



State of Oregon
Department of
Environmental
Quality

Oregon Department of Environmental Quality
Sept. 30, 2020

Notice of Proposed Rulemaking

1200-Z Industrial Stormwater General Permit Renewal *Update: Rescheduled Public Hearing Date to Oct. 30, 2020*

This document package contains:

- Notice of Proposed Rulemaking
- Draft Rules – changes highlighted
- Draft Rules – changes included

Note for Readers:

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Accessibility Information

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Introduction

DEQ invites public input on proposed permanent rule amendments to chapter 340 of the Oregon Administrative Rules.

Request for Other Options

During the public comment period, DEQ asks for public comment on whether there are other options for achieving the rules' substantive goals of meeting federal and state water quality regulations and ensuring the permit is implementable, while reducing the rules' potential economic impact on business.

Overview

The 1200-Z industrial stormwater general permit regulates stormwater discharges from industrial facilities that may reach Oregon waterways, directly, or through a conveyance system such as ditches or storm drains. Over 860 current permit registrants discharge to 184 waterways throughout Oregon. Permit coverage is required based on the Standard Industrial Classification (SIC) of each facility statewide and for facilities with specific activities that discharge into the Columbia Slough and the Portland Harbor Superfund site. In general, the permit requires facilities to implement best management practices and control measures to reduce pollution in stormwater discharged from sites. All facilities are required to develop and implement site-specific stormwater pollution control plans, monitor stormwater discharged from each site, and install additional pollution controls if the sampling results do not meet the targets.

The permit registrants include over 215 different industrial SIC's and varying sizes of facilities ranging from less than one acre to over 100 acres. DEQ has required permits for industrial stormwater since 1991.

In August 2017, DEQ renewed the 1200-Z industrial stormwater general permit for a five-year term. DEQ subsequently received a petition to reconsider the permit from the Oregon Industrial Stormwater Group, a diverse group of permitted industries. In addition, a petition was filed in

Multnomah County Circuit Court, by Columbia Riverkeeper and Northwest Environmental Defense Center.

As a result, on Aug. 17, 2018, DEQ entered into a Consent Judgement and a Settlement Agreement with Northwest Environmental Defense Center, Columbia Riverkeeper and Oregon Industrial Stormwater Group as an intervener regarding the 1200-Z industrial stormwater general permit renewal. In summary, DEQ committed to the following:

- By Oct. 31, 2018, DEQ will issue a final revised 1200-Z permit in accordance with ORS 183.484(4) that affirms or modifies the 1200-Z issued on Aug. 1, 2017;
- By Oct. 30, 2020, DEQ will release for public review and comment a revised draft 1200-Z permit and;
- By March 30, 2021, DEQ will issue a final revised 1200-Z permit along with written responses to public comments received on the draft revised 1200-Z permit.

On Oct. 22, 2018, DEQ reissued the 1200-Z incorporating several short-term changes from the Settlement Agreement signed by the parties in August 2018. In summary, DEQ committed to the following:

- A process for considering proposed numeric technology-based effluent limitations, or, alternatively, proposed numeric technology-based benchmarks for the pollutants copper, lead, zinc, and total suspended solids;
- A process to consider one or more proposed site-specific, TMDL-specific, or state-wide numeric water quality-based effluent limitations, related to industrial stormwater discharges into impaired waters; and
- Development of appropriate monitoring and reporting requirements to ensure and verify compliance at discharge point(s) identified in each permit registrant's stormwater pollution control plan.

DEQ established an advisory committee to provide input to DEQ on the elements of the 1200-Z industrial stormwater general permit renewal associated with the Settlement Agreement. Specifically, DEQ sought input on the evaluations, methodologies, and appropriate scale for considering numeric water quality-based effluent limitations for impaired waters and numeric technology-based effluent limitations or benchmarks for copper, lead, zinc, and total suspended solids. The advisory committee also considered appropriate monitoring and reporting requirements in relation to effluent limitations or benchmarks.

DEQ had assistance on this permit renewal rulemaking from PG Environmental, a contractor that has national experience in industrial stormwater regulations, federal regulations, and the Clean Water Act. PG Environmental helped with a number of the data analyses and associated work for DEQ and the advisory committee to consider methodologies and appropriate scale for considering permit limits vs. benchmarks as well as other technical elements associated with the permit renewal.

DEQ is proposing the following substantive changes to the permit that include, among others:

- A framework for managing elevated levels of certain impairment pollutants, including copper, lead, zinc, iron, pH, and bacteria, discharged to Category 5: 303(d) listed waterways, that are impaired for that pollutant;
- New requirements for permit applicants that discharge to Category 5: 303(d) listed impaired waterways when monitoring exceeds water quality standards;
- New requirements for facilities that divert stormwater from reaching surface waters to manage pollutant discharges through a mass reduction waiver;
- Changes in monitoring requirements for all current and future permit registrants;
- Changes in statewide benchmarks for copper, lead, zinc, and biological oxygen demand (BOD₅) benchmark concentration applicable to Columbia Slough dischargers;
- Increased corrective action response requirements for some pollutants detected in industrial stormwater that are above targets;
- Requiring all facilities to use DEQ's new Environmental Data Management System, called Your DEQ Online; and
- Numeric water quality-based effluent limit for discharges to Category 5: 303(d) listed waters for pH.

Procedural Summary

More information

Information about this rulemaking is on this rulemaking's webpage:

<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx>

Public Hearings – *Rescheduled*

DEQ will hold one public hearing. **The hearing will be online and by teleconference only.** Anyone can attend the hearing by webinar or phone.

Information about the virtual public hearing:

- Oct. 30, 2020
- Noon
- Join the hearing online by visiting the Zoom link below:
<https://us02web.zoom.us/j/81620689673?pwd=YWV5SWVaeFZiRFFtZE5XdDE3ODVmZz09>
- Meeting ID: 816 2068 9673
- Password: 099090

Or join by phone:

- Teleconference number: 888-475-4499
- Meeting ID: 816 2068 9673
- Password: 099090

How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person can submit comments by email, by regular mail or at the public hearing.

Comment deadline

DEQ will only consider comments received by 4 p.m., Oct. 30, 2020.

Submit comment by email

Any person can submit comments by sending an email. Commenters should include “1200Z Comments” in the email subject line. Submit emails to: 1200comments@deq.state.or.us

Note for public university students:

ORS 192.345(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon’s public records law. If you are an Oregon public university or OHSU student, notify DEQ that you wish to keep your email address confidential.

By mail

Oregon DEQ
Attn: Christine Svetkovich, 7th Floor
700 NE Multnomah St., Room 600
Portland, OR 97232-4100

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Get email or text updates about this rulemaking by signing up through this link: https://public.govdelivery.com/accounts/ORDEQ/subscriber/new?topic_id=ORDEQ_396; or on the rulemaking web site: <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx>

Get email or text updates about other, future DEQ rulemakings by signing up through this link: [DEQ Email Notice List](#).

What will happen next?

DEQ will include a written response to comments in a staff report DEQ will submit to the Environmental Quality Commission. DEQ may modify the rule proposal based on the comments.

Present proposal to the EQC

Proposed rules only become effective if the Environmental Quality Commission adopts them. DEQ plans to present the proposed rules to the commission for a decision in early 2021.

Statement of need

What need would the proposed rule address?

This rulemaking is to reissue the 1200-Z Industrial Stormwater General Permit by March 20, 2021, in response to a Settlement Agreement between DEQ, Columbia Riverkeeper, Northwest Environmental Defense Center, and Oregon Industrial Stormwater Group.

How would the proposed rule address the need?

The proposed rule will establish the renewed permit in rule. This is the first water quality general permit that DEQ is renewing via rule since the authorizing statute (ORS 468B.050) was updated in 2005 to explicitly allow general permits to be issued by order or rule.

How will DEQ know the rule addressed the need?

DEQ will provide the EQC with a proposed 1200-Z industrial stormwater general permit that is high quality, protective, implementable and legally defensible as well as appropriate for Oregon.

Rules affected, authorities, supporting documents

Lead division

Water Quality Division

Program or activity

Stormwater program

Chapter 340 action

Amend

340-045-0033(11) *add the following:* (g) NPDES 1200-Z Industrial Stormwater General Permit (issued *insert date*)

Statutory Authority - ORS

468.020

468.065

468B.035

468B.025

Statutes Implemented - ORS

468.065

468B.015

468B.035

468B.050

Documents relied on for this rulemaking

Document title	Document location
Title	Link or office address
Contractor: PG Environmental Resource Documents Available by Request	www.pgenv.com Phone: 703-956-1956
National Academies of Science Report	https://www.nap.edu/catalog/25355/improving-the-epa-multi-sector-general-permit-for-industrial-stormwater-discharges
Advisory Committee Meeting Materials Posted online	https://www.oregon.gov/deq/Regulation/rulemaking/Pages/r1200Z.aspx
Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, 2015 permit and fact sheet, EPA	https://www.epa.gov/npdes/stormwater-discharges-industrial-activities

Document title	Document location
<p>Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, proposed 2020, EPA: Proposed 2020 MSGP (Permit Part 1-9) Proposed 2020 MSGP Appendix A-P Proposed 2020 MSGP draft Appendix Q Proposed 2020 MSGP Fact Sheet</p>	<p>https://www.epa.gov/npdes/proposed-2020-msgp-public-comment</p>
<p>TABLE 30: Aquatic Life Water Quality Criteria for Toxic Pollutants OAR 340-041-8033</p>	<p>https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=256054</p>
<p>NPDES Permit Writers' Manual, 2010, EPA</p>	<p>https://www.epa.gov/npdes/npdes-permit-writers-manual</p>
<p>Interim Permitting Approach For Water Quality-Based Effluent Limitations In Storm Water Permits, 1996, EPA</p>	<p>https://www.federalregister.gov/documents/1996/08/26/96-21671/interim-permitting-approach-for-water-quality-based-effluent-limitations-in-storm-water-permits</p>
<p>National Pollutant Discharge Elimination System Storm Water Implementation Package, 1991,EPA Proposed Rule and Draft General Permits</p>	<p>https://nepis.epa.gov/Exe/ZyPDF.cgi/91022RY4.PDF?Dockey=91022RY4.PDF</p>
<p>EPA Memorandum: Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits, 2007</p>	<p>https://www.epa.gov/sites/production/files/2015-09/documents/memo_complianceschedules_may07.pdf</p>
<p>EPA’s Combined Sewer Overflow Control Policy, 1994</p>	<p>https://www.epa.gov/npdes/combined-sewer-overflows-csos</p>
<p>Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs, 2014, EPA</p>	<p>https://www.epa.gov/tmdl/establishing-total-maximum-daily-load-tmdl-wasteload-allocations-wlas-storm-water-sources-and</p>
<p>Compliance Schedules in NPDES permits, 2010, DEQ Internal Management Directive</p>	<p>https://www.oregon.gov/deq/Data-and-Reports/Pages/imd.aspx</p>
<p>The Use of Significant Figures and Rounding Conventions in Water Quality Permitting, 2012, DEQ Internal Management Directive</p>	<p>https://www.oregon.gov/deq/Data-and-Reports/Pages/imd.aspx</p>

Document title	Document location
Reasonable Potential Analysis IMD Memo, 2011 Reasonable Potential Analysis for Toxics v.3.8	https://www.oregon.gov/deq/Data-and-Reports/Pages/imd.aspx
Oregon Bacteria Rule: Bacteria Criteria for Marine and Estuarine Waters, 2011, DEQ Internal Management Directive	https://www.oregon.gov/deq/Data-and-Reports/Pages/imd.aspx
DEQ webpage and associated documents from Water Quality Standards Revisions for Bacteria, Aug. 2016 rulemaking	https://www.oregon.gov/deq/wq/Pages/WQ-Standards-Bacteria.aspx
DEQ webpage and associated documents from Arsenic, Iron and Manganese Rulemaking, April 2011	https://www.oregon.gov/deq/wq/Pages/WQ-Standards-Metals.aspx
The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities: Storm Water Panel Recommendations to the California State Water Resources Control Board, 2006	https://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/numeric/swpanel_final_report.pdf
Evaluation of Washington’s Industrial Stormwater General Permit, 2006, prepared by EnviroVision and Herrera Environmental Consultants	http://ruby.fgcu.edu/courses/twimberley/10199/stormwater.pdf
Washington State Ecology’s Industrial Stormwater General Permit documents, 2020 and 2015	https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Stormwater-general-permits/Industrial-stormwater-permit
2018 Industrial General Permit Amendment Documents for Board Adoption, CA Water Boards	https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx
PG Environmental, EPA Contractor Work Agreement: Contract EP-C-16-003, June 2020 Advisory Committee Meeting 2 Summary, Appendix A	https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx
Clean Water Act section 301(b)(1)(C) and 40 CFR 122.44(d), Federal regulations for numeric effluent limitations Advisory Committee Meeting 4 Summary, Appendix A	https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx

Document title	Document location
States' monitoring and reporting frequencies comparison Advisory Committee Meeting 4 Summary, Appendix A	https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx

Fee Analysis

This rulemaking does not involve fees.

Statement of fiscal and economic impact

Fiscal and Economic Impact

The proposed 1200-Z industrial stormwater general permit will impact current and future permit registrants in different ways based on how each proposed permit change relates to each facility. DEQ does not have specific information accessible regarding each of the 862 current permit registrants to determine the fiscal impacts. However, the proposed permit will likely have some fiscal impact for all 1200-Z industrial stormwater general permit registrants.

The specific fiscal impact of the proposed permit to each facility with current permit coverage will be based on a number of facility specific factors including:

- The location of each facility's discharge and the list of impairments for that waterbody based on the DEQ draft 2018/2020 Integrated Report ([Integrated Report](#));
- The current geometric mean for each statewide benchmark at each facility and if that level is above or below the proposed benchmark, and/or impairment pollutant targets or water quality-based effluent limits proposed in the permit;
- Best management practices, controls, operation and maintenance procedures, and corrective actions implemented and installed at facilities;
- The Standards Industrial Code (SIC) and specific sector each facility is identified as, as well as receiving waterbody; and
- How each facility implements the current permit and site-specific stormwater pollution control plan, specifically as it relates to good housekeeping, best management practices, and source and operational control activities.

Statement of Cost of Compliance

The proposed permit will have fiscal and economic impacts on businesses, state and federal agencies, units of local governments, and the public. DEQ is unable to quantify the specific impacts of the proposed changes at this time due to the following:

- DEQ does not know which or how many facilities will have exceedances of statewide benchmark levels, impairment pollutant targets, or water quality-based effluent limits at the time of the permit renewal and when monitoring occurs.
- Facilities that previously had benchmark or impairment exceedances under the current or previous permit(s) may have resolved the issue(s) causing the elevated pollutant level(s).
- DEQ does not know what additional actions each facility will need to evaluate the sources of the pollutions and options to reduce them.

- DEQ does not have accessible information to determine what actions are currently occurring at each facility that could be modified or enhanced to meet the new requirements.

While DEQ does know the status of compliance for recently inspected facilities, DEQ cannot determine how all facilities are complying with the current permit. Therefore, the costs associated to comply with the proposed permit requirements are unknown. DEQ anticipates that facilities in full compliance with all current permit requirements are likely to have less fiscal impacts than facilities not currently meeting the requirements of the current permit.

DEQ does expect fiscal impacts from proposed monitoring requirements at each facility, the follow-up actions required based on the monitoring results, the new requirements for facilities that divert stormwater from reaching surface waters, the requirements for new permit applicants, or the use of the new environmental data management system.

Monitoring

Category 5:303(d) list pollutants

DEQ anticipates the majority of facilities will have some decreased costs associated with monitoring. In part, because DEQ is proposing to reduce the impairment pollutant monitoring to only the pollutants that have been determined to have a reasonable potential to discharge from industrial facilities in Oregon. This is a reduction in 38 pollutants that will no longer be required to be monitored. In addition, some impairment pollutants that facilities have monitored for many years have not been detected and the permit will discontinue monitoring requirements for those pollutants such as pesticides, like aldrin, and dieldrin. In some cases, the cost savings will be significant, considering laboratory analysis for some pollutant suites can be an estimated \$218.25.

Monitoring waiver – discontinue sampling

DEQ is recommending the amount of consecutive samples under the geometric mean, a special type of average that tends to dampen the effect of very high or low values and is an appropriate measure of stormwater discharges given their highly variable nature, needed to qualify for a monitoring waiver to be increased from four samples to five samples. That means that facilities would have additional monitoring costs to be able to qualify for a monitoring waiver for this specific requirement. In order to be able to improve analytical trends, the monitoring waiver will no longer be extended to the end of the permit cycle. Instead, facilities will reinstate benchmark monitoring during the last year of the permit cycle.

Sector-specific monitoring

Some facilities may have increased or decreased pollutant monitoring costs based on the sector-specific requirements identified in the federal multi-sector general permit that DEQ

proposes to continue using in this permit renewal. Some examples include: Land Transportation industrial sector has a new requirement to monitor for mercury and Ship and Boat Building industrial sector will now monitor for chromium and nickel.

The costs for analyzing water samples averages at \$25.28 per pollutant with a high range around \$218.25, for some hydrocarbons.

Mass reduction waivers

Facilities that have approved mass reduction waivers, in other words that have reduced the mass of pollutants discharged by diverting a portion of their discharge from reaching surface waters basins under the current or prior permit, will have additional costs to hire a professional engineer to certify that that the system designed, implemented, and maintained still functions as planned. This is important to ensure that the mass reduction devices infiltrating stormwater and reducing discharge of pollutants planned for at each site is effective. The cost for a professional engineer is approximately \$179 per hour. DEQ does not know how many hours of work this will take nor how many facilities currently may infiltrate, divert, reuse, store, evaporate, or send stormwater to a sanitary sewer.

Pollutant reductions

Facilities with monitoring results for pollutants in the proposed permit that are over the benchmark levels may have increased costs for implementing additional best management practices, corrective actions, and treatment, to reduce pollutant levels under the Tier 1, Tier 1.5 (Appendix B) and Tier 2 corrective action levels. There is a new requirement (Tier 1.5, Appendix B) to install prescriptive source and operational controls when discharge exceeds benchmarks. DEQ will be adopting industrial specific checklists from EPA. Tier 1.5 corrective action responses is expanded to monitoring that exceeds sector-specific benchmarks, monitoring characterization based on industrial type. Although there will be an added cost to facilities unable to meet benchmarks targets, facilities have been required to meet many of the pollutant reduction concentrations in the previous two permit cycles. Those facilities that have not installed appropriate controls to meet benchmarks may have some additional cost associated with prescriptive source and operation controls. However, DEQ anticipates negligible costs for facilities that have installed appropriate controls. DEQ is unable to quantify the costs for pollution reductions for each facility without knowing the facility specific current best management practices and any treatment systems currently implemented at each site. DEQ anticipates that the new environmental data management system will allow DEQ and the permit registrants to track the best management practices implemented at each facility and the effectiveness of each best management practice over time.

DEQ is proposing a framework for managing elevated levels of the following impairment pollutants: copper, lead, zinc, iron, pH and bacteria, that are discharged to waterways impaired for that pollutant that do not have a Total Maximum Daily Load. The proposed framework will require increased response actions to elevated levels of those pollutants and may result in narrative and numeric water quality based effluent limits for facilities. The

proposed permit language allows for existing facilities subject to numeric water quality-based effluent limits to be given a two-year compliance schedule to install needed controls to meet the numeric effluent limit. This condition includes reporting milestones and site improvement costs. Facilities with elevated levels of impairment pollutants that discharge into waterbodies that are water quality limited for that pollutant will likely have fiscal impacts associated with the new requirements.

New applicants

New permit applicants with facilities discharging to impaired waters for pollutants shown to be a concern from industrial sites will need to provide additional information in the permit application to qualify for permit coverage. The additional information may require more upfront costs associated with the permit applications that have discharge data indicating elevated pollutant concentrations above the water quality standards. These facilities will not be eligible for coverage under the general permit and will need to apply for an individual permit.

Your DEQ Online

Implementing DEQ's new electronic environmental data management system, Your DEQ Online, will increase efficiency and timeliness for both DEQ and the facilities with 1200-Z permit coverage, over time. DEQ's Electronic Data Management System will also reduce the costs currently associated with paper processing, mailing of hard copy discharge monitoring reports, associated quarterly laboratory reports, required Tier 1, Tier 1.5 and Tier 2 reports, and monitoring waiver requests for facilities and DEQ. DEQ is scheduling Your DEQ Online for industrial stormwater permit registrants beginning in late 2020.

State and federal agencies

There are currently two state agencies with permit coverage for four facilities across the state. Three of those facilities are airports the Oregon Department of Aviation manages and the other is an Oregon Air National Guard facility the Oregon Military Department manages. There is one federal facility managed by the U.S. Army Corps of Engineers with permit coverage.

The impacts to these agencies are the same as the impacts to all permit registrants, as discussed throughout this document.

DEQ

The new requirements will likely increase DEQ's workload. The increased workload may arise specifically when sites are required to submit reports associated with mandatory water quality based effluent limits, Professional Engineer stamped mass reduction waiver requirements, compliance schedules and prescriptive source and operation controls. DEQ anticipates added technical assistance in response to new permit conditions, including the proposed new numeric water quality-based effluent limits for discharges to Category 5:

303(d) listed waters and associated compliance schedules applicable to discharge monitoring results that cannot immediately comply with the limits. Depending on facilities' level of ability to meet monitoring concentrations and stay in compliance with their permit, there is an option that DEQ will need to respond with formal enforcement to discharge violations. That said, DEQ expects a number of efficiencies with implementing Your DEQ Online, including time savings associated with processing, reviewing, and responding to discharge monitoring reports, corrective action reports, and monitoring waiver requests.

Local governments

There are 50 local government permit registrants with coverage under the 1200-Z permit. These facilities include wastewater treatment plants, landfills and transfer stations, port facilities, airports, industrial parks, and regional transportation related facilities.

The impacts to the local governments are similar to all permit registrants identified throughout this document.

Public

The public will have more information directly available to them with the implementation of Your DEQ Online, including the location of facilities with permit coverage, the stormwater discharge locations, monitoring results, and the stormwater pollution control plans implemented at all sites with permit coverage. While all of this information is currently available through public records requests, the process often takes two weeks.

DEQ takes into consideration environmental and human health impacts when proposing new permit requirements. The associated costs or benefits from the permit changes are unknown.

Large businesses – businesses with more than 50 employees

DEQ does not exactly know the impacts of the proposed permit requirements on large businesses. However, as stated, the cost to comply with the proposed permit will be based on the facility specific information DEQ can begin tracking this information when it implements its environmental management data system.

For large businesses, the cost to comply with the proposed rules is identical to costs for all permit registrants, large and small, described throughout this document.

Small businesses – businesses with 50 or fewer employees

As is the case for all permit registrants, the extent of the small business fiscal impact is unknown and cannot be accurately quantified. DEQ estimates approximately 166 of the 863 permit registrants are small businesses.

a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

DEQ estimates the approximate number of small businesses that may be impacted by the proposed permit is estimated at 166 permit registrants.

b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

DEQ generally anticipates that most permit registrants will have similar recordkeeping and other administrative activities under the current permit. The exception for all permit holders will be the change to electronic reporting and the option for record keeping instead of mailed hard copies and paper documents. This change will reduce costs for permit holders who no longer print, mail, and manage paper files onsite.

c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

Same as above.

d. Describe how DEQ involved small businesses in developing this proposed rule.

DEQ requested input from the Oregon Business and Industry Association when establishing the advisory committee for this rulemaking. While there was not a representative specifically for small businesses, a number of the individual advisory committee members work with or represent permit registrants that are large and small businesses.

Documents relied on for fiscal and economic impact

Document title	Document location
Title	Link or office address
DEQ's Water Quality SIS Database for permit registrants	DEQ
Oregon's 2018/2020 draft Integrated Report	https://www.oregon.gov/deq/wq/Pages/2018-Integrated-Report.aspx
Cost Impact Analysis for the Proposed 2020 Multi-Sector General Permit (MSGP)	https://www.epa.gov/sites/production/files/2020-02/documents/final_proposed_2020_msgp_cost_analysis.pdf

Document title	Document location
US Bureau of Labor Statistics	https://www.bls.gov/oes/current/oes_nat.htm
Oregon Department of Employment	DEQ

Advisory committee fiscal review

DEQ appointed an advisory committee.

As ORS 183.33 requires, DEQ asked for the committee’s recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 reduce that impact.

The committee reviewed the draft fiscal and economic impact statement and documented its recommendations in the approved minutes dated June 17, 2020, online:

<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx> under 1200-Z Permit Rulemaking Advisory Committee Meetings

The committee determined the proposed rules would have an impact on small and large businesses in Oregon. Brief summaries of comments about the fiscal impact included:

- An increase in monitoring will increase costs associated with monitoring;
- Cost increases are significant for doing mass reduction system with a certified professional engineer; increasing sampling costs for large and small businesses

As ORS 183.333 and 183.540 require, the committee considered how DEQ could reduce the rules’ fiscal impact on small business by:

- Recommendation to consider adding flexibility in how to resolve mass reduction system issues

Housing cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the proposed rules would not affect development costs, because this permit is for industrial stormwater facilities and not single-family dwellings.

Federal relationship

Relationship to federal requirements

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

DEQ has had industrial stormwater general permits since 1991. The overall intent of the permits have remained the same, to reduce pollution levels in stormwater discharged into Oregon's waterways from industrial sites. Federal regulations require stormwater discharges associated with specific categories of industrial activity to be covered under NPDES permits.

DEQ's industrial stormwater general permit framework requires all facilities to monitor their stormwater, develop and keep up to date a pollution control plan specific to their facility and install additional pollution controls if sampling does not meet targets. The permit also has specific requirements for different industrial activities based on Standard Industrial Classification that is adopted from the federal permit. DEQ's industrial stormwater general permit has always and will continue to be specific to Oregon to ensure the appropriate water quality standards, total maximum daily loads, water quality monitoring data, industrial activities and associated stormwater discharges are taken into consideration. This proposed rule and permit has permit requirements that are different from and in addition to the federal Multi-Sector General permit, which is EPA's industrial stormwater general permit for locations EPA regulates.

There are public health, environmental, scientific, economic, technological and administrative reasons that DEQ is proposing an industrial stormwater general permit that has requirements that are in addition to EPA's permit. DEQ uses Oregon-specific monitoring data, the most recent Integrated Report and associated water assessment and list of impaired waterbodies, total maximum daily loads that have waste load allocations for industrial stormwater, information associated with cleanup sites as well as the types of industries in Oregon to develop appropriate permit conditions. In addition, during permit development, DEQ considered information associated with the fiscal impact statement and an assessment of what has worked and not during implementation of prior permits for the regulated community as well as DEQ. EPA's permit does not include any of the state-specific information listed above.

Due to the Oregon-specific considerations, the proposed permit has benchmarks, water quality-based effluent limitations and monitoring specific to Oregon. In addition, the proposed permit continues specific requirements for industrial sites that discharge into the Columbia Slough and the Portland Harbor Superfund site to ensure wasteload allocations are implemented and industrial stormwater discharges are not a source of contamination to

those waterbodies. The proposed permit does include industry-specific federal requirements, as well as, the general monitoring framework that are included in EPA's current permit.

DEQ considered several alternatives to the proposed permit conditions and did not adopt them due to feedback from the advisory committee and the ability to implement the permit by the permit registrants and DEQ.

Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with statewide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
 - Resources, objectives or areas identified in the statewide planning goals, or
 - Present or future land uses identified in acknowledged comprehensive plans

DEQ determined whether the proposed rules involve programs or actions that affect land use by reviewing its Statewide Agency Coordination plan. The plan describes the programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

Goal	Title
5	Open Spaces, Scenic and Historic Areas, and Natural Resources
6	Air, Water and Land Resources Quality
9	Ocean Resources
11	Public Facilities and Services
16	Estuarial Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

Determination

While the proposed rule significantly affects land use, DEQ’s existing land use compatibility procedures adequately cover the proposed rules. Existing EQC rules require DEQ to determine compliance with local government acknowledge comprehensive plans prior to the issuance of NPDES permits. OAR 340-018-0030(5)(d); 340-018-0050. For this reason, 1200-Z permit applications require a Land Use Compatibility Statement to be signed by the local land use authority confirming that the activity or use is compatible with the

acknowledged comprehensive plan and land use regulations prior to issuing permit coverage.

EQC Prior Involvement

DEQ shared information with the EQC about this rulemaking through an informational item on Friday, Nov. 15, 2019 at the EQC meeting in Portland, Oregon. The memorandum is online here: https://www.oregon.gov/deq/EQCdocs/11152019_ItemJ_1200z.pdf

DEQ's director will share information with the EQC about this rulemaking as part of the director's report in September 2020.

Advisory Committee

Background

DEQ convened a 1200-Z Industrial Stormwater Permit Renewal Rulemaking advisory committee. The committee included representatives from small and large businesses, local government, and private industry. The committee met seven times. The committee's web page is online: <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx>

The committee members were:

1200-Z Industrial Stormwater Permit Renewal Rulemaking Advisory Committee	
Name	Representing
Ada Banasik	Maul Foster & Alongi, Inc.
Alan Flemming	Kennedy/Jenks Consultants, Inc.
Norma Job	Ash Grove Cement Company
Chris Rich	Perkins Coie, LLP
Jamie Saul	Earthrise Law Center
Jonah Sandford	Northwest Environmental Defense Center
Debbie Deetz Silva	EVRAZ NA
Kathryn VanNatta	Northwest Pulp and Paper Association
Michael Campbell	Stoel Rives, LLP
Stacy Hibbard	City of Portland, Bureau of Environmental Services

Meeting notifications

To notify people about the advisory committee's activities, DEQ:

- Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
 - Subscribers of Rulemaking and Stormwater (13,493 recipients)
- People who signed up for the advisory committee bulletin.
- Added advisory committee announcements to DEQ's calendar of public meetings at [DEQ Calendar](#)

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee covered topics that included an introduction to the rulemaking scope and purpose. The committee discussions included topics such as numeric water quality-based effluent limits, DEQ's draft 2018/2020 Integrated Report and

delistings, technology-based effluent limitations, Columbia Slough Biochemical Oxygen Demand benchmark, sector-specific and impairment monitoring recommendations, surrogate pollutant assessment, water quality-effluent limit methodology, benchmark methodology and draft permit language. Advisory committee members provided recommendations throughout the rulemaking process about topics related to permit updates. All agendas, meeting materials, and meeting summaries are online:

<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx>

Public Engagement

Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing on Aug. 15, 2020, by:

- On Aug. 15, 2020, filing notice with the Oregon Secretary of State for publication in the September 2020 Oregon Bulletin;
- Notifying the EPA by mail;
- Posting the Notice and draft rules on the web page for this rulemaking, located at: <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx>
- Emailing 2,400 interested parties on the 1200-Z industrial stormwater newsletter through GovDelivery.
- Emailing 13,493 interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - Stormwater
- Emailing the following key legislators required under ORS 183.335:
 - Senator Michael Dembrow, Chair of Senate Committee on Environment and Natural Resources
 - Senator Alan Olsen, Vice-chair of Senate Committee on Environment and Natural Resources
 - Representative Ken Helm, Chair of House Committee on Water
 - Representative Gary Leif, Vice-chair of House Committee on Water
 - Senator Kathleen Taylor, Co-Chair of Joint Committee on Ways and Means Subcommittee on Natural Resources
 - Representative Jeff Reardon Co-Chair of Joint Committee on Ways and Means Subcommittee on Natural Resources
- Emailing advisory committee members,
- Posting on the DEQ event calendar: [DEQ Calendar](#)

How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person can submit comments by email, by regular mail or at the public hearing.

Comment deadline

DEQ will only consider comments on the proposed rules that DEQ receives by 4 p.m., on Oct. 30, 2020.

Submit comment by email

Any person can submit comments by sending an email. Commenters should include “1200Z Comments” in the email subject line. Submit emails to: 1200comments@deq.state.or.us

Note for public university students:

ORS 192.345(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon’s public records law. If you are an Oregon public university or OHSU student, notify DEQ that you wish to keep your email address confidential.

By mail

Oregon DEQ
Attn: Christine Svetkovich, 7th Floor
700 NE Multnomah St., Room 600
Portland, OR 97232-4100

At hearing – Rescheduled

- Oct. 30, 2020
- Noon
- Join the hearing online by visiting the Zoom link below:
<https://us02web.zoom.us/j/81620689673?pwd=YWV5SWVaeFZiRFFtZE5XdDE3ODVmZz09>
- Meeting ID: 816 2068 9673
- Password: 099090

Or join by phone:

- Teleconference number: 888-475-4499
- Meeting ID: 816 2068 9673
- Password: 099090

Public Hearing

Public hearings – *Rescheduled*

DEQ plans to hold one public hearing. Anyone can attend a hearing in person, or by webinar or teleconference.

Information about the public hearing:

- Oct. 30, 2020
- Noon
- Join the hearing online by visiting the Zoom link below:
<https://us02web.zoom.us/j/81620689673?pwd=YWV5SWVaeFZiRFFtZE5XdDE3ODVmZz09>
- Meeting ID: 816 2068 9673
- Password: 099090

Or join by phone:

- Teleconference number: 888-475-4499
- Meeting ID: 816 2068 9673
- Password: 099090

DEQ will consider all written comments received at the hearings listed below before completing the draft rules. DEQ will summarize all comments and respond to comments in the Environmental Quality Commission staff report.

Any person can submit comments on the proposed rules as described in the Introduction section of this document.

Draft Rules - With Edits Highlighted

Key to Identifying Changed Text:

~~Deleted Text~~

New/inserted text

340-045-0033

General Permits

(1) General permits may be adopted by a rule of the Environmental Quality Commission or by order the Director issues. A permit adopted by rule may be terminated by a later permit issued by order if the later permit covers the same activity and specifically provides for terminating the earlier permit.

(2) General permits may be developed for certain categories of minor discharge sources or minor activities where individual NPDES or WPCF permits are not necessary to adequately protect the environment. Before the Director can issue a general permit, the following conditions must be met:

(a) There must be several minor sources or activities that involve the same or substantially similar types of operations.

(b) The sources or activities must have the potential to discharge or dispose of the same or similar types of wastes.

(c) The general permit must require the same or similar monitoring requirements, effluent limitations and operating conditions for the categories.

(d) The category of sources or activities would be more appropriately controlled under a general permit than an individual permit.

(3) General permits issued after this rule's effective date will specify the following:

(a) The requirements to obtain coverage under a general permit, including application requirements and application submittal deadlines. DEQ may determine that submitting an application is not necessary after evaluating the type of discharge, potential for toxic and conventional pollutants in the discharge, expected discharge volume, availability of other means to identify dischargers, and estimated number of dischargers to be covered by the permit. DEQ must provide its evaluation in the public notice for the general permit.

(b) The process DEQ used to notify a person that coverage under a general permit has been obtained and the discharge or activity is authorized.

(4) Although general permits may include activities throughout the state, they may also be restricted to more limited geographical areas.

(5) Before issuing a general permit, DEQ will follow the public notice and participation procedures outlined in OAR 340-045-0027 and 340-045-0035(3). If the general permit is to be adopted into rule, DEQ will also follow ORS 183.325 to 183.410. In addition DEQ will make reasonable efforts to notify potentially interested persons.

(6) Any person operating a discharge source or conducting an activity described in a general permit must apply for coverage under the general permit, unless the general permit does not require submitting an application under subsection (3)(a) of this rule or the source or activity is specifically covered by an individual NPDES or WPCF permit, or a person makes an application for an individual permit under subsection (9) of this rule.

(a) Any person seeking coverage under a general permit must submit an application as required under the terms of the applicable NPDES or WPCF general permit. If application requirements are not specified in the general permit, procedures in OAR 340-045-0030 or 340-071-0162, whichever is applicable, must be followed.

(b) A person who fails to submit an application under the terms of the general permit, OAR 340-045-0030 or 340-071-0162, whichever is applicable, is not authorized to conduct the activity described in the permit.

(7) Any person required to have coverage under a general permit must pay permit fees as required in OAR 340-045-0070 to 340-045-0075 or 340-071-0140 to obtain and maintain coverage under that permit.

(8) Any permittee covered by an individual NPDES or WPCF permit may request that the individual permit be canceled or allowed to expire, and that it be covered by a general permit if its discharge or activity may be covered by an existing general permit. As long as the permittee is covered by an individual NPDES or WPCF permit, the conditions and limitations of the individual permit govern until such time as it is canceled or expires.

(9) Any person not wishing to be covered by a general permit may apply for an individual permit under OAR 340-045-0030 or 340-071-0162, whichever is applicable.

(10) 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.

(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) The permittee failed to comply with, or is not currently in compliance with, the terms and conditions of the general permit, submitted false information, or the permittee 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.

(11) The following general permits are adopted by reference in this rule and are available for review at DEQ:

- (a) NPDES 200-J, Filter backwash (issued August 29, 1997);
- (b) NPDES 500-J, Boiler blowdown (issued August 29, 1997);
- (c) NPDES 700-PM, Suction dredges (issued July 5, 2005);
- (d) NPDES 1500-A, Petroleum hydrocarbon cleanups discharged to surface waters (issued August 22, 2000);
- (e) NPDES 1700-A, Vehicle and equipment wash water discharged to surface waters (issued March 5, 1998);
- (f) NPDES 1900-J, Non-contact geothermal heat exchange (issued September 11, 1997);
- (g) [NPDES 1200-Z Industrial Stormwater General Permit \(issued insert date\).](#)

Draft Rules – With Edits Incorporated

340-045-0033

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