



State of Oregon Department of Environmental Quality

Notice of Proposed Rulemaking

April 28, 2023

Industrial Stormwater General Permit, No. 1200Z, Rulemaking amendment

This package contains the following documents:

- Notice of Rulemaking
- Draft Rules

Note for Readers:

This package contains multiple documents. If you want to read more than one document at a time, you can open multiple copies of this PDF by downloading the PDF and then opening it in Adobe. You can then either:

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Introduction

DEQ invites public input on proposed permanent rule amendment to the Industrial Stormwater General Permit, No. 1200-Z. No changes are proposed to chapter 340 of the Oregon Administrative Rules. This rulemaking will not change the expiration date of the permit.

Request for Other Options

During the public comment period, DEQ asks for public comment on whether there are other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on business.

Overview

The 1200-Z industrial stormwater permit has approximately 900 facilities with permit coverage across Oregon. The types of facilities are primarily based on the Standard Industrial Classification code that ranges from food processors to ports that have industrial activities that come into contact or have the potential to come into contact with stormwater. There are additional criteria for industrial facilities within the City of Portland that discharge into the Portland Harbor Superfund site area or into the Columbia Slough watershed that determine if permit coverage is required.

In March 2021, the Oregon Environmental Quality Commission (EQC) adopted the 1200-Z permit by rule reference in OAR 340-045-0033(11)(g). DEQ inadvertently omitted a clause from the permit that has been in previous versions since 2007. This rulemaking amendment is needed to add the clause back into the rule for the clarity necessary to remove regulatory ambiguity caused by not currently have the language in the rule.

The 2023 rulemaking amendment under the Tier 2 corrective action section of the permit is (Schedule A.12.a, page 21): *“Permit registrants are not required to conduct this evaluation for the benchmark parameter(s) for which DEQ or agent has granted a monitoring waiver in accordance with Schedule B.9 of this permit.”* Without this clause, permit registrants may incur high capital costs to install stormwater treatment based on a single stormwater sample event.

Tier 2 corrective action is a compliance evaluation based on the geometric mean calculation from a year of sampling. If the calculated value is over the benchmark, a permit registrant must install treatment measures to reduce the pollutant concentration(s) with the goal of meeting the benchmarks in future discharges. Benchmarks are derived from the latest acute water quality criteria designed to protect aquatic ecosystems from adverse impacts from short-term intermittent stormwater discharges.

An approved monitoring waiver allows the permit registrant to discontinue sampling. The permit requires stormwater discharge sampling four times a year.

Before the 2021 permit, the monitoring waiver criteria and Tier 2 evaluations were based on the same number of sample results: four samples or one sampling a year. The 2021 permit included two key changes to protect water quality by increasing:

1. The required sampling prior to requesting a monitoring waiver from four sample results to five sample results; and
2. The frequency of Tier 2 evaluation from once a permit cycle to annually (sample results from July 1 – June 30).

Due to a fifth sample needed prior to requesting a monitoring waiver, some permit registrants will only have one sample result between July 1, 2022, and June 30, 2023, sampling year. If that one sample exceeds the benchmark, permit registrants will incur high capital costs to install stormwater treatment based on Tier 2 requirements. This is contrary to the permit's adaptive management approach. The permit requires a Tier 1 corrective action response when a single sample result exceeds the benchmark, relying on an escalating corrective action response. First Tier 1 corrective action for a single sample exceedance where the permit registrant removes the pollutant source; then Tier 2 corrective action, necessitating installation of more costly and aggressive control measures. The Tier 2 evaluation is due annually on Aug. 15, based on an entire year of sampling events.

The permit relies on an adaptive management approach to protect water quality using benchmark monitoring and tiered corrective action regulatory structure to assist permit registrants in determining whether site controls are effectively reducing pollutants in industrial stormwater discharges. Benchmarks are screening concentrations and when exceeded, the permit registrant must follow Tier 1 and Tier 2 corrective actions, which differ from enforceable numeric effluent limits where an exceedance is a permit violation.

Tier 1 corrective action requires investigation and removal of the pollutant sources based on a single sample result. Tier 2 corrective action is determined after a year of sampling results. If the Tier 2 evaluation reveals the collective data is over the benchmark, permit registrants must install stormwater treatment that removes the pollutants prior to discharge.

National Pollutant Discharge Elimination System permits must be renewed every five years. Tier 1 and Tier 2 corrective action and the clause subject of this rulemaking amendment were first written into the 2007 industrial stormwater permit. Subsequent versions of the permit in 2012, 2017 and 2018 included the omitted clause; exempting permit registrants from Tier 2 stormwater treatment requirements when DEQ or agent has granted a monitoring waiver. DEQ's monitoring waiver and Tier 2 corrective action conditions are consistent with federal regulations and EPA's industrial stormwater permit.

Although DEQ cannot determine the exact number of impacted permit registrants, we have received many emails and phone calls from potentially affected permit registrants and their consultants in December 2022. Without this rulemaking amendment, permit registrants will continue to be impacted by the unintentional omission until July 2025, when all permit registrants reinstate discharge monitoring.

Procedural Summary

More information

Information about this rulemaking is on this rulemaking's web page: [1200Z Correction 2023](#)

Virtual Public Hearing

DEQ plans to hold a virtual public hearing. Anyone can attend the hearing by Zoom, an online video conference platform, with toll-free telephone access for audio-only connections.

Date: June 6, 2023

Start time: 10 a.m.

Call and web connection information:

[Join online via Zoom.](#)

Join by phone:

Toll-free number: 833-548-0276 or 833-548-0282

Meeting ID: 878 6987 7672

Passcode: 628684

Instructions on how to join webinar or teleconference: [Instructions](#)

How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person can submit comments by [email](#), regular mail or at the public hearing.

- **Email:** Send comments by email to 1200zPublicComment@deq.oregon.gov
- **Postal mail:** Oregon DEQ, Attn: Krista Ratliff/Stormwater, 475 NE Bellevue Dr. 110, Bend, Oregon 97701
- **At public hearing:** 10 a.m., Tuesday, June 6, 2023

Comment deadline

DEQ will only consider comments on the proposed rules that DEQ receives **by 4 p.m., on June 7, 2023.**

Note for public university students

ORS 192.345(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon's public records law. If you are an Oregon public university or OHSU student, notify DEQ that you wish to keep your email address confidential.

Sign up for rulemaking notices

Get email or text updates about this rulemaking by either:

- Signing up through this link: [Stormwater GovDelivery](#);
- Signing up on the rulemaking web site: [1200Z Correction 2023](#)
- Signing up through this link: [Public Notices](#)

What will happen next?

DEQ will include a written response to comments in a staff report DEQ will submit to the EQC during the July meeting. DEQ may modify the rule proposal based on the comments.

Proposed rules only become effective if the Environmental Quality Commission adopts them.

Statement of need

What need would the proposed rule address?

The current 1200-Z permit unintentionally omitted a clause that has been in the permit since 2007. This rulemaking amendment will remedy the 1200-Z permit to meet the 2021 rule adoption intent. This will correct two contradictory permit conditions creating ambiguity in the permit's regulatory requirements.

How would the proposed rule address the need?

It will allow permit registrants that have met the monitoring waiver condition to continue to be exempt from Tier 2 treatment installation requirements consistent with the rule intention per previous permit language.

How will DEQ know the rule addressed the need?

If this rule amendment is adopted, permit registrants will be allowed time to address single benchmark exceedances with source control measures prior to escalating to potentially more costly stormwater treatment requirements.

Rules affected, authorities, supporting documents

Lead division

Water Quality Division

Program or activity

Stormwater program

Chapter 340 rule language

340-045-0033(11) (g): NPDES 1200-Z Industrial Stormwater General Permit (*no rule language change is proposed*)

Amend				
340-045-0033 (by reference)				

Statutory Authority - ORS				
468.020	468.065	468B.035	468B.025	

Statutes Implemented - ORS				
468.065	468B.015	468B.035	468B.050	

Documents relied on for rulemaking

Document title	Document location
NPDES Industrial Stormwater General Permit, No. 1200-Z	DEQ Headquarters Office 700 NE Multnomah St. Suite 600 Portland, OR 97232

Fee Analysis

This rulemaking does not involve fees.

Statement of fiscal and economic impact

Fiscal and Economic Impact

DEQ anticipates this rulemaking to have a positive fiscal impact on current and future 1200-Z permit registrants because the permit amendment will relieve those registered under the permit from the need to install stormwater treatment based on a single stormwater sample result. Instead, this amendment will ensure the intent of the 2021 rulemaking and correct the industrial stormwater permit by fixing two conflicting conditions.

Statement of Cost of Compliance

There is no cost of compliance. The inclusion of the rulemaking amendment will not present additional compliance costs to the regulated community. Instead, this amendment will ensure the intent of the 2021 rulemaking and maintain the longstanding exemption under the industrial stormwater permit.

State agencies

There are no new requirements or increase to DEQ or DEQ's agent's workload.

Local governments

There are 50 local government permit registrants with coverage under the 1200-Z permit. These facilities include wastewater treatment plants, landfills and transfer stations, port facilities, airports, industrial parks, and regional transportation related facilities. These local governments should experience positive fiscal impacts because of this rulemaking as described above.

Public

There are no public impacts because the rulemaking amendment is related to industrial entities regulated under the industrial stormwater general permit, No. 1200-Z.

Large businesses - businesses with more than 50 employees

For large businesses, there is no additional cost or negative fiscal impacts. Large businesses that hold an industrial stormwater general permit, No. 1200-Z, may experience positive fiscal impacts because the permit amendment will relieve permit registrants of the need to install costly stormwater treatment based on a single stormwater sample result.

Small businesses – businesses with 50 or fewer employees

ORS 183.336 - Cost of Compliance for Small Businesses

a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

DEQ estimates approximately 166 of the 906 permit registrants are small businesses.

b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

The rule amendment does not require any additional activities.

c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

The rule amendment does not require any additional costs. Small businesses that hold an industrial stormwater general permit, No. 1200-Z, may experience positive fiscal impacts because the permit amendment will relieve permit registrants of the need install stormwater treatment based on a single stormwater sample result.

d. Describe how DEQ involved small businesses in developing this proposed rule.

DEQ will send GovDelivery notices to all permit registrants signed up for the industrial stormwater newsletters, rulemaking, stormwater and public notices. Small business representatives were included on the advisory committee leading up to the 2021 adoption of the permit by reference.

Documents relied on for fiscal and economic impact

Document title	Document location
US Bureau of Labor Statistics	https://www.bls.gov/oes/current/oes_nat.htm

Housing cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the rulemaking amendment would not affect development costs, because this permit is for industrial stormwater facilities and not single-family dwellings.

Racial Equity

DEQ does not have specific racial information regarding each of the 906 current permit registrants. The rulemaking amendment is a minor correction to a federally delegated Clean Water Act Section 402 permit and is consistent with federal and state water quality rules. There are no expected changes to practical implementation of the stormwater regulatory permitting program, rather this correction will help maintain the protection of approximately 186 water bodies statewide. This is important for all Oregonians but may have particular significance to those historically underserved communities such as Black, Indigenous and people of color.

Environmental Justice Considerations

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. DEQ is committed to incorporating environmental justice best practices into its programs and decision-making, to ensure all people in Oregon have equitable environmental and public health protections. Recognizing the externalized costs of water pollution can negatively affect poor, rural, indigenous and minority communities in Oregon.

DEQ will hold a public hearing in a virtual setting so that members of the public from across the state could attend and give input.

This proposed rulemaking amendment includes a minor correction to the 1200-Z industrial stormwater permit. The 1200-Z industrial stormwater general permit is a high quality, protective and implementable permit appropriate for Oregon. Water quality permits help restore and maintain healthy and abundant fisheries and beneficial uses including recreation.

Federal relationship

The stormwater program is a federally delegated authority for stormwater National Pollutant Discharge Elimination System permits.

Relationship to federal requirements

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

The proposed rules are not different from or in addition to federal requirements. DEQ has had industrial stormwater general permits since 1991. The overall intent of the permits has remained the same, to reduce pollution levels in stormwater discharged into Oregon's waterways from industrial sites. DEQ's monitoring waiver and Tier 2 corrective action conditions are consistent with federal regulations and EPA's industrial stormwater permit.

Land use

Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with statewide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
 - Resources, objects, or areas identified in the statewide planning goals, or
 - Present or future land uses identified in acknowledge comprehensive plans

DEQ determined whether the proposed rules involve programs or actions that affect land use by reviewing its Statewide Agency Coordination plan. The plan describes the programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

Goal	Title
5	Natural Resources, Scenic and Historic Areas, and Open Spaces
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarine Resources
19	Ocean Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

Determination

DEQ's existing land use compatibility procedures adequately cover the proposed rule. Existing EQC rules require DEQ to determine compliance with local government acknowledge comprehensive plans prior to the issuance of discharge permits (OAR 340-018-0030(5)(d); 340-018-0050). For this reason, 1200-Z permit applications require a Land Use Compatibility Statement to be signed by the local land use authority confirming that the activity or use is compatible with the acknowledged comprehensive plan and land use regulations prior to issuing permit coverage.

EQC Prior Involvement

The EQC adopted the Industrial Stormwater General Permit, No. 1200-Z, by rulemaking in March 2021. The permit is adopted by reference in OAR 340-045-0033(11)(g).

The EQC adopted the Industrial Stormwater General Permit, No. 1200-Z, by rulemaking in 2007. The minor correction subject of this rulemaking amendment was in the 2007 stormwater permit.

Public Engagement

Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing by:

- On April 27, 2023, Filing notice with the Oregon Secretary of State for publication in the May 2023 Oregon Bulletin;
- Notifying the EPA by email;
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at: [1200Z Correction 2023](#);
- Emailing 25,574 interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - Stormwater
 - DEQ Public Notices
 - 1200-Z Industrial Stormwater Newsletters
- Emailing the following key legislators required under [ORS 183.335](#):
 - Representative [Ken Helm](#), Chair, House Committee on Agriculture, Land Use, Natural Resources and Water
 - Representative [Mark Owens](#), Vice-Chair, House Committee on Agriculture, Land Use, Natural Resources and Water
 - Representative [Annessa Hartman](#), Vice-Chair, House Committee on Agriculture, Land Use, Natural Resources and Water
 - Senator [Jeff Golden](#), Chair, Senate Committee on Natural Resources
 - Senator [Fred Girod](#), Vice-Chair, Senate Committee on Natural Resources
- Emailed the 1200-Z Rules Advisory Committee members from 2021 (6 meetings between April 2019 and June 2020 to provide input on the 2021 permit renewal and rule adoption)
- Posting on the DEQ event calendar: [DEQ Calendar](#)

How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person can submit comments by [email](#), regular mail or at the public hearing.

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Date: June 6, 2023
Start time: 10:00 a.m.

Call and web connection information:

[Join online via Zoom.](#)

Join by phone:

Toll-free number: 833-548-0276 or 833-548-0282
Meeting ID: 878 6987 7672
Passcode: 628684

Instructions on how to join webinar or teleconference: [Instructions](#)

DEQ will consider all comments and testimony received before the closing date. DEQ will summarize all comments and respond to comments in the Environmental Quality Commission staff report.

Accessibility Information

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

Contact: 800-452-4011 | TTY: 711 | deqinfo@deq.state.or.us

DEQ does not discriminate on the basis of race, color, national origin, disability, age or sex in administration of its programs or activities.

Visit DEQ's [Civil Rights and Environmental Justice page](#).

Supporting documents

Industrial Stormwater General Permit, No. 1200-Z

1200-Z permit language – Edits Highlighted

No edits to rule language are proposed. This rulemaking is proposing to amend the language in the 1200-Z permit adopted by reference in 340-045-0033(11)(g).

Key to Identifying Changed Text:

New/inserted text

Page 21 of 143, Schedule A.12.a:

12. Tier 2 Corrective Action Response based on Geometric Mean Benchmark Evaluation:

- a. “Permit registrants are not required to conduct this evaluation for the benchmark parameter(s) for which DEQ or agent has granted a monitoring waiver in accordance with Schedule B.9 of this permit.”

Amended Rules

No edits to rule language are proposed. This rulemaking is proposing to amend the language in the 1200-Z permit adopted by reference in 340-045-0033(11)(g).

340-045-0033

General Permits

(1) General permits may be adopted by a rule of the Environmental Quality Commission or by order the Director issues. A permit adopted by rule may be terminated by a later permit issued by order if the later permit covers the same activity and specifically provides for terminating the earlier permit.

(2) General permits may be developed for certain categories of minor discharge sources or minor activities where individual NPDES or WPCF permits are not necessary to adequately protect the environment. Before the Director can issue a general permit, the following conditions must be met:

(a) There must be several minor sources or activities that involve the same or substantially similar types of operations.

(b) The sources or activities must have the potential to discharge or dispose of the same or similar types of wastes.

(c) The general permit must require the same or similar monitoring requirements, effluent limitations and operating conditions for the categories.

(d) The category of sources or activities would be more appropriately controlled under a general permit than an individual permit.

(3) General permits issued after this rule's effective date will specify the following:

(a) The requirements to obtain coverage under a general permit, including application requirements and application submittal deadlines. DEQ may determine that submitting an application is not necessary after evaluating the type of discharge, potential for toxic and conventional pollutants in the discharge, expected discharge volume, availability of other means to identify dischargers, and estimated number of dischargers to be covered by the permit. DEQ must provide its evaluation in the public notice for the general permit.

(b) The process DEQ used to notify a person that coverage under a general permit has been obtained and the discharge or activity is authorized.

(4) Although general permits may include activities throughout the state, they may also be restricted to more limited geographical areas.

(5) Before issuing a general permit, DEQ will follow the public notice and participation procedures outlined in OAR 340-045-0027 and 340-045-0035(3). If the general permit is to

be adopted into rule, DEQ will also follow ORS 183.325 to 183.410. In addition, DEQ will make reasonable efforts to notify potentially interested persons.

(6) Any person operating a discharge source or conducting an activity described in a general permit must apply for coverage under the general permit, unless the general permit does not require submitting an application under subsection (3)(a) of this rule or the source or activity is specifically covered by an individual NPDES or WPCF permit, or a person makes an application for an individual permit under subsection (9) of this rule.

(a) Any person seeking coverage under a general permit must submit an application as required under the terms of the applicable NPDES or WPCF general permit. If application requirements are not specified in the general permit, procedures in OAR 340-045-0030 or 340-071-0162, whichever is applicable, must be followed.

(b) A person who fails to submit an application under the terms of the general permit, OAR 340-045-0030 or 340-071-0162, whichever is applicable, is not authorized to conduct the activity described in the permit.

(7) Any person required to have coverage under a general permit must pay permit fees as required in OAR 340-045-0070 to 340-045-0075 or 340-071-0140 to obtain and maintain coverage under that permit.

(8) Any permittee covered by an individual NPDES or WPCF permit may request that the individual permit be canceled or allowed to expire, and that it be covered by a general permit if its discharge or activity may be covered by an existing general permit. As long as the permittee is covered by an individual NPDES or WPCF permit, the conditions and limitations of the individual permit govern until such time as it is canceled or expires.

(9) Any person not wishing to be covered by a general permit may apply for an individual permit under OAR 340-045-0030 or 340-071-0162, whichever is applicable.

(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.

(11) The following general permits are adopted by reference in this rule and are available for review at DEQ:

- (a) NPDES 200-J, Filter backwash (issued August 29, 1997);
- (b) NPDES 500-J, Boiler blowdown (issued August 29, 1997);
- (c) NPDES 700-PM, Suction dredges (issued July 5, 2005);
- (d) NPDES 1500-A, Petroleum hydrocarbon cleanups discharged to surface waters (issued August 22, 2000);
- (e) NPDES 1700-A, Vehicle and equipment wash water discharged to surface waters (issued March 5, 1998);
- (f) NPDES 1900-J, Non-contact geothermal heat exchange (issued September 11, 1997)
- (g) NPDES 1200-Z Industrial Stormwater Discharge Permit (issued March 25, 2021)

Statutory/Other Authority: ORS 468.020, 468B.020 & 468B.035

Statutes/Other Implemented: ORS 468.065, 468B.015, 468B.035 & 468B.050

History:

[DEQ 6-2021, amend filed 03/25/2021, effective 03/25/2021](#)

[DEQ 15-2017, amend filed 10/31/2017, effective 11/01/2017](#)

DEQ 1-2010, f. & cert. ef. 1-22-10

DEQ 10-2006, f. 8-15-06, cert. ef. 9-1-06

DEQ 11-2005, f. & cert. ef. 12-28-05

DEQ 5-2005, f. & cert. ef. 7-1-05

DEQ 12-2003, f. & cert. ef. 9-2-03

DEQ 14-2002, f. & cert. ef. 10-16-02

DEQ 8-2002, f. & cert. ef. 8-9-02

DEQ 13-2001, f. & cert. ef. 10-16-01

DEQ 15-2000, f. & cert. ef. 10-11-00

DEQ 28-1980, f. & ef. 10-27-80