benchmarks values are achievable with the use of passive treatment which is an economically achievable technology for most facilities. Filtration studies in the International BMP Database are inclusive of all filter media types such as sand and more costly media which may include peat or zeolite. Therefore, DEQ considers filtration systems which do not require electrical current to operate, as passive treatment.</p>

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		<p>basin/retention pond, all of which have been summarized in the International Stormwater BMP Database. Moreover, DEQ ignores its own analysis demonstrating that on average the permitted facilities are discharging below 0.010 mg/L of copper. This demonstrates that the available technology can support at least this level of control.</p> <p>To the extent that DEQ uses a similar approach to establish limits or benchmarks for zinc and lead, this of course would be unlawful. DEQ must determine both the technology-based limits, under the BAT factors, and the water quality-based limits, and use the more protective of the two as the effluent limit in the permit.</p>	
31	18	<p>Gresham concerns with how certain parameter benchmarks were derived by DEQ and the potential implications for triggering numerous Tier II corrective actions. The City is supportive of benchmarks that are scientifically defensible and protective of Oregon's waters that are also technologically achievable and also separable from a business' operations contribution to the parameter versus sources of the parameter that come from legal standard building materials such as metal buildings and chain link fences.</p>	<p>DEQ re-calculated the benchmarks and re-posted the entire permit and the permit evaluation report for an additional 35-day public comment period which ended on June 19, 2017.</p>
32	21	<p>Schedule A, 9 (Benchmarks): Appendix 1 states that "Oregon's water quality criteria for metals are expressed as total instead of dissolved." This is incorrect. Table 30 in OAR 340-041- 8033 gives the water quality criteria for lead and zinc as the dissolved concentration in the water column. Similarly the biotic ligand copper model results are expressed as dissolved. It is unclear how DEQ applied water quality criteria expressed as dissolved metals to generate benchmarks expressed as total metals.</p>	<p>DEQ agrees with this comment and made this change in the final permit. The PER explains this issue.</p>
33	21	<p>Schedule A, 9 (Benchmarks): The Monte Carlo method is described as being used to account for environmental variability. However, the approach used for applying the Monte Carlo simulations is not clear. For example, if dependent data are simulated as independent, the results would be biased. Similarly, assumptions on distributions should be verified. Any method for calculating benchmarks must account for the physicochemical constraints on water chemistry and not randomly mix data that could not co-exist in nature. It would help if the PER clarified the approach used for the Monte Carlo analysis.</p>	<p>The PER states that, "Oracle's Crystal Ball software was used to determine the best fit distribution based on the available data in each geo-region for the following parameters: temperature, pH, dissolved copper, dissolved organic carbon, conductivity, total recoverable lead, total recoverable zinc and hardness." There generally are not strong correlations among these parameters. That is, they are not dependent variables. The PER also states that histograms were verified: "Histograms of the randomly generated datasets were compared to the distributions of the original data." Finally, the PER states that, "Conductivity is used to calculate the concentration of the geochemical ions needed for the model (alkalinity, calcium, chloride,</p>

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			magnesium, potassium, sodium and sulfate).” This approach accounts for possible interdependencies between these parameters. Thus, no further clarification is needed in the PER
34	21	<p>The PER states that the lack of sufficient lead data required the use of a single data set to characterize the background conditions in the entire state. Since background conditions may vary widely, this approach casts doubt on the validity of the lead benchmarks. DEQ needs to justify this approach by other than lack of sufficient data. The District has an extensive data set for dissolved lead (and other parameters) that is available for DEQ’s use.</p> <p>Appendix J of the EPA Multi-Sector General Permit provides an example for benchmarks based on hardness and the hardness-based criteria. The minimum benchmark based on the criteria without an adjustment for dilution at hardness between 0 and 24.99 is 0.04 mg/L (40 µg/L), which is above the proposed 27 µg/L benchmark. Appendix J also notes that third-party data from a utility such as the District is appropriate for determining instream hardness. DEQ has provided some local (e.g., slough and lower river) applications. The District could make its data available should DEQ wish to consider more site-specific data</p>	DEQ re-calculated the benchmarks and re-posted the entire permit and permit evaluation report for an additional 35-day public comment period which ended on June 19, 2017.
35	21	<p>The Permit Evaluation Report (PER) is not clear on the form of the metals (total recoverable or dissolved) used in the benchmark analysis, and therefore the relationship between the benchmarks and the criteria is uncertain. The PER identifies the equation for the old, total recoverable criteria rather than the current water quality standard based on the dissolved form of the metal. The correction to apply is the "conversion factor" used to derive the dissolved criteria and form of the standard. The spreadsheets cited for the benchmark analysis identified the total recoverable form of the metal for evaluating the ambient criteria. Using the total recoverable form of the metal would create a substantial bias in the benchmarks as can be readily demonstrated in data sets for the Tualatin Basin, which include the dissolved form of the metal to compare to the correct criteria. Also, the DEQ analysis did not describe the translator used to convert the instream calculation for a dissolved criteria to a total recoverable benchmark used for the industrial permit. The analysis presented by DEQ does not provide a reasonable indication of the potential, such as a 10th percentile, of exceeding water quality criteria</p>	<p>DEQ acknowledges that there are several methods and conversion factors that could be used in the development of the risk-based lead and zinc benchmarks. The factors proposed in your attachments would likely equate to a higher risk-based lead and zinc benchmarks, but note that the risk-based benchmark would also be “capped” at the current benchmark values for lead and zinc (40 µg/L and 120 µg/L, respectively).</p> <p>The conversion factor used in the risk-based lead and zinc benchmark calculations in the proposed 1200-Z is consistent with DEQ policy. Please see <i>DEQ’s Implementation Instructions for Dissolved Metals Water Quality Criteria in Reasonable Potential Analysis and Water Quality-based Effluent Limits Calculations</i> The total recoverable portion of the sample was used to calculate the lead and zinc benchmarks. No translator value was calculated because the criteria against which the benchmarks were compared was calculated as total recoverable as well. Given the amount of data required for this analysis benchmarks were not developed on a basin by basin scale. Data from the Tualatin Basin was incorporated into the Statewide</p>

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		due to an industrial stormwater discharge located in the Tualatin Basin.	benchmark and an appropriate 10 percent probability of exceeding the benchmark was calculated.
36	34	Schedule A, Table 4: BES suggests the addition of the word "Geographic" before "Benchmarks" in the title of the table. This addition would help distinguish the benchmarks in Table 4 from the sector-specific benchmarks.	DEQ decided to use the term "statewide" benchmarks to signify all benchmarks. The final permit contains "regional" benchmarks for Columbia River, Columbia Slough and Portland Harbor. Table 4 refers to all other areas of the state as "regional" benchmarks.
37	34	Schedule A, Table 4: BES asks DEQ to consider adding a note to the table that explains that the permit registrants' assignment letter will state which geographic benchmarks apply to the permit registrant.	DEQ defined Columbia Slough and Portland Harbor in Schedule D. The Columbia River benchmarks apply to all direct dischargers into the Columbia River. The term geographic benchmarks is no longer used in the final permit. Most renewing facilities will know the location and receiving water of their discharge points. DEQ, agents or local government may be able to assist in the determination when needed.
38	35, 38	<p>NWFPA strongly objects to the proposed Statewide Benchmarks in Table 4, particularly the level for zinc. At the time when DEQ set the current benchmarks for zinc and other metals, industrial dischargers clearly told the agency that we believed those standards would be extremely difficult to achieve. That has proven to be true. Food processors have invested significantly in new technology and processes. Compliance with the current benchmark has been difficult and sometimes unachievable.</p> <p>Now, DEQ is proposing to lower that standard by 25%, but only for those facilities that are outside the Portland area. This creates a bi-furcated program with inconsistent, unreasonable, and unachievable benchmark requirements. DEQ has not made the case for why the Regional level needs to be lower. It is our opinion that the proposed Regional zinc benchmark, 0.090, is still not consistently achievable nor is it economically feasible, even using the most effective technology available. Our members tell us that even with the installation of some very promising new drain filters, they do not believe they can achieve the benchmarks.</p> <p>NWFPA urges DEQ to revise the proposed Regional benchmark for zinc, making it consistent with the Portland benchmark, and leaving it at the current level of 0.120.</p>	<p>DEQ has determined that the benchmark values are reasonable. For the metals benchmarks, risk based modeling estimated benchmark values that would result in an acceptable (low) probability of causing or contributing to degradation of state waters, a 10% exceedance rate of the acute aquatic life criteria. Concurrently, DEQ developed technology based metal benchmarks utilizing discharge monitoring data submitted by the facilities under the current 1200-Z and 1200-COLS permits and passive treatments system data from the International Stormwater BMP Database. The technology based approach was to increase the likelihood that facilities will succeed in meeting the metals benchmark and utilizes treatment technologies that feasible.</p> <p>As part of the technical feasibility analysis, DEQ evaluated discharge monitoring report data from 2011 - 2016 submitted by the facilities. This was to assess relevant industrial facility stormwater metals discharge concentrations, it is likely that few facilities had implemented Tier II corrective actions (i.e., treatment BMPs), As a result, this analysis would not show the effects of Tier II corrective actions. While DEQ's analysis of the discharge monitoring data indicates that most facilities should be able to meet the benchmarks with passive treatment, DEQ acknowledges that some benchmarks will be challenging for some facilities to meet using passive treatment alone, specifically if they have previously installed passive</p>

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		<p>We [Weyerhaeuser Company] recall that the 2012 benchmark was itself an 80% decrease from the previous permit issued in July 2007. As has been noted by others, an additional 25% reduction in the zinc benchmark is likely to be infeasible or impossible, and for those sites that constructed engineered systems based on the 0.12 mg/L zinc benchmark, it is unreasonable that DEQ would significantly lower the benchmark hardly a year after the current permit's Tier II implementation deadline. Sites that made these investments had every reason to expect (given that the Department approved the designs) that they could operate these systems for their design life. The proposed reduced benchmarks will render many treatment systems as inadequate, and require redesign and reconstruction.</p>	<p>treatment systems.</p> <p>Additionally, DEQ recognizes that certain facilities may obtain an individual permit to address site specific concerns or benchmarks that are not achievable. It should be noted that the inability to reach benchmarks is not a permit violation. Rather, not following through with corrective actions is a permit violation</p>
39	38	<p>DEQ's modeling appears to assess the probability of zinc criteria exceedances caused by industrial zinc discharges (ignoring other non-industrial sources of zinc, or assuming they remain the same). There are, of course, many other sources of zinc entering receiving waters that are indistinguishable from 1200Z zinc discharges. It is perplexing that in its permit development materials, the Department has not shown what portion of the zinc found in Oregon waters is from 1200Z sources, versus other sources. It isn't clear this has even been evaluated. Understanding the sources of zinc should be an important part of revising benchmarks, in part to be able to evaluate the extent to which the new benchmarks will benefit water quality. Without an assessment of the sources and amounts of zinc from different sources, it's unclear how the effect of the new benchmark can even be assessed. The Department does not appear to have attempted to evaluate the effect, if any, the new benchmarks would have on water quality. What is clear, however, is that many tons of zinc sulfate moss control powder/granules (33% zinc content) is used in the state, and most of it ends up draining into gutters and then flowing into Oregon streams and rivers. In addition, uncoated galvanized roofing products are readily available and used throughout the state, which is also a significant source of zinc. If zinc is a recognized threat to Oregon water quality, all sources should be addressed, not just the ever-shrinking portion associated with 1200Z permittees. A place to start would be determining how much zinc-sulfate moss control powder is actually sold and used in the state.</p>	<p>DEQ disagrees with this comment. While the commenter is correct there are many potential sources of zinc in the environment, it is not within the scope of this analysis or the PER to evaluate these sources and incorporate them into the permit. The site selection process for this permit analysis was revised to include a wider range of sites across the state. This inherently included sites influenced by industrial discharges, non-industrial sources of zinc, both or, potentially, neither. In the end, this permit is meant to protect Oregon's waters downstream of industrial facilities and the site selection process and analysis support that goal.</p>
40	38	<p>More than 90% of the water quality monitoring data DEQ provided in its</p>	<p>If DEQ waited to collect post Tier II data, DEQ would have been unable to</p>

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		<p>supporting documents for zinc in the Willamette Valley precedes the current permit. That is, it was collected before the current permit was even issued. More than 96% of the data DEQ shows in its supporting data spreadsheet precedes July 2014, the earliest approximate date when Tier II requirements could have been triggered. And 100% of the monitoring data precedes July 1, 2016, the approximate date that sites were required to complete Tier II work. There are, as the Department has demonstrated here, methods to revise a probability-based benchmark using modeling that doesn't take into account the effects of field work that has reduced the probability of zinc exceedances. We question why DEQ would do so. Before DEQ further reduces the zinc benchmark, it should collect enough post-Tier II monitoring data to allow more meaningful modeling to be done, and to establish the need to change the benchmarks.</p>	<p>evaluate the benchmarks at this permit renewal and made the determination that it was not appropriate to wait. DEQ was committed to re-evaluate the benchmarks during this permit renewal since new data and information was available since the analyses completed in 2011. DEQ will use the data collected from the 2016 monitoring year and beyond to determine future permit requirements.</p>
41	41	<p>... my biggest concern is that benchmarks are being lowered without any prior notification. How are these benchmarks achieved? Why was zinc lowered in the "regional" areas and not the other areas of the state (I may be wrong on this issue as I do not know what the current benchmarks are for the other areas).</p>	<p>DEQ has determined that the benchmark values are reasonable. DEQ evaluated the newly adopted aquatic life criterion for copper which requires use of the biotic ligand model based on evaluation of eleven different water quality parameters rather than the hardness based calculations used in previous renewal processes. Changes to the zinc and lead benchmarks are based on a reassessment of the risk based water quality modeling.</p> <p>Concurrently, DEQ developed technology based metal benchmarks utilizing discharge monitoring data submitted by the facilities under the current 1200-Z and 1200-COLS permits and passive treatments system data from the International Stormwater BMP Database. The technology based approach was to increase the likelihood that facilities will succeed in meeting the metals benchmarks and utilize treatment technologies that are feasible. Additionally, the benchmarks are based on regionally specific information, for lead and zinc a region hardness value was used (similar to the previous permit) and for copper the BLM uses regional factors (not just hardness).</p>
42	45	<p>We would like to see a better, more robust partnership with industry which would include the use of an advisory committee to develop the new benchmarks/standards.</p>	<p>For the 2011/2012 permits DEQ convened an advisory group of diverse various stakeholders, ranging from industry to environmental advocacy groups. The goal was to discuss how to make the permits protective and implementable. DEQ determined that it was not necessary to reconvene an advisory committee with a robust process for the development of this permit since the general framework of the permit is similar to the previous</p>

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			permits.
43	49	<p>It has come to my attention that DEQ is proposing new benchmarks for Zinc that are extremely low and extremely difficult if not impossible for industries to comply with. It is my understanding that Zinc is found everywhere: in tires, on roads, on rooftops and in farm fields, etc. There is no way to stop Zinc from entering industries when Zinc from these sources is everywhere and surrounding their business locations.</p> <p>On behalf of our Albany area industries and businesses I am asking that the DEQ lessen the severity of the proposed draft reduction for Zinc. Let industries continue to use their treatment systems, fine tuning to achieve their best results meeting current standards. Let's recognize the tremendous amount of financial investments Oregon industries have already made and help these great employers instead of asking them to meet a new benchmark that is impractical and unattainable.</p>	DEQ has determined that the benchmark values are reasonable, see comments above.
44	51	<p>What is difficult for Selmet is determining the unknowns from offsite agriculture and the fact that Selmet's facility is butted up against I-5, a busy freeway and the main freeway through Oregon. Zinc is a component of tires, and tire wear is a known source of zinc. Dust containing zinc from I-5 creates background zinc levels that could very easily exceed the new standard.</p> <p>Selmet has invested over \$500,000 and allocated a substantial amount of real estate in an extensive onsite stormwater treatment system that includes retention ponds, oil water separators, and bioswales. This investment allowed Selmet to achieve compliance with the existing Zinc benchmark of 0.12 mg/L most of the time. The range of analytical results in the last reporting period, July 1, 2015 - June 30, 2016, was 0.0271 - 0.128 mg/L. In this case, 7 out of 8 sample results were below 0.12 mg/L, but none were below the proposed 0.027 mg/L benchmark. Reducing the benchmark again in this draft permit, results in a moving target that makes it very difficult for businesses to plan for the future. How are businesses to know that the benchmark won't again be further reduced in the future, invalidating any capital improvements made during this permit cycle, just as this new draft permit could invalidate prior capital improvements?</p>	<p>DEQ acknowledges this comment, DEQ re-calculated the benchmarks and re-posted the entire permit and the permit evaluation report for an additional 35-day public comment period which ended on June 19, 2017.</p> <p>Then a technological feasibility analysis identified an achievable and justifiable benchmark at a reasonable cost for Oregon industrial facilities.</p>
45	51	...With that said the proposed benchmarks for Zinc (and also Copper) are	Natural background pollutants are those substances that are naturally

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		<p>extremely low, considering these compounds are ubiquitous in our environment. In several areas, these metals are present at “natural” or “background” concentrations higher than the proposed benchmarks in both surface water and groundwater that also may be municipal water sources.</p>	<p>occurring in soils or ground water. Natural background pollutants do not include legacy pollutants from earlier activities at facilities, or pollutants in run-on from neighboring sources which are not naturally occurring, such as other industrial sites or roadways.</p> <p>The final permit retains a natural background monitoring waiver exemption for benchmark exceedances and a Tier II natural background waiver condition associated Tier II corrective action response.</p>
46	51	<p>"In conclusion, on behalf of Selmet and other regulated industries, I request that the reduction in the benchmark for zinc be less severe for the following reasons:</p> <ol style="list-style-type: none"> 1. Companies are still “working their plan” and fine tuning SWPCP BMPs and treatment systems to achieve sampling results below the 0.12 mg/L benchmark. 2. After implementing extensive BMPs and a well-engineered treatment system, other than incremental improvements, there isn't much opportunity to reduce zinc levels even further, let alone by another order of magnitude. <p>It is counterproductive to distract regulated industries from the ongoing work of compliance with existing limits with such a sudden and drastic change that leaves them vulnerable to third party litigation. This drains resources away from the common goal, and what often is intended for the common good becomes a predatory endeavor."</p>	<p>DEQ acknowledges this comment. For zinc, the 75th to 90th percentile industrial stormwater discharge average was 188 to 352 µg/L. This corresponds to achievable discharge concentrations that range from about 74 to 112 µg/L for a technologically achievable benchmark of 90 µg/L (rounded to one significant digit).</p>
47	52	<p>As we said in our DEQ budget testimony of March 13, 2017 to the Natural Resources Subcommittee of the Joint Ways and Means Committee, NWPPA believes the draft permit has some mathematical calculation errors among other issues. To remedy this situation NWPPA points to OSIG's analysis of benchmarks and the request for additional time to address and evaluate the reasons and science behind the proposed benchmark and also other issues in an additional comment period. NWPPA hopes that the Agency will honor our request for another comment period to fully evaluate the proposed permit conditions when the Agency has fully explained the proposed modifications to the regulated community.</p>	<p>DEQ acknowledges the comment, DEQ re-calculated the benchmarks and re-posted the entire permit and permit evaluation report for an additional 35-day public comment period which ended on June 19, 2017.</p>
48	52	<p>First, in our previous March 2017 comments on the first permit draft, we</p>	<p>DEQ appreciates this comment.</p>

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		stated our belief that mathematical errors had been made when calculating several benchmarks. NWPPA thanks the Department for addressing the mathematical errors. NWPPA supports the corrected lead and zinc benchmarks and we reiterate our support of the OISG comments on the benchmarks.	
Best Available and Economically Achievable Technology (BAT) Standard			
49	15	<p>Finally, DEQ calculation of BAT for copper fails to comply with the statutory and regulatory requirements. Again, the BAT standard sets a high bar. Congress fully expected that, for any given category of dischargers, application of BAT would result in the closure of some facilities. <i>American Iron & Steel Institute v. EPA</i>, 526 F.2d 1027, 1051-1052 (3d Cir. 1975) (“Congress clearly contemplated that cleaning up the nation’s waters might necessitate the closing of some marginal plants.”). Nor is the average performer within a category of dischargers representative of BAT. “[R]ather than establishing the range of levels in reference to the average of the best performers in an industrial category, the range should, at a minimum, be established with reference to the best performer in any industrial category.” <i>American Paper Institute</i>, 543 F.2d at 346 (emphasis added). See also <i>American Meat Institute v. EPA</i>, 526 F.2d 442, 462-463 (7th Cir. 1975); <i>American Frozen Food Institute</i>, 539 F.2d at 120-21.6</p>	<p>DEQ disagrees with this comment. Technologically achievable benchmarks based on BMP data and a comparison to industrial discharge data determine a reasonable and attainable target for industry. This is consistent with EPA setting limits based on performance of specific technologies. By using passive filtration, DEQ has met BAT by looking at cost, availability and eliminating non-water quality environmental impacts, including energy requirements.</p> <p>The technology based-effluent limits in DEQ’s 1200- Z permit comply with applicable federal technology-based treatment requirements under 40 CFR 125.3. Each category of technology based-effluent limits must be addressed in the stormwater plan with a description of potential pollution sources, assessing potential risk pollutants may pose to stormwater quality. Any such activities, materials, or features must be addressed by the measures and subsequently controls at the facility to minimize pollutants from mobilizing in stormwater discharge.</p> <p>DEQ has determined that the combination of pollution prevention, structural and treatment management practices in conjunction with tiered corrective actions for benchmark exceedances, is an environmentally sound way to control the discharge of pollutants in stormwater runoff from industrial facilities and protect water quality. Operators must select, design, and implement control measures (BMPs) in accordance with good engineering practices and manufacturer’s specifications and evaluate a variety of factors when choosing their BMPs. Failure to do so is a permit violation.</p>
Biotic Ligand Model			

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50	4,14	<p>The proposed NPDES permit for storm water discharges in the state of Oregon uses a one size fits all approach to the benchmark limits and is based on hardness corrected values for metals. There is much more applicable science suitable for determining benchmarks and I urge you to consider incorporating the use of Biotic Ligand Models for other metals as well as copper.</p>	<p>The EPA took action on January 31, 2013, on new and revised aquatic life water quality criteria for toxics in Oregon's water quality standards. At that time pursuant to the EPA's authority Section 303(c) of the Clean Water Act, an aquatic life criteria was approved for zinc. This criteria for zinc was not based on the biotic ligand model. Furthermore, the EPA has not released a national recommended water quality criteria for zinc based on the biotic ligand model. The benchmarks are based on evaluating attainment of the legally effective water quality criteria adopted by DEQ and approved by EPA. DEQ cannot use the biotic ligand model for any pollutants unless it already the basis of water quality standards that are approved, such as copper.</p> <p>DEQ has re-evaluated the proposed benchmarked based on available water quality data in Oregon and what is technologically achievable based on scientific information available from the International BMP Database.</p>
51	4	<p>Below is a discussion of the widespread use of the Biotic Ligand Model for your review and consideration. While the consideration of comprehensive bioavailability-based benchmarks for copper (i.e., Biotic Ligand Model; BLM) is commendable, in principle, this same state of the science methodology should be applied for all metals for which BLMs exist. For example, draft BLM- based criteria for zinc and silver in fresh water have been submitted to the EPA, and a proposed update to SLM-based zinc criteria in fresh water was recently developed and published (DeForest and Van Genderen 2012). In addition, SLM-based freshwater WQC for several other metals, including aluminum and lead, are in the process of development. It should also be noted that the BLM has been widely applied in Europe for assessing metals risks to aquatic organisms and for regulating metals concentrations in aquatic environments (e.g., ECB 2008; UK Environment Agency 2009). Since OR DEQ continues to set stormwater benchmarks based on their current numeric WQC for aquatic life, these hardness-based benchmarks for metals other than copper should also be replaced with values based on the BLM. Similarly, the BLM for zinc, among other metals, is as fully developed as the copper BLM and immediately available for use by OR DEQ.</p>	<p>DEQ cannot use the biotic ligand model for any pollutants unless it already the basis of water quality standards that are approved, such as copper.</p> <p>DEQ has re-evaluated the proposed benchmarked based on available water quality data in Oregon and what is technologically achievable based on scientific information available from the International BMP Database.</p>
52	4	<p>One consequence of disregarding the availability of BLMs for other metals is apparent when comparing benchmarks for copper and zinc,</p>	<p>DEQ cannot use the biotic ligand model for any pollutants unless it already the basis of water quality standards that are approved, such as copper.</p>

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		<p>relative to historic (hardness-based) and current (BLM for copper and hardness for zinc) values. In the draft 12002 permit (p. 18; Table 4), copper benchmarks are markedly higher than those for zinc in two of the seven geographic scenarios (Columbia River and Eastern). When comparing the difference between hardness-based AWQC for copper and zinc, the zinc values are 10-40 fold higher (Figure 1) (see comments). These same relative differences between toxicity/regulatory values should be conserved when incorporating new methodology (BLM). However, and as a result, zinc discharges will face disproportionate burdens (technologically and financially), relative to copper. OR DEQ is urged to re-evaluate the benchmarks for zinc using the best available science, similar to what has been done for copper.</p>	<p>DEQ has re-evaluated the proposed benchmark based on available water quality data in Oregon and what is technologically achievable based on scientific information available from the International BMP Database</p>
53	15	<p>As DEQ notes, the water quality standard for copper was recently revised based on the biologic ligand model (“BLM”). To account for this change, DEQ claims to have begun the process of conducting “risk-based modeling” to develop water quality based copper benchmark concentrations. For this process, DEQ has divided the state into five georegions--Cascades, Coastal, Columbia River, Eastern, and Willamette Valley-- and the Columbia Slough and Portland Harbor. DEQ then selected a subset of the available water quality data in those areas to run the BLM. Specifically, DEQ excluded information from “sites in remote mountain areas, or in areas that are primarily agricultural,” as these areas “would not be representative of industrial stormwater receiving waters.” After these areas were removed, DEQ was left with water quality data from sites on major rivers, sites on smaller creeks and channels in developed areas, and sites on smaller creeks and channels “that didn’t fit into the above categories.” DEQ, however, excluded information from this last category, claiming “statistical summaries of important parameters” demonstrated that “water quality in the first two categories was very similar, but different from water quality in the [final] categor[y].” What these differences were and why that warranted exclusion was not explained.</p>	<p>The first draft’s comment period ended March 20, 2017, and sites were selected based on where industries are or may be located, which could potentially include sites located downstream of industrial facility outfalls.</p> <p>For the final benchmark analysis, a list of potential sampling sites was compiled from DEQ’s Element and LASAR databases as well as the National Water Quality Monitoring Council’s Water Quality Portal, which queries data from the USGS, EPA and the National Water Quality Monitoring Council databases. Additional data for the Columbia Slough and Portland Harbor georegions were provided by the City of Portland. This effort resulted in over 15,500 potential sites.</p> <p>The site selection process in the final metals benchmark modeling was chosen to ensure that no sites would unfairly bias the analysis. DEQ did not exclude any sites expressly because they were high mountain streams. The site selection process used in this permit renewal was more inclusive than in previous permit cycles and the previous 2017 public noticed draft. All waterways, with the exception of estuaries, were considered when acquiring data. If small streams and channels in undeveloped areas were not included in any given area, it was due to a lack of data. DEQ utilized the available data and analyzed thoroughly. The final permit does reflect potential permit conditions across the state, including “sites in remote mountain areas, or in areas that are primarily agricultural.”</p>
54	15	<p>Based on the preceding analysis it is abundantly clear the approach to regulating copper pursued by DEQ is patently unlawful. As noted above,</p>	<p>By setting the benchmark at an attainable level, DEQ encourages adoption of appropriate and effective pollution control technologies that protect, or</p>

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		<p>for every permit DEQ must first determine what technology based limits it must impose on each discharger. After that analysis is complete, DEQ must then determine if any more stringent limitations are necessary to ensure compliance with water quality standards. Based on the answers to those two questions, DEQ must set the permit terms to reflect the more protective of the two suites of controls. Here, DEQ turns this fundamental principle on its head. Specifically, the draft permit is proposed copper limits appear to be based on the weaker of the two potential standards.</p>	<p>where necessary, improve in water quality.</p> <p>Also, a recent evaluation of water quality data indicated that Oregon waters meet water quality criteria for copper. Therefore, it is reasonable to expect that the more stringent requirements of the permit will be protective of water quality.</p> <p>DEQ has developed a permit consistent with State water quality goals. Facilities are required to ensure that stormwater discharge does not cause or contribute to an exceedance of instream water quality standards in OAR 340-041, including the narrative standards and aquatic life and human health criteria. The benchmark values in the permit for the zinc and lead are based on a water quality model and a 10% exceedance rate of the acute aquatic life criteria.</p>
55	20	<p>The permit evaluation report speaks to having enough years of input data but does not show plots or methods for ascertaining that there were enough data to represent the variability in the input parameters statewide. The spreadsheet with input data lists 18,536 samples with at least one parameter measured; however, in ODEQ's database, there are at least 155,000 individual samples with at least one parameter measured (Oregon Dept. of Environmental Quality. Technical Support Document: An Evaluation to Derive Statewide Copper Criteria Using the Biotic Ligand Model, July 2016). Out of the 18,536 samples listed in the permit documentation, only 3,395 include measured dissolved organic carbon (DOC), which is a parameter that greatly influences the bioavailability of copper. From the permit documentation, it appears from the analysis that the input data (the 18,536 samples) were sub-selected from ODEQ's database and comprise samples at locations near current industrial sources. Since this is a general permit, the data should represent all possible locations where a permittee can be granted a permit under the general permit (i.e., the whole state) rather than based on sub-selected data. For example, the current approach is inadequate for assessing certain mining sites, which are regulated industrial activities with the potential to affect copper levels and bioavailability and which typically take place in more rural areas. If there is sufficient data, the application of the benchmarks could be subdivided into regions and seasons to provide more in-depth analysis about certain locations, but the analysis should utilize all</p>	<p>The first draft's comment period ended March 20, 2017, and sites were selected based on where industries are or may be located, which could potentially include sites located downstream of industrial facility outfalls.</p> <p>For the final benchmark analysis, a list of potential sampling sites was compiled from DEQ's Element and LASAR databases as well as the National Water Quality Monitoring Council's Water Quality Portal, which queries data from the USGS, EPA and the National Water Quality Monitoring Council databases. Additional data for the Columbia Slough and Portland Harbor georegions were provided by the City of Portland. This effort resulted in over 15,500 potential sites.</p> <p>Sites impacted by saline water from the coast were removed. In addition, sites were removed based on their proximity to an industrial facility outfall. Such sites were identified by the site description or by mapping site locations against the most recent NPDES facility layer in ArcGIS. This vetting process resulted in just over 2,000 sites with the parameters necessary for this analysis that were not in close proximity to an industrial facility outfall. Once the final site list was established, sites were separated into the correct georegion based on location and parameters for the copper benchmark and the lead and zinc benchmark calculations were further separated into separate MS Excel files.</p> <p>As previously discussed, the site selection process in the final metals benchmark modeling was chosen to ensure that no sites would unfairly bias</p>

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		of the data available and not just selected data near certain locations.	the analysis.
Clean Water Act			
56	15	Rather than adhere to the requirements that the CWA establishes for NPDES permits, DEQ has chosen to use an entirely different, and legally insupportable, permit for regulating industrial stormwater discharges. In place of technology-based and water quality-based effluent limitations, DEQ instead uses broad narrative limits, permittee-chosen Best Management Practices (“BMPs”) identified in a Stormwater Pollution Control Plan (“SWPCP”), and benchmarks which are theoretically designed to determine whether BMPs work. The benchmark values, however, have no relationship to the BMPs’ adequacy. Nor, in many instances, are the benchmarks set at levels that will ensure compliance with Oregon’s water quality standards. The CWA, however, mandates that DEQ include technology-based and water quality-based effluent limitations in NPDES permits. Thus, the unenforceable “target concentrations” and BMP requirements proposed by DEQ do not comply with the CWA.	<p>Federal regulations allow narrative limits or controls rather than effluent limits. DEQ relies on technology-based narrative effluent limits to minimize pollutants and resulting tiered corrective action to control discharges from causing or contributing to an excursion of water quality standards.</p> <p>This is consistent with the EPA Multi-Sector General Permit. EPA emphasizes that the benchmark thresholds used for monitoring are not effluent limits themselves, but rather information that is primarily for the use of the industrial facility to determine the overall effectiveness of its control measures and to assist in understanding when corrective action(s) may be necessary. Where applicable, dischargers must also submit stormwater effluent data relating to impaired waters and compliance with numeric effluent limitations guidelines. In addition, dischargers are required to submit an annual discharge monitoring report and comply with Tier I and Tier II corrective actions.</p> <p>Also, a recent evaluation of water quality data indicated that Oregon waters meet water quality criteria for copper.</p>
57	15	Boise Cascade is concerned that the Department removed the term point source from the permit. The Clean Water Act does define point source as a discernible, confined and discrete conveyance, not "an entire industrial facility". Boise believes point source and the appropriate definition should be included in the permit.	EPA required DEQ to regulate pollutants in the stormwater regardless of the shape of the discharge.
58	26	The Permit Must Include Clear, Measurable and Enforceable Effluent Limits.	<p>The permit includes technology-based effluent limits with expanded transparency of conditions including: Minimizing exposure, Dust Generation and Vehicle Tracking of Industrial Materials, Housekeeping, Spill Prevention and Response Procedures, and Employee Education contain explicit permit conditions. These technology-based effluent limits categories changes were based on EPA’s MSGP as well as incorporating Portland Harbor Superfund requirements and inspectors’ observations.</p> <p>For stormwater discharges, EPA’s regulations generally allow narrative limits or controls rather than numeric effluent limits, and DEQ’s permit is based on EPA’s Multi-sector General Permit.</p>

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59	15	<p>DEQ may not issue the permit as drafted because it fails to ensure compliance with the CWA and its implementing regulations. During the permit development process DEQ has stated that it will not review, or make public, the SWPCPs for facilities that were covered under the previous iteration of the permit. This is not lawful. Because of the permit structure that DEQ is proposing, and the heavy reliance on the permittee-created SWPCPs in order to meet the requirements of the CWA, DEQ must review these plans and allow the public the opportunity to comment.</p> <p>Although the permit and fact sheet are silent on this issue, it appears that DEQ intends to grant permit coverage immediately to any entity that has submitted its bare-bones application form. DEQ cannot simultaneously divest itself of review authority over permittees' SWPCP while failing to set meaningful standards in the permit itself. This is precisely the issue—creation of an “impermissible self-regulatory system”—that led to the rejection of the Phase II rules by the Ninth Circuit. See EDC, 344 F.3d at 854-56. As the Ninth Circuit aptly noted, the failure to include in the permit the necessary effluent limits and controls or to oversee individual stormwater programs, is flawed because “nothing prevents the operator of a [permittee] from misunderstanding or misrepresenting its own stormwater situation and proposing a set of minimum measures for itself that would reduce discharges by far less than the maximum extent practicable.” Id. at 855. DEQ is preparing to make exactly this mistake.</p> <p>Because of the permit structure that DEQ is proposing, and the heavy reliance on the permittee-created SWPCPs in order to meet the requirements of the CWA, DEQ must review these plans and allow the public the opportunity to comment.</p>	<p>DEQ and many other states, as well as EPA, do not a review SWPCPs at the time of renewal. A facility’s SWPCP template completeness does not guarantee that site specific issues are addressed and a desk review does not mean that the SWPCP is fully compliant with the permit. Inspections are the best way to evaluate the SWPCP as it relates to the actual control measures at the facility.</p> <p>Updated stormwater pollution control plans are required for all facilities. SWPCPs will be evaluated prior to inspection or in response to any complaint. The narrative technology-based effluent limits contain clear and measurable elements in which the SWPCP must include maintenance schedules and frequency of housekeeping measures.</p> <p>The permit contains all the required elements under federal law. The SWPCP is a living document that must be kept up to date reflecting all BMPs on the site. Failure to implement the SWPCP or Tier II is a permit violation which necessitate enforcement.</p> <p>Neither DEQ nor its agent determine the measures appropriate at a regulated industrial site. The SPWPC must be prepared by a person knowledgeable in stormwater management and familiar with the facility.</p>
Corrections			
60	5, 12, 13	The phosphorus benchmark for the Columbia Slough should be 0.16 mg/L, not 0.016 mg/L. (§ A.9)	DEQ acknowledges this error and has made the correction.
61	5,16	Schedule B.1.a (Pollutant Parameters - Benchmarks): The last sentence is incomplete. For clarity, please insert "applicable to the discharge in Schedule E of the permit."	DEQ agrees with this comment and made this change in the final permit.
62	8	In the section titled “Summary of Key Changes,” the fourth bullet point describes the change in the TSS benchmark in the Columbia Slough and	DEQ agrees with this comment and made this change in the final permit.

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		<p>Portland Harbor as “from X mg/L to 30mg/L.” This should read “from 100 mg/L to 30 mg/L.”</p> <p>For completeness, the Summary of Key Changes should list all the proposed changes to benchmarks. The fifth bullet point describes the copper benchmark as being based on the “biologic ligand model.” This should read “biotic ligand model.”</p>	This oversight has been fixed in the final permit.
63	21	Technology Based Approach for the copper benchmark, first line: the copper benchmark in the current 1200-Z permit is 0.020 mg/L, not 0.20 mg/L (the 20 µg/L equivalence is correct).	DEQ agrees with this comment and made this change in the final permit.
64	21	Permitted Activities Table of Contents: The Table of Contents does not reference (or link to) Schedule E and Schedule F and their respective page numbers.	This oversight has been fixed in the final permit.
65	34	Permitted Activities Table of Contents: The Table of Contents does not reference (or link to) Schedule E and Schedule F and their respective page numbers.	This oversight has been fixed in the final permit.
Corrective Action Triggers			
66	5	The water quality standards corrective action report should include, at the option of the permit registrant, an evaluation of whether the discharges from the facility are causing or contributing to a violation of water quality standards. (§ A.4.b.ii)	The water quality standards corrective action report is required when the permit registrant, DEQ or its agent and any outside group determines that the discharge causes or contributes to an excursion of water quality standards. DEQ must be able to show that the conduct is expressly prohibited by law. Collection of evidence is essential to determine whether a violation occurred. The permit registrant always has appeal rights in any enforcement action.
67	5	The target concentration for corrective actions should be the concentration that triggered the specific corrective action at issue. (§§ B.1.d, E.4):When more than one type of monitoring for the same pollutant is required, proposed Schedule B.1.d provides, “If a facility finds there are two or more different concentrations for the same parameter the target will be [the] lowest concentration.” OISG asks that DEQ delete this sentence. Because the immediately following sentence in this condition requires all applicable corrective actions to be undertaken, the “target concentration” should not be the lowest concentration. The “target” for each corrective action requirement should be the applicable discharge benchmark,	<p>DEQ agrees with this comment. The corrective action section is intended to reiterate the importance of completing the applicable corrective response associated with each monitoring exceedance.</p> <p>Permit registrants must take each corresponding corrective action response related to any and all benchmark, impairment reference concentrations or numeric effluent limit exceedance. This includes any geometric mean exceedance that may trigger Tier II corrective action response.</p>

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		discharge limit, or reference concentration.	
68	5	The water quality standards corrective action report should include, at the option of the permit registrant, an evaluation of whether the discharges from the facility are causing or contributing to a violation of water quality standards. (§ A.4.b.ii)	The water quality standards corrective action report is required when the permit registrant, DEQ or its agent determines that the discharge causes or contributes to an excursion of water quality standards. DEQ must be able to show that the conduct is expressly prohibited by law. Collection of evidence is essential to determine whether a violation occurred. The permit registrant always has appeal rights in any enforcement action.
69	32	A.13 Language is vague and confusing. Provide better glossary to ensure consistent interpretations.	DEQ disagrees with this comment. The corrective action section is intended to reiterate the importance of completing the applicable corrective response associated with each monitoring exceedance.
Cost			
70	14	The current benchmarks are technically and financially burdensome and these reduced levels will challenge current available technology. Requiring the proposed reductions by fixed facilities will not address the multitude of non-facility sources and impose disproportionate burdens (technologically and financially), relative to copper.	DEQ acknowledges this comment. This permit is focused on discharges of industrial stormwater. Other DEQ programs and permits focus on appropriate actions associated with discharges that have copper from other activities.
71	26	Nor does it appear that the DEQ has given consideration to the compliance and cost feasibility to achieve these lowered benchmarks.	This comment was submitted regarding the lower metal benchmark values in the March 2017 draft permit. DEQ subsequently re-posted the permit for a second public notice to address some of the comments related to the lower metal benchmarks. Regarding this comment as a concept, DEQ acknowledges this comment. DEQ takes economic issues into consideration when developing permit requirements. DEQ has made several changes to the final permit based on public comments received on the draft permit. The final permit minimizes compliance costs to the extent possible considering existing statutes, regulations, and case law.
72	32	DEQ does not appear to have evaluated the extent to which zinc treatment systems being marketed live up to the vendor's advertisements, which we suggest is a factor in the affordability DEQ refers to. Our experience has been that zinc treatment media is neither as effective nor as long-lasting as advertised, which causes media-based treatment systems to be much less affordable than expected. Before finalizing new benchmarks, we recommend that DEQ verify that the treatment systems being identified as available are as durable and affordable as expected.	DEQ takes economic issues into consideration when developing permit requirements. DEQ has made several changes to the final permit based on public comments received on the draft permit. The final permit considers compliance costs to the extent possible considering existing statutes, regulations, and case law.

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Definition Clarification			
73	5	The permit should include a definition of “regular business hours” that is limited to periods when the facility is engaged in active primary production and staffed with trained stormwater sampling personnel. (§ D.3)	DEQ agrees with this comment and made this change in the final permit to define regular business hours of operation.
74	5	Definition of “monitoring year” to address the problem of facilities that receive permit coverage late in the monitoring year. (§ D.3.q)	DEQ has defined the permit assignment letter, which will include the monitoring year. DEQ intends to renew all facilities around the same time to eliminate staggered monitoring years for renewing facilities.
75	5	Suggested a clarification to the definition of “qualifying sample” so that at least one of the samples taken within a 14- day period can be used as a qualifying sample. (§ D.3)	The definition of qualifying sample includes the frequency of 14-days apart. If a facility takes more than one sample within a 14-day period, the “qualifying sample” is the first sample. The permit registrant may not choose between the two samples as to which they would like to report as the “qualifying sample.” All samples results must be reported; however, only “qualifying samples” may be used for corrective action triggers, geometric mean, and waiver requests.
76	26	Boise Cascade is concerned that the Department removed the term point source from the permit. The Clean Water Act does define point source as a discernible, confined and discrete conveyance, not "an entire industrial facility". Boise believes point source and the appropriate definition should be included in the permit.	DEQ has been required by EPA to regulate all potentially polluted industrial stormwater discharge regardless of the shape.
77	32	Section 7 electronic submittal: Remove until requirements are defined and clear.	DEQ anticipates that the NetDMR system will be ready this permit cycle to accept stormwater DMRs. The details of how and when will be made available to all once system is ready.
Dilution Factor			
78	21	Because it is not possible to replicate DEQ’s calculation of the benchmarks, the District calculated benchmarks using data for Tualatin Basin tributaries for comparison. The District data set includes coincident data on total metals, dissolved metals and hardness. Using this data, the District was not able to replicate the benchmarks proposed by DEQ. Using the assumed dilution factor of 5 suggested by DEQ, the District derived much higher benchmarks using instream data as well as Monte Carlo techniques for extrapolating data. The District would be glad to review these calculations with DEQ staff to better understand how the proposed	DEQ acknowledges the comment, DEQ re-calculated the benchmarks and re-posted the entire permit and permit evaluation report for an additional 35-day public comment period which ended on June 19, 2017.

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		benchmarks were developed.	
79	38	<p>In its explanatory materials, DEQ states that a dilution factor of 5 is appropriate because it's protective of the environment and appropriate for model input. We comment that it's neither necessary nor appropriate to use a single dilution factor in the model, and the most appropriate dilution factor (if it were necessary to use a single dilution factor, which it isn't), is one that represents the large majority of sites. Since DEQ seems to have set its dilution factor based on protecting small drainage basins, we want to point out that an overly conservative dilution factor for larger drainage basins does not transfer any protection to smaller upstream drainage basins or watersheds that are in entirely different regions. A site can only affect its own basin/subbasin and downstream systems (which always have larger dilution factors, except in cases where withdrawals deplete the waterway- but that's a different water quality problem). DEQ seems to suggest that by using a conservative dilution factor, the larger drainage basins somehow provide protection to the smaller, more isolated watersheds, which is at odds with the general observation that water flows from smaller to larger (and more diluted) waterways. We believe DEQ should consider setting benchmarks for a range of dilution factors, since that appears to be a factor that significantly affects the probability analysis, and every site's dilution factor can be readily estimated. Using a single dilution factor for all permitted facilities introduces a significant inaccuracy for a large majority of sites.</p>	<p>DEQ disagrees with this comment. Because this is a general permit DEQ cannot provide site specific conditions, such as site specific dilutions factors, also because this is a general permit that applies to wide variety of sources discharging to many different waterbodies, and the dilution factor of 5 in the current permit is appropriate for the majority of the facilities as indicated in the PER. DEQ concluded that the dilution factor of 5 is protective of the environment and appropriate for model input. This type of site specific analysis is more appropriate for an individual permit. DEQ recognizes that certain facilities may want to obtain an individual permit to address site specific concerns.</p>
Electronic Reporting			
80	11	<p>Schedule B, Reporting and Recording Requirements, 8.a.i.2: To avoid confusion and ensure consistency, AOI requests that DEQ clarify in the permit how non-detections should be reported. DEQ should also ensure resources are available to support electronic submissions and include a contingency plan to address technical difficulties.</p>	<p>EPA published the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule, which will modernize Clean Water Act (CWA) reporting for municipalities, industries and other facilities. It was published in the Federal Register on October 22, 2015. The rule replaces most paper-based NPDES reporting requirements with electronic reporting. Part of this rule requires regulatory authorities to share data electronically with EPA. Oregon DEQ adopted EPA's two-phased approach. Phase one will require Discharge Monitoring Reports and the Sewage/Sludge Biosolids annual program reports associated with NPDES permits to be submitted to DEQ electronically. Phase two will include other types of NPDES permit reporting, including permit applications. The rule does not change what information is required. It only changes the method</p>

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			<p>by which information is provided.</p> <p>When the NetDMR system and DEQ are ready to implement electronic reporting for industrial stormwater registrants, DEQ and EPA will have a robust training program for permit registrants prior to requiring permits to be submitted electronically.</p>
81	11	<p>Permit Coverage and Exclusions from Coverage, 7, Electronic Submissions: The new permit establishes a new electronic submission process. The permit requires the applicant to submit the application and related documents in an electronic format. Based on concerns we have regarding DEQ's potentially limited resources to manage such a system, we request that DEQ ensure resources are available to support electronic submissions and that DEQ include a contingency plan to address technical difficulties.</p>	<p>DEQ will comply with the Electronic Reporting Rule by using EPA's online electronic DMR data submission tool, NetDMR, for Oregon's NPDES permit holders. The system includes training, outreach and support for users.</p>
82	33	<p>Although ALG understands the new electronic submittal requirements under of the proposed permit to be part of DEQ's conformance with the 2015 NPDES Electronic Reporting Rule, we have concerns about public access to the electronically submitted required data. Public availability of stormwater monitoring data in California seems to have created confusion regarding exceedances of numeric action levels (the equivalent to DEQ's numeric benchmarks) constituting violations of permit requirements. As a result, it appears that the public accessibility of electronically reported stormwater data has led to a rise in third-party nuisance litigation against facilities that are in or working towards compliance with stormwater general permit requirements. As such, ALG urges DEQ to carefully consider the extent to which access to certain facility data, including monitoring data, SWPCPs, and enforcement status, is made accessible to the general public. While ALG understands that certain effluent NPDES data must be made publicly available upon request under federal regulations, it might not be necessarily prudent for regulatory authorities to automatically grant public access to such records.</p>	<p>See comment above.</p>
83	36	<p>The draft Permit establishes a new electronic reporting and document submittal process. DEQ's Permit Evaluation and Overview document states that all Discharge Monitoring Reports (DMRs) will be electronically submitted and signed, including uploaded lab reports, starting for the 2017-2018 monitoring year. Under the draft Permit, it</p>	<p>DEQ will comply with the Electronic Reporting Rule by using EPA's online electronic DMR data submission tool, NetDMR, for Oregon's NPDES permit holders. The system includes training, outreach and support for users.</p>

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		would be expected that each permittee will have very different reporting requirements, depending upon its geographic location, sector specific requirements, impairment pollutants, etc. As this new system will no doubt require significant resources from DEQ to create and maintain, ORRA recommends contingency plans for reporting be included within the permit to account for the potential for challenges in the electronic reporting process.	DEQ has entered the majority of the individual permit holders already. The general permit monitoring parameters and reporting timeframes are commonly less than the individual NPDES permit setup. DEQ is scheduled to upload a new Q&A by October 2017 and more information may be found on DEQ's NPDES Electronic Reporting Rule: Oregon's Implementation Plan web page.
General			
84	11	As a threshold matter, the process for developing this new combined permit has been frustrating for those attempting to engage with the agency. Unlike previous rulemakings, the agency has failed to adequately request or receive feedback from involved and concerned stakeholders. For example, when pressed on issues in the draft permit, the agency has not been able to sufficiently respond to our members' concerns in a way that could rationally explain the failure to address many issues our comments identified in the previous draft permit. A more involved stakeholder process on the front end could have helped resolve issues that we have previously commented on, of which many still remain for no apparent reason. Instead, we are again highlighting many issues that remain with the second draft permit. Overall, we believe the current draft permit will create new and complex challenges for the agency and regulated businesses. Due to the lack of a meaningful stakeholder process and failure to address a number of significant issues, we remain concerned that this permit will be litigated.	DEQ acknowledges this comment.
85	11, 19	DEQ should provide the public with a cross-walk analysis of the changes from the previous permits, describing the changes, the reason for the changes, and the anticipated impact to regulated entities from the changes. Finally, the permit is undergoing significant enough changes that it will compel permittees to update their stormwater pollution control plans. Please provide a cross-walk or red-line contrasting the new version to the older ones to aid facilities in efficiently making the necessary changes to their plans.	DEQ updated the SWPCP checklist and all parts of the <i>Technical Assistance for Industrial Operators</i> document on DEQ's industrial stormwater website. As with the current checklist for the 2011/2012 permits, following and submitting the checklist will assist in assuring facilities include all required elements in their plan.
86	34	Schedule A.to, Schedule A.11, Schedule A.13, and Schedule B.4: To avoid confusion, BES recommends that in these sections DEQ exclusively	DEQ decided to use the term "statewide" benchmarks to signify all benchmarks. The final permit contains "regional" benchmarks for Columbia

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		refer to the benchmarks contained in Table 4 of Schedule A as "geographic benchmarks" instead of sometimes referring to those same benchmarks as "statewide benchmarks."	River, Columbia Slough and Portland Harbor. Table 4 refers to all other areas of the state as "regional" benchmarks as the final permit no longer includes the geographic areas of Willamette Valley, Eastern, Cascades, or Coastal. However, specific water quality characteristics were considered in modeling the final benchmarks.
87	35	We have numerous serious concerns over the conditions proposed in this draft permit. We believe that the permit DEQ is proposing will not work for industrial dischargers in the state. Rather than enumerate all our concerns about the terms and conditions of the permit, we would like to refer you to, and incorporate, the comments submitted by Associated Oregon Industries/Oregon Business Association. AOI/OBA has done an outstanding job of explaining the issues with the proposed permit conditions and has given DEQ an excellent set of options for addressing these issues. NWFPA agrees with these comments and believes that they give DEQ an excellent path for improving and correcting the proposed permit.	DEQ has provided responses to the comments referred to throughout this document.
88	21	The difficulties faced in using a water quality-based approach for calculating the conditions in a state-wide general permit are evident in the PER's explanation of the benchmark calculations. Water quality parameters are necessarily local; the more they are generalized into regions, the less applicable they are. The benchmarks calculated by the District using extensive data available for streams in the Tualatin Basin are much higher than those proposed by DEQ for the Willamette Valley. A technology-based approach would appear more equitable for a general permit, especially where technology- based benchmarks are readily achievable and would not have a local character. In addition, the anti-backsliding analysis is less applicable to a technology-based approach, since technology generally improves over time. For these reasons the District agrees with DEQ that it is infeasible to develop water quality-based criteria. The District also recommends that DEQ should focus on the benchmarks for copper, lead and zinc using a technology-based approach.	<p>While DEQ agrees with the comment that generalizing the benchmarks into regions can result in more conservative values than if local data sets were utilized. DEQ disagrees that this approach is not appropriate, this is a general permit for industrial stormwater discharge for facilities throughout the state of Oregon, as such DEQ modeled the metal benchmarks using the same geo-regions that were developed as part of the copper water criteria development.</p> <p>DEQ has developed a permit consistent with State water quality goals. The benchmark values in the permit for the zinc and lead are based on a water quality model and a 10% exceedance rate of the acute aquatic life criteria. The process and methodology is generally consistent with the process that DEQ used to develop the previous permit and other general permits.</p>
89	21	In the Regulatory Context subsection of the Background section of the PEO, DEQ explains that the federal Clean Water Act prohibits unpermitted discharges of pollutants from point sources to waters of the United States and quotes definitions from the 40 CFR 122.2 in support.	This permit is consistent with EPA, as the MSGP has also removed the words point source on the first page regarding eligibility for coverage. Although, EPA retains the definition of point source in the MSGP and the CWA uses the term point source, DEQ has been required by EPA to

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		<p>Later, at 2.2.1, DEQ adds that channeled sheet flow is a nonpoint source discharge. With this background, it is unclear why DEQ intends to expand the scope of the 1200-Z permit to include a nonpoint source or finds it is necessary to remove the term “point source” as defined and used in federal regulation and in the Multi-Sector General Permit. The connection between the 1200-Z and EPA’s Multi-Sector General Permit would be improved by consistently applying the terminology regarding point sources, and the scope of coverage under the 1200-Z should be consistent with the definitions contained in the EPA’s Multi-Sector General Permit.</p>	<p>regulate all potentially polluted industrial stormwater discharge regardless of the shape.</p> <p>It is not always possible to sample stormwater runoff in location such as ditches or pipes where the flow is concentrated. Therefore, episodically samples are required when discharge leaves the facility and it may be necessary to concentrate flows.</p>
90	43	<p>We request the text in Section 2.1/Page 11 of the 1200-Z permit evaluation report be revised as shown in the redline text below to more appropriately reflect the 2006 process with the Lower Willamette Group.</p> <p>In 2006, DEQ solicited input from EPA, DEQ, City of Portland and the Lower Willamette Group as part of its Joint Source Control Strategy (JSCS) and developed a strategy for ensuring that stormwater discharges to Portland Harbor would not re-contaminate remediated river sediment. One concept was for DEQ to develop a Portland Harbor specific stormwater permit with loading analyses, risk assessment-based compliance points and performance standards.</p>	<p>The subject paragraph in the PER does not refer to permit revision, but rather recounts the chronology of multi-organization development of the Portland Harbor stormwater strategy. DEQ has revised the language.</p>
91	41	<p>In addition, now that we will be making DMR reports online, lawyers will not have to get up from their big desks to review benchmark exceedances and file litigation against us on behalf of special interest groups. It almost seems as though the DEQ does not care about small manufacturers that have to bear the brunt of stormwater pollution. I am sure that if you tested the stormwater from an average Walmart parking lot you would find all kinds of pollutants. If zinc is such a major issue in the state of Oregon, why do you still allow zinc based moss control products that powder a majority of roofs in Lane County? What about vehicle brake pads that contain copper? Why they are not banned in Oregon?</p>	<p>Section 402(b) of the CWA authorizes DEQ to implement federal laws and rules for NPDES permit program in Oregon. A NPDES permit is typically a license for a facility to discharge a specified amount of pollutant into a receiving water under defined conditions. The CWA designates which facilities will be regulated.</p> <p>The Electronic Reporting Rule applies to all NPDES delegated states which implement the CWA under permitting programs. The rule also requires states and other regulatory authorities to share data electronically with EPA. The data that these regulatory authorities will share with EPA includes permit, compliance monitoring (e.g., inspection), violation determination, and enforcement action data.</p>
92	15, 56	<p>Stormwater runoff is a significant threat to Oregon’s waterways. As a result, the issuance of this permit provides an important opportunity to achieve real improvements in water quality through the implementation of protective terms and conditions that will direct how industrial facilities</p>	<p>DEQ has determined that the permit is in compliance with the requirements of the CWA and aligned with current federal and state requirements.</p>

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		manage and treat stormwater runoff. Therefore, we strongly encourage DEQ to adopt a permit that recognizes and reduces stormwater runoff's considerable contribution to water pollution. To this end, federal and state law enable and require DEQ to protect Oregon's waterways to a significantly greater degree than DEQ's draft permit provides. We urge DEQ to exercise its existing legal authority to design a permit that achieves real results for Oregon's waterways.	
93	15	Proper and effective management of stormwater runoff to protect water quality is both necessary and attainable in Oregon. DEQ must act to protect Oregon's water quality, iconic fish and wildlife populations, and the use and enjoyment of our streams and rivers, now and in the future. To accomplish these goals, DEQ must craft a permit that establishes specific, clear, measurable, and enforceable terms detailing what is required to eliminate the discharge of pollutants from industrial sites, protect water quality, help recover the most imperiled streams and rivers, and implement management measures that achieve these goals. We believe that DEQ's draft permit falls short of the mark. Generally, as discussed in detail below, the permit fails to 1) include the detail necessary to ensure compliance with the requirements of the CWA, 2) ensure that the dischargers will use the best treatment and control technology, 3) ensure the protection of designated and existing uses, 4) protects water quality, 5) protect and restore already degraded waterbodies, and 6) require the necessary and appropriate monitoring and reporting requirements. As drafted, the permit reflects DEQ's lack of resources to oversee the industrial stormwater program, not the requirements of federal and state law.	<p>DEQ has determined that the permit is in compliance with the requirements of the CWA and aligned with current federal and state requirements.</p> <p>DEQ expects that facilities' compliance with the technology-based limits through the careful selection, design, installation, and implementation of effective control measures as well the monitoring and corrective action requirements in the permit generally will result in discharges that are controlled as necessary to meet applicable water quality standards.</p>
94	46	In Section 3.7.9 Final Benchmarks, Table 10 identifies one (1) asterisk after the Total Copper benchmark for the Columbia River benchmark of 0.020 mg/L, indicating per the table notes that the benchmark value is based on the modeled technologically achievable evaluation. This should likely be corrected to two (2) asterisks after 0.020 to identify (per the table notes) that the modeled benchmark value of 0.050 mg/L for the Columbia River (Table 8 in Section 3.7.6.4) exceeded the benchmark value in the current permit.	<p>DEQ agrees with this comment and made this change in the final permit.</p> <p>This oversight has been fixed in the final permit evaluation report.</p>
95	51	Many companies, including Selmet, implemented the full spectrum of BMPs appropriate to our sites as well as invested in capital projects to	This permit for industrial stormwater. Other DEQ programs, state agencies and permits focus on stormwater and discharges from different land uses

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		treat stormwater in order to bring pollutants below the benchmarks. Most companies are surrounded by commercial, agricultural, and residential areas that discharge pollutants that may far exceed the industrial permit benchmark levels and yet are less regulated or entirely unregulated.	and activities.
Georegions			
96	5,15,24,26,33	<p>DEQ received several comments about the complexity of the georegions and multiple benchmark values. Since the benchmark table was simplified, many of the comments are no longer applicable.</p> <ul style="list-style-type: none"> • The proposed benchmark regions should be clearly defined in the permit. • The 1200-Z Permit Evaluation and Overview and draft permit contain proposed benchmarks applicable in specific geographic regions, which is a significant change from the previous state-wide benchmarks. DEQ should ensure that an accurate and reliable tool, or other easily accessible means for making that determination, is developed and publicly available. • Condition references statewide or geographic benchmarks, but it is not clear what the difference between the two is; if is relevant, include the two in the definition section. <p>The permit should include a sufficiently specific definition of each region so that it is clear in which region each facility lies.</p>	<p>The georegions are now limited to the Portland Harbor, Columbia River and Columbia Slough. The Portland Harbor is defined in Schedule D. If there are any question regarding the receiving water location from a facility or an individual discharge point, contact the local MS4 jurisdiction. DEQ will provide a tool on the website to assist facilities in determining the appropriate benchmark values. Facilities are also able to contact DEQ or its agent with questions.</p> <p>If a facility is in the Portland Harbor geo-region, that facility will be assigned to the Portland Harbor geo-region. The Columbia geo-region is defined as direct discharges to the Columbia River.</p> <p>The Columbia Slough geo-region includes all facilities that were previously permitted under the 1200-COLS or 1200-COLSB permits.</p>
Grab Sampling			
97	20	<p>Grab Sampling</p> <ol style="list-style-type: none"> i. For each discharge point monitored, collect a single grab sample of stormwater discharge or a series of composite samples. ii. Composite samples may be used as an alternative to grab sampling, except when monitoring for pH, oil and grease and E. coli. Compositated samples must be collected from same storm event. Operators may not switch between grab sampling to composite sampling without DEQ or agent approval. iii. Permit registrants may use a single grab sample to satisfy multiple pollutant parameter monitoring requirements (for example, required to monitor for zinc as benchmark and impairment pollutant)." 	<p>DEQ agrees with this comment. The permit now includes: "Registrants may not switch between grab sampling to composite sampling during a monitoring year without DEQ or agent approval."</p>

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		The PER 3.1.1: "The language regarding grab sampling and composite sampling was reworded to make it clear that, when compositing, composite samples must come from the same storm event. In addition, language was added that requires DEO or agent approval before switching between grab sampling and composite sampling during the monitoring year. This helps ensure consistency within each monitoring year. Approval is not required when switching sampling methods between monitoring years." The PER and permit language regarding DEQ approval are contradictory.	
98	11	Schedule B, Sampling Procedures, 2.a.ii: AOI/OBA request that DEQ provide direction on how to request approval from DEQ or Agent and whether information or rationale must be included in the request when switching between grab sampling and composite sampling during a monitoring year.	The permit requires written approval when switching between grab sampling and composite sampling during a monitoring year. This requirement ensures sample results provide data which best represents a facilities discharge for the purpose of geometric mean evaluation. Composite sampling may bias the data for facilities that may not be attaining benchmarks in a single grab sample.
Impairment Pollutants			
99	5	For a new discharge to an impaired water, the applicant should not be required to demonstrate that the discharge will not cause or contribute to a water quality standards exceedance at the point of discharge. (§ 1.a.iii)	This permit condition is consistent with EPA's language in the MSGP.
100	5	Because there is no adverse effect to water quality criterion for TSS, OISG proposes that the more stringent regional or sector-specific benchmark should serve as the reference concentration when the receiving water is impaired by suspended solids, turbidity, sediment, or sedimentation. (§ B.1.b.ii (1))	The Columbia Slough and Portland Harbor benchmark for TSS is 30 mg/L. The permit does not contain any sector-specific TSS benchmarks. Certain facilities must monitor TSS as a numeric effluent limit. When this is the case, samples may qualify for one or more monitoring requirement; however, corrective action is based on each exceedance.
101	5	Schedule A, Discharges to Impaired Waters, 5.a: Verify that the references to Schedule A.4 in the permit are correct. This may be an incorrect reference.	DEQ did verify the OAR reference as correct.
102	6	And then to page 22 where we are talking about impairment pollutants those assignments are usually given to us after this permit went thru into the permit cycles. On this last permit cycle we were given this long extended list of pollutants to monitor impairment pollutant to monitors and almost all of them came out with non detection we want to make sure on this round of the permit we don't end up with redoing all of the	It is important for DEQ to have the data associated with impairment pollutants so it can be used to evaluate industrial stormwater discharges when TMDLs are developed within watersheds. Upon renewal all monitoring waivers must be reinstated. Facilities must re-establish eligibility for a waiver based on monitoring results during at least

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		gathering data again and that is quite a waste of resources in our part to test for so many items that have never had a history of showing up in our water sample.	the first year of coverage, even if results have proven to be non-detect.
103	15	DEQ Must Protect Impaired Waters. In short, DEQ has failed to protect Oregon's already impaired waters. With stormwater pollutants commonly identified as one of the leading causes of water quality impairment across the United States, and the cause of numerous 303(d) listings and TMDLs in Oregon, it is incumbent upon DEQ to fulfill its obligations to protect these waters through the mandatory permitting restrictions. Here, DEQ has in effect authorized discharges to water quality limited waters in contravention of the CWA's implementing regulations.	<p>The permit conditions affirm DEQ's authority to impose additional monitoring, site controls or compliance schedules on a site-specific basis or require coverage under an individual permit.</p> <p>DEQ addresses impaired waters in two ways:</p> <p>(a) New discharges into a 303(d) listed waterbody must comply with condition 1 of Permit Coverage and Exclusion from Coverage section of the permit. Schedule A.5 reads: New discharges to impaired waters authorized to discharge under this permit must implement and maintain any control measures or conditions on the site that enabled the permit registrant to become eligible for permit coverage</p> <p>(b) Renewed sources must sample for all impaired pollutants based on indirect or direct discharge into a 303(d) listed waterbody and any exceedances of reference concentrations permit registrants must conduct a Tier I investigation to determine the source of the pollutant and take actions to remove or reduce the discharge.</p> <p>The Columbia Slough TMDL identified a wasteload allocation for industrial sites. DEQ does have a provision in the permit under Schedule A.5 which states: "If DEQ determines that additional site specific requirements are necessary to comply with applicable TMDL wasteload allocations for industrial stormwater discharges, DEQ will require a SWPCP revision."</p>
104	30	Monitoring for all pollutants that facilities currently have waivers for results in costly monitoring with many non-detect results. Impairment pollutants can be based on outdated TMDL's that have been in effect for years without additional monitoring by DEQ to continue justifying their inclusion Many facilities will spend time and money to again monitor for pollutants they have already shown are not present on their site. DEQ should revise monitoring requirements to ease this burden.	DEQ has determined that it is appropriate for all facilities to monitor for a minimum of one year for all pollutants that are required to be monitored by each facility since this is a new permit term and some of the benchmarks have changed. In addition, it is important to conduct monitoring on a regular basis to ensure the current site conditions are reflective of the discharges and best management practices are effective.
105	15	In short, DEQ has failed to protect Oregon's already impaired waters. With stormwater pollutants commonly identified as one of the leading causes of water quality impairment across the United States, and the cause of numerous 303(d) listings and TMDLs in Oregon, it is incumbent upon	<p>The permit requires new dischargers applying for coverage must:</p> <p>Prevent all pollutants for which the waterbody is impaired from exposure to stormwater and document in the Stormwater Pollution Control Plan</p>

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		<p>DEQ to fulfill its obligations to protect these waters through the mandatory permitting restrictions.</p> <p>Here, DEQ has in effect authorized discharges to water quality limited waters in contravention of the CWA’s implementing regulations. 40 C.F.R. § 122.4(i). Under EPA’s regulation, DEQ cannot authorize a discharge that will cause or contribute to violations of water quality standards. See <i>Friends of Pinto Creek v. United States EPA</i>, 2007 U.S. App. LEXIS 23251, 65 ERC (BNA) 1289 (9th Cir. 2007)(“The plain language of the first sentence of the regulation is very clear that no permit may be issued to a new discharger if the discharge will contribute to the violation of water quality standards. This corresponds to the stated objectives of the Clean Water Act ‘to restore and maintain the chemical, physical, and biological integrity of the nation’s waters.’”). Given the broad scope of facilities that will be operating under this permit, numerous water quality limited stream and rivers that will be receiving polluted stormwater under this permit, in many cases where the impairment is caused by stormwater pollutants. Thus, there can be no question that absent proper regulatory measures these discharges will cause or contribute to the further violations of water quality in these watersheds. Despite this, the permit fails to include the measures specifically targeted at effectively ensuring the prevention of further stormwater discharges to these impaired waterbodies.</p> <p>...Regardless of the form, however, the permit must be consistent with and implement the TMDL. This is where the proposed permit fails. Instead of implementing measures to protect these at risk waters, DEQ erroneously presumes that compliance with the terms of the permit constitutes compliance with Oregon’s TMDLs. The presumption that “compliance with the terms and conditions of the permit complies with the [TMDLs]” is based on the false conclusion that implementing methods to achieve TMDLs will automatically create compliance with such TMDLs. While implementation of BMPs and benchmark guidelines is an approach to meeting the goals of the TMDL, it does not follow that implementing BMPs in compliance with the permit somehow constitutes compliance with the TMDLs established for an impaired water body. To the contrary, “[m]eeting waste load and load allocations will ensure water quality standards attainment.” ...For example, the Columbia Slough TMDL for lead explains, “DEQ anticipates requiring implementation of BMPs</p>	<p>(SWPCP) procedures taken to prevent exposure on-site; or</p> <p>Document in SWPCP that the pollutant(s) for which the waterbody is impaired are not present at the site; or</p> <p>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).</p> <p>If a new discharger is unable to meet the above conditions, discharge must cease; or</p> <p>Obtain coverage under an individual permit.</p> <p>If the water quality samples are above the water quality criteria for the impairment pollutant(s) the facilities are not allowed to obtain coverage under the permit. For water quality criteria that are below the detection limit, the water quality data would be compared against the quantitation limit for the water quality criteria.</p> <p>This is consistent with the EPA’s condition in the MSGP for new discharger to an impaired water without a TMDL. When a new discharger applies for coverage all submitted documentation is posted to 30-day public comment period.</p> <p>Regarding EPA-approved TMDLs, in the course of development of a TMDL Oregon’s waters targeted for TMDL development are based on the extent of pollution and the use(s) of the water, (e.g., health of aquatic life or public recreation), and the identity of the pollutant(s) causing or expected to cause the impairment. The TMDL establishes a target for total load of pollutant the water body can assimilate and allocates the load to point sources.</p> <p>For existing EPA-approved TMDLs at the time of issuance of this 1200-Z permit cycle, loads associated with the industrial discharges have not been identified as causing or contributing to the impairment, with the exception of the Columbia Slough, and thus no load allocation has been assigned.</p>

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		<p>through stormwater permits” for industrial stormwater permittees... The analysis was not definitive, finding “BMPs should be developed based on land uses, but further delineation of sources based on land use must be done.” Id. at 6. In addition, the water quality management plan for Willamette TMDLs explains that NPDES permits will “ensure that all 303(d) related issues and TMDL allocations are addressed in the permit.” Willamette Basin TMDL: Water Quality Management Plan (WQMP), page 14-11. The WQMP does not contemplate that NPDES permits will certify compliance with TMDLs; rather, the WQMP expects NPDES permits to address TMDLs. The above analysis assumes industrial stormwater discharges were contemplated as a source in each TMDL analysis. If this assumption is false, any discharges to impaired water bodies from industrial stormwater discharges that include pollutant parameters for which there is an established TMDL likely violate that TMDL. DEQ may find exceptions if it determines the discharge is de minimis. Columbia Slough Total Maximum Daily Loads (TMDLs), page A-7 (“General permits apply to industrial categories that can meet general conditions assumed to cause negligible degradation of water quality.”).</p>	<p>DEQ has changed the language to read: A new discharger to an impaired water with a TMDL (based on EPA-approved TMDLs as of May 1, 2017) prior to obtaining coverage under the permit:</p> <p>DEQ will presume that compliance with the terms and conditions of the permit complies with the TMDL and will grant the owner or operator coverage under the permit, unless the TMDL establishes wasteload allocation(s) and additional requirements for industrial stormwater discharges.</p> <p>DEQ will inform the applicant if any additional monitoring, site controls or compliance schedules are necessary to prevent industrial stormwater from exceeding the wasteload allocation(s) in the TMDL(s), or if coverage under an individual permit is necessary.</p> <p>When developing TMDL’s, DEQ assesses the assimilative capacity of a waterbody, and includes the amount and types of discharges from industries.</p> <p>Nothing prevents DEQ from providing coverage for new discharges to 303(d) listed waters even in the absence of an assigned wasteload allocation in an EPA-approved TMDL, as long as it can provide assurance that the discharge will ensure compliance with water quality standards. As a matter of policy and in the absence of a TMDL, it is reasonable to allow a new discharge that discharges pollutants at or below the same level as the water quality criteria to be considered a discharge that will not cause or contribute to a violation of water quality standards (since it would either maintain or improve the receiving water quality). When the water quality standard has concentration-based criteria, a discharge of pollutants at or below the criteria level will have a neutral or positive effect on the receiving water body, and over time may even help the waterbody to achieve attainment of water quality standards.</p>
106	15	<p>DEQ may not account for industrial stormwater discharges in the reserve capacity or margin of safety, however. Oregon defines “reserve capacity” as the “allocation for increases in pollutant loads from future growth and new or expanded sources,” OAR 340-042-0040(k), and “includes that loading capacity that has been set aside for a safety margin and is otherwise unallocated.” OAR 340-041-0002(49). The margin of safety component of reserve capacity “is not meant to compensate for a failure to</p>	<p>When the TMDL does not explicitly identify industrial stormwater wasteload allocations, then compliance with the terms and conditions of this permit is presumed consistent with the TMDL.</p>

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		consider known pollutant sources,” and thus may not be relied on to cover industrial stormwater discharges containing pollutant parameters. See Willamette Basin TMDL, Overview at 1-11. Under either scenario, the permits cannot presume that compliance with BAT via BMPs and other permit requirements will constitute compliance with approved TMDLs.	
107	15	...the presumption that permit compliance will result in compliance with TMDLs is circular: meeting the permit means complying with TMDLs because TMDLs say permits will require compliance with TMDLs. This is illogical and thus the presumption should be removed from the permit. Even if industrial stormwater discharges were considered in the TMDL analysis, DEQ failed to identify the control measures and conditions that will protect designated uses. Assuming industrial stormwater discharges were included as a source in the TMDL analysis, DEQ must identify the control measures and conditions it requires for discharges into impaired water bodies.	See comment above.
108	15	Waters that do not have a TMDL fare no better. There, DEQ’s approach seems to suggest that simply monitoring impairment pollutants and taking future actions where a discharge is found to exceed some as yet defined reference level is sufficient to ensure compliance with the requirements and assumptions of the various applicable TMDLs. This could not be further from the case. DEQ must revise the draft permit to comply with the CWA and restore impaired waterbodies.	<p>Requiring permit registrants to monitor discharge for impaired pollutants is similar to the EPA’s MSGP. However, EPA only requires once a year monitoring and DEQ requires impairment monitoring twice a year. Facilities must monitor for the impairment pollutants to determine if they are present in their discharge, determine the source of the pollutants, and to take Tier I corrective actions if the pollutants are present in levels above the reference concentrations.</p> <p>EPA and DEQ maintains its position that the impaired waters monitoring requirements in the final permit are sufficiently stringent to ensure authorized discharges are controlled as necessary to meet water quality standards. DEQ considers monitoring requirements to collect additional data related to the presence or absence of the impairing pollutant in specific discharge to provide information for further analyses.</p>
Inspections			
109	16	Recordkeeping requirements include a requirement for "Documentation of maintenance and repairs of control measures." Recommend that this be clarified to be structural or treatment control measures, as the routine replacement of temporary or disposable control measures such as straw waddles, catch basin filter socks, etc. can occur as a matter of routine	All control measures affect the quality of stormwater discharge and should be inspected and documented when repaired or maintained during inspections. If there are routine daily inspections apart from the formal monthly or discharge event inspection, the inspection report will include the condition of all control measures. DEQ does not expect records to track the

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		daily activities not significant enough for formal tracking.	changed out every straw wattle; however, the inspection report must denote the conditions of control measures and if need or repair or replacement. If there are structural or treatment controls on a different maintenance schedule, such as an oil water separator, the permit registrant must retain these records for three years and supply them upon request.
110	26	Condition B.7.a: This condition implies that the complete site requires monitoring regardless of whether there is industrial activity or not, or if it is in operation or not. Boise Cascade requests that the definition in the existing permit remain, it is clearly written and defines the areas to be inspected.	The final permit includes language from the 2011/2012 permits regarding permit registrants must inspect areas where industrial materials or activities are exposed to stormwater. There is no need to make this change.
111	26	Boise Cascade requests that industrial activity be added back to the first sentence of this condition to pinpoint the source of items describe in this sentence. The facilities have control over industrial activities.	Since this general permit is for industrial stormwater, the intent of the condition is directly related to industrial activities.
112	26	Odor was added to this condition. How does one measure odor and when does it become a Clean Water Act issue? Boise Cascade requests that odor be removed from the permit and if there should be an odor issue that it be managed under the Departments Nuisance Odor program.	The 2008 and 2015 Multi-sector general permit and MS4 illicit discharge evaluation under 40 CFR 122.26 requires the evaluation of odor in discharge. The 2011/2012 permits omitted odor from the required visual observation inspections. The permit is now in line with the visual observation requirements in the MSGP.
113	26	Condition 8.7.e.vii: This condition also notes "or other obvious indicators of pollution in the stormwater". This is subjective and leaves the door wide open to interpretation for what would be considered an obvious indication of pollution. As this statement is ambiguous, Boise Cascade request that it be removed from the condition.	This condition is in line with EPA's Multi-Sector General Permit. EPA explains that the visual observation list does not include each and every possible sign of stormwater pollution, but is a good indicator list whether there is evidence of pollution in discharge. There may be other indicators and the permit registrant is expected to recognize obvious signs of stormwater pollution.
114	26	Condition 8.7.f: Requires inspectors to be familiar with all aspects of the permit. See comment on Condition 10)(ii).	<p>The NTBEL portion of the permit requires that trained employees must be familiar with pertinent components and goals of the SWPCP and the permit. However, Schedule B.7.b requires that inspectors who perform visual observations and monthly site review, must be familiar with all aspects of the SWPCP.</p> <p>It is important that key personnel review the SWPCP and comprehend its significance to compliance.</p>
115	27	Inspections (page 27): The inspection exclusion for substantially similar	DEQ agrees with the comment and has added the provision, "upon written

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		outfalls has been removed. The exclusion should be left up to permit registrant. Exclusion from inspection for outfalls with minimal activity or no exposure should be allowed. Permittees should be able to justify not inspecting similar outfalls based on exposure and activity in addition to similarity. Recommendation: Include language similar to the current permit that allows substantially similar outfalls to be excluded from monthly inspection.	approval from DEQ or agent an exceptionally large facility may modify inspection frequency.”
116	32	<p>These new requirements for inspection alone could be a fulltime job at a large site, and does not promote the most effective methods for catching problems on a site. A more effective tactic for inspection is to empower all employees to identify and resolve problems rather than designate one to catch all problems. This results in exponential results of catching problems. Find a way to incentivize sites to routinely inspect as part of daily duties, rather than creating a chore list that doesn't typically result in action, but checking boxes.</p> <p>Some of the requirements in here are redundant to other requirements in the permit.</p>	DEQ acknowledges this comment.
117	32	<p>These new requirements for inspection alone could be a fulltime job at a large site, and does not promote the most effective methods for catching problems on a site. A more effective tactic for inspection is to empower all employees to identify and resolve problems rather than designate one to catch all problems. This results in exponential results of catching problems. Find a way to incentivize sites to routinely inspect as part of daily duties, rather than creating a chore list that doesn't typically result in action, but checking boxes.</p> <p>Some of the requirements in here are redundant to other requirements in the permit.</p>	DEQ acknowledges this comment.
118	34	Schedule B.7.c. and B.7.d: BES recommends that DEQ add language to more clearly connect these subsections (which discuss visual observations) with Schedule B.7.e.vii. BES finds that it is not intuitive that Schedule B.7.e.vii addresses the visual observations referred to in Schedule B.7.c. and B.7.d. Alternatively, BES recommends that DEQ separate out provisions regarding visual inspections versus visual observations and address them in two separate sections (i.e., in Schedule	The final permit reiterates that the visual observation is required during a discharge event; clarified language reads, “Visual observations above must be conducted during a discharge event if one occurs during the month, regardless whether the monthly site inspection has already occurred.”

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		<p>B.7 and a new Schedule B.8 under the "Inspections" heading). As currently proposed, the language may cause confusion because visual observations covered in Schedule B.7.e.vii must be done while discharging but visual inspections covered in Schedule B.7.e.i-vi and B.7.e.viii can be completed at any time during the month (including on a dry day). In order to successfully meet the permit requirements, visual observation of stormwater discharge is often completed on a different day than the inspection of the rest of the facility. Re-wording Schedule B.7 as described above may help to reduce confusion and non-compliance with the permit.</p>	
119	34	<p>Schedule B.7.e.vii: BES finds that the language "including discharge points are representative' is unclear. Is DEQ's intent to require that visual observations be done at substantially similar outfalls or not? If so, then DEQ should consider rephrasing the language to "including discharge points that have been determined to be substantially similar in accordance with Schedule B.2.c.ii."</p>	<p>Visual observations are required at discharge points that have been determined to be substantially similar. Although the exemption for large facilities remains and they may modify inspections if approved in writing.</p>
120	21	<p>Schedule B, 7.f: This permit term requires that persons performing inspections must be "familiar with all aspects of the permit." The permit includes a large amount of information that is not relevant to performing inspections. Since it is not necessary to be familiar with all aspects of the permit to perform inspections, this requirement is unnecessary and burdensome. It should be revised to require that persons performing inspections be familiar with relevant portions of the permit as recommended in comments regarding Schedule A, 1.j.ii.</p>	<p>The NTBEL portion of the permit requires that trained employees must be familiar with pertinent components and goals of the SWPCP and the permit. However, Schedule B.7.b requires that inspectors who perform visual observations and monthly site review, must be familiar with all aspects of the SWPCP.</p> <p>It is important that key personnel review the SWPCP and comprehend its significance to compliance.</p>
121	40	<p>On page 27, Section B.7.b, requiring personnel conducting inspections to be familiar with fill aspects of the SWPCP is an excessive strain on manpower without a commensurate environmental benefit. The military relies heavily on shop personnel to support completion of inspections across the permitted area by having them inspect their own facilities. With the permit broadening inspection requirements it will be even more essential to rely on assigned shop personnel. These individuals do not typically need to be familiar with the entire SWPCP as many portions may not apply to their particular facility and operations. Requiring them all to</p>	<p>See above response.</p>

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		be familiar with the entire SWPCP is not useful and would prohibit otherwise qualified staff from supporting the required stormwater inspections, effectively ensuring the facility would be unable to fully comply with inspection requirements. We request this provision be modified to only require inspector familiarity with pertinent aspects of the SWPCP, rather than with the entire SWPCP, as this is more beneficial both environmentally and from a manpower perspective.	
Monitoring			
122	15	Although industrial facilities commonly discharge more than a dozen different heavy metals (in addition to other toxic pollutants), DEQ continues to establish benchmarks for only three metals: Total Copper, Total Lead, and Total Zinc. This is simply impermissible under the CWA. In addition, the rationale that DEQ has provided for limiting its benchmarks to only three metals is outdated and insupportable. DEQ must regulate all the pollutants that industrial facilities actually discharge.	Schedule E includes industry specific narrative-based technology limits, benchmarks and numeric effluent limits. In addition, six regulated industrial activities are subject to numeric effluent limit guidelines under specific Codes of Federal Regulations and varied years of rulemaking. In this permit, DEQ is targeting pollutants that may be present in high concentrations in industrial stormwater runoff to prevent degradation of the state's surface water quality. In addition, the monitoring of other pollutants such as TSS and the sector specific benchmarks requires corrective actions to be taken when monitoring results are measured above those benchmarks.
123	5	If fewer than four qualifying samples are collected during the second monitoring year, the permit registrant should have the option of using additional samples from the first monitoring year, but that should not be required. (§ A.11.e)	DEQ agrees with the comment. The permit reads: If fewer than four samples were collected during the second monitoring year, sample results from the previous monitoring year <u>may</u> be used to obtain four consecutive values for the Tier II analysis.
124	5	If a permit registrant receives permit coverage late in the monitoring period, it will often be infeasible or impossible for it to collect the required number of qualifying samples for new monitoring parameters. OISG has suggested a new Schedule B.3.b to address this problem. (§ B.3.b)	The monitoring variance language allows missed samples due to no storm events of sufficient magnitude to produce run-off during regular business hours and safe conditions. Regardless of renewal date or new permit coverage date, permit registrants must request a monitoring variance for missed samples. DEQ and its agent will take into account timing of coverage as it relates to minimum frequency of sampling.
125	11	Schedule B, Monitoring Requirements, 2.a.: AOI/OBA requests that DEQ replace “discharge permit” with the term “outfall” as written in the current permit.	DEQ did not make this change. EPA requires all stormwater discharge points to be sampled, not just defined outfall locations.
126	15	The previous iteration of the permit required monitoring of cadmium, nickel, chromium, mercury, and PCBs. These efforts demonstrated two things. First, as DEQ notes it is not reasonable to use one of the existing	As discussed in the permit evaluation report, DEQ evaluated the cadmium, nickel, chromium, and mercury monitoring data that was submit. As illustrated in Table 13 of the permit evaluation report, the 75 th percentile for

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		parameters as an indicator or surrogate for these pollutants. As a result, DEQ must address these pollutants in the permit. Second, the data demonstrate that these pollutants are present in stormwater discharges, and are at concentrations that may cause or contribute to a violation of water quality standards, including the chronic aquatic life, human health, and narrative criteria. As a result, the permit must address these pollutants through effluent limits and monitoring requirements.	<p>cadmium, chromium, nickel, mercury, and PCBs were below their respective acute aquatic water quality criterion.</p> <p>That is, more than 75 percent of the data were below the water quality criteria. Because the majority of the data were below criteria, routine monitoring of these pollutants is not included in the proposed permit.</p> <p>Although some correlation was observed, correlations were not strong enough to reliably predict the concentration of one pollutant based on another pollutant. Therefore, the indicator pollutant concept was not further pursued.</p>
127	16	Schedule B Monitoring Requirements - Sampling Procedures a 2.d. It is unclear or not practicable to determine when discharge starts during snowmelt events. Snowmelt events are not representative of typical stormwater discharge events.	The permit registrant must sample snowmelt when it is discharging. The timing requirement to monitor discharge during the first 12 hours of the discharge event provides an ample window of time during regular business hours to take a sample. DEQ acknowledges it may be slightly more difficult, but just as rainfall can be forecasted, temperature can be an indicator of potential snowmelt. As long as a permit registrant meets the required sampling frequency in the permit, permit registrants can determine the appropriateness of sampling snowmelt as makes sense for their facility.
128	32	Schedule B language throughout is vague and existing permit requirements have been confusing for many existing permittees. This proposed language does not appear to eliminate confusion, but create more.	The final permit has addressed many of the concerns and varied interpretations during the last five years from agents, industry and DEQ.
129	15	All NPDES permits must include monitoring and reporting requirements sufficient to ensure compliance with the permit's limitations. 40 C.F.R. § 122.44(i)(1). This must include monitoring on a schedule "dependent on the nature and effect of the discharge." Id. § 122.44(i)(4). In addition, industrial stormwater permits must requirement annual inspections, through which the permittee determine and must certify, "that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance. Id. § 122.44(i)(4); see also id. § 122.44(i)(4)(iii) ("Such report and certification be signed in accordance with §122.22"). The draft permit fails to meet these requirements. Rather, the permit allows facilities to stop monitoring "[i]f the geometric mean of four consecutive qualifying samples is equal to or below the impairment reference concentration or statewide, geographic or sector specific	DEQ changed the final permit to require facilities to continue monitoring discharge until written approval by DEQ or agent. This new conditions eliminates the automatic approval if DEQ or agent do not comment in 30 calendar days and allows for the time to conduct an appropriate analysis of each request. There are several circumstances where the permit registrant must reinstate monitoring at any point during the permit cycle. DEQ or agent may revoke a waiver based on inspection or corrective action. Facilities must maintain all control measures, inspections and maintenance at the site.

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		<p>benchmarks.” Permit, Sch. B.4(a)(i)(1). This is inappropriate for several reasons.</p> <p>....In sum, four sampling events per year is already a low frequency considering the potential risks of industrial stormwater discharge. Consistent monitoring should remain throughout the permit cycle in order to track trends and to adequately understand the discharge. See e.g., NRDC, 808 F.3d at 580, 583 (“Thus, because the 2013 VGP [Vessel General Permit] does not contain a mechanism to evaluate compliance with the WQBELs, the monitoring requirements are arbitrary and capricious and not in accordance with the law. See Waterkeeper All., 399 F.3d at 499 (failure of permit to include any mechanism for evaluating compliance with required technical standards rendered agency unable to ensure compliance with water quality stand.”).</p>	
Monitoring Frequency			
130	15	<p>First, consistent monitoring throughout the permit term is necessary to ensure compliance with the permit’s terms and conditions. Because DEQ continues to rely on a BMP-based permitting structure and adaptive management approach, the monitoring of discharge and comparison to benchmarks is a necessary to ensure permit compliance. Without the feedback loop created by the regular measurement of discharge quality there is little or nothing in the permit that will ensure permittees will continue to implement and improve their operations. As DEQ often points out as a reason to not regulate stormwater more rigorously, the potential variability in stormwater discharges is a storm reason to require facilities to monitor discharges consistently throughout the permit term. There is no evidence that the minimum four required monitoring events is sufficient to account for the variability in the discharge events.</p>	<p>40 CFR 122.44(a.)(2) allows state NPDES programs to write in express monitoring waiver conditions into permit conditions. This allowance is exercised in the final permit and DEQ has met all the applicable conditions of this regulation.</p> <p>DEQ allows monitoring waivers when a facility invests in adequate controls and consistently achieve benchmarks. DEQ, or its agents, reviews all monitoring waiver requests before a decision is made to grant or deny the request.</p> <p>DEQ and its agents will make decisions regarding monitoring waiver requests on a case-by-case basis and retains the authority to rescind a waiver as necessary.</p>
131	15	<p>In sum, four sampling events per year is already a low frequency considering the potential risks of industrial stormwater discharge. Consistent monitoring should remain throughout the permit cycle in order to track trends and to adequately understand the discharge.</p>	<p>DEQ changed the final permit to require facilities to continue monitoring discharge until written approval by DEQ or agent. This new condition eliminates the automatic approval if DEQ or agent do not comment in 30 calendar days. There are several circumstances where the permit registrant must reinstate monitoring. DEQ or agent may revoke a waiver based on inspection or corrective action.</p>
132	30	Schedule B, 5: Additional monitoring - Requiring a permittee to submit	A facility may conduct follow-up monitoring any time inside the 14 day

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		all additional monitoring in the DMR does not incentivize permittees to resolve corrective actions on the site via monitoring, but rather penalizes them through inclusion in the DMR and geomean calculations. EPA' s Multi-Sector General Permit (MSGP) states "Once monitoring requirements have been completely fulfilled you are no longer required to report monitoring results using NETDMR .DEQ should make clear how to report additional monitoring results outside the requirements of the permit	timeframe which defines a qualifying sample, without including this data in the geometric mean calculation. All sample results must be reported; however, the permit does exempt Tier I investigation and reporting requirements for the benchmarks parameter(s) monitoring yet to be addressed by Tier II implementation. This exemption applies from the end of the second monitoring year through the Tier II implementation deadline, to specifically inform the Tier II corrective action selection process based on data.
Monitoring Variance			
133	5	OISG has suggested revisions to Schedule B.3.a to clarify the basis for monitoring variances. (§ B.3.a)	A variance applies only when there is no discharge during regular business hours under safe conditions. If a facility failed to analyze the minimum sampling frequency outlined in the permit for any other reason, DEQ or agent has enforcement discretion.
134	11	Schedule B, Monitoring Requirements, Monitoring Variance, 3: We ask DEQ to revise this section to include other examples for when a permittee may be excused from monitoring. In addition, the permit should not limit the types of evidence that may be used to establish that a discharge did not occur during normal business hours and safe conditions. Moreover, many facilities have installed infiltration basins and other structures that prevent a discharge except in the event of extremely large storms. In order to encourage these efforts to minimize stormwater discharges, and in order to avoid requiring the facility to apply for (and DEQ or its agents to evaluate) monitoring variances each year for these facilities, the permit should provide a monitoring waiver for the outfalls.	DEQ disagrees with this comment. If a facility has discharges, they should be monitored so that the discharge is characterized. A variance applies only when there is no discharge during regular business hours under safe conditions. If a facility failed to analyze the minimum sampling frequency outlined in the permit for any other reason, DEQ or agent has enforcement discretion.
135	31	8. Schedule B.3 subsection b.iii (page 24) – A monitoring variance can be requested if no storm events occur during safe conditions, yet the term “safe conditions” is not defined.	The exemption should be applied on a case-by-case inclement weather event. A variance applies only when there is no discharge during regular business hours under safe conditions. If a facility failed to analyze the minimum sampling frequency outlined in the permit for any other reason, DEQ or agent has enforcement discretion.

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136	34	Schedule B.3.a.iii: BES suggests that DEQ add "flow metering" to the list of appropriate supporting data in this paragraph.	DEQ did not make this change.
137	21	Schedule B.3, page 25: The permit should be clear that the listed supporting data are only examples and not justifications for missed samples. Even in drought years or when rainfall in an area is below average, a facility may receive enough rainfall to result in a discharge that should have been sampled. Since obtaining a monitoring variance requires proof of a negative, photo documentation is unlikely to be helpful. Rather than submitting supporting data, the registrant's certified statement on the Discharge Monitoring Report that no discharge occurred should be sufficient, unless DEQ has evidence to the contrary.	<p>The monitoring variance section of the permit intentionally uses the term "may include" prior to the list of supporting data permit registrants could include in a monitoring variance request. Since many facilities are installing infiltration devices or large detention ponds, photo documentation of the outlets during large rain events depicting no flow may be substantiating evidence of no discharge.</p> <p>A variance applies only when there is no discharge during regular business hours under safe conditions. Facilities may use discretion and best professional judgment on the level of supporting data they choose to submit.</p>
Monitoring Waiver			
138	5	If a permit registrant infiltrates all of the design storm, no discharge benchmark should apply and no further monitoring should be required. (§§ A.11.k.iv, B.4.a)	Permit registrants must comply with all conditions of the permit. If a facility continues to retain coverage then a variance and annual discharge monitoring report are required.
139	5	Because of agency resource constraints, it is important to retain a default approval process for monitoring waivers. (§ B.4.d)	Facilities are expected to continue to monitor until notified in writing a monitoring waiver is approved or denied.
140	5	To ensure that a facility's monitoring requirements are clear to DEQ, its agents, the permit registrant, and the public, the permit should be clear that monitoring waivers must be revoked in writing by DEQ or its agent. (§ B.4.g)	The 2011/2012 permits and final permit indeed preserved the condition that DEQ or agent will notify the permit registrant <u>in writing</u> that the monitoring waiver is revoked.
141	6, 54	Two things I want to say with concern regarding one is right now you guys have taken away on this proposal this draft the 30 day limit for monitoring waiver and if you did not hear back from the agent that wavier automatically became effected and now it has been taken away, from the current permit instead basically it is an open door we have to sit around and basically hope for the DEQ or our agent to respond before the wavier will become effective there is no timeline to the agent to respond back to us or is there a timeline to say that this agent/DEQ will respond . We can literally drain excessive monitoring along the way even on elements that	DEQ or its agent needs to review each monitoring waiver request to ensure the decision made is appropriate for each site. Each request received is prioritized based on other work at any given time. DEQ and its agents aim to respond to requests as timely as possible.

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		were undetected before. I want to ask you guys to re-evaluate them either to restate what was previously written or make adjustment so we have a timeline to what we are doing.	
142	8	Schedule B.4.a (Monitoring Waiver for Benchmark and Impairment Pollutant Monitoring): The City concurs with the DEQ that facilities which effectively implement their SWPCP and collect qualifying samples, it is appropriate to request a monitoring waiver as described in the draft permit language. These waivers are particularly suitable, given the lower parameter benchmarks for lead and zinc. In addition, Schedule B.4.g.ii still allows for the revocation of a monitoring waiver at the DEQ's request.	DEQ acknowledges this comment.
143	8	Schedule B.4.d (Monitoring Waiver for Benchmark and Impairment Pollutant Monitoring): Previous permit allowed DEQ 30 days to review and approve/disapprove permittee requests for a monitoring waiver. Current proposed language provides no timeframe for approval from DEQ; and only states the following "Until the monitoring waiver is approved, the permit registrant must continue monitoring." Although it is understood that DEQ resources are stretched, it is our assertion that it is a reasonable request for the DEQ to provide a response within a defined period of time. Please consider a 60-day notification period to approve/disapprove permittee requests in order to limit potentially unnecessary sampling costs and resources.	DEQ or its agent needs to review each monitoring waiver request to ensure the decision made is appropriate for each site. Each request received is prioritized based on other work at any given time. DEQ and its agents aim to respond to requests as timely as possible.
144	11	Schedule B, Monitoring Waiver, 4.d: The proposed update to this section states that DEQ will notify permittee in writing if a request for a monitoring waiver is approved or denied. AOI requests that DEQ include the statement in the previous permit regarding approval if DEQ or the Agent does not respond within 30 days. In the event this provision was removed out of concern about DEQ's or its Agent's ability to approve requests for monitoring waivers within the 30 day timeframe, we request DEQ include a slightly longer time frame, such as 45- days.	Facilities are expected to continue to monitor until notified in writing a monitoring waiver is approved or denied. DEQ or its agent needs to review each monitoring waiver request to ensure the decision made is appropriate for each site. Each request received is prioritized based on other work at any given time. DEQ and its agents aim to respond to requests as timely as possible and DEQ declines to change the timeframe. DEQ acknowledges the cost of compliance with the conditions in the permit, including monitoring, and thus will retain the 30 day timeframe as the target for DEQ or agent to respond to a monitoring waiver request.
145	11	Schedule B, Monitoring Waiver, 4.b: The draft permit no longer specifically references waiver eligibility for individual discharge points. The final sentence should be rewritten to state "Monitoring waivers may	The final permit language now reads, "Monitoring waivers may be allowed for monitoring waivers for individual parameters and separate discharge points." This omission was an oversight and has been included in the final

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		be allowed for individual parameters or discharge points.”	permit to remain consistent with waiver condition in the 2011/2012 permits.
146	11	Schedule B, Monitoring Waiver, 4.c: The draft permit is ambiguous as to whether, when Tier II is triggered, a permittee is ineligible for monitoring waivers at all discharge points where there was an exceedance or at every discharge point at the facility. AOI/OBA request the permit be revised to read, “If Tier II has been triggered, permit registrants are ineligible for monitoring waivers at the discharge points and for the parameters that exceeded the geometric mean in Schedule A.11.”	DEQ has edited the final permit to reflect this ambiguity. Sch. B.4.c now reads: “If the facility has triggered Tier II during this permit term, permit registrants are <u>ineligible for monitoring waivers at all discharge points and parameters that exceeded the geometric mean in Schedule A.11.</u> ” The ineligibility applies to the end of second monitoring year through Tier II implementation date.
147	12	Schedule B.4: DEQ removed language that explicitly stated that monitoring waivers could be obtained for individual parameters. DEQ should continue to offer monitoring waivers on an individual parameter basis. Additionally, DEQ should include the language from the previous permit cycle stating that monitoring waivers are approved if DEQ or the agent does not respond within 30 days. This time-frame could be extended to 60 days, but should still have some sort of end date to provide certainty and clarity about when monitoring will be required.	The final permit does allow for monitoring waivers for individual parameters and separate discharge points. DEQ and its agents are committed to timely response upon receiving monitoring waiver request. Facilities are encouraged to submit request independent of DMR review. It is imperative facilities continue to maintain all control measures and still perform monthly inspections in the absence of monitoring. DEQ and its agents must track and formally approve all waiver requests.
148	15	Eliminating the monitoring requirement after only four samples will decrease the likelihood of finding benchmark exceedances and triggering actions. DEQ has no mechanism in place to ensure this does not occur. As DEQ admitted in a recent call with stakeholders it has never sampled at a facility after granting a monitoring waiver to determine if it is still in compliance with benchmarks. Suggesting that one could look at the monitoring data at the beginning of the next permit cycle is dubious. There is no reason to believe that a facility would not simply recommit to dutifully implementing its BMPS for just long enough to reacquire the monitoring waiver.	Our agents, Bureau of Environmental Services, Clean Water Services and City of Eugene, generally inspect all their industrial facilities at least once a permit term. DEQ is also obligated to inspect facilities under the EPA’s Performance Partnership. Compliance is evaluated by maintaining an accurate SWPCP and all control measures and still perform monthly inspections in the absence of monitoring. DEQ’s desired objective is to inspect as many facilities as possible, as this mechanism is the best for evaluating compliance.
149	18	Schedule B. 4. Monitoring Waiver The City doesn’t believe monitoring waivers should be granted for pollutant parameters simply because they are less than the benchmark. The benchmark is established to be a level above which some action is required. Being slightly less than that value should only mean that implementation of a permittee’s SPCP is successfully keeping pollutants below the benchmark level, rather than being a case to eliminate monitoring for pollutants being adequately controlled.	A waiver is only granted once four consecutive qualifying samples is equal to or below the benchmark or reference concentrations. The minimum frequency for sampling is broken down into two distinct timeframes. Samples must be taken on or before December 31 and on or after January 1 of each monitoring year. Impairment reference concentrations are set to ensure that the level of pollutants will not cause the waterbody to exceed the water quality standards, which are numeric limits based on toxicity to aquatic life or human health, or other thresholds needed to protect designated beneficial uses (swimming, fishing, navigation, water supply,

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			<p>etc.) of the waterbody.</p> <p>In addition, benchmarks evaluation also take into account ambient water quality conditions. Therefore, keeping pollutants at or below these values has a direct correlation to protection of Oregon’s waters. A NPDES permit will generally specify an acceptable level of a pollutant or pollutant parameter in a discharge.</p>
150	18	<p>Schedule B. 4. Monitoring Waiver If waivers are available to permittees, they should be granted for values that are significantly below the benchmark, i.e., non-detects. If DEQ wishes to provide a mechanism for permittees to reduce their monitoring, then we feel a more appropriate and still protective requirement would be to lower the monitoring requirements to once per year, rather than the required four annual samples, for pollutants that are less than the benchmark standard (e.g. less than 25% or 50% of the benchmark)</p>	<p>DEQ has not changed the monitoring waiver condition in the final permit. Keeping with federal regulation as a baseline, DEQ will track regional and federal changes to this condition to inform the next permit cycle.</p>
151	18	<p>Schedule B. 4. Monitoring Waiver With regard to DEQ’s requirement that waivers are only valid from years 3 to 5, it should be clear that this monitoring reduction remains in effect even if the permit is administratively extended. With the potential for administrative extension being likely, it is important to ensure that some reduced level of monitoring is always occurring to ensure that changes in pollutant runoff occurring over time is tracked.</p>	<p>Under OAR 340-045-0040(2) if a completed application for renewal of a permit is filed with DEQ or its agent, the permit will not expire until final action has been taken on the renewal application. Monitoring waivers, as well as, all other conditions continue to apply until the permit registrant is renewed under the final 2017 permit. However, when coverage is granted in the fall and there are two discharge events, sampling is required based on the minimum frequency of two samples on or before December 31st.</p>
152	20	<p>It is not clear in the permit whether ODEQ intends to review and approve waivers. In addition, it is not clear how ODEQ will track the new benchmark(s) to assess compliance. While exceeding a benchmark is not a permit violation, failure to conduct a corrective action, in this case triggering a tier I or 2 response, is a permit violation. ODEQ must be able to independently verify compliance and not have to rely solely on the permittee.</p>	<p>The intent of the clauses, “The permit registrant’s request must include documentation to support the request; and “Until written approval of the monitoring waiver is received, the permit registrant must continue monitoring,” is to allow DEQ and its agents a reasonable amount of time to conduct a thorough review of the documents, monitoring data and request. Prior to approval, facilities discharge must continue to be sampled. The previous permit clause, “If DEQ or Agent does not comment within 30 calendar days, the monitoring waiver is deemed approved,” could impede facilities and regulators from clear communication to assist in compliance.</p>

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153	31	The second aspect of particular concern is the allowance of a monitoring waiver to be issued parameters that triggered Tier II requirements. Without a couple years of monitoring data, it may be impossible to determine if BMPs are being maintained at a sufficient frequency.	The permit requires all control measures including treatment, to be cleaned, maintained and repaired to ensure effective operation as designed. Tier II corrective action often requires significant capital investment. The second monitoring year evaluation of sampling results will be in July 2019. Facilities have until June 30, 2021, to implement Tier II measures. Thus, the 2021/2022 monitoring year sample results may be used to obtain a monitoring waiver. Upon renewal under the 2022 permit all facilities must reinstate monitoring and re-establish any monitoring waivers. Based on this schedule, facilities will have at least one year of monitoring data to ensure the source control and treatment measures are operating properly.
154	34	Schedule B.4.a.i.(1): BES requests that DEQ add language on how a permittee can qualify for a monitoring waiver for pH. Under the proposed permit, requesting a monitoring waiver under Schedule B.4.a.i.(1) is based on a geometric-mean calculation, which is not appropriate for pH. BES recommends that a permittee be allowed to request a monitoring waiver for pH when the permittee can demonstrate four consecutive samples that were within the pH range allowed by the permit. In addition, BES recommends that DEQ delete "statewide," in the phrase "statewide, geographic or sector specific benchmarks."	DEQ agrees and has made this change.
155	34	Schedule B.4.a.i.(2): As proposed, Schedule B.4.a.i.(2) allows monitoring waivers in certain instances for Tier II parameters addressed with treatment measures. BES believes that monitoring waivers should not be granted for Tier II parameters. Monitoring should be required in order to assess treatment measure performance and ongoing maintenance needs to ensure treatment systems continue to function as designed. However, if DEQ wants to grant monitoring waivers for Tier II parameters, the permit language should be amended to explicitly require that the four consecutive samples referenced must be taken after Tier II implementation has been completed.	See comment above. Operation and maintenance for all passive and active treatment must be included in facility's SWPCP. The final permit allows facilities to request a waiver only after Tier II implementation date for those parameters and all applicable discharge points which triggered Tier II.
156	36	Schedule B.4.g.i.(4): The intent of this language is unclear to BES. We recommend that DEQ reword sub-paragraph (4) to more clearly express this trigger for reinstatement of stormwater discharge monitoring.	DEQ agrees and has made this change.

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157	34	<p>Schedule B, 4.g.ii, Revocation of Monitoring Waiver: This section allows DEQ and agents to revoke monitoring waivers based only on the same conditions that require a permittee to reinstate monitoring. It is critical that DEQ and agents also be allowed to revoke monitoring waivers for cause, such as the results of an inspection, a Warning Letter or formal enforcement action.</p>	<p>DEQ agrees and has made this change.</p>
158	36	<p>The current Permit states that if DEQ or Agent does not comment within 30 calendar days on a request to exercise a monitoring waiver, then the monitoring waiver is deemed approved. The draft Permit removes this 30 day approval timeframe. While ORRA understands that DEQ's resources may be limited, it is unreasonable to offer no specified timeframe in which DEQ or its Agent must respond to a monitoring waiver request. Rather than removing this language altogether, ORRA suggests an alternative timeframe be included within the Permit, such as 60 days.</p> <p>Language has been added to the Permit to state the following:</p> <p>"If Tier II has been triggered, permit registrants are ineligible for monitoring waivers at all discharge points for all parameters that exceeded the geometric mean in ScheduleA.1.I..."</p> <p>ORRA's interpretation of this additional language would mean that if a facility has 2 outfalls, and only one outfall triggered Tier II for a pollutant, the other outfall would not be eligible for a monitoring waiver for that particular pollutant, even if no exceedance occurred there. This places an undo compliance burden on permitted facilities. If permittees are meeting or below benchmarks at any discharge point, the ability to exercise the monitoring waiver under the permit should apply. This allows a permittee to adjust operations and focus on specific areas where challenges are identified. ORRA requests this new language be removed from the permit.</p>	<p>The final permit does allow for monitoring waivers for individual parameters and separate discharge points. DEQ and its agents are committed to timely response upon receiving monitoring waiver request. Facilities are encouraged to submit request independent of DMR review. It is imperative facilities continue to maintain all control measures and still perform monthly inspections in the absence of monitoring. DEQ and its agents must track and formally approve all waiver requests.</p> <p>The stated language in the comment is explicit to discharge points and parameter(s) which triggered Tier II. All other discharge points can apply for a monitoring waiver at any point once sample results geometric mean is equal to or below the benchmark.</p> <p>In addition, the ineligibility only applies to the end of the second year to Tier II implementation date. Once Tier II corrective action is installed then monitoring waiver conditions apply to discharge points and parameter(s) that triggered Tier II.</p>
159	21	<p>Schedule B, 4.g.ii, Revocation of Monitoring Waiver: This section allows DEQ and agents to revoke monitoring waivers based only on the same conditions that require a permittee to reinstate monitoring. It is critical that DEQ and agents also be allowed to revoke monitoring waivers for cause, such as the results of an inspection, a Warning Letter or formal enforcement action.</p>	<p>DEQ agrees and has made this change.</p>

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MS4			
160	18	Request that DEQ add a requirement to mail or email a copy of the SWPCP and DMR information to the local municipality if they are located within the boundary of a Phase I or Phase II Stormwater NPDES permit.	DEQ acknowledges this comment. Once the federal electronic reporting rule is fully implemented in Oregon, all municipalities will have access to this information.
161	20	EPA is concerned that coverage of the same facility under more than one permit has led to confusion over dilution, representative samples, and monitoring locations. To that end, if storm water from a regulated industrial activity is included in a different NPDES permit, that permit must have requirements for storm water pollution prevention that are at least as protective as the draft permit. For example, an operator operating a log pond under or the 400-J permit or mixing stormwater with non-contact cooling water under the 100-J permit.	DEQ acknowledges this comment.
162	? ?	32 The MS4 operator has obligations to the Illicit Discharge Detection and Elimination requirements of their permit. This permit requirement covers the MS4's authority to follow up on discharges from a facility to the MS4, and this statement is redundant to existing authority under another DEQ-led program. This can be used improperly by DEQ agents, rather than the intended actual MS4 operator. It is permit over-reach.	DEQ does not agree with the comment. There is no condition in the permit considering this matter.
No Exposure			
163	5	A no exposure certification exempts a facility from the need to obtain any NPDES permit for its stormwater discharges, not just the 1200-Z general permit. (§ 6.a)	DEQ acknowledges this comment.
164	5	The permit should reference the most recent EPA guidance for no exposure certifications. (§ 6.a.i, iii)	DEQ agrees and has made this change.
165	18	No Exposure Conditional Exclusion from Permit Coverage The City of Gresham acknowledges the limitation of DEQ resources to review permit exclusion requests. We recommend that if DEQ cannot meet the 60-day review timeframe, that DEQ contact the applicant to request additional time and data, if needed. Suggestions for simplification of the verification process is to require the applicant to submit an aerial photograph of their site from the preceding 12 months or have the local municipality conduct	DEQ acknowledges this comment. If DEQ or its agent does not comment within 60 calendar days the conditional exclusion is deemed approved.

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		a site drive through and sign off on the application.	
166	31	Permit Coverage Schedule 6.a subsection iv (page 7) – Agents do not have the authority to issue NPDES permit or no exposure certifications.	DEQ acknowledges that agents do not have the authority to issue permit coverage for the 1200-Z permit. DEQ makes the final decisions associated with permit registration. For applications received for sites within the agent’s jurisdictions, the agents make a recommendation to DEQ that inform the final decision.
167	32	60 days unnecessarily draws out this review, and allows the Agent or DEQ to lengthen the time of uncertainty of expectations of compliance on an active site, putting the site and the environment at risk.	Many of the agents confirm no exposures certifications by conducting site visits. Where it is geographically reasonable, DEQ also attempts to confirm exemptions. Expanding the timeline from 30 days to 60 calendar days serves DEQ and its agents in confirming the conditional exclusion from permit coverage. Once verified the facility may receive written approval, which in turn provides certainty to the facility.
168	32	6. B.iii. Due to inconsistent permit interpretations and permittees experiences with agent overreach, we suggest that only DEQ is authorized to make these determinations. If agents continue to be used, we request that DEQ provide publicly the records and documentation of required training and coordination in accordance with the Intergovernmental Agreements between DEQ and agents. This will build trust and provide for accountability to ensure consistency.	DEQ works closely with the agents to ensure implementation of the permit is consistent statewide. DEQ does not have the resources to implement the permit in any of the areas that the agents cover.
169	21	Section 6.a.ii requires that the owner/operator seeking a “no exposure” conditional exclusion must “ensure that contaminated soil or materials from previous operations are removed or otherwise not exposed.” As an agent, the District is concerned about its ability to enforce this provision. DEQ should provide guidance to agents on how to determine whether an owner/operator has complied with this requirement.	Language was changed to: “Ensure that known materials from previous operations are removed or otherwise not exposed to stormwater.” If outreach or guidance is needed, DEQ will provide it.
170	21	Schedule D, 5: This new section covers the process permit registrants must follow to terminate permit coverage. As an agent, the District has addressed situations where the process was circumvented, resulting in unregulated sites with the potential to impact water quality in the District’s jurisdiction. Termination requires, among other tasks, resolving outstanding compliance issues and ensuring that materials including residuals on the ground, materials from past industrial activity, equipment and wastes, as well as zinc or copper roofing materials are not exposed to precipitation. These tasks are important for preventing the discharge of	Permit registrants must continue to comply with all conditions of the permit until termination is approved. Although the permit is silent on inactive status approval, only facilities that meet 40 CFR 122.26(g)(4)(iii) are eligible and if they falsely request inactive status, you can refer for enforcement. If the facility does qualify for inactive status at that time they may discontinuing monitoring.

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		<p>pollutants to the waters of the state. Unfortunately, they also have the potential to be expensive and to be avoided, particularly by a permit registrant who is no longer in business at the site. In the District's experience, an operator abandoned the site without terminating its permit. The District anticipates that the permit registrant will wait out the permit term, without making the expenditures required for termination. Since they will no longer be performing industrial activities, they will not need to apply for renewed coverage. Once the facility is no longer permitted, DEQ and agents have substantially less leverage to ensure that sites are brought to the level required for termination. This situation has the potential for creating industrial "brownfields" in the District and throughout the state.</p> <p>In addition, the proposed 1200-Z Permit also provides, at Schedule B.4, the ability for a facility to become "inactive" and avoid monitoring requirements. When inactive, a permittee need only submit annual DMRs noting its facility's status. The standard for becoming inactive ("no industrial materials or activities exposed to stormwater") is much lower than the standard for termination. The Proposed 1200-Z Permit requires only submittal of a request, with supporting documentation, for inactive status. The operator of an inactive site can simply wait out the permit term and not go through the expensive process of termination. Removed NEC conditions and appreciate the alternate perspective.</p> <p>To address this concern, DEQ should consider how performance of the tasks required for termination will be enforced once a permit expires. It would help the agents if DEQ described the administrative process for termination situations. To provide adequate time to respond, the permit should require notice of 60 days to allow DEQ or the agent to confirm that the site qualifies for inactive status.</p>	
Non Stormwater Discharges			
171	21	<p>Authorized Non-Stormwater Discharges 8. a. ii and iii. There are common, readily available de-chlorination techniques for hydrant and water line flushing that should be implemented to prevent chlorinated discharges from being released to surface water. The permit should contain a requirement that flushing releases are authorized only when dechlorinated.</p>	<p>DEQ did not make these changes to the non-stormwater discharge requirements. DEQ has additional information if needed to address this instance.</p>

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172	18	<p>8. a. vi. The language "...provided that all pesticides, herbicides, and fertilizer have been applied according to manufacturers' instructions" is inappropriate. Oregon law already requires that pesticide labels be followed further, the licensing requirement for an applicator requires them to follow this law. The extension of this expectation onto the permittee with regard to landscapers it hires is an unreasonable and impossible oversight requirement that is duplicative of other Oregon law. If DEQ wishes to influence the reduction of pesticides and fertilizers within the industrial permits, a separate requirement should be listed within the Stormwater Pollution Control Plan (SPCP) section. Suggestions include:</p> <ul style="list-style-type: none"> • SPCP shall include a section on landscape maintenance practices and how the permittee intends to manage this portion of its property (e.g., employee v. contractor). • Landscaping practices should consider the implementation of integrated pest management and/or organic maintenance techniques in order to limit the impacts of pesticides and fertilizers to surface waters. • Permittees shall maintain a copy of the landscape management plan and chemicals utilized by its employees or contractors. <p>Permittees shall ensure that employees responsible for landscape management have training in reading and applying chemicals per label instructions and Oregon law.</p>	<p>The permit now reads based on this response, "landscape watering and irrigation drainage."</p> <p>The Oregon Department of Agriculture Pesticide and Fertilizer Programs regulate the sale and use of pesticides and fertilizers in Oregon with the following goals:</p> <ul style="list-style-type: none"> • Protect people and the environment from any adverse effects of pesticide use while maintaining the availability of pesticides for beneficial uses. • Assure that effective fertilizer, agricultural mineral, agricultural amendment, and lime products are provided for agricultural and consumer uses. <p>Federal law defines a pesticide as:</p> <ul style="list-style-type: none"> • Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and • Any substance or mixture of substances intended for use as a plant growth regulator, defoliant, or desiccant.
173	18	<p>8. a. vii. Existing language is unclear. Suggest amending language as follows: "Pavement washing with cold water only of uncontaminated clean pavement (i.e., pavement shall be swept prior to washing and shall exclude areas stained with oils, chemicals, tars or other hydrocarbons, etc.)."</p>	<p>The suggested language change is very similar to the 2011/2012 permits language which was retained in the 2017 permit. Pavement must be swept before washing and any spilled materials removed. Facility personnel may not use hot water, detergent or other cleaning products.</p> <p>All pavement washing is prohibited any area where there has been a previous spill or leak of hazardous or toxic material.</p>
174	18	<p>8. a. viii. The reference to the expired 1700-A permit is not helpful. DEQ has acknowledged that it does not intend to renew this permit. Gresham believes that the 1700-A permit is helpful for the protection of Oregon's waters and it should either be renewed or its protective elements should be directly incorporated into the 1200-Z permit.</p>	<p>DEQ has altered the language in this condition and acknowledges that the 1700-A permit is helpful for protection of Oregon's waterways. DEQ is working on a timeline and work plan for the renewal of the permit as it relates to other priority work in DEQ's water permit programs.</p> <p>The final permit makes reference to the coverage eligibility condition under the 1700-A discharge wash water permit of 8 or more vehicle washing per</p>

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			week. The 1200-Z authorizes wash water discharge from less than 8 vehicles or 4 large pieces of equipment or trucks.
175	20	<p>Vehicle washing: Schedule A.7.a.viii states, "[v]ehicle washing that does not use detergents or hot water unless the 1700-A NPDES permit is required for the discharge."</p> <p>EPA Comment: Only those entities washing 8 or more vehicles are accountable under the 1700-A permit. This provision would allow routine discharges of vehicle wash water; however, vehicle wash water contains a variety of pollutants including sediments. The discharge of vehicle wash water should not be an allowable non-stormwater discharge. Instead, EPA recommends that ODEQ change the draft permit to be consistent with EPA's MSGP, which includes the following narrative effluent limit in Part 2.1.2.1, "Perform all vehicle and/or equipment cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also that capture any overspray;"</p>	<p>The 2011/2012 permits and the 2017 permit follows EPA's recommended language in Schedule A.1.viii, minimize exposure, stimulating all wash water is managed indoors, in bermed areas aimed at evaporation, or disposed into sanitary or infiltrated into grassy vegetated areas, unless authorized discharge meets the allowed limit of vehicles and equipment or is regulated under the 1700-A.</p> <p>The allowance under authorized non-stormwater discharge is consistent with DEQ's regulation for wash water. Since discharge must be sampled, if results prove to have elevated TSS or Oil and Grease, the permit registrant must take corrective action to address washing operations.</p> <p>Vehicle washing prohibits the discharge of engine, transmission or undercarriage washing. Additional best management practices and potential pollutant protection techniques may be found at DEQ and Department of Ecology websites.</p>
176	31	<p>Permit Coverage Schedule 7.a subsection viii (page 9) – The 1700-A permit expired in 2003 and cannot be issued at this time. As there are no immediate plans to renew this permit, the reference should be removed. Although it is DEQ policy to allow dischargers to apply for the permit and operate as though they have been granted coverage, these sites are not currently being inspected to ensure permit compliance and it has not been DEQ practice to prohibit discharges in the event of an effluent limit exceedance. It is recommended that the allowable activities are outlined in this section instead of referencing required activities detailed in another permit.</p>	<p>The reference to the specific permit was removed; however, the final permit included the restriction of washing less than 8 vehicles per week.</p>
177	32	<p>8.a.iv. It is not clear what DEQ means by "chillers."</p>	<p>A chiller is a machine that removes heat from a liquid via a vapor-compression or absorption refrigeration cycle. This liquid can then be circulated through a heat exchanger to cool equipment, or another process stream (such as air or process water). Chilled water is used to cool and dehumidify air in mid- to large-size commercial, industrial, and institutional facilities.</p>
178	32	<p>Discharge from emergency or unplanned firefighting...It is unclear why</p>	<p>DEQ has determined that the clarification is appropriate.</p>

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		this addition is needed.	
179	21	Section 8, Authorized Non Stormwater Discharges: Section 8.a.ii allows discharge from fire hydrant flushing and maintenance. To be consistent with application of the MS4 permit, permit registrants should be required to comply with DEQ BMPs for discharges of chlorinated water for this type of discharge.	Did not make this change. DEQ prohibits chlorinated discharges.
Narrative Technology Based Effluent Limits (NTBELs)			
180	5, 11	In addition, and for consistency with the first paragraph of Schedule A.1, this condition should use the term “feasible,” not “possible.” Using “possible” would require secondary containment even if that were not “economically practicable and achievable in light of best industry practice.”	<p>Consistent with EPA’s permit, the final permit narrative TBEL requirements are mandatory and have been moved into the control measures that facilities will implement to meet the TBELs. This section of the permit also references CWA section 304(b)(2), factors considered in assessing Best Available Technology Economically Achievable (BAT), such as cost, age of equipment, energy requirements, etc.</p> <p>40 CFR 450.11(b) defines infeasible as not technologically <u>possible</u>, or not economically practicable and achievable in light of best industry practices. These terms and definitions are embedded in federal regulations and EPA’s industrial permit.</p>
181	11	Schedule A, Control Measures for Technology Based Effluent Limits, 3.b: The terms “minimize” and “feasible” are defined under Schedule D.3. The terms should not also need to be defined under Schedule A.3.b.	DEQ did not make this change; therefore, the terms are referenced in Schedule A and Schedule D.
182	15	Regardless of the form of the effluent limits ultimately chosen, the permit must include a clear requirement that dischargers will comply with the Best Available Technology Economically Achievable (“BAT”) and the Best Conventional Pollution Control Technology (“BCT”) standards. The draft permit fails to impose, or even reference, these requirements.	<p>Best Conventional Pollution Control Technology (“BCT”) standards. The Clean Water Act requires facilities to meet technology based effluent limits. DEQ’s 1200-Z permit is based to EPA’s Multi-Sector General permit (MSGP). The effluent limits in the MSGP correspond to required levels of technology-based control under the CWA (i.e., Best Practicable control Technology currently available for all pollutants (BPT), Best Conventional pollutant control Technologies for conventional pollutants (BCT) and Best Available Technology economically achievable for toxic pollutants (BAT)).</p> <p>EPA establishes national effluent guidelines for specific industrial groups. One of the major strategies of the Clean Water Act (CWA) in making “reasonable further progress toward the national goal of eliminating the discharge of all pollutants” is to require effluent limitations based on the capabilities of the technologies available to control those discharges.</p>

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			<p>Technology-based effluent limitations (TBELs) aim to prevent pollution by requiring a minimum level of effluent quality that is attainable using demonstrated technologies for reducing discharges of pollutants or pollution into the Oregon's waters. TBELs in this permit are expressed in a narrative form. EPA interprets the CWA to allow Best Management Practices (BMPs) in the place of numeric TBELs when numeric limits are infeasible. EPA has stated, that it is not always feasible to develop numeric TBELs for industrial stormwater due to the variability of stormwater discharge and the BMPs employed at the industrial sites.</p> <p>The technology based-effluent limits in DEQ's 1200- Z permit comply with applicable federal technology-based treatment requirements under 40 CFR 125.3. Each category of technology based-effluent limits must be addressed in the stormwater plan with a description of potential pollution sources, assessing potential risk pollutants may pose to stormwater quality. Any such activities, materials, or features must be addressed by the measures and subsequently controls at the facility to minimize pollutants from mobilizing in stormwater discharge.</p> <p>DEQ has determined that the combination of pollution prevention, structural and treatment management practices in conjunction with tiered corrective actions for benchmark exceedances, is an environmentally sound way to control the discharge of pollutants in stormwater runoff from industrial facilities and protect water quality. Operators must select, design, and implement control measures (BMPs) in accordance with good engineering practices and manufacturer's specifications and evaluate a variety of factors when choosing their BMPs. Failure to do so is a permit violation.</p>
183	15	<p>In addition to the lower benchmarks that will be difficult to meet, the permit includes specific requirements to meet narrative technology-based effluent limits (NTBELs). The NTBELs are enforceable requirements that facilities must meet "where applicable and technologically available and economically achievable in light of best industry practice." Therefore, a permittee can be found in violation of the permit if it fails to implement any of the applicable NTBELs regardless of whether the permittee is routinely achieving the benchmarks and regardless of whether the permittee is causing or contributing to a water quality violation. Because the NTBELs are narrative standards and determining "economically</p>	<p>Permit compliance is determined by compliance with all permit conditions. DEQ and its agents evaluate compliance in many ways, including inspections and use enforcement discretion as appropriate. DEQ does not agree that a permit shield is appropriate.</p>

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		achievable in light of best industry practice" guidance is not clear, a permittee will never be able to be confident it is fully complying with the permit and may be subject to potential violations for failure to implement NTBELs that an inspector or third party considers applicable. With any permit, a permittee must be able to reasonably determine if it is complying with the permit. Boise Cascade believes a permit shield is essential so that we can be reasonable confident that we are complying with the permit and will not be subject to enforcement actions simply because we failed to implement an NTBEL that was not necessary to achieve the benchmarks or to prevent a water quality violation.	
184	26	There are inconsistent interpretations by DEQ and agents about how DEQ defines/determines/reviews/accepts what is "technologically available, economically practicable and achievable in light of best industry practice." This is EPA language that DEQ has provided inconsistent interpretations for. DEQ's inconsistent administration of NTBEL's have confused permittees who share conflicting anecdotes about compliance with NTBEL's.	<p>To determine technological availability and economic achievability, permit registrants need to consider what control measures are considered "best" for their industry, and then select and design control measures for their site that are viable in terms of cost and technology. When determining what is "best" for their industry Permit registrants may evaluate control measures for similarly situated industries in Oregon and nearby states such as Idaho, Washington, and California. As a result, economic considerations may come into play when facilities determines the appropriate BMPs or control measures to implement to meet the narrative TBELs in the permit.</p> <p>Consistent with EPA's permit, the final permit narrative TBEL requirements are mandatory and have been moved into the control measures that facilities will implement to meet the TBELs. This section of the permit also references CWA section 304(b)(2), factors considered in assessing Best Available Technology Economically Achievable (BAT), such as cost, age of equipment, energy requirements, etc.</p> <p>Facilities will describe the control measures in their SWPCP and must make every reasonable effort to minimize or eliminate pollutants from stormwater discharge.</p>
185	32	A.1.a.i.Given the punitive nature of BES's interpretation of the NTBEL requirements, adding "may discharge" provides more unclear language and expectation of compliance. It also, allows DEQ and agents to enforce on something that "may discharge" without the need to provide justification for violation notices regarding materials and activities that do NOT discharge to surface water. Creates confusion and is simply impossible to comply with.	<p>The permit registrant is required to minimize or eliminate discharge from the facility which comes in contact with industrial activity.</p> <p>Using source control by preventing stormwater from coming into contact with polluting materials is generally more effective, and less costly, than trying to remove pollutants from stormwater.</p>

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186	32	...control and maintain control measures including all best management practices....A.3.a.Inclusion of the word "all" is not appropriate in this context. Not all BMP's will relate to control measures.	This change was not make as the term control measures and BMPS are distinct of each other in this context although many times they are used interchangeably.
187	32	.3.a-d This section needs revisions as it is vague and not clear why "infeasible" was added where the terms isn't referenced above. This section includes revisions to the EPA's requirements that are confusing. DEQ lacks adequate information and guidance regarding the selection, design, operation and maintenance of control measures in this permit to add detail above and beyond EPA's requirements. DEQ and DEQ agents should not be requiring additional corrective actions unless they have been properly trained about selection and design of control measures. DEQ must be prepared to take full responsibility for recommendations of control measures and financial responsibility for a permittees investment if the corrective action suggested by DEQ or agent does not work. 3.d. provides for another location of a punitive approach to enforce narrative limits to control measures. This is not consistent with EPA's guidance on control measures, and is confusing narrative limits with control measures. Mixing narrative limits with control measure is not a standard stormwater management strategy, and is confusing how these are separate requirements. Only BMP's that are applicable	<p>Facilities must implement the narrative technology based effluent limits to the extent they are technologically available and economically achievable in light of best industry practice, which aligns with the Clean Water Act requirements for technology based effluent limits. DEQ combined the permit requirements related to control measures and narrative technology based effluent limits to improve the readability of the permit.</p> <p>This language will be retained from the 2011/2012 permits and is already established in DEQ and agents enforcement discretion. Permit registrants must take corrective actions to meet the narrative and numeric technology based effluent limits.</p>
188	15	<p>Even assuming the permit language is based on best professional judgment, which requires DEQ to evaluate the BAT and BCT criteria set forth in the Clean Water Act and implementing regulations, here the Fact Sheet makes clear that DEQ has not done any analysis that supports altering in any way Congress' BAT and BCT criteria, or how those criteria might be applied to industrial stormwater discharges on a facility-by-facility basis. As a result, the permit's effluent limitations must clearly require each discharger to implement BAT and BCT. Any alteration in those criteria would be inconsistent with the Clean Water Act and invites dischargers to randomly select BMPs based on their subjective notion of "best industry practice" and some loose consideration of "technological availability" and "economic achievability."</p> <p>At no point does DEQ address how the draft permit will ensure compliance with these standards. In fact, the draft permit removes the only language that referenced the appropriate factors to be considered when selecting the appropriate technology for eliminating stormwater</p>	<p>The final permit includes appropriate factors facilities may use in selecting control measures based on the CWA.</p> <p>Meeting the technology based requirements are mandatory. When choosing the BMPS to meet the limits, facilities can consider whether the control measures are technologically available and economic achievable in light of best industry practice and identify these measures in the SWPCP. The technology based requirements serve as the baseline requirements and the SWPCP must be developed to meet this requirements. If sampling data shows that benchmarks are being exceeded then facilities must re-evaluate these BMPs on-site and under the Tier II corrective actions install treatment BMPs. If operational and structural source control measures are not feasible or adequate at controlling the pollutants in their discharge then stormwater treatment BMPs that remove pollutants from stormwater may be necessary.</p> <p>EPA identifies the best available technology that is economically achievable for that industry and sets regulatory requirements based on the</p>

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		runoff. To correct this DEQ must ensure the permit expressly requires the development of a pollution control plan that reflects the BAT and BCT requirements. This will require the permittee to identify not only the measures that will be implemented, but also identify and justify each minimum BMP or applicable advanced BMP not being implemented at the facility because they do not reflect best industry practice considering technological availability and economic achievability and are not necessary to implement BAT and BCT at the facility.	<p>performance of that technology. The Effluent Guidelines do not require facilities to install the particular technology identified by EPA; however, the regulations do require facilities to achieve the regulatory standards which were developed based on a particular model technology.</p> <p>The permit's regulatory framework is based on CWA section 304. DEQ and agents ensure permitted facilities are meeting the conditions of the permit and in turn compliance with the federal and state regulations.</p>
189	15	<p>DEQ has failed to ensure the permit will comply with the Oregon's narrative water quality criteria. The permit evaluation report in fact fails to mention narrative criteria at all. This is patently unlawful. See 40 C.F.R. § 122.44(d)(1) (every NPDES permit must include the requirements necessary to "Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.") (emphasis added).</p> <p>Specifically, DEQ must ensure that "the highest and best practicable treatment and/or control of wastes, activities, and flows" have been used in this case "so as to maintain dissolved oxygen and overall water quality at the highest possible levels and water temperatures, coliform bacteria concentrations, dissolved chemical substances, toxic materials, radioactivity, turbidities, color, odor, and other deleterious factors at the lowest possible levels." OAR 340-041-0007(1). Similarly, DEQ must also address whether there are any "less stringent natural conditions" that "exceed[] the numeric criteria" for the waterbodies, and thus "supersede[] the numeric criteria and becomes the standard for that water body." OAR 340-041-0007(2). Finally, DEQ must ensure that the permit include limits necessary to prevent the creation of a condition that is deleterious to fish. OAR 340-041-0007(11).</p>	<p>DEQ disagrees with this comment. DEQ has developed a permit consistent with State water quality goals. Facilities are required to ensure that stormwater discharge does not cause or contribute to an exceedance of instream water quality standards in OAR 340-041, including the narrative standards and aquatic life and human health criteria. The benchmark values in the permit for the zinc and lead are based on a water quality model and a 10% exceedance rate of the acute aquatic life criteria.</p> <p>For stormwater discharges, EPA and DEQ continue to include non-numeric water quality-based effluent limits. Federal regulations allow narrative limits or controls rather than numeric effluent limits. DEQ relies on technology-based narrative effluent limits to minimize pollutants and resulting tiered corrective action to control discharges from causing or contributing to an excursion of water quality standards. The permit was developed to comply with the CWA and applicable rules and regulations. The NPDES regulations at Title 40 of the Code of Federal Regulations (CFR) 125.3(a) require NPDES permit writers to develop technology-based treatment requirements, consistent with CWA section 301(b), that represent the minimum level of control that must be imposed in a permit.</p>
190	52	Third, referencing permit condition A-1, we have many concerns with the condition as proposed in the draft permit. NWPPA supports the OISG comments on alternatives addressing narrative technology-based effluent limits. We believe the Department should strongly consider revising the permit accordingly.	All BMPs refers to each specific NTBELs as listed in the site-specific SWPCP. All BMPs applicable to each individual site.
NTBEL: Preventative Maintenance			

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191	32	A.1.i.It is not clear what is meant by "as designed" for storage areas or material handling as these are not "designed", but rather may be governed by a process or procedure. In some cases that process or procedure has been written into a BMP not "designed".	This refers to the requirement to clean, maintain and repair all stormwater pollution prevention structural controls and treatment control to ensure they operate as intended.
NTBEL: Dust Generation and Vehicle Tracking of Industrial Materials			
192	5, 7, 11, 12, 26, 30	<p>The proposed requirement to minimize tracking of materials within and between operational areas is too broad and should be limited to circumstances in which the tracking has a substantial adverse effect on stormwater discharge quality. (§§ A.1.f, B.7.e.iii) The requirement to control tracking within a facility is too broad, particularly where other stormwater controls would prevent the tracked materials from leaving the site in stormwater. OISG and AOI/OBA suggests qualifying this requirement by adding the phrase “where the tracking of materials is likely to have a substantial adverse effect on stormwater quality.” The tracking of industrial materials within and between operational areas is already addressed in general housekeeping requirements. The addition of the requirement here is overly prescriptive especially if there is little to no impact to stormwater discharges within and between operational areas at a permitted site. This NTBEL essentially opens up the entire operation of the facility for violations and recordkeeping violations. Should a facility have treatment measures to keep the "onsite tracked" material from discharging then this requirement is not necessary. Boise Cascade requests that the requirement in A.1.f is to “<i>minimize</i> generation of dust and tracking <i>on exposed surfaces</i> within and between operational areas and off site.” This is a reasonable requirement to draw stormwater management personnel attention to during implementation of general housekeeping and other controls and is specific to site areas that are exposed to stormwater. It follows that application of housekeeping measures and controls can be readily applied to meet the requirement and prevent recordkeeping violations. The requirement in Schedule B (renumbered to B.7.e.iii.) is similarly qualified with the requirement to “inspect areas where industrial materials or activities are <i>exposed to stormwater</i>” and further qualified in specificity as to “where vehicles enter or exit the site.” Again, rather than being too broad, the conditions are specific regarding areas of exposure and can be readily addressed with various commonly applied control measures and practices.</p>	<p>The requirement in A.1.f is to “<i>minimize</i> generation of dust and tracking <i>on exposed surfaces</i> within and between operational areas and off site.” This is a reasonable requirement to draw stormwater management personnel attention to during implementation of general housekeeping and other controls and is specific to site areas that are exposed to stormwater. It follows that application of housekeeping measures and controls can be readily applied to meet the requirement and prevent recordkeeping violations. The requirement in Schedule B (renumbered to B.7.e.iii.) is similarly qualified with the requirement to “inspect areas where industrial materials or activities are <i>exposed to stormwater</i>” and further qualified in specificity as to “where vehicles enter or exit the site.” Again, rather than being too broad, the conditions are specific regarding areas of exposure and can be readily addressed with various commonly applied control measures and practices.</p>

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		OISG has suggested revisions to Schedule B.7.a to clarify that inspections for internal tracking of materials are intended to evaluate whether the internal tracking is likely to have a substantial adverse effect on stormwater discharge quality. Many facilities have invested substantially in treatment systems or other measures to more efficiently and effectively prevent the discharge of pollutants in stormwater from internal tracking and dust generation. Where such controls or other circumstances prevent internal tracking from adversely affecting discharge quality, inspections that reveal internal tracking should not require corrective action. (§ B.7.d)	
193	34	Schedule A.1 .f: Schedule A.1 .f. of the proposed permit addresses dust generation and vehicle tracking of industrial materials and sets the narrative goal to "Minimize generation of dust, tracking <i>"within and between operational areas, and tracking off-site of raw, final or waste materials."</i> To facilitate coordination between DEQ's cleanup and stormwater programs, BES recommends this concept be further expanded in the proposed permit by adding sediment (e.g., soil, particulates) to the narrative goal.	Same response as above.
194	34	<p>Source tracing data collected as part of both Columbia Slough and Portland Harbor investigations have demonstrated that offsite tracking of contaminants from upland sites (contaminated soil, raw, waste materials, etc.) contributes to the contaminant load discharging from City outfalls.</p> <p>BES requests that permit tracking language stress that contaminants must be controlled onsite and are not allowed to be transported offsite via fugitive dust or vehicular transport.</p>	Fugitive dust can be a method for soils to move easily and uncontrolled off-site. The new requirement to control tracking within and between operational areas can help eliminate this pollutant source from depositing directly into waterways or washing into storm sewer systems. This is especially critical on known contaminated sites.
195	34	Schedule A.1.f: BES appreciates the modifications made in Schedule A.1.f of the revised permit draft to address dust generation and vehicle tracking. The modified language is anticipated to facilitate coordination between DEQ's cleanup and stormwater programs and source control at selected industrial facilities. However, BES requests that proposed language related to track-out in Schedule E.G.4.1.4 and Schedule E.H.2.1.4 be deleted. The language of concern states, "Note: DEQ recognizes that some fine grains may remain visible on the surfaces of off-site streets, other paved areas, and sidewalks even after you have implemented sediment removal practices. Such 'staining' is not a violation of [cited section of the permit]." While we recognize that this language is included	<p>Sector G and H pertain to mining sites only. In reviewing the permits database the City of Portland does not have metal mining, coal mining and coal mining-related activities permit holders.</p> <p>DEQ did not make any modifications to Schedule E in the permit. These conditions come from EPA's MSGP.</p>

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		<p>under sector-specific permit requirements, we believe that it is misleading, sets precedent, and implies that sediment track-out materials are uncontaminated and will not adversely impact stormwater discharges. In addition, this language is not supported by source tracing data collected as part of both Columbia Slough and Portland Harbor investigations that demonstrate that offsite tracking of contaminants (contaminated soil, raw waste materials, etc.) from upland sites contributes to the contaminant load discharging from City outfalls. BES requests that permit tracking language stress that contaminants must be controlled onsite and are not allowed to be transported offsite via fugitive dust or vehicular transport. BES looks forward to continuing discussions with DEQ regarding addressing offsite tracking both under the revised 1200-Z permit and DEQ's cleanup authority to meet source control goals in Portland Harbor and Columbia Slough.</p>	
196	36	<p>The requirement to minimize tracking of industrial materials was amended to include tracking between operational areas, rather than only addressing tracking off the site. It may not be practical for a facility to continually minimize tracking within their operations. Furthermore, if a facility has installed source control or treatment measures to prevent materials that could be tracked between operational areas from entering its discharge, this requirement places an unnecessary compliance burden on the permittee. We request that DEQ remove this language from the Permit.</p>	<p>Increased attention to minimizing tracking between operational areas is a reasonable, iterative improvement to day-to-day housekeeping practices intended to improve site pollution control in several ways. First, minimizing the potential for fugitive dust and associated contaminants to leave the site reduces the potential for deposit directly on waterways or on roadways and adjacent properties where it can then be entrained in offsite stormwater discharges. Second, improved controls on materials tracked within the site reduces solids loading into site stormwater conveyances, which can improve function and reduce the need for maintenance of existing controls.</p>
NTBEL: Employee Education			
197	5	<p>The proposed requirements that personnel read the permit and receive training immediately upon a change in duties are stated too broadly. (§ A.1.j.ii, iii) The permit is 127 pages long, and most of it will be irrelevant to a specific facility or the obligations of specific personnel who are responsible for complying with the permit.</p>	<p>This condition has been removed from the final permit.</p>
198	7	<p>Schedule A. 1.j.ii: It appears the proposed inserted requirements for employee education would require numerous personnel to read the permit in its entirety. This 1200-Z permit is highly technical and much of the permit language is not pertinent to a specific facility or would not apply to the responsibilities of individual employees. Pertinent aspects of the stormwater permit that are relevant to the responsibilities of the personnel</p>	<p>The final permit requires facilities to develop and maintain an employee orientation and education program to inform personnel on the pertinent components and goals of this permit and the SWPCP. In addition the permit outlines which personnel that must be trained and understand the facility's specific requirements. This includes:</p> <ol style="list-style-type: none"> 1) Personnel who are responsible for the design, installation,

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		<p>being trained should be the requirement. Mandating that the permit be read in its entirety as the current proposed permit reads is not productive. Employees were previously trained on the implementation of the site-specific Storm Water Pollution Control Plan (SWPCP) under prior permits, which is practical education on a facility's specific requirements and employee responsibilities. Accordingly, the reference to Schedule A, 1.j should be removed from the paragraph on employee education at ScheduleA.7.c.iv.</p>	<p>maintenance, or repair of controls including, pollution prevention and treatment measures;</p> <ol style="list-style-type: none"> 2) Personnel responsible for the storage and handling of chemicals and materials that could contribute pollutants to stormwater; 3) Personnel who are responsible for conducting or documenting monitoring or inspections as required in Schedule B; and 4) Personnel who are responsible for conducting and documenting corrective actions.
199	11	<p>Schedule A, Technology Based Effluent Limitations, Narrative Standards, 1.j.ii: The new permit includes extensive and broad-sweeping new personnel training requirements.</p> <p>We specifically request that DEQ delete the requirement that personnel must have read the permit, as this places an unreasonable expectation on permittees. The permit is 127 pages long, and most of it will be irrelevant to a specific facility or the obligations of specific personnel who are responsible for complying with the permit. A requirement to perform basic stormwater awareness training for employees would be a reasonable alternative.</p> <p>... should be specific to: "personnel who are responsible for the design, installation, maintenance, or repair of controls under this permit including, pollution prevention and treatment measures." Similarly, the personnel training requirement under A.1.j.ii.4 should be specific to "personnel who are responsible for conducting and documenting corrective actions under this permit."</p>	See response above.
200	12	<p>Schedule A.1.j, Employee Education: The requirements for employees to read the permit do not inform the employee of how their job function could impact stormwater and this requirement should be removed. DEQ could change this requirement to ensure that personnel have read "applicable sections of the site-specific SWPCP" or similar. DEQ should also remove the requirement that training occur "immediately" and should instead set a reasonable time limit (e.g. within one week or similar).</p>	<p>This condition has been removed from the final permit.</p> <p>The condition to train staff upon change in duties to key personnel has been changed from immediately to no later than 30 calendar days. In order to be in compliance with permit conditions and be protective of water quality, it is vital that employees are trained to recognize potential pollutant sources and know how to respond to a spill.</p>
201	16	<p>Schedule A, 1.j.ii. Maintenance of stormwater features including such activities as catch basin maintenance and street sweeping are often performed by third party facility management companies or other external</p>	See response above.

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		<p>vendors who could rotate personnel frequently. Requesting that each of these personnel review the SWPCP is not practical.</p> <p>Recommend that paragraph 1 be changed to "Personnel who are responsible for overseeing the design..." Recommend t11.at paragraph 4 be changed to "Personnel who are responsible for identifying and/or documenting corrective actions "</p>	
202	16	<p>Schedule A.1.j.iii. "Immediate" is not defined and is not necessarily practical where dedicated environmental personnel with training experience are not present at the facility on a routine basis. Training is often set to an annual schedule, and providing "immediate" training to personnel is not practical.</p>	See responses above.
203	20	<p>Employee Training (Schedules A.1.j, A.1.j.ii, and A.7.c.iv). Schedule A.1.j "Train all employees who work in areas where industrial materials or activities are exposed to stormwater and who are responsible for implementing measures necessary to meet the conditions of this permit." Schedule A.1.j.ii. "Permit registrant must ensure that the following personnel have read the permit and understand the facility's specific requirements and their responsibilities: (1- 4)" Schedule A.7.c. iv. "Employee Education - The elements of the training program must include the requirements in Schedule A.1.j. Include a description of the training content and the required frequency." PER "Not all employees are required to be trained"</p> <p>EPA comment: The permit should require an updated list of the individuals expected to have training, so that it is clear if all those that should have training actually do and there is a document clearly stating who should be trained. Example text from EPA's MSGP Part 5.2.1 "You must identify the staff members (by name or title) that comprise the facility's stormwater pollution prevention team as well as their individual responsibilities 11 in the SWPPP.</p>	<p>The final permit requires: "Education and training must be documented and include which specific employees received training. A log of training dates must kept on-site and submitted to DEQ or agent upon request."</p> <p>Due to personnel changes over time, DEQ and agent review the training log at time of inspection which will include the pollution prevention team as those members who have been trained, instead of an updated list.</p>
204	23	<p>Employee Education: In Schedule A.1.j.ii., the permit describes personnel who are required to understand the permit requirements, the Stormwater Pollution Control Plan, and the contents of the plan. Specific language in the proposed permit requires ... "the following personnel have read the</p>	See responses above.

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		<p>permit and understand the facility's specific requirements and their responsibilities"... Pacific Power agrees that personnel with direct involvement in permit implementation should understand the permit requirements. However, Pacific Power requests and supports the training of employees regarding their role in overall compliance with this permit and the facility Stormwater Pollution Control Plan as an acceptable means to ensure understanding of the permit requirements, in lieu of requiring affected personnel read the general permit. In addition, Pacific Power requests the following content be removed from the permit:</p> <p>Permit registrant must ensure that the following personnel have read the permit and understand the facility's specific requirements and their responsibilities.</p>	
205	26	<p>Condition A.1.j.ii: This condition added the requirement that the permittee must ensure that the listed personnel read the permit and understand the facility's specific requirements and their responsibility. A facility may have a wide range of employees designing, conducting monitoring, inspections and maintenance, personnel ranges from cleanup people to Region Engineer. The proposed 12002 permit is 127 pages long! Most of the permit is irrelevant to the obligations of specific personnel who are responsible monitoring and inspections. Boise Cascade request the requirement that personnel must have read the permit as this places an unreasonable expectation on permit holders. Permittees are required to educate employees and a sound education program will meet the heart of this condition.</p>	See responses above.
206	26	<p>Condition A.1.j.iii.2: Requires immediate education and training for personnel listed in Condition A.1.j.ii. There is no definition for immediate, is it within 2 days of hiring or transferring to a new position? It is a concern to Boise Cascade that immediate may be difficult to meet, i.e., trainer's schedule may not be "immediately" open. The current permit requires annual education and training on components and goals of the SWPCP; it is likely that a facility has a solid base of employees who understand their storm program, ensuring that the facility follows the applicable permit and SWPCP requirements until the key personnel is educated and trained. Boise Cascade recommends that key personnel listed in Schedule A.1.j.ii be included in the 30 day training requirement.</p>	See responses above.

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207	27	Narrative Technology Based Effluent Limits - Employee Education (pages 11-12) Condition j.ii requires the permit registrant to ensure an exhaustive list of personnel have read the entire permit and understand the facility's specific requirements and their responsibilities. Although we agree the personnel listed should understand their responsibilities, many of the requirements in the permit are not relevant to a specific facility or the obligations of specific personnel who are responsible for complying with the permit.	See responses above.
208	30	Schedule A, j.ii: It appears the proposed inserted requirements for employee education would require numerous personnel to "read and understand" the permit in its entirety. This 1200-Z permit is highly technical and much of the permit language is not pertinent to a specific facility or would not apply to the responsibilities of individual employees. Pertinent aspects of the stormwater permit that are relevant to the responsibilities of the personnel being trained should be the requirement. Mandating that the permit be read and understood in its entirety as the current proposed permit reads is not productive nor possible.	See responses above.
209	32	A.1.j.It is not clear who should be trained with this revised language. It is too broad, and vulnerable to loose and punitive interpretations. Employee Education.	See responses above.
210	32	This is permit overreach, the revision contains typos and is impossible to comply with. Personnel will not be able to read and understand this entire permit, but rather can be provided the adequate information by a site manager to understand the requirements of their specific duties. EPA's MSGPO language provide for training employees as it relates to "the scope of their job duties" rather than DEQ's unclear and unrealistic language prone to punitive interpretations.	See responses above.
211	34	Schedule A.1.j: Explicitly require tenants of the permit holder that fall under the permit's coverage to meet the employee education requirements of paragraph of section 1. Consider using the language, "Train all employees, including personnel of a permittee's tenant, who work in areas where industrial materials or activities are exposed to stormwater and who are responsible for implementing measures necessary to meet the conditions of this permit."	<p>The permit requires the permit registrant to "Indicate how spill response will be coordinated between the permit registrant and otherwise unpermitted tenants." The permit registrant is ultimately responsible for spills of the tenant and appropriate response.</p> <p>Schedule E for Air Transportation sectors has more detailed requirements.</p> <p>Sector S states: Operators include the airport authority and airport tenants,</p>

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			including air passenger or cargo companies, fixed based operators, and other parties who routinely perform industrial activities on airport property. The airport authority and tenants of the airport are encouraged to work in partnership in the development of the SWPCP. Tenants of the airport facility include air passenger or cargo companies, fixed based operators and other parties who have contracts with the airport authority to conduct business operations on airport property and whose operations result in stormwater discharges associated with industrial activity. An airport tenant may obtain authorization under this permit and develop a SWPCP for discharges from his/her own areas of the airport.
212	34	Schedule A.1.j: In this section, DEQ does not include the following language that is included in the introductory paragraph of Schedule A.1.j of the 1200-Z permit currently in effect: "Train all employees who work in areas where industrial materials or activities are exposed to stormwater and who are responsible for implanting the measures necessary to meet conditions of the permit." However, DEQ has retained this language in the portion of the permit governing who needs to be trained within 30 days of hire (Schedule A.1.j.iii.(I)). This change to the introductory paragraph of Schedule A.1.j makes it unclear as to whether these employees (i.e., employees who work in areas where industrial materials or activities are exposed to stormwater and who are responsible for implanting the measures necessary to meet conditions of the permit) need annual training in addition to the initial new-hire training	<p>The 2011/2012 permits language was too broad: "Train all employees who work in areas where industrial materials or activities are exposed to stormwater and who are responsible for implementing the measures necessary to meet conditions of the permit."</p> <p>The final permit requires employee training for:</p> <ol style="list-style-type: none"> (1) Personnel who are responsible for the design, installation, maintenance, or repair of controls including, pollution prevention and treatment measures; (2) Personnel responsible for the storage and handling of chemicals and materials that could contribute pollutants to stormwater; (3) Personnel who are responsible for conducting or documenting monitoring or inspections as required in Schedule B; and (4) Personnel who are responsible for conducting and documenting corrective actions.
213	21	Schedule A, 1.j.ii: This provision requires the permit registrant to ensure that personnel with specified duties have read the permit and understand the facility's specific requirements and their responsibilities. The specified personnel are those responsible for: design, installation, maintenance or repair of controls; storage and handling of chemicals and materials; conducting and documenting inspections; and conducting or documenting corrective actions. While it is important that personnel with these duties understand the permit, it is unnecessary to require that they read the entire 127-page permit when they only need to understand those portions	See response above.

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		<p>applicable to their duties. In the District's experience as a 1200-Z permit registrant and agent, training employees in their duties using plain language explanations and hands-on demonstrations is a more effective training technique than requiring them to read the permit. As an agent, the District would be challenged in enforcing this requirement, since it is difficult to establish whether someone has actually read the permit. In the District's experience, a more effective approach is to require a training program tailored to employees' duties and responsibilities under the permit.</p>	
214	36	<p>The employee education requirement was expanded to require that specific personnel have read the permit. The list of specific personnel could be interpreted to include the majority of, if not all of the employees at a facility. While ORRA agrees that personnel should be trained in regards to stormwater awareness and a facility's specific requirements and responsibilities, the requirement for personnel to read the permit is unreasonable. As currently drafted, the permit is 127 pages in length, and contains terminology that would likely be confusing to some personnel. Moreover, the permit contains a significant amount of information that is likely not applicable to every permitted facility. ORRA requests that the requirement for personnel to read the permit be removed and replaced with reference to a facility-specific stormwater awareness training program.</p>	See response above.
NTBEL: Housekeeping			
215	11, 5	<p>Schedule A, Technology Based Effluent Limitations, Narrative Standards, A.1.g: The mere presence of a minor amount of debris and litter at a facility should not be a violation of the permit. Schedule A.1.g requires routine cleaning of exposed areas through such measures as regular sweeping and litter pick-up. The purpose of this routine housekeeping requirement is to ensure that minor amounts of debris and litter are regularly cleaned up so that they do not become large amounts that could have a significant adverse effect on stormwater quality. Necessarily, then, the existence of a minor amount of debris or litter should not itself be a permit violation if the permit registrant adheres to a regular cleaning schedule. If the mere existence of minor amounts of debris or litter were a permit violation, there would be no need for requiring routine</p>	<p>This language has not changed from the 2011/2012 permits. It is important to minimize litter that may contribute to pollutants in stormwater. This housekeeping condition requires the permit registrant to routinely clean all exposed areas to minimize exposure. Pursuant to OAR 340-012-0055 water quality violations classification, a failure to substantially implement a stormwater plan in accordance with a NPDES permit is a Class I violation.</p> <p>Minor amounts of debris or litter would not in itself be a permit violation.</p>

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		housekeeping measures.	
216	32	It is unclear what clarity "must" provides in this requirement. Housekeeping has historically been inconsistently regulated under this permit. Facilities experience changing interpretations year to year of this requirements, as well as conflicting responses from DEQ and agents between sites.	The final permit removed the word "must" prior to routinely clean all exposed areas that may contribute pollutants to stormwater with measures such as sweeping at regular intervals, litter pick-up, keeping materials orderly and labeled, prompt clean-up of spills and leaks, proper maintenance of vehicles and stowing materials in appropriate containers.
NTBEL: Minimize Exposure			
217	5	<p>The proposed requirement to store "chemical liquids" within berms or other secondary containment is too broad and should not be adopted. (§ A.1.a.iii)</p> <p>The proposed requirement to store all "solid or liquid materials" within berms or other secondary containment is too broad and should not be adopted. (§ A.1.a.iii)</p>	This condition was includes hazardous substances, petroleum/oil liquids, and chemical solid or liquids that have potential to contaminate stormwater.
218	5	The proposed requirement to remove or prevent the exposure of contaminated soil or significant materials from previous operations should be qualified to ensure consistency with cleanup standards and to ensure that the requirement is not unnecessarily burdensome. (§§ A.1.a.ix, A.10.a.i):The proposed requirement to "[e]nsure that known or discovered contaminated soil or significant materials from previous operations is removed or otherwise not exposed" is stated too broadly and has the potential to conflict with DEQ cleanup decisions.	EPA defines "significant materials", per 122.26(b)(12), as including but not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the permittee is required to report pursuant to section 313 of title III or SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.
219	5, 7, 11, 12, 26, 27, 30, 32	<p>Schedule A, Technology Based Effluent Limitations, Narrative Standards, A.1.a.ix.: The new permit requires permittees, "ensure that known or discovered contaminated soil or significant materials from previous operations is removed or otherwise not exposed." This requirement is stated too broadly. Low levels of residual contamination that meet cleanup standards and that are not present in significant concentrations in the facility's stormwater discharges may not merit further attention, even where it is feasible to do so. We request that DEQ delete this additional narrative standard.</p> <p>The requirement should be qualified to ensure consistency with cleanup standards and to ensure that the requirement is not unnecessarily burdensome. Other narrative technology based effluent limits cover what</p>	<p>DEQ limited the condition to "known significant material from past operations" (as defined in the permit) and added the option for ensuring that controls are applied to residual significant materials, rather than requiring only removal or elimination of exposure. In this way, residual significant materials, whenever they are discovered, are treated as any other industrial pollutant with the expectation that runoff exposed to them will be controlled or exposure eliminated.</p> <p>DEQ's stormwater program and the agents work closely with other DEQ programs as necessary, such as cleanup and hazardous waste, to ensure coordination and permit implementation consistent with site specific information.</p>

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		<p>appears to be the intent of this additional requirement.</p> <p>The requirement does not account for DEQ's risk-based cleanup standards and is not practical. If included, this narrative standard should be revised to allow more flexibility by requiring that the residually impacted soil be "managed in a way that doesn't impact stormwater" rather than specifically requiring cover or removal.</p> <p>There may be cases where contaminated soil has been cleaned up to meet regulatory standards, i.e., reported spills or a UST removal. This new condition does not allow the use of cleanup standards/limits and implies that these areas would need to be removed or otherwise not exposed regardless of the level of cleanup. Low levels of residual contamination that meet the published cleanup standards may not influence stormwater discharges and would not justify further cleanup. Economic feasibility of removal (if possible) of the soil/material to values below the cleanup standards, as implied by this condition, has not been taken into account. Boise Cascade recommends this condition be modified to include language about the materials being in excess of the cleanup standards or likely to be present in concentrations that would put the stormwater discharge above the benchmarks.</p> <p>Low levels of residual contamination that meet cleanup standards and that are not present in significant concentrations in the facility's stormwater discharges may not merit further attention, even where it is feasible to do so.</p> <p>Recommendation: Modify requirement 1.a.ix to read: "Ensure that known or discovered contaminated soil or significant materials from previous operations is removed or otherwise not exposed if the contaminants or materials are in excess of cleanup standards or are otherwise likely to be present in significant concentrations in stormwater discharges.</p> <p>This is permit overreach and causes facilities with existing contamination that they may not be legally responsible for, now an enforceable clean-up activity. It is unclear if DEQ has the authority to include this in stormwater permit, and has legal repercussions beyond the scope of this permit.</p>	
220	7, 11, 26, 30,	Narrative Technology-Based Effluent Limits: Several changes from the previous permit are noted in this proposed 1200-Z permit that are broadly	The final permit settled upon the language; "petroleum/oil liquids, and other chemical solid or liquid materials that have potential to contaminate

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	32	<p>applied such as Schedule A, 1.a.iii: The insertion of the requirement to store “chemical liquids” within berms or secondary containment is unnecessary. The current requirement to store hazardous substances as defined within berms or secondary containment would include “chemical liquids”. Water is a “chemical liquid”. To the extent that a “chemical liquid” may also be a hazardous substance, it is redundant to insert such a broad, generalized term as “chemical liquid”. The term “chemical liquid” should be deleted.</p> <p>Condition A.1.a.iii: Boise Cascade recommends that the words other chemical liquids be removed from the sentence. All liquids are chemicals; this is a broad requirement.</p> <p>The insertion of the requirement to store "chemical liquids" within berms or secondary containment is unnecessary.</p> <p>The current requirement to store hazardous substances as defined within berms or secondary containment would include hazardous “chemical liquids.”</p> <p>Technically, water is also a "chemical liquid." To the extent that a "chemical liquid" may also be a hazardous substance, it is redundant to insert such a broad, generalized term as "chemical liquid." The term "chemical liquid" should be deleted, or clearly defined in the glossary.</p> <p>"Chemical liquids" is unclear and undefined with large impacts to a facility.</p>	<p>stormwater within berms or other secondary containment devices to prevent leaks and spills.”</p> <p>EPA defines “significant materials”, per 122.26(b)(12), as including but not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the permittee is required to report pursuant to section 313 of title III or SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.</p>
221	32	A.1.iii.This section is about hazardous substances, not "such substances" and is too broad and permit overreach.	DEQ disagrees with this comment.
222	32	A.1.a DEQ must address how minimizing exposure requirements are addressed when downstream treatment is present.	Minimizing exposure to industrial stormwater is an important permit requirement regardless of the treatment employed.
223	34	Schedule A.1.a.ix: Comparing language in Schedule A.1.a.ix of the proposed permit circulated for comment in May 2017 with the proposed permit circulated in March 2017, the May 20 17 proposed permit reads, "Ensure that known or discovered contaminated soil or significant materials from previous operations is are controlled, removed or otherwise not exposed to stormwater." The revised draft DEQ 1200-Z Permit	<p>DEQ limited residual materials from past operations throughout the permit to “significant materials” as defined in Schedule D. DEQ also clarified throughout the permit that exposure to stormwater of these legacy significant materials is required for regulation under the stormwater permit.</p> <p>DEQ retained the language, “Ensure that known significant materials from previous operations are controlled, removed or otherwise not exposed to</p>

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		<p>Evaluation Report continues to state that this new requirement is intended to address contaminants that may be present or discovered on a site. BES appreciates the language addressing "known significant materials from previous operations" in the proposed permit and believes that it will facilitate ongoing coordination between the DEQ's clean-up and stormwater programs .BES believes that the language in the final permit should more clearly express that the permit can be used to address contamination in site soils or surface materials (e.g., caulking, paint, concrete, asphalt, and grout) that is known at permit issuance or discovered after issuance of a party's 1200-Z permit, in order to prevent stormwater exposure to these contaminants. BES recommends that the original March 20 17 draft permit language be retained or new language be developed to capture both contaminant sources known at the time of permit issuance and those discovered during the permit coverage period Such permit coverage is an important tool in achieving source control in both Portland Harbor and the Columbia Slough.</p>	<p>stormwater.”</p>
224	37	<p>The proposed change to store all solid or liquid materials within secondary containment is too broad and would add costly and unnecessary burden to facilities with very little benefit to stormwater.</p>	<p>The final permit added the qualifying term: “Store all hazardous substances (see Schedule D.3, Definitions), petroleum/oil liquids, and other <u>chemical</u> solid or liquid materials that have potential to contaminate stormwater within berms or other secondary containment devices to prevent leaks and spills.”</p>
Numeric Effluent Limits			
225	15	<p>DEQ should re-evaluate its rationale for failing to require that permittees comply with the human health criteria by imposing numeric effluent limits or, at a minimum, benchmark requirements.</p>	<p>Human health criterion is based on lifetime exposures to toxic pollutants affecting human health. These standards apply to treated municipal and industrial wastewater discharges with individual permits. The toxics standards for the protection of aquatic life are best suited to serve as benchmarks for stormwater permits because of its high variability in its discharge. The permit water quality standards conditions establish that stormwater discharge must not cause or contribute to an exceedance of instream water quality standards in OAR 340-041, including the narrative standards and aquatic life and human health criteria. DEQ has developed this permit consistent with State water quality goals.</p>
226	15	<p>To the extent that DEQ is considering using a similar approach to establishing limits or benchmarks for zinc and lead, this of course would be unlawful. DEQ must determine both the technology-based limits, under</p>	<p>For stormwater discharges, EPA’s regulations generally allow narrative limits or controls rather than numeric effluent limits, and DEQ’s permit is</p>

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		the BAT factors, and the water quality-based limits, and use the more protective of the two as the effluent limit in the permit.	based on EPA's Multi-sector General Permit.
227	15	Finally, because DEQ has to date failed to establish specific permit requirements that will otherwise ensure compliance with water quality standards, DEQ must require consistent monitoring so that the narrative water quality-based requirement can be enforced. In short, as drafted, the benchmarks are largely are not based on water quality standards. As a result, merely meeting benchmarks says little or nothing about whether the facility will be causing or contributing with water quality criteria. As a result, the facilities must, through effluent monitoring, continue to demonstrate compliance with this limitation throughout the term of the permit.	DEQ does not agree that the permit requirements have failed to establish specific clear conditions.
228	32	A.2. Numeric Technology Based Effluent Limits - An exceedance of the effluent limitation is a permit violation. This should not be a permit violation, and is not a violation in EPA's 2015 MSGP.	At any point a discharge is determined to cause or contribute to the excursion of water quality standards, the permit registrant must address the problem in a timely manner. The CWA and Division 12 of OARs establishes fines and enforcement procedures for discharge violations based on exceedance percentage. An exceedance of a numeric effluent limit is a Class 2 violation.
229	15	DEQ Must Establish Technology-Based Numeric Effluent Limits	Stormwater discharges can be highly intermittent, are usually characterized by very high flows occurring over relatively short time intervals, and carry a variety of pollutants whose source, nature and extent varies. This is in contrast to process wastewater discharges from a particular industrial or commercial facility where the effluent is more predictable and can be more effectively analyzed to develop numeric effluent limitations. EPA includes non-numeric effluent limits in NPDES permits, such as the MSGP, such as requirements mandating facilities to "minimize" various types of pollutant discharges, or to implement control measures unless "infeasible." Consistent with the control level requirements of the CWA, EPA has defined the term "minimize" as "for the purposes of this permit minimize means to reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practices." Similarly, "feasible" means "technologically possible and economically practicable and achievable in light of best industry practices. EPA notes that it does not intend for any permit requirement to conflict with state water rights law." EPA has determined that the technology-based numeric and non-numeric

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			<p>effluent limits in the 2015 MSGP, taken as a whole, constitute BPT for all pollutants, BCT for conventional pollutants, and BAT for toxic and nonconventional pollutants that may be discharged in industrial stormwater.</p> <p>The BAT/BPT/BCT effluent limits in the 2015 MSGP are expressed as specific pollution prevention requirements for minimizing the pollutant levels in the discharge. EPA added greater clarity and specificity in some of the effluent limits because in past MSGPs they were written in very general terms, leaving operators wide latitude in interpreting what constituted compliance, which led to widely varying levels of stormwater program effectiveness. EPA continues to assert that the combination of pollution prevention and structural management practices required by these limits are the best technologically available and economically practicable and achievable controls, as well as the most environmentally sound way to control the discharge of pollutants in stormwater runoff from industrial facilities. Pollution prevention continues to be the cornerstone of the NPDES stormwater program. DEQ's permit is based on EPA's MSGP.</p>
230	15	<p>The Permit Must Ensure Compliance with all Water Quality Criteria</p> <p>DEQ should re-evaluate its rationale for failing to require that permittees comply with the human health criteria by imposing numeric effluent limits or, at a minimum, benchmark requirements.</p>	<p>DEQ has developed a permit consistent with State water quality goals and requirements. Facilities are required to ensure that stormwater discharge does not cause or contribute to an exceedance of instream water quality standards in OAR 340-041, including the narrative standards and aquatic life and human health criteria. The benchmark values in the permit for the zinc and lead are based on a water quality model and a 10% exceedance rate of the acute aquatic life criteria.</p>
231	15	<p>DEQ must revise the draft permit to include enforceable effluent limits. In place of technology-based and water quality-based effluent limitations, DEQ instead uses broad narrative limits, permittee-chosen Best Management Practices ("BMPs") identified in a Stormwater Pollution Control Plan ("SWPCP"), and benchmarks which are theoretically designed to determine whether BMPs work. The benchmark values, however, have no relationship to the BMPs' adequacy. Nor, in many instances, are the benchmarks set at levels that will ensure compliance with Oregon's water quality standards. The CWA, however, mandates that DEQ include technology-based and water quality-based effluent limitations in NPDES permits. Thus, the unenforceable "target concentrations" and BMP requirements proposed by DEQ do not comply</p>	<p>EPA sets numeric or narrative limitations in rulemaking process, but where no effluent limit guidelines (ELG) applies, puts TBELs in stormwater and other permits using its BPJ (per 40 CFR 125.3). Where ELGs contain limitations, numeric or otherwise, that apply to stormwater discharges, these limitations are included in the MSGP. EPA adds that due to the variability of stormwater discharges, numeric limitations for stormwater are rarely able to be derived. It is simply not possible for the Agency set numeric effluent limitations on a general permit scale. See EPA Fact Sheet and response to comments on the 2015 MSGP.</p>

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		with the CWA.	
232	15	<p>DEQ suggests that its reliance on narrative limits, and BMPs, is “consistent with the CWA and regulations for implementation of control measures contained in 40 CFR 122[.44](k)(4).” PER, Sec. 2.1. This assertion is dubious. The regulation DEQ cites allows for the use of BMPs in permits when “[t]he practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.” 40 C.F.R. § 122.44(k)(4). Thus under this regulation, BMPs, or a requirement that the permittee develop BMPs, may be included as a permit term or condition when doing so is necessary to ensure the permittee will comply with established effluent limits—they cannot stand in place of effluent limits. Therefore, this regulation does not relieve DEQ of the obligation to craft the limits in the first place, as it seems to suggest. Further, to the extent that the identification of the necessary BMPs, or the need to develop BMPs, to “carry out the purposes and intent of the CWA” does not change this analysis. The development of numeric effluent limits is mandatory, the use of BMPs to augment, and ensure that those limits are met, is permissive. 40 C.F.R. § 122.44(a)(1).</p> <p>The question is then whether DEQ’s narrative limits are sufficient. The answer is no. As discussed above, the CWA and its implementing regulations call for the development of numeric effluent limits. There is a limited exception to this requirement in EPA’s regulations where the development of such limits is infeasible. 40 C.F.R. § 122.44(k)(2). This exception is not applicable here, as DEQ has demonstrated. And if it were applicable, DEQ would have to respond to that infeasibility finding in other ways, namely by establishing required BMPs. <i>Natural Res. Defense Council v. U.S. EPA</i>, 808 F.3d 556, 579 (2d Cir. 2015) (“NRDC”). In fact, DEQ has already begun establishing technology-based limits, albeit for the wrong reasons and applying the wrong standards. As discussed more below, DEQ development of the proposed copper benchmark for this permit demonstrates that it can create numeric effluent limits.</p>	DEQ’s 1200-Z permit is based on EPA’s MSGP. DEQ has determined the narrative limits are appropriate and consistent with federal law under the CWA.
233	15	Numeric effluent limits will provide the clarity and certainty that all interested parties want out of a permit. For the regulated community, permittees will know precisely what is expected of them, but they will be given the flexibility on how best to comply with the permit’s requirements. For the public, numeric limits will provide certainty that if	See response above.

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		the permit is followed water quality will be protected.	
Permit Assignment Letter			
234	5	<p>The permit should make clear that DEQ will renew an existing facility's permit coverage by issuing the permit registrant a permit coverage assignment letter. (§ 3)</p> <p>The permit should specify the minimum contents of the permit coverage assignment letter for new and existing facilities. (§§ 2.b, 3): When assigning permit coverage to a facility, DEQ must or should make specific, written determinations concerning which permit provisions apply to that facility.</p>	<p>DEQ's assignment of coverage and permit assignment letter is the mechanism DEQ uses to communicate to a permit registrant the date the facility is covered under the renewed permit.</p> <p>Each permit registrant is responsible for being in compliance with all conditions in the permit once facilities are renewed.</p>
235	5	When permit coverage decisions are subject to public comment, the public should have an opportunity to comment on a draft permit coverage assignment letter. (§ 2.b)	DEQ posts the SWPCP's for new permit applicants for a 30 day public comment period.
236	31	A list of additional SWPCP elements should be included with the monitoring table that is sent to the discharger with the renewed permit.	DEQ's <i>Technical Assistance for Industrial Operators</i> document on the industrial stormwater website includes a section relative to this comment.
Permit Coverage and Exclusion			
237	5	On page 2, the prohibition on other discharges should not include discharges authorized by a Water Pollution Control Facility (WPCF) permit.	The 1200-Z permit is a federally delegated NPDES permit. A Water Pollution Control Facility (WPCF) is a state permit which does not authorize discharge to surface waters. Therefore, it isn't included because it can never be used in the circumstance of permitting stormwater runoff to surface waters.
238	5	Schedule A.1.k should be revised to clarify that the permit does not prohibit discharges to the sanitary sewer or discharges authorized by rule or a WPCF permit. (§ A.1.k)	The 1200-Z authorizes stormwater and specific non-stormwater discharges to surface waters or conveyance systems which lead to surface waters. If at any time stormwater is redirected to sanitary sewer, the facility must have authorization from the sewer district authority.
239	11	The permit should describe facilities that are eligible for coverage under the permit: No facility is required to obtain coverage under the permit. The general permit should specify the sources that are eligible—not required—to obtain coverage under the permit. This would be consistent with EPA's MSGP, which specifies the sources that are "eligible" to obtain coverage under the MSGP. See, e.g., MSGP § 1.1.	DEQ made this change. This is consistent with DEQ's other NPDES general permits.

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240	11	Schedule A, Corrective Actions, 11.j.ii: AOI/OBA requests that DEQ clarify that this section only applies to parameters for which permittee is not currently completing corrective action under the prior permit as specified under Permit Coverage and Exclusions, 3.d. DEQ could refer back to the Permit Coverage and Exclusions, 3.d.	<p>There is a small sub-set of facilities for which the Tier II corrective action timelines under Schedule A.11 in the final permit does not pertain to.</p> <p>Permit Coverage and Exclusions, 3.d. reads:</p> <p>“Permit registrants for which Tier II corrective action implementation deadline was after June 30, 2017, under the 1200-COLS permit that expired on September 30, 2016 or under the 1200-Z permit that expired on June 30, 2017, are exempt from Schedule A.11 for the parameter(s) and discharge point(s) that triggered Tier II.”</p>
241	12	Permit Coverage and Exclusions from Coverage 3.c: This section requires continued implementation of corrective action measures which were developed to meet benchmarks in the current permit. Permittees should not be required to complete installation of treatment facilities that were designed to achieve benchmarks under the expiring permit, which may or may not satisfy the new benchmarks in the proposed permit.	<p>The benchmarks values are based on water quality standards, ambient data and modeling. Facilities for which Tier II implementation deadline was June 30, 2016, or later, are required to re-evaluate the geometric mean of sampling results at the end of the second monitoring year and adjust existing source control and treatment or install additional source control and treatment measures.</p> <p>All facilities, regardless of Tier II status, are encouraged to invest in effective Tier I corrective action measures throughout their permit term to achieve the benchmarks. Under the Tier I corrective actions, facilities must take a traditional adaptive management approach to evaluating the cause of the problem and correcting it.</p>
242	12	Permit Coverage and Exclusions from Coverage, 5. Name Change or Transfer of Permit Coverage: This section requires the permittee to submit information to DEQ alone, and not an agent. DEQ should add “or agent” to this section.	Name change or transfer of coverage is processed solely by DEQ and then shared with appropriate agent.
243	18	8. b. Wording is lengthy and confusing. The section refers to “authorized discharges,” so suggest that the wording be limited to what is actually authorized. e.g., “Commingled discharge points for internal drainage system wastewater that is authorized by another NPDES permit.”	DEQ has changed the language based on the comment and the condition now reads: “Separate any piping of interior floor drains and process wastewater discharge points from the storm drainage system to prevent unpermitted discharge of pollutants to waters of the state. Discharge from floor drains to the stormwater drainage system is a violation of this permit.”
244	18	8. c. Same comment as 8.b. Suggest “Wastewater or wastewater mixed with stormwater that is reused or recycled without discharge or disposal.” As reworded to focus only on what is authorized, this section seems to “only” authorize wastewater and stormwater that is not discharged, which then begs the question why are we listing it at all? It is unclear why 8.c. is	See response above.

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		useful to the permittee. It would be simpler for DEQ to include this example as a type of discharge that is prohibited by this permit except where authorized by the WWTP operator.	
245	31	<p>(Page 1) Sources that are required to obtain coverage under this permit – The term “point source” has been removed and it is inferred that sites that discharge stormwater to surface waters solely via sheet flow would now be required to obtain permit coverage. If this is DEQ’s intent there should be a significant outreach effort to ensure that the industrial community is aware of the revised regulation as to avoid third party lawsuits. Additionally, although it was communicated during the public hearing that it was DEQ’s intent, this section does not specifically define an industrial facility as a point source.</p>	<p>EPA required DEQ to regulate all discharge of stormwater from permitted industrial sites. Both 2008 and 2015 eligibility language states: In compliance with the provisions of the Clean Water Act (CWA), as amended (33 U.S.C. 1251 <i>et seq.</i>), operators of stormwater discharges associated with industrial activity located in an area identified in Appendix C where EPA is the permitting authority are authorized to discharge to waters of the United States in accordance with the eligibility and Notice of Intent (NOI) requirements, effluent limitations, inspection requirements, and other conditions set forth in this permit.</p> <p>2009 Region 10 Q & A: Discharge of a pollutant is defined as “any addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States ‘from any ‘point source,’ or any addition of any pollutant or combination of pollutants to the waters of the ‘contiguous zone ‘or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. See 40 CFR 122.2.” <u>Sheet flow also is a form of conveyance.</u></p>
246	34	<p>Section 3.d of" Permit Coverage and Exclusion from Coverage": As proposed, the exemption described in section 3.d applies to permit holders that have not met their implementation deadline; this will result in an unintended benefit for non-compliance with the previous permit. BES recommends that the language be changed to "Permit registrants yet to be required to complete Tier II corrective action requirements...." The exemption in section 3.d should not apply to facilities that had a Tier II implementation deadline of June 30, 2017 or earlier and have failed to implement their Tier II plan by July 1, 2017 (unless lack of implementation was "beyond reasonable control").</p>	<p>Permit now reads under Permit Coverage and Exclusion from Coverage 3.d and e:</p> <p>“For Tier II corrective action requirements triggered during the second year of coverage from the 1200-COLS permit that expired on September 30, 2016 or during the second year of coverage under the 1200-Z permit that expired on June 30, 2017, permit registrants must comply with the implementation deadline in the previous permit.”</p> <p>“Permit registrants for which Tier II corrective action implementation deadline under the 1200-COLS permit that expired on September 30, 2016 or under the 1200-Z permit that expired on June 30, 2017, was after June 30, 2017, are exempt from Schedule A.11 for the parameter(s) and</p>

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			discharge point(s) that triggered Tier II.”
247	21	Section 1.d states that “for the impairments listed below, condition b does not apply.” For clarity, this should read “condition 1.b does not apply.”	DEQ agrees and has made this change.
248	21	Permit Coverage and Exclusion from Coverage, section 1.a, page 5: It is unclear when reviewing the DEQ 303(d) website what 303(d) list was in effect on May 1, 2017. To aid registrants and agents, DEQ should publish the list along with GIS information to clearly identify the list referenced in the 1200-Z permit.	DEQ will provide locating tools and a static 303(d) database based on May 1, 2017 EPA approved 2012 integrated report. DEQ will provide technical assistance to the public and agents as needed.
249	21	Permit Coverage and Exclusion from Coverage, section 3.c, page 6: This provision requires the registrant of an existing facility to submit an updated stormwater pollution control plan (SWPCP) to DEQ or an agent at some date after the permit becomes effective. This will leave facilities operating under a SWPCP that may not reflect the requirements of their new permit and may lead to compliance and enforcement issues. The District asks that DEQ provide guidance to agents for addressing discrepancies between a registrant's permit and SWPCP.	<p>Updated SWPCPs for renewed facilities must be submitted by December 29, 2017. Permit registrants’ SWPCPs will need to include required elements under the final 2017 permit.</p> <p>Renewed facilities coverage will begin early August 2017 and take a month or two for all permit registrants to obtain coverage under the final permit. There will be very little time between assigning coverage and the end of December SWPCP submittal deadline. If a facility is inspected during this time, DEQ will expect our agents to allow reasonable time under Schedule A.3 which states: “If modifications to the control measures are necessary to meet the technology-based effluent limits in this permit, the permit registrant must revise the SWPCP no later than 30 calendar days from completion of the modifications, unless otherwise approved by DEQ or agent.”</p>
250	21	Permit Coverage and Exclusion from Coverage, section 5, page 7: This provision covers name changes and transfer of ownership. The requirement should read "submit to DEQ or agent" in the second line of 5.a and "DEQ or agent will notify" and "upon DEQ or agent approval" in 5.b.	Name change and transfer of ownership is not authorized by DEQ agents under our intergovernmental agreements.
251	21	Permit Coverage and Exclusion from Coverage, section 6.a.v, page 7: The comma after the "a" in the first line should be deleted; the term "MS4 operator" in the second and third lines should be changed to "MS4 permittee."	This grammatical error has been fixed in the final permit.
Permit Shield			

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252	5	<p>Compliance with the control measures specified in the Stormwater Pollution Control Plan (SWPCP), including any applicable corrective action requirements, should constitute compliance with the permit's narrative technology-based effluent limits, provided that the SWPCP has been submitted to DEQ or its agent as required by the permit, and provided further that any revisions to the control measures that DEQ or its agent has required the permit registrant to make have been made within the time allowed. (§ A.3)</p> <p>Compliance with the control measures specified in the SWPCP, including any applicable corrective action requirements, should constitute compliance with the permit's water quality-based effluent limits, provided that the SWPCP has been submitted to DEQ or its agent as required by the permit, and provided further that any revisions to the control measures that DEQ or its agent has required the permit registrant to make have been made within the time allowed. (§ A.4.a)</p>	<p>DEQ disagrees with this comment. DEQ will not provide a permit shield based solely on compliance with the SWPCP unless the plan rather the BMPs are the permit effluent limits and DEQ thoroughly reviews and approves each plan as the required effluent limits before coverage is granted. DEQ lacks the resources in the general permit program to do this. Facilities may apply for an Individual Permit where DEQ can better conduct a site specific analysis of their BMPs, discharge and receiving waterbody.</p> <p>Also, EPA Region 10 provided the following formal comments to DEQ on this issue: EPA has a longstanding policy against providing assurances outside the context of formal enforcement proceedings. State agencies administering federal law under state authority should abide by similar policies against providing regulated entities an "enforcement shield". It is crucial that the DEQ maintain its enforcement discretion over all aspects of the NPDES program, and remain free to consider all relevant facts and circumstances surrounding any potential future permit violations.</p>
253	11	<p>Schedule A, Control Measures for Technology Based Effluent Limits, 3: Compliance with the control measures specified in the Stormwater Pollution Control Plan (SWPCP), including any applicable corrective action requirements, should constitute compliance with the permit's narrative technology-based effluent limits, provided that the SWPCP has been submitted to DEQ or its agent as required by the permit, and provided further that any revisions to the control measures that DEQ or its agent has required the permit registrant to make have been made within the time allowed. Translating the general permit's necessarily vague and subjective narrative technology-based effluent limits into facility-specific stormwater control measures requires professional and policy judgments that can ultimately be made only by DEQ. AOI/OBA's would like to see language intended to prevent a permit registrant from being subject to an enforcement action for violating the narrative limits even though it has (1) prepared an SWPCP that explains how it will comply with 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) complied fully and in good faith with the SWPCP. This type of is not intended to prevent DEQ or its agent from requiring changes in the SWPCP at any time to comply with the permit's narrative technology-</p>	<p>Permit registrants must comply with all permit conditions to be in compliance with the permit.</p>

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		based effluent limits. But permit registrants should not be punished retroactively for complying in good faith with a SWPCP that has been submitted for DEQ or its agent for review.	
254	27	Water Quality based Effluent Limitations (page 13): The Port fully supports, and reiterates here, OISG's proposed provision added to Schedule A.4.a pertaining to compliance with water quality-based effluent limits. The comment is consistent with the Clean Water Act's (CWA) permit shield provision and DEQ's permit shield rule. For the reasons stated in the previous comment, compliance with control measures specified in the SWPCP should constitute compliance with the permit's water quality-based effluent limits.	See responses above.
255	37	Compliance with the Stormwater Pollution Control Plan (SWPCP) should constitute compliance with the permit's narrative technology-based effluent limits and water quality-based effluent limits, provided that the SWPCP has been submitted to DEQ as required by the permit.	See responses above.
pH Monitoring			
256	6	<p>The next items we want to bring to attention to is the PH testing the problem with how it is written right now is in this revision it allows us only 15 minutes of time to allow us to collect the water samples to analyzing them, that's ok that pretty much limit everybody to using only the portable sampler in the field. Keep in mind that when they are picking up this water sample often the storm is still going on, we really wanted them to collect this samples , pack this safely, and move it back to a safe place to have it analyze and minimize our people/personals time out in the field for that matter. 15 minutes is not enough time to make that happen. We ask that DEQ reconsider this timeframe to a more reasonable time of two hours so that we can safely move this samples close up the secure site and move it to a safe area to analyze the samples. I am not sure how fast anybody can run I do not want any personal running around rushing a sample into a lab for that purpose just a higher case for injuries</p>	Permit registrants must follow the latest version of 40 CFR 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, which outlines analytical methods, sampling containers, need for preservation and among other procedural details maximum holding times. 40 CFR 136 outlines pH monitoring holding time of 15 minutes. Facilities must comply with this federal regulation and must be able to confirm to DEQ or agent on-site monitoring.
257	11	Schedule B, Monitoring Requirements, 2.e.: The 15 minute limit for pH hold time is unreasonable. For some, it takes more than 15 minutes just to collect a sample and get back to an in-house lab. A calibrated portable meter isn't very practical given the diverse sampling requirements. This	See response above.

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		will impact large and small permittees, in particular permittees without trained technicians and instrumentation personnel.	
258	19	<p>The new permit eliminates the option of pH paper for monitoring purposes. While we understand the concerns for the accuracy of pH measurements with this rudimentary tool, it did provide a safe alternative to the other strategies allowed by the permit. Elimination of pH paper leaves only two options for pH monitoring - transfer to a lab within 15 minutes and the use of a portable device in the field- and neither is well-suited to the conditions at our facility. Both of our sampling locations are located in remote locations, making the 15-minute window all but impossible, even if the sampler collects each pH sample independently and goes directly to the lab with it before filling and documenting the (many) other little bottles required for each monitoring event. And the portable units present their own challenges- they must be properly calibrated shortly before use, so they can't be left near the monitoring points. Again, our sampling locations are quite remote, and one is an intermittent discharge that only occurs during a particularly heavy rain event. We fear that much staff time will be consumed calibrating a probe and driving out to the sampling location, only to discover that no sample is available and then to repeat the exercise the next day, or the next week. If pH paper is to be eliminated, we request that the 15-minute window be extended to at least 30 minutes (preferably an hour) to allow staff the time to return with a sample to a proper test lab.</p>	See response above.
259	20	<p>Comment 2: pH Benchmark Corrective Action (Schedule A.11.b Schedule A.) 1,b states that “[for the pH benchmark Tier II corrective action requirements are triggered if 50 percent or more of qualifying samples during the first two monitoring years of permit coverage are outside of the p1-I benchmark range.” The current 1200 Z permit states, “[for the p1-1 benchmark Tier II corrective action requirements are triggered if more than three samples collected during the first two years of permit coverage are outside of the p11 benchmark range.” See Schedule A.12.b of the 2012 1200-Z permit.</p> <p>EPA comment: The draft permit is less stringent than the previous permit. The previous would have triggered Tier H corrective action after three samples above pH benchmarks, the new one allows waiting until after</p>	Registrants must follow the latest version of 40 CFR 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, which outlines analytical methods, sampling containers, need for preservation and among other procedural details maximum holding times. 40 CFR 136 outlines pH monitoring holding time of 15 minutes. Facilities must comply with this federal regulation and must be able to confirm to DEQ or agent on-site monitoring.

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		four. To avoid the appearance of backsliding, ODEQ should either use the 2012 language (see above) or other equally stringent language. 40 CFR § 122.44(0(1) restricts the relaxation of standards or conditions contained in existing permits. Under the regulation, a permittee must meet one of the causes for modification under § 122.62 for the reissued permit to allow relaxation of such limitations, standards, or conditions. Therefore, DEQ did not provided a basis for this change.	
260	30	Schedule B, 2.e: pH- Requiring a pH probe for all pH is not realistic and is onerous on the permittee who is only required to sample four times per year. Keeping up with calibration and storage of probes is very problematic for a pH meter’s performance. DEQ must provide additional guidance on using a pH probe and the importance of storage and calibration for consistent measurements and to avoid drifting. In addition, pH strips are adequate pH indicators when the range of acceptable pH is between 5.5-9,	Registrants must follow the latest version of 40 CFR 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, which outlines analytical methods, sampling containers, need for preservation and among other procedural details maximum holding times. 40 CFR 136 outlines pH monitoring holding time of 15 minutes. Facilities must comply with this federal regulation and must be able to confirm to DEQ or agent on-site monitoring.
261	32	B.2.e.A pH strip for ranges between 5.5-9 is adequate. Without better guidance from DEQ, pH probes can be quite problematic to operate at many facilities. Problems with calibration and storage will exacerbate these problems. This is not realistic for most facilities.	Registrants must follow the latest version of 40 CFR 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, which outlines analytical methods, sampling containers, need for preservation and among other procedural details maximum holding times. 40 CFR 136 outlines pH monitoring holding time of 15 minutes. Facilities must comply with this federal regulation and must be able to confirm to DEQ or agent on-site monitoring.
Portland Harbor			
262	5	The scope of “Portland Harbor” is undefined in the permit. (p. 4): Although there is some description of the area encompassed by “Portland Harbor” in the permit evaluation report, the permit itself should define the area within which facilities will be subject to the Portland Harbor provisions of the permit, including the permit requirement for certain nonindustrial facilities in Table 2 and the Portland Harbor- specific discharge benchmarks in Schedule A.9. The area should be defined with sufficient specificity that a facility will be able to readily determine whether it is within or outside the area.	DEQ added a definition for Portland Harbor in Schedule D. DEQ also developed maps to assist in determining whether a site is located within the Portland Harbor georegion and included a georegions section in the 1200-Z implementation guide. DEQ and DEQ’s Agent, the City of Portland, will offer technical assistance for registrants within the Portland Harbor georegion. The Portland Harbor Superfund Site is located within the lower Willamette River from the Broadway Bridge (RM 11.8) to Kelly Point Park (RM 1.9) and is the result of decades of industrial use along the Willamette River.
263	5	(§2.a.ii): Because the permit requirement for the Portland Harbor activities listed in Table 2 would be new, these facilities should have a reasonable	DEQ, in coordination with DEQ’s Agent, the City of Portland, has developed a notification letter for affected facilities, which includes

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		amount of time after the effective date of the permit to apply for permit coverage. OISG suggests at least 120 days because the applicant will need time to prepare an SWPCP to submit with its application. In addition, the permit should expressly provide that these facilities are not required to have an NPDES permit for their stormwater discharges until DEQ has taken final action on their permit application.	reasonable timeframes for requesting technical assistance, preparing No Exposure Certifications or preparing application materials.
264	10	Total Suspended Solids (TSS) benchmark: We support reducing the TSS benchmark from 100 mg/L to 30 mg/L for Portland Harbor. This new benchmark is on an order of magnitude that is achievable for urban runoff in general (e.g., Barret 2008), is already being achieved by many sites in the PHSS, and matches that used by the United States Environmental Protection Agency (U.S. EPA) for comparable sediment-contamination sites (U.S. EPA, 2015, pg. 199-201). Lowering the benchmark will also reduce contamination discharging to the Willamette River via contaminants sorbed to discharged sediment. Reducing contamination to the Willamette River will help to ensure a successful PHSS cleanup in the long term.	DEQ appreciates the comment and retained the requirement.
265	10	Additional industrial activities: The revised permit adopts “Additional Industrial Activities Covered” for Portland Harbor that are similar to the types of activities listed under the 1200-COLS permit (Table 2). We support this change, which results in a more consistent approach to permitting industrial stormwater ultimately discharging to the Willamette River and will likely reduce the recontamination potential of the PHSS post-cleanup.	DEQ appreciates the comment and retained the requirement.
266	34	<p>BES has a comment directly related to industrial stormwater discharges to Portland Harbor. As DEQ is aware, PCBs are the major risk driver in Portland Harbor for human ingestion of fish, largely due to the bioaccumulative nature of PCBs. However, the proposed permit has no PCB benchmarks. In addition, under the proposed permit, sampling of PCBs (as an impairment pollutant) is only required twice per year in Portland Harbor. Further, even though corrective action is required if impairment reference concentrations for PCBs are exceeded, the impairment reference concentration of 2 µg/L may not be protective of the fish ingestion pathway.</p> <p>According to DEQ's Guidance for Evaluating the Stormwater Pathway at</p>	DEQ expanded permit coverage in Portland Harbor and lower the TSS benchmark for discharges in both the Portland Harbor and Columbia Slough. In part, this is intended to support remedial action on sediment and improve water quality in these waterways by further reducing solids and associated contaminants. In addition, source control evaluations will continue at sites in these areas under DEQ's Guidance for Evaluating the Stormwater Pathway at Upland Sites. DEQ's cleanup program will continue to ensure that individual site evaluations consider relevant cleanup levels for PCBs and other contaminants of concern and strive to meet analytical detection limits comparable to those values. As sediment remedial actions occur in these waterways, DEQ intends to continue evaluating data from permit monitoring and other sources, in coordination with EPA, the City

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		<p>upland Sites (DEQ 08-LQ-076), bioaccumulative compounds should be "evaluated conservatively" and "managed aggressively." However, the median stormwater PCB concentration of 0.048 µg/L reported in Table 10 of DEQ's 1200-Z Permit Evaluation and Overview is 750 times DEQ's stormwater SLV for total PCBs derived for the protection of human consumption of fish.</p> <p>Additionally, the reference concentration for PCBs in the proposed 1200-Z permit is significantly higher than almost all samples collected in Portland Harbor that are represented in the stormwater PCB curves in Appendix E of DEQ's Guidance for Evaluating the Stormwater Pathway at upland Sites.</p> <p>While the City understands that reducing the TSS benchmark in the proposed 1200-Z permit can reduce stormwater pollutant concentrations (e.g., PCBs), it is not clear whether the benchmark in the permit will be protective of the river and the City's conveyance system for bioaccumulative pollutants, especially given the low concentrations at which PCBs may pose health risks. The City encourages DEQ to consider developing additional mechanisms, which may be programmatic changes moving forward, to address industrial stormwater discharges in Portland Harbor, particularly as DEQ clarifies with EPA Portland Harbor-specific stormwater targets needed to protect human health and the environment.</p>	<p>and other partners, toward determinations on remedy success, recontamination prevention and water quality improvement. Data and information obtained during the 2017 permit cycle will inform these efforts and allow development of effective approaches, whether through permits or other mechanisms in the future.</p>
Public Notice			
267	2,5,15,20,21, 25,27,28,30, 31	<p>DEQ received comments requesting the permit be re-posted for an additional 35-day comment period. These comments have been summarized.</p> <ul style="list-style-type: none"> • During a public hearing held March 15, 2017, ODEQ has withdrawn the Stormwater Discharge Benchmarks and will release the Benchmarks for public comment at a later date. It is unclear whether ODEQ will make the whole Draft Permit open to public comment at this later date, or if only the Benchmarks will be open for public comment. • In light of the lack of clarity and transparency provided by ODEQ, and the impact the Benchmarks will certainly have pursuant to the Draft Permit's substantive compliance requirements, commenter reserves the right to comment on these Benchmarks when they are open for public comment. 	<p>DEQ acknowledges this comment. Based on comments the permit was revised and reposted on May15, 2017, for a second 35-day public comment period. Comments were accepted until Jun 19, 2017, at 5:00 p.m.</p>

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		<ul style="list-style-type: none"> DEQ should re-open the entire permit for public comment when the benchmark re-evaluation is complete. Changing the benchmarks could significantly alter how other portions of the permit are implemented and the feasibility of compliance with the entire permit. 	
268	15	Recordkeeping requirements include a requirement for "Documentation of maintenance and repairs of control measures." Recommend that this be clarified to be structural or treatment control measures, as the routine replacement of temporary or disposable control measures such as straw waddles, catch basin filter socks, etc can occur as a matter of routine daily activities not significant enough for formal tracking.	All maintenance and repairs need to be noted in the inspection report.
Records			
269	31	A list of required paperwork that a discharger is required to have onsite should be included with the monitoring table that is sent to the discharger with the renewed permit. Also, this table should indicate that the record retention time has been increased from three to five years.	DEQ acknowledges this comment. The record retention timeframe of three years has been retained in this permit.
270	52	<p>Finally, at the June 14, 2017 public hearing on the permit, I asked a clarifying question on the Department's intent on records retention – whether the time period was three years or five years because there was a conflict in between the draft permit and the permit evaluation report. We verbally received conflicting answers at the hearing from two Department staff people. Please see also Schedule B, item 10 – 5-year requirement and Schedule F, Section C, item C8 – 3-year requirement.</p> <ul style="list-style-type: none"> NWPPA comment: we ask the Department in the response to comments address the three-year/five-year conflicts and clearly state the records retention policy and to address the Department's justification for any changes in policy. NWPPA suggests that the Department clearly advertise any change in the records retention policy in communications to the regulated community. <p>We ask that the Department clearly communicate the date when the change will be implemented and enforceable because of possible lag time if the records retention policy requirement is extended from three years to five years"</p>	According to 40 C.F.R. § 122.41(j)(2), "the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application.." DEQ has the authority to extend this the period. DEQ has decided to retain the records retention requirement to 3 years.
Reporting Monitoring Data			

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271	34	BES recommends that this sub-paragraph be revised to include a requirement to submit a copy of the chain of custody form and require that field pH results be recorded on the chain of custody form.	DEQ does not agree this is necessary and did not make the recommend change.
272	34	Schedule B.8.a.i.(3): BES finds that it is not clear whether this sub-paragraph requires the permittee to report samples collected from substantially similar discharge points. If that is the intent, please revise the permit language to explicitly state that the sample results that must be reported under this provision include results from those discharge points determined to be substantially similar in accordance with Schedule B.2.c.ii. If that is not the intent of sub- paragraph (3), BES suggests that this sub-paragraph be revised to read "All sample results from discharge points that have been designated as stormwater monitoring locations in the SWPCP must be reported."	Substantially similar monitoring exemption remains in the permit. If Tier II is triggered, substantially similar discharge points must be addressed with properly sized treatment and source control. Post Tier II implementation substantially similar discharge points are only eligible for a waiver as monitoring must resume.
273	34	Schedule B.11.Table 6: Under the Permit Condition "Sample results exceed effluent limits," add "numeric" prior to "effluent limits."	DEQ made this change.
274	36	ORRA requests that DEQ specify in the Permit how non-detections should be reported.	Reporting specifications are included in the DMR form that DEQ provides.
Representative Sampling			
275	5	The permit should not require discharge sampling before combining stormwater discharges from the facility prior to sampling, before combining facility stormwater with stormwater run-on, or before the facility stormwater combines with any other substance. (§ B.2.b.iii)	Stormwater sampling must be representative of each basin and differing industrial uses. The language does not prohibit run- on. The language does require an evaluation of discharge location and possible site modifications to eliminate co- mingled stormwater from groundwater, wastewater or varied pollutant sources.
276	20	Based on recent experience at 1200-Z facilities in Oregon, we recommend adding language on what constitutes a representative sample. Possible text might be "A representative sample is collected prior to the stormwater leaving your facility, at a location downstream from all of your industrial materials and activities, before the industrial storm water mingles with other sources."	Stormwater sampling must be representative of each basin and differing industrial uses. The language does not prohibit run-on. The language does require an evaluation of discharge location and possible site modifications to eliminate co-mingled stormwater from groundwater, wastewater or varied pollutant sources. The 2011/2012 permits and the final 2017 permits all include under Schedule B.2.b, representative sampling language. The permit address representative sampling prior to comingling with other source and characterizing discharge based on industrial activities at the site.

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			<p>The permit reads: Representative Sample -</p> <ul style="list-style-type: none"> i. Samples must be representative of the discharge. ii. Monitoring locations must be identified in the SWPCP. iii. All samples must be taken at discharge points located before the stormwater joins or is diluted by stormwater from a different drainage area of the facility or areas outside the facility; wastewater, or any other wastestream, body of water or substance, including groundwater unless: <ul style="list-style-type: none"> 1) DEQ or agent approve in writing; or <p>On-site stormwater flows combine into a common treatment facility (for example, filter or settling pond). In this case, monitor the discharge from the treatment facility.</p>
277	37	Schedule B of the proposed permit should not require discharge sampling before combining stormwater: from different drainages areas at a facility, with stormwater run-on, with authorized non-stormwater discharges, or with any other substances.	Stormwater sampling must be representative of each basin and differing industrial uses. The language does not prohibit run-on. The language does require an evaluation of discharge location and possible site modifications to eliminate co-mingled stormwater from groundwater, wastewater or varied pollutant sources.
Schedule D			
278	2	First, based on statements made by representatives of the Oregon Department of Environmental Quality ("ODEQ") during a public hearing held March 15, 2017, we understand the ODEQ has withdrawn the Stormwater Discharge Benchmarks ("Benchmarks") as proposed in the Draft Permit from public comment at this time. We further understand ODEQ will release the Benchmarks for public comment at a later date, presumably sometime in the second quarter of 2017. It is unclear whether ODEQ will make the whole Draft Permit open to public comment at this later date, or if only the Benchmarks will be open for public comment. We note the ODEQ website, as of March 19, 2017, has made no mention of the Benchmarks being withdrawn from public comment.	DEQ acknowledges this comment. Based on comments the permit was revised and reposted on May 15, 2017, for a second 35-day public comment period. Comments were accepted through Jun 19, 2017, at 5:00 p.m.
279	5	The proposed requirement to provide 30 days' advance notice of changes to the site, operations, or control measures should be deleted. (§ A.8.d)	Facilities are expected to update the SWPCP based on the 2017 renewed permit conditions.
280	5	OISG has suggested a revision to Schedule B.7.d to address the problem of conducting monthly visual inspections at all outfalls during the dry	DEQ did not make this change as some outfalls have discharge regardless

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		season. (§ B.7.d)	of the season.
281	5	Schedule D.2, which concerns the availability of the SWPCP and monitoring data, includes a new and unexplained sentence regarding “regional restrictions” that appears to be both out of place and unwarranted. (§ D.2)	Schedule D.2 has not been changed from the 2011/2012 permits to the final 2017 permit.
282	5	Because there is no water quality criterion for TSS, OISG proposes that the more stringent regional or sector-specific benchmark should serve as the reference concentration when the receiving water is impaired by suspended solids, turbidity, sediment, or sedimentation. (§ B.1.b.ii (1))	DEQ does not intend to alter Schedule E from EPA’s Multi-Sector General Permit language.
283	11	Schedule A, Stormwater Pollution Control Plan, Required Elements, 7.c.v: The proposed requirement for an operation and maintenance plan should be limited to active treatment systems. Although an operation and maintenance plan at the level of detail required by proposed Schedule A.7.c.v may be appropriate for active treatment systems, the permit evaluation report provides no justification for imposing this burden on permit registrants for the many and varied passive treatment systems used to control stormwater. The proper operation and maintenance of passive treatment systems are already addressed by the requirement in Schedule A.7.c.iii. to include in the SWPCP the schedule for maintaining stormwater control measures and the requirement in Schedule B.7.e.viii for monthly inspections of stormwater control measures.	The final permit does require operation and maintenance plans for all active and passive treatment systems. When these facilities install treatment as part of Tier II corrective action or as changes in control measures under the SWPCP revision the SWPCP must include: “Include an operation and maintenance plan for active treatment systems, such as electro-coagulation, chemical flocculation, or ion-exchange. The O&M plan must include, as appropriate to the type of treatment system, items such as system schematic, manufacturer’s maintenance/operation specifications, chemical use, treatment volumes and a monitoring or inspection plan and frequency. For passive treatment and low impact development control measures, include routine maintenance standards.
284	11	Schedule A, Control Measures for Technology Based Effluent Limits, 3.b: The terms “minimize” and “infeasible” are defined in Schedule D. The terms do not need to be defined here. AOI requests that DEQ justify why the original text in 3.b. is being proposed to be deleted.	The definitions in Schedule D have been revised for clarity.
285	11	Schedule D, Special Conditions, 3: The permit should include a definition of “regular business hours” that is limited to periods when the facility is engaged in active primary production and staffed with trained stormwater sampling personnel. This should not be left to the evaluation report. As defined in the evaluation report, the term is too broad. Many businesses operate extended hours or continuously and will have trained the employees present during these hours in appropriate stormwater controls. However, it is not feasible to have employees trained in appropriate stormwater sampling procedures at the facility during all the times that it	The definitions in Schedule D have been revised for clarity.

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		is operating.	
286	11	Schedule D, Special Conditions, Definitions, 3.g: AOI/OBA requests that DEQ delete this definition.	The definitions in Schedule D have been revised for clarity.
287	11	Schedule D, Special Conditions, Definitions, 3.n.xii: AOI/OBA requests that DEQ include outdoor storage of vehicles, closed tanks and materials and/or products that are intended to be exposed to stormwater. See 40 CFR 122.26(g)(2).	The definitions in Schedule D have been revised for clarity.
288	11	Schedule D, Special Conditions, 5, Terminating Permit Coverage: A no exposure certification is not appropriate for termination of permit coverage because the no exposure certification assumes ongoing industrial activities, whereas termination (as opposed to a transfer of the permit) implies the end of industrial activities. Moreover, it may not be possible to meet these requirements for a no exposure certification if the facility is converted to a non-industrial operation but the nonindustrial materials or activities remain exposed to stormwater. Furthermore, the no exposure certification provisions are unnecessary because, if a facility chose to terminate its permit coverage but significant industrial materials remained and were exposed to stormwater, the facility would be subject to an enforcement action for continuing to discharge industrial stormwater without an NPDES permit.	The final permit deleted the no exposure certification provision from Schedule D.5; Terminating Permit Coverage.
289	11	<p>Schedule D, Definitions, 3.g: AOI/OBA appreciate DEQ's revisions to the definition of "Discharge Point." As DEQ appreciates, this is a critical definition and nonpoint source discharges or discharges not associated with Industrial Activity should be excluded. AOI/OBA request the definition of "Discharge Point" be revised to read:</p> <p>"Discharge Point" means for the purposes of this permit, the location where Industrial Stormwater is discharged from the facility through a point source, as defined under OAR 340-045-0010, such that the first receiving waterbody into which the discharge flows, either directly or through a separate storm sewer system, is a water of the U.S. A facility may have more than one Discharge Point."</p>	<p>The final permit defines a discharge point as: "the location where collected and concentrated stormwater flows discharge from the facility such that the first receiving waterbody into which the discharge flows, either directly or through a separate storm sewer system, is a water of the U.S."</p> <p>The term discharge point has replaced outfall. Facilities are required to concentrate and collect stormwater discharge off-site.</p> <p>In some areas at a facility it may be difficult to obtain a sample because the runoff drains as sheet flow before it becomes concentrated enough for sampling. If the flow is too shallow to directly fill a collection bottle, facilities may:</p> <ul style="list-style-type: none"> • Concentrating the sheet flow by excavating a small depression in an existing ditch or other location where stormwater runoff flows. • Installing a trough, gutter or ditch to intercept and concentrate

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			<p>stormwater flow.</p> <ul style="list-style-type: none"> Installing “speed” bumps to convey and concentrate a large area of sheet flow.
290	11	Schedule D, Definitions, 3: AOI/OBA request that DEQ define the term “Columbia River” and “Regional” in the Definitions section of Schedule D of the permit. DEQ has provided a definition for the other geographic regions for which benchmarks have been established (see Schedule D, Definitions, 3e, 3.w).	DEQ declined to make this change. The Columbia River benchmarks apply to direct discharges to the Columbia River. Excluding the Columbia Slough, Portland Harbor and Columbia River, the regional benchmarks apply to all other industrial discharges into Oregon’s waters.
291	12	Schedule D.4.gg: The proposed definition of waste is overly broad and is not consistent with other DEQ and EPA definitions of waste. Waste should include only discarded materials for consistency with other environmental programs.	The definitions in Schedule D have been revised for clarity.
292	12	Schedule D.5.b: It is not reasonable to include the “No Exposure” criteria for all permit terminations. A facility may have zinc roofing material but may no longer be the operator of the facility. As such, they should be able to terminate 1200- Z coverage without having to certify the no exposure form.	The final permit deleted the no exposure certification provision from Schedule D.5; Terminating Permit Coverage.
293	16	Schedule D provides a definition for Discharge Point of "the location where collected and concentrated runoff or snowmelt stormwater flows of industrial stormwater are discharged from the facility directly entering waters of the state or indirectly through a conveyance system." In addition to some basic need for clarity in this sentence, there is a need to clarify "indirectly through a conveyance system." For instance, it should stipulate "or discharging to a conveyance system such as a municipal storm system that discharges to waters of the state."	The definitions in Schedule D have been revised for clarity.
294	16	Schedule D includes a definition of "run-on sources" but the permit does not otherwise use this phrase. Recommend striking it.	<p>Run-on sources of stormwater means stormwater that drains from land located upslope or upstream from the regulated facility. This term appears several times in the permit. Industrial sites are required to sample all stormwater discharge regardless of the source.</p> <p>Facilities concerned about an off-site source, could evaluate the possibility of diverting or otherwise preventing the run-on from commingling with their stormwater discharge.</p>

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295	20	<p>Comment 11: Definition of composite sample Section E. Definitions "24-hour composite sample means a sample formed by collecting and mixing discrete samples taken periodically and based on time or flow."</p> <p>EPA comment: 40 CFR 122.21(g)(7)(ii) gives the option for a flow-weighted composite or grab. "Flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge" not a 24-hour composite.</p>	The definitions in Schedule D have been revised for clarity.
296	20	<p>Definition of stormwater</p> <p>"Storm water means that portion of rain runoff, snowmelt runoff and surface runoff and drainage that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater drainage system into a defined surface waterbody, or a constructed infiltration facility."</p> <p>EPA's MSGP: stormwater runoff, snowmelt runoff, and surface runoff and drainage. See 40 CFR 122.26(b)(13). 40 CFR 122.26(b)(13): means storm water runoff, snowmelt runoff, and surface runoff and drainage.</p> <p>EPA comment: The narrative stating "stormwater drainage system into a defined surface waterbody, or a constructed infiltration facility" is not defining what storm water is, but instead defines storm water connections to waters. Edit definition to reflect the CFR language.</p>	The definitions in Schedule D have been revised for clarity.
297	20	The model and results are called "preliminary" and the permit evaluation report states that the model is pending review. It seems unusual that the permit would include results of a model that is not final. Please let us know if the benchmarks are expected to change significantly prior to the final permit.	DEQ acknowledges this comment. Based on comments the permit was revised and reposted on May15, 2017, for a second 35-day public comment period. Comments were accepted until Jun 19, 2017, at 5:00 p.m.
298	21	In summary, the District urges DEQ to retain the concept of the 1200-Z as a permit for point source discharges, to re-evaluate its determination of the lead and zinc benchmarks, to evaluate technology-based benchmarks and to address the District's comments provided in this letter.	DEQ acknowledges this comment. Based on comments the permit was revised and reposted on May15, 2017, for a second 35-day public comment period. Comments were accepted until Jun 19, 2017, at 5:00 p.m.
299	25	I am Craig Smith. I'm with the Northwest food processers in Portland. I represent the Oregon food processing industry and my comment today is	DEQ acknowledges this comment. Based on comments the permit was revised and reposted on May15, 2017, for a second 35-day public comment

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		really simple we would also like to see you guys reopen comment on the entire permit at the time when you reopen the comments for benchmarks and I want to thank you for being willing to reopen and re-evaluate the benchmark process we really feel the being able to comment on the whole permit at the same time as we see the benchmark process would be important process and there are some differential concerns that need to be addressed, so thank you for being able to pull that benchmark back and we really appreciate the time you urge you to reopen comment on the whole permit.	period. Comments were accepted until Jun 19, 2017, at 5:00 p.m.
300	26	This is a new condition to define minimize and infeasible. The definition for minimize in this section does not match the definition in Schedule D. The definition of minimize in Schedule D includes the statement "minimize means reduce or eliminate, or both". These definitions should be in the definition section (Schedule D) not the body of the permit or match so there is no confusion on the definition.	The definitions in Schedule D have been revised for clarity.
301	27	The proposed benchmarks are particularly worrisome because they have not been adequately justified or explained. It is our understanding from the public hearing record that the DEQ has decided to reopen the opportunity to comment on the benchmarks sometime in the spring, although no date has yet been proposed. We agree the benchmarks need to be revisited but we urge the DEQ to also consider reopening the entire permit so that we can comment on the benchmarks in context with related permit provisions.	Based on comments the permit was revised and reposted on May15, 2017, for a second 35-day public comment period. Comments were accepted until Jun 19, 2017, at 5:00 p.m.
302	28	I'm with Geosyntec. I am also on the DEQ blue ribbon committee panel that advises the overall NPDES permit program. One comment is I urge you to open the entire permit for comment when it is re-issued. As the benchmarks could change, certainly that would change what one would interpret in going on with the permit and what is significant issues with the permit if it to change or at least open up all of the parts of the permit that will be impacted by the changes to the benchmarks.	Based on comments received, the permit was revised and reposted on May15, 2017, for a second 35-day public comment period. Comments were accepted until Jun 19, 2017, at 5:00 p.m.
303	30	WWC has concerns with the transparency of the public process DEQ undertook to develop this proposed 1200-Z permit. Particularly the brief amount of time permittees have had to review and provide input on the significant changes in the permit has been inadequate. While DEQ asked for feedback during two public meetings in 2016, some changes now	Based on comments the permit was revised and reposted on May15, 2017, for a second 35-day public comment period. Comments were accepted until Jun 19, 2017, at 5:00 p.m.

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		<p>incorporated into the proposed 1200-Z permit were first seen with the issuance of the draft permit in 2017. To date, DEQ has been unable to provide clear answers to questions regarding the new draft permit. Previous processes to develop revisions to stormwater permit had the benefit of input from stakeholder groups and an advisory committee. This proposed 1200-Z permit has apparently had no input from the stakeholders. WWC encourages stakeholder involvement in permit revision processes and we are ready and wit Ung to participate when such opportunities are provided by DEQ.</p>	
304	31	<p>General Comment – DEQ has stated verbally that it is their intention to re-post the geographic benchmarks section once additional analysis has been performed. As the revision of these benchmarks has the potential to affect other areas of the permit, it is suggested that the permit is reposted in its' entirety once the benchmarks are revised.</p>	<p>Based on comments the permit was revised and reposted on May15, 2017, for a second 35-day public comment period. Comments were accepted until Jun 19, 2017, at 5:00 p.m.</p>
305	31	<p>Schedule D.3 subsection u (page 33) – Per the no exposure certification guidelines, storm resistant shelters cannot be constructed using unsealed zinc or copper building materials. This requirement should be referenced in this section.</p>	<p>The definitions in Schedule D have been revised for clarity.</p>
306	31	<p>Schedule D.5 subsection c (page 35) – Agents do not have the authority to terminate permit coverage.</p>	<p>The definitions in Schedule D have been revised for clarity.</p>
307	31	<p>General Comment – A list of required paperwork that a discharger is required to have onsite should be included with the monitoring table that is sent to the discharger with the renewed permit. Also, this table should indicate that the record retention time has been increased from three to five years.</p>	<p>See the <i>Technical Assistance for Industrial Operators</i> document on DEQ's Industrial Stormwater website for assistance with what paperwork is required to be onsite.</p> <p>The records retention requirements in the permit is three years.</p>
308	33	<p>Although ALG understands the new electronic submittal requirements under of the proposed permit to be part of DEQ's conformance with the 2015 NPDES Electronic Reporting Rule, we have concerns about public access to the electronically submitted required data. Public availability of stormwater monitoring data in California seems to have created confusion regarding exceedances of numeric action levels (the equivalent to DEQ's numeric benchmarks) constituting violations of permit requirements. As a result, it appears that the public accessibility of electronically reported stormwater data has led to a rise in third-party nuisance litigation against</p>	<p>EPA published the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule, which will modernize Clean Water Act (CWA) reporting for municipalities, industries and other facilities. It was published in the Federal Register on October 22, 2015. The rule replaces most paper-based NPDES reporting requirements with electronic reporting. Part of this rule requires regulatory authorities to share data electronically with EPA. Oregon DEQ adopted EPA's two-phased approach. Phase one will require Discharge Monitoring Reports and the Sewage/Sludge Biosolids annual program reports associated with NPDES</p>

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		<p>facilities that are in or working towards compliance with stormwater general permit requirements. As such, ALG urges DEQ to carefully consider the extent to which access to certain facility data, including monitoring data, SWPCPs, and enforcement status, is made accessible to the general public. While ALG understands that certain effluent NPDES data must be made publicly available upon request under federal regulations, it might not be necessarily prudent for regulatory authorities to automatically grant public access to such records.</p>	<p>permits to be submitted to DEQ electronically. Phase two will include other types of NPDES permit reporting, including permit applications. The rule does not change what information is required. It only changes the method by which information is provided.</p>
309	34	<p>Schedule D.3: BES requests that DEQ add "Portland Harbor" to the list of definitions and define it in terms of river miles. References to Portland Harbor in the Permit Evaluation and Overview Report are approximate and inconsistent; at one point that document suggests that Portland Harbor is the lowest -10 miles of the Willamette River, and at another point that document suggests it is approximately between river mile 1 to 12. BES recommends that DEQ use the EPA Record of Decision for the Portland Harbor Clean-Up to define Portland Harbor for purposes of the forthcoming 1200-Z permit; the EPA Record of Decision for the Portland Harbor Clean-Up defines the in-river portion of Portland Harbor as approximately river mile 1.9 to 11.8.</p>	<p>DEQ agrees and has made this change.</p>
310	34	<p>Schedule D.3: BES believes that there are several definitions in Schedule D.3 that DEQ should review to ensure consistency and a clear understanding on the part of permit holders that DEQ considers "sheet flow" to be a form of conveyance that can create a unique discharge point that needs to be considered when evaluating a permittee's site and developing the SWPCP. Definitions that BES believes are in particular need of review by DEQ are: "Discharge," "Discharge Point," "Industrial Stormwater," "Stormwater," and "Stormwater Conveyance." (For this latter term, BES suggests that DEQ define "Conveyance" rather than "Stormwater Conveyance.")</p>	<p>DEQ has addressed all of these s suggested edits in the final permit.</p>
311	34	<p>Schedule D.3.v.ii: Delete the "Point Source Discharge" definition included here; this definition is not needed because although the current permit in effect uses the term "point source," the proposed permit does not.</p>	<p>The final permit did remove the definition of point source discharge. This is consistent with Washington Department of Ecology's approach in their permit and guidance requiring the permit registrant to sample each distinct point of discharge off-site, except as otherwise exempt from monitoring as a "substantially identical discharge point."</p>

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312	34	Schedule D.3: BES appreciates the revisions to several definitions within this section but still believes that the definitions in Schedule D.3, in conjunction with the permit's language, do not clearly express that "sheet flow" is a form of conveyance that can create a unique discharge point that needs to be considered when evaluating a permittee's site and developing the SWPCP. The Industrial Stormwater Permit Evaluation Report No. 1200-Z explicitly expresses 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." BES recommends that DEQ make the permit language more explicit so that permit holders do not have to rely on the Permit Evaluation Report to understand the permit requirements. At a minimum, the definition of "Discharge Point" in Schedule D 1 .g of the permit should include the term sheet flow.	<p>Both 2008 and 2015 eligibility language states: In compliance with the provisions of the Clean Water Act (CWA), as amended (33 U.S.C. 1251 <i>et seq.</i>), operators of stormwater discharges associated with industrial activity... authorized to discharge to waters of the United States. Neither the 2008 nor the 2015 has MSGP included the term sheet flow.</p> <p>DEQ made this change under the direction of EPA, and accordingly our permit reflects similar language.</p> <p><i>Discharge</i> when used without qualification means the “discharge of a pollutant.” (See 40 CFR 122.2).</p>
313	21	Schedule D.3.s, page 32: The definition of natural background pollutants" is limited to those naturally occurring in soils or groundwater. Since the dilute nature and natural acidity of precipitation could cause runoff to be outside the benchmark range, the definition should also include "due to precipitation."	DEQ declined to make this change. Natural conditions means conditions or circumstances affecting the physical, chemical, or biological integrity of a water of the state that are not influenced by past or present anthropogenic activities. Acid rain does not meet the natural background criteria.
314	21	Schedule D.4, page 35: This section describes authorized activities of agents. Since agents may perform actions in addition to those listed (such as requiring corrective action, as provided in Schedule A.3 .d), the second sentence of this section should be revised to read, "The agent may be authorized to conduct activities including but not limited to: ..."	This section of the permit was not changed. Including refers to a list of items the agents are authorized to perform. Although the list may not be comprehensive, the phrase “including but not limited to” is not needed.
315	37	The Schedule D.3.bb definition of Regular Business Hours should include language clarifying that regular business hours include times when personnel are onsite who have received adequate SWPCP training for collecting monitoring samples and performing monthly inspections.	DEQ agrees and has made this change; however, based on EPA’s comment DEQ has changed the term to “regular business hours of operation.”
316	54	Discharge Point Definition: This is a critical definition and non-point source discharge or discharges not associated with industrial activity should be excluded from the definition. "Discharge Point" means for the purposes of this permit, the location where industrial storm water is discharged from the facility through a point source, as defined under OAR 340-045-010, such that the first receiving water body into which the discharge flows either directly or through a separate storm sewer system,	<p>The permit states; “Discharge Point means the location where collected and concentrated stormwater flows discharge from the facility such that the first receiving waterbody into which the discharge flows, either directly or through a separate storm sewer system, is a water of the U.S.”</p> <p>This is consistent with the EPA’s MSGP permit.</p>

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		is a water of the U.S. A facility may have more than one Discharge Point.	
Schedule E			
317	5	Sector-specific discharge benchmarks for chemical oxygen demand (COD) should be removed. (§§ E.A.3, E.B.1, E.G.8.1, E.G.8.3, E.K.2, E.N.3, E.S.6, E.U.4): Although EPA’s MSGP includes a 120 mg/L COD discharge benchmark for several industry sectors, the benchmark has no water quality or control technology basis, and no such basis is discussed or referenced in the permit evaluation report. The Schedule A.9 benchmarks, including the TSS benchmark, are sufficient control technology indicators for these industry sectors, and biochemical oxygen demand (BOD) is a reference concentration for all industrial stormwater discharges to waterbodies that are impaired for dissolved oxygen. Because there is an insufficient basis for the COD benchmark, it should be removed from the permit.	DEQ did not alter Schedule E which comes directly from EPA's Multi-Sector General Permit language.
318	5	For the reasons discussed above in OISG’s comments on proposed Schedule B.1.d, the proposed sentence in Schedule E.4 regarding target concentrations should be deleted. (§ E.4)	The permit clarified this section.
319	5	As discussed above, OISG has requested that DEQ make wood preserving facilities eligible for coverage under the 1200-Z permit. If eligibility is extended to these facilities, it would be consistent with DEQ’s approach to Schedule E to add the MSGP provisions relevant to wood preserving facilities to Schedule E.	DEQ did not alter Schedule E which comes directly from EPA's Multi-Sector General Permit language. DEQ will evaluate applications for coverage to this permit on a case by case basis.
320	11	Wood preserving facilities (Standard Industrial Classification (SIC) Code 2491) should not be excluded from coverage. (p. 3). Of the facilities that EPA’s regulations define as “industrial” for purposes of the NPDES stormwater permit requirement, wood preserving facilities are the only Oregon facilities that are categorically excluded from coverage under DEQ’s general industrial stormwater permits. Historically, DEQ excluded these facilities from coverage and required them to obtain individual NPDES permits because several were the subject of ongoing cleanup actions. But stormwater discharges from most Oregon wood preserving facilities today present much less risk of harm than discharges from many industrial categories that are eligible for coverage under the 1200-Z permit. More importantly, there is no reason to continue categorically	DEQ did not alter Schedule E which comes directly from EPA's Multi-Sector General Permit language.

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		excluding wood preserving facilities from coverage. Wood preserving facilities are eligible for coverage under EPA's Multi-Sector General Permit (MSGP) for industrial stormwater discharges, and any stormwater control requirements that are specific to wood preserving facilities can be addressed through sector-specific requirements in Schedule E of the permit, as for other industrial categories. Moreover, if the general permit is inappropriate for a particular wood preserving facility, DEQ has ample authority under both the permit and OAR 340-045-0033(10) to require the facility to remain covered by an individual NPDES permit. Therefore, AOI/OBA requests that wood preserving facilities qualify for the 1200-Z.	
321	27	<p>Schedule E - Sector-Specific Requirements for Industrial Activity Sector S - Air Transportation (page 100). Under condition E.S.2 Multiple Operators at Air Transportation Facilities, the proposed permit states that, "An airport tenant may obtain authorization under this permit and develop a SWPCP for discharges from his/her own areas of the airport." This is problematic for airport operators because in some locations it is not practicable to isolate individual tenant discharges, and the airport authority is required to sample downstream of a tenant's discharge. It is often not feasible to separate out the pollutants from a single tenant for each sampling event that exceeds benchmarks to determine if the tenant's activities contributed to the exceedance. For these reasons it should be clear that the airport authority should be in control of tenant status under the permit.</p> <p>Recommendation: DEQ should modify E.S.2 to read: "An airport tenant may obtain authorization under this permit and develop a SWPCP for discharges from his/her own areas of the airport if the airport authority approves and deems that the tenant's discharges will not be commingled with other airport facilities."</p>	DEQ did not alter Schedule E which comes directly from EPA's Multi-Sector General Permit language.
322	31	12. Schedule E.C (page 45)/Table 4 (page 18) – Dischargers engaged in manure based composting activities for fertilizer production should be required to monitor for E. coli.	DEQ will look at this in the next permit cycle.
323	34	In addition, BES requests that the new language added by DEQ to Sections E.G.4.1.4 and E.H.2.1.4 be deleted. This language states "Note: DEQ recognizes that some fine grains may remain visible on the surfaces of off-site streets, other paved areas, and sidewalks even after you have	DEQ did not alter Schedule E which comes directly from EPA's Multi-Sector General Permit language.

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		implemented sediment removal practices. Such "staining" is not a violation of E.G.4.1.4." While this language is included under sector-specific requirements, we believe it is misleading, sets precedent, and implies that sediment track out materials are uncontaminated and will not adversely impact stormwater discharges.	
324	37	The Schedule E.A .4 Sector Specific Benchmarks for Sector A- Timber Products should be amended to remove chemical oxygen demand {COD) as a required monitoring parameter.	DEQ did not alter Schedule E which comes directly from EPA's Multi-Sector General Permit language.
325	44	With respect to arsenic discharge benchmarks, there are a number of facilities in Oregon that do not and have never used preservative formulations containing arsenic. Although this number is not great, it does not make sense to apply this benchmark if arsenic have never been used in the manufacturing process.	DEQ did not alter Schedule E which comes directly from EPA's Multi-Sector General Permit language.
Sheet Flow			
326	3, 5, 7, 10, 11, 26, 27, 30, 32, 42	<p>...With regards to the definition of sheet flow. Currently this is too vague and opening up a lot of question if they need coverage or not. This could lead to legal actions by third parties, and uncertainty as to whatever permit coverage is required.</p> <p>The permit may not regulate "sheet flow." (p. 1): Although the proposed permit does not itself expressly apply to "sheet flow" or "dispersed runoff," the accompanying permit evaluation report states that the permit is intended to regulate these nonpoint sources. There is no legal authority for regulating sheet flow or other nonpoint sources in a National Pollutant Discharge Elimination System (NPDES) permit, and the permit evaluation report does not cite any such authority. The report states in section 1.0 that the term "point source" was removed from the permit's cover page "to be consistent with EPA[']s . . . requirements for coverage," but EPA's Multi-Sector General Permit (MSGP) for industrial stormwater discharges clearly regulates only point source discharges of stormwater.</p> <p>The proposed permit would regulate "sheet flow," but it does not cite any legal basis for this requirement. DEQ cannot redefine "point source" as "an entire industrial facility," and it has no authority to require an NPDES permit for nonpoint sources of industrial stormwater. Perhaps more importantly, it does not appear that DEQ has given any consideration to</p>	<p>DEQ received direction from EPA that sheet flow discharges must be regulated under the 1200Z permit. Both the EPA MSGP and the Washington Department of Ecology's Industrial general permit regulates sheet flow discharges, as evidenced, in part, by direction in the permits to guidance for collecting sheet flow <i>samples in EPA's 2009 Industrial Monitoring and Sampling Guide</i> and <i>Washington Department of Ecology's 2015 Stormwater Sampling Manual</i>. DEQ's approach aligns with EPA and WA and DEQ's 1200-Z implementation guide will also refer to these guidance documents.</p> <p>If sheet flow does not infiltrate fully, discharge must be eliminated, diverted, contained or sampled. 40 CFR 122.26(b)(14)exempts sampling from areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater associated with industrial activities. DEQ has made this change to be consistent with EPA position that sheet flow must be regulated and requires a NPDES permit. The permit requires facilities to identify the potential sources of pollutants from industrial activities that could result in contaminated stormwater discharges.</p> <p>Facilities need to include any known sheet flow discharge in their SWPCP</p>

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		<p>how this novel requirement would be implemented through stormwater plans or monitoring requirements.</p> <p>Recommendations:</p> <p>Remove references to "sheet flow" and "non-point source" discharges as a "discharge point" in the Permit Evaluation Report. Reinsert the reference to "point-source" on the Permit cover (page 1). "Sheet Flow": The removal of the term "from a point source" in the first sentence of the 1200-Z proposed permit when describing industrial stormwater discharge is problematic. According to the 1200-Z Permit Evaluation and Overview, there appears to be intent to regulate "sheet flow" as a form of conveyance. "Sheet flow" is not a point source and it is unclear how a permitted facility would implement stormwater plans or any kind of a monitoring program for "sheet flow". There will inevitably be confusion and inconsistent interpretation of intent with this assertion to regulate "sheet flow."</p> <p>EPA's MSGP regulates only point source discharges of stormwater, see MSGP at p. A-2 (definitions of "discharge" and "discharge of a pollutant"), and "point source" is defined by the Clean Water Act and EPA's regulations as a "discernible, confined, and discrete conveyance." See 33 U.S.C. § 1362(14); 40 C.F.R. § 122.2. DEQ cannot redefine "point source" as "an entire industrial facility," and it has no authority to require an NPDES permit for nonpoint sources of industrial stormwater.</p> <p>DEQ indicated at the informational meeting prior to the public hearing that sheet flow leaving an industrial site would trigger a requirement for coverage under the 1200-Z permit. However, the very first statement of the permit reads "Sources that are required to obtain coverage under this permit: A facility that may discharge industrial stormwater to surface waters or to conveyance systems that discharge to surface waters of the state..." and industrial stormwater is defined as "the discharge from any conveyance that is used for collecting and conveying stormwater..." Sheet flow is typically defined as not flowing through a conveyance and would therefore not meet DEQ's proposed definition of industrial stormwater and would not trigger permit coverage. In addition, sheet flow often leads to a street, infiltrating in a right of way, an adjacent piece of land, etc, and not to surface waters. If DEQ intends to cover sheet flow, DEQ should add specific information regarding the definition of sheet flow, how</p>	<p>and have a plan to sample that discharge. The permit regulates pollution potential not the shape of the water.</p> <p>The change to remove the term "point source" from the first page of the permit further lines up with the 2008 and 2015 MSGP.</p>

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		<p>receiving waters are to be identified, how to handle sites that exclusively have sheet flow from areas with no industrial activity, and when sheet flow triggers permit coverage requirements.</p> <p>Dispersed runoff: Though industrial stormwater may be most easily conceptualized and monitored through the use of outfalls, it is more realistic to also consider industrial discharge due to dispersed runoff (i.e., as sheet flow). We support the new 1200-Z permit's consideration of an entire industrial footprint as the "point source." This change is consistent with other relevant industrial stormwater permits (e.g., U.S. EPA and Washington State Department of Ecology)</p> <p>Eligible Sources: The Permit Evaluation and Overview Report, at 1.0 (Permit Coverage and Exclusions from Coverage), states that the term "point source" was removed from this section in order to regulate "sheet flow" under the permit. AOI/OBA believe that DEQ cannot use the permit to regulate "sheet flow." The omission of the term "point source" does not change the meaning of this sentence because "discharge" is defined by the Clean Water Act and EPA's regulations as the addition of pollutants from a "point source." See 33 U.S.C. §§ 1311(a), 1342(p), 1362(12), (14); 40 C.F.R. § 122.2.</p> <p>Even if the sentence were revised to clearly require a permit for "sheet flow" or other nonpoint source stormwater, the NPDES permit program regulates only point sources. See, e.g., <i>id.</i>; <i>South Fla. Water Mgmt. Dist. v. Miccosukee Tribe</i>, 541 U.S. 95, 102-04 (2004). Although the term "point source" is broadly defined, DEQ has no legal authority to require an NPDES permit for "sheet flow" or other nonpoint sources.</p> <p>Condition B.2.c: Boise Cascade requests the DEQ replace "discharge point" with the term "outfall", as in the current permit. The term outfall is concise and familiar and does not imply nonpoint discharges.</p> <p>Condition 8.7.e.vii: The condition requires monitoring at all "discharge points". As mentioned before discharge point implies nonpoint as well as point source discharges. Boise Cascade requests that the discharge points be change to Outfall(s).</p>	
327	34	In several instances, the 1200-Z Permit Evaluation and Overview explicitly expresses that dispersed flow/overland flow/sheet flow is a	DEQ's <i>Technical Assistance for Industrial Operators</i> document on the industrial stormwater website includes a section relative to this comment.

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		<p>discharge point that needs to be sampled, visually observed on a monthly basis, and included in the SWPCP. However, the relevant referenced sections of the permit do not explicitly state these requirements or use those key terms (i.e. "sheet flow," "dispersed flow," and "overland flow"). BES recommends that DEQ make the permit language more explicit so that permit holders do not have to rely on the 1200-Z Permit Evaluation and Overview to understand the permit requirements. At a minimum, the definition of "Discharge Point" in Schedule D.3.g of the permit should include the terminology from the 1200- Z Permit Evaluation and Overview.</p>	<p>We will finalize implementation guidance on this topic and other changes in the permit in coordination with the agents.</p>
328	36	<p>The term "discharge location" has been replaced with "discharge points" throughout the permit. Likewise, the term "outfall" has been replaced with "discharge points", in an effort to require permittees to sample sheet flow. However, this seems inconsistent with the definitions of 40 CFR 122.2, where discharge of a pollutant is defined as:</p> <p>Any addition of any " pollutant" or combination of pollutants to "waters of the United States" from any " point source, "</p> <p>And point source is defined as:</p> <p>any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation , landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.</p> <p>EPA's Multi-Sector General Permit (MSGP) for industrial stormwater discharges clearly regulates only "point source" discharges of stormwater. Based on this understanding, ORRA respectfully disagrees with DEQ redefining "point source" as "an entire industrial facility" and requests that DEQ provide justification for this change.</p>	<p>40 CFR 122.2 further defines: <i>Discharge of a pollutant</i> means:</p> <p>(a) Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source,” or</p> <p>(b) Any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.</p> <p>This definition includes additions of pollutants into waters of the United States from: <u>surface runoff which is collected or channelled by man</u>; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any “indirect discharger.”</p> <p>Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and <u>industrial, municipal, and agricultural waste discharged into water.</u></p> <p>and</p> <p>Point source means <u>any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding</u></p>

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			operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See § 122.3).
329	37	The permit evaluation report indicates DEQ's intent to regulate nonpoint sources such as "sheet flow" and "dispersed runoff", which is a difficult, if not impossible requirement for facilities.	<p>DEQ received direction from EPA that sheet flow discharges must be regulated under the 1200Z permit. Both the EPA's MSGP and the Washington Department of Ecology regulate sheet flow discharges, as evidenced, in part, by direction in the permits to guidance for collecting sheet flow samples in EPA's 2009 <i>Industrial Monitoring and Sampling Guide</i> and Washington Department of Ecology's 2015 <i>Stormwater Sampling Manual</i>. DEQ's approach aligns with EPA and Washington's.</p> <p>If sheet flow does not infiltrate fully, discharge must be eliminated, diverted, contained or sampled. 40 CFR 122.26(b)(14) exempts sampling from areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater associated with industrial activities. DEQ has made this change to be consistent with EPA position that sheet flow must be regulated and requires a NPDES permit. The permit requires facilities to identify the potential sources of pollutants from industrial activities that could result in contaminated stormwater discharges.</p>
330	40	The permit may not regulate "sheet flow." (p. 1)	DEQ received direction from EPA that sheet flow discharges must be regulated under the 1200Z permit.
SIC Code			
331	6	... the SIC listing was using the wrong group categories SIC code 42 for instance right now in this permit is listing trucking and carrier service except air the correct reference to that is motor rights and transportation and warehousing.	DEQ uses the category headings from the EPA's permit, which sometimes do not match the United States Department of Labor SIC code grouping. Regardless of the reference, the SIC code industry group meanings do not change.
332	16	Schedule A, 7.a.vi. Secondary SIC codes are not formally required as part of the permit application and regulatory applicability considerations. Because of this, there is no regulatory basis for including secondary SIC codes in the SWPCP. There are no guidelines for how secondary SIC codes are determined. Recommend striking this requirement.	EPA and DEQ require co-located activities or secondary SIC codes to be included in coverage. Each corresponding SIC code applicable to the drainage areas and discharge point must be written on the map and identified. Therefore, discharge from each industrial activity regulated under the permit must sample for applicable statewide benchmarks and

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			sector-specific pollutants identified in Schedule E.
333	16	Schedule A, 7.b.iv added language referencing secondary SIC codes that does not clearly present what is being requested. The language as proposed states the following: "For each area of the site where a reasonable potential exists for contributing pollutants to stormwater runoff, a description of the potential pollutant sources that could be present in stormwater discharges and if associated with a secondary SIC code." There is no context for secondary SIC codes in the permit other than to provide effluent limits for specific sectors. Permit applicability is associated with primary SIC codes only. Recommend that this addition be struck.	<p>If the industrial sites are not contiguous, then the permit registrant must submit a separate application and SWPCP for each site. However, there may be different conditions or different manufacturing that covers one site. Coverage is based on the SIC code that corresponds to the primary industrial activity. An activity is not considered co-located if the activity, when considered separately, does not meet the definition of co-located industrial activities in Schedule E.</p> <p>Many of the sector specific narrative technology based effluent limits require facilities to “minimize” pollutant in their discharge. Consistent with EPA’s permit, the term “minimize” means to reduce and/or eliminate to the extent achievable using control measures (including BMPs) that are technologically available and economically achievable and practicable in light of best industry practice. As a result, facilities need to “consider” certain pollution prevention measure listed in the permit to the extent they are technologically available and economically achievable and practicable in light of best industry practice.</p>
334	41	Manufacturers are under the sniper’s scope in Oregon and it is not fair to us or to our employees. While reviewing the proposed stormwater permit, I noticed that you have quite a few benchmarks that are based on SIC codes. Your list is quite extensive but still quite narrow in my opinion. There are very few galvanizers in Oregon and instead of being scapegoats (like manufacturers in general), why can’t the DEQ work with us to set realistic benchmarks instead of viewing us at the 100,000 ft. level?	DEQ did not edit Schedule E; conditions come directly from EPA and as such DEQ is obligated to include sector specific conditions.
Site Map			
335	5	The newly proposed requirement that the SWPCP site map show the use of a building should apply only to the extent that the use is relevant to the quality of stormwater discharges from the site. Similarly, the newly proposed requirement that the site may show the location of machinery should be limited to stationary machinery. (§ A.7.b.i(6),(18))	DEQ declined to make this change. Under federal law buildings located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas are excluded. (See 40 CFR 122.26)
336	12, 16	Schedule A.7.b.i(5): The requirement that the site plan include the “total industrial footprint” is vague. DEQ should consider allowing facilities to instead identify non-industrial areas to keep figures readable and useable.	This condition was not retained in the final permit based on comments received. However, it is important to include SIC code applicable to the drainage areas and discharge points be written on the map, since parts of the sites industrial activities may vary.

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337	16	Schedule A, 7.b.i.16 requires narrative detail be included on site plans, including whether discharge points are "substantially similar" and whether or not they are monitored. This type of narrative detail is better suited for the narrative portion of the SWPCP, not the site plan.	DEQ disagrees. The requirement to label discharge points and substantially similar locations on the site map is reasonable and helps regulators understand the locations in relationship to the industrial site. This information may be included in the narrative of the SWPCP as well.
338	16	Schedule A, 7.b.i.18 requires the following be identified on site plans: immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility. It is unclear whether only rail lines used to carry materials "used or created by the facility" are covered or if it is intended to require that all rail lines be identified. This requires clarification, and also whether this is limited to the portion of the site subject to permitting.	The language comes directly from EPA and makes it clear that this applies to rail lines used to carry raw material manufactured products, waste material, or by-products <u>used or created by the facility</u> .
339	16	Schedule A, 7.b.ix provides a new requirement embedded in the narrative requirements for the SWPCP that the monitoring location must be labeled "monitoring location." It is unclear if this is referring to a site map requirement (should be in the previous paragraph i) or physically labeling the monitoring location at the facility. Clarification is required.	This requirement is referring to the site map and it is not required that the physical discharge points and substantially similar locations are labeling on the site.
340	32	A.7.b.ix.Sites may already have "monitoring locations" labeled on their site maps as "sample points". Can DEQ allow for alternate labels, so long as they are clearly defined in the SWPCP? This requires people who used alternate wording to revise their SWPCP in multiple locations to stay in compliance. This creates undue burden on the permittee with little benefit to the function of the SWPCP.	<p>Since all facilities must update their SWPCP and in preparation of electronic reporting it is required that facilities assign a unique three-digit number starting with 001, 002 and so on. The SWPCP checklist will outline the required elements of the SWPCP to assist facilities in following uniform format.</p> <p>The permit requires identification of each discharge point and the location(s) where stormwater monitoring will occur as required by Schedule B.2. The monitoring location must also be labeled in the SWPCP as "monitoring location." Existing discharge points excluded from monitoring must include a description of the discharge point(s) and data or analysis supporting that the discharge point(s) are substantially similar as described in Schedule B.2.c.ii of this permit.</p>
341	34	Schedule A.7.b: BES recommends that Schedule A.7.b. be revised to require the Site Description in the Stormwater Pollution Control Plan (SWPCP) to include the location, description and characterization data for any known or discovered contaminated surface (soil, concrete, asphalt,	Incorporated: Location and description, with any available characterization data, of areas of known or discovered significant materials from previous operations.

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		<p>grout, etc.). It is recommended that the results of all site investigations and environment data be used and considered by the pemmittee in the development of the SWPCP. The DEQ Cleanup Program's general strategy for evaluating runoff from upland cleanup sites</p> <p>Is to compare erodible soil data against appropriate toxicity and bioaccumulation screening level values protective of that receiving waterbody (see DEQ's Guidance for Evaluating the Stormwater Pathway at Upland Sites [DEQ 08-LQ-076]).</p>	
342	34	<p>Schedule A.7.b.i.17: This sub-paragraph requires that the location and a description of spill prevention and cleanup materials be included in a site map in the SWPCP. BES believes that it would be more appropriate to locate this requirement in Schedule A.7.c.1, which currently addresses SWPCP requirements related to spill prevention and response procedure.</p>	<p>DEQ disagrees. When the location is on the site map, it shows it in relation to possible hazardous materials and therefore DEQ or agent can evaluate if it is sited correctly for prompt cleanup.</p>
343	34	<p>Schedule A.7.b: BES appreciates the revision to Schedule A.7.b to require the Site Description in the Stormwater Pollution Control Plan (SWPCP) to include the location, description and characterization data for any known or discovered contaminated surface (soil, concrete, asphalt, grout, etc.). BES recommends this requirement be implemented by requiring the permittee to use the results and data from all environmental site investigations to develop a SWPCP. For sites with known or discovered soil contamination, the SWCP should be prepared to consider stormwater contaminant migration pathways consistent with the DEQ Cleanup Program's Guidance for Evaluating the Stormwater Pathway at Upland Sites [DEQ 08-LQ-076]) to ensure protection of the receiving water body.</p>	<p>Incorporating the Portland Harbor Superfund site within the permit will address potential re-contamination and limit discharge into this reach of the Willamette River.</p> <p>Coordination will continue between DEQ cleanup program and the stormwater program.</p>
344	34	<p>Schedule A.7.b: BES appreciates the revision to Schedule A.7.b to require the Site Description in the Stormwater Pollution Control Plan (SWPCP) to include the location, description and characterization data for any known or discovered contaminated surface (soil, concrete, asphalt, grout, etc.). BES recommends this requirement be implemented by requiring the permittee to use the results and data from all environmental site investigations to develop a SWPCP. For sites with known or discovered soil contamination, the SWCP should be prepared to consider stormwater contaminant migration pathways consistent with the DEQ Cleanup Program's Guidance for Evaluating the Stormwater Pathway at Upland</p>	<p>The EPA's 2015 Multi-Sector General Permit has special requirements for discharge to several west coast federal Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, sites. On July 7, 2015, a coalition of environmental groups filed a lawsuit challenging the EPA's Multi-Sector General Permit. Part of the settlement agreement, EPA will propose a nationwide expansion of measures used in preventing recontamination of Superfund sites in the 2020 federal industrial stormwater permit.</p> <p>Further requirements pertaining to CERCLA sites will likely be incorporated into the 2022 permit.</p>

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		Sites [DEQ 08-LQ-076]) to ensure protection of the receiving water body.	For each area of the site where a reasonable potential exists for contributing pollutants to stormwater runoff, the permit requires a description of the potential pollutant sources that could be present in stormwater discharges.
Sources Covered			
345	5	Wood preserving facilities (Standard Industrial Classification (SIC) Code 2491) should not be categorically excluded from coverage under the permit. (p. 3): Of the facilities that EPA's regulations define as "industrial" for purposes of the NPDES stormwater permit requirement, wood preserving facilities are the only Oregon facilities that are categorically excluded from coverage under DEQ's general industrial stormwater permits.	Consistent with the EPA's MSGP, the final permit allows wood preserving facilities eligible for coverage.
346	5	On page 3, the proposed permit excludes facilities within SIC codes 2951, 3273, and 3279 from coverage under the 1200-Z permit because they are eligible for coverage under another general NPDES permit, including general permit 1200-A. DEQ should verify, however, that all facilities within these SIC codes are in fact eligible for coverage under another general permit.	<p>Upon renewal of the 1200-A permit, DEQ will align both permits and include coverage eligibility for 2951 and 3273, including mobile asphalt and concrete batch plants in the 1200-A only.</p> <p>SIC code 3279 was excluded from coverage under the previous permits and in EPA's industrial permit.</p>
347	5	On page 3, the permit should be clear that, for facilities that require an NPDES permit because of the presence of vehicle maintenance shops, equipment cleaning operations, or airport deicing operations, only stormwater discharges from those portions of the facility with these shops or operations require an NPDES permit.	<p>The permit reads:</p> <p>Facilities with the following primary SIC codes that have vehicle maintenance shops (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or airport deicing operations:</p> <p>40 Railroad Transportation</p> <p>41 Local and Suburban Transit and Interurban Highway Passenger Transportation</p> <p>42 Trucking and Courier Services, Except Air (excluding 4221, 4222, and 4225)</p> <p>43 United States Postal Service</p> <p>44 Water Transportation</p> <p>45 Transportation by Air</p>

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			<p>5171 Petroleum Bulk Stations and Terminals, except petroleum sold via retail method.</p> <p>Federal regulations require coverage for these SIC codes only when one or more of the auxiliary activities take place at the facility.</p>
348	12	<p>Table 1. Sources Covered: According to DEQ in the 1200-A Permit Evaluation Report, there are currently facilities with SIC codes 3241 (Cement, Hydraulic), 3281 (Cut stone and stone products), and 3295 (Minerals and Earths, Ground or Otherwise Treated) which are covered under the 1200-A permit. SIC code 32 (except 3273) is listed in Table 1, Sources required to obtain coverage in the draft 1200-Z permit, which could lead to confusion regarding which permit is required for coverage at a particular site. Additionally, SIC sector 14 operations and SIC sector 32 operations are often, but not always, co-located. DEQ should clarify that facilities are not intended to have both permits at one site, and that if SIC codes applicable to the site may trigger permit coverage requirements under both 1200-A and 1200-Z, that coverage under the 1200-A permit is most appropriate. For standalone SIC code 32 facilities, coverage under the 1200-Z is warranted. DEQ has indicated in the past that determining the most appropriate permit for co-located operations may be decided based on percentage of revenue generated by each operation. This is not appropriate as most SIC 14 operations are co-located in order to generate product for and directly support the smaller footprint SIC 32 operations. If little to no external sales occur from the mining operation other than supporting the onsite processing facility, revenue would not be a good indicator of size of operation. DEQ should cover sites with SIC 14 operations under the 1200-A permit, along with any co-located activities.</p>	<p>DEQ does not intend for any industrial facility to be covered under more than one industrial stormwater permit. Since the 1200-Z specifically excludes SIC code 14 from coverage, any mining and quarrying of nonmetallic minerals, except fuels, is required to obtain coverage under the 1200-A.</p> <p>For the purpose of permitting, a facility must determine its primary SIC code based on the primary activity occurring at the site. This determination most of the time is based on operation the generated the most revenue or employs the most personnel. In Oregon since DEQ categorically excludes SIC codes 14 from obtaining coverage under the 1200-Z unlike EPA, the appropriate permit for the industrial group 14 regardless of any co-located activities is the 1200-A.</p> <p>The 1200-A will include sector-specific conditions under Sector J for mineral mining and processing facilities, in addition to Sector D and E for all co-located facilities. DEQ will be conducting outreach to the existing permitted registrants that are impacted to provide the path forward.</p>
349	12	<p>Table 1. Sources Covered: SIC code 34 has parenthesis indicating “(excluding 3279)” This reference to 3279 appears to be a typo and may intend to reference 3479 instead.</p>	<p>SIC code 3279 was excluded from coverage under the previous permits and in EPA’s industrial permit.</p>
SWPCP			
350	5	<p>The proposed requirements to identify and keep current tenant contact information and to describe spill response coordination with tenants would be unnecessarily burdensome and should be deleted. (§ A.7.c.ii)</p>	<p>DEQ has determined that all conditions in the permit are required to be in compliance with the permit. Knowing who to contact and how to respond to a spill are key actions needed in case of an emergency.</p>

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351	5	The proposed requirement to provide 30 days' advance notice of changes to the site, operations, or control measures should be deleted. (§ A.8.d)	This condition was deleted in the final permit.
352	5	Renewing permit registrants should be given 180 days after approval of their renewal applications to modify their SWPCPs to comply with the newly applicable permit requirements. (§ A.8)	Renewed facilities must update the SWPCPs to DEQ or agent by December 29, 2017, unless DEQ or agent approves a later date.
353	5	Although it is likely implied, the provision allowing DEQ or its agent to require revisions to the SWPCP at any time should be expressly qualified by the phrase "as necessary to implement permit requirements." (§ A.8.f)	DEQ has determined that the permit language is clear.
354	11	Schedule A, Stormwater Pollution Control Plan, Required Elements, 7.c.ii: The proposed requirements to identify and keep current tenant contact information and to describe spill response coordination with tenants would be unnecessarily burdensome and should be deleted. The proposed provision would be very burdensome because it would require permit registrants to revise and submit to DEQ its SWPCP each time a tenant's site contact changed. If the tenant is registered under the 1200-Z, the tenant should be responsible for providing that information. If the tenant is not registered, then the permit registrant will be responsible for complying with the permit, and it should be allowed to manage its tenants in whatever manner it believes will best enable it to comply, including spill response coordination.	<p>If a tenant or adjacent industry has a separate coverage under a NPDES permit than this condition would not apply. The condition was retained under SWPCP required elements.</p> <p>The condition requires the permit registrant to indicate spill response coordination between their tenants on the industrial site that are within the regulated coverage area and is the ultimate responsibility of the permit holder.</p> <p>Spill response planning is an important element of effective stormwater management.</p>
355	11	The proposed permit also states that the permit registrant "is ultimately responsible for spills of the tenant and appropriate response." The permit should specify only responsibility with respect to this permit and only with respect to tenants that are not also registered under the permit. It should not dictate responsibility for other purposes, including other regulatory provisions and contractual obligations.	See above response.
356	13	During the permit development process DEQ has stated that it will not review, or make public, the SWPCPs for facilities that were covered under the previous iteration of the permit. This is not lawful. Because of the permit structure that DEQ is proposing, and the heavy reliance on the permittee-created SWPCPs in order to meet the requirements of the CWA, DEQ must review these plans and allow the public the opportunity to comment.	DEQ and its agents review the plans in coordination with facility inspections to ensure the SWPCP matches the conditions on the ground during at that time. The SWPCP's are part of the permit record and can be requested per a formal records request. SWPCP's associated with new applications will continue to be posted for a 30 day public comment. DEQ has no legal obligation to review SWPCPs at permit renewal.

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357	16	<p>Schedule A, 7.c.ii requires the following: "If the facility includes tenants that have an industrial process, for each tenant indicate who is responsible for on-site management of significant materials and their contact information." It is unclear if this is referring to any industrial tenant, whether industrial processes only include those exposed to stormwater, or only those that are subject to permitting. It also states the following: "The permit registrant is ultimately responsible for spills of the tenant and appropriate response." This request should be confined to tenants who are similarly subject to stormwater permitting. Tenants should only be required to be included in a SWPCP if the permittee has a direct business relationship that includes the authority to request such information, and where there is an explicit intent to coordinate spill response actions.</p>	<p>The requirement can be clarified within 40 CFR 122.26 and Schedule D, definitions portion of the permit. It includes all portions of a facility covered under primary SIC codes in Table 1, for the specific geographic areas and co-located industrial activities.</p> <p>Stormwater associated with industrial activity (40 CFR 122.26(b)(14)), means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to:</p> <ol style="list-style-type: none"> i. Industrial plant yards; ii. Immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; iii. Material handling sites (Material handling activities include the storage, loading and unloading, transportation or conveyance of raw material, intermediate product, finished product, by-product or waste product.); iv. Refuse sites; v. Sites used for the application or disposal of process waste waters (as defined in 40 CFR part§ 401); vi. Sites used for storage or maintenance of material handling equipment; vii. Sites used for residual treatment, storage, or disposal; shipping and receiving areas; viii. Manufacturing buildings; ix. Storage areas (including tank farms) for raw materials, and intermediate and finished products; x. Areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. Significant materials includes, but are not limited to: raw materials storage; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical that a facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ash, slag, and sludge that have the potential to be released with stormwater discharges; or xi. Stormwater run-on that commingles with stormwater discharges associated with industrial activity at the facility. xii. The term excludes areas located on plant lands separate

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			<p>from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas.</p>
358	16	<p>Schedule A, 7.c.v provides specific requirements for O&M Plans. It is unclear whether existing O&M plans that are already approved have to be updated to meet these requirements. This should be stipulated to be applicable to O&M plans prepared and submitted after the effective date of the permit.</p>	<p>All renewed facilities must update and re-submit a SWCPC based on the final permit conditions. If an operations and maintenance plan was submitted as a separate addendum to the SWPCP as part of a Tier II corrective action and no changes are needed, then a facility would not need to re-submit that portion of the revised plan.</p>
359	26	<p>Condition A.7.c.iii.: The requirements for preventative maintenance and best management practices are broad and not specific to the impact to the quality of stormwater discharged off site. Boise Cascade recommends adding language such as ".....maintenance and repairs to prevent leaks, spills and other releases that could contaminate stormwater....disposal of waste materials exposed to stormwatertanks and containers that could leak and contaminate stormwater." Also, this condition requires a schedule for regular pickup and disposal of waste materials. Not all waste are generated consistently therefore not on a regular disposal schedule.</p>	<p>DEQ did add the addition of exposed to stormwater in the preventative maintenance section of the SWPCP required elements.</p> <p>DEQ acknowledges not all wastes are on regular scheduled pick up; however, the SWPCP must include the schedule and frequency of waste collection if known.</p>
360	26	<p>Condition A.7.b.6: There are several new required elements of the SWPCP. This condition has a new requirement of including the labeling of building uses. For security purposes (as this document is available to the public) this additional requirement is a concern. Boise Cascade recommends the removal of labeling building uses unless the use is relevant to the quality of stormwater discharge off site.</p>	<p>This condition was removed. FOIA's fourth exemption protects two broad categories of information in agency records: "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential."</p>
361	26	<p>Condition B.7.e.iii.: requires inspection of internal tracking of industrial or waste material, not just tracking off site. See comment, Schedule A.1.f. Also, this condition now includes employee only entrance/exits, which may not associated with industrial activity.</p>	<p>40 CFR 122.26 excludes from permitting areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater drained from the industrial activity.</p>
362	27	<p>Stormwater Pollution Control Plan required Elements (page 17): Condition 7.C.ii requires the permit registrant to identify, for "each tenant," persons responsible for on-site management of significant materials and their contact information, and to indicate how spill response will be coordinated between the permit registrant and tenants. The Port has numerous facilities, each with many tenants, making this requirement</p>	<p>Sector S of EPA's MSGP may affect the Port of Portland's International airport. This includes EPA clarifications regarding airport operators' responsibilities and the permit requirements that airport authorities may conduct on behalf of airport tenants.</p> <p>Air transportation facilities often have more than one operator who could discharge stormwater associated with industrial activity. Operators include</p>

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		exceedingly burdensome. SWPCPs would presumably have to be updated each time a tenant's makes a change in employee assignments. Since the Port as the permit registrant is ultimately responsible for management of tenants, it should be left up to the Port to determine the best approach for coordinating compliance. Recommendation: Strike condition 7.C.ii	<p>the airport authority and airport tenants, including air passenger or cargo companies, fixed based operators, and other parties who routinely perform industrial activities on airport property. Likely many tenants have fueling and maintenance areas. These are potential sources of stormwater pollutants and the source of potential spills.</p> <p>DEQ's requirement is limited to formulating and including a coordinated plan between the Port and otherwise unpermitted tenants concerning spill response. The details are left up to the Port to determine the best approach.</p>
363	27	Stormwater Pollution Control Plan Required Elements (page 17): Condition 7.c.v requires Operation and Maintenance Plans for both active and passive treatment systems. Requiring detailed plans for passive treatment such as inlet filters and swales is onerous and unnecessary. This requirement should be limited to active treatment systems. Maintenance of passive treatment is covered in condition 7.c.iii. Recommendation: Strike condition 7.c.v and replace with: "Include an operation and maintenance plan for active treatment systems, such as electro-coagulation or flocculation."	<p>When passive treatment and green infrastructure is installed at a site, the SWPCP must include O&M plan to ensure optimal performance. The permit is based on adaptive management approach by investigating any elevated pollutant discharges.</p> <p>It is important this information is included in the SWPCP for key personnel to know the proper operation and maintenance of all control measures. Without this information and employee training program, facility inspectors would be unaware when and how to maintain control measures. There are many standard guides and checklist sufficient which may be included in the plan.</p>
364	22	A.7.b.i. There are additional elements in here that are vague, redundant, and burdensome to accomplish. This will take time to resolve for many facilities. There are map cluttering issues on larger sites as well.	Renewed facilities must update the SWPCPs to DEQ or agent by December 29, 2017, unless DEQ or agent approves a later date. DEQ's industrial stormwater website includes technical assistance documents for industrial operators.
365	32	A.7.b.i.4 For established sites this requirement creates confusion and has no apparent justification to require. Electronic reporting at the EPA does not limit a site to use their own existing names. As recommended by DEQ during the last permit, many sites have invested in labeling outfalls to reduce confusion.	In the past DEQ has allowed facilities to use any naming convention for facility discharge points. The electronic reporting tool, NetDMR, which DEQ adopted is limited to a convention three-digit identification number for each monitoring location.
366	32	A.7.b.vi Including operation and maintenance procedures via a SWPCP will be challenging to comply with. Unless the facility is altering procedures as recommended by design or manufacturer recommendations, this should not be required. A facility can submit and make available an operations and maintenance plan, but should not be subject to BES or DEQ review and acceptance. DEQ and agents are not on the site, not	<p>The operation and maintenance plans for all control measures are intended to support facility personnel in knowing how to maintain and inspect these facilities.</p> <p>This is a requirement of the SWPCP and is included in the Tier II corrective action checklist. The permit registrant must select, design, install, implement and maintain control measures. The SWPCP is a living</p>

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		intimately familiar with the performance of the variety of the treatment devices and detailed procedures facilities are now using for treatment and source controls. A description of treatment controls will likely already be in a Tier I report, Tier II response report, or a Tier II plan. This is redundant.	document meant to assist a permitted facility in continued compliance with the permit conditions. DEQ and agents review SWPCP at the time of permit assignment and prior to inspections. The SWPCP must be prepared, revised as needed and reflect the conditions at the site.
367	32	A.7.c.i.It should be adequate to indicate who is responsible for that persons work. It could be that a team of people performs this task and is supervised by a manager. In some cases this person is not issued a phone or email to use, they clock in and clock out. Should the staff member who operates the forklift be listed?	The intent of the requirement under spill prevention and response to indicate who is responsible for on-site management of significant materials and include their contact information is for easy reference in case of a spill. As long as the SWPCP includes the facility contact and the Oregon Emergency Response line number, it is adequate.
368	32	A.7.c.ii.It is not clear how a facility can reasonably stay in compliance with this requirement. A spill response plan is followed for the site, and on this site approved by the Coast Guard. The response for tenants in the plan, applies for all areas of the site and tenant sites are not distinguished as separate from this plan. If a tenant or subcontractor is on a site, the same requirements apply.	If a Spill Prevention, Control and Counter Measures Plan (SPCC) is required and inclusive of all potential pollutant sources for the permit registrant and tenants at a facility, this may be included in the SWPCP and will meet this requirement.
369	32	A.7.c.v.This is not required to be included a SWPCP in the EPA's 2015 MSGP, and should not be required here. Operations and Maintenance plans can be made available upon request. Preventative maintenance procedures and frequency are already included in the SWPCP elsewhere in the permit.	DEQ has retained this requirement in the final permit.
370	32	Schedule A.7.b.vi: BES recommends that this paragraph be revised to apply only to Tier II Corrective Actions (not also Tier I Corrective Actions). As currently proposed, this paragraph requires the permittees to identify in the SWPCP which treatment or source controls were in response to Tier I Corrective Actions employed over the previous permit term versus source controls put in place to meet the narrative technology based effluent limits. BES believes that it is not DEQ's intent to track these distinctions in the SWPCP, and that DEQ is more narrowly interested in tracking which treatment or source controls were put in place by a permittee in response to Tier II Corrective Action. Schedule A.7.c: BES suggests reversing the order of Schedule A.7.c.v ("Operation and Maintenance Plans") and Schedule A.7.c.iv ("Employee	There may be many types of corrective actions that may require source control. The SWPCP is required to describe control measures so inspectors and facility staff can ensure they are working properly and maintained. The final permit condition for the SWPCP to include operation and maintenance plans is Schedule A.7.c.iv. Employee Education is now in Schedule A.7.c.v as recommended for logical flow. Schedule A.8 condition has not been revised from the 2011/2012 permits except to clarify that Tier II SWPCP revisions are addressed under A.11. This submittal reference of a Tier II SWPCP revision is necessary to emphasize that Tier II corrective action plans are part of the SWPCP and must be followed and updated under these conditions.

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		<p>Education") so that the two sections dealing with maintenance come one directly after the other, creating a better logical flow. The two maintenance paragraphs are currently separated by the paragraph on employee education.</p> <p>Schedule A.8: BES recommends re-lettering current Schedule A.8.h to become Schedule A.8.i and then inserting a new subsection Schedule A.8.h that provides, "h. Schedule A.IO applies to Tier I SWPCP revision submittals." As proposed for public comment, Schedule A.8 of the permit states that Schedule A.11 applies to Tier II SWPCP revision submittal, but Schedule A.8 does not similarly state that Schedule A.10 applies to Tier I SWPCP revision submittals. In addition, the recommended ordering of Schedule A.8.h and Schedule A.8.i is consistent with the order in which Tier I and II are addressed elsewhere in the permit.</p>	
371	34	<p>Schedule A.7.c.iv: BES urges DEQ to require that the SWPCP for passive treatment and infiltration facilities include an Operations and Maintenance Plan. These types of facilities require ongoing maintenance to ensure that they continue to function as designed. The need for O&M plans is of increased importance if monitoring waivers are allowed for Tier II parameters.</p>	<p>DEQ made this change in the final permit. The permit reads, "For passive treatment and low impact development control measures, include routine maintenance standards."</p>
372	34	<p>Schedule A.7.b.i (15), page 16: This provision requires that the SWPCP contain a site map showing the "location and description of authorized non-stormwater discharges." These discharges are listed at Permit Coverage and Exclusion from Coverage, section 8 beginning on page 8. They include: fire hydrant flushing; potable water; condensate from air conditioners; landscape watering; vehicle, pavement and building washing; footing drains; and incidental mist from cooling towers. Mapping the locations of these activities (such as sprinkler heads, air conditioners, pavement and buildings to be washed) would add extraneous detail to maps and not increase their value. Providing this information in a narrative rather than in map form would be more useful to agents.</p>	<p>DEQ agrees with this comment. The intent is to identify on the site map any known fixed authorized non-stormwater discharges, such as vehicle washing pad, ground water or spring water or condensate from air conditioners.</p>
373	21	<p>Schedule A.7.b.i (18), page 16: Instead of using bullets, use numbers or letters for ease of reference to particular requirements</p>	<p>DEQ made this change and now depicts this section with capital letters.</p>
374	39	<p>Is there a particular timeframe or due date that SWPCPs will need to be updated to reflect the new Permit conditions? Language in the draft</p>	<p>Updated SWPCPs must be submitted to DEQ or agent by December 29,</p>

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		Permit states that revisions to the SWPCP must be made no later than 30 calendar days of making changes. My understanding is that the renewed Permit is effective July 1, 2017, so will SWPCPs have to be updated by July 31, 2017 (i.e., 30 calendar days from its effective date)? Or is there going to be a longer time period established for updating the SWPCPs to address the new Permit conditions?	2017, unless a later date is approved in writing by DEQ or agent.
Subjective Language			
375	12	Schedule A.11.j.ii and k.iii: According to the draft permit language, the Tier II Mass Reduction Waiver request may be stamped by a C.E.G., but a Tier II Report cannot. This is inconsistent.	DEQ evaluated the certified engineering geologist examination and qualification under the Board of Geologist Examiners; DEQ determined the skill set and earned seal better applies to mass reduction measures rather than advanced treatment technologies.
376	20	<p>Comment 9: Implementation Schedules: Consistency between the PER and the Permit Schedule A.12.c "Control measures that require capital improvements must be completed within two years of receiving permit coverage, unless a later date is approved in writing by DEQ or agent." The PER: "If a facility is implementing control measures that require capital improvements, the facility must include these measures in an implementation schedule in the Stormwater Pollution Control Plan and complete the improvements within two years of receiving permit coverage."</p> <p>EPA comment: Adding the language from the PER about including an implementation schedule in the Stormwater Pollution Control Plan in the Permit would improve clarity and effectiveness.</p>	<p>The difference in the condition giving a new applicant two years from receiving permit coverage to install capital improvements and allowing only a year and a half for existing facilities to install Tier II corrective action for existing facilities which have had time to conduct Tier I investigation and Tier II is based on facilities data not meeting benchmark values.</p> <p>A newly covered facility's capital improvements are not in response to corrective action, but rather an attempt to meet the conditions of the permit and control pollutants prior to benchmark exceedances.</p>
377	32	6.b.i.Outfalls have a clear and existing definition that is legally defensible. "Discharge point" is too vague and not clearly defined in this permit.	<p>Schedule D.3.g reads, "g. Discharge Point means the location where collected and concentrated stormwater flows discharge from the facility such that the first receiving waterbody into which the discharge flows, either directly or through a separate storm sewer system, is a water of the U.S."</p> <p>The change was made to capture all discharge regardless of the shape of the flow as it does not affect the potential to pollute.</p>
Substantially Similar Outfalls			
378	5	OISG has suggested revisions to Schedule B.2.c.ii to make clear that, as under the current permit, the demonstration of substantial similarity may	There was no change in this condition.

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		be based on either monitoring data or an analysis of the similarity of the drainage areas and stormwater controls. (§ B.3.c.ii)	
379	26	Condition B.7.e.vi: Recommend adding the following language to the end of the sentence.....at all outfall(s), unless outfalls are representative as described in Schedule 8.2.c.ii. Please change discharge point to outfall and the current permit differentiates between those outfalls that have been reviewed and determined as substantially similar and those outfalls designated as monitoring outfalls (see Condition B.7.a.i.7).	<p>The term discharge point is consistent throughout the permit when referring to any point of discharge. If substantially similar outfalls are not being monitored based on the SWPCP, the language change does not change this practice. However, permit registrants must inspect and perform visual observation of substantially similar discharge(s).</p> <p>In addition, if a facility triggers Tier II corrective action, the facility must properly apply and size approved Tier II corrective action responses and mass reduction measures to all substantially similar discharge points.</p>
SWPCP Revision			
380	5	The requirement to keep the SWPCP current should be limited to the required elements of the SWPCP and to changes that could have a significant effect on the quality or quantity of stormwater discharges from the site. (§ A.6.d)	Facilities are expected to update the SWPCP based on the 2017 renewed permit conditions.
381	5	The requirement to update the SWPCP to reflect changes that may significantly “change the nature of pollutants” or significantly “increase pollutant(s) levels” should be stated more precisely as changes that significantly increase the amount or concentration of pollutants. (§ A.8.b.iii)	DEQ declined to make this revision.
382	8	Schedule A.8.c1 (SWPCP Revisions): This sentence should be corrected to read "If submission of SWMP revisions is required due to Schedule A.8.b.iii-iv the revisions must be submitted to DEQ or agent 30 calendar days prior to the planned change date." The language on submittal timeframes as currently stated in this section is contradictory.	All reference of plan submittal prior to planned change date has been removed from the final permit. The permit is clear that facilities may need to revise their SWPCP based on their own monthly inspections and Tier I investigations or after DEQ or the Agent conducts an inspection. The plan revision should come after discovery of a problem during an inspection.
383	11	Schedule A, Stormwater Pollution Control Plan, Preparation and Implementation of SWPCP, 6.d: Many SWPCPs contain extraneous elements and details that are not required by the permit. Moreover, facilities frequently make insignificant changes that have no potential to affect stormwater. The permit should be clear that the failure to update SWPCP provisions that are not required or to update the SWPCP to reflect insignificant site changes is not a permit violation. Permit registrants should not be compelled—at the risk of agency or	The SWPCP, at a minimum, must include the components outlined in the permit and describe how the permit registrant intends to comply with the narrative technology-based effluent limit to eliminate or reduce the potential to contaminate stormwater and prevent any violation of instream water quality standards.

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		citizen suit enforcement actions—to constantly revise the SWPCP to reflect facility changes that have no significant effect on water quality.	
384	11	Schedule A, Stormwater Pollution Control Plan, Preparation and Implementation of SWPCP, 6.e and 8: The draft permit is ambiguous as to whether existing permittees must update their SWPCPs following assignment. Given the substantial changes to the required elements of the SWPCP, an updated SWPCP seems to be required. The draft permit suggests that the changes need to be made within 30 days. This is not sufficient time to revise the SWPCP. We request that DEQ provide existing permittees 180 days to make initial changes to the SWPCP.	Updated SWPCPs must be submitted to DEQ or agent by December 29, 2017, unless a later date is approved in writing by DEQ or agent.
385	11	Schedule A, Stormwater Pollution Control Plan, Required Elements, 8.f: We request that this section be revised to reflect that DEQ or its agent may only require the permittee to revise their SWPCP if a deficiency is noted or one of the triggers under 8 occur. Simply stating that DEQ may require the permit registrant to revise the SWPCP “at any time” is too broad.	DEQ mostly retained the SWPCP revision section from the 2011/2012 permits and declined to change this language. DEQ and agent retain authority to require the permit registrant to revise the SWPCP at any time. This discretion may be used in response to complaints, inspections, and water quality violations, monitoring data results or other enforcement actions.
386	11	Schedule A, Stormwater Pollution Control Plan, Preparation and Implementation of SWPCP, 6.e and 8: AOI/OBA appreciate that DEQ has given permittees until October 31, 2017 to submit initial changes to stormwater pollution control plans (SWPCPs) following assignment. See Permit Coverage and Exclusions from Coverage, 3.c. AOI/OBA request that DEQ clarify that the 30-day requirement for updating SWPCPs found in Schedule A.6.e does not apply to initial changes to the SWPCP following assignment.	Updated SWPCPs must be submitted to DEQ or agent by December 29, 2017, unless a later date is approved in writing by DEQ or agent. The timeframe for submittal has extended from the first draft of the permit.
387	11	Schedule A, Stormwater Pollution Control Plan, Required Elements, 7.b.iii: The proposed requirement that the SWPCP must include a “location and description, with any available characterization data, of areas of known or discovered significant materials from previous operations” is too broad. AOI/OBA request this requirement be limited to “areas of known or discovered significant materials from previous operations which could be exposed to stormwater.”	40 CFR 122.26 g.4.iii., no exposure certification requires a facility list exposure to materials from past industrial activities. As NPDES permitting authority, DEQ has added similar information must be included in the SWPCP. DEQ determined this is a reasonable requirement.
388	11	Schedule A, Stormwater Pollution Control Plan, Required Elements, 7.c.iv: For many active treatment systems, the manufacturer will provide an Operations and Maintenance Manual. AOI/OBA request that a	DEQ will accept any manufacturer’s O&M plan and when appropriate published guides or maintenance procedures from reliable sources.

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		<p>permittee be authorized to submit where appropriate, the manufacturer's Operations and Maintenance Manual as the Operations and Maintenance Plan.</p>	
389	12	<p>Schedule A.8: The draft permit changes the requirements for SWPCPs, and nearly all SWPCPs will need to be revised to include updated information. Many of the updates will impact site figures, which need to be submitted to DEQ within 30 days of revisions. Given the extent to which SWPCPs will need to be updated, 30 days is not sufficient to ensure that all permit requirements have been met. DEQ should allow for a longer timeframe for completion and submission of initial SWPCP revisions upon issuance of the revised permit.</p>	<p>The permit allows for DEQ or agent to approve a longer timeframe as needed. Facilities must meet the submission timeframe of no later than 30 calendar days, unless express approval has been granted for an alternate schedule.</p>
390	18	<p>Schedule A. 8. SWPCP Revisions It is unclear how the permittee or DEQ will ascertain if changes in a firm's operations and practices will necessitate additional pollutants to be sampled under the Schedule B. Monitoring Requirements.</p>	<p>Schedule B monitoring requirements will be defined in the permit assignment letter upon renewal or at the time of coverage for new applicants. To determine if a SWPCP revision is needed due to changes to the site, a facility must look at operations or control measures that may significantly change the nature of pollutants present in stormwater discharge; or significantly increase the pollutant(s) levels, discharge frequency, discharge volume or flow rate. Permit registrants may need to conduct sampling.</p> <p>If a large detention structure is installed to change discharge volume or flow, the SWPCP must be revised to show this change at the site.</p>
391	26	<p>Condition A.8: It is not clear if the Department is requiring existing permittee to update their SWPCP and if so, that the changes need to be made within 30 days. This is not sufficient time to revise the SWPCP, especially if a company has more than one facility with a SWPCP. Boise Cascade believes it is reasonable to allow more time to complete the appropriate plan revisions and request that language be included in the permit for existing permit holders to have 180 days to revise their SWPCP.</p>	<p>Updated SWPCPs must be submitted to DEQ or agent by December 29, 2017, unless a later date is approved in writing by DEQ or agent. The timeframe for submittal has extended from the first draft of the permit.</p>
392	26	<p>Condition A.B.a.: Condition requires revision to the SWPCP be in compliance with Schedule A.6, which requires revisions be made no later than 30 calendar days from completion of the modifications. Section 2.5 of the Evaluation Report states once the proposed permit is issued facilities will have approximately four months to complete and submit an</p>	<p>Updated SWPCPs must be submitted to DEQ or agent by December 29, 2017, unless a later date is approved in writing by DEQ or agent. The timeframe for submittal has extended from the first draft of the permit.</p>

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		updated plan. Boise Cascade requests the timeline for the submittal of updated SWPCP plan be addressed on the coverage letter for each facility.	
393	31	General Comment – Although the DEQ does not plan to post SWPCPs for public comment as a part of the renewal process, the revised permit requires additional information to be included in SWPCPs. In order to effectively administer the permit, the regulatory authority should have access to the most current and up-to-date information possible. Even if they aren't posted for public comment or "approved", dischargers should be required to submit revised SWPCPs as a part of the permit renewal process.	See above response.
394	32	A.8.The language in this section is vague. As written, loose interpretations could result in a facility constantly revising and submitting the SWPCP, and then waiting for "acceptance" while the site may be held up by the review. This could be quite problematic in certain situations. In addition, it does not make sense to require a revision be approved prior to a change date for a change in operation that may be immediate, and out of a site manager's control, but has to wait for "approval" to mitigate for the impact.	All reference of plan submittal prior to planned change date has been removed from the final permit. The permit is clear that facilities may need to revise their SWPCP based on their own monthly inspections and Tier I investigations or after DEQ or the agent conducts an inspection. The plan revision should come after discovery of a problem during an inspection.
395	33	The 1200-Z Permit Evaluation and Overview and draft permit specify several revisions that will need to be made to all SWPCPs, but they do not address when such revisions are required to be completed. In the absence of a specified completion date, the default date would be assumed as the effective date of the permit, giving facilities only 30 days from the planned issuance date to complete the necessary revisions in order to be compliant with permit requirements. ALG requests that the final permit specifies a completion date for SWPCP required revisions that is at least 60 days after the effective date of the permit. This would allow facilities a more reasonable timeline to review final permit requirements and make any necessary changes to their SWPCPs.	Updated SWPCPs must be submitted to DEQ or agent by December 29, 2017, unless a later date is approved in writing by DEQ or agent. The timeframe for submittal has extended from the first draft of the permit.
396	33	Schedule A, 7, Required SWPCP elements: Item 7.c.v requires submittal of detailed operation and maintenance plans as part of the SWPCP. These documents are typically produced by the engineer or firm providing the treatment system and need not be subject to review as part of the SWPCP approval process. Instead of incorporating these documents into the SWPCP, they should be maintained on-site, and subject to production at	The final permit does require operation and maintenance plans for all active and passive treatment systems. When these facilities install treatment as part of Tier II corrective action or as changes in control measures under the SWPCP revision the SWPCP must include: "Include an operation and maintenance plan for active treatment systems, such as electro-coagulation, chemical flocculation, or ion-exchange. The O&M plan must include, as

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		the request of DEQ or the agent. Did not make this precise change. O & M plan is now only required for active treatment. This is required as part of the Tier II plan and is included in the SWPCP.	appropriate to the type of treatment system, items such as system schematic, manufacturer's maintenance/operation specifications, chemical use, treatment volumes and a monitoring or inspection plan and frequency. For passive treatment and low impact development control measures, include routine maintenance standards. Any operation and maintenance plans must be included in the SWPCP.
397	36	It is ORRA's understanding that DEQ does not intend to require the submittal and approval of a permittee's Stormwater Pollution Control Plan (SWPCP) at the time renewed permit coverage is issued. However, it is likely that most permittees will need to update their SWPCPs in order to comply with the requirements outlined in Schedule A.7 of the Permit. Therefore, according to the requirements of Schedule A.6.e, a permittee will only have 30 calendar days to make this required update. This is an unreasonable expectation, especially for companies who have more than one permitted facility. ORRA requests that DEQ provide 180 days for any SWPCP changes required by the renewed Permit.	Updated SWPCPs must be submitted to DEQ or agent by December 29, 2017, unless a later date is approved in writing by DEQ or agent.
398	36	Sections 6 and 7 clearly state when a permittee is required to update or amend their SWPCP. ORRA requests that DEQ's ability to require a permit registrant to revise their SWPCP "at any time" be removed, and replaced with language specifying DEQ's ability to require a revision of the SWPCP due to a deficiency, based on conditions specified in sections 6 and 7 of the permit.	DEQ did not incorporate this request.
Table 1			
399	10	We support the inclusion of facilities previously covered by the 1200-COLS permit. Holding all facilities to the same standards helps to address our concerns regarding recontamination of the PHSS post- cleanup, as well as concerns regarding contaminant loading to the Columbia River.	DEQ agrees with this comment and our intent is for the 1200-COLS permit to no longer be a separate general permit and all registrants under a 1200-COLS will be renewed on the expanded 1200-Z.
400	18	Table 1: Sources covered Amend to include the 7500 series of automotive repair related firms, in particular SIC 7538, 7533, 7532, 7537, and 7539. DEQ has noted that it has the authority to include any type of commerce with a high potential to cause water quality degradation. Gresham inspection staff have observed that automotive related businesses are commonly storing metals, waste materials, discarded parts, engines, tires, etc. outside without appropriate	DEQ declined to include 7500 SIC code series.

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		best management practices that are commonly available and easily implementable. The aggregate of unregulated automotive related businesses represents a significant additional uncontrolled pollution source in urban areas.	
401	31	2. Table 1 (page 3) – Category 24 Excluding 2491 – This exemption should only be for wood preservation using chemical methods. Kiln drying does not have the potential to release pollutants in such a way that would warrant an individual permit.	The final permit no longer excludes 2491 – wood preserving. Specific operational details will be analyzed during permit application review and will be posted to 30 day public comment period to allow for interested parties to review application materials.
402	31	4. Table 1 (page 3) – Category 5171 – “...sold via retail method”. There should be additional language indicating that the exemption only applies if 100% of sales are generated by selling via retail method directly to the end user.	DEQ declined to make this clarification.
Table 2			
403	11	Table 2, Additional Industrial Activities Covered: The new permit would require facilities to obtain coverage for activities that have not traditionally been covered under the Clean Water and EPA’s MSGP. The list of additional industrial activities are stated too broadly. If DEQ seeks to cover additional industrial activities, DEQ should identify those activities by specific SIC codes.	The industrial activities listed in Table 2 are within the definition of industrial activities in 40 C.F.R. § 122.26(b)(14). 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. Table 2 only applies to discharges to these two sediment and water quality impaired waterways.
404	18	Further, DEQ has acknowledged the potential for used tires to contribute to metal loading from a business. Given that systems exist for the reclamation and disposal of tires, adding a requirement within the permit to limit the uncovered stockpiling of used tires to 10 tires is not only a reasonable requirement, but also much more protective of Oregon’s waters.	Currently, Table 2 only applies to discharges to the Columbia Slough and Portland Harbor. Stockpiling of tires is not known to occur at sites discharging to these waterways. However, if during implementation of the permit, DEQ finds tire stockpiling and relevant data is available to evaluate pollutant discharges as a result of this activity, DEQ will consider regulating the activity during the next permit renewal cycle.
405	27	Permit Coverage and Exclusion from Coverage - New Application for Permit Coverage Requirements (pages 5- 6): In condition 2.a.ii, an existing facility with stormwater discharges associated with industrial activities identified in Table 1 or Table 2 and operating without coverage under any NPDES permit for those discharges must "immediately" submit a complete application to DEQ or agent, unless a later date is approved.	DEQ, in coordination with DEQ’s Agent, the City of Portland, has developed a notification letter for affected facilities, which includes reasonable timeframes for requesting technical assistance, preparing No Exposure Certifications or preparing application materials.

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		<p>This condition puts applicants submitting for industrial activities identified in Table 2 immediately out of compliance because it requires facilities to have an application ready the moment the new permit is issued.</p> <p>Potential applicants that may be covered under Table 2 will not know if they would be required to have permit coverage, or what they will be required to comply with, until they have seen the final permit conditions. Facilities need time to prepare Stormwater Pollution Control Plans and obtain land use compatibility forms from local agencies.</p> <p>DEQ needs to identify a reasonable timeframe for preparing a complete application. Recommendation: DEQ should allow some reasonable amount of time, for example 120 days, for a Table 2 facility to submit a complete application or obtain approval from DEQ or agent for a later date.</p>	
406	5, 27	<p>The Table 2 nonindustrial Portland Harbor facilities are not clearly defined, and the permit evaluation report does not provide sufficient justification for requiring these facilities to obtain an NPDES permit for their stormwater discharges. (p. 4).</p> <p>The proposed permit evaluation report does not explain why these specific types of nonindustrial facilities must obtain an NPDES permit or, in the case of the Columbia Slough, why DEQ proposes to continue requiring these facilities to obtain permit coverage. For discharges to the Portland Harbor the requirement to cover "Any former activity that resulted in significant materials (as defined in Schedule D) remaining on site" is vague and could include benign materials resulting from non-industrial activities that are not significant contributors of pollutants. The definition in Schedule D, from EPA's regulations, is only intended to apply to industrial activities. In any case, the requirement is confusing because it is either too broad (if it is intended to cover non-industrial activities) or redundant (if it is intended to cover industrial activities) because such facilities are already included in EPA's definition of industrial activities and already implicitly included in Table 1. DEQ should explain its regulatory objective, and cite evidence for the (apparent) determination that these particular categories will contribute to a water quality standards violation or are otherwise significant contributors of pollutants.</p> <p>In Table 2, under the heading: "Discharges to Portland Harbor," strike: "Any former activity that resulted in significant materials (as defined in</p>	<p>The intention of Table 2 is to require permits for facilities in Portland Harbor and the Columbia Slough that have stormwater discharges exposed to industrial activities, as defined in 40 C.F.R. § 122.26(b)(14). Although these sites may not have an SIC code listed in Table 1, these activities have been shown to contain pollutants of concern for the sediment contamination in these water bodies. The Table 2 list of activities requiring permit coverage when exposures to stormwater are determined has been working well in the Columbia Slough drainage for several permit cycles.</p>

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		Schedule D) remaining on site."	
407	34	<p>Table 2 ("Additional Industrial Activities Covered"): We recommend that DEQ add to the column of Discharges to Portland Harbor the waste handling language that is already listed for Discharges to Columbia Slough.</p> <p>Table 2 and Schedule A.7.b: Schedule A. I.a.ix of the proposed permit includes a new requirement to "ensure that known or discovered contaminated soil or significant materials from previous operations is removed or otherwise not exposed." The DEQ 1200-Z Permit Evaluation and Overview Report states that this new requirement was added to address contaminants that may be discovered on sites and are not from current operations but may be impacting otherwise well managed current operations, and to improve cross-program coordination with the DEQ clean-up program and prevent stormwater from exposed contaminated soils. BES appreciates this addition and believes that it will facilitate coordination between the DEQ's clean-up and stormwater programs. BES recommends that this concept be further expanded in the proposed permit as follows:</p> <p>Table 2: Add an additional category under Columbia Slough reading "Any former activity that resulted in significant materials (as defined in Schedule D) remaining on-site." This category is already listed in Table 2 for Portland Harbor.</p>	This comment was incorporated into the final permit.
408	34	Table 2 -Additional Industrial Activities Covered: BES appreciates the modifications made to Table 2 in the proposed permit. BES agrees with the DEQ 1200Z Permit Evaluation Report when it states that the inclusion of these activities in the permit will help capture additional industrial sources that might not be covered under the existing SIC code triggers to prevent their contributions to impairments or recontamination of sediment in Portland Harbor and Columbia Slough.	DEQ acknowledges this comment.
409	43	As indicated by Table 2 of the draft permit, DEQ intends to require that several types of previously-unpermitted industries in Portland Harbor obtain 1200-Z permits. Given that the CERCLA Superfund process is well underway in Portland Harbor, this requirement is redundant and unnecessary and could potentially add confusion. Portland Harbor source	DEQ disagrees with the comment. Upland source control for Portland Harbor proceeds under DEQ Cleanup and Water Quality authorities, as specified in Oregon Revised Statutes and Oregon Administrative Rules. In addition, EPA interprets the federal CERCLA authorities to require implementation of a comprehensive stormwater strategy, inclusive of

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		control under CERCLA is sufficient, and source control activities address stormwater discharges with criteria that are far more stringent than the NPDES benchmarks. Implementation of source control measures will address legacy contamination; industries that for decades have not been considered sources of water quality contamination do not need regulation under the Clean Water Act.	controls and monitoring for on-going as well as legacy sources that could contribute to recontamination following completion of remediation of Portland Harbor. As part of this comprehensive strategy, DEQ proposed to use the existing 1200-Z permit structure, require registration of additional sites and lower the TSS benchmark. This approach supports completed source control work at up to 90 sites that are already covered by the permit for on-going discharges to Portland Harbor. The addition of sites with similar activities as those already covered increases equitability and improves recontamination prevention.
Technologically Achievable			
410	28	I'm going to act on the technical feasibility part previous permit you had an industrial advisory committee that was formed and when the copper number came out pretty low using your as I say Quasi risk assessment the panel urged that you look at the use of past BMP as a way to feasibility as passive BMPs in their ability to treat down and give a concentration levels and then you reset the copper level to 20 when it was at 4 to begin with. The ideas the panel brought forth was that if you go with a number like 4 you're going to push everyone into active treatment systems, chemical usage, and Energy usage you know all those kinds of issues I guess maybe the bottom line is consider feasibility of passive controls and the sustainability of what you are going to ask people to do in terms of other potential impact so I would urge that DEQ look at that as well.	The copper value did not change. Pertaining to lowered lead and zinc levels, the purpose of technologically achievable analysis is to identify an achievable and justifiable benchmark at a reasonable cost for Oregon industrial facilities. The methodology assesses BMP study data and then compares it to Oregon DMR data to determine what are reasonable and attainable stormwater discharge concentrations for industrial stormwater permit registrants.
Technologically Feasible			
411	15	Copper, Lead, and Zinc Based on the preceding analysis it abundantly clear the approach to regulating copper pursued by DEQ is patently unlawful. As noted above, for every permit DEQ must first determine what technology based limits it must impose on each discharger. After that analysis is complete, DEQ must then determine if any more stringent limitations are necessary to ensure compliance with water quality standards. Based on the answers to those two questions, DEQ must set the permit terms to reflect the more protective of the two suites of controls. Here, DEQ turns this fundamental principle on its head. Specifically, the draft permit is proposed copper limits appear to be based on the weaker of the two potential standards.	DEQ disagrees with this comment. By setting the benchmark at an attainable level, DEQ encourages adoption of appropriate and effective pollution control technologies that protect, or where necessary, improve in water quality. Also, a recent evaluation of water quality data indicated that Oregon waters meet water quality criteria for copper. Therefore, it is reasonable to expect that the more stringent requirements of the permit will be protective of water quality.

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412	15	<p>Second, as discussed above, DEQ has the duty to ensure that the permittees will use the appropriate technology to reduce or eliminate the discharge of pollutants from these facilities. Here, DEQ has done the analysis and reduced this technology- based requirement to a numeric limit, 0.020 mg/L. Again, the imposition of the appropriate technology based effluent limits is of primary importance under the NPDES permitting program. It would be wholly inconsistent with the statutory and regulatory scheme to fail to impose the necessary technology based limits. Thus, where DEQ has defined the appropriate limits, it must include those limits in the permit.</p>	<p>DEQ disagrees with this comment. DEQ has developed a permit consistent with State water quality goals. Facilities are required to ensure that stormwater discharge does not cause or contribute to an exceedance of instream water quality standards in OAR 340-041, including the narrative standards and aquatic life and human health criteria. The benchmark values in the permit for the zinc and lead are based on a water quality model and a 10% exceedance rate of the acute aquatic life criteria.</p>
413	15	<p>Here, DEQ appears to search for a technology that all facilities could implement and uses that as the basis for the technology-based limit. Specifically, DEQ’s analysis targeted ensuring that 75% of the facilities could meet the limit. This clearly misstates the goal of the BAT analysis. In addition, DEQ limited its analysis to only “media filters” as the control technology assessed. In doing so DEQ ignored the many other treatment options, including but not limited to biofilters, bioretention, detention basins, porous pavement, retention ponds, wetland basins, and wetland basin/retention pond, all of which have been summarized in the International Stormwater BMP Database. Moreover, DEQ ignores its own analysis demonstrating that on average the permitted facilities are discharging below 0.010 mg/L of copper. This demonstrates that the available technology can support at least this level of control.</p>	<p>DEQ did not target "ensuring that 75% of the facilities could meet the limit" (benchmark). Rather, "the purpose of the technologically achievable analysis is to identify an achievable and justifiable benchmark that can be reached at a reasonable cost by Oregon industrial facilities."</p> <p>Using the 75% effluent value was one of many aspects of DEQ's approach to achieving this purpose. Media filters are typically the most effective (passive) means of reducing concentrations. Therefore, DEQ focused on this BMP.</p> <p>To assess achievability, it is necessary to have both before and after treatment data. Effluent data alone do not demonstrate the ability to meet a target level. For example, a facility may have few sources of copper, or very little that contributes to copper, and therefore not need to treat for copper. A facility that does not need to treat for copper does not demonstrate the effectiveness of a treatment technology.</p>
Temperature			
414	15	<p>Similarly, several studies document that stormwater discharges contribute to high temperatures in receiving waterways. See U.S. General Accounting Office, Water Quality: Better Data and Evaluation of Urban Runoff Programs Needed To Assess Effectiveness Report to Congress at 19 (June 2001). The permit, however, does not establish effluent limitations (or even benchmarks) for temperature. This is impermissible, particularly since many of Oregon’s water quality-limited waters suffer impairment due to high temperatures. DEQ must include temperature effluent limitations in the permit to comply with the CWA.</p>	<p>DEQ’s 1200-Z permit is consistent with EPA’s MGSP. In addition when evaluating this topic during the development of temperature TMDLs throughout Oregon, DEQ has determined that stormwater discharges likely do not contribute to exceedances of the temperature standard. That said, if an analysis associated with a specific TMDL concludes that industrial stormwater discharges in a given area require additional data or actions, DEQ will make the additional requirements at that time.</p>

No.	Commenter ID	Comment	DEQ Response
Termination			
415	5	<p>A no exposure certification should not be required to terminate permit coverage. (§ D.5): The proposed permit would include a new permit coverage termination condition, which would require the submission of a no exposure certification to terminate coverage. A no exposure certification, which requires periodic recertification, is not appropriate to terminate permit coverage because it assumes ongoing industrial activities, whereas termination (as opposed to a transfer of the permit) is the end of industrial activities.</p>	<p>DEQ did not retain the requirement for submittal of a no exposure certification to terminate coverage.</p>
416	27	<p>Terminating Permit Coverage (page 35): Termination implies the end of industrial activities. A no-exposure certification is for ongoing industrial activities. It is not appropriate if industrial activities are no longer conducted on the site.</p> <p>Recommendation: Delete the no-exposure requirements and require registrants to resolve all outstanding compliance issues and complete And submit a Notice of Termination.</p>	<p>See above response.</p>
417	34	<p>Schedule D.5.a.i: As proposed, this paragraph appears to require a registrant to submit both a Notice of Termination and a "No Exposure" Certification ("NEC") even if the registrant is seeking to terminate permit coverage because it is going out of business or moving to a new location-situations in which an NEC should not be required. BES recommends that this section be revised to only include requirements for terminating a permit, not also requirements for obtaining an NEC (which are already addressed on the NEC form). If Schedule D.5.a.i is revised in this way, then Schedule D.5.b.xii should be deleted, since that paragraph only appropriately applies to those registrants seeking an NEC (as opposed to registrants seeking to terminate permit coverage because they are going out of business or moving to a new location). If, however, DEQ declines to revise Schedule D.5.a.i so that it does not address requirements for obtaining an NEC, then DEQ should revise Schedule D.5.b.xii to make it clear that it does not apply to a registrant when the registrant is seeking termination of permit coverage because it is going out of business or moving to a new location; Schedule D.5.b.xii does not align with a registrant in those instances.</p>	<p>See above response.</p>

No.	Commenter ID	Comment	DEQ Response
Tier I Corrective Action			
418	5, 16	Pollutant source tracing should not be a required element of a Tier I corrective action because it often cannot be completed within the time required for a Tier I corrective action. (§ A.10.a.i): In most instances, it will not be possible to conduct pollutant source tracing within the 30 days allowed for a Tier I corrective action investigation.	<p>DEQ acknowledges that source tracing investigations may encompass a range of actions with varying degrees of effort. While tracing and controlling obvious sources may be possible immediately, DEQ agrees with the comment that waiting for seasonal rains to accomplish sampling may not be possible within the Tier I time frame. Because Tier I corrective actions represent an opportunity to complete or begin source tracing and may allow sites to avoid the need for subsequent Tier II corrective actions, DEQ retained source tracing as an option within Tier I. However, in consideration of the comment, DEQ included the wording of “conducting, commencing or planning for any needed source tracing activities” in the permit condition.</p> <p>In addition, Tier I includes the allowance if the timeframe is infeasible to complete. Permit registrants should add the reasoning to the Tier I report and corrective action must be completed as soon as practicable.</p>
419	5	Removing contaminated soil or significant materials should not be a required element of a Tier I corrective action. (§ A.10.a.i)	DEQ limited residual materials from past operations throughout the permit to “significant materials” as defined in Schedule D. DEQ also clarified throughout the permit that exposure to stormwater of these legacy significant materials is required for regulation under the stormwater permit.
420	5, 37	Permit registrants that obtain a Tier II mass reduction waiver for a pollutant and outfall should not be subject to the Tier I corrective action requirement for that pollutant and outfall combination.	Discharges which exceed benchmarks or impairment reference concentrations must perform Tier I if monitoring results exceed values, even if mass loading has been reduced.
421	5, 37	The requirement to perform a Tier I corrective action based on the results of a monthly visual inspection should be removed from the proposed permit.	DEQ does not agree with this recommendation.
422	8	<p>Schedule A.11.i (Tier II Corrective Action Response Based on Second Year Geometric Mean Benchmark Evaluation): Requirement that "All approved Tier II corrective action responses and mass reduction actions must be applied to all substantially similar discharge points" will be especially onerous to large permitted facilities. A one-size fits all approach may not be feasible for all drainage areas.</p> <p>Additional control measures may already be in place to reduce pollutants</p>	The final permit made this important distinction. The final permit now reads: “Properly apply and size approved Tier II corrective action responses and mass reduction measures to all substantially similar discharge points.”

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		<p>within the different drainage basins. The City requests the opportunity to request from the DEQ an additional 30 days for large permitted facilities to complete an evaluation of all substantially similar discharge points and to provide written justification to the DEQ to substantiate the following options: Corrective actions are not needed at all substantially similar discharge points based on existing site controls; or Alternative corrective actions are proposed based on existing land use, drainage patterns, and site conditions.</p>	
423	12	<p>Schedule A.10.b: This section requires corrective action implementation within 30 days, but does not specify when the 30 day timeframe begins. The language should be revised to indicate that the corrective action be implemented upon completion of the investigation and Tier I Report or as soon as practicable.</p>	<p>The investigation is required once a facility receives stormwater monitoring results. Tier I corrective action response Sch. 10.a. states: "If stormwater monitoring results exceed....," this is the triggering event for which the site specific corrective action must be implemented before the next storm event or no later than 30 calendar days.</p>
424	16	<p>Schedule A, 10.b. It is unclear when the Corrective Action implementation deadline is measured from (i.e., after receiving monitoring results, or following submittal of the Tier I Corrective Action report). Potential subjective interpretation of the phrase "if possible" by DEQ or agent for determining a permit violation if implementation of Tier I Corrective Action occurs after the first storm event but within 30 days after receiving results/ submitting Tier I Corrective Action report.</p>	<p>The investigation is required once a facility receives stormwater monitoring results. Tier I corrective action response Sch. 10.a. states: "If stormwater monitoring results exceed....," this is the triggering event for which the site specific corrective action must be implemented before the next storm event or no later than 30 calendar days.</p>
425	21	<p>Schedule A, 9 (Benchmarks): The application of the proposed benchmarks for lead and zinc will result in a significant impact on DEQ and the District as an agent of DEQ. The proposed zinc benchmark is set at a level lower than one would expect to find in stormwater draining all land uses other than open, undeveloped land. (See Analysis of Oregon Urban Runoff Water Quality Monitoring Data Collected from 1990 to 1996, by Oregon Association of Clean Water Agencies, June 1997, finding the following mean zinc concentrations in stormwater draining the associated land use: in-pipe industrial 0.629 mg/L, instream industrial 0.274 mg/L, transportation 0.236 mg/L, commercial 0.168 mg/L, residential 0.108 mg/L and open 0.025 mg/L.) It is thus not surprising that, based on past monitoring results, the District estimates that 80 to 90 percent of industrial facilities in the District will be subject to Tier II requirements due to exceedance of the zinc benchmark. These facilities will need to respond with a Tier II report (or waiver request) and a revised SWPCP. The Tier II report must include a proposal for active or passive treatment, the</p>	<p>DEQ acknowledges the comment, DEQ re-calculated the benchmarks and re-posted the entire permit and permit evaluation report for an additional 35-day public comment period which ended on June 19, 2017.</p>

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		rationale for the selection and projected reduction in pollutants. Any waiver request must include supporting data and analyses. The District, acting as the agent, must evaluate and accept or deny these materials within 60 days of receipt. Presumably, a similar level of effort will be required by other agents or DEQ.	
426	21	Schedule A, 9 (Benchmarks): Clearly, permit registrants should implement controls needed to ensure that water quality criteria are achieved. It is not clear from the PEO that the proposed benchmarks are necessary to provide the level of control to reasonably ensure water quality criteria are met. It would be helpful if DEQ would develop an appropriate, technology- based level for a benchmark similar to what was done for copper. Under situations where the technology- based controls can meet water quality criteria and are therefore more stringent, they could be the effective benchmarks and allow continued improvements over subsequent permit terms as technology and understanding improve.	DEQ modified the Tier I corrective action in the permit. All benchmark, impairment and sector-specific monitoring exceedance require investigation and written report. The report must also address effluent from treatment measures or mass-reduction control measures. There is no longer a separate Tier II exceedance report.
427	26	Condition A.10.b: The time frame of corrective action implementation "before the next storm event if possible or within 30 calendar days, whichever comes first." is not reasonable as the next storm may not come within 30 calendar days or to implement within 30 calendar days if a product needs to be ordered. The condition goes on to say that if it is infeasible to complete the action within the time frame to document reasoning. There is no definition of infeasible in the permit	Infeasible conditions which may prevent a facility from completing corrective actions before the next storm event or no later than 30 calendar days, is specific to each site and will be evaluated as such. This is not an unreasonable timeframe and must be followed to be in compliance with the permit.
428	30	Schedule B, 9: Data exceeding benchmarks - Incorporate EPA's MSGP regarding a response to benchmark exceedances. Also, clearly define expectations of the following statement in definitions or with additional guidance or fact sheets; "technologically available and economically practicable in light of best industry practice." Various interpretations from DEQ and DEQ agents of this statement have created confusion amongst current permittees. WWC strongly suggest DEQ provide additional guidance about monitoring and use of data for additional monitoring similar to guidance provided in Washington and other state programs	DEQ will provide a link to Washington Ecology's and EPA's monitoring guidance on our website under technical assistance. DEQ will take in to account the other concerns in this comment as we draft and revise documents.
429	31	Table 6 (page 30) – The statement instructing a business not to submit a Tier I report unless requested should be removed. In order to effectively administer the permit and provide technical assistance, the regulatory authority should have access to as much information about a site as	DEQ disagrees with this comment. Facilities submit their analytical reports to DEQ or the Agents on an annual basis. If DEQ or the Agent would like to review laboratory results before they are submitted at the end of the monitoring year, they can request that information on a case by case basis.

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		possible.	DEQ and the agents review Tier I reports during inspections and have the authority to request them at any time.
430	31	General Comment – In order to ensure that dischargers are properly addressing benchmark exceedances, Tier I reports should be submitted with the annual DMR.	DEQ altered the Tier I reporting submittal last permit term. During the 2006 1200-COLS and 2007 1200-Z, SWPCP revisions were required in the form of an “Action Plan,” equivalent to Tier I report, which was an addendum to the SWPCP. DEQ determined this was not an effective method to track compliance or SWPCP revisions. During the 2011/2012 stormwater permits, facilities were required to submit SWPCP revisions if changes were made to control measures rather than identifying SWPCP revisions in the corrective “Action Plan.” Tier I reports were then retained on-site unless DEQ or its agent requested submittal. DEQ evaluates Tier I reports at the time of inspection when compliance can be assessed in conjunction with a thorough site review. The permit retains the authority for DEQ or its agent to request the facility submit Tier I reports at any time or prior to an inspection. At any time the public or private citizens may request Tier I reports under public records law. Budget and resource constraints requires DEQ to streamline reporting and evaluate compliance at the time of inspections.
431	31	The second aspect of particular concern is that although efforts to reduce the amount of paperwork the DEQ receives and instead devote more resources to site inspections, not requiring Tier I reports or all modifications of stormwater pollution control plans to be submitted inhibits the regulatory authority to have a clear and current understanding of a dischargers site conditions and compliance status.	DEQ or its agent may request Tier I reports at any time.
432	31	...not requiring Tier I reports or all modifications of stormwater pollution control plans to be submitted inhibits the regulatory authority to have a clear and current understanding of a dischargers site conditions and compliance status.	DEQ disagrees with this comment. Facilities submit their analytical reports to DEQ or the agents on an annual basis. If DEQ or the agent would like to review laboratory results before they are submitted at the end of the monitoring year, they can request that information on a case by case basis.
433	32	A.10.b. Most of the time in Western Oregon, the next storm even will come within minutes. This will be impossible to comply with. Define "in feasible" from a technical perspective as this will be open to interpretation and should be made clear from a technical point of view.	Schedule a.10.b reads: b., “Implement corrective actions before the next storm event, if possible, or no later than 30 calendar days after receiving the monitoring results, whichever comes first. If permit registrant fails to complete the corrective action within this time frame, the reasoning should be documented in the Tier 1 Report, and corrective actions must be completed as soon as practicable.”

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			This condition gives flexibility around timing as long as the permit registrant expressly includes reasoning and a new timeframe in the Tier I report.
434	32	A.10.a.i.This requirement can create undue burden for a facility operating most places in Oregon. Most sites will have contaminated soils present, but covered with pavement. To require a site remove soil without adequate guidance for how a site will determine or eliminate "contaminated soils" as being a cause of the problem. This could result in expensive clean-up that may have no impact on stormwater quality on the site, and gives DEQ and DEQ agents an opportunity to enforce on "contaminated soils" even if it can't be determined that a benchmark exceedance could be specifically traced to contaminated soils.	DEQ acknowledges that source tracing investigations may encompass a range of actions with varying degrees of effort. While tracing and controlling obvious sources may be possible immediately, DEQ agrees with the comment that waiting for seasonal rains to accomplish sampling may not be possible within the Tier I time frame. Because Tier I corrective actions represent an opportunity to complete or begin source tracing and may allow sites to avoid the need for subsequent Tier II corrective actions, DEQ retained source tracing as an option within Tier I. However, in consideration of the comment, DEQ included the wording of "conducting, commencing or planning for any needed source tracing activities" in the permit condition.
435	32	A.10.a.ii.The previous language was adequate. Doesn't the Tier I report cover what the schedule for implementation is, and already includes the requirement to revise the SWPCP if necessary? The additional language seems to require an implementation schedule be included in the SWPCP that is already required in the report. Provide some sort of guidance for what to do in the event that the SWPCP revision impacts an approved Tier II plan. Can the revision be included in the SWPCP, or does the SWPCP revision now have to include a new submittal of the Tier II plan and be re-stamped and evaluated by an engineer? This could become costly to a facility with existing tier II treatment, and is not clear how to administrate in the permit.	DEQ acknowledges this comment and declines to make the change. Tier I reports are independent of SWPCP revisions. The SWPCP revisions requirements have not changed from the 2011/2012 permits.
436	34	Schedule A.10: BES suggests adding language to the heading of section 10 of Schedule A and to section 10.a. to make it clear that the section applies to Tier I reports triggered by visual observations showing evidence of stormwater pollution. Schedule B.7.f.viii now explicitly requires a Tier I report in these cases and therefore the part of the permit governing Tier I requirements (Schedule A.10) should speak to Tier I reports required due to visual observations showing evidence of stormwater pollution in addition to Tier I reports required because of impairment pollutant or benchmark exceedances.	DEQ agrees and has made this change.

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437	15	<p>DEQ shirks its duty to oversee permit compliance by not requiring that permittees submit Tier 1 Reports to the agency. DEQ must include monitoring and reporting requirements sufficient to ensure compliance with the permit's limitations. 40 C.F.R. § 122.44(i)(1). Failure to require Tier 1 Report submittal undercuts DEQ's ability to triage permit compliance review. Furthermore, failure to require Tier 1 Report submittal undercuts the public's right to enforce the Clean Water Act when federal and state agencies, for whatever reason, fail to enforce the law. DEQ's Permit Evaluation Report notes that DEQ can request a Tier 1 Report. This is not sufficient to meet the requirements of 40 C.F.R. § 122.44(i)(1). For example, how will DEQ know when to request a Tier 1 Report given the agency's decision to require annual DMR reporting? Inspections occur infrequently and cannot substitute for compliance reporting by the permittee.</p> <p>The lack of Tier 1 Report reporting requirements, failure to require quarterly DMR reporting, and lack of SWPCP review demonstrates DEQ's decision to craft a permit that fits the Oregon Legislature's decision to fund DEQ at inadequate levels, not compliance with federal and state law. Commenters urge DEQ to revise the permit to require that permittee's submit a Tier 1 Report within ten days of completing the report. If DEQ staff are not available to review those reports, at least the public will have access to the reports to protect the rivers they swim in, obtain water from, or catch fish in.</p> <p>If the agency chooses to ignore Commenters input on Tier 1 Report reporting, the agency should explain the extent to which it is attempting to undercut the public's right to review important information on permit compliance. Administrative burden alone is not a sufficient answer in light of DEQ's historic failure to utilize modern technology for permit tracking. As a practical matter, industrial facilities benefit by keeping the public in the dark on whether they are completing Tier 1 Reports and, in so doing, meeting the permit's requirements. And, as a practical matter, water quality suffers as a result of cutting off public oversight of the NPDES industrial stormwater program. See e.g. National Research Council, Urban Stormwater Management in the United States, at 183, National Academies Press (2009) (explaining that industrial facilities are significant sources of heavy metals and organic toxics and noting that sampling drawn from EPA's MS4 monitoring and input into the National</p>	<p>DEQ altered the Tier I reporting submittal last permit term. During the 2006 1200-COLS and 2007 1200-Z, SWPCP revisions were required in the form of an "Action Plan," equivalent to Tier I report, which was an addendum to the SWPCP. DEQ determined this was not an effective method to track compliance or SWPCP revisions. During the 2011/2012 stormwater permits, facilities were required to submit SWPCP revisions if changes were made to control measures rather than identifying SWPCP revisions in the corrective "Action Plan." Tier I reports were then retained on-site unless DEQ or its agent requested submittal. DEQ evaluates Tier I reports at the time of inspection when compliance can be assessed in conjunction with a thorough site review. The permit retains the authority for DEQ or its agent to request the facility submit Tier I reports at any time or prior to an inspection. At any time the public or private citizens may request Tier I reports under public records law. The reality of delivering regulatory services with environmental results under budget and resource constraints requires DEQ to streamline reporting and evaluate compliance at the time of inspections.</p> <p>Effluent guidelines are not always established for every pollutant present in a point source discharge. In many instances, EPA promulgates effluent guidelines for an indicator pollutant. Industrial facilities that comply with the effluent guidelines for the indicator pollutant will also control other pollutants (e.g., pollutants with a similar chemical structure). For example, EPA may choose to regulate only one of several metals present in the effluent from an industrial category, and compliance with the effluent guidelines will ensure that similar metals present in the discharge are adequately controlled.</p> <p>It is infeasible under a general permit which covers 29 industrial sectors to establish benchmarks or numeric effluent limits for all pollutants in the industrial discharge for each facility. Therefore, based on the many studies, such as the National Urban Runoff Program study and 2008 National Research Council Report, Urban Stormwater Management in the United States, total zinc, total copper and total lead prove to be the three heavy metals most commonly measured in stormwater and therefore are sufficient indicator pollutants.</p>

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		Stormwater Quality Database demonstrated the absolute highest metal concentrations in discharges were observed in industrial areas, and the median metal concentrations in industrial areas “were about three times the median concentrations observed in open-space and residential areas.”).	
438	48	We understand that the decision to move away from the required submittal of Action Plans within thirty days of receiving laboratory reports that identify benchmark exceedances was made for two main reasons. The first was to place the responsibility of taking a substantial, active role in reducing the pollutant concentration in the hands of the regulated business by introducing Tier II requirements, and the second was to reduce the volume of paperwork DEQ has to process. However, without a regular review of this paperwork, there is no guarantee that benchmark exceedances are being addressed. This concern is compounded by DEQ's goal to inspect permitted businesses at least once every other permit cycle (once every ten years). By failing to complete Tier I plans, additional pollutants are being released to surface waters. ACWA suggests ensuring Tier I Reports are completed by requiring them to be submitted with the annual discharge monitoring report.	DEQ altered the Tier I reporting submittal last permit term. During the 2006 1200-COLS and 2007 1200-Z, SWPCP revisions were required in the form of an “Action Plan,” equivalent to Tier I report, which was an addendum to the SWPCP. DEQ determined this was not an effective method to track compliance or SWPCP revisions. During the 2011/2012 stormwater permits, facilities were required to SWPCP revisions if changes were made to control measures rather than identifying SWPCP revisions in the corrective “Action Plan.” Tier I reports were then retained on-site unless DEQ or its agent requested submittal. DEQ evaluates Tier I reports at the time of inspection when compliance can be assessed in conjunction with a thorough site review. The permit retains the authority for DEQ or its agent to request the facility submit Tier I reports at any time or prior to an inspection. At any time the public or private citizens may request Tier I reports under public records law. The reality of delivering regulatory services with environmental results under budget and resource constraints requires DEQ to streamline reporting and evaluate compliance at the time of inspections.
439	51	It is difficult to quantify how much each potential source is actually contributing, particularly when a major potential source is offsite vehicle traffic on I-5 and the amount of dust reaching Selmet is variable based on weather conditions.	DEQ acknowledges this comment. The permit registrant is responsible for run-on or dust deposition from outside sources coming onto the industrial footprint.
440	51	Another major issue is that Selmet and other companies are reacting to laboratory analytical results above the benchmarks after the fact, when there were no visual indications beforehand or known specific activities to account for the results. Subsequent results below the benchmarks could not be conclusively contributed to specific corrective actions.	DEQ’s Tier I corrective action is an opportunity for the site to investigate the cause of elevated pollutant sources. If a facility has developed a robust plan and minimized exposure from industrial activity or unsealed sources of metals, benchmark sampling should be below the benchmarks in most cases. Some facilities may need to hire outside consultants or request DEQ or its agents to assist in identifying potential sources of pollutants, prior to triggering Tier II corrective action. The permit allows time to respond to exceedances and make modifications with low cost BMPs prior to having to install treatment.
Tier II Corrective Action - Timeline			

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441	5	For facilities that received coverage under the current general permits after July 1, 2015, the proposed permit provides that the time registered under the current permit is included in the determination of the coverage year for Tier II corrective action purposes. Many of the proposed regional discharge benchmarks, however, are much more stringent than the existing benchmarks. It would not be appropriate to give these facilities any less time to achieve such benchmarks than other facilities. (§ A.11.c.)	<p>The permit condition did not change in the final permit and will only pertain to a small number of facilities. If these facilities sampling results exceed the revised benchmarks, they must still perform Tier I corrective action response.</p> <p>DEQ suggests those facilities evaluate treatment and source control to achieve the new lowered benchmarks if at all possible.</p>
442	5	Permit registrants whose Tier II corrective action implementation deadline is on or after July 1, 2017 under the current 1200-Z permit should be exempt from Tier II requirements under the renewed 1200-Z permit. (§§ 3.c, d, A.11.c)	<p>All facilities, regardless of Tier II status are encouraged to invest in effective Tier I corrective action measures throughout their permit term.</p> <p>Permit: Permit registrants for which Tier II corrective action implementation deadline under the 1200-COLS permit that expired on September 30, 2016 or under the 1200-Z permit that expired on June 30, 2017, was after June 30, 2017, are exempt from Schedule A.11 for the parameter(s) and discharge point(s) that triggered Tier II.</p> <p>PER: This section addressed 1200-Z and 1200-COLS facilities that have yet to install their Tier II treatment or mass reduction infiltration measures. This applies to all permit registrants that exceeded the geometric mean of the benchmarks in the monitoring year 2015/2016, with installation deadline after the expiration of the current permit, June 30, 2017. The Tier II revised plan deadline for these facilities is Dec. 31, 2016, with implementation due by June 30, 2018.</p> <p>Because these facilities will only have one monitoring year to evaluate the selection, design and installation of the Tier II corrective actions, only Tier I investigation and reporting is required. DEQ will exempt this small number of facilities from additional treatment or mass reduction measures for the specific pollutant(s) that may still be exceeding the geometric mean of the benchmark.</p>
443	26	Condition 8.11. Table 6: In the Due Date Column, Second year geometric mean exceeds benchmarks row needs to have language to allow the permittee to collect two years of data following permit issuance, not permit effective date. In the event that the permit is not issued timely, the permittee may not be able to collect a full 2 years of data, which may put the facility into Tier II unnecessarily, i.e., less time to take corrective action to reduce benchmarks by the second year. Permit does not have a	A facility may collect more samples than the minimum required frequency. The monitoring variance language no longer allow for a categorically exemption to monitoring based on timing of coverage. If a facility has limited discharge events then the first year coverage data may be used in the second year geometric year evaluation.

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		Schedule C.	
444	32	This language is confusing. If corrective actions are not installed by the end of the permit term, do they continue with existing Tier II plan, or are they exempt from Tier II requirements as stated? Provide clear and concise compliance dates for Tier II in the cover letter and describe this inclusion of dates in the cover letter into the permit. Clear up the language and provide additional guidance for existing Tier II requirements, as historically these requirements have created confusion amongst permittees and DEQ staff/Agents, resulting in inconsistent administration of the Tier II requirements and compliance dates surrounding them.	If you have questions about the applicability of the permit language as Tier II for your facility, contact DEQ or your agent.
445	34	Schedule B.11, Table 6: SWPCP Revisions: BES finds that the due date as written in the right- hand column of Schedule B.11 Table 6 is confusing. BES suggests that DEQ create two sub rows within the "Due Date" column, one for revisions required due to Schedule A.8.b.iii that are due 30 days before a planned change, and another sub row for revisions that are due within 30 days of making the modification (under Schedule A.8.b.i-iii. & iv.)	DEQ acknowledges this comment and has decided to leave the table as proposed in the draft permit.
Tier II Corrective Action - Trigger			
446	5	Treatment should not be required for Tier II corrective actions if DEQ or its agent determines that the control measures in the Tier II report are sufficient to meet the goal of achieving the benchmark. (§ A.11.j.i)	The time to employ source control measures are prior to triggering Tier II. In order to keep consistency and equitable conditions during the course of several permit cycles, Tier II must install treatment controls to address the repeated benchmark exceedances.
447	5	The permit should specify a design storm for Tier II corrective actions and waivers, subject to DEQ or agent approval of any alternative design storm. (§ A.11.j.i, k.i)	DEQ has determined that the Tier II checklist is the appropriate place for this information, because many local jurisdiction have their own design storm and permit registrants are required to use whichever is most stringent.
448	5	Where Tier II corrective action and mass reduction measures apply to drainage basins served by “substantially similar” discharge points, the permit should clarify that different measures may be applied to different drainage basins, as appropriate. (§ A.11.i.)	The final permit made this important distinction. The final permit now reads: “Properly apply and size approved Tier II corrective action responses and mass reduction measures to all substantially similar discharge points.”
449	11	Schedule A, Stormwater Discharge Benchmarks, 11.j.i: Treatment should not be required for Tier II corrective actions if it is not necessary or is less effective than other controls. Operational and structural controls (such as coating a zinc roof or covering operations or equipment with a roof) may	The time to employ source control measures are prior to triggering Tier II. In order to keep consistency and equitable conditions during the course of several permit cycles, Tier II must install treatment controls to address the

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		<p>be much more effective and reliable than treatment. The permit should allow DEQ or its agent to approve such controls in lieu of treatment where it is appropriate. AOI/OBA request this section be revised as follows: “The Tier II report must include a proposal for active or passive treatment. In selecting an active or passive treatment system, a permittee may take into account what is feasible. This may include a combination of source removal control and treatment measures, with the goal of achieving the benchmark(s) in Schedule A.9 of the permit. The report must include the rationale for the selection of the control and treatment measures, the projected reduction of pollutant concentration(s) and the schedule for implementing these measures.”</p>	<p>repeated benchmark exceedances.</p> <p>The 2011/2012 permits were silent on the timing or the applicability of waivers to Tier II parameters and implemented discharge points. The final permit language applies to all Tier II corrective action implementation dates which span the 2017-2022 permit cycle.</p>
450	11	<p>Schedule A, Corrective Actions, 11.j.iii: AOI/OBA request that DEQ clarify that this section only applies to parameters for which the permittee is not currently completing corrective action under the prior permit as specified under Permit Coverage and Exclusions, 3.e. DEQ could refer back to the Permit Coverage and Exclusions, 3.e.</p>	<p>The 2011/2012 permits were silent on the timing or the applicability of waivers to Tier II parameters and implemented discharge points. The final permit language applies to all Tier II corrective action implementation dates which span the 2017-2022 permit cycle.</p>
451	11	<p>Schedule A, Corrective Actions, 11.j.iii (3) and 11.k.iv (3): The draft permit is not clear that all four consecutive samples must be collected after Tier II implementation. The current wording could be interpreted to mean inclusion of samples collected prior to Tier II implementation may be included in the geometric mean calculation. AOI/OBA request that this section be rewritten to read: “Permit registrants may request a monitoring waiver if the geometric mean of four consecutive qualifying samples is equal to or below the benchmark. All four samples must be collected after Tier II implementation is complete.”</p>	<p>DEQ acknowledges this comment and has determined that the permit is clear that all four samples must be collected after Tier II implementation is complete.</p>
452	20	<p>The sector specific benchmarks have been required to be implemented in the permit since the 2011 1200-ZN permit as a result of litigation. Under the settlement agreement with NEDC and Columbia Riverkeeper, DEQ agreed to issue new permits based on the EPA’s 2008 MSGP. The 2008 MSGP does not parse out different corrective actions based on type of benchmarks but requires corrective actions for all benchmarks. Given the complexity of the permit, consistency across the benchmarks is recommended.</p>	<p>Sector E was incorporated into the 2011/2012 permits as part of the settlement agreement with Northwest Environmental Defense Center and Columbia Riverkeeper using EPA Multi-Sector General Permit as a platform. A coalition of environmental groups filed a lawsuit challenging the EPA’s Industrial Stormwater Permit during the summer of 2015. On August 16, 2016, the EPA reached a settlement in Clean Water Act (CWA) lawsuits regarding stormwater permitting requirements that will have significant consequences to industrial stormwater dischargers throughout the U.S. The settlement obligates the EPA to take a number of actions in connection with reissuing the Industrial Stormwater MSGP in 2020.</p>

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			<p>Two of those actions will affect sector-specific benchmarks and effluent limits. 1) 1.Evaluate the effectiveness of the current benchmark monitoring provisions in the Industrial Stormwater MSGP; and 2) 3.Prioritize industry sectors for the development of numeric effluent limitations or other stormwater control measures, as well as evaluate the need for additional monitoring requirements in certain situations (e.g., discharges to impaired waterbodies).</p> <p>Due to the upcoming changes to the sector-specific conditions affecting Schedule E in the permit and the fact that the benchmarks values were calculated on ambient water quality criteria outside of Oregon, DEQ will evaluate this recommended change upon issuance of the 1200-Z in 2022.</p>
453	26	<p>Condition A.11.j.i: Our experience with this condition in the current permit (A.12.c.i) was that the DEQ interpreted this condition to mean that a facility was required to implement both treatment and control. If an outfall already had treatment in place but still required Tier 11, the facility was required to upgrade the treatment whether that action was beneficial to the Tier 11 corrective action plan or not, nor could just control be applied, it had to include treatment too. This minimized the permittee flexibility in determining the best method of meeting the benchmark. As the condition states "the goal is to achieve the benchmarks", Boise Cascade recommends that the second sentence in the condition be modified to read "This may include a combination of source controls and/or treatment measures, with the goal of achieving the benchmark(s) in Schedule A.9 of the permit". 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.</p>	<p>The time to employ source control measures are prior to triggering Tier II. In order to keep consistency and equitable conditions during the course of several permit cycles, Tier II must install treatment BMPs to address the repeated benchmark exceedances.</p>
454	27	<p>Tier II Corrective Action Response Based on Second Year Geometric Mean Benchmark Evaluation (page 20): Condition 11.i requires that all approved Tier II corrective action responses and mass reduction actions must be applied to all substantially similar discharge points. Permittees should be allowed to treat each drainage basin separately. For example the cost of implementing an active treatment system may be achievable in a relatively small drainage basin. However, the cost of implementing the same type of active treatment in a larger drainage basin may be</p>	<p>The underlying premise for not monitoring substantially similar discharge points is the effluent is of similar composition and the BMPS are implemented and maintain at all substantially similar discharge points. Using the same rationale for eliminating monitoring at these discharge points, properly applied and sized Tier II corrective action responses and mass reduction measures must be installed at all substantially similar discharge points. Post Tier II implementation, facilities must begin</p>

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		prohibitive. The permittee would also need to collect stormwater samples at the designated substantially similar outfalls to verify that they are in fact also continuously exceeding benchmarks. Recommendation: Strike language that requires the Tier II corrective action be applied substantially similar outfalls.	<p>sampling substantially similar discharge points.</p> <p>There is nothing prohibiting a facility from collecting stormwater samples at the designated substantially similar outfall to verify that they are in fact also continuously not exceeding benchmarks. In the event a facility has actual discharge data, DEQ or its agent will consider sample results on a case-by-case basis.</p>
455	32	This language is confusing. If corrective actions are not installed by the end of the permit term, do they continue with existing Tier II plan, or are they exempt from Tier II requirements as stated? Provide clear and concise compliance dates for Tier II in the cover letter and describe this inclusion of dates in the cover letter into the permit. Clear up the language and provide additional guidance for existing Tier II requirements, as historically these requirements have created confusion amongst permittees and DEQ staff/Agents, resulting in inconsistent administration of the Tier II requirements and compliance dates surrounding them.	<p>Only permit registrants of which Tier II corrective action implementation deadline under the 1200-COLS permit that expired on September 30, 2016 or under the 1200-Z permit that expired on June 30, 2017, was after June 30, 2017, are exempt from Schedule A.11 for the parameter(s) and discharge point(s) that triggered Tier II. All other facilities and permit registrants under the 1200-COLSB and 1200-Z will evaluate Tier II in the second year of coverage. The permit assignment letter will indicate which monitoring year is the second year of coverage.</p> <p>DEQ and the agents intend to grant coverage to renewing facilities in a timely manner; thus the second monitoring year for the majority facilities will be 2018/2019 monitoring year.</p> <p>If a facility has any questions, contact DEQ or agent.</p>
456	34	Schedule A.11.c: It appears to BES that this subsection should read "on or after July 1, 2016" instead of "on or after July 1, 2015." Our understanding is that permit holders whose first year of coverage was between July 1, 2015 and June 30, 2016 have their second year of coverage under the current permit (7/1/2016 - 6/30/2017 data) and are subject to section 3.c of "Permit Coverage & Exclusion."	<p>Permit registrants for which Tier II corrective action implementation deadline under the 1200-COLS permit that expired on September 30, 2016 or under the 1200-Z permit that expired on June 30, 2017, was after June 30, 2017, are exempt from Schedule A.11 for the parameter(s) and discharge point(s) that triggered Tier II.</p> <p>These are all facilities whose second year has already triggered Tier II, but have yet to install.</p> <p>For permit registrants that received new coverage under a previous industrial stormwater general permit (that is, the 1200-COLS, 1200-COLSB or 1200-Z) on or after July 1, 2016, time spent registered under the previous permit is included in determining the second year of permit coverage and other Tier II deadlines.</p> <p>All facilities will have a second monitoring year identified on their permit assignment letter and will evaluate Tier II again during this permit term.</p>

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457	34	Schedule A.11.c: Since several of the proposed benchmarks are lower than what is in the current permit, BES recommends that section 11.c be deleted. This deletion will make it so that all permittees currently operating under an industrial stormwater general permit and ultimately covered by the proposed new 1200-Z permit will have the same first year of coverage under the new 1200-Z permit. This will result in more equitable treatment of permittees, who aim to meet the lower benchmarks, and aid DEQ and agents' administrative oversight of permittees.	DEQ disagrees with this comment. For covered facilities on or after July 1, 2016, permit assignment letters have already discerned the second monitoring year.
458	21	[PER] 2.3.1 Tier II Corrective Actions: This section requires that if more than the minimum number of samples are collected, they must all be used in the second year geomean calculation, as long as they meet the criteria for qualifying samples (14 days apart, properly analyzed and meet quality control). Permittees may collect (and must report on their DMRs) multiple samples of a single storm. Since the samples would not be collected 14 days apart, it is not clear whether they would all be qualifying samples for purposes of calculating the geometric mean. DEQ should provide guidance on which samples should be used in calculating the geomean when multiple samples are collected and analyzed from the same storm.	The intention is, if multiple samples are collected from the same storm event they would be used for composite sampling. A definition of qualifying samples has been added to the permit and in order to be used for the geometric mean evaluation grab samples would need to be 14 days apart.
459	21	There appears to be a disparity in expectations that are applicable to current Tier II facilities under the new 1200-Z. Paragraph 3.c requires permittees that took Tier II corrective action under the current permit to comply with the implementation deadline in that permit. However, under paragraph 3.d, if a permittee has not yet completed its Tier II corrective actions from the current permit it is exempt from Tier II corrective action response under the proposed (new) permit. Thus a facility that was in Tier II under the current permit and has implemented its corrective action is subject to the new Tier II response requirements under the new, more stringent, benchmarks. In the second permit year they may find themselves again in Tier II, due to lower benchmarks, and required to respond with corrective action that must address the new benchmarks. But a facility that has not yet implemented its Tier II corrective action requirements will not be required to apply the new benchmarks to a geometric mean evaluation in the second permit year. It would help agents communicate expectations if this apparent difference were explained in the PEO or if consistent expectations were clarified in the permit.	<p>Permit: Permit registrants for which Tier II corrective action implementation deadline under the 1200-COLS permit that expired on September 30, 2016 or under the 1200-Z permit that expired on June 30, 2017, was after June 30, 2017, are exempt from Schedule A.11 for the parameter(s) and discharge point(s) that triggered Tier II.</p> <p>PER: This section addressed 1200-Z and 1200-COLS facilities that have yet to install their Tier II treatment or mass reduction infiltration measures. This applies to all permit registrants that exceeded the geometric mean of the benchmarks in the monitoring year 2015/2016, with installation deadline after the expiration of the current permit, June 30, 2017. The Tier II revised plan deadline for these facilities is Dec. 31, 2016, with implementation due by June 30, 2018.</p> <p>Because these facilities will only have one monitoring year to evaluate the selection, design and installation of the Tier II corrective actions, only Tier I investigation and reporting is required. DEQ will exempt this small number of facilities from additional treatment or mass reduction measures for the specific pollutant(s) that may still be exceeding the geometric mean of the</p>

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			benchmark. This exemption applies to the 2017-2022 permit cycle. Tier I investigations require all facilities to review selection, design, installation and implementation of control measures and take corrective action achieve benchmarks.
460	21	Paragraph 3.c requires permit registrants that triggered Tier II under the current permit to comply with the implementation deadline in that permit. The permit should be clear that Tier II permit registrants must continue to implement those corrective actions under the new permit.	DEQ acknowledges this comment and has determined that the permit is clear.
461	21	Schedule A, 11: Clarification in this section would be helpful. Since it is possible for a permit registrant to secure a monitoring waiver after the first year of the permit (and so not collect any samples during the second year), the permit should describe how the geomean should be calculated in this situation. (Section 11.e provides that four consecutive samples from the previous year may be used. If a monitoring waiver was secured based on the first-year samples, then Tier II could not be triggered). Is it appropriate to assume that the decision to grant a waiver also means that Tier II is not triggered?	Yes, permit reads: Permit registrants are not required to conduct this (Tier II) evaluation for the benchmark parameter(s) for which DEQ or agent has granted a monitoring waiver in accordance with Schedule B.4 of the permit.
462	21	Schedule A, 11 a and b: These two sections require evaluation of sample results collected “during the second monitoring year” for all but pH, and evaluation of sample results collected “during the first two monitoring years” for pH. Is this difference intentional?	Yes, because pH triggers if 50 percent or more are outside range.
463	21	Schedule B.4.i (3), page 25: This provision pertains to obtaining a monitoring waiver after Tier II corrective action has been implemented and states that a waiver may be requested if pH results are within the range for four consecutive reading." This could be interpreted as meaning either that all four pH readings must be in the range of 5.5 to 9.0 (or 8.5 in the Columbia Slough), or that 50 percent or more are not outside that range. DEQ should clarify its intent.	The final permit reads: “For the pH benchmark, Tier II corrective action requirements are triggered if 50 percent or more of qualifying samples during the first two monitoring years of permit coverage are outside of the pH benchmark range.”
464	21	Schedule A, 11.k.iv (2): This permit provision states that for Tier II mass reduction waivers based on infiltration, the modified benchmarks will be calculated by “dividing by the fraction of the design storm infiltrated. For example, if ¼ of the design storm is infiltrated, benchmarks will be divided by ¼.” This is incorrect. This approach would result in dividing the benchmark by the fraction infiltrated, which would multiply the	The modified benchmark calculation was removed from the permit.

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		benchmark by 4 in the example. The PEO should clarify how the mass reduction waivers adjust the benchmark so that the reduced flow results in the same load from the facility as with the original flow and benchmark. To calculate the new benchmark, the old one should be multiplied by the ratio of the original flow to the reduced flow. In the example, this ratio would be 4/3.	
465	47	Even if Tier II corrective action requirements are removed from the 2017 permit, permit holders would still have to conduct a Tier I corrective action every time the Zinc benchmark was exceeded. Beyond providing no measurable benefits, repeatedly conducting the same corrective process would represent a significant but wholly unnecessary administrative burden.	DEQ disagrees with this comment. Tier I corrective actions are intended to be an opportunity for correcting malfunctioning or misapplied controls in order to avoid having to undertake Tier II corrective actions. Additionally, permit registrants would not be in compliance with the Tier I corrective actions requirements if they are simply repeating the same corrective action without evaluating and addressing the exceeded benchmark value.
466	48	Tier II requirements were created to ensure that chronic benchmark exceedances would be addressed and the pollutant contribution from these areas would be reduced. ACWA supports the decision to require monitoring until the Tier II plan has been fully implemented. However, we are concerned that without continued analytical monitoring, it will be impossible to determine if the plan has been properly implemented or if the source controls and treatment measures are being maintained at the proper frequency. It is suggested that once Tier II requirements are triggered, analytical monitoring must continue for the remainder of the permit cycle and waiver requests for these specific parameters would be automatically denied.	The majority of facilities second monitoring year will be 2018/2019. Therefore, facilities will have until June 30, 2021, to implement Tier II measures. Thus, the 2021/2022 monitoring year sample results may be used to obtain a monitoring waiver, leaving only one monitoring year without sample data for Tier II discharge point(s) and pollutant(s).
Tier II Mass Reduction Waiver			
467	5	The calculation method for modifying discharge benchmarks following a Tier II mass reduction waiver appears to be incorrect. (§ A.11.k.iv(2))	The modified benchmark calculation was removed from the permit.
468	5	As discussed in the comment above on Schedule A.11.k.iv, a facility that infiltrates all of the design storm in a drainage basin should receive a monitoring waiver for the discharge point that serves that drainage basin. (§ B.4.a.iv)	A monitoring waiver may be approved if the geometric mean of four consecutive samples is equal to or below the benchmark. The final permit does not include a broad exemption from monitoring subsequent to implementation of the Tier II mass reduction waiver.
469	5	The calculation method for modifying discharge benchmarks following a Tier II mass reduction waiver appears to be incorrect. (§ A.11.k.iv(2)):The increased benchmarks following a Tier II mass reduction waiver should be	The modified benchmark calculation was removed from the permit.

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		derived by dividing the benchmarks by 1 minus the fraction of the design storm infiltrated or diverted. In the example, if the benchmark is 20 micrograms per liter, and one-quarter of the design storm is infiltrated, then the revised benchmark would be 20 divided by (1 minus 0.25), or 26.7 micrograms per liter. If more of the design storm is infiltrated, say three-quarters, then the revised benchmark would be 20 divided by (1 minus 0.75), or 80 micrograms per liter.	
470	5	If a permit registrant infiltrates all of the design storm, no discharge benchmark should apply and no further monitoring should be required. (§§ A.11.k.iv, B.4.a): If a permit registrant infiltrates or otherwise diverts all of the design storm in a drainage basin, the resulting modified benchmark would be infinite (assuming that division by zero were possible). In addition, there would almost never be enough qualifying discharges from these drainage basins for permit registrants to obtain the required number of monitoring samples. Thus, each year the permit registrant would need to request, and DEQ or its agent would need to process, a monitoring variance for each of these drainage basins. For these reasons, there should be no benchmark and no further monitoring requirement other than inspection requirements.	There is no mechanism under federal or state law to allow a permitted facility to no longer monitor potential stormwater discharge above the design storm. If a facility is unable to obtain the required minimum number of sampling due to lack of storm events of sufficient magnitude to produce run-off during regular business hours and safe conditions, the permit allows registrants to submit request for a monitoring variance. During a discharge event, a NPDES permitted facility must sample and characterize the stormwater leaving the industrial site.
471	5	Where Tier II corrective action and mass reduction measures apply to drainage basins served by “substantially similar” discharge points, the permit should clarify that different measures may be applied to different drainage basins, as appropriate. (§ A.11.i.)	The final permit made this important distinction. The final permit now reads: “Properly apply and size approved Tier II corrective action responses and mass reduction measures to all substantially similar discharge points.”
472	5	In the accompanying mark-up of the proposed permit, OISG has suggested additional language for Schedule A.11.k.ii to clarify the scope and applicability of mass reduction waivers. (§ A.11.k.ii)	DEQ did not make the suggested edits.
473	20	Comment 1: Individual permittee calculation of benchmarks through Tier 2 Mass Reduction Waiver (Schedule A.11.k.iv) Schedule A.1 I .k,iv of the draft permit allows the permittee to request a mass reduction waiver if the permittee implements or has implemented volume reduction measures that have or will result in a reduction of the pollutant loading in the discharge below the mass equivalent of the benchmark. While aspects of this provision are in the 2012 permit, EPA has significant concerns regarding the “modified benchmark” addition to the mass reduction waiver. This provision adds significant complexity for both ODEQ and the permittees	The modified benchmark calculation was removed from the permit.

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		without a demonstrated need; the waivers in the 2012 permit appear to offer the desired flexibility without the additional potential problems.	
474	20	The EPA has the following specific concerns related to the allowances for adjusted benchmarks. There are due process concerns associated with changing benchmarks after a permit is final. In particular, the public will not have been given the opportunity to comment upon a different benchmark for a specific permittee. A change, such as this, would be considered a modification to the permit that would require public notice and comment.	The modified benchmark calculation was removed from the permit.
475	20	While aspects of this provision are in the 2012 permit, EPA has significant concerns regarding the "modified benchmark" addition to the mass reduction waiver.	The modified benchmark calculation was removed from the permit.
476	21	Schedule A, 11.k.iv (2): This permit provision states that for Tier II mass reduction waivers based on infiltration, the modified benchmarks will be calculated by "dividing by the fraction of the design storm infiltrated. For example, if ¼ of the design storm is infiltrated, benchmarks will be divided by ¼." This is incorrect. This approach would result in dividing the benchmark by the fraction infiltrated, which would multiply the benchmark by 4 in the example. The PEO should clarify how the mass reduction waivers adjust the benchmark so that the reduced flow results in the same load from the facility as with the original flow and benchmark. To calculate the new benchmark, the old one should be multiplied by the ratio of the original flow to the reduced flow. In the example, this ratio would be 4/3.	The modified benchmark calculation was removed from the permit.
477	34	Schedule A.11.k.iv: Section 11.k.iv should be moved out of section .k to a more logical place in section 11. Section 11.k.i.-iii. cover how a permittee can obtain a mass reduction waiver, but section 11.k.iv and other subsections of section 11 address requirements that apply after a Tier II mass reduction waiver has been granted.	DEQ acknowledges this comment, but declined to make this change.
478	21	Schedule A.11.k, page 21: This section covers Tier II mass reduction waivers. In the prior version of the proposed 1200-Z permit this section included a provision to adjust the benchmark based on the mass reduction, which is the necessary approach (although the example previously given was not correct). Unless the benchmark is adjusted to reflect the	Although the modified benchmark underlying principle was appropriate, the implementation created many challenges. Permit registrants expressed concern regarding permit assignment letters citing benchmark values above the current water quality calculated benchmarks. All permit registrants under the last two versions of the permit which installed Tier II mass

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		<p>decreased flow, there will be no benefit to the volume reduction. This draft has deleted the provision to recalculate the benchmark and section k.iv (1) requires Tier I corrective action in response to "a benchmark exceedance." If the intent is to provide an incentive to reduce flow, this section would need to be revised to require re-calculating the benchmark based on volume reduction. As commented previously, for the reduced flow to result in the same load as the original flow, the new benchmark should equal the old benchmark multiplied by the ratio of the original flow to the reduced flow. The requirement for Tier I response at k.iv (1) should reference the recalculated benchmark.</p>	<p>reduction, would need a modified benchmarks based on original design even though capacity may be reduced over time. In addition, EPA had significant concerns regarding the approach including: 1) due process associated with changing benchmarks after permit issuance; 2) regulatory oversight and review; and 3) managing mass loading flow-based monitoring verses discharge concentration.</p> <p>DEQ considers many incentives to decreasing the volume of discharge. Although many times monitoring variances will be required to substantiate no discharge claims, some of the benefits to operations come in energy savings related to alternative advance treatment, opportunity for reuse and decreased sampling cost.</p>
479	42	<p>DEQ indicates modified benchmarks are "calculated by dividing the fraction of the design storm infiltrated".</p>	<p>The modified benchmark calculation was removed from the permit.</p>
480	21	<p>Schedule A.11.k, page 21: This section covers Tier II mass reduction waivers. In the prior version of the proposed 1200-Z permit this section included a provision to adjust the benchmark based on the mass reduction, which is the necessary approach (although the example previously given was not correct). Unless the benchmark is adjusted to reflect the decreased flow, there will be no benefit to the volume reduction. This draft has deleted the provision to recalculate the benchmark and section k.iv (1) requires Tier I corrective action in response to "a benchmark exceedance." If the intent is to provide an incentive to reduce flow, this section would need to be revised to require re-calculating the benchmark based on volume reduction. As commented previously, for the reduced flow to result in the same load as the original flow, the new benchmark should equal the old benchmark multiplied by the ratio of the original flow to the reduced flow. The requirement for Tier I response at k.iv (1) should reference the recalculated benchmark.</p>	<p>Although the modified benchmark underlying principle was appropriate, the implementation created many challenges. Permit registrants expressed concern regarding permit assignment letters citing benchmark values above the current water quality calculated benchmarks. All permit registrants under the last two versions of the permit which installed Tier II mass reduction, would need a modified benchmarks based on original design even though capacity may be reduced over time. In addition, EPA had significant concerns regarding the approach including: 1) due process associated with changing benchmarks after permit issuance; 2) regulatory oversight and review; and 3) managing mass loading flow-based monitoring verses discharge concentration.</p> <p>DEQ considers many incentives to decreasing the volume of discharge. Although many times monitoring variances will be required to substantiate no discharge claims, some of the benefits to operations come in energy savings related to alternative advance treatment, opportunity for reuse and decreased sampling cost.</p>
Tier II Report			

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481	11	Schedule A, Corrective Actions 11.j.ii: AOI/OBA requests that DEQ reconsider whether registered geologists can prepare Tier II corrective action reports and adding the registered geologists as an option for a professional certification to the corrective action report.	DEQ evaluated the certified engineering geologist examination and qualification under the Board of Geologist Examiners, DEQ determined the skill set and earned seal better applies to mass reduction measures rather than advanced treatment technologies.
482	11	Schedule A, Technology Based Effluent Limitations, Narrative Standards, j.ii: AOI/OBA requests that DEQ reconsider whether registered geologists can prepare Tier II corrective action reports.	DEQ declined to make this change. See response above.
483	34	Schedule A.11.j.i: BES recommends that Schedule A11.j.i be revised to require the Tier II Report to include the estimated cost of installation of source controls and treatment measures, the treatment system schematic and operational plan, and the operations and maintenance schedule for treatment measures. This information is part of the DEQ Tier II checklist under the current permit and is useful information to have contained within the report.	The SWPCP must include an O&M for active treatment. The checklist will continue to request estimated cost information. DEQ has determined this is the best place to capture the information and has determined that the details is not appropriate in the permit.
484	34	Schedule A.11.k.iv.(2): BES believes there is a typographical error and that the permit should read "dividing by the fraction of the design storm not infiltrated." For example, if $\frac{1}{4}$ of the design storm is infiltrated, benchmarks will be divided by $\frac{3}{4}$. As currently written, permit holders who infiltrate $\frac{1}{4}$ of the design storm will end up with a higher benchmark than permit holders that infiltrate $\frac{3}{4}$ of the design storm.	This section has been removed.
485	34	Schedule A.11.j.i: BES recommends that Schedule A.11.j.i be revised to require the Tier II Report to include the estimated cost of installation of source controls and treatment measures. This information is of use should a facility fail to install any of the proposed measures.	<p>This information request is included in the Tier II checklist which must be contained in the SWPCP revision submitted by the facility.</p> <p>DEQ declined to make this a permit requirement due case law and Freedom of Information Act (FOIA). FOIA's fourth exemption protects two broad categories of information in agency records: "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." <i>In Environmental Integrity Project v. EPA</i>, environmental groups sued EPA to obtain business information provided to it. EPA withheld information protected under FOIA's fourth exemption. The D.C. District Court ruled that the language of the CWA did not expressly modify or supersede FOIA as required under the Administrative Procedure Act, and so EPA acted within its discretion to withhold the data. DEQ's 1200-Z permit is consistent with EPA's MSGP.</p>

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486	34	Schedule A.11.i and j: BES recommends that DEQ delete section 11.i and instead incorporate the relevant text into sections 11J and 11.k. Section 11.i addresses sizing of Tier II corrective action responses and mass reduction measures, and that subject should be included in the sections respectively covering the Tier II Report (section 11J) and Tier II Mass Reduction Waiver (section 11.k). In addition, section 11.j.iii should be moved out of section 11J; the title of section 11.j is "Tier II Report" but 11.j.iii relates to post-Tier-11-implementation requirements, not the Tier II Report.	DEQ declined to make this change.
487	34	Schedule A.11.j.iii.(2) and Schedule A.11.k.iv.(2): These sections both state, "Monitoring must resume at substantially similar discharge points!" The intent of this language is not clear. Will monitoring need to resume at the substantially similar discharge point that triggered Tier II or at all substantially similar outfalls to which the Tier II response and measure were applied? If the intent is the latter, BES suggests that DEQ not use the word "resume"; in most cases, substantially similar discharge points have never been monitored. In addition, if the intent is the latter, it is unclear if monitoring must be done for all parameters required by the permit or just for the parameters that triggered the Tier II Corrective Action.	Monitoring must resume at substantially similar to which the Tier II response and measures were applied, not all substantially similar discharge points. DEQ acknowledges that some substantially similar discharge points may have not been monitoring in the past; however, the expectation with this new condition is permit registrants must prove similar composition based on monitoring data. A monitoring waiver is now required to discontinue further monitoring.
TMDL			
488	15	Regardless of the form, however, the permit must be consistent with and implement the TMDL. This is where the proposed permit fails. Instead of implementing measures to protect these at risk waters, DEQ erroneously presumes that compliance with the terms of the permit constitutes compliance with Oregon's TMDLs. The presumption that "compliance with the terms and conditions of the permit complies with the [TMDLs]" is based on the false conclusion that implementing methods to achieve TMDLs will automatically create compliance with such TMDLs. While implementation of BMPs and benchmark guidelines is an approach to meeting the goals of the TMDL, it does not follow that implementing BMPs in compliance with the permit somehow constitutes compliance with the TMDLs established for an impaired water body. To the contrary, "[m]eeting waste load and load allocations will ensure water quality standards attainment."	<p>DEQ has changed the language to read: A new discharger to an impaired water with a TMDL (based on EPA-approved TMDLs as of May 1, 2017) prior to obtaining coverage under the permit:</p> <ul style="list-style-type: none"> i. DEQ will presume that compliance with the terms and conditions of the permit complies with the TMDL and will grant the owner or operator coverage under the permit, unless the TMDL establishes wasteload allocation(s) and additional requirements for industrial stormwater discharges. ii. DEQ will inform the applicant if any additional monitoring, site controls or compliance schedules are necessary to prevent industrial stormwater from exceeding the wasteload allocation(s) in the TMDL(s), or if coverage under an individual permit is necessary.

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			<p>When developing TMDL's, DEQ assesses the assimilative capacity of a waterbody, and includes the amount and types of discharges from industries.</p> <p>Nothing prevents DEQ from providing coverage for new discharges to 303(d) listed waters even in the absence of an assigned wasteload allocation in an EPA-approved TMDL, as long as the facility can provide assurance that the discharge will be in compliance with water quality standards. As a matter of policy and in the absence of a TMDL, it is reasonable to allow a new discharge that discharges pollutants at or below the same level as the water quality criteria to be considered a discharge that will not cause or contribute to a violation of water quality standards (since it would either maintain or improve the receiving water quality). When the water quality standard has concentration-based criteria, a discharge of pollutants at or below the criteria level will have a neutral or positive effect on the receiving water body, and over time may even help the waterbody to achieve attainment of water quality standards.</p>
489	26	<p>In Section 1.1 of the Permit Evaluation and Overview document states that the temperature exemption remains for new dischargers to an impaired water without a TMDL, but if a TMDL establishes a waste load allocation for temperature to industrial stormwater, a new discharger must comply with the TMDL. This requirement is in Condition A.1 of the permit. Boise Cascade is concerned that facilities residing in areas of the state that are hot in the summer and have discharges off asphalt into shallow systems (wetland and swales) may not be able to meet a water quality temperature requirement with a solution that is economically feasible.</p>	<p>The final permit does not require facilities to measure temperature as an impairment or as an established wasteload allocation for industrial stormwater in an EPA-approved TMDL. At the time of permit issuances there were no temperature wasteload allocations for industrial stormwater in EPA-approved TMDLs</p>
490	32	<p>A.5.a-d There is no guarantee that the EPA will approve this list by May 1, 2017, nor is it clear how the list will change what a permittee will be required to do.</p>	<p>On Dec. 21, 2016, EPA approved most of the submitted 303(d) listings and delistings. Upon that date the approved 2012 303(d) list was effective for Clean Water Act purposes. At the same time, EPA disapproved DEQ's submittal for not including other waters. EPA proposed adding other waters to Oregon's 303(d) list and is taking public comments on the proposed additions until April 3, 2017. EPA determined that Oregon's 2012 Section 303(d) listing of 131 water quality limited segments still requiring TMDLs meets the requirements of CWA Section 303(d) and EPA's implementing regulations. In addition, the EPA has determined that the removal of 60 water quality limited segments due to standards attainment was also</p>

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			<p>consistent with CWA Section 303(d) and the federal regulations.</p> <p>The disapproval impacted certain pollutants outside the Willamette and Umatilla Basins. Permit assignment letters impairment pollutant monitoring will be based on all approved 303(d) listings as of May 1, 2017, and will not include EPA's future decision on the disapproved listings or delistings until the next industrial stormwater general permit.</p>
TSS Reduction			
491	3	<p>The proposed reduction in the Columbia Slough total suspended solids (TSS) benchmark is not supported by the permit evaluation report. (§ A.9)</p>	<p>DEQ built on the process described in the 1999 DEQ 1200-COLS Fact Sheet for development of a TSS benchmark. The fact sheet presents conclusions from evaluation of literature and modeling, at the time, of association of organic pollutants (PCBs, pesticides and dioxins) with TSS and the largest contribution of PCBs to the Slough being through stormwater solids. This work justified setting a TSS benchmark of 50 mg/L to assist in preventing recontamination of remediated Slough sediment. In the 17 years since then, evaluation of data collected from stormwater discharges into the Columbia Slough shows reductions of TSS with corresponding reductions in metals, PCBs, PAHs, pesticides and other contaminants, which supports further lowering of the TSS benchmark to support water quality and fish tissue improvement and recontamination prevention.</p>
492	5, 7, 30, 40, 50, 52	<p>First one related to TSS benchmark for Columbia Slough and Portland Harbor. My understanding they are surrogate for other contaminants and I like to see a clause or allowance in the permit that if a discharger over that limit and able to test and can show there are no contaminants present is that they could be pushed back to the 100 ml benchmark.</p> <p>The proposed reduction in the Columbia Slough total suspended solids (TSS) benchmark is not supported by the permit evaluation report, any water quality or control technology analysis. (§ A.9). The reduction of the TSS Benchmark in the Columbia Slough geographic is of particular concern.</p> <p>DEQ justified lowering this benchmark by using TSS as surrogate for the presence of other contaminants. TSS is not an appropriate surrogate parameter to detect the presence of adsorbed pollutants for the purposes of reducing recontamination to river sediments (National Highway Runoff Data and Methodology, 2013, Department of Transportation v. United</p>	<p>DEQ built on the process described in the 1999 DEQ 1200-COLS Fact Sheet for development of a TSS benchmark. The fact sheet presents conclusions from evaluation of literature and modeling, at the time, of association of organic pollutants (PCBs, pesticides and dioxins) with TSS and the largest contribution of PCBs to the Slough being through stormwater solids. This work justified setting a TSS benchmark of 50 mg/L to assist in preventing recontamination of remediated Slough sediment. In the 17 years since then, evaluation of data collected from stormwater discharges into the Columbia Slough shows reductions of TSS with corresponding reductions in metals, PCBs, PAHs, pesticides and other contaminants, which supports further lowering of the TSS benchmark to support water quality and fish tissue improvement and recontamination prevention.</p>

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		<p>States Environmental Protection Agency, 2013). A substance must be a pollutant in its own right before it can be limited as a surrogate for another pollutant (Environmental Letter, 2013).</p> <p>The reduction to 30 mg/L is significant and no explanation or justification was provided for the change. The benchmark for TSS should not be lowered without a complete evaluation of the impacts of seasonal variation and concentrations of naturally occurring contributors to TSS such as algae, decaying plant and animal life, climate change, etc.</p> <p>NWPPA does not support changing the COLS permit TSS benchmark. NWPPA comments that there is no technical or policy justification for changing the value from 50 to 30. NWPPA asks that the Department review and reconsider their TSS values and in their response to comments clearly address the technical and policy justification for changing benchmarks</p>	
493	7,30	<p>Although, as stated in the permit evaluation report, the majority of permit registrants may be able to achieve a discharge benchmark of 30 mg/L, there is no analysis of whether that benchmark is feasible for the remaining permit registrants. It may be difficult for some facilities to meet the lower 30 mg/l TSS benchmark even with these substantial treatment systems in place. Many industrial facilities in Portland Harbor have invested millions of dollars on sophisticated state-of-the-art stormwater systems for treatment of stormwater discharges and even then TSS is likely to be above this benchmark.</p>	<p>In 1999, the 1200-COLS permit included a TSS benchmark of 50 mg/L for discharges to the Columbia Slough as one approach to reducing loads of sediment and associated pollutants in order to meet TMDL goals reduce fish tissue concentrations of contaminants and prevent sediment recontamination in the Columbia Slough. This benchmark was 80 mg/l lower than the 130 mg/L TSS benchmark statewide under the 1200Z permit at the time. More than 130 sites registered under the 1200-COLS permit since then have been able to meet the 50 mg/L TSS benchmark using a combination of commonly applied BMPs, control measures and more sophisticated treatment options. 84% of current permit registrants discharging to Portland Harbor currently achieve TSS of 30 mg/L or lower and in keeping with the Clean Water Act concept of iterative improvement and “maximum extent practicable;” DEQ anticipates that closer attention to general housekeeping practices, coupled with additional BMPs and control measures along the treatment train, will allow most sites to achieve the TSS benchmark reduction of 70 mg/L into Portland Harbor.</p>
494	42	<p>The two primary sources that DEQ references for the proposed TSS benchmark are:</p> <ol style="list-style-type: none"> 1. The Washington Department of Ecology (Ecology) 2015 Industrial Stormwater General Permit, which includes a 30 mg/l effluent limit for TSS for discharges to contaminated sediment areas. Ecology’s rationale is 	<p>The proposed permit lowers the TSS benchmark for discharges to Portland Harbor from 100 mg/L to 30 mg/L and, for discharges to the Columbia Slough, from 50 mg/L to 30 mg/L. DEQ built on the process described in the 1999 DEQ 1200-COLS Fact Sheet for development of a TSS benchmark. The fact sheet provides DEQ’s rationale for considering TSS a</p>

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		<p>that the low TSS limit is in keeping with EPA and state requirements for preventing sediment recontamination.</p> <p>2. An evaluation of TSS concentrations compared to DEQ's "rank order" curves from Appendix E of DEQ's Guidance for Evaluating the Stormwater Pathway at Upland Sites. The curves were created to evaluate industrial stormwater discharges to Portland Harbor. According to DEQ, concentrations on the flat portion of the curve suggest that stormwater is "representative of 'typical' industrial stormwater for Portland Harbor sites." A TSS concentration of 30 mg/l plots on the flat portion of the curve. Out of 540 stormwater discharge measurements collected between 2006 and 2016 from 25 industrial sites in the Portland Harbor, 70 percent were at or below 30 mg/L."</p>	<p>pollutant of concern, despite TSS not having a water quality criteria. The fact sheet also presents conclusions from evaluation of literature and modeling, at the time, of association of organic pollutants (PCBs, pesticides and dioxins) with TSS and the largest contribution of PCBs to the Slough being through stormwater solids. This work justified setting a TSS benchmark of 50 mg/L to assist in preventing recontamination of remediated Slough sediment. In the 17 years since then, evaluation of data collected from stormwater discharges into the Columbia Slough and Portland Harbor shows reductions of TSS with corresponding reductions in metals, PCBs, PAHs, pesticides and other contaminants, which supports further lowering of the TSS benchmark to support water quality and fish tissue improvement and recontamination prevention. The approach of reducing TSS to facilitate corresponding reductions in other pollutants is also implemented by EPA's MSGP and WA Department of Ecology's ISGP for discharges to contaminated sediment sites, also to help in preventing recontamination, as is intended by DEQ in Portland Harbor and the Columbia Slough.</p>
495	50	<p>DEQ indicates the drop in TSS for Portland Harbor and the Slough are an effort to reduce loading of pollutants associated with particles such as PCBs and pesticides. Having studied numerous Portland Harbor facilities for the last 15 years, we often find that particles most likely to contain PCBs or pesticides are extremely small silt and colloidal particles (below 15 microns in size). These toxics are unlikely to get removed in conventional best management practices even if TSS benchmarks are met.</p>	<p>The approach of reducing TSS to facilitate corresponding reductions in other pollutants is also implemented by EPA's MSGP and WA Department of Ecology's ISGP for discharges to contaminated sediment sites, also to help in preventing recontamination, as is intended by DEQ in Portland Harbor and the Columbia Slough. DEQ will use data and information from this permit cycle to evaluate the effectiveness of the permit to meet DEQ's source control obligations.</p>
Units			
496	5, 7, 11, 13	<p>Schedule A, Table 4: Benchmarks. The unit of measure for benchmark concentrations is not defined for metals, total suspended solids, total oil and grease, biological oxygen demand, and phosphorus.</p>	<p>This was an oversight and the error has been corrected.</p>
497	24	<p>We work directly with a lot of business owners and their maintenance personnel in getting them to understand the level of which their outflowing stormwater quality needs to achieve. The largest concern we have is that with the use of your current 'part per million' units; nearly everything that is a concern is a small fraction with very little to differentiate of why they need to be concerned.</p> <p>It is our opinion that the State of Oregon needs to mandate 'part per</p>	<p>DEQ did not include this recommendation in the permit.</p>

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		billion' units for reporting in order to give the test results a better understanding of their relevance.	
498	24	Keep in mind that even your Proposed Water Quality Permit shifted on page 28 to reflect the units discussed in ppb units. This was done in order to show relevance, increase comprehension, and minimize errors. Note in the very first line of page 28 reads "... DEQ developed a technology-based benchmark of 0.20 mg/L (20 ug/L)...". The 0.20 mg/L is in error for that should read 0.020 mg/L of which would be equivalent to that of 20 ug/L.	This was an oversight and the error has been corrected.
Unrelated to Permit			
499	BB	Given the punitive nature of BES's interpretation of the NTBEL requirements, adding "may discharge" provides more unclear language and expectation of compliance. It also, allows DEQ and agents to enforce on something that "may discharge" without the need to provide justification for violation notices regarding materials and activities that do NOT discharge to surface water. Creates confusion and is simply impossible to comply with.	DEQ acknowledges this comment.
Visual Monitoring			
500	5	OISG has suggested a revision to Schedule B.7.d to address the problem of conducting monthly visual inspections at all outfalls during the dry season. (§ B.7.d)	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 in writing a modified inspection frequency. This condition has not changed.
501	5	If a discharge point is not sampled because it is substantially similar to a sampled discharge point, there should also be no requirement to visually inspect that discharge point. (§ B.7.e.vi)	Visual observation must be performed at all substantially similar discharge points as part of the monthly inspection requirement. Although the permit has language to exclude sampling at substantially similar discharge points, facilities still must make visual observation to make sure there is no presence of pollution.
502	20	Comment 12: Inspections: Consistency between the PER and the Permit PER 3.2 Inspections: "... If there is no discharge from a facility, inspection can be done at any time during the month. If at any time during a month there is a discharge the permit requires staff to conduct visual observation at all discharge points during the same month. Visual inspection must occur regardless of whether or not the monthly inspection has already	DEQ agrees and has made this change.

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		<p>occurred...."</p> <p>EPA comment: The underlined text from the PER needs to be added to the Permit in Schedule B.7. Inspections.</p>	
Water Quality Based Effluent Limits			
503	15	<p>The Permit Must Include Water Quality-Based Effluent Limits</p> <p>“No permit may be issued: . . . [w]hen the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States.” 40 C.F.R. § 122.4(d). Thus, NPDES permits must include effluent limits for all pollutants that are or 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, including State narrative criteria for water quality.” 40 C.F.R. § 122.44(d)(1)(i); id. § 122.44(d)(1)(vii)(A) (WQBELs must be “derived from” and comply with all applicable water quality standards); see also NRDC, 808 F. 3d at 498 (“EPA acted arbitrarily and capriciously in issuing the WQBELs because they violate section 1342’s requirement that NPDES permits ensure compliance with the CWA. Cf. <i>Waterkeeper All.</i>, 399 F.3d at 498.”).</p>	<p>EPA maintains that the MSGP and its water quality-based effluent limits are consistent with the CWA and its regulations. The permit contains a narrative water quality-based effluent limit to ensure that discharges are controlled as necessary to meet applicable water quality standards. EPA disagrees that the permit puts the burden on the discharger to establish “controls as necessary” to meet WQS. The permit explicitly states that “EPA expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards.”</p>
Water Quality Standards			
504	5	<p>Compliance with the control measures specified in the SWPCP, including any applicable corrective action requirements, should constitute compliance with the permit’s water quality-based effluent limits, provided that the SWPCP has been submitted to DEQ or its agent as required by the permit, and provided further that any revisions to the control measures that DEQ or its agent has required the permit registrant to make have been made within the time allowed. (§ A 4 a)</p>	<p>Compliance with all conditions in the permit is required.</p>
505	5	<p>Because there is no water quality criterion for TSS, OISG proposes that the more stringent regional or sector-specific benchmark should serve as the reference concentration when the receiving water is impaired by suspended solids, turbidity, sediment, or sedimentation. (§ B.1.b.ii (1))</p>	<p>DEQ did not accept this recommendation.</p>
506	8	<p>Schedule A.4 (Water Quality Standards): Per the Permit Evaluation and Overview "Water quality samples collected. From the facility's discharge along with samples at upstream and downstream locations in the receiving</p>	<p>If there are specific questions about the applicability of this section to a facility that is not covered in the <i>Technical Assistance Guide for Industrial Dischargers</i> document on DEQ’s industrial stormwater website, contact</p>

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		waterbody are required to establish that a permit registrants ' discharge caused or contributed to a water quality standards exceedance." This leaves much ambiguity in regard to the timing and ultimate responsibility for collecting additional instream samples. DEQ should provide additional clarity or guidance on this section.	DEQ or its agent.
507	15	<p>The Permit Must Ensure Compliance with all Water Quality Criteria:</p> <p>The draft permit ignores the human health criteria. In so doing, DEQ misses an opportunity to monitor and reduce pollutants that threaten public health.</p> <p>Chronic Aquatic Life Criteria: Similarly, DEQ has not ensured the permit will result in compliance with chronic aquatic life criteria. Acute toxicity levels are inappropriate as the foundation for the benchmarks for two reasons. First, they fail to reflect the possible chronic effects of the frequent and long-term stormwater events that often occur in Oregon. Second, they fail to recognize the potential for bioaccumulation of certain pollutants, which necessarily persist beyond the allegedly "short-term" occurrence of stormwater events.</p> <p>DEQ provides no justification for setting benchmarks based on acute toxicity in the permit evaluation. Oregon receive significant and frequent rainfall. Frequent, long lasting storm events are likely to lead to chronic toxicity for many organisms even where stormwater discharges comply with the benchmarks. Therefore, DEQ's decision to base benchmarks on acute toxicity levels is inappropriate.</p>	<p>The focus of the human health criteria is to protect humans from health effects associated with consumption of fish, shellfish and drinking water. This water quality standard is based on lifetime exposures to toxic pollutants affecting human health. These standards apply to treated municipal and industrial wastewater discharges with individual permits. The toxics standards for the protection of aquatic life are best suited to serve as benchmarks for stormwater permits because of its high variability in its discharge.</p> <p>DEQ requires sampling for persistent pollutants that can negatively impact fish when a waterbody is impaired for such pollutants. If a facility's monitoring results indicate discharge is not meeting reference concentrations, corrective action must be taken to investigate known causes.</p> <p>In addition, the permit has added language that specifically requires known or discovered significant materials from previous operations must be removed or otherwise exposed. This will address PCBs and other legacy pollutants which are no longer used or have been restricted by recent regulation. The reduction of TSS in the Portland Harbor will also reduce toxic chemicals discharged in industrial stormwater.</p>
508	11	Schedule A, Water Quality Based Effluent Limitations, 4.b: Corrective action for causing or contributing to a violation of water quality standards should be triggered only by notice from DEQ or its agent. The permit registrant will rarely be able to determine that its discharge caused or contributed to a water quality standards violation. Water quality standards are not expressed as discharge limits that can be readily ascertained by permit registrants. Moreover, the evaluation of whether a discharge caused or contributed to a violation of water quality standards ordinarily requires the application of professional, policy, and legal judgments by DEQ.	<p>Water quality samples collected from the facility's discharge along with samples at upstream and downstream locations in the receiving waterbody are required to establish that a permit registrant's discharge caused or contributed to a water quality standards exceedance. The permits do 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.</p> <p>This determination can be made by the facility, DEQ, their agent, third-parties, and environmental groups or in response to a complaint.</p>

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509	11	Schedule A, Water Quality Standards, 4.a: The requirement that “[t]he permit registrant must not cause or contribute to a violation of instream water quality standards as established in OAR 340-041” should be modified to read “[t]he permit registrant must not cause or contribute to a violation of instream water quality standards as established in OAR 340-041 except as authorized under this permit.”	At no time is a permit registrant authorized to cause or contribute to a violation of instream water quality standards. A NPDES permit is typically a license for a facility to discharge a specified amount of pollutant into a receiving water under defined conditions.
510	15	<p>A Blanket Narrative Condition and Corrective Action Requirement is Not a Water Quality-Based Effluent Limit that Ensures Compliance with Water Quality Standards</p> <p>In Schedule A.4 of the draft permit, DEQ proposes a blanket narrative condition that the discharge “must not cause or contribute to a violation of water quality standards” and that in the event that the discharge does cause or contribute to a violation of standards the permit registrant “must take [] corrective actions.” Permit, Sch.A.4. While this narrative condition does state the law, it does not ensure that discharges authorized by this permit will comply with water quality standards. See 40 C.F.R. § 122.4(d) (No permit may be issued “[w]hen the imposition of conditions cannot ensure compliance with the applicable water quality requirements of the affected States[.]”) (emphasis added). See NRDC, 808 F.3d at 578 (simple narrative condition does not ensure compliance with water quality standards because it fails to give specific guidance on discharge limits). In NRDC, the Second Circuit also found that a requirement to take corrective action after a violation, as found in Schedule A, failed to meet the law’s requirement that a permit prevent discharges that violate water quality standards before they happen. Id. DEQ’s proposed permit fails to meet federal and state requirements for NPDES permits to ensure authorized discharges comply with water quality standards.</p>	For stormwater discharges, EPA and DEQ continue to include non-numeric water quality-based effluent limits. Federal regulations allow narrative limits or controls rather than numeric effluent limits. DEQ relies on technology-based narrative effluent limits to minimize pollutants and resulting tiered corrective action to control discharges from causing or contributing to an excursion of water quality standards. The permit was developed to comply with the CWA and applicable rules and regulations. The NPDES regulations at Title 40 of the Code of Federal Regulations (CFR) 125.3 require NPDES permit writers to develop technology-based treatment requirements, consistent with CWA section 301(b), that represent the minimum level of control that must be imposed in a permit.
511	15	DEQ has not ensured the permit will result in compliance with chronic aquatic life criteria. Acute toxicity levels are inappropriate as the foundation for the benchmarks for two reasons. First, they fail to reflect the possible chronic effects of the frequent and long-term stormwater events that often occur in Oregon. Second, they fail to recognize the potential for bioaccumulation of certain pollutants, which necessarily persist beyond the allegedly “short-term” occurrence of stormwater events.	<p>DEQ has agreed to use the EPA’s MSGP as a platform during permit development. EPA views acute criteria as generally more appropriate than chronic criteria, since benchmarks are usually set equal to acute ambient water quality criteria for the receiving waters, with no allowance for dilution during storm events. The most likely critical stormwater conditions for acute toxicity would be a high intensity short duration storm event that occurs after a long period of no rain.</p> <p>In Oregon the critical condition of acute toxicity is most likely during a</p>

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			summer or early fall event when the receiving water have low flows.
512	15	<p>DEQ must complete a reasonable potential analysis (“RPA”). An RPA assesses whether a particular discharge has the potential to cause or contribute an excursion above applicable water quality standards. This analysis allows the permit writer to assess whether a permit must include water quality-based effluent limitations. Without this information, DEQ cannot adequately regulate stormwater discharges. The Permit Evaluation Report does not mention whether an RPA was conducted or will be conducted on point sources discharging under the 1200-Z Permit.</p> <p>The Ninth Circuit has held that the Clean Water Act requires the EPA to include in permits whatever effluent limitations it determines are necessary to achieve the state water quality standards. Trustees for Alaska v. Environmental Protection Agency, 749 F.2d 549, 557 (9th Cir. 1984). DEQ must use the RPA to determine what effluent limitations are needed to achieve the water quality standards set forth for the water bodies covered by the permits</p>	<p>Reasonable potential analysis is suited to individual point source discharges to a defined waterbody. The general permit approach has been adopted for industrial stormwater discharges modeled after EPA to efficiently regulate many industrial sectors with similar discharge characteristics. It is not feasible to apply in-stream dilution, statewide stormwater effluent data, and factors such as site specific background criteria to indirect discharges under a general permit. The permit does include the clause: “permit registrant must not cause or contribute to a violation of instream water quality standards as established in Oar 340-041.”</p> <p>While DEQ maintains that compliance with the permit will result in discharges that meet water quality standards, DEQ recognizes that there may be information that necessitates additional measures to ensure that discharges meet water quality standards. Thus, the water quality-based section of the permit states: “DEQ or agent may impose additional monitoring, site controls or compliance schedules on a site-specific basis, or require the permit registrant to obtain coverage under an individual permit, if information in the application, required reports, or from other sources indicates that the discharge is causing or contributing to a violation of water quality standards, either in the receiving waterbody or a downstream waterbody.”</p>
513	16, 32	Schedule A, 4.b.iii. It is unclear when the Corrective Action implementation deadline is measured from (i.e., after receiving monitoring results, or following submittal of the Water Quality Standards Corrective Action report). The term "if possible" allows too much subjectivity for compliance. The added "whichever comes first" implies that during the rainy season you could be required to implement corrective actions that day, regardless of the availability of materials and resources, planning, safety considerations or other reasons that a corrective action is not feasible. Recommend keeping the language in the current permit as is.	DEQ declined to make this change. At any point a discharge is determined to cause or contribute to the excursion of water quality standards, the permit registrant must address the problem in a timely manner. The CWA and Division 12 of OAR’s establishes fines and enforcement procedures for discharge violations based on exceedance percentage.
514	16	Schedule A, 4.c. This section of the permit can be interpreted as potentially authorizing the DEQ and agents to mandate site specific means and methods of storm water management and treatment at facilities to address water quality standards violations, without input from the facility.	If a facility’s discharge causes or contributes to an excursion of water quality standards this is a class I violation. Through the enforcement process, DEQ and a facility may enter into a Mutual Agreement and Order which may include requirements for studies, plans, upgrades and/or interim requirements. DEQ does have the authority mandate site specific conditions

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		Recommend keeping the language in the current permit as is.	to stop and prevent stormwater from violating water quality standards.
515	20	Per Oregon’s copper water quality standard (EndNote N, provision 3(a)), the permit or permit evaluation report should identify how the benchmarks result in protection of the most bioavailable conditions for each waterbody.	The re-analysis of the benchmarks after March 20 should have corrected for the bias of representing conditions near industrial discharges because we looked at all available data for freshwater regions. This vetting process resulted in just over 2,000 sites with the parameters necessary for this analysis that were not in close proximity to an industrial facility outfall.
516	32	A.4.c.Permittees are deeply concerned with DEQ providing agents this kind of broad authority given multiple issues with DEQ's agents regarding conflicting advice, inventing requirements outside the permit and providing inconsistent permit interpretations. In addition, if DEQ would like to begin to prescribe site controls and schedules they must also accept responsibility for performance and costs of those controls in the event recommendations and timelines are not realistic or implementable. In the least DEQ should be providing much better technical guidance, consistent permit interpretations and design criteria to help with the existing problems consistency problems, without adding requirements that will exacerbate these problems. Permittees must be assured that any additional monitoring, site controls, or schedules are realistic and the DEQ's chosen permit administrator has the technical expertise and experience to address complicated problems in a reasonable and scientific manner.	This section is not substantively changed from the previous permit. DEQ retains authority to protect Oregon’s waters from discharges that exceed water quality standards under OAR 340-012-0055(1)(b). If at any time our agent identifies violation which are referred to DEQ’s Compliance and Enforcement division and technical staff are involved in the outcomes.
517	21	Schedule A, 4.b.i: This provision requires certain actions “within 24 hours of discovering the violation.” For consistency with federal rules, this should read “within 24 hours of becoming aware of the violation.”	DEQ did not make this change.
Zinc			
518	22	Based on historical stormwater analysis results at our facility, it is unlikely that we will be able to maintain stormwater Total Zinc levels at or below the proposed benchmark value. It should be noted that nothing directly involved with our production processes (cryogenic distillation of ambient air) or ongoing operations contributes to this potential benchmark exceedance. Rather, our reviews have determined that the majority / all of this Total Zinc discharge to our stormwater outfalls is directly tied to the significant amount of galvanized structural steel that make up our production equipment as well as the significant amount of galvanized facility fencing located throughout our facility.	There are fairly low cost sealants on the market for galvanized structural steel and fencing. There are also environmentally friendly non-leeching fencing materials which could be used. It may take source control techniques to eliminate industrial sources of zinc even if they are used in the production process.

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519	22	<p>The Linde Hillsboro, OR facility prides itself on safe and environmentally friendly production operations as well as being responsible members of the City of Hillsboro / State of Oregon business communities. Should the proposed benchmark thresholds be changed as indicated, we are concerned that continued compliance (even with future investment in zinc discharge mitigation measures) may become impossible due to the existing design and equipment aspects associated with our facility.</p> <p>We urge that the Oregon DEQ and the 1200-Z Permit change committee considers the situation associated with the Linde Hillsboro facility (as well as other similar businesses within the affected regions) in their review / consideration of the proposed new Total Zinc discharge benchmarks and reaches a mutually acceptable compromise for all parties involved.</p>	<p>The benchmark values in the permit for the zinc based on a water quality model and a 10% exceedance rate of the acute aquatic life criteria.</p>

Appendix

Don Abing	Megan Faria	Kelly Kincella	Zane Posen
Geert Aerts	Larry Ferguson	Jeff Kipilman	Lindsay Pour
Anthony Albert	Laurie Fisher	William Lee Kohler	Kristine Precour
Rachele Altman	Wes Fisher	Ted Kozlowski	David Pulaski
Vincent Alvarez	Rita Cabral	Elaine Kuehn	Luke Pyke
Jan And	Adam Fleming	Lynn Kush	Julianne Ramaker
Brian Anderson	Arlys Fones	Paul Landau	James Rankin
Nancy Anderson	Dan, Karol Forner	Ruba Leech	Duane Ray
Lucas Andresen	Matthias Fostvedt	Patrick Leiphart	Vince Ready
Donna Anessi	Heidi, Gerald Fox	Ryan Lemoine	Sheryl Redburn
John Ardner	Hannah Fraser	Rebecca Lester	Dana Regan
Noreen Arnold	Matt Freedman	Karen Lewis	Joan Reid
Chris Arthur	Richard Freeman	Alicia Liang	Bill Richardson
Jim Ashley-Walker	Michael Freese	Sara Libby	Anthony Riedl
Kathy Balogh	Roberta Gannett	Penelope Lichatowich	Erin Riley
Cory Barge	Brian Garrison	Tom Lichatowich	Sally Riley
Matthew Barmann	Alex Gedrose	Charles Lief	Diane Rios
Gabriel Barnatan	Corey Gedrose	Judith Lienhard	Amy Roberts
Mary Barrow	Gloria Gedrose	Torrey Lindbo	Kathleen Robertson
Bridget Bayer	Julie Gedrose	Rose Lindsey	Arnold Rochlin
Stewart Bell	Karlyn Gedrose	Jessica Lipinski	Kyle Rolnick
Jen Belts	Monica Gilman	Victoria Lowe	Frank, Vickey Romph
Tom Bender	Sarah Glathar	John Macdonald	Frank Rouse
Kade Benton	John Goetz	Joann Macey	Dennis Sample
Barbara Bernstein	Emily Goldman	Penny Machinski	Paul Sansone
David, Rachel Bernstein	Steve Goldstein	Craig Mackie	Courtney Santoro
Linore Blackstone	Erinne Goodell	Aaron Macy	Ellen Saunders
Merna Blagg	Candace Goodman	Mai-Lill Magi	Daniel Scarpine
Karen Blasche	Pamela Green	Kat Majors	Del Scharffenberg
Robyn Bluemmel	Stacy Green	Miriam Margulies	Melissa Scherling
Rob Bodner	Sue Greenspan	Emilie Marlinghaus	Janet Schmidt
Jean Boesl	Deena Grossman Keep	Katrina Mcalpine	Irene Schoppy
Paul Borchering	John Hahn-Francini	Margaret Mccauley	Nicholas Scrivens

Lyndon Borden	Michael Hall	Gary Mccuen	Elizabeth See
Lyndon Borden	Elizabeth Hallett	Jim Mcdaniel	Dana Sewall
John Brinkley	Paul Halliday	Sharon Mcdonald	Melody Shapiro
William Bromann	Jack Hamburg	Mary Ellen Mcfadder	Kathleen Shelman
Lucile Brook	Nancy Hamer	Teresa Mcfarland	Dan Sherwood
David Brugato	Craig Hamilton	Mary Mcgaughey	Ansel Shoemaker
Sally Buck	Sean Hanrahan	Ed Menze	Sarah Silva
Jacob Bullock	Holly Hansen	Ted Messing	Julianne Simpson
Trish Bunyard	Phil Hanson	Josh Metcalf	Joanne Skirving
Lori Ann Burd	Ashlyn Hardman	Rob Meyers	Gwendolyn Sky
John Burns	Marilyn Harlin	Debrah Miles	Marina Slaton
R C	Ryushin Hart	Charlie Miller	Anne Smith
Maxine Callinan	Margaret Hartman	Bonnie Mitchell	Joan Smith
Michael Campbell	Andrew Hawley	Christian Molter	Kim Smith
Laurie Caplan	Douglas Hayner	Gregory Monahan	Linda Smith
Bob, Ruthanne Carothers	Helen Hays	Amanda Moore	Jo-Elle Somerset
Jack Carter	Susan Haywood	Ann, Doug Morten	Kathy Sperle
James Castle	Stephen Heard Keep	Mckennon Mullen	Dorothy Sperry
Liz Chapman	Zechariah Heck	John Murphy	Taylor St Clair
Matthew Cherf	Bev Hedin	Bobbee Murr	Elizabeth Stanek
Amy Chinitz	Nancy Hedrick	Linda Nagy	Clemens Starck
Anne-Marie Claire	Nigel, Karen Heinemann	Grace Neff	Victoria Starr
Rebecca Clarke	Lorraine Heller	Marianne, Tom Nelson	Ellen Stearns
Martha Clemons	R J Herb	John Nettleton	Judy Steinberger
Martha Clemons	Jeffrey Herman	Jody Neubert	James Stengle
Rob Cochran	Craig Heverly	Mary, Klaus Neuendorf	Don Stephens
Carrie Cole	Ryan Hibbs	Hanna Neuschwander	Wade Stoddard
Margaret, Thomas Comfort	Casey Hickman	Bonnie New	Mindy Stone
Bruce Cook	Greg Hoffman	Jody Newcomer	(Barbara) Bobbi Stout
Amy Cortese	Peter Hoppe	Cynthia Nielsen	Kathleen Sweet
Randy Cottonware	Vernon Huffman	Calvin Noling	Romney Taylor
Stephen Couche	Lise Hull	Toni Noll	Stephanie Taylor
Richard Craig	Mollie Hunt	Matthew Nusinov	Jim Temple
Desiree Craven	Fred Ingram	Julie Oatfield	Wanda Terrell

Preston Danford	Rich Inlove	William Obrien	Susan Teso
John Davolio	Ursula Irwin	Laura Ohanian	James Thompson et's
Chris Debruler	Ken, Anne Jackson	Kelley O'hanley	Deb Thrall
Phyllis Decristofaro	E Jacob	Gail Ohara	Willie Tiffany
Lenny Dee	Diane Jacobs	Jacob Olson	Celia Tippit
Teresa Delorenzo	George Janas	Jake Olson	Scott Tobiason
Josh Demarco	Helen Jaskoski	Maureen O'neal	Kathy Tonegawa
Karen Deora	Mary Ann Jasper	Alex Paiz	Pam Treece
Peter Devry	Heidi Jimenez	Deanna Palm	Barbara Trent-Nugent
Heather Dimke	Jenet Johnsen	Samuel Parker	Dena Turner
Melinda Cooper	Laree Johnson	Susan Bennett Parks	Rachel Ulrich
Madi Dolifka	Cheryl Johnson	K. Paule	Kathryn Vannatta
Martin Donohoe	Bruce Johnston	Emily Pelletier	Suzanne Vanslyke
Raymond Dukes	Louise Johnston	Josie Peper	Lexi Veltri
Kathleen Dunn	Robert Jones	Shannon Perry	Susan Vosburg
Scott Dunn	Sandra Joos	Kathryn Peterson	Susan Vosburg
Judith Eda	Michael Kalafut	Jeff Pettey	Jane Waddell
Cynthia Enlow	Neal Keefer	Patricia Pettit	Dale Walker
William, Ann Equitz	Jennifer Kelley	Russ Phillips	Susan Walsh
Holly Erickson	Diane Kenedy	D. Randy Phillips	Ellen Wax
Adriana Escobedo-Land	John Kent	Anthony Phong	Randall Webb
Christine Wong	Larry Kent	Nora Polk	Susan Wechsler
Pam Wood	Maria Kent	Karen Pollach	Tamara Wecker
Brandon Yann	Owen Kessel	Jan Polychronis	Mark Wheeler
Audrey Zerr	Rebecca Kimsey	Darlene Pope	Matt Wheeler
Warren Zimmermann	Nancy Winn	Nancy Whitney	Jeffrey White
Harry Wohlsein	Jim Winterbottom	Connor Williamson	Lois White
	Alex Wohl		Suzanne Zuniga