

Industrial Stormwater Program

1200-Z Rulemaking Advisory Committee Meeting No. 1

May 7, 10:15 a.m. –3 p.m.
DEQ Headquarters Room #710
700 NE Multnomah St.
Portland, Or 97232

List of DEQ attendees

- Justin Green
- Christine Svetkovich
- Krista Ratliff
- Courtney Brown
- Michele Martin
- Diane Lloyd (DOJ)

List of Committee Members attendees

- Ada Banasik
- Alan Flemming
- Ame LeCocq
- Chris Rich
- Jamie Saul
- Jonah Sandford
- Kathryn VanNatta
- Michael Campbell
- Stacy Hibbard (Chair)

List of public attendees (in-person and via audio webconference)

- Dorothy Sperry, Port of Portland
- Tess Lydick, Hart Crowser
- Kirsten White, Cascadia Associates
- Scott Grimes, PBS Eng. & Env.
- Taylor Lucey, Oregon Forest and Industries Council
- Ted Lathrop, Stormwater Rx
- Jon Wilson, City of Eugene

List of handouts and presentation notes

- 1200-Z Settlement Document and Consent Judgment
- Group Charter
- National Academy of Sciences Report Summary
- Agenda
- PowerPoint Slides



State of Oregon
Department of
Environmental
Quality

Industrial Stormwater
700 NE Multnomah St.,
Suite 600
Portland, OR 97232
Phone: 541-633-2033
866-863-6668
Fax: 503-229-6762
Contact: Krista Ratliff
www.oregon.gov/DEQ

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Oregon's air, land and
water.*

Time	Topic
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10:15 am	Welcome
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10:35 am Introductions
11:00 am Introduction to Project Scope
11:15 am Ground rules, Charter, Committee Structure
11:40 am Lunch
12:20 pm National Academies of Science Report
[Report](#)
2:30 pm Next Meeting Discussion
3:00 pm Adjourn

Welcome:

Michele Martin (MM): Welcome; I am your facilitator, this is our first meeting, logistics: exits, phone/web participants please announce yourselves, and send e-mail to Courtney; meeting is being recorded.

Introductions:

Krista Ratliff: Permit writer, works out of DEQ Bend office

MM: Operations and policy analyst at DEQ, worked at DEQ 5 years

Ada Banasik: Maul Foster Alongi, works with industry

Diane Lloyd: DOJ

Alan Fleming: Kennedy Jenks

Jamie Saul: Earthrise, representing Columbia Riverkeeper

Jonah Sanford: NEDC (Northwest Environmental Defense Center)

Ame LeCoq: Recology, company has nine 1200-Z facilities, one individual permit and one in WA

Kathryn Van Natta: NWPP (Northwest Pulp and Paper), 24 years

Christine Svetkovich: DEQ Stormwater program manager

Stacy Hibbard: City of Portland, Bureau of Environmental Services, City of Portland, has about 225 1200-Z and 1200-A permits, 6 inspectors

Michael Campbell: Attorney, represents industrial permit holders

Chris Rich: Attorney at Perkins Coie, 19 years, started out at DEQ, represents 1200-Z permittees

Courtney Brown: DEQ, Office of Compliance and Enforcement; 13 years at DEQ

Justin Green: DEQ WQ Administrator, one year with DEQ, from Florida

- Thank you Advisory Committee members;
- We would be one of the first states to do effluent limits if that is the result of the process; here to determine whether appropriate
- Process inspired by litigation; that's behind us, here to work together;
- We will discuss national report

- A lot of expertise in the room
- Our goal: high quality permit that is protective, credible
- Stormwater program implements a lot of permits – over 2300 permittees; limited staff
- Stormwater is a statewide program managed from headquarters by Christine; regional offices do implementation, provide in-put on permit development
- One team for clean water – focus on statewide work
- Thank you for being here

Questions?

Kathryn Van Natta: permit writers separate out by job function – do those specialties extend to the regions?

A: C. Svetkovich: permit writers are primarily at HQ and are also policy folks in that area – they help regional people implement consistently and are a policy point person for questions

KVN: So chart is functional chart – not location-based chart? E.g. Krista is in Bend but serves HQ function

A: yes

Project Scope, Charter, Ground rules, Committee Structure:

Michele M.: “what is 1200-Z Advisory Committee”?: The Advisory Committee meetings are subject to public meeting laws, will be asked to review fiscal impact statement; bring all this info back to your groups; seeking your technical expertise

C. Svetkovich: Project Scope:

- Copy of settlement agreement in your packet: 3 buckets we committed to: 1) a process for considering technology-based effluent limits and benchmarks; 2) a process for considering water quality-based effluent limitations; 3) ensuring we develop appropriate monitoring and reporting requirements to ensure compliance;
- Next part re: data: first monitoring year DMRs were due July 2018; all facilities were required to monitor for all pollutants – we now have a robust data set – we transferred all paper data to electronic format – that work is done; data from 2018 is most holistic in terms of data points and pollutants for each facility with permit coverage
- We will be analyzing all that data – finalizing agreement with consultant to do technical work of analyzing data – agreement not signed yet – technical work to begin July 2019 – expect consultants will participate/interact with advisory committee – more to come
- Ensuring permit conditions that can verify compliance
- Goal: a permit that protects water quality, is technical and legally defensible; implementable – looking for your input so we can get there

Timelines: Consent decree in your folder; commitment to have draft permit out for public comment end of Oct 2020; final permit in effect March 2021; slide 10 is how we expect the process to go, will likely have to go out for public comment before what we committed to – by August 2020

M. Campbell: I want to hear more about the thinking re: rulemaking process versus issuing the permit as an order. It was explained as more transparent but order process was as well; clients have 2 concerns: scope-settlement agreement contemplated this as a modification of the permit; makes sense to renew permit as same time, all other issues that would come up with renewal appear to be off the table; his clients have other issues

with the permit; what would make permit limits palatable relate to other permit conditions that are off the table; Also, 5 meetings then one year until EQC adopts; worried advisory committee will provide input then DEQ will take it and make a decision – creates a high risk we will be back in litigation; Advisory Committee process is brief; it provides input but no consensus to avoid litigation

C. Svetkovich: In middle of our process EPA will issue the Multi-Sector General Permit (aka the “federal permit”) results of that will inform Committee discussion and our permit; DEQ understands 840 facilities across state and not all are represented here at the Committee; we want to make sure info is shared outside of the Advisory Committee meetings; want to use the rulemaking process to help engage in as many ways as possible.

J. Green: This move to a rulemaking process is not just with the water program, it’s DEQ-wide. Agency is using more rulemaking for permits; Rulemaking has required steps, provides more certainty; a process established to ensure transparency; feedback was that permits issued by order was not a good process; Regarding comment about advisory committee meetings and then time lapse to permit draft: DEQ will provide feedback along the way; we will respond to comments at next Advisory Committee meeting.

C. Svetkovich: Courtney’s role is to capture questions so we can follow up; respond to all input and questions.

D. Lloyd – Agency actions that affect the public should be done by rule; permits do not fit neatly because they may not directly affect general public; this type of permit has a broad scope; agency permit-by-order is a process like a rule-making; when process is complete review is more stream-lined.

K. VanNatta: NW Pulp & Paper Ass. shares Michael’s concerns; heard positive things – been involved in many past processes – want more broad wide-open processes; want the anti-vacuum; EPA federal permit will impact this but also the Willamette mercury TMDL and its focus on TSS and the new 303d list will impact – moving parts internally that could shape the conversations in this Committee – would hate to forgo good open conversations because we are sticking to a timeline

A. LeCoq: Don’t be nailed to timeline at sacrifice of good conversations and more implementable permit – don’t narrow scope too fine to just what’s in settlement agreement, need to look at permit holistically

J. Saul: Perspective of rulemaking as a process: we support DEQ’s transparency goals; concern general permit was static and didn’t allow for site and watershed-specific concerns into account – with rule that concern is heightened – more difficult to re-open rule – Columbia Riverkeeper support will depend on what goes into permit vs. permit assignment letter; don’t want to lose flexibility

C. Svetkovich: the rule would reference the permit so any changes to permit would be similar to what we do now

M. Campbell: make sure heard it correctly: EQC could adopt it as a rule but DEQ could modify that as an order; Q to Diane – if a minor change needed to be made in permit could DEQ do that and not go back to EQC?

D. Lloyd: DEQ would have that authority, not sure how/if DEQ would use it

J. Green: no firm commitments today but we will bring back more info to Advisory Committee re: timeline and not being bound by it; the timeline is a commitment under settlement agreement; we are bound by; less flexible

D. Lloyd: deadlines were filed with court; a lot of thought went into them; re: scope: given time given to settlement agreement we should focus on its issues; but this is a proposed rule so opportunity for comment in rulemaking

C. Rich: potentially constrained scope is something we want to hear feedback from DEQ on; two permits ago feedback on our input was not adequate; this is that opportunity; if can build in opportunity for comment then the discussion, quality and problem-solving that can come from discussion in this Advisory Committee can be really good.

J. Saul: we negotiated very specific steps for DEQ to take; it's narrow because task is complicated – concerned that opening up scope will delay and potentially run contrary to what parties agreed to

M. Martin: Charter:

- Committee charter is in the folder: resource for members to understand roles; Committee members can talk with Chair, Stacy Hibbard.
- Members to provide copies of relevant research and info
- Housekeeping and communication: respect and assume good intentions; focus on the meeting
- Limit acronyms
- Regarding non-committee members: Do we want to allow for 15 minutes at the end of meetings for public that is not AC member? INPUT:
 - o M. Camp: Yes, folks outside committee can hijack discussion – don't want that to happen; but welcome expertise –
 - o J. Saul: agree with M. CampbellMartin: Yes we will have non-Advisory Committee participation but won't get derailed- public comment will be welcomed with appropriate facilitation to keep the meeting on track and on time.

K. Ratliff: Review of Meeting Summaries

- National Academy of Sciences report to better inform EPA general permit
- Next meeting hope to have data and analysis available for consideration
- WA state as an example – draft permit out for public comment now
- Water Quality criteria also considered
- Not a consensus-based Committee but looking forward to your input
- Travel reimbursements

Everyone come back at 12:05

[Lunch Break]

K. Ratliff: National Academy of Sciences Report

- Reason behind the report: federal permit 2015, subject of litigation and then settlement agreement which funded the report – intended to inform next federal permit;
- Settlement term: EPA would consider additional implementation measures (similar to Tier II corrective action – “achievable consequence” for benchmarks based on magnitude)
- Distinguish between additional implementation measures (Tiers 1-3) based on analytical sampling over benchmark; risk-based tiers for categories of industry (categories)
- Structure and process of meetings – their scope was to discuss federal permit benchmark monitoring requirements etc. result was peer-reviewed consensus report
- DEQ's settlement agreement, had DEQ committing to looking at report
- EPA will issue draft federal permit within a year

- Report's Findings:
 - o Risk-based findings:
 - o Monitoring (sector-specific)
 - lowest risk categories (slightly above no exposure) should have only visual and no analytical monitoring; certified inspector does not make a regulatory observation; creates a publically-accessible report once per permit term
 - All industries sample for pH TSS and COD
 - Remove iron and magnesium – low risk to aquatic life – in Oregon we have no magnesium standard – only hazardous waste sector samples for magnesium in OR
 - PAH – from hydrocarbon and petroleum sectors
 - o Problems with federal permit – does data support numeric effluent limits? Half of sectors don't monitor under federal permit – effluent limitation guidelines developed decades ago – lack of info to recommend technology-based limits
 - Recommendations
 - More data and more credible data;
 - Acute criteria as a basis for benchmarks – report recommends water quality-based benchmarks be solely based on acute criteria
 - Have risk-based categories
 - We have baseline monitoring here in OR for all industries – anti-backsliding issues so we can't directly adopt federal approach.

M. Campbell: Report is a little off because we collect a lot of that data (component of Settlement Agreement is that DEQ would pull it together) – we've never been clear about what a benchmark means: a limit in a citizen suit and nothing in DEQ context; even though permit says benchmarks are not enforceable it happens; for metals the numbers are derived from WQ-criteria – that squishiness – benchmarks are supposed to trigger something; OR is further along than EPA in terms of data – we need to understand what is the number we will come up with: is it technology based? Is it enforceable?

J. Saul: Backsliding point is a good one; need ample data of high quality; we want effluent limitations to be well-grounded; robust monitoring is key; We don't think of benchmarks as de facto limitation, but it triggers an iterative process with unknown outcome, no certainty there will be attainment of water quality standards; effluent limitations bring a degree of certainty – also beneficial for regulated facilities – you either hit the number or not; perhaps it would lighten DEQ workload.

Ada Banasik: not enough data to show if you implement BMPs your load will change; limits may overcome onerous BMPs that may not correlate to better water quality.

Chris Rich.: Federal permit is intended to be one-sized fits all; benefits of adaptive management approach is that you allow facilities to try different strategies; benchmarks trigger heightened obligations – if you go to a numeric limit then no point of a Stormwater Management Plan, facilities don't get to figure out through adaptive management what might work; will be a huge burden for small industry to figure out how to meet limit in one permit cycle; effectively statewide individual permit; would be very dramatic leap to go there to abandon the core basis of permit which is adaptive management;

Alan Flemming: amount of data and ideally more data is better: there is a lot of variability between sites – that variability translates into data; TSS example – requires 150 samples to get a reliable set – not realistic; general concept on categories of monitoring is good but not simply implemented; also: size of facility is not

necessarily meaningful – look at concentration and style and quality of management; sometimes bigger facilities have dedicated staff

K. Ratliff: re: size: Category 1 Table 33 (report reference) – not necessarily size: activities performed at site; there is some size criteria but size of industrial footprint may not be a factor – it’s more what type of pollutants and activities there are

- Federal permit definition of “benchmark”: “indicators of overall effectiveness of your control measures and to assist you in determining when additional corrective actions may be necessary.”

Monitoring (academy report cont’d):

- Federal permit prohibits composite sampling; quality data is challenging; report promotes composite of pulses
- Possible training on sampling
- Change units from milligrams to micrograms
- Quarterly grab is inadequate
- Sector- specific benchmarks were set by EPA based on industry self-disclosure
- Dissolved metals: applies to category 3 (complex site or a site blowing the benchmark) – site could have a lot of sampling techniques – individualizing sampling plan
- Report recommends: different sampling, more sampling – a lot about how we sample, provide more composite, will give more reliable characterization of what’s coming off the site

Michael Campbell: last advisory committee looked at bell curves – composite sampling options was a reaction to that – concern was that you’d get a more accurate portrayal with composite but if we go to limits composite could help with the variability.

Stacy Hibbard: We do not see a lot of composite sampling occurring: many parameters don’t lend themselves to it; the “compositable storm” is a challenge.

Ada Banasik: Composite sampling is more expensive; it’s more representative; WA permit side-steps composite by allowing daily averages throughout day.

K. Ratliff: how to do daily average with limits?

M. Campbell: that’s my impression – you take the average for that day;

K. Ratliff: now permit timing is 12 hours since start of discharge and you have to get approval to switch between grab and composite; first flush under federal permit is within 30 minutes of discharge; east side storms are more “flashy”; A lot of the report is not directly applicable to Oregon – but focus on data-side and what we can adopt when we do our analysis.

Retention standards:

K. Ratliff: In OR we have tier II based on geometric mean – if you exceed geometric mean have to do treatment; other option is mass reduction waiver (goal is to infiltrate stormwater; mass v. concentration) charge of committee was to recommend one retention standard – committee said no.

Report recommended infiltration devices should be sampled for drinking water standards; DEQ doesn’t do drinking water standard; exemption for non-drinking water aquifers; OR. Health Authority regulates drinking water

Thoughts?

Alan Flemming: looked at the report's sources: 2 committee members published half the reports cited – Canby experience; tone the report took was shocking; hope to get consensus to encourage infiltration for all the positive benefits it provides.

Ada Banasik: much easier to implement design standards than to make everyone monitor groundwater.

C. Rich: state should not throw out already existing efforts to protect ground water; big question is what is the design storm? That would help – if we could think about a process if someone wants to pursue a waiver for mass reduction – no clear guidance on what is the standard.

Ada Banasick: disconnect is sampling overflows from infiltration facilities; there will be overflows from those from time-to-time so requiring corrective action from exceedances does not make sense

Stacy Hibbard: expectations re: maintenance.

K. Ratliff: report says discharge allowance should not be tied to corrective action and should have a mechanism for bypass; we want to incentivize infiltration.

Stacy Hibbard: expanding mass reduction to all pollutants (if they get it for one) would be helpful.

Sectors:

K. Ratliff: SIC codes – report suggests other industrial operations that have potential pollutants but not corresponding SIC code (e.g. Facilities with numerous parked diesel vehicles). These are similar to OR's table 2 which we've implemented for Portland harbor and Columbia slough

- Report looked at worst performing based on data; we could do a data call for tier II facilities;
- Report recommends industrial/SIC code fact sheets – our challenge is the variability between facilities in the same sector
- Look at toxic release inventory – good source of info

K. Ratliff: surprised by sampling of infiltration; When looking at tiers report is using 8x over benchmark deemed high risk.

J. Saul: if DEQ thinks there's a data gap we should support gathering data for good analysis.

K. Ratliff: It would be helpful to look at universe of facilities that triggered tier II; envisioning a possible data call re: what's on the ground now, what source control are being implemented now; permittees are required by permit to make sure they are doing O&M – so DEQ has an idea what treatment technologies are being used on the ground and what works.

Stacy Hibbard: Permit requires those measures be implemented so if folks are not implementing what's in Stormwater Pollution Control Plan, there may be an enforcement issue, so you might not get a response you are looking for.

J. Saul: try to get more Oregon-specific data so that it's more locally applicable – envision a technology-driven process whether it's passive infiltration or other.

M. Campbell: I assume DEQ can break down data by SIC code; one approach to link control measure to discharge limits; or link SIC codes to results; on individual permits WA already does that – to equate control measures to limits would be hard to do; might be easier to link SIC to numbers.

K. Ratliff: DEQ's data is set up now based on SIC.

Ada Banasik.: I agree with Michael – report acknowledged BMP database is not the best source – in our case would be better to use OR facilities – a lot of facilities use a combo of measures, not easy to pull useful info out

Alan Flemming: Echo Ada - data is not a good indication of treatment performance because a combination of operational, treatment and practices

K. Ratliff: 8x the benchmark is a very different framework that the current Oregon permit framework– federal data includes a number of data sets from coal mines, (Alan: data came from 3 sites in New Mexico – one corner of the country- be careful about the data);

Stacy Hibbard: we could look at who triggered tier II and what their SICs codes are;

K. Ratliff: good idea.

C. Rich: what is the goal of the data? In stormwater the goal has been to achieve “bang for buck” in reducing pollutants; better to find industries that are now achieving benchmarks after having triggered Tier II.

K. Ratliff: box and whisker graph in federal report is not helpful; we have very few BMP clearinghouses; don't distinguish industrial BMPs; we have data, SIC, tier II list, we have SWMPs.

M. Campbell: if some industries are low pick the 95% and go with that - if we try to tie controls to numbers in Oregon – pick highest number of facilities or specific geographic areas and focus on those - more manageable ; settlement agreement talked about off-ramps so outliers do not drive the process; incremental approach and not everything at once

K. Ratliff: Anything else in report the group wants to talk about? We will likely see federal permit draft in 2020.

Stacy Hibbard: idea of annual monitoring when a waiver is in place – thoughts? I'm a fan of continued monitoring.

A. LeCoq: WA permit incorporates annual monitoring even after you've reached consistent attainment.

K. Ratliff: WA permit requires 8 samples (min of 2 years); WA is adding some non-SIC codes.

M. Campbell: waivers are an incentive for performance; restructuring it so it's a higher bar to get the waiver or requiring a check in is not – retain the waiver concept because it's a big incentive to permittees.

C. Rich: Agree; waiver is an incentive.

Ada Banasik: People in Portland are already doing this; would be nice to have a process to not get kicked out of waiver process but still allow for sampling to check performance; performance-based sampling is good but should not negate the waiver.

C. Rich: 5 year permit cycle – won't earn waiver until within cycle – when cycle expires would be a natural time for someone to demonstrate waiver – so waiver wouldn't continue forever.

A. LeCoq: composite sampling is not feasible; not practical; report's tiered approach raises questions such as can you move from tier to tier?

K. VanNatta: how does it work on the ground and is it effective? How to provide certainty over a longer period of time while still incentivizing good behavior; stormwater regulation can be punitive – how do you know when you are doing it right?

A. LeCoq: we've been told there's no such thing as 100% compliance.

M. Martin: Final comments questions input for next meeting:

Ada Banasik: leave numeric effluent limitations aside – data set will drive that; how infiltration is implemented is important; clearly defining stormwater design is important (esp. outside of Portland); if established design storm then no need to sample overflows.

D. Lloyd: no comment

Alan Flemming: design storm and certainty for permittees is very important; have something defined; annual and mass loading – we need to remember our goal: improving water quality without causing unnecessary problems; be careful about looking at industrial data at end of pipe adjacent to industrial activities; some municipal facilities look just like industrial facilities.

J. Saul: re: data – we may need to be comfortable taking action on imperfect data; if goal is to protect water quality then we encourage agency to take action to move permit forward; been pushing for numeric effluent limits because it simplifies things for industrial facilities too; treatment and BMPs are at facilities' discretion – hope to stay focused on that approach.

Jonah S.: What's the best methodology to analyze data? We need to be prepared to make decisions based on imperfect data.

A. LeCoq: thank you; industry wants to comply but we need a road map, consistency across the state is important; if narrow scope, hope to have a detailed review in next permit cycle.

K. VanNatta: refer to original comments.

Stacy Hibbard: new outlook on effluent limitations – could be clear/objective. Need to make sure they are achievable.

M. Campbell: I hate litigation; emphasize what Ame said; clients need a permit they understand; permit should tell them what to do; hope process gets us to practical consensus; hope to avoid litigation.

C. Rich: I appreciated conversations here. Industrial stormwater is frustrating and punitive – uneasy about a hard target effluent limit when the backend is so complicated and subjective; give permittees time and incentives and some path that moves towards improved water quality over time; don't want 839 enforcement actions in first permit cycle for violating limit.

Justin Green: thank you, people are looking for clarity consistency credibility; Krista did an excellent job.

K. Ratliff: Stacy will be the Committee chair. She will review meeting summary. I will send e-mails with a link to meeting materials; will limit lunches to 40 minutes.

C. Svetkovich: After we have certainty re: consultant we will have a better sense of timing for next meeting; will send doodle poll that everyone can see everyone's schedules.

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.