

DEQ Response to Comments

NPDES 1200-CN Construction Stormwater General Discharge Permit

September 2021



Water Quality Permitting
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Overview

The 35-day public comment period for the proposed permit was from May 21, 2021 to June 25, 2021.

The following individuals or entities submitted written comments during the public comment period:

List of Commenters		
#	Name	Affiliation
1	Alexander Wade	Marion County
2	Danelle Peterson	Clean Water Services (CWS)
3	Margaret McCauley	Environmental Protection Agency (EPA)
4	Ted Hart	City of Corvallis
5	Eli Holmes	Willamette Riverkeeper
6	Christine Valentine	Oregon State Landscape Architect Board (OSLAB)

Similar comments are categorized below with DEQ's response following the comment. Original comments are on file with DEQ.

NPDES 1200-CN Construction Stormwater General Discharge Permit

General 1200-CN Permit Comments

General Comments

Local Programs' Submissions Must Be Updated

Comment from Willamette Riverkeeper:

1. As DEQ is well aware, several municipalities in the Willamette River Basin sued DEQ over the Draft Phase II (Small) MS4 General Permit, thus delaying DEQ's issuance of the Small MS4 General Permit and municipalities' application for coverage under the "modified" Small MS4 permit (March 12, 2021). Several of these municipalities are also "qualified local programs" under the proposed 1200-CN permit. The DEQ's review of local programs for the draft 1200-CN permit likely occurred before the modified Small MS4 permit was issued, and certainly before municipalities submitted all the necessary information for coverage under the modified Small MS4 permit to DEQ. Thus, DEQ's draft 1200-CN permit cannot be based on a "comprehensive description of each local stormwater program" (Permit Eval. Report at 9) because the local programs pre-date the modified Small MS4 permit programs. DEQ's current draft 1200-CN permit appears (1) to eliminate the requirement to apply for a 1200-CN general permit (2) for operators in qualified local program jurisdictions (3) without requiring or assuring that the more recent modified Small MS4 requirements apply to operators. Essentially this approach would allow a lower and arguably illegal standard for construction stormwater discharges to persist throughout the Willamette River Basin. Thus, Willamette Riverkeeper urges:

- DEQ's 1200-CN permit be consistent with the modified Small MS4 permit (particularly the construction stormwater management provisions). If any provision of the 1200-CN permit sets a lower standard, it should be re-drafted to be consistent with the modified Small MS4 permit.
- This is important because DEQ proposes that qualified local programs will "automatically" permit coverage under the 1200-CN general permit, there is a greater need to ensure consistency with the modified Small MS4 permit.

Furthermore, because the draft 1200-CN permit does not contain numeric turbidity limitations, monitoring requirements, numeric effluent limitations (see Permit Eval. Report at 6-7), it is even more important to ensure the qualified local programs are robust and in-line with the modified Small MS4 general permit provisions.

Lastly, we are concerned that operators that should be under the 1200-C permit may seek coverage under the draft 1200-CN permit, and evade meaningful review by DEQ. So, it is even more important that qualified local programs be fully vetted and consistent with other requirements.

DEQ Response:

The 1200-CN permit and MS4 Phase II general permit are two separate permits. As such, DEQ must

evaluate each permit, permit assignment and designation of a “qualified local program” independently. Each jurisdiction that wanted to continue as a qualified local program or wanted to be considered as one submitted an application to DEQ. DEQ conducted a thorough evaluation of each local jurisdiction’s 1200-CN application, which included submission of relevant local codes and ordinances, ESCP requirements and review processes, inspection and enforcement procedures and additional stormwater program documents and templates. Additionally, DEQ conducted an interview with the relevant stormwater program staff of each jurisdictions to discuss the stormwater permit application and review processes, inspection schedule, and enforcement procedures. This comprehensive application evaluation and interview process informed DEQ as to the capability and resources of each jurisdiction’s stormwater program. Further, DEQ designated “local qualified programs” by the ability of each jurisdiction to meet the requirements of the current 1200-C Construction Stormwater permit. As such, each jurisdiction listed in the draft permit demonstrated the ability to implement the 1200-CN.

MS4 and Mercury TMDL Concerns

Comment from Willamette Riverkeeper:

2. Some of Willamette Riverkeeper’s concerns were raised in its comments to the Small MS4 General permit (enclosed as Attachment 1), and DEQ’s modified Small MS4 permit more than doubled the 5,000 square foot threshold for small communities and increased it by 40% for large communities, did not check how these increases interface with the TMDL for mercury.

DEQ Response:

The EPA Construction General Permit has land disturbance threshold of 1-acre requiring the construction site operator to obtain Construction Stormwater permit coverage. The 1200-CN permit is in line with this federal condition; however, 1200-CN permit coverage may be applied to any size project that is less than five acres within the jurisdictional boundaries that the local 1200-CN jurisdiction deems is appropriate to protect water quality. The 1200-CN permit conditions are appropriate as it relates to the Willamette Mercury TMDL and all other TMDLs that have been issued and approved by EPA to date.

Intensification of Construction in the Willamette River Basin and General Permit Approach

Comment from Willamette Riverkeeper:

3. Willamette Riverkeeper recognizes some efficiencies exist for applicants for DEQ by using a general NPDES permit approach. However, Willamette Riverkeeper urges the DEQ to proactively consider individual permits on an equal footing with general permits for construction stormwater, and not presume that all applicants should be allowed to seek coverage under the 1200-CN general permit. Willamette Riverkeeper is concerned with the pace of development throughout the Willamette River Basin, the intensity of construction, and the resulting impacts on the watershed. We request that in implementing the construction stormwater program, DEQ scrutinize and distinguish projects that truly do have “similar discharge characteristics” from those that more appropriately merit coverage under an individual permit.

DEQ Response:

Each proposed construction project that applies for local stormwater permit coverage and the local 1200-CN jurisdiction deems appropriate for 1200-CN coverage is evaluated for a potential exceedance of water quality standards. If a proposed project has a high risk of a water quality exceedance, the permit applicant will be directed to DEQ to determine what water quality permit is most appropriate for the proposed

discharge (Sections 3 and 7.b). In some cases, an individual water quality permit may be required as per OAR 340-045-0033(10). Additionally, waters of the state and natural buffer zones require additional Best Management Practices implementation be approved by the 1200-CN jurisdiction and included to the Erosion and Sediment Control Plan. To further control the potential discharge of pollutants from a construction site, the Environmental Management Plan review process has been added to the 1200-CN permit to address any documented or unanticipated media contamination such as soil or groundwater contamination found on a project site. A DEQ approved Contaminated Media Management Plan and/or Active Treatment System Plan must be in place and submitted with the 1200-CN application when known or suspected contamination is at the proposed project site.

Willamette Greenway Goal 15

Comment from Willamette Riverkeeper:

4. The Willamette River Greenway and the accompanying regulations (OAR 660-015-0005) will apply to projects in qualified local programs. Willamette Riverkeeper did not identify specific references to Goal 15 in the draft 1200-CN permit.

Also, Goal 15 setback requirements at (C)(3)(k) are narrative; but the draft 1200-CN does not reference setbacks. Appendix B to the draft 1200-CN permit discusses buffer zones, but this (and any the alternatives and exceptions) must be done in the context of Goal 15 requirements.)

DEQ Response:

The 1200-CN draft permit does not condition setbacks from waters adjacent to or within construction site boundaries. Setbacks are the regulatory authority of the local jurisdictions. Some local jurisdictions have required natural buffers zones (NBZ) of waters of the state that must be retained, other jurisdictions allow encroachment within NBZs to occur and some allow encroachment within the NBZs based on specific permit conditions. DEQ has regulatory authority over construction activities proposed within NBZs of waters of the state adjacent to or within construction site boundaries. Conditioning appropriate erosion and sediment controls during the construction activities within a NBZ of a water of the state ensures the Best Management Practices developed and implemented are appropriate to protect waters of the state from sediment discharges. If the applicant seeks to encroach within the NBZ, they must provide calculations that prove the proposed BMPs meet or exceed the sediment removal efficiency of the encroached width of the NBZ before permit approval will be granted.

Erosion and Sediment Control Plan

Comment from Clean Water Services:

5. Parts I through III Suggest adding a section for dewatering BMPs to Forms II and III. BMPs could include sediment bags, baker tanks, dedicated vegetated areas for infiltration.

DEQ Response:

The Erosion and Sediment Control Plan, Forms I through III have been revised to include BMPs typically implemented when discharging to upland vegetated areas when dewatering is performed without an active chemical treatment system.

Intergovernmental Agreement (IGA)

Comment from City of Corvallis:

6. We would like DEQ to consider using a one year Inter-government Agreement (IGA) for the next permit term.

DEQ Response:

There are not intergovernmental agreements associated with the 1200-CN permit. If the City does not wish to be a 1200-CN jurisdiction, let DEQ know and DEQ will cover all sites within any local jurisdiction that are an acre or more through the 1200-C permit process.

Permit Formatting

Comments from Marion County:

7. All documents should have numbered pages.
8. The appendices both reference the 1200-C, and associated sections, instead of the CN, throughout.
9. Inconsistent language is sometimes a problem.
10. Schedule D(9.4), when the lettering runs through the alphabet, then it should go to aa, bb, cc, etc Lettering also skips "z".

DEQ Response:

The final permit and associated documents are formatted appropriately.

Conclusion

Comment from Willamette Riverkeeper:

11. Thank you for considering Willamette Riverkeeper's concerns. We also request that DEQ post on its website its Response to Comments.

DEQ Response:

The response to comments is posted on DEQ's website with the other 1200-CN permit documents.

1200-CN Permit Condition Comments

Section 1.1 Disturbance less than 5 acres

Comment from Marion County:

12. There is still no lower limit permit threshold specified, so it currently reads that it will apply to all projects under 5 acres. There are inconsistencies in the permit though, where language implies a lower limit:

- First page: "sources covered": "b. less than 1 acre but part of"
- Section 1.2 (specific to Gresham, Troutdale, and Wood Village), "less than 1 acre".
- For this to be functional and efficient, clarification is needed. Since issuance of a local permit automatically covers a project, leaving the lower threshold out will automatically bring all of those small projects that have a local permit under the umbrella of the 1200-CN.

DEQ Response:

Projects that range from less than 5 to 1 acres and issued local stormwater permits by entities listed in Section 1.1 are automatically covered by the 1200-CN permit. Section 1.1.c.i explicitly states the size range of the disturbed area for each 1200-CN jurisdiction.

Projects within the jurisdictional boundaries of the entities listed in Section 1.2 that are less than an acre and issued local stormwater permit coverage are automatically covered under the 1200-CN permit.

Section 1.1.a

Comment from Marion County:

13. Still no clarification of what qualifies as "local permits"

DEQ Response:

Local permits are the permits or permit coverage issued by the qualified local programs listed in the 1200-CN permit. The definition is included on page 18 of the 1200-CN permit.

Section 2 Environmental Management Plan

Comment from Clean Water Services:

14. Suggested permit language:

- a. Construction dewatering for the purpose of lowering non-contaminated groundwater will be or is performed, and an Active Treatment System is to be utilized before discharge. An EMP is not required for dewatering accumulated water due to shallow excavation activities (See Section 4.3) Recommend expanding/clarifying that an EMP would not be required for common dewatering activities for non-contaminated groundwater. Most construction sites installing utilities need to lower the groundwater table in order to safely excavate and work in the trenches. Common practice dewatering includes pumping sediment laden groundwater through a sediment bag or baker tank for land application. The expanded requirement to submit an EMP for most dewatering activities would be unnecessarily burdensome to DEQ and CWS to implement do to the number of sites that dewater.

DEQ Response:

Section 2.b has been edited to provide clarity. An EMP is only required of any dewatering plan that utilizes an active chemical treatment system.

Comment from Marion County:

15. It is still unclear, as written, how the environmental management plan section will be implemented.

DEQ Response:

If a proposed construction site has a DEQ assigned Environmental Cleanup Site Information (ECSI) number associated with the property, there is known or suspected contamination at the site or if contamination is unexpectedly encountered during construction activities, an Environmental Management Plan must be submitted to DEQ. DEQ maintains the ECSI database to track sites in Oregon with known or potential contamination from hazardous substances, and to document sites where DEQ has determined that no further action is required. If DEQ determines a site where the groundwater or soils will not be contaminated by fluctuating groundwater levels, an Environmental Management Plan (EMP) will not be required.

The local permit applicant should submit the EMP directly to DEQ for review along with the current review fee. DEQ will review the EMP and approve the plan or request revisions of if necessary. Once approved, DEQ will inform the 1200-CN jurisdiction and the applicant. The 1200-CN jurisdiction is not required to review or approve EMPs.

Comment from Marion County:

16. If CN Coverage is automatic when local permit is issued, who is responsible for following up on this? How is this enforced/implemented? Clarifying the language and requirements in this permit will avoid future complications.

DEQ Response:

The onus is on the owner or operator to inform the 1200-CN jurisdiction and DEQ of known contamination on-site. The landowner is responsible for handling contaminated media appropriately.

Comment from Marion County:

17. When would these conditions be "anticipated"? Should that be defined for clarity?

DEQ Response:

Property owners typically know if a site has known media contamination. Contamination may be known if DEQ has assigned the project site an ECSI number, or it was discovered by an Environmental Assessment performed during the purchase of the property. Additionally, historical information, such as the previous owners and the activities performed on-site are required to be disclosed during the transfer of the property title.

Comment from Marion County:

18. Adding an appendix that describes the database of contaminated sites, and how DEQ sees these plans being implemented would be helpful. The language is not clear regarding the role jurisdictions play.

DEQ Response:

A link to the ECSI database has been added to Appendix A. 1200-CN jurisdictions will be able to quickly identify contaminated sites within their jurisdictional boundary and identify project sites that may require an EMP.

Section 3 Procedures for Denial or Revocation of Coverage

Comment from City of Corvallis:

19. Please provide penalty details/reference to link/document (e.g. OAR 340-045-0033(10)) for permit violation.

DEQ Response:

Oregon Administrative Rule (OAR 340-045-0033(10)) is easily located by searching the OAR reference through DEQ's website or any search engine.

Comment from Marion County:

20. Language clarity: Are revoke and terminate interchangeable?

DEQ Response:

No. DEQ may revoke coverage when someone has violated the permit and termination usually happens when there's no longer a need for permit coverage because the permitted activity has been completed.

Comment from Marion County:

21. "DEQ or the 1200-CN Jurisdiction may refuse to authorize, terminate or revoke automatic coverage"
If the coverage is automatic, how does authorization get refused?

DEQ Response:

The Director may refuse to authorize or renew coverage, or may revoke existing coverage under a general permit, as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit per OAR 340-045-0033(10) when:

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

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

Section 4 Performance Measures

Comment from City of Corvallis:

22. Recommend changing "must implement erosion and sediment control measures at all times to prevent any turbid discharges or sediment from leaving the project site" to "shall minimize turbid discharges from the project site to the maximum extent practicable". Requirement as written will be impossible to comply with during the rainy season, will likely decrease some contractor's efforts to contain sediment on site as so difficult, and opens municipality to 3rd party lawsuits.

DEQ Response:

The permit condition (Section 4) "must implement erosion and sediment control measures at all times to prevent any turbid discharges or sediment from leaving the project site" is appropriate to ensure adequate erosion control measures are developed and implemented at each site. DEQ did not make any changes in response to this comment.

Comment from Marion County:

23. Uses the language "revised as necessary to reflect site conditions". This is vague. When is it necessary?

DEQ Response:

The owner or operator must have a copy of the ESCP on site at all times. The ESCP is a working document and must be revised to reflect any changes from the original plan. This includes, but is not limited to, changes to implemented BMPs, the addition or subtraction of areas to be disturbed by construction activities and a list of contractors performing construction activities on site. The requirement to track all changes on the ESCP is necessary to inform project site personnel of the revised ESCP and to provide DEQ and 1200-CN inspectors a history of erosion and sediment controls implemented on site.

Section 4.1.a Operator must prevent the discharge of sediment to surface waters or conveyance systems leading to surface waters of the state

Comment from City of Corvallis:

24. Recommend changing "The following conditions indicate that sediment has left or is likely to leave the site and are prohibited" to "The following conditions indicate that sediment has left or is likely to leave the site and must be minimized to the maximum extent practicable".

DEQ Response:

DEQ has retained the permit language since discharging sediment from construction sites is prohibited.

Comment from Marion County:

25. Change to or: "initiated or completed or is not effective".

DEQ Response:

DEQ agrees with this comment and has edited the permit accordingly.

Section 4.1.h

Comment from Marion County:

26. Deposits. How is ownership of, or responsibility for, sediment to be proved? This seems like it may be difficult to enforce.

DEQ Response:

Evidence of sediment discharge from a site may be proven in numerous ways, such as photographs, inspector observation and turbidity monitoring from discharge points of a project site. DEQ or 1200-CN inspectors will document the necessary observations and conditions at project sites to determine if there is enough evidence to prove a discharge of sediment occurred from the permitted construction project site when appropriate.

Section 4.2 Establish and maintain natural buffer zones and controls to protect surface waters of the state

Comments from Marion County:

27. Is it the responsibility of an jurisdictions to enforce these standards and rules?

DEQ Response:

It is the responsibility of the 1200-CN jurisdiction to review the application and submitted ESCP for compliance with Section 4.2.a. The onus is on the owner or operator to validate the proposed natural

buffer zone width and appropriate BMPs if the Natural Buffer Zone (NBZ) is proposed to be encroached within. Appendix B provides instructions as to how the permit applicant may justify encroaching within the 50 NBZ and that the proposed BMPs are equal to the 50 foot undisturbed NBZ in their sediment load removal efficiency. DEQ expects that the 1200-CN jurisdiction will confirm that the necessary calculations to prove encroaching within the NBZ are submitted; however, it is not DEQ's intent or expectation to create more review time or required training of stormwater staff.

28. This section needs clarification as to how and when it is required.

DEQ Response:

As stated in Section 4.2 of the permit, "When a surface water of the state is located within 50 feet of the project site's land disturbances:

- a. The operator must comply with local natural buffer zone requirements before proposing the following compliance alternatives. As such, anytime a permit applicant proposes to encroach within the 50 foot NBZ of a water of the state the applicant must be in compliance with the conditional requirements of Section 4.2.

29. Natural Buffer zones: Our program does not include these requirements. Are these requirements "compliance alternatives" as stated in 4.2 a? Or are these 3 options after jurisdictional requirements are met to satisfy bullet a?

DEQ Response:

If a local jurisdiction requires a natural buffer of greater than 50 feet for a water of the state, Section 4.2.a and its alternatives are not appropriate for sites within the jurisdiction. However; if the local jurisdiction does not have buffer requirements for waters of the state, a 50 foot natural buffer zone or an alternative from Section 4.2.a must be a component of the ESCP.

Section 4.2.b

Comment from City of Corvallis:

30. Please clarify sentence "If DEQ determines that the project requires a 401 water quality certification, construction activities, including stockpiling and staging of materials, are prohibited from encroaching into the existing 50 foot natural buffer zone of any water of the state, unless otherwise authorized in the 401 water quality certification; and the project may not claim the natural buffer zone alternatives of 5.2.a. A "then" statement seems to be missing from this sentence. Do we need to adopt or standardize a buffer zone? Do we tie this to the existing riparian corridor zones?

DEQ Response:

The Natural Buffer Zone alternatives of Section 4.2.a do not apply if the project has obtained a 401 Water Quality Certification (WQC). The 401 WQC review process is a comprehensive evaluation of potential impacts caused by the construction process and loss of natural buffer zone area. Typically, a 401 WQC requires on-site or off-site mitigation to compensate for the impact of construction activities within waters of the state or below the Ordinary High Water Line (OHWL). The 1200-C defers to the Natural Buffer Zone requirement of the 401 WQC as the encroachment is evaluated for potential environmental impact and is not based on the increase of buildable space for potential profit. Per Section 4.2, "The operator must comply with local natural buffer zone requirements before proposing the following compliance alternatives." As such, existing local buffer or riparian corridor requirements that are stricter than the

default 50 foot natural buffer zone supersede the conditions of Appendix B.

Section 4.3 Construction dewatering requirements

Comment from Clean Water Services:

31. This section pertains to accumulated water from precipitation and uncontaminated groundwater seepage due to shallow excavation activities, not for the lowering of contaminated groundwater...Recommend expanding uncontaminated groundwater and accumulated precipitation to include all dewatering except for dewatering activities that require active treatment. The number of EMP plans for common, non-contaminated dewatering would be overwhelming to DEQ and CWS would be unnecessarily burdensome to the permittee. This section pertains to all non-contaminated groundwater or accumulated water from precipitation.

DEQ Response:

DEQ has edited Section 4.3 to provide clarity and consistency with Section 2.b.

Section 4.3.d

Comment from Marion County:

32. Is this a requirement to monitor for oil and grease? At what level? Who ensures this is met and enforced? Is this based on visual monitoring? Is this a requirement or a suggestion?

DEQ Response:

Section 4.3.d requires the owner or operator to use an oil/grease separator when these pollutants are observed in accumulated runoff or groundwater seepage in shallow trenches or excavations that are to be dewatered. This condition does not address the treatment of media contaminated with oil and grease, it is intended to prevent small amounts of oil/grease that may be present from operating vehicles and equipment. An EMP must be submitted and a plan review conducted on sites with oil/grease or hydrocarbon contamination is present.

All conditions of the permit are requirements, unless specifically as a recommendation or suggestion. The owner or operator's visual monitoring inspector or any construction staff involved in the dewatering process is required to visually check for oil/grease before dewatering.

Enforcement actions for non-compliance with the 1200-CN permit are the responsibility of the 1200-CN jurisdiction.

Section 4.4.a Engineered sediment basin or similar installed impoundment

Comment from Oregon State Landscape Architect Board:

33. This comment is submitted on behalf of the Oregon State Landscape Architect Board (OSLAB), which is the Oregon occupational licensure board for landscape architecture practice. Realizing that the DEQ comment period on the 1200-CN permit is this Friday, I wanted to get this comment on

DEQ's radar screen while that public comment period is open. I understand from your previous email that the public comment period on the 1200-CA is not yet open. OSLAB may submit further comment when the public comment period for the 1200-CA permit opens.

The Chair and Vice Chair of OSLAB have expressed concern that the DEQ 1200-CN and 1200-CA permits may restrict customary areas of practice for Oregon Registered Landscape Architects with respect to at least the preparation and stamping of sediment basin plans and sediment trap designs. There may be other areas where these permits will limit the required design professional to a licensed engineer when in fact there is practice overlap such that Registered Landscape Architects are legally authorized by the State of Oregon to do the same work.

OSLAB has not been able to meet since this issue first came to the attention of the Chair and Vice Chair. OSLAB is next scheduled to meet on 08/04/2021, and this issue will be on the agenda for discussion at that time. I am hoping that there will be opportunity for DEQ and OSLAB, as two state agencies, to discuss this matter during this meeting, or as may be necessary, soon after the OSLAB meeting. I'd also like to find out if there is any particular information related to regulated landscape architecture practice that would be helpful for OSLAB to provide to DEQ in regards to this practice overlap issue.

DEQ Response:

DEQ is always available to discuss proposed permit conditions and looks forward to the opportunity to engage with professions involved in ESCP development and implementation. DEQ understands OSLAB did not meet as a full board on August 4th and the next scheduled meeting of the full board is to occur in early November. DEQ reviewed the Landscape Architect curriculum submitted by OSLAB. DEQ determined that specific technical training, such as calculating soil infiltration based on hyetograph analysis, groundwater impacts and other site specific technical details are not required in a Registered Landscape Architects' course curriculum. Sedimentation basin designs for sites that DEQ regulates need to include a comprehensive analysis of site-specific characteristics to prevent negative water quality impacts to receiving waterbodies from stormwater runoff from construction activities. As such, DEQ retained the permit condition. If OSLAB would like to discuss the specific element DEQ would need to for evaluations to ensure the curriculum is aligned with the stormwater general permit conditions, please let us know.

Section 5.2 Stormwater discharges from construction support activities at the construction site when:

Comment from Marion County:

34. Construction support activity needs to be defined. What qualifies as a support activity? Concrete, tile, painters, landscaping, taco trucks? How does that fit in with the commercial outfit exemption? What qualifies something as commercial?

DEQ Response:

A construction support activity is defined as a construction-related activity that specifically supports the construction activity and involves earth disturbance or pollutant-generating activities of its own, and can include activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, and borrow areas. The definition for construction support activity has been added to Section 9.4 Permit Specific Definitions of the 1200-CN permit. Section 5.2.a-d of the permit states the conditions that must be met for an activity to be considered a construction support activity:

- a) The support activity is directly related to the construction site covered by this NPDES permit.
- b) The support activity is not a commercial operation, nor does it serve multiple unrelated construction projects.
- c) The support activity does not operate beyond the completion of the construction activity at the last construction project it supports; and
- d) The appropriate control measures are implemented to ensure compliance with the discharge and water quality requirements of this permit.
- e) The examples in the comment are all construction support activities (i.e. concrete, tile, painting and landscaping), with the exception of taco trucks.

Section 6.1 Combined discharges

Comment from City of Corvallis:

35. Recommend changing language to clarify that dewatering can be performed with the proper BMPs alone, without DEQ approval, if there is not chemical treatment involved. Section 6 and throughout permit-Language seeks to make a distinction between stormwater discharges and groundwater discharges, but often there is no clear distinction in the field. During the wet season, water in a trench excavation may be both groundwater and accumulated stormwater. Would this situation be considered a "non-stormwater" discharge?

DEQ Response:

Section 6.1-“Combined discharges” allows for stormwater runoff conveyances systems of any authorized stormwater discharge of Sections 5.1 and 5.2 to be combined with any authorized non-stormwater discharge of Section 6. The intent of Section 6.1 is to minimize the conveyance systems required on a project site, and therefore reduce the number of BMPs and discharge points. This reduces the burden of the visual monitoring inspector and personnel performing BMP maintenance. Additionally, having fewer BMPs on site reduces the cost of stormwater control measures and potential BMP failure.

Section 4.3 defines dewatering requirements for accumulated precipitation and groundwater seepage into

shallow trenches and excavations, which are authorized stormwater and non-stormwater discharges respectively.

Section 7 Prohibited Discharges

Comment from City of Corvallis:

36. Please provide further clarification on "visually turbid".

DEQ Response:

Visually turbid is when an individual is able to observe the optical condition of waters caused by suspended or dissolved particles or colloids that scatter and absorb light rays instead of transmitting light in straight lines through the water column. Often "visually turbid" is water that is cloudy or brown. Preventing visually turbid discharge from sites where construction activities are performed is required in the 1200-CN permit.

Section 7.b

Comment from Marion County:

37. What standards are applicable exactly? What does this mean, and how is it implemented? So if there is determined to be a water quality standard violation, because there are multiple sources of a contaminant, all contributing parties that would be covered under this permit are automatically in violation?

DEQ Response:

The owner or operator is always responsible for complying with the permit conditions. However, if there is credible evidence of a subcontractor or material supplier being responsible for the water quality violation, compliance and enforcement actions may be brought against the responsible party.

Comment from City of Corvallis:

38. Omit "cause and contribute" from "A discharge that causes or contributes to an exceedance of any applicable water quality standard" as impracticable.

DEQ Response:

DEQ has determined that the term "cause and contribute" is appropriate.

Section 7.d

Comment from City of Corvallis:

39. Change "Wastewater from washing" to "Wash" in sentence "Wastewater from washing and cleanout of stucco, paint, form release oils, curing compounds and other construction materials".

DEQ Response:

The term "wastewater" is used and defined in the Federal Construction General Permit. As such, wastewater is used to define the water collected after the wash and cleanout process. Wash may be

confused with the water before washing and cleanout; therefore DEQ did not make any changes in response to this comment.

Section 8.1 Person(s) responsible for visually monitoring the project site

Comment from Marion County:

40. Inconsistent language again, as this section implies that all sites under 5 acres will be covered.

DEQ Response:

The 1200-CN jurisdictions listed in Section 1.1 and 1.2 of the permit specify what size project sites will be automatically covered by the 1200-CN permit.

Comments from Marion County:

41. How does this section apply to the smaller sites within common plans of development?

42. Do the smaller sites still have the same monitoring requirements, except that a certification isn't required? This is open to interpretation as written.

DEQ Response:

A visual monitoring inspector is only required if the project is an acre or more in size. This applies to common-plan-of-development lots; therefore only lots 1 acre in size must be visually monitored regardless of development type.

Comment from Marion County:

43. Is the certified inspector an individual employed by the agency, or by the permittee?

DEQ Response:

It is the responsibility of the owner or operator to employ the certified visual monitoring inspector.

Comment from City of Corvallis:

44. Does DEQ have a model code that we can determine if we do comply? If the CESCL fails to submit the report, what is the consequence - are they fined and/or are we fined?

DEQ Response:

The 1200-CN Jurisdiction may determine when the inspection reports need to be submitted by the owner or operator within their jurisdiction, if at all. DEQ created flexible permit conditions regarding submissions of inspection reports and availability. A 1200-CN Jurisdiction may choose to review inspection reports when performing site inspections, or request reports when deemed appropriate. The inspection reports must be completed and retained by the owner or operator to be in compliance with 1200-CN conditions; however, review and submission requirements of the reports by the 1200-CN Jurisdiction can be incorporated in whatever manner the local jurisdiction determines is most beneficial to permit compliance.

Section 8.2 Frequency of visual monitoring inspections

Comment from Willamette Riverkeeper:

45. Because so many of the qualified local programs are in the Willamette River Basin, Willamette Riverkeeper requests that DEQ assure the public that DEQ-approved courses and programs contain a component that addresses problems particular to the soils of the region. For example, the banks of the Willamette River are soft and silty in some areas, and clay-like in others. Construction mitigation measures and runoff may need to differ based on the soils of a construction project. The frequency of visual monitoring focuses on a pre-set timeframe (initial date, 14 days, and within 24 hours of any storm event). Draft 1200-CN Permit at B.8.2. This approach seems to ignore the particular nature of a project or the stage of a project; we suggest that the permit should include visual monitoring also when a particular stage of a project occurs that may risk discharging stormwater to surface waters. At a minimum, an Erosion and Sediment Control Plan should be required provide for this monitoring.

DEQ Response:

The visual monitoring inspection frequency schedule required to be performed by a certified individual in the 1200-CN permit is identical to the 1200-C Construction Stormwater General Discharge Permit. In addition, all 1200-CN jurisdictions conduct visual inspections in addition to those performed by the certified visual monitoring inspector hired by the owner or operator. The addition of 1200-CN jurisdiction inspectors increases the number inspections performed. Additionally, 1200-CN jurisdiction inspectors are familiar with the soil types within their jurisdiction and add a layer of erosion and sediment control review specific to the project site that ensure the appropriate Best Management Practices are implemented. The inspection schedule of a 1200-CN jurisdiction typically aligns with the construction activities or phase being performed at the project site. For example, some 1200-CN jurisdictions have an inspector on site every day that construction activities involving infrastructure (e.g. streets and utilities) is occurring. DEQ is confident that the combination of the visual monitoring inspector conditions and the local inspections implemented will adequately address any site specific erosion and sediment control issues that may arise during construction activities. Additionally, conditions of the 1200-CN permit prohibit visually turbid discharge and sediment transported through erosive conditions from leaving a permit covered project site.

Section 8.3 Reductions in visual monitoring frequency

Comment from Marion County:

46. A visual aid like a flow chart for the reduction in monitoring frequencies would be helpful.

DEQ Response:

The specific requirements that allow for a reduction in the visual monitoring inspection frequency are stated clearly in the narrative conditions of Section 8.3. All 1200-CN jurisdictions are welcome to develop flow charts or other permit materials that would be helpful for their local jurisdiction.

Section 8.3.b**Comment from Marion County:**

47. Does the last sentence, about inspections continuing until, only refer to linear construction sites?

DEQ Response:

Yes. Section 8.3.b are requirements for linear construction projects only.

Section 8.5 Visual monitoring inspection report**Comments from City of Corvallis:**

48. The inspection reports are to have an ID number that is assigned by us. Would this just be the EXC permit number?

DEQ Response:

The inspection reports require the permit coverage identification number assigned by the 1200-CN jurisdiction. Not all 1200-CN jurisdictions have an inspection form template, but many do. DEQ leaves this decision to the local jurisdictions. The use of inspection report forms ensures a consistent inspection process at each site that prioritizes compliance. Yes, the 1200-CN jurisdictions are responsible for compliance with all permit conditions at all sites is regulates using the 1200-CN permit.

Section 9.4 Permit-Specific Definitions**Comment from Clean Water Services:**

49. b. Active Treatment System-the use of chemicals and/or pumps to remove pollutants from water (stormwater runoff or from dewatering) before discharge from a permitted site. Most construction sites installing utilities need to lower the groundwater table in order to safely excavate and work in the trenches. Common practice dewatering includes pumping sediment laden groundwater through a sediment bag or baker tank for land application. In some cases dewatering wells are used to lower the water table then and clean clear water is discharged to land or directly to the storm system. As written the new definition includes the use of pumps would classify standard dewatering practices as Active Treatment, requiring permittees to submit an Environmental Management Plan and pay an additional fee.

Active Treatment System- The use of chemicals (e.g. cationic treatment chemicals, electro-coagulation, flocculants, filtration, anionic polyacrylamide, polymers, hydrochloric or sulfuric acid) to treat sediment, pH neutralization, or other pollutant removal is planned or implemented at the project site.

DEQ Response:

DEQ agrees that an EMP is only required when an active treatment system using treatment chemicals is employed. The use of pumps only during dewatering activities does not trigger the applicant to complete and submit an EMP; however, the discharge location to upland vegetated areas needs to be approved by DEQ or 1200-CN jurisdiction to ensure infiltration if feasible and that the water is not allowed to flow to the stormwater conveyance system on site.

Comment from Marion County:

50. Document would benefit from added definitions:

Earth disturbance, construction support activity and local permit.

DEQ Response:

The following recommended definitions have been added to the permit:

Earth disturbance: actions taken to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavating, cutting, and filling), soil compaction, and movement and stockpiling of top soils.

Construction support activity: a construction-related activity that specifically supports the construction activity and involves earth disturbance or pollutant-generating activities of its own, and can include activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, and borrow areas.

Local permit: Permits or permit coverage issued by a local entity that is designated as a “local qualified program” or 1200-CN jurisdiction by DEQ (e.g. city or county).

Permit Evaluation Report Comments

Comment from Margaret McCauley of Environmental Protection Agency:

PER.1 The changes look good to me, although I think you may want to adjust this section header in the PER: “Visual Mentoring Inspection Report”.

DEQ Response:

DEQ has made the correction.

Appendix A Environmental Management Plan Review Applications for Contaminated Media Management, Construction Dewatering and Active Chemical Treatment Systems Comments

Comment from Marion County:

A.1 References need to be updated throughout for 1200-CN

DEQ Response:

DEQ agrees with the comment. Appendix A provides information for completing and submitting an Environmental Management Plan as required in the 1200-CN permits. The appropriate references to the

1200-CN permit have been included in Appendix A.

Comment from Marion County:

A.2 Where is table 70H?

DEQ Response:

Appendix A has been corrected to include the correct Fee Table (70F).

Comment from Marion County:

A.3 Application should be on one page

DEQ Response:

The application is designed as a fillable PDF. A fillable PDF allows the applicant to complete the application on-line and either print, download or upload without having to worry about formatting issues. The comprehensive questions and fillable text cells require more than one page to provide the applicant with a user friendly document. In addition, documents found on DEQ's Stormwater Construction webpage must be displayed as non-editable PDFs.

Comment from Marion County:

A.4 Is "Corps and State Agencies" sufficient, or should there be more information in case applicants do not know?

DEQ Response:

DEQ has determined that "Corps and State Agencies" is sufficient and appropriate. The illustrated schematic of the discharge point submitted with the EMP will alert DEQ technical staff to the potential involvement of federal or other state agencies.

Comments from Marion County:

A.5 Is there supposed to be another heading for certification information?

Final sentence on page 4 should move to page 5 Section 2. Should be formatted so that section heading is on same page with section.

DEQ Response:

The final permit and associated documents are formatted appropriately.

Appendix B Natural Buffer Zone Requirement Comments

Comment from Marion County:

B.1 "For linear construction sites". Section states that disturbances are limited, but what are they limited to? This is not defined.

DEQ Response:

Linear construction sites may not be able to provide one of the three compliance alternatives of Section 4.2.a: a) A 50 foot natural buffer is not feasible due to site constraints (e.g. limited right-of-way); b) Maintain less than a 50 foot buffer and provide erosion and sediment controls equivalent to the 50 foot natural buffer (e.g. a steeply sloped buffer with limited space to implement appropriate controls); c) It is

infeasible to maintain a natural buffer of any size and there does not exist enough space to implement erosion and sediment controls (e.g. Cliffside roadways or adjacent to waters of the state).

Comment from Marion County:

B.2 Permit registrant. Since coverage is automatic, is "permit registrant" specifically defined to apply to automatically covered entities?

DEQ Response:

The local permittee of automatically covered construction project sites are referred to as owner or operator. The 1200-CN permit and supporting documents have been revised changing permit registrant to owner or operator.

Comment from Marion County:

B.3 Earth disturbance or earth-disturbance?

DEQ Response:

The hyphenated term "earth-disturbance" has been edited to earth disturbance to be consistent with the 1200-CN permit.

Comment from the Marion County:

B.4 Define 7-day site stabilization.

DEQ Response:

The definition of "7-day stabilization" is in footnote #2. If double row of perimeter controls is implemented within the natural buffer zone, the owner/operator is required to complete the stabilization activities required by the 1200-CN Jurisdiction.

Comment from Marion County:

B.5 Define the distinction between Eastern and Western Oregon. Cascade Range?

DEQ Response:

For the purpose of this permit, the delineation between Western and Eastern Oregon is the crest of the Cascade Range.

Comment from Marion County:

B.6 Attachment 1:

The text does not mention estimates or estimating, but the tables give estimates of sediment removal. There is also limited explanation of conditions which would produce these results. Also the removal efficiencies limitations aren't discussed. If influent has TSS of 30 ppm, will there be a 90% reduction?

DEQ Response:

The estimated percentage sediment removals shown in Tables B-8 and B-9 are determined by numerous factors, such as percent slope and vegetation and soil type. Slope must be below 9 percent for the tables to apply; therefore the percent of sediment removal is an estimate based on a range of percentages dependent on the buffer slope (i.e. from 0 to less than 9%). Further, most sites typically do not display a homogenous soil and vegetation type. As such, the sediment removal percentage displayed in Tables B-8 and B-9 is the average removal percentage expected at a site with less than 9% slope and predominately displaying the soil and vegetation type provided.

The estimated percentage sediment removal tables in Appendix B attempt to simplify what can be a difficult determination based on numerous factors, such as but not limited to slope, vegetation and soil type, precipitation, compaction, percent vegetation cover and antecedent conditions. Providing an easy to use format that evaluates proposed buffer encroachment, but is protective of water quality allows the 1200-CN jurisdictional staff the ability to review erosion and sediment control plans for the appropriate BMPs within a timely and cost-effective manner.

Typically, influent with a TSS of 30 ppm will be visual clear; and therefore compliant with the 1200-CN permit if discharged from the site. Water samples that have TSS of greater than 40-45 ppm will begin to appear cloudy and visibly turbid. If the buffer zone removal efficiency were to be significantly less than 90%, stormwater runoff sheet flowing through the buffer zone far in excess of 30 ppm and discharging into the waterbody will not exceed permit effluent limit. As a note, although the proposed BMPs to be implemented within a natural buffer zone may be approved by the 1200-CN jurisdiction, the owner/operator must still visual monitor discharge to the waterbody for turbidity and scouring. If either is present, the owner/operator must make immediate corrective action and document necessary erosion and sediment control modifications in the visual monitoring inspection report per Section 8.5 of the 1200-CN permit.

Comment from Marion County:

B.8 Last sentence of Notes states "sediment removal efficiencies present in Tables B-2 through B-6", these tables do not display sediment removal efficiencies, but rather risk levels.

DEQ Response:

Appendix B has been edited to the appropriate heading of Tables B2-B6, which is "risk levels".

Comment from Marion County:

B.9 Bullet points should be numbers or letter so they can be referenced

- in the middle of the bullet points in a non-bulleted section that begins with:
 - "where some natural buffer zone exists"
 - Are these exceptions or notes of what does not qualify as an exception? This might be better served as a footnote rather than in the middle of a section discussing exceptions

DEQ Response:

The non-bulleted paragraphs have been formatted to align with the bulleted section above. These paragraphs provide additional information about natural buffer zones relevant to the bulleted section where on natural buffer zone exists due to preexisting development disturbances.

Comments from Marion County:

B.10 All references for 1200 permit are for the C and need to be corrected for the CN

B.11 Table of contents needs to be formatted correctly.

B.12 Indent B.1.1 through B.1.4 as they are contained within B.1.

B.13 Spacing between section labels and titles inconsistent throughout.

B.14 Section titles should be capitalized.

B.15 Attachments 1 and 2: Are the subheaders needed?

B.16 Notes for? Also left align "Notes".

B.17 Section B.1.2, whole section seems to be in draft state.

B.18 Wording is confusing or incorrect and reference also appears wrong in the first sentence "one of the section B.2.1".

B.19 For small residential lots bullet point has reference to section B3 which does not exist. It looks like it should be B2.

B.20 Section B.1.3, first section has incorrect B.3 reference again.

B.21 Section B.2.2, Indented formatting, does not match document.

B.22 Small residential lot compliance alternative 1, where are the footnotes (2 and 3)?

B.23 Table B-1 alternative-what does the superscript 2 reference?

B.24 Superscript 3 on soil type, what is this referencing?

B.25 Table B-2, is soil type supposed to be a header?

B.26 Table b-6, format text on page with table.

B.27 Table b-6, gray background in top of table.

B.28 Table b-7, yellow shade does not match other tables.

B.29 Sediment removal efficiency tables header should be on same page with the text.

B.30 Hyperlinks need to be checked for functionality and correctness. May want to reevaluate how this information if included so that it is accessible in the future.

DEQ Response:

The final permit and associated documents are formatted appropriately.

Comment from Marion County:

B.31 There is no single asterisk in tables B-8 or B-9.

DEQ Response:

The note referencing the asterisks on the headings of Tables 8 and 9 is found beneath each of the tables.