

Oregon Department of Environmental Quality



# Permit Evaluation Report

## National Pollutant Discharge Elimination System

### 1200-CA Stormwater General Discharge Permit

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## Final Action

Issuance of National Pollutant Discharge Elimination System (NPDES) 1200-CA Stormwater General Discharge Permit for public entities performing capital improvement projects that discharge construction stormwater to surface water and conveyance systems leading to waters of the state.

## Permit Category

Issuance of the 1200-CA Stormwater General Discharge Permit is a Category III permitting activity per Oregon Administrative Rule 340-045-0027(2)(c)(C). Category III permitting activities require DEQ provide public notice of the proposed action and a minimum of 35 days to submit written comments.

## Permit Area

This 1200-CA NPDES Stormwater General Discharge Permit authorizes discharges in Oregon excluding tribal trust and reservation lands.

## Sources Covered by this Permit

Permit coverage is required under this General Permit if the following activities under the authority or jurisdiction of a public entity have the potential to discharge to surface waters or to a conveyance system that leads to surface waters of the state in Oregon and do not have coverage under another NPDES permit:

- a) Any construction activity and materials or equipment staging and stockpiling that will disturb one or more acres of land; or
- b) Any construction activity and materials or equipment staging and stockpiling that will disturb less than one acre of land but is part of a common plan of development or sale that will ultimately disturb one or more acres of land; or
- c) Any construction activity that results in the disturbance of less than one acre of land that is a necessary and required component (e.g., utilities, structure, or infrastructure) of a final project that will ultimately disturb one or more acres of land; or
- d) Any construction activity that may discharge stormwater to surface waters of the state that may be a significant contributor of pollutants to waters of the state or may cause an exceedance of a water quality standard.

## Coverage

The past 1200-CA permit iteration expired December 31, 2005. The 1200-CA Permit has been administratively extended since the 2005 expiration date. This permit renewal is a replacement of the previous 1200-CA stormwater general discharge permit issued on December 31, 2000. Currently, the 1200-CA permit has 42 public entity permit registrants authorized to discharge from project sites where construction activities are performed and no new permit registrants have been added since the December 31, 2005, expiration date. This permit is issued in accordance with Oregon Administrative Rule 340-045-0040. The permit covers stormwater discharges from construction activities performed by public entities that have a potential to discharge to surface waters or conveyance systems that eventually discharge to waters of the state.

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**August, 2022**

# Summary of Permit Action

This permit action renews the NPDES permit for the State of Oregon to allow and regulate the discharge of stormwater runoff from construction activities.

This Permit Evaluation Report describes the basis and methodology used in developing the permit. The Permit Evaluation report is organized as follows:

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## 1. Introduction

The 1200-CA NPDES General Permit covers the discharge of stormwater runoff from capital improvement projects performed by public entities that include construction activities, such as clearing, grading, excavation, grubbing, and staging and stockpiling that will disturb one or more acres, or will disturb less than one acre of land but be part of a common plan of development, or sale that will ultimately disturb one or more acres of land or has the potential to discharge to surface waters or conveyance system leading to waters of the state. The construction activities covered by the 1200-CA permit include those identified in 40 Code of Federal Regulations (CFR) §122.26.

Upon renewal, the Oregon Department of Environmental Quality conditionally changed the NPDES 1200-CA Stormwater General Discharge Permit for stormwater discharges from construction activities performed by public entities. The expired 1200-CA permit iteration became effective on December 31, 2000, and expired December 31, 2005. As such, the 1200-CA permit has been administratively extended since its expiration date of December 31, 2005.

This Permit Evaluation Report (PER) will briefly describe the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the finalized 1200-CA permit. After the public comment period closed, as required by OAR 340-045-0027(1)(c), comments substantive to water quality were summarized and DEQ responded by writing a Response to Comments document. DEQ addressed all substantive comments and identified any changes to the permit conditions and the reason for the changes in the Response to Comments document. DEQ will post the Response to Comments document with the final 1200-CA permit and make the Response to Comments available to the public on request per OAR 340-045-0035(4)(i)(8).

Currently, there are 42 public entities authorized as 1200-CA permit registrants to discharge stormwater from construction activities performed within their jurisdiction.

## 2. General Permit Approach

A general NPDES permit provides required permit coverage to new and existing dischargers that meet the eligibility criteria in the general permit. Based on similar discharge characteristics, NPDES general permits require the same effluent limitations, operating conditions, and requirement standards for every permit registrant. General permits are issued with multiple dischargers obtaining coverage under that general permit after it is issued, consistent with the permit eligibility and authorization provisions. Therefore, dischargers covered under general permits know their applicable requirements before obtaining coverage. Furthermore, obtaining coverage under a general permit is typically quicker than an individual permit. As such, a general permit is the appropriate permitting approach to regulate stormwater discharge from construction activities performed by public entities to address capital improvement projects in Oregon.

In the majority of cases, a general NPDES permit will provide sufficient stormwater management requirements for discharges of stormwater from construction sites. DEQ is aware that there will be occasions when the general permit may not be appropriate for a specific construction project. DEQ may require a discharger to apply for and obtain an individual permit if it determines that the general permit does not provide adequate assurance that water quality or the beneficial uses of a waterbody will be protected, or the project has a reasonable potential to cause or contribute to a violation of water quality standards.

## 3. Overview and History

DEQ issued its first 1200-C Construction General Permit on September 30, 1996, after the federal Phase I Stormwater regulations addressed construction activities that disturbed five or more acres of land as Category (x) of the definition of "stormwater discharges associated with industrial activity" (40 CFR 122.26(b)(14)(x)) in 1990. This is the second iteration of the 1200-CA General Permit issued by DEQ. The previous permit issue date was December 31, 2000. In accordance with state and federal law, NPDES permits will be effective for a fixed term

not to exceed five years. The 1200-CA permit is scheduled to become effective September 15, 2022, and expire on September 14, 2027.

The federal requirements specific to NPDES permits are set out in 33 USC § 1342(p) and 40 CFR § 122.26. ORS 468.065 and ORS 468B.050 provide specific state authority for the permits. In addition, ORS 468B.035 authorizes the implementation of the Federal Clean Water Act and regulations adopted under the Act.

## 4. Legal and Policy Analysis

On December 1, 2009, EPA promulgated Effluent Limitation Guidelines and New Source Performance Standards (NSPS) to control the discharge of pollutants from construction sites (74 Fed. Reg. 62996, and 40 CFR 450.21). These requirements, known as the “Construction and Development Rule” or “C&D Rule,” became effective on February 1, 2010. On March 6, 2014, pursuant to a settlement agreement to resolve litigation, EPA finalized amendments to the C&D Rule that withdrew the numeric turbidity limitation and monitoring requirements and provided clarification regarding several other requirements of the rule (79 Fed. Reg. 12661 and 80 Fed. Reg. 25235). DEQ must incorporate these requirements into the 1200-CA permit. Therefore, the 1200-CA permit conditions reflect the 2014 C&D Rule amendments. Substantial changes to 1200-CA permit conditions are necessary as it has been over 21 years since the permit was renewed.

### Summary of C&D Rule Requirements

The C&D rule requirements include non-numeric effluent limitations that apply to all permitted discharges from construction sites (40 CFR 450.21) The 1200-CA permit does not establish numeric effluent limitations and is in-line with the EPA’s non-numeric requirements based on the inclusion of expanded narrative criteria. The goal of the 1200-CA permit is to prevent the discharge of sediment and other pollutants using effective planning and erosion control measures, and control discharges that do occur using effective sediment control measures. Registrants must implement a range of pollution control and prevention measures or prevent discharges of pollutants, including those from dry weather discharges as well as wet weather (i.e., stormwater).

The C&D Rule’s non-numeric (i.e., narrative) effluent limits are as follows (see 40 CFR 450.21):

#### 1. Erosion and Sediment Controls

Registrants must design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed and maintained to:

- a. Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges;
- b. Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points;
- c. Minimize the amount of soil exposed during construction activity;
- d. Minimize the disturbance of steep slopes;
- e. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater discharge, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
- f. Provide and maintain natural buffers around waters of the state, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible;
- g. Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted; and,

- h. Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.

## **2. Soil Stabilization Requirements**

Registrants must, at a minimum, initiate soil stabilization measures immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. In arid, semiarid, and drought-stricken areas, where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority. Stabilization must be completed within a period of time determined by the permitting authority. In limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remains disturbed.

## **3. Dewatering Requirements**

Registrants must minimize the discharge of pollutants from dewatering trenches and excavations. Discharges are prohibited unless managed by appropriate controls.

## **4. Pollution Prevention Measures**

Registrants must design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented and maintained to:

- a. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
- b. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater. Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use); and
- c. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

## **5. Prohibited Discharges**

The following discharges from C&D sites are prohibited:

- a. Wastewater from washout of concrete, unless managed by an appropriate control;
- b. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
- c. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
- d. Soaps or solvents used in vehicle and equipment washing.

## **6. Surface Outlets**

When discharging from basins and impoundments, operators must utilize outlet structures that withdraw water from the surface, unless infeasible.

## 5. Antibacksliding Review

The 1200-CA stormwater general discharge permit, like previous iterations, requires permit registrants to control the discharge of pollutants, to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act (CWA). The 1200-CA general permit requires registrants to design, implement and maintain an Erosion and Sediment Control Plan (ESCP) utilizing Best Management Practices (BMPs) as the primary mechanism to reduce pollutants in discharges resulting from construction activities.<sup>1</sup>

The 1200-CA permit contains clear and specific provisions to prescribe the design, implementation, and maintenance of BMPs that adequately protect water quality and are appropriate for site-specific characteristics. Additionally, the permit stipulates the frequency of actions and required minimum control measures that must be met to prevent erosion and sedimentation transport from construction activities. Although the permit conditions are expressed differently than the comparable provisions in DEQ's previously issued permit iterations, DEQ has determined that the provisions in the permit are, in all cases, at least as stringent as those established in the previous 1200-CA permits. The 1200-CA permit includes the reporting requirement per the anti-backsliding rules in 40 CFR 122.44(l).

## 6. Antidegradation Review

DEQ's antidegradation policy in OAR 340-041-0004 requires DEQ to conduct a review of a permit to determine if the discharges to surface waters will protect existing water quality and to ensure protection of existing and designated uses. The stormwater controls required in the 1200-CA general permit are expected to result in discharges from construction project sites that comply with Oregon's water quality standards and protect designated and existing uses of Oregon's waters. The Erosion and Sediment Control Plan (ESCP) and performance requirements in the 1200-CA permit are designed to ensure that Oregon's water quality standard for turbidity (OAR 340-041-0036) will be met, which prohibits a greater than 10% increase in turbidity compared to an upstream control point of a receiving water. Because no requirements in the 1200-CA permit are to be relaxed or eliminated from the previous applicable permit, DEQ has determined that the renewal of this general permit will not result in increased pollutant loads.

Where construction activities may discharge to a water that is impaired (303(d) Category 4 or 5 listed) due to turbidity or sediment, an increased number of BMPs or controls with increased sediment removal effectiveness are required (Section 13.2.4.c). DEQ may notify permit applicants and/or registrants of existing projects with significantly increased discharges that additional analyses, stormwater controls, or other permit conditions are necessary to comply with the applicable antidegradation requirements or notify the registrant that an individual permit application is necessary.

DEQ does not anticipate increased discharges or pollutant loads will result from issuance of the 1200-CA permit. Although construction activities are inherently variable, DEQ has no information that the amount of construction activity covered under the 1200-CA permit will increase significantly above the highest levels experienced under the previous permit iterations.

DEQ determined that existing water quality will not be degraded by the issuance of this permit. The 1200-CA permit does not set numeric discharge limits as Federal Law<sup>2</sup> recognizes that stormwater discharges are highly variable in nature and difficult to control due to topography, soil composition, land use and weather differences (e.g., intensity and duration of storms). DEQ is confident that the narrative stormwater control measures required in the 1200-CA permit will sufficiently protect waters of the state from degradation. The goal of the permit is a net reduction in pollutant loadings over the five-year permit term. During the five-year permit term, the registrants will implement an identified range of stormwater management controls to minimize stormwater pollution

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<sup>1</sup> See 40 CFR § 122.44(k).



discharges from construction activities. Therefore, the issuance of this permit will protect and improve existing water quality and is consistent with DEQ's antidegradation policy.

Under the state's antidegradation policy, where high quality waters constitute an outstanding state or national resource, such waters may be classified as Outstanding Resource Waters of Oregon. Currently, Waldo and Crater Lakes and the North Fork Smith River and its tributaries and associated wetlands are the only Outstanding Resource Waters of Oregon. In accordance with the policies established for these Outstanding Resource Waters, DEQ will not issue any permit coverage discharging to these waters, except for emergency or restoration purposes.

<sup>2</sup> See 40 CFR § 450.21

## 7. Water Quality Limited Waters and Total Maximum Daily Loads

Any waterbody that does not, or is not, expected to meet the applicable state water quality standards is described as "impaired" or as a "water quality-limited segment." Section 303(d) of the CWA requires states to identify impaired waterbodies within the state and develop Total Maximum Daily Load management plans for those impaired waterbodies. TMDLs define both waste load allocations (WLAs) for point sources and load allocations (LAs) for non-point sources that specify how much of a particular pollutant can be discharged from both regulated and unregulated sources, respectively, such that the waterbody will again meet state water quality standards. Oregon's 2018/2020 Integrated Report and 303(d) list contain the water quality limited waterbodies with a TMDL and those approved for a TMDL, but currently has not been developed. For construction discharges to waterbodies subject to a TMDL and/or listed on DEQ's 303(d) list, the registrants must comply with the more stringent requirements in accordance with 40 CFR 122.44(d)(1)(vii)(A)-(B).

## 8. State Statutory Permit Requirements

All water quality permits must meet the requirements of state law. Oregon statutes in general give the Environmental Quality Commission and DEQ broad authority to impose permit requirements needed to prevent, abate, or control water pollution. See ORS 468B.010, 468B.015, 468B.020, and 468B.110. However, direct statutory requirements applicable to discharge permits are more limited. ORS 468B.020 (2)(b) directs DEQ to require the use of all available and reasonable methods necessary to protect water quality and beneficial uses. At a minimum, NPDES general permits must require registrants to develop, implement, and maintain an ESCP designed to prevent the discharge of pollutants from construction activities, to protect water quality and to satisfy the appropriate water quality requirements under the Clean Water Act.

## 9. Summary of Key Changes to the 1200-CA Permit

The 1200-CA permit was last renewed over 20 years ago on December 31, 2000; therefore, substantial changes are necessary to update and modify past permit conditions, and numerous additional conditions are added to meet EPA requirements and be in-line with State regulations. Most of the conditions in the expired 1200-CA permit are retained in the renewed 1200-CA permit. However, the permit is substantially reorganized and reworded to improve clarity. DEQ's goal is a permit that clearly meets all the state and federal requirements (the Federal Construction General Permit was reissued in 2017) and is implementable. In addition, challenges with implementation of permit requirements identified by DEQ during the expired permit term are addressed to increase the overall effectiveness of the renewed 1200-CA permit. In addition to a section-by-section summary, the following significant changes are found in the final 1200-CA permit:

- a) **Compliance Requirements and Timelines for 1200-CA Permit Covered Projects Performing Activities before the Permit Effective Date:** Section 2-Discharge Authorization states the dates which previously registered entities must comply with the renewed 1200-CA permit conditions. DEQ realizes that updating ESCPs and achieving compliance with modified or new 1200-CA permit conditional requirements may be an

arduous task for projects covered under the expiring 1200-CA permit. For example, sedimentation basins are difficult to add, move or enlarge after construction activities begin and revising an existing ESCP developed to meet the previous 1200-C permit requirements may present difficult challenges. However, it is imperative that permit covered projects authorized under the expired permit comply with the conditions of the renewed permit to protect water quality and be in-line with State and Federal requirements. Throughout the 1200-CA permit, timelines clearly state the date DEQ expects 1200-CA projects issued under the previous permit to achieve permit compliance. Some new conditions, such as EMP reviews, will not be required for projects performing construction activities prior to permit issuance that were not previously reviewed, as the appropriate opportunity to develop or revise plans has passed.

- b) **ESCP Submission:** DEQ modernized and upgraded the way it accepts, shares and processes information with a new Environmental Data Management System called “Your DEQ Online”, or YDO. Changes are made to the permit process that increase permit review transparency, reduce paper use and streamline DEQ’s review and recordkeeping processes. 1200-CA permit registrants are required to create a public entity profile and upload all required project documents and pay permit fees using the YDO system.
- c) **Construction projects of 5 or more acres:** 1200-CA permit covered projects at least 5 acres in size must undergo a mandatory 14-day public comment period before construction activities can commence. The permit registrant is required to post all necessary project documents required in Your DEQ Online (YDO) or on their agency website, including a complete ESCP for the 14-day mandatory public comment period.
- d) **Environmental Management Plan (EMP):** An additional plan submittal and fee are required to cover projects with contaminated soils and groundwater and dewatering plans utilizing active chemical treatment systems (including pH lowering of discharge from amended soils). The current fee for an Environmental Plan Review is \$846.00 per OAR 340-045-0075 Table 70F. Discharges from sites utilizing these systems or encountering contaminated soil conditions have the potential to discharge pollutants, therefore plan review by DEQ is necessary. The intent of this permit addition is to address potential submission requirements before 1200-CA permit covered projects initiate construction activities on site in order to prevent contaminated sites from discharging pollutants to waters of the state. Additionally, by providing the information early the permit registrant may avoid work delays while plans are reviewed for approval. Appendix A includes EMP submission instruction and EMP review applications. EMP application materials and information will be available for all contamination and dewatering situations when this requirement applies.
- e) **OAR 340-041-0036-General Effluent Limitations to meet Applicable In-Stream Water Quality Standards and Water Quality Requirements for TMDL and 303(d) Listed Waterbodies:** The expired permit does not explicitly state the water quality standard requirement for turbidity. DEQ has included the 10% turbidity standard (OAR 340-041-0036) to the 1200-CA permit for clarity. In addition, the no more than 10% increase in turbidity to a receiving water above a background standard defines the permit discharge violation limit. While turbidity monitoring is not required in the 1200-CA permit, registrants have the flexibility to monitor if determined as an appropriate to protect water quality and ensure permit compliance.
- f) **General Stormwater Control Design, Implementation, Installation, and Maintenance Requirements:** The design, implementation, installation and maintenance requirements of Best Management Practices (BMPs) are scattered throughout expired permit, as it lists BMP requirements as conditions found in the Erosion and Sediment Control Plan Section and elsewhere. The 1200-CA permit consolidates the narrative criteria for BMPs requirements into one section, now titled Technology-Based Effluent Limitations/Control Measures, which are in-line with Federal C&D Rule requirements (40 CFR 450.21). The 1200-CA permit includes narrative criteria of each erosion and sediment control in one section only, thereby eliminating the redundancy of the expired permit. This change allows the permit registrant to choose BMPs that are appropriate for each site eliminates prescriptive lists of BMPs that may not be appropriate for any given construction site. This change also allows permit registrants to use new technologies as available and as makes sense for any given site.
- g) **Visual Monitoring Requirements:** The expired permit requires projects to have visual monitoring performed by a person with knowledge and experience in stormwater controls and management practices. The 1200-CA

permit requires all projects that are an acre or more in size to be visually monitoring by a certified visual monitoring inspector. The intent of this change is to have all 1200-CA permit covered construction sites have visual monitoring inspections conducted by a certified individual to ensure that the ESCP is being implemented and is effective as designed. Certified visual monitoring inspectors have received training on how to design, implement and monitor ESCPs for various types of construction activities and site conditions. DEQ anticipates this will increase the effectiveness of the ESCP and BMPs implemented at sites, and therefore be more protective of water quality.

- h) **Use of Engineered Soils:** The practice of stabilizing soil by adding cementitious compounds on project sites in Oregon has increased and is becoming more common throughout the state. The practice of engineering soils by the addition of cementitious compounds extends the building period into wet weather and allows for soil stabilization in saturated conditions. The intent of this change is to establish clear requirements for the application of cementitious compounds, and the containment and discharge of potentially high pH stormwater runoff that contacts engineered soils to ensure water quality is protected.
- i) **Clarity Regarding Permit Requirements Associated with the ESCP, Visual Monitoring Inspections, and Visual Monitoring Reports:** The 1200-CA ESCP requirements have corresponding conditions in the Requirements for Visual Monitoring (Section 17.4) and Visual Monitoring Inspection Report (Section 17.5). The goal of linking visual monitoring inspection conditions is to ensure compliance, visual monitoring inspection and documentation of the ESCP requirements, thereby creating a stepwise approach from a control requirement to documentation of the implementation, effectiveness and maintenance of the erosion and sediment controls specified in the ESCP.
- j) **Replaced “minimize” with “prevent” throughout the permit.** Since the goal of the 1200-CA permit is to prevent erosion and sedimentation and the discharge of pollutants from sites where construction activities are being performed, DEQ revised the permit accordingly. For the purposes of this permit, prevent is defined as “keep from happening or arising”. As such, the permit requires steps that must be taken (e.g., develop an ESCP and implement erosion and sediment controls) to keep sediment from being discharged or transported from a 1200-CA permit covered site. DEQ expects that the necessary permit steps must be taken by 1200-CA registrants to prevent erosion, sediment transport and visibly turbid discharge from a project site. DEQ understands that approved plans may not always result in the intended outcomes, though the registrant must always take the required steps to prevent visibly turbid discharge and adjust as needed. Furthermore, DEQ replaced subjective words and terms (e.g., minimize, as soon as possible, as soon as practical) throughout the expired permit to improve clarity and better define the objective of permit conditions. Although 40 CFR § 450.21 states that erosion and sediment control measures and practices must minimize sediment discharge from sites, DEQ has determined that preventing sediment discharge from construction activities is a more appropriate approach to protecting the water quality of Oregon waters.

More information on changes to the 1200-CA permit is below. DEQ made these changes based on input from stakeholders, current permit registrants and evaluation of the expired permit effectiveness by DEQ. The revisions reflect improvements or enhancements that will result in clarity, more efficient and effective implementation of permit requirements and meet the appropriate federal requirements and additional requirements regarding sediment and erosion from construction activities that may discharge to surface waters of the state.

## 10. Cover Page

The cover page provides information about the area of permit coverage, sources covered, limitations of permit coverage, and a description of permitted activities. As described, the permit covers existing and new discharges of stormwater from construction activities. Although groundwater is defined as waters of the state, the permit does not cover any stormwater discharges to underground injection control systems. Discharges to underground injection control (UIC) systems are regulated under a separate set of rules derived from the Federal Safe Drinking Water Act and require a UIC permit. Apart from the allowable non-stormwater discharges identified, the permit prohibits all non-stormwater discharges.

## 10.1 Sources Covered by this Permit

The cover page of the 1200-CA permit describes the types of discharges eligible for permit coverage. The 1200-CA permit issued in 2000 set a threshold of construction activity disturbance area at a minimum of 5 acres, which was lowered to 1 or more acres on December 1, 2002. The following are included in the 1200-CA permit:

- a) The land disturbance threshold is clearly defined as 1 acre or more in all sources listed, except any construction activity that discharges pollutants that may cause an exceedance of a water quality standard, which has no minimum area of disturbance.
- b) Project sites performing construction activities that may discharge to a water of the state are required to be covered under the 1200-CA permit. The expired 1200-CA permit did not explicitly state that the stormwater runoff from the project site may have the potential to discharge to a surface water or to a conveyance system that leads to surface waters of the state in Oregon and do not have coverage under another NPDES permit.
- c) Construction Activities are listed in Permit Specific Definitions: The list of construction activities is removed from the Sources Covered by this Permit section of the permit. Construction Activities are listed in the Definitions section of the 1200-CA permit. The term Construction Activities is used throughout the permit. Thus, having one location where construction activities is defined reduces the 1200-CA permit length. In addition, having one clear definition removes potential uncertainty.
- d) Stumping is added to the definition of construction activities: Stumping is defined as: “to clear the land of stumps once the forest harvest operation is completed”. Once stumping occurs on a site the project may no longer covered by the Forest Practices Act. Stumping is one defining activity of land conversion from forest practices (i.e., silviculture) that may require the operator to obtain a 1200-C permit coverage dependent on future land use.
- e) Construction Activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility as defined in 40 CFR 122.26(b)(15), however any activity discharging stormwater to surface waters of the state that may be a significant contributor of pollutants to waters of the state or may cause an exceedance of a water quality standard will be required to have permit coverage (See Cover page/Sources Covered by Permit/d). This qualification removes permitting barriers that prevent an appropriate response to emergency-related projects (e.g., wildfires, mud slides, earthquake, extreme flooding conditions, disruption in essential public services),
- f) Any construction activity that results in the disturbance of less than one acre of land (e.g., utilities, structure, and infrastructure) that is a necessary and required component of a final project that will ultimately disturb one or more acres of land added to the list of activities requiring 1200-CA coverage: This addition to the 1200-CA permit prevents phasing of projects to circumvent 1200-CA permit coverage. If the final project is an acre or greater, than this clause explicitly states that phasing a project to avoid a 1200-CA is not allowed and permit coverage must be obtained by the operator before performing the initial construction activity.

## 10.2 Limitations of Coverage

The renewed 1200-CA permit expands the list of other government agencies and their roles in construction project regulations.

- a) 401 Water Quality Certification (WQC): The 1200-CA permit identifies that there are separate permit application processes for projects that require federal, state and local permits and approvals. The intent is to provide clear requirements during the permit application process so that registrants do not have to revise project plans and ESCPs late in the stormwater permitting process. The renewed permit includes a recommendation that registrants identify, apply for and resolve any state (Department of

- State Lands) or federal (US Army Corps of Engineers) and/or DEQ 401 WQC requirements before construction activities are performed under 1200-CA NPDES permit coverage to prevent unintended non-compliance situations with other regulatory agencies. The intent is to prevent registrants from having to reapply for local building and development permits or revise their ESCP due to the conditions imposed on projects requiring a 401 WQC, and/or local jurisdictions.
- b) Stormwater discharges covered under other permitted activities (e.g., industrial, MS4) are not regulated by the 1200-CA permit.
  - c) Post-construction stormwater discharges from the site following project completion are not regulated by the 1200-CA permit.
  - d) Stormwater discharge from areas where 1200-CA permit covered construction activities occur are not authorized under the 1200-CA permit to discharge to UICs. Typically discharges of stormwater to UICs must be treated beforehand. DEQ recommends the 1200-CA permit registrant understand the conditions of the UIC permit before discharging stormwater runoff from construction activities into a UIC.

## 11. Permit Changes

The following itemized 1200-CA permit changes are organized to match the corresponding renewed 1200-CA permit.

### 11.1 Schedule A – Controls and Limitations

The eligibility and permit conditional requirements to obtain permit coverage under the 1200-CA general permit are stated in this section of the permit. In addition, the authorized stormwater, authorized non-stormwater, and prohibited discharges are explicitly stated. The following changes are included in the Control and Limitations Section of the 1200-CA permit:

#### Section 1 Application requirements for obtaining permit coverage

The expired permit did not address an application process for adding new public entities as 1200-CA permit registrants. DEQ is developing a 1200-CA application for public entities and will begin accepting applications once the 1200-CA permit is renewed.

#### Section 2 Discharge authorization

Realizing that the renewed 1200-CA permit conditional requirements are considerably modified from the expired permit, DEQ determined that compliance dates must be after the date of permit issuance to ensure implementation is done appropriately and is achievable. This will allow permit registrants the necessary time to create administrative and contractual procedural guidelines, develop new ESCP design and review protocols as well as create effective ESCP implementation and visual monitoring and reporting requisites. However, DEQ determined that Section 16-Corrective Actions must be complied with shortly after permit issuance to ensure construction stormwater runoff does not cause issues at existing project sites.

Compliance dates for existing (pre-permit issuance) and new permit registrants (post-permit issuance) are as follows:

- Permit coverage for permit registrants that were issued permit coverage prior to TBD, the issuance date of this permit, begins on TBD, the effective date of this permit.
- Permit registrants issued permit coverage before TBD, the issuance date of this permit, must comply with the conditional requirements of this permit by April 1, 2023, excluding all conditional requirements of Section 16, which must be complied with by TBD, the effective date of this permit.

- Permit coverage for new applicants begins when the registrant receives documented notice from DEQ that registration is approved.
- Permit registrants issued permit coverage after TBD, the issuance date of this permit, must immediately comply with all permit conditions.

#### **Section 4 Multi-Phase Developments**

The ESCP must be developed and submitted to DEQ in YDO for any additional phases before construction activities, including stockpiling and staging, are performed on an additional phase of the project not included in the original ESCP.

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

Construction projects 5 or more acres in size to be performed under 1200-CA permit coverage must undergo a mandatory 14-day public comment period before construction activities can commence. The permit registrant is required to post all necessary project documents required in Your DEQ Online (YDO) or on their agency website, including a complete ESCP for the 14-day mandatory public comment period.

If Construction Activities Expand beyond Five Acres after Permit Coverage was Originally Assigned: All projects that disturb 5-acres or more are subject to a 14-calendar day public review period before permit registration is granted, for projects 5-acres or more that have not undergone a 14-calendar day review period, DEQ will impose the required 14-calendar day public review period during which the registrant may be required to temporarily suspend all construction activities in the area expanded beyond the boundaries of the originally submitted ESCP. The intent is to ensure all projects of 5-acres or more undergo the mandatory public review period.

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

An additional plan submittal and fee are required to cover projects with contaminated soils and groundwater and dewatering plans utilizing active chemical treatment systems (including pH lowering of discharge from amended soils by chemical treatment other than CO<sub>2</sub> sparging). The current fee for an Environmental Plan Review is \$846.00 per OAR 340-045-0075 Table 70F. Discharges from sites utilizing these systems or encountering contaminated soil conditions have the potential to discharge pollutants, therefore plan review by DEQ is necessary. The goal of this permit condition is to address potential requirements before 1200-CA permit covered projects initiate construction activities on site in order to prevent pollutant discharges to waters of the state. Additionally, by providing the information early, the permit registrant may avoid work delays while EMPs are reviewed for approval. Appendix A includes EMP submission instructions. EMPs will be available for all contamination and dewatering situations when this requirement applies.

#### **Section 7 Procedures for Denial or Revocation of Coverage**

The 1200-CA permit is appropriate for the majority of proposed projects to be covered under its conditional requirements. However, there may be individual projects for which general permit conditions do not provide adequate water quality protection. Thus, a permit registrant has the option of applying for an individual permit when a project is denied 1200-CA general permit coverage or coverage is revoked after construction activities begin on a project site. If a 1200-CA permit site is not able to prevent turbid discharge due to site conditions (e.g., erosive soils, steep slopes, shallow groundwater tables) and therefore poses a threat to water quality, DEQ may require an individual permit. Revocation was included in the permit to clearly match the procedures of OAR 340-045-0033(10).

#### **Section 9 Electronic System Use Requirement**

DEQ requires registrants to use YDO for all submission of project related documents. This includes any changes to DEQ of the permit registrant contact information and the on-site contact person as well as other changes as outlined in the permit.

## Section 10 Authorized Discharges

The expired permit did not include conditions addressing authorized discharges. The 1200-CA General Permit conditionally authorizes construction stormwater discharges from public entity construction projects, and certain types of non-stormwater discharges, provided the registrants comply with the terms and conditions of the 1200-CA permit.

## Section 11 Authorized Non-Stormwater Discharges

Certain types of authorized discharges unrelated to precipitation events (i.e., non-stormwater discharges), listed in Section 11 of the 1200-CA permit are conditionally allowed to discharge as the result of construction activities. Such authorized non-stormwater discharges cannot be sources of pollution to the waters of the state. The permittee is responsible for the quality of the discharge from their construction activities. Authorized non-stormwater discharges are not addressed in the expired permit.

The qualifier “uncontaminated” means that the discharge does not cause or contribute to an exceedance of applicable water quality standards or is above state or federal action levels. Similarly, “non-turbid” means the discharge does not cause or contribute to an exceedance of turbidity-related water quality standards.

### Section 11.1 Combined Discharges

This section explicitly allows authorized stormwater and non-stormwater discharges to be comingled, conveyed, and discharged from site by the same system. DEQ expects this clarification may result in less conveyance systems and discharge points at construction sites. The fewer number of erosion and sediment controls, the less potential for failure and need for maintenance over the lifetime of the project.

## Section 12 Prohibited Discharges

DEQ included a list of prohibited discharges to the 1200-CA permit. The list is consistent with the 1200-C Construction Stormwater Permit. The following prohibited discharges are to be noted:

- a. Wheel and/or tire wash wastewater typically contains high turbidity and pollutant load (e.g., metals from brake pads and radial tires). The permit requires that wheel and/or tire wash wastewater be treated onsite or discharged to the local sewer system with appropriate approval. The intent through prohibition is to prevent the discharge of washwater contaminated with pollutants to surface water or conveyance systems leading to of the state.

In addition, the following prohibitions are included in the 1200-CA permit:

- a. Any visually turbid discharge or discharge (see Section 13.2.11) from the construction site to surface waters or conveyance system leading to waters of the state.
- b. A discharge that causes or contributing to an exceedance above any applicable water quality standard.

To add clarity to the 1200-CA permit, the definition for visibly turbid discharge is added to Schedule D.4-Permit Specific Definitions. *ddd*. Visibly Turbid Discharge is defined as “cloudiness in the water caused by”.

The finalized permit conditions clearly establish the goals of the 1200-CA permit, ESCP and creates narrative standards to which the registrant must adhere. This provision explicitly states that DEQ considers the discharge of any visually turbid water as a water quality standard violation, as it is assumed to be at least 10% greater than background turbidity levels of the receiving waterbody. This condition does not conflict with or prevent enforcement of other water quality standards.

## Section 13 Technology Based Effluent Limitations/Control Measures

Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPSs) are technology-based effluent limitations under CWA Sections 301 and 306 for categories of point source discharges. These effluent limitations, which can be either numeric or non-numeric, along with water quality-based effluent limitations, if necessary, must be incorporated into NPDES permits, as appropriate. ELGs and NSPSs are based on the degree of control that can be achieved using various levels of pollutant control technology as defined in the CWA.

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions for meeting technology based ELGs established under Section 301 and, where applicable, any NSPS established under Section 306. Once an ELG or NSPS is promulgated in accordance with these sections, NPDES permits must incorporate limits based on such limitations and standards. See 40 CFR 122.44(a)(1). Prior to the promulgation of national ELGs and/or NSPSs, permitting authorities must establish and include in NPDES permits technology-based effluent limitations case-by-case based on their best professional judgment. See CWA section 402(a)(1)(B); 125.3(a)(2)(ii)(B).

Technology Based Effluent Limitations/Control Measures are divided into 4 sections:

- a) **Section 13.1: General Stormwater Control Design, Installation, and Maintenance Requirements**
  - i. Establishes the overall principle for designing, installing, and maintaining stormwater controls that work to minimize the discharge of pollutants from construction sites, as required in 40 CFR 450.21.
- b) **Section 13.2: Erosion Prevention and Sediment Control and Treatment Requirements**
  - i. Implements the C&D rule's requirement at 40 CFR 450.21(a) to "design, install, and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants," as well as the requirements in 40 CFR 450.21(b) for soil stabilization.
- c) **Section 13.3: Pollution Prevention Requirements**
  - i. Implements the C&D rule requirements in 40 CFR 450.21(d) and (e) for pollution prevention measures and prohibited discharges.
- c) **Section 13.4: Construction Dewatering Requirements**
  - i. Implements the C&D rule requirement that prohibits "discharges from dewatering activities, including discharges from dewatering of trenches and excavations" unless managed by "appropriate controls".

The TBELs/Control Measure Section layout of the 1200-CA permit is restructured to improve clarity and assist in ESCP development. The control measure requirements are listed to mirror the linear process of the typical construction project. Addressing general control measure design, installation and maintenance requirements (e.g., generally accepted practices, install before construction activities, remain effective and are maintained) before implementation is intended to ensure the registrant and ESCP developer choose the appropriate site-specific control measures that best prevent erosion and sediment discharge. The narrative conditional requirements of control measure in the 1200-CA permit include:

### Section 13.1 General Stormwater Control Design, Installation, and Maintenance Requirements

Discharges from construction sites typically contain high turbidity and sediment concentration levels unless erosion and sediment controls are effectively implemented and maintained during construction activities. Pollutants from construction sites are typically hydrophobic and adhere to organic materials in sediment and are transported off-site through the discharge of turbid stormwater runoff. Preventing visibly turbid discharge is in-line with the EPA's 2022 Construction General Permit's definition of "non-turbid" discharge that emphasizes the visual qualities of the water be free of turbidity. As such, using narrative criteria such as the



prevention of “visibly turbid discharge” is an appropriate and effective means of controlling pollutant discharge from construction sites that require permit coverage throughout Oregon.

The narrative description of erosion and sediment control treatment requirements are expanded in the 1200-CA permit. DEQ removed the prescriptive BMP list from the expired permit to ensure permit registrants can choose BMPs appropriate for the site and use new technologies as makes sense. The Technology Based Effluent Limitations/Control Measures section of the 1200-CA permit consists of all components of the EPA’s C & D Rule.

The condition “Avoid or minimize excavation and bare ground activities during wet weather” of the expired permit is removed from the renewed permit. DEQ realizes that is not possible in most projects due to unpredictable weather patterns. In addition, the resources of permit registrants may vary greatly. As such, the focus of the permit conditions is to ensure the appropriate best management practices are used in all weather conditions.

### **Section 13.1.2 Design and install all stormwater controls in accordance with engineering and professional practices**

Design and install all stormwater controls in accordance with appropriate, recognized and generally accepted engineering and professional practices, including applicable design specifications and manufacturer’s instructions. The expired permit allowed BMPs with no qualifying specifications. The clause, “in accordance with appropriate, recognized and generally accepted engineering practices, including applicable design specifications” explicitly states that the registrant must utilize BMPs known to be effective and install them correctly. Found at: <https://www.osha.gov/laws-regs/standardinterpretations/2016-05-11-0>.

#### **Section 13.1.3.b Installation of stormwater controls**

The requirement to install soil stabilization erosion prevention measures on exposed soil that will not be worked for 14 days is included in the permit. This requirement protects cleared, unworked areas of a site from potential erosion. The 14-day unworked period of any area of exposed soil on a project site is to be monitored for during the visual monitoring inspection requirements of Section 17.4.g and temporary control measures are required per Section 3.2.20. Although the same 14-day requirement is stated in separate sections of the permit, they are not redundant, as each fulfills an individual purpose in erosion and sediment control on 1200-CA covered project sites.

#### **Section 13.1.5.c**

The maintenance of erosion and sediment controls is critical in preventing sediment from leaving the project site, either through erosive forces or suspended in stormwater discharge. The required maintenance of sediment controls, such as straw waddles and biobags is determined by the height of sediment accumulated at the control relative to the exposed above ground surface height of the control. Biobags may be overwhelmed by sediment deposits if not maintained correctly and allow bypass of sediment laden runoff or sediment to be deposited on the downslope of the control. Proper installation requires that straw waddles are placed in a trench and spiked in place. Allowing sediment to embed the below ground surface portion of the waddles provides additional support to stem the erosive force of sediment when encountering the trenched waddle. However, the above ground portion of the straw waddle must be maintained to prevent sediment deposits from overwhelming the waddle and rendering it ineffective. Sediment accumulation of one third of the exposed above ground portion of the control allows for the control to remain effective and provides a safe amount of reservoir to retain further sediment deposits.

#### **Section 13.2.1.c**

Discharge from construction activities may convey sediment loads that will attenuate the infiltration rate of the post-construction facility reducing its on-site water retention capability and pollutant

removal effectiveness. Accordingly, stormwater runoff discharge from permit covered project sites is not permitted to enter existing post-construction facilities that are designed to infiltrate nor those constructed during permit coverage; however, the following exceptions are allowed:

Discharge from construction activities may be conveyed to post-construction facilities constructed during 1200-CA permit coverage if the construction plans state that at least the top 18 inches of growth media in the facility will be replaced with suitable growth media after project completion and final stabilization is achieved.

Post-construction stormwater facilities constructed during 1200-CA permit covered construction activities may receive discharge from project sites where construction activities are performed, if the facility is cleared of all accumulated sediment and temporary control measures, such as rip rap, velocity dissipating rock pads or impermeable liners. In addition, any soil layer embedded with sediment from construction activity discharge must be removed before constructing the post-construction facility. Once the facility is restored to native soil layers, it must be constructed to the design specifications approved by the local regulatory agency or the conditions of the 401 WQC.

For post-construction facilities constructed during 1200-CA permit coverage, it is recommended that the construction plans include an impermeable barrier, or a layer of impermeable clay collected from earth moving activities on site be used to line the proposed facility. These practices will prevent the native soil from sediment embedding within pores that allow stormwater runoff infiltration and reduce the effectiveness of the facility. In addition, the amount of sediment to be excavated after construction activities cease and the site is permanently stabilized will be reduced.

It is recommended that post-construction stormwater facilities be over-sized to meet the capacity requirement of Section 13.2.17. Post-construction facilities are typically sized to retain 50% of a 2-year 24-hour storm event, and the 1200-CA permit requires stormwater facilities to receive runoff from areas where construction activities are performed to retain 100% of the 2-year 24-hour storm. After construction activities cease and the site achieves final stabilization criteria, the facility can be filled with the appropriate growth media to post-construction capacity.

### **Section 13.2.2 Sequence**

The term “Sequence” is introduced in the renewed permit when referring to limiting clearing, grading and other land disturbing activities to the maximum extent practical to prevent exposed inactive areas from causing erosion as per Section 13.2.20. The expired permit defined land disturbing activities in this context as “Phasing”. “Sequence” is used in the renewed 1200-CA permit to differentiate and clarify the requirements of this provision. “Phase” refers to a stage in the construction process or of the project, “sequence” is the order the phases are performed or completed. “Phase” is also used in multi-phase development and construction activities (e.g., phases of construction: clearing, excavating, vertical, infrastructure, utilities) in the permit. The intent of defining the order of land disturbing activities with the word “Sequence” is to uniquely identify this provision so that all permit requirements are clear.

### **Section 13.2.3 Prevent bypass and ponding**

Create smooth surfaces between the soil surface and sediment controls to prevent bypass and pooling of stormwater: When possible, the registrant must attempt to smooth surface soils to provide contact between sediment controls and the ground, thereby increasing stormwater control effectiveness.

### **Section 13.2.4 Establish and maintain natural buffer zones and/or equivalent erosion and sediment controls**

Appendix B was created to supplement the 1200-CA and provides clear and thorough natural buffer zone requirements to ESCP developers. For example, Appendix B explains how to measure the natural buffer zone width, use the RUSLE2 or similar sediment transport model, and provides soil type, slope percentage, and natural vegetative cover tables that characterize site conditions and therefore direct the developer to the appropriate BMP choice. The list of prescribed BMPs in the expired permit is deleted in the renewed permit. DEQ determined to not provide a prescriptive list that may limit the ESCP developers' options in the permit. Moreover, the removal of any prescriptive requirements provides ESCP developers flexibility on sites where difficult and unique situations occur. The expired permit relied on the implementation of two BMPs, usually the same control, when encroaching within 50 feet of a natural buffer zone. This "doubling up" approach of BMPs, typically sediment fence, is not adequate, site-specific and did not dictate that the most effective BMPs be implemented. Two distinct BMPs will be required in the encroached portion of a natural buffer zone. Typically, a silt fence or similar performing control is installed per Section 13.2.6 and additional BMPs per the requirements of Appendix B.

Natural buffer zone is added to the 1200-CA permit in Schedule D.4.aa to clarify the physical description and characteristics of a natural buffer and when Section 13.2.4 conditional requirements will apply. A natural buffer may be comprised of a homogeneous natural cover, such as vegetation, rock or bare soil. In addition, a natural buffer may be a heterogeneous composition of natural and human-made features, such as a combination of vegetated buffer, asphalt road, gravel walkway and structures.

Appendix B provides soil and natural vegetation tables that determine buffer requirements or type and effectiveness of BMPs based on site characteristics. By basing the BMP type on site characteristics, the guidance tool steers the ESCP developer to create an acceptable alternative to the sediment removal capability of the naturally vegetated 50-foot natural buffer zone found on site. The buffer guidance provided in Appendix B places the onus on the ESCP developer to choose the most effective means of preventing sediment from entering surface water. DEQ realizes that the natural buffer zone requirements are significantly different than in previous permit iterations and expects that the regulated community will be tasked with learning a sediment transport model before submitting permit compliant ESCPs to DEQ. DEQ expects that the natural buffer zone requirements in Appendix B are implementable and appropriate as the EPA has vetted the instructions found in Appendix B and includes them as a component of the Federal Construction Stormwater General Permit.

#### **Section 13.2.4.a.1 Natural Buffer Zone Requirements on Projects with a 401 Water Quality Certification**

Typically, inconsistencies in natural buffer zone width requirements may differ between the permitting requirements of federal, state and local jurisdictions. The 401 WQC requires a 50-foot minimum natural buffer unless otherwise conditioned in the 401 Certification. Due to the Federal 404 permit and DEQ's 401 WQC application review time, the conditions of the 401 WQC may require the developer to revise locally approved plans and obtain new permits if 1200-CA permit coverage is in place before the 401 WQC is issued. The intent of the recommendation in the permit is to prevent plan revision and permit reissuance, and therefore alleviate potential frustration directed toward DEQ from the building community. In addition, this permit condition will likely result in protection of existing natural buffer zones from unauthorized encroachment and prevent the cost

burden of buffer zone restoration for projects that require both 1200-C permit coverage and a 401 WQC.

#### **Section 13.2.4.c**

This permit condition prioritizes BMP requirements in waterbodies with a TMDL load allocation for sediment. As such, the BMP option list for buffers of TMDL listed waterbodies for the pollutants turbidity or sedimentation is reduced to the most effective BMPs or proposed control measures of equal effectiveness for DEQ approval. The intent of the conditional change is to eliminate the potential of additional turbidity or sediment loading from a construction site during and after construction activities. This condition requires that the natural vegetated buffer be maintained, which is the most effective BMP at sediment and pollutant filtration and removal.

Natural buffer zone widths on projects that began construction activities prior to the effective date of the renewed 1200-CA permit do not need to be altered to the requirements of Appendix B, and the BMPs implemented within the natural buffer zone per the ESCP are deemed appropriate.

#### **Section 13.2.6 Install sediment controls along all perimeter areas of the site that may potentially discharge stormwater runoff from disturbed areas identified in the ESCP**

The heading for this section clarifies the need to install controls only on perimeter segments where the potential for discharge from disturbed areas on site may occur. DEQ edited this section of the permit with the intent of eliminating the installation of sediment and erosion controls that do not contribute to protecting water quality. This has the added benefit of reducing material waste as well. Typically, many linear construction projects have segments that will not discharge stormwater from disturbed drainage areas where construction activities occur.

#### **Section 13.2.7 Prevent sediment track-out**

With the intent of preventing sediment from leaving the construction site, the requirements of this section also prescribe construction details of entry and exit access points. Numerous sediment controls are listed and must be utilized to prevent sediment from leaving the site; however, if all stated sediment controls are implemented and sediment track-out is still an issue, the registrant must control the source to eliminate sediment from leaving the site.

#### **Section 13.2.8.c Management of Stockpiles**

The expired permit required that stockpiles be stabilized or covered at the end of each workday as needed based on weather conditions, including winds that have the potential to generate fugitive dust events. As is required throughout this permit, BMPs must be implemented to prevent discharges to surface waters or conveyance systems leading to surface waters. The 1200-CA permit expands this condition to include weekends, holidays or extended breaks to ensure the required control measures are in place before the site is vacated for any extended period of time. The onus is placed on the registrant to ensure that regardless of the impending storm event magnitude, the appropriate erosion and sediment controls are in place to prevent stockpiles from being the source of turbid discharge and/or wind erosion resulting in sediment leaving the project site.

#### **Section 13.2.9 Prevent wind erosion and control dust**

Fugitive dust must be controlled at all times on a 1200-CA permit covered site to prevent sediment from leaving the site and being conveyed to a water of the state. The majority of the 1200-CA conditions address erosion and sediment transport off site through stormwater runoff, wind erosion poses a threat to erodible soils as well. Exposed soils, stockpiles and soils being worked are some examples of when wind erosion controls must be implemented.

### **Section 13.2.10 Steep Slopes**

The Federal C & D Rule requirement is to minimize soil disturbance in steep slope areas, as is found in the expired permit. However, steep slopes once disturbed can make erosion control difficult. As stated earlier, the word minimize is subjective without a clear quantifying threshold or objective goal and is replaced throughout the body of the permit with clear and definable terms and goal-oriented language. The goal of the 1200-CA permit is to prevent erosion and sediment transport, which is effectively done by prohibiting unnecessary steep slope disturbances.

### **Section 13.2.11 Prevent the discharge of sediment to surface waters or conveyance systems leading to surface waters of the state**

Typically, it is not possible for DEQ inspectors to be present for more than a day during the duration of a 1200-CA construction project. A DEQ conducted inspection may not occur during storm events or other times when conditions are conducive to sediment transport from the project site, therefore; DEQ inspectors will look for the presence of the indicators listed in this section to determine if sediment is likely to or has left the project site. As such, the indicators listed in this section may provide evidence of an ineffective stormwater control, poorly designed ESCP, lack of required maintenance and permit violations.

### **Section 13.2.17 Sedimentation Basin Installation**

Designing the storage capacity of sediment basins is consistent with the Federal Construction General Permit and based on the local 2-year, 24-hour storm event, or a design storm event of one inch. An inch of precipitation per acre of drainage area is equal to 3,600 cubic feet.

### **Section 13.2.18 Sediment Basins required on Project Sites with Engineered Soils**

There are no conditions for the use and control of cementitious materials soils (soil amendments including, but not limited to Portland cement-treated base [CTB], cement kiln dust [CKD], or fly ash) to create engineered soils in the expired permit. The practice of cementitious stabilization of soil on project sites in Oregon has increased during the period of the expired permit and is becoming more common throughout the state. Oregon soils west of the Cascade Mountain Range are typically saturated due to high groundwater and frequent precipitation. The practice of engineering soils by the addition of cementitious compounds extends the building period into wet weather. The intent of this permit condition is to establish water quality protective protocols for the application, containment and discharge of stormwater runoff that comes in contact with engineered soils.

Cementitious compounds increase the pH of stormwater runoff and the installation of a sediment basin or similar impoundment (e.g., trap, pond) allows for the sampling and treatment of high pH runoff (i.e., above 8.5 standard units) before discharge as per OAR 340-041-0021. The registrant will be required to determine the acceptable pH range of discharge based on specific criteria for the River Basin (<https://www.oregon.gov/deq/Rulemaking%20Docs/div41basinmap.pdf>) where the project is located. Visual monitoring must be performed per permit conditions, however visual monitoring is inappropriate and inadequate in occurrences of increased pH. The permit requires that high pH runoff be adjusted or neutralized before discharge from the project site until it is in the range of pH Standard Units (SU) using an appropriate treatment BMP such as carbon dioxide (CO<sub>2</sub>) sparging or dry ice.

### **Section 13.2.20 Temporary Stabilization**

Stabilization requirements in the expired permit are ambiguous and unclear. The expired permit condition requires stabilization of the site using temporary seeding if construction activities cease for 30 calendar days or more, however there is no provision that stipulates how cessation of activities

are tracked. Sections 13.2.20 and 13.2.21 require additional BMPs to stabilize project sites or portions of sites where construction activities have ceased for 14 days. The intent of these 1200-CA conditions is to clarify stabilization requirements and create a tracking process from inspection to reporting as a method of documenting the length of time a site or portion of a site is inactive. The permit requires stabilization measures (e.g., seeding protected by erosion controls until vegetation is established, sodding, mulching, erosion control blankets, hydromulch and/or gravel) to be implemented and maintained to prevent erosion from exposed portions of the site. In addition, the installation of temporary stabilization measures (e.g., blown straw and a tackifier, loose straw, compost mulch, temporary vegetative cover, crushed rock and/or gravel base), final vegetation cover, or permanent stabilization measures are required immediately whenever any land disturbing activities have permanently ceased or will be temporarily inactive on any portion of the site for 14 or more calendar days. The installation of stabilization measures is required as soon as practicable; however, no later than seven calendar days after stabilization is initiated.

The following permit conditions are included in the 1200-CA permit that require inspectors to monitor inactive portions of site, and document when activities have temporarily or permanently ceased:

a) **Section 17.4.g Requirements for Visual Monitoring**

Check the project site for any portion where land disturbing activities have permanently ceased or will be temporarily inactive for 14 or more calendar days.

b) **Section 17.5.f Visual Monitoring Inspection Report**

Document locations of the site where land disturbing activities have permanently ceased or will be temporarily inactive for 14 or more calendar days.

**Section 13.2.21 Final Stabilization Criteria**

Criteria that determine final stabilization are now referenced only by Section 13.2.21, which reduces redundancy and ambiguity. To achieve Project Completion the registrant is required to complete or achieve all conditions of 13.2.21 that apply to their project site, which reduces redundancy and potential ambiguity. In addition, the permit allows for exceptions to final stabilization requirements in arid and semi-arid areas of the state.

**Section 13.3 Pollution Prevention Requirements**

Pollution Prevention is one of the six components of EPA's C&D Rule, and therefore included in the 1200-CA permit. The general housekeeping requirements in the expired permit are minimal and not as comprehensive as the Federal C&D Rule stipulates. 1200-CA permit conditions address solid waste that may contribute to pollutant discharge from the project site. Additionally, specific requirements for vehicles, building materials, pesticides, waste, hazardous and toxic compounds, fertilizer, and portable toilets create a robust narrative that explicitly states mandatory actions and preventative measures. The following is a summary of the Pollution Prevention conditions:

- a) The 1200-CA permit requirements of the pollution prevention section are intended to ensure that pollutant discharges do not occur as a result of storm events. Covering for construction and domestic waste containers such as tarps, plastic sheeting, and temporary roofs, are available industry control technologies that operators can use to help prevent pollution from construction site and required in the permit. In addition, some cover technologies, such as tarps, can be reused multiple times on the same site due to their durability and longevity.

## **Section 13.4 Construction Dewatering Requirements**

This permit condition addresses how accumulated water must be treated to prevent the discharge of pollutants in cases where uncontaminated groundwater seepage and/or precipitation runoff accumulates. Construction activities that create depressions, such as excavations, trenches, foundations, vaults and tire/wheel wash or other similar areas typically accumulate stormwater runoff that may prevent the ability to perform necessary construction activities in these areas. Dewatering these areas of accumulated stormwater may pose a difficult problem to the registrant as the water is usually turbid, and a dewatering plan is not included in the originally submitted ESCP. Treatment methods and requirements are stipulated in the 1200-CA permit; however, at no time may visibly turbid discharge from accumulated stormwater dewatering leave the site.

An EMP is not required if the accumulated surface water is not chemically treated before discharge. The Environmental Management Plan is being instituted only to address sites which need to lower contaminated groundwater, manage contaminated media or utilize chemicals to treat discharge that may result in a permit violation or water quality standard exceedance.

## **Section 14 Water Quality-Based Effluent Limitations and Associated Requirements for Stormwater Discharges**

The clause, “DEQ expects compliance with the permit conditions is compliance with applicable water quality standards” varies slightly from the statement of the expired permit “will result in stormwater discharges being controlled as necessary to meet applicable water quality standards”. The expired permit was amended to reduce confusion. The term “as necessary” is subjective, and therefore may be misinterpreted. The stormwater control measures of the renewed permit are deemed necessary and are not open for interpretation. The goal of the 1200-C permit conditions is that compliance with all permit requirements constitutes compliance with applicable water quality standards as established in OAR 340-041.

### **Section 14.1 General Effluent Limitation to Meet Applicable In-Stream Water Quality Standards**

Projects that have 1200-CA permit coverage are held to the turbidity water quality standard that no more than a 10% cumulative increase in natural stream turbidities may be allowed, as measured relative to a control point immediately upstream of the turbidity causing activity. However, the expired permit does not explicitly state the water quality standard requirement for turbidity. DEQ included the 10% turbidity standard (OAR 340-041-0036) to the 1200-CA permit for clarity. In addition, the “no more than 10% turbidity increase in discharge above background” standard defines the permit discharge violation limit. While turbidity monitoring is not required in the permit, registrants have the flexibility to monitor if deemed appropriate.

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

Numerous changes are found in the ESCP Section of the permit. The intent is to establish clear guidelines for the design, submittal, implementation, and revision of an ESCP. The 1200-CA permit explicitly states that the ESCP must be implemented from initial soil disturbance to project completion, which is not a condition of the expired permit. The expired permit lists a minimum number of site description and map details that must be included in the ESCP. In order to create a clearer depiction of the project site, the map and detail requirements of the ESCP are expanded in the 1200-CA permit.

The ESCP must be submitted to DEQ before initiating construction activities and must be submitted for the area that necessitates permit coverage. The term “developed for the area that needs permit coverage” is in the permit, thus clearly requiring that the submitted ESCP site map must match the permitted area.

## **Section 15.1 Qualifications to Develop ESCP**

### **Section 15.1.a**

For projects of 20 acres or more, the ESCP must be developed by one of the following credentialed professionals:

- a) Certified Professional in Erosion and Sediment Control,
- b) Certified Professional in Stormwater Quality,
- c) Oregon Registered Professional Engineer,
- d) Oregon Registered Landscape Architect; or
- e) Oregon Certified Engineering Geologist.

This requirement ensures that a large construction project site will achieve permit compliance through an adequate and appropriately designed ESCP.

### **Section 15.1.b**

The 1200-CA permit requires that an Oregon Registered Engineer or Oregon Registered Landscape Architect must design and stamp engineered facilities, such as sedimentation basins or diversion structures.

## **Section 15.2 Design the ESCP to meet the following objectives**

Creating an ESCP that is based on generally accepted engineering practices to achieve permit compliance and prevent sediment discharge off site is the intent of Section 15.2. Addressing site-specific erosion and sediment control issues with effective and proven measures will typically result in a viable plan. Additionally, the expired permit neglects to address site-specific factors that will influence the effectiveness of the selected BMPs to be implemented as part of the ESCP. The ESCP designer will be better able to choose the appropriate erosion and sediment control measure if the decision is based on all relevant project site information (e.g., potential runoff volume and flow rates).

## **Section 15.3 ESCP for each distinct phase of construction activity**

To clarify ESCP submittal expectations, DEQ has defined four unique construction phases that must be accounted for in the ESCP map and description. All 4 phases of construction must be accounted for in ESCPs when the ESCP is submitted to DEQ in YDO. The 4-construction phases are:

- a) Demolition, clearing, grading, excavating, and land development.
- b) Street and utilities.
- c) Vertical construction.
- d) Final landscaping and site stabilization.

The four distinct construction phases accounted for in the ESCP ensures a complete ESCP before work is initiated and during transition from one phase to another. An ESCP designed for all phases of construction allows the registrant the foresight to plan for and make available the required BMPs to be implemented during future construction activities. These requirements of the permit are clearer and more protective of water quality. If the construction activities do not include the any of the 4 phases of Section 15.3, the narrative description included in the ESCP must state which phases are to be performed.



Many of the 1200-CA registrants will perform linear construction projects as part of their capital improvement projects. Linear construction projects typically do not follow the typical progression of construction phases listed in this permit section. Narrative requirements are included in this section which address linear construction projects and the numerous construction phases that may be performed during the duration of a linear construction project. The intent of addressing linear projects is to ensure that an ESCP site map and details are submitted to DEQ for each construction phase before work is initiated on that phase.

### **Section 15.4 ESCP Contents**

Due to the addition of numerous conditional requirements found throughout the renewed permit, several inclusions are necessary additions to Section 15.4 ESCP Contents. The following are included in the ESCP Contents Section of the renewed permit:

- a) The 1200-CA permit states that contractors to perform work on site must be listed in the ESCP. The registrant may not have reached contractual agreements with contractors when the permit application is submitted to DEQ, therefore the ESCP must be revised when the contractors are identified and if construction firms change during permit coverage.
- b) Personnel responsible for designing, implementing, and maintaining erosion and sediment control measures are required to be documented in the ESCP.
- c) A copy of the Environmental Management Plan must be included in the ESCP, if applicable. An approved plan does not have to be submitted with the original ESCP as DEQ realizes this may delay 1200-CA coverage on a project site. However, once approved, the EMP must be attached to the ESCP kept on site.

#### **Section 15.4.e Site Description**

The following narrative site descriptions are required. These additions provide details about pollution generating activities on-site and locations where discharges may impact surface waters.

- a) The 1200-CA permit requires the category 5 status of any 303(d) listed waterbody be identified in the ESCP. Identifying the impairment of the waterbody ensures the appropriate control measures and practices will be implemented to protect impaired waters of the state.
- b) Any waters to be impacted by state or federal agency regulations (i.e., 401 WQC, DSL, USACE) must be listed.
- c) Construction support activity areas, either on or off-site, must be described.
- d) A projected schedule of all construction activities. The intent of this addition is to ensure that the ESCP and stormwater control measures are implemented before, during and after construction activities occur.
- e) A statement that engineered soils will be used on site.
- f) A list of all pollutant generating activities on site. The requirement in Section 15.4.e.xiii to identify the locations of all pollutant-generating activities will provide operators with an understanding of how the location of their various pollutant-generating activities will correspond to the areas of disturbance at the site, the potential impacts of where these activities are located on the discharge pollutants, and the ideal locations for stormwater control measures to reduce or eliminate such discharges. This information will be used to comply with the pollution prevention requirements in Section 13.3.
- g) A list of design specifications that may be found in the manufacturer specifications and/or in applicable erosion and sediment control manuals or ordinances. Any departures from such specifications must reflect appropriate engineering practice and must be documented in the ESCP.

- h) Compliance with the Natural Buffer Zone requirements of Section 13.2.4, or the equivalent compliance alternative. The narrative description must include the justification for not maintaining a vegetated natural buffer, the BMPs to be implemented to achieve the equivalent sediment and erosion control of a natural 50-foot buffer zone. For waterbodies requiring or with an approved TMDL for turbidity or sedimentation, the narrative description must include the 50-foot vegetated zone and additional 25 feet per each 5 degrees of slope, or DEQ approved control measures of an equal effectiveness.
- i) The perimeter controls for a Linear Construction Site must be described. In cases where perimeter controls are infeasible, the ESCP designer must document alternative control measures to effectively prevent erosion and control sediment transport from the project site.
- j) A narrative description of the “Sediment Track-Out” controls must be included in this section of the ESCP.
- k) The designer must document sediment basin design consideration and sizing calculations.
- l) To ensure that cationic treatment chemicals will not lead to an exceedance of water quality standards, the ESCP designer must include a narrative description of the specific controls and implementation procedures employed with an active treatment system.
- m) The Spill Prevention Procedures (Section 13.3.10) are to be listed in the description.
- n) Documentation that required staff are trained with accordance of Section 17.1 is to be included in the ESCP narrative description list (Section 15.4.e.xxvi).
- o) The tentative business hours and days for the project must be stated.

#### **Section 15.4.f Site Map**

The expired permit required an ESCP site map that failed to identify all locations of pollutant generating activities and storage areas, sensitive vegetation and riparian areas and potentially erosive slopes. The permit increased the number of required site map components with the intent of creating a more comprehensive depiction of the construction site, and therefore, more protective of water quality. The following are included in the 1200-CA permit list of site map requirements:

- a) The requirement in Section 15.4.f.iii to map the flow of stormwater on the site will provide important information to assist with planning, designing, and installing the appropriate stormwater control measures necessary to meet the permit’s requirements regarding erosion and sediment controls, pollution prevention, and stabilization. Specifically, it will also assist the operator with complying with the requirements in Section 13.2.5 to “Direct stormwater to vegetated areas.”
- b) Steep slopes must be labeled with percentage grade on ESCP site map.
- c) The ESCP site map must identify existing vegetation and riparian areas to be preserved.
- d) Concrete washout locations shall be shown.
- e) Sanitary facilities locations shall be shown.
- f) Online reference and location of the nearest official rain gauge, or, if used, location of the registrant’s onsite rain gauge shall be shown.
- g) Onsite water disposal locations (e.g., for dewatering) shall be shown.
- h) The requirement to show storm drain inlets in the immediate vicinity of the site only applies to those inlets that are easily identifiable from the site or from a publicly accessible area immediately adjacent to your site.
- i) Locations where polymers, flocculants, or other treatment chemicals will be used and stored.

- j) Receiving water(s) shall be identified and shown.
- k) Authorized non-stormwater discharge point locations shall be shown.
- l) The location of post-construction stormwater facilities that are designed to infiltrate or filter stormwater must be identified. Soil compaction must be avoided in these areas during construction activities. The hydraulic conductivity of the post-construction facility can be severely diminished through soil compaction or if embedded with stormwater runoff during construction activities.
- m) The location of engineered soils (Section 13.2.18) and engineered sediment basins (Section 13.2.17) are permit requirements and must be shown in the ESCP map. The conveyance of stormwater runoff from areas where engineered soils are utilized to sediment basins before discharge from the site must be illustrated in the site map of the ESCP. This provision is intended to ensure a separate conveyance system for high pH engineered soil runoff is implemented without contaminating stormwater conveyed from other areas of the project.
- n) The location of any pollutant generating activities.
- o) The location of any shared<sup>3</sup> stormwater controls.
- p) With the intent of connecting all requirements of the ESCP narrative description section with the Site Map, the locations of perimeter control measures for linear construction sites (Section 13.2.6), sediment track out controls (Section 13.2.7), and stabilization measures (Sections 13.2.20 and 13.2.21) must be shown.

## **Section 15.5 ESCP Certification**

The ESCP must be signed and dated if Section 15.1 is applicable.

## **Section 15.6 ESCP Attachments**

A new condition of the 1200-CA permit requires documents to be kept with the ESCP as attachments. A copy of any correspondence between DEQ and the permit registrant related to permit coverage, a copy of the permit, and the approved Environmental Management Plan must be added as post-submittal attachments to the ESCP. In addition, a list of all personnel responsible for the design, installation, maintenance of stormwater control measures, as well as those responsible for complying with the permit and ESCP requirements, is to be kept with the ESCP (Section 15.4.c.1) A list of all contractors performing construction activities on-site is required to be kept with the ESCP (Section 15.4.c.2). The knowledge of where specific construction activities are being performed and by whom is necessary to determine the source of pollutant discharges from the site. The ESCP attachments allow on-site personnel easier access to all pertinent stormwater documents in a convenient location.

## **Section 15.7 On-Site Availability of the ESCP**

DEQ is aware that companies and government agencies are going paperless to reduce their environmental impact, therefore electronic copies of the ESCP will be allowed in lieu of paper hardcopies. Electronic copies must be easily accessible to all personnel and DEQ inspectors.

<sup>3</sup> "Shared Control" - for the purposes of this permit, a stormwater control, such as a sediment basin or pond, used by two or more operators that is installed and maintained for the purpose of minimizing and controlling pollutant discharges from a construction site with multiple registrants associated with a common plan of development or sale.

## Section 15.8 ESCP Revisions

The expired permit lists two criteria that trigger ESCP revisions: 1) BMP or erosion and sediment control change or 2) modification or change of the certified visual monitoring inspector. The goal of the increased revision list is to have the on-site ESCP reflect current site conditions, project size and the implemented erosion and sediment control measures. Furthermore, new revision requirements follow the stepwise monitoring and documentation approach of the 1200-CA permit. Additionally, the permit clearly states that an ESCP must be prepared before ground disturbing activities commence. The intent of this clause is to ensure that projects have a complete ESCP covering all phases, and that construction activities are not initiated on phases not included in the ESCP submitted to DEQ. As previously addressed in the Multi-Phase Development Section, ESCP revisions are intended for modifying original plans that are no longer appropriate or adequate. A common permit violation observed during inspections performed during the term of the expired permit involved the ESCP revision process, typically revisions are not performed within the prescribed 7-days after a listed change in a site condition has occurred. Permit conditions create a comprehensive guideline that registrants can clearly follow.

- a) If there is an increase in construction activities to adjacent lots, the ESCP must be revised and submitted to include the increased area before discharge may potentially occur from the increased area.
- b) The ESCP must be revised to include other activities that may not be currently included. This includes changes made in response to corrective actions triggered under Section 16. As with any plan developed for future activities, alterations occur due to unforeseen circumstances. If the construction activities are modified, the ESCP will need to reflect these changes.
- c) The permit requires areas on the site map to reflect areas where operational control is transferred (and the date of transfer) since initiating permit coverage. This requirement will assist DEQ in assigning responsibility to the correct registrant and ensuring permit coverage is assigned appropriately.
- d) Where DEQ determines it is necessary to install and/or implement additional controls at the site in order to meet the requirements of this permit, the following must be included in the ESCP:
  - i. A copy of any correspondence describing such measures and requirements; and
  - ii. A description of the controls that will be used to meet such requirements.
- e) Any change of contractors that will engage in construction activities on site, and the areas of the site where the contractor(s) will engage in construction activities must be revised in the ESCP. DEQ is aware that contractors may have permit and ESCP responsibilities and may need to discuss the site conditions with the responsible party.
- f) Any change of any personnel (by name and position) that are responsible for the design, installation and maintenance of stormwater control measures (see Section 15.10) must be revised in the ESCP.
- g) Revisions to the ESCP must reflect applicable federal, state, tribal, or local requirements that affect the stormwater controls implemented at the site. The regulations of other governmental agencies may warrant alterations be made that effect the ESCP.
- h) Any revisions to DEQ approved EMPs for Active Chemical Treatment Systems must be submitted to DEQ for review and approval before being utilized on site. The ESCP must be revised if a change in chemical treatment systems or chemically enhanced stormwater control is made, including use of a different treatment chemical, different dosage rate, or different area of treatment application as applicable. Alterations to submitted chemical treatment system plans may result in changes to the BMPs and control measures design in the ESCP. Revisions must be made to the ESCP reflective of the chemical treatment system being used.

## Section 15.9 Submission of ESCP Revision to DEQ

The submission criteria of ESCP revisions to DEQ by registrants are only required when:

- a) Part of a corrective action requirement in Section 16.
- b) An increase or decrease of the project size.
- c) An increase or decrease of the size or location of disturbed areas.
- d) A change to BMPs (e.g., type, design, or location).
- e) A change of the certified visual monitoring inspector.

The intent of this permit condition is to inform DEQ of significant changes to the ESCP and not overwhelm the registrant with necessary administrative duties that may have no bearing on permit compliance. DEQ expects that the registrant will submit required revisions within 30 days of the ESCP revision.

### **Section 15.10 Prior to the Commencement of Construction Activities**

The 1200-CA permit requires that stormwater personnel must be assembled by the registrant at each permitted site prior to the commencement of land disturbing activities. The registrant shall require that the ESCP visual monitoring inspector, implementers, and maintenance staff state their duties and responsibilities. DEQ's intent by adding this provision is to ensure that the professional stormwater staff are identified prior to construction activities, and the individuals to contact when stormwater control BMP or ESCP questions or issues arise on-site are known.

### **Section 15.11 Registrant is Responsible for Ensuring that all Activities on the Site Comply with the Requirements of the Permit**

This permit condition states that the permit registrant is ultimately responsible for compliance with the 1200-CA permit. The requirement that the ESCP be physically available on site has become problematic as some construction, engineering, and development firms are paperless. DEQ revised the permit to allow the ESCP to be stored electronically if the personnel on-site can access it and make it available for inspector review when requested. This permit modification allows those implementing the ESCP, maintenance crews, and visual monitoring inspectors to have easy plan access and not have to carry paper plans into the field, which is convenient during inclement weather days.

## **Section 16 Corrective Actions**

All Corrective Action conditions of the expired permit are located under the same general heading "Corrective Actions". The renewed 1200-CA permit separates the corrective action requirements into 4 subheadings: (1) Corrective Actions, when is a corrective actions required; (2) Corrective Action timelines, a schedule by which registrants must initiate and complete corrective actions; (3) Corrective Action Documentation, what must be included in a Corrective Action Report; and (4), Submit a Corrective Action Report to DEQ, only required in cases where discharges are causing an exceedance of applicable water quality standards, or if sediment or turbidity (as described in Sections 12 or 13.2.11) are visible in discharge from the permitted site within a conveyance system leading to surface waters or surface waters downstream of the discharge point. This condition ensures there is clarity identifying, completing and reporting corrective actions.

### **Section 16.1 Corrective Action Timelines**

Corrective action timelines are established to ensure that steps are being taken to prevent discharge of pollutants to waters of the state and address a continued or possible permit violation. Pollutant and sediment discharge from the project site must be addressed immediately. In addition, failure to fully implement the ESCP or maintain BMPs may result in a prohibited discharge. If DEQ issues corrective actions, they must be completed following the timelines established in this section.

## **Section 16.2 Corrective Action Documentation**

Within 24 hours of any corrective action taken, the registrant must document the list of requirements in this section in a corrective action report. Record keeping components of the Corrective Action Report are expanded beyond those of the expired permit as well. The 1200-CA permit states that the registrant must sign the report, keep the reports on site, and retain all Corrective Actions Reports for a minimum of 3 years.

## **Section 16.3 Submit a Corrective Action Report to DEQ**

Under the expired permit, the registrant is required to submit all corrective actions to DEQ within 10 days. This requirement has not been widely adhered and it is also difficult to track since DEQ does not know when the actions are taken, thus when the “within ten days” is determined. Therefore, DEQ expects that only corrective actions that arise due to discharges causing an exceedance of water quality standards, or visibly turbid discharges be submitted to DEQ, and within 48 hours due to the potential impact to waters of the state. In addition, DEQ conditioned the permit so that all ESCP revisions that result from corrective actions are submitted to DEQ and documented in the permit materials kept on site.

As stated throughout the Permit Evaluation Report, subjective language is removed from the 1200-CA permit. Permit conditions with subjective terms lack the clarity needed for NPDES permit conditions. In an effort to protect water quality, the overarching goal of the 1200-CA permit is that no visible discharge must leave the site. Each condition of the permit is developed with this as its goal. However, DEQ realizes that extreme storm events do occur and that some site conditions make sediment and erosion control difficult. If the registrant observes a turbid discharge occurrence and takes immediate corrective action within the timeline required in Section 16.1, documents the corrective actions taken along with the additional information necessary and submits the corrective action report to DEQ within 48 hours, DEQ will evaluate these factors as part of the determination if an enforcement action for noncompliance is warranted.

## **Schedule B**

# **Minimum Monitoring and Recordkeeping Requirements**

### **Section 17 Visual Monitoring of Site and Reporting Requirements**

The 1200-CA permit includes well defined visual monitoring requirements that improve ESCP and implemented BMP oversight. This robust visual monitoring approach creates a professional stormwater presence on all project sites and focuses monitoring efforts during times when construction activities have an increased potential for turbid discharge.

DEQ determined that pH sampling of detained stormwater runoff must be performed before discharge from the site on projects with engineered soils.

#### **Section 17.1 Person Responsible for Inspecting the Project Site**

The expired 1200-CA permit requires visual monitoring be conducted by “a person with knowledge and experience in stormwater controls and management practices” on projects of at least 5-acres. The permit condition will require all sites be visually monitored by a certified inspector. EPA and most other states require experienced or qualified inspectors on all projects. All construction sites that do not implement the ESCP and associated appropriate erosion and sediment controls have the potential to create large erosion and sedimentation pollution problems, regardless of the size of the site. Having a certified inspector at all 1200-CA permitted sites has the added benefit of an on-site specialist that others can seek advice from or to report stormwater issues that arise. In addition, having a certified visual monitoring inspector on every site may reduce improper BMP implementation and maintenance issues.

Visual monitoring inspectors certified through the Oregon Department of Transportation’s Erosion and Sediment Control Manager Certification may only perform visual monitoring inspections on ODOT projects.

#### **Section 17.2 Frequency of Inspections**

The inspection frequency for visual monitoring is presented in a table format in the expired permit with minimal narrative. The renewed 1200-CA permit provides a clearer narrative description of visual monitoring frequency and requirements. The permit includes:

- a) Visual monitoring of the project site must occur on the initial day that land disturbing activities commence to ensure that all stormwater control measures are in place and installed correctly. Initial monitoring of the project site is a new 1200-CA permit requirement.
- b) The amount of rainfall necessary to create runoff is site-specific and dependent on numerous factors (i.e., soil type, degree of compaction, vegetation coverage, percent slope, percentage of impervious surface). The expired permit requires visually monitoring “within 24 hours after any storm event of greater than 0.5 inches of rain per 24-hour period”. Changes were made to the 1200-CA permit requirement: “within 24 hours of any storm event that results in discharge from the site”. The change clearly stipulates that the inspector must visually monitor the site within 24 hours of a storm event that results in discharge from the site on a daily basis during stormy weather.

Storm events that result in discharge from the site impact the implemented BMPs on site. In order to be more protective of water quality, visual monitoring must be performed when the site is most vulnerable and likely to have sediment transport off-site or turbid discharge occurrences. Therefore, the narrative criteria of a discharge event as a threshold of when visual monitoring must occur is the more effective than regularly scheduled inspections. Conversely, certain locations in Oregon have the ability to infiltrate all precipitation from a large magnitude storm event. A numeric criteria threshold may require visual

monitoring inspections to be performed on projects where there is no stormwater accumulation; and as such, no discharge from the project site occurs.

DEQ's inspectors typically use 0.10" as the threshold of discharge generating storm events and will request documented proof that the site did not discharge on days where the precipitation amount exceeded 0.1". A condition of the permit requires that the visual monitoring inspector document that no discharge has left the site after a storm event of at least 0.1". The permit condition requires that Inspectors account for weather conditions in their inspection reports, and have proof (e.g., dated picture of all points of discharge) that runoff generated on the site did not amount to discharge from the site.

### **Section 17.3 Reductions in Visual Monitoring Frequency**

The 1200-CA permit allows the following scenarios a reduction of the required visual monitoring inspections in Section 17.2:

- a) Prior to a project site becoming inactive or in anticipation of inaccessibility, the 1200-CA permit requires that visual monitoring be performed once, but no less than 14 days, before inactivity or inaccessibility occurs. The 14-day requirement is new to the 1200-CA permit, with the goal of ensuring all stormwater controls are in place and functioning before reducing the monitoring frequency. In addition, the permit monitoring schedule requires that the project site be monitored twice during the first month of inactivity before being reduced to once a month. The intent of this addition is to verify that the BMPs are installed and maintained correctly before the reducing the monitoring frequency.
- b) Visual monitoring frequencies during frozen conditions are modified in the 1200-CA permit. If construction activities occur during frozen conditions, the requirement remains the same at once a month; however, if construction activities are suspended during frozen conditions, visual monitoring is no longer required until activities resume.
- c) The visual monitoring schedule of linear construction sites is addressed in the permit. DEQ determined that the unique nature of linear construction sites allows for a reduced inspection frequency once the site has met stabilization criteria and a month of monitoring to ensure that stormwater BMPs are installed and the ESCP is operating as designed.
- d) Procedural conditions are included in the visual monitoring section of the permit that create a process that requires the documentation of initial inactivity in areas of the project site. The goal is to have visual monitoring inspectors document the initial day of land disturbing activities have permanently ceased or will be temporarily inactive for 14 or more calendar days. The 1200-CA permit requirement decreases the inactive period length from 30 to 14 days that triggers additional BMP control measures be implemented. The 14-day trigger will ensure that sites that are inactive do not cause erosion and sediment issues. Documentation of site inactivity will start the clock on the stabilization requirements of Section 13.2.20 or 13.2.21. Under the expired permit it was difficult to determine when the initiation and cessation of construction activities in various areas of permitted sites occurs. Creating a process that requires visual monitoring to check for recently inactive areas and to document the initial inactive date will inform registrants and inspectors of the date by which stabilization measures must be initiated and completed.

### **Section 17.4 Requirements for Visual Monitoring**

This permit condition requires Inspectors to document that no discharge has left the project site within 24 hours after a storm event occurs. Date-stamped photos of all discharge locations from the site must be taken during visual monitoring.

### **Section 17.5 Visual Monitoring Inspection Report**

Expired permit requirements do not set a time limit for completing the inspection report after visual monitoring has occurred. The renewed permit requirement is that the inspection report be completed within



48 hours of visual monitoring of the site. Completing the inspection report within 48 hours ensures that current information is documented while still fresh in the inspector's notes and thoughts and that the information is available when inspections occur. In conjunction with the ESCP, electronic copies of inspection report are allowed: "The inspection report can be stored electronically as long as the personnel on-site can access it and make it available for DEQ inspector review." Electronic forms will have a verifiable creation date and time stamp that will document if completed with 48-hour requirement after visual monitoring is completed.

- a) Date-stamped photo documentation of all discharge points must be attached to the visual monitoring report as proof that no discharge occurred within 24 hours after a storm event.
- b) With the intent of identifying and implementing erosion and sediment controls on areas of the site that are temporarily or permanently inactive within the required 14-day period, visual monitoring reports must document any such portions of the project site.
- c) The visual monitoring report condition states that any pH sampling performed on sites with engineered soils be documented. The pH sampling results are not required to be submitted to DEQ; however, they must be available as part of the visual monitoring report.
- d) The 1200-CA permit requires the visual monitoring inspector to sign each visual monitoring report they produce. This permit requirement explicitly states the inspector's professional responsibilities and ensures that the individual who conducted the visual monitoring is identified in association with the visual monitoring report.
- e) The visual monitoring reports must be kept for a minimum of 3 years after project completion, which is an increase from the expired 1-year requirement.

## **Section 17.6 Monitoring Requirements**

The 1200-CA permit requires monitoring of pH Standard Units (SU) when engineered soils are used on a permit covered project site.

### **Section 17.6.1 Monitoring pH of Stormwater Captured in Sediment Basins/Impoundments when Engineered Soils are used.**

The rationale and justification for requiring sediment basins on sites with engineered soils is stated earlier in this Permit Evaluation Report (see Control Measures). This section of the permit outlines the pH sampling protocol. The goal of the sampling protocol is to analyze the runoff for pH before it is discharged from the site and sample any discharge containing sediment basin runoff. Confinement of potentially high pH stormwater runoff is necessary so it can be monitored and treated appropriately. The pH neutralized runoff can then be discharged from the basin to a conveyance system on site and must be sampled again upon discharge from the site. Monitoring of stormwater runoff and discharge must be done as a "batch" sample, not continuous flow.

The registrant is required to sample pH from the date of the initial use of cementitious compounds until the area of engineered soils is fully stabilized. Submission of sampling data, maintenance records, or corrective actions in the case of exceedances is not required, however it must be recorded in the inspection report. Inspection report requirements for these scenarios are included in the 1200-CA permit. The Clean Water Act Section 308(a)(3)(A)<sup>4</sup> grants DEQ the regulatory ability to establish pH sampling guidelines on project sites where engineered soils are employed.

<sup>4</sup> The Administrator shall require the owner or operator of any point source to (I) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require.

## **Schedule D**

### **Special Conditions**

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

The added definitions provide clarity to the 1200-CA Construction Stormwater Permit.

- a) The term Agricultural Land is changed to Farm Use as defined in ORS 308A.056.
- b) No defined words or terms are removed from expired permit definition list. The following are added to the definition list concomitantly with new or modified permit conditions in the 1200-CA permit: Active Chemical Treatment System, Active Treatment System, Backwash Water, Clean Water Act, Common Plan of Development or Sale, CO<sub>2</sub> Sparging, Contamination, Construction Activities, Construction Support Activity, Conveyance System, DEQ, Detention, Discharge Point, Earth Disturbance, Encroach(ing), Engineered Soils, Erosion and Sediment Control BMPs, Farm Use Land, Hazardous Substances, Linear Construction Site, Local Government, National Pollutant Discharge Elimination System, Native Topsoil, Natural Buffer Zone, Natural Vegetation, Non-Stormwater Pollution Controls, Owner, Permit Registrant, Person, pH Neutralization, Pollutant, Pollution or Water Pollution, Project Completion, Runoff Controls, Sediment, Sediment Basin/Impoundment, Responsible Person, Sequence, Shared Control, Site, Steep Slopes, Storm Event, Stormwater Conveyance, Stumping, Surface runoff, Surface Water, Thawing Conditions, Total Maximum Daily Load, Toxic Substances, Treatment Chemicals, Underground Injection Control, Visibly Turbid Discharge and Water or Waters of the State.
- c) Active Chemical Treatment System and Active Treatment System are added to the permit for clarity. The qualifier “active” means that pumps or other mechanical means are utilized to convey stormwater, as opposed to “passive” means (i.e., gravity fed or conveyed).
- d) The term Steep Slope is found in the expired permit, however DEQ determined that adding it to the definition list is warranted.

#### **Schedule F – NPDES General Conditions**

The general conditions that are applicable to all NPDES permits are included in this section. They address operation and maintenance, monitoring and record-keeping, and reporting requirements. DEQ recognizes that some of these conditions do not readily apply to construction activity stormwater discharges. However, the stormwater permits are NPDES permits, and these conditions are required for all such permits. Where a conflict exists, the general conditions included in this section are superseded by the conditions in Schedules A and D.

#### **Appendix A-Environmental Management Plan Review Applications for Contaminated Media Management and Active Chemical Treatment Systems**

Appendix A provides Environmental Management Plan review guidance and application forms for Contaminated Media Management and Construction Dewatering utilizing Active Chemical Treatment Systems.

#### **Appendix B-Natural Buffer Zone Requirements**

The purpose of this appendix is to assist registrants in complying with the requirements in Section 13.2.4 of the permit regarding the establishment of natural buffer zones and/or equivalent sediment controls.

## **Alternate formats**

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us).