



State of Oregon Department of Environmental Quality

# Industrial Stormwater General Permit No. 1200-A Response to Comments

August 2012 and October 2012 Comment Periods

## List of Commenters

No.	Name of Individual(s)	Name of Organization
1	Dawn Hottenroth	City of Portland Bureau of Environmental Services
2	Lynne Kennedy	City of Gresham
3	Leslie Adams	Rogue Riverkeeper
4	Laura Kerr and Cameron La Follette	Northwest Environmental Defense Center and Oregon Coast Alliance
5	Marne Coleman	Coleman T, Inc. DBA Newberg Rock & Dirt
6	Michael J. Lidgard	United States Environmental Protection Agency Region 10
7	Vaughn Balzer	Oregon Department of Geology and Mineral Industries
8	Stu Lips	

No.	Topic	Commenter	Specific Comment	Response
<b>General Comments</b>				
1	Appropriate Stormwater Permit	1	Batch plant operators are more like industrial sources that should be covered under the 1200-COLS/1200-Z permits	DEQ disagrees with this comment. DEQ recently re-issued the 1200-Z and 1200-COLS National Pollutant Discharge NPDES Industrial Stormwater Permits. On the face page of the 1200-Z and 1200-COLS permits batch plant operators are excluded from obtaining coverage under these permits. DEQ is not planning to re-issue these permits again until 2017. At that time, DEQ will consider whether these operations should be transferred to the 1200-Z or 1200-COLS permit.
2	Agents	1	Permit should acknowledge local jurisdiction agents as well as DEQ and DOGAMI.	DEQ agrees with this comment and has changed the permit accordingly.
3	Public review	3,4	The SWPCP developed by the permittee should be available for public review along with the permit application. In addition, action plans should be submitted to DEQ and kept available for public inspection.	The SWPCPs developed under this permit are public records and are available for public review at the time that the public is notified of the permit application. DEQ is currently reviewing its procedures to ensure that the public is aware that the plan is available for review. As stated in the permit certain revisions are not required to be submitted to DEQ or its Agent. If the public requests to examine any SWPCPs, DEQ or Agent will request that the facility make these revisions available for public review. No changes to the permit are needed to address this comment.
4	Land Use	3	DEQ and DOGAMI must ensure that permittees stay in compliance with land use compatibility statements (LUCS) and in general with county land use codes and floodplain ordinances. DEQ, DOGAMI and counties need to better communicate to ensure that sand and gravel facilities are not operating in violation of land use codes and permits.	DEQ and DOGAMI recognize the importance of effective communication with local government agencies on land use compliance. If permittees are not complying with the land use compatibility statements submitted with their permit application, it could be considered a permit violation. No changes to the permit are needed to address this comment.
5	Comments on specific operations	3	Commenter raised issues related to compliance of the Tidewater site in the Rogue Estuary and requested that DEQ and DOGAMI ensure that this site does not continue to violate its permit.	DEQ and DOGAMI are aware of the concerns at the Tidewater site. DOGAMI has been working with the permittee to improve its BMPs in order to address these issues. No changes to the permit are needed to address this comment.

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6	Need for permit	5	There should be no 1200A permit as long as sand and gravel operations are utilizing good management.	Sand and Gravel operators are required to obtain permit coverage even if they are utilizing good stormwater management. In 1990, the Congress adopted requirements for stormwater discharges to surface waters from certain categories of industries, including sand and gravel and batch plant operations. <sup>1</sup> As an EPA approved state program, the Oregon Department of Environmental Quality is responsible for implementing these regulations and issuing NPDES permits.
7	Pollution	8	Industry should not be allowed to discharge any pollutants into waters.	The federal Clean Water Act (CWA) provides that discharges from point sources to waters of the United States are prohibited, unless in compliance with a national pollutant discharge elimination system permit. <sup>2</sup> The 1200-A permit contains the conditions by which sand and gravel operations may discharge into state waters while protecting beneficial uses of those waters.
<b>Permit Coverage and Eligibility- Application Requirements, No Exposure Exclusion and Authorized Non-Stormwater Discharges</b>				
8	Coverage	1	The title to this section should be changed, as the permit does not describe limitation on coverage.	DEQ disagrees with this comment. The topics of this section (such as applying for coverage and renewing coverage) are appropriately placed in this section consistent with other Oregon general NPDES permits.
9	Coverage for dischargers to impaired waters	7	The definitions of new discharger and new source make it difficult to determine which facilities are subject to the requirements for new dischargers to impaired waters.	DEQ agrees and has modified the permit so that new sources are subject to the same requirements as new dischargers.
10	Coverage for discharges to impaired waters	2	Consider changing the language in Condition 1.c to provide greater clarity. The condition is overly broad and should state “do not apply if the waterbody is only impaired for one or more of the following”	DEQ has made changes to the language to provide greater clarity.

<sup>1</sup> 55 Fed. Reg. 47990; 40 C.F.R. 122.26.

<sup>2</sup> Clean Water Act 301(a).

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11	Coverage for discharges to impaired waters	2, 4	Mine dewatering discharges may affect stream temperature, help or exacerbate flow modification, or contribute to impairments for biological criteria; as a result requirements in Conditions 1.a. and 1.b. should apply to facilities that discharge to waters impaired for temperature and flow modification.	<p>Condition 1.a of the permit applies to impairment pollutants that are not addressed by a Total Daily Maximum Load. In instances where a new discharger is discharging mine dewatering to an impaired waterbody without a TMDL for temperature, DEQ agrees that the requirements in condition 1.a. should apply and changed the permit accordingly.</p> <p>Condition 1.b of the permit applies to impairment pollutants that are addressed by a TMDL. As DEQ develops TMDLs for temperature, the agency evaluates whether WLAs for mine dewatering discharges are needed to achieve compliance with water quality standards. The permit includes language that the discharge must comply with any applicable TMDL requirements.</p>
12	Coverage for discharges to impaired waters	1	The term “impairment pollutant” needs a definition	DEQ agrees with this comment and has added a definition for “impairment pollutant” in Section D.3.
13	Coverage for discharges to impaired waters	1	1.c.i. should state “biological criteria,” rather than biological communities.	DEQ agrees with this comment and has changed the permit language accordingly.
14	Renewal Requirements for Facilities that exceed benchmarks based on 4 <sup>th</sup> year geometric mean evaluation	1	Clarify that buffer sizing is a width measure.	DEQ agrees with this comment and has changed the permit language accordingly.
15	Renewal Requirements for Facilities that exceed benchmarks based on 4 <sup>th</sup> year geometric mean evaluation	2	Section 4.a.iv.1 should be changed to state that “average and maximum concentrations associated with volume reductions must not exceed concentrations that existed prior to the volume reduction.	DEQ disagrees with this comment. It is likely that alternate benchmark values would apply in this situation. However, given the large variability in storm water concentrations, basing targets on a small historical data set may not be the best approach. This will be addressed in guidance or on a case-by-case basis. No changes to permit needed to address this comment.
16	Non-stormwater discharges	1	Clarify that local jurisdictions may regulate non-stormwater discharges.	DEQ agrees with this comment and has changed the permit language accordingly.

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17	Non-stormwater discharges	3,4	The permit improperly authorizes the discharge of “pavement wash waters” and “vehicle washing,” as such discharge increases the potential for stormwater to be laden with high levels of toxic metals. Such wash water should be treated separately.	DEQ disagrees with this comment. Authorized non-stormwater discharges are subject to the terms of the permit. The permit requires regular sweeping of pavement before pavement is washed, which would remove metallic residues. The permit only authorizes discharge of waters from vehicle washing without hot water or detergents. Such washing is generally limited to washing of wheels to control sediment track-out. Such washing would not mobilize significant amounts of brake dust as it would be confined to an exterior rinse. Any facility that washes more than 8 vehicles or pieces of equipment per week needs to comply with the terms of the 1700-A permit, which would include additional BMPs.
18	Non-stormwater discharges	1	DEQ’s permit should not allow washing down pavement after sweeping paved areas, which is prohibited by EPA’s Construction Stormwater permit.	DEQ disagrees with this comment. Sweeping sediment into a stormwater conveyance system is prohibited under the 1200-A permit. The non-stormwater discharge authorization applies to pavement washwater that has already been swept to ensure sediment or other pollutants are not washed into the conveyance system. Moreover, DEQ’s permit does not allow discharge of pavement wash water if hot water or detergent is used, which is more stringent than EPA’s multi-sector general permit, which provides coverage for sand and gravel operations.
19	Non-stormwater discharges	2	The term “uncontaminated” groundwater should be defined in section 6.a.x.	DEQ agrees and has included a definition of “uncontaminated” in the permit.
<b>Schedule A-Technology and Water Quality Based Limits, Stormwater Pollution Control Plan, Benchmarks and Corrective Actions</b>				
20	Sediment and Erosion Control	2	Term “control” in 1.a.ii should be changed to “eliminate to the extent practicable”	DEQ disagrees with comment and concludes that the language is sufficiently clear and does not need to be specifically defined.
21	Sediment and Erosion Control	1	Standard erosion and sediment control practice requires sediment removal when a facility is at half or some other percentage of capacity. This language should be included in condition A.1.a.iv in the permit.	DEQ agrees with this comment and has changed the permit language accordingly.
22	Sediment and Erosion Control	2	Add language to condition A.1.a.v that the local municipality should be contacted for all activities that result in sediment or other pollutants entering public infrastructure.	DEQ agrees with this comment and has changed the permit language accordingly.
23	Exposure minimization	1	Condition A.1.b should include language “to the extent technologically available and economically practicable and achievable in light of best industry practice,” similar to the 1200Z and COLS permit language.	DEQ agrees with this comment and has changed the permit language accordingly.

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24	Limitations on Process Wastewater and Mine Dewatering Discharges	1	Mine dewatering discharges should be pretreated for solids and nutrients by vegetated or other erosion control prior to discharge. Mine dewatering dischargers under EPA's Construction Stormwater Permit are prohibited unless they receive treatment through an appropriate onsite control. DEQ's language is less specific than EPA's requirements.	DEQ disagrees with this comment. While EPA's Construction Stormwater Permit does contain these requirements, the Multi-sector General Permit, which covers sand and gravel mining operators, does not include such requirements. DEQ examined data for current operators under the previous permit and found that they were meeting TSS benchmarks without such a requirement. As a result, DEQ does not see that such a requirement would have any environmental benefit at additional cost to the permittees.
24	Limitations on Process Wastewater and Mine Dewatering Discharges	1, 2	For facilities adjacent to surface waters, the statement requiring "no visible turbidity increase" has unclear applicability. A definition for "no visible turbidity increase" should rely on field measurement.	The clause requiring "no visible turbidity increase" is included to ensure that facilities have a means to determine if their discharge is causing or contributing to a violation of the water quality standard for turbidity without the need for upstream and downstream samples. The water quality standard for turbidity prohibits discharges from increasing background turbidity by more than ten percent. Literature indicates that a visible plume would equate to at least a 10% increase in background turbidity. If, during an inspection, a facility noticed an incidence of visible turbidity, it would indicate the need for immediate corrective action.
25	Corrective actions	1	DEQ should consider including a requirement to cease or redirect voluntary discharges, such as mine dewatering discharges, until final corrective actions are needed to address a violation.	DEQ agrees that, if mine dewatering is causing or contributing to the violation, a discharger should cease or redirect such discharges until corrective actions are implemented. DEQ has changed the permit language accordingly.
26	Corrective actions	2	Consider consolidating sections of the permit regarding corrective action into one place	DEQ recognizes that more than one section of the permit describes corrective action requirements; however, these requirements are included to address various topics. Moreover, the current permit follows the structure of the previous permit and other recently revised industrial stormwater permits. Therefore, no changes were made in response to this comment.
27	Corrective actions	2	If corrective action is required, DEQ should require the permittee to demonstrate that the action has eliminated the excursion.	DEQ disagrees with this comment. Ongoing benchmark sampling and inspections will monitor the success or failure of corrective actions.
28	Corrective action for impairment pollutants	4	DEQ should require permittees to determine the source of impairment pollutants and revise SWPCP to control and eliminate such pollutants.	DEQ disagrees with this comment. Current requirements are sufficient to control both benchmark and impairment pollutants. Tier I corrective actions are intended for facilities to regularly investigate the cause of elevated pollutant concentrations in their discharge. Facilities are required to evaluate the cause of the elevated pollutants in their discharge within 30 days of obtaining the monitoring results.

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29	Incorporation of TMDLs	3	Commenter inquired how the permit incorporated the Rogue and Bear Creek TMDLs.	DEQ's policy is to consider all potentially significant sources of pollutants in a TMDL analysis. If a TMDL included specific requirements or loads for facilities covered under this permit, such requirements would be included in the permit for those facilities. The TMDLs for Rogue River and Bear Creek do not include specific requirements for industrial stormwater; therefore, DEQ does not consider industrial stormwater to be a significant source of pollutants covered by the TMDL.
30	TMDL Compliance	4	DEQ should not presume that permit compliance will ensure TMDL compliance. If a TMDL does not mention stormwater, it does not contemplate the extent to which stormwater affects the quality of the water body or how its discharge affects its assimilative capacity. If a source will discharge impairment pollutants into a water body with a TMDL, DEQ should revise the TMDL to incorporate load allocations for stormwater. Otherwise, in order to be consistent with the <i>Pinto Creek</i> decision and EPA regulations, DEQ must review each new application on a case-by-case basis to determine whether there are available load allocations and whether other sources are reducing pollution pursuant to compliance schedules.	DEQ disagrees with this comment. DEQ affirmatively considers all potential pollutant loads when developing the TMDL and determines whether existing loads are significant cause of or contribution to the impairment. For existing TMDLs, DEQ assigned WLAs as required to attain water quality standards. Second, in Oregon, unlike the situation with Pinto Creek, when a TMDL is developed, implementation measures designed to achieve compliance with the allocations are addressed as part of the TMDL process. In Pinto Creek, allocations were assigned but there were no implementation measures established for dischargers.
31	Sediment discharge	2	Permit should prohibit discharge of significant amounts of sediment to groundwater, in addition to surface waters.	DEQ disagrees with this comment. The 1200A permit regulates discharges of sediment to surface waters. DEQ has developed a separate Water Pollution Control Facility permit (WPCF 1000) that addresses discharges from sand and gravel mining facilities to the ground.
32	SWPCP-Use of Chemical Treatment BMPs	1	EPA's construction stormwater permit has specific requirements for use of treatment chemicals including specific training and evaluation of water and residual solids; this is inadequately addressed in DEQ's permit.  The SWPCP should include discussion about disposal of residues from chemical flocculation or treatment.	DEQ has included additional language under Employee Education regarding training for use of treatment chemicals. DEQ has also modified the permit to include discussion about disposal of residues from chemical flocculation and treatment and has revised the permit accordingly.
33	SWPCP	4	DEQ must require that permittees submit all SWPCP changes to DEQ or its agent in a timely manner and should be made available for public review.	DEQ disagrees with this comment. Since the SWPCP is a recordkeeping document certain revisions do not need to be submitted to DEQ. These revisions can be requested by DEQ or the Agent as needed.
34	SWPCP	7	The site map should include the location of wheel wash facilities.	DEQ agrees with this comment and has added this to the SWPCP requirements.

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35	Benchmarks	2	The pH benchmark range is set outside the water quality standard. DEQ should match the benchmark range to the water quality standard, require that a mass balance be calculated, or require upstream and downstream field measurement.	DEQ disagrees with this comment. Water quality standards set instream goals for water quality. The pH benchmark is a target for stormwater effluent and not meant to be an instream goal. The pH benchmark range of 5.5 to 9.0 S.U. accounts for natural conditions where it has been demonstrated that rainfall has a pH of less than 6.0 S.U.
36	Benchmarks	6	Oregon's sand and gravel permit must include effluent limitations and compliance monitoring for mine dewatering water because they are required by 40 CFR Part 436.	DEQ agrees and has modified the permit accordingly.
<b>Schedule B- Monitoring, Inspections, Reporting and Recordkeeping</b>				
37	Sampling Methods	6	The proposed permit allows permittees to use litmus paper. Federal rule requires electrometric measurement.	DEQ agrees and has modified the permit accordingly.
38	Impairment monitoring	1, 3,4	<p>DEQ should require permittees on water quality limited streams to monitor for all impairment pollutants and allow permittees to gain waivers if eligible.</p> <p>PAHs and PCBs should be added to the list of impairment pollutants, at least for batch plants.</p>	DEQ agrees that PAHs should be added to the list of impairment pollutants for all facilities, as these facilities have the potential to discharge PAHs from truck operation and maintenance. Moreover, DEQ agrees that PCBs should be added to the list of impairment pollutants for batch plants, because such facilities operate in industrial areas where PCBs may have been used in the past. Permittees will be eligible to obtain waivers for these pollutants according to the process outlined in the permit. DEQ does not agree that permittees should monitor for all impairment pollutants, as it is unlikely that sand and gravel operations would contribute other pollutants to state waters, given their location and the nature of their operations.
39	Impairment Pollutant Monitoring	1	DEQ needs to determine if dischargers to waters impaired for chlordane will need to monitor for chlordane	DEQ agrees with this comment and has added chlordane to the list of impairment pollutants for which we will require monitoring.
40	Impairment pollutants	4	DEQ should include benchmarks for impairment pollutants.	As described in the final permit in Schedule A.10, DEQ will set a reference concentration for the impairment pollutants in individual assignment letters. The reference concentration will be used to determine if the pollutant is present in stormwater discharges. If the pollutants are present in their discharge above the reference concentrations, the facilities must meet the Tier I corrective action requirements.

No.	Topic	Commenter	Specific Comment	Response
41	Inspections	1	DEQ should require inspection of onsite treatment facilities every quarter, since there is a quarterly inspection requirement for the wet weather visit.	DEQ has included the wet weather visit as a permit requirement to ensure that permittees have proper treatment capacity for the fall "first flush." DEQ agrees that visual inspections should be done more frequently and is adding a requirement that visual inspections of onsite treatment facilities be conducted monthly in conjunction with other monthly inspections required in the permit.
42	Inspections	6	Visible sheens in discharges should be explicitly prohibited	As part of inspection requirements in Schedule B.7.c., facilities are required to note any visible sheen in their discharge and note what corrective actions they take to address the visible sheen. DEQ considers this requirement sufficient to address any visible sheens detected in a discharge.
43	Monitoring variance	4	The permit should not allow for monitoring variance if facilities may still be discharging pollutants, as only with this information can the permittee and DEQ judge the effectiveness of control measures and for DEQ and the public to understand the status of the state's water. The only exception is when required monitoring may be impossible due to lack of rainfall resulting in discharges to the facility.	The monitoring variance is allowed for certain specific occasions when there is not sufficient discharge from the site to collect a representative sample. DEQ believes it is appropriate to allow facilities to request a variance in a broader set of circumstances than lack of rainfall. Language was revised to provide additional clarity as to when a monitoring waiver can be obtained.
<b>Schedule D – Special Conditions</b>				
44	Data collection	2	Section 4 should include the following language: "DOGAMI will give preference to data gathered using calibrated scientific equipment and materials when such data conflicts with visual observations."	DEQ disagrees with this comment and does not conclude that there is a need for such language.
<b>Schedule F – NPDES General Conditions</b>				
45	Reporting of Monitoring Results	6	Exceedances should be reported to inspectors and enforcement officers within 30 days of testing results.	DEQ agrees that exceedances should be reported to DEQ or its agents within 30 days of testing results. Such a requirement already is included in other sections of the permit including Permit Coverage and Exclusion from Coverage, section 4.e.i (Renewal Application Requirements), Schedule A Section 4.b.ii (Water Quality Standards), and Schedule A Sections 11 and 12 (Tier 1 and Tier 2 Corrective Actions). No changes to the permit are needed to address this comment.