



Oregon Department of Environmental Quality

DEQ Response to Comments

700-PM National Pollutant Discharge Elimination System General Permit

Overview

DEQ accepted public comment on the proposed 700-PM NPDES general permit for in-water placer mining from Dec. 18, 2024 through Jan. 27, 2025. A virtual public hearing was held on Jan. 22, 2022. The permit expires on April 30, 2025. This is a summary of comments received during the public comment period and a response from DEQ.

List of commenters	
#	Commenter
1	Tom Quintal
2	Larry Chase
3	Jay Bechtol
4	Tom Kitchar, Waldo Mining District
5	Eve Goldman, Tualatin Riverkeepers; Lindsey Hutchison, Willamette Riverkeeper; Teryn Yazdani, Columbia Riverkeeper; Frances Oyung, Rogue Riverkeepers; Mary Stites, Northwest Environmental Defense Center

Fees

Comment:

Permit is too expensive compared other resource users like fishing, hunting, boating etc. DEQ administrative cost is way out of control like so many other state agencies. (Commenter No. 1)

These rules shut down a revenue stream that can be financially very helpful to certain Oregonians. (Commenter No. 2)

Response:

A general permit is a lower cost permit. This permit requires payment of fees. New, annual and renewal administration fees are required per ORS 468B.118 and implemented in OAR 340-045-0075.

Fees and permit requirements for motorized suction dredging were enacted by Senate Bill 3 that took effect on Jan. 1, 2018. Fiscal impacts were considered as part of this action and are available on Oregon Legislative Information 2017 Regular Session SB3 enrolled which is [online](#).

Translation or other formats

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Permitting authority

Comment:

Motorized gold suction dredges do not add anything to streams that are not already in the water. A pollutant is not a substance that is already found within the high-water mark of the river. There is no addition. A CWA 402 permit does not apply. (Commenter Nos. 1, 4)

A CWA 402 NPDES permit does not apply. All discharges into waters of dredged material are regulated by the Army Corp under 404. No other discharge from in-stream placer mining is required to have both a CWA 402 NPDES permit and an Army Corp permit under 404. (Commenter No. 4)

The federal mining law of 1872 supersedes or preempts state law under the Supremacy Clause of the Constitution of the United States. (Commenter No. 1)

Regulations jointly issued by federal EPA and Army Corp state that suction dredging does not as a matter of practice produce an addition withing the meaning of the CWA 402 NPDES program and is not a point source discharge and reaffirms longstanding de-minimus unregulated movements under the CWA 404 program. (Commenter No. 1)

Discharge from a small suction dredge does not qualify as an industrial facility or facility classification. Consider how the Army Corp does not regulate small, motorized gold suction dredge discharges under 404. Army Corp considers a 4-inch small dredge to be a de-minimus discharge. All motorized suction dredge mining should be considered reclamation that removes trash and unwanted material from ESH streams. Chevron doctrine will provide a path for regulated industries to reduce administrative burden regulations. (Commenter No. 1)

There is significant doubt that in-stream placer mining equipment are point sources. (Commenter No. 4)

DEQ violates 1899 Oregon general and special laws act (ORS 541.110) and Oregon Admissions Act. (Commenter No. 4)

DEQ should ban all non-motorized mining and all non-motorized suction dredge mining in essential salmon habitat. (Commenter No. 5)

Response:

DEQ has the responsibility and authority to regulate discharges of pollutants to waters of the state pursuant to the Clean Water Act (as implemented under 40 CFR 123) and Oregon state law (as required under 340-041-0001).

In 2019, the Oregon Supreme Court considered the question of whether suction dredge mining resulted in an actual "addition of a pollutant," and thus a discharge for which EPA and DEQ could permit. *E. Oregon Mining Ass'n v. Dep't of Env't Quality*, 365 Or 313, 317 (2019). The Court noted, the term "addition" had long been interpreted to include the addition of suspended solids and remobilized heavy metals following mining operations. *Id.* at 317. The court further found that although pollutants are not considered "added" when transferred between different portions of the same water body, here it was reasonable to conclude that the deposit of materials following mining operation was not a transfer, but rather an addition to the water.

In this same case the court also considered whether suction dredge mining produced "dredged material" over which the Corps, not DEQ, maintained exclusive authority to permit. *Id.* In considering whether materials discharged from suction dredge mining qualified as "dredged material," subject to Corps jurisdiction under section 404, or "processed waste," subject to EPA's permitting authority under section 402, the Court considered the distinctive pollutant risks posed by the cumulative effects of suction dredge mining. *Id.* at 351. Because of those risks, the Court decided, the agencies reasonably concluded that EPA, and correspondingly DEQ, with its focus on water health, could regulate suction dredge mining.

ORS 541.110 addresses beneficial uses for purposes of appropriating water rights and does not limit DEQ's authority to regulate suction dredge mining to preserve water quality.

No changes were made to the permit based on these comments.

Permit conditions

Comment:

This permit is overly restrictive. Oregon miners are not able to comply with it or to use it when out on a family outing on a weekend to recover a small amount of minerals. (Commenter No. 1)

DEQ uses turbidity to limit placer mining as much as possible. Fish survive high turbidity events as a regular occurrence. Fish do not die because water is turbid for a few days. A shovel, sluice box or one of the small suction dredges that Oregon says can upset or overwhelm a river ecosystem is ridiculous and unsupported by valid research. (Commenter No. 2)

If turbidity were truly a concern, DEQ would concentrate way more on feed rate than on the device that processes the gravel. (Commenter No. 2)

There are no dead fish. DEQ is regulating for potential to harm when no actual harm has been shown. (Commenter No. 4)

Response:

The fact sheet appropriately contains information to support the permit limitations and best management practices in place to be protective of water quality, its beneficial uses and anti-degradation. No changes were made to the permit based on this comment.

Comment:

Commenter re-submitted a report entitled, Placer Mining on the Rogue River, Oregon, in Its Relation to the Fish and Fishing in that Stream: An Ecological Study Made for the Oregon Department of Geology and Mineral Industries, Sept. 1937 – May 1938, by Dr. Henry Baldwin Ward. This study is the only real scientific analysis of the effects of muddy water from placer mining on fish and fish life and to date, no further study has concluded differently. There is no other similar study done more recently, and by anyone in DEQ with Dr. Ward's credentials. There are no dead or sick fish. DEQ is regulating for potential to harm when no harm has been shown. Commenter added that in 2010, DEQ staffer, Beth Moore, did not read the study and then provided an unbelievable explanation as to why in a deposition. (Commenter No. 4)

Response:

Thank you for re-submitting the 1937 study by Ward with highlighted sections. This 1937 study was considered during the 2015 700-PM permit renewal. A couple of Tables were not legible in this recent PDF re-submittal; however, the study can be viewed online: [2017 Regular Legislative Session SB3 Enrolled Meeting Documents – Placer Mining on the Rogue River, Report.](#)

The fact sheet appropriately contains information to support the permit limitations and best management practices in place to be protective of water quality, its beneficial uses and anti-degradation. In response to the submitted study, no changes were made to the permit.

Comment:

Senate Bill 838 was enacted based on false or misleading information concerning the supposed increase in the number of suction dredge miners between 2007 and 2013. (Commenter No. 4)

These rules are an underhanded way to try to circumvent the will of the Oregon legislature as delineated in the first section of Senate Bill 838. (Commenter No. 2)

Response:

Thank you for your comment. Senate Bill 838 was finalized in 2013 and required the development of a report on suction dredge mining for the Oregon legislature. This report can be found here: [Governor's Office Report: SB838 Proposed New Regulatory Framework](#). No changes were made to the permit in response to this comment.

Comment:

What used to be a 3-page permit is now 22 pages. (Commenter No. 1)

Response:

Thank you for your comment. No changes were made to the permit in response to this comment.

Monitoring and reporting

Comment:

DEQ should require the use of equipment that objectively tests turbidity. A visual interpretation makes compliance subjective rather than objective. Require additional monitoring devices that better determine turbidity levels. (Commenter No. 5)

Response:

This permit allows but limits turbidity. Visible turbidity is defined in the permit. This permit contains a condition for daylight hours of operation which is consistent with the ability to determine compliance with the visible turbidity limits. Visual monitoring is sufficient to determine compliance with the 300 feet mixing zone. Visual monitoring is typically used as a method of monitoring in other states placer mining permits and DEQ uses visual monitoring in other permits, for example the NPDES 1200C construction stormwater general permit, to determine compliance. No change was made to the permit in response to this comment.

Comment:

Ban all non-motorized mining in essential salmon habitat because although there is a condition for habitat structures to be returned to their original position upon completion of the mining activity, there is no way to know that condition is met if photos or other evidence is not required before the structures are moved. (Commenter No. 5)

Ban all non-motorized mining in essential salmon habitat because although there is a condition in the permit that states mining equipment, including suction dredges and in-water non-motorized mining equipment must not be used where fish eggs are present. These redds, nests for fish eggs may be easy to miss or overlook. Allowing any suction dredge mining in essential salmon habitat puts fish eggs and fry at unnecessary risk. (Commenter No. 5)

Response:

Self-monitoring is a requirement of any NPDES permit. Each miner is required to have a copy of this permit on hand so that the requirements can be referred to and followed. Miners are responsible for knowing and following permit requirements.

DEQ considers self-monitoring and reporting to be one of the most important methods of compliance. The regulatory system that protects water quality in Oregon is based on complete and accurate monitoring and reporting by permit holders. When permit holders fail to comply with these obligations, the public and DEQ are unable to determine whether permit holders are complying with their permits. Because compliance with the monitoring and reporting requirements is critical to protecting water quality, violation of these requirements is considered by DEQ to be among the most serious of violations.

Oregon State Police has independent authority to enforce state law. DEQ will continue to partner with Oregon State Police on enforcement of conditions in this permit.

Comment:

Glad that DEQ is going to have online capability for the permit, permit renewal and annual report. Are all three projected to be a part of the new permit renewal? (Commenter No. 3)

Response

Yes. DEQ is transitioning to Your DEQ Online. Your DEQ Online is a one stop place to submit permit applications, reports and pay fees. Applications and fees will be submitted electronically, as well as the annual report.

Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age, sex, religion, sexual orientation, gender identity, or marital status in the administration of its programs and activities. Visit DEQ's [Civil Rights and Environmental Justice page](#).