



State of Oregon
Department of
Environmental
Quality

General Permit NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM WASTE DISCHARGE PERMIT

Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232
Telephone: 503-229-5696

Issued pursuant to ORS 468B.050 and the federal Clean Water Act

REGISTERED TO:

Name

Address

Assigned Permit Number to display on dredge

This general permit provides coverage under the National Pollutant Discharge Elimination System for four kinds of discharges from in-water placer mining:

1. Discharges from **motorized** suction dredges not exceeding 30 horsepower with suction hoses with inside diameters no larger than four inches in diameter that **do not operate in essential salmon habitat**. Operators seeking coverage for this type of discharge must apply for registration under the permit and registration must be approved by DEQ.
2. Discharges from **gravity or siphon** suction dredges with suction hoses with inside diameters no larger than six inches in diameter that **do not operate in essential salmon habitat**. Operators seeking coverage for this type of discharge must apply for registration under the permit and registration must be approved by DEQ.
3. Discharges from **gravity or siphon** suction dredges with suction hoses with inside diameters no larger than four inches in diameter that **operate in essential salmon habitat**. Operators seeking coverage for this type of discharge must apply for registration under the permit and registration must be approved by DEQ.
4. **Discharges from in-water, non-motorized mining equipment or devices**. Operators seeking coverage for this type of discharge are not required to apply for registration but are required to comply with all applicable permit terms.

All other mining activities that discharge to surface waters of the state are required to apply for an individual permit, except for hand panning which is exempt from permitting requirements.

Jennifer Wigal
Water Quality Division Administrator

DRAFT

Issuance Date

DRAFT

Effective Date

PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, a person covered under this permit is authorized to discharge wastewater from authorized mining equipment to waters of the state in accordance with all the requirements, limitations, and conditions set forth in the permit as follows:

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Definitions

Background Turbidity means turbidity that represents the ambient turbidity of undisturbed waters as measured or observed at least 10 feet upstream or up-current from the suction dredge or in-water non-motorized mining equipment operation at the time dredging occurs.

Boulder means a rock 12 inches in diameter or greater.

Combination highbanker/suction dredge means a type of mineral processing equipment constructed on an elevated support structure (e.g., legs or a box) with a suction hose for conveyance of streambed, bank, or upland material to the hopper of the highbanker.

Daylight hours means the hours between sunrise and sunset.

DEQ or *Department* means Oregon Department of Environmental Quality.

Essential salmon habitat means habitat as defined by ORS 196.810(1)(g)(B), and as further defined and designed by Department of State Lands rule, and all areas, up to the ordinary high water line, from the lowest extent of essential indigenous anadromous salmonid habitat to the highest extent of essential indigenous anadromous salmonid habitat in any river in Oregon as directed by Enrolled Senate Bill 3, 2017.

Gravel Bar means a transitional gravel deposit that lacks any rooted vegetation, located either between the stream banks and the wetted perimeter of the stream or entirely within the wetted perimeter of the stream.

Gravity Suction Dredge means a device with a suction nozzle and hose for conveyance of streambed material for which suction is created by gravity. A gravity dredge does not have an auxiliary power source.

Habitat structure means physical composition of natural or restoration material that provides function and complexity in a stream. And includes but is not limited to:

- Boulders
- *Woody material* such as living or dead trees, shrubs, stumps, large tree limbs, and logs;
- *Vegetation* such as grasses, shrubs, wildflowers, or weeds; and
- *Other natural features* necessary to provide fish with areas for spawning, resting, food, *refuge from predators and shade*.

Highbanker or power sluice means mineral processing equipment that is generally a single sluicebox or series of sluiceboxes, header box or hopper often with classifying, concentrating, and/or water spray features that is usually mounted on a stand with adjustable legs. Water is usually supplied by a motorized pump and hose to the header or hopper. Placer material is normally fed to the header or hopper by hand tools (e.g., shovel, scoop).

In-water non-motorized mining equipment or device means any equipment or device used for prospecting and small scale mining, including equipment used for gravity separation or other processing of precious metals or minerals from stream deposits within the wetted perimeter of a stream. These devices include but are not limited to a hand sluice box, mini rocker, or hand suction tool.

Motorized means powered mechanically or by internal combustion, hydraulics, pneumatics, electricity.

Motorized in-stream placer mining means mining using any form of motorized equipment for the purpose of extracting gold, silver or any other precious metals from placer deposits of the beds and banks of waters of the state.

OAR means Oregon Administrative Rule.

ORS means Oregon Revised Statute.

Pollution or water pollution means alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof. ORS 468B.005(5).

Siphon Suction Dredge means a device with a suction nozzle and hose for conveyance of streambed material for which suction is created by siphon action. A siphon dredge does not have an auxiliary power source.

Stream bank means a slope of land adjoining and confining a stream channel.

Suction dredge means a mechanical device with a suction nozzle and hose for conveyance of streambed material to a sluice box, where suction is created by a power source (electric motor or combustion engine) or gravity. The sluice box and power source of a suction dredge are mounted on a floating platform. For purposes of this permit, a suction dredge includes a gravity or siphon suction dredge.

Visible Turbidity means turbidity that is visible when compared to background turbidity.

Wastes mean sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances that will or may cause pollution or tend to cause pollution of any waters of the state. ORS 468B.005(9).

Wetted perimeter means the area of the stream that is underwater, or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by water that is actively moving at the time the activity occurs.

Coverage and Eligibility

A person covered by this permit may not discharge wastes to waters of the state except in compliance with this permit. Subject to applicable laws, any person not wishing to be covered by this permit may apply for an individual permit.

1. Discharges Authorized by this permit

- a. Discharges from motorized suction dredges not exceeding 30 horsepower with suction hoses with inside diameters no larger than four inches in diameter that do not operate in essential salmon habitat.
- b. Discharges from gravity or siphon suction dredges with suction hoses with inside diameters no larger than six inches in diameter that do not operate in essential salmon habitat.
- c. Discharges from gravity or siphon suction dredges with suction hoses with inside diameters no larger than four inches in diameter that operate in essential salmon habitat.
- d. Discharges from in-water, non-motorized mining equipment or devices

2. Discharges Not Authorized By This Permit

- a. Other Discharges: This general permit does not authorize discharges from highbanker and combination highbanker/suction dredge equipment.
- b. Oregon State Scenic Waterways: This general permit does not authorize discharges from suction dredges in Oregon State Scenic Waterways. Pursuant to ORS 390.805 to ORS 390.925 motorized suction dredge mining is restricted in Oregon State Scenic Waterways. Location information on Oregon State Scenic Waterways will be provided with the application.
- c. Essential Salmon Habitat: This general permit does not authorize discharges from motorized in-stream placer mining, including motorized suction dredges in Essential Salmon Habitat. Location information on Essential Salmon Habitat waterways will be provided with the application.
- d. Outstanding Resource Water: Pursuant to OAR 340-041-0305 this general permit does not authorize discharges in Outstanding Resource Waters of North Fork Smith River, its tributaries and associated wetlands (OAR 340-041-0305(4)); Waldo Lake and its associated wetlands (OAR 340-041- 0345(7)) and Crater Lake (OAR 340-041-0185(6)). Location information on this Outstanding Resource Water will be provided with the application.
- e. Tribal Lands: This general permit does not authorize discharges from suction dredges or in-water non-motorized mining equipment operating on tribal lands, or waterways that constitute a boundary of a tribal reservation. Information on water bodies that serves as tribal reservation boundaries will be provided with the application.
- f. Impaired Water on 303(d) List: This general permit does not authorize discharges from suction dredges operating on any stream segment that is listed as water quality limited in categories 4 and 5 for sedimentation, turbidity or toxics other than chlorine, on the list published by DEQ pursuant to OAR 340-041-0046 unless a stream segment is subject to a total maximum daily load (TMDL) that includes a wasteload allocation for mining under the 700PM permit. The 303(d) list as approved or established by EPA that is in effect as of January 1 of each year will be used to determine if coverage is available.
- g. TMDL: Due to known mercury contamination from historical mercury and gold mining activities and as described in the supporting material for the 2019 EPA Willamette Basin Mercury TMDL and/or cited in the 2019 EPA Willamette Basin Mercury TMDL, this permit does not authorize discharges from mining in streams that flow from the former Bohemia Mining District and are tributary to the Dorena Reservoir.

3. Suction dredge equipment: How to Register for Permit Coverage and other requirements

- a. A person must take the following steps to register and maintain permit coverage for suction dredge equipment:
 - i. Obtain a DEQ application form by downloading the application from the DEQ website, by mail or in person from a DEQ office.
 - ii. When DEQ directs, the applicant must submit the general permit application and application related documents electronically on DEQ-approved web-based forms including pre-approved attachments. The permittee must sign and certify all electronic submissions in accordance with the requirements Schedule F, Section D8 of this permit.
 - iii. Submit a completed application to DEQ. Request coverage under this permit at least thirty days prior to the planned activity. The Department may accept applications filed less than thirty days from the planned activity on a case-by-case basis.
 - iv. A person registering for a motorized suction dredge must submit an initial application fee of \$250 and an annual fee of \$250. Permit registrants must pay an annual fee of \$250 each year thereafter to maintain permit coverage as long as the permit is in effect. A person registering for a gravity or siphon suction dredge must submit a fee of \$25 and thereafter pay the \$25 annual fee to maintain permit coverage. DEQ will use fee schedules in Table 70G in OAR 340-045-0075 to administer fees that are in effect.
- b. All applications for registration must include an address and geographic coordinates for the proposed mining operation. All applications for motorized suction dredges must also include information on how the proposed mining operation will be accessed by the permit registrant and written affirmation that the operator has reviewed all specified information relating to cultural resource preservation and best management practices for motorized in-stream placer mining provided by the department in the permit registration materials.
- c. DEQ will review the application and will take one of the following actions:
 - i. Issue written notice of permit registration approval;
 - ii. Request additional information; or
 - iii. Deny registration under this permit. The applicant will be notified if the applicant's operation cannot be approved for registration under the permit, and if the applicant may need to apply for an individual permit. The procedures for denial of an application to register and for requesting a hearing on a denial are contained in OAR 340-045-0050.
- d. An assigned permit number is provided by DEQ upon registration. DEQ's assigned permit number must be displayed at all times on a suction dredge located within the wetted perimeter. The assigned permit number identifies the operator – not the equipment – and may be transferred from one piece of equipment to another depending on which equipment the operator is using.
- a. The assigned permit number must be displayed in a manner that is visible and legible for purposes of identification from banks and shorelines. The identification number shall read left to right and be in block characters not less than three inches in height and of a color that contrasts with the background.
- e. A suction dredge authorized under this permit must be located within coordinates approved in the application to register under the permit and within the wetted perimeter.
- f. During mining activities, a person covered by this permit must have a copy of the permit in the person's possession or readily available for inspection at the mining location. Registered suction dredge operators must possess the permit copy assigned to them through registration.

- g. At no time may permit coverage apply to simultaneous operation of more than one suction dredge. The person covered by this permit may supervise another person operating a single suction dredge as long as the person covered by this permit is present. A person operating under the supervision of a person covered by the permit must comply with all conditions and limitations in the permit.
- h. Permit registrants must submit an amended application if contact information, mining location, or the operation has changed.

4. Suction dredge equipment: How to renew coverage prior to this permit's expiration date.

- a. At least 180 days prior to permit expiration, registrants must:
 - i. Submit a complete application form, including a \$250 renewal fee in addition to the annual fee for discharge from a motorized suction dredge and/or a \$25 annual fee for discharge from a gravity or siphon suction dredge to DEQ. The DEQ Director may grant permission to submit the complete application later than the 180 days but no later than the permit expiration date.

5. In-water non-motorized mining equipment: Permit coverage and other requirements

- a. No application or fee is required for discharges from in-water non-motorized mining equipment.
- b. Persons conducting in-water non-motorized mining must have a copy of the permit in their possession or readily available for inspection at the mining location. Copies of this permit are available for operators using in-water non-motorized equipment at DEQ's website: <http://www.oregon.gov/deq/wq/wqpermits/Pages/Mining.aspx> or by requesting a copy from a DEQ office.
- c. In-water non-motorized mining equipment authorized under this permit must be located within the wetted perimeter.
- d. At no time may permit coverage apply to simultaneous operation of more than one in-water non-motorized mining device. The person covered by this permit may supervise another person operating a single in-water non-motorized mining device as long as the person covered by this permit is present. A person operating under the supervision of a person covered by the permit must comply with all conditions and limitations in the permit.

SCHEDULE A: Discharge Limitations For All Equipment

1. Discharges from suction dredges and in-water non-motorized equipment authorized by this permit must not create visible turbidity above background beyond 300 feet downstream or downcurrent of the mining operation. In no case may visible turbidity cover the entire wetted perimeter (from stream bank to opposite stream bank). No wastes may be discharged and no activities may be conducted that will cause or contribute to a violation of water quality standards as adopted in OAR Chapter 340, Division 41.
2. If any visible increase in turbidity of wastewater discharges is observed above background turbidity beyond any point more than 300 feet downstream or downcurrent from the activity at any time, the operation must be modified, curtailed, or stopped immediately so that a violation as defined in Schedule A does not exist. Options to prevent, mitigate or correct turbid water discharges include, but are not limited to, ceasing operations, moving the location of the operation, reducing process flow or using a smaller machine.
3. Suction dredge and in-water non-motorized mining operations are prohibited during non-daylight hours.
4. Mining must not cause any measurable increase in turbidity in the Diamond Peak, Kalmiopsis, Eagle Cap, Gearhart Mountain, Mount Hood, Mount Jefferson, Mount Washington, Mountain Lakes, Oregon Islands, Strawberry Mountain, Three Arch Rocks and Three Sisters wilderness areas. Measurable increase in turbidity for purposes of this permit is any visible turbidity.
5. Suction dredge equipment must be properly maintained and petroleum products must be managed so that no visible oily sheen is created in the water.
6. Operation of a suction dredge is not allowed in waters less than 500 feet upstream from a stream segment of the same stream or a tributary of a stream with a stream segment that is listed as water quality limited in categories 4 and 5 for sedimentation, turbidity or toxics other than chlorine, on the list published by DEQ pursuant to OAR 340-041-0046 unless a stream segment is subject to a total maximum daily load (TMDL) that includes a wasteload allocation for mining under the 700PM permit. The 303(d) list as approved or established by EPA that is in effect as of January 1 of each year will be used for water quality limited waters.

SCHEDULE B: Monitoring and Reporting Requirements for Suction Dredge Registrants

1. A registrant must visually monitor the turbid wastewater discharges from the suction dredge each day of the operation. Visual monitoring must be performed at least once a day during daylight hours
2. A registrant must visually monitor the wastewater discharge immediately downstream or down current from the mining activity until the turbidity plume is no longer visible.
3. A registrant must record all of the information listed below in a monitoring log:
 - a. assigned permit number;
 - b. date of visual monitoring;
 - c. time of visual monitoring;
 - d. location of visual monitoring:
 - i. using township, range and section and latitude and longitude and
 - ii. stream name;
 - e. suction dredge nozzle inside diameter, hose inside diameter and maximum horsepower rating;
 - f. date that equipment was checked and date equipment was decontaminated for invasive species according to Schedule D, Condition 16;
 - g. account of any mercury observed in sluice box or concentrate during cleanout process and amount of mercury collected;
 - h. whether operations were modified, curtailed or stopped and if so, what actions were taken, in order to comply with the 300 foot turbidity limit;
 - i. other noncompliance according to Schedule F, Section D6; and
 - j. the printed name of the person performing the visual monitoring and recording the observations in the monitoring log.
4. The monitoring log must be legible and available to authorities upon request.
5. A registrant must submit the monitoring log as part of the DEQ annual report by **February 28** of each calendar year. Permit registrants must submit an annual report even if no dredging occurred. Annual reports must be submitted to DEQ Headquarters at 700 NE Multnomah Street, Suite 600, Portland OR, 97232. An annual report form will be available on DEQ's web page or at a DEQ office.
6. A registrant must maintain monitoring logs and annual reports required by this permit and records of all data used to complete the application for this permit for at least three years from the expiration date of this permit.
7. When a registrant becomes aware that it has failed to properly report any relevant facts or has submitted incorrect information in a permit application or any report to DEQ, the registrant must promptly submit or correct the submission of such facts or information.

8. Electronic Reporting Requirements: A registrant must submit to DEQ the results of Schedule B 3. monitoring in an electronic format as specified below.
 - a. When DEQ directs, the registrant must submit permit-required monitoring results using DEQ-approved, web-based Discharge Monitoring Report (DMR) forms.
 - b. The reporting period is the calendar year.
 - c. The registrant must submit monitoring data by February 28 of each calendar year for the previous year, unless DEQ specifies otherwise in writing.
 - d. Any data used to calculate summary statistics, additional monitoring, and other required reporting not entered on the web-based form must be submitted as a separate DEQ-approved electronic attachment.
 - e. The registrant must sign and certify all electronic submissions in accordance with the requirements Schedule F, Section D8 of this permit.

SCHEDULE C: COMPLIANCE SCHEDULE

A compliance schedule is not part of this permit.

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SCHEDULE D: Best Management Practices and Other Special Conditions

1. Suction dredges or in-water non-motorized mining equipment must be operated to ensure that there is no overlap of turbidity plumes from equipment used in the same waters.
2. Suction dredging is not allowed outside the periods set in the in-water work schedule (Timing of In-Water Work To Protect Fish and Wildlife Resources) established by the Oregon Department of Fish and Wildlife.
3. Mining equipment, including suction dredges and in-water non-motorized mining equipment must not be used where fish eggs are present.
4. No activities authorized by this permit, including operation of mining equipment, location of mining equipment, or turbid discharge, may obstruct a migrating fish from advancing upstream or downstream.
5. Mining equipment, including suction dredges and in-water non-motorized mining equipment must not be used where live freshwater mussels are present. Operations must be relocated if live mussels are encountered during excavation.
6. Mining equipment, including suction dredges and in-water non-motorized mining equipment must not be used where Pacific lamprey ammocoetes (larvae) are present. If Pacific lamprey ammocoetes are found, the operator must salvage the ammocoetes by sifting through streambed material in the area of operation and in the removed substrate and returning salvaged ammocoetes to the stream away from the activity.
7. Dredging or mining material from stream banks is prohibited under this permit.
8. Undercutting or eroding stream banks and removal or disturbance of boulders, rooted vegetation, or embedded woody plants and other habitat structure from stream banks is prohibited.
9. Moving boulders, logs, or other habitat structure within the stream channel is allowed by hand or non-motorized equipment. However, in no case may this habitat structure be removed entirely from the stream. Boulders and other habitat structures must be returned to their original position upon completion of the mining activity. The mining activity is considered complete if a person authorized by this permit does not return to that location to resume the activity within 24 hours.
10. Removal of habitat structure that extends into the stream channel from the stream bank is also prohibited. Examples of habitat structure are boulders, woody materials, vegetation, and other natural features.
11. This permit does not authorize operations that may affect bridge footings, dams, and other structures in or near the stream.
12. Suction dredge equipment must be maintained, and petroleum products managed, to prevent water pollution as follows:
 - a. Discharging oil, grease and fuel from suction dredge activity is prohibited. Permit registrants must report spills according to requirements of Schedule F, Section D5.
 - b. Equipment used for suction dredging must not release petroleum products. Equipment surfaces must be free of oils and grease, and must be checked for fuel and oil leaks prior to start of operation on a daily basis.
 - c. Oil absorbent material and an American National Standards Institute (ANSI) or Underwriters Laboratories (UL) approved safety container and self-closing nozzle must be used when refueling to prevent possible contamination of surface waters or groundwater.
 - d. Fuel and oil storage must be located at least 25 feet back from the wetted perimeter of the stream. Where a 25 foot setback is not possible (due to circumstances such as steep bank, storage security, movement of operations),

- fuel and oil must be stored in secondary containment. When it is not practical to store fuel and oil on land, secondary containment must be used when storing fuel on the dredge or in a support boat. Secondary containment capacity must be able to hold an amount greater than the fuel container volume.
- e. In the event a spill occurs, suction dredge operators must contain, remove and mitigate such spills immediately. All waste oil or other clean up materials contaminated with petroleum products must be properly disposed off-site.
13. No visible turbidity plume may reach the intake of a drinking water source. Drinking water source information tools to identify downstream intake locations are provided by the DEQ Drinking Water Protection Program and the Oregon Department of Water Resources.
14. Except as restricted in essential salmon habitat, suction dredging and in-water non-motorized mining is allowed on non-vegetated gravel bars up to 10 feet outside the wetted perimeter of the stream.
15. Motorized wheeled or tracked equipment is prohibited below the ordinary high water mark except for the suction dredge and life support system (for example, breathing air supply). Dredges may be launched and taken out at boat ramps, stream crossings/fords and other public water access points that are authorized by land management authorities.
16. Mining equipment must not carry or contain invasive species. Equipment must be decontaminated prior to its placement in Oregon waters and when transferring from one water body to another. The Oregon Marine Board provides information including decontamination steps on aquatic invasive species. Discharge of decontamination solutions to waters of the state is prohibited.
17. Use of chemical agents such as mercury to improve mineral processing or metal extraction from ore or high-grade fines is not allowed under this permit.
18. Operation of motorized mining equipment within 1,000 feet of a residence or campground is prohibited between the hours of the earlier of 8 p.m. or sunset and 8 a.m. This permit condition may be waived in a permit issued to the owner of a federal mining claim if the applicant seeking a waiver provides substantial evidence specific to the mining claim that establishes that the application of the condition either violates federal law, or constitutes a regulatory taking. DEQ shall review and make a determination regarding the request for a waiver of this condition as part of the permit coverage decision.
19. To the extent feasible and in addition to any other requirement in this permit, motorized equipment may not be operated in a manner deleterious to freshwater mollusks, essential salmon habitat or habitat essential to the recovery and conservation of Pacific lamprey.
20. Upon notification by DEQ that a mining discharge is no longer authorized for permit coverage, the permit registrant must apply for an amendment of the permit registration to change the location of the mining operation within 90 days of the date of notification. If an amended registration is not received DEQ will terminate permit coverage.

SCHEDULE E: PRETREATMENT ACTIVITIES

A pretreatment program is not part of this permit.

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SCHEDULE F: NPDES GENERAL CONDITIONS

INDUSTRIAL FACILITIES

July 31, 2016 Version

Where requirements in Schedules A, B, and D contain requirements that are more specific than the general conditions, those provisions supersede the general conditions.

SECTION A. STANDARD CONDITIONS

A1. Duty to Comply with Permit

The permittee must comply with all conditions of this permit. Failure to comply with any permit condition is a violation of Oregon Revised Statutes (ORS) 468B.025 and the federal Clean Water Act and is grounds for an enforcement action. Failure to comply is also grounds for DEQ to terminate, modify and reissue, revoke, or deny renewal of a permit.

A2. Penalties for Water Pollution and Permit Condition Violations

The permit is enforceable by DEQ or EPA, and in some circumstances also by third-parties under the citizen suit provisions of 33 USC § 1365. DEQ enforcement is generally based on provisions of state statutes and Environmental Quality Commission (EQC) rules, and EPA enforcement is generally based on provisions of federal statutes and EPA regulations.

ORS 468.140 allows DEQ to impose civil penalties up to \$25,000 per day for violation of a term, condition, or requirement of a permit.

Under ORS 468.943, unlawful water pollution in the second degree, is a Class A misdemeanor and is punishable by a fine of up to \$25,000, imprisonment for not more than one year, or both. Each day on which a violation occurs or continues is a separately punishable offense.

Under ORS 468.946, unlawful water pollution in the first degree is a Class B felony and is punishable by a fine of up to \$250,000, imprisonment for not more than 10 years, or both.

The Clean Water Act provides that any person who violates permit condition, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$25,000 per day for each violation.

The Clean Water Act provides that any person who negligently violates any condition, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both.

In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both.

Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both.

In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.

Any person who knowingly violates section any permit condition, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both.

In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both.

An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

Any person may be assessed an administrative penalty by the Administrator for violating any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act.

Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000.

Penalties for Class II violations are not to exceed \$10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$125,000.

A3. Duty to Mitigate

The permittee must take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit. In addition, upon request of DEQ, the permittee must correct any adverse impact on the environment or human health resulting from noncompliance with this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

A4. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and have the permit renewed. The application must be submitted at least 180 days before the expiration date of this permit.

DEQ may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date.

A5. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:

- a. Violation of any term, condition, or requirement of this permit, a rule, or a statute.
- b. Obtaining this permit by misrepresentation or failure to disclose fully all material facts.
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- d. The permittee is identified as a Designated Management Agency or allocated a wasteload under a total maximum daily load (TMDL).
- e. New information or regulations.
- f. Modification of compliance schedules.
- g. Requirements of permit reopener conditions.
- h. Correction of technical mistakes made in determining permit conditions.
- i. Determination that the permitted activity endangers human health or the environment.
- j. Other causes as specified in 40 CFR §§ 122.62, 122.64, and 124.5.

The filing of a request by the permittee for a permit modification, revocation or reissuance, termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

A6. Toxic Pollutants

The permittee must comply with any applicable effluent standards or prohibitions established under Oregon Administrative Rules (OAR) 340-041-0033 and 307(a) of the federal Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the federal Clean Water Act within

the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

A7. Property Rights and Other Legal Requirements

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege, or authorize any injury to persons or property or invasion of any other private rights, or any infringement of federal, tribal, state, or local laws or regulations.

A8. Permit References

Except for effluent standards or prohibitions established under section 307(a) of the federal Clean Water Act and OAR 340-041-0033 for toxic pollutants, and standards for sewage sludge use or disposal established under section 405(d) of the federal Clean Water Act, all rules and statutes referred to in this permit are those in effect on the date this permit is issued.

A9. Permit Fees

The permittee must pay the fees required by OAR.

SECTION B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

B1. Proper Operation and Maintenance

The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

B2. Need to Halt or Reduce Activity Not a Defense

For industrial or commercial facilities, upon reduction, loss, or failure of the treatment facility, the permittee must, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced or lost. It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

B3. Bypass of Treatment Facilities

a. Definitions

- (1) "Bypass" means intentional diversion of waste streams from any portion of the treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, provided the diversion is to allow essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs b and c of this section.
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Prohibition of bypass.

- (1) Bypass is prohibited and DEQ may take enforcement action against a permittee for bypass unless:
 - i. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventative maintenance; and
 - iii. The permittee submitted notices and requests as required under General Condition B3.c.

- (2) DEQ may approve an anticipated bypass, after considering its adverse effects and any alternatives to bypassing, when DEQ determines that it will meet the three conditions listed above in General Condition B3.b(1).
- c. Notice and request for bypass.
 - (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, a written notice must be submitted to DEQ at least ten days before the date of the bypass.
 - (2) Unanticipated bypass. The permittee must submit notice of an unanticipated bypass as required in General Condition D5.

B4. Upset

- a. Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operation error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of General Condition B4.c are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and that the permittee can identify the causes(s) of the upset;
 - (2) The permitted facility was at the time being properly operated;
 - (3) The permittee submitted notice of the upset as required in General Condition D5, hereof (24-hour notice); and
 - (4) The permittee complied with any remedial measures required under General Condition A3 hereof.
- d. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

B5. Treatment of Single Operational Upset

For purposes of this permit, a single operational upset that leads to simultaneous violations of more than one pollutant parameter will be treated as a single violation. A single operational upset is an exceptional incident that causes simultaneous, unintentional, unknowing (not the result of a knowing act or omission), temporary noncompliance with more than one federal Clean Water Act effluent discharge pollutant parameter. A single operational upset does not include federal Clean Water Act violations involving discharge without a NPDES permit or noncompliance to the extent caused by improperly designed or inadequate treatment facilities. Each day of a single operational upset is a violation.

B6. Public Notification of Effluent Violation

If effluent limitations specified in this permit are exceeded or an overflow occurs that threatens public health, the permittee must take such steps as are necessary to alert the public, health agencies and other affected entities (for example, public water systems) about the extent and nature of the discharge in accordance with the notification procedures developed under General Condition B7. Such steps may include, but are not limited to, posting of the river at access points and other places, news releases, and paid announcements on radio and television.

B7. Emergency Response and Public Notification Plan

The permittee must develop and implement an emergency response and public notification plan that identifies measures to protect public health from bypasses or upsets that may endanger public health. At a minimum the plan must include mechanisms to:

- a. Ensure that the permittee is aware (to the greatest extent possible) of such events;
- b. Ensure notification of appropriate personnel and ensure that they are immediately dispatched for investigation and response;

- c. Ensure immediate notification to the public, health agencies, and other affected entities (including public water systems). The response plan must identify the public health and other officials who will receive immediate notification;
- d. Ensure that appropriate personnel are aware of and follow the plan and are appropriately trained;
- e. Provide emergency operations; and
- f. Ensure that DEQ is notified of the public notification steps taken.

B8. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters must be disposed of in such a manner as to prevent any pollutant from such materials from entering waters of the state, causing nuisance conditions, or creating a public health hazard.

SECTION C. MONITORING AND RECORDS

C1. Representative Sampling

Sampling and measurements taken as required herein must be representative of the volume and nature of the monitored discharge. All samples must be taken at the monitoring points specified in this permit, and must be taken, unless otherwise specified, before the effluent joins or is diluted by any other waste stream, body of water, or substance. Monitoring points must not be changed without notification to and the approval of DEQ. Samples must be collected in accordance with requirements in 40 CFR part 122.21 and 40 CFR part 403 Appendix E.

C2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices must be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices must be installed, calibrated and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected must be capable of measuring flows with a maximum deviation of less than ± 10 percent from true discharge rates throughout the range of expected discharge volumes.

C3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR part 136 or, in the case of sludge (biosolids) use and disposal, approved under 40 CFR part 503 unless other test procedures have been specified in this permit.

For monitoring of recycled water with no discharge to waters of the state, monitoring must be conducted according to test procedures approved under 40 CFR part 136 or as specified in the most recent edition of Standard Methods for the Examination of Water and Wastewater unless other test procedures have been specified in this permit or approved in writing by DEQ.

C4. Penalties for Tampering

The federal Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit may, upon conviction, be punished by a fine of not more than \$10,000 per violation, imprisonment for not more than two years, or both. If a conviction of a person is for a violation committed after a first conviction of such person, punishment is a fine not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or both.

C5. Reporting of Monitoring Results

Monitoring results must be summarized each month on a discharge monitoring report form approved by DEQ. The reports must be submitted monthly and are to be mailed, delivered or otherwise transmitted by the 15th day of the following month unless specifically approved otherwise in Schedule B of this permit.

C6. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or, in the case of sludge (biosolids) use and disposal, approved under 40 CFR part 503 or as specified in this permit, the results of this monitoring must be included in the calculation and reporting of the data

submitted in the discharge monitoring report. Such increased frequency must also be indicated. For a pollutant parameter that may be sampled more than once per day (for example, total residual chlorine), only the average daily value must be recorded unless otherwise specified in this permit.

C7. Averaging of Measurements

Calculations for all limitations that require averaging of measurements must utilize an arithmetic mean, except for bacteria which must be averaged as specified in this permit.

C8. Retention of Records

Records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities must be retained for a period of at least 5 years (or longer as required by 40 CFR part 503). Records of all monitoring information including all calibration and maintenance records, all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit and records of all data used to complete the application for this permit must be retained for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of DEQ at any time.

C9. Records Contents

Records of monitoring information must include:

- a. The date, exact place, time, and methods of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

C10. Inspection and Entry

The permittee must allow DEQ or EPA upon the presentation of credentials to:

- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by state law, any substances or parameters at any location.

C11. Confidentiality of Information

Any information relating to this permit that is submitted to or obtained by DEQ is available to the public unless classified as confidential by the Director of DEQ under ORS 468.095. The permittee may request that information be classified as confidential if it is a trade secret as defined by that statute. The name and address of the permittee, permit applications, permits, effluent data, and information required by NPDES application forms under 40 CFR § 122.21 are not classified as confidential [40 CFR § 122.7(b)].

SECTION D. REPORTING REQUIREMENTS

D1. Planned Changes

The permittee must comply with OAR 340-052, "Review of Plans and Specifications" and 40 CFR § 122.41(l)(1). Except where exempted under OAR 340-052, no construction, installation, or modification involving disposal systems, treatment works, sewerage systems, or common sewers may be commenced until the plans and specifications are submitted to and approved by DEQ. The permittee must give notice to DEQ as soon as possible of any planned physical alternations or additions to the permitted facility.

D2. Anticipated Noncompliance

The permittee must give advance notice to DEQ of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

D3. Transfers

This permit may be transferred to a new permittee provided the transferee acquires a property interest in the permitted activity and agrees in writing to fully comply with all the terms and conditions of the permit and EQC rules. No permit may be transferred to a third party without prior written approval from DEQ. DEQ may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under 40 CFR § 122.61. The permittee must notify DEQ when a transfer of property interest takes place.

D4. Compliance Schedule

Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date. Any reports of noncompliance must include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.

D5. Twenty-Four Hour Reporting

The permittee must report any noncompliance that may endanger health or the environment. Any information must be provided orally (by telephone) within 24 hours from the time the permittee becomes aware of the circumstances, unless a shorter time is specified in the permit. During normal business hours, the DEQ regional office must be called. Outside of normal business hours, DEQ must be contacted at 1-800-452-0311 (Oregon Emergency Response System).

- a. The following must be included as information that must be reported within 24 hours under this paragraph:
 - (1) Any unanticipated bypass that exceeds any effluent limitation in this permit;
 - (2) Any upset that exceeds any effluent limitation in this permit;
 - (3) Violation of maximum daily discharge limitation for any of the pollutants listed by DEQ in this permit; and
 - (4) Any noncompliance that may endanger human health or the environment.
- b. A written submission must also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission must contain:
 - (1) A description of noncompliance and its cause;
 - (2) The period of noncompliance, including exact dates and times;
 - (3) The estimated time noncompliance is expected to continue if it has not been corrected;
 - (4) Steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance; and
 - (5) Public notification steps taken, pursuant to General Condition B7.

DEQ may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

D6. Other Noncompliance

The permittee must report all instances of noncompliance not reported under General Condition D4 or D5, at the time monitoring reports are submitted. The reports must contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times;
- c. The estimated time noncompliance is expected to continue if it has not been corrected; and
- d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

D7. Duty to Provide Information

The permittee must furnish to DEQ within a reasonable time any information that DEQ may request to determine compliance with the permit or to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit. The permittee must also furnish to DEQ, upon request, copies of records required to be kept by this permit.

Other Information: When the permittee becomes aware that it has failed to submit any relevant facts or has submitted incorrect information in a permit application or any report to DEQ, it must promptly submit such facts or information.

D8. Signatory Requirements

All applications, reports or information submitted to DEQ must be signed and certified in accordance with 40 CFR § 122.22.

D9. Falsification of Information

Under ORS 468.953, any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, is subject to a Class C felony punishable by a fine not to exceed \$125,000 per violation and up to 5 years in prison per ORS chapter 161. Additionally, according to 40 CFR § 122.41(k)(2), any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit including monitoring reports or reports of compliance or non-compliance will, upon conviction, be punished by a federal civil penalty not to exceed \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

D10. Changes to Discharges of Toxic Pollutant

The permittee must notify DEQ as soon as it knows or has reason to believe the following:

- a. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following “notification levels:
 - (1) One hundred micrograms per liter (100 µg/l);
 - (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - (3) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR § 122.21(g)(7); or
 - (4) The level established by DEQ in accordance with 40 CFR § 122.44(f).
- b. That any activity has occurred or will occur that would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
 - (1) Five hundred micrograms per liter (500 µg/l);
 - (2) One milligram per liter (1 mg/l) for antimony;
 - (3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR § 122.21(g)(7); or
 - (4) The level established by DEQ in accordance with 40 CFR § 122.44(f).

SECTION E. DEFINITIONS

- E1. *BOD* or *BOD₅* means five-day biochemical oxygen demand.
- E2. *CBOD* or *CBOD₅* means five-day carbonaceous biochemical oxygen demand.
- E3. *TSS* means total suspended solids.
- E4. *Bacteria* means but is not limited to fecal coliform bacteria, total coliform bacteria, *Escherichia coli* (*E. coli*) bacteria, and *Enterococcus* bacteria.
- E5. *FC* means fecal coliform bacteria.
- E6. *Total residual chlorine* means combined chlorine forms plus free residual chlorine
- E7. *Technology based permit effluent limitations* means technology-based treatment requirements as defined in 40 CFR § 125.3, and concentration and mass load effluent limitations that are based on minimum design criteria specified in OAR 340-041.
- E8. *mg/l* means milligrams per liter.
- E9. *µg/l* means microgram per liter.
- E10. *kg* means kilograms.

- E11. m^3/d means cubic meters per day.
- E12. *MGD* means million gallons per day.
- E13. *Average monthly effluent limitation* as defined at 40 CFR § 122.2 means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.
- E14. *Average weekly effluent limitation* as defined at 40 CFR § 122.2 means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.
- E15. *Daily discharge* as defined at 40 CFR § 122.2 means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge must be calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge must be calculated as the average measurement of the pollutant over the day.
- E16. *24-hour composite sample* means a sample formed by collecting and mixing discrete samples taken periodically and based on time or flow.
- E17. *Grab sample* means an individual discrete sample collected over a period of time not to exceed 15 minutes.
- E18. *Quarter* means January through March, April through June, July through September, or October through December.
- E19. *Month* means calendar month.
- E20. *Week* means a calendar week of Sunday through Saturday.