Permit Evaluation Report for National Pollutant Discharge Elimination System
1200-C Construction Stormwater General Permit

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Final Action

Issuance of National Pollutant Discharge Elimination System (NPDES) 1200-C Construction Stormwater General Permit for construction stormwater discharges to surface water and conveyance systems leading to waters of the state.

Permit Category

Issuance of the1200-C Construction General 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. In addition to the posting of the 1200-C draft permit for public comments, DEQ is holding a Public Hearing on October 28, 2020 to allow interested parties submit oral or written comments.

Activities Covered Under the Permit

The following activities require coverage under this General Permit if they 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 or materials or equipment staging and stockpiling that 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
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 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.

Source Location

This 1200-C Construction Stormwater General Permit covers all areas within the state of Oregon except tribal trust and reservation lands.

Coverage

The effective date of the current permit expires December 14, 2020. This permit renewal is a replacement

of the previous 1200-C construction stormwater general permit issued on December 15, 2015. This permit is issued in accordance with Oregon Administrative Rule 340-045-0040. The permit covers construction stormwater discharges that have a potential to surface waters, or conveyance systems that eventually discharge to waters of the state.

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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 Oregon Department of Environmental Quality is proposing changes to the NPDES 1200-C General Permit for construction stormwater discharges upon reissuance. The current permit became effective on December 15, 2015 and expires December 14, 2020. The current version of the 1200-C permit covers the discharge of stormwater runoff from construction activities including clearing, grading, excavation, grubbing, 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, and has the potential to discharge to surface waters or conveyance system leading to waters of the state. The construction activities covered by the 1200-C permit include those identified in 40 Code of Federal Regulations (CFR) §122.26.

This Permit Evaluation Report (PER) will briefly describe the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. After the public comment period closes as required by OAR 340-045-0027(1)(c), comments will be summarized and DEQ will respond to the comments received, and will specify any changes to the permit provisions and the reason for the changes will be included in the response to comments. DEQ will make this response to comments available to the public on request per OAR 340-045-0035(4)(i)(8).

Currently, there are approximately 1,200 construction projects throughout Oregon registered under the 1200-C permit. In 2018, 2019, and 2020; 385, 394, and 281 (as of September 15th) new construction projects registered under the 1200-C permit, respectively.

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 in Oregon.

In the majority of cases, the proposed general 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 and beneficial uses 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 sixth iteration of the 1200-C General Permit issued by DEQ. Previous issue dates were in 1996, 2000, 2005, 2010, and 2015. In accordance with state and federal law,

NPDES permits will be effective for a fixed term not to exceed five years. This draft permit is tentatively scheduled to become effective on December 14, 2020 and expire on December 13, 2025.

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 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 also provided clarification regarding several other requirements of the rule (79 Fed. Reg. 12661 and 80 Fed. Reg. 25235). DEQ must incorporate these requirements into this permit. Therefore, the 2020 1200-C permit conditions reflect the 2014 C&D Rule amendments and maintains existing changes that were made to the 2015 permit to incorporate the other portions of C&D Rule requirements not affected by the 2014 amendments.

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-C draft permit does not establish numeric effluent limitations and is in-line with the EPA's non-numeric requirements based on narrative criteria. The goal of the 1200-C permit is to prevent the discharge of sediment and other pollutants through the use of effective planning and erosion control measures, and control discharges that do occur through the use of 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 remain 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

This 1200-C construction stormwater general 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. This general permit requires registrants to design, implement, and maintain an Erosion and Sediment Control Plan (ESCP) utilizing Best Management Practices as the primary mechanism to reduce pollutants in discharges resulting from construction activities.[1]

This draft permit contains clear and specific provisions to prescribe the design, implementation, and maintenance of Best Management Practices (BMPs). 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 this draft permit are, in all cases, at least as stringent as those established in the previous 1200-C permits. This draft permit carries the reporting requirement forward from the 2015 permit 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 proposed permit to determine if the proposed discharges to surface waters will protect existing water quality and to ensure protection of existing and designated uses. The stormwater controls required in the proposed 1200-C general permit are expected to result in discharges that will comply with Oregon's water quality standards, and protect designated and existing uses. The Erosion and Sediment Control Plan (ESCP) and performance requirements in the 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. Because no requirements in the proposed 1200-C permit are proposed 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, increased BMPs are required (Section 2.2.4.c). DEQ may notify permit applicants 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 proposed permit. The number of permit applications for new construction activity each year is generally balanced by the cessation of construction activity at sites that had permit coverage in previous years. Although construction activities are inherently variable, DEQ has no information that the amount of construction activity covered under the proposed permit will increase significantly above the highest levels experienced under the previous permits.

[1] See 40 CFR § 122.44(k).

DEQ determined that existing water quality will not be degraded by the issuance of this permit. The permit does not set numeric discharge limits as Federal Law[2] 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 draft 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 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, 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.

[2] 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 contains the water quality limited waterbodies with a TMDL and those approved for a TMDL[3] 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 468B110. 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-C Permit

Most of the conditions in the current 1200-C permit are retained in the proposed draft permit. However, the draft permit has been substantially reorganized and reworded to improve clarity. DEQ's goal is to have a permit that clearly meets all of 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 and Agents during the current permit term have been addressed to increase the overall effectiveness of this draft permit. In addition to a section by section summary, the following significant changes were made in the proposed draft permit:

- **Application Submission:** DEQ is in the process of modernizing and upgrading the way it accepts, shares and processes information with a new Environmental Data Management System called "Your DEQ Online." Changes have been made to the permit process that will reduce paper use and streamline DEQ's review and recordkeeping processes.
- **Small Lot Permit:** The Small Lot Permit is required for a construction site less than one acre, if it is part of a "common plan of development or sale" disturbing one or more acres. DEQ's Small Lot Permit requirements have been incorporated into the proposed draft permit. The current small lot permit has a unique and separate application process and fee structure which inadvertently created an inconvenient permitting process for lots less than an acre in size (typically as part of a common plan of development). All projects that require 1200-C permit coverage have the same application and submittal requirements (except for the application fee, and no annual fee for common plan of development projects that are less than one acre). The intent is to create a consistent permit process that simplifies obtaining and maintaining permit coverage for the regulated community.
[3] Link to 2018/2020 Link for TMDLs.
- **Environmental Management Plan (EMP):** An additional plan submittal and fee are required to cover projects with contaminated soils, dewatering plans, and active treatment systems (including pH lowering of discharge from amended soils). The fee for Environmental Plan Review is $767.00 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 proposed permit addition is to address potential submission requirements before 1200-C permit coverage is issued in order to prevent pollutant discharges and to ensure the information is considered when permit coverage decisions are made. Additionally, by providing the information with the permit applications, the permit registrant may avoid work delays while plans submitted after the permit is issued are reviewed for approval. Appendix A includes guidance, instruction and EMP review applications. Application materials and information will be available for the situations when this requirement applies.
- **OAR 340-041-0036 added to General Effluent Limitations to meet Applicable In-Stream Water Quality Standards and Water Quality Requirements for TMDL and 303(d) Listed Waterbodies:** The current permit does not explicitly state the water quality standard requirement for turbidity. DEQ is proposing to include the 10% turbidity standard (OAR 340-041-0036) to the draft permit for clarity. In addition, the no more than 10% turbidity in discharge above background standard defines the permit discharge violation limit. While monitoring is not required in the proposed permit, registrants have the flexibility to monitor if determined appropriate.
- **General Stormwater Control Design, Implementation, Installation, and Maintenance Requirements:** The design, implementation, installation and maintenance requirements of Best Management Practices are scattered throughout current permit, as the current permit lists Best Management Practices requirements as conditions found in the Erosion and Sediment Control Plan Section. The proposed draft permit consolidates the narrative criteria for Best Management Practices 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 proposed permit

includes the narrative criteria of each erosion and sediment control in one section only, thereby eliminating the redundancy of the current permit. This change allows the permit applicant to choose Best Management Practices that match the control narrative and incorporate Best Management Practices that meet that narrative into the Erosion and Sediment Control Plan. The proposed draft language eliminates prescriptive lists of Best Management Practices that may not be site-appropriate.

- **Visual Monitoring Requirements:** The current permit requires projects 5-acres or greater to have visual monitoring performed by a certified individual. The proposed permit requires all projects that are an acre or more in size to be visually monitoring by a certified inspector. The intent of this proposed change is to have the majority of construction sites perform visual inspections to ensure that the ESCPs are being implemented and are effective as designed. DEQ anticipates this will increase the effectiveness of the Best Management Practices implemented at sites.
- **Use of Engineered Soils:** The practice of cementitious stabilization of soil 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. The intent of this proposed change is to establish clear requirements for the application of cementitious compounds, and the containment and discharge of potentially high pH stormwater runoff that comes in contact with engineered soils to ensure water quality is protected.
- **Clarity Regarding Permit Requirements Associated with ESCP, Visual Monitoring Inspections, and Visual Monitoring Reports:** Current permit and proposed draft ESCP requirements have corresponding conditions added to the Requirements for Visual Monitoring (Section 6.4) and Visual Monitoring Inspection Report (Section 6.5). The goal of linking concomitant provisions is to ensure compliance, visual monitoring inspection, and documentation of the ESCP requirements, thereby creating a step-wise approach from a control requirement to documentation of its implementation.
- **Replaced "minimize" with "prevent" throughout the proposed permit.** Since the goal of the 1200-C permit is to prevent erosion and sedimentation, and the discharge of pollutants from construction sites, DEQ revised the proposed permit accordingly. Furthermore, DEQ replaced subjective terms (e.g. as soon as possible, as soon as practical) throughout the current permit in order to improve clarity and better define the objective of draft permit conditions.

More information on these proposed changes to the permit is below. DEQ made these changes based on input from stakeholders, current permit registrants and evaluation of the current permit by DEQ and its Agents. The proposed revisions reflect improvements or enhancements that will result in 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. With the exception of 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-C permit describes the types of discharges eligible for permit coverage. The following have been added to the proposed drat permit:

- **Construction Activities are listed in Definitions:** The list of construction activities has been removed from the Sources Covered by this Permit section of the draft permit. Construction Activities are listed in the Definitions section of the draft permit. The term Construction Activities is used throughout the draft permit, ad have one central location where construction activities is defined reduces the draft permit length. In addition, having one clear definition removes potential uncertainty.
- **Stumping has been 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 project to obtain a 1200-C permit coverage dependent on future land use.
- **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 obtain permit coverage (Cover page/Sources Covered by Permit/d). This qualification removes permitting barriers (e.g. obtaining a LUCS, inability to meet permit termination criteria) that prevent an appropriate response to emergency-related projects (e.g., wildfires, mud slides, earthquake, extreme flooding conditions, disruption in essential public services),
- **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-C coverage:** This addition to the draft permit language prevents phasing of projects to circumvent 1200-C permit coverage. If the final project is an acre or greater, than this clause explicitly states that phasing a project to avoid a 1200-C is not allowed.

10.2 Limitations of Coverage

The proposed draft permit expands the list of other government agencies and their roles in construction project regulations.

- The draft 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 DEQ 401 water quality certification requirements before applying for 1200-C NPDES permit coverage to prevent unintended non-compliance situations with other regulatory programs. 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.

- **401 Water Quality Certification:** Identifies a linear permit application process 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 projects do not have revised plans late in the stormwater permitting process.

11. Draft Permit Proposed Changes

The following itemized draft permit proposed changes are numbered and organized to match the corresponding 1200-C draft permit.

1. Schedule A – Controls and Limitations

The eligibility conditions and application requirements to obtain permit coverage under the 1200-C general permit are stated in this section of the draft permit. In addition, the authorized stormwater, authorized non-stormwater, and prohibited discharges are explicitly stated. The following changes have been made to the Control and Limitations Section of the current 1200-C permit:

- **Party that must obtain coverage under this general permit:** The expiring permit requires the "legally authorized representative (LAR)" to be the signatory on the permit application, which is still a valid requirement of the draft permit. The draft permit introduces the term "**Responsible Person**" as the individual associated with a construction project that is obligated to seek coverage under this general permit. A Responsible Person meets either of the following two criteria: (1) has operational control over construction plans and specifications, including the ability to modify those plans and specifications (typically the owner of the site); and (2) has day-to-day operational control of those activities at a project necessary to ensure compliance with the permit conditions (typically the general contractor). Only a responsible person is eligible to obtain coverage under the permit. To avoid confusion between the terms LAR and Responsible Person, a person is defined as a legal entity (e.g. Corporation, LLC.), therefore a company can seek coverage under this general permit.
- **The application must include:** The Erosion and Sediment Control Plan (ESCP) must be submitted for the area that necessitates permit coverage**.** The language **"developed for the area that needs permit coverage"** is added to the draft permit. The language clarifies that the submitted ESCP site map must match the permitted area. Furthermore, a revision to the ESCP is only allowed for changes to the original ESCP area that are no longer appropriate or adequate. ESCP revisions for construction activities in adjacent lots purchased or obtained after permit coverage are obtained will be accepted.
- **Multi-Phase Developments (e.g. residential subdivisions):** Only phases detailed in the ESCP submitted at time of application can be revised. The draft permit language ties land use approval to required permit coverage. The phases to be developed in the ESCP should match the land area that has land use approval. The addition of future phases is not considered a revision of the ESCP. An ESCP revision cannot include additional phases beyond the scope of the information in the application and associated ESCP.
- **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. The intent is to ensure all projects of 5-acres or more undergo the mandatory public review period.
- **Changes to Project Information:** The registrant must notify DEQ of any changes to the contact information of the permit registrant and the on-site contact person. Notifying DEQ of these changes will be done electronically when the on-line system is available. Proposed draft language also requires that the registrant provide a Land Use Compatibility Statement (LUCS) reflective of the proposed project site if it differs from the LUCS submitted with the application.

- **Transfer of Permit Registration:** Language has been added requiring the registrant to resolve all outstanding compliance and enforcement issues, and pay all outstanding permit fees before the transfer will be approved by DEQ.
- **Procedures for Denial or Revocation of Coverage:** Revocation was added to the draft permit language to clearly match the procedures of OAR 340-045-0033(10).
- **Electronic System Use Requirement:** DEQ will require registrants to use "Your DEQ On-Line" when available.

1.1 Authorized Discharges

This draft 1200-C General Permit conditionally authorizes construction stormwater discharges, and certain types of non-stormwater discharges, provided the registrants comply with the terms and conditions of the Permit.

1.2 Authorized Non-Stormwater Discharges

Certain types of authorized discharges unrelated to precipitation events (i.e., non-stormwater discharges), listed in permit Section 1.4 of the proposed draft 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. The following changes have been made to authorized non-stormwater discharge conditions in the draft permit:

- The qualifier "**uncontaminated**" was added to the list of authorized non-stormwater discharges and means that the discharge does not cause or contribute to an exceedance of applicable water quality standards. Similarly, "non-turbid" means the discharge does not cause or contribute to an exceedance of turbidity-related water quality standards.
- **Combined Discharges:** This proposed change 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 BMPs, the less potential for BMP failure and need for maintenance over the lifetime of the project.

1.3 Prohibited Discharges

DEQ added the following to the list of prohibited discharges in the draft permit:

- Wheel and/or tire wash wastewater typically contains high turbidity and pollutant load (e.g. metals from brake pads and radial tires). The draft permit language requires that wheel and/or tire wash wastewater be treated onsite or discharged to the local sewer system with appropriate approval. The intent is to prevent the discharge of washwater contaminated with pollutants to surface water or conveyance systems leading to waters of the state. In addition, the following prohibitions were added to the draft permit:
    a. Any visually turbid discharge to surface waters or conveyance system leading to waters of the state;
    b. Causing or contributing to an exceedance above any applicable water quality standard; or
    c. Discharge of sediment (see Section 2.2.11) to surface waters or conveyance systems leading to waters of the state.

The language of the draft permit clearly establishes the goals of the 1200-C permit and 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. The proposed language does not conflict with

or prevent enforcement of the water quality standard that allows of no more than a 10% turbidity cumulative turbidity increase as measured form a control point upstream in a receiving water body.

2. 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 NSPS, 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:

- Part 2.1: General Stormwater Control Design, Installation, and Maintenance Requirements
    - 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;
- Part 2.2: Erosion Prevention and Sediment Control and Treatment Requirements
    - 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;
- Part 2.3: Pollution Prevention Requirements
    - Implements the C&D rule requirements in 40 CFR 450.21(d) and (e) for pollution prevention measures and prohibited discharges; and
- Part 2.4: Construction Dewatering Requirements
    - 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 layout of the current permit is restructured in the control measure section of the draft permit. The control measure requirements are listed to mirror the linear construction process. 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 proposed draft permit control measure conditions include:

- 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 current permit allows BMPs with no qualifying specifications. The language proposed in this draft permit, "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.

- The requirement to install erosion prevention measures on cleared land that will not be worked for 14 days is proposed in the draft permit. Although sequencing (see below) is required by the draft permit, this requirement protects cleared, unworked areas of a site from potential erosion.
- The condition "Avoid or minimize excavation and bare ground activities during wet weather" of the current permit has been removed from the prosed draft permit language. DEQ realizes that is not possible in most projects due to weather patterns. As such, the focus of the draft permit is to ensure the appropriate best management practices are used in all weather conditions.
- The narrative description of erosion and sediment control treatment requirements are expanded in the draft permit. DEQ has removed the prescriptive BMP list that is in the current permit to ensure applicants can choose BMP's appropriate for the site and also use new technologies and BMPs available. The Technology Based Effluent Limitations/Control Measures section of the proposed draft permit consists of all components of the EPA's C & D Rule.
- **Sequence:** The term "Sequence" is introduced in the proposed 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 2.2.20. The current permit defines land disturbing activities in this context as "Phasing". "Sequence" is used in the draft 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 language of the draft 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.
- 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.
- **Natural Buffer Zone Requirements:** Appendix B has been added to this proposed draft as a guidance document that provides clear and thorough buffer guidance to ESCP developers. For example, Appendix B explains how to measure buffer zone width, use the RUSLE2 application tool, 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 BMPs in the current permit has been deleted. DEQ did not provide a prescriptive list that may limit the ESCP developers' options in the draft permit. Moreover, removing any prescriptive requirements provides ESCP developers flexibility on sites where difficult and unique situations occur. The current permit relied on the implementation of two BMPs when encroaching within 50 feet of a buffer zone. This "doubling up" of BMPs approach was not site specific and did not dictate that the most effective BMPs be implemented. This draft permit 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' 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. EPA has vetted and reviewed the guidance found in Appendix B and includes it as a component of the federal Construction stormwater General Permit.
- **Natural Buffer Zone Requirements on Projects with a 401 WQC:** Typically, due to the Federal 404 permit and DEQ's 401 WQC application review time, the 401 WQC is obtained by developers

after the required local permits. This creates inconsistencies in buffer width requirements between state and local jurisdictions. The 401 WQC requires a 50 foot minimum buffer unless otherwise conditioned in the 401 Certification. The conditions of the 401 WQC may force the developer to revise locally approved plans and obtain new permits. The intent of the draft permit language is to prevent plan revision and permit reissuance, and therefore alleviate potential frustration directed toward DEQ from the building community. In addition, the draft permit language 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 11 of the current permit lists "must maintain established vegetated buffers sized at 50 feet (horizontally) plus an additional 25 feet (horizontally) per 5 degrees of slope" as a BMP option for 303(d) listed and TMDL established waters for turbidity or sedimentation. Language in the draft permit 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 has been reduced to the most effective BMPs or proposed control measures of equal effectiveness for DEQ or Agent approval. The intent of the proposed language is to eliminate the potential of additional turbidity or sediment loading from a construction site during and after construction activities. The proposed BMP condition requires that the natural vegetated buffer be maintained, which is the most effective BMP at sediment and pollutant filtration and removal.
- **Management of Stockpiles:** The current permit requires stockpiles be stabilized or covered at the end of each workday as needed based on weather conditions, or other BMPs must be implemented to prevent discharges to surface waters or conveyance systems leading to surface waters. The proposed draft permit expands the condition to include weekends, holidays or extended breaks to ensure the required control measures are in place before the site is vacated for any period of time.
- **Steep Slopes:** The federal C & D rule requirement is to minimize Steep Slopes, as is the language found in the current 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 has been replaced throughout the body of the draft permit with clear and definable terms and goal oriented language. The goal of the proposed draft language is to prevent erosion, which is effectively done by prohibiting unnecessary steep slope disturbances.
- **Sedimentation Basin Installation:** Designing the storage capacity of sediment basins is consistent with the Federal CGP 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.
- **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 current permit. The practice of cementitious stabilization of soil on project sites in Oregon has increased during the period of the current 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 addition 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 as conditioned in the current permit, however visual monitoring is inappropriate and inadequate in occurrences of increased pH. The draft permit requires that high pH runoff be adjusted or neutralized until it is in the range of pH standard units (su) using an appropriate treatment BMP such as carbon dioxide (CO_2) sparging or dry ice.

- **Temporary Stabilization:** Stabilization requirements in the current permit are ambiguous and unclear. Current permit language 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 2.2.20 and 2.2.21 require additional BMPs to stabilize project sites or portions of sites where construction activities have ceased for 14 days. However the stabilization language of Section 8.c.ii.3 states that temporary and/or final stabilization measures must be implemented whenever construction activities have permanently ceased on a portion of the project site. The intent of the proposed draft language is to clarify stabilization requirements and create a tracking process through inspection and reporting as a method of documenting the length of time a site or portion of a site has been inactive. The proposed permit requires stabilization measures (e.g., seeding protected by erosion controls until vegetation is established, sodding, mulching, erosion control blankets, hydromulch, 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 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 has been initiated.
- The following permit conditions have been added to the draft permit that require inspectors to monitor inactive portions of site, and document when activities have temporarily or permanently ceased:
    - **Section 6.4 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.
    - **Section 6.5 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.
- **Final Stabilization:** Final stabilization criteria were moved from the termination section of the current permit to the Final Stabilization section of the draft permit. Criteria that determine final stabilization are now referenced by Section number (2.2.21) in the Termination Section of the draft permit, which reduces redundancy and potential ambiguity. In addition, the draft permit language allows for exceptions to final stabilization requirements in arid and semi-arid areas of the state. The following link displays arid and semi-arid climates found in Oregon: ttps://www.ncdc.noaa.gov/climatenormals/clim60/states/Clim_OR_01.pdf.

2.1. Pollution Prevention Requirements

Pollution Prevention is one of the six components of EPA's C&D Rule, thus included in the draft permit. The general housekeeping requirements in the current permit are minimal and not as comprehensive as the Federal C&D Rule dictate. Proposed draft permit language addresses 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 proposed Pollution Prevention conditions:

- The proposed draft permit conditions made to 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 draft permit language. In addition, some cover technologies, such as tarps, can be reused multiple times on the same site due to their durability and longevity.

2.2. Construction Dewatering Requirements

The Environmental Management Plan is being instituted to address sites which need to lower groundwater and are aware of this before construction commences. In cases where groundwater accumulates due to construction activities such as excavations, trenches, foundations, vaults, tire/wheel wash or other similar areas, an EMP is not required. The proposed permit language addresses how the accumulated water must be treated to prevent the discharge of pollutants.

3. Water Quality-Based Effluent Limitations and Associated Requirements for Stormwater Discharges

The proposed draft language "DEQ expects compliance with the permit conditions is compliance with applicable water quality standards" varies slightly from the statement of the current permit "will result in stormwater discharges being controlled as necessary to meet applicable water quality standards". The language was amended to reduce confusion. The term "as necessary" is subjective, and therefore may be misinterpreted. The stormwater control measures of the 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.

3.1. General Effluent Limitation to Meet Applicable In-Stream Water Quality Standards

Projects that have 1200-C coverage have been held to the current 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 current permit does not explicitly state the water quality standard requirement for turbidity. DEQ is proposing to include the 10% turbidity standard (OAR 340-041-0036) to the draft permit for clarity. In addition, the "no more than 10% turbidity increase in discharge above background" standard defines the permit discharge violation limit. While monitoring is not required in the proposed permit, registrants have the flexibility to monitor if determined appropriate.

4. Erosion and Sediment Control Plan (ESCP)

Numerous changes are proposed to the ESCP Section of the draft permit. The overarching goal is to establish clear guidelines for the design, submittal, implementation, and revision of an ESCP. The draft permit language explicitly states that the ESCP must be implemented from initial soil disturbance to termination, which is not a condition of the current permit. The list of DEQ approved erosion and

sediment control programs that certified visual monitoring inspectors must complete is now located in Schedule B-Minimum Monitoring and Recordkeeping Requirements. Additionally, discussion of local government requirements for erosion and sediment control measures has been removed from the permit language to avoid confusing the conditions of this permit with other jurisdictional regulations and provide permit clarity.

4.1. ESCP for each distinct phase of construction activity

In an effort to clarity ESCP submittal expectations, DEQ has defined four unique construction phases that must be accounted for in the ESCP in the draft permit. Currently, DEQ requests for all phases of construction to be accounted for in ESCPs during the application submission process of the 1200-C, which results in longer application timeframes and unnecessary back and forth. The 4-phases are:

1. Demolition, clearing, grading, excavating, and land development
2. Street and utilities
3. Vertical construction
4. 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. This proposed requirements in the draft permit are clearer and more protective of water quality.

4.2. ESCP Contents

Due to numerous proposed conditions found throughout the draft permit, additions have been made to the Section 4.4-ESCP Contents of the proposed draft permit. The following have been added to the ESCP Contents Section of the proposed draft permit:

- The draft permit proposes 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.
- Personnel responsible for designing, implementing, and maintaining erosion and sediment control measures are required to be documented in the ESCP.
- 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-C approval and issuance. However, once approved, the EMP must be attached to the ESCP kept on site.

4.3. Site Description

The following narrative site descriptions have been added to the draft permit. These additions provide details about pollution generating activities on-site and locations where discharges may impact surface waters.

- The draft 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.
- Any waters to be impacted by state or federal agency regulations (i.e. 401 WQC, DSL, USACE) must be listed.

- Although addressed in the current permit, but were not required to be identified in the ESCP, construction support activity areas, either on or off-site, must be described.
- 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.
- A statement that engineered soils will be used on site.
- A list of all pollutant generating activities on site. The requirement in Section 4.4.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 2.3.
- 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.
- Compliance with the Natural Buffer Zone requirements of Section 2.2.4, 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 or Agent approved control measures of an equal effectiveness.
- 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.
- A narrative description of the "Sediment Track-Out" controls must be included in this section of the ESCP.
- The designer must document sediment basin design consideration and sizing calculations.
- 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.
- The Spill Prevention Procedures (Section 2.3.10) are to be listed in the description.
- Documentation that required staff are trained with accordance of Section 6.1 is added to the ESCP narrative description list in the draft permit (Section 4.4.e.xxvi).
- The tentative business hours and days for the project must be stated.

4.4. Site Map

The current permit required an incomplete 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 draft permit increases the number of required site map components with the intent of creating a more comprehensive depiction of the construction site. The following additions are included in the draft permit list of site map requirements:

- The requirement in Section 4.4.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 2.2.5 to "Direct stormwater to vegetated areas."
- Steep slopes must be labeled with percentage grade on ESCP site map.

- The ESCP site map must identify existing vegetation and riparian areas to be preserved.
- Concrete washout locations shall be shown.
- Sanitary facilities locations shall be shown.
- Location of the nearest official rain gauge, or, if used, location of the registrant's onsite rain gauge shall be shown.
- Onsite water disposal locations (e.g. for dewatering) shall be shown.
- The requirement to show storm drain inlets in the immediate vicinity of the site on site maps only applies to those inlets that are easily identifiable from the site or from a publicly accessible area immediately adjacent to your site.
- Locations where polymers, flocculants, or other treatment chemicals will be used and stored.
- Receiving water(s) shall be identified and shown.
- Authorized non-stormwater discharge point locations shall be shown.
- Post-construction stormwater facilities that are designed to infiltrate or filter stormwater have been added to the draft permit requirements. 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.
- The location of engineered soils (Section 2.2.18) and engineered sediment basins (Section 2.2.17) are added to the draft permit requirements. 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.
- The location of any pollutant generating activities is added to the proposed draft permit.
- The location of any shared[4] stormwater controls.
- With the intent of connecting all current and proposed requirements of the ESCP narrative description section with the Site Map, the locations of perimeter control measures for linear construction sites (section 2.2.6), sediment track out controls (section 2.2.7), and stabilization measures (sections 2.2.20 and 2.2.21) have been added to the proposed draft permit.

4.5. ESCP Attachments

- A new condition of the draft permit requires documents to be kept with the ESCP as attachments. A copy of the permit application, any correspondence between DEQ/Agent 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. The attachments allow on-site personnel easier access to all pertinent stormwater documents in ne convenient location.

4.6. On-Site Availability of the ESCP

DEQ is aware that companies 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 or Agent inspectors.

[4] "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.

4.7. ESCP Revisions

The current permit lists 2 criteria that trigger ESCP revisions: BMP or erosion and sediment control measure change or 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 erosion and sediment control measures. Furthermore, new revision requirements follow the stepwise monitoring and documentation approach of the draft permit. Additionally, the proposed permit language 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 with the 1200-C application. 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 current permit involved the ESCP revision process. DEQ will no longer allow the developer to add phases to an ESCP for a permitted project as revisions were frequently submitted after land disturbing activities commenced in addition phases that were not included in the original ESCP. DEQ has proposed the following additions to create a comprehensive guideline registrants can clearly follow.

- An increase in construction activities to adjacent lots (see Section 1.2.7). The registrant may be required to submit a different LUCS to DEQ or Agent representative of additional lots if it is not included in the LUCS submitted with the application. This revision allowance does not supersede Section 1.2.3 Multi-Phase development ESCP provisions.
- Other activities at the site that are no longer accurately reflected in the ESCP. This includes changes made in response to corrective actions triggered under Section 5. The ESCP does not need to be modified if the estimated dates in Section 4.4.e.viii change during the course of construction. 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.
- The proposed permit requires areas on the site map to reflect areas where operational control has been 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.
- Where DEQ or Agent 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.
- 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 have ESCP responsibilities and may need to discuss the site conditions with the responsible party.
- Any change of any personnel (by name and position) that are responsible for the design, installation and maintenance of stormwater control measures (see Section 4.10) must be revised in the ESCP.
- 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.
- 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.

4.8. Submission of ESCP Revision to DEQ or Agent

The submission criteria of ESCP revisions to DEQ or an Agent in the draft permit are consistent with those of the current permit, with the exception of Active Treatment Systems, which require DEQ approval before operation on-site is allowed.

4.9. Prior to the Commencement of Construction Activities

- The draft 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 preparer, 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.

4.10 The Registrant is Responsible for Ensuring that all Activities on the Site Comply with the Requirements of the Permit.

- The language in this draft permit provision states that the permit registrant is ultimately responsible for compliance with the 1200-C permit.
- On-Site Availability of ESCP-The requirement that the ESCP be physically available on site has become problematic as some construction, engineering, and development firms are paperless. DEQ is proposing permit revisions to allow the ESCP to be stored electronically as long as the personnel on-site can access it and make it available for inspector review when requested. This proposed permit modification allows the ESCP implementer, maintenance crew, and inspectors to have easy plan access and not have to carry paper plans into the field (convenient during rainy days).

5. Corrective Actions

All Corrective Action conditions of the current permit are located under the same general heading "Corrective Actions". The proposed draft permit divides the corrective action requirements into 4 subheadings: (1) Corrective Actions, when are corrective actions required; (2) Corrective Action timelines, a schedule that registrants must initiate and complete corrective actions by; (3) Corrective Action Documentation, what must be included in a Corrective Action Report; and (4), Submit a Corrective Action Report to DEQ or Agent, only required in cases where discharges are causing an exceedance of applicable water quality standards, or if sediment or turbidity (as described in Section 2.2.11) are visible in discharge from the permitted site within a conveyance system leading to surface waters, or surface waters 50 feet or more downstream of the discharge point. This is to ensure there is clarity. Specifically:

- The current permit language, "Surface waters of the state at any location where more than one-half of the width of the receiving surface water is affected" has been deleted from the proposed permit. The deleted text is not an appropriate way to monitor discharges from construction sites. The 1200-C requires only visual monitoring for erosion and or sedimentation, not that pollutant concentrations must be below numeric benchmark criteria. The language has been removed from the Corrective Action section to provide clarity and remove ambiguity.

5.2. Corrective Action Documentation

- Record keeping components of the Corrective Action Report are proposed to be expanded beyond those of the current permit as well. Language in the proposed draft 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.

5.3. Submit a Corrective Action Report to DEQ or Agent

- Currently, the registrant is required to submit all corrective actions to DEQ or the Agent 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" should be counted. Therefore, DEQ proposes that only corrective actions that arise due to discharges causing an exceedance of water quality standards, or visibly turbid discharges be submitted to DEQ or Agent. In addition, DEQ is proposed that all changes are documented in the permit materials kept on site.

Schedule B
Minimum Monitoring and Recordkeeping Requirements

6. Visual Monitoring of Site and Reporting Requirements

The draft permit language 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 increase for turbid discharge.

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

6.1. Person Responsible for Inspecting the Project Site

Currently, the 1200-C permit requires visual monitoring be conducted by certified individual on projects of at least 5-acres. The proposed 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-C 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 CESCL on every site may reduce improper BMP implementation and maintenance issues.

6.2. Frequency of Inspections

The inspection frequency for visual monitoring is presented in a Table format in the current permit with minimal narrative. The proposed draft has eliminated the Frequency Table, and now provides a clearer narrative description of visual monitoring frequency and requirements. The proposed permit includes:

- 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 permit requirement added to the draft permit.
- 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 current permit requires visually monitoring, "Daily when runoff is occurring". The proposed draft has added "within 24 hours of any storm event that results in discharge from the site". The change is to clarify that the Inspector must visually monitor the site within 24 hours of a storm event that results in discharge from the site and not on a daily basis during stormy weather.

DEQ's 1200-C 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". Language has been added to the draft permit requiring that the visual monitoring inspector

document that no discharge has left the site after a storm event of at least 0.1". The proposed change will require 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.

6.3. Reductions in Visual Monitoring Frequency

- Prior to a project site becoming inactive or in anticipation of inaccessibility, the proposed draft 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-C permit language with the goal of ensuring all stormwater controls are in place and functioning before reducing the monitoring frequency. In addition, the draft 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.
- Visual monitoring frequencies during frozen conditions have been modified in the proposed draft permit. If construction activities are occurring 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.
- The visual monitoring schedule of linear construction sites is addressed in the draft 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.
- Procedural conditions are proposed in the visual monitoring section of the draft 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 proposed draft permit requirement decreases the inactive period length from 30 to 14 days that triggers additional BMP control measures be implemented. The14 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 2.2.20 or 2.2.21. Under the current permit, it is 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.

6.4. Requirements for Visual Monitoring

- The proposed language 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.

6.5. Visual Monitoring Inspection Report

- Current permit requirements do not set a time limit for completing the inspection report after visual monitoring has occurred. DEQ is proposing that the inspection report be completed within 48 hours of visual monitoring of the site to ensure the documentation is available. Completing the inspection report within 48 hours ensures that current information is documented while still fresh in the inspector's notes and thoughts, and ensures that the information is available when inspections occur. In conjunction with the ESCP, electronic copies of inspection report are proposed to be allowed in the draft permit, "The inspection report can be stored electronically as long as the personnel on-site can

access it and make it available for DEQ or Agent 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.

- 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.
- 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.
- The proposed visual monitoring report language 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 or the Agent, however they must be available as part of the visual monitoring report.
- The draft permit requires the visual monitoring inspector to sign each visual monitoring report they produce. This draft permit addition 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.

6.6. Monitoring Requirements

6.6.1. Monitoring the 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. This proposed condition allows for the confinement of high pH stormwater runoff so it can be 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.

- 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 has been added to the draft permit. The Clean Water Act Section 308(a)(3)(A)[3] grants DEQ the regulatory ability to establish pH sampling guidelines on project sites where engineered soils are employed.

7. Schedule D-Special Conditions

7.1. Termination of Permit Coverage

Final stabilization criteria were moved from the Terminating 1200-C Section to Section 2.2.21, thus consolidating all criteria in one section for clarity. The additional changes to Terminating 1200-C Coverage conditions are proposed in the draft permit as follows:

7.1.1. Conditions for Terminating 1200-C Coverage

- The proposed permit includes a condition that the registrant must satisfy all enforcement issues before 1200-C coverage can be terminated. If the project has an enforcement action that has not been satisfied, and the violation occurred during 1200-C coverage, DEQ must be assured the issue is resolved before terminating permit coverage. This is important to ensure that corrective actions are completed and water quality is protected.

- A time limit is added to the draft permit to that verifies site stabilization during a DEQ inspection. The registrant has 30 days to submit a Notice of Termination (NOT) after DEQ has verified that the site meets final stabilizations requirements. The proposed language also states there is no need for the registrant to send photos with the NOT if an inspector verifies that the site is stabilized and has inspected the site within the last 30 days.
- The proposed termination language requires area covered under a 1200-C permit must either be stabilized as per 2.2.21, or sold to another responsible person. The new owner must seek coverage under the 1200-C if the purchased area is not stabilized. Permit coverage under a 1200-C permit may be terminated only once DEQ has proof that the covered area is either:

    1. Stabilized as per 2.2.21;
    2. Covered under another 1200-C or appropriate permit; or
    3. A combination of 1 and 2.

- Terminating criteria for Farm Use lands has been removed from the draft permit. DEQ has specifically addressed conditions under its authority throughout the draft permit to avoid requirements that may be under the purview of another governmental agency. The requirements of other agencies were removed from the current permit language to prevent confusion.

7.1.2. Permit-Specific Definitions

The added definitions provide additional clarification to 1200-C Construction Stormwater Permit terms.

- The term Agricultural Land has been changed to Farm Use as defined in ORS 308A.056.
- No defined words or terms have been removed from current permit definition list. The following have been added to the definition list concomitantly with new or modified permit conditions in the draft permit: Backwash Water, Cationic Treatment Chemicals, CO_2 Sparging, Encroach(ing), Engineered Soils, Hazardous Substances, Linear Construction Site, Native Topsoil, pH Neutralization, Primary Control Measure, Responsible Person, Sequence, Shared Control, Steep Slopes, Storm Event, Stumping, and Toxic Substances.
- The terms Common Plan of Development or Sale, Sediment Basin/Impoundment, and Steep Slope were found in the current permit, however DEQ determined adding them 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 municipal 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, Construction Dewatering, and Active Chemical Treatment Systems

Appendix A provides Environmental Management Plan review guidance and application forms for Contaminated Media Management, Construction Dewatering, and 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 2.2.4 of the permit regarding the establishment of natural buffer zones and/or equivalent sediment controls.