

# DEQ Response to Comments

## NPDES 1200-CA NPDES Stormwater General Discharge Permit

August 2022



### **Water Quality Permitting**

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# Overview

The 35-day minimum public comment period for the proposed permit was from February 14, 2022, to March 28, 2022.

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

<b>List of Commenters</b>		
<b>#</b>	<b>Name</b>	<b>Affiliation</b>
1	Matt W. Knudsen	Marion County Public Works
2	Terry Marsh	Fox Erosion Control and Landscape, Inc.
3	Blake Hamalainen	Port of Portland
4	Melissa Hurley	Cascade Geosynthetics
5	Tony Gilbertson	Clean Water Services (CWS)
6	John Raasch	Oregon Department of Transportation (ODOT)
7	Tom Fellows	Oregon Association of County Engineers and Surveyors (OACES)
8	John Nagy	Water Environmental Services (WES)

Similar comments are categorized below with DEQ’s response following the comment. Original comments are on file with DEQ.

# NPDES 1200 NPDES Stormwater General Discharge Permit General 1200-CA Permit Comments

## General Comments

### 1200-CA Permit Administrative Process

#### Comment from Oregon Department of Transportation:

##### 1. Effective Date:

###### Request:

ODOT requests that the Permit effective date be April 1, 2023. Prior to this date, ODOT would comply with the existing 1200-CA permit. Construction season in most of Oregon ends October 1. The new permit requirements will likely require significant work and time for ODOT to implement. With current levels of staff and resources, it would be extremely difficult for ODOT to implement the new permit requirements during the busy construction season, and to do so would likely result in project delays and significant expense to the agency, for the reasons described below. Once construction season ends, ODOT's key construction engineers and staff will have the ability to review and update the Agency's guidance, plans and specifications, manuals, and develop, provide and take training, hire new staff, negotiate contract change orders for numerous existing contracts, etc. so they can be successful in complying with the significant changes outlined in the new 1200-CA Permit. Given the amount of work necessary and the number of contract change orders that would be required, April 1 is the earliest ODOT anticipates that it could reasonably be prepared.

#### Why a Delayed Effective Date is Important:

- **Projects Late in Design or Already in Construction:**

ODOT and other permittees have large and complex projects requiring multiple years of construction that are in construction now or are about to go to bid. These projects were designed and/or contracted within current Permit parameters. Changing the foundational conditions, as defined in the new 1200-CA Permit, for projects late in the design phase or currently under construction can result in multiple complications, including:

- Contract Change Orders (CCOs) of potentially significant financial magnitude and construction delays while CCO's are negotiated with contractors.
  - Agency payout of CCOs can disrupt budgets to such a degree that other projects could be delayed as funding is shifted to pay CCO's on existing projects.
  - New 1200-CA Permit can require that contractors have full time erosion and sediment control manager/inspector. Acquiring trained staff, reallocating resources, or hiring a consultant may result in shortage of qualified persons to satisfy permit requirements.
  - Project Plans at or beyond Advance Plans stage of design development when new 1200-CA Permit becomes active would need additional staff time and budget, not currently allocated, to revise existing plans to comply with Permit's ESCP and potentially EMP requirements.
  - Projects already under construction that are adjacent to waterways may not be able to comply with the new ESCP buffer requirements (*Establish and maintain natural buffer zones*), as buffer areas may have already been impacted as allowed under the existing permit. Construction projects may need to provide sediment barriers, sometimes in redundant placement, to comply with the new 1200-CA Permit buffer requirement in lieu of leaving vegetation in place. This work could involve BMP's not already on the Bid Item List, resulting in Contract Change Orders (CCO), and design, procurement and installation of additional BMPs, all of which will take time to implement.
  - Projects already under construction had ESC plans and specifications set by the current 1200-CA Permit. New 1200-CA Permit requirement that ESCPs include phased ESC plans would require significant revision of plans and specifications during an active construction project. This could delay the project schedules and add significant cost to the projects.
- **ODOT Policy and Procedural Changes to Incorporate New 1200-CA Requirements:**  
 Beside the complications that result from changing requirements for projects already under way, ODOT will need time to enact changes within our organization. ODOT is a large agency and changes required by the new 1200-CA Permit cannot be immediately prepared and implemented due to the interconnectedness of multiple business lines and the time needed to revise and review the items listed below.

Necessary changes include:

- Training for ODOT personnel statewide for designers, inspectors, environmental staff, maintenance personnel, construction project managers and leadership.
- Training in Your DEQ Online (YDO) for ODOT staff
- Training for consultant engineers & designers
- Training for contractor personnel
- Revising guidance documents including the Erosion and Sediment Control Manual, the Roadside Development Manual, and Standard Drawings
- Changes to Oregon Standard Specifications for Construction and their Special Provisions.
- Revise Consultant Scope of Work templates
- Revise Erosion and Sediment Control Monitoring Form

- Review technical guidance as provided by bulletins, directives and advisories for conflicts with updated permit requirements and revise as necessary.

ODOT develops, edits and maintains the Oregon Standard Specifications for Construction. This contract document and the associated ODOT training, forms, templates and technical guidance are utilized by local governments throughout Oregon for their construction projects. When the 2022 construction season ends, ODOT will need time to carefully update these tools and training to reflect the new Permit requirements.

### **DEQ Response:**

DEQ understands that ODOT projects are complex with many regulatory layers that require Agency oversight. In addition, DEQ realizes there are many ongoing ODOT construction projects covered under the 1200-CA permit throughout the state; therefore, Since the current 1200-CA was written in 2000, the conditions are outdated regarding current State and Federal regulations. As such, DEQ determined it is appropriate to ensure all construction projects follow a comprehensive corrective action process as soon as possible to make certain any erosion and/or sediment control issues are documented and resolved in short order. The requirements in Section 16 will be in effect on September 15, 2022, the permit effective date. Section 16 of the 1200-CA permit requires timelines for corrective actions and reporting due to water quality exceedances or turbid discharge events from construction project sites under the 1200-CA permit. Thus, compliance with Section 16 creates clarity and consistency regarding corrective actions for all 1200-CA projects and will ensure all 1200-CA covered projects will be protective of water quality in Oregon.

Beginning April 1, 2023, permit registrants that were issued permit coverage prior to August 11, 2022, the permit issuance date, must comply with all conditions in the 1200-CA permit. This timing will allow existing permit registrants enough time to transition from requirements of the previous permit to implementing new permit conditions. In addition, DEQ has developed an implementation plan and will partner with ODOT and other 1200-CA registrants to develop permit procedures, edit relevant permit documents and train 1200-CA permit registrants on compliance requirements, ESCP development and on the YDO submission process if needed.

### **Comment from Oregon Department of Transportation:**

2. What ODOT requests clarification in the 1200-CA Permit regarding how the 1 and 5 acres of ground disturbance thresholds are defined and how that cumulatively defines a “**project**”. For example, a series of small ground disturbances on linear projects such as culvert replacements or sign replacements could cumulatively add up to 1 or 5 acres of soil disturbance, but each individual site is small and the sites are spread over long distances.
  - ODOT recommends that linear projects with individually small areas of soil disturbance that are separated over longer distances (highway corridor projects, etc.) not be considered cumulatively to meet the 1 or 5 acre Permit thresholds.

### **DEQ Response:**

The 1200-CA permit states in the “Sources Covered” section on page 1 that any construction



activity, materials or equipment staging and stockpiling that will disturb one or more acres of land must have 1200-CA permit coverage. Per EPA’s Appendix A-Definitions and Acronyms of the Federal Construction General Permit, a permit covered project site is the land where any “facility or activity” is physically located or conducted, including adjacent land used in connection with the facility or activity. Using ODOT’s example from the comment above, each individual culvert or sign replacement project is a discrete site where construction activities are performed. If the total disturbed area for an individual culvert or sign replacement does not total one acre, including staging, stockpiling and access roads, the project does not meet the minimum threshold to be covered under the 1200-CA permit. These smaller construction projects will be required to implement the erosion and sediment controls required in ODOT’s MS4 Phase 1 permit. The 5-acre threshold requiring a mandatory 14-day public comment period must be calculated by the same approach.

**Comment from Clean Water Services:**

3. What role will Agents have in processing erosion control plans for 1200-CA projects?

**DEQ Response:**

1200-C Agents are not involved in the 1200-CA permit process.

**Comment from Marion County Public Works:**

4. This version of the 1200-CA permit is written in a way that is not conducive to public projects, which include an ITB process.

**DEQ Response:**

The 1200-CA permit provide permit registrants flexibility to administer the permitting process as works for each public entity while meeting state and federal regulations. Based on the permit conditions, permit registrants have all permit required deadlines before the bidding process is initiated and can schedule accordingly as well as plan for the Invitation to Bid (ITB) process. The mandatory 14-day public comment period for projects 5-acres and above and ESCP submission timelines are established in the 1200-CA permit conditions. A permit registrant’s pre-construction contractual process must reflect these permit condition timelines to assure on-time construction activity commencement. Permit registrants can develop the ESCP and other documents prior to awarding bids and may modify as necessary depending on any contractual negotiations during the bid and award process. The contractor can be added immediately before the ESCP is submitted via Your DEQ Online (YDO) to DEQ. DEQ must receive the ESCP on YDO before work may be initiated on-site and can be the day work begins in some cases. In addition, ESCP revisions can be made and submitted to DEQ at any time.

**Comment from Oregon Department of Transportation:**

**5. DEQ Document Review Response Timing:**

- ODOT requests clarification of the timeframe within which DEQ will respond to the permittee under in **Section 5** (responding to public comments for 14-calendar day public review period) and **Section 6** (reviewing and approving the Environmental Management Plan).

Such language is present in other parts of the 1200-CA permit. See Section 15.9 – Submission of ESCP Revisions to DEQ: *“If the registrant does not receive a response to the revisions from DEQ within ten calendar days of receipt, the proposed revisions are deemed accepted.”*

These timeframes are important so that the permittee can timely know when it may move forward with its project.

### **DEQ Response:**

The timeline for all procedures in the 1200-CA permitting process that are impacted by factors beyond DEQ’s control are unknown and therefore not possible to include in the permit conditions. For example, if numerous comments are made about a proposed 1200-CA project during the mandatory 14-day public comment period that are substantive to water quality impacts during construction activities, the timeframe for working through the comments would be longer than if comments received are not about potential impacts to water quality. Regardless, as a public agency, adherence to Oregon’s public process regulations per OAR 340-045-0035(8) and the federal Clean Water Act regulations as stated in 40 CFR Part 25 regarding responding to substantive comments regarding water quality is needed. It is not possible to predict or to define a timeframe regarding ensuring effective consideration of public input in all cases.

### **Comment from Marion County Public Works:**

6. Please include a simplified workflow or process guide to summarize this permit into actionable items.

### **DEQ Response:**

The 1200-CA permit outlines the permitting requirements from the application for permit registration, through requirements regarding ESCPs for current permit registrants to final stabilization criteria. Permit registrants can identify conditional deadlines (i.e., ESCP submission, stabilization control implementation and corrective action timelines) and schedule for the mandatory periods of time allotted for public comment and inspection frequency. As each Agency has a unique administrative process, permit registrants are encouraged to develop a procedural guide and/or check lists that is appropriate for each. If there are specific questions about the process, DEQ would be glad to answer them.

### **Comment from Oregon Department of Transportation:**

#### **7. Staging and Disposal Sites:**

Provide clarification in the new permit that Project staging areas, material processing areas or material storage and/or disposal areas arranged by Contractor off the project site and regulated under a separate 1200-C permit are not the responsibility of ODOT.

### **DEQ Response:**

ODOT is a permit registrant for the 1200-CA, as such, it sets the project boundaries for each construction site by delineating project sites in the ESCP. Permit registrants are responsible for compliance with the conditions of the 1200-CA permit at each specific project site. Permit coverage under 1200-CA and other 1200 Series NPDES General Construction Stormwater permits are not issued for the same areas, and by permit condition not allowed. The Sources Covered section of the 1200-CA states, “Permit coverage is required under this General

Permit.....and do not have coverage under another NPDES permit”. NPDES Construction Stormwater General Permit conditions require discrete boundaries with no permit overlap. Thus, if ODOT hires a contractor that obtains 1200-C permit coverage for project staging areas not on land managed by ODOT and as such not a part of the 1200-CA permit covered project site, the contractor is responsible for all 1200-C permitting requirements.

## **1200-CA Permit Condition Comments**

### **Section 5 Construction projects that disturb 5 or more acres**

#### **Comment from Clean Water Services:**

8. Consider removing the 14-day public comment period. Now that ESCP are available to the Public via YDO, the public should be able to comment on a plan at any time. There are other opportunities in the development process that would allow the public to comment on a project (i.e., Land Use process).

#### **DEQ Response:**

The 14-day Public Comment period is an opportunity for public input on all applicable water quality issues that may arise during the proposed construction project. The public process is in line with state and federal regulations per OAR 340-045-0035(8) and 40 CFR Part 25 respectively and is completed prior to the start of any construction activities on projects. As such, having a clearly defined process retains the objective of meaningful public input before projects commence. Land Use Compatibility Statement applications and other development and building permits each provide a specific role in a jurisdiction’s regulatory process and may not be relevant to water quality topics regulated under the 1200-CA permit.

### **Section 6 Environmental Management Plan**

#### **Comment from Marion County Public Works:**

9. Section 6 does not give a clear definition of contamination or threshold of pollutants.

#### **DEQ Response:**

Contamination is defined in the 1200-CA permit in Schedule D.4.i as to be caused by a known or unknown pollutant release from a known or suspected source. Pollutant is defined in the 1200-CA permit in Schedule D.4.hh as dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, domestic sewage sludge (biosolids), munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, cellar dirt and industrial, municipal, and agricultural waste discharge into water. As such, pollutant contamination is broadly defined. DEQ determined that in order to provide clarity that regardless of the type of pollutant contamination scenarios that may be present on a construction site, an Environmental Management Plan review process is required to ensure the construction activity has an appropriate plan to manage contamination at the site.

Appendix A supplements Section 6 of the 1200-CA permit and outlines the Environmental Management Plan (EMP) review process. Known pollutant contamination may be present due to historic factors, such as land use or a previous spill. Unknown pollutant contamination encountered during the performance of construction activities must be reviewed through the EMP process once identified.

Pollutants are not presented by benchmark or exceedance levels in the 1200-CA permit, as the site-specific conditions may require the registrant to develop pollutant management plans at much lower concentration levels. An EMP review will assess historic and future site use to identify potential pollutants and identify possible human and ecological receptors. In addition, the EMP reviews are tailored to management of the contaminated media type (i.e., soil and/or groundwater) at each site and determine which regulatory guidelines must be applied when disposing of contaminated waste.

## **Comment from Port of Portland:**

### **10. Port of Portland Comment Port of Portland Suggested Language**

(Changes in blue)

#### ***Schedule A***

#### ***Section 6***

*a. Contaminated soils, contaminated groundwater or hazardous materials that will or have the potential to be encountered during construction activities.*

#### ***Appendix A***

The EMP requirement should have a nexus to water quality. The Port suggests adding language to clarify that an EMP is required where contaminated media on site has the potential to be exposed to stormwater.

a. Contaminated soils, contaminated groundwater or hazardous materials that will or have the potential to be **exposed to stormwater** during construction activities.

## **DEQ Response:**

The 1200-CA permit is a construction stormwater general permit; therefore, the conditions within pertain to the control and management of construction stormwater runoff and potential discharge from areas where construction activities are performed at project sites. The 1200-CA permit applies to stormwater and authorized non-stormwater discharges from construction projects with 1200-CA permit coverage. The purpose and goal of an Environmental Management Plan review is to determine if pollutants on site will pose a risk to water quality during construction activities and to ensure appropriate best management practices are implemented to protect water quality during the construction activities. Section 6 of the 1200-CA permit states, “DEQ will determine if the project can have coverage under this permit after the permit registrant has included appropriate controls and implementation procedures designed to ensure that the above activities will not lead to discharges that cause an exceedance of water quality standards.”

The suggested qualifier “exposed to stormwater” does not address contaminated groundwater pumped to the surface during dewatering activities. Dewatering is common for construction activities associated with many projects across Oregon and the groundwater associated with dewatering is not always exposed to stormwater. Contaminated groundwater can pose a risk to water quality if discharged from construction sites if not treated and controlled appropriately; therefore Section 6.a has not be modified as proposed.

## **Comment from Port of Portland:**

### **11. Port of Portland Comment Port of Portland Suggested Language**

(Changes in blue)

#### ***Schedule A***

#### ***Section 6***

*c. An Active Chemical Treatment System (e.g., cationic treatment chemicals,*

*electrocoagulation, flocculants, filtration, anionic polyacrylamide, polymers, hydrochloric or sulfuric acid) for sediment, pH neutralization, or other pollutant removal is planned or implemented at the project site.*

The EMP requirement should have a nexus to water quality. The Port suggests adding language to clarify that an EMP is required for any water treatment performed on site and discharge is directed to the storm system.

c. An Active Chemical Treatment System (e.g., cationic treatment chemicals, electrocoagulation, flocculants, filtration, anionic polyacrylamide, polymers, hydrochloric or sulfuric acid) for sediment, pH neutralization, or other pollutant removal is planned or implemented at the project site and discharge is directed to the storm system.

### **DEQ Response:**

The requirement of an Environmental Management Plan review for proposed active chemical treatment systems has a nexus to water quality, as Section 6 of the 1200-CA permit states, “DEQ will determine if the project can have coverage under this permit after the permit registrant has included appropriate controls and implementation procedures designed to ensure that the above activities will not lead to discharges that cause an exceedance of water quality standards”. Additionally, some active chemical treatment systems discharge directly to a receiving waterbody, thereby bypassing the storm system. As such, Section 6.c has not be modified.

## **Section 7 Procedures for denial or revocation of coverage**

### **Comment from Marion County Public Works:**

12. We would like clarification on what is grounds for denial of permit coverage (section 7).

### **DEQ Response:**

Grounds for denial, revocation or renewal of permit coverage are outlined in OAR 340-045-0033(10). Specifically, it states:

(10) The Director may refuse to authorize or renew coverage, or may revoke existing coverage under a general permit, as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit.

(a) The procedures for denying a permit in OAR 340-045-0050 and for permit revocation in OAR 340-045-0060 apply.

(b) Any interested person may petition the Director to take action under this section.

(c) The grounds for requiring an individual permit include the following:

(A) The discharge or activity is a significant contributor of pollution or creates other environmental problems.

(B) The permittee failed to comply with, or is not currently in compliance with, the terms and conditions of the general permit, submitted false information, or the permittee is in violation of any applicable law.

(C) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged.

(D) For NPDES general permits, effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit.

(E) Circumstances have changed so that the discharge or activity is no longer appropriately

controlled under a general permit, or either temporarily or permanently reducing or eliminating the authorized discharge is necessary; or  
(F) Any other relevant factors.

## **Section 13 Technology based effluent limitations/control measures**

### **Comment from Port of Portland:**

#### **13. Schedule A Section 13.2.1**

*b. Vegetated buffer zones between the site and sensitive areas (e.g., wetlands, springs, groundwater seeps, etc.) and other areas required to be preserved, especially in perimeter areas; and*

#### **Schedule A Section 15.4 (f)**

*vii. Vegetated buffer zones and/or equivalent sediment controls (see Section 13.2.4 and Appendix B) between the site sensitive areas (e.g., wetlands), and other areas to be preserved, clearly label with the words "Natural Buffer Zone";*

Vegetated buffer zones and natural buffer zones are both referenced throughout this permit, and it is unclear if they have separate requirements. Suggest providing a definition for vegetated buffer zones or replacing vegetated buffer zones with natural buffer zones throughout.

### **DEQ Response:**

A natural buffer zone is the area between construction activities and a water of the state. Natural defines the existing conditions of the 50-foot-wide buffer zone before proposed encroachment associated with construction activities. A natural buffer zone may be comprised of vegetation, bare soil and rock. Some natural buffer zone may exist within the 50-foot area adjacent to a water of the state, but portions of the area within 50 feet may be occupied by preexisting development disturbances, such as concrete walkways, asphalt roads and structures. Identifying the composition and condition of the natural buffer zone is necessary when a permit registrant proposes to encroach within the permit conditioned 50-foot buffer associated with a surface waterbody.

A vegetated buffer zone is a defined width between areas on a project site where construction activities are being performed and undisturbed portions or waterbodies that will receive stormwater runoff that sheetflows through the vegetated buffer zone. Furthermore, a vegetated buffer zone is a subclass of a natural buffer zone when describing the existing conditions as required in Section 13.2.4 and Appendix B.

The intent of Section 15.4.f.vii is to identify, delineate and provide wording that a vegetated buffer zone comprises a portion of a waterbodies natural buffer zone. DEQ evaluates ESCPs for appropriate sediment removal efficiency based on retained vegetated buffers and proposed BMPs. Additionally, the ESCP informs DEQ of the vegetated buffer strip comprising all or a portion of a waterbodies' natural buffer zone.

### **Comment from Port of Portland:**

**14. 13.1** *The permit registrant must implement erosion and sediment control measures at all times to prevent any turbid discharges or sediment from leaving the project site from initial*

*soil disturbance until project completion. Failure to implement any of the required erosion and sediment control measures or practices, or the discharge of turbid water and/or sediment from the project site is a permit violation.*

This language is not included in the current 1200-C, suggests any amount of sediment or turbid discharge from the site is a permit violation, and does not allow the permit registrant an opportunity to implement corrective measures to avoid a permit violation. Suggest referencing a narrative or numeric standard to measure compliance.

Suggested permit language:

The permit registrant must implement erosion and sediment control measures at all times to prevent any visibly turbid discharges or significant quantities of sediment from leaving the project site from initial soil disturbance until project completion. Failure to implement any of the required erosion and sediment control measures or practices, or the discharge of visibly turbid water and/or significant quantities of sediment from the project site that exceed state water quality standards referenced in Schedule A Section 14.1 is a permit violation.

### **DEQ Response:**

DEQ revised Section 13.1 of the 1200-CA permit as follows:

The permit registrant must implement erosion and sediment control measures at all times to prevent any visibly turbid discharge or sediment from leaving the project site from initial soil disturbance until project completion. The discharge of visibly turbid water and/or sediment from the project site is prohibited.

The discharge of visibly turbid water is prohibited as a narrative requirement of the 1200-CA permit. In addition, significant quantities is a subjective term, and significant levels are a violation of the permit even in cases where water quality standards are not exceeded. Subjective terms, such as significant quantities are difficult to define quantitatively and may be interpreted as vastly different amounts by permit registrants, DEQ and others. Subjective words and terms are not included in the 1200-CA permit conditions where appropriate objective terms are clear and implementable. This approach provides clear goals and requirements for the registrant to achieve permit compliance and results in increased water quality protection.

### **Comment from Port of Portland:**

#### **15. Schedule A Section 13.2.4**

*a. The permit registrant must comply with local natural buffer zone requirements before proposing the following compliance alternatives.*

This language suggests “local” requirements for natural buffer zones must be followed and not the requirements of this permit. Is this the intent of this requirement?

### **DEQ Response:**

No. The 1200-CA registrant must comply with the local natural buffer zone requirements. If the local jurisdiction does not allow construction activities within the natural buffer zone, Section 13.2.4 is not appropriate for use. In jurisdictions where there are not natural buffer zone requirements or restrictions, the 1200-CA permit registrant can encroach within the 50’ natural buffer zone when following the required justification of proposed BMPs to mitigate the sediment removal effectiveness of the encroached natural buffer zone as outlined in the 1200-CA permit

and Appendix B.

### **Comment from Terry Marsh:**

16. Fox's long-standing frustration with the 1200-C-Permit has not changed with my review of the latest proposed revisions. Specifically, the Permit criteria does not formally recognize or reference in the BMPs the existence of engineered fiber matrix (EFM), bonded fiber matrix (BFM), or flexible growth medium (FGM) hydromulch products. To be clear, DEQ does not preclude the use of such products. However, not identifying them in the BMPs results in these products being overlooked in the Permit design and submittal process for stabilization of exposed soils. The absence relegates these superior products to an afterthought that are only utilized in crunch time or emergency circumstances.

In some respects, Fox does not really have a dog in the fight, as it performs all manner of soil stabilization including straw mulching, rolled mattings, wattles, silt fencing, etc. But difficulties are arising with many of these traditional methods. First, straw is becoming increasingly scarce, and certified straw is no longer available. There are two primary reasons for this shortage: 1) It's all being shipped overseas; 2) The countries receiving the straw are not requiring growers undergo the expense of certification. Second, rolled mattings are primarily imported from foreign sources, largely India. Material and logistical issues have resulted in poor quality and drastic shortages in recent years.

This brings me back to hydromulches. The application of ECM, BFM and FGM is faster, less expensive, weed-free, sterile, equal in longevity, and most importantly, readily available. For comparison purposes, ODOT's QPL lists the various hydromulch products as acceptable for Temporary Mulching, Soil Stabilization, and Type A – D Slope Matting. DEQ's permit application process says nothing of the products, thus they are forever being left off the table.

The fix to all of this appears simple enough. Sections 13.1.3., 13.2.8, 13.2.20, and 13.2.21 need only identify EFM, BFM and FGM with the list of other items that are acceptable for the stabilization of exposed soils. To make it even simpler, they only need to reference "BFM" to let everyone know such products are in play. This addition would ensure that design engineers and Permit applicants are aware and able to consider hydromulches from the beginning.

### **DEQ Response:**

The 1200-CA permit does not restrict the use of effective erosion and sediment controls. It does not; however, include prescriptive BMPs in the 1200-CA permit.

The narrative description of erosion and sediment control requirements are expanded in the final permit. DEQ has removed the example BMP list that was in the prior permit iteration to ensure the permit registrant may choose BMPs appropriate for the site and have the option to use new technologies and control measures. Moreover, removing prescriptive requirements provides ESCP developers flexibility on sites where difficult and unique situations occur and when new BMPs become available. If the control measure implemented achieves 1200-CA permit compliance without negative environmental impacts, it is available for use under the 1200-CA permit.

### **Comment from Melissa Hurley:**



17. Section 13.2.21b. Final Stabilization Criteria

*b. Implement temporary bio or photo-degradable non-vegetative stabilization measures (e.g., mulch or rolled erosion control products) to provide effective cover while vegetation is being established to prevent erosion of the seeded or planted area.*

I recommend removing the “or photo” language here. The supposedly photodegradable nettings used on rolled erosion control products doesn’t break down well in our climate at all. Biodegradable nettings for rolled erosion control products and straw wattles are widely commercially available.

**DEQ Response:**

The 1200-CA is a general NPDES permit that will be implemented statewide. In some areas of Oregon that receive relatively more sunshine, photo-degradable control measures may be effective and function as designed. The onus is on the Erosion and Sediment Control Plan designer to select the appropriate control measure for each site or change the control if it is not performing once implemented. As such, DEQ did not make the recommend change.

**Comment from Water Environmental Services:**

18. Linear projects such as roads are often constrained to a narrow area that does not offer space for temporary treatment ponds. The Department should incorporate alternatives such as the opportunity for permittees to utilize standard best management practices if no rain is forecast for 5 days.

**Comment from Oregon Association of County Engineers and Surveyors:**

19. The Oregon Association of County Engineers and Surveyors (OACES), an affiliate of the Association of Oregon Counties (AOC) represents Oregon's 36 county public works agencies and road departments across the state and provides a forum to share best practices and overcome challenges. County roads are a critical component of Oregon's integrated road system and are responsible for over 6000 of Oregon's non-federal road network, over 32,000 total miles, and over 3,400 bridges.

OACES is writing to express concern with the draft changes for the 1200-CA series construction stormwater permits, which includes language to evaluate linear engineered soil projects with 2-year, 24-hour precipitation tables based on rainfall events in the wettest periods of the year. OACES urges you to amend the 1200-CA permitting applications to reflect regional and seasonal changes in rainfall events as well as natural available water capacity and soil variable permeability.

Draft changes for 1200-CA permits require excessive overbuilding of sedimentation basins to collect and treat stormwater runoff for engineered soils. Overbuilding sedimentation basins will create artificial water traps that will disrupt the natural ecosystem, especially in regions struggling to adapt to an increased risk of drought conditions. Sedimentation basins disturb roadside soils and geological conditions, in many places, there is not adequate space to use this option. Linear soil projects reduce the impacts of excavation and backfill by shrinking the impacted area and construction time and present a more environmentally friendly alternative.

To accommodate 1200-CA permits environmental protection standards OACES recommends:

Amending the precipitation table to 50 percent of a 2-year, 24-hour event in accordance with standard stormwater retention and treatment requirements under ODEQ and ODOT Best Management Practices.

Utilizing soil type, permeability, capacity, and predicted rainfall to develop linear engineered soil erosion and sediment control plans to prevent contaminated stormwater runoff from linear engineered soil projects in place of one-size-fits-all requirements. Requiring registrants to check and document amended soil conditions daily according to best management practices until the amended soils have been sealed (amended soils are typically stabilized into an inert material with concrete cement within 2 days of construction) to ensure that stormwater runoff is prevented. Utilizing standard best management practices if no rain is forecast for 5 days.

OACES is also concerned with language to separate linear engineered soil projects into multiple smaller work zones. Engineered soils occur during full depth reclamation projects that utilize onsite materials which reduce construction costs and emissions by avoiding costly soil off-haul and large volumes of material imports. Full depth reclamation has a smaller environmental footprint compared to the traditional off-haul and import method of removing and constructing roads. Linear engineered soil projects for roadways require substantial size (typically a one quarter-mile minimum length) in order to provide scale efficiencies to allow the process to be cost effective. Managing multiple smaller work zones will not allow linear engineered soil projects to be economically viable and may force counties to use traditional off-haul and import methods to complete projects within budget constraints.

County road departments play a key role in managing Oregon's water quality, and are grateful to be included in the discussion, as the subsequent policy changes will have a severe impact on counties and county land. We hope to have the opportunity for more in-depth conversations going forward.

### **DEQ Response:**

DEQ anticipated that permit registrants conducting linear transportation projects may have difficulty implementing 13.2.18 due to Right-Of-Way constraints and the scale of most linear construction projects. As such, the 1200-CA requirement for constructing a sedimentation basin on project sites where engineered soils are being utilized allows for plan alternatives that retain and treat the high pH stormwater runoff on sites where constraints do not provide the area needed for temporary sedimentation basins. In addition to the suggested alternatives, baker tanks, multiple smaller temporary basins and phasing of the construction process have allowed permit registrants to comply with the 1200-C permit conditions, which has been in effect since December 2020 and are the same as the 1200-CA permit. Regardless of the method utilized to retain and treat high pH stormwater runoff that has contact with engineered soils, the pH levels need to be within the Standard Unit range per OAR 340-041-0021 before discharged from the project site.

The language OACES refers to that requires linear projects to be segmented into smaller work zones was not in the draft 1200-CA permit posted for public comment nor is it in the final permit. There are approved 1200-C projects in Oregon in which multiple smaller temporary sedimentation basins have been constructed throughout the duration of the project due to limited project area; however, this is not a 1200-CA permit requirement. The construction of multiple smaller basins was proposed by a permit registrant and approved as an appropriate plan for the unique site conditions. This project exemplifies the flexibility registrants have to meet the

requirements of Section 13.2.18.

The 1200-CA permit regulates the discharge from sites performing construction activities, not post construction requirements. ODOT and other Agencies may require that post-construction stormwater facilities are sized to meet 50% the volume of a 2-year 24-hour storm event from the contributing drainage area. However, post construction stormwater facilities are designed to detain runoff and discharge when the facility reaches a certain capacity. In addition, post-construction stormwater facilities typically provide water quality treatment prior to discharge. Sedimentation basins utilized during construction activities do not provide water quality treatment, as this occurs through engineered media layers and the presence of a mature and established vegetative component. These vital components are absent in facilities constructed during construction and as such, construction facilities perform as sedimentation basins. Sedimentation basins are not designed to discharge continuously as post-construction facilities do; and furthermore, sedimentation basins must retain stormwater runoff from numerous storm events to allow time for the suspended particles in the retained stormwater runoff to drop out of suspension. The time necessary to allow suspended particles to settle out of the retained runoff results in a necessary increase to the sedimentation basin capacity per Section 13.2.17. DEQ has determined that 100% of the 2-year 24-hour storm is the appropriate volume capacity for a sedimentation basin on a construction site.

## **Section 15 Erosion and Sediment Control Plan (ESCP)**

### **Comment from Marion County Public Works:**

20. The threshold for developing and submitting an ESCP changes throughout the document. Five acres or more is the lowest threshold the permit states.

### **DEQ Response:**

The Sources Covered Section on page 1 of the 1200-CA permit states that any capital improvement project that will disturb an acre or more and may discharge to a water of the state must have 1200-CA permit coverage. Section 15 of the 1200-CA states that before any project under this permit begins, the ESCP must be submitted to DEQ. Section 15.1 requires that for construction activities disturbing twenty or more acres, the ESCP must be developed and stamped by a professional with one of the following credentials, and their name and credentials must be included in the ESCP as a preparer:

- i. Certified Professional in Erosion and Sediment Control.
- ii. Certified Professional in Stormwater Quality.
- iii. Oregon Registered Professional Engineer.
- iv. Oregon Registered Landscape Architect.
- v. Oregon Certified Engineering Geologist.

The 5-acre requirement is in reference to the mandatory 14-day public comment period. All projects 5-acres or more in disturbed area must post the necessary project documents, such as the ESCP, LUCS and EMP if necessary, on their website, or request DEQ post for 14-days prior to initiating construction activities.

### **Comment from Oregon Department of Transportation:**

**21. ESCP Cover Sheet:**

ODOT requests that draft ESCP Cover Sheet template be revised to remove specification language and be simplified to the extent practicable.

The template for the required Cover Sheet includes notes that use specification language. ODOT does not include specification language in Contract Plans to avoid conflicts and discrepancies between the project specifications and the project plans. Our request is that DEQ allow Erosion and Sediment Control (ESC) standard notes to be used. ESC standard notes will be updated to reflect Permit requirements, however the cover sheet would not contain specification language, as that language is already or will be included in the project standard specifications and special provisions.

**DEQ Response:**

To date, DEQ has not developed a draft ESCP template, nor was one included with the 1200-CA draft permit documents posted during the public comment period. There is currently an ESCP template developed for the 1200-C permit, which will be utilized in the development of a 1200-CA ESCP template. Most of the ESCP conditions of the 1200-CA permit are identical to the 1200-C permit; therefore, it is reasonable to assume that the 1200-C and 1200-CA ESCP templates will predominately mirror each other.

DEQ will develop and require ESCP standard notes based on the 1200-CA permit conditions. This is to ensure that all ESCPs implemented under the 1200-CA permit can be reviewed, evaluated and implemented consistently. ESCP standard notes will be developed from 1200-CA permit conditional requirements and will set the minimum expectations required of a registrant to be permit compliant. Currently, there are 42 1200-CA permit registrants and DEQ expects to add more once the permit is renewed and an application is made available on YDO. The 1200-CA is a general permit that applies to numerous registrants with broad and diverse project goals and administrative processes yet must be implementable. The 1200-CA permit was written to allow for the required flexibility necessary of a general permit for all permit registrants; therefore, specificity regarding administrative and contractual requirements is not appropriate for this NPDES general permit.

**Comment from Marion County Public Works:**

22. This version of the 1200-CA permit is written in a way that does not allow the government agency nor its contractor to easily adjust to field conditions regarding BMPs.

**DEQ Response:**

Thank you for the feedback. Section 15.8 requires that the ESCP be revised to reflect changes to ESCP required and implemented BMPs. Section 15.9 requires the permit registrant to submit a revised ESCP to DEQ for changes of implemented BMPs in the ESCP design; however, the revision does not need to be submitted until 30 days after the change. This intentionally allows registrants time to compile all changes and submit to YDO on a monthly basis if necessary and be able to adjust BMPs as necessary.

**Comment from Marion County Public Works:**

23. It is unclear what the required qualifications are for preparing an ESCP on projects that are under 20 acres (section 15.1).

### **DEQ Response:**

Projects less than 20 acres in area of disturbance can be designed by someone experienced in developing erosion and sediment control plans; however, their experience does not need to be documented. Regardless of the project size, ESCPs submitted to DEQ must meet all necessary permit conditions.

## **Schedule D Section 4 Permit-Specific Definitions**

### **Comment from Water Environmental Services:**

24. Schedule D, Section 4, item uu contains the word “draft” in the definition of *Stumping*. This appears to be an artifact of the 1200-C and 1200-CN permits which retain the word “draft”.

### **DEQ Response:**

The word “draft” has been removed from the final 1200-CA permit.

### **Comment from Port of Portland:**

25. *ddd. Water or Waters of the State as defined by ORS 468B.005(10)-lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.*

Suggest addressing “wetlands” in this definition.

### **DEQ Response:**

Wetlands has been added to the Water or Waters of the State definition (Schedule D.4.eee) in the final 1200-CA permit.

### **Comment from Oregon Department of Transportation:**

#### **26. Definitions (Schedule D):**

ODOT asks that the following terms be clarified or defined in the new 1200-CA Permit language. In the alternative, ODOT requests that these definitions be included in the PER and that the PER be directly referenced in the relevant portions of the 1200-CA Permit.

- 1) **“No turbid discharge”** is a threshold that cannot always be met, despite the permittee fully complying with their ESCP. ODOT requests that DEQ provide unambiguous language in the permit that a turbid discharge under the following conditions would not be a permit violation:
  - The ESCP is kept current with Project site conditions and monitoring and reporting to DEQ are in compliance with Section 17.
  - The project correctly installs and maintains all of the erosion and sediment control features in accordance with the ESCP.

- The storm event is of an unusually long duration or high intensity compared to normal storm events.
- The permittee promptly notifies DEQ of turbid discharge and conducts corrective actions according to Section 16 to remedy the discharge of sediment resulting from the excessive storm events.

**DEQ Response:**

The term “No turbid discharge” is not found in the 1200-CA permit, nor is it a required condition; however, the permit conditions are clear regarding visibly turbid discharge. No visibly turbid discharge is the goal of and a requirement of the 1200-CA permit, as explicitly stated in Section 12 Prohibited discharges: “The following discharges are not authorized by this permit:

- a. Visually turbid discharge or discharge of sediment (see Section 13.2.11) from the construction site to surface waters or a conveyance system that leads to waters of the state”.

To add clarity to the 1200-CA permit, the definition for visibly turbid discharge is added to Schedule D.4-Permit Specific Definitions.*ddd*.

The other bullets above do not have terms associated with them and as such are part of permit conditions or sections with additional context. If ODOT has any questions about any permit conditions and associated requirements, please let us know.

**Comment from Oregon Department of Transportation:**

27. 2) Schedule ODOT requests that DEQ define “**Prevent**” as follows:

“Prevent” as used in this Permit with respect to turbid discharges means that the permittee shall deploy technology-based discharge limitations (TBEL’s) technologies as pollution control standards, as shown in the ESCP, and these technologies shall be used to control sediment or pollutant transport to specified industry standards. The permittee shall be in compliance with the Permit when utilizing all measures to prevent erosion and control sediment or pollutant transport as shown on the ESCP and complying with notification and corrective action requirements under Section 16. Extreme storm events do not always allow for full containment of sediment and turbid discharge. The term “Prevent” does not mean or imply an absolute requirement to stop sediment or pollutant transport during all possible extreme storm events. If the permittee promptly notifies DEQ of turbid discharge and conducts corrective actions according to section 16 to remedy the discharge of sediment or pollutant transport during these excessive storm events, then the permittee is still in compliance with the Permit and not subject to a violation.

**DEQ Response:**

According to Oxford languages online dictionary, prevent is defined as “to keep something from happening or arising;” therefore, for the purposes of the 1200-CA, prevent means to keep visibly turbid discharge from areas where construction activities are occurring from happening or arising.

Preventing visibly turbid discharge from a project site covered by the 1200-CA permit is required by State and Federal regulations. DEQ permit registrants implement all aspects of the ESCP, including maintenance and inspection requirements. Additionally, DEQ also realizes that extreme magnitude storm events may tax and potentially overwhelm the most well designed and

implemented ESCP and associated BMPs. That is part of the reason that visual monitoring is required when there are discharges from a site.

Each turbid discharge event reported to DEQ as required by Section 16.3 will be evaluated on a project specific basis.