



# Permit Evaluation Report for: National Pollutant Discharge Elimination System 1200-C Construction Stormwater General Permit

Oregon Department of Environmental Quality

700 NE Multnomah St, Ste 600

Portland, OR 97232

September 22, 2025

---

## Proposed Permit Action

Renewal of National Pollutant Discharge Elimination System (NPDES) 1200-C Construction Stormwater General Permit. The current 1200-C construction general permit expires December 14, 2025. This permit renewal is a replacement of the previous 1200-C construction stormwater general permit issued on December 15, 2020. This permit is issued in accordance with Oregon Administrative Rule 340-045-0040.

## Permit Category

Renewal of the 1200-C construction general permit is a Category III permitting activity per Oregon Administrative Rule 340-045-0027(2)(c)(C). Category III permitting activities require DEQ provide public notice of the proposed action and a minimum of 35 days to submit written comments. In addition to the posting of the 1200-C draft permit for written comments, DEQ is holding a Public Hearing on October 23, 2025 to allow interested parties to submit oral comments. DEQ gives equal weight to written and verbal comments.

## Source Location

This 1200-C permit covers all areas within the state of Oregon except tribal trust and reservation lands, and Lands of Exclusive Federal Jurisdiction.

## Activities Covered Under the Permit

The permit covers construction stormwater discharges to surface waters of the state and conveyance systems leading to waters of the state.

## Permit Writer

Daria Gneckow

[Daria.Gneckow@deq.oregon.gov](mailto:Daria.Gneckow@deq.oregon.gov)

Translation or other formats

[Español](#) | [한국어](#) | [繁體中文](#) | [Русский](#) | [Tiếng Việt](#) | [العربية](#)

800-452-4011 | TTY: 711 | [deqinfo@deq.oregon.gov](mailto: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

<b>1.0</b>	<b>BACKGROUND</b>	<b>4</b>
1.1	Introduction	4
1.2	General Permit Approach	4
1.3	Overview and History	4
1.4	Legal and Policy Analysis	5
1.5	Anti-backsliding Review	6
1.6	Antidegradation Review	6
1.7	Local Municipalities that Serve as DEQ's Agent	7
1.8	Summary of Key Changes	8
<b>2.0</b>	<b>COVER PAGE</b>	<b>9</b>
2.1	Permit Area	9
2.2	Sources Covered by this Permit	9
2.3	Limitations of coverage	11
<b>3.0</b>	<b>CONDITION I: APPLICATION AND PERMIT COVERAGE REQUIREMENTS</b>	<b>12</b>
3.1	Eligibility Conditions	13
3.2	Application	13
3.3	Changes to Application Information	14
3.4	Transfer of Permit Registrations.	14
3.5	General Permit Renewal	14
3.6	Post Notice of Permit Coverage	16
<b>4.0</b>	<b>SCHEDULE A: EFFLUENT LIMITATIONS AND CONTROL MEASURES</b>	<b>17</b>
4.1	Technology-based Effluent Limitations (TBELs) and Control Measures	18
4.1.1	General Design, Installation and Maintenance Requirements	18
4.2	Pre-Construction Requirements	19
4.3	Natural Buffer Zone (NBZ) Protection	19
4.3.1	Applicability	19
4.3.2	Transition to Narrative BMP Framework	19
4.3.3	Compliance Options	20
4.4	Track-out	22

<b>4.5</b>	<b>Stockpile Management</b>	<b>22</b>
<b>4.6</b>	<b>Steep Slopes</b>	<b>23</b>
<b>4.7</b>	<b>Preserve Soil Condition for Revegetation</b>	<b>23</b>
<b>4.8</b>	<b>Concrete Management</b>	<b>23</b>
<b>4.9</b>	<b>Sediment Basin</b>	<b>24</b>
<b>4.10</b>	<b>Stabilize Exposed Soils</b>	<b>24</b>
<b>4.11</b>	<b>Pollution Prevention</b>	<b>25</b>
<b>4.12</b>	<b>Compliance with Water Quality Standards</b>	<b>26</b>
<b>4.13</b>	<b>Erosion and Sediment Control Plan (ESCP)</b>	<b>26</b>
4.13.1	ESCP General Requirements	27
4.13.2	ESCP Contents	27
4.13.3	ESCP Revisions	28
<b>4.14</b>	<b>Environmental Management Plan</b>	<b>29</b>
<b>4.15</b>	<b>Corrective Actions</b>	<b>29</b>
<b>5.0</b>	<b>SCHEDULE B – INSPECTIONS, MONITORING, AND RECORDKEEPING</b>	<b>30</b>
<b>5.1</b>	<b>Designated Erosion and Sediment Control Inspector</b>	<b>30</b>
<b>5.2</b>	<b>Inspection Frequency</b>	<b>31</b>
5.2.1	Proposed Dual-Option Frequency	31
5.2.2	Frequency Rationale	31
5.2.3	One-time Frequency Selection & DEQ Oversight	31
5.2.4	Compliance with inspection frequency 2	32
<b>5.3</b>	<b>Reductions in Visual Monitoring, Inspection Requirements, and pH Monitoring</b>	<b>33</b>
<b>5.4</b>	<b>Record Keeping Logbook</b>	<b>33</b>
<b>6.0</b>	<b>SCHEDULE D – SPECIAL CONDITIONS</b>	<b>34</b>
<b>6.1</b>	<b>Availability of Records</b>	<b>34</b>
<b>6.2</b>	<b>Permit-Specific Definitions</b>	<b>34</b>
<b>7.0</b>	<b>SCHEDULE F - NPDES GENERAL CONDITIONS</b>	<b>35</b>
<b>8.0</b>	<b>APPENDICES</b>	<b>36</b>
<b>8.1</b>	<b>Appendix A - Environmental Management Plan Review Applications for Contaminated Media Management and Chemical Treatment</b>	<b>36</b>
<b>8.2</b>	<b>Appendix B - Natural Buffer Zone Requirements</b>	<b>37</b>
<b>8.3</b>	<b>Appendix C - Erosion and Sediment Control Plan Requirements</b>	<b>37</b>

## **1.0 Background**

### **1.1 Introduction**

The Oregon Department of Environmental Quality is proposing changes to the NPDES 1200-C permit for construction stormwater discharges upon reissuance. The current permit became effective on December 15, 2020, and expires December 14, 2025. The 1200-C permit covers 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 or more acres and may discharge to surface waters of the state or conveyance systems leading to surface waters of the state. Activities that disturb less than one acre that are part of a common plan of development or sale, if the larger common plan of development or sale will ultimately disturb one acre or more and may discharge to surface waters or conveyance systems leading to surface waters of the state are also included with the scope of the permit and require coverage. 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).

The number of active 1200-C permit registrants has remained relatively stable over time, with approximately 1,200 registered projects both in 2015 and 2020, and 1,300 in 2025.

### **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 permit registrant. 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 the appropriate permitting approach to regulate most stormwater discharge from construction activities in Oregon.

In the majority of cases, the proposed general 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 an individual permit if it determines that the general 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**

DEQ issued its first 1200-C permit on September 30, 1996, after the federal Phase I Stormwater regulations addressed construction activities that disturbed five or more acres of land as Category (x) of the definition of "stormwater discharges associated with industrial activity" (40 CFR 122.26(b)(14)(x)) in 1990. This is the seventh iteration of the 1200-C General Permit issued by DEQ. Previous issue dates were in 1996, 2000, 2005, 2010, 2015, and 2020. In accordance with state and federal law, NPDES permits will be effective for a fixed term not to exceed five years. This draft permit is tentatively scheduled to become effective on December 15, 2025, and expire on December 14, 2030. 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 specific state authority for NPDES permits. In addition, ORS 468B.035 authorizes state implementation of the federal Clean Water Act and its adopted regulations.

## **1.4 Legal and Policy Analysis**

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 2025 1200-C permit conditions reflect the 2010 C&D Rule and the 2014 Rule amendments.

### **Summary of C&D Rule Requirements**

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-C 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-C 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.

The C&D rule’s non-numeric (i.e. narrative) effluent limits are as follows (see 40 CFR 450.21):

### **Erosion and Sediment Controls**

Operators must design, install, and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, controls must be designed, installed, and maintained to:

- Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges;
- Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points;
- Minimize the amount of soil exposed during construction activity;
- Minimize the disturbance of steep slopes;
- Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater discharge, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
- Provide and maintain natural buffers around waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible;
- Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted; and
- Preserve topsoil, unless infeasible. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.

### **Soil Stabilization Requirements**

Operators must, at a minimum, initiate soil stabilization measures immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority. Stabilization must be completed within a period of time determined by the permitting authority. In limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remains disturbed.

### **Dewatering Requirements**

Operators must minimize the discharge of pollutants from dewatering trenches and excavations. Discharges are prohibited unless managed by appropriate controls.

### **Pollution Prevention Measures**

Operators must design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

- Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
- Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater. Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use); and
- Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

### **Prohibited Discharges**

The following discharges from C&D rule sites are prohibited:

- Wastewater from washout of concrete, unless managed by an appropriate control;
- Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
- Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
- Soaps or solvents used in vehicle and equipment washing.

### **Surface Outlets**

When discharging from basins and impoundments, operators must utilize outlet structures that withdraw water from the surface, unless infeasible.

## **1.5 Anti-backsliding Review**

This 1200-C construction stormwater general permit, like previous iterations, requires permit registrants 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 registrants 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)).

This draft permit contains clear and specific provisions to prescribe the design, implementation, and maintenance of BMPs. Additionally, the permit stipulates the frequency of 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 previous versions of the permit, DEQ has determined that the provisions in this draft permit are, in all cases, at least as stringent as those established in the previous versions.

## **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-C permit are expected to result in discharges that will comply with Oregon's water quality standards and protect designated and existing

uses. The Erosion and Sediment Control Plan (ESCP) and 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-C 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 4 or 5 listed) due to turbidity or sediment, increased protective measures and accelerated stabilization timelines are imposed. DEQ may notify permit applicants or registrants of existing projects with significantly increased discharges that additional analyses, stormwater controls, or other permit conditions are necessary to comply with the applicable antidegradation requirements or notify the applicant that an individual permit application is necessary.

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 is generally balanced by the cessation of construction activity at sites that had permit coverage in previous years. Although construction activities are inherently variable, DEQ has no information 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 is confident that the narrative stormwater control measures required in the draft permit will sufficiently protect waters of the state from degradation. The goal of the permit is a net reduction in pollutant loadings over the five-year permit term. During the five-year permit term, the registrants 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, where high quality waters constitute an outstanding state or national resource, such 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 for emergency or restoration purposes.

## **1.7 Local Municipalities that Serve as DEQ's Agent**

DEQ authorizes local public entities under a Memorandum of Agreement to act as its Agent to implement the permit on DEQ's behalf. To improve readability, "DEQ or Agent" has been replaced with "DEQ" throughout the permit. A note to this effect has been added to Condition I of the permit.

The following local public entities currently act as DEQ's Agent for implementation of the 1200-C permit: City of Eugene, Clean Water Services (which includes all or parts of the cities of Beaverton, Cornelius, Forest Grove, Hillsboro, Sherwood, Tigard and Tualatin), and Rogue Valley Sewer Services (which includes the cities of Eagle Point, Phoenix, and Talent, as well as the urbanized, unincorporated portions of Jackson County.)

The Agents typically conduct the following activities: application and ESCP review, compliance inspections, technical assistance, and other general implementation actions. If a construction project is occurring in an Agents' jurisdiction, they must submit the application materials to the Agent rather than DEQ. Permit transfers, terminations, and name changes must be submitted to DEQ. Agents will refer formal enforcement actions to DEQ's Office of Compliance and Enforcement. Agents review chemical treatment plans for treating turbidity. However, Agents do not review CMMPs; CMMPs including those that include a chemical treatment component are reviewed by DEQ.

It is anticipated that Agents will transition to DEQ's electronic reporting system Your DEQ Online (YDO) shortly after permit renewal. DEQ and the Agents will assist applicants and registrants with this administrative transition.

DEQ retains authority to administer and regulate construction activities within these jurisdictions on a case-by-case basis.

## 1.8 Summary of Key Changes

Many of the requirements from the current 1200-C permit have been retained in the proposed draft. However, the draft permit has been substantially reorganized and rewritten to enhance clarity. DEQ's objective is to ensure the permit clearly complies with all applicable state and federal regulations.

The draft also addresses implementation challenges identified by DEQ and its Agents during the current permit term, with the aim of improving overall permit effectiveness. These revisions are based on feedback from interested parties, permit registrants, and compliance evaluations conducted by DEQ and its Agents.

The proposed changes represent improvements that support more efficient and effective implementation of permit requirements while ensuring compliance with federal standards and additional requirements related to sediment and erosion control from construction activities that may impact surface waters of the state.

In addition to the section-by-section summary presented in the remainder of this PER, the following are key changes included in the proposed draft permit:

- **Permit Restructuring:** To improve organization and readability, DEQ has restructured the permit. A new section, Condition I, has been added to consolidate general permit requirements, including eligibility criteria, discharge prohibitions, and administrative provisions such as permit transfers, terminations, and continuation of coverage upon general permit renewal. These elements were previously included in Schedule A, which is now focused on technology-based effluent limits, water quality-based effluent limits, ESCP requirements, and corrective actions. A new Appendix C has also been introduced, providing a comprehensive list of minimum ESCP elements, and signage requirements. Additionally, Schedule D has been expanded to include additional permit-specific definitions.
- **Increased Readability:** To further support compliance, DEQ has revised language for clarity, using plain language, reducing redundancy, and simplifying the structure and content hierarchy. These changes make the permit easier to navigate and have reduced its overall length by about 25 percent.
- **Simplified Natural Buffer Zone Conditions:** DEQ has eliminated the requirement to use the RUSLE2 soil loss equation, replacing it with a set of narrative protective measures. These include accelerated stabilization timelines, redundant perimeter controls, construction activity restrictions, and required backup BMP supplies. Where natural buffers are eliminated, stormwater capture and treatment are now required. Small-lot compliance alternatives have been eliminated due to incompatibility with buffer zone protection goals.
- **Inspection Frequency:** Inspection requirements have been revised for clarity and alignment with federal standards. "Visual monitoring" is now termed "inspections," while "monitoring" refers only to water quality sampling. The previous discharge-based schedule has been replaced with two options, per EPA's Construction General Permit (CGP, *referred to as the federal permit in this document*): inspections either every 7 days, or every 14 days plus within 24 hours of forecasted rainfall of 0.25 inches or more. This change supports more predictable planning and reflects EPA findings on discharge likelihood.
- **Applicable In-Stream Water Quality Standards for turbidity and sedimentation:** DEQ is adding explicit references to the 10 percent turbidity standard (OAR 340-041-0036) and the sedimentation standard (OAR 340-041-0007[11]) in the draft permit. Although monitoring is not required, permit registrants may choose to monitor if deemed appropriate.
- **Multiple Inspectors:** DEQ has introduced new requirements regarding site inspection teams. For projects with multiple inspectors, one must be designated as the primary inspector. This individual is responsible for reviewing and signing inspection reports completed by other team members to ensure the ESCP is being properly implemented throughout the construction project. The inspection team is limited to a maximum of three inspectors. This change is intended to improve compliance by ensuring consistent

oversight—particularly from an inspector who is familiar with the project’s scope, timeline, and onsite contractors.

- **Pre-construction Meeting:** Similarly, DEQ has added a requirement that a pre-construction meeting be held. The meeting should include key personnel, including the designated erosion and sediment control inspector, general contractor representative, and others involved in pollution prevention or erosion and sediment control implementation. The purpose is to review the permit and ESCP, establish lines of communication, and identify where permit-related documents are stored.
- **Site Logbook:** DEQ has added the requirement to maintain a site logbook containing all permit compliance records. A logbook is an important tool for both documentation and accountability, which can demonstrate compliance through adaptive management and corrective actions taken. DEQ sees better compliance outcomes when a comprehensive logbook is maintained onsite.
- **Post Notice of Permit Coverage:** The permit will require that registrants post a sign or notice of permit coverage at a safe, publicly accessible location in close proximity to the construction site. The sign would include the information about the construction site, such as how to obtain a copy of the ESCP, and methods for reporting potential permit violations. This requirement is consistent with many existing local signage requirements and the federal permit.

## 2.0 Cover Page

The cover page provides information about the area of permit coverage, sources covered, limitations of permit coverage, and a description of permitted activities. As described, the permit covers existing and new discharges from construction activities.

### 2.1 Permit Area

Lands of Exclusive Federal Jurisdiction have been added to the areas excluded from the permit coverage. The Environmental Protection Agency (EPA) modified its 2022 CGP to include construction projects in all Lands of Exclusive Federal Jurisdiction, making EPA the permitting authority in these lands. Lands of Exclusive Federal Jurisdiction are lands in the U.S. where the federal government retains exclusive jurisdiction in relevant respects, including for purposes of implementing the CWA section 402 NPDES program. Not all federal 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 of Lands of Exclusive Federal Jurisdiction may change over time. The EPA is aware that individual federal land management agencies may maintain partial maps or lists but is unaware of a comprehensive listing of all current Lands of Exclusive Federal Jurisdiction across all agencies. In Oregon, 16 U.S.C. Chapter 1 identifies Crater Lake National Park as containing Lands of Exclusive Federal Jurisdiction.

### 2.2 Sources Covered by this Permit

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

#### **Regulated construction activities have been defined:**

The list of construction activities has been added to the Sources Covered by this Permit section of the draft permit. Although construction activities are listed in the definitions in Schedule D of the draft permit, having the definition on the first page allows readers to quickly determine whether their work requires permit coverage.

In addition, DEQ has explicitly added construction support activities to this section. These activities were previously referenced only under the “Authorized Stormwater Discharges” condition of Schedule A. Relocating them here makes coverage more transparent, highlights the full scope of regulated activities, and improves document usability for applicants and reviewers.

DEQ recognizes that some construction preparatory work may take place prior to obtaining permit coverage. These activities are allowed, provided they are conducted in a manner that prevents pollutant discharges from entering waters of the state. Examples of allowable preparatory work include:

- Conducting site surveys, including environmental assessments and wetland delineations that involve soil borings or test pits (if minimal, and promptly stabilized)
- Flagging boundaries, marking utilities, and installing survey stakes
- Staging equipment, materials, jobsite offices, trailers, and containers on paved surfaces (with appropriate controls, such as oil catchment for leaky equipment, secondary containment for fuel, catch basin inserts to capture fines, etc).
- Erecting signage and fencing that does not require excavation or trenching
- Clearing brush and small trees with manual equipment in a manner that does not disturb the soil.

The following activities, however, require permit coverage before work begins:

- Clearing brush and trees with heavy equipment or in a manner that disturbs soil
- Removing plant roots and tree stumps
- Filling or stockpiling soil or aggregate
- Staging equipment and materials on unpaved or erodible surfaces (including compacted gravel surfaces)
- Installing stormwater BMPs that require trenching or excavation (e.g., sediment fence)
- Constructing access roads or staging pads.
- Any activity that disturbs soil, even if less than one acre (e.g., utility trenching)

### **Forestland Conversions:**

The CWA provides an exemption from NPDES permitting requirements for certain silvicultural activities when conducted as part of ongoing forest management practices, and nonpoint sources are regulated separately and are exempt from permitting requirements generally (per 40 CFR 122.3(e), *see note at the end of this section regarding silvicultural nonpoint and point sources*). However, these exemptions do not extend to activities associated with the conversion of forested lands to non-forestry uses, such as residential, commercial, or industrial development.

When a forestry operation involves land disturbance for the purpose of converting forest land for future development, and the disturbed area meets the acreage threshold, the activity may be subject to the 1200-C permit. (Please note that 1200-C permit coverage may also be required for construction activities is less than an acre where DEQ has documented water quality violations or where DEQ determines there is significant potential for contribution of pollutants to waters of the state or may contribute to a violation of a water quality standard.)

DEQ, the Oregon Department of Forestry (ODF), and other state agencies have an established Memorandum of Agreement to coordinate the review of proposed forestland conversions. Under this agreement, when a landowner or operator proposes to convert forestland to an alternate use, ODF may waive, exempt, or modify certain Forest Practices Act (FPA) requirements. In such cases, ODF will require the submission of a Plan for an Alternate Practice, which must describe the proposed operation. This plan is then shared with DEQ to evaluate whether the proposed activities trigger the requirement for 1200-C permit coverage. However, these plans do not always provide sufficient detail for DEQ to make a definitive determination. It is therefore important for landowners and operators to understand the following key considerations to determine if the 1200-C permit is applicable to the proposed work:

- **Timing and intent:** Land clearing, grading, or grubbing activities performed in advance of or in preparation for planned land use changes (for example, development) are not considered exempt silvicultural operations and are therefore regulated construction activities under the 1200-C permit.
- **Speculative clearing:** Forestry activities that involve the clearing in anticipation of future non-forestry uses *may* require 1200-C permit coverage, particularly when the future use is reasonably foreseeable.
- **Forestry to agricultural use:** The 1200-C is not applicable when forestry land is converted to agricultural land provided: the activity prepares the site for normal agricultural operations as defined in ORS 308A.056. This exemption does not apply if the agricultural use is temporary and will later be converted to non-forestry or non-agricultural use.

Clear and accurate information regarding project intent, timing, and land use planning is critical to determining regulatory obligations. Landowners are encouraged to consult early with both ODF and DEQ to ensure compliance with applicable stormwater permitting requirements.

*\*Note:* Nonpoint source silvicultural activities generally include nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance. Silvicultural point source runoff from rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities are considered discharges associated with industrial activity and require NPDES permit coverage (40 CFR 122.27).

### **Agricultural Land Conversions:**

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 that prepare a site for non-agricultural use include clearing of non-crop vegetation, grading, stockpiling, road building, or other similar activities.

The exemption also does not apply to mass grading of agricultural land, such as placement of fill when it is not a necessary component of the primary agricultural activity. For example, if you are engaging in earthmoving (grading, clearing, excavating) over one acre, even for agricultural-to-agricultural conversion (like pasture to orchards): if it resembles construction rather than traditional farming, then the disturbance is subject to the 1200-C permit. Alternatively, genuine agricultural-to-agricultural conversions, where soil disturbance is part of standard farming (for example, switching crops), as long as no construction-like activity occurs are still considered exempt.

The exemption does not apply to the construction of buildings (such as dairy barns or processing facilities) or associated roads that disturb over an acre of land.

The exemption also does not apply to clearing and grading for solar farm installation on agricultural land.

If you have any questions about whether your project is considered a standard agricultural activity, please contact Oregon Dept. of Agriculture.

### **Construction activity that is less than one acre that may result in water quality impacts:**

DEQ has clarified this to eliminate ambiguity about how permit coverage eligibility is determined when discharges may result in water quality impacts. The responsibility now clearly lies with DEQ to make this determination, based on documented water quality violations or an assessment of the potential risk for pollutant discharges that could impact state waters or contribute to a violation of water quality standards.

## **2.3 Limitations of coverage**

The proposed draft permit expands the list of discharges that are not regulated by the 1200-C permit. Below are the new or modified limitations:

### **In-water work permits:**

The previous permit included a recommendation that registrants identify, apply for, and resolve any state (Department of State Lands) or federal (US Army Corps of Engineers) and DEQ 401 water quality certification (WQC) requirements before applying for 1200-C NPDES permit coverage to prevent unintended non-compliance situations with other regulatory programs. The intent is to prevent registrants from having to reapply for local building and development permits or revise their ESCP due to the conditions imposed on projects requiring a 401 certificate, and/or local jurisdictions.

The draft permit now requires that these in-water work permits be resolved and provided with the 1200-C permit application. The intent of requiring these in-water work permits be obtained prior to seeking 1200-C permit coverage is twofold. First, it allows DEQ to adequately assess 1200-C permit applications for compliance with significant permit conditions that prohibit impacts to waters of the state or encroachment into natural buffer zones surrounding such waters unless enhanced protective measures are utilized per Schedule A.3 of the permit. Second, it prevents unnecessary plan or project scope revisions that could result in federal, or state review of in-water work permit applications as described above.

Federal code supports this new requirement in 40 CFR 122.21 - Application for a permit. Specifically, 40 CFR 122.21(f) states:

*“Information requirements. All applicants for NPDES permits, other than POTWs and other TWTDS, vessels, and pesticide applicators, must provide the information in paragraphs (f)(1) through (10) of this section...”*

40 CFR § 122.21(f)(6)(viii) and (ix) of in these referenced paragraphs include:

*“Dredge or fill permits under section 404 of CWA” and “Other relevant environmental permits, including State permits.”[emphasis added]*

In addition, OAR 340-045-0030 (“Application for NPDES or WPCF Permit”) provides DEQ with broad authority to require information necessary to determine that an activity is permittable under an NPDES permit and to assess whether permit conditions will ensure compliance with effluent limitations and water quality standards. As stated above, 1200-C permit applications for projects involving in-water work cannot be adequately reviewed for compliance with the prohibitions, limitations, or conditions of the permit without the related in-water work authorizations included in the application package.

#### **Discharges to Underground Injection Controls:**

The previous permit simply stated that the permit does not authorize discharges to UICs, and this draft permit clarifies that these discharges are prohibited to unpermitted or unregistered UICs. Schedule A.20 further clarifies that construction stormwater discharges to UICs are acceptable so long as they meet UIC permit conditions and strict water quality criteria.

### **3.0 Condition I: Application and Permit Coverage Requirements**

Condition I of the permit contains the requirements listed below. Only new or materially updated conditions are described in this PER.

#### **Administrative Conditions**

- Permitted Activities
- Eligibility Conditions
- DEQ Agents
- Application
- Multi-Phase Developments
- Construction Activities that Disturb Five Acres or More
- Annual Fee

- Changes to Application Information
- Transfer of Permit Registration
- Termination of Permit Coverage
- Continuation of Coverage
- Electronic System Use Requirement

#### Regulated Discharges

- Authorized Stormwater Discharges
- Authorized Non-stormwater Discharges
- Prohibited Discharges

#### Public Signage

- Post Notice of Permit Coverage

### 3.1 Eligibility Conditions

DEQ has clarified the following roles:

- **Operator:** The entity eligible for coverage under the 1200-C permit. Eligibility criteria are outlined in this section.
- **Registrant:** Once permit coverage is issued, the operator is referred to as the "registrant." This term is used throughout the permit to identify the party responsible for complying with all permit conditions.
- **Responsible Official (RO):** This term is used specifically within the YDO permitting system. The RO is the legally accountable individual responsible for submitting all applications and reports in YDO. While the permit itself does not reference this role, it is included here for clarity and context regarding the permitting process.

### 3.2 Application

#### Application Review Time:

Applications should be submitted 30 days before the commencement of any construction activities. This should provide technical review staff with adequate time to review the application materials and request any necessary revisions. Please note that applications for complex or large projects, such as projects impacting surface waters or large-scale energy projects, should be submitted 60 days in advance.

#### Delineations and In-water Work Permits:

In the list of required application materials, DEQ has added: "Current wetland or stream delineation for all waters of the state within the project area or applicable natural buffer zone and any associated in-water work permits from appropriate permitting agencies." Section 2.3 of this PER explains why this requirement has been added.

#### Small Lot Permit Coverage:

The Small Lot Permit is required for a construction site less than one acre, if it is part of a "common plan of development or sale" disturbing one or more acres. The current permit does not explicitly state that small lots require permit coverage, so this section has been added for clarity. All projects that require 1200-C permit coverage have the same application and submittal requirements (except for the application fee, and no annual fee for common plan of development projects that are less than one acre).

DEQ has clarified that small lot permit coverage is not required for projects within 1200-CN jurisdictions. These jurisdictions operate qualifying local programs, which DEQ reviews every 5 years as part of the 1200-CN permit renewal process. All 1200-CN jurisdictions are also regulated MS4s, whose construction stormwater programs are subject to additional audits under the MS4 permit requirements.

Under EPA's Stormwater Phase II Final Rule, states have explicit authority to rely on qualifying local programs to provide compliance oversight of construction projects under 5 acres. This approach avoids duplicative permitting while maintaining strong oversight. However, DEQ may require a discharger to apply for and obtain 1200-C permit coverage or an individual permit if it determines that the local permitting mechanism 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.

### **3.3 Changes to Application Information**

Changes must now be submitted to DEQ within 7 calendar days rather than 30 days. DEQ's YDO electronic permitting system provides a convenient avenue for providing the required updates.

This section also clarifies that increases in disturbance areas or major project scope changes are not considered a change to the application information and are expressly disallowed. Minor increases directly associated with the originally approved project scope may be allowed on a case by case basis. Examples of allowable minor increases include unanticipated utility improvement in the right-of-way necessary for successful connection to the new construction, or additional staging area to support permitted construction activity. Increases such as adding residential lots outside of the originally permitted project area will not be considered for approval.

### **3.4 Transfer of Permit Registrations.**

This section has been slightly modified:

- Transfers must be submitted within 14 days of the planned transfer rather than 30 days.

If ownership changes and the site is not transferred in accordance with this section, DEQ may terminate permit coverage after sixty calendar days if the previous owner does not respond. For clarification: in such cases, DEQ will issue a formal legal notice to the registrant, requiring action within sixty calendar days. If no response is received, DEQ will proceed with terminating the permit registration.

### **3.5 General Permit Renewal**

Registrants continuing coverage under the renewed permit must comply with all conditions of the new permit, which the exception of three conditions listed in this section.

- Post notice of permit coverage in a visible location;
- Revise the ESCP;
- Select and comply with one of the new inspection frequencies, inspection report content, and recordkeeping requirements.

DEQ recognizes that these conditions cannot reasonably be implemented immediately and believes three months to be an appropriate compliance schedule.

In addition, during the next renewal cycle, registrants will not be required to submit renewal applications 180 days prior to permit expiration as the current permit outlines.

As provided in OAR 340-045-0033(3)(a), general permits issued by DEQ must specify the requirements to obtain permit coverage, including application requirements and application submittal deadlines. This OAR section also provides "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." (emphasis added).

In addition, OAR 340-045-0033(6)(a) states that 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) (referenced above).

The draft 1200-C permit proposes to eliminate the requirement for renewal applications 180 days prior to the general permit's expiration. In making this determination to not require renewal applications it is DEQ's intent

that if permit reissuance is delayed, permits for all existing registrants would be administratively extended per OAR 340-045-0040(2).

DEQ has reviewed the considerations listed in OAR 340-045-0033(3)(a) and has determined that there is no compelling environmental or administrative justification for requiring renewal applications. A summary of this evaluation follows:

#### **Potential for toxic and conventional pollutants:**

Construction stormwater contains conventional pollutants such as sediment, nutrients, and in some cases hydrocarbons or pH-altering materials; these pollutants are well understood, predictable, and effectively addressed through performance-based standards in the general permit. The potential for toxic pollutants is relatively low, as hazardous materials—such as paints, caulks, sealants, fluorescent light ballasts, solvents, petroleum products, wood preservatives, additives, curing compounds, and acids or bases—are generally used in small, localized quantities and stored in controlled areas. Additionally, the permit prohibits the discharge of toxic or hazardous substances.

The permit requires development and implementation of an erosion and sediment control plan (ESCP), contaminated media management plans (CMMPs, if applicable), routine inspections, and corrective actions to address any pollutant discharges. When these measures are effectively implemented, they are sufficient to mitigate environmental risks associated with both conventional and potentially toxic pollutants.

It is also important to note that construction sites are temporary in nature. While they may cause short-term physical disturbances, they do not result in the ongoing toxic discharges typically associated with industrial or manufacturing operations. As such, because the types of pollutants and their management strategies remain consistent over time, requiring permit renewal applications does not typically yield new information that would affect how these discharges are regulated under the general permit.

#### **Expected discharge volume:**

Stormwater discharge volumes from construction sites are highly variable and depend on geographic location, weather events, project size, and duration of activity. The 1200-C permit requires that registrants reduce of volume, velocity, and peak flow rates of discharges to prevent erosion, channelization, and scour on site and at discharge points. Unlike regulated wastewater facilities with continuous and quantifiable effluent, construction sites do not discharge during dry weather conditions, have no consistent flow, and they do not measure discharge volumes during rainy conditions. Therefore, permit renewal based on discharge volume is not applicable, as volume is both highly variable and managed through existing erosion and sediment control measures.

#### **Means to identify dischargers:**

The majority of dischargers—more than 95 percent—self-identify and apply for permit coverage. DEQ also identifies unpermitted dischargers by investigating pollution complaints, coordinating with other DEQ programs, and through administration of the Municipal Separate Storm Sewer System (MS4) program, which directs local projects to DEQ for coverage. These mechanisms ensure that DEQ can effectively identify and regulate construction stormwater discharges without a renewal process.

#### **Estimated number of dischargers:**

The number of active 1200-C permit registrants has remained relatively stable over time, with approximately 1,200 registered projects both in 2015 and 2020, and 1,300 in 2025. Requiring renewal applications for this volume of dischargers imposes a significant and unnecessary administrative burden on both DEQ and permit registrants. Resources devoted to processing renewals could be more effectively allocated to compliance oversight where environmental outcomes are most directly affected.

#### **Summary:**

Requiring NPDES 1200-C renewal applications is unnecessary, administratively burdensome and inefficient. The temporary nature of construction discharges, the predictable and manageable pollutant profile, the adequacy of current regulatory controls, and the consistent number of permit registrants collectively support eliminating this requirement. Environmental protection goals are better achieved through site-specific compliance oversight,

timely termination of coverage upon stabilization, and targeted enforcement—rather than through a renewal process that provides no additional value in regulating or understanding construction stormwater discharges.

### **3.6 Post Notice of Permit Coverage**

Posting a notice of permit coverage and related site information helps facilitate public reporting of potential permit violations to DEQ or its Agent. Many municipalities already require similar signage as part of their local building and development permit processes. The intent is to raise public awareness about construction-related stormwater impacts—such as offsite sedimentation from track-out or fugitive dust—and to provide clear guidance on how to report such issues. DEQ believes this increased visibility will enhance compliance by empowering the public to identify and report pollution more effectively.

## **4.0 Schedule A: Effluent Limitations and Control Measures**

Schedule A of the permit contains the requirements listed below. Only new or materially updated conditions are described.

### **Technology-Based Effluent Limitations and Control Measures**

- General Design, Installation, and Maintenance Requirements
- Pre-Construction Requirements
- Natural Buffer Zone (NBZ) Protection
- Vegetation
- Perimeter Controls
- Track-out
- Stockpile Management
- Dust Control
- Steep Slopes
- Preserve Soil Condition for Revegetation
- Storm Drain Inlet Protection
- Concrete Management
- Discharge Location Protection
- Sediment Basin
- Runoff Treatment for Engineered Soils
- Stabilize Exposed Soils
- Final Stabilization
- Pollution Prevention
- Dewatering

### **Water Quality-based Effluent Limitations**

- Discharges to Surface Waters
- Discharges to Groundwater

### **Erosion and Sediment Control Plan (ESCP)**

- ESCP General Requirements
- ESCP Contents
- ESCP Revisions
- Environmental Management Plan (EMP)

### **Corrective Actions**

## **4.1 Technology-based Effluent Limitations (TBELs) and Control Measures**

Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPSs) are technology-based effluent limitations under CWA Sections 301 and 306 for categories of point source discharges. These effluent limitations, which can be either numeric or non-numeric, along with water quality-based effluent limitations, if necessary, must be incorporated into NPDES permits, as appropriate. ELGs and NSPSs are based on the degree of control that can be achieved using various levels of pollutant control technology as defined in the CWA.

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions for meeting technology-based ELGs established under Section 301 and, where applicable, any NSPS established under Section 306. Once an ELG or NSPS is promulgated in accordance with these sections, NPDES permits must incorporate limits based on such limitations and standards. See 40 CFR 122.44(a)(1). Prior to the promulgation of national ELGs and/or NSPS, permitting authorities must establish and include in NPDES permits technology-based effluent limitations case-by-case based on their best professional judgment. See CWA section 402(a)(1)(B) and CFR 125.3(a)(2)(ii)(B).

The requirements in Schedule A TBELs generally apply the national ELGs and NSPSs in the C&D rule in 40 CFR part 450, promulgated on December 1, 2009 (74 Fed. Reg. 62996) and amended on March 6, 2014 (79 Fed. Reg. 12661). These requirements apply to all permitted sites, including construction support activities that are covered under the permit under Part 1.2.1.c. EPA crafted the non-numeric effluent limitations guidelines in the C&D rule to allow flexibility in how delegated states implement these requirements in permits. See 74 FR 63016. As an example, 40 CFR 450.21(a)(5) requires construction operators to design, install, and maintain controls to “minimize sediment discharges from the site.” Thus, delegated states have discretion within this somewhat broad requirement, defined further at 40 CFR 450.21(a)(5), to further define what it means to minimize sediment discharges, or to achieve any of the other non-numeric limits. See 74 FR 63016.

Accordingly, this permit section incorporates each of the C&D rule’s non-numeric limits as well as state’s discretionary authority to expand on these limits based on best professional judgement to minimize the discharge of pollutants from construction sites to waters of the state. This is consistent with DEQ’s objective to write general permits with conditions that are clear, specific, implementable, and will result in compliance with in-stream water quality standards.

See Section 1.4 Legal and Policy Analysis for more context on the C&D rule.

### **4.1.1 General Design, Installation and Maintenance Requirements**

#### **Factors when designing stormwater controls:**

Language has been revised to require that registrants account for—rather than merely consider—the expected amount, frequency, intensity, and duration of precipitation events. This change emphasizes the importance of developing ESCPs based on realistic, site-specific precipitation patterns. DEQ often receives ESCP submittals that assume dry weather for the duration of the project, which not only contradicts the intent of the construction stormwater general permit but also ignores the reality of Oregon’s weather conditions.

DEQ has also added that registrants should account for opportunities for onsite material reuse, such as using cleared trees for erosion control mulch cover, repurposing compost sock content for post-construction growth media, etc. This approach reduces the carbon footprint of the overall project and can result in cost savings.

#### **Photographic documentation of installation of stormwater controls:**

Photographic documentation should begin with the initial installation of stormwater control measures and continue throughout the project as it moves through different phases. This ongoing documentation supports compliance with permit requirements and reflects adaptive site management practices. BMPs installed during early phases—such as before grading—are often insufficient for later phases, like vertical construction.

#### **Repair/replace controls:**

The permit now provides clear timelines for repairing or replacing stormwater controls, which were previously undefined. All repairs or replacements must be completed by the end of the next business day after the issue is identified. If that is not feasible, the registrant must explain the delay in the inspection report, including the reason

for the delay and why the activity qualifies as routine maintenance rather than a corrective action. In these cases, repairs must still be completed within seven calendar days from the time the issue was discovered.

## **4.2 Pre-Construction Requirements**

A requirement to hold a pre-construction meeting has been added. Effective implementation of the ESCP requires clear communication from the outset of the project. The pre-construction meeting provides an opportunity for the inspector and key personnel to review the project scope and address the design, installation, and maintenance of BMPs across the life of the project. Early coordination helps ensure compliance with ESCP requirements and facilitates consistent execution throughout the project. If there are substantial changes to the project scope or personnel, an additional meeting should be held to address such topics.

## **4.3 Natural Buffer Zone (NBZ) Protection**

The Natural Buffer Zone conditions implement the C&D rule's requirement to minimize the discharge of pollutants from the site by providing and maintaining "natural buffers around surface waters... unless infeasible." See 40 CFR 450.21(a)(6). However, the C&D rule does not specify what size buffer is necessary to meet the requirement but rather leaves this and other related determinations up to the NPDES permitting authority. As such, DEQ has established a default 50-foot buffer width (consistent with EPA) and a wider buffer requirement for sites discharging to impaired waters (more detail below). Additionally, DEQ has adopted a narrative set of BMPs for projects that encroach into the buffer. This approach replaces the RUSLE2-based sediment loss equivalency method used in the 2020 1200-C permit. Small-lot buffer compliance alternatives have been removed due to their incompatibility with the permit's water quality protection goals.

### **4.3.1 Applicability**

This requirement applies to all project sites that are situated within 50 feet of a surface water, with certain exceptions described in Appendix B. Note that the requirements do not apply to stormwater control features (for example, stormwater conveyance channels and sediment basins).

An increased natural buffer zone width is required for projects that are within 125 feet of and have the potential to discharge to surface waters listed as Category 5 impaired for sedimentation or turbidity on the most recently approved Oregon 303(d) list (found on the ["Water Quality Assessment" page of DEQ's website](#)). In these circumstances, the applicant must calculate and provide an alternative natural buffer width in accordance with the procedures set forth in Appendix B.

### **4.3.2 Transition to Narrative BMP Framework**

In response to extensive feedback from the regulated community, DEQ has eliminated the RUSLE2 model requirement and adopted a narrative-based BMP framework for managing work within buffer zones. Projects with reduced buffers are subject to protective measures such as accelerated stabilization timelines for exposed soils, redundant perimeter controls, disturbance limitations, and maintaining additional BMP supplies. If a project cannot maintain a buffer of any width, stormwater must be captured and treated prior to discharge.

The RUSLE2 tool, which calculates sediment loss over time based on factors such as soil type, slope, vegetation, and precipitation, has precedent under the federal permit. Under the previous permit, permittees were required to select BMPs that achieved sediment reductions equivalent to an undisturbed buffer. However, practical issues limited the model's usability and effectiveness, such as limited technical support from software developers, lack of native riparian vegetation types and full BMP inventories in the model database, and reliance on static construction timelines, which often do not reflect actual project durations or delays.

Given these limitations, DEQ has returned to a narrative BMP approach similar to that used in the 2015 1200-C permit. However, the 2025 draft includes more detailed and prescriptive requirements for each compliance option, ensuring consistency and clarity in implementation. The proposed measures should generally result in the sediment loss equivalency of an undisturbed natural buffer.

DEQ believes this narrative framework will result in more effective, practical, and enforceable buffer protection and better alignment with site-specific construction practices in Oregon.

Details for each compliance option are provided below.

### **4.3.3 Compliance Options**

Registrants must select one of the compliance options listed below and comply with the additional conditions contained in Appendix B. DEQ has removed the requirement that registrants comply with local buffer zone requirements before selecting a compliance option; this is because local setback requirements are already taken into consideration during the land use approval process.

#### **Compliance Option 1. Maintain an undisturbed 50-foot natural buffer**

This compliance option represents the most straightforward and environmentally protective option by preserving the natural vegetative area adjacent to waterbodies, with minimal complexity for implementation or oversight. The general approach is outlined below.

No earth-disturbing activities are allowed within the 50-foot buffer during permit coverage. The buffer must be clearly marked (for example, flags or fencing) before construction begins, in addition to required perimeter controls. The purpose of this requirement is to make the buffer area clearly off-limits to the people working on site so that unintended disturbances are avoided.

While registrants are not required to enhance the quality of the vegetation that already exists within the buffer, registrants are encouraged to do so where such improvements will enhance the water quality protection benefits of the buffer during and after construction. For instance, the registrant may want to target plantings where limited vegetation exists or replace existing vegetation where invasive or noxious plant species have taken over. In this case, the registrant may want to remove and replace them with a diversity of native trees, shrubs, and herbaceous plants that are well-adapted to the climatic, soil, and hydrologic conditions on the site. Registrants are also encouraged to limit the removal of naturally deposited leaf litter, woody debris, and other biomass, as this material contributes to the ability of the buffer to retain water and filter pollutants.

The registrant must ensure that all discharges from the area of earth disturbance to the natural buffer zone are first treated by the site's erosion and sediment controls and prevent erosion caused by stormwater flows within the buffer. Discharges from dewatering activities must be routed to upland areas to prevent concentrated flows to the buffer. The purpose of this requirement is to decrease the rate of stormwater flow and encourage infiltration so that the pollutant filtering functions of the buffer will be achieved. The ESCP must depict all BMPs utilized to treat stormwater prior to discharge into the buffer or prevent erosion from stormwater discharges to the buffer.

#### **Compliance Option 2. Provide and maintain a buffer that is less than 50 feet but greater than 5 feet that is supplemented by enhanced control measures**

Compliance option 2 allows for a reduced natural buffer width (5–49 feet) where it is infeasible to maintain the default 50-foot buffer. Because this compliance option requires the use of redundant controls spaced 5 feet apart, any project retaining a buffer less than 5 feet must comply with compliance option 3.

To ensure equivalent protection of water quality, the permit requires a combination of accelerated stabilization, redundant sediment controls, and enhanced BMP implementation within and near the encroached buffer.

##### **Accelerated stabilization**

Rapid stabilization is necessary to reduce erosion risks and pollutant discharge to surface waters, especially in areas with a reduced vegetative buffer. The 1-day and 3-day deadlines for temporary and final stabilization, respectively, reflect best industry practice and encourage that work be completed in a timely manner.

##### **Redundant Controls**

Requiring two sediment control devices in series improves sediment and turbidity removal before runoff reaches the preserved buffer. This layered treatment approach accounts for reduced vegetative filtration capacity. The spacing and selection criteria (for example, particle size capture) are intended to ensure effective pollutant removal under site-specific conditions. Restrictions on using dual silt fences without vegetated separation address common BMP ineffectiveness observed in field applications.

Use of two silt fences in series is only permitted when a 5-foot vegetated strip (for example, grass) is placed between them. However, this strip is not considered part of the preserved buffer, as installation of the

downgradient silt fence involves trenching—an earth-disturbing activity that disqualifies the area from buffer designation. In other words, the downgradient control is considered the demarcation of the preserved buffer.

Straw wattles are not considered a substantially equivalent alternative for redundant perimeter controls and do not meet the performance criteria required under this section.

### **Disturbance Restrictions in the Encroached Buffer**

Limiting activity in the encroached area minimizes disturbance and helps preserve any remaining vegetative and soil filtration functions. Prohibiting material staging and requiring rapid disposition of fill reduce risks of erosion and pollutant mobilization.

### **BMP Supply Readiness**

On-site availability of BMPs ensures prompt response to storm events or control failures. The requirement to maintain supplies in excess of minimum needs reflects lessons learned from compliance inspections, where delayed BMP replacement has led to sediment discharges to surface waters.

### **Erosion Prevention and Mitigation**

Preventing concentrated flows, promoting sheet flow, and responding promptly to BMP failures are foundational erosion and sediment control principles. These provisions are particularly critical given the reduced buffer width and closer proximity to receiving waters.

### **High-Risk Site Considerations**

Projects with steep slopes, highly erodible soils, or intensive grading require enhanced controls to manage elevated discharge risk. The listed BMP options (for example, larger sediment basins, chemical treatment, phased grading) reflect BMPs identified in technical literature and prior permit iterations as effective in managing high sediment loads.

### **ESCP Documentation Requirements**

The enhanced ESCP elements ensure clarity and enforceability of site-specific protection strategies. Requiring narrative justification, staging timelines, delineated buffer areas, and mapped BMP supplies facilitates oversight by DEQ or Agents and helps ensure consistent implementation of controls. Preparation and certification of the ESCP by a qualified professional (per Schedule A.21) ensures that stormwater controls are properly designed and integrated into the construction sequence.

### **Compliance Option 3. Infeasibility of Maintaining an Undisturbed Natural Buffer**

Compliance option 3 is available when maintaining even a minimal ( $\geq 5$ -foot) natural buffer is infeasible due to physical site constraints. These sites inherently pose a higher risk of sediment-laden runoff because of their close proximity to surface waters and absence of natural filtering capacity. To address this elevated risk, the permit requires a more robust set of structural controls and treatment measures. The intent is to ensure that water quality is protected through engineered solutions that match or exceed the pollutant removal effectiveness of a natural vegetated buffer.

To maintain consistency with the performance objectives of options 1 and 2, registrants must implement the baseline requirements provided in those sections; these are the foundational site controls necessary even in the absence of a vegetated buffer.

### **Stormwater Capture and Treatment**

The core condition of compliance option 3 is that no untreated construction stormwater may reach surface waters. This is achieved through engineered containment, redirection, and treatment systems designed to replicate the pollutant removal functions of a natural buffer. Key elements include:

- Impermeable barriers (for example, berms, sheet piling) to isolate work areas,
- Diversion structures (for example, dikes, channels) to direct flows to treatment zones,

- Passive or active treatment systems, with sizing and flow control to prevent overflow or bypass,
- Treated discharge quality criteria, requiring clear effluent free of visible sediment and compliant with turbidity water quality standards.

These requirements ensure that construction runoff undergoes controlled treatment before release.

### **Chemical Treatment**

Projects that implement chemical treatment must submit an Environmental Management Plan (EMP) per Schedule A.24, consistent with existing requirements for complex or high-risk discharges. The review fee and EMP submittal enable DEQ to assess system design, chemical use, and environmental safeguards prior to implementation.

### **ESCP Requirements**

The enhanced ESCP elements ensure transparency and accountability for treatment system design and buffer zone alternatives. Preparation and certification of the ESCP by a qualified professional (per Schedule A.21) ensures that stormwater controls are properly designed and integrated into the construction sequence.

## **4.4 Track-out**

The goal of the track-out conditions is to prevent off-site sediment transport by requiring effective planning, physical controls, and prompt cleanup. DEQ has modified these conditions in response to recurring non-compliance issues observed at permitted construction sites. Key updates include:

### **Controlled Access Points**

Requiring designated access points before land disturbance limits vehicle movement and enables focused deployment of track-out controls. This enhances BMP effectiveness and ease of enforcement. DEQ now uses the term access point instead of construction entrance/exit for greater clarity.

### **Integration with Perimeter Controls**

Track-out controls must be designed and maintained in coordination with perimeter BMPs to ensure that construction site access points support overall site containment and do not compromise the effectiveness of other controls. For example, perimeter sediment fencing shall not be installed in a manner that concentrates stormwater flows onto a stabilized construction entrance, as such conditions may result in undercutting of geotextile fabric or aggregate and reduce the effectiveness of the entrance in preventing track-out.

### **Prohibited Access Point Placement Near Stormwater Inlets**

Access points must not be located on or adjacent to storm drain inlets unless the inlets are properly sealed. This prevents direct discharge of tracked sediment into stormwater systems or receiving waters.

### **Transport of Sediment and Saturated Soils**

To reduce fugitive dust, material loss, and runoff, sediment and saturated soils must be transported in covered or watertight vehicles.

### **Adjusting Track-Out Controls as Roads Are Built**

As roads and utilities are constructed, active lots can become new sources of sediment track-out onto freshly built roads and into stormwater infrastructure. This requirement ensures track-out controls are adapted to changing site conditions, addressing common compliance gaps in phased projects like subdivisions.

## **4.5 Stockpile Management**

The stockpile management conditions target a common and well-documented source of sediment discharge on construction sites. The required use of temporary stabilization when a pile will be unused ensures that pollutant discharges from storm events are minimized, while at the same time it addresses the practicability of these controls by limiting this requirement to times when the piles are inactive. Acceptable stabilization methods—such

as tarps, blown straw, and hydroseeding—are standard, widely available BMPs that operators are typically already using to meet stabilization requirements under Schedule A.16.

DEQ revised this section to address patterns of non-compliance observed in the field. Key updates include:

#### **Daily and Extended Stabilization**

Requiring temporary cover at the end of each workday and stable cover for piles inactive for 7+ days prevents erosion during dry and wet weather conditions. These timeframes reflect BMP implementation timelines proven to reduce sediment loss.

#### **“Clean” Material Exemption**

Allowing uncovered storage of clean materials (for example, washed aggregate, landscape rock, rip rap) when sediment controls are present avoids unnecessary requirements for non-erodible materials, while still protecting downgradient areas from incidental sediment.

#### **Soil for Offsite Disposal**

When immediate haul-off is not possible, the permit requires that these piles be minimized in size and duration and stabilized accordingly. This ensures temporary storage piles do not become uncontrolled sediment sources.

#### **Contaminated Material Handling**

Segregating contaminated stockpiles and managing them under an approved EMP ensures pollutants beyond sediment (for example, petroleum, heavy metals) are handled per DEQ standards and do not contribute to water quality violations.

### **4.6 Steep Slopes**

The definition of steep slopes has been changed from 70 to 15 percent grade for consistency with EPA’s permit and other state construction stormwater general permits. The new definition in Schedule D further clarifies that this means 15-foot vertical rise for every 100 feet of horizontal distance. While the steep slope conditions remain materially unchanged, the permit language has been updated for improved clarity.

### **4.7 Preserve Soil Condition for Revegetation**

This section combines the implementation of C&D requirements to minimize soil compaction, unless infeasible (40 CFR 450.21(a)(7)) and to preserve topsoil, unless infeasible (40 CFR 450.21(a)(8)). While the conditions remain materially unchanged, the permit language has been updated for improved clarity, including revising the section title to “Preserve Soil Condition for Revegetation.”

### **4.8 Concrete Management**

Concrete wash water and waste are high in pH and uncontrolled discharges of these materials can cause violations of water quality standards and harm aquatic life. The concrete management requirements in this permit are designed to prevent these pollutants from reaching stormwater conveyances or waters of the state, consistent with 40 CFR §450.21(e)(1), which requires operators to minimize discharges from washout of concrete and associated equipment. DEQ has added more specificity to this section:

#### **Installation of Washout Facility Signage**

Requiring washout area signage before concrete activities begin reduces the likelihood of unauthorized or accidental washout on bare ground by site contractors.

#### **Containment and Cleanout**

Impermeable pits or containers prevent seepage of high-pH wastewater into the ground or stormwater system. The requirement to manage capacity has been specified: cleaning or replacing washouts once they reach 75 percent prevents overflows, especially during rain events.

#### **Siting Requirements**

Maintaining at least a 50-foot setback from storm drains, stormwater conveyances, and surface waters provides an additional protective buffer, reducing the risk of pollutant transport via overland flow.

## **4.9 Sediment Basin**

Sediment basins are widely used at construction sites to detain stormwater and promote the settling of suspended solids before discharge. Proper design, siting, operation, and maintenance of these basins are critical to ensuring they function as effective pollutant control structures. The following requirements align with EPA's permit and reflect DEQ's best professional judgment for sediment basin performance and water quality protection. The fundamental elements of this section remain unchanged; however, conditions are clarified and several have been added:

### **Post-Construction Conversion**

If the basin is to be converted into a permanent stormwater facility, removal of accumulated sediment is necessary to meet post-construction design capacity. This requirement ensures that long-term performance is not compromised by construction-phase sediment loading.

### **Sediment Treatment Design**

In addition to volume, basins must be designed to promote effective treatment—such as adequate residence time, increased flow paths (for example, via baffles), and outlet structures that reduce short-circuiting. These features improve sediment settling and pollutant removal efficiency.

### **Dewatering Capacity**

Where construction dewatering discharges are routed to the basin, additional storage and treatment capacity must be incorporated to prevent overflows and maintain effective sediment capture for both stormwater and dewatering volumes.

### **Erosion and Velocity Control**

Erosion controls at inlets, outlets, and basin interiors are necessary to prevent the basin itself from becoming a source of sediment. Lining and velocity dissipation devices (for example, rock aprons, riprap) reduce scour and sediment resuspension, particularly during high flows.

### **Sediment Depth Maintenance**

Defining a maximum sediment storage depth and requiring cleanout once sediment reaches 50% capacity ensures continued basin performance. A visible marker (for example, stake) provides a practical tool for field personnel to track sediment levels and schedule maintenance before performance declines or scour occurs.

## **4.10 Stabilize Exposed Soils**

Unstabilized, exposed soils are a primary source of sediment discharge from construction sites. Timely soil stabilization—through vegetative or non-vegetative means—is one of the most effective methods for minimizing erosion, particularly during periods of site inactivity.

The C&D rule, at 40 CFR 450.21(b), requires that a deadline to complete stabilization be established by each permit authority. The new 1200-C stabilization deadlines are based on the concept of phasing construction disturbances, similar to the approach of the EPA's permit. The intent of this approach is to provide an incentive to disturb less land at any given period of time by providing longer stabilization timeframes if the disturbance is kept below a threshold level. This approach is also consistent with the C&D rule requirement at 40 CFR 450.21(a)(3) to "minimize the amount of soil exposed during construction activity." The approach described below also provides improved protection against erosion, by ensuring that high risk areas are stabilized sooner.

### **Stabilization Deadlines Based on Site Risk and Project Type**

The permit includes three tiers of stabilization deadlines, reflecting the level of risk associated with project size, receiving water impairment status, and buffer encroachment:

- 14-day completion deadline for projects disturbing less than 5 acres at a time. This applies to lower-risk sites with limited disturbance.
- 7-day completion deadline for sites disturbing 5 or more acres at a time, sites discharging to waterbody that is listed as Category 5 impaired for turbidity or sedimentation on the most recently approved Oregon 303(d) list, and areas upgradient of encroached buffers. These higher-risk areas warrant faster stabilization to protect impaired or sensitive receiving waters.
- 1-day initiation / 3-day completion deadline for encroached buffer areas under compliance options 2 and 3. These high-priority zones require the most protective measures due to their proximity to surface waters and reduced vegetative filtration.

This tiered approach ensures stabilization efforts are proportionate to environmental risk while maintaining implementation feasibility.

### **Definition of “Immediate Initiation”**

"Immediate initiation" is defined as beginning stabilization measures no later than the end of the next business day following cessation of construction activities. This language ensures timely action while accounting for operational limitations. The definition aligns with EPA's permit and provides clear benchmarks for compliance and inspection documentation.

### **Examples of Acceptable Initiation Activities**

Providing specific examples—such as soil preparation, mulching, seeding, or finalizing arrangements for BMP installation—clarifies what constitutes meaningful progress and avoids ambiguity. These examples also support consistent enforcement by permitting authorities and predictable expectations for permittees.

### **Completion Criteria for Vegetative and Non-Vegetative Stabilization**

Clear definitions of when stabilization is considered "complete" ensure consistency across projects. For vegetative stabilization, completion requires both seeding and protective cover (for example, matting) and, ultimately, vegetation established at uniform density per final stabilization criteria. For non-vegetative methods, completion occurs when all BMPs (for example, mulch, gravel, erosion control blankets) are fully installed.

### **Documentation Requirements**

Documenting the dates of construction cessation and stabilization in inspection reports supports accountability and facilitates compliance review. It also ensures that stabilization deadlines are tracked and enforceable.

## **4.11 Pollution Prevention**

The requirement to implement pollution prevention practices for materials such as building products, landscape chemicals, fuels, and sanitary waste is necessary to control pollutants that are not typically removed by sediment controls alone. These materials are often present in small volumes across a site and can be easily mobilized by stormwater if not properly managed. The permit conditions are consistent with 40 CFR 450.21(d), which requires implementation of pollution prevention measures. DEQ has revised this section to improve clarity, add specificity, and eliminate redundancy with other sections (for example, prohibited discharges). Notable updates include:

### **Pesticides, Herbicides, Insecticides, and Fertilizers**

These materials are toxic in low concentrations and pose a risk to water quality when exposed to rainfall. Covering storage areas or using equivalent containment reduces the chance of runoff contamination.

### **Sanitary Waste**

Portable toilets and wash stations, if overturned or leaking, can release pathogens and nutrients into stormwater. Locating them at least 50 feet from storm conveyances and ensuring secure placement with regular maintenance reduces this risk. Projects with limited space must provide secondary containment, ensuring pollutant discharges are still prevented even where setbacks aren't possible.

### **Washing Applicators and Containers**

A 50-foot setback from storm infrastructure helps prevent highly concentrated pollutants from reaching surface waters. This distance requirement is supported by field experience showing frequent washout-related violations.

#### **4.12 Compliance with Water Quality Standards**

This section affirms that compliance with the permit is expected to result in discharges that do not violate Oregon's numeric or narrative water quality standards. By specifically addressing turbidity, sedimentation, and groundwater protection, and by requiring corrective action where exceedances occur, the permit maintains consistency with Oregon Administrative Rules and 40 CFR 122.44(d)(1). If a discharge is determined—by either the permit registrant or DEQ—to cause or contribute to an exceedance of a water quality standard, Schedule A.25 requires the registrant to take timely corrective action. This ensures that permittees remain accountable for pollutant discharges even when BMPs are initially in place but prove ineffective under site-specific conditions or in sensitive environments.

##### **Turbidity (OAR 340-041-0036)**

Turbidity (Nephelometric Turbidity Units, NTU); No more than a 10 percent cumulative increase in natural stream turbidities may be allowed, as measured relative to a control point immediately upstream of the turbidity causing activity.

Application of this standard requires information on background turbidity levels. As an alternative to collecting background samples, registrants may establish the background turbidity levels of the receiving water based on published data (including scientific studies or government data). In these situations, registrants must identify the source(s) of all data provided, including if the data are from samples collected from the receiving water. With this approach, only discharges with turbidity levels at or below background are allowed.

##### **Sedimentation (OAR 340-041-0007(11))**

The formation of appreciable bottom or sludge deposits or the formation of any organic or inorganic deposits deleterious to fish or other aquatic life or injurious to public health, recreation, or industry may not be allowed.

Application of this standard requires direct visual observation of the receiving water for evidence of sediment deposition at and downstream of the project's discharge point, compared to conditions upstream of the discharge. The comparison must be made under similar flow conditions to determine whether the project is contributing to increased sedimentation.

##### **Groundwater Protection and UIC Compliance**

Discharges to groundwater via injection wells (UICs) are subject to additional regulation under OAR 340-044 and 40 CFR 144–146. Prohibiting the discharge of visibly turbid or contaminated stormwater into UICs ensures protection of groundwater quality. By referencing both state and federal UIC regulations, the permit provides a clear compliance framework. The condition also acknowledges that discharges to municipal stormwater UIC systems must follow local jurisdictional requirements.

#### **4.13 Erosion and Sediment Control Plan (ESCP)**

The ESCP is a required, site-specific document that serves as a planning and implementation tool to guide how the permit registrant will meet the effluent limits and other conditions of the 1200-C permit. It provides a detailed approach for managing erosion, sedimentation, and stormwater pollution throughout all stages of construction—from initial soil disturbance through final stabilization.

The ESCP is intended to serve as a road map for how the registrant will comply with the effluent limits and other conditions of this permit. The ESCP does not itself establish effluent limits, or terms and conditions, that apply to the construction site's discharges; these limits, terms, and conditions are established in this permit. This distinction allows the ESCP to remain flexible and adaptive, enabling registrants to modify their strategies and BMPs as site conditions change, while still meeting all permit requirements.

Numerous updates have been proposed to the ESCP section in this draft permit. The overarching goal is to provide clear, enforceable guidance for developing, implementing, and revising ESCPs while ensuring alignment

with updated permit conditions. These changes also incorporate additional planning elements and reinforce the ESCP's role as a central compliance and communication tool during active construction.

#### **4.13.1 ESCP General Requirements**

##### **Objectives**

The ECSP must meet the following objectives:

- Be site-specific because every construction site has unique characteristics—such as soil type, topography, drainage patterns, proximity to surface waters, and construction phasing—that directly influence the risk of erosion and the selection and effectiveness of BMPs. A generic or template plan cannot adequately account for these factors.
- Account for wet weather conditions, which significantly influence sediment transport and BMP performance in Oregon's climate. As with the general requirements in Schedule A.1, applicants must incorporate anticipated precipitation (amount, frequency, intensity, and duration) into ESCP development. DEQ frequently receives ESCPs that assume dry weather throughout construction, which contradicts both the permit's intent and the reality that precipitation events occur any time of year in Oregon. On-site stormwater management is necessary throughout the entire year to ensure sites implement adequate erosion and sediment controls prior to the onset of a precipitation event, even if construction is planned only during the typically "dry" season.
- Incorporate recognized engineering practices to minimize erosion and pollutant discharge;
- Ensure compliance with technology-based limits in the 1200-C permit and Oregon's water quality standards; and
- Address peak stormwater flow and velocity, which can drive erosion and overwhelm controls if not properly managed.

##### **Professional Qualifications**

For high-risk projects (those disturbing  $\geq 20$  acres or using Natural Buffer Zone compliance options 2 or 3), the ESCP must be developed and stamped by a qualified professional. Acceptable credentials include:

- Certified Professional in Erosion and Sediment Control (CPESC),
- Certified Professional in Stormwater Quality (CPSWQ),
- Oregon-licensed Professional Engineers, Landscape Architects, or Engineering Geologists.

This ensures that complex site conditions and sensitive discharges are addressed with appropriately designed and reviewed plans. Additionally, engineered controls such as sediment basins and chemical treatment systems must be stamped by an Oregon Registered Professional Engineer, reinforcing design and treatment reliability and efficacy.

##### **On-Site Availability**

The ESCP must be maintained on-site and readily accessible to inspectors, project staff, subcontractors, and DEQ or Agent inspectors. Allowing for electronic storage accommodates modern workflows, provided the documents can easily be accessed as needed. Making the ESCP available to subcontractors and service providers ensures that all parties working on-site are aware of and follow site-specific requirements—reducing risk of non-compliance due to miscommunication.

#### **4.13.2 ESCP Contents**

This section has been updated to improve clarity, consistency, and usability for both permit registrants and reviewers.

##### **Construction stages**

- DEQ now uses the term “stages” instead of “phases” to avoid confusion with multi-phase developments (for example, subdivisions).
- A separate sheet for existing conditions is now required to depict baseline BMPs that must be installed prior to any ground-disturbing activities such as demolition, clearing, and grading.
- For large, irregularly shaped, or linear projects, a number Key Map is required to help orient reviewers and field personnel across multiple plan sheets, ensuring continuity and full site coverage.

### **ESCP Plan Elements and Format**

- The list of minimum required ESCP contents has been relocated from the main permit body to Appendix C to streamline the permit document and improve readability. The minimum ESCP contents have been updated to reflect new and revised permit conditions.
- Requiring inclusion of all items listed in Appendix C ensures that the ESCP comprehensively addresses site-specific conditions, BMPs, and inspection frequency. Standardizing key elements, such as scale, symbology, and readability, reduces confusion and improves usability for inspectors, contractors, and plan reviewers.
- Prohibiting extraneous map details or unnecessary elements helps focus the plan on erosion and sediment control and minimizes misinterpretation in the field. Examples of these elements include overhead utilities, survey markers, pre-grading contours on post-grading sheets, etc.

### **4.13.3 ESCP Revisions**

DEQ recognizes that construction sites are dynamic environments where conditions can change due to design modifications, contractor transitions, unanticipated site conditions, and ongoing evaluation of BMP performance. To remain effective and enforceable, the ESCP must reflect the current site conditions and BMPs. This section outlines clear expectations for when revisions are required and when submittal to DEQ or an Agent is necessary. DEQ has made modifications to this section as follows:

- The permit no longer allows an increase in disturbance area beyond what was identified in the original LUCS and ESCP. This is also reflected in Condition I.7 which states that “if the disturbance area differs from the originally submitted LUCS, a revised LUCS that reflects the current project site is required. Increases in disturbance area or major scope changes are not permitted.” DEQ does not have a review mechanism for project size increases or scope changes such as adding additional construction stages. In very limited circumstances, DEQ may authorize minor project size increases. Examples include adding a staging area or unanticipated utility connection work in the right of way. If construction activities expand beyond five acres after initial permit coverage has been granted, and DEQ approves the expansion, a 14-calendar day public review period is required. During this period, no construction activities may occur within the expanded area until permit coverage is officially approved.
- All ESCP updates must be dated and initialed by the designated erosion and sediment control inspector, or the primary inspector if multiple individuals are assigned. This provides a clear record of accountability and enables DEQ to verify updates during inspections. Changes to engineered BMPs must be stamped by a Professional Engineer (PE) to ensure they meet design standards.
- For revisions that require submittal, the deadline has been reduced from 10 to 7 calendar days. With DEQ’s electronic reporting system in place, submittals can now be made more efficiently and with minimal administrative burden.
- DEQ has clarified that ESCP submittal is only required for significant BMP changes. Significant changes include modifications to stormwater control measures that can significantly affect how stormwater is managed on-site. These changes may impact the type, location, size, function, or design of BMPs and can alter the effectiveness of the overall erosion and sediment control strategy. Examples include:
  - Replacing a sediment basin with a different control such as a vegetated swale, sediment trap, or filter bag system.

- Switching from silt fence to compost socks or vice versa, particularly when used as perimeter or downgradient controls.
- Altering flow conveyance systems (for example, changing channel linings, adding riprap, or modifying outlet protection).

This submission requirement helps DEQ stay informed of significant modifications and maintain accurate project records. However, to reduce administrative burden, prior DEQ approval is not required—except in cases involving Environmental Management Plans (EMPs), which must be reviewed due to their complexity and pollutant risk.

#### **4.14 Environmental Management Plan**

Certain construction sites pose higher risks of discharging pollutants that are not effectively managed through standard erosion and sediment control practices—such as contaminated soil or groundwater, hazardous materials, or the use of treatment chemicals. To address these risks, the Environmental Management Plan (EMP) provides a project-specific planning tool that outlines how these pollutants will be identified, managed, and prevented from discharging to waters of the state. When required, the EMP becomes an enforceable component of the ESCP. Key changes to this section are outlined below:

- DEQ has integrated and expanded on components of this section within Appendix A for clarity and improved organization. Please see Section 8.1 this PER document for more detail on Appendix A changes.
- The term “Active Chemical Treatment System (ACTS)” has been revised to “Chemical Treatment Plan (CTP)” to eliminate confusion. This change clarifies that the requirement applies to all use of treatment chemicals—including passive systems (for example, flow-through flocculant systems)—not just powered or mechanical systems. CO<sub>2</sub> sparging and dry ice remain excluded, as addressed in Schedule A.15. Additionally, DEQ has clarified that all chemical treatment plans must include post-treatment settling or filtration to remove flocculated sediment, with further detail provided in Appendix A.
- DEQ has added a section regarding triggers for EMP revisions and submittals. These include significant changes in treatment needs and design or dosage modifications. Significant changes require DEQ review and may trigger a new EMP review fee, ensuring continued adequate oversight and regulatory accountability. If DEQ determines that an existing EMP approach is insufficient to prevent prohibited discharges, the agency may require revisions. This provides a regulatory backstop to address evolving site conditions or observed compliance issues.

#### **4.15 Corrective Actions**

DEQ made slight modifications in this section for clarity and organization.

## 5.0 Schedule B – Inspections, Monitoring, and Recordkeeping

Schedule B of the permit contains the requirements listed below. Only new or materially updated conditions are described.

- Designated Erosion and Sediment Control Inspector
- Inspection Frequency
- Reductions in Inspection Frequency
- Inspection Requirements
- Inspection Report
- Monitoring pH
- Recordkeeping Logbook
- Inspections by DEQ

### 5.1 Designated Erosion and Sediment Control Inspector

This section establishes the qualifications for people assigned the responsibility to inspect the site for compliance with the permit.

#### Inspector Certification Requirements

To ensure inspectors possess baseline knowledge and technical competency, the permit requires certification from one of several nationally recognized or DEQ-approved erosion and sediment control programs:

CESSWI, CPESC, CPSWQ, CISEC, CESCL, and the Rogue Valley Sewer Services (RVSS) certification provide comprehensive training in BMP selection, installation, maintenance, regulatory compliance, and inspection protocols. DEQ has added CESSWI to the approved list for this permit cycle, recognizing its alignment with these core objectives.

DEQ retains the ability to approve additional equivalent programs during the permit term. This flexibility allows for evolving industry standards and supports the potential development of an Oregon-specific certification in the future.

#### Core Competency Requirements:

In addition to holding a valid certification, inspectors must demonstrate the practical skills and field knowledge needed to assess site conditions and support compliance with permit requirements. Similar to the 2015 1200-C permit, this section outlines essential competencies to ensure inspectors can effectively apply their training on-site. These competencies help ensure that inspectors are not only certified, but also capable of making informed decisions, identifying BMP deficiencies, and meaningfully contributing to the successful implementation of the ESCP. DEQ assesses and documents inspector competency during compliance inspections to verify that these standards are being met in the field.

#### Primary Inspector Requirement

For projects with multiple inspectors, the permit requires the designation of a Primary Inspector to ensure accountability, consistency, and clear communication. The Primary Inspector is responsible for:

- Reviewing and signing all inspection reports completed by other inspectors, and
- Overseeing the overall effectiveness and integrity of the site's inspection program.

Limiting the inspection team to three individuals promotes manageable coordination and prevents confusion or dilution of responsibility. The Primary Inspector should also have a working knowledge of the project's overall scope and construction timeline, which helps maintain continuity in BMP implementation as site conditions change throughout the project.

This requirement is grounded in field experience: DEQ compliance inspectors frequently encounter compliance deficiencies on sites where multiple inspectors operate independently, leading to inconsistent documentation, poor coordination, and unresolved BMP failures. In such cases, DEQ staff have reported being unable to identify or reach a responsible individual during inspections—an issue that mirrors the experience of on-site contractors who need timely direction to address stormwater concerns. Requiring a designated Primary Inspector addresses this communication gap and supports a more cohesive and responsive site management approach.

## **5.2 Inspection Frequency**

This section establishes the required minimum inspection frequency.

### **5.2.1 Proposed Dual-Option Frequency**

DEQ proposes adoption inspection frequency framework used in the last three iterations of the federal permit and widely adopted by many states.

Under this approach, registrants may choose between two options:

- Option 1: Inspect the site at least once every 7 calendar days, or
- Option 2: Inspect the site at least once every 14 calendar days and within 24 hours of
  - A storm event that produces 0.25 inches or more of rain within a 24-hour period.
  - A discharge caused by snowmelt from a storm event that produces 3.25 inches or more of snow within a 24-hour period.

*More detail on option 2 is provided in section 5.2.3 below.*

### **5.2.2 Frequency Rationale**

This dual-option frame provides flexibility and predictability for registrants, allowing them to select the schedule that best fits their project logistics. EPA’s analysis has shown both frequencies to be generally protective of water quality. Projects may also choose to inspect more frequently based on site-specific risk or conditions.

The key benefits to this approach include predictability and clarity:

- *Predictability:* The 7-day option allows registrants or third-party inspectors to establish a consistent schedule—for example, inspecting Site A every Monday, Site B every Tuesday, etc. —enabling better planning around project staffing and budgeting.
- *Clarity:* Unlike the current 1200-C permit, which ties inspections to “active discharge,” this model relies on measurable rainfall—a clear, objective trigger. This eliminates confusion around whether an inspection is required when rainfall occurs, but discharge is uncertain.

#### **Storm-Based Trigger**

The 0.25-inch threshold is a well-established standard in construction stormwater permitting and is considered protective while remaining practical. Defining the storm window based on calendar days (midnight to midnight) rather than a rolling total aligns with standard weather reporting formats, making it easier for registrants to track rainfall and determine when inspections are required. Requiring use of either an on-site rain gauge or representative weather station ensures registrants are using reliable, site-relevant precipitation data to determine when inspections are triggered.

#### **Snowmelt-Based Trigger**

Because snowmelt events can produce substantial discharges and often go uninspected, the permit adds a 3.25-inch snow accumulation trigger to initiate inspections. This reflects DEQ’s growing awareness of pollution risks associated with snowmelt runoff, especially in higher elevation or eastern Oregon projects.

### **5.2.3 One-time Frequency Selection & DEQ Oversight**

The permit strictly prohibits switching between inspection frequency options once a selection has been made. This is a deliberate and necessary condition to ensure consistency, integrity, and enforceability of inspection

requirements throughout the life of a project. Allowing registrants to alternate between frequencies would open the door to intentional manipulation of inspection schedules—for example, defaulting to the 14-day/rain-triggered option during dry weather and switching to weekly during the wet season to avoid storm-related inspections.

Feedback from other state permitting authorities reinforces this approach: inspection staff report that allowing frequency switching makes it impossible to verify whether the minimum required inspections have occurred, especially during variable weather conditions.

DEQ acknowledges that this restriction may appear overly rigid. However, permit conditions must meet two essential objectives: they must be clear and practicable for registrants to follow, and they must be trackable and enforceable by DEQ. A consistent inspection frequency is critical to both goals. Without it, DEQ cannot reliably assess whether sites are meeting their inspection obligations, particularly during compliance reviews or for determining appropriate enforcement actions. Further, the ability to choose an inspection frequency provides flexibility, predictability, and clarity for the registrants, however, this must be balanced with DEQ's responsibility to ensure adequate oversight. *(Note: When compliance is assessed, DEQ will defer to the inspection frequency listed in the originally approved ESCP.)*

For these reasons, the initially chosen inspection frequency must be clearly documented in the ESCP and followed without exception unless DEQ explicitly authorizes a change in writing.

DEQ may consider written requests to change the selected inspection frequency only under exceptional circumstances where there is a legitimate change in project scope or conditions. Requests submitted solely to reduce the number of inspections will not be approved. Requests must include clear justification and supporting documentation.

Note: If a revised ESCP submittal includes a change in inspection frequency without prior DEQ approval, that change is not considered valid—even if the rest of the ESCP revision is accepted.

Finally, DEQ retains authority to require more frequent inspections where needed, including:

- Projects with repeated violations or ongoing water quality concerns;
- High-risk locations (for example, near sensitive waters or habitat); or
- Projects causing offsite impacts such as fugitive dust sediment track-out.

## **5.2.4 Compliance with inspection frequency 2**

This section provides additional detail on compliance with inspection frequency option 2.

### **Complying with inspection frequency option 2:**

Sites electing to comply with this inspection frequency must conduct an inspection once every 14 days and additional inspections within 24 hours of a storm event that produces 0.25 inch or more of rain within a 24-hour period (midnight to midnight), or within 24 hours of a discharge caused by snowmelt resulting from an accumulation of 3.25 inches or more within a 24-hour period. To comply with this requirement, registrants should ensure that no more than 14 days pass after each inspection before the next inspection is conducted. This could be accomplished by choosing a regular day during the two-week period on which inspections will be conducted in the absence of qualifying precipitation events. Where a rain event occurs that produces 0.25 inches or more during the two-week period or a snowmelt discharge occurs following a 3.25 inch or greater snowstorm, an inspection must be performed within 24 hours of the occurrence of the event. Following the event-related inspection (or final event-related inspection in cases of multi-day events), the registrant must conduct the next inspection within no more than 14 calendar days.

Conducting an inspection “within 24 hours” means that once either of the two conditions in are met (0.25 inch rain event or snowmelt from 3.25 snow accumulation) the registrant’s inspector has 24 hours from that time to conduct an inspection. For clarification, the 24 hours is counted as a continuous passage of time, and not counted by business hours (for example, 3 business days of 8 hours each). When the 24-hour inspection time frame occurs entirely outside of normal working hours, the inspector must conduct an inspection by no later than the end of the next business day.

NOAA has determined that 3.25 inches of snow is, on average, equivalent to 0.25 inches of rain. Registrants are required to conduct an inspection after a 3.25-inch snow accumulation only once there is sufficient snowmelt to cause a discharge.

#### **Multiple day storms:**

If a storm event produces 0.25 inches or more of rain within a 24-hour period (including when there are multiple, smaller storms that alone produce less than 0.25 inches but together produce 0.25 inches or more in 24 hours), the registrant is required to conduct one inspection within 24 hours of when 0.25 inches of rain or more has fallen. By contrast, if a storm event produces 0.25 inches or more of rain within a 24-hour period on the first day of a storm and continues to produce 0.25 inches or more of rain on subsequent days, the operator must conduct an inspection within 24 hours of the first day of the storm and within 24 hours after last day of the storm that produces 0.25 inches or more of rain (i.e., only two inspections would be required for such a storm event). To help illustrate: if 0.30 inches of rain falls on Day 1, 0.25 inches of rain falls on Day 2, and 0.10 inches of rain falls on Day 3, the operator would be required to conduct a first inspection within 24 hours of the Day 1 rainfall and a second inspection within 24 hours of the Day 2 rainfall, but a third inspection would not be required within 24 hours of the Day 3 rainfall.

Where a snowmelt discharge is concerned, additional snowmelt inspections are only required if following the discharge from the first snowmelt, there is a discharge from a separate storm event that produces 3.25 inches or more of snow.

Requiring inspections to be conducted within 24 hours of the occurrence of a qualifying storm event provides assurance that, during multiple days of discharge from a single storm event, problems with the control of pollutants will be identified sooner and corrected in accordance with the corrective action timeframes specified in Schedule A.25 of the permit.

### **5.3 Reductions in Visual Monitoring, Inspection Requirements, and pH Monitoring**

These sections contain minor changes for clarity and to align with the new inspection frequency, stabilization timeframe requirements, and minor terminology changes.

### **5.4 Record Keeping Logbook**

DEQ has introduced a new recordkeeping requirement in the form of a site logbook, which serves as the central repository for all required documentation under the 1200-C permit. This logbook is intended to promote accountability, transparency, and adaptive site management by organizing permit documents and records of inspections, corrective actions, and BMP implementation.

DEQ has consistently observed that sites using organized logbooks tend to demonstrate a higher level of compliance. Organized logbooks allow for quicker response to field conditions, improved coordination among multiple inspectors, and efficient compliance assessment by DEQ or Agents.

The permit requires that the logbook be kept onsite or readily accessible to onsite personnel, and that it be immediately available upon request by DEQ or its Agent. Digital logbooks are allowed; however, they must meet basic accessibility standards:

- All information must be legible, complete, and presented in a professional format;
- The screen size must allow effective review by inspectors in the field;
- If DEQ/Agent inspectors find digital records difficult to access or interpret, the registrant must provide an alternate format upon request.

## **6.0 Schedule D – Special Conditions**

Schedule D of the permit contains the requirements listed below. Only new or materially updated conditions are described.

- Schedule Precedence
- Availability of Records
- Other Requirements
- Local Public Agencies Acting as DEQ's Agent
- Permit-Specific Definitions

### **6.1 Availability of Records**

In addition to the ESCP, DEQ has added the EMP and inspection records as documents that must be made available to government agencies responsible for stormwater management in the project area. Construction sites operating under the 1200-C permit often fall under the jurisdiction of multiple entities, such as local municipal stormwater programs (MS4s), land use authorities, and other state or regional agencies. This requirement improves interagency communication and allows oversight authorities to quickly verify compliance, identify deficiencies, and facilitate prompt corrective action when necessary.

### **6.2 Permit-Specific Definitions**

DEQ has introduced definitions for new terms, corrected previously inaccurate or frequently misunderstood definitions, and eliminated terms that are no longer applicable or relevant to the permit.

## **7.0 Schedule F - NPDES General Conditions**

These conditions are standard to all industrial NPDES permits and include language regarding operation and maintenance of facilities, monitoring and record keeping, and reporting requirements. If conflicts arise between Schedule F and any other schedule of the permit, the requirements in Schedule F will not apply.

## 8.0 Appendices

### 8.1 Appendix A - Environmental Management Plan Review Applications for Contaminated Media Management and Chemical Treatment

DEQ introduced the Environmental Management Plan (EMP) requirement in the 2020 1200-C permit term to address pollutant risks that fall outside the scope of standard erosion and sediment control practices—specifically, contamination and chemical treatment. Since implementation, it has become clear that additional clarity was needed regarding when EMPs are required and what they must include. Appendix A has been revised and expanded to provide clear guidance for permit applicants and registrants on EMP triggers, expectations, and submittal requirements.

#### Contaminated Media Management Plans (CMMPs)

This section of Appendix A supports implementation of Schedule A.24 by providing clear instructions, expectations, and application requirements for developing a Contaminated Media Management Plan (CMMP), a type of Environmental Management Plan (EMP). The rationale for this section is rooted in the need to protect surface and groundwater resources from construction-related discharges that may be contaminated with pollutants not typically addressed by standard erosion and sediment control practices.

Applicants should generally understand environmental conditions at the project site prior to project permitting. This includes, but is not limited to, contaminated soil, groundwater, debris, and/or hazardous building materials (e.g., asbestos, lead-based paint) and if there is a reasonable expectation of encountering contamination on the project site due to past site uses. Applicants are encouraged to conduct due diligence through accepted industry practices; this is particularly important when the property's use is changing (e.g., from agricultural to residential). The key steps in conducting environmental due diligence include the following:

- **Site Screening/Phase I Environmental Site Assessment (ESA):** A Phase I ESA involves a comprehensive investigation of the property's historical use and current condition. Phase I components include: (1) a site visit and inspection to identify potential environmental hazards; (2) a review of historical records including aerial photos, property search to identify past uses and potential contamination; (3) a review of regulatory databases (i.e., DEQ's Environmental Cleanup Information Database found at the following website. This database also includes Leaking Underground Storage Tank (LUST) or Heating Oil Tank (HOT) information: <https://www.oregon.gov/deq/hazards-and-cleanup/env-cleanup/pages/ecsi.aspx>) for records of hazardous waste sites, underground storage tanks, and other environmental concerns (*Please note: DEQ is transitioning to Your DEQ Online for management of these records*); (4) Speaking with current and past property owners, operators, and occupants to gain insights into the site's history and potential environmental issues.
- **Phase II Environmental Site Assessment (ESA) (if needed):** If the Phase I ESA identifies potential contamination, a Phase II ESA should be conducted to collect samples (e.g., soil, groundwater, building materials, etc.) and analyze them for the presence, extent, and concentrations of contaminants at the project site.
- **Additional Site-specific Assessments:** Other evaluations, such as geotechnical investigations or pre-construction risk assessments, may also help identify existing or potential contamination at the site.

Key changes to this section include:

- CMMP applicability has been changed from “projects that will or have the potential for encountering...” to “projects that will encounter or are reasonably expected to encounter.” This clarification eliminates ambiguity by requiring registrants to rely on site-specific knowledge rather than speculative “potential” when determining if a CMMP is necessary. Determinations should be based on reliable due diligence methods as listed above. This ensures CMMP requirements are applied consistently and only where there is a demonstrated or reasonably anticipated risk of contaminated media or hazardous substances being encountered during construction.

- CMMPs developed with DEQ Cleanup Program involvement and oversight that are tailored to the project's specific scope and construction sequence are not subject to EMP review fee. However, generic or hypothetical plans (such as those from a No Further Action determination not tied to actual development) are not acceptable. CMMPs must be integrated with the ESCP and reflect site-specific conditions and BMPs.
- Clarity on CMMPs that include a chemical treatment component should complete both parts 1 and 2 of the appendix and refer to the plan as CMMP. These combined plans require a PE stamp.
- Expanded list of required CMMP elements to ensure comprehensive planning and pollutant control.

### **Chemical Treatment Plans (CTPs)**

This section of Appendix A provides application requirements and design expectations for Chemical Treatment Plans, which are required when chemical additives are used to treat stormwater or dewatering water prior to discharge. Because these systems carry unique risks, especially regarding toxicity and residual chemical discharge, effective controls and site-specific designs are critical. Key changes to this section include:

- The prohibition of direct discharge of chemically treated water to surface waters is prohibited unless the system includes post-treatment settling or filtration (for example, settling basins or mechanical sand filters). These design features are necessary to remove flocculated solids and residual chemicals.
- The requirement that use of cationic treatment chemicals result in no detectable levels in effluent discharges; this is a critical safeguard due to the high toxicity of these substances to aquatic life.
- Expanded list of CTP elements ensure clear, enforceable expectations and protective system performance.

## **8.2 Appendix B - Natural Buffer Zone Requirements**

Appendix B supports the implementation of the Natural Buffer Zone (NBZ) requirements of Schedule A.3. This appendix has been substantially updated to reflect the new narrative BMP approach as described in section 4.3 of this Permit Evaluation Report. This appendix includes detailed information on NBZ applicability and exemptions, calculations for expended buffer widths for sites discharging to impaired waters, detailed requirements for the three compliance options, and small lot compliance.

The revised appendix includes:

- Clear guidance on when and where NBZ requirements apply, including exemptions;
- Buffer width calculations for projects discharging to impaired waters;
- Detailed explanations of the three compliance options, including required enhanced BMPs and documentation needs; and
- Simplified pathway for small lot compliance.

These updates are designed to improve usability, enhance protection of buffers and surface waters, and ensure consistent application of NBZ requirements.

## **8.3 Appendix C - Erosion and Sediment Control Plan Requirements**

Appendix C is a new addition to the permit that consolidates all required elements of the Erosion and Sediment Control Plan (ESCP) into a single, easily accessible location. This change improves usability by reducing the need to reference the main body of the permit in addition to external guidance documents. This new appendix includes:

- The list of minimum required ESCP elements. This list has been relocated from the main permit body to this appendix to better organize the permit document and improve readability. The minimum ESCP contents have been updated to align with new and revised permit conditions.
- Inclusion of the BMP Matrix and inspection frequency options.
- A QR code and shortened URL to streamline compliance with the public posting requirement outlined in Condition I.14 of the permit.