Permit Evaluation Report (PER): National Pollutant Discharge Elimination System (NPDES) 1200-CN Construction Stormwater General Permit

Oregon Department of Environmental Quality
700 NE Multnomah St, Ste 600
Portland, OR 97232

Permit Writer/Contact: Daria Gneckow, Daria.Gneckow@deq.oregon.gov

Proposed Permit Action

DEQ is renewing the 1200-CN Construction Stormwater General Permit (1200-CN permit) in accordance with Oregon Administrative Rule (OAR) 340-045-0040. This renewal replaces the previous 1200-CN permit issued on September 27, 2021.

Renewal of the 1200-CN permit is a Category III permitting action per OAR 340-045-0027(2)(c)(C). Category III permitting actions require DEQ provide public notice of the proposed action and a minimum of a 35-day public comment period.

Permit Category

National Pollutant Discharge Elimination System (NPDES) General Permit - Construction Stormwater for projects less than five (5) acres located within designated geographic areas.

Source Location

Coverage under this permit is available only for eligible construction activities located within the MS4 boundaries of local jurisdictions that administer a DEQ-approved Qualified Local Program (QLP). Permit coverage must be obtained directly from DEQ for discharges from construction activities undertaken by the QLP jurisdiction itself, or by federal or state agencies. The permit area excludes: tribal trust and reservation lands, and Lands of Exclusive Federal Jurisdiction.

Activities Covered Under the Permit

The permit covers construction activities that have the potential to discharge stormwater to surface waters of the state and conveyance systems leading to surface waters of the state.

Translation or other formats

Español | 한국어 | 繁體中文 | Русский | Tiếng Việt | العربية

800-452-4011 | TTY: 711 | deqinfo@deq.oregon.gov

Non-discrimination statement

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

Table of Contents

1.0 BACKGROUND 3

1.1 Introduction 3

1.2 General permit approach 3

1.3 Overview and history 3

1.4 Qualifying local programs 5

1.5 Anti-backsliding review 6

1.6 Antidegradation review 6

1.7 Permit development and alignment with the 1200-c permit 7

2.0 COVER PAGE 8

2.1 Permit area 8

2.2 Sources covered by this permit 9

3.0 CONDITION I: PERMIT COVERAGE REQUIREMENTS 11

3.1 Relationship to qualified local programs and local agency authority 11

4.0 SCHEDULE A: EFFLUENT LIMITATIONS AND CONTROL MEASURES 12

4.1 General control measure and plan requirements 12

4.2 Pre-construction requirements 12

4.3 Natural buffer zone (NBZ) protection 12

5.0 SCHEDULE B – INSPECTIONS, MONITORING, AND RECORDKEEPING 13

6.0 SCHEDULE D – SPECIAL CONDITIONS 14

7.0 APPENDICES 15

PUBLIC NOTICE DRAFT

1.0 Background

1.1 Introduction

The Oregon Department of Environmental Quality (DEQ) is proposing changes to the NPDES 1200-CN permit for construction stormwater discharges within jurisdictions with qualified local programs upon reissuance. The current permit became effective on September 27, 2021, and expired September 26, 2026. The 1200-CN permit covers stormwater and limited non-stormwater discharges from construction activities including clearing, grading, excavating, grubbing, stumping, demolition, stockpiling, and other land disturbing activities, as well as support activities (including concrete or asphalt batch plants, portable rock crushers, equipment staging, material storage, excavated material disposal areas, and borrow areas) that will disturb one to five acres and may discharge to surface waters of the state or conveyance systems leading to surface waters of the state. Construction activities covered by this permit also include those identified in 40 Code of Federal Regulations (CFR)122.26 as requiring coverage.

This Permit Evaluation Report (PER) describes the principal facts and the significant factual, legal, methodological, and policy issues considered in preparing the draft permit. After the public comment period closes as required by OAR 340-045-0027(1)(c), DEQ will summarize the comments received, respond to the comments, and specify any changes to the permit language and the reason for the changes. DEQ will make this response to comments available to the public per OAR 340-045-0035(8).

1.2 General permit approach

A general NPDES permit provides required permit coverage to new and existing dischargers that meet the eligibility criteria in the general permit. Based on similar discharge characteristics, NPDES general permits require the same effluent limitations, operating conditions, and requirement standards for every eligible discharger. General permits are issued with multiple dischargers obtaining coverage under that general permit after it is issued, consistent with the permit eligibility and authorization provisions. Therefore, dischargers covered under general permits know their applicable requirements before obtaining coverage. Furthermore, obtaining coverage under a general permit is typically quicker and less costly than an individual permit. As such, a general permit is a suitable permitting approach to regulate most stormwater discharge from construction activities in Oregon.

To reduce the overlap and redundancy between local construction stormwater programs and state stormwater permitting regulations, DEQ is proposing that certain construction projects located in jurisdictions that have qualified local programs are automatically covered under the 1200-CN permit. Automatically covering construction projects in these jurisdictions helps operators by reducing dual permitting. Operators in these jurisdictions are required to meet local stormwater requirements, but are not required to apply for the 1200-CN permit or pay permit application fees to DEQ. This simplifies the construction operator's permit process and eases the compliance burden among the regulated industry.

In the majority of cases, the 1200-CN permit will provide sufficient stormwater management requirements for discharges of stormwater from construction sites. DEQ is aware that there will be occasions when the general permit may not be appropriate for a specific construction project. DEQ may require a discharger to apply for and obtain 1200-C permit coverage or an individual permit if it determines that the 1200-CN permit does not provide adequate assurance that water quality and beneficial uses will be protected, or the project has a reasonable potential to cause or contribute to a violation of water quality standards.

1.3 Overview and history

The Federal Phase I and Phase II stormwater regulations, promulgated in 1990 and 1999, respectively, established requirements for stormwater discharges associated with construction activity pursuant to Section 402(p) of the Clean Water Act (33 U.S.C. § 1342(p)). Phase I designated stormwater discharges from construction activities disturbing five or more acres as "stormwater discharges associated with industrial activity" subject to NPDES permitting requirements (40 CFR § 122.26(b)(14)(x)). Phase II expanded these requirements to include "small

PUBLIC NOTICE DRAFT

construction activities" disturbing one or more acres, or less than one acre where the disturbance is part of a larger common plan of development or sale that will ultimately disturb one acre or more (40 CFR § 122.26(b)(15)).

The Phase II regulations also expanded the Municipal Separate Storm Sewer System (MS4) program to regulated small MS4s and required operators of regulated MS4s to develop programs to address stormwater runoff from construction activities (40 CFR § 122.34(b)(4)). Accordingly, construction stormwater runoff became subject to both state-issued construction stormwater permits and local construction site runoff control programs implemented by regulated MS4s.

To implement the federal Phase I regulations, DEQ issued Oregon's first 1200-C Construction Stormwater General Permit (1200-C permit) on September 30, 1996. Following promulgation of the Phase II regulations, DEQ revised the permit to expand coverage to construction activities disturbing one or more acres and to construction activities that are part of a larger common plan of development. Since its initial issuance, there have been seven (7) iterations of the 1200-C permit issued by DEQ. Previous issue dates were in 1996, 2000, 2005, 2010, 2015, 2020, and 2025.

The Phase II regulations also provided permitting authorities with flexibility to streamline authorization under general permits. Specifically, EPA authorized states to waive Notice of Intent (NOI) requirements for small construction activities to receive authorization under a general permit. DEQ implemented this regulatory flexibility through its Qualified Local Program (QLP) framework. Under this approach, DEQ may recognize a municipal construction stormwater program that is determined to be at least as stringent as the state's construction stormwater permit. Eligible construction activities located within an approved QLP geographic area receive automatic authorization under the 1200-CN general permit without submitting an application to DEQ and instead comply with the applicable local construction stormwater program.

To distinguish between construction activities requiring DEQ registration and those receiving automatic coverage through approved QLP jurisdictions, DEQ separated the construction stormwater program into two general permits in 2010. The 1200-C permit applies to construction activities that must obtain permit registration directly from DEQ or Agent, while the 1200-CN permit provides automatic coverage for eligible construction activities within approved QLPs. DEQ has issued the 1200-CN permit in 2010, 2015, and 2021. This permit is proposed to become effective DATE, 2026, and expire DATE, 2031.

1.3.1 Federal and state authorities:

The federal requirements specific to NPDES permits are included in 33 USC 1342(p) and 40 CFR §122.26. Oregon Revised Statutes (ORS) ORS 468.065 and ORS 468B.050 provide state law authority for DEQ to issue NPDES permits. In addition, ORS 468B.035 authorizes state implementation of the federal Clean Water Act and its adopted regulations.

1.3.2 Construction and development rule:

On December 1, 2009, EPA promulgated Effluent Limitation Guidelines and New Source Performance Standards to control the discharge of pollutants from construction sites (74 Fed. Reg. 62996, and 40 CFR 450.21). These requirements, known as the “Construction and Development Rule” or “C&D rule,” became effective on February 1, 2010. On March 6, 2014, pursuant to a settlement agreement to resolve litigation, EPA finalized amendments to the C&D Rule that withdrew the numeric turbidity limitation and monitoring requirements and also provided clarification regarding several other requirements of the rule (79 Fed. Reg. 12661 and 80 Fed. Reg. 25235). The 1200-CN permit conditions reflect the 2010 C&D Rule and the 2014 Rule amendments.

The C&D rule requirements include non-numeric effluent limitations that apply to all permitted discharges from construction sites (40 CFR 450.21) The 1200-CN permit does not establish numeric effluent limitations and is consistent with EPA’s non-numeric requirements based on narrative criteria. The goal of the 1200-CN permit is to prevent the discharge of sediment and other pollutants through the use of effective planning, implementation of erosion and sediment controls, and monitoring.

PUBLIC NOTICE DRAFT

1.4 Qualifying local programs

The 1200-CN permit relies on a framework under which DEQ may recognize local construction stormwater programs as QLPs. Prior to approval as a QLP, DEQ evaluates each jurisdiction's legal authorities, erosion and sediment control requirements, inspection procedures, enforcement program, permit termination procedures, and other implementation elements to determine whether the local program is at least as stringent as the applicable requirements of the 1200-CN permit. The 1200-CN permit does not delegate federal permitting authority to local governments.

Once approved, the local program serves as the implementation mechanism through which operators comply with the applicable requirements of the 1200-CN permit. The permit does not incorporate all local ordinances or requirements by reference. Rather, DEQ's approval of a QLP reflects an affirmative determination that the local program, when considered as a whole, satisfies the corresponding requirements of the permit. Accordingly, operators generally demonstrate compliance with the permit by complying with the approved local program. Where the permit expressly establishes a requirement that is more stringent than the approved local program, operators must comply with the permit requirement. Likewise, where the permit assigns implementation responsibility to DEQ, such as review and approval of Environmental Management Plans, operators must comply with the applicable DEQ requirements and procedures.

This approach allows DEQ to leverage existing local construction stormwater programs for eligible small construction projects while maintaining statewide consistency, retained state oversight, and compliance with Oregon's delegated NPDES program responsibilities as established in ORS 468B.050.

1.4.1 Qualified local program terminology

The renewed permit introduces the term Qualified Local Program (QLP) to align with terminology used in the federal NPDES regulations (40 CFR 122.44(s)) and to provide a consistent term for the locally administered construction stormwater program. Previous versions of the permit generally referred to these as “1200-CN jurisdictions” or as “participating local governments/programs.”

In the permit, “QLP” generally refers to both the DEQ-approved local program and the jurisdiction administering that program. The term “QLP jurisdiction” is used only where necessary to specifically refer to the governmental entity or its legal authority, such as when addressing jurisdictional boundaries, adoption and enforcement of local ordinances, or construction activities undertaken by the jurisdiction itself. This terminology does not change the existing 1200-CN implementation framework or the respective authorities of DEQ and participating jurisdictions.

1.4.2 QLP list

Previous versions of the permit identified approved QLPs within the permit. DEQ has removed the list of approved jurisdictions from the permit and will instead maintain the current list on DEQ's Construction Stormwater Program webpage.

This change improves permit administration by allowing DEQ to update the list of approved jurisdictions independently of the permit renewal process. For example, DEQ can promptly update the list when a local program is newly approved, voluntarily withdraws from the program, no longer satisfies permit eligibility requirements, or when intra-jurisdictional changes effect program administration. Under the previous approach, these administrative changes would require a permit modification (OAR 340-045-0055) despite no change to the substantive permit requirements. In other words, DEQ's determination that a jurisdiction satisfies the established QLP criteria is an administrative implementation decision made pursuant to the permit rather than a modification of the permit.

Maintaining the list separately from the permit improves administrative efficiency and ensures that operators and the public have access to the most current information regarding geographic areas where 1200-CN permit coverage is available.

PUBLIC NOTICE DRAFT

1.5 Anti-backsliding review

This 1200-CN permit, like previous iterations, requires permit operators to control the discharge of pollutants, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. This general permit requires operators to design, implement, and maintain an Erosion and Sediment Control Plan (ESCP) utilizing Best Management Practices (BMPs) as the primary mechanism to reduce pollutants in discharges resulting from construction activities (See 40 CFR 122.44(k)).

The 1200-CN permit contains clear and specific provisions to prescribe implementation of BMPs. Additionally, the permit stipulates actions and required minimum control measures that must be met to prevent erosion and sedimentation transport from construction activities. Although the permit conditions are expressed differently than the comparable provisions in DEQ's previously issued permit iterations, DEQ determined that the provisions in this permit are, in all cases, at least as stringent as those established in the previous 1200-CN permits.

1.6 Antidegradation review

DEQ's antidegradation policy in OAR 340-041-0004 requires DEQ to conduct a review of a proposed permit to determine if the proposed discharges to surface waters will protect existing water quality and to ensure protection of existing and designated uses. The stormwater controls required in the proposed 1200-CN permit are expected to result in discharges that will comply with Oregon's water quality standards and protect designated and existing uses. The performance requirements in the permit are designed to ensure that Oregon's water quality standard for turbidity (OAR 340-041-0036) will be met, which prohibits a greater than 10 percent increase in turbidity compared to an upstream control point. Because no requirements in the proposed 1200-CN permit are proposed to be relaxed or eliminated from the previous permit, DEQ has determined that the renewal of this general permit will not result in increased pollutant loads.

Where construction activities may discharge to a water that is impaired (303[d] Category 5-listed) due to turbidity or sediment, increased natural buffer zone protective measures and accelerated stabilization timelines are imposed. DEQ retains the right to require 1200-C permit coverage rather than 1200-CN for any projects that DEQ determines may result in exceedance of any applicable water quality standards. Alternatively, DEQ may require application for an individual NPDES permit if it determines that additional analyses, stormwater controls, or other permit conditions are necessary to comply with the applicable water quality standards as established in OAR 340-041.

DEQ does not anticipate increased discharges or pollutant loads will result from issuance of the proposed permit. The number of permit applications for new construction activity each year within 1200-CN jurisdictions is generally balanced by the cessation of construction activity at sites that had permit coverage in previous years. DEQ has no information indicating that the amount of construction activity covered under the proposed permit will increase significantly above the highest levels experienced under the previous permits.

DEQ determined that existing water quality will not be degraded by the issuance of this permit. The permit does not set numeric discharge limits as federal law recognizes that stormwater discharges are highly variable in nature and difficult to control due to topography, soil composition, land use and weather differences (for example, intensity and duration of storms) (See 40 CFR 450.21). DEQ has determined that the narrative stormwater control measures required in the draft permit, together with the design standards, implementation, and compliance oversight provided through QLPs, are sufficient to protect waters of the state from degradation. The goal of the permit is a net reduction in pollutant loading over the five-year permit term. During the five-year permit term, operators will implement an identified range of stormwater management controls to minimize stormwater pollution discharges from construction activities. Therefore, the issuance of this permit will protect and improve existing water quality and is consistent with DEQ's antidegradation policy.

Under the state's antidegradation policy, high quality waters may be classified as Outstanding Resource Waters of Oregon. Currently, Waldo and Crater Lakes and the North Fork Smith River and its tributaries and associated wetlands are the only Outstanding Resource Waters of Oregon. In accordance with the policies established for these Outstanding Resource Waters, DEQ will not issue any permit coverage discharging to these waters, except

PUBLIC NOTICE DRAFT

for emergency or restoration purposes. There are currently no 1200-CN jurisdictions within geographic areas which discharge to these waters.

1.7 Permit development and alignment with the 1200-C permit

The revisions to the 1200-CN permit generally reflect the policy and technical analysis conducted during the 2025 renewal of the 1200-C permit. Consistent with prior permit renewals, the 1200-CN was updated to include similar conditions within the most recently renewed 1200-C permit while accounting for the unique implementation considerations of QLPs.

Unlike the 1200-C permit, which establishes comprehensive statewide requirements for construction projects directly regulated by DEQ or Agents, the 1200-CN relies on approved local construction stormwater programs implemented by QLP jurisdictions. As a condition of approval, QLPs must maintain construction stormwater programs that satisfy the minimum measures required by their applicable Phase I or Phase II MS4 permits and demonstrate that their local requirements are at least as stringent as the state's construction stormwater program.

These local programs establish detailed implementation requirements, including local legal authority and enforcement procedures, erosion and sediment control design standards, ESCP review procedures, inspection protocols, education and outreach, complaint response procedures, and annual reporting. In addition, QLPs implement other MS4 program elements that complement construction stormwater oversight, including illicit discharge detection and elimination (IDDE), stormwater infrastructure oversight, and locally adopted development, riparian protection, and tree protection standards.

Because these implementation mechanisms are established through approved local programs, many provisions of the 1200-CN have been generalized to establish statewide performance standards while allowing QLPs to implement equivalent or more specific local requirements. These revisions do not reduce the level of environmental protection required under the permit but instead recognize that many implementation details are appropriately addressed through locally administered programs.

Accordingly, this Report focuses primarily on revisions unique to the 1200-CN permit and the administration of QLPs. Detailed rationale for the changes that were adopted in the 1200-C permit may be found in the 2025 1200-C Permit Evaluation Report. Significant revisions incorporated from the 1200-C permit into the 1200-CN include: permit restructuring, increased readability, simplified/narrative natural buffer zone conditions, adoption of the federal inspection frequency, inclusion of in-stream water quality standards for turbidity and sedimentation, restrictions on multiple inspectors, and requirements for a pre-construction meeting and additional records.

PUBLIC NOTICE DRAFT

2.0 Cover page

DEQ revised the cover page to clearly identify the permit's purpose, applicability, permit area, and relationship to QLPs.

2.1 Permit area

DEQ added language clarifying that construction activities undertaken by a QLP jurisdiction itself, or by a state or federal agency, are not eligible for 1200-CN coverage and remain under DEQ's permitting authority. DEQ also added Lands of Exclusive Federal Jurisdiction to the areas excluded from 1200-CN permit coverage. These changes are discussed below:

2.1.1 QLP jurisdiction projects

The 1200-CN framework relies on QLPs to provide local authorization, review plans, conduct inspections, and exercise compliance and enforcement authority for construction activities within their jurisdictions. Applying this framework to a QLP jurisdiction's own construction projects would place the QLP in the position of self-regulating. The QLP jurisdiction must instead obtain coverage under the programmatic 1200-CA Construction Stormwater General Permit for Government Agencies (1200-CA permit) or obtain 1200-C permit coverage for individual projects.

Other local public agencies remain eligible for 1200-CN coverage where the QLP can provide independent and unbiased regulatory oversight. For example, a county community college project may be eligible for automatic 1200-CN coverage through a city QLP.

2.1.2 State and federal agency projects

State and federal agencies operate throughout Oregon, often managing numerous construction projects simultaneously across multiple jurisdictions. Agencies such as the Oregon Department of Transportation, Oregon Parks and Recreation Department, U.S. Forest Service, and Federal Highway Administration undertake projects of varying sizes, including projects both above and below the 1200-CN acreage threshold. DEQ already regulates qualifying government agency projects under the 1200-CA permit and seeks to maintain consistent permitting and oversight regardless of project size or location. Additionally, linear projects, particularly highway construction, often cross multiple local jurisdictions. Obtaining 1200-CN coverage through multiple QLPs would fragment NPDES permit administration and oversight.

Federal projects can present additional jurisdictional considerations, including Oregon's authority to regulate discharges to *waters of the state* versus *waters of the United States (WOTUS)*, as well as questions involving Lands of Exclusive Federal Jurisdiction (discussed below), where EPA retains NPDES permitting authority. DEQ is better positioned than individual QLPs to address federal/state jurisdictional matters.

This restriction on state and federal projects applies specifically to NPDES construction stormwater permit coverage and does not displace or impact otherwise applicable local regulatory requirements.

2.1.3 Lands of exclusive federal jurisdiction

EPA modified its 2022 CGP to include discharges from construction projects in all Lands of Exclusive Federal Jurisdiction, making EPA the permitting authority. This exclusion is separate from the restriction on federal agency projects discussed above. It applies to construction activities based on *their location*, regardless of whether a federal agency or another entity undertakes the project.

Not all federally-owned lands are Lands of Exclusive Federal Jurisdiction. The EPA does not maintain a map or list of all Lands of Exclusive Federal Jurisdiction because the jurisdictional status of federal lands is tracked by multiple Federal land management agencies and the jurisdictional status may change over time. In Oregon, 16 U.S.C. Chapter 1 identifies Crater Lake National Park as containing Lands of Exclusive Federal Jurisdiction.

Operators claiming this exclusion must provide DEQ and the QLP written documentation from the appropriate federal agency confirming that the project is located on Lands of Exclusive Federal Jurisdiction and that EPA is

PUBLIC NOTICE DRAFT

the appropriate NPDES permitting authority. Exclusion from this permit does not exempt the discharger of the obligation to obtain any required federal permit (such as the CGP) or from the requirements to comply with state water quality standards.

2.2 Sources covered by this permit

The cover page of the 1200-CN permit describes the types of discharges eligible for permit coverage. The following have been added or revised in the proposed draft permit:

2.2.1 Regulated construction activities:

The list of construction activities has been added to the draft permit cover page. Although construction activity definitions are listed in Schedule D, having the definition on the first page allows readers to quickly determine whether their work requires permit coverage. In addition, DEQ has added construction support activities to this section. These activities were previously referenced only under the "Authorized Stormwater Discharges" condition of Schedule A.

DEQ also revised the definition of Construction Activity and Construction Support Activity in Schedule D:

Construction Activity: The revised definition adds examples such as stockpiling, staging areas, and new or improved haul and access roads and clarifies the distinction between routine maintenance and construction activity. Specifically, repairs that do not qualify as routine maintenance, replacement activities, and repaving that exposes underlying or surrounding soil are considered construction activity. Note: Installation of BMPs that requires trenching or excavation (e.g. sediment fence, wattles, etc) are construction activity and require permit coverage prior to installation.

Construction Support Activity: The revised definition expressly includes qualifying activities located either on or off the primary construction site and expands the examples to include portable or temporary batch plants, portable rock crushers, material storage and disposal areas, haul and construction access roads, side-cast areas, and parking areas. Note: Independent commercial operations, activities serving multiple unrelated construction projects, and activities that continue beyond completion of the construction activity they support are not considered construction support activities under this permit and may require separate NPDES permit coverage, as applicable.

2.2.2 Forestland conversions:

The 1200-CN permit adopts the same approach to forestland conversions as the 2025 1200-C permit. As discussed in the 1200-C Permit Evaluation Report, the Clean Water Act exempts certain silvicultural activities from NPDES permitting requirements; however, this exemption does not extend to activities associated with the conversion of forestland to non-forestry uses, such as residential, commercial, industrial, or other development.

Where construction activities associated with a forestland conversion occur within a QLP and otherwise satisfy the permit eligibility criteria, the activities are subject to automatic coverage under the 1200-CN permit.

Adding this provision to the 1200-CN supports the goal of consistent statewide implementation of construction stormwater requirements regardless of whether a qualifying project is regulated directly by DEQ under the 1200-C permit or receives automatic 1200-CN coverage through a QLP.

2.2.3 Agricultural land conversions:

The 1200-CN permit adopts the same approach to agricultural land conversions as the 2025 1200-C permit. As discussed in the 1200-C Permit Evaluation Report, the CWA provides an exemption from NPDES permitting requirements for non-point source agricultural activities, including stormwater runoff from orchards, cultivated crops, pastures, and range lands in accordance with 40 CFR 122.3(e). This exemption applies to activities conducted as part of ongoing agricultural operation. However, this exemption does not extend to activities associated with the conversion of agricultural lands to non-agricultural uses, such as residential, commercial, or industrial development. Activities preparing a site for non-agricultural use include clearing of non-crop vegetation, grading, stockpiling, road building, or similar activities.

PUBLIC NOTICE DRAFT

Where construction activities occur within a QLP and otherwise satisfy the permit eligibility criteria, the activities are subject to automatic coverage under the 1200-CN permit. Operators with questions regarding whether an activity constitutes a standard agricultural operation are encouraged to consult with the Oregon Department of Agriculture early in the planning process.

2.2.4 Construction Activity Disturbing Less Than One Acre

The previous 1200-CN permit required coverage for construction activity disturbing less than one acre when the activity was part of a larger common plan of development or sale that would ultimately disturb one acre or more (commonly been referred to as "small lot" projects). The renewed permit removes the requirement for 1200-CN coverage for sub-acre construction that receives qualifying authorization from the QLP jurisdiction. Qualifying authorization is the same local authorization that triggers automatic 1200-CN coverage for projects disturbing one acre or more.

Under 40 CFR § 122.26(b)(15), sub-acre construction may constitute regulated small construction activity when it is part of a larger common plan of development or sale. This change does not alter that definition or remove these activities from construction stormwater regulation. All QLP jurisdictions are regulated MS4s, and DEQ confirmed that their local construction programs regulate land disturbance beginning at thresholds ranging from 500 to 1,000 square feet.

DEQ determined that requiring 1200-CN coverage for these projects is unnecessary to protect water quality. The QLP already reviews and authorizes the activity, requires erosion and sediment control plans, conducts inspections, and has authority to require corrective action and issue enforcement action. Requiring the same activity to also receive automatic coverage under the 1200-CN adds an additional permitting layer without materially changing the controls implemented at the construction site.

The change also advances recent federal policy (Executive Order 14394, *Removing Regulatory Barriers to Affordable Home Construction*) encouraging agencies to identify opportunities to streamline requirements affecting housing construction while maintaining environmental protections, and specifically identifies the Construction General Permit and MS4 construction-site requirements for evaluation. Oregon has similarly established policies intended to reduce regulatory barriers to support housing production, although those policies do not specifically address NPDES construction stormwater permitting.

DEQ does not consider this change to constitute backsliding. The renewed permit does not establish a less stringent effluent limitation or replace an existing construction stormwater control with a less stringent requirement. Rather, it removes an overlapping permitting mechanism for activities that remain subject to enforceable construction stormwater requirements through the QLP/MS4 program.

DEQ also considered the regulatory framework and oversight applicable to these activities when evaluating this change. DEQ has increased resources and oversight of the MS4 program and worked to align MS4 construction requirements with DEQ's construction stormwater permits (1200-C, 1200-CN, and 1200-CA). This alignment provides greater consistency in construction stormwater requirements, implementation, and oversight across the programs. DEQ also reviews MS4 implementation, including construction programs, and retains authority to inspect construction sites and address discharges that may cause or contribute to water quality impacts.

For these reasons, DEQ determined that removing the additional 1200-CN permitting mechanism for qualifying sub-acre projects does not represent a reduction in the substantive construction stormwater controls or environmental protection applicable to these activities.

PUBLIC NOTICE DRAFT

3.0 Condition I: permit coverage requirements

DEQ substantially reorganized the permit by creating a new Condition I to consolidate permit conditions relating to eligibility, permit coverage, discharge authorizations, prohibited discharges, permit administration, and operator responsibilities. In the 2021 permit, these administrative conditions were distributed throughout the permit. Consolidating these conditions into a single permit section improves permit organization and usability by establishing the applicable regulatory framework before describing the substantive permit requirements in Schedules A, B, and D.

3.1 Relationship to qualified local programs and local agency authority

DEQ clarified the mechanism by which eligible construction activities receive authorization under the 1200-CN permit. Unlike the 1200-C permit, which requires submittal of an application and issuance of permit registration by DEQ, eligible construction activities within approved QLP jurisdictions receive automatic coverage upon obtaining the applicable local permit or authorization. The revised language also more clearly distinguishes the respective roles of QLPs and DEQ. QLPs administer their local construction stormwater programs, including plan review, inspections, and implementation of their local enforcement authorities to achieve compliance. DEQ retains NPDES permitting authority, oversight of approved QLPs, and independent enforcement authority under state law, including the authority to take enforcement action or require coverage under another NPDES permit when necessary to protect water quality.

PUBLIC NOTICE DRAFT

4.0 Schedule A: Effluent limitations and control measures

DEQ substantially revised Schedule A to align with the 2025 1200-C permit. Because the 1200-CN is implemented through QLPs, many conditions have been simplified to establish statewide performance requirements while allowing approved local construction stormwater programs implementation of equivalent or more detailed local requirements through their ordinances, erosion and sediment control design standards, plan review procedures, inspection programs, and enforcement authorities. This approach maintains the level of environmental protection established by the permit while reducing unnecessary duplication between state and local program requirements.

The following sections describe revisions unique to the 1200-CN or additional explanation because of the QLP implementation framework.

4.1 General control measure and plan requirements

The permit now incorporates the general design purpose and intent of the 2025 1200-C permit but removes much of the implementation detail because QLPs maintain local design standards and ESCP requirements.

4.2 Pre-Construction requirements

The permit incorporates a pre-construction meeting requirement consistent with the 2025 1200-C permit. The purpose of this requirement is to ensure that the operator, designated erosion and sediment control inspector, contractors, and other responsible personnel have a common understanding of the approved ESCP, permit requirements, sequencing of construction activities, inspection responsibilities, and site-specific environmental constraints before construction activities begin. Most QLPs already require or participate in pre-construction meetings or similar early project coordination activities; however, this requirement places responsibility on the operator to ensure the meeting occurs. In other words, the requirement largely formalizes a common practice within approved QLP jurisdictions while maintaining consistency with the renewed 1200-C permit.

4.3 Natural buffer zone (NBZ) protection

The permit adopts the revised natural buffer zone framework established in the 2025 1200-C permit while recognizing that QLPs frequently maintain locally adopted riparian protection, setback, tree preservation, or environmentally sensitive area requirements that may be more comprehensive than the statewide permit.

PUBLIC NOTICE DRAFT

5.0 Schedule B – Inspections, monitoring, and recordkeeping

DEQ substantially revised Schedule B to align with the monitoring, inspection, and recordkeeping requirements of the 2025 1200-C permit to promote statewide consistency in construction stormwater implementation. The revisions incorporate updated inspection frequencies, inspector qualification requirements, documentation and recordkeeping provisions, and pH monitoring procedures. Where appropriate, permit language was modified to recognize the role of QLPs in administering local construction stormwater programs while maintaining equivalent statewide performance expectations.

Because these revisions substantively mirror the changes adopted in the 2025 1200-C permit, the technical and policy basis for these requirements is discussed in the 1200-C Permit Evaluation Report and is not repeated in this report.

PUBLIC NOTICE DRAFT

6.0 Schedule D – Special conditions

DEQ revised Schedule D to align the permit-specific definitions with those in the 2025 1200-C permit in order to improve consistency by using common terminology where the permits regulate similar activities and responsibilities. Definitions were also updated to improve clarity, remove obsolete terms, and better reflect current regulatory and program implementation practices, including the unique implementation framework of the 1200-CN permit.

PUBLIC NOTICE DRAFT

7.0 Appendices

The permit incorporates appropriately modified versions of Appendices A and B from the 2025 1200-C permit to improve consistency between Oregon's construction stormwater permits. Appendix A contains the EMP requirements, while Appendix B expands on the permit's natural buffer zone requirements.

The appendices consolidate technical requirements that support implementation of the permit while improving the organization and readability of the permit document itself. Placing these provisions in appendices allows the corresponding permit conditions to focus on when the requirements apply, while the appendices provide the detailed technical requirements necessary for implementation.

PUBLIC NOTICE DRAFT