

Industrial Stormwater Program

1200-Z Rulemaking

Advisory Committee Meeting No. 5 Follow-up

Meeting Summary

Monday, May 4, 2020

Webinar and Conference Call only

List of DEQ attendees

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

List of Committee Member attendees

- Ada Banasik
- Alan Flemming
- Chris Rich
- Jamie Saul
- Jonah Sandford
- Debbie Silva
- Kathryn VanNatta
- Michael Campbell
- Norma Job
- Stacy Hibbard (Chair)

PG Environmental attendees

- Audrey Signorelli
- Amy King
- Anne LaDuca

Meeting materials

Please refer to the webpage for this rulemaking under 1200-Z Permit Rulemaking Advisory Committee Meetings / [Meeting 5 Follow-up](#)

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.



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water.*

1200-Z Permit Rulemaking

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Agenda

May 4, 2020
9:00 a.m.-11:00 a.m.

Meeting materials are [online](#) under meeting No.5:
<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx>

This meeting will be held by webinar only. Please use the webinar link below. Alternatively, a call-in number is provided. Contact Michele Martin at martin.michele@deq.state.or.us or cell: 971-219-5049 with questions.

Microsoft Teams Webinar:
[Join Microsoft Teams Meeting](#) (click on this link to join the meeting)

Alternatively, you can use the call-in; web is preferred.
Call: [+1 971-319-4991](tel:+19713194991) Conference ID: 395 087 848#

Time	Topic	Presenter
9:00 a.m.	Welcome and logistics	Michele Martin
9:15 a.m.	Continue DEQ presentation and discussion on proposed permit language <i>Slides No.: 12, 13, 14, 21, 22</i> <i>Supplemental Sheet 3-5</i>	Krista Ratliff
10:00 a.m.	DEQ Meeting 5 presentation re-cap and continued discussion <i>Slides No.: 15, 23</i>	Krista Ratliff
10:30 a.m.	Questions regarding presentations provided by PG Environmental: Columbia Slough BOD Benchmark, Sector-specific and impairment monitoring recommendations, surrogate pollutant assessment, water quality-effluent limit methodology	PG Environmental
10:45 a.m.	Comments/questions from advisory committee members	Advisory Committee Members
10:55 am	Discussion: Committee members' written permit recommendations received to date, (time permitting) <i>Supplemental Sheet 6</i>	Christine Svetkovich
11:00 am	Adjourn	

Supplemental Sheets 3 through 6 will be used for this meeting.

Meeting Summary

Note: Since several of the attendees participated by phone, DEQ was unable to capture all phone attendee names and affiliations.

Michele Martin (MM): Good morning, welcome, intro DEQ participants, PG Environmental

- We are using Microsoft teams for this meeting, add full name; AC members can use chat function and I will call on you.
- Roll call for AC: Ada, Alan, Norma, Chris, Jamie, Jonah (no – signed on after roll call), Debbie (on the call but no audio), Michael, Kathryn, Stacy
- Go over agenda
- Krista will go over slides, presentation re-cap, PG Environmental here to answer Qs on presentations from meeting #5

Krista Ratliff (KR): Thank you, good morning, slowly go through supplemental #3-5, touch base on other slides before we go into a re-cap, 3 others from PG Environmental are here today, Dan Connally couldn't make the call

#3 supplemental, red-lines of monitoring in the permit

- We plan to move federal numeric TBELS, and statewide benchmarks under Schedule B monitoring requirements;
- In the past the benchmark table and federal number TBELS were in Schedule A so they are all shown in one place under monitoring requirements;
- We are also proposing to use the saltwater criteria, supplemental. 3 slide 12, most of the saltwater criteria is less stringent than fresh so adding it to schedule E; similar to what EPA does but when applying the standard in the estuarine zones will still be applying mostly the freshwater standard. Whichever standard is more stringent is what will need to be used.
- We are proposing to reduce impairment monitoring for existing and new dischargers based on presentation and data PGE presented in meeting #3; they analyzed all discharge data from 20 years to see who exceeds over 10%; this list of 8 is the list that is exceeded; based on reasonable potential this is the list
- During meeting #4 I presented impacts on facilities that would be discharging based on 2018/2020 integrated report; it decreased the amount of facilities that would be discharging but did not change the data trends for narrowing the list of impairments;
- DEQ's integrated report sent to EPA last month some changes were made; the one that was sent to EPA has all the changes made based on comments received are now in the mapping and assessment tools online; previously the impairment listings did not reflect the final 2018/2020 report that went to EPA; now we can get better idea of how many facilities will be impacted by the narrowing of the impairment list
- Supplemental 3 is based on Tier III framework; a lot of comments on this tiered corrective action are based on impairment monitoring; based on feedback we heard and PG Environmental work, some of the supplemental 3, 4, and 5 will change; how we will propose to modify impaired water dischargers sampling and our WQBEL proposals; obviously this redline of sup 3 is taking into the Tier III framework; we will look at pH and TSS as having a reference concentration that would trigger Tier III framework because all basin-specific pH ranges are more narrow than statewide range is now— we are thinking about what that means and targets used

- Iron- challenging to think about corrective action – it’s ubiquitous in landscape and has a chronic aquatic life water quality standard (WQS); this portion of supplemental 3 proposes if a facility is exceeding iron impairment, it would not accelerate to a WQBEL, if the facilities show actual iron exceedance that is not coming from industrial activities; recall in Tier III we propose give facility’s an opportunity to demonstrate that the impairment pollutant is not coming from their activities, we want to allow this for iron;
- Last time we talked about changing dissolved to totals; we will pursue this; table 5, impairment monitoring, has for the metals to sample in dissolved based on stormwater impacts to receiving stream and assess for total concentration
- E. coli and fecal coliform (bacteria)– proposal from PG Environmental on how to deal with in context of WQBEL; we want to use appropriate bacteria indicator for sampling; have been using E. coli as surrogate for fecal; meeting 5 PG Environmental evaluated surrogates and determined that E. coli is not a good surrogate for fecal; raises issues on how we will set monitoring and evaluate monitoring; we have Oregon Administrative Rules (OARs) written and on how our geomeans and medians should be expressed in permits for the monitoring; this proposal talks about assigning the reference concentration at the targets based on WQS for fresh and coastal; this talks about setting bacteria monitoring at the standard for E. coli and enterococcus, but fecal coliform does not have a target expressed in OARs
- A lot of conversation about bacteria not escalating to a numeric WQBEL and we have proposed that as well; looking at impaired waters on coast, very few E. coli listings but many fecal listings so we have to figure out which limit to use because fecal do not actually set a limit like E. coli does so that makes it difficult to set a reference concentration; likely why permit used E. coli in past; not sure what to do about fecal numbers, they are very low, would be hard for facilities to meet at end of pipe
- WQBEL section yet to be developed – PG Environmental, Audrey Signorelli, is here to discuss
- Supplemental 3: proposed to alter exemptions under impairment monitoring – that terminology proposed aligns with listing methodology terms in 303(d) listing – now you can figure out what is exempt based on this same terminology; no change to the exemptions, just actual listing verbiage
- Any Qs on supplemental 3? (None)
- Supplemental 4 – slower examination of this proposal:
- We are looking at surrogates for sedimentation and turbidity, need to think about this more as PG Environmental suggested that for impairment monitoring should be using turbidity instead of TSS (total suspended solids);
- There are not many other proposed changes in supplemental 4 – changes to improve readability in representative sampling section and ensure all waste streams being sampled; some facilities have other general permits, (e.g. log pond) if that discharge is co-mingled, we want it separated but if it can’t then we have to make sure that all parameters in both permits are sampled for; for non-stormwater discharge only need to be sampled if co-mingled with stormwater, e.g. groundwater intrusion and no rain event then be clearly no need to sample;
- Want to take into account variability of bacteria sampling due to the way water quality criteria is written – so if instantaneous E. coli 406/100 organisms, because there is great variability then criteria is written to allow for follow up sampling so we have attempted to account for great variability for fecal indicator concentrations in short time periods so samples needed over time to understand trends and sources; as written it may not make complete sense to do 5 samples during one rain event but want to allow some follow-up sampling; last meeting talked about 5 samples over wet weather period, not well-received; we would love feedback on other ideas to account for variability from bacteria sampling and what follow-up is best to use;

- Last meeting we talked about timing – could not find reasoning for 14 calendar days from the current permit- we are proposing to change collection of samples from 14 days apart to 72-hours – aligns with federal regulations
- Pg. 3 of supplemental 4 monitoring frequency table did not change but made few edits to account for possibility of establishing WQBELs, want to expand any applicable numeric limits to new frequency; heard from AC member that mass reduction proposal probably did not go far enough and has issues with PE-stamped certification, challenges would come assessing the as-built facilities and making sure they are infiltrating as designed; monitoring variance section has added that stamped verification could be used as demonstration for not sampling at the minimum frequency
- Waiver condition – proposing a different waiver criteria for benchmark separate from impairments; this proposal is to increase the geomean from 4 samples that are equal to or lower to request the benchmark; permit could have eligibility go to 6 consecutive samples at or below geomean; since the permit allow for facilities to sample more than the minimum frequency, limit the timeframe the facilities have to get a sample over a full monitoring year; permit allows facilities to sample more minimum frequency as long as meeting 14-days apart but since proposal change to 3-days apart want to ensure we are getting a full year of monitoring prior to waivers request; so that is part of the thinking of moving to 6 and getting full monitoring year; and facilities can get waiver prior to Tier II evaluation year
- In addition, impairment discontinuance aligns with EPA proposal to have impairment monitoring for non-detects for 4 consecutive samples; or after 3 years of monitoring if below refer concentration then allow for monitoring waiver request
- Subtracting the background concentrations – we still need to figure out what that looks like; also talks about looking at facility with approve monitoring waiver subject to one time benchmark monitoring verification; have that verification due second quarter fall 2024 for all facilities that have previously been granted monitoring waiver; if still below benchmark concentration then it would automatically extended to end of permit year; if follow-up monitoring exceeded then that is a reason to revoke the monitoring waiver

Questions?

Ada: Regarding 5 follow-up samples for bacteria – with hold times and travel time could be a challenge to collect and not helpful because people will have to take 4 samples in an hour

Michael Campbell (MC): in regard to monitoring waiver, why move to 6 samples versus 4? What prompted?

KR: we heard earlier that monitoring waiver requests if trending up, it is a challenge for us to grant if trending up; 6 is an attempt to get more data, and facilities get at least year of monitoring under their belt; increasing it is an attempt to verify and get more data to do assessment; don't want to do more because gets into Tier 2 year

Stacy Hibbard (SH): In light of moving from 14 days apart to 72 hours apart, I recommend that DEQ consider a fall storm monitoring requirement – concerned people will wait until fall storms happen and only sample in winter and spring. A quarterly requirement instead of semi-annual is another option but may not work well for Eastern areas of the state.

KR: I want to align monitoring better with reporting; quarterly sampling and quarterly reporting makes sense to me

Ada: I have not seen anything in draft language. No exemption or waiver for not sampling overflows? Is that right?

KR: Yes, correct will discuss more later today in retention standard slide

- Slide 14 supplemental 5 – this section re: inspections to make sure facilities are inspecting all areas of industrial activity and taking corrective actions immediately
- Concerns about what the word “immediately” – EPA has a definition of immediate – thinking about adding that definition – means the day you discover the need – that you have some temporary controls to mitigate the discharge – the “immediate” term is there to prompt facilities to make changes as soon as practicable – want facilities to know they have to do something right away, having a definition might help;
- Also want to make sure infiltration devices are included in monthly inspections
- We are moving to e-reporting for applications and submissions but agents are not moving right away so not yet drafted; agents will still have paper submittals
- This one will be heavily influenced by earlier sections; may tweak Tier III based on everyone’s responses

MM: no comments

KR: slide 15, follow-up slide, moving on to slide 21

- Slide 15 re-cap: talk about saltwater criteria – historically not assigned saltwater criteria; we have 26 facilities that are mostly in estuarine waters, only 1 with a direct discharge to Ocean; GIS folks pulled this list re: category 5 waters, some arsenic listings for impairments and it’s one of the few parameters saltwater criteria is more stringent than fresh; we will have to consider this; this is where the most changes will come; as far as benchmarks we are assessing for freshwater, will likely be more stringent, assigned at freshwater; for facilities discharging at coast the saltwater will apply; for estuarine zone we will compare saltwater to fresh and assign the most stringent; because standards folks have done a good job mapping and classifying all zones we are set up well to have mapping and GIS layers, should be easy to establish correct criteria in estuarine zones
- I want to get a quick opinion from Advisory Committee – EPA permit proposes to express monitoring in milligrams per liter; we have always expressed monitoring in done mg/L – any opinion on switching to µg/L? (NONE)
- Slide 22 – talk about current state of retention standards, we don’t specify when facilities establish mass reduction that they must design to peak flow – we need to make clear they need to design to peak flow – Any overall issues on mass reduction checklist or waiver? I hear from everyone that monitoring these facilities is an issue

SH: I know for mass reduction facilities the table they are required to fill out is a little confusing – no need to collect that info mass loading facility wide since the requirement is per discharge points; that infiltration doesn’t apply to

MC: not clear when you say design is peak flow, help me out? And are you talking about making changes to checklist or permit?

KR: maybe both, being more explicit; the design storm we have is based on ODOT, not sure if there’s a better way to do that- I would like to be more specific to have facilities design to a peak instead of overall – looking at hydrographs to make sure mass reduction is capturing the peak of the storm

MC: currently based on 24-hour, they will get a blast of rain for 15 minutes, and discharge and be way under the amount for the day; I think that is an issue, vet with consultants

Ada: Not to derail but generally the way we designed in the past was peak storm if you are designing infiltration you would design to include peak storm; it's a storage facility as well and infiltrates over time; any revisions should allow facilities to count that storage; the peak is going into storage facility; think about specifying that facilities account for the peaks.

Chris: Double check where DEQ is on question of sampling the overflow from retention systems

KR: I have heard the permit needs to have better conditions regarding this – I was hoping EPA would respond to this – National Academy of Science report asked EPA to have more effective regulations and make permits easier to implement – and re: overflow bypass – went likely too far on facilities treating to drinking water standards;

- DEQ and agents need to do due diligence when reviewing;
- The National Academy of Science report request EPA address: “Some degree of regulatory relief during large-event bypass would need to be implemented to encourage industrial stormwater retention where it is safe and appropriate. The most significant incentive would be assurance that installation of a well-designed retention system provides relief from the corrective action process associated with episodic results above benchmark thresholds associated with bypass.” – we are thinking about and be more clear in the permit because it is coming up more and more;
- Not only an overflow from mass reduction; bypass is not the right term – it has consequences in Schedule F – thinking about overflow from mass load facilities also have to write permit conditions re: discharge from treatment system that has already treated all stormwater from design storm; it is on our radar; will continue to work with Dan Connally from PG Environmental to get a red-line of permit and improve permit language for next meeting;
- Any comments or ideas on how to use mass reduction facilities on context of WQBEL? For facilities that have and discharge to impaired water –

SH: for terminology I suggest “flows in excess of design” – I do not see any reason to not allow those facilities to have monitoring waivers; for treatment if not comfortable with waivers then require all discharge has to go through common monitoring point – route all flows back together

Alan: often the cost of conveyance modification to get water to/from treatment is more than actual treatment; can be extremely expensive

KR: any other comments? Thank you for your feedback; will be a quick turnaround to get a draft of the permit for last meeting; any bright ideas for WQBEL on already designed facilities that might discharge over the limits based on mass?

Chris: flows that exceed design capacity is an important issue – when a facility can do an infiltration facility it requires a lot of area and investment – so if you comply with your standard and it's approved Tier II measure and stamped by a PE it should be considered a Tier II in compliance with the permit – if DEQ wants to know you are having these flows then have facilities provide notice then DEQ has some metrics, over-topping – waiver – evaluate the Tier II to calculate the methodology is this sporadic or a longer issue – once it overtops it is likely to sample over the benchmarks – what are the long term goals of mass reduction and need to think about how folks comply with permits

KR: I like the idea of getting someone out there re-certifying that facilities are implemented the way it is designed; if we had assurances that facility is being maintained that would alleviate some regulatory unknown;

- Moving back to slide 15 – the intent of the slide is to go over some of the proposals broadly; at 10:30 we will open up for clarifying questions on the PG presentations from last time; you can find the presentations on rulemaking page under meeting #5;
- Comparison on benchmarks from EPA permit – benchmark sampling on sector E aligns with OR water quality standards and also to include saltwater criteria – for all dischargers have them identify the latitude and longitude of their discharge points;
- Third PG Environmental topic: evaluate surrogate monitoring;
- Heard a lot of comments last meeting based on complexity of Tier III, we are working on what to do with exceedances to impaired waters; Tier III concept, even though some lag time on facilities to escalate to WQBEL is shorter than what WA proposed, they give all facilities a 2-year compliance schedule; we are trying to find a balance with exceedances to impaired waters
- Recap mass reduction waiver – it may not have hit the mark b/c Advisory Committee hoping there would be some reduced monitoring or allowance of a waiver instead of a variance – now mass reduction discharge not subject to Tier I or II; hire a PE to re-certify that facility is infiltrating as designed - \$179/hour EPA estimate; also waiver/stamped verification is accepted as a demonstration if they do not meet a monitoring frequency; the thinking was the current permit proposal would not include any reduction of monitoring because already getting the benefit

SH: if exempt from Tier I and Tier II, then what is value of collecting data if no consequence for high numbers?

KR: in the e-certification or in the current mass reduction waiver checklist we could have each facility have modified benchmark; the thinking is that each facility would have some metric based on mass reduction – so showing that each facility meeting the modified benchmark

Ada: I agree. To me it sounded like no point; as far as each facility is different with the mass loading, use overflow sampling to compare to some site specific benchmark, so comparing one grab sample to mass load and geomean, would be a little off as well. Unless took a geomean of all overflow that happened over a longer period time

KR: Intent for us to make sure that facilities are maintaining which we have in O&M requirement that infiltration devices are being inspected and maintained - maybe that is enough but having some verification that they are not being neglected is what we are grappling with – trying to find sweet spot in between [Krista cut out]

MM: voice check; lost Krista; any questions?

Audrey, PG Environmental: Dan could not be here but we were involved in his previous presentations

Christine Svetkovich: we will continue to use PG Environmental info provided as we continue to move forward with draft permit language

MM: On the agenda we have opportunity for Christine to take any comments from Advisory Comm. or to move on to supplemental sheet 6; committee can comment by e-mail, we received comment from Stacy and Michael

CS: we got feedback from our initial meeting that we broaden scope of discussions – if we have time to talk about topics outside of scope of settlement agreement we will do that; we got feedback from BES, compiled those into one; after meeting 4 Michael Campbell also commented – so place to start: turn to Stacy, is there anything that you provided that is in supplemental 6 that you want to talk about?

SH: the comments speak for themselves, as agents we track issues with implementation – these are things we've collected from current and even previous permit cycles; a lot of them have been addressed through the committee; they are broad, apply to whole permit; first ones were provided in November

CS: Michael would you like to chime in?

MC: sure. I think there's a lot in our submission but overall is suggesting a way for folks to figure out what they should be doing before we get into an enforcement situation; permit is complicated and requires a lot of professional judgment; system to work with DEQ on what they should be doing; eg. the narrative condition regarding compliance with water quality standards, a lot of permittees don't know what to do with that – permit assumes that if you are doing everything you are supposed to be doing in compliance with WQS. Comes as a surprise to permittees; almost a retroactive application of water quality standards; Tier III has some promise but needs fair amount of work and discussion to get this right

CS: Committee input on topics in supplemental 6 from BES or MC? In June we will spend time on proposed Tier III based on feedback so far

KVN: I just want to support MC's written and verbal comments; certainty is important to the regulated community; removing ambiguity is a key factor

KR: back to slide 15 – any comments on Tier III or mass reduction?

- We heard a lot of feedback on Tier III – some like EPA approach – EPA did a lot of work comparing state's; we will be looking at their spreadsheets; regarding limiting impairment list- Nat'l academy recommends narrowing list – grateful to PG Environmental work on evaluating our data from so many years – we are limiting our list to those 8 impairments– EPA said they are trying to balance burden to regulated community – we have seen the limiting of the list done in WA and CA;
- Will still look at surrogates, most problematic for TSS when impairment is turbidity or sedimentation; EPA has sampling for TSS why we have done that – PG Environmental has shown that when looking at impairment monitoring need to look at WQSs, recommends we do turbidity monitoring because we don't have a sedimentation standard; complications because requires upstream sampling of waterbody; we have talked about direct vs indirect dischargers; maybe can set some sort of permit conditions that applies to each; for indirect dischargers it's difficult to assess end of pipe
- Iron and bacteria – 2 of the pollutants we are including on impairment list based on exceedances to reference concentrations; current proposals are that neither of these exceedances would escalate to a WQBEL; iron would escalate only if shown to be the source and if facility not meeting reference concentration; bacteria – exceedances would have to install mandatory narrative WQBEL – some are one-time evaluation, others on the list would be more on-going; based on 2018/2020 integrated report now submitted to EPA we can get a really good picture of the facilities subject to impairment monitoring; expecting a quick turnaround from EPA on the integrated report, 30-60 days
- Slide 3 – a little premature but based on current permit conditions want to brainstorm and recognize that we do want to improve clarity and recognize that some proposals need additional technical assistance; EPA has stated they will develop guidance for development of background concentration guidance; likely the timing of any guidance doc will not align with our current schedule of having a draft permit out end of summer; EPA language still requires non-human impact reference site,

unfortunately – difficult to obtain; bacteria sampling- as Ada pointed out that follow-up or 5 samples over time need additional procedures – also proof that discharge did not cause or contribute to WQS, includes additional elements, we put that into meeting 5 summary that should be posted soon – 4 places where we would develop additional implementation documents

AC comments?

Chris: echo comment regarding need for TA, some clearinghouse for getting clear and consistent statewide interpretation – someplace to go to look for collective comments, something that could build over time; a place that people can go to submit a comment and others can see it, I am glad to see DEQ is thinking about this

MC: what are the topics that you will cover before next meeting? Sounds like you are working on benchmarks?

KR: Michele- Do you have full PowerPoint open? Advisory committee summary from meeting 5 – hoping to get a fairly complete redline permit for you for next meeting; also working on financial impact statement – and any additional parking lot items, also monitoring tables and sampling concentrations

CS – thank you everyone for participating today and following up in short order.

MM: thank you Courtney and PG Environmental

KR: acknowledge MC that we also plan on doing crosswalk document with a rationale column; you had mentioned that our thinking/rationale would be beneficial