Response to Comments:
National Pollutant Discharge Elimination System 1200-C Construction Stormwater General Permit

Dec. 15, 2025

Oregon Department of Environmental Quality
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Acronyms

BMP – Best Management Practice

C&D Rule – Construction and Development Rule (40 CFR 450)

CFR – Code of Federal Regulations

CGP – Construction General Permit (EPA)

CMMP – Contaminated Media Management Plan

CTP – Chemical Treatment Plan

DEQ – Oregon Department of Environmental Quality

DSL – Oregon Department of State Lands

EMP – Environmental Management Plan

EPA – U.S. Environmental Protection Agency

ESCP – Erosion and Sediment Control Plan

MS4 – Municipal Separate Storm Sewer System

NBZ – Natural Buffer Zone

NPDES – National Pollutant Discharge Elimination System

ODOT – Oregon Department of Transportation

OAR – Oregon Administrative Rule

ORS – Oregon Revised Statute

PER – Permit Evaluation Report

PE – Professional Engineer

RO – Responsible Official (NPDES Signatory in Your DEQ Online, or YDO)

RUSLE2 – Revised Universal Soil Loss Equation, Version 2

YDO – Your DEQ Online

1. Background

1.1 Introduction

This document presents the Oregon Department of Environmental Quality's (DEQ) responses to comments received during the public notice period for the renewal of the NPDES 1200-C Construction Stormwater General Permit. The purpose of this Response to Comments (RTC) is to summarize the major issues raised by interested parties, describe DEQ's evaluation of those issues, and identify any resulting revisions to the permit or supporting materials. The RTC, together with the Permit Evaluation Report (PER) and final permit, forms part of the administrative record supporting DEQ's permitting decision under Oregon Administrative Rules (OAR) Chapter 340, Division 45.

1.2 Public notice and comment period

DEQ issued the draft 1200-C permit and supporting documents for public review on September 22, 2025, consistent with OAR 340-045-0027. The notice announced a 35-day public comment period and was distributed via GovDelivery and posted on DEQ's website. The draft permit, Permit Evaluation Report, and all appendices (A–C) were made available for review online. DEQ hosted a virtual public hearing on October 23, 2025, where DEQ provided an overview of proposed changes and accepted verbal comments. The comment period closed on October 27, 2025.

2. List of commentors

The following individuals or entities submitted written comments during the public comment period:

2.1 List of commenters and affiliations

ID#	Commenter	Affiliation
1	Brent Whittaker	AKS Engineering & Forestry, LLC
2	Robert Besler	Lower Columbia Engineering, LLC
3	Chase Berg	
4	Michael Zenthoefer	Point Environmental
5	Hannah Latzo	John Day Basin Partnership
6	Lolly Anderson	Santiam Water Control District
7	Gregory Ewanitz	Lennar
8	Jessi Runyan	Wildwood Environmental
9	James Fraser/Levi Old	Trout Unlimited
10	Jack Blackham	City of Eugene
11	Corley McFarland	Precision Approach Engineering
12	Gordon Kurtz	Benton County
13	Courtney Linkous	Tetra Tech
14	James Raspen	Bonneville Power Administration
15	Ian Langdale	Kiewit

3. Overview of comments received

DEQ received 15 comment submissions, representing municipalities, consulting firms, developers, environmental organizations, and state and federal agencies. Each submission contained one or more discrete comments addressing specific provisions of the draft permit, appendices, or PER. In total, approximately 170 individual comments were cataloged, reviewed, and incorporated into the administrative record. The comments addressed a broad range of topics including permit applicability, buffer protection, inspection frequency, and recordkeeping methods.

Out of scope comments

Some comments received during the public review period addressed topics that fall outside the scope of this permit renewal. These include but are not limited to requests to change statutory or rule-based requirements such as applicable water quality standards; comments on permit applicability as established by state and federal regulations; requests for new implementation tools, guidance, or programmatic resources; and requests for changes in DEQ implementation, compliance, and enforcement protocols. Because these subjects cannot be addressed through the permit renewal process, DEQ has either provided brief responses identifying the relevant governing authorities or appropriate program pathways for those issues or noted that the comment is outside the scope of this renewal.

Requests for federal alignment

Several comments requested that DEQ revise permit conditions solely to match EPA's Construction General Permit (CGP). Under 40 CFR §123.1(i)(1), authorized states may adopt requirements more stringent than federal minimums, and Oregon law directs DEQ to ensure discharges do not cause or contribute to violations of state water quality standards or impair beneficial uses. Because these comments did not provide a technical, legal, or factual basis for changing the permit conditions beyond a preference for federal alignment, DEQ has not responded to each comment individually. The PER describes the rationale for these conditions and how they were developed to meet Oregon's water quality and implementation needs.

Cost of compliance

Several comments objected to certain requirements solely on the basis of compliance cost. DEQ recognizes that designing and implementing stormwater controls involves financial investment; however, DEQ is obligated under the Clean Water Act, 40 CFR Parts 122 and 450, and state water quality law to include permit conditions necessary to protect water quality. And DEQ cannot remove or relax permit requirements solely due to cost concerns when those conditions are necessary to meet applicable state and federal obligations.

As explained throughout the PER, the permit conditions reflect technology-based effluent limits established by EPA for construction activities, along with water quality–based requirements necessary to ensure discharges do not cause or contribute to violations of state water quality standards. Cost alone does not provide a basis to eliminate protective conditions. The renewed 1200-C permit generally aligns with federal construction stormwater requirements, is designed to be clear and implementable, and provides the level of control necessary to protect Oregon's waters. When developing the permit conditions, DEQ considered EPA's cost analysis for the federal Construction General Permit, which is available at https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-fact-sheet.pdf

Evaluation and organization of comments

DEQ analyzed comments based on technical content and legal relevance and grouped similar items into thematic categories to facilitate the response process (themes are listed below). Where multiple commenters raised similar issues, DEQ consolidated those comments in a representative way, and in some cases edited comments for length and clarity. Minor editorial, typographical, and formatting corrections were addressed without individual discussion. All comment letters, unique comment identifiers, and their respective themes are preserved in the permit renewal administrative record and are available through the Public Records Request process.

DEQ thanks all the commenters for the time and effort that they put into preparing comments on this draft permit. The comments provided information used to improve the permit and PER.

Themes:

- General/Miscellaneous
- Eligibility & Coverage
- Application/Transfer/Renewal/Termination
- Authorized & Prohibited Discharges
- Natural Buffer Zone
- Inspections & Frequency Options
- Inspector Qualifications & Training
- TBELs/WQBELs
- Corrective Actions & Timelines
- ESCP Requirements & Revisions
- EMP / CMMP / CTP
- Definitions & Terminology
- Recordkeeping / Posting Signage
- Editorial / Formatting (not individually addressed in this document)

4. Response to comments

This section presents DEQ's detailed responses to comments organized by thematic category.

4.1 General/miscellaneous

Condition I.1

"Until this permit expires, is modified, revoked, or terminated the registrant is authorized to install and operate erosion and sediment control measures and stormwater treatment and control facilities, and may discharge stormwater and authorized non-stormwater discharges to surface waters of the state or conveyance systems leading to surface waters of the state only in conformance with all conditions set forth in this permit.

Comment: This is not a permit to install and operate erosion and sediment control measures and stormwater treatment and control facilities. This is a permit to discharge stormwater and authorized non-stormwater to waters of the state. However, to make these discharges in compliance with the permit, it most often requires installation and operation of sediment control measures and stormwater treatment facilities." (Commentor ID# 4)

DEQ response:

DEQ reviewed this comment and determined that the existing language is appropriate. The 1200-C permit is, at its core, an authorization to discharge stormwater and certain authorized non-stormwater discharges in accordance with permit conditions. However, NPDES construction stormwater permits are required under federal law (40 CFR 122.26 and 40 CFR 450.21) to include enforceable, technology-based effluent limitations that take the form of specific control measures and treatment requirements. Further, OAR 340-045-0015(d) requires that without first obtaining an NPDES permit, a person may not construct, install, operate, or conduct any industrial, commercial, or other establishment or activity if the operation or conduct would cause an increase in the discharge of wastes into the waters of the state. Because the installation, operation, and maintenance of erosion and sediment controls are integral to achieving compliance with the permit's effluent limitations and state water quality standards, the permit directly authorizes registrants to install and operate these measures.

General comment:

The permit discusses contributing to a violation of water quality standards, preventing violations of water quality standards, permit violations, and prohibited discharges. I argue that since the 1200-C is an authorization to discharge stormwater and authorized non-stormwater to waters of the state, then no actual permit violation can exist unless there is a prohibited discharge from the site. In other words, until the site discharges dirty water off site into a water of the state or conveyance to said water, any broken-down silt fence, uncovered stockpile, un-staked straw wattle, other BMP or administrative deficiency cannot constitute a violation of the permit. Until said prohibited discharge occurs there can be no enforcement action from DEQ. (Commentor ID#4)

DEQ response:

Under 40 CFR 450.21, NPDES construction stormwater permits must include technology-based effluent limitations in the form of required erosion and sediment controls and pollution-prevention measures that must be implemented, installed, and maintained at all times. These conditions are themselves enforceable effluent limitations, independent of whether a discharge has occurred.

While not all violations automatically result in enforcement actions, DEQ may take enforcement based on the severity of the deficiency, risk of environmental impacts, duration of noncompliance, and the registrant's responsiveness. Correcting deficiencies promptly, as required under Schedule A.25 (Corrective Actions), can reduce or avoid enforcement in some cases, but does not negate the underlying violation.

General comment:

Santiam Water Control District (SWCD) requests the following requirements in the 1200-C Permit:

- Require applicants to identify, or require DEQ staff to identify, whether the permit's receiving water body is a district facility or feeds into a district facility. If so, provide notice to the impacted district. Currently, applicants often provide little more description than "roadside ditch" to identify a receiving water. In the past, SWCD has appreciated when DEQ staff has provided notice that its facilities will be impacted. A more formal process for identification would assure that notice is not dependent on the discretion of the DEQ staff reviewing the application.
- Require applicants seeking to discharge into district-owned facilities to first obtain written permission from the district operating the receiving facilities. This requirement will afford districts the opportunity to evaluate the pollutants in the proposed stormwater discharges and gauge the impact of increases in stormwater flows. The districts may then enter into agreements with dischargers to address liabilities surrounding water quality and increased stormwater flows.
- Require renewal applicants seeking to discharge into district-owned facilities to again obtain written permission from the district prior to permit renewal. This will allow the parties (districts and dischargers) to revise stormwater discharge agreements to accommodate and meet evolving regulatory obligations.

(Commentor ID# 6)

DEQ response:

DEQ has determined that the recommended permit conditions are not appropriate for inclusion. A complete permit application requires a Land Use Compatibility Statement (LUCS) demonstrating that the proposed activities are consistent with the local government's comprehensive plan under OAR 340-018-0030. The LUCS process provides a mechanism for local review of land use, zoning, and infrastructure compatibility, including potential coordination with special districts that manage drainage or irrigation systems.

The authorization provided by the 1200-C permit is limited to regulating stormwater discharges from construction activity for purposes of the Clean Water Act § 402(p) and state water-quality standards under OAR 340-045-0033 and OAR 340-045-0040(1). The permit does not grant property access rights or impose conditions on or to privately owned or district-operated facilities, as those are civil or inter-agency matters.

Additionally, the conditions of the 1200-C permit require the implementation and maintenance of erosion and sediment control practices that minimize the potential for sediment or other pollutants to be discharged to downstream and receiving infrastructure, including district-owned irrigation facilities.

And the permit is clear that it does not authorize post-construction stormwater discharges originating from the site after completion of construction activities and final stabilization. Those discharges are subject to other programs or local requirements as applicable.

4.2 Eligibility & coverage

General comment:

Page 1: Regarding the same discharges already covered under a separate NPDES permit, please provide clarification about what specifically constitutes and suffices for a separate NPDES permit if not the MS4 Phase I or II. (Commentor ID# 10)

DEQ response:

DEQ clarifies that the discharge from a project site subject to the 1200-C cannot be covered by another NDPES permit for the same discharge. For example, a site cannot hold 1200-CA coverage for a city capital improvement project and have overlapping 1200-C coverage for the general contractor completing the work. MS4 permits regulate the municipal storm sewer system and impose programmatic requirements for local construction runoff programs; they do not authorize construction stormwater discharges from private or public construction sites that are subject to the 1200-C permit occurring within the MS4's jurisdiction.

General comment:

Page 1: Ensure mobilization of equipment for best management practice (BMP) installation is recognized as a permitted support activity. (Commentor ID# 1)

DEQ response:

Construction support activities include activities directly associated with the permitted construction activity, including portable/temporary concrete or asphalt batch plants, portable rock crushers, equipment and material staging and storage, excavated material storage and disposal areas, and borrow areas. Mobilization of equipment for BMP installation fits squarely within that scope.

General comment:

Several commentors requested categorical exclusion from 1200-C permitting for restoration projects due to costs and perceived redundancies with other environmental permits/certifications. One commenter seeks restoration specific guidance or decision tree. One commentor seeks a waiver from permit fees for restoration projects. (Commentor IDs #5 and #9)

DEQ response:

Under the federal Clean Water Act and implementing regulations at 40 CFR Part 122, discharges of pollutants from point sources to waters of the United States must be authorized under an NPDES permit. This includes discharges that may occur during restoration-related construction activities. States do not have the authority to establish categorical exemptions from NPDES permitting for particular project types, including environmental restoration. An NPDES permit (under Section 402 of the Clean Water Act) is a permit for point source discharges, and is differentiated from Section 401 water quality certification, which is a state or tribal certification that the project will comply with water quality standards before a federal permit can be issued and is not an NPDES permit.

While DEQ supports and encourages restoration and habitat enhancement projects, any activity that involves earth disturbance, equipment operation, or other pollutant-generating work that results in a discharge to surface waters must be evaluated for NPDES permit coverage. In Oregon, this may occur under the 1200-C-series Construction Stormwater General Permits or individual NPDES permits.

DEQ does have flexibility to streamline review and reduce administrative burden where restoration projects have a net environmental benefit. For example, DEQ may:

- Determine that coverage under a general permit (rather than an individual permit) adequately protects water quality;
- Coordinate 1200-C and 401 water quality review to avoid duplication; or
- Document that a project falls outside the scope of NPDES regulation when no point-source discharge occurs.

DEQ would like to note that John Day Basin Partnership consists of entities eligible for 1200-CA permit coverage, which a programmatic permit for government entities. This permit does not require a per-project fee, but rather an annual fee equivalent to the 1200-C annual fee. This could result in cost savings for JDBP.

DEQ acknowledges the request for development of guidance materials or decision tools to assist with determining permitting needs for restoration projects. However, DEQ does not routinely prepare project-type-specific guidance for individual entities or regulated sectors due to a variety of reason, including limited resources, but DEQ is open to a collaborative effort to develop materials and tools as time and resources allow. We appreciate your interest in improving the clarity of permitting pathways for restoration work and would welcome a discussion about potential next steps and resource sharing to advance that effort.

Regarding the waiving of permit fees, DEQ cannot waive NPDES permit application or annual fees for specific categories of projects. Permit fees are established in rule under OAR 340-045-0070, and DEQ does not have discretion to waive or modify fees on a project-specific basis outside of those rule provisions.

Condition I.2:

Several commentors requested clarification on the roles of registrants versus responsible officials (RO) and requested that DEQ allow business entities to register as ROs in Your DEQ Online (YDO). (Commenter ID# 1 and 7)

DEQ response:

The Clean Water Act (CWA) allows businesses, municipalities, or other organizations to register for NPDES permit coverage. The registrant is the legal entity responsible for complying with all permit conditions and for any associated discharges. However, permit applications and reports must be signed and submitted by an individual, rather than the business entity, as required in 40 CFR §122.22 and the Cross-Media Electronic Reporting Rule (CROMERR, 40 CFR Part 3). These rules ensure that each submittal is certified by an individual who is authorized to act for the registrant and legally accountable for its accuracy.

Because of these requirements, online reporting systems such as DEQ's Your DEQ Online (YDO) and EPA's NetDMR restrict accounts to individual users, not companies or organizations. It is worth noting that a permit registrant may have multiple Responsible Officials (ROs) within YDO, provided each meets the signatory criteria in 40 CFR §122.22. Businesses may also assign employees or contractors the "consultant" role to prepare and upload permit documents in YDO; however, the RO must complete the final submittal and electronic signature step.

DEQ will delete reference to the RO in this permit section to eliminate confusion.

Condition I.4:

Define a clear cutoff timeline for Common Plan of Development (CPD) to avoid indefinite linkage of projects. (Commentor ID# 1)

DEQ response:

DEQ has determined that establishing a fixed cutoff timeline for CPDs is not appropriate because the CPD framework focuses on project intent, approvals, design, and phasing, rather than the passage of time. Under 40 CFR 122.26(b)(14)(x) and (15)(i) and according to EPA's CPD guidance, separate construction activities remain part of the same CPD when they are connected by a shared plan, approval, design, or logical sequence of development, regardless of how many months or years pass between phases. DEQ will continue to make determinations on a case-by-case basis when evaluating CPD applicability.

4.3 Application/transfer/renewal/termination

Condition I.4:

Several commentors requested that DEQ commit to maximum review time frame for permit applications. One commentor specified that if applications must be submitted 30 days before construction, DEQ should commit to a 30-day review turnaround. (Commentor IDs# 1 and 7)

DEQ response: The requirement for applicants to submit materials at least 30 days before construction ensures that DEQ has sufficient time to conduct a complete and thorough review, which may vary depending on project complexity, required coordination with other programs, and the need for additional information from the applicant. DEQ makes every effort to process applications promptly and routinely completes reviews within this timeframe; however, adding a fixed review deadline in the permit could compromise the quality of technical review and/or result in approval of deficient application packages. For these reasons, DEQ will retain the existing application timing requirement without adding a reciprocal review timeline.

Limitations of coverage/condition 1.4.d:

Several commentors expressed concern that the permit appears to require applicants to obtain or "resolve" DSL Removal-Fill permits, Army Corps authorizations, and DEQ 401 water quality certifications before receiving 1200-C coverage, stating that these permits are independent, and that 1200-C authorization should not be delayed for upland work while other in-water approvals are pending. They also requested clarification on what "resolve"

means in this context and sought clear definitions of "wetland/stream delineation", including whether DEQ is requiring DSL-approved delineations. One commenter requested that the permit specify a delineation resource that will be used as decisive authority to prevent "opinion-based enforcement" by DEQ. One commenter emphasized that requiring formal DSL-approved delineations for all projects would be cost-prohibitive and outside the scope of the 1200-C program and requested clarity or exemptions for projects that would not otherwise trigger delineation or in-water permitting requirements. (Commentor IDs# 1, 4, 10, 11, 14)

DEQ response:

DEQ is not requiring applicants to obtain a DSL wetland delineation concurrence solely for the purpose of depicting waters of the state on the ESCP or determining natural buffer zone distances, nor is DEQ utilizing or establishing any separate delineation standard for "opinion-based enforcement".

Applicants should submit a valid DSL concurrence letter with the 1200-C application package if the approval has already been obtained. If no DSL concurrence has been obtained, DEQ expects applicants to provide site assessments or surveys prepared by qualified professionals to identify and depict wetlands and waters of the state in the ESCP.

Accurate delineation performed in accordance with standard professional methods is particularly important for implementing the natural buffer zone requirements in Appendix B. Determining the buffer width requires identifying the actual limits of waters of the state, including the upland/wetland boundary, top of bank, and ordinary high-water line (OHWL). Consultants sometimes identify only a "centerline" of a stream, but this does not capture the actual boundary and will not identify fringing wetlands or other adjacent waters. ESCPs are drawn to a scale that requires this level of detail, especially in situations where no buffer is proposed, and construction occurs up to (but not into) the wetland or water boundary. The permit does not authorize applicants to estimate the location of waters of the state; it requires accurate identification so the buffer can be measured, and protective conditions applied. As such, desktop resources such as NWI or Wetland Inventory maps alone are not acceptable. This expectation is consistent with prior 1200-C permits and reflects the need to accurately identify all waters of the state.

DEQ notes that delineations that follow established methods do not necessarily incur "tens of thousands of dollars" and that DEQ routinely accepts delineations that have not undergone DSL concurrence, provided they are prepared consistent with professional industry standards.

For projects that will impact wetlands or waters, applicants must include in the 1200-C application the applicable Removal-Fill authorizations from DSL, federal Section 404 permits from the U.S. Army Corps of Engineers, and any associated DEQ 401 Water Quality Certifications. DEQ has broad authority to require this documentation as part of the 1200-C application, and Section 2.3 of the Permit Evaluation Report explains both the legal basis and the practical need for this information to support review of projects with natural buffer zone applicability or in-water work components.

Condition I.5:

Allow increases in disturbance areas if included in original Land Use Compatibility Statement (LUCS) and covered by the permit; the current prohibition is overly restrictive. (Commentor ID# 1)

DEQ response:

The LUCS establishes land use compatibility but does not replace DEQ's obligation to evaluate the full disturbance area or scope for permit coverage. DEQ does not have a review mechanism to evaluate project size increases or scope changes, such as additional phases or construction stages, after coverage has been issued. In very limited circumstances, DEQ may authorize minor increases in disturbance on a case-by-case basis (e.g., adding a small staging area or unanticipated utility connection work within the right-of-way) provided the proposed expansion is minimal and does not increase the project's overall risk profile (for example, expansion into the natural buffer). For expansions outside these limited approvable circumstances, applicants must submit a revised application with updated project information. DEQ will retain this current prohibition regarding project expansions as written.

Condition I.5:

For multi-phase developments, the permit states “Any new phases added after initial permit coverage is assigned will require separate 1200-C permit approval.” What if separate phase or additional adjacent area is less than one acre? (Commentor ID# 10)

DEQ response:

That work is considered part of the common plan of development and requires 1200-C permit coverage.

Condition I.6:

Since DEQ requires applicants to utilize the YDO electronic reporting system, and the 1200-C Permit and YDO demand the submittal of all the required documents and payments, the 14-calendar day review period should begin after successful submittal of all the required documents and the correct Permit payments or fees via the YDO. Otherwise, Condition I.6 inappropriately affords DEQ a very loose timeframe by which to determine if the application and ESCP is complete. Therefore, we request that Condition I.6 be modified as follows:

Applications for construction activities that disturb five acres, or more are subject to a fourteen (14) calendar day public review and comment period prior to issuance of Permit coverage. This review period begins upon the submittal of the required documents and payment ~~DEQ’s determination that the application and ESCP are complete~~ and upon issuance of the public notice." (Commentor ID# 7)

DEQ response:

It is inappropriate to post potentially deficient application packages on public notice as it does not allow for the public to review or comment on the project as intended.

Condition I.8:

Regarding changes to application information, "minor modifications" remains undefined. Could this be a "minor phase"? (Commentor ID# 10)

DEQ response:

Clarification on “minor modifications” is included in section 3.3 of the PER.

Condition I.9:

Wildwood suggests allowing additional types of partial permit transfers other than those allowed under the 1200-C Permit for Small Lots. Large linear construction projects often cross properties owned by several landowners, including government agencies (e.g. USFS, BLM), and these owners often have site-specific restoration requirements beyond what is required under NPDES/1200-C Permit (e.g. specific landscaping or site enhancement requirements), or they wish to perform additional work on their property that is separate from the linear construction activity. In these cases, it would be useful to allow the original permittee to transfer a portion of a permitted project to other responsible parties, similar to what is allowed under the current WA Dept of Ecology CGP. The current permittee would indicate the remaining permitted acreage they are responsible for after the transfer and would update all applicable documents to reflect the revised acreage. (Commentor ID# 8)

DEQ response:

The 1200-C permit does not prohibit “partial transfers”, and DEQ has routinely facilitated these in practice for linear projects and other multi-operator sites. In this context, the term “transfer” is referring to the intent to transfer responsibility of a portion of the permitted site, but in practice this process does not follow the typical permit transfer process as outlined in Condition I.9. When “partial transfers” occur, the new operator must apply for separate permit coverage per Condition I.4 and indicate in the application and ESCP that the project area is already covered under existing 1200-C registration, including the original permit/PLC number. After DEQ approves coverage for the new operator, the current registrant must update its ESCP to reflect the remaining permitted area after the transfer. Partial transfers may be made to multiple operators under this process. Transfers do not require public notice unless the scope of construction activities changes from the original application. DEQ

will not revise the permit because the administrative mechanism to complete partial transfers already exists and is sufficient for implementation.

DEQ notes that it has published a fact sheet addressing transfers for small lots, and similar principles apply to partial transfers in these linear-project or multi-operator scenarios.

Condition I.9:

The requirement to submit the transfer form 14 calendar days prior to a transfer is a difficult timeline for the current registrant to achieve, as the actual closing date of most transactions is unknown or variable. Therefore, we request that Condition I.9.a.iii be modified as follows:

Submit transfer form and applicable fee within 14 calendar days ~~prior to~~ <u>of</u> the ~~planned~~ transfer." (Commentor ID# 7)

DEQ response:

DEQ has reviewed the comment and agrees to revise permit language. To ensure continuity of permit coverage while allowing greater flexibility, DEQ will revise the condition to require that the transfer form be submitted *within 14 calendar days* of the transfer rather than 14 days in advance. This change maintains DEQ's ability to update permit records promptly while better aligning with real-world property transfer processes and timelines.

Condition I.10:

Discharge authorization under this general permit terminates when DEQ provides confirmation of permit coverage termination.

Comment: Sometimes termination confirmation is never received. This should be a specific time frame, ex. Authorization under this general permit terminates when DEQ provides confirmation of permit coverage termination or within 10 days if no confirmation is given." (Commentor ID# 1, 4)

DEQ response:

DEQ has determined that it is not appropriate to establish automatic termination after a set number of days without confirmation that a site meets all termination criteria. An affirmative DEQ determination is necessary to ensure that stabilization has been achieved, and that coverage does not end prematurely while risks of discharge remain.

DEQ acknowledges that delays in issuing termination confirmations can create uncertainty for registrants and is committed to improving internal processes to ensure timely reviews. Registrants can also help expedite processing by submitting complete and accurate termination materials, including all required supporting documentation demonstrating stabilization and compliance with Schedule A.17. Clear, complete submittals reduce the need for additional technical staff review and follow-up with registrants, allowing to DEQ finalize terminations more quickly.

Condition I.10:

Clarify whether an applicant is allowed to submit a notice of termination when out of compliance or under active enforcement. Clarify what status needs to be (e.g. resolved). (Commentor ID# 10)

DEQ response:

Previous iterations of the 1200-C permit required that enforcement actions be fully resolved prior to approval of termination. DEQ determined that this approach was not practical because some enforcement cases, particularly complex or contested matters, can take a year or more to resolve. Legal proceedings may extend well beyond the completion of construction, resulting in unnecessary annual fees and prolonged permit obligations despite the site meeting final stabilization requirements.

Rather than requiring a status of "resolved," DEQ will make termination determinations on a case-by-case basis informed by the status of the compliance or enforcement issue. If a site meets all termination criteria and is making meaningful progress toward resolving an enforcement action, DEQ will approve termination. Conversely,

if DEQ has information through an ongoing enforcement case indicating continued noncompliance or a risk of discharge, DEQ may require coverage to remain in place until those risks are mitigated.

For these reasons, the permit does not specify that an enforcement case must be "resolved," which provides necessary discretion to evaluate termination eligibility based on site-specific conditions and compliance status.

Condition I.11:

Will proof of pre-construction requirements be required on existing projects with permit coverage? (Commentor ID# 1)

DEQ response:

No. DEQ has clarified this in Schedule A.2.a

Condition I.11/Schedule A.3:

Address how the new Natural Buffer Zone (NBZ) requirements apply to projects already underway at the time of permit issuance (grandfathering). (Commentor ID# 1)

DEQ response:

For permit registrants that received permit coverage prior to December 14, 2025, the previously approved NBZ erosion and sediment controls are deemed appropriate. DEQ has clarified this in Schedule A.3.

Condition I.12:

Registrants "must use YDO when directed to do so" in Agent areas. This creates unnecessary inconsistency, and its removal is recommended. (Commentor ID# 1)

DEQ response:

The existing language is appropriate to ensure statewide consistency in permit records, compliance tracking, and data management. The phrase "use YDO when directed to do so" reflects operational realities and provides the necessary flexibility for DEQ and Agents to route specific actions through YDO when required by state procedures or system functionality.

4.4 Authorized & prohibited discharges

Condition I.14:

Replace vague reference to "front page" with a specific section citation or definition within this section. (Commentor ID# 1)

DEQ response:

DEQ has replaced "front page" to "cover page." This is the most accurate way to direct readers to the comprehensive description of constructions activities regulated by this permit.

Condition I.14:

Clarify whether chlorinated potable water is considered "uncontaminated." (Commentor ID# 1)

DEQ response:

DEQ clarifies that potable water is not automatically considered "uncontaminated" for purposes of authorized non-stormwater discharges. While potable water is generally low-risk, chlorine residuals can be harmful to aquatic life and must be managed to ensure that discharges do not violate Oregon water quality standards for aquatic life (OAR 340-041-8033).

Condition I.14:

Pavement wash water clarification is positive—confirm this applies universally (Commentor ID# 1)

DEQ response:

DEQ confirms that the clarification regarding pavement wash water applies universally across all 1200-C permitted construction sites, provided the wash water meets all conditions listed in this provision (free of soaps, solvents, toxic or hazardous materials, routed to sediment trap, etc.).

Condition I.14:

Define "Hydro-demolition water," and distinguish it from concrete washout requirements. (Commentor ID# 1)

DEQ response:

Hydro-demolition (also referred to as hydro blasting or water jetting) utilizes high pressure water to remove concrete, asphalt, and grout. The resulting water typically contains elevated pH, fine concrete particulates, and dissolved constituents, and must therefore be managed as a process wastewater. Concrete washout requirements apply to managing leftover concrete, slurry, and equipment reinstate from concrete installation activities; concrete washout is generated intermittently and at relatively low volumes. In contrast, hydro-demolition generates a continuous, high volume wastewater stream that requires strategic containment, collection, and appropriate disposal or treatment to prevent discharges to waters of the state. Both hydro-demolition water and concrete washout are standard construction industry terms, and DEQ does not see a need to add a specific definition to Schedule D.

4.5 Natural buffer zone

Schedule A.3:

Expanding the NBZ to 125 feet may constitute a taking of usable property without compensation. (Commentor ID# 1)

DEQ response:

The permit does not universally expand the Natural Buffer Zone (NBZ) to 125 feet but rather requires that an alternative buffer be calculated when a project is located within 125 feet of receiving waters that are impaired for turbidity or sedimentation. Regardless of buffer width, the NBZ condition does not create a no-build zone or restrict permissible land uses. Rather, it specifies performance-based erosion and sediment control measures to minimize the potential for sediment discharge from construction activities occurring near surface waters.

Schedule A.3:

"The registrant must identify and maintain natural buffers and/or enhanced erosion and sediment controls for discharges to any receiving water that is located within 50 feet of construction activity. Registrants must select one of the compliance options listed below and comply with the additional conditions contained in Appendix B."
Comment: Replace "for discharges" to "along"

(Commenter ID# 4)

DEQ response:

DEQ determined that the existing phrase "for discharges" is appropriate and will be retained. The Natural Buffer Zone requirement is tied to the discharge pathway, specifically, stormwater leaving the construction site and reaching a receiving water within 50 feet.

Schedule A.3.c:

Compliance Option 3: If infeasible to maintain an undisturbed natural buffer of any size, stormwater must be collected and treated prior to discharge.
Comment: Collection and treatment of stormwater should not be required if the sheet flow or discharge over the buffer-less area is clear. Only the collection and treatment of turbid water should be required.

(Commenter ID# 4)

DEQ response:

DEQ partly agrees with this comment. DEQ determined that treatment is required whenever a natural buffer cannot be maintained because the buffer itself is a preventative control measure intended to reduce erosion, filter sediment, and minimize pollutant transport before runoff reaches a receiving water. When the buffer is absent, capture and treatment serve as a functionally equivalent protective measure. Waiting until runoff appears turbid before implementing treatment would undermine the preventative intent of Compliance Option 3 and allow uncontrolled runoff conditions to develop. Therefore, registrants must have a capture and treatment approach in place, regardless of momentary instances of visual clarity, which can vary rapidly with changing rainfall intensity, soil disturbance, or BMP performance.

However, DEQ acknowledges that there may be *limited* circumstances in which discharges are genuinely clear and do not require treatment (for example, all work areas are temporarily stabilized with anchored plastic sheeting, or project is in the final stabilization stage, etc.). Accordingly, DEQ has added the following allowance to Appendix B: "Treatment is not required when there are no exposed soils upgradient and within the encroached buffer and construction stormwater is visually clear, free of sediment or other pollutants, and meets the water quality standard for turbidity." In practice, this exception will apply only rarely, as active construction sites seldom generate clear, non-turbid stormwater. DEQ will retain the language as is in Schedule A.3.c because a capture and treatment approach remain necessary when this allowance is not applicable.

Appendix B.3.

Compliance options 2 and 3 require a Professional Engineer stamp on Erosion and Sediment Control Plans (ESCPs)."
Comment: Please revise to include Certified Professional in Erosion and Sediment Control (CPESC), PE, and Registered Landscape Architect (RLA) as stated in schedule A.21.e.

(Commenter ID# 4 and 10)

DEQ response:

DEQ has accepted this revision.

Appendix B.7.a.:

At a minimum, rational must include range of particle sizes to be intercepted and trapped by controls. Comment: Particle size evaluation is an academic exercise as it pertains to selecting BMPs and will serve no practical purpose. Understanding of the soil type, e.g. sand, silt, clay, loam, is more important for BMP selection, though related to particle size.

(Commenter ID# 4)

DEQ response:

DEQ clarifies that this comment refers to Natural Buffer Zone (NBZ) Compliance Option 2, which requires redundant perimeter controls and a rationale for BMP selection, including the range of particle sizes the controls are designed to intercept. This requirement is also consistent with Schedule A.1.c, which directs registrants to account for soil particle size when designing stormwater controls, in alignment with the federal Construction and Development Rule at 40 CFR 450.21(a)(5).

Considering particle size is a standard and practical design step that ensures BMPs are capable of intercepting and treating the types of sediment expected on the site, an especially important factor when perimeter controls are placed in close proximity to receiving waters. DEQ does not expect a detailed laboratory analysis; commonly available information on site soils (e.g., clay, silt, loam, sand) is sufficient to characterize the expected particle size range and support BMP selection. (Please note: many construction projects already rely on geotechnical reports for building and utility design, and these reports typically provide excellent site-specific soil data that can be used to satisfy this requirement.)

Requiring this rationale supports defensible design documentation and helps both registrants and DEQ verify that controls are technically appropriate. For these reasons, DEQ will retain the existing requirement.

Appendix B.7.a.iv:

Other substantially equivalent sediment or turbidity BMP approved by DEQ. Straw wattles are not considered substantially equivalent for redundant perimeter controls.

Comment: Suggest defining substantially equivalent BMP as a BMP that can retain water.

(Commenter ID# 4)

DEQ response:

DEQ determined that defining "substantially equivalent BMP" solely as a BMP that can retain water is too limiting and does not reflect the range of controls that may provide performance comparable to the redundant perimeter controls required under NBZ Compliance Option 2. The intent of the "substantially equivalent" provision is to allow flexibility for BMPs that can reliably interceptor filter sediment-laden runoff based on site conditions and best professional judgment. DEQ will retain existing language.

Appendix B.8.d:

Compliance Option 3 states: Treated stormwater discharges must be visually clear, free of sediment, and must meet the water quality standard for turbidity. Comment: Oregon's turbidity criterion would likely be considered as an ambient receiving water standard. Conditioning Permit compliance on ambient standards is likely an impermissible "end result" requirement, consistent with the Supreme Court's decision in City and County of San Francisco v. EPA. The Supreme explained that § 1311(b)(1)(C) authorizes the Permitting authority to impose "limitations" that set out concrete measures a Permittee must take to implement and meet water quality objectives, not to declare that a Permittee must ensure an ambient result, specifically stating: "A "limitation" is a "restriction…imposed from without," not an end-result requirement leaving Permittees to determine necessary steps." Therefore, we request the following addition: *Treated stormwater discharges must be visually clear, free of sediment, and must meet the water quality standard for turbidity* <u>*at the discharge point.*</u> - (Commentor ID# 7)

DEQ response:

Appendix B.8.d does not impose an impermissible requirement. The requirement that treated discharge be "visually clear, free of sediment, and meet the water quality standard for turbidity" functions within the framework of specific, concrete, operational conditions established in the permit. These conditions constitute the enforceable "limitations" of 40 CFR 122.44(d)(1). Appendix B.8 (and the permit in general) provides these actionable requirements by specifying design and operation criteria for treatment systems, required BMP installation, inspection, and maintenance standards, inspection and corrective action triggers, etc. When these measures are adequately implemented, the resulting discharge is expected to meet Oregon's water-quality standards at the point of discharge and within ambient receiving waters.

After reviewing this comment, DEQ determined it may be beneficial to revise the condition to clarify how the turbidity standard applies. DEQ will therefore revise the sentence to: "Treated stormwater discharges must be visually clear and free of sediment at the discharge point and must meet <u>the in-stream water quality standard for turbidity if upstream and downstream measurements are feasible</u>." This revision clarifies that compliance with Oregon's 10% turbidity criterion cannot be determined solely by an end-of-pipe reading; it requires comparison of upstream and downstream turbidity when feasible.

The Supreme Court's holding in *City & County of San Francisco v. EPA* addressed a broad "catch all" prohibition that was different and is distinguishable from the permit language referenced in the comment. Additionally, while DEQ implements the NPDES program in Oregon it issues permits based on the authority granted under Oregon state law so any analysis of authority for permit conditions would have to consider state law. Oregon's turbidity standard was properly adopted based on state law authority.

4.6 Inspections & frequency options

Schedule B.1:

The requirement to have a maximum of three inspectors is not feasible on projects with extended timelines. Projects that span multiple years will often encounter staff turnover within the company. If there is a primary

inspector, dictating the number of supplemental inspectors used for coverage is unnecessary and potential jurisdictional overreach. Schedule B.1 also implies that a primary inspector may not take time off beyond six days. Again, this level of control is not feasible, or appropriate.

(Commenter ID# 1)

DEQ response:

The intent of identifying a primary inspector and a limited number of supplemental inspectors is to promote clear accountability and avoid confusion about who holds responsibility for inspection oversight. Projects may change their primary or supplemental designated inspectors at any time by submitting an ESCP revision; however, DEQ notes that maintaining inspector continuity is strongly correlated with positive compliance outcomes. The three-inspector limit applies only to the number of individuals designated at one time, not over the entire duration of the project. This prevents confusion during DEQ compliance evaluations and avoids situations in which numerous individuals are nominally responsible for inspections without clear assignment. Schedule B.1 also does not prohibit inspectors from taking leave.

Schedule B.2:

Option 1: seven calendar days: The permit should revise the inspection frequency language from “seven calendar days” to “once weekly.” This revision would preserve the intended inspection frequency while allowing limited scheduling flexibility for holidays, illness, and temporary site inaccessibility. Adopting a “once weekly” standard would improve practicality and consistency without reducing compliance oversight or permit effectiveness. (Commenter ID# 1)

DEQ response:

DEQ reviewed this comment and determined that retaining the “seven calendar days” standard is necessary for consistent statewide implementation. A “once weekly” requirement is inherently more variable and could result in inspection intervals up to eleven days apart if an inspection occurs on a Monday one week and a Friday the next. The permit already provides flexibility by offering two inspection frequency options and allowing up to three designated inspectors at a given time. In addition, Schedule B.5 allows for missed or limited-scope inspections when portions of the site are temporarily unsafe or inaccessible, provided adequate documentation is generated. For these reasons, DEQ will retain “seven calendar days” in this inspection frequency option.

Schedule B.2.

“If the required 24-hour window falls entirely outside normal working hours (i.e. no work is being conducted on site), the inspection must be completed by the end of the next business day.”
Comment: Realistically, if a rain event begins on Friday afternoon but does not reach 0.25” until after close of business, the inspection will occur on the following Monday.

(Commenter ID# 4)

DEQ response:

DEQ clarifies that the 24-hour inspection window is measured from midnight to midnight. If a forecast indicates that 0.25 inches of rain is expected on a Friday, an inspection must be conducted during normal working hours that day, even if the rainfall threshold is not reached until after close of business (and no work is planned for Saturday). This ensures that BMPs are appropriately installed, maintained, and functioning in advance of the anticipated storm event. For these reasons, no permit change is necessary.

Schedule B.2:

This section outlines inspection frequency regarding storm/snowmelt triggers. We request limited flexibility for consecutive storm days when conditions are unsafe or access is infeasible, the inspection may occur on the next business day with documentation in the report. We also request frequency adjustments per project upon notice. We request Schedule B.2 should be modified as follows:

The selected frequency must be identified in the ESCP and inspection reports and maintained for the duration of Permit coverage.

a. Inspection frequency option 1: At least once every seven (7) calendar days; or

b. Inspection frequency option 2: Once every 14 calendar days and within ~~24 hours~~ the next business day of:

i. A storm event that produces 0.25 inches or more of rain within a 24-hour period…

Inspection Frequency Selection:

Registrants may not switch inspection frequencies after DEQ issues Permit coverage. DEQ may consider requests to switch inspection frequencies ~~on a very limited case-by-case basis~~ provided the registrant submits a written request with clear justification…

(Commentor ID# 7)

DEQ response:

Schedule B.5.h already provides flexibility for unsafe conditions are when access is infeasible, allowing inspectors to document the specific reasons and locations that cannot be inspected and to complete a follow-up inspection as soon as conditions allow. The permit's timing requirements also already align with the commenter's request: "within 24 hours" and "by the end of the next business day" function equivalently where the 24-hour window falls entirely outside normal working hours. When a triggering storm event is forecasted for a Friday, the inspection can be performed that same day, meeting the required frequency. Regarding the request to allow switching between inspection frequencies, DEQ directs the commenter to Section 5.2.3 of the Permit Evaluation Report, which explains the regulatory and implementation rationale for restrictions on switching. To avoid potential misunderstanding, DEQ has removed language from the permit that could be read to suggest that switching inspection frequencies is allowed.

Schedule B.2:

I suggest adding a stipulation to the inspection frequency (Schedule B, item 2) that allows for once per month inspections during the dry season. Without active rainfall, the possibility for site discharge and transferred pollution is greatly diminished.

DEQ response:

DEQ determined that maintaining the existing inspection frequencies in Schedule B is necessary to ensure consistent oversight and compliance throughout the year. Track-out, wind erosion, and non-stormwater discharges occur during dry conditions, creating potential for pollutant transport. Further, there is no formal statewide established "dry season" so retaining the existing frequency ensures uniform statewide implementation.

Schedule B.4:

Why include date stamped photos of "no discharge" when inspection frequency is not related to discharge when utilizing Option 1 inspection frequency? This is an irrelevant and arbitrary requirement.

(Commenter ID# 1)

DEQ response:

DEQ clarifies that the commenter is referring to the requirement to document whether a discharge occurred within 24 hours of a 0.25-inch storm event. DEQ agrees that this observation is only relevant for sites using Option 2, the rainfall-triggered inspection approach, and has revised the permit to limit this requirement to registrants selecting Option 2.

Schedule B.5.e.iv:

Visual observations of discharge example words are poor choices. "Turbid" is a term that covers the range of opacity. The term "sheen" is a noun, not an adjective. A description of the presence of a sheen would be more appropriate.

(Commenter ID# 1)

DEQ response:

DEQ response: DEQ reviewed this comment and determined that the terminology used in Schedule B.5.e.iv is appropriate and consistent with the inspection requirements in Schedule B.4.e.ii, which direct inspectors to "document the visual quality of the discharge and take note of characteristics of the stormwater discharge, including turbidity, color, odor, suspended solids, foam, oil sheen, and any other indicators of stormwater pollutants." The terms listed in Schedule B.5.e.iv are intentionally simplified for readability and reflect standard descriptors used in stormwater inspections. Therefore, DEQ finds the existing language clear and functional and does not consider revisions necessary.

Schedule B.5:

Several commentors requested that DEQ retain the current 48-hour timeframe for completing inspection reports rather than reducing it to 24 hours, noting that inspectors often visit multiple or large sites each day, that linear projects can take several hours to inspect, and that travel time to and from remote sites can further limit an inspector's ability to prepare detailed reports and obtain Primary Inspector review and signature within a 24-hour window. - (Commentor IDs# 8 and 13)

DEQ response:

The 24-hour inspection report completion timeframe is necessary to ensure timely documentation of site conditions, BMP performance, and any necessary corrective actions identified during inspections. Inspection reports serve as the primary record of site compliance, and delays in documenting observations can result in incomplete or inaccurate information, particularly following storm events when discharges and BMP failures are most likely. The 24-hour timeframe aligns inspection reporting with corrective action timelines in Schedule A.25, which require deficiencies to be documented and addressed promptly. Please note that the 24-hour requirement applies to documenting *that inspection has occurred*, not to completing all follow-up actions.

DEQ acknowledges that the Primary Inspector may not always be available to sign the report within the same 24-hour period and has revised to the permit to allows three (3) business days for signature. Further, DEQ clarified that the purpose of the Primary Inspector signature "to ensure the report contents meet the requirements in Schedules B.4 and B.5.", rather than verification of "adequate implementation of the ESCP over the course of the construction project."

Schedule B.8:

DEQ should define reasonable times. While unannounced inspections are permitted under ORS 468.095, requiring Agents to comply with site safety protocols (including scheduling when necessary for access and escort) would balance DEQ's inspection rights with workplace safety obligations.

(Commenter ID# 1)

DEQ response:

DEQ has determined that defining "reasonable times" in the permit is not necessary. DEQ and Agents comply with site-specific safety and access protocols, including coordinating check-in or escort procedures, but such coordination does not restrict DEQ's authority to conduct unannounced inspections. For these reasons, no permit change is necessary.

4.7 Inspector qualifications & training

Schedule B.1:

Mandating specific third-party certifications (CESSWI, CPESC, etc.) could be seen as an unfunded mandate. DEQ may also lack authority to prescribe inspector employment qualifications beyond "qualified inspector." (Commentor ID# 1)

DEQ response:

DEQ reviewed this comment and determined that it has clear authority to establish inspector qualification requirements as part of the permit's enforceable conditions. Additionally, this is not an unfunded mandate under Oregon law as the requirement to obtain a 1200-C permit predates 1997 the Unfunded Mandate Act and is also a requirement of federal law.

Schedule B.1:

Several commentors requested that DEQ add Professional Engineering (PE) accreditation to be an allowable certification for being a Designated Erosion and Sediment Control inspector and to certify inspection reports. (Commentor IDs# 2, 3, 12)

DEQ response:

DEQ agrees in part with this comment. The permit has been revised to specify that licensed Professional Engineers (PEs) may perform inspections, but only if they possess experience and knowledge in erosion and sediment control practices. This distinction is necessary because PEs are not universally educated or trained on the subject, and automatic acceptance as an inspector qualification based solely on licensure would not ensure consistent or adequate 1200-C oversight at construction projects.

Schedule B.1:

Please include the EPA Construction General Permit Inspector Training as another Certification for designated inspectors. - (Commentor ID# 14)

DEQ response:

DEQ reviewed this request and determined that the EPA CGP Inspector Training will not be added as an approved certification for designated inspectors. The EPA training provides general awareness-level instruction intended to introduce the federal CGP framework; however, it is not as comprehensive or rigorous as the certification programs currently included in the permit.

Schedule B.5:

Clarify what the primary inspector is attesting to by signing the report? That they have reviewed it? There is specific language certifying trueness, accuracy, and completeness that cannot be certified directly if the primary inspector is signing the report without being on-site.

(Commenter ID# 1)

DEQ response:

DEQ agrees with this comment and has revised the language from "to verify adequate implementation of the ESCP over the course of the construction project" to "report contents meet the requirements in Schedules B.4 and B.5."

4.8 TBELs/WQBELs

Schedule A.1:

Specify references for "recognized, generally accepted engineering and professional practices"—cite BMP manuals, Oregon Dept of Transportation (ODOT), American Public Works Association (APWA) standards, or manufacturer specifications. - -(Commentor ID# 1)

DEQ response:

DEQ has determined that listing specific manuals or standards in the permit is not appropriate. The term "recognized, generally accepted engineering and professional practices" intentionally provides flexibility for registrants to select BMPs and design approaches that reflect current industry standards, site conditions, and technological advances without limiting compliance to a fixed set of documents. Referencing specific resources

could create unintended conflicts, quickly become outdated, or exclude new, innovative practices that meet or exceed the permit's performance standards.

Schedule A.1.m:

"Maintain controls at all times, and not only in response to inspections or identified problems."
Comment: The proposed requirement in Schedule A.1.m to "Maintain controls at all times…" is unrealistic, costly, and restrains the registrants to be solely focused on fixing and repairing stormwater controls at all times, rather than focus on the construction project for which they have applied for 1200-C Permit coverage. If DEQ desires all registrants to "Maintain controls at all times…", then there is no longer a need for routine and post-storm event inspections. We strongly request that Schedule A.1.m be modified back to the language in the current 1200-C Permit, Section 2.1.4 as follows:

- ~~*Maintain controls at all times, and not only in response to inspections or identified problems.*~~ *Ensure that all stormwater controls are maintained and remain effective during Permit coverage and are protected from activities that reduce their effectiveness.* - (Commenter ID# 7)

DEQ response:

DEQ determined that the requirement to "maintain controls at all times" is appropriate and meets federal technology-based effluent limitations under 40 CFR 450.21, which obligate registrants to ensure that erosion and sediment controls remain effective whenever they are needed to prevent the discharge of pollutants. The phrase does not require continuous, round-the-clock repair activities; rather, it establishes a performance expectation that BMPs must remain functional between inspections so that storm events or construction operations do not result in uncontrolled sediment discharges. DEQ will retain the existing Schedule A.1.m language.

Schedule A.2:

Clarify if pre-construction meeting requirements apply to third-party inspectors.

(Commentor ID# 1)

DEQ response:

Schedule A.2 requires the permit registrant to "conduct an on-site pre-construction meeting with key personnel, including the designated erosion and sediment control inspector(s)…" Third-party inspectors qualify as designated erosion and sediment control inspectors when they are contracted to perform the required inspections. Accordingly, they are required to attend the pre-construction meeting.

Schedule A.2:

Define "mark off." Is this in the ESCP, field markings, or both? - (Commentor ID# 1)

DEQ response:

DEQ clarifies that the requirement to "identify and clearly mark off" clearing limits, sensitive areas, buffers, and preserved trees applies both to the ESCP and to field implementation. Per Appendix C, these features must be depicted on ESCP plan sheets. Per Schedule A.2, these areas must be visibly marked in the field as a pre-construction task so that equipment operators, contractors, and inspectors can readily identify protected boundaries and prevent encroachment. The permit does not prescribe a specific marking method and allows the registrant to select an approach that is appropriate for the specific site, types of protected resources, and construction sequence. Examples of marking off include flagging, fencing, staking, paint, or other durable indicators. DEQ notes that the term "buffers" in this context refers both to required Natural Buffer Zones required under Schedule A.3 and to any voluntary protective buffers incorporated into the project design (e.g., mature trees selected for preservation, wildlife habitat areas, or other sensitive site features). DEQ has slightly revised Appendix C so that this language matches Schedule A.2; previously, Appendix C used more broad language regarding which sensitive features need to be depicted on the ESCP sheets.

Schedule A.5:

Clarify whether "10 ft" setback from inlets is a standard or is this provided as an example. - (Commentor ID# 1)

DEQ response:

The inclusion of "(e.g., 10 ft)" is intended as an example, not a fixed standard. The intent is to avoid locating construction access points or track-out controls directly on top of or too close to stormwater inlets, as vehicle and equipment traffic can damage inlet protection measures and reduce their effectiveness at capturing sediment, or generate excessive sediment loads that clog inlet protection and result in turbid bypass flows. Registrants retain flexibility to determine appropriate setbacks or protective measures based on site conditions, equipment needs, and traffic patterns, and must implement effective inlet protection when proximity cannot be avoided. If an access point must be located near an inlet due to site constraints, the stormwater inlet must be effectively protected or sealed during active construction, consistent with Schedule A.11 requirements.

Schedule A.5.d:

Regarding perimeter controls for linear construction sites, "other practices" remains undefined and/or without examples provided. - (Commentor ID# 10)

DEQ response:

DEQ determined that the phrase "other practices" is appropriate and intentionally flexible to accommodate the unique conditions present on linear construction sites, where conventional perimeter controls (e.g., silt fence, wattles) may not be feasible due to topography, right-of-way constraints, or safety and access requirements. "Other practices" may include administrative or operational controls, such as project sequencing to avoid wet-weather work, targeted/frequent street sweeping where space limitations preclude construction entrances, or grading adjustments to route stormwater toward the project interior, along with other BMPs that achieve the same functional objective of preventing sediment from leaving the project area. Because the range of feasible approaches is broad and site-specific, listing potential options in the permit is impractical, and DEQ has not encountered implementation issues with this terminology.

Schedule A.6e:

Requirement to cover sediment loads overlaps with Oregon Department of Transportation (ODOT) and local transportation authority jurisdiction; recommend removal or cross-reference instead. ODOT and local transportation codes (ORS 818.300 and ORS 818.310) already require loads to be secured and covered to prevent spilling onto highways. Enforcement traditionally falls under ODOT Motor Carrier, Oregon State Police, county sheriffs, and local police—not DEQ. The Draft 1200-C Construction Stormwater General Permit incorporates a requirement to cover or contain loads leaving the site as a stormwater BMP. This could be seen as duplicative regulation and jurisdictional overreach since transportation authorities already regulate and enforce load covering.

(Commentor ID# 1)

DEQ response:

DEQ acknowledges that load securing and covering requirements are regulated and enforced by ODOT, Oregon State Police, and local law enforcement. While transportation laws broadly address roadway safety and debris prevention, the 1200-C permit requirement serves a distinct purpose under state and federal law: to prevent the discharge of sediment and other pollutants from regulated construction activities to waters of the state. The permit requirement to cover or contain loads when leaving a construction site is best management practice (BMP) that helps ensure soil or sediment-laden material is not deposited on roadways where it can be mobilized by stormwater runoff.

The two regulatory frameworks operate independently and DEQ is not asserting authority over transportation safety or enforcement functions. Rather, the permit condition complements existing requirements and helps prevent sediment discharges to surfaces waters. Therefore, DEQ is retaining the condition, as it necessary to meet the permit's stormwater pollution control objectives and does not constitute jurisdictional overreach.

Schedule A.6e:

By definition, dirt being hauled by a truck would not be sediment. Is it the intent of the 1200-C that all dirt hauled off the site should be covered? This is not necessary, most soil (unless very dry and loose) does not require a cover and will not blow out of the truck. - (Commentor ID# 4)

DEQ response:

DEQ agrees that this condition should be clarified to refer to "sediment-containing loads" for accuracy. These loads include soil, aggregate, demolition debris containing fines, sediment-laden vegetation such as root balls, and other construction-related materials or wastes that can deposit sediment on roadways and be mobilized by stormwater runoff. In practice, DEQ has observed significant sediment deposition on public roads associated with construction off-hauling activities, and these situations are a frequent source of pollution complaints submitted to the agency.

Schedule A.6.h:

This section states: "iii. Hosing or sweeping tracked-out sediment into any stormwater conveyance, storm drain inlet, or water of the state is prohibited."

Comment: The draft 1200-C Permit should be aligned with the EPA's CGP allowable non-stormwater discharges. We request that Schedule A.6.h be modified as follows:

iii. Hosing or sweeping tracked-out sediment into any stormwater conveyance, storm drain inlet, or water of the state is prohibited, unless the feature is connected to a sediment basin, sediment trap, or similarly effective control. - (Commentor ID# 7)

DEQ response:

The proposed addition to this condition derives from the EPA CGP's allowable non-stormwater discharge provision (Section 1.2.2), which allows pavement wash water to enter a conveyance only when that conveyance is connected to a sediment basin, sediment trap, or similarly effective control. However, DEQ does not interpret this allowance as authorizing the intentional washing or sweeping of tracked-out sediment into storm drains. The cited CGP section pertains to pavement wash waters generally and expressly limits the allowance to uncontaminated, non-turbid discharges, which do not include sediment-laden wash water. Moreover, the CGP section specific to sediment track-out (Section 2.2.4) contains no such exception and requires preventing track-out at the source.

DEQ determined that maintaining the existing prohibition in Schedule A.6.h is necessary to prevent the direct transport of sediment and other pollutants into stormwater conveyances and surface waters. Allowing intentional washing of sediment into conveyances, even when downstream controls exist, would reduce the treatment capacity and functional life of sediment basins, traps, or similar controls. The permit already provides flexibility for managing track-out through containment and removal through dry sweeping or vacuuming methods.

Schedule A.7:

Numerous similar comments were submitted regarding stockpile management, and the following is a summary of those comments:

Several of the stockpile and material management requirements in Schedule A.7 need clarification and additional flexibility. Where the permit states that "piles must not be located on or adjacent to stormwater conveyances," the permit should specify a proximity distance. For the requirement that "stockpiles must be covered at the end of each workday," the permit should clarify which types of stockpiles this applies to (e.g., soil stockpiles) and provide an exemption for stockpiles placed within basins or areas where stormwater cannot discharge. The commenter also recommends retaining the existing permit language that allows stabilization or covering "based on weather forecasts," because covering every stockpile daily is often not practicable.

The reference to "clean" stockpiled material not requiring stabilization may unintentionally broaden enforcement to include all crushed aggregate. While down-gradient controls are appropriate for aggregate piles, requiring plastic covers is excessive and can create additional environmental impacts. Similarly, the language in Schedule A.7.e allowing plastic sheeting as a general method for covering stockpiles should be reconsidered; plastic tarps

are frequently ineffective (e.g., blowing off piles) and create substantial waste. Plastic may be appropriate only in limited, sensitive circumstances.

Finally, the permit should include a stabilization timeline consistent with Schedule A,16. The commenter recommends: “Stockpiles where construction activities have permanently ceased or will be temporarily inactive for 14 or more calendar days must immediately initiate stabilization measures and complete them as soon as practicable, but no later than 14 days after initiation.” - (Commenter ID#s 1, 4)

DEQ response:

The requirement for stockpiles not being located “on or adjacent to stormwater conveyances” is intended to prevent direct sediment loading into inlets, ditches, and other conveyances. Registrants must locate stockpiles far enough from these features to ensure that any sloughing or erosion is fully contained within the immediate storage area and does not result in material entering the stormwater system. The permit does not prescribe a fixed setback distance to preserve flexibility for varied site conditions.

Regarding the requirement that “stockpiles must be covered at the end of each workday,” DEQ is retaining the performance-based approach because unprotected stockpiles are a significant potential source of sediment. Excavated or imported materials are often unconsolidated and can slough or fail, and minimizing rainfall impact on stockpiles is a practical and well-established source control measure. While downgradient perimeter controls remain necessary, they function as a final line of defense to intercept dislodged sediment, not as a substitute for preventing sediment generation within the active construction footprint in the first place.

DEQ is not requiring the use of plastic to cover stockpiles; tarps or plastic sheeting are listed only as examples of potential cover materials. DEQ agrees that minimizing the use of plastic is consistent with broader environmental protection goals. However, DEQ cannot prohibit the use of a commonly used, industry-standard BMP that can be effective when properly sized, installed, and anchored. Registrants may choose alternative cover or stabilization materials that do not involve the use of plastic, such as jute or coconut-coir erosion matting, or hydroseed with tackifier.

In regard to the daily cover exemption for “clean” stockpiled material, this applies to materials such as washed aggregate, landscape rock, rip rap, and similar products when adequate downgradient controls are present. Stockpile materials containing fines, such as crushed aggregate, remain significant sources of sediment and require daily cover similar to soil stockpiles.

Finally, with respect to the recommendation for a 14-day stabilization timeline, DEQ notes that Schedule A.7 establishes management requirements for stockpiles, which present different risks than exposed soils associated with clearing, grading, or excavation. Schedule A.16 establishes 3-, 7-, and 14-day stabilization timelines for broader soil exposure areas, depending on risk (acreage, proximity to surface waters, and impairment status of receiving water). These distinctions are intentional and allow the permit to address the differing erosion and sediment risks associated with stockpiles versus other disturbed areas on construction sites.

Schedule A.8:

Discharges of dust are outside of the 1200-C scope unless it lands in the water and causes turbidity. - (Commentor ID# 4)

DEQ response:

DEQ acknowledges that airborne dust emissions are not regulated under the 1200-C permit. However, when dust generated by construction activities settles on surfaces and is subsequently mobilized by stormwater runoff, it becomes a pollutant discharge subject to the permit and Oregon water quality standards. This condition is limited to preventing or minimizing the generation of sediment and fine particulates that may enter stormwater conveyance systems or waters of the state. This approach is consistent with the 40 CFR 450.21 and the EPA CGP.

Schedule A.9:

For our primary line of work at airports, a 25% slope is a very common Federal Aviation Administration (FAA)-allowed maximum slope. Given that airport and non-airport projects will often have slopes exceeding the new

15% threshold, consideration is requested for provisions be included to forgo this requirement (Short slope run, large distance from property line boundary or body of water, etc.). (Commentor ID# 11)

DEQ response:

Slopes exceeding 15% have a substantially higher potential for rill and gully formation, sediment mobilization, and BMP failure during storm events, regardless of site type. The 15% threshold is consistent with established erosion and sediment control best practices and reflects the federal requirement to minimize erosion on steep slopes under 40 CFR 450.21(a)(4) and the EPA CGP. DEQ will not provide a blanket exemption from Schedule A.9 for airport sites.

Schedule A.11:

DEQ is requiring that catch basin inserts be cleaned before sediment retention capacity is reduced by 50 percent. Consider consistency with sediment barrier reduction in capacity. (Commentor ID# 10)

DEQ response:

The 50-percent threshold for catch basin inserts and 1/3 sediment fence accumulation height are consistent with industry standards and practices as well as BMP guidance published by EPA and other agencies.

Schedule A.11.e:

This section states: where there is evidence of sediment accumulation adjacent to the inlet protection measure, remove the sediment immediately and no later than the end of the same business day.

Comment: Again, DEQ's proposed change to Schedule A.11.e needs to align with EPA's CGP as well as the language in the current 1200-C Permit, Section 2.2.13.b. We request that Schedule A.11.e be modified as follows:

Where there is evidence of sediment accumulation adjacent to the inlet protection measure, remove the sediment ~~immediately and no later than~~ by the end of the same business day <u>in which it is found or by the end of the following business day if removal by the same business day is not feasible.</u>

(Commentor ID# 7)

DEQ response:

This is an objection based solely on the cost of compliance and requests alignment with federal CGP, which DEQ has authority to exceed. There is no legal or technical basis offered for this change. DEQ declines to make this change.

Schedule A.11.e:

The following statement, "evidence of sediment accumulation" is too broad of a statement and could be used to define minuscule amounts that have no bearing on the effectiveness of the control. Sediment accumulation is a good thing, if it is not excessive. Consider qualifying it by stating sediment accumulation that impacts the effectiveness of the control. (Commenter ID# 1)

DEQ response:

Schedule A.11.d already requires corrective action when sediment accumulation impacts the effectiveness of the control. The related requirement to remove accumulated sediment *adjacent to* inlet protection measures is intended to prevent that sediment from reaching the measures and compromising their performance. The intent is not to require corrective action for inconsequential or trace amounts of sediment. Inspectors should evaluate sediment accumulation in relation to the performance capacity of the BMP and, in general, should remove sediment when it is visibly noticeable and has the potential to compromise the inlet protection if dislodged by stormwater runoff. DEQ will retain this condition as written.

Schedule A.12:

This section outlines how the registrants should manage concrete wash water. However, DEQ has added proposed language pertaining to concrete and concrete waste.

Comment: DEQ's addition of subsections b. and d. to Schedule A.12 in the draft 1200-C Permit is confusing and is the antithesis to what should be regulated in a stormwater discharge Permit. DEQ incorrectly uses the terms concrete waste and concrete synonymous with concrete wash water. A potential pollutant, concrete wash water is correctly listed as a prohibited discharge in the draft 1200-C Permit. However, for DEQ to extrapolate that concrete and concrete waste are also pollutants that should be managed like concrete wash water is irrational. As discussed in above Comment No. 5, concrete is a predominant building product in the State, used in residential, commercial, industrial, and transportation construction projects. Therefore, we request the following portions be modified as follows:

Schedule A.12.b: Direct all concrete wash water ~~and concrete waste~~ into an impermeable, lined pit or leak-proof container designed so that no overflows can occur due to inadequate sizing or precipitation. Washout facilities must be cleaned, or new facilities must be constructed and ready for use, once the washout is 75% full. Wash water is to be handled as a waste.

Schedule A.12.d: Do not dump ~~concrete~~, concrete mix, or concrete wash water onto the ground.
(Commentor ID# 7)

DEQ response:

DEQ determined that the terminology in Schedule A.12 is appropriate and consistent with the intent of the NPDES construction stormwater program. Concrete wash water is a prohibited discharge due to its high pH and potential to violate water quality standards. Solid concrete waste materials must be managed as pollutant sources; when exposed to stormwater, fine particles, alkaline residue, or other contaminants can mobilize. The term "concrete waste" refers to broken pieces, fines, dust, slurry residues, or other byproducts generated during construction activities (which are often "dumped"), rather than intact, cured concrete building materials.

DEQ disagrees that the conditions in Schedule A.12 are irrational or contrary to stormwater regulation. Rather, they ensure that wastes generated during construction are managed to prevent discharge of pollutants to waters of the state.

Schedule A.12:

Lined pits cannot be practically loaded out without spilling. Consider prohibiting lined pits. (Commentor ID# 10)

DEQ response:

DEQ reviewed this comment and determined that prohibiting lined pits is not appropriate. Lined pits are commonly used and, when properly constructed and maintained, effectively prevent high-pH wash water from infiltrating to groundwater; specifying that pits must be lined is therefore an important distinction. DEQ acknowledges that lined pits require careful loading out, but the permit already requires operators to manage washout facilities to prevent spills. A range of alternative containment options, such as prefabricated bins, self-contained systems, or off-site disposal, are available if lined pits are not suitable for a given site.

Schedule A.12.c:

We request that Schedule A.12.c be modified as follows:

Locate washout activities a minimum of 50 feet from stormwater conveyance, storm drain inlet, or waters of the state, <u>unless infeasible.</u> (Commentor ID# 7)

DEQ response: DEQ determined that maintaining the minimum 50-foot setback in Schedule A.12.c is necessary to protect adjacent conveyances and waters of the state discharges of high-pH concrete wash water. Adding a broad "unless infeasible" exception would substantially weaken this measure, as determining feasibility is subjective, variable across sites, and difficult for DEQ to verify in the field. DEQ inspectors frequently encounter concrete wash water spills, overtopping, and mismanagement near inlets and conveyances, particularly during wet weather, and the 50-foot buffer remains a straightforward and effective means of reducing these risks. EPA's Stormwater Best Management Practice Concrete Washout guidance (EPA, 2012) similarly advises that washout facilities should not be placed within 50 feet of storm drains, open ditches, or waterbodies.

For sites with limited space, registrants have multiple compliance options, including the use of off-site washout facilities, closed or self-contained washout systems that eliminate stormwater inputs, or temporarily blocking nearby storm drain inlets, conveyances, or other discharge pathways during concrete work. These alternatives provide flexibility without undermining the protective intent of the setback. As such, DEQ will revise this condition to read:

"Locate washout activities a minimum of 50 feet from stormwater conveyance, storm drain inlet, or waters of the state. For sites with limited space where 50 feet cannot be maintained, the registrant must use off-site washout facilities, self-contained washout systems (those that eliminate stormwater inputs), or block nearby storm inlets, conveyances, or other discharge pathways to waters of the state."

Schedule A.14.j:

Clarify this statement: "This maintenance depth must be clearly marked with a stake or other visual indicator." Will this be determined by the engineer in the ESCP? (Commenter ID# 1)

DEQ response:

The maintenance depth is part of the sediment basin design and must be included in the ESCP as part of the sediment basin design, which must be prepared and stamped by an Oregon Registered Professional Engineer. However, on-site personnel such as the contractor or the erosion and sediment control inspector may install the maintenance depth field marker. DEQ does not believe additional clarification is needed, as marking the maintenance depth in the field is a standard implementation step completed by onsite staff, consistent with other PE-designed elements of the ESCP.

Schedule A.17:

"Prior to permit termination (see Condition I.10), the registrant must: a. Establish uniform perennial vegetation (excluding noxious or invasive weeds) that provides at least 70 percent cover on all exposed areas. Limited allowable exceptions include:
Comment: Excluding noxious or invasive weeds from the percent vegetated cover is outside of the authority of the 1200-C. - (Commenter ID# 4)

DEQ response:

DEQ determined that excluding noxious or invasive weeds from the final stabilization cover requirement is within the agency's authority to prevent water pollution. The purpose of final stabilization is to ensure long-term erosion control and prevent sediment-laden discharges after permit termination. Noxious and invasive species do not provide reliable or durable soil stabilization, are prone to rapid die-off, and often require repeated removal or herbicide application (activities that can themselves introduce pollutant sources over time). Aligning vegetative cover with species that provide functional, resilient stabilization supports the objective of this condition at preventing erosion and offsite sedimentation once construction is complete. This approach is also consistent with EPA's CGP, which requires achieving "70 percent or more of the vegetative cover native to local undisturbed areas." For these reasons, DEQ will retain the exclusion of noxious and invasive weeds in Schedule A.17.

Schedule A.17:

This section states "Ensure there is no reasonable potential for construction-related sediment or turbidity discharges to surface waters."

Comment: We request this clarify that the determination of "reasonable potential" is based on achieving final stabilization in accordance with A.17, removal of temporary controls, and documentation of site-specific on-site conditions in the ESCP and termination submittal. To avoid any misinterpretation as an ambient-condition test, this determination should be explicitly tied to site stabilization criteria and on-site conditions, rather than to ambient receiving-water measurements and we request to be modified to include:

Ensure there is no reasonable potential for construction-related sediment or turbidity discharges to surface waters. The determination of 'reasonable potential' is based on site stabilization criteria and on-site conditions and is not contingent on ambient receiving-water measurements or testing. (Commentor ID# 7)

DEQ response:

The “reasonable potential” determination is tied to the registrant’s implementation of stabilization measures and the absence of exposed or erodible soils and is intended to ensure that final site conditions do not present a risk for construction-related sediment or turbidity discharges at the time of permit termination. This language has been included in all iterations of the 1200-C permit since 2005 and has not been interpreted by DEQ staff, the regulated community broadly, as requiring ambient receiving water monitoring or off-site evaluation. However, if receiving water impacts or off-site sedimentation occur due to inadequate site stabilization, the registrant remains responsible for taking corrective action to mitigate and prevent recurrence. DEQ determined that the existing language is sufficiently clear and did not revise the permit in response to this comment.

Schedule A.18:

Regarding storing outside containers in secondary containment, define “appropriately sized”. (Commentor ID# 10)

DEQ response:

DEQ determined that a prescriptive definition is not appropriate because the capacity of “appropriately sized” secondary containment varies based on the type and volume of materials being stored, and certain material categories have specific containment requirements established outside this permit. In general, outdoor secondary containment should be sized to hold at least 110% of the volume of the largest container and provide sufficient freeboard to contain precipitation.

Schedule A.18:

“For washing applicators and containers used for stucco, paint, form release oils, curing compounds, or other materials: m. Direct wash water into a leak-proof container or a properly lined pit that is designed, sized, and maintained to prevent overflow, including from precipitation. Designated washout areas must be clearly identified with signage and included in the ESCP.
Comment: Directing wash water from exposed aggregate/concrete treated with curing compound into a leakproof container or lined pit is not practicable. This wash water should be directed to a point behind the curb or isolated area for infiltration. (Commenter ID# 4)

DEQ response:

Wash water generated from exposed aggregate or concrete finishing operations must be managed as a process wastewater. Wash water from concrete finishing activities typically contains elevated pH, cement fines, suspended solids, and chemical additives from curing compounds. Allowing this water to infiltrate behind a curb or in an “isolated” area risks uncontrolled discharge to groundwater, stormwater systems, or surface waters, and is inconsistent with the technology-based effluent limitation requirements of 40 CFR 450.21€. DEQ will retain the requirement to capture wash water in a leak-proof container or properly lined pit.

4.9 Corrective actions & timelines

Schedule A.25:

The five-calendar day requirement should remain at 10 calendar days. Five days does not provide sufficient time to fully investigate, and vet information provided to DEQ. Especially considering the tendency of DEQ to use Registrant-provided information to allege further violations and propose additional enforcement. - (Commentor ID# 1)

DEQ response:

DEQ believes that a five-day timeframe provides sufficient opportunity for registrants to investigate potential violations, initiate corrective actions, and submit accurate information to DEQ. Timely submission of corrective action reports is essential for DEQ to confirm the adequacy of corrective actions and ensure that site conditions do not pose ongoing risk. Regarding the concern that DEQ uses submitted information to allege further violations, DEQ notes that enforcement decisions are based on documented site conditions and compliance with permit requirements, not on the act of reporting itself. Accurate and timely reporting is an obligation under 40 CFR

122.41(h) and OAR 340-045-0015(5)(d) and is also a mitigating factor in enforcement. For these reasons, DEQ will retain the five-day deadline.

Schedule A.25:

The draft permit's requirement for submittal of corrective action self-reports risks undermining the very compliance it seeks to promote. If DEQ uses these self-reports primarily as enforcement triggers, it will only discourage transparency, foster mistrust, and incentivize non-reporting. Corrective action reports should be recognized as evidence of good-faith compliance efforts, not as a basis for automatic penalty, except in cases of willful neglect or repeated violations. (Commentor ID# 1)

DEQ response:

DEQ clarifies that corrective action reports are not only intended to document timely implementation of required measures and verify that deficiencies have been addressed, but also to demonstrate accountability. They do not to serve as automatic enforcement triggers. DEQ evaluates the need for enforcement based on the nature, severity, duration, and environmental risk of the underlying deficiency, as well as the registrant's responsiveness. Prompt corrective action and transparent reporting are considered mitigating factors and often reduce or eliminate the need for formal enforcement. Non-reporting or delayed reporting, by contrast, can be an independent violation. DEQ will continue to use a case-specific approach, and, as stated prior, corrective action reports themselves do not constitute automatic penalties.

Schedule A.20 and A.25:

Schedule A.20 states: *The registrant must comply with all Permit conditions, including the proper selection, installation and maintenance of control measures, as well as conducting inspections, monitoring (if necessary), taking corrective actions, reporting and maintaining records to reduce the discharge of pollutants from construction activities. Compliance with the conditions of this Permit is expected to result in discharges that will comply with Oregon's water quality standards as established in OAR 340-041. If the registrant or DEQ determines that a site discharge is causing or contributing to an exceedance of an applicable water quality standard, the Permit registrant must take corrective actions per Schedule A.25.*

Comment: To clarify that the determination serves as a trigger rather than an ambient compliance condition, we request that the following sentence be added to Schedule A.20 stating that a finding that a discharge is causing or contributing to an exceedance function solely as a trigger for the specified corrective actions under Schedule A.25:

"A determination that a site discharge is causing or contributing to an exceedance operates solely as a trigger for the corrective actions and documentation required by Schedule A.25 and does not, by itself, constitute noncompliance where all Permit conditions, including timely corrective actions, are met." (Commentor ID# 7)

DEQ response:

This comment requests that water quality exceedance be the sole trigger for corrective actions, and that such exceedance not be considered non-compliance if adequate corrective actions are taken. DEQ determined that this approach is not appropriate.

Schedule A.25 requires corrective measures when inspections identify BMP failures, damage, improper installation, or other conditions indicating that existing controls are not effective, even if a non-compliant discharge has not yet occurred. The purpose of the corrective action framework is intentionally proactive: to ensure timely repairs and prevent potential water quality impacts. Limiting corrective action triggers to only water quality exceedances would undermine this preventative function of this condition and reduce the registrant's responsibility to maintain effective controls.

In regards commenter's suggestion that completing corrective actions should negate non-compliance when a water-quality exceedance has already occurred: Construction stormwater discharges that cause or contribute to a violation of water quality standards are considered noncompliant discharges and constitute a violation of both the 1200-C permit as well as state law (ORS 468B.025(1)(b), and OAR 340-045-0040(1)), regardless of whether corrective actions are taken. Schedule A.25 provides a pathway to return to compliance, but it does not negate the

underlying water quality violation or limit DEQ's enforcement response. Adding language stating that such a determination "does not constitute noncompliance" would be inconsistent with Oregon's water quality standards and would thus improperly restrict DEQ's authority to address water quality impacts from construction activities.

4.10 ESCP requirements & revisions

Schedule A.21:

DEQ should clarify whether it will recognize a wet weather season. DEQ should define "wet weather conditions" within the permit glossary or in Schedule B to provide a consistent statewide standard. - (Commentor ID # 1)

DEQ response:

It is not technically appropriate to recognize a statewide "wet weather season." Oregon's precipitation patterns vary significantly by region, elevation, and year-to-year climate conditions, and a uniform seasonal definition would not accurately reflect site-specific risks across the state or over the duration of a project, thereby excluding sites from implementing protective measures during certain times of year. Instead, the permit uses the term "wet weather conditions" for the purposes of ESCP design to refer broadly to circumstances where rainfall, snowmelt, or saturated soils create an increased potential for erosion, sediment mobilization, or discharge, regardless of the time of year. This performance-based approach aligns with C&D Rules (40 CFR 450.21), which require operators to adjust BMPs in response to actual weather and site conditions rather than calendar dates or seasons.

Schedule A.22:

Why is DEQ now requiring existing conditions to be part of the ESCP? Specifically, what function does it serve for protecting the environment? (Commentor ID # 1)

DEQ response:

Existing conditions information helps ensure that the ESCP accurately reflects site-specific topography, drainage patterns, vegetation, and sensitive resources to be marked off and protected before construction begins. Further, the existing conditions sheet provides a clear through-line between pre-construction features (such as trees slated for removal or structures planned for demolition) and the subsequent sheet depicting demolition, clearing, grading, excavating and land development activities. These important features are easily "lost" within the more complex plan sheet, which can result in inadequate plan interpretation by onsite contractors or DEQ plan reviewers.

Schedule A.22:

Stages of construction are not distinct, often occurring simultaneously, depending on the project. - (Commentor ID # 1)

DEQ response:

DEQ acknowledges that construction activities often overlap and do not always proceed in fully distinct or sequential stages. The permit uses the term "stages" to describe typical categories of construction activity (e.g., grading, utilities, vertical construction) because each stage requires different erosion and sediment control approaches. The intent is not to require that these stages occur in isolation, but to ensure that the ESCP identifies the types of activities expected to occur and depicts appropriate BMPs for each stage, regardless of whether they overlap in time.

Schedule A.23:

"The ESCP is a living document and must be updated any time site conditions warrant adjustments to the project or BMPs. The ESCP must identify the date and nature of the adjustments. Revisions to the ESCP must be made immediately when any of the following occur:"

Comment: Again, DEQ has proposed a new requirement that is overly burdensome to the regulated community, a significant departure from the current 1200-C Permit, and provides no apparent benefit to water quality or the environment. Therefore, we request that Schedule A.23 of the draft 1200-C Permit be modified back to the current 1200-C, Section 4.8 as follows:

The ESCP is a living document and must be updated any time site conditions warrant adjustments to the project or BMPs. The ESCP must identify the date and nature of the adjustments. Revisions to the ESCP must be made within seven days ~~immediately~~ when any of the following occur: - (Commentor ID# 7)

DEQ response:

Requiring ESCP revisions "immediately" when specified conditions occur is appropriate and necessary so that inspectors and onsite contractors have an accurate, real-time record of implemented controls. In this context, "immediately" means updating the ESCP at the time BMPs are adjusted or corrective actions are implemented, typically through redline edits to an onsite hard-copy plan, not performing instantaneous electronic CAD file edits. DEQ does not agree that this requirement poses a substantial burden; in practice, many sites already maintain contemporaneous red-lined ESCPs as part of routine construction oversight.

Schedule A.23.k:

Define "significant change to BMPs." Listing type, design, or location is too vague. Swapping a wattle for a sediment fence or moving a BMP by 10 feet to protect a root zone would fall under those three qualifiers but are insignificant and should not require a revision submission. Please provide specific standards for which these would require a revision submission to DEQ. - (Commenter ID# 1)

DEQ response:

DEQ acknowledges the request for additional detail regarding what constitutes a "significant change to BMPs" under Schedule A.23 and has provided additional explanation in the Permit Evaluation Report (PER) to further clarify. In summary, the intent of this condition is not to require submission of revisions for minor, routine field adjustments, such as shifting a BMP a short distance to avoid utilities or protect a tree root zone. These types of modifications are common and expected during construction and do not trigger the ESCP revision requirement.

A "significant change" refers to modifications that materially alter the effectiveness of erosion and sediment controls or change the project's potential to discharge pollutants. DEQ has provided the following examples of significant changes in the Permit Evaluation Report (PER) Examples include, but are not limited to:

- 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, 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, as noted in the PER, prior DEQ approval is not required for implementing substantial changes (except in cases involving Environmental Management Plans (EMPs), which must be reviewed due to complexity and pollutant risk).

DEQ is retaining this approach because prescriptive thresholds would not apply consistently across the wide range of project types and site conditions covered under the 1200-C permit, where BMP performance needs can vary significantly. Given this variability, and the potential for subjective interpretation of what constitutes a "significant" change, where registrants are making good-faith, site-appropriate adjustments aimed at maintaining or improving environmental protection DEQ would not require a revision submission. This approach ensures flexibility while still supporting effective oversight of substantive changes that could affect pollutant-discharge potential.

Appendix C:

In the ESCP requirements, schematics of BMPs for individual lots are required for residential subdivisions. Will Industrial subdivisions not need to comply with the section? Considering removing "residential" or adding "industrial". Also consider using "land divisions" instead of subdivisions (land division include partitions, subdivisions do not). (Commentor ID# 10)

DEQ response:

DEQ reviewed this comment and determined that the existing reference to "residential subdivisions" is intentional and appropriate. Residential lots typically share similar design features, construction sequencing, utility layouts, and disturbance patterns; therefore, a representative BMP schematic is practical and effective at depicting necessary control measures to builders and contractors. In contrast, commercial and industrial developments can vary widely in size, configuration, structure type, infrastructure layout, and disturbance footprint. Because of this variability, a single representative lot schematic would not a provide useful guidance for control measure implementation.

For these reasons, DEQ will retain the term "residential subdivisions" and will not expand this requirement to industrial, commercial, or mixed-use land divisions.

Appendix C.1.c.xi:

"Location of sanitary stations, waste management, stockpiling areas, on-site and off-site construction support activity areas, material, and equipment staging areas."
Comment: Why is the location of sanitary stations relevant to an ESCP? This should not be a requirement to be shown on the plan. (Commenter ID# 4)

DEQ response:

Sanitary stations are potential sources of sewage spills or overflows which pose significant risk to water quality. As such, the permit requires that sanitary facilities be located at least 50 feet from stormwater conveyances, storm drain inlets, or waters of the state and that sites with limited space that cannot meet the distance requirement must utilize secondary containment. Including this information on the ESCP ensures that the distance requirement is met, otherwise the use of secondary containment is required. DEQ will retain the requirement.

Appendix C.1.e.i:

"Identify removal of all temporary BMPs."
Comment: Removal of all temporary BMPs is implied, identification of temp. BMPs to be removed is redundant and should not be required. (Commenter ID# 4)

DEQ response:

DEQ agrees with this comment and has removed this ESCP requirement from Appendix C.

Appendix C.1.g.vi:

"Dust suppression method and dates of use."
Comment: Dates of dust suppression use would be impossible to predict other than generally during dry periods, which is implied, thus making any date predictions superfluous. (Commenter ID# 4)

DEQ response:

DEQ partially agrees with comment. Methods of dust suppression should be anticipated given construction sequencing and schedule; however, dates of use are too granular given construction schedule changes and or unanticipated weather conditions. DEQ has revised this ESCP requirement to read "Dust suppression method and approximate dates of use."

4.11 EMP / CMMP / CTP

Schedule A.24:

Specify size and type of underground storage tanks. (Commenter ID# 1)

DEQ response:

DEQ does not specify a minimum size or type of underground storage tank (UST) in the Environmental Management Plan (EMP) requirements because the potential environmental risk associated with USTs is influenced not only by size or type, but also by factors such as age, condition, contents, site history, and

construction activity scope. Registrants should evaluate all known or suspected USTs during site pre-construction site characterization, and if a UST is inadvertently discovered during construction, they must cease all discharges and notify DEQ within 48 hours.

Appendix A.2:

"When cationic treatment chemicals are proposed, the registrant must ensure that discharges contain no detectable levels of cationic chemicals." Comment: Does this mean that residual testing is now required as part of the CTP monitoring plan? Permit alludes to residual testing requirements but does not explicitly state that residual testing is required. Please clarify. - (Commenter ID# 4)

DEQ response:

Under CWA §301(b)(1)(C) and 40 CFR 122.44(d)(1), NPDES permits must include limits necessary to meet water quality standards. Oregon's water quality standards (and EPA's national criteria) prohibit discharges of toxic pollutants in amounts that cause toxicity to aquatic life or have "adverse effects" on designated beneficial uses. Cationic polymers are acutely toxic at extremely low concentrations, and even very small residual levels can result in aquatic mortality. Accordingly, to meet water quality standards, the registrant must ensure that discharges contain no detectable levels of cationic chemicals.

Whether residual testing is required depends on the specific treatment system and the Chemical Treatment Plan (CTP). Appendix A requires the CTP to describe treatment system design and operation to ensure that no cationic chemicals are discharged, which may include residual testing, if necessary, based on the chemical used, treatment design, changes in site conditions, and manufacturer specifications. In many cases, adequate process controls, settling time, dosing control, and proper system maintenance and operation may be sufficient to demonstrate that residuals are not present. Thus, the permit requires registrants to develop a protective, site-appropriate monitoring and verification approach but does not mandate residual testing in every instance.

Appendix A.2:

"Permit text: The CTP must be prepared and stamped by an Oregon Registered Professional Engineer and should include the following:" Comment: Please clarify that the mechanical and hydraulic (pipe sizing & flow rates) elements must be stamped by a PE, but the overall CTP can be prepared by a professional in erosion control. (Commenter ID# 4)

DEQ response:

DEQ confirms that the entire CTP must be prepared and stamped by an Oregon-registered Professional Engineer (PE). This requirement is intentional and applies to all elements of the CTP described in Appendix A.2. Chemical treatment systems involve engineered processes with the potential for significant water quality impacts if not properly designed, operated, and maintained.

Appendix A. 2. IV. Proposed Treatment:

Comment: Suggest reference to Washington Dept of Ecology emerging stormwater treatment technologies (WSDOE TAPE) Program for other available treatment options. (Commentor ID# 4)

DEQ response:

Thank you for your suggestion. DEQ supports the use of effective stormwater treatment technologies and encourages applicants and permit registrants to consult the Washington State Department of Ecology's TAPE (Technology Assessment Protocol – Ecology) program when evaluating treatment options. At this time, DEQ is not yet prepared to formally cite the TAPE program within the 1200-C permit itself.

4.12 Definitions & Terminology

Schedule A.22:

Define "construction stage" to avoid ambiguity by referencing Schedule A.22 a. through e.

DEQ response:

DEQ notes that the permit now uses the term "stages" rather than "phases" when referring to categorically distinct construction activities, such as grading or vertical construction, to avoid confusion with multi-phase developments like subdivisions. DEQ determined that a separate definition of "construction stage" in Schedule D is not necessary because, as the commenter points out, Schedule A.22 already identifies the specific construction stages that require corresponding ESCP sheets. These stages categorically and temporally distinguish the types of activities occurring on site and provide the operative framework for determining appropriate BMP implementation. (Commentor ID# 1)

Schedule D:

In the permit specific definitions, "disturbance" remains undefined while being the most critical action. (Commentor ID# 10)

DEQ response:

DEQ reviewed this comment and determined that a separate definition of "disturbance" is not necessary because the permit already relies on the definition of "construction activity" which describes the types of land disturbance that trigger NPDES construction stormwater permitting (e.g., clearing, grading, excavation, and stockpiling).

4.13 Recordkeeping / posting signage

Condition I.16:

Numerous commenters expressed concerns about the proposed signage requirements in Condition A.16. They stated that providing ESCPs to the public is inappropriate, burdensome, and unnecessary, noting that plans should instead be made available via YDO. They also objected to including a contact name and phone number, citing privacy, workplace safety, and personally identifiable information concerns, and recommended allowing a DEQ technical assistance contact. Commenters also opposed signage language directing the public directly to DEQ's complaint system, arguing that this encourages uninformed or unfounded complaints, bypasses the role of designated inspectors, and could result in unnecessary burdens on registrants and DEQ. They recommended that signage for sensitive facilities such as data centers, government installations, or secure projects, be limited to stating that the site is has active 1200-C permit coverage and refer the public to DEQ's website for more information on the permit itself. In general, comments requested that DEQ narrow the signage requirement, remove public-reporting prompts, and avoid obligations that duplicate or exceed local posting requirements. (Commentor IDs# 1, 2, 3)

DEQ response:

DEQ has determined that the signage requirements in Condition A.16 are appropriate and necessary to improve transparency and facilitate public awareness of permitted construction activities. This requirement is also consistent with EPA's CGP, which includes similar public notice and project information posting provisions. Directing the public to DEQ's official complaint website is consistent with DEQ's statewide public-reporting framework, which plays a crucial role in identifying real or potential impacts to human health and the environment. Providing clear information on how to submit observations helps ensure complaints are routed to correct DEQ program for follow up. It is also worth noting that not all complaints result in enforcement action.

DEQ clarifies that the requirement for a "project contact" is intended to identify an operational point of contact for the construction project. In modern business practices, this contact information is often distinct from personal contact information.

Regarding requests to provide ESCPs or other electronic plans directly to the public, DEQ does not intend the condition to require individualized physical document production by the landowner. The requirement may be fulfilled by providing electronic copies of the ESCPs via email.

With respect to signage at sensitive facilities, DEQ notes that all ESCPs and application materials are public records and accordingly are subject to public disclosure under Oregon law.

Schedule A.1.j:

"Take photographic documentation of the initial installation of BMPs and significant changes made to BMPs as the construction project progresses from one stage to the next. Photos must be maintained in the site logbook per Schedule B.7."
Comment: FYI, occasionally sites will not allow photos or make it difficult to take photos, e.g. confidential clients. (Commenter ID# 4)

DEQ response:

Photographic documentation remains necessary to verify BMP installation and changes over the course of construction. However, DEQ acknowledges that some sites may have legitimate security or confidentiality restrictions. In such cases, inspectors should work with the client to identify practical ways to obtain the required photos, such as limiting images to BMPs and excluding sensitive content or cropping areas not relevant to stormwater controls. This permit requirement does not supersede the Confidential Information Procedure in OAR 340-090-0420.

Schedule A.1.j:

Take photographic documentation of the initial installation of BMPs and significant changes made to BMPs as the construction project progresses from one stage to the next. Photos must be maintained in the site logbook per Schedule B.7; By reference, Schedule B.7 [Recordkeeping Logbook] proposes the following: i. Photo documentation of the initial installation of BMPs and significant changes made to BMPs based on project stages per Schedule A.1.
Comment: The proposed additions to Schedule A.1.j and B.7.i requiring the regulated community to photo document "…initial installation of BMPs and significant changes made to BMPs as the construction project progresses from one stage to the next…" and that the photos "…must be maintained in the site logbook" is an overly burdensome administrative task and provides no benefit to water quality or the environment. These proposed additions will also require a significant investment for storage space for documents (either digital or hardcopy) and will require additional equipment and resources. Therefore, we request that the following portions be deleted in their entirety as follows:

> Schedule A.1.j. ~~Take photographic documentation of the initial installation of BMPs and significant changes made to BMPs as the construction project progresses from one stage to the next. Photos must be maintained in the site logbook per Schedule B.7;~~
>
> Schedule B.7.i ~~Photo documentation of the initial installation of BMPs and significant changes made to BMPs based on project stages per Schedule A.1.~~ (Commenter ID# 7)

DEQ response:

DEQ determined that the photo documentation requirements in Schedule A.1.j and B.7.i are appropriate, practical, and necessary to support effective and adaptive compliance implementation. Photographs provide an objective record of BMP installation, condition, and modifications as the project advances through one construction stage to the next (for example, BMPs installed during site prep work are insufficient for later phases, like vertical construction).

The photo-documentation requirement is limited to initial installation and significant changes, not daily or ongoing documentation and digital photography requires minimal storage capacity. DEQ does not expect hardcopy storage; digital retention is acceptable if available upon request by DEQ or Agent. For these reasons, the photo documentation requirements provide meaningful compliance value, and DEQ will retain them as written.

Schedule B.7:

Pertaining to Subsection n., if a document is required to be retained, "etc." is not an acceptable description. Required documents must be specified. (Commenter ID# 1)

DEQ response:

DEQ reviewed this comment and clarifies that the term "etc." is used only to indicate that the list provided is illustrative rather than exhaustive, as additional site-specific documents may be relevant to permit compliance and stormwater management. To clarify this point but limit the open-ended interpretation, DEQ has revised the permit language to read "Additional relevant records, including but not limited to maintenance records, disposal manifests (soil and water), BMP invoices, beneficial use determinations for imported fill material~~, etc~~."

Schedule B.7:

Records retention: Clarify whether third party retention permissible. (Commenter ID# 1)

DEQ response:

DEQ clarifies that registrants may use third parties to store or manage permit records; however, the permit registrant remains fully responsible for ensuring that all required documents are complete, accurate, readily accessible, and available to DEQ or Agent upon request for the three-year retention period specified in the permit. The use of third parties does not transfer the registrant's legal obligations under OAR 340-045-0015(5)(d) and 40 CFR §122.41(j).

Schedule B.7:

DEQ should specify that the photo documentation requirement under Schedule B.7.c. applies only to new permit coverages or newly installed BMPs after the effective date of the revised permit, and not to previously installed controls under existing authorizations. (Commenter ID# 1)

DEQ response:

DEQ agrees with this comment and has revised Condition I.14 of the permit to state that existing registrants need only to photo document any remaining stages of construction.