State of Oregon
DEQ Department of Environmental Quality

1200-Z Industrial Stormwater Discharge Permit 2026 Reissuance

Response to Public Comments

July 2026

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Acronyms

6PPD-q 6PPD-quinone

AFFF Aqueous Film Forming Foam

BAT Best Available Technologies

BMP Best Management Practices

BOD_5 Biochemical Oxygen Demand

CEG Certified Engineering Geologist

CNE No Exposure Condition Exclusion

CFR Code of Federal Regulations

CWA Clean Water Act

DMR Discharge Monitoring Report

EPA Environmental Protection Agency

EQC Environmental Quality Commission

MDL Method Detection Limit

MS4 Municipal Separate Storm Sewer System

MSGP Multi-Sector General Permit

ND Non-detect

NOT Notice of Termination

NPDES National Pollutant Discharge Elimination System

OAR Oregon Administrative Rules

OERS Oregon Emergency Response System

PE Professional Engineer

PER Permit Evaluation Report

PFAS per- and polyfluoroalkyl Substances

RL Reporting Limit

ROD Revord of Decision

SCM Source Control Measures

SIC Standard Industrial Classification (Codes)

SWPCP Stormwater Pollution Control Plan

TBEL Technology-based Effluent Limitations

TMDL Total Maximum Daily Load

TSS Total Suspended Solids

USC United States Code

WLA Waste Load Allocation

WQBEL Water Quality-based Effluent Limitations

1 Introduction

This response to public comments document addresses comments and questions received on the proposed 2026 reissuance of the 1200-Z industrial stormwater National Pollutant Discharge Elimination System permit. The individuals and organizations shown in Table 1 provided comments on the public notice drafts of the permit and evaluation report during the public comment period which was held from April 9 through May 15, 2026. DEQ held a public hearing on May 12, 2026. Comments received have been reviewed by DEQ and are addressed in this document to the best extent possible. Comments that resulted in modifications to the permit or permit evaluation report are noted. In total, there were 111 unique comments from 22 entities. DEQ made modifications based on 41 of the comments.

Disclaimer: Many comments have been summarized and combined based on topic. While every individual comment is represented within the numbered section, there may be several comments together; therefore, responses repeat. Contact DEQ to request the full comments.

Table 1: Commenters who provided comments during the public comment period on the drafts of the 1200-Z industrial stormwater NPDES permit and permit evaluation report.

Commenter #	Commenter	Acronym
1	Aquarius environmental	Aquarius environmental
2	BNSF Railway	BNSF
3	City of Eugene - agent	City of Eugene
4	City of Portland, Bureau of Environmental Services - agent	BES
5	Clean Water Services - agent	CWS
6	Fuss & O'Neill	F & O
7	GeoEngineers	GeoEngineers
8	Glacier Northwest	Glacier Northwest
9	Gunderson Marine and Iron (written support for WWC comments)	Gunderson Marine & Iron
10	Northwest Environmental Defense Center and Columbia Riverkeeper	NEDC/CRK
11	Northwest Pulp and Paper Association	NWPPA
12	Oregon Business and Industries	OBI
13	Oregon Fuels Association	OFA
14	Oregon Industrial Stormwater Group	OISG
15	Oregon Refuse and Recycling Association	ORRA
16	Oregon Trucking Associations, Inc.	OTA
17	SCS Engineers	SCS Engineers
18	Simplot Company	Simplot

Commenter #	Commenter	Acronym
19	Vigor Industrial LLC	Vigor
20	Waste Connections	Waste Connections
21	Wildish Land Co.	Wildish Land Co.
22	Working Waterfront Coalition	WWC

2 Comments from: Aquarius environmental

Aquarius environmental #1

Description: Visual Observations - Photographs

Comment: “Document visual observation by taking a photograph”

While this requirement may sound simple, it is likely to prove problematic and create numerous logistical and administrative concerns, including:

- Field staff are not necessarily provided with smart phones or digital cameras
- Adding a date and timestamp is challenging digitally and data is not always compatible between android and iPhone file sharing (e.g. HEIC format vs. jpeg)
- Field staff do not all have access to computers and/or have the knowledge to download and share, maintaining records, uploading and storing photographs in accessible locations
- Establishing consistent procedures for retaining and organizing photographic records across facilities
- Background against the sky, backlit, or against a light-colored background

The value added to the inspection appears minimal compared to the potential burden. Many of the benchmark pollutants (pH, iron, copper, E. Coli, etc.) cannot be evaluated based on photographs. While certain visual indicators may be interpreted to a degree, there are notable limitations and influencing factors (camera light, shadow, angle, focus, etc.). The analytical laboratory sampling data is the most reliable documentation of water quality and leaves no room for interpretation. Photo documentation will provide minimal added data while creating frustration and confusion with field personnel who have less familiarity with the tools and programs needed to meet the requirements.

This requirement is infeasible, most industrial personnel do not have access to company phones with cameras, dedicated camera equipment onsite, or computer access for photo storage and management.

The added requirement for photographic documentation may create significant administrative burden without a corresponding improvement in environmental protection or compliance verification.

Response: This requirement has been removed.

Changes were made based on this comment.

Aquarius environmental #2

Description: Schedule D, Special Condition 3 “Flood Prone Sites.”

Comment: “Flood Prone Site,” creates significant regulatory uncertainty and the lack of a process or standards for determining when the Department of Environmental Quality (“DEQ”) or a local government could require

potentially costly modifications of infrastructure makes the predictable application of the requirements impossible. Even if Special Condition 3 was modified to add the needed definitional and procedural clarity, however, DEQ has not identified any gap in the generally applicable provisions of the Draft Permit that justifies or explains why the special or different BMPs at “Flood Prone Sites” set forth in Special Condition 3 are needed.

Condition D.3, related to stormwater discharge from facilities located in floodplains or deemed to be flood-prone sites. Neither the term “floodplain” or “susceptible to past flooding events” are defined in the draft permit. The characterization of a site as “susceptible to past flooding events” is too broad and should have a set timeframe in which past flooding occurred. The language around additional source control measures, operational controls, and BMPs to mitigate risk of stormwater contamination is also vague and subjective. It is at the discretion of DEQ, its agent, or the local government to determine the need for and extent of modification required, but it is unclear what a facility must do to comply with the requirements. How is a facility to determine the potential risks and responses?

The Condition 3 language is unclear and confusing as to what additional source control measures, operational controls and BMPs to consider to “mitigate risk of stormwater contamination” that are not already provided for in the 1200Z Permit. The purpose of the 1200Z permit and the requirements to develop a Storm Water Pollution Control Plan is to regulate various pollutants from industrial activities that may be discharged in stormwater or snowmelt during discharge events.

The proposed condition would give DEQ, DEQ agents, and local governments extraordinarily broad and apparently unconstrained authority to “require modification of infrastructure.” Would this allow these entities to require a permit registrant to relocate all or a portion of its facility? Require the construction of walls or other flood barriers? The potential scope of this provision is simply too broad and ill-defined.

This Special Condition is concerning for several reasons. First, the Draft Permit does not provide a definition of what constitutes a “flood-prone site.” Further, the Draft Permit does not provide any guidance of what additional source control measures, operational controls or BMPs must be considered by a permittee. In addition, the Draft Permit provides DEQ, its agent or local government authority to require modification of infrastructure without providing any guidelines for when such a modification requirement could be triggered or what type of modification could be required. For these reasons, DEQ should remove this provision.

Response: DEQ removed this section based on considerable feedback and will reconsider when the permit is reissued in 2031.

Changes were made based on this comment.

Aquarius environmental #3

Description: Mass Reduction Measures - Support

Comment: We appreciate and applaud DEQ for updating the language to clarify the relevance of voluntary installation of mass-reduction measures that are not part of the Tier 2 response. We further support condition A. 13. e, defining submittal of certification prior to construction of voluntary measures. A number of facilities we work with have sought to incorporate low-impact development and mass-reduction measures, but have had no avenue to do so in the current 1200z. This provision will provide additional pathways for permittees in pollution prevention.

Response: Thank you for the input.

Aquarius environmental #4

Description: Agents - SWPCP revisions

Comment: Does this allow the permittee to submit a PDF instead of wet-signed paper copies to the Agent? Wet-signed paper copies are burdensome to permittees and, often, to Agents, as they are often misplaced even when registered mail or other tracking is used. There are numerous PDF digital signature formats available to meet federal signature standards.

Add language clarifying that permittees in jurisdictions managed by Agents are required to submit hardcopies with wet signatures until otherwise directed.

Response: Unfortunately, until such time all 1200-Z permit registrants are using Your DEQ Online, wet signatures are required for those facilities operating in DEQs' agent geographic areas. The permit has been updated accordingly.

Changes were made based on this comment.

Aquarius environmental #5

Description: Sample Procedures

Comment: DEQ has retained the 'discharge must be sampled during the first 12 hours of discharge event' language, but there is no requirement to sample outside of scheduled operating hours. As many businesses are closed more than 12 hours per day, it is very difficult to document or prove the start of discharge during unattended operations. Further, there is no established criterion for antecedent dry conditions, such that the establishment of an 'event' is very vague. Further, certain monitoring parameters, such as bacteria and organics, are short-lab-hold, such that the permittee is beholden to the lab's ability to accept and batch short-lab-hold samples, which are beyond the permittee's control. In practice, some agents and/or DEQ have penalized permittees for not being able to document that this criterion is met when the permit does not define acceptance criteria.

We suggest it would be more appropriate to use the language to 'target sample collection' in the first 12 hours, rather than 'must sample'.

Response: The permit allows if you cannot sample in that timeframe you must document in the Discharge Monitoring Report the reason why. This requirement is not overly burdensome. The permit changed the definition from regular business hours to scheduled operating hours which means the daylight time periods when the facility is staffed to conduct any function related to industrial activity, but excluding time periods where only routine maintenance, emergency response, security, and/or janitorial services are performed. The permit retains sampling is not required outside scheduled operating hours or unsafe conditions.

Aquarius environmental #6

Description: Visual Observations - Frequency

Comment: DEQ has retained the monthly visual observation requirement. While we agree that visual monitoring can be a good BMP for identifying potential contamination, we find the monthly requirement to be generally overly burdensome. The DEQ permit evaluation report does not assess the value of the monthly

interval. From a training or inspector's perspective, if any concerns are raised by DEQ or Agent inspectors, they are often raised 12–24 months after the inspection. The inspector then punitively comments that visual observations are conducted at 'the wrong time' or missed, without any description of the benefit to pollution prevention. Further, timing sample collection during a discharge during business hours generally requires multiple inspections of various outfalls, resulting in a high labor/cost burden and documentation burden. The EPA MSGP and neighboring states like Washington require this to be conducted quarterly, not monthly.

Has DEQ considered the net benefit of this requirement? How many Tier 1s or other pollution prevention measures have been identified and addressed as a result of visual monitoring? We conducted an informal evaluation of 39 1200-Z facilities, representing over 2,340 monthly inspections over a five-year permit term. In this evaluation, we identified two Tier 1s for visual observations, roughly 0.08%.

We propose adjusting to quarterly visual observations to align with the MSGP. As there is little discernible benefit from monthly observations, quarterly observations will better align with other monitoring and record-keeping (i.e., DMRs).

Response: For exceptionally large facilities where monthly inspections of all areas or visual observation at all substantially similar discharge points are infeasible, DEQ or agent may approve in writing a modified inspection frequency. Historically and depending on where the site is located there may be several months of dry weather that would not require visual observations. In addition, because DEQ allows substantially similar discharge points, it is extremely important that an operator perform visual observations on those un-monitored discharge points.

DEQ has not evaluated visual observations in relation to Tier 1 reports. Visual observations of stormwater discharges provide a practical and inexpensive means for operators to evaluate the effectiveness of their control measures and DEQ will maintain a monthly frequency.

Aquarius environmental #7

Description: pH Field Notes

Comment: We provide sample collection as a service to our numerous clients. For the last 20 years or so, we have documented pH readings, including the date of last calibration, on Chain of Custody forms. Is it DEQ's intent that a separate form or document from the CoC is used? We have further had experience with DEQ agents, noting that field notes were incomplete or missing information and that there was no guidance on expectations.

DEQ should clarify whether this is a separate document and the expected contents of 'field notes'.

Response: It is important that the following details are recorded either on the chain of custody or in a field log:

- Date
- Time
- Location of collection
- pH meter type and calibration performed
- pH reading

The permit has been revised to account for this information being documented on the chain of custody.

Changes were made based on this comment.

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3 Comments from: BNSF Railway

BNSF #1

Description: No Exposure

Comment: DEQ provide permittees information on how DEQ or its agent will determine that a facility's stormwater discharges "have a reasonable potential to cause or contribute to a violation of applicable water quality standards."

The proposed language to deny or revoke a No Exposure Condition Exclusion (CNE) due to a reasonable potential to cause or contribute to a violation of applicable water quality standards is too vague, with significant risk of inconsistent application due to the subjective nature of the permit language. In addition, there is no defined process for how DEQ would evaluate whether a facility's stormwater discharges have a reasonable potential to cause or contribute to a violation of applicable water quality standards. A CNE is based on a facility meeting a defined set of requirements as described in Permit Condition 1.5 and DEQ already has the authority to deny or revoke a CNE under the current Permit. The proposed language should be removed from the Permit as it is not necessary.

Response: DEQ removed "or agent" from the No Exposure Conditional Exclusion from Permit Coverage section of the permit. DEQ may use the Reasonable Potential Analysis Process for Toxic Pollutant, 2024, Internal Management Directive or other factors when determining reasonable potential to cause or contribute to a violation. EPA's Stormwater Phase II Rule includes water quality concerns, and a requirement to obtain coverage following the permitting authority's determination that the discharge causes, has a reasonable potential to cause, or contributes to a violation of an applicable water quality standard, including designated uses.

Changes were made based on this comment.

BNSF #2

Description: Table 1 and Table 2

Comment: The Permit language uses the term "auxiliary operations" which is a term that is not defined and is not used anywhere else in the Permit except for Table 1. Rather than refer to "auxiliary operations," the Permit should refer to "primary industrial activity" which is defined in Schedule D.4 and what a facility's eligibility for coverage under the 1200-Z Permit is based on.

BNSF requests clarification on whether the language in the Permit "once covered under the permit all stormwater associated with industrial activities (See Schedule D.4 Definition) are regulated activities" means either:

1. stormwater associated with "industrial activity" as defined in Schedule D.4 Definitions and limited to areas of the facility engaged in other industrial activities identified in 40 CFR 122.26(b)(14)(i)-(xi); or

2. stormwater discharge associated with industrial activity as defined in Schedule D.4 Definitions and essentially requiring the entire footprint of a facility to be covered under the 1200-Z Permit.

DEQ should clarify the language in Table 1 and in the text above Table 2 to specify that, for transportation facilities, when coverage under the 1200-Z Permit is triggered by vehicle maintenance activities or equipment cleaning operations, only those areas of the facility which are engaged in industrial activities defined in 40 CFR 122.26(b)(14)(i)-(xi) are also regulated activities under the 1200-Z Permit.

Response: Auxiliary operations are the supporting activities tied to transportation, such as:

- **Vehicle and equipment maintenance**, including fluid changes, mechanical repairs, and lubrication sanding, painting, refinishing, and parts cleaning
- **Equipment cleaning operations**, including exterior vehicle wash-downs, interior trailer washouts, tank rinsing, and cleaning other industrial transfer equipment

The permit language discussed in these comments is not a substantive change from the 2021 permit but rather is a formatting change. The requirement that all industrial discharges from facilities in transportation sectors that have vehicle maintenance shops, equipment cleaning operations or airport deicing operations must obtain coverage and comply with the permit is consistent with the 2021 permit. The permit language is consistent with 340-045-0015(2) and 40 CFR 122.26 which are the rules that outline the requirements for who must obtain permit coverage. DEQ has only proposed moving the language that addresses this requirement from a footnote to the body of the table. The EQC initially expanded the permit coverage requirements to transportation sector facilities stormwater discharge associated with industrial activities during the 2021 rulemaking. At that time, the staff report for the rulemaking included discussion of the Oregon-specific considerations that warranted the expanded coverage requirements under state law.

This permit language is also consistent with ORS 468B.025, OAR 340-045-0015 and 40 CFR 122.26(b)(14) which provide permit coverage requirements under state and federal law. Based on the wide variety of industrial activities and significant materials exposed to stormwater discharge associated with industrial activity, the scope of the regulated operations is expanded to protect Oregon's waters. Some pollutant sources include material and waste storage, such as oil/fuel drums, batteries, tires, or filters stored outside, trailers and trucks storage, material or products from spills or leaks, and loading, unloading areas.

The condition has been implemented throughout the 2021-2016 permit cycle included areas defined in 40 CRF 122.26(b)(14) which is included in Schedule D.3 of this permit. Stormwater discharge associated with industrial activity:

"…The term includes, but is not limited to, stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product."

BNSF #3

Description: Definition - Industrial Activity

Comment: It appears that DEQ is stating in its 2021 Response to Comments document that all transportation facilities are significant contributors of pollutants based on the DEQ response: "Once a facility is covered under the permit, DEQ may expand the area covered under the permit to regulate stormwater discharge associated with industrial activity from the entire footprint. Based on the wide variety of industrial activities and significant materials associated with industrial activity exposed to stormwater discharge, DEQ has expanded the scope beyond auxiliary operations to protect Oregon's waters." However, there is no supporting reasoning or

justification as to how DEQ made this determination. The term significant contributor of pollutants only appears once in the 1200-Z Permit under the definition for Industrial Activity. For example, at a transportation facility, Significant Materials are not an Industrial Activity unless the Significant Materials are associated with vehicle maintenance or equipment cleaning.

The vague description of “a wide variety of industrial activities and significant materials associated with industrial activity” cannot be considered a “significant contributor of pollutants” by default, as activities at transportation facilities vary widely regarding volume, frequency or intensity of activities. Using this blanket determination to state that any transportation facility is a “significant contributor of pollutants” is an overreach of DEQ’s authority and is not supported by technical evidence.

BNSF requests that DEQ establish and document a process for determining when a facility is considered a “significant contributor of pollutants.”

Response: Please see Transportation Sector - Sector P response.

The comment is addressing language that is retained from the 2021 permit and has not changed. With this phrase DEQ is summarizing the reasoning for including the facilities listed in Table 2. Technical data supports the determinations to include industrial activities categories in Table 2. This approach been shown to contain pollutants of concern for the sediment contamination in these water bodies. When Portland Harbor was added to the Table 2 list of activities requiring permit coverage in 2017, the Table 2 approach had already been working well in the Columbia Slough drainage for several permit cycles.

On-going evaluation of contaminant loading related to sediment remediation, City of Portland outfall investigations and upland source control project work, indicate that recontamination of remediated sediment and delayed natural recovery in both the Columbia Slough and Portland Harbor are likely without reductions in loading through stormwater discharges. Both water bodies ROD rely on the 1200-Z permit to help control sediments in upland sites covered under this permit.

The CWA allows states to reduce or eliminate the discharge of contaminated stormwater determines which is a significant contributor of pollutants to waters of the state. Some keys factors may include hydrology, land use and nature of pollutants discharged with potential to cause or worsen water quality. Portland Harbor and Columbia Slough industrial stormwater regulations meet this criteria.

BNSF #4

Description: Erosion and Sediment Control

Comment: “Stabilize exposed areas, including areas where industrial activity has taken place in the past and significant materials remain, and contain runoff using structural and nonstructural controls to minimize erosion of soil and prevent the discharge of sediment.” The proposed language to prevent the discharge of sediment is overly prescriptive as it implies that zero sediment would need to be discharged from the facility to meet this proposed permit requirement (e.g., non-detect results for total suspended solids). The proposed language should be changed from “prevent the discharge of sediment” to “minimize discharge of sediment.”

Response: The narrative technology-based effluent limit has been changed to: “Stabilize exposed areas, including areas where industrial activity has taken place in the past and significant materials remain, and contain runoff using structural and nonstructural controls to minimize erosion of soil and control the discharge of sediment.”

Changes were made based on this comment.

BNSF #5

Description: Narrative WQBEL - Quarterly Cleaning of Storm Sewer Lines and Catch Basins

Comment: Language should be added to account for the potential for run-on as the cause of iron or bacteria in the storm sewer lines of a facility regulated under the 1200-Z Permit. For example, if a municipal separate storm sewer system (MS4) is determined to be the cause by source tracing sampling, then the Permittee under the 1200-Z Permit should not be required to clean storm sewer lines and catch basins on a quarterly basis.

Request that this requirement be revised to a requirement to specifically evaluate whether increasing cleaning to quarterly would be practicable and beneficial. It is unclear who would have the burden of proving that a sewer line is a source of continuing triggering events or how that would be done. Quarterly cleaning may also be impracticable for some facilities, particularly during the winter. Because of these uncertainties, a requirement to evaluate quarterly cleaning and to implement it only if it is determined to be practicable and beneficial, would be better than a blanket requirement to implement quarterly cleaning at all facilities where triggering events persist.

Response: Schedule A.20.k states: “If sample results continue to trigger as outlined in Schedule A.20.h and i above after completion of water quality-based narrative effluent limits above, the permit registrants must clean storm sewer lines, including catch basins quarterly, if proven to be a source.” The escalation in frequency of storm sewer line and catch basin cleaning may be avoided if sediment from the site is determined not be the source of exceedances.

A representative sample includes run-on sources that commingle with stormwater discharge associated with industrial activity. In addition, permit registrant shall, to the extent practicable, sample stormwater discharge associated with industrial activity as it flows off-site before it combines with stormwater, wastewater or other waste permitted streams, or from areas outside the facility, or mixes with any surface water.

BNSF #6

Description: Monthly Inspection Corrective Action Deadline

Comment: “Conduct all permanent corrective action required as a result of inspection within 30 calendar days or by next storm event.”

The proposed language implies that the permanent best management practices (BMPs) would be structural. While permanent operational BMPs could be implemented within 30 days, the proposed change would result in insufficient time to adequately implement certain structural BMPs and the proposed language does not identify a mechanism for the Permittee to extend the timeframe for implementation of the corrective action. As such, the proposed language would ultimately result in Permittees being out of compliance with the 30-day timeframe when required approvals for capital expenditures or other conditions limit the ability for a Permittee to complete the corrective action. For example, erecting a building or cover may require local agency approval and permits, engineering design, ordering of materials and fabrication, retaining a contractor, and construction; there are “permanent” corrective actions that may take months or potentially years to complete. The proposed Permit does not describe how a facility can maintain compliance if the action cannot be completed within the new deadline. Revise the language to better clarify the permanent corrective action deadline and include a process for maintaining compliance with the Permit if the deadline cannot be met.

Suggest revise language: Conduct all permanent corrective action required as a result of inspection within 30 calendar days. If completion of the permanent corrective action is not possible within 30 days, the Permittee

must document the schedule of implementation for the corrective action that the Permittee plans to take and the reason why completion of the corrective action is not possible within 30 days.

Response: The permit was revised to add “If the permit registrant fails to complete the corrective action within this timeframe, an explanation must be documented in the inspection report, and corrective actions must be completed as soon as practicable.”

Changes were made based on this comment.

BNSF #7

Description: Transportation Sector - Sector P

Comment: “For the transportation sectors below eligibility is based on the auxiliary operations listed above; however, once covered under the permit all stormwater associated with industrial activities (See Schedule D.4, Definition) are regulated activities…”

This additional statement should be removed because it is contrary to EPA’s stormwater regulations, which state: “Only those portions of the [transportation] facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14) (i)-(vii) or (ix)-(xi) of this section are associated with industrial activity.” 40 C.F.R. § 122.26(b)(14)(viii). Moreover, neither the Proposed Permit nor the draft evaluation report provides an alternative basis under 33 U.S.C. § 1342(p)(2)(E) and 40 C.F.R. § 122.26(a)(9)(i)(D) for regulating stormwater discharges from these nonindustrial activities.

While this change was adopted as a footnote to Table 1 in the 2021 issuance of the 1200-Z Permit, the response to comments on this change lacked adequate justification other than DEQ stating that “once a facility is covered under the permit, DEQ may expand the area covered under the permit to regulate stormwater discharge associated with industrial activity from the entire footprint.” Reasoning provided in DEQ’s response to comments included “based on the wide variety of industrial activities and significant materials associated with industrial activity exposed to stormwater discharge, DEQ has expanded the scope beyond auxiliary operations to protect Oregon’s waters” and also cited that “Washington State Ecology’s industrial stormwater general permit also regulates the entire footprint of industrial facilities.” DEQ’s response to comments states that the proposed final Permit language is consistent with 40 CFR 122.26. DEQ failed to identify whether the expansion of Permit coverage for transportation facilities was completed under Residual Designated Authority (RDA) or state authority.

Response: The permit language discussed in these comments is not a substantive change from the 2021 permit but rather is a formatting change. The requirement that all industrial discharges from facilities in transportation sectors that have vehicle maintenance shops, equipment cleaning operations or airport deicing operations must obtain coverage and comply with the permit is consistent with the 2021 permit. The permit language is consistent with 340-045-0015(2) and 40 CFR 122.26 which are the rules that outline the requirements for who must obtain permit coverage. DEQ has only proposed moving the language that addresses this requirement from a footnote to the body of the table. The Environmental Quality Commission initially expanded the permit coverage requirements to transportation sector facilities stormwater discharge associated with industrial activities during the 2021 rulemaking. At that time, the staff report for the rulemaking included discussion of the Oregon-specific considerations that warranted the expanded coverage requirements under state law.

This permit language is also consistent with ORS 468B.025, OAR 340-045-0015 and 40 CFR 122.26(b)(14) which provide permit coverage requirements under state and federal law. Based on the wide variety of

industrial activities and significant materials exposed to stormwater discharge associated with industrial activity, the scope of the regulated operations is expanded to protect Oregon's waters. Some pollutant sources include material and waste storage, such as oil/fuel drums, batteries, tires, or filters stored outside, trailers and trucks storage, material or products from spills or leaks, and loading, unloading areas.

The condition has been implemented throughout the 2021-2016 permit cycle included areas defined in 40 CRF 122.26(b)(14) which is included in Schedule D.3 of this permit. Stormwater discharge associated with industrial activity:

"…The term includes, but is not limited to, stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product."

BNSF #8

Description: WQBEL - Bacteria

Comment: To facilitate Permittee compliance and understanding, the new requirements for fecal coliform and enterococcus should match what is already required for e. coli for consistency. The proposed requirements for fecal coliform and enterococcus are abstract by including a reference to "not more than 10 percent of the samples" particularly for enterococcus which references a 90-day sampling period for this evaluation. Further, it is not clear where the "not more than 10 percent" requirement originated from. By including the reference to "not more than 10 percent," this would equate to allowing one sample exceedance over an approximate 2.5 year period (assuming four samples per year as required by the Permit).

BNSF suggests using similar impairment concentrations to E. coli. Fecal coliform should be set at 43 organisms per 100 ml and enterococcus should be set at 130 organisms per 100 ml.

Response: DEQ appreciates the comment. Impairment concentrations are derived from DEQ's water quality standards. E. coli has a criterion for no single sample may exceed 406 organisms per 100 ml; however, fecal coliforms shellfish harvesting designation is either a median concentration of 14 organisms per 100 ml or the no more than ten percent of the samples may exceed… criterion. The same is for coastal water contact recreation for enterococcus the water quality standard is expressed in a 90-day geometric of 35 organisms per 100 ml based on a minimum of 5 samples or a no more than ten percent of the sample may exceed… criterion.

In practicality, if a single sample exceeds 130 organisms per 100 ml for enterococcus or 43 organisms per 100 ml for fecal than the permit registrant may decide the probability of additional samples meeting the water quality criteria.

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4 Comments from: City of Eugene

City of Eugene #1

Description: Employee Education -Signatures

Comment: It is infeasible to obtain signatures and titles from over a thousand employees. In addition, many facilities have implemented electronic training delivery, tracking and record keeping documenting when employees have completed the required training.

Response: DEQ has removed the signature requirement from the Employee Education section of the permit.

Changes were made based on this comment.

City of Eugene #2

Description: Agents - SWPCP revisions

Comment: Does this allow the permittee to submit a PDF instead of wet-signed paper copies to the Agent? Wet-signed paper copies are burdensome to permittees and, often, to Agents, as they are often misplaced even when registered mail or other tracking is used. There are numerous PDF digital signature formats available to meet federal signature standards.

Add language clarifying that permittees in jurisdictions managed by Agents are required to submit hardcopies with wet signatures until otherwise directed.

Response: Unfortunately, until such time all 1200-Z permit registrants are using Your DEQ Online, wet signatures are required for those facilities operating in DEQs' agent geographic areas. The permit has been updated accordingly.

Changes were made based on this comment.

City of Eugene #3

Description: Emergency Firefighting - AFFF

Comment: Industrial facilities should not be expected to interfere with emergency firefighting operations and question their use of materials. Fire departments should be responsible for the materials they use, not the industrial facility.

Response: Senate Bill 91 prohibits fire departments from selling, using, or disposing of firefighting foam containing per- and polyfluoroalkyl substances (PFAS) beginning January 1, 2026, with full enforcement effective July 1, 2026. DEQ and Oregon State Fire Marshall are tasked with ensuring safe foam disposal and supporting departments through educational programming. No fire department is allowed to use firefighting foam containing per- and polyfluoroalkyl substances (PFAS). Although this is the case, 1200-Z permit registrants have no authority over emergency firefighting activities; therefore, the qualifier was removed.

Changes were made based on this comment.

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5 Comments from: City of Portland, Bureau of Environmental Services

BES #1

Description: Employee Education -Signatures

Comment: It is infeasible to obtain signatures and titles from over a thousand employees. In addition, many facilities have implemented electronic training delivery, tracking and record keeping documenting when employees have completed the required training.

Response: DEQ has removed the signature requirement from the Employee Education section of the permit.

Changes were made based on this comment.

BES #2

Description: Condition I.2(d)(i)

Comment: It is not clear if there is timeline for DEQ or agent review of the application materials for completeness and compliance with the permit conditions. The applicant has 90 days to submit updated materials if the application is deficient but are there timelines for DEQ review and processing?

Adding partial language from OAR 340-045-0030 without context or reference may lead to inconsistent or misapplication of the entirety or OAR 340-045-0030. In addition, as an agent, BES would like the flexibility to set a 30-day due date for the submittal of updated application materials to address communicated deficiencies. It is our experience that it regularly takes a second subsequent submittal to adequately address the communicated deficiencies. Thereby setting a 30-day due date allows for two rounds of revisions while keeping the application moving toward timely permit issuance.

Response: Oregon Revised Statues 340-045-0030(5)(a) reads: “If DEQ determines that additional information is needed, it will promptly request in writing the needed information from the applicant. The application will be considered withdrawn if the applicant fails to submit the requested information within 90 days of the request or such other time as DEQ establishes in writing.” The 90-day clock starts once DEQ or agent requests final edits in order to assign coverage under the 1200-Z.

The permit has been revised to better reflect the Oregon Administrative Rule. It now reads: “If applicant fails to respond to additional information request within 90 days, the application will be considered withdrawn, and the applicant must submit a new application. The application will be withdrawn unless DEQ or agent approves an alternative deadline for the submission of additional information.”

BES #3

Description: Revision Log - SWPCP

Comment: BES recommends the underlined text be added as follows: “A log which includes past revision dates with a brief summary of the revision for each revision date.” Providing a summary of revisions will aid DEQ or agent in applicable regulatory review of the revisions.

This requirement appears ambiguous and may create additional administrative burden without clear implementation guidance. Clarification is needed regarding whether DEQ intends to provide a standardized template or format for this log. Would the log need to identify specific sections revised or simply document that a revision occurred on a given date.

Response: A log depicting Plan revisions is a good practice and will make it easier for the facility to track changes and assist DEQ and agent’s identifying the changes. It should document the section changed. The permit now reads: “A log which includes past revision sections and dates.”

Changes were made based on this comment.

BES #4

Description: Spill Prevention and Response Procedures - Emergency Reporting

Comment: BES recommends the strikethrough text be removed as follows: ~~"At a minimum, the permit registrant must follow twenty-four-hour reporting in accordance with Schedule F, Section D5, conduct spill prevention and response measures including the following:"~~ The addition of reference to Schedule F and twenty-four hour reporting may lead to confusion and delayed reporting of spills. Schedule F, Section D5 language broadly covers reporting requirements associated with noncompliance and does not explicitly address spills. Additionally, certain types of spills require immediate reporting rather than twenty-four hour reporting.

BES recommends the strikethrough text be removed and the underlined text be added as follows: "Procedures for immediate notification of appropriate facility personnel, DEQ or agent, ~~local emergency service~~ and the Oregon Emergency Response System (1-800-452-0311), when a spill may endanger health or the environment." The addition of "immediate" to notification aligns with DEQ Emergency Response reporting timeframes and the removal of "local emergency service" is appropriate because they do not need to be notified of all spills that may endanger health or the environment. Instead, BES recommends adding local emergency service in sentence that follows this one because it includes an applicability caveat.

BES recommends the underlined text be added as follows: "Include applicable requirements for reporting spills or unpermitted discharges to local emergency services, municipalities, public health and drinking water supply agencies."

Response: DEQ revised the permit based on the suggested changes.

Changes were made based on this comment.

BES #5

Description: Monthly Inspection cite Visual Observation

Comment: BES recommends removing visual observation language under monthly inspections as it is applicable to visual observations section not monthly inspections.

Response: DEQ revised the permit based on the suggested changes.

Changes were made based on this comment.

BES #6

Description: Re-Certification of Mass Reduction Measures

Comment: BES recommends requiring permit registrants who have an approved mass reduction certificate be required to recertify. BES does not feel it creates undue burden for permit registrants to recertify their mass reduction measures on a 5-year basis. BES would be amenable to only requiring recertification for mass reduction measures designed at the DEQ-approved design storm capacity and allowing those designed above the DEQ-approved design storm capacity to not recertify.

Response: During the 2021 permit cycle permit registrants were required to hire a PE or CEG and address any maintenance or design deficiencies to the mass reduction measure. The permit requires operation and

maintenance and the 2026 permit includes re-certification if: (1) Failure to meet all maintenance schedules specified in the stamped certification. (2) If it is known that mass reduction measure discharges during design storms below required capacity. (3) If the mass reduction measure does not meet the design specifications. (4) If visual observations show signs of pollution in discharge as indicated in Schedule B.34 from the mass reduction measures.

DEQ declined to require re-certification of permit registrants who have an approved mass reduction measures certificate or installed based on an approved Tier 2 mass reduction waiver during the previous permit cycle.

BES #7

Description: Visual Observation - During a Discharge Event

Comment: BES recommends adding the requirement for the permit registrant to substantiate the claim that there was no discharge event during the month for visual observation purposes.

Response: Storm events that result in a measurable amount of precipitation to produce an actual discharge may be different for an operator due to location, impervious surface, stormwater infrastructure and infiltration. Visual observations must be performed monthly during discharge events. If DEQ or agent can substantiate a missed visual observation during records review, this is a failure to collect monitoring data required in Schedule B of the permit.

BES #8

Description: Visual Observation

Comment: BES recommends a form, in addition to photographs, be required to document completion of visual observations. Photo quality varies widely, and it will be difficult for regulators to ascertain if visual signs of pollution were present or absent in the discharge. In addition, the photograph does not indicate the nature of the discharge, whether caused by snow or rain. BES recommends the underlined text be added and strike-through text removed, as follows: “Document visual observation by taking a photograph of the container with the date and timestamp on the photo, <u>along with a form indicating the nature of the discharge, whether caused by snow or rain, and the presence/absences of evidence of stormwater pollution.</u> Keep on-site the forms and photos in chronological order and provide to DEQ or agent when requested.”

Response: DEQ revised the permit based on the suggested changes.

Changes were made based on this comment.

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6 Comments from: Clean Water Services

CWS #1

Description: Tier 2

Comment: Tier 2 permit section includes modifications that create scenarios that would allow facilities to evade timely and meaningful implementation of Tier 2 corrective actions. Schedule A.19.a.i–ii create scenarios where a facility could implement an inadequate Tier 2 plan and then evade future Tier 2 obligations for 5 and 2 years, respectively. Moreover, Schedule A.19.a.iii–iv impermissibly allows for the facility to evade Tier 2

response if they have mass reduction measures or monitoring waivers. These new additions must be taken out.

If a Tier 2 measure does not lower the pollutant to or below the state benchmark within 24 months of installation, then the industry should be required to perform another Tier 2 corrective action.

Tier 2 process is largely procedural: the corrective action responses heavily focus on assessment and documentation rather than mandatory source elimination or treatment installation. This results in routine Tier 2 processes that do not meaningfully reduce pollutant loading after substantial exceedances of screening criteria. DEQ must remove the new Tier 2 exemptions set forth in Schedule A.19.a.ii–v. and amend Schedule A.19.a.i–ii to ensure that permittees are not effectively rewarded for implementing inadequate Tier 2 corrective actions.

Response: In 2021 during the 1200-Z rulemaking process, DEQ increased the Tier 2 geometric mean evaluation from one time a permit cycle to annually. Tier 2 section does not allow facilities to evade timely and meaningful implementation. The exemption is only applicable to those facilities that have yet to install their Tier 2 engineered plan. The permit registrant must hire an engineer to stamp a treatment proposal with a projected percent reduction to reduce the pollutant discharged to or below the benchmark. The mass reduction waiver must be stamped by an engineer or certified engineering geologist to evaluate and show how the remaining mass load of pollutants discharged are at or below the mass equivalent of the statewide benchmarks. The facilities yet to install should not need to do more prior to implementing the plan. The exemption is only applicable to the specific pollutant and monitoring location. Additionally, the approved corrective action must be installed at all substantially similar discharge locations.

If after Tier 2 installation there is still benchmark exceedances, the permit registrant must evaluate whether the additional measures were properly installed, maintained and implemented and whether modifications to these measures are necessary.

CWS #2

Description: pH Field Notes

Comment: We provide sample collection as a service to our numerous clients. For the last 20 years or so, we have documented pH readings, including the date of last calibration, on Chain of Custody forms. Is it DEQ's intent that a separate form or document from the CoC is used? We have further had experience with DEQ agents, noting that field notes were incomplete or missing information and that there was no guidance on expectations.

DEQ should clarify whether this is a separate document and the expected contents of 'field notes'.

Response: It is important the following details are recorded either on the chain of custody or in a field log:

- Date
- Time
- Location of collection
- pH meter type and calibration performed
- pH reading

. The permit has been revised to account for this information being document on the chain of custody.

Changes were made based on this comment.

CWS #3

Description: SWPCP - Maintenance Frequency

Comment: Clarification should be provided for maintenance schedules. Maintenance frequency should be based on a performance measure or a measure of time.

Response: DEQ declined to make this change. The SWPCP required elements are site-specific and must address the appropriate maintenance frequency based on the source control used to meet the narrative technology-based effluent limits.

CWS #4

Description: Terminating Permit Coverage

Comment: Once the Agent has accepted the Notice of Termination, must the permittee continue to submit DMRs until DEQ terminates the permit? Or may the permittee stop submitting the DMRs once the Agent has accepted the NOT in accordance with the statement on the 2021 Notice of Termination form? Clarify Schedule D.5.c vs. 2021 NOT form to ensure permittees are in compliance with the DMR submittal requirements in the permit once the NOT has been accepted by the Agent given approval of the Notice of Termination by DEQ is not currently conducted within YDO in Agent jurisdictions.

Response: Legally a permit registrant must comply with the permit conditions until a final action to terminate coverage is complete.

CWS #5

Description: Schedule E

Comment: “Potential Pollutant Sources. Document in your SWPCP the following sources and activities that have potential pollutants associated with them: pollution sources from vehicles; fuel or other liquid storage; pressure lines containing slurry, hydraulic fluid, or other potential harmful liquids; and loading or temporary storage of materials from vehicles”. CWS has several 1200-Z facilities which haul materials to and from their site. The provided language, similar to the potential pollution source section under sector H., would support the mitigation of pollution sources from vehicle transport.

Response: Schedule E is adopted from EPA and DEQ declines to edit this portion of the permit at this time.

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7 Comments from: Fuss & O’Neill

F & O #1

Description: No Exposure

Comment: DEQ provide permittees information on how DEQ or its agent will determine that a facility’s stormwater discharges “have a reasonable potential to cause or contribute to a violation of applicable water quality standards.”

The proposed language to deny or revoke a No Exposure Condition Exclusion (CNE) due to a reasonable potential to cause or contribute to a violation of applicable water quality standards is too vague, with significant

risk of inconsistent application due to the subjective nature of the permit language. In addition, there is no defined process for how DEQ would evaluate whether a facility's stormwater discharges have a reasonable potential to cause or contribute to a violation of applicable water quality standards. A CNE is based on a facility meeting a defined set of requirements as described in Permit Condition 1.5 and DEQ already has the authority to deny or revoke a CNE under the current Permit. The proposed language should be removed from the Permit as it is not necessary.

Response: DEQ removed "or agent" from the No Exposure Conditional Exclusion from Permit Coverage section of the permit. DEQ may use the Reasonable Potential Analysis Process for Toxic Pollutant, 2024, Internal Management Directive or other factors when determining reasonable potential to cause or contribute to a violation. EPA's Stormwater Phase II Rule includes water quality concerns, and a requirement to obtain coverage following the permitting authority's determination that the discharge causes, has a reasonable potential to cause, or contributes to a violation of an applicable water quality standard, including designated uses.

Changes were made based on this comment.

F & O #2

Description: Benchmarks

Comment: How were the contributions of naturally occurring, consumer use and agricultural sources of benchmark and water quality-based effluent limit metals considered when developing benchmarks and water quality-based effluent limits?

Response: Agricultural sources are exempt from NPDES permitting. Please see the Permit Evaluation Report's Appendix for detailed information on how the benchmarks and water quality-based effluent limits are derived.

F & O #3

Description: Cost-benefit Analysis

Comment: Has DEQ conducted a regulatory burden assessment, cost-benefit analysis or economic impact study that provides context for the costs associated with implementing the requirements of the Industrial Stormwater General Permit related to expected environmental benefits and, if so, has this assessment been made available to the public?

Response: In 2021 the permit was reissued by rulemaking. Part of every state rulemaking process includes a statement of fiscal and economic impact. During the 2021 rulemaking there was significant changes to the permit and some of these changes had a cost to the regulated community. The rulemaking documents may are available on Oregon Records Management System. DEQ kept the fundamental permit structure the same this permit cycle and do not anticipate the conditions will add a significant economic impact from the previous permit cycle. If you would like additional information please fill out a public record request.

F & O #4

Description: Stormwater Treatment and No Exposure Certification

Comment: Can DEQ provide clarification regarding under what circumstances a facility employing stormwater treatment might be disqualified from obtaining a No Exposure Certification?

Response: The no exposure certification exclusion from permitting is based on industrial activities and materials exposed to stormwater. If an industrial operation meets the conditions for permitting, they must apply for coverage, regardless of stormwater treatment employed.

F & O #5

Description: Electronic Reporting

Comment: Previously, the electronic notification was loosely required, and it appears that under the revised permit it is specifically required. Will the existing electronic reporting system undergo any updates to accommodate additional reporting requirements and, if so, will the updated system be ready once the Permit is in effect?

Response: DEQ's stormwater program has been using our electronic reporting system, Your DEQ Online, since fall of 2021. The 2021 permit was issued at that time, but DEQ knew we would be transitioning soon to electronic reporting. DEQs' agents have are not began using YDO for electronic reporting at this time; therefore, the permit language needs to accommodate both paper and electronic permitting operations.

F & O #6

Description: Name Change or Transfer

Comment: Industrial Stormwater Discharge General Permit grants DEQ the authority to approve or deny a name change or transfer. No criteria are provided to clarify under what circumstances a name change or transfer can be denied. Can DEQ provide these criteria?

Response: Legal name change must be listed in Oregon's Secretary of State Corporation Division. Transfer and name changes will not occur until DEQ has received the appropriate signatures and fee and reviewed the information. These are the main reasons DEQ may deny the permitting action. The criteria are listed on the Name Change and/or Transfer NPDES or WPCF Permit form.

F & O #7

Description: Fecal Coliform and Enterococcus

Comment: The Draft NPDES Industrial Stormwater Discharge General Permit establishes a triggering event of greater than 10% of samples collected over a 90-day period exceeding bacteria impairment concentration. In establishing triggering event criteria, the NPDES Industrial Stormwater Discharge General DRAFT Permit Evaluation Report acknowledges challenges associated with the relative infrequency of stormwater sample collection. Can DEQ provide clarification on how the bacteria-triggering criterion will work in practice?

Response: Issue Paper: Revisions to the Water Quality Standards for Bacteria, Aug. 2016, explains greater than ten percent of samples collected over 90 days or any single sample when less than 10 sample points exist. So, if the initial sample is over the impairment concentrations, the permit registrant will have 90 days in order to get nine more samples in order for the ten percent to be under the water quality standards criterion.

F & O #8

Description: Background Waiver

Comment: Draft NPDES Industrial Stormwater Discharge General Permit creates a provision for establishing that a benchmark exceedance is attributable to background conditions. Other than the fact sheet referenced in the NPDES Industrial Stormwater Discharge General DRAFT Permit Evaluation Report, will DEQ provide other guidance, forms or checklists to assist the regulated community in compiling and submitting these waiver requests?

Response: DEQ has a fact sheet on our Industrial Stormwater Permits web page specifically for background waiver requests. DEQ uses EPA's Industrial Stormwater Monitoring and Sampling Guide, April 2021, as guidance.

F & O #9

Description: Integrated Report

Comment: For permittees that have made a determination of impairment status based on the 2022 303(d) list, will DEQ provide notification of any updates to the 303(d) list or is the expectation that the regulated community must monitor updates to the 303(d) list and make changes to monitoring requirements as needed?

Response: All current permit registrants will receive monitoring requirements including impairment status based on the 2024 Integrated Report. Impairment status is based on the 303(d) list in effect at the time of assignment or renewal.

F & O #10

Description: Impaired Water Body

Comment: Can DEQ provide clarification regarding how to determine if stormwater is "indirectly discharging"?

Response: An indirect discharge of stormwater refers to stormwater runoff that enters a Municipal Separate Storm Sewer Systems rather than being discharged directly into surface waters. Any discharge that does not directly flow from the facility into water of the state, but rather enters a conveyance system first.

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8 Comments from: GeoEngineers

GeoEngineers #1

Description: No Exposure

Comment: DEQ provide permittees information on how DEQ or its agent will determine that a facility's stormwater discharges "have a reasonable potential to cause or contribute to a violation of applicable water quality standards."

The proposed language to deny or revoke a No Exposure Condition Exclusion (CNE) due to a reasonable potential to cause or contribute to a violation of applicable water quality standards is too vague, with significant risk of inconsistent application due to the subjective nature of the permit language. In addition, there is no defined process for how DEQ would evaluate whether a facility's stormwater discharges have a reasonable

potential to cause or contribute to a violation of applicable water quality standards. A CNE is based on a facility meeting a defined set of requirements as described in Permit Condition 1.5 and DEQ already has the authority to deny or revoke a CNE under the current Permit. The proposed language should be removed from the Permit as it is not necessary.

Response: DEQ removed “or agent” from the No Exposure Conditional Exclusion from Permit Coverage section of the permit. DEQ may use the Reasonable Potential Analysis Process for Toxic Pollutant, 2024, Internal Management Directive or other factors when determining reasonable potential to cause or contribute to a violation. EPA’s Stormwater Phase II Rule includes water quality concerns, and a requirement to obtain coverage following the permitting authority’s determination that the discharge causes, has a reasonable potential to cause, or contributes to a violation of an applicable water quality standard, including designated uses.

Changes were made based on this comment.

GeoEngineers #2

Description: Narrative Technology-based Effluent Limits - Tarps

Comment: To eliminate tarps as an acceptable covering measure suggests that a facility would have to cover the entire facility with a roof or move all industrial activity within a building. There are many instances where this is not feasible. When tarps are properly secured and maintained, they are fully protective as a long-term stormwater protection measure. If the tarps are applied correctly and maintained in good condition, they serve as an effective best management practice to limit exposure of materials to storm water.

Removing the use of all tarps is problematic for many industrial facilities. When properly utilized, temporary covers such as durable tarps provide significant protection from stormwater exposure. As written, the revisions to Section 8(c) may require building permits, engineering, or alterations to land use permit entitlements to allow for construction of roofs or buildings, which will require considerable time and capital investments from a Permittee and may not result in significantly better protection of stormwater quality.

Permanent cover requirements as proposed, without exception, are not practicable. In the least, a process for exemptions must be available. There is support for allowance for tarps as acceptable covers. Removing the use of all tarps is problematic for many industrial facilities. When properly utilized, temporary covers such as durable tarps provide significant protection from stormwater exposure.

Response: DEQ retained the 2021 permit language in response to the comment.

Changes were made based on this comment.

GeoEngineers #3

Description: Employee Education - New Requirement for Additional Training

Comment: “No later than 60 calendar days after changes to the site, operations or control measures that may significantly change the nature of pollutants present in stormwater discharge or significantly the pollutant(s) levels, discharge frequency, discharge volume or flow rate”

The proposed change does not specify which employees are required to receive additional training nor does it restrict the training content to only cover the pertinent details related to the change at the facility. For larger, complex sites, this may lead to repetitive full-length stormwater training being required as many as six times

per year. This is an unnecessary and unproductive burden on Permittees, both to provide this training and track a multitude of new deadlines. Remove the section. Consider adding requirements to the annual training content that include a discussion of changes to the site, operations, or control measures that have occurred since the date of the previous annual training.

Is the re-training requirement specific to the “significant” change? Is the 60-day clock started at completion of install or initiation of install. Does DEQ intend to consider only changes that require SWPCP updates to qualify as “significant?”

Response: DEQ appreciates the comment and amended the requirement based on feedback. The edits now make it clear the permit registrant is only responsible to provide mid-year training specific to the revised SWPCP changes. It is crucial that personnel have the most up-to-date information when the site changes. The personnel who are required to be trained does not change due to this condition. The final permit clarifies the training only needs to include the portion of the revised SWPCP related to operation or control measures that may significantly change the nature of pollutants present in stormwater discharge or significantly increase the pollutant(s) levels, discharge frequency, volume or flow rate and monitoring location or discharge points. Training must be conducted no later than 60 days after the revised SWPCP submittal, which means at the most a short training may be required quarterly.

Changes were made based on this comment.

GeoEngineers #4

Description: Wash Water Discharge

Comment: “Minimize or eliminate discharge of authorized non-stormwater wash water by performing washing in bermed areas that does not discharge into stormwater system, dispose of into the sanitary sewer, drain to a proper collection system such as a closed-loop system or fully infiltrating into vegetated area (do not drain into engineered vegetated low impact development features). If unable to eliminate wash water discharge, the permit registrant must comply with restriction in Condition 1.6.”

If the discharge is listed as an authorized non-stormwater discharge, it is not clear why there would be a requirement to minimize or eliminate it? This requirement appears to contradict Schedule A - 6(a) (viii) and creates confusion regarding authorized discharges.

The changes proposed to this language, as a permit condition, add confusion for permittees rather than clarification. We understand that DEQ is indicating the agency’s preferred hierarchy of management, rather than a compliance requirement. This discussion seems more appropriate for the permit evaluation report rather than the permit language.

Response: This condition to minimize wash water discharge is not new to the 2026 permit narrative technology-based effluent limit section. The wash water language has been retained from the 2021 permit applicable to wash water controls. The permit registrant must follow the authorized non-stormwater condition applicable to wash water discharge, otherwise, if a washing operation cannot conform with the restrictions under Condition I.6, the permit registrant must eliminate that non-stormwater discharge by disposing to sanitary sewer, operating a closed-loop system or fully infiltrating the water.

Changes were made based on this comment.

GeoEngineers #5

Description: Authorized Non-stormwater High Pressure Definition

Comment: What constitutes high pressure? Does this include all power washer units or a specific pressure threshold?

Response: The standards for light-duty pressure washing are 1000 psi at the low-end range. Anything under 1000 psi would not be considered high pressure.

GeoEngineers #6

Description: Minimize Exposure

Comment: “Locate materials and activities indoors away from doors or drains or protect them with storm resistant covers if stormwater from affected areas may discharge to surface waters.”

This is subjective (what distance constitutes “away from”). Interior drains are already prohibited. Is this change in permit language meant to apply to exterior drains?

The Proposed Permit would require that indoor materials and activities be located “away from doors or drains,” but it provides no definition or guidance as to what constitutes “away from.” This ambiguity would make the requirement difficult or impossible to implement and enforce consistently and objectively. Different facilities and inspectors will have different interpretations of what “away from” means. The proposed requirement would also not make any allowance for doors that are kept closed except when in use. Materials and equipment would need to be located at an undefined distance away from doors even if the door is only occasionally and briefly opened or is only used in an emergency. Similarly, materials and equipment would need to be located at an undefined distance away from drains even if the drain if there are barriers or other measures effectively separating the material and equipment from the drain.

Response: The permit was revised to read: “Locate materials and activities indoors, away from doors or exterior drains or protect them with storm resistant covers if stormwater from affected areas may discharge…” This is under the minimize exposure narrative limit and not intended to be a prohibition.

Changes were made based on this comment.

GeoEngineers #7

Description: Mass Reduction Measures

Comment: Schedule A.13.h(3) “DEQ or agent shall require corrective action or recertification for the following reasons: If the mass reduction measure does not meet the specifications.”

Please clarify what is meant by specifications. Does DEQ intend to provide oversight review of engineering (design and specifications) completed by professional engineers or will DEQ limit this review to the presence/absence of the required elements of the Tier 2 corrective action report per the associated checklist?

Response: DEQ stormwater program is the process of hiring an environmental engineer. DEQ intends to review each mass reduction certification. The permit was revised to specify “design” specifications. This includes structural design and hydraulic performance.

Changes were made based on this comment.

GeoEngineers #8

Description: Tier 2 Corrective Action

Comment: The permit should be revised throughout for consistency amongst terms related to the Tier 2 process. There are instances where Tier 2 corrective action response includes Tier 2 report, Tier 2 Background Waiver, and Tier 2 Mass Reduction Waiver but other instances where Mass Reduction Waiver and Background Waiver are not considered a corrective action response or where only one is included and described generally as “mass reduction measures”. Please standardize language with respect to Tier 2 Corrective Action Response, the Tier 2 Corrective Action Report, the Tier 2 Mass Reduction Waiver, and the Tier 2 Background Waiver.

Response: Thank you for the input. DEQ edited the permit for consistency with correct terminology.

Changes were made based on this comment.

GeoEngineers #9

Description: Tier 2 Exemption - New Monitoring Point

Comment: Tier 2 geometric mean benchmark evaluations are also not appropriate for a new monitoring point that was established mid-water-year. DEQ should revise the above list to include when new monitoring points are established after November 15, not just when new site-wide permit coverage is granted.

Response: The permit was revised based on the comment.

Changes were made based on this comment.

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9 Comments from: Glacier Northwest

Glacier Northwest #1

Description: Wash Water Discharge

Comment: “Minimize or eliminate discharge of authorized non-stormwater wash water by performing washing in bermed areas that does not discharge into stormwater system, dispose of into the sanitary sewer, drain to a proper collection system such as a closed-loop system or fully infiltrating into vegetated area (do not drain into engineered vegetated low impact development features). If unable to eliminate wash water discharge, the permit registrant must comply with restriction in Condition 1.6.”

If the discharge is listed as an authorized non-stormwater discharge, it is not clear why there would be a requirement to minimize or eliminate it? This requirement appears to contradict Schedule A - 6(a) (viii) and creates confusion regarding authorized discharges.

The changes proposed to this language, as a permit condition, add confusion for permittees rather than clarification. We understand that DEQ is indicating the agency’s preferred hierarchy of management, rather than a compliance requirement. This discussion seems more appropriate for the permit evaluation report rather than the permit language.

Response: This condition to minimize wash water discharge is not new to the 2026 permit narrative technology-based effluent limit section. The wash water language has been retained from the 2021 permit applicable to wash water controls. The permit registrant must follow the authorized non-stormwater condition

applicable to wash water discharge, otherwise, if a washing operation cannot conform with the restrictions under Condition I.6, the permit registrant must eliminate that non-stormwater discharge by disposing to sanitary sewer, operating a closed-loop system or fully infiltrating the water.

Changes were made based on this comment.

Glacier Northwest #2

Description: Storm Event – Monthly Inspection Corrective Action

Comment: “Conduct all permanent corrective action required as a result of inspection within 30 calendar days or by next storm event.”

Please clarify what constitutes a “storm event” for purposes of this requirement. For example, if a corrective action is identified and precipitation occurs three days later, would the facility immediately be considered out of compliance if the corrective action could not reasonably be completed within that timeframe?

Additional clarification is needed to ensure facilities can realistically comply with corrective action timelines. A qualifying definition in this scenario would help regulated facilities understand the threshold of a storm event.

Response: The permit does include a definition of storm event:"...means a precipitation event that results in a measurable amount of precipitation to results in an actual discharge (except otherwise specified in Schedule E)." Sector E.G, E.H and E.J uses a quarter inch in 24-hour storm event threshold. DEQ declines to set a storm event threshold in the permit. There are several factors that contribute to an actual discharge. This is a discharge permit, and the focus is on preventing pollutants from discharging in stormwater. It is crucial an operator understand the storm system infrastructure specific to their industrial operation. Corrective action is required prior to a discharge event.

Glacier Northwest #3

Description: Visual Observations - Photographs

Comment: “Document visual observation by taking a photograph”

While this requirement may sound simple, it is likely to prove problematic and create numerous logistical and administrative concerns, including:

- Field staff are not necessarily provided with smart phones or digital cameras
- Adding a date and timestamp is challenging digitally and data is not always compatible between android and iPhone file sharing (e.g. HEIC format vs. jpeg)
- Field staff do not all have access to computers and/or have the knowledge to download and share, maintaining records, uploading and storing photographs in accessible locations
- Establishing consistent procedures for retaining and organizing photographic records across facilities
- Background against the sky, backlit, or against a light-colored background

The value added to the inspection appears minimal compared to the potential burden. Many of the benchmark pollutants (pH, iron, copper, E. Coli, etc.) cannot be evaluated based on photographs. While certain visual indicators may be interpreted to a degree, there are notable limitations and influencing factors (camera light, shadow, angle, focus, etc.). The analytical laboratory sampling data is the most reliable documentation of water quality and leaves no room for interpretation. Photo documentation will provide minimal added data while

creating frustration and confusion with field personnel who have less familiarity with the tools and programs needed to meet the requirements.

This requirement is infeasible, most industrial personnel do not have access to company phones with cameras, dedicated camera equipment onsite, or computer access for photo storage and management.

The added requirement for photographic documentation may create significant administrative burden without a corresponding improvement in environmental protection or compliance verification.

Response: This requirement has been removed.

Changes were made based on this comment.

Glacier Northwest #4

Description: Minimize Exposure - Drain Fluids

Comment: “Drain fluids from equipment and vehicles that will be decommissioned, and prior to extended on-site storage and ensure proper disposal.” -Glacier Northwest requests clarification regarding this sentence. Specifically, we seek confirmation as to whether the phrase “ensure proper disposal” refers to the drained fluids, the decommissioned equipment itself, or both, as the current wording is unclear. Additionally, Glacier Northwest requests clarification on the definition of “extended storage,” including the timeframe intended by the term. For example, it is unclear whether “extended storage” refers to a period of one year, five years, or another specified duration.

Response: The permit was revised from “ensure proper disposal” to “ensure proper fluid disposal.” Permit registrants with Standard Industrial Code 5015, must follow additional ODOT state laws under the DMV’s oversight. However, DEQ is for state agency responsible for water pollution laws. DEQ’s Materials Management and Hazardous Waste programs published an Auto Dismantler Handbook, that includes many best practices. The permit requires that decommissioned vehicles and equipment have the fluids drained if plan on being stored on-site. Best practices are to drain and properly dispose of fluids as soon as possible or as soon as an operational decision has been made to decommission.

Fuel begins to degrade and hydraulic seals start drying as early as a month.

Changes were made based on this comment.

Glacier Northwest #5

Description: Waste Chemicals and Material Disposal

Comment: Glacier Northwest requests clarification regarding what is considered “materials” within this section. For example, steel scrap and recycling bins are commonly stored uncovered within industrial settings. Under the proposed language, it appears that scrap bins would require permanent structures or roofing to remain compliant. Additionally, roofing or permanent structures may restrict access for equipment needed to load, unload, or maintain materials, this also has the potential to limit access for other equipment and operational activities within the facility.

Response: There are many BMPs and conditions in Sector N which must be incorporated into a SWPCP. Neither EPA nor DEQ mandate the substantial quantities of stockpiled material located at scrap recycling facilities be covered all the time. DEQ does expects that the Plan to include measures to minimize exposure of these materials to surface runoff.

The permit defines significant materials. “Industrial materials or activities include material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products.”

Glacier Northwest #6

Description: Additional Monitoring

Comment: Glacier Northwest requests clarification regarding what conditions or triggers would result in additional monitoring requirements being imposed. We also request clarification on whether permit registrants would have the opportunity for discussion with DEQ prior to additional monitoring points or requirements being added. As currently written, this section appears very broad and open ended, making it difficult for facilities to understand potential future compliance obligations and costs associated with permit requirements. This section negatively impacts industries by leaving an open door for regulations that are not called out and potentially not justified.

Response: As described in the permit, DEQ will provide “reasons for the monitoring, locations and pollutants to be monitored, frequency and period of monitoring, sample types and reporting requirements.” This will supply the justification and clearly describe the required actions. Individual permits impose a substantial expense and effort upon the registrant, and DEQ believes this generally will not be needed to implement additional monitoring. Some reasons are spelled out in the permit; for example, (1) a new discharger to impaired waters, (2) if the discharge has caused or contributed to an exceedance of water quality standards, either in the receiving waterbody or a downstream waterbody, (3) accurately characterize the quality and quantity of pollutants discharged from your waste rock and overburden piles.

Glacier Northwest #7

Description: Revision Log - SWPCP

Comment: This requirement appears ambiguous and may create additional administrative burden without clear implementation guidance. Clarification is needed regarding whether DEQ intends to provide a standardized template or format for this log. Would the log need to identify specific sections revised or simply document that a revision occurred on a given date.

Response: A log depicting Plan revisions is a good practice and will make it easier for the facility to track changes and assist DEQ and agent’s identifying the changes. It should document the section changed. The permit now reads: “A log which includes past revision sections and dates.”

Changes were made based on this comment.

Glacier Northwest #8

Description: Exceedance of Numeric Effluent Limits in Table 3

Comment: The above portion of this section appears incomplete or grammatically unclear and may require revision for readability and implementation clarity.

Response: DEQ has edited the permit in response to the comment.

Changes were made based on this comment.

10 Comments from: Gunderson Marine and Iron

Gunderson Marine & Iron #1

Description: Schedule D, Special Condition 3 “Flood Prone Sites.”

Comment: “Flood Prone Site,” creates significant regulatory uncertainty and the lack of a process or standards for determining when the Department of Environmental Quality (“DEQ”) or a local government could require potentially costly modifications of infrastructure makes the predictable application of the requirements impossible. Even if Special Condition 3 was modified to add the needed definitional and procedural clarity, however, DEQ has not identified any gap in the generally applicable provisions of the Draft Permit that justifies or explains why the special or different BMPs at “Flood Prone Sites” set forth in Special Condition 3 are needed.

Condition D.3, related to stormwater discharge from facilities located in floodplains or deemed to be flood-prone sites. Neither the term “floodplain” or “susceptible to past flooding events” are defined in the draft permit. The characterization of a site as “susceptible to past flooding events” is too broad and should have a set timeframe in which past flooding occurred. The language around additional source control measures, operational controls, and BMPs to mitigate risk of stormwater contamination is also vague and subjective. It is at the discretion of DEQ, its agent, or the local government to determine the need for and extent of modification required, but it is unclear what a facility must do to comply with the requirements. How is a facility to determine the potential risks and responses?

The Condition 3 language is unclear and confusing as to what additional source control measures, operational controls and BMPs to consider to “mitigate risk of stormwater contamination” that are not already provided for in the 1200Z Permit. The purpose of the 1200Z permit and the requirements to develop a Storm Water Pollution Control Plan is to regulate various pollutants from industrial activities that may be discharged in stormwater or snowmelt during discharge events.

The proposed condition would give DEQ, DEQ agents, and local governments extraordinarily broad and apparently unconstrained authority to “require modification of infrastructure.” Would this allow these entities to require a permit registrant to relocate all or a portion of its facility? Require the construction of walls or other flood barriers? The potential scope of this provision is simply too broad and ill-defined.

This Special Condition is concerning for several reasons. First, the Draft Permit does not provide a definition of what constitutes a “flood-prone site.” Further, the Draft Permit does not provide any guidance of what additional source control measures, operational controls or BMPs must be considered by a permittee. In addition, the Draft Permit provides DEQ, its agent or local government authority to require modification of infrastructure without providing any guidelines for when such a modification requirement could be triggered or what type of modification could be required. For these reasons, DEQ should remove this provision.

Response: DEQ removed this section based on considerable feedback and will reconsider when the permit is reissued in 2031.

Changes were made based on this comment.

11 Comments from: Northwest Environmental Defense Center and Columbia Riverkeeper

NEDC/CRK #1

Description: Water Quality Standards

Comment: DEQ's removal of the express prohibition stating that the permit registrant "must not cause or contribute to an exceedance of instream water quality standards as established in OAR 340-041" materially weakens the permit and renders the draft permit unable to ensure compliance with water quality standards, as required by 33 U.S.C. § 1311. DEQ's mere removal of the language, without offering meaningful and sufficient proactive permitting obligations, frustrates the CWA's core requirement that all National Pollution Discharge Elimination System ("NPDES") permits ensure compliance with water quality standards.

DEQ's interpretation (Supreme Court's recent decision in City and County of San Francisco v. Environmental Protection) and new suggested permit language creates a true statutory conflict. If the permit no longer prohibits causing or contributing to water quality standards exceedances, then the permit lacks an enforceable mechanism to ensure compliance with various provisions of OAR Chapter 340, Division 41. DEQ cannot lawfully issue a general permit that authorizes substantial discharges without ensuring that those discharges comply with applicable water quality standards. DEQ must replace it with equally enforceable and sufficiently specific water-quality based permit conditions that directly ensure compliance with Oregon water quality standards.

Nothing in the Supreme Court's decision requires—or even supports—such a reductive result. The Court addressed whether the Environmental Protection Agency ("EPA") could impose vague, indeterminate "end-result" permit provision untethered from identifiable compliance obligations. The suggested provision merely requires permittees to investigate exceedances after discovery, making SWPCP revisions, implement corrective actions at a later time, and potentially install additional controls at the later direction of DEQ. But these procedural obligations are not equivalent to a substantive water quality-based effluent limitation. Under the CWA, water quality standard compliance is not optional, it cannot be deferred, and it certainly cannot be contingent on later agency discretion.

Response: The permit language at issue in these comments, and proposed for deletion in the permit, is similar to the general prohibition on discharges that contribute to a violation of water quality standards that was at issue in the U.S. Supreme Court's decision in *City and County of San Francisco v. EPA*, 604 U.S. 334 (2025). In that case the U.S. Supreme Court found that a condition that served as an "end result" requirement exceeded EPA's authority*. Id.* at 344-345. Based on this case, DEQ reconsidered this language and concluded that the language was unnecessary, given that the remainder of the Water Quality-based Effluent Limitations ensure compliance with water quality standards by requiring corrective action if a discharge contributes to an exceedance of water quality standards.

This permit also added language to be clear that revocation of monitoring waivers or monitoring exemptions can occur if an exceedance is discovered. Given that DEQ determined the language to be unnecessary, DEQ did not consider the agency's authority to retain this provision under state law. Commenters also assert that removing this language impermissibly weakens the permit. The Oregon Court of Appeals recently considered whether removal of a similar permit condition constituted backsliding and held that it did not: "removal of such an "end-result" requirement from the NPDES permit at issue in this case did not constitute backsliding under the Clean Water Act." *Nw. Env't Advocs. v. Dep't of Env't Quality,* 349 Or. App. 17, 32 (2026). DEQ has not made changes in response to these comments.

NEDC/CRK #2

Description: Tarps

Comment: Schedule A.8.c includes revised language that would allow for temporary covers like tarps to be used in lieu of storage bins, dumpsters, or lids. The permit includes no language that would impose a temporal requirement to eventually install adequate, permanent infrastructure. Proper disposal and coverage of waste is crucial to minimizing materials to stormwater exposure. As such, DEQ must replace this language with conditions that prioritize adequate permanent infrastructure and remove a loophole that facilitates inadequate, poorly maintained storage mechanisms that will be vulnerable to weather events.

Response: The permit language allows for temporary covers as long as they are properly secured. As with any source control measure used to minimize exposure, tarps must be maintained. They are also called out as temporary covers in the permit. It is infeasible for all exposure to be under permanent infrastructure. If an operator is able to adequately eliminate exposure, they would be exempt from permit coverage under the no exposure certification. If DEQ or agent observe any poorly maintained covers this is a permit violation. The permit registrant must cover all waste bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to these pollutants.

NEDC/CRK #3

Description: Housekeeping

Comment: Schedule A.8.g requires permittees to “routinely clean all exposed areas” but provides no defined and required cleaning schedules. This language must be updated to require housekeeping at frequencies that are sufficient to prevent pollution accumulation, ideally at least once a month during the wet weather system.

Response: EPA’s industrial stormwater permit does not define a required frequency of sweeping or vacuuming. The general permit’s narrative technology-based effluent limits for housekeeping are not obligated to set a required frequency; however, each permit registrant must describe these measures, maintenance schedules and frequency of housekeeping measures in their SWPCP. Records of completion of the described housekeeping measures in response to the narrative technology-based effluent limits must be kept for three years to ensure compliance with frequency is met. And if the permit registrant is subject to water quality-based effluent limits, a prescribed frequency is required.

NEDC/CRK #4

Description: Spill Prevention and Response Procedure

Comment: “If the use of berms or secondary containment devices is not practicable, store such substances in areas that do not drain off-site” - but provides no articulable standards or guidance for determining when berms and secondary containment would not be practicable. This provides too much latitude to avoid more stringent best management practices in a manner that undermines the efficacy of spill prevention procedures necessary to protect water quality. The Applicant must bear the burden of demonstrating that secondary containment is not practicable and must then demonstrate how it will ensure that substances will not drain off site.

Response: Aboveground storage tanks secondary containment is regulated by Oregon Fire Code and enforced by Oregon Office of State Fire Marshall. The permit does not provide too much latitude and compliance with this condition and compliance with state law is evaluated during inspections.

NEDC/CRK #5

Description: Permit Qualifiers

Comment: Routine use of modifiers like “if practicable,” “unless DEQ or agent approves a later date” and “as soon as practicable” substantially reduce certainty and enforceability of the permit’s narrative requirements.

Response: The 1200-Z has nearly 1200 individual industrial facilities within 29 different sectors (even more sectors applicable to discharge to the Columbia Slough and Portland Harbor) and the term practicable is used in the permit for specific circumstances. First, it is used in the context of Best Available Technologies - BAT to minimize pollutants in extent technologically available and economically practicable and achievable in light of best industry practice and alternative Best Management Practices in recognition of the diverse types of industry operations covered under the general permit. Depending on the circumstances of the facility, a range of control measures may be appropriate.

Secondly, it is used in the context of corrective action timelines. The timelines do not just leave it up to the operator to perform the corrective action when it is practicable, instead there is deadlines set and flexibility allowed for various circumstances that may prevent an operator from meeting those timelines. Some reasons an operator may not be able to implement corrective action include precipitation, other local, state or federal regulatory requirements, funding or budgets, and supply chain delays. Without this, operators would be subject to strict enforcement. Corrective action, compliance with SWPCP and meeting technology-based and water quality-based effluent limits are mandatory.

Third, it is used in the context of representative samples and timing monitoring. Permit registrants must sample prior to stormwater discharge associated with industrial activity commingling with other waste stream, to the extent practicable. Again, there are circumstances that may prevent an operator from sampling discharge during the first 12 hours of an event.

When the corrective action or the sampling does not meet the required deadlines, an operator must document the reasons. The permit conditions are enforceable and must be followed by those regulated under the 1200-Z.

NEDC/CRK #6

Description: New Dischargers

Comment: Condition I.1 authorizes new discharges to impaired water where applicants provide “technical demonstrations” that discharges are “not expected to cause or contribute” to exceedances. It does not define or substantiate what would constitute such a technical demonstration, nor is there any information or analysis concerning objective criteria used to evaluate those demonstrations or continuous verification procedures that would ensure that the permitted activity would not further degrade the already impaired waterway. Rather, the permit instead leaves substantial discretion to DEQ or its agents without any defined standards.

The CWA requires DEQ to ensure that new discharges will not cause or contribute to violations of water quality standards. This concern is particularly acute for the Portland Harbor, the Columbia Slough, and the various salmonid-bearing streams already impaired by metals, sediment, bacteria, and temperature. Thus, for permittees seeking coverage in impaired basins, the permit must require quantitative pollutant loading analysis, mandatory consideration of upstream impairment conditions, and accessible disclosures of technical demonstrations that support coverage decisions.

Response: This comment addressed language that is being retained from the 2021 permit and has been implemented by DEQ since 2012. This provision requires that if a new discharger seeks to discharge to an impaired water they must establish that the pollutants for which the water body is impaired are not present in their discharge or provide a demonstration that their discharge is not expected to cause or contribute to an exceedance of water quality standards at the point of discharge. DEQ technical staff would review any such submittal according to any directives to staff and using their technical expertise. This language is consistent with EPA's industrial permit.

In reviewing a recent permit appeal, the Oregon Court of Appeals noted that agency staff implementing the CWA are often required to use their judgement in analyzing data: "'in many science-based policymaking contexts, under the CWA the [agency] is required to exercise its judgment even in the face of some scientific uncertainty.'" *Nw. Env't Advocs. v. Dep't of Env't Quality*, 349 Or. App. 17, 30 (2026) citing *Upper Blackstone Water Pollution Abatement Dist. v. E.P.A.*, 690 F3d 9, 23-24 (1st Cir. 2012), *cert den*, 569 US 972 (2013).

Potential technical information could include:

- Fate and transport modeling
- Engineering reports of source control pollutant removal efficiencies
- Peer-reviewed literature
- Low impact development software modeling

NEDC/CRK #7

Description: TMDL Compliance

Comment: Condition I.1.c. improperly presumes that "compliance with the terms and conditions of this permit is presumed to be consistent with the TMDL." This creates an automatic presumption of compliance, despite the fact that the permit lacks numeric limits that are tailored to watershed-specific waste load allocations. Indeed, many TMDLs do not even properly contemplate stormwater pollutant loading. In other words, this permit is not fundamentally designed to prohibit pollutant loading in a manner that is consistent with TMDL obligations.

This language must be replaced with language that requires DEQ to make a site-specific determination that the discharge is consistent with all applicable waste load allocations and applicable water quality standards.

Response: The commenter raises a concern that DEQ is assuming compliance with TMDLs, but DEQ has completed analysis to support this determination where applicable. DEQ's approach to considering new discharges where a TMDL applies is also consistent with EPA's approach in its MSGP.

DEQ conducted a review of Oregon's TMDLs to determine if stormwater discharges were considered in the source assessment of the TMDL and whether stormwater was identified as a significant source. During source assessment, the TMDL program evaluates the significant sources of the impairment. Typically, stormwater is not considered a significant source for most TMDLs. This analysis ensures compliance with water quality standards because staff confirm that the TMDL analyzed industrial stormwater and determined that it was not a source and therefore was not provided with an allocation. Therefore, additional actions beyond the requirements of the permit are not necessary for new dischargers to waterbodies that have a TMDL without an industrial stormwater allocation. If, however, stormwater was given an allocation in the applicable TMDL, staff will review and determine that the allocation can accommodate the new discharger.

One example of a TMDL that currently identifies reductions from industrial stormwater is the Columbia Slough TMDL. DEQ evaluated the TMDL to determine whether additional requirements for the industrial sources within

the watershed are necessary to ensure compliance with the TMDL. DEQ determined that the strategy in the TMDL for industrial facilities operating under the 1200-COLS (later incorporated into the 1200-Z) permit is to implement BMPs and monitor the effectiveness of these controls via the benchmarks in the permit. The TMDL did establish a WLA for industrial stormwater for Biochemical Oxygen Demand (BOD_5). As a result, in 2021 DEQ recalculated and lowered the BOD_5 benchmark to effectively control concentrations in stormwater discharges to the Columbia Slough Watershed based on current loads.

NEDC/CRK #8

Description: Impairment Status

Comment: "Impairment monitoring is based on the first receiving water body stormwater discharge (directly or indirectly) enters for each monitoring water point." This would allow for a facility to discharge into an unimpaired tributary that flows into an impaired waterway, without requiring that facility to conduct impairment monitoring. This is impermissible and this language must be removed from the final permit to ensure that facilities discharging into impaired waterways are conducting the requisite monitoring.

Response: This methodology is consistent with the Integrated Report which uses defined assessment units that remain the same over reporting cycles. This is also consistent with EPA's industrial stormwater permitting approach where a facility is considered to discharge to an impaired water if the first water of the US to which the discharge is identified to section 303(d) of the CWA as not meeting an applicable water quality standard. If the discharge enters a storm sewer system, impaired status is determined by the first natural waterbody the discharge will reach.

Whether or not an adjacent/downstream assessment unit is also impaired (or attaining) is a site specific and pollutant-specific evaluation of factors such as flow, hydrology, and pollutant characteristics. Conclusions from one assessment unit cannot be universally extrapolated to the adjacent unit.

NEDC/CRK #9

Description: Stormwater Discharge

Comment: The draft permit explicitly states that statewide and sector-specific benchmarks are merely "screening concentrations" and adds not "enforceable" numeric effluent limits. Diluting this language substantially reduces the enforceability of the permit. DEQ should remove the changes to the first sentence of Schedule A.12.a, as the existing language already makes clear that benchmarks are screening concentrations, and the language does not need to be further diluted, as this modification only weakens necessary enforcement mechanisms.

Response: DEQ deleted Schedule A.12.a in response to this comment.

Changes were made based on this comment.

NEDC/CRK #10

Description: Sector-Specific Benchmarks

Comment: The permit now includes language that defaults permittees to statewide benchmarks, regardless of if the sector-specific benchmark set forth in Schedule E would be more protective of water quality. Schedule

27.a must be modified to make clear that the applicable screening criteria is whichever benchmark is more stringent and protective of water quality.

Response: This language was simply edited for clarity in 2026; however, monitoring requirements did not change. In 2021, DEQ revised metal benchmarks using median hardness in relation to each georegion to calculate the appropriate concentrations for hardness-dependent freshwater statewide and sector-specific benchmarks. Sector-specific benchmarks are developed by EPA and take into account specific pollutants likely to be mobilized from industrial sectors or activities. Both statewide benchmarks and sector-specific benchmarks reflect Oregon's water quality standards. The statewide benchmarks are applied for total copper, total lead, total zinc, pH and total suspended solids because the modeling was more accurate and robust when developing the statewide benchmarks. Schedule E does not list other concentrations but rather defaults to stringent statewide benchmarks.

EPA's permit Part 8 (1200-Z Schedule E) does not list metals concentrations but instead requires calculation based on hardness dependent range. DEQ has calculated metals based on median hardness specific to seven georegions. Furthermore, statewide benchmarks for pH and TSS are as or more stringent than those concentrations found in EPA's sector-specific requirements.

Any parameter different than the statewide benchmarks is assigned based on the appropriate sector as required monitoring from Schedule E in the permit.

NEDC/CRK #11

Description: Tier 1

Comment: DEQ allows the permittee to evade complying with Tier 1 corrective action implementation within 30 days of sampling results, so long as they include "an explanation" in the Tier 1 report. However, this exception includes no parameters that carve out guardrails for excusing compliance, effectively allowing permittees to evade implementing a Tier 1 report so long as there is some explanation. This is unacceptable and this language must be removed or substantially modified to narrow the circumstances for which there is any justifiable reason for failing to timely implement a Tier 1 corrective action.

Response: Facilities are required to evaluate the cause of the elevated pollutants or visual observation in their discharge within 30 days of obtaining the monitoring results. The cornerstone of stormwater management is pollution prevention and controlling the source of the pollutants. Tier 1 may include SWPCP revisions, reevaluating selection design, installation and implementation of control measures and ensuring proper maintenance. If the investigation requires capital improvement or ordering replacement materials, an explanation of this may be included in the Tier 1 report. In addition, the permit registrant must evaluate and implement changes at substantially similar discharge points. For an exceptionally large facility this may take time.

The Tier 1 investigation, report and corrective action must be completed within 30 calendar days. Some reasons an operator may not be able to implement corrective action include precipitation, other local, state or federal regulatory requirements, funding or budgets, and supply chain delays. DEQ declines to add a list of reasons to the permit. Tier 1 reports are fundamental to permit compliance and are always reviewed during inspections. If they are insufficient this is a permit violation.

NEDC/CRK #12

Description: Tier 2

Comment: Tier 2 permit section includes modifications that create scenarios that would allow facilities to evade timely and meaningful implementation of Tier 2 corrective actions. Schedule A.19.a.i–ii create scenarios where a facility could implement an inadequate Tier 2 plan and then evade future Tier 2 obligations for 5 and 2 years, respectively. Moreover, Schedule A.19.a.iii–iv impermissibly allows for the facility to evade Tier 2 response if they have mass reduction measures or monitoring waivers. These new additions must be taken out.

If a Tier 2 measure does not lower the pollutant to or below the state benchmark within 24 months of installation, then the industry should be required to perform another Tier 2 corrective action.

Tier 2 process is largely procedural: the corrective action responses heavily focus on assessment and documentation rather than mandatory source elimination or treatment installation. This results in routine Tier 2 processes that do not meaningfully reduce pollutant loading after substantial exceedances of screening criteria. DEQ must remove the new Tier 2 exemptions set forth in Schedule A.19.a.ii–v. and amend Schedule A.19.a.i–ii to ensure that permittees are not effectively rewarded for implementing inadequate Tier 2 corrective actions.

Response: During the 2021 1200-Z rulemaking process, DEQ increased the Tier 2 geometric mean evaluation from once a permit cycle to annually. The Tier permit 2 section does not allow facilities to evade timely and meaningful implementation. The exemption is only applicable to those facilities that have yet to install their Tier 2 engineered stamped plan. The permit registrant must hire an engineer to stamp a treatment proposal with a projected percent reduction to reduce the pollutant discharged to or below the benchmark. The mass reduction waiver must be stamped by an engineer or certified engineering geologist to evaluate and show how the remaining mass load of pollutants discharged are at or below the mass equivalent of the statewide benchmarks. The facilities yet to install should not need to do more even prior to implementing the plan. The exemption is only applicable to the specific pollutant and monitoring location. Additionally, the approved corrective action must be installed at all substantially similar discharge locations.

If after Tier 2 installation there is still benchmark exceedances, the permit registrant must evaluate whether the additional measures were properly installed, maintained and implemented and whether modifications to these measures are necessary.

NEDC/CRK #13

Description: Tier 2 Applicability to State-wide Benchmarks

Comment: Tier 2 response for statewide benchmarks. A Tier 2 response must apply to all benchmarks—statewide, sector-specific, and impairment. DEQ must modify this language to remove this discrepancy.

Response: Impairment sampling exceedance escalates to either a numeric effluent limit or an enforceable narrative effluent limit. Sector-specific benchmarks are parameters originally developed by EPA for the 1995 Multi-Sector General Permit. Schedule E sector-specific benchmarks are directly from EPA's MSGP and do not necessary accurately represent water quality standards based on regional characteristics like the statewide benchmarks.

The group application process submitted in the early 1990's required industries to determine how to form their groups and to submit the required monitoring data. The National Academy of Sciences, 2019 report on the improving the EPA Multi-Sector General Permit, reported the pollutant monitoring requirements of the MSGP are particularly dated and have not been substantially updated over time. The report went on to point out the following shortfalls affecting sector-specific benchmarks:

- Industries self-determined which pollutants needed to be analyzed

- Limitation found in sampling techniques and analytical methods
- Options for controlling pollutants (technology-based) have not been comprehensively updates since 1995
- Sector-specific benchmark monitoring requirements shows inconsistencies across sectors that have comparable industrial activities
- Need for updated evaluations of pollutant potential and opportunities for pollutant reduction through implementation of additional SCMs

DEQ hired PG Environmental to evaluate the sector-specific benchmarks during the 2021 rulemaking process and they concluded a lack of supporting documents to provide the basis for specific monitoring. DEQ recognizes the importance of sector-specific benchmark monitoring; however, until EPA does a thoughtful and thorough analysis for these benchmarks, DEQ limits Tier 2 corrective action to statewide benchmarks.

NEDC/CRK #14

Description: Monitoring Waivers

Comment: The permit makes monitoring waivers too easy to obtain. As a whole, the waiver request process is overly broad and could have unintended environmental consequences. This language allows for covered entities to request waivers in a variety of circumstances that could be subject to change. There are too many processes for waivers, allowing for facilities to bypass sampling, monitoring, and reporting requirements and thus be exempt from corrective actions, shirking compliance. This undermines the public and EPA's ability to ensure that the general permit, as a whole, meets CWA requirements.

Response: The EPA's industrial permit has a less frequent monitoring schedule, less stringent criteria to discontinue sampling for a longer period of time and requires less pollutant monitoring than the 1200-Z. Permit registrants must monitor for the first year of the permit cycle (or coverage) and the last year of the permit cycle. One reinstated monitoring, sample results are subject to Tier 2 geometric mean evaluation. The purpose of the waiver is to benefit permit registrant's investments in adequate operational and source controls by reducing monitoring because benchmarks are being consistently achieved.

NEDC/CRK #15

Description: Mass Reduction Measures Certification

Comment: The permit still relies heavily on design certifications rather than routinely re-verified, long-term pollutant reduction performance assurances. Indeed, stormwater treatment systems frequently experience reduced infiltration and declining pollutant removal efficiency over time due to, for example, maintenance failures, bypass events, improper housekeeping, and clogging. Because of this, the permit should be modified to require periodic recertification, mandatory field performance verification obligations, and routine pollutant removal and functionality testing. Moreover, mandatory corrective action and routine critical re-evaluation of mass reduction applicability–especially after benchmark exceedances–must occur.

While commenters appreciate that the draft language set forth in Schedule A.13 to require maintenance logs, it is unclear what standards–if any–DEQ will implement to ensure that mass reduction measures are operating properly. Given that mass reduction waivers can be granted and utilized, even despite benchmark exceedances, DEQ cannot issue such a broad privilege without obligations to meaningfully recertify and demonstrate that such infrastructure is operating as intended. That said, DEQ must amend the language of

Schedule 13 to include routine maintenance verification obligations to ensure that facilities with Mass Reduction privileges do not cause or contribute to water quality standards violations.

Response: The permit requires Tier 1 corrective action from any mass reduction measure that has not been properly maintained in response to benchmark exceedances. In 2021, the permit required permit registrants who installed during previous permit cycles to hire a professional engineer or certified engineering geologist and certify these structures. The 2026 permit certification requirements apply to this permit cycle and yet to be installed mass reduction measures. Mass reduction measures are evaluated during inspections and are required to be inspected monthly. If the mass reduction measure is not functioning properly and being maintained as designed, the permit registrant must take corrective action.

Routine maintenance standards must be included in the SWPCP which is reviewed by DEQ or agent. Failing to substantially implement a stormwater plan is a Class 1 violation.

DEQ added a recertification requirement during this permit cycle based on the following reasons: (1) Failure to meet all maintenance schedules specified in the stamped certification. (2) If it is known that mass reduction measure discharges during design storms below required capacity. (3) If the mass reduction measure does not meet the design specifications. (4) If visual observations show signs of pollution in discharge as indicated in Schedule B.34 from the mass reduction measures.

NEDC/CRK #16

Description: Emerging Contaminants of Concern

Comment: Draft Permit wholly fails to address or attempt to limit the discharge from two extremely harmful pollutant compounds and emerging contaminants, Per- and polyfluoroalkyl (“PFAs”) and 6PPD-quinone (“6PPD-q”). DEQ should institute the bare minimum and provide more protective conditions for these pollutants in light of the harm they pose to the environment, public health, fish, and other aquatic species. At the least, DEQ should require sampling and reporting of PFAs and 6PPD-q for facilities in the air transportation or waste management sector as a first step. Additionally, DEQ could implement BMPs to mitigate PFAs and 6PPD-q pollution and require the elimination of these pollutants, to the extent practicable, from covered entities and their discharges.

Response: DEQ recognizes PFAS and 6PPD-q as contaminants of emerging concern and is actively working to better understand their sources, environmental behavior, and potential risks. Both contaminants present significant scientific and regulatory challenges due to their widespread presence, evolving toxicity information, and the current lack of established federal or state water quality criteria applicable in permitting frameworks.

While the EPA has taken important steps concerning PFAS, such as establishing drinking water standards and issuing fish tissue monitoring recommendations, conclusion around how many PFAS compounds (24 or 40) are appropriate for industrial stormwater sampling is unknown due to lack of data. For 6PPD-q standardized monitoring methods, regulatory criteria, standardized analytical methods, and nationally consistent implementation approaches suitable for routine permit implementation are still under development. Additionally, according to the Oregon Environmental Accreditation Program there is only one lab in Oregon equipped to analyze 6PPD-q samples proving analytical methods are not readily available at this time.

While EPA’s draft 2021 industrial stormwater permit included PFAS indicator monitoring (report only with no corrective action requirement) for specific sectors and requested comments on 6PPD-q, the permit was not issued on time and is not final at the time of 1200-Z issuance. Washington’s industrial stormwater permit will be reissued in summer 2028 prior to the five-year term and before 6PPD-q monitoring going into effect in 2028.

DEQ is actively advancing efforts that are relevant to your concerns and that will inform future stormwater permitting by:

- Conducting and supporting monitoring and source identification efforts for PFAS across multiple environmental media, including surface water, groundwater, and biosolids.
- Participating in regional and national discussions to develop consistent approaches for PFAS and 6PPD/6PPDq assessment, including engagement with EPA and other states.
- Evaluating available science and analytical methods to inform future permitting and regulatory decisions.
- Supporting research and interagency coordination on stormwater-related contaminants, including PFAS and 6PPD/6PPD-q.
- Considering opportunities to incorporate BMPs and source control strategies where appropriate and supported by available science and authority.
- Coordinating with EPA, other states, and regional partners to develop consistent approaches for addressing PFAS and 6PPD/6PPD-q in stormwater.
- Tracking ongoing research related to PFAS and 6PPD/6PPD-q toxicity, fate, and transport, and potential mitigation strategies for stormwater systems.
- Assessing how emerging contaminants may be incorporated into future iterations of the 1200-Z permit as science, analytical methods, and regulatory frameworks mature.

Although, 1200-Z is not proposing sampling for these emerging contaminates at this time for the reasons listed above, facilities are required to minimize exposure of pollutants to stormwater and implement source control measures, which can also help reduce the transport of these emerging contaminants. DEQ agrees that monitoring, source reduction, pollution prevention, and BMP implementation are important tools for addressing emerging contaminants and are critical components of addressing PFAS and 6PPD/6PPD-q. As scientific understanding, analytical capabilities, and regulatory frameworks continue to evolve, DEQ will continue to evaluate opportunities to incorporate PFAS and 6PPD/6PPD-q into stormwater permitting requirements and other permitting programs, including potential monitoring requirements, BMPs, or other conditions where feasible and relevant.

NEDC/CRK #17

Description: No Exposure Certification

Comment: “Submit the signed certification to DEQ or agent once every five years, beginning five years after the date of first submittal. If DEQ or agent does not comment on the “no exposure” certification within 60 calendar days, the “no exposure” conditional exclusion is deemed approved. If DEQ or agent notify the applicant of approval, the owner or operator must keep a copy of the approved certification on-site.” - This language of Condition I.5.a.iv must be modified to removed so that DEQ can only affirmatively grant such “no exposure” exclusions.

Response: The application, and therefore the approval of the exclusion, is conditional upon the permitting authority’s acceptance of the certification. The permitting authority can review the information and contact or inspect the facility if there are questions regarding the facility’s no exposure claim. The permit has been changed to reflect current practice. DEQ or agent review each no certification and either approve or deny.

Changes were made based on this comment.

NEDC/CRK #18

Description: Wash Water

Comment: The authorized non-stormwater language is significantly weaker and is unclear how this exclusion is to be monitored, much less verified. Nonetheless, the exclusion is improper because exterior wash water often inherently includes metals, residue, tire particles, and sediment that are harmful to water quality. As such, the wash water exclusion should be removed from the permit language.

Response: DEQ disagrees that the authorized non-stormwater wash water language is weaker. The condition clarified only exterior of vehicles may be washed without high pressure water of any kind and without solvents, chemicals or soaps. The language also added vehicle undercarriage or engines washing is prohibited. DEQ allows wash water discharge because the conditions originate from 1700-A National Pollution Discharge Elimination System permit (expired). This separate NPDES permit has outlined activities which DEQ's determined to be de minimis impact on the environment are allowed without obtaining a permit. The language in the 1200-Z is consistent allowing only washing activities that fit the de minimis activities.

The permit registrant must follow the authorized non-stormwater condition applicable to wash water discharge, otherwise, if a washing operation cannot conform with the restrictions under Condition I.6, the permit registrant must eliminate that non-stormwater discharge by disposing to sanitary sewer, operating a closed-loop system or fully infiltrating the water. The wash water language has been retained from the 2021 permit applicable to wash water controls.

Changes were made based on this comment.

NEDC/CRK #19

Description: Discharge Monitoring Reports

Comment: It is unclear if monitoring waivers and inactivity dismiss the registrant's obligations to submit DMRs. Allowing registrants to avoid DMR submissions under the unverified notion that operations are inactive is incongruent with the obligations in Schedule D.5, which governs termination of permit coverage. Allowing a registrant to claim that operations are inactive invites a substantial loophole for basic monitoring requirements.

Response: The permit has been edited to reflect the comment. Schedule B.35.a states: "The permit registrant must submit a Discharge Monitoring Report quarterly."

Changes were made based on this comment.

NEDC/CRK #20

Description: Visual Observations

Comment: The proposed language results in less protective permit conditions, only requiring visual observations to occur once a month during a discharge event. Eliminating a broader requirement for visual observations could, in theory, allow for pollution sources to accumulate, mobilize, and cause increased environmental and public health harms during a large precipitation event. Commenters request DEQ seriously consider removing any proposed edits that limit visual observation requirements.

Response: Visual observations requirements have been retained from the 2021 permit. Visual observations of stormwater discharges provide a useful and inexpensive means for operators to evaluate the effectiveness of

their control measures. DEQ's monthly requirement is more stringent than EPA's quarterly visual assessment requirement.

The only change to the 2026 permit was to reorganize and create a separate section for visual observations to increase compliance with the enforceable requirement. Failure to conduct visual observation is cited as a Class I violation for failure to monitor under OAR 340-012-0055(o).

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12 Comments from: Northwest Pulp and Paper Association

NWPPA #1

Description: Schedule D, Special Condition 3 "Flood Prone Sites."

Comment: "Flood Prone Site," creates significant regulatory uncertainty and the lack of a process or standards for determining when the Department of Environmental Quality ("DEQ") or a local government could require potentially costly modifications of infrastructure makes the predictable application of the requirements impossible. Even if Special Condition 3 was modified to add the needed definitional and procedural clarity, however, DEQ has not identified any gap in the generally applicable provisions of the Draft Permit that justifies or explains why the special or different BMPs at "Flood Prone Sites" set forth in Special Condition 3 are needed.

Condition D.3, related to stormwater discharge from facilities located in floodplains or deemed to be flood-prone sites. Neither the term "floodplain" or "susceptible to past flooding events" are defined in the draft permit. The characterization of a site as "susceptible to past flooding events" is too broad and should have a set timeframe in which past flooding occurred. The language around additional source control measures, operational controls, and BMPs to mitigate risk of stormwater contamination is also vague and subjective. It is at the discretion of DEQ, its agent, or the local government to determine the need for and extent of modification required, but it is unclear what a facility must do to comply with the requirements. How is a facility to determine the potential risks and responses?

The Condition 3 language is unclear and confusing as to what additional source control measures, operational controls and BMPs to consider to "mitigate risk of stormwater contamination" that are not already provided for in the 1200Z Permit. The purpose of the 1200Z permit and the requirements to develop a Storm Water Pollution Control Plan is to regulate various pollutants from industrial activities that may be discharged in stormwater or snowmelt during discharge events.

The proposed condition would give DEQ, DEQ agents, and local governments extraordinarily broad and apparently unconstrained authority to "require modification of infrastructure." Would this allow these entities to require a permit registrant to relocate all or a portion of its facility? Require the construction of walls or other flood barriers? The potential scope of this provision is simply too broad and ill-defined.

This Special Condition is concerning for several reasons. First, the Draft Permit does not provide a definition of what constitutes a "flood-prone site." Further, the Draft Permit does not provide any guidance of what additional source control measures, operational controls or BMPs must be considered by a permittee. In addition, the Draft Permit provides DEQ, its agent or local government authority to require modification of infrastructure without providing any guidelines for when such a modification requirement could be triggered or what type of modification could be required. For these reasons, DEQ should remove this provision.

Response: DEQ removed this section based on considerable feedback and will reconsider when the permit is reissued in 2031.

Changes were made based on this comment.

NWPPA #2

Description: Schedule D.2 Records

Comment: Condition D.2 lacks specificity as to the need for the records to be associated with the SWPCP and monitoring data. We ask that DEQ include clarifying language that the scope of "records" is limited to the SWPCP and associated monitoring data.

Response: The reports required under other reports are listed in Schedule B.38 Record Keeping Procedures. Schedule D.2 now references Schedule B.38.

NWPPA #3

Description: Monitoring Variance

Comment: Removal of state or federal declaration of a drought year as a justification for variance under Condition B.29.c.i is concerning. The declaration of a drought should be enough to support a facility's claim that there were no storm events of sufficient magnitude to produce a discharge. This should be retained and, at a minimum, allowed as a justification in conjunction with the subsequent demonstration or photo documentation under Condition B.29.c.ii & iii.

The added provisions of variance denial under Condition B.29.d are again subjective. The threshold for DEQ or its agent to deem supporting data and analysis of a variance request to be inadequate is unclear and creates uncertainty in the process.

Response: DEQ removed the drought declaration language because Oregon's drought declaration factors are driven by other factors besides precipitation like snowpack and temperature. Just because Oregon lists a county or state-declared drought emergency, this may have little to do with discharge events at a particular industrial site. The best way to document a monitoring variance is to provide photo documentation.

The 2021 permit had very similar language if DEQ or agent has evidence contradicting the information in the permit registrant's monitoring variance request, failure to complete the required monitoring is cited as a permit violation. The current permit's language outlines the conditions DEQ, or our agent can use to deny a variance request stating: "if supporting data and analysis is inadequate or rain data contradicts the claim there were no storm events of sufficient magnitude to produce a discharge during scheduled operating hours and safe conditions."

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13 Comments from: Oregon Business and Industries

OBI #1

Description: No Exposure

Comment: DEQ provide permittees information on how DEQ or its agent will determine that a facility's stormwater discharges "have a reasonable potential to cause or contribute to a violation of applicable water quality standards."

The proposed language to deny or revoke a No Exposure Condition Exclusion (CNE) due to a reasonable potential to cause or contribute to a violation of applicable water quality standards is too vague, with significant risk of inconsistent application due to the subjective nature of the permit language. In addition, there is no defined process for how DEQ would evaluate whether a facility's stormwater discharges have a reasonable potential to cause or contribute to a violation of applicable water quality standards. A CNE is based on a facility meeting a defined set of requirements as described in Permit Condition 1.5 and DEQ already has the authority to deny or revoke a CNE under the current Permit. The proposed language should be removed from the Permit as it is not necessary.

Response: DEQ removed "or agent" from the No Exposure Conditional Exclusion from Permit Coverage section of the permit. DEQ may use the Reasonable Potential Analysis Process for Toxic Pollutant, 2024, Internal Management Directive or other factors when determining reasonable potential to cause or contribute to a violation. EPA's Stormwater Phase II Rule includes water quality concerns, and a requirement to obtain coverage following the permitting authority's determination that the discharge causes, has a reasonable potential to cause, or contributes to a violation of an applicable water quality standard, including designated uses.

Changes were made based on this comment.

OBI #2

Description: Narrative Technology-based Effluent Limits - Tarps

Comment: To eliminate tarps as an acceptable covering measure suggests that a facility would have to cover the entire facility with a roof or move all industrial activity within a building. There are many instances where this is not feasible. When tarps are properly secured and maintained, they are fully protective as a long-term stormwater protection measure. If the tarps are applied correctly and maintained in good condition, they serve as an effective best management practice to limit exposure of materials to storm water.

Removing the use of all tarps is problematic for many industrial facilities. When properly utilized, temporary covers such as durable tarps provide significant protection from stormwater exposure. As written, the revisions to Section 8(c) may require building permits, engineering, or alterations to land use permit entitlements to allow for construction of roofs or buildings, which will require considerable time and capital investments from a Permittee and may not result in significantly better protection of stormwater quality.

Permanent cover requirements as proposed, without exception, are not practicable. In the least, a process for exemptions must be available. There is support for the allowance for tarps as acceptable covers. Removing the use of all tarps is problematic for many industrial facilities. When properly utilized, temporary covers such as durable tarps provide significant protection from stormwater exposure.

Response: DEQ retained the 2021 permit language in response to the comment.

Changes were made based on this comment.

OBI #3

Description: Employee Education -Signatures

Comment: It is infeasible to obtain signatures and titles from over a thousand employees. In addition, many facilities have implemented electronic training delivery, tracking and record keeping documenting when employees have completed the required training.

Response: DEQ has removed the signature requirement from the Employee Education section of the permit.

Changes were made based on this comment.

OBI #4

Description: Schedule D, Special Condition 3 “Flood Prone Sites.”

Comment: “Flood Prone Site,” creates significant regulatory uncertainty and the lack of a process or standards for determining when the Department of Environmental Quality (“DEQ”) or a local government could require potentially costly modifications of infrastructure makes the predictable application of the requirements impossible. Even if Special Condition 3 was modified to add the needed definitional and procedural clarity, however, DEQ has not identified any gap in the generally applicable provisions of the Draft Permit that justifies or explains why the special or different BMPs at “Flood Prone Sites” set forth in Special Condition 3 are needed.

Condition D.3, related to stormwater discharge from facilities located in floodplains or deemed to be flood-prone sites. Neither the term “floodplain” or “susceptible to past flooding events” are defined in the draft permit. The characterization of a site as “susceptible to past flooding events” is too broad and should have a set timeframe in which past flooding occurred. The language around additional source control measures, operational controls, and BMPs to mitigate risk of stormwater contamination is also vague and subjective. It is at the discretion of DEQ, its agent, or the local government to determine the need for and extent of modification required, but it is unclear what a facility must do to comply with the requirements. How is a facility to determine the potential risks and responses?

The Condition 3 language is unclear and confusing as to what additional source control measures, operational controls and BMPs to consider to “mitigate risk of stormwater contamination” that are not already provided for in the 1200Z Permit. The purpose of the 1200Z permit and the requirements to develop a Storm Water Pollution Control Plan is to regulate various pollutants from industrial activities that may be discharged in stormwater or snowmelt during discharge events.

The proposed condition would give DEQ, DEQ agents, and local governments extraordinarily broad and apparently unconstrained authority to “require modification of infrastructure.” Would this allow these entities to require a permit registrant to relocate all or a portion of its facility? Require the construction of walls or other flood barriers? The potential scope of this provision is simply too broad and ill-defined.

This Special Condition is concerning for several reasons. First, the Draft Permit does not provide a definition of what constitutes a “flood-prone site.” Further, the Draft Permit does not provide any guidance of what additional source control measures, operational controls or BMPs must be considered by a permittee. In addition, the Draft Permit provides DEQ, its agent or local government authority to require modification of infrastructure without providing any guidelines for when such a modification requirement could be triggered or what type of modification could be required. For these reasons, DEQ should remove this provision.

Response: DEQ removed this section based on considerable feedback and will reconsider when the permit is reissued in 2031.

Changes were made based on this comment.

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14 Comments from: Oregon Fuels Association

OFA #1

Description: Table 1 - SIC code 5171

Comment: “5171 Petroleum Bulk Stations and Terminals, (except petroleum sold via retail method (removed))”

OFA’s understanding is that the highlighted revisions above are not intended to constitute a substantive rule change and will not alter the applicability of the Permit to petroleum bulk storage facilities. Specifically, DEQ has indicated that the revisions do not affect whether facilities classified under SIC 5171 are required to obtain coverage under the Permit. Accordingly, OFA does not oppose the proposed revisions to the Permit as currently drafted. At the same time, consistent application of the regulation and permit coverage, particularly as it relates to Petroleum Bulk Stations and Terminals, remains critical to ensure 1200-Z permits are not required when petroleum is sold as a retail and non-retail sale without a maintenance shops. More specifically, retail and non-retail fuel sales infrastructure is not in themselves “maintenance shops”.

Response: DEQ appreciates the feedback and confirms SIC code 5171 must perform vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or equipment cleaning operations to be eligible for coverage under the 1200-Z.

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15 Comments from: Oregon Industrial Stormwater Group

OISG #1

Description: Narrative Technology-based Effluent Limits - Tarps

Comment: To eliminate tarps as an acceptable covering measure suggests that a facility would have to cover the entire facility with a roof or move all industrial activity within a building. There are many instances where this is not feasible. When tarps are properly secured and maintained, they are fully protective as a long-term stormwater protection measure. If the tarps are applied correctly and maintained in good condition, they serve as an effective best management practice to limit exposure of materials to storm water.

Removing the use of all tarps is problematic for many industrial facilities. When properly utilized, temporary covers such as durable tarps provide significant protection from stormwater exposure. As written, the revisions to Section 8(c) may require building permits, engineering, or alterations to land use permit entitlements to allow for construction of roofs or buildings, which will require considerable time and capital investments from a Permittee and may not result in significantly better protection of stormwater quality.

Permanent cover requirements as proposed, without exception, are not practicable. In the least, a process for exemptions must be available. There is support for the allowance for tarps as acceptable covers. Removing the use of all tarps is problematic for many industrial facilities. When properly utilized, temporary covers such as durable tarps provide significant protection from stormwater exposure.

Response: DEQ retained the 2021 permit language in response to the comment.

Changes were made based on this comment.

OISG #2

Description: Employee Education -Signatures

Comment: It is infeasible to obtain signatures and titles from over a thousand employees. In addition, many facilities have implemented electronic training delivery, tracking and record keeping documenting when employees have completed the required training.

Response: DEQ has removed the signature requirement from the Employee Education section of the permit.

Changes were made based on this comment.

OISG #3

Description: Revised SWPCP Deadline

Comment: Recommend that DEQ change the SWPCP submittal date to December 31, 2026, and provide Permittees with six months.

For entities with multiple facilities covered under the Permit, this is an unreasonable timeline. Even for single facilities covered under the Permit, the changes proposed within the draft Permit are extensive enough that it will take significant time to update the SWPCPs and accompanying site maps. Furthermore, we expect that consulting firms will be overwhelmed with requests for support from their clients to assist in the completion of these updates, affecting capacity to meet the requirements.

Response: DEQ changed the updated SWPCP deadline from September 30, 2026, to November 30, 2026. This provides permit registrants five months after the issuance date to incorporate revised language into their Plan. DEQ declined to change the date to end of December, recognizing mass reduction measures certifications are due at that time. A November deadline provides ample time considering the permit retained its fundamental structure. Permit registrants may request approval for a later date if needed.

Changes were made based on this comment.

OISG #4

Description: Storm Event Definition (Corrective Action Deadline (Tier 1))

Comment: “If modifications to the control measures are necessary to meet technology-based effluent limits in this permit, the permit registrant must implement the modifications before the next storm event if practicable or no later than 30 calendar days from discovery, unless DEQ or agent approve a later date”

There does not appear to be a definition of “storm event”. A qualifier is needed to establish what defines a storm event (e.g. 1/2” of rain in 24-hour period or 25-year/24-hour storm). This same reference is found in several sections and is likely to lead to interpretation by permittees. To add confusion, it appears that DEQ provides different definitions for “storm event” depending on the specific regulatory context. A definition or qualifier would be appreciated.

Storm events come along at variable frequency and could occur 24 hours from receiving sample results, or more than a month after receiving sample results. The Draft Permit language creates an ambiguous and variable timeframe to complete corrective actions, by basing the timeline on the timing of the next storm event. This does not inherently provide adequate time to thoughtfully investigate an exceedance and determine a meaningful action. Requiring an action to be complete by the next storm event opens permittees acting in good

faith to the potential of unnecessary violations or lawsuits. Inspectors and agents are rarely looking into the timing of storm events and generally look at the 30-day mark when reviewing records. Adjusting language to be a 30-day requirement makes for more consistent and clear language for permittees to follow.

For example, if a corrective action is identified and precipitation occurs three days later, would the facility immediately be considered out of compliance if the corrective action could not reasonably be completed within that timeframe?

Response: The permit does include a definition of storm event:"…means a precipitation event that results in a measurable amount of precipitation to results in an actual discharge (except otherwise specified in Schedule E)." Sector G, H and J uses a quarter inch in 24-hour storm event threshold. DEQ declines to set a storm event threshold in the permit. There are several factors that contribute to an actual discharge. This is a discharge permit, and the focus is on preventing pollutants from discharging in stormwater. It is crucial an operator understand the storm system infrastructure specific to their industrial operation. Corrective action is required prior to a discharge event.

OISG #5

Description: Schedule D, Special Condition 3 "Flood Prone Sites."

Comment: "Flood Prone Site," creates significant regulatory uncertainty and the lack of a process or standards for determining when the Department of Environmental Quality ("DEQ") or a local government could require potentially costly modifications of infrastructure makes the predictable application of the requirements impossible. Even if Special Condition 3 was modified to add the needed definitional and procedural clarity, however, DEQ has not identified any gap in the generally applicable provisions of the Draft Permit that justifies or explains why the special or different BMPs at "Flood Prone Sites" set forth in Special Condition 3 are needed.

Condition D.3, related to stormwater discharge from facilities located in floodplains or deemed to be flood-prone sites. Neither the term "floodplain" or "susceptible to past flooding events" are defined in the draft permit. The characterization of a site as "susceptible to past flooding events" is too broad and should have a set timeframe in which past flooding occurred. The language around additional source control measures, operational controls, and BMPs to mitigate risk of stormwater contamination is also vague and subjective. It is at the discretion of DEQ, its agent, or the local government to determine the need for and extent of modification required, but it is unclear what a facility must do to comply with the requirements. How is a facility to determine the potential risks and responses?

The Condition 3 language is unclear and confusing as to what additional source control measures, operational controls and BMPs to consider to "mitigate risk of stormwater contamination" that are not already provided for in the 1200Z Permit. The purpose of the 1200Z permit and the requirements to develop a Storm Water Pollution Control Plan is to regulate various pollutants from industrial activities that may be discharged in stormwater or snowmelt during discharge events.

The proposed condition would give DEQ, DEQ agents, and local governments extraordinarily broad and apparently unconstrained authority to "require modification of infrastructure." Would this allow these entities to require a permit registrant to relocate all or a portion of its facility? Require the construction of walls or other flood barriers? The potential scope of this provision is simply too broad and ill-defined.

This Special Condition is concerning for several reasons. First, the Draft Permit does not provide a definition of what constitutes a "flood-prone site." Further, the Draft Permit does not provide any guidance of what additional source control measures, operational controls or BMPs must be considered by a permittee. In addition, the

Draft Permit provides DEQ, its agent or local government authority to require modification of infrastructure without providing any guidelines for when such a modification requirement could be triggered or what type of modification could be required. For these reasons, DEQ should remove this provision.

Response: DEQ removed this section based on considerable feedback and will reconsider when the permit is reissued in 2031.

Changes were made based on this comment.

OISG #6

Description: Minimize Exposure

Comment: “Locate materials and activities indoors away from doors or drains or protect them with storm resistant covers if stormwater from affected areas may discharge to surface waters.”

This is subjective (what distance constitutes “away from”). Interior drains are already prohibited. Is this change in permit language meant to apply to exterior drains?

The Proposed Permit would require that indoor materials and activities be located “away from doors or drains,” but it provides no definition or guidance as to what constitutes “away from.” This ambiguity would make the requirement difficult or impossible to implement and enforce consistently and objectively. Different facilities and inspectors will have different interpretations of what “away from” means. The proposed requirement would also not make any allowance for doors that are kept closed except when in use. Materials and equipment would need to be located at an undefined distance away from doors even if the door is only occasionally and briefly opened or is only used in an emergency. Similarly, materials and equipment would need to be located at an undefined distance away from drains even if the drain if there are barriers or other measures effectively separating the material and equipment from the drain.

Response: The permit was revised to read: “Locate materials and activities indoors, away from doors or exterior drains or protect them with storm resistant covers if stormwater from affected areas may discharge…” This is under the minimize exposure narrative limit and not intended to be a prohibition.

Changes were made based on this comment.

OISG #7

Description: Narrative WQBEL - Quarterly Cleaning of Storm Sewer Lines and Catch Basins

Comment: Language should be added to account for the potential for run-on as the cause of iron or bacteria in the storm sewer lines of a facility regulated under the 1200-Z Permit. For example, if a municipal separate storm sewer system (MS4) is determined to be the cause by source tracing sampling, then the Permittee under the 1200-Z Permit should not be required to clean storm sewer lines and catch basins on a quarterly basis.

Request that this requirement be revised to a requirement to specifically evaluate whether increasing cleaning to quarterly would be practicable and beneficial. It is unclear who would have the burden of proving that a sewer line is a source of continuing triggering events or how that would be done. Quarterly cleaning may also be impracticable for some facilities, particularly during the winter. Because of these uncertainties, a requirement to evaluate quarterly cleaning and to implement it only if it is determined to be practicable and beneficial, would be better than a blanket requirement to implement quarterly cleaning at all facilities where triggering events persist.

Response: Schedule A.20.k states: “If sample results continue to trigger as outlined in Schedule A.20.h and i above after completion of water quality-based narrative effluent limits above, the permit registrants must clean storm sewer lines, including catch basins quarterly, if proven to be a source.” The escalation in frequency of storm sewer line and catch basin cleaning may be avoided if sediment from the site is determined not be the source of exceedances. A representative sample includes run-on sources that commingle with stormwater discharge associated with industrial activity.

In addition, permit registrant shall, to the extent practicable, sample stormwater discharge associated with industrial activity as it flows off-site before it combines with stormwater, wastewater or other waste permitted streams, or from areas outside the facility, or mixes with any surface water.

OISG #8

Description: Transportation Sector - Sector P

Comment: “For the transportation sectors below eligibility is based on the auxiliary operations listed above; however, once covered under the permit all stormwater associated with industrial activities (See Schedule D.4, Definition) are regulated activities…”

This additional statement should be removed because it is contrary to EPA’s stormwater regulations, which state: “Only those portions of the [transportation] facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14) (i)-(vii) or (ix)-(xi) of this section are associated with industrial activity.” 40 C.F.R. § 122.26(b)(14)(viii). Moreover, neither the Proposed Permit nor the draft evaluation report provides an alternative basis under 33 U.S.C. § 1342(p)(2)(E) and 40 C.F.R. § 122.26(a)(9)(i)(D) for regulating stormwater discharges from these nonindustrial activities.

While this change was adopted as a footnote to Table 1 in the 2021 issuance of the 1200-Z Permit, the response to comments on this change lacked adequate justification other than DEQ stating that “once a facility is covered under the permit, DEQ may expand the area covered under the permit to regulate stormwater discharge associated with industrial activity from the entire footprint.” Reasoning provided in DEQ’s response to comments included “based on the wide variety of industrial activities and significant materials associated with industrial activity exposed to stormwater discharge, DEQ has expanded the scope beyond auxiliary operations to protect Oregon’s waters” and also cited that “Washington State Ecology’s industrial stormwater general permit also regulates the entire footprint of industrial facilities.” DEQ’s response to comments states that the proposed final Permit language is consistent with 40 CFR 122.26. DEQ failed to identify whether the expansion of Permit coverage for transportation facilities was completed under Residual Designated Authority (RDA) or state authority.

Response: The permit language discussed in these comments is not a substantive change from the 2021 permit but rather is a formatting change. The requirement that all industrial discharges from facilities in transportation sectors that have vehicle maintenance shops, equipment cleaning operations or airport deicing operations must obtain coverage and comply with the permit is consistent with the 2021 permit. The permit language is consistent with 340-045-0015(2) and 40 CFR 122.26 which are the rules that outline the requirements for who must obtain permit coverage. DEQ has only proposed moving the language that addresses this requirement from a footnote to the body of the table. The Environmental Quality Commission initially expanded the permit coverage requirements to transportation sector facilities stormwater discharge associated with industrial activities during the 2021 rulemaking. At that time, the staff report for the rulemaking included discussion of the Oregon-specific considerations that warranted the expanded coverage requirements under state law.

This permit language is also consistent with ORS 468B.025, OAR 340-045-0015 and 40 CFR 122.26(b)(14) which provide permit coverage requirements under state and federal law. Based on the wide variety of industrial activities and significant materials exposed to stormwater discharge associated with industrial activity, the scope of the regulated operations is expanded to protect Oregon's waters. Some pollutant sources include material and waste storage, such as oil/fuel drums, batteries, tires, or filters stored outside, trailers and trucks storage, material or products from spills or leaks, and loading, unloading areas.

The condition has been implemented throughout the 2021-2016 permit cycle included areas defined in 40 CRF 122.26(b)(14) which is included in Schedule D.3 of this permit. Stormwater discharge associated with industrial activity:

"…The term includes, but is not limited to, stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product."

OISG #9

Description: Table 2 - Application Deadline

Comment: For facilities that must obtain an NPDES permit only because of a determination pursuant to 40 C.F.R. § 122.26(a)(9)(i)(D)—the stated basis for requiring Table 2 facilities to obtain a permit—EPA's regulations allow the facility to apply for permit coverage within 180 days after receipt of notice that permit coverage is required. See 40 C.F.R. § 122.26(a)(9)(iii). Proposed Permit Condition I.2.a.ii should be revised to require individual notice to Table 2 facilities that permit coverage is required, and both Proposed Permit Conditions I.2.a.ii and iii should be revised to allow facilities 180 days, rather than 60, to apply for permit coverage after receipt of the notice. Because a complete application must include a stormwater pollution control plan (SWPCP), 60 days would generally be insufficient, particularly for a large facility or for a small business that is unfamiliar with stormwater discharge requirements.

Response: DEQ declined to adjust application requirements for new permit coverage.

OISG #10

Description: Emergency Firefighting - PFAS containing AFFF

Comment: The Proposed Permit would limit authorized discharges from emergency or unplanned firefighting activities to those that do not use AFFF. The concern is that AFFF may contain hazardous per- and polyfluoroalkyl substances (PFAS). OISG shares this concern but believes the restriction on all AFFF is too broad because many types of AFFF are not formulated with these fluorinated compounds. To more narrowly focus the restriction, OISG suggests that it be limited to "AFFF formulated with fluorinated surfactants."

Response: The reference to AFFF under authorized non-stormwater discharge for emergency firefighting has been removed from the permit.

Changes were made based on this comment.

OISG #11

Description: Authorized non-stormwater - High pressure washing

Comment: Pavement washing must be without hot water or detergents and can only be undertaken in areas that have been swept and that do not contain spills or leaks of toxic or hazardous materials. The Proposed Permit would further prohibit all discharges from high pressure washing and washing of undercarriages, and it would count tractors and their trailers as separate vehicles. Given the extremely limited scope of authorized discharges from these activities, the need for these additional restrictions is not apparent or explained in the draft evaluation report. On the other hand, the additional restrictions may pose significant costs on facilities that have few or no practicable alternatives—which is the reason why these non-stormwater discharges were originally included in the permit.

OISG requests that the proposed additional restrictions not be included in the renewed permit.

Response: The authorized non-stormwater language is consistent with DEQ's expired 1700-A NPDES discharge permit conditions. The 1200-Z no longer requires oil and grease monitoring and it is important that washing does not mobilize pollutants. Larger pieces of equipment have been counted separately by DEQ staff and our agents; hence this clarifies the practice.

OISG #12

Description: Employee Education

Comment: Broad, generalized employee training requirements applied uniformly across all facility personnel will not meaningfully improve a facility's ability to prevent or respond to spills, leaks, or other emergencies. Effective training programs are necessarily role-specific. Employees responsible for sampling and inspections require focused instruction on those tasks, while employees responsible for spill response require training tailored to emergency response protocols. The expansion of site-specific training requirements to include all "personnel who may cause or respond to a spill or leak" is overly broad language. This could be interpreted to include anyone that arrives on site in a vehicle that has potential to leak, regardless of whether they are an employee at the facility or just a vendor or customer.

A blanket requirement risks mandating training for employees whose job responsibilities do not implicate certain activities. This approach adds administrative burdens without a corresponding improvement in compliance or environmental protection. More importantly, it may reduce overall training effectiveness by reducing the time and attention that employees can devote to the stormwater tasks they actually perform. Tailoring training to job function ensures that employees receive targeted, practical instruction that improves performance in the areas they are expected to be trained for.

OISG requests that this language be amended to permit facilities to structure training programs based on employee responsibilities, as described in the facility's SWPCP, rather than imposing generalized training requirements across all personnel.

Response: The list of employees required to be trained include: (1) Personnel responsible for the design, installation, maintenance, or repair of controls including pollution prevention and treatment measures; (2) Personnel responsible for the storage and handling of chemicals and materials that could contribute pollutants to stormwater; (3) Personnel responsible for conducting or documenting visual observations, sampling or

inspections as required in Schedule B; (4) Personnel who trained to respond to a spill or leak; and (5) Personnel who are responsible for conducting and documenting corrective actions. DEQ changed the language in number four to better align with the responsibilities of staff trained to respond to a spill or leak.

Changes were made based on this comment.

OISG #13

Description: Emergency Firefighting Reporting

Comment: The Proposed Permit would limit authorized discharges from firefighting activities to firefighting activities that do not use AFFF (or, as proposed by OISG in the comment above, AFFF formulated with fluorinated surfactants). The Proposed Permit also adds a requirement in Condition A.8.k to "[r]eport emergency firefighting discharge to DEQ or agent within 2 business days of incident." OISG requests that Condition A.8.k be clarified to specify that a report is required only for unauthorized discharges from firefighting activities that used AFFF formulated with fluorinated surfactants.

Response: If there is a risk of petroleum, chemicals or fire suppression water/foam reaching a waterway, it should be reported to OERS immediately. They can be reached 24/7 at 800-452-0311. If a facility is located in our agents geographic area, report to OERS and to the appropriate agent. DEQ removed the reference to AFFF in the permit.

Changes were made based on this comment.

OISG #14

Description: Tier 2 - Treatment Requirement

Comment: "The Tier 2 report must include a proposal for active or passive treatment. This may include a combination of source removal and source control but must propose treatment measures with the goal of achieving the benchmark(s)."

Because the effectiveness of the permit registrant's proposed Tier 2 measures must be supported by a report prepared and stamped by an Oregon-registered professional engineer, the permit should allow the permit registrant to justify why source removal or source control measures can meet the goal of achieving the benchmarks without treatment measures. For example, if the permit registrant removes the only source of the benchmark exceedance, there is no reason to require the permit registrant to install, operate, and maintain treatment measures to remove a pollutant that will no longer be present. The permit should not arbitrarily require treatment measures that can be shown to be unnecessary.

Response: DEQ edited the Tier 1 corrective action requirement to address source removal. The permit language reads: "Investigate the cause of the elevated pollutant levels, including conducting any needed pollutant source tracing, source control or source removal. Ensure that known or discovered significant materials from previous operations are controlled, removed or otherwise not exposed." If an operator knows how to remove a source of contamination, this should be done during a Tier 1 corrective action response. Monitoring and Tier 2 geometric mean evaluations should allow time for source removal prior to triggering Tier 2. Tier 2 corrective actions also allow alternatives to treatment.

OISG #15

Description: Post-tier 2 - Substantially Similar Discharge Points

Comment: Must sample substantially similar discharge points for the parameters that triggered Tier 2. For exceptionally large facilities where sampling at all substantially similar discharge points are infeasible, DEQ or agent may approve a modification." This provision requires all discharge points that were subject to Tier 2 to be monitored following Tier 2 implementation, regardless of whether the discharge point continues to be substantially similar to a monitored discharge point. OISG requests that this provision be removed. The justification for the monitoring exemption does not change because of a benchmark exceedance at the discharge point that is sampled. Moreover, because Tier 2 responses must be applied to all substantially similar discharge points, the discharge points should remain similar after the implementation of those responses. Although Proposed Permit Condition A.19.g.iii would allow DEQ to reestablish the monitoring waiver for the substantially similar discharge points, the permit registrant would need to provide at least five sample results from the substantially similar monitoring points in order to do so.

Response: The permit requires sampling at substantially similar discharge points post Tier 2 installation because the treatment or source control measures have changed and the permit registrant must once again demonstrate substantially similar effluent. Substantially similar discharge points are exempted from monitoring requirements when a permit registrant can prove through past monitoring or an analysis of industrial activities, site characteristics, significant materials, and management practices and activities that the sampling results from the equivalent monitored discharge points represent the quality from substantially similar unmonitored discharge points. DEQ or agent's approval of a substantially similar determination is contingent upon the very principle that substantially similar discharge points stormwater quality are representative of the monitored analytical results; therefore, installing the same Tier 2 corrective action and reestablishing the exemption through monitoring is appropriate.

OISG #16

Description: Tier 2 Background Waiver

Comment: The deadline for submitting a Tier 2 background waiver request is the December 31 immediately following the monitoring year that triggered Tier 2 requirements (i.e., the monitoring year ending the preceding June 30). Because a background waiver request will generally need to be supported by monitoring data in addition to the data required to be collected pursuant to the permit, collecting and analyzing all the needed data will often be impossible by the December 31 deadline, particularly given that there may not be sufficient rainfall to collect samples until the late autumn immediately preceding the deadline. OISG requests that the following language be appended to proposed condition A.19.h.ii.(2) to authorize DEQ to allow the permit registrant additional time to collect and analyze the data where that is warranted.

OISG suggests the following language: If additional time is needed to collect data in support of a background waiver request, a timely waiver request may include a proposed schedule for collecting, analyzing, and reporting the data to DEQ, together with a justification for the schedule. If DEQ approves the schedule, the data may be submitted in accordance with the approved schedule after the deadline for submitting the waiver request, and DEQ will notify the permit registrant whether the waiver is approved or denied within 60 days of receipt of the data.

Response: DEQ recognizes natural background waivers may take additional time, the permit was not revised to address the suggestion. There are a small number of facilities that may be eligible for this exemption from Tier 2 and the permit already allows DEQ or agent to approve a later date.

OISG #17

Description: Monitoring Waiver

Comment: Because all waivers would expire at the end of the permit term in any event, reinstating the monitoring requirement for the final year of the permit term has no obvious justification other than to limit the period during which waivers are effective. The draft evaluation report states that monitoring data during this last year “will assist DEQ when analyzing the stormwater data to make sound permit decisions,” but it is not clear how this data would assist DEQ, given that DEQ would likely have no time to evaluate or even review the data before permit coverage is assigned to a facility under the renewed 1200-Z Permit. Eliminating the waiver for the final year of the permit term substantially reduces the value of the waiver to permit registrants without providing any substantially useful data in return.

Because of these costs, monitoring waivers provide an important incentive to permit registrants to achieve discharge benchmarks. The permit makes it difficult to obtain monitoring waivers and substantially reduce the value of the waiver by limiting the period for which a waiver is effective to no more than three of the five years of the permit cycle.

Response: Reinstating monitoring waiver the last year of the permit cycle and calculating the geometric means ensures permit registrants are maintaining their housekeeping and source control measures during the timeframes they have an approved monitoring waiver. Discharge data during the 2025-2026 permit year will be used during the 2031 permit reissuance. Discharge data is used to evaluate what pollutants the permit should include and at what concentrations. DEQ reduced impairment parameter monitoring in 2021 and discontinues oil and grease monitoring based on discharge data analyses. DEQ will continue to use discharge data to inform future permits. Allowing up to three years discontinued discharge sampling strikes a balance between sampling and analytical costs and regulatory assurance that discharge quality is meeting concentrations and therefore preventing harmful pollutants from entering surface waters. Additional sampling throughout the permit term also helps reduce the uncertainty associated with natural variability among storms and wet versus dry years.

A permit registrant may use the geometric mean of sample results to demonstrate their operational and sources control practices are protective of water quality. One way to verify controls are being maintained is to reinstate monitoring.

OISG #18

Description: Monitoring Waiver Criteria

Comment: Obtaining a monitoring waiver should not require more than the required number of samples for the monitoring year, and the waiver should apply through the end of the permit term.

Both the current and Proposed Permit include extensive and complex discharge monitoring requirements. Compliance with these requirements is expensive, not only for sampling and analysis, but also for personnel and other administrative costs associated with managing and implementing the required monitoring program.

No substantial reason has been given to support the need for five qualifying samples. Indeed, the only purpose of the requirement appears to be to make it more difficult to obtain a waiver and to make the period during which a waiver is effective shorter. In the absence of any identified benefit from requiring five samples, the renewed permit should replace the requirement for five samples in Conditions B.30.a.i.(1) and (2) with four samples.

Response: Collection of more samples increases the confidence that a site is complying with the requirements by reducing the acceptable error. The 2021 permit required five samples as the minimum number of samples collected to request a monitoring waiver and going back to four samples would cause confusion.

OISG #19

Description: Definition - Scheduled Operating Hours (narrowed)

Comment: Many facilities conduct some level of industrial activities continuously or through the weekend, including all daylight hours. Particularly for smaller facilities, however, the personnel qualified and available to conduct stormwater sampling and monitoring may be available only on weekdays. To address this concern, OISG proposes that “scheduled operating hours” be defined by default as 8 a.m. to 5 p.m. weekdays, unless the permit registrant specifies different hours in the SWPCP.

Response: DEQ declined to make this change. Many facilities work extended hours, and site-specific hours are a requirement element of the SWPCP.

OISG #20

Description: Sector J - Mining and Quarrying of Nonmetallic Minerals

Comment: The Proposed Permit includes a new Sector J in Schedule E for co-located mining and quarrying of nonmetallic minerals. Because the 1200-A general permit is specifically intended for these activities, the renewed permit should clarify that the permit registrant may opt to include these activities under another applicable permit, including the 1200-A permit.

Response: The permit now includes “limitations of coverage” section in Sector J similar to Sector D: E.J.1. “Limitation of Coverage - Mining and Quarrying of Nonmetallic Minerals, Except Fuels must apply for coverage under the 1200-A Industrial Stormwater Permit. The requirements in Sector J apply to stormwater discharges associated with co-located industrial activities only, as defined in Schedule D.5, Definitions. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur.”

Changes were made based on this comment.

OISG #21

Description: Definition - Design Storm

Comment: The 1200-Z Permit should expressly define the design storm for permit actions as the design storm in DEQ’s guidance for Tier 2 corrective actions.

Several conditions in the Proposed Permit reference a “design storm,” and DEQ evaluates Tier 2 corrective action proposals based on a design storm. The permit itself, however, does not define the applicable design storm. To provide clarity and certainty for permit registrants, OISG requests that DEQ add a definition of “design storm” in Condition D.3 that references the design storm in DEQ’s “Tier 2 Revised Stormwater Control Plan Checklist Instructions” (Jan. 2023).

Response: DEQ may evaluate our design storm threshold and if the definition was in the permit that would require a permit modification.

OISG #22

Description: Compliance with SWPCP Constitutes Compliance with Narrative TBEL

Comment: Conditions A.8, A.9, Schedule E. The permit should expressly state that compliance with the stormwater control measures specified in the SWPCP constitutes compliance with the permit's narrative technology-based effluent limits in Schedule A.8 and E.

Few of these narrative limits themselves are sufficiently specific to enable the permit registrant, DEQ, or anyone else to identify what specific stormwater control measures a facility must implement to comply with the narrative limits until they are translated into facility-specific requirements in the SWPCP. Once the vague narrative limits are incorporated into the SWPCP as specific requirements, however, permit registrants should not be exposed to an enforcement action for violating the narrative limits based on an after-the-fact determination that the permit registrant should have implemented stormwater controls other than or in addition to those specified in the SWPCP.

Until DEQ or its agent confirms, either expressly or implicitly through acquiescence, that the facility-specific stormwater controls described in the SWPCP are consistent with the permit's narrative technology-based effluent limits, neither the permit registrant nor anyone else has the ability to determine whether the controls that it has selected are sufficient. Accordingly, a permit registrant should not be subject to an enforcement action, including a citizen suit, for violating the narrative technology-based effluent limits if it has (1) prepared a SWPCP that describes the stormwater controls that it has selected to implement the narrative limits, (2) submitted the SWPCP to DEQ or its agent, (3) made any changes to the SWPCP that DEQ or its agent has directed, and (4) has fully complied with the relevant provisions of the SWPCP.

In addition, enforcing the narrative technology-based effluent limits directly against permit registrants, without first translating those limits into facility-specific stormwater control requirements described in the SWPCP, would be inconsistent with the Clean Water Act (CWA), EPA's implementing regulations, and the U.S. Supreme Court's recent decision in *City and County of San Francisco v. EPA*, 604 U.S. 334 (2025) (*San Francisco*

As the Court noted, it is permissible for the permit to direct the permittee to achieve an end result by complying with numeric discharge limits or with specific, "narrative" management or operational practices. *See id.* at 355. But the permit must tell the permittee specifically what it must do or not do to comply and must not leave that for the permittee to figure out on its own—at the risk of finding out only at the end of an enforcement action that the permit required something else.

Therefore, standing alone, the narrative technology-based effluent limits would not be impermissible under *San Francisco*. But the permit also includes the process described above for translating these vague objectives into specific, enforceable stormwater controls that are incorporated into each facility's SWPCP. So long as the permit requires compliance only with the specific controls identified in the SWPCP, and not with the "end result" narrative technology-based effluent limits that the SWPCP is intended to implement, the permit should pass muster under *San Francisco*.

But a permit registrant must at all times know what it must do or not do to comply with the permit, and it should not be subject to an enforcement action for failing to take actions that are identified only in the course of the enforcement action itself.

Response: The conditions referenced in this comment include specific directives and best management practices and are not similar to the conditions considered in *City and County of San Francisco v. EPA*, 604 U.S. 334 (2025).

EPA Region 10 has advised DEQ to decline to make this change based on longstanding policy against providing assurances outside the context of formal enforcement proceedings. State agencies administering

federal law under state authority should abide by similar policies against providing regulated entities an "enforcement shield". It is crucial that the DEQ maintain its enforcement discretion over all aspects of the NPDES program, and remain free to consider all relevant facts and circumstances surrounding any potential future permit violations.

OISG #23

Description: Water Quality Standards – Support

Comment: The Proposed Permit proposes to remove Condition A.3.a of the current 1200-Z Permit, which provides, “The permit registrant must not cause or contribute to an exceedance of instream water quality standards as established in OAR 340-041.” OISG supports removing the condition. As discussed in the comment above, this condition is an impermissible “end result” condition that does not tell the permit registrant what it must do or not do to comply. *See San Francisco,* 602 U.S. at 355. If DEQ determines that a facility’s stormwater discharges contribute to an exceedance of instream water quality standards, Condition A.10 of the Proposed Permit sets forth a process for evaluating any such contribution and implementing additional or revised stormwater controls, as needed, to eliminate the contribution going forward.

Response: Thank you for the input.

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16 Comments from: Oregon Refuse and Recycling Association

ORRA #1

Description: Narrative Technology-based Effluent Limits - Tarps

Comment: To eliminate tarps as an acceptable covering measure suggests that a facility would have to cover the entire facility with a roof or move all industrial activity within a building. There are many instances where this is not feasible. When tarps are properly secured and maintained, they are fully protective as a long-term stormwater protection measure. If the tarps are applied correctly and maintained in good condition, they serve as an effective best management practice to limit exposure of materials to storm water.

Removing the use of all tarps is problematic for many industrial facilities. When properly utilized, temporary covers such as durable tarps provide significant protection from stormwater exposure. As written, the revisions to Section 8(c) may require building permits, engineering, or alterations to land use permit entitlements to allow for construction of roofs or buildings, which will require considerable time and capital investments from a Permittee and may not result in significantly better protection of stormwater quality.

Permanent cover requirements as proposed, without exception, are not practicable. In the least, a process for exemptions must be available. ORRA supports the allowance for tarps as acceptable covers. Removing the use of all tarps is problematic for many industrial facilities. When properly utilized, temporary covers such as durable tarps provide significant protection from stormwater exposure.

Response: DEQ retained the 2021 permit language in response to the comment.

Changes were made based on this comment.

ORRA #2

Description: Storage of Unused, Empty Waste Container Exemptions

Comment: ORRA requests that an allowance be made for waste facilities that store not-in-use waste containers on-site.

Response: DEQ declined to make the suggested change. Many waste containers may contain residue and liquid waste even after they are cleaned. An individual facility may work with DEQ or agent and provide in the SWPCP cleaning procedures and specifics related to unused, empty containers storage.

ORRA #3

Description: Waste Chemicals and Material Disposal

Comment: The existing requirement for dumpsters to be closed when not in use will pose operational challenges for our members and their customers. Many locations do not have the space to allow for a lid to open. Many construction companies specifically request boxes without lids so they can be loaded from any side on the project site. Lids can also pose a danger to customers if improperly used, particularly for customers who are not strong enough to lift or open lidded containers.

In specific situations, customer material is bulky and can cause damage to a lid when being loaded. The lids of a drop box are the most easily broken component because they are a moving part. Repairs and replacement can be extremely costly, and these costs are passed on to the ratepayer. Temporary tarps are a fraction of the cost and have none of the repair costs associated with a permanently installed lid. At construction sites some entities use equipment to load the boxes. Even boxes without lids can be damaged by such equipment. Adding a lid to such boxes only increases the likelihood of damage

The proposed dumpster requirements are unnecessarily burdensome on solid waste facilities. Waste facilities regularly store large numbers of empty, not-in-use dumpsters for the purpose of storage or maintenance prior to providing them to customers. Waste containers take up large volumes of space, and it is not feasible to store large amounts indoors. Even facilities with an “in-service” dumpster that is actively used for waste collection often do not have a reasonable way to store containers indoors or put lids on their boxes due to their location, such as a loading dock with active truck loading and unloading next to it.

Finally, if a facility has installed treatment measures to address pollutants within their stormwater discharge, and the facility is meeting benchmarks even if they store containers on site without cover, then the requirement as written should not apply to that facility.

Solid waste hauling and processing companies serve a vital public health service. Arbitrarily requiring all dumpsters to be covered by roofs or lids, regardless of their intended use or whether they impact stormwater quality, will be a costly regulatory burden for ratepayers to endure. ORRA suggests that provisions are made for empty dumpsters, exempting them from the requirement for cover. Tarps can be a valuable tool in a permittee’s toolbox.

Response: DEQ updated the permit to say “Recycle or properly dispose of waste to eliminate or minimize exposure of pollutants to stormwater. Cover all waste bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to these pollutants. Acceptable covers include storage of bins or dumpsters under roofed areas or use of lids or properly secured temporary covers such as tarps”

DEQ revised the language to waste bins from waste contained in bins. EPA strictly requires all dumpsters remain covered when not in use to prevent garbage leachate from discharging. The final language reflects ORRA's suggested comment and retains the 2021 permit language. Since this is a general permit the conditions must be protective for all sectors. DEQ recognizes the distinct nature of operations ORRA represents; however, the language discussed is not a substantive change from 2021 permit.

EPA's permit recommends for dumpsters and roll off boxes that do not have lids and could leak, ensure that discharges have a control (e.g., secondary containment, treatment).

The permit is consistent 40 CFR 122.44(k) and CWA regulations requiring BMP to control or abate the discharge of pollutants when numeric effluent limits are infeasible. Stormwater regulations expects operators to select, design, install, and implement SCMs, in accordance with good engineering practices and manufacturer's specifications, to meet the technology-based effluent limits listed and the water quality-based effluent limitations.

Changes were made based on this comment.

ORRA #4

Description: Revised SWPCP Deadline

Comment: Recommend that DEQ change the SWPCP submittal date to December 31, 2026, and provide Permittees with six months.

For entities with multiple facilities covered under the Permit, this is an unreasonable timeline. Even for single facilities covered under the Permit, the changes proposed within the draft Permit are extensive enough that it will take significant time to update the SWPCPs and accompanying site maps. Furthermore, we expect that consulting firms will be overwhelmed with requests for support from their clients to assist in the completion of these updates, affecting capacity to meet the requirements.

Response: DEQ changed the updated SWPCP deadline from September 30, 2026, to November 30, 2026. This provides permit registrants five months after the issuance date to incorporate revised language into their Plan. DEQ declined to change the date to end of December, recognizing mass reduction measures certifications are due at that time. A November deadline provides ample time considering the permit retained its fundamental structure. Permit registrants may request approval for a later date if needed.

Changes were made based on this comment.

ORRA #5

Description: Employee Education - New Requirement for Additional Training

Comment: "No later than 60 calendar days after changes to the site, operations or control measures that may significantly change the nature of pollutants present in stormwater discharge or significantly the pollutant(s) levels, discharge frequency, discharge volume or flow rate"

The proposed change does not specify which employees are required to receive additional training nor does it restrict the training content to only cover the pertinent details related to the change at the facility. For larger, complex sites, this may lead to repetitive full-length stormwater training being required as many as six times per year. This is an unnecessary and unproductive burden on Permittees, both to provide this training and track a multitude of new deadlines. Remove the section. Consider adding requirements to the annual training

content that include a discussion of changes to the site, operations, or control measures that have occurred since the date of the previous annual training.

Is the re-training requirement specific to the “significant” change? Is the 60-day clock started at completion of install or initiation of install. Does DEQ intend to consider only changes that require SWPCP updates to qualify as “significant?”

Response: DEQ appreciates the comment and amended the requirement based on feedback. The edits now make it clear the permit registrant is only responsible to provide mid-year training specific to the revised SWPCP changes. It is crucial that personnel have the most up-to-date information when the site changes. The personnel who are required to be trained does not change due to this condition. The final permit clarifies the training only needs to include the portion of the revised SWPCP related to operation or control measures that may significantly change the nature of pollutants present in stormwater discharge or significantly increase the pollutant(s) levels, discharge frequency, volume or flow rate and monitoring location or discharge points. Training must be conducted no later than 60 days after the revised SWPCP submittal, which means at the most a short training may be required quarterly.

Changes were made based on this comment.

ORRA #6

Description: Visual Observations - Photographs

Comment: “Document visual observation by taking a photograph”

While this requirement may sound simple, it is likely to prove problematic and create numerous logistical and administrative concerns, including:

- Field staff are not necessarily provided with smart phones or digital cameras
- Adding a date and timestamp is challenging digitally and data is not always compatible between android and iPhone file sharing (e.g. HEIC format vs. jpeg)
- Field staff do not all have access to computers and/or have the knowledge to download and share, maintaining records, uploading and storing photographs in accessible locations
- Establishing consistent procedures for retaining and organizing photographic records across facilities
- Background against the sky, backlit, or against a light-colored background

The value added to the inspection appears minimal compared to the potential burden. Many of the benchmark pollutants (pH, iron, copper, E. Coli, etc.) cannot be evaluated based on photographs. While certain visual indicators may be interpreted to a degree, there are notable limitations and influencing factors (camera light, shadow, angle, focus, etc.). The analytical laboratory sampling data is the most reliable documentation of water quality and leaves no room for interpretation. Photo documentation will provide minimal added data while creating frustration and confusion with field personnel who have less familiarity with the tools and programs needed to meet the requirements.

This requirement is infeasible, most industrial personnel do not have access to company phones with cameras, dedicated camera equipment onsite, or computer access for photo storage and management.

The added requirement for photographic documentation may create significant administrative burden without a corresponding improvement in environmental protection or compliance verification.

Response: This requirement has been removed.

Changes were made based on this comment.

ORRA #7

Description: Emergency Firefighting Incident

Comment: ORRA requests that DEQ clarify who within DEQ should be contacted, how or where reports should be filed, and if reporting to another program would satisfy this requirement.

Some permittees are covered by multiple DEQ Permits and already have requirements to report emergency firefighting activity to other DEQ programs. Additional requirements to report these activities may create confusion amongst the regulated community.

Response: If there is a risk of petroleum, chemicals or fire suppression water/foam reaching a waterway, it should be reported to OERS immediately. They can be reached 24/7 at 800-452-0311. If a facility is located in our agents geographic area, report to OERS and to the appropriate agent. DEQ removed the reference to AFFF in the permit.

Changes were made based on this comment.

ORRA #8

Description: Employee Education -Signatures

Comment: It is infeasible to obtain signatures and titles from over a thousand employees. In addition, many facilities have implemented electronic training delivery, tracking and record keeping documenting when employees have completed the required training.

Response: DEQ has removed the signature requirement from the Employee Education section of the permit.

Changes were made based on this comment.

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17 Comments from: Oregon Trucking Associations, Inc.

OTA #1

Description: Visual Observations - Photographs

Comment: “Document visual observation by taking a photograph”

While this requirement may sound simple, it is likely to prove problematic and create numerous logistical and administrative concerns, including:

- Field staff are not necessarily provided with smart phones or digital cameras
- Adding a date and timestamp is challenging digitally and data is not always compatible between android and iPhone file sharing (e.g. HEIC format vs. jpeg)
- Field staff do not all have access to computers and/or have the knowledge to download and share, maintaining records, uploading and storing photographs in accessible locations
- Establishing consistent procedures for retaining and organizing photographic records across facilities
- Background against the sky, backlit, or against a light-colored background

The value added to the inspection appears minimal compared to the potential burden. Many of the benchmark pollutants (pH, iron, copper, E. Coli, etc.) cannot be evaluated based on photographs. While certain visual indicators may be interpreted to a degree, there are notable limitations and influencing factors (camera light, shadow, angle, focus, etc.). The analytical laboratory sampling data is the most reliable documentation of water quality and leaves no room for interpretation. Photo documentation will provide minimal added data while creating frustration and confusion with field personnel who have less familiarity with the tools and programs needed to meet the requirements.

This requirement is infeasible, most industrial personnel do not have access to company phones with cameras, dedicated camera equipment onsite, or computer access for photo storage and management.

The added requirement for photographic documentation may create significant administrative burden without a corresponding improvement in environmental protection or compliance verification.

Response: This requirement has been removed.

Changes were made based on this comment.

OTA #2

Description: Employee Education

Comment: Broad, generalized employee training requirements applied uniformly across all facility personnel will not meaningfully improve a facility's ability to prevent or respond to spills, leaks, or other emergencies. Effective training programs are necessarily role-specific. Employees responsible for sampling and inspections require focused instruction on those tasks, while employees responsible for spill response require training tailored to emergency response protocols. The expansion of site-specific training requirements to include all "personnel who may cause or respond to a spill or leak" is overly broad language. This could be interpreted to include anyone that arrives on site in a vehicle that has potential to leak, regardless of whether they are an employee at the facility or just a vendor or customer.

A blanket requirement risks mandating training for employees whose job responsibilities do not implicate certain activities. This approach adds administrative burdens without a corresponding improvement in compliance or environmental protection. More importantly, it may reduce overall training effectiveness by reducing the time and attention that employees can devote to the stormwater tasks they actually perform. Tailoring training to job function ensures that employees receive targeted, practical instruction that improves performance in the areas they are expected to be trained for.

Request that this language be amended to permit facilities to structure training programs based on employee responsibilities, as described in the facility's SWPCP, rather than imposing generalized training requirements across all personnel.

Response: The list of employees required to be trained include: (1) Personnel responsible for the design, installation, maintenance, or repair of controls including pollution prevention and treatment measures; (2) Personnel responsible for the storage and handling of chemicals and materials that could contribute pollutants to stormwater; (3) Personnel responsible for conducting or documenting visual observations, sampling or inspections as required in Schedule B; (4) Personnel who trained to respond to a spill or leak; and (5) Personnel who are responsible for conducting and documenting corrective actions. DEQ changed the language in number four to better align with the responsibilities of staff trained to respond to a spill or leak.

Changes were made based on this comment.

18 Comments from: SCS Engineers

SCS Engineers #1

Description: Definitions - Discharge point

Comment: Sheet flow is not regulated under the Clean Water Act by EPA. OORS 468B.025, which allows the state opportunities to exempt de minimis discharges from permit requirements: We would argue that sheet flow is both de minimis and not a point source discharge, as defined in ORS 468B.005(4). EPA, in general, and most rulemaking in Oregon requires consideration of “best available science” or BAS. DEQ does not appear to have met BAS standard at several levels. The main failures would be not providing any BAS support for a requirement including sheet flow that is outside the NPDES program, and which has little, if any support in the scientific literature with regard to protecting human health and the environment. EPA directly addresses stormwater as sheet flow in their Response to Comments regarding the Final Rule of the Federal Water Pollution Control Act (referred to as the Clean Water Act or CWA) as follows [55 Fed. Reg 47990] (Nov. 16, 1990) EPA clarification on the status of the terms “point source” and “discharge” under these regulations. Commenters asked if “sheet flow” is covered, EPA responded in 1990, this rulemaking only covers storm water discharges from point sources. Thus, the CWA and NPDES (EPA) does not consider sheet flow a point source discharge, as defined by EPA in the CWA. The term “sheet flow” does not, occur in EPA’s NPDES rules, nor would it be regulated as a point source discharge.

DEQ may argue that the State has the authority to include requirements that are more restrictive or stringent than those included in the NPDES federal programs. This is true but generally limited to addressing water quality standards in terms of (a) designated uses, (b) numeric and/or narrative water quality criteria, and (c) antidegradation policy, as outlined in the CWA. Each of these has a process that must be followed and that usually requires quantitative analyses and technical support using best available science. We are aware of no provision under the industrial NPDES program, or NPDES in general, which allows for wholesale addition or modification of requirements beyond those found in the MSGP or ancillary program documents, especially without scientific or high-level regulatory support, including that of EPA Headquarters.

Response: This comment addresses the permit requirement retained from the 2021 permit that permitted facilities sample and, if necessary, control sheet flow discharging from regulated industrial facilities into waters of the state. This requirement has not changed. Factually this is a specific scenario where an industrial facility deemed to be conducting activities generating stormwater requiring an NPDES permit, has a facility design such that sheets of stormwater directly drain from the facility to waters of the state. Given these facts, such sheet flow is potentially of environmental concern and therefore assessment is required. Additionally, requiring monitoring of sheet flow from permitted industrial facilities is consistent with the policies of the state of Oregon to prevent and control pollution as described in ORS 468B.015, 468B.020 and 468B.025.

This comment also addresses state authority in NPDES permitting. DEQ’s authority to issue water quality permits is provided by the Oregon Legislature. State law broadly prohibits placement of waste and causing pollution of waters of the state without a permit, ORS 468B.020, ORS 468B.050. Additionally, DEQ entered into an MOA with EPA that allows the agency to issue permits that also meet the requirements of the Federal Clean Water Act. As the comment points out, federal law provides that state programs must only meet the federal requirements as a floor and can be more restrictive. Additionally, as referenced in DEQ’s agreement with EPA cited above (p. 6-7), the NPDES permits issued by DEQ can also include state law requirements. This is necessary to avoid the need to obtain separate water quality permits to address both state and federal

requirements. Rather DEQ develops NPDES permits that meet the requirements of both state and federal law. DEQ's water quality permitting authority is not limited as described in the comment.

SCS Engineers #2

Description: Table 2

Comment: We suggest that DEQ add language [in Table 2] that describes exemptions from the above for those retail businesses that generally do not "store" vehicles but do provide parking for delivery or transport vehicles and do not otherwise have a discernable industrial source of stormwater pollutants. We suggest that DEQ add language that describes exemptions from the above for those retail businesses that generally do not "store" vehicles but do provide parking for delivery or transport vehicles and do not otherwise have a discernable industrial source of stormwater pollutants. Indeed, EPA's Guidance Manual for Conditional Exclusion from Storm Water Permitting Based On "No Exposure" of Industrial Activities to Storm Water (EPA 833-B-00-001; June 2000), lists such uses, including the following: Drums, barrels, tanks and similar containers that are sealed (Section 3.1.1), adequately maintained vehicles , such as trucks, automobiles, forklifts, trailers or other general purpose vehicles found onsite—but not industrial machinery—which are not leaking or are otherwise a potential source of contaminants (Section 3.1.4), and final products built and intended for use outdoors (Section 3.1.5).

Response: The industrial activities in Table 2 have already been implemented for nearly three decades for dischargers to the Columbia Slough. The no exposure certification criteria under Phase II federal regulations does not directly translate to Table 2 dischargers. Table 2 includes storage of vehicles, machinery, equipment (including disposal/refuse containers stored by a disposal/refuse contractor/vendor), and trailers (including rental, sales, wrecked vehicles, fleet, and general storage).

SCS Engineers #3

Description: Storage of Unused, Empty Waste Container Exemptions

Comment: DEQ and the 1200-Z permit should specify that empty, inactive waste containers on sites that store waste containers (waste management service providers) are not required to have a lid or to be covered. These sites often store large numbers of empty containers in large areas making it infeasible to cover either individual empty containers or cover the area where these containers are staged due to the large footprint. These empty inactive containers, even if they previously contained waste, would add no or de minimis amounts of pollutants to stormwater, which would be easily treated by site stormwater treatment BMPs.

Response: DEQ declined to make the suggested change. Many waste containers may contain residue and liquid waste even after they are cleaned. An individual facility may work with DEQ or agent and provide in the SWPCP cleaning procedures and specifics related to unused, empty containers storage.

SCS Engineers #4

Description: Reporting Non-detects

Comment: Please update the above permit section and the 1200-Z NPDES Industrial Stormwater General Permit: Annual Geometric Mean Reporting in Your DEQ Online fact sheet (updated 7/27/2023) with your updated terminology in Schedule B.35.a.ii using method detection limit (MDL) and reporting limit (RL).

Response: All forms and guidance documents will be updated after the permit is issued.

Changes were made based on this comment.

SCS Engineers #5

Description: Geometric Mean Non-detects

Comment: DEQ has directed permittees in the 1200-Z NPDES Industrial Stormwater General Permit: Annual Geometric Mean Reporting in Your DEQ Online fact sheet (updated 7/27/2023) to refer to how their laboratory defines a “ND’ or “Not Detected” and use one-half of that value. This direction is in error: If a laboratory reports a non-detection, that means that the parameter is not present above the MDL. In such cases, a zero or ND for that value is entered because for all intents and purposes of the permit, the parameter is not present in more than de minimis concentrations, or the permit would/should require a lower MDL.

When a lab reports an estimated value, it should remove any ND notation (because it was detected at or above the detection limit) and report the estimated value. DEQ needs to decide whether to require entry of the estimated value, the midpoint value between the RL and MDL, or a choice of the lower of the two (estimated values are probably reasonable accurate). AND (‘Not detected at the MDL) should be recorded as half the value of the MDL.” In stormwater applications, a laboratory reporting limit is synonymous with quantification limits or the lowest concentration that can be measured with acceptable accuracy and precision. If a parameter is detected below the RL, then EPA suggests recording half the RL as an estimated concentration, with the understanding that this should normally be a reasonable estimate.

Response: DEQ’s Reasonable Potential Internal Management Directive indicates:

Calculation	Less than MDL	Between MDL and MRL	Greater than MRL
All calculations except geometric mean	0	MDL. If no MDL given, then MRL	Observed value
Geometric mean	1/2*MDL. If no MDL given, then 1/2*MRL.	MDL. If no MDL given, then MRL	Observed value

Note: If all values at a location are less than the MDL, the geometric mean is assigned the value zero.

DEQ is not asking laboratories to report ½ the MDL for results below the MDL; DEQ is asking that ½ the MDL be used in calculations of the geometric mean.

In calculating the geometric mean:

- the MDL should be used for estimated values.
- ½ the MDL should be used for non-detects.
- If all results are non-detect, the geometric mean should be set to zero.

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19 Comments from: Simplot Company

Simplot #1

Description: Employee Education -Signatures

Comment: It is infeasible to obtain signatures and titles from over a thousand employees. In addition, many facilities have implemented electronic training delivery, tracking and record keeping documenting when employees have completed the required training.

Response: DEQ has removed the signature requirement from the Employee Education section of the permit.

Changes were made based on this comment.

Simplot #2

Description: Exceedance of Numeric Effluent Limits in Table 3

Comment: The above portion of this section appears incomplete or grammatically unclear and may require revision for readability and implementation clarity.

Response: DEQ has edited the permit in response to the comment.

Changes were made based on this comment.

Simplot #3

Description: Emergency Firefighting Incident

Comment: This requirement should clarify if the event still has to be reported even if it complies with Condition I.6, Authorized Non-Stormwater Discharges. Part 6.a.i allows for “Discharges from emergency or unplanned fire-fighting activities that do not use Aqueous Film Forming Foam (AFFF).”

Response: The reference to AFFF under authorized non-stormwater discharge for emergency firefighting has been removed from the permit. For DEQ sites reporting

Changes were made based on this comment.

Simplot #4

Description: Statewide and Sector-Specific Benchmarks

Comment: Simplot appreciates the clarifying language to this paragraph, which makes it more consistent to EPA’s Multi-Sector General Permit (MSGP) language: Benchmarks are screening concentrations, not enforceable numeric effluent limits. A benchmark exceedance, therefore, is not a permit violation, but failing to take the required corrective action in response to a benchmark exceedance is a permit violation.

Response: Although we appreciate the support for this language, this condition has been removed from the permit as it is better suited for the Permit Evaluation Report.

Simplot #5

Description: Tier 2 Exemptions

Comment: Part 19.a starts with Tier 2 geometric mean exemptions. This section would read more similarly to Section 18 (Tier 1) if Exemptions were moved to the end of the section, or close to or included within 19.h, Exemptions.

Response: DEQ declined to make this change.

Simplot #6

Description: Monitoring Waiver - Clarity

Comment: It is unclear if four (4) or five (5) quarterly samples should be considered in the geometric mean. Please review for accuracy.

Response: The permit is written to allow monitoring waiver requests only after the permit registrant has sampled for four quarters. Therefore, those renewing coverage under the 2026 permit will be eligible for a monitoring waiver on or after July 1, 2027, and once the geometric mean of five most recent consecutive qualifying samples is equal to or below the applicable statewide or sector-specific benchmarks.

Simplot #7

Description: EPA MSGP Issuance

Comment: Simplot would like to see EPA's 2026 MSGP finalized prior to the finalization of Oregon's 1200-Z Permit. Without the EPA MSGP being finalized first, it is impossible to weigh the Oregon requirements against the updated federal MSGP requirements, and thus impossible to say if the Proposed Permit is more or less stringent. There has been no update to the public on the progress of the EPA Final 2026 MSGP since the Spring 2025 public comment period.

Response: Although the MSGP is used as a general framework for the 1200-Z, Oregon's industrial permit has been more stringent and Oregon-specific since the first permit was issued in the late 1990's. EPA does not require states to adopt the conditions of the MSGP. The draft federal industrial permit did make some changes to Schedule E that DEQ has yet to update in the 1200-Z because EPA's permit was administratively extended. Schedule E has been adopted from EPA's permit; however, the rest of the Schedules in the 1200-Z incorporate the minimum federal rules and go beyond the MSGP to satisfy Oregon's state rules and statutes.

Simplot #8

Description: Inactive and Unstaffed Sites

Comment: Proposed Permit Part 30.a.iv should require an exemption from the "and there are no industrial materials or activities exposed to stormwater" portion of this exclusion for the following industries: Sector G and Sector H.

Response: The permit already exempts inactive and unstaffed sites in the monitoring waiver section: "If a facility is inactive and unstaffed and no industrial materials or activities are exposed to stormwater; the permit registrant is not required to conduct monitoring for the remainder of the permit term." In addition, Schedule E is incorporated into the 1200-Z from the MSGP for sector-specific conditions requirements.

Simplot #9

Description: Schedule E - Permit Numbering

Comment: The number in Schedule E should be corrected to account for the change in numbering in Schedule A and B.

Response: Thank you for pointing this out; the numbering citation has been corrected.

Changes were made based on this comment.

Simplot #10

Description: Visual Observations - Frequency

Comment: Proposed Permit requires visual observations once per month. EPA's 2021 and draft 2025 MSGP only require visual observations on a quarterly basis. The Proposed Permit should also require visual observations on a quarterly basis. The 1200-Z should not be more stringent than federal requirements. Additionally, Part 34.a.vi, a new addition to the Proposed Permit, requires time-stamped photos of the full visual observation containers, which is onerous to permittees and is also more stringent than federal requirements. Part 34.a.vi should be removed.

Response: The requirement for time-stamped photos have been removed based on significant feedback.

For exceptionally large facilities where monthly inspections of all areas or visual observation at all substantially similar discharge points are infeasible, DEQ or agent may approve in writing a modified inspection frequency. Statewide historically there may be several months of dry weather that would not require visual observations. In addition, because DEQ allows substantially similar discharge points, it is extremely important that an operator perform visual observations on those un-monitored discharge points.

Changes were made based on this comment.

Simplot #11

Description: Reporting Monitoring Data

Comment: The ability to select "no discharge" in the DMR as stated in 35.a, may cause confusion when compared to Part 29., Monitoring Variance. Part 29 requires a monitoring variance submittal with each DMR for the following condition:

"If the permit registrant missed a sample due to no storm events of sufficient magnitude to produce a discharge during scheduled operating hours and safe conditions…" Part 35 should remind the reader that a monitoring variance is required in the case of "no discharge" or point the reader to Part 29.

Response: DEQ declined to make this change.

Simplot #12

Description: DMR Submission

Comment: "The permit registrant must submit a DMR by required due dates. Failure to submit a DMR is a violation, even if there was no discharge during a quarter, UNLESS the permit registrant has an approved monitoring waiver or the permit registrant is claiming operations are inactive." This part should be revised for clarity.

Response: A DMR is due if a permit registrant has an approved monitoring waiver or the permit registrant is claiming operations are inactive. If reporting in YDO, a waiver is reported **9, Conditional Monitoring (Not Required this Period)* and inactive or unstaffed is reported **2, Operation Shutdown*.

Simplot #13

Description: Record Keeping Procedures

Comment: The addition of "and kept in chronological order" to Part 38 is overreach. While it would be ideal for records to be maintained chronologically, it should not be a permit requirement.

Response: The permit was revised and no longer requires records to be kept in chronological order, although highly recommends the good recordkeeping practice.

Changes were made based on this comment.

Simplot #14

Description: Table 8: Reporting Requirements

Comment: For "SWPCP submission", there should be clarity provided that minor SWPCP revisions do not require submittal (i.e. that changes must be those listed in 16.b to qualify for re-submittal). The "Due Date" column should read (addition in bold): "No later than 30 calendar days after the completion of modification listed in 16.b or as requested by DEQ or agent".

Response: DEQ declined to make this change. The table already references Schedule A.16.

Simplot #15

Description: Schedule C

Comment: The permit should have the word "*that"* removed from the end of the sentence as it makes the sentence confusing. The sentence should be as follows: *Prior to completion of the allowed compliance schedule, the permit registrant is not required to increase monitoring frequency under Table 6 when sample results exceed the numeric effluent limit.*

Response: DEQ revised the permit based on the suggested changes.

Changes were made based on this comment.

Simplot #16

Description: Schedule D.2

Comment: Availability of SWPCP, Monitoring Data and Records Schedule D, Part 2 asks for a response to requests for records to be made within 5 business, unless a later date is approved. Is the request to be made within 5 business days? Please update this to clarify.

Response: The permit was revised to read: "…within 10 business days from date of request…" (deadline extended based on a separate comment)

Changes were made based on this comment.

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20 Comments from: Vigor Industrial LLC

Vigor #1

Description: Narrative Technology-based Effluent Limits - Tarps

Comment: To eliminate tarps as an acceptable covering measure suggests that a facility would have to cover the entire facility with a roof or move all industrial activity within a building. There are many instances where this is not feasible. When tarps are properly secured and maintained, they are fully protective as a long-term stormwater protection measure. If the tarps are applied correctly and maintained in good condition, they serve as an effective best management practice to limit exposure of materials to storm water.

Removing the use of all tarps is problematic for many industrial facilities. When properly utilized, temporary covers such as durable tarps provide significant protection from stormwater exposure. As written, the revisions to Section 8(c) may require building permits, engineering, or alterations to land use permit entitlements to allow for construction of roofs or buildings, which will require considerable time and capital investments from a Permittee and may not result in significantly better protection of stormwater quality.

Permanent cover requirements as proposed, without exception, are not practicable. In the least, a process for exemptions must be available. There is support for allowance for tarps as acceptable covers. Removing the use of all tarps is problematic for many industrial facilities. When properly utilized, temporary covers such as durable tarps provide significant protection from stormwater exposure.

Response: DEQ retained the 2021 permit language in response to the comment.

Changes were made based on this comment.

Vigor #2

Description: Employee Education -Signatures

Comment: It is infeasible to obtain signatures and titles from over a thousand employees. In addition, many facilities have implemented electronic training delivery, tracking and record keeping documenting when employees have completed the required training.

Response: DEQ has removed the signature requirement from the Employee Education section of the permit.

Changes were made based on this comment.

Vigor #3

Description: Wash Water Discharge

Comment: “Minimize or eliminate discharge of authorized non-stormwater wash water by performing washing in bermed areas that does not discharge into stormwater system, dispose of into the sanitary sewer, drain to a proper collection system such as a closed-loop system or fully infiltrating into vegetated area (do not drain into engineered vegetated low impact development features). If unable to eliminate wash water discharge, the permit registrant must comply with restriction in Condition 1.6.”

If the discharge is listed as an authorized non-stormwater discharge, it is not clear why there would be a requirement to minimize or eliminate it? This requirement appears to contradict Schedule A - 6(a) (viii) and creates confusion regarding authorized discharges.

The changes proposed to this language, as a permit condition, add confusion for permittees rather than clarification. We understand that DEQ is indicating the agency's preferred hierarchy of management, rather than a compliance requirement. This discussion seems more appropriate for the permit evaluation report rather than the permit language.

Response: This condition to minimize wash water discharge is not new to the 2026 permit narrative technology-based effluent limit section. The wash water language has been retained from the 2021 permit applicable to wash water controls. The permit registrant must follow the authorized non-stormwater condition applicable to wash water discharge, otherwise, if a washing operation cannot conform with the restrictions under Condition I.6, the permit registrant must eliminate that non-stormwater discharge by disposing to sanitary sewer, operating a closed-loop system or fully infiltrating the water.

Changes were made based on this comment.

Vigor #4

Description: Storm Event Definition (Corrective Action Deadline (Tier 1))

Comment: "If modifications to the control measures are necessary to meet technology-based effluent limits in this permit, the permit registrant must implement the modifications before the next storm event if practicable or no later than 30 calendar days from discovery, unless DEQ or agent approve a later date"

There does not appear to be a definition of "storm event". A qualifier is needed to establish what defines a storm event (e.g. 1/2" of rain in 24-hour period or 25-year/24-hour storm). This same reference is found in several sections and is likely to lead to interpretation by permittees. To add confusion, it appears that DEQ provides different definitions for "storm event" depending on the specific regulatory context. A definition or qualifier would be appreciated.

Storm events come along at variable frequency and could occur 24 hours from receiving sample results, or more than a month after receiving sample results. The Draft Permit language creates an ambiguous and variable timeframe to complete corrective actions, by basing the timeline on the timing of the next storm event. This does not inherently provide adequate time to thoughtfully investigate an exceedance and determine a meaningful action. Requiring an action to be complete by the next storm event opens permittees acting in good faith to the potential of unnecessary violations or lawsuits. Inspectors and agents are rarely looking into the timing of storm events and generally look at the 30-day mark when reviewing records. Adjusting language to be a 30-day requirement makes for more consistent and clear language for permittees to follow.

For example, if a corrective action is identified and precipitation occurs three days later, would the facility immediately be considered out of compliance if the corrective action could not reasonably be completed within that timeframe?

Response: The permit does include a definition of storm event:"…means a precipitation event that results in a measurable amount of precipitation to results in an actual discharge (except otherwise specified in Schedule E)." Sector G, H and J uses a quarter inch in 24-hour storm event threshold. DEQ declines to set a storm event threshold in the permit. There are several factors that contribute to an actual discharge. This is a discharge permit, and the focus is on preventing pollutants from discharging in stormwater. It is crucial an operator understand the storm system infrastructure specific to their industrial operation. Corrective action is required prior to a discharge event.

Vigor #5

Description: Schedule D, Special Condition 3 “Flood Prone Sites.”

Comment: “Flood Prone Site,” creates significant regulatory uncertainty and the lack of a process or standards for determining when the Department of Environmental Quality (“DEQ”) or a local government could require potentially costly modifications of infrastructure makes the predictable application of the requirements impossible. Even if Special Condition 3 was modified to add the needed definitional and procedural clarity, however, DEQ has not identified any gap in the generally applicable provisions of the Draft Permit that justifies or explains why the special or different BMPs at “Flood Prone Sites” set forth in Special Condition 3 are needed.

Condition D.3, related to stormwater discharge from facilities located in floodplains or deemed to be flood-prone sites. Neither the term “floodplain” or “susceptible to past flooding events” are defined in the draft permit. The characterization of a site as “susceptible to past flooding events” is too broad and should have a set timeframe in which past flooding occurred. The language around additional source control measures, operational controls, and BMPs to mitigate risk of stormwater contamination is also vague and subjective. It is at the discretion of DEQ, its agent, or the local government to determine the need for and extent of modification required, but it is unclear what a facility must do to comply with the requirements. How is a facility to determine the potential risks and responses?

The Condition 3 language is unclear and confusing as to what additional source control measures, operational controls and BMPs to consider to “mitigate risk of stormwater contamination” that are not already provided for in the 1200Z Permit. The purpose of the 1200Z permit and the requirements to develop a Storm Water Pollution Control Plan is to regulate various pollutants from industrial activities that may be discharged in stormwater or snowmelt during discharge events.

The proposed condition would give DEQ, DEQ agents, and local governments extraordinarily broad and apparently unconstrained authority to “require modification of infrastructure.” Would this allow these entities to require a permit registrant to relocate all or a portion of its facility? Require the construction of walls or other flood barriers? The potential scope of this provision is simply too broad and ill-defined.

This Special Condition is concerning for several reasons. First, the Draft Permit does not provide a definition of what constitutes a “flood-prone site.” Further, the Draft Permit does not provide any guidance of what additional source control measures, operational controls or BMPs must be considered by a permittee. In addition, the Draft Permit provides DEQ, its agent or local government authority to require modification of infrastructure without providing any guidelines for when such a modification requirement could be triggered or what type of modification could be required. For these reasons, DEQ should remove this provision.

Response: DEQ removed this section based on considerable feedback and will reconsider when the permit is reissued in 2031.

Changes were made based on this comment.

Vigor #6

Description: Emergency Firefighting - AFFF

Comment: Industrial facilities should not be expected to interfere with emergency firefighting operations and question their use of materials. Fire departments should be responsible for the materials they use, not the industrial facility.

Response: Senate Bill 91 prohibits fire departments from selling, using, or disposing of firefighting foam containing per- and polyfluoroalkyl substances (PFAS) beginning January 1, 2026, with full enforcement effective July 1, 2026. DEQ and Oregon State Fire Marshall are tasked with ensuring safe foam disposal and supporting departments through educational programming. No fire department is allowed to use firefighting foam containing per- and polyfluoroalkyl substances (PFAS). Although, this is the case, 1200-Z permit registrants have no authority over emergency firefighting activities; therefore, the qualifier was removed.

Changes were made based on this comment.

Vigor #7

Description: Water Quality Standards - Clearly Defined Guidelines

Comment: As written, in the absence of a determination from DEQ or its agent, the Draft Permit language requires the permittee to use its own judgement regarding whether a discharge is contributing to an exceedance of instream water quality standards. In the absence of clearly defined guidelines or criteria to establish when a discharge is or could be contributing to an exceedance of water quality standards in the receiving waterbody, this could lead to inconsistent interpretation and application of the permit terms across permittees.

Vigor recommends revising Schedule A.10.a of the Draft Permit to clearly state under what conditions the permittee is required to implement corrective actions and reporting under Condition A.10, presuming these conditions are distinct from corrective action requirements triggered by exceedances of benchmarks (or observations of obvious signs of pollution in discharge) and numeric effluent limits. Corrective action and reporting requirements for these situations are already described in Schedules A.18 and A. 20, respectively.

Response: The corrective action response required if a discharge is contributing to an exceedance of instream water quality standards is a Water Quality Standards Corrective Action Report. The specifics around the discovery may vary; therefore, DEQ declines to define guidelines or criteria. An example may be a large turbidity plume discharge violating no more than a ten percent cumulative increase in natural stream turbidities may be allowed, as measured relative to a control point immediately upstream of the turbidity causing activity water quality standard.

Vigor #8

Description: Sampling Procedures

Comment: Stormwater flows may combine into a common on-site active treatment facility; discharges in excess of the design storm capacity must be sampled if the minimum monitoring frequency has not been achieved.” Vigor reads this provision as requiring sampling of combined treated and untreated discharge from an active treatment system from a storm generating runoff exceeding the design storm capacity for the treatment system, when the minimum monitoring frequency for the monitoring period has not been met.

Thus, this monitoring requirement could be interpreted to require sampling of the untreated discharge, which is not required to receive treatment per DEQ’s design storm engineering standards. Untreated overflows represent a small percentage of the overall discharge from an active treatment system even during storm

events that exceed design storm criteria. Untreated overflows are therefore not representative of discharge quality associated with the area receiving treatment at the active treatment system.

Further, composite samples of stormwater discharges consisting of separate treated and untreated discharge would not be representative of treated effluent quality during the much more common type of discharge events represented by design storm conditions (i.e., when an overflow is not occurring). During any given overflow event, it is difficult to quantify the effect of commingling of treated and untreated discharge on effluent discharge quality. Vigor recommends revising Schedule B.28.b.vi of the Draft Permit to allow stormwater flows to combine into a common on-site active treatment facility; and discharge from the treatment facility during storm events that generate flow in excess of the design storm capacity.

Response: This is not a new condition to the 2026 permit. The intent of this condition is to make it clear a discharge in excess of design storm capacity is not a valid reason to miss sampling. Bypass is defined in Schedule F Section B.3 and means an intention intentional diversion of waste streams from any portion of the treatment facility. Since this is stormwater discharge permit, generally neither the bypass nor upset language applies. The language allows stormwater flows to combined in a common on-site active treatment facility and if an operator has sampled the minimum frequency the excess (untreated) would not need to be sampled.

Vigor #9

Description: Tier 2 O & M Specifications

Comment: “Tier 2 report must include operations and maintenance specifications.”

Generally, operations and maintenance specifications are determined at the time of construction completion and treatment system commissioning, rather than at the time of initial design.

Response: The permit added “…if known at the time of design”.

Changes were made based on this comment.

Vigor #10

Description: SWPCP Requirements - Tier 2

Comment: The SWPCP is a plan describing best management practices and control measures on the site. Including implementation dates that control measures were put into place adds unnecessary language that prevents the plan from being succinct in the requirements it sets out. Implementation dates are documented in plenty of other records including the required Tier 2 Completion Notification that is set out in Schedule A.19.i.iv. Additionally, if current language in Schedule A.16.d of the Draft Permit is adopted, newly added implementation measures would be documented in the SWPCP revision log, which would provide a reasonably detailed record of the timeline of implementation of new stormwater treatment and source controls.

Vigor recommends revising Schedule A.17.d.vi of the Draft Permit to state that the SWPCP should include “A description of stormwater treatment controls and source controls, including low impact development.”

Response: DEQ is not requiring any Tier 2 corrective action dates in the past are incorporated into the SWPCP but rather going forward adding a date of implementation to the Plan. This will make it easier for DEQ and our agents to get a full picture of the site without opening several documents. Tier 2 corrective action is part of the Plan already and DEQ does not consider this to be unreasonable.

Vigor #11

Description: End-Result Narrative TBEL

Comment: Vigor recommends revising Draft Permit language to more clearly show consistency with the March 2025 U.S. Supreme Court decision in *City and County of San Francisco, California v. Environmental Protection Agency*, which held that 33 U.S.C. § 1311(b)(1)C) of the Clean Water Act does not authorize the U.S. Environmental Protection Agency (USEPA) to include “end - result” water -quality limitations in its NPDES permits. This would apply to instream water quality standards.

Response: EPA’s 2026 draft MSGP and fact sheet did not address the Supreme Court decision. Based on this case, DEQ reconsidered the Water Quality Standards language. The permit is consistent with the CWA and its implementing regulations at 40 CFR 122.44(k)(4). Section 402(a)(2) of the CWA states: “The administrator shall prescribe conditions for such permits to assure compliance with the requirements in paragraph (1) . . .including conditions on data and information collection, reporting and such other requirements as he deems appropriate.” (Section 402(a)(1) includes effluent limitation requirements.) This statutory provision is reflected in the CWA implementing regulations, which state that BMPs, i.e., control measures, can be included in permits when “[t]he practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.” 40 CFR 122.44(k)(4).

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21 Comments from: Waste Connections

Waste Connections #1

Description: Revised SWPCP Deadline

Comment: Recommend that DEQ change the SWPCP submittal date to December 31, 2026, and provide Permittees with six months.

For entities with multiple facilities covered under the Permit, this is an unreasonable timeline. Even for single facilities covered under the Permit, the changes proposed within the draft Permit are extensive enough that it will take significant time to update the SWPCPs and accompanying site maps. Furthermore, we expect that consulting firms will be overwhelmed with requests for support from their clients to assist in the completion of these updates, affecting capacity to meet the requirements.

Response: DEQ changed the updated SWPCP deadline from September 30, 2026, to November 30, 2026. This provides permit registrants five months after the issuance date to incorporate revised language into their Plan. DEQ declined to change the date to end of December, recognizing mass reduction measures certifications are due at that time. A November deadline provides ample time considering the permit retained its fundamental structure. Permit registrants may request approval for a later date if needed.

Changes were made based on this comment.

Waste Connections #2

Description: Employee Education - New Requirement for Additional Training

Comment: “No later than 60 calendar days after changes to the site, operations or control measures that may significantly change the nature of pollutants present in stormwater discharge or significantly the pollutant(s) levels, discharge frequency, discharge volume or flow rate”

The proposed change does not specify which employees are required to receive additional training nor does it restrict the training content to only cover the pertinent details related to the change at the facility. For larger, complex sites, this may lead to repetitive full-length stormwater training being required as many as six times per year. This is an unnecessary and unproductive burden on Permittees, both to provide this training and track a multitude of new deadlines. Remove the section. Consider adding requirements to the annual training content that include a discussion of changes to the site, operations, or control measures that have occurred since the date of the previous annual training.

Is the re-training requirement specific to the “significant” change? Is the 60-day clock started at completion of install or initiation of install. Does DEQ intend to consider only changes that require SWPCP updates to qualify as “significant?”

Response: DEQ appreciates the comment and amended the requirement based on feedback. The edits now make it clear the permit registrant is only responsible to provide mid-year training specific to the revised SWPCP changes. It is crucial that personnel have the most up-to-date information when the site changes. The personnel who are required to be trained does not change due to this condition. The final permit clarifies the training only needs to include the portion of the revised SWPCP related to operation or control measures that may significantly change the nature of pollutants present in stormwater discharge or significantly increase the pollutant(s) levels, discharge frequency, volume or flow rate and monitoring location or discharge points. Training must be conducted no later than 60 days after the revised SWPCP submittal, which means at the most a short training may be required quarterly.

Changes were made based on this comment.

Waste Connections #3

Description: Definition - Scheduled Operating Hours

Comment: The new definition of scheduled operating hours notably means daylight time periods. Waste Connections wishes to express support for this proposed definition. Many Permit requirements are associated with scheduled operating hours, including the obligation to collect stormwater samples. This new definition provides greater clarity on compliance in circumstances where discharge is rare at facilities that operate during hours of darkness and reduces risks to safety and quality by collecting field samples in potentially hazardous areas using only artificial light.

Response: Thank you for the input.

Waste Connections #4

Description: Monthly Inspection Corrective Action Deadline

Comment: “Conduct all permanent corrective action required as a result of inspection within 30 calendar days or by next storm event.”

The proposed language implies that the permanent best management practices (BMPs) would be structural. While permanent operational BMPs could be implemented within 30 days, the proposed change would result in insufficient time to adequately implement certain structural BMPs and the proposed language does not identify

a mechanism for the Permittee to extend the timeframe for implementation of the corrective action. As such, the proposed language would ultimately result in Permittees being out of compliance with the 30-day timeframe when required approvals for capital expenditures or other conditions limit the ability for a Permittee to complete the corrective action. For example, erecting a building or cover may require local agency approval and permits, engineering design, ordering of materials and fabrication, retaining a contractor, and construction; there are "permanent" corrective actions that may take months or potentially years to complete. The proposed Permit does not describe how a facility can maintain compliance if the action cannot be completed within the new deadline. Revise the language to better clarify the permanent corrective action deadline and include a process for maintaining compliance with the Permit if the deadline cannot be met.

Suggest revise language: Conduct all permanent corrective action required as a result of inspection within 30 calendar days. If completion of the permanent corrective action is not possible within 30 days, the Permittee must document the schedule of implementation for the corrective action that the Permittee plans to take and the reason why completion of the corrective action is not possible within 30 days.

Response: The permit was revised to add "If the permit registrant fails to complete the corrective action within this timeframe, an explanation must be documented in the inspection report, and corrective actions must be completed as soon as practicable."

Changes were made based on this comment.

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22 Comments from: Wildish Land Co.

Wildish Land Co. #1

Description: Condition I.2(d)(i)

Comment: It is not clear if there is timeline for DEQ or agent review of the application materials for completeness and compliance with the permit conditions. The applicant has 90 days to submit updated materials if the application is deficient but are there timelines for DEQ review and processing?

Response: The 90-day clock starts once DEQ or agent requests final edits in order to assign coverage under the 1200-Z. Oregon Revised Statues 340-045-0030(5)(a) reads: "If DEQ determines that additional information is needed, it will promptly request in writing the needed information from the applicant. The application will be considered withdrawn if the applicant fails to submit the requested information within 90 days of the request or such other time as DEQ establishes in writing."

The permit has been revised to better reflect the Oregon Administrative Rule. It now reads: "If applicant fails to respond to additional information request within 90 days, the application will be considered withdrawn, and the applicant must submit a new application. The application will be withdrawn unless DEQ or agent approves an alternative deadline for the submission of additional information."

Wildish Land Co. #2

Description: Wash Water Discharge

Comment: "Minimize or eliminate discharge of authorized non-stormwater wash water by performing washing in bermed areas that does not discharge into stormwater system, dispose of into the sanitary sewer, drain to a proper collection system such as a closed-loop system or fully infiltrating into vegetated area (do not drain into

engineered vegetated low impact development features). If unable to eliminate wash water discharge, the permit registrant must comply with restriction in Condition 1.6."

If the discharge is listed as an authorized non-stormwater discharge, it is not clear why there would be a requirement to minimize or eliminate it? This requirement appears to contradict Schedule A - 6(a) (viii) and creates confusion regarding authorized discharges.

The changes proposed to this language, as a permit condition, add confusion for permittees rather than clarification. We understand that DEQ is indicating the agency's preferred hierarchy of management, rather than a compliance requirement. This discussion seems more appropriate for the permit evaluation report rather than the permit language.

Response: This condition to minimize wash water discharge is not new to the 2026 permit narrative technology-based effluent limit section. The wash water language has been retained from the 2021 permit applicable to wash water controls. The permit registrant must follow the authorized non-stormwater condition applicable to wash water discharge, otherwise, if a washing operation cannot conform with the restrictions under Condition I.6, the permit registrant must eliminate that non-stormwater discharge by disposing to sanitary sewer, operating a closed-loop system or fully infiltrating the water.

Changes were made based on this comment.

Wildish Land Co. #3

Description: Storm Event Definition (Corrective Action Deadline (Tier 1))

Comment: "If modifications to the control measures are necessary to meet technology-based effluent limits in this permit, the permit registrant must implement the modifications before the next storm event if practicable or no later than 30 calendar days from discovery, unless DEQ or agent approve a later date"

There does not appear to be a definition of "storm event". A qualifier is needed to establish what defines a storm event (e.g. 1/2" of rain in 24-hour period or 25-year/24-hour storm). This same reference is found in several sections and is likely to lead to interpretation by permittees. To add confusion, it appears that DEQ provides different definitions for "storm event" depending on the specific regulatory context. A definition or qualifier would be appreciated.

Storm events come along at variable frequency and could occur 24 hours from receiving sample results, or more than a month after receiving sample results. The Draft Permit language creates an ambiguous and variable timeframe to complete corrective actions, by basing the timeline on the timing of the next storm event. This does not inherently provide adequate time to thoughtfully investigate an exceedance and determine a meaningful action. Requiring an action to be complete by the next storm event opens permittees acting in good faith to the potential of unnecessary violations or lawsuits. Inspectors and agents are rarely looking into the timing of storm events and generally look at the 30-day mark when reviewing records. Adjusting language to be a 30-day requirement makes for more consistent and clear language for permittees to follow.

For example, if a corrective action is identified and precipitation occurs three days later, would the facility immediately be considered out of compliance if the corrective action could not reasonably be completed within that timeframe?

Response: The permit does include a definition of storm event:"…means a precipitation event that results in a measurable amount of precipitation to results in an actual discharge (except otherwise specified in Schedule E)." Sector G, H and J uses a quarter inch in 24-hour storm event threshold. DEQ declines to set a storm event threshold in the permit. There are several factors that contribute to an actual discharge. This is a discharge

permit, and the focus is on preventing pollutants from discharging in stormwater. It is crucial an operator understand the storm system infrastructure specific to their industrial operation. Corrective action is required prior to a discharge event.

Wildish Land Co. #4

Description: Visual Observations - Photographs

Comment: “Document visual observation by taking a photograph”

While this requirement may sound simple, it is likely to prove problematic and create numerous logistical and administrative concerns, including:

- Field staff are not necessarily provided with smart phones or digital cameras
- Adding a date and timestamp is challenging digitally and data is not always compatible between android and iPhone file sharing (e.g. HEIC format vs. jpeg)
- Field staff do not all have access to computers and/or have the knowledge to download and share, maintaining records, uploading and storing photographs in accessible locations
- Establishing consistent procedures for retaining and organizing photographic records across facilities
- Background against the sky, backlit, or against a light-colored background

The value added to the inspection appears minimal compared to the potential burden. Many of the benchmark pollutants (pH, iron, copper, E. Coli, etc.) cannot be evaluated based on photographs. While certain visual indicators may be interpreted to a degree, there are notable limitations and influencing factors (camera light, shadow, angle, focus, etc.). The analytical laboratory sampling data is the most reliable documentation of water quality and leaves no room for interpretation. Photo documentation will provide minimal added data while creating frustration and confusion with field personnel who have less familiarity with the tools and programs needed to meet the requirements.

This requirement is infeasible, most industrial personnel do not have access to company phones with cameras, dedicated camera equipment onsite, or computer access for photo storage and management.

The added requirement for photographic documentation may create significant administrative burden without a corresponding improvement in environmental protection or compliance verification.

Response: This requirement has been removed.

Changes were made based on this comment.

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23 Comments from: Working Waterfront Coalition

WWC #1

Description: Schedule D, Special Condition 3 “Flood Prone Sites.”

Comment: “Flood Prone Site,” creates significant regulatory uncertainty and the lack of a process or standards for determining when the Department of Environmental Quality (“DEQ”) or a local government could require potentially costly modifications of infrastructure makes the predictable application of the requirements impossible. Even if Special Condition 3 was modified to add the needed definitional and procedural clarity, however, DEQ has not identified any gap in the generally applicable provisions of the Draft Permit that justifies

or explains why the special or different BMPs at “Flood Prone Sites” set forth in Special Condition 3 are needed.

Condition D.3, related to stormwater discharge from facilities located in floodplains or deemed to be flood-prone sites. Neither the term “floodplain” or “susceptible to past flooding events” are defined in the draft permit. The characterization of a site as “susceptible to past flooding events” is too broad and should have a set timeframe in which past flooding occurred. The language around additional source control measures, operational controls, and BMPs to mitigate risk of stormwater contamination is also vague and subjective. It is at the discretion of DEQ, its agent, or the local government to determine the need for and extent of modification required, but it is unclear what a facility must do to comply with the requirements. How is a facility to determine the potential risks and responses?

The Condition 3 language is unclear and confusing as to what additional source control measures, operational controls and BMPs to consider to “mitigate risk of stormwater contamination” that are not already provided for in the 1200Z Permit. The purpose of the 1200Z permit and the requirements to develop a Storm Water Pollution Control Plan is to regulate various pollutants from industrial activities that may be discharged in stormwater or snowmelt during discharge events.

The proposed condition would give DEQ, DEQ agents, and local governments extraordinarily broad and apparently unconstrained authority to “require modification of infrastructure.” Would this allow these entities to require a permit registrant to relocate all or a portion of its facility? Require the construction of walls or other flood barriers? The potential scope of this provision is simply too broad and ill-defined.

This Special Condition is concerning for several reasons. First, the Draft Permit does not provide a definition of what constitutes a “flood-prone site.” Further, the Draft Permit does not provide any guidance of what additional source control measures, operational controls or BMPs must be considered by a permittee. In addition, the Draft Permit provides DEQ, its agent or local government authority to require modification of infrastructure without providing any guidelines for when such a modification requirement could be triggered or what type of modification could be required. For these reasons, DEQ should remove this provision.

Response: DEQ removed this section based on considerable feedback and will reconsider when the permit is reissued in 2031.

Changes were made based on this comment.
