DEQ Response to Comments

NPDES 1200-C Construction Stormwater General Discharge Permit

Dec. 15, 2020

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DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.

State of Oregon
Department of
Environmental
Quality

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Overview

The public comment period for the proposed permit was from Sept. 23, 2020 to Oct. 30, 2020.

A virtual public hearing for this proposed permit was held on Oct. 28, 2020 via a Zoom conference call. There were 48 attendees at the public hearing.

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

List of Commenters		
#	**Name**	**Affiliation**
1	Tony Gilbertson	Clean Water Services (CWS)
2	Michael Zenthoefer	Point Environmental
3	Nick Jones	I.E. Engineering Inc.
4	S. Alison Rhea	LCP, LLC
5	Stacey Kim	Environmental Protection Agency (EPA)
6	Jennie Morgan	Rogue Valley Sewer Services (RVSS)
7	Mark Gibson	City of Hillsboro
8	Simone Anter	Columbia Riverkeeper, the Northwest Defense Center, Willamette Riverkeeper, Rogue Riverkeeper, and Tualatin Riverkeeper (RK)
9	Jeremy Russell	CPSWQ
10	John Nagy	Water Environmental Services (WES)
11	Stephanie Anderson	HDR, Inc.
12	Lolly Anderson	Santiam Water Control District (SWCD)
13	Margaret McCauley	Environmental Protection Agency (EPA)
14	Emily Riley	Pahlisch Homes
15	Ellen Miller	Oregon Home Builders Association (OHBA)
16	Danelle Petersen	Port of Portland (POP)
17	Ryan Largura	City of Troutdale
18	Tyler J. Ernst	Oregon Forest & Industries Council

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

NPDES 1200-C Construction Stormwater General Discharge Permit
General 1200-C Permit Comments

Expiration Date

Comment from City of Troutdale:

1. Expiration date-2025 not 2020.

DEQ response:

The permit expiration date has been revised to 2025.

Grandfathering Current Permit Holders

Comment from Oregon Home Builders Association:

2. The draft 1200-C should include language or allowances for current 1200-C permits for sites under construction. As proposed, all current 1200-C permit holders will be required to follow the new permit requirements. Current permit holders should be vested under the rules that were currently in-place at the time of permit issuance. It is unrealistic to expect existing permit holders to retroactively modify their sites under construction to adhere to the new and additional permit requirements. Existing site layouts, staging and construction may prevent permittees from complying with new and additional permit requirements. The added expense of implementation and inspection will be cost prohibitive to many active construction projects.

Comment from City of Hillsboro:

3. Will previous and active 1200C projects that are under construction prior to these changes be held to these new rules when they go into effect or subject to the previous 1200Cpermit requirements until renewal?

DEQ response:

As background, all current permit holders were mailed renewal applications for this permit in June, 2020 or with permit registrations that were issued after June to ensure all permit registrants had the opportunity to renew permit coverage prior to the permit expiration date of December 14, 2020. In addition, upon permit renewal, Oregon's construction stormwater general permit must meet current federal construction stormwater general permit requirements. To ensure all current and future permit registrants have information regarding the new permit and access to technical assistance, DEQ will schedule online

trainings and post permit fact sheet documents online.

DEQ understands that existing permit registrants will need to modify Erosion and Sediment Controls Plans (ESCPs) and determine how the other new permit conditions may be applicable to each site. As such, DEQ has included timelines for implementation for some of the new permit conditions to ensure adequate time for planning and implementation. Those include:

- Certified Erosion and Sediment Control or Storm Water Quality Inspector (Inspector) (Section 6.1)- By May 15, 2021, permit registrants that received permit coverage prior to December 14th 2020 must have visual monitoring of sites under 5 acres conducted by a person certified in a DEQ approved erosion and sediment control program.
- Natural Buffer Zones (Section 2.2.4)-Permit registrants that received permit coverage prior to December 14, 2020, the approved natural buffer zone width and approved erosion and sediment controls are deemed appropriate.
- Sediment Basins (Sections 2.2.17 and 2.2.18)-Permit registrants that received permit coverage prior to December 14, 2020, the approved sediment basin is deemed appropriate.
- Erosion and Sediment Control Plan (See Section 4)- All permit registrants that received permit coverage prior to December 14, 2020 must update the ESCP content and site map to ensure that the requirements of this permit are addressed by February 15, 2021.

Cost Impacts

Comment from Oregon Home Builders Association:

4. It appears that DEQ is not required to evaluate cost or benefits of the updated permit requirements in its process of issuing an order. The cost of compliance should be noted as it greatly influences DEQ's intended outcomes of stormwater permitting.

DEQ Response:

When issuing an NPDES permit as an Order, DEQ is not required to evaluate costs of implementing the permit. DEQ has renewed the construction stormwater general permit in Oregon to ensure it meets the federal construction stormwater general permit requirements, is clear, implementable and protects water quality. The cost analysis for the federal construction stormwater general permit can be found at: https://www.epa.gov/sites/production/files/201905/documents/final_2017_cgpfact_sheet.pdf.

DEQ is aware that the current economic situation is challenging for many businesses throughout Oregon. As such, DEQ reviewed the comments received during the public comment period and modified the permit in response. DEQ anticipates that the major costs associated with the construction stormwater general permit are for the pollution prevention plans for construction activities, the costs of sediment and erosion controls, and the costs of stormwater management measures. The majority of required stormwater controls have been incorporated from the prior permit. The 1200-C permit intentionally avoid prescriptive lists of required stormwater controls in lieu of a narrative description. This narrative description approach is to ensure that permit registrants have flexibility in the development and implementation of the permit conditions associated with the Erosion and Sediment Control Plans for each project site.

Signage

Comment from Environmental Protection Agency (EPA):

5. Helpful to add posted signage requirement for citizen awareness and concerns.
   - Example in CGP: 1.5 REQUIREMENT TO POST A NOTICE OF YOUR PERMIT COVERAGE

   You must post a sign or other notice of your permit coverage at a safe, publicly accessible location in close proximity to the construction site. The notice must be located so that it is visible from the public road that is nearest to the active part of the construction site, and it must use a font large enough to be readily viewed from a public right-of-way. At a minimum, the notice must include:

   a. The NPDES ID (i.e., permit tracking number assigned to your NOI);

   b. A contact name and phone number for obtaining additional construction site information;

   c. The Uniform Resource Locator (URL) for the SWPPP (if available), or the following statement: "If you would like to obtain a copy of the Stormwater Pollution Prevention Plan (SWPPP) for this site, contact the EPA Regional Office at [include the appropriate CGP Regional Office contact information found at https://www.epa.gov/npdes/contact-us-stormwater#regional];" and

   d. The following statement "If you observe indicators of stormwater pollutants in the discharge or in the receiving waterbody, contact the EPA through the following website: https://www.epa.gov/enforcement/report-environmental-violations."

DEQ Response:

DEQ is confident that the construction site runoff control programs in Oregon's MS4 communities and DEQ's pollution complaint system adequately provide the citizens of Oregon an effective way to report water quality concerns observed due to construction activities. As such, DEQ has determined that signage at construction sites with 1200-C permit coverage is not necessary.

Santiam Water Control District

Comment from Santiam Water Control District:

6. SWCD requests that DEQ include the following requirements in the 1200-C permit:
   1) Require applicants seeking to discharge into district owned facilities to first obtain written permission from the district operating the receiving facilities.
      This requirement will afford districts the opportunity to evaluate the pollutants in the proposed stormwater discharges and gauge the impact of increases in stormwater flows. The districts may then enter into agreements with dischargers to address liabilities surrounding water quality and increased stormwater flows.
   2) Require renewal applicants to again obtain written permission from the district prior to permit renewal.
      This will allow the parties (districts and dischargers) to revise stormwater discharge agreements to accommodate and meet evolving regulatory obligations.

DEQ Response:

Thank you for the comment and recommendation. DEQ has determined that the recommended permit condition is not appropriate in this NPDES 1200-C Construction Stormwater General Permit. A complete application for coverage already requires a Land Use Compatibility Statement (LUCS) indicating that the proposed activities are compatible with the local government's acknowledged comprehensive plan. The authorization provided by the 1200-C permit is limited to authorizing the discharges covered under the permit for purposes of the Clean Water Act and state water quality laws. Additionally, the permit is clear that it does not authorize post-construction stormwater discharges that originate from the site after completion of construction activities and the site is stabilized.

Numeric Water Quality-Based Effluent Limits

Comment from Columbia Riverkeeper, the Northwest Defense Center, Willamette Riverkeeper, Rogue Riverkeeper, and Tualatin Riverkeeper:

7. The Permit Should Include Numeric Water Quality-Based Effluent Limits for Turbidity, High pH, and Phosphorous. To ensure that water quality is adequately protected, DEQ should include numeric effluent limits for sites discharging to waters impaired for certain parameters. DEQ may not issue a permit "to a new source or new discharger, if the discharge from its construction or operation will cause or contribute to a violation of water quality standards." 40 CFR 122.4(i). For waters that are already impaired for pollutants of concern in construction stormwater discharges, no assimilative capacity is available for these pollutants. Because of this, it is likely that inadequate controls will cause or contribute to a violation of water quality standards for these parameters in already-impaired waters. To avoid such a violation, DEQ must include appropriate water quality-based effluent limits, including numeric limits. *See* generally 40 CFR 122.44(d). And to ensure these limits are met, the Permit should include robust monitoring requirements for the relevant parameters.

   This is the strategy employed by Washington's Department of Ecology, which has included numeric effluent limits in its Construction Stormwater General Permit (CSWGP). Ecology "has determined that construction sites without adequate controls have the potential to cause or contribute to violations of water quality standards in waterbodies that are 303(d) listed" for Turbidity, Fine sediment, High pH, and Phosphorous. Department of Ecology, Construction Stormwater General Permit Fact Sheet, July 1, 2020 at 21. As a result of this determination, Washington's CSWGP requires dischargers to waters impaired for the above parameters to comply with numeric effluent limitations for Turbidity (used as a surrogate for Fine Sediment and Phosphorous) and/or High pH. CSWGP at 21−23. These dischargers are required to sample weekly when discharging, and submit the results to Ecology each month. CSWGP at 20, 24−25.

   In contrast to Ecology's Permit framework, DEQ's Draft Permit does not include water quality-based effluent limitations necessary to ensure that water quality standards are protected. The Draft Permit does not mandate sampling of any kind at sites discharging to impaired waters (or any other sites), despite, as Ecology has determined, there is a reasonable likelihood these sites could cause or contribute to a water quality exceedance for Turbidity, High pH, Fine Sediment, and/or Phosphorous. Particularly with regard to waters already impaired for these pollutants, it is simply insufficient to state that DEQ "expects compliance with the permit conditions is compliance with applicable water quality standards." Permit at 23. To comply with the Clean Water Act, DEQ must follow Ecology's lead and develop numeric effluent limitations and adequate monitoring requirements for dischargers to waters impaired for these pollutants.

DEQ Response:

DEQ has determined that numeric water quality based effluent limits are not appropriate in the 1200-C construction stormwater general permit. DEQ identified potential activities at constructions sites that could cause pollution during development of the 1200-C Permit and evaluated all activities to assess which have reasonable potential to cause or contribute to a water quality violation. Non-numeric effluent limits are included as narrative conditions in the permit to prevent water quality violations from occurring during construction activities. These include turbid discharges and sediment transport from construction activities. The goal of the 1200-C permit is to prevent the discharge of sediment and other pollutants from regulated construction sites through the implementation of effective planning and erosion control measures. Pollutant discharges are prevented by the implementation of Best Management Practices implemented per the Erosion and Sediment Control Plan and performance requirements in Schedule A of the permit. In addition, discharges of turbidity and sediment are prohibited per Section 2.2.11 of the permit.

The 1200-C construction stormwater general permit is in-line with the EPA's requirements based on narrative criteria. On Dec. 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 Feb. 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), as such effluent limits in NPDES permits may be expressed as numeric or non-numeric standards. The current 2017 EPA Construction General Permit includes and incorporates the changes to the C & D Rule based on the 2014 federal settlement agreement. Under EPA's regulations, non-numeric effluent limits are authorized where "[n]umeric effluent limitations are infeasible." [40 CFR 122.44(k)(3).] Courts have recognized that there are circumstances when numeric effluent limits are infeasible and have held that EPA may issue permits with conditions (for example, BMPs) designed to reduce the level of effluent discharges to acceptable levels (*Natural Res. Def. Council, Inc. v. EPA, 673 F.2d 400, 403* and *Natural Res. Def. Council, Inc. v. Costle, 568 F.2d 1369)*.

Stormwater discharges from construction sites vary significantly from other NPDES-regulated discharges. Standardized numeric effluent limits are difficult to uniformly require of stormwater discharges from areas where construction activities occur. Stormwater discharges can be highly intermittent, are usually characterized by very high flows occurring over relatively short time intervals, and they carry a variety of pollutants whose source, nature and extent varies. *See 55 Fed. Reg. 47.990 (Nov. 16, 1990)*. The highly variable pollutant load of effluent due to construction activities, wide range of stormwater control measure effectiveness, and stormwater discharge flow rates and volumes depend on a number of factors (e.g. construction activities occurring at the site, nature of precipitation in relation to phases of construction activity, and site-specific conditions, including vegetation, hydrology, topography, soils, and surface imperviousness), thus DEQ considers non-numeric effluent limits of stormwater discharges due to construction activities more protective of water quality.

DEQ developed a tiered approach to protect impaired waters in Oregon's 1200-C construction stormwater general permit, with more stringent Best Management Practices required for construction projects that may discharge to 303(d)-listed waterbodies for sedimentation and turbidity. Given that Best Management Practices required in the 1200-C permit are designed to prevent sediments, sediment-laden runoff, and other pollutant parameters (such as metals and nutrients) attached to these sediments from reaching surface waters, the Best Management Practices in an approved ESCP are expected to sufficiently control

pollutant loads from construction sites with permit coverage when implemented. If DEQ determines that a violation of water quality standards has occurred, the permit outlines the response process, including corrective action plans and revocation of the permit coverage if warranted.

Environmental Management Plan

Comment from City of Hillsboro:

8. Too often we have seen plans submitted in the summer for a 2-year construction project and no thought is given to what the conditions will look like in the winter other than the minimum amount of required BMP's. I have heard everything from we will just stop working if there is a problem, to we will resubmit for a dewatering plan when we need it. The problem that the developers don't see is that the review process takes time to review and approve a dewatering plan, meanwhile they have an active turbidity problem occurring in the middle of construction that they need to address and don't have the luxury of time to wait for their dewatering plan approval. This is why I changed our standards to start requiring these plans to be pre-approved prior to projects going into construction during the wetter time of year or if their plans clearly show a grading change that will cause them to interact with the groundwater table based on the geotechnical report.

   With these 1200C changes, to ensure projects come to the table with an EMP, In my opinion I think you will need some kind of mechanism that shows its more definitively required for some projects. For example if a project can show that it will complete the first three sequences of construction between May – September, and won't interact with groundwater or contaminated soil, then they might not need to submit for one. If a project cannot accomplish this and their construction schedule shows a 1 or 2 year schedule with active construction still occurring October - April, then they should include it as there is high probability that they will have a construction site discharge from either stormwater or groundwater. This is just a thought and a suggestion, I certainly do realize the challenge DEQ has with writing these rules that cover all parts of the state along with the different geography and climate across the state.

DEQ Response:

DEQ appreciates the input regarding implementation of Environmental Management Plans. Directions for Environmental Management Plan submissions to DEQ will be posted on DEQ's website. The 1200-C construction stormwater general permit does not recognize nor differentiate the implementation of erosion and sediment control measures based on a "wet weather season". While DEQ recognizes that most precipitation occurs from October to April in Oregon, summer storm events do occur throughout the state that can lead to discharge from a construction site. If a proposed construction site has a DEQ assigned Environmental Cleanup Site Information (ECSI) number associated with the property, an Environmental Management Plan must be submitted to DEQ. DEQ maintains the ECSI database to track sites in Oregon with known or potential contamination from hazardous substances, and to document sites where DEQ has determined that no further action is required. If DEQ declares a site where the groundwater is not, or soils will not be contaminated by fluctuating groundwater levels, an Environmental Management Plan will not be required.

Small Lot Permit

Comment from Jeremy Russell:

9. **Small Lot Permit**
    - This is a needed adjustment for permittees and regulators.
    - Consider an option for small lots to sign on to an existing 1200-C through the revision process
    - Consider options for 1200-C permittees to be able to remove non-compliant builders from their permit coverage in order to require separate permitting under the small lot program

DEQ Response:

DEQ revised the small lot permit application process to make permit coverage for small lots clearer and consistent.

Small lot permit coverage is separate from the initial 1200-C permit coverage of a common plan of development typically obtained for residential subdivision projects. Dual coverage is not available under the 1200-C permit, therefore small lots will not be allowed to "sign on" to an existing 1200-C permit. The small lot permit conditions will require that each builder within a common plan of development obtain separate 1200-C permit coverage for the lots being developed if the development does not have 1200-C coverage.

Comment from City of Hillsboro:

10. If a small lot is removed from the original 1200-C what is the process for the original permit? Do they also need to update their plans to show that they no longer have a responsibility for that area?

DEQ Response:

The original permit registrant is required to update the ESCP map by removing individual lots that have been sold or are stabilized. However, the permit registrant is still ultimately responsible for the area of original permit coverage until termination of permit coverage is approved by DEQ or an Agent. All undeveloped lots need to be stabilized or have small lot permit coverage before permit termination.

1200-C Permit Condition Comments

Cover Page

Comment from City of Troutdale:

11. Sources d. How is significant contributor defined?

DEQ Response:

Oregon is an authorized by the EPA to regulate stormwater discharges from municipal separate storm sewer systems (MS4s), industrial activities, and construction sites under section 402(p) of the Clean Water Act. These stormwater discharges require NPDES permits.

In addition, Oregon can use its delegated authority under 40 CFR 123.25 to require NPDES permits for other stormwater discharges or category of discharges on a case-by-case basis when it determines that:

- The discharges contribute to a violation of water quality standards,
- Are a significant contributor of pollutant to protected surface waters of the state, or
- Controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern.

Comment from City of Troutdale:

12. Limitation a.i Remove the word in (RL) “listed in above”

DEQ Response:

The 1200-C permit has been revised accordingly.

Comment from the City of Troutdale:

13. And, should it be agencies instead of jurisdictions?

DEQ Response:

The 1200-C permit has been revised accordingly.

Comment from the City of Troutdale:

14. c. Does permit need to be terminated?

DEQ Response:

The 1200-C permit authorizes discharges associated with construction activities; therefore, post-construction discharges that originate from the site after the completion of construction activities and site

stabilization are not required to obtain 1200-C permit coverage. A 1200-C permitted construction site that meets the final stabilization criteria of Section 2.2.21 of this permit may request to terminate permit coverage. However, a stabilized site that has not submitted a notice of termination is still considered an active construction site.

Section 1.1.1 Responsible person that must obtain coverage under this general permit

Comment from City of Troutdale:

15. Is the responsible person held liable if enforcement action occurs?

DEQ Response:

Yes, the responsible person identified in the permit application is responsible for permit compliance. Site-specific situations regarding violations of other environmental laws by contractors may be determined.

Section 1.2.1 Application submittal

Comment from Rogue Valley Sewer Services:

16. Permit registrant-also frequently referred to as registrant.

DEQ Response:

The 1200-C permit has been revised for consistency.

Section 1.2.2 Items that must be included in the application

Comment from City of Troutdale:

17. What about Environmental Management Plan?

DEQ Response:

The details of when an Environmental Management Plan is required are outlined in Section 1.2.9. DEQ expects that an Environmental Management Plan will not be required for the majority of projects.

Section 1.2.2.e

Comment from Rogue Valley Sewer Services:

18. Move e to text in heading of 1.2.2-"The following items must be included in the application and must

be submitted to DEQ or Agent in the format required per Section 1.2.13."

DEQ Response:

Section 1.2.2.e has been incorporated into the requirements of Section 1.2.2.

Section 1.2.3 Multi-Phase Developments (e.g. residential subdivisions)

Comment from Rogue Valley Sewer Services:

19. The term "narrative" has been removed from other sections of draft permit-perhaps remove it here as well?

DEQ Response:

Thank you for the suggestion. DEQ has removed the term "narrative" from this section to ensure consistency.

Comments from Oregon Home Builders Association:

20. **Separate Permits for Multi-phase Developments**
    Section 1.2.3 requires separate 1200-C permits for each phase of multi-phase developments. Based on experience of our members, DEQ agents have not allowed multiple 1200-C permits on the same site. We understand DEQ's concerns of additional construction occurring at a site prior to approval. However, multiple permits on a project will add more challenges than assurance, including but not limited to, misunderstanding where separate permits apply on the site, problematic recordkeeping, misidentification of the responsible party, delay in construction due to required notice period and difficulty in closing out separate 1200-C permits on the site. DEQ should provide an alternative to starting over on a 1200-C application for an additional phase of the development, except in the event of a significant change in the project such as an ownership or a close out of a 1200-C on the previous phase of development. Additional phases should be addressed under an ESCP revision and could be revisited at annual renewal. DEQ should work out the details with agents and permit holders to clarify when and how multi-phase developments should apply for and update permits.

21. And, Multiple 1200-C permits on the same development site could be problematic. Request having a choice of ESCP revisions under existing 1200-C or a new permit.

Comment from Pahlisch Homes:

22. Finally, one question we'd like to see addressed pertains to permits across multi-phased development. Per Section 1.2.3, the addition of "post coverage" phases within the proposed development would require separate 1200-C coverage. This seems contradictory to the CWS, as they typically don't allow separate permits for the same property. Perhaps there's a mechanism for an ESCP revision to extend the permit coverage across new additions once approved? Otherwise, more clarification is needed on this point.

DEQ Response:

Section 1.2.3 of the permit does not allow for multiple 1200-C permit coverage on the same project site. Additionally, Section 1.2.11.b will not allow projects to be covered by different NPDES permits for the same discharge. All phases of proposed projects must have land use approval to be approved for permit coverage by DEQ or Agent. If additional phases are granted land use approval, the applicant can apply for permit coverage on the additional phases, which will result in two separate projects with permit coverage. However, at no time will permit coverage overlap on a project site. Each permit registration must identify and cover specific phases of the common plan of development. Section 1.2.3 is in line with other states and the federal construction stormwater general permit.

Section 1.2.3 of the permit was modified to be consistent with the federal permit and in response to numerous compliance issues that arose during the past permit term. Occasionally, land disturbing activities commenced on unpermitted post-coverage phases before the registrant submitted a revised ESCP, which led to discharge from construction activities without an approved ESCP. Furthermore, the process of submitting a revised ESCP to add additional post-coverage phases resulted in an open ended review and approval process for DEQ.

Comment from Jeremy Russell:

23. **Multi-Phase Developments (e.g. residential subdivisions)**

This is a needed addition to permit language. As a regulatory official I have seen many permittees knowingly leave out anticipated additional lots until after coverage termination and begin disturbance of additional areas without permit coverage or implementation of an approved ESCP.

DEQ Response:

Thank you for the feedback.

Comment from City of Troutdale:

24. Unclear. What is "post coverage phases"?

DEQ Response:

Post-coverage phases are common plan of development phases added after the original permit coverage for a site was issued.

Comment from Point Environmental:

25. Will post-coverage phases actually require a new permit or modification of the existing coverage?

DEQ Response:

Post-coverage phases will require new permit coverage. (See responses to Comments 20-24 above).

Section 1.2.4 Construction Projects that Disturb Five or More Acres

Comment from City of Troutdale:

26. Is this a point source discharge? Or does this effectively mean no further construction activities can commence until the 14 day public review period ends and approved by DEQ? Would help to clarify.

DEQ Response:

The 1200-C permit authorizes discharges from construction activities, and these discharges are considered point source discharges under Section 402 of the Clean Water Act.

The permit does not authorize construction activity during the 14-day public comment period until and unless permit coverage is authorized by DEQ or Agent, in accordance with Oregon Administrative Rule (OAR) 340-045-0033(6)(b) that states the applicant "is not authorized to conduct the activity described in the permit."

Comment from City of Troutdale:

27. Remove s from discharges.

DEQ Response:

The permit has been revised accordingly (See DEQ response to comment #30).

Comment from Point Environmental:

28. Can we add a maximum agent review period? i.e. DEQ has 14 days to determine if an application is complete once an application has been determined to be complete DEQ has a maximum of 45 days for public comment period and review. If the registrant has not heard from DEQ within 45 days, coverage is automatically or even provisionally granted.

DEQ Response:

It is not appropriate for DEQ to provide automatic approvals without reviewing materials to determine compliance**.**

Comment from Columbia Riverkeeper, the Northwest Defense Center, Willamette Riverkeeper, Rogue Riverkeeper, and Tualatin Riverkeeper:

29. DEQ's Draft Permit Fails to Allow Meaningful Public Participation.

Under the Permit applicants seeking coverage under the permit for "construction activities that disturb or are likely to disturb five or more acres after permit coverage is issued, are subject to a 14 calendar day public review period before permit registration is granted." Permit at 1.2.4. The 14 day public review period may only begin after DEQ determines that the application and Erosion and Sediment Control Plan (ESCP) are complete. Fourteen days is not enough time for the public to gather the necessary information

on the proposed construction activity, including activity, including obtaining the relevant documents from DEQ, to review this information and to write comments. Moreover, even if it did, DEQ is left with precious little time to review the comments and incorporate that information into its permitting decision. As a result, DEQ should require applications to be submitted at least 60 days before construction activities are scheduled to begin. This will allow the public, through a 30 day comment period, and DEQ sufficient time to review the materials.

Additionally, once a site obtains coverage under the Permit, DEQ should require permittees to submit an annual report. This report should include, at a minimum: 1) a compilation of all facility inspections and visual observations, including the name of the inspector(s); 2) a summary of any corrective actions implemented or not implemented; 3) a summary of any Permit violations; 4) a summary of any additional sampling and analysis, including analytical methods for each parameter.1 Such a report would allow the public to timely assess a site's impact on water quality, and its compliance with the Permit.

DEQ Response:

DEQ only issues permit coverage to applicants once DEQ confirms that the application materials meet all the permit requirements, regardless of the date the application is received or how long it takes to approve.

DEQ has required a 14-day public comment permit for projects 5-acres or more in size for many years. As such, the process for DEQ to provide any materials requested to anyone who asks is streamlined and efficient. A requestor may request an extension of the 14-day public comment. Once DEQ's online electronic data management system called "Your DEQ Online" is implemented in 2021, all public notice documents for construction sites will be posted directly online for direct access.

DEQ has determined that an annual report is not appropriate for construction sites. Construction sites vary in size and scope, thus the timeframe that permit registrants are required to have permit coverage varies from a couple of months to multiple years. DEQ reviews compliance with all permit requirements during inspections and confirms sites are stabilized before permit coverage is terminated. At any point, the public can make a public records request for all records associated with a permit registrant. In addition, as "Your DEQ Online" is implemented, many permit related documents will be available for review at all times.

Comment from Rogue Valley Sewer Services:

30. During the 14 calendar day public review period, registrants are not authorized to discharge in accordance with 340-045-0033(6)(b) until and unless permit coverage is approved by DEQ or Agent- The wording used here implies that construction activity could be occurring as long as discharge is not happening. The OAR reference says you cannot "conduct the activity described in the permit", for clarity the same language should be used.

DEQ Response:

The permit has been revised accordingly to be consistent with Oregon Administrative Rule (OAR) 340-045-0033(6)(b).

Section 1.2.8.b.i Transfer of permit registration

Comment from City of Troutdale:

31. Does "discharge source" mean permit coverage?

DEQ Response:

No. Discharge source does not mean permit coverage.

Section 1.2.9 Environmental Management Plan

Comment from Rogue Valley Sewer Services:

32. Section 1.2.9.b requires an Environmental Management Plan (EMP) for dewatering that lowers groundwater, or for dewatering of accumulated water due to shallow excavation. It seems the permit is attempting to distinguish between groundwater and surface water. Surface water, eg. rain or runoff, may 'accumulate' in shallow excavations. However, groundwater that slowly seeps into a shallow excavation could also be interpreted as 'accumulated water' that can be treated in accordance with section 2.4. It is suggested that DEQ provide a definition of accumulated water, or use the term surface water instead of accumulated water.

    The requirement to prepare an EMP, which has its own application form and review fee, and treat uncontaminated groundwater with a chitosan enhanced sand filter will add substantial time and cost to a project without any measurable benefit. Groundwater is high throughout the Rogue Valley and we conduct dewatering, for the purpose of lowering groundwater, on 60-75% of our projects, only very rarely have we come across contaminated groundwater. RVSS' standard practice is to infiltrate uncontaminated groundwater and accumulated surface water in a vegetated area. In situations with uncontaminated groundwater, there is no difference between the groundwater and surface water, thus requiring them to be handled in two different ways does not make sense.

    The permit could clarify that treatment is required in areas with known or suspected contamination, but a blanket requirement for treatment of all construction dewatering is unwarranted. Suggested language for 1.2.9.a would be "Contaminated soils, contaminated groundwater, or hazardous materials…" and for section 1.2.9.b "Construction dewatering for the purpose of lowering contaminated groundwater…"

DEQ Response:

Section 1.2.9 of the permit has been revised accordingly. Project sites lowering uncontaminated groundwater are not required to submit an Environmental Management Plan, unless an active treatment system is implemented. The discharge of groundwater must comply with the requirements of Section 1.5.

Comment from City of Troutdale:

33. Will Agents be required to collect review fee and perform review of the contaminated media management? Shouldn't this review fall to DEQ's cleanup section? This feels burdensome on Agents who do not have the expertise of DEQ's cleanup section.

DEQ Response:

Agents are not required to review Environmental Management Plans. The review process for projects with Environmental Management Plans will be coordinated between DEQ and the Agent. Agents will accept and review 1200-C applications, erosion and sediment control plans, and land use compatibility statements and DEQ will review and when appropriate, approve the Environmental Management Plan.

Section 1.2.13 Electronic System Use Requirement

Comment from City of Troutdale:

34. Consider removing Agent names because this may change and information becomes obsolete.

DEQ Response:

The list of Agents by name has been removed from the referenced permit condition.

Comment from I.E. Engineering, Inc.:

35. With the online application system, will changes to inspectors and amendments to plans be able to be submitted electronically through this as well?

DEQ Response:

Yes. DEQ's new online format, called "Your DEQ Online" will allow permit registrants to update all application information at any time. In addition, all documents will be submitted electronically, such as ESCP updates. Information concerning Your DEQ Online may be found at: https://www.oregon.gov/deq/Permits/Pages/Your-DEQ-Online.aspx**.**

Comment from City of Hillsboro:

36. Your DEQ Online: Will this remove the requirement(s) for original signatures on the application and LUCS?

DEQ Response:

Yes, once Your DEQ Online is implemented, all permit applications will be submitted online and wet signatures of documents will no longer be required.

Comment from Columbia Riverkeeper, the Northwest Defense Center, Willamette Riverkeeper, Rogue Riverkeeper, and Tualatin Riverkeeper:

37. DEQ's Electronic System Use Requirement Waiver is Unnecessarily Vague.
Under the proposed Permit, applicants must submit all documents using DEQ's reporting system, however applicants may contact DEQ to request a waiver of the online reporting requirements if they "are unable to submit reports electronically (for example, those who do not have an internet connection." DEQ

must clarify how and why it will grant waivers to applicants. Integrating an online reporting system greatly increases the public's ability to monitor and review permitting documents. As written, the Permit grants DEQ unfettered discretion to grant online reporting waivers with no ability for the public to understand why, how, or to whom waivers are granted. The Permit must include specific instances when DEQ will grant waivers.

DEQ Response:

The 1200-C Electronic System Use Requirement waiver process is consistent with federal NPDES requirements in 40 CFR 127.15 and 40 CFR 127.24. While DEQ does not anticipate many 1200-C construction stormwater permit electronic reporting waiver applications or approvals based on the criteria for approval and associated costs for permit registrants, the system will be the same for all stormwater general permit registrants and applicants. In cases when a waiver from using Your DEQ Online is approved, DEQ will charge additional fees and put timeframes on all approvals. In situations when a waiver is approved, all records associated with the permit registration will be available in the same way public records are provided currently when requested.

Section 1.3.2 Stormwater discharges from construction support activities at the construction site

Comment from City of Troutdale:

38. Are support activities to be included in ESCP submittal for review?

DEQ Response:

Yes. Section 4.4.e.vi requires construction support activities to be included in the ESCP.

Section 1.4.I.a Combined Discharges

Comment from City of Troutdale:

39. This second part about use of sanitary or combined sewer needs more clarity and may need to become its own part b or c. I'm confused what it means.

DEQ Response:

The local sewer district must preapprove discharge from construction activities into sanitary or combined sewer systems.

Section 1.5 PROHIBITED DISCHARGES

Comment from City of Troutdale:

40. Would it be helpful to include a generic part j. that says something like "other discharges with the

potential to..."?

DEQ Response:

Since Section 1.5.a explicitly states that turbid and sediment discharges are not allowed and Section 1.5.b states that “Causing or contributing to an exceedance of any applicable water quality standard” is not authorized by this permit, DEQ determined that additional permit conditions on this point are not necessary.

Section 2.1.1 Factors to consider when designing stormwater controls

Comment from Oregon Home Builders Association:

41. Remove run-on from the permit to avoid confusion, unless it is specifically defined under 7.5.1 Permit-Specific Definitions.

DEQ Response:

Thank you for the suggestion. DEQ added a definition for stormwater run-on in Section 7.5.1.

Section 2.1.2 Design and install all stormwater controls in accordance with engineering and professional practices.

Comment from Rogue Valley Sewer Services and City of Troutdale:

42. In accordance WITH engineering and professional practices.

DEQ Response:

DEQ has revised the 1200-C permit accordingly.

Section 2.1.3.a Activities to complete the installation of stormwater controls

Comment from City of Troutdale:

43. For consistency, should it be "discharge" instead of "exit"?

DEQ Response:

DEQ revised the 1200-C permit accordingly for consistency.

Section 2.1.3.b

Comment from Environmental Protection Agency:

44. Install erosion prevention measures on cleared areas that will not be worked for 14 days; and
    - Add clarity to "erosion prevention measures"

DEQ Response:

DEQ added erosion prevention measure examples (e.g. matting, straw mulch, compost blankets) to Section 2.1.3.b of the permit.

Section 2.1.5 Maintaining erosion and sediment controls

Comment from City of Troutdale:

45. Should be moved to sections of specific controls under Section 2.2.

DEQ Response:

Section 2.1 addresses the general maintenance requirements of stormwater controls, whereas Section 2.2 details specific erosion and sediment control measures that must be implemented on a construction site to prevent erosion and sediment transport or discharge from the site.

Comment from Jeremy Russell:

46. Maintaining erosion and sediment controls:
    - The section header references erosion controls and sediment controls, but maintenance requirements listed are sediment controls only.

DEQ Response:

DEQ added general maintenance requirements for erosion control measures to Section 2.1.5.a of the permit.

Comment from Jeremy Russell:

47. For sediment controls, consider including guidance for maintaining stabilized access, and consider adding temporary stabilization maintenance.

DEQ Response:

DEQ appreciates the recommendation and will fully evaluate it during permit implementation to determine if that specificity would help permit registrants. At any time, DEQ can issue fact sheets and other technical assistance documents regarding permit implementation. DEQ looks forward to feedback on what types of technical assistance documents would be helpful.

Comment from Jeremy Russell:

48. Consider including wording that requires the site inspector to determine and address the source of accumulated sediment at downstream bmps.

DEQ Response:

The permit conditions require the outcome of this suggestion. Section 6.4.a.b.c and d. requires that the visual monitoring inspector must:

a. Confirm that all stormwater controls are properly installed and are working as intended to prevent pollutant discharges;

b. That the presence of conditions that could lead to spills, leaks, or other accumulations of pollutants on the site are addressed (See Section 2.3);

c. Identify any locations where new or modified stormwater controls are necessary to meet the requirements of Sections 2, 3 and 4; and,

d. Check for the presence of visible erosion and sedimentation as outlined in Section 2.2.11 and document any indication of sediment that has left or is likely to leave the project site.

These requirements are written to create a stepwise procedure that ensures sediment or any other pollutant is adequately address by implementing appropriate BMPs. In addition, the permit allows the inspector the flexibility to change the Erosion and Sediment Control Plan to comply with all conditions of the permit and prevent pollutant discharging from the project site.

Section 2.2 EROSION PREVENTION AND SEDIMENT CONTROL AND TREATMENT REQUIREMENTS

Comment from Jeremy Russell:

49. EROSION PREVENTION AND SEDIMENT CONTROL AND TREATMENT REQUIREMENTS

- Consider adding construction site pollutant controls and soil protection language. Focusing only on sediment being discharged with stormwater takes away from other sections of this permit that are related to preventing soil compaction, soil contamination, and soil degradation.
- Without providing specific focus on soil protection, much of the language in this permit could be interpreted as though erosion and degradation of site soils is acceptable as long as the transported sediment is removed from its point of settlement or does not exit the site.

DEQ Response:

DEQ reviewed the permit conditions as it relates to these comments and determined that no changes to the permit are needed. Sections 2.2.21 Prevent Soil Compaction and 2.3 Pollution Prevention Controls specifically address erosion and sediment transport. Numerous permit conditions (e.g. Section 2.1, 2.2. and 2.3) specifically address soil compaction, contamination, degradation and erosion prevention and control at the source to prevent the accumulation of sediment at any point in the conveyance of stormwater from the project site.

Section 2.2.3 Preventing bypass and ponding

Comment from Jeremy Russell:

50. Preventing bypass and ponding:
    - Further clarification is needed. Does DEQ suggest that smooth surfaces be created by paving, placement of plastic sheeting, etc.?
    - Typically, infiltratable areas, ponding to allow sedimentation to occur, attenuation (checkdams) and a higher roughness (R) factor (furrows, grasses, straw) are desired prior to runoff coming into contact with bmps to help reduce velocity of runoff and quantity of sediment deposited.
    - During the public comment hearing this section was explained as addressing undercutting of bmps like straw wattles and sediment fence but undercutting and bypassing of these bmps is usually observed due to improper installation like placement on top of smooth soils.
    - For bmps like straw wattles, sediment fencing, and berms; proper sizing of the bmp, placement on the contour, trenching/keying, compacting backfilled trench, and slightly overlapping and upturning the ends.

DEQ Response:

Thank you for the recommendation to clarify this section. This condition is intended for Best Management Practices (BMPs) that have increased effectiveness by complete contact with a smooth soil surface.

Comment from City of Hillsboro:

51. How does this section apply to all phases of construction? Smooth surfaces cannot be attained during rough grading phases and continuous cut and fill work? Also, construction sites can be at a rough grade condition any time of year and may need to stabilize and cover the site due to changing weather conditions prior to having smooth surfaces.

DEQ Response:

The intent of Section 2.2.3 is to be clear that when the opportunity arises during land disturbing activities, final grading should create a smooth surface in areas where BMPs engineered to contact the soil surface are to be implemented. DEQ understands that smooth surfaces are not attainable in all phases of land disturbing activities or at project sites that have an ESCP that includes adequate stormwater runoff treatment without the use of BMPs that filter surface runoff. However, if BMPs are implemented that are designed and engineered to filter surface stormwater runoff, the soil surface should be graded to a smooth finish so that stormwater runoff does not bypass the BMPs by flowing underneath, or pool in depressed areas on-site before ultimately discharging as potential pollutant laden untreated runoff.

Section 2.2.4 Establish and maintain natural buffer zones and/or equivalent erosion and sediment controls

Comments from Oregon Home Builders Association:

52. Establishing and Maintaining Natural Buffer Zones
    Concern: Allowing a DEQ/Agent to dictate when a project will be subject to 401 Water Quality Certification requirements. This is not a fair measure (based on a judgement call), when it seems this should be determined on actual water impacts.

DEQ Response:

The Section 401 Water Quality Certification Program at DEQ determines when a project is required to obtain 401 Water Quality Certification. DEQ removed the term "Agent" form this section.

Comment from Oregon Home Builders Association:

53. The previous permit Schedule A section 7. B. iv states that the natural buffer zone requirements do not apply if (3) "There is a CWA Section 404 permit and 401 WQC issued for the project."

DEQ Response:

The intent of Section 2.2.4.b is to encourage and promote coordinated efforts between regulatory agencies when establishing natural buffer zone requirements. The 1200-C permit conditions regarding natural buffer zones and Section 401 WQC conditions are intended to be coordinated; however 1200-C permit registrants often obtain 1200-C permit coverage prior to a 401 WQC. It is imperative that natural buffer zone provisions of regulating authorities be coordinated to ensure consistency when possible to avoid conflicting requirements. For example, the current 1200-C permit allowed registrants to encroach within 50 feet of a natural buffer zone, however the conditions of a 401 WQC obtained at a later date, required a minimum 50 foot buffer, which often resulted in a confused and frustrated registrant. Ideally, registrants that obtain 1200-C permit coverage concurrent with a 401 WQC avoid potential work delays and costly restoration of natural buffer zone encroachment when the conditions of all regulatory agencies involved are consistent.

Comment from Oregon Home Builders Association:

54. Buffer Contingent on "Potential to Discharge"
    Section 2.2.4 c. requires an applicant to prove that a 50-foot additional buffer width is not required by assessing the 'potential to discharge'. The alternative (reduced) buffer zone depth calculations outlined in Appendix B utilize the USDA RUSLE2 model for sediment removal efficiencies. It should be noted that this sediment loss model is not well suited for the forested vegetated buffers that are typical across the state of Oregon. Furthermore, we are concerned about DEQ's ability to require additional buffer widths based on the 'potential to discharge.' Additional buffer requirements following land use approval could cause conflicts with the approved site design. This requirement could be duplicative or additive to a local jurisdiction's land use standards, further reducing the buildable land and housing potential. DEQ buffer requirements should not override local jurisdiction requirements for vegetated buffers or dictate the development patterns and housing densities after

land use approval.

DEQ Response:

The requirements of Section 2.2.4 do not require an "additional" 50 foot buffer be retained on project sites. A 50 foot natural buffer is the maximum default width of a natural buffer zone on a project with 1200-C permit coverage, unless additional width is required by local jurisdictions or the receiving waterbody is impaired or has a TMDL for sedimentation and turbidity parameters.

DEQ developed erosion rate rankings based on soil type and slope using the USDA RUSLE2 model for sediment removal efficiencies for soils typically found throughout Oregon. DEQ determined the RUSLE2 model to be appropriate as land disturbance activities are similar for agricultural and construction sites. Typically the work performed denudes the project site and works the top soil layer completely, which creates fine sediment particles that are prone to erosion and can be transported in stormwater runoff easily. EPA provides vegetative groundcover examples from which states may apply those most exemplary of their natural buffer zones. While DEQ acknowledges that forested landscapes differ from the examples found in Appendix B, EPA recommends choosing the vegetative type most similar. A forest understory may appropriately be described by the vegetative goundcover choices presented in the Tables of Appendix B. Due to a limited list of vegetation types, DEQ choose to address specific soil types found throughout Oregon in order to provide an accurate guidance document.

It is not the intent of DEQ to require "duplicative or additive" natural buffer zone widths. Section 2.2.4 states "The registrant must comply with local natural buffer zone requirements before proposing the following compliance alternatives"; therefore, if the local buffer zone requirement is a 75 foot natural buffer zone be maintained on the project site, the requires of Section 2.2.4 have been met with no additional buffer zone width.

Comment from City of Troutdale:

55. This section feels unrealistic to ask registrants to understand and successfully implement considering the level of education needed.

DEQ Response:

Appendix B provides thorough guidance for implementing the natural buffer zone requirements of Section 2.2.4. DEQ is always available to provide technical assistance as needed.

Comment from Oregon Home Builders Association:

56. Please clarify. Section ambiguity could require every project in the state to prove an additional buffer width is not required.

DEQ Response:

A 50 foot natural buffer is the maximum default width of a natural buffer zone on a project with 1200-C permit coverage, unless an additional width is required by local jurisdictions or the receiving waterbody is impaired or has a TMDL for sedimentation and turbidity (See Section 2.2.4.c). Registrants may encroach within the 50 foot buffer if BMPs to be implemented equal the pollutant filtration capability of the width of natural buffer zone encroached upon. The registrant must submit an ESCP to DEQ or Agent that meets the requirements of Section 2.2.4 for approval. Appendix B provides thorough guidance to determining

natural buffer zone delineation and width.

Comment from Oregon Home Builders Association:

57. Is the 50 ft. buffer in addition to the mapped riparian area?

DEQ Response:

No. Appendix B provides guidance on determining and delineating natural buffers. The natural buffer zone is typically determined from the Ordinary High Water Mark (OHWM) of a waterbody.

Comment from Oregon Home Builders Association:

58. How does this work if it conflicts with local requirements?

DEQ Response:

Local natural buffer zone requirements (unless none exist) supersede the conditions of Section 2.2.4.

Comment from Oregon Home Builders Association:

59. Potential takings issue?

DEQ Response:

Private property may be regulated to a certain extent, however if regulations go too far it will be recognized as a 'taking'. Section 2.2.4 of the 1200-C permit does not impose additional buffer conditions above and beyond those of local jurisdictions (See Section 2.2.4.a). The permit allows for the encroachment within the 50 foot buffer with the implementation of appropriate BMPs if allowed by the local jurisdiction; therefore, the 1200-C permit does not present or pose a takings issue.

Comment from City of Troutdale:

60. Section 2.2.4.a.i.2-Should this refer specifically to Appendix B Table B-8?

DEQ Response:

A general statement is made in Section 2.2.4 informing permit registrants that Appendix B is provided as buffer zone guidance for Section 2.2.4 of the permit.

Comment from City of Hillsboro:

61. Section-2.2.4.b All approved DEQ 401 in-water-work should be clearly shown and included within 1200C ESCP Plans and shown as disturbance. This should include a supplemental plan for any stream diversion bypass plans with appropriate erosion and sediment controls to include dewatering plans, as necessary. Diversion plans should include an inspection and maintenance plan to ensure all by-pass systems remain operational and do not overflow into isolated work areas. The in-stream work/diversion plans should include a list of controls used to isolate the work area and identify by-pass intake and discharge locations and incorporate all additional requirements listed in the 401

requirements.

DEQ Response:

Section 2.2.4.b of the 1200-C permit is included to demonstrate the coordination between DEQ's 401 Water Quality Certification and stormwater programs since some projects that require 1200-C coverage also need a 401 water quality certification. Each program has specific regulations and requirements that are determined based on project specific factors. The programs coordinate and jointly review ESCP plans for projects that require both 1200-C coverage and 401 certifications when the application process is done in parallel. When this occurs, it is helpful to ensure applicants have coordinated feedback from DEQ.

Comment from Oregon Home Builders Association:

62. Section 2.2.4.b DEQ cannot determine 401 certificate requirements. DSL determines whether a 401 cert is triggered by impacts to waters of the state. Rewrite to clarify that the intent is in coordination.

DEQ Response:

Through review of a joint permit application, the U.S. Army Corps of Engineers will determine if the proposed discharge of dredged or fill materials will require Section 404 permit coverage. Before a Section 404 permit is issued, Section 401 of the Clean Water Act allows DEQ's 401 WQC Program to review 404 permit applications and other water quality related items, and either deny, approve or approve with conditions the proposed in-water-work project. DEQ's 401 WQC review and approval process is a coordinated effort that may involve numerous State and Federal regulatory agencies (e.g. National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Oregon Department of Fish and Wildlife, Portland Sediment Evaluation Team). Within their purview, an external regulatory agency may condition specific requirements of the in-water-work project; however, DEQ ultimately determines the 401 WQC requirements.

Comment from City of Hillsboro:

63. Section 2.2.4.b. Why does the DEQ 401 Permit require turbidity monitoring with specific NTU ranges but not the 1200C/CN Permits? It would help provide clarification and consistency if these were the same NTU thresholds/limits.

DEQ Response:

The 401 WQC approves in-water-work and expects that exceedances to water quality standards will occur. The work performed and approved by a 401 water quality certification acknowledges that necessary in-water–work, such as dredging, is impossible to perform without exceeding Oregon's turbidity standards. In an effort to minimize the water quality exceedance, the 401 WQ Certification sets limits to NTU exceedances that may occur. These exceedances are limited in duration (i.e. amount of time above acceptable levels) and maximum amount (e.g. never to exceed 50 NTU above background). As such, the 401 WQC expects and allows water quality standard exceedances. The 1200-C permit is required for construction sites and not in-water work. As such, a NTU limit is not appropriate.

Comment from Oregon Home Builders Association and Pahlisch Homes:

64. Section 2.2.4.c Concern: Allowing an Agent to determine if a project has "potential to discharge". Mandating larger buffer zones on the ambiguous/undefined term "potential", may cause a detrimental

ripple effects on a plan, that could halt a project's development altogether. How would one assess the 'potential to discharge'?

DEQ Response:

The engineer and/or ESCP developer are required to determine if a project site has the potential to discharge to an impaired or TMDL listed waterbody for the parameters sedimentation or turbidity not DEQ or the Agent. This information is found on DEQ's Water Quality Assessment webpage in the Integrated Report: https://www.oregon.gov/deq/wq/pages/wq-assessment.aspx.
If the project site conditions may result in discharge to a sedimentation or turbidity impaired or TMDL listed waterbody, the ESCP must include control measures per Section 2.2.4.c.

Comment from City of Hillsboro:

65. Section 2.2.4.c. How will the five degree of slope criteria be determined?

DEQ Response:

The average slope of the project site (nearest to 5 foot increments) within the 50 foot natural buffer zone (measured horizontally).

Section 2.2.5 Preserve existing vegetation where possible and:

Comment from City of Hillsboro:

66. Section 2.2.5.c. Is there a recommended percentage?

DEQ Response:

The registrant is not required to preserve a specific percentage of the existing vegetation, only to preserve if feasible. The intent of Section 2.2.5.c is to encourage registrants to preserve the existing vegetation on site to assist in achieving permit compliance. Vegetated areas on site provide opportunities for the filtration and infiltration of stormwater. Additionally, existing vegetation prevents erosion and sediment transport.

Comment from Rogue Valley Sewer Services:

67. Section 2.2.5 Eliminate the word by "When possible preserve existing vegetation by:" Need to delete "by". These are not measures for vegetation preservation, these are revegetation measures and a vegetation BMP.

DEQ Response:

The 1200-C permit has been revised accordingly.

Section 2.2.7 Prevent sediment track-out onto public or private roads

Comment from Jeremy Russell:

68. Section 2.2.7 Prevent sediment track-out onto public or private roads

- For many sites this has been interpreted as small paved approach or a paved driveway only. While paved surfaces are useful for keeping entrance/exit points from becoming rutted and eroding, they provide little to no sediment removal and often lend to a turbid discharge when rain events occur even with regular sweeping.
- Consider adding a qualifier for use of "paved exits" as a track-out control like length of paved surface, rumble pads or manual wheel washing upstream, etc.

DEQ Response:

DEQ has an ESCP template available on-line with construction details for construction entrances and exits. 1200-C reviewers will compare the Erosion and Sediment Control Plan BMPs to ensure they are designed as required by the construction details of the template.

Comment from Oregon Home Builders Association:

69. Private not provide.

DEQ Response:

DEQ revised the 1200-C permit accordingly.

Comment from Point Environmental:

70. Section 2.2.7.e. This seems ambiguous, does this refer to all dirt hauled away. Unless soil is dry and loose it does not necessarily blow out of the truck. Sediment, referring to the soil particles mobilized by wind and water aren't really removed via dump truck, they are usually removed via vac truck.

DEQ Response:

Section 2.2.7.e requires all dirt hauled from a 1200-C permitted construction project to cover loads to prevent sediment transport off site. Section 2.2.7.e is consistent with Oregon statues (ORS 818.300) which states, "a person commits the offense of operating with a sifting or leaking load that drives or moves on a highway any vehicle or combination of vehicles that is so constructed or loaded so as to allow its contents to drop, sift, leak or otherwise escape therefrom."

Comment from Point Environmental:

71. Section 2.2.7.g.h. Can roads be washed after mechanical means of track-out removal have been exhausted?

DEQ Response:

Yes, as long as the washwater is not allowed to drain into any stormwater conveyance, storm drain inlet, or water of the state.

Section 2.2.8 Locate stockpiles away from construction activities that contain sediment or soil

Comment from Jeremy Russell:

72. Section 2.2.8.b. Locate stockpiles away from construction activities that contain sediment or soil
    - Section b. requires sediment barriers on the down gradient which is common and effective sediment control practice. Consider verbiage that includes barriers/diversions on the upslope to divert flows around stockpiles thereby eliminating comingling.

DEQ Response:

The permit requires registrants to locate stockpiles away from any stormwater conveyance or where flows concentrate on-site. In addition, the permit allows for the implementation of BMPs when and where necessary. If a stockpile is inadvertently situated where stormwater flows are draining on-site, the ESCP must be revised to implement BMPs to control and divert stormwater flows around the stockpile soil to prevent sediment from accumulating at barriers downslope of the stockpile (See Section 2.2.11.e).

Comment from City of Hillsboro and Point Environmental:

73. Section 2.2.8.c. Language denotes covered at the end of each work day as needed based on "weather conditions", which can be subjective between the contractor and inspector. For example what type of forecasted weather condition warrants the need to cover a stockpile? Maybe the term "weather condition" should be changed to say any forecasted measurable precipitation or sustained winds above 10mph.

    Consider adding to Section 2.2.8.c: Stage erosion control BMPs adjacent uncovered stockpiles that would be necessary to cover the pile at a moment's notice should weather conditions change abruptly.

DEQ Response:

DEQ appreciations the suggestions. The 1200-C permit conditions are intentionally structured to ensure flexibility for the various site conditions, potential weather conditions and soil types and other factors at construction sites that require 1200-C construction stormwater permit coverage throughout Oregon.

Section 2.2.9 Prevent wind erosion and control dust

Comment from Jeremy Russell:

74. Prevent wind erosion and control dust
    - It should be noted that application of water as a dust suppressant is an extremely temporary /emergency dust suppression method which should only be utilized during active soil disturbance and not relied upon as a stabilization measure. See US EPA guidance listing

irrigation and roughening as “emergency applications”.

- Repeated wetting, drying, and exposure of soils to heat and freeze-thaw cycle lends to degradation of soil structure, depletion of soil organic matter, and increased compaction of soils.
- Consider wording that focuses on daily cover/temporary stabilization as the preferred/required dust control technique.

DEQ Response:

Sections 2.2.20 requires registrants provide temporary stabilization control measures and lists a variety of options and timelines. DEQ will consider additional dust suppression requirements in future permit conditions if warranted.

Section 2.2.12 Prevent soil compaction

Comment from Jeremy Russell:

75. Prevent soil compaction
    - Consider establishing soil amendment and de-compaction requirements if and when topsoil stockpiling is infeasible
    - Consider providing clear guidance concerning soil rehabilitation techniques. The practice by many operators is to simply apply a topsoil to highly compacted areas or only scarifying these soils less than four inches. Adoption of a standard requiring 6” of subsoil decompaction prior to placing topsoil is suggested.
    - Consider information from NRCS Urban Soil Quality Technical Note #2 and typical soil De-compaction requirements from other jurisdictions.

DEQ Response:

DEQ has determined that these suggestions are not needed for compliance in the current permit and will consider these suggestions to prevent soil compaction in the future.

Comment from Oregon Home Builders Association:

76. Section 2.2.12.a. The permittee may not want to re-spread topsoil on the site. Some projects have all topsoil hauled away which would render this requirement moot. The engineering and construction specifications are the controlling guidance.

DEQ Response:

DEQ understands that reusing topsoil may not be appropriate for all permit registrants. The intent of Section 2.2.12.a is to preserve resources on-site and prevent sediment from leaving the site. DEQ realizes that some sites may not have adequate space to stockpile topsoil until it can be reapplied for use in an appropriate area later in the construction process, hence the clause “unless infeasible” has been added to address this situation. However, if feasible, the developer should consider stockpiling the topsoil for reuse.

Section 2.2.13 Protect storm drain inlets

Comment from Environmental Protection Agency:

77. Section 2.2.13.b. Protect storm drain inlets. The following are ways to protect storm drain inlets: b. Clean, or remove and replace, the protection measures as sediment accumulates in accordance with Section 2.1.5

    - Guidance on deadlines and accumulation capacity for storm drain inlet protection is helpful
    - CGP Example: 2.2.13 Protect storm drain inlets. The following are ways to protect storm drain inlets:
      Clean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet protection measure, remove the deposited sediment by the end of the same business day in which it is found or by the end of the following business day if removal by the same business day is not feasible.

DEQ Response:

DEQ revised the permit to include these specifics regarding for storm drain inlet protection.

Comment from City of Troutdale:

78. Section 2.2.13.b. Why not include relevant parts of Section 2.1.5 here?

DEQ Response:

In order to clarify storm drain inlet requirements, the reference to Section 2.1.5 has been removed from Section 2.2.13. Sediment accumulation capacity and removal timelines for storm drain inlet protection has been added to Section 2.2.13.b.

Section 2.2.14 For projects involving concrete, establish concrete truck and other concrete equipment washout areas before beginning concrete work.

Comment from Environmental Protection Agency:

79. For projects involving concrete, establish concrete truck and other concrete equipment washout areas before beginning concrete work.

    - Add clarifying language noting concrete washout not near waters, generally stated later in 2.3.1 General conditions, OR permit states: a. Locate activities away from waters of the state and stormwater inlets or conveyances so that stormwater coming into contact with these activities cannot reach waters of the state.

DEQ Response:

DEQ has revised the 1200-C permit for clarity.

Comment from City of Troutdale:

80. Section 2.2.14.c. Isn't Part c.i implied through Parts a-g?

DEQ Response:

Due to the caustic nature of concrete and the deleterious environmental harm it produces by impacting receiving waterbodies of discharge from construction activities, DEQ explicitly states the conditions addressing concrete control on-site. Note: Section 2.2.14.c.i is revised and now listed as 2.2.14.d.

Section 2.2.15 Establish material and waste storage areas, and other non-stormwater controls before construction activities commence

Comment from City of Troutdale:

81. Isn't this redundant with Section 2.3? Or be stated at least under 2.3.1?

DEQ Response:

Section 2.2 lists control measures that must be in place on construction projects with 1200-C permit coverage. Section 2.2.15 specifically states that areas on-site must be designated as materials and waste storage. Section 2.3 addresses specific pollutant control measures that must be implemented on-site. The storage of construction and domestic wastes must be within the area Section 2.2.15, and the control measures for storing construction and domestic wastes in the designated area are specified in Section 2.3.7.

Section 2.2.16 Control stormwater discharges

Comment from Environmental Protection Agency:

82. Control stormwater discharges: b. Protect stream banks from concentrated flows by constructing primary control measures.
    - Clarify or reword “primary control measures”

Comment from Rogue Valley Sewer Services:

83. Control Stormwater Discharges requires management of stormwater discharges using a primary control measure. The definition for Primary Control Measure provided in the permit includes structures that are typically used for post-construction stormwater (SW) management and are built during project construction. The 1200-C permit regulates discharges during construction and permanent, post-construction SW management facilities are not to be used to manage runoff during construction, thus the requirement does not make sense. Part a. of 2.2.16 states that velocity

dissipation devices should be used to slow down runoff…" this is appropriate and all that the permit needs to state. RVSS suggests deleting subsection 2.2.16.b.

As defined, this implies constructing a post-construction SW management facility. The 1200-C permit regulates discharges during construction and permanent SW management facilities are not to be used for during construction runoff, so the requirement does not make sense.

Comment from City of Hillsboro:

84. Is this supposed to be a permanent structure as defined, requiring minimum design criteria? This sounds like a post-construction control that this permit does not authorize under limitations of coverage.

DEQ Response:

DEQ appreciates the feedback on this section. In response, "Primary control" measures has been replaced in the file permit with "runoff control" measures. Examples of runoff control measures were also added to 2.2.16.b (e.g. check dams, outlet protection (riprap), pipe slope drains, swales/dikes, surface roughening). The term "Primary Control Measures" has been removed from the definition section of the permit.

Comment from Oregon Home Builders Association:

85. Section 2.2.16.e. An atypical standard. Different surface covers result in different runoff volume. Is there a basis for this standard unit volume?

DEQ Response:

DEQ is unable to respond to this comment. The permit does not have a Section 2.2.16.e.

Section 2.2.18 Engineered sediment basin or similar impoundment must be installed with engineered soils

Comment from Environmental Protection Agency:

86. Engineered sediment basin or similar impoundment must be installed with engineered soils.
An engineered sediment basin or similar impoundment must be installed on sites with engineered soils as follows:

- For construction activity involving the use of engineered soils (soil amendments including, but not limited to Portland cement-treated base [CTB], cement kiln dust [CKD], or fly ash), the registrant must install an engineered sediment basin or similar impoundment in accordance with Section 2.2.17 (e.g. trap, pond) to treat high pH runoff (i.e. above 8.5 standard units) before discharge. The registrant is required to determine the acceptable pH water quality criteria range of site discharge based on criteria of the receiving waterbody according to OAR 340-041-0021. If necessary the registrant must adjust or neutralize the high pH water until it is in the range of pH Standard Units (su) using an appropriate treatment BMP such as carbon dioxide (CO2) sparging or dry ice.
- The permittee must obtain written approval from DEQ or Agent before using any form of

chemical treatment other than CO2 sparging or dry ice (see Section 1.2.9). See Section 6.6.1 for pH sampling requirements

- Guidance on sampling practices (frequency, where to sample, acceptable pH equipment, buffer requirements) and documentation/ records to maintained with or in ESCP.

DEQ Response:

DEQ is developing pH monitoring guidance and will make it available with the issuance of the 1200-C permit. Section 6.5.i requires all monitoring results to be documented and available to DEQ or Agent inspection upon request.

Comment from City of Hillsboro:

87. Section 2.2.18.b. Section .2.18.b: Use of Dry Ice & Co2 sparging doesn't require DEQ approval? However the EMP in section 1.2.9 states that it does?

DEQ Response:

The design, construction and use of sedimentation basins to store and treat stormwater runoff exposed to soils amended with cementitious materials does not require an Environmental Management Plan. Active Treatment Systems must be approved by DEQ when contaminated groundwater or soils are treated on-site; however, when CO2 sparging is implemented to treat high pH stormwater runoff from exposure to engineered soils, DEQ approval is not required.

Comments from Columbia Riverkeeper, the Northwest Defense Center, Willamette Riverkeeper, Rogue Riverkeeper, and Tualatin Riverkeeper:

88. Section 2.2.18 C. "Engineered Soils" Should be More Closely Monitored
Under the proposed Permit, Section 2.2.18, DEQ would allow the use of engineered soils. Engineered soils is a general term with a wide range of variability for what they can contain, what purposes they can serve, and where they can be used.

DEQ Response:

DEQ does monitor the use of engineered soils now and will continue to do so under the 1200-C renewal.

Comments from Columbia Riverkeeper, the Northwest Defense Center, Willamette Riverkeeper, Rogue Riverkeeper, and Tualatin Riverkeeper:

89. Factors such as particle size, depth, compaction, expansion/contraction rates, cracking, and leaching potential relate to water flow and infiltration—all concerns for stormwater permitting in the context of using engineered soils, but none of these concerns are addressed by DEQ's 1200-C proposed Permit.

DEQ Response:

Section 2.1.1 of the permit addresses factors that determine stormwater runoff volume and flow rates from drainage areas on-site and discharge from the project site. The conditions in Section 2.2.18 are appropriate since pH monitoring is required and the inherent prevention of pollutant discharge measures

required by the 1200-C permit. DEQ is aware that numerous factors ultimately determine the pollutant load of discharge from sites where engineered soils are used; however, the permit does not allow an exceedance of water quality standards and the permit registrant is responsible to design, implement and install water quality control measures on sites with engineered soils that ensure permit compliance.

Comments from Columbia Riverkeeper, the Northwest Defense Center, Willamette Riverkeeper, Rogue Riverkeeper, and Tualatin Riverkeeper:

90. Nor does DEQ identify any of the toxic chemicals and heavy metals that leach from engineered soils identified in the draft Permit. Nor does DEQ appear to require an engineer evaluation and certification for the use of engineered soils. All of these issues should be clearly addressed by the 1200-C Permit.

DEQ Response:

DEQ realizes that engineered soils may pose a threat to water quality for their potential to raise the pH of receiving waterbodies and other pollutants that may be discharged from the project site as well. Suspended sediment (typically expressed as turbidity or total suspended solids) is the most common pollutant associated with discharges from construction sites, and commonly used as a surrogate for other pollutants discharged due to construction activities (EPA 2008). Sediment is a physical pollutant that is relatively easy and inexpensive to sample and an excellent indicator to determine the effectiveness of pollutant control measures implemented on construction sites. Sediment is a chemical pollutant as well, as the organic content of sediment is responsible for pollutant transport in stormwater discharge from construction sites. Metals, pesticides, and other organic pollutants are conveyed by sediment in stormwater runoff through adsorption to the organic matter component of sediment particles. Therefore, DEQ has developed 1200-C permit conditions that rely on turbidity monitoring of suspended sediment and particles as an effective management tool for evaluating and adequately addressing the often highly variable construction stormwater discharges and associated impacts on the beneficial uses of the receiving water.

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the Clean Water Act (CWA) to include conditions for meeting technology-based Effluent Limitation Guidelines (ELGs) established under Section 301 and, where applicable, any New Source Performance Standards (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)), which include Best Management Practices (BMPs). The regulations contained in 40 CFR 122.44(k) authorize the use of BMPs to abate the discharge of pollutants when (1) they are developed in accordance with Section 304(e) of the CWA, (2) numeric limitations are infeasible, or (3) the practices are necessary to achieve limitations/standards or meet the intent of the CWA. DEQ developed required prevention and monitoring BMPs to control any pollutant discharge from project sites that use engineered soils. Given that the BMPs required in the 1200-C permit are designed to prevent sediments, sediment-laden runoff, and other pollutant parameters (such as metals and nutrients) attached to sediments from reaching surface waters, the BMPs in an approved ESCP are expected to sufficiently control pollutant loads from construction sites when implemented. In addition, pH monitoring is required in the permit to ensure the protection of the receiving waterbody and fish populations.

Comments from Columbia Riverkeeper, the Northwest Defense Center, Willamette

Riverkeeper, Rogue Riverkeeper, and Tualatin Riverkeeper:

91. DEQ does not provide any definition or limitation or context for what engineered soils may be in the context of the 1200-C Permit. Historically, "engineered soils" may be used in landscaping, and for outdoor construction such as golf courses and ball fields, or sidewalks or paved areas. The addition of Portland cement treated base (CTB), cement kiln dust (CKD), and fly ash is new to this draft permit. While these materials are increasingly used in construction projects, and may have economic benefits to the building industry, questions remain about the health and safety of these materials to the public and the environment. Our research suggests that more reports and studies focus on the economic benefits of these products and not as much on their health and safety; to that end, the commenters ask whether DEQ has as part of this 1200-C process, evaluated health, safety, and environmental effects of the products it proposes to allow by way of this Permit. For example, has DEQ reviewed the Congressional Report on CKD mandated by RCRA? See 42 U.S.C. 6982(o) and available, along with other relevant materials, at https://archive.epa.gov/epawaste/nonhaz/industrial/special/web/html/index-2.html. Has DEQ considered that according to the EPA, "CKD that is not returned to the system, typically due to the presence of undesired constituents such as alkali metals, is disposed of in landfills, or sold for beneficial use." See https://www.epa.gov/hw/special-wastes#CDK. Since these products are not listed as hazardous wastes under RCRA, DEQ must provide additional protections to Oregonians and our waters from CTB, CKD, and fly ash products, and this Permit is an opportunity to do just that.

    For example, fly ash can contain considerable amounts of toxic elements, which can leach into the environment. These can include but are not limited to boron, phosphorus, anadium, chromium arsenic, selenium, molybdenum, antimony, and tungsten. CKD can contain chlorine, chloride, heavy metals, and corrosive substances. Oregon should prohibit the use of CTB, CKD, and fly ash products that may contain these elements, but the 1200-C Permit makes no such restriction. Even if these products are not produced in Oregon, Oregon's 1200-C Permit should prohibit the use of products containing these materials in construction in the state so Oregon does not become a dumping ground for other states', or nations', excess waste products.

    It is also unclear whether DEQ is imposing restrictions on what can and cannot be constructed using engineered soils. For example, are impoundments built with engineered soils containing CTB, CKD, and fly ash? If so, are additional precautions being taken for structures that are built for the purpose of storing large loads of runoff, and/or that are built with leaching potentials? While the proposed 1200-C Permit focuses on water quality protection through potentially high pH stormwater runoff, it does not address that CTB, CKD, or fly ash can also cause acidic (low pH) conditions, nor does it address potential other water quality standards or toxins emanating from increased use of engineered soils containing CTB, CKD, and fly ash. The Permit does not address setbacks from waters of the state for the use of these products, and thus does not appear to directly address the impacts of runoff and leaching from stormwater to waters of the state.

    Lastly, CTB, CKD, and fly ash are byproducts of the cement production industry and energy production industries, such as coal production. Both of these industries are large producers of greenhouse gases (GHGs) and major contributors to climate change. The 1200-C proposed Permit does not acknowledge these factors, and how DEQ's endorsement of the use of these products in the 1200-C Permit satisfies the requirements of the agency's obligations under Executive Order No. 20-04 (March 10, 2020).

DEQ Response:

Requirements of the 1200-C permit ensure that registrants develop an Erosion and Sediment Control Plan

and implement the stormwater control measures required by the ESCP to prevent the discharge of pollutants from a construction project site using engineered soils. A sedimentation basin and pH monitoring are additional pollution prevention steps that have been added to the permit to ensure that water quality is protected from discharges associated with sites that use Portland cement treated base (CTB), cement kiln dust (CKD), and fly ash.

Section 2.2.19 Maintain site appropriately

Comment from City of Troutdale:

92. Is this section better suited 2.1 general requirements under 2.1.4 or as 2.1.5?

DEQ Response:

DEQ maintains that Section 2.2.19 is appropriately placed in the 1200-C permit. Section 2.1 addresses the requirements of individual control measures, and Section 2.2 the erosion control and sediment treatment methods that must be implemented on the project site. Section 2.2.19 summarizes steps the registrant must perform to bring the site into compliance. DEQ realizes that BMPs may fail, or ESCPs overwhelmed by storm events with well above average precipitation. Section 2.2.19 provides a step-wise procedure for registrants to address such scenarios.

Comment from Point Environmental:

93. Section 2.2.19.a. Can we get a volume threshold here, especially for triggering a corrective action report. Example: "Clean up sediment in excess of 6 cubic foot... and submit corrective action report..."

DEQ Response:

Both Sections 5.a and 5.b state that if the following occur, corrective action must be taken:

- The discharges are causing an exceedance of applicable water quality standards:
- Sediment or turbidity (as described in Section 2.2.11) are visible in discharge from the permitted site within:

    i. A conveyance system leading to surface waters; or
    ii. Surface waters from the discharge point.

Section 5.b references conditions on-site that are indicative of the potential to cause a water quality standard violation. The thresholds are explicitly stated in 2.2.11. The permit conditions regard any amount of visible sediment and/or turbidity discharged from the site as a water quality violation, therefore; a volume threshold is not applicable.

Section 2.2.21 Final Stabilization Criteria (for any areas not covered by permanent structures). Prior to permit termination, registrants must:

Comment from Point Environmental:

94. These three sections are confusing, a. indicates that all exposed areas must be covered by 70% veg prior to termination, while b. seems to indicate that termination can be completed prior to 70% veg establishment if areas are covered with bio or photo-degradable mulch or matting, then c. again requires final veg or permanent stabilization be established before temp sediment controls are removed. Example: I would not recommend pulling the toe of slope sediment barrier from a freshly seeded and matted/mulched slope, therefore you could not terminate a permit after installing non-veg mulch or matting.

DEQ Response:

Section 2.2.21 in its entirety consistently requires that vegetation be established on at least 70% of the exposed areas of a project site before termination will be approved by DEQ or Agent. Section 2.2.21.a states the 70% coverage requirement with certain exceptions. Section 2.2.21.b states that temporary bio- or photo-degradable measures may be installed to promote establishment of vegetation. Section 2.2.21.c states that temporary sediment controls must be removed after permanent stabilization or final vegetative cover is established. Sections 2.2.21.a, .b and .c require that final stabilization or 70% vegetative cover of exposed areas of the construction site must be achieved. The temporary bio- or photo-degradative measures in Section 2.2.21.b are not required to be removed as a condition of permit termination.

Comment from Point Environmental:

95. Could you provide a more concrete definition of permanent stabilization? I would suggest permanent stabilization = Permanent structures, asphalt roads/paths, concrete roads/paths, clean gravel surfaces (not used for construction), 70% perennial vegetated surfaces, or permanent landscaping wood mulched areas.

DEQ Response:

Final Stabilization is defined as established uniform (i.e., evenly distributed, without large bare areas) perennial vegetation that provides 70 percent or more cover on all exposed areas with exceptions per Section 2.2.21.

Section 2.3 POLLUTION PREVENTION CONTROLS

Comment from Jeremy Russell:

96. POLLUTION PREVENTION CONTROLS

- Sections of this permit reference prohibition of pollutant discharge to soils and groundwater
- Consider including wording which clearly prohibits discharge of pollutants to site soils. Current

wording is “to prevent the discharge of pollutants to stormwater”. This wording is regularly misconstrued by permittees and jurisdictions to mean that discharge of pollutants to soil (e.g. concrete washout, paints, etc.) are not enforceable unless they are transported off site by stormwater discharge, this interpretation of the permit language does not provide protection for ground water, does not prevent the creation of contaminated soils, and does not.

DEQ Response:

Thank you for the recommendation. The purpose 1200-C permit is to prevent the discharge of pollutants from construction activities to surface waters, waters of the state, and conveyance systems that discharge to waters of the state. For example, the storage of pollutant generating materials must be protected from precipitation that may lead to conveyance systems that discharge from the site. The permit conditions identify pollutants commonly found on construction sites and the pollution control measures that registrants must implement to prevent water quality standard violations. The pollution control measures indirectly prevent soil and groundwater pollutant contamination. Section 2.3 requires that registrants provide the appropriate control and prevention measures to ensure pollutants typically encountered at construction sites do not have contact with soil and precipitation, are discarded in designated areas and are immediately cleaned up in the case of leakage or accidental spillage.

Comment from City of Hillsboro:

97. Stationary refueling centers with fuel containers over 5 gallons on sites should be placed within a secondary containment tank to prevent spills and should also have the secondary containment tank protected/covered from rain/snow.

    Spill kit location signage/labels should be required to help identify all spill kits on site.
    All spills and spill clean-up should be required to be recorded in the CESCL’s logbook if contained onsite and reported to DEQ/Local Agent if the spill goes beyond the permit limits.
    There should be a minimum specified spill kit size in the permit language to ensure sites understand the minimum amount of clean-up supplies to have available. We also recommend specifying a certain number of spill kits required for each project based on the project size (e.g. minimum of 1 for every 5 acres).

DEQ Response:

Section 2.3 requires that “The registrant must provide written spill prevention and response procedures, employee training on spill prevention and proper disposal procedures, spill kits available on site, regularly maintained vehicles and machinery, material delivery and storage controls, signage, and covered storage areas for waste and supplies”. Sections 2.3.1 to 2.3.10 have specific requirements for the prevention, containment, clean-up, and emergency notification procedures for pollutants stored on-site. ORS Chapters 466-468 address the storage, spill prevention, and emergency notification conditions for toxic and hazardous chemicals that may be found or used on a construction project site. Sections 2.3.2, .5 and .6 of the permit remind registrants that storage and handling of pollutant generating waste must be according to applicable local, state, federal codes.

Comment from Point Environmental:

98. Spilled or leaked materials from construction activities, such as building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present. Add fuels and lubricants.

DEQ Response:

DEQ has added fuels and lubricants to the list of Section 2.3.

Comment from City of Troutdale:

99. Is this when applicable, or do all registrants need to submit this prior to construction? Should this paragraph be moved to Section 2.3.1 with guidelines provided by Part a-e?

DEQ Response:

Registrants must provide adequate written spill prevention and response procedures, employee training on spill prevention and proper disposal procedures, spill kits available on-site, regularly maintained vehicles and machinery, material delivery and storage controls, signage, and covered storage areas for waste and supplies. Section 2.3 identifies business procedures registrants must implement to prevent pollutant contamination each registrant must comply with on-site. Section 2.3.1 are the general permit conditions that prevent pollutant contamination on-site that may result in water quality standard violations.

Section 2.3.1 General Conditions

Comment from Rogue Valley Sewer Services:

100. Section 2.3.1.e. Store materials in a covered area cover-remove the word cover.

DEQ Response:

The 1200-C permit has been revised accordingly.

Section 2.3.10 Emergency Spill Notification Requirements

Comment from Point Environmental

101. Please insert the notification thresholds, i.e. petroleum spills in excess of 52 gallons on land or any amount in waters or that are likely to reach waters.

DEQ Response:

In an attempt to increase the clarity of 1200-C requirements, the conditions of regulatory agencies other than DEQ are generally noted (e.g. according to applicable local, state or federal codes). Permit registrants must consult other regulatory agencies guidelines for specific requirements (e.g. volume thresholds, notification deadlines) to ensure compliance with all regulatory conditions.

Section 2.4 CONSTRUCTION DEWATERING REQUIREMENTS

Comment from Rogue Valley Sewer Services:

102. It seems the permit is attempting to distinguish between groundwater and surface water. Surface water, eg. rain, sheet flow, may 'accumulate' in shallow excavations. However, groundwater that slowly seeps into a shallow excavation could also be interpreted as 'accumulated water' that can be treated in accordance with section 2.4. I think more explanatory language is needed to clarify the intended distinction.

DEQ Response:

DEQ has revised Section 2.4 of the permit to include “accumulated water from precipitation and uncontaminated groundwater seepage due to shallow excavation activities”.

Comment from Oregon Home Builders Association:

103. Section 2.4.i. PE Stamped Active Treatment Systems

Section 2.4 i. requires a licensed engineer to design and stamp active treatment systems. There are many scenarios in which a contractor designed, or pre-manufactured system could be provided that provides active treatment. Recommend rewriting the language to remove the licensed engineer requirement to allow contractor or pre-manufactured active treatment systems.

DEQ Response:

The effective design of an Active Treatment System (ATS) requires a detailed survey and analysis of site conditions. With proper planning, ATS performance can provide exceptional water quality discharge and prevent significant impacts to surface water quality, even under extreme environmental conditions. These systems can be very effective in reducing the sediment in storm water runoff, but the systems that use additives/polymers to enhance sedimentation also pose a potential risk to water quality (e.g., operational failure, equipment failure, additive/polymer release, etc.). Vendor-specific systems use various methods of dose control, sediment/floc removal, filtration, etc., that are detailed in project-specific documentation; however, the particular coagulant/flocculant to be used for a given project is determined based on the water chemistry of the site because the coagulants are specific in their reactions with various types of sediments. The appropriate selection of dosage must be carefully matched to the characteristics of each site.

Given their aquatic toxicity and the need to take into account site-specific factors to ensure proper use, the EPA requires a case-by-case type of permitting approach for the use of cationic chemicals at regulated construction sites (EPA Construction General Permit Fact Sheet, 2012). In the context of the C&D rule, EPA found that with the right operator training and proper usage, chemicals can be used properly on sites to avoid risk to aquatic species. It is for these reasons that DEQ has decided to require case-by case authorization or individual permits for sites that elect to use such chemicals.

In lieu of placing the onus on permit registrants to provide staff training to ATS operators and perform the duties specified by EPA, DEQ has taken an alternative approach of requiring the design and dosing amounts of active treatment systems be performed by a professional engineer. Furthermore, numerous factors determine the system’s efficacy and potential for unintended treatment chemical (e.g. polymers,

flocculants, coagulants) discharge, such as soils on-site, expected turbidity, pH, stormwater flowrate) which complicate engineering the system design and dosing specifications. Enlisting in a professional engineer for this work will ensure ATSs used in Oregon are operated appropriately and protect water quality.

Section 3.1 GENERAL EFFLUENT LIMITATIONS TO MEET APPLICABLE IN-STREAM WATER QUALTY STANDARDS

Comment from Point Environmental:

104. This standard is usually unobtainable in headwater areas or allows way too much turbidity in mainstem reaches. I would suggest an effluent limit mirroring Washington standards, under 25NTU acceptable, 25-250 your working to improve and documenting, over 250 your shut down.

DEQ Response:

DEQ appreciates the suggestion. For this permit, DEQ determined that the non-numeric standard approach to address turbidity and other pollutants (with the exception of pH when engineered soils are used) is appropriate. While permit registrants have the option for monitoring for turbidity (add reference to where in the permit), no discharges of turbidity or sediments is allowed. This is in-line with the 2017 federal construction stormwater general permit.

Comment from City of Hillsboro:

105. Section 3.1 of the permit conflicts with the no visible turbidity discharge language in Section 1.5.a. To eliminate confusion among permit holders, this language should be made consistent, therefore there should be no increase in stream turbidity regardless of the background if no visible turbid discharges are allowed from permitted activities.

DEQ Response:

Turbidity monitoring is not required by the 1200-C permit, however it does not prevent the registrant from performing turbidity monitoring to ensure stormwater discharge does not violate water quality standards. If a permit registrant decides to monitor for turbidity, Section 3.1 outlines the required framework for doing so.

Section 4.3 ESCP FOR EACH PHASE OF CONSTRUCTION ACTIVITY

Comment from Jeremy Russell:

106. ESCP FOR EACH PHASE OF CONSTRUCTION ACTIVITY

- This is an excellent addition to the permit language which will help track and control water quality impacts of redevelopment projects from start to finish.

Comment from Pahlisch Homes:

107. 4.3 New ESCP Requirements
Concern: The requirements for vertical/landscape ESCPs at the time of 1200C submittal. This requirement is not applicable for land use development plans, as it is often too early in the timetable to determine such information at time of submittal. Further, listing out all on-site contractors (name, title, certification numbers) will result in painful administrative upkeep and could cause more project delays if unknown at the time.

Comment from Oregon Home Builders Association:

108. Including Vertical Home/Building Construction
Section 4.3 requires the initial 1200-C application to include vertical construction and final landscaping Erosion and Sediment Control Plans (ESCP.) For many subdivision land development projects, the vertical construction of the buildings (homes) and final landscaping may not necessarily be known or determined at the time of the 1200-C permit submittal. In addition, the owner/developer of the vertical construction may change as a portion of or all of the project may be sold to individual builders or a large multi-national builder. Local jurisdictions require an ESCP to obtain a building permit for vertical structures. Builders can provide the ESCP to DEQ at the building permit phase. We recommend revising the language to not require these phases as part of the initial ESCP but to include if known at the time of permit application.

DEQ Response:

Construction projects generally receive grading and/or building permits (local permits) from local authorities prior to initiating construction activity. These local permits spell out the scope of the project, the parcels involved, the type of construction approved, etc. Referring to the local permit helps define "common plan of development or sale." In cases such as tract home developments, a local permit will include all phases of the construction project including rough grading, utility and road installation, and vertical construction. All construction activities approved in the local permit are part of the common plan of development and must remain under the General Permit until construction is completed. For custom home construction, local permits typically only approve vertical construction as the rough grading, utilities, and road improvements were already independently completed under a previous local permit (e.g. grading and building). In the case of a custom home site, the homeowner must submit plans and obtain a distinct and separate local permit from the local authority in order to proceed. In addition, the homeowner of the custom home site, even if less than 1-acre, must apply for coverage under the 1200-C permit because the lot is part of a common plan of development. Permit applicants should submit whatever plans are known/available at the time 1200-C applications are submitted.

If late stage building plans are not known at the time of 1200-C permit application submittal or change after permit coverage is issued, DEQ's new online format, called "Your DEQ Online", will allow permit registrants to update all application information at any time. In addition, all documents will be submitted electronically, such as ESCP updates.

Comment from Oregon Home Builders Association:

109. For developments, permits will be maintained, transferred over to lot owners at time of building or the home builder will obtain separate 1200-C permit coverage. An ESCP will be required for the building permit from local.

DEQ Response:

Upon sale of a lot that is part of a 1200-C permitted common plan of development, the permit registrant must revise the ESCP map. The registrant may maintain permit coverage for the lot or terminate if all undeveloped lots have met final stabilization criteria. The homebuilder of the individual lot is required to obtain 1200-C permit coverage before commencing land disturbing activities. The original permit coverage cannot be transferred to the individual lot owner. The intent of the 1200-C permit requirements of common plan of developments is to ensure that all lots have permit coverage or have met final stabilization criteria. Additionally, the original permit registrant is allowed to terminate coverage once all lots have been developed, stabilized or sold to individuals who obtain separate permit coverage.

Section 4.4 ESCP CONTENTS

110. Plan Site Map: v. Locations of all springs, wetlands, and other surface waters onsite. Also identify if any surface waters are listed as impaired (i.e. 303(d) listed Category 4 and 5);
    - Clarify distance or proximity of waters to be accounted for in map
    - Example in CGP: Locations of all waters of the U.S. within and one mile downstream of the site's discharge point.

DEQ Response:

DEQ has revised the 1200-C permit per EPA's comment.

Comment from Oregon Home Builders Association:

111. Section 4.4.b.i. This information may not be known at the time of 1200C application. Engineers and applicants do not know the contractors performing the work at the time of the permit application. This creates tracking and responsibility assignment challenges. It adds more to track on the permit applications and update with changes without measurable benefit.

DEQ Response:

DEQ is aware that contractors may not be known at the time of permit issuance; however the registrant is required to update the contractor list when known, and/or when a contractor is replaced. DEQ's new on-line electronic data management system called Your DEQ Online will allow registrants to update site information throughout the project. This requirement aims to clarify in the ESCP which contractors the ESCP covers, and the areas of the site over which each contractor has control. A current contractor list is important information for DEQ to ensure we know who the appropriate contacts are throughout the project.

Comment from Rogue Valley Sewer Services:

112. Section 4.4.e.vii. What is the reason for asking for these to be listed for each project? They are authorized so this seems unnecessary clutter in the ESCP.

DEQ Response:

Registrants are encouraged to consider developing a site sequencing plan as part of the schedule for construction activities. The purpose of requiring documentation of the sequencing of construction

activities is to assist registrants with planning their construction activity in conjunction with the control measures they intent to use to comply with the conditions in this permit. Proper construction site sequence planning limits the amount of land disturbed at one time and limits the exposure of unprotected soils through rapid stabilization, which in turn reduces the amount of sediment that gets discharged from the construction site. This requirement provides operators a better understanding of the site runoff characteristics throughout all phases of construction activity, which will help plan for the types of stormwater control measures necessary to meet permit conditions throughout the project. Documenting the sequencing of construction activities will help registrants to minimize earth disturbances to the extent necessary for the construction activity, which will also minimize pollutants discharged in stormwater. If plans change due to unforeseen circumstances or for other reasons, the requirement to describe the sequence and estimated dates of construction activities is not meant to "lock in" the registrant in meeting these dates. When departures from initial projections occur, those should be documented in the ESCP as appropriate.

Comment from Rogue valley Sewer Services:

113. Section 4.4.e.xiii. This also seems unnecessary. It is a construction site, there will be many materials used. They may not be known ahead of time, or may change. It is far too much effort to track the materials and locations of their use on site. The covering and secondary containment requirements ensure that runoff does not happen from the storage of the materials and the permit already specifies the registrant is to ensure there is no discharge or unauthorized materials.

Comment from City of Troutdale:

114. Section 4.4.e.xiii. This does not seem realistic and overly burdensome. Isn't this covered under Section 2.3 Pollution Prevention? How is this enforced if it changes during construction?

DEQ Response:

DEQ also requires in Section 4.4.e.xiii that in the description of each pollutant-generating activity operators must list any known hazardous or toxic substances, such as PCBs and asbestos, which will be disturbed or removed during construction. This condition is in-line with EPA in Part 7.2.7 of the 2012 CGP. DEQ's new on-line system will allow registrants to update the list of pollutant generating materials on-site when necessary.

Comment from Rogue Valley Sewer Services:

115. Section 4.4.e.xv is redundant with xiv. If this is meant to be additional specification to xiv, it should be tabbed in.
Section 4.4.e.xv. Should parts xv-xviii be parts 1-4 under part xiv? Confused what registrant must include for the detail design sheets of ESCP.

DEQ Response:

The permit has been revised. Sections 4.4.e.xv to 4.4.e.vii are now listed as 4.4.e.xiv.i to 4.4.e.xiv.iv.

Comment from I.E. Engineering, Inc.:

116. Section 4.4 e xviii – A proposed timetable for each BMP device with duration seems like very

arbitrary information due to the myriad of changes and delays that happen to a project. A BMP map that shows actual BMP install and removal dates would be more effective and provide a timeline along with the inspections.

DEQ Response:

The 1200-C permit integrates a step-wise process that ensures stormwater control measures are designed, implemented, maintained, monitored and documentation of these procedures is performed. The tentative installation and removal date of a BMP should match the stage of the construction process and have a documented record during this time. DEQ is aware that exact commencement and finish construction dates is difficult to predict; however, the DEQ on-line electronic system will allow contractors to update and revise project dates once known. The registrant must maintain a current and accurate BMP that reflects BMP changes during the construction process. The requirement to include a proposed BMP timetable will allow DEQ permit inspectors and reviewers to evaluate project conditions and ensure the ESCP is being implemented correctly during the appropriate construction phase.

Comment from Rogue Valley Sewer Services:

117. Section 4.4.e.xxii. It is unclear how this differs from everything above, which are during and post-construction stormwater controls. Without clarity, this item should be removed.

DEQ Response:

Section 4.4.e.xxii references Section 2.2.17-Engineered Sediment Basin or Similar Impoundment Installed. Engineered sediment basin installed during construction activities are temporary BMPs. The engineering and design specifications must be developed and stamped by a Professional Engineer and included in the ESCP contents.

Section 4.8 ESCP REVISIONS

Comment from Rogue Valley Sewer Services:

118. Section 4.8.h. This seems an excessive amount of tracking that in practice will never be done and thus should not be included as a permit requirement.

Comment from City of Troutdale:

119. Is it realistic to expect part h will be tracked, especially the areas of work? And also part i when it comes to installation and maintenance?

DEQ Response:

DEQ's new on-line electronic data management system called Your DEQ Online will allow registrants to update project information when appropriate.

Section 4.9 SUBMISSION OF ESCP REVISION TO DEQ OR AGENT

Comment from City of Hillsboro:

120. Section 4.9.a. Revisions outlined in Section 4.8 are not required to be submitted?

DEQ Response:

Only the ESCP revisions identified in section 4.9 are required to be submitted to DEQ as an updated ESCP.

Section 4.11 THE REGISTRANT IS RESPONSIBLE FOR ENSURING THAT ALL ACTIVITIES ON THE SITE COMPLY WITH THE REQUIRMENTS OF THIS PERMIT

Comment from Jeremy Russell:

121. THE REGISTRANT IS RESPONSIBLE FOR ENSURING THAT ALL ACTIVITIES ON THE SITE COMPLY WITH THE REQUIRMENTS OF THIS PERMIT

Consider including:

- Assign identifiers (numerical or otherwise) to all on and offsite stormwater conveyances
- Update the site map regularly to reflect areas that are permanently stabilized or areas that have been otherwise removed from permit coverage (small lots)
- Document areas and dates of initial soil disturbance and;
- Document date and areas of temporary and final stabilization; and
- Document any corrections or violations from local jurisdictions

DEQ Response:

DEQ appreciates the suggestions and the permit has addressed the above as noted: Section 4.8.3 -To reflect areas on the site map where operational control has been transferred (and the date of transfer) since initiating permit coverage. Section 4.4.e.viii.1- A description and projected schedule for the following: Estimated start dates of construction activities in each portion of the site, including clearing and grubbing, mass grading, demolition activities, site preparation (i.e., excavating, cutting and filling), final grading, and creation of soil and vegetation stockpiles requiring stabilization. Section 4.4.e.viii.3 - Estimated dates of temporary or final stabilization of exposed areas for each portion of the site. Section 5.2- Within 24 hours of each corrective action implemented, the registrant must document the corrective actions in a report.

Section 5 CORRECTIVE ACTIONS

Comment from Point Environmental:

122. Section 5.c. Need to define significant, it sure would be nice to have some numerical effluent limitations like Washington.

DEQ Response:

For the purpose of this permit, a significant contributor is a discharge that DEQ determines to contribute to a violation of a water quality standard, or is a significant contributor of pollutants to Oregon waters. See response to Comment 7 regarding numeric effluent limits.

Section 5.2 CORRECTIVE ACTION DOCUMENTATION

Comment from Point Environmental:

123. Section 5.2.h. This could cause delays in submitting the report to DEQ. Consider allowing the report to be signed by the certified inspector.

DEQ Response:

The intent of requiring the permit registrant, who is responsible for permit compliance, to sign the Corrective Action Report is to ensure that the permit registrant is aware of potential permit violations and the corrective actions taken.

Comment from Columbia Riverkeeper, the Northwest Defense Center, Willamette Riverkeeper, Rogue Riverkeeper, and Tualatin Riverkeeper:

124. Section 5.2.i. D. Corrective Action Documentation
Section 5.2.i of the Draft Permit requires that any corrective action documentation and specifically the report be "kept at the site or at an easily accessible location and made available to DEQ or Agent upon request." Permit at 5.2.i. Corrective action reports are imperative for the public to understand if there is compliance with the permit and, more importantly, to understand how non-compliance is dealt with by the Permittee. The Draft Permit must require that corrective action reports be submitted via DEQ's new online reporting system. This requirement will ensure the public has access to the reports and the DEQ also has access to the report in a timely manner if they choose. If corrective action reports are required to already be submitted via the new online reporting system, this must be clarified in the Draft Permit.

DEQ Response:

Section 1.2.13 states that permit registrants must submit all required documents and payments using DEQ's electronic reporting system, available on DEQ's website, when directed to do so.

Comment from City of Troutdale:

125. Section 5.2.j. Is it three years after permit coverage is terminated or from when report generated?

DEQ Response:

Section 5.2.j of the 1200-C permit has been revised and requires that Corrective Action Reports be kept for three years beyond permit termination.

Section 5.3 SUBMIT A CORRECTIVE ACTION REPORT TO DEQ OR AGENT

Comment from Point Environmental:

126. Clearly state in this section DEQ notification requirements, when do conditions in 5.a-5.f warrant a 24 hour phone call to DEQ versus a report within 10 days. This has been a source of confusion in the last 5 years. Most conditions requiring corrective actions do not, in my opinion, rise to the level of endangering health and the environmental requiring the 24 hour reporting per schedule f, D5.

Comment from Rogue Valley Sewer Services:

127. This is redundant with section 5.2. There should not be two separate sections describing items to be included in the corrective action report. Include all the items under 5.3 in section 5.2 and simply state that it must be submitted to DEQ within 10 days.

DEQ Response:

All corrective actions are required to be documented in a Corrective Action Report; however not all corrective actions are required to be submitted to DEQ. Only corrective actions taken for discharges that are causing an exceedance of applicable water quality standards or 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 from the discharge point. Section 5.2 lists the requirements that must be included in a Corrective Action Report within 24 hours of the corrective action occurring, and Section 5.3 lists the Corrective Actions that must be submitted to DEQ with 10 days of identifying the need to undertake a corrective action.

Section 6 VISUAL MONITORING OF SITE AND REPORTING REQUIREMENTS

Comment from I. E. Engineering, Inc.:

128. Will DEQ be providing forms for inspections, photo log, rain log, corrective actions, amendments, etc.?

DEQ Response:

DEQ has templates available on-line and will post inspection templates for registrants to use if they choose; however, registrants are not required to use DEQ templates.

Comment from I. E. Engineering, Inc.:

129. I attached the BMP map for a project I inspected in Alaska. We were required to show installation and removal dates of the BMPs which provided a nice timeline and documentation for the evolution of the project.

DEQ Response:

The 1200-C permit does require the ESCP site map to include all stormwater controls (4.4.f.xxii), and Section 4.8.b requires the registrant to revise any changes to stormwater control BMPs (e.g. location, maintenance, revision). The revised versions of the ESCP site map provide a timeline of BMP implementation during the construction process.

Section 6.1 PERSON(S) RESPONSIBLE FOR VISUALLY MONITORING THE PROJECT SITE

Comment from Jeremy Russell:

130. Section 6.1 PERSON(S) RESPONSIBLE FOR VISUALLY MONITORING THE PROJECT SITE
    - Consider including CESSWI and CISEC to this list

DEQ Response:

Thank you for the suggestion. DEQ has evaluated and added the Certified Inspector of Sediment and Erosion Control (CISEC) program to the 1200-C permit as an approved sediment and erosion control program.

Comment from S. Alison Rhea LCP, LLC:

131. Section 6.1. I am currently an approved CESCL instructor and as of now have only been able to provide Ecology approved content to my trainings (based on my signed MOA with Ecology). This means that all DEQ requirements are typically omitted. I am concerned that Oregon permittees will not get the training they need for Oregon-specific requirements unless DEQ coordinates with Ecology to expand the approved curriculum. For example, Ecology's permit is a numerically based standard for compliance and Oregon is not, so the requirements for monitoring and reporting as very different.

    Since DEQ is approving CESCL training for inspectors, we may be setting ourselves up for some miscommunication about what is required for permit compliance in Oregon based on Ecology standards, especially if only Ecology approved curriculum is included in the CESCL training.

Comment from Columbia Riverkeeper, the Northwest Defense Center, Willamette Riverkeeper, Rogue Riverkeeper, and Tualatin Riverkeeper:

132. E. Inspectors Must be Trained on the Requirements of the 1200-C Permit
    As with the 2015 Permit, the Draft Permit fails to ensure that the Inspector responsible for visual monitoring at permitted sites has sufficient knowledge of the 1200-C Permit's requirements. The Permit requires only that the person responsible for visual monitoring be certified in one of four approved sediment and erosion control programs, or any other course approved in the future by DEQ. Permit at 33. However, it is not clear that the four currently approved programs—Certified Professional in Erosion and Sediment Control, Certified Professional in Storm Water Quality, Washington State Certified Erosion and Sediment Control Lead, and Rogue Valley Sewer Services Erosion and Sediment Control Certification—include sufficient training, or any training at all, related to the requirements of the 1200-C Permit itself.

This is a significant oversight. The Permit's visual monitoring requirements are critical to ensuring that stormwater controls are functioning as intended, that water quality is being protected, and ultimately that the site is complying with the Permit. Clearly, a detailed understanding of the Permit is essential to any Inspector performing this monitoring. This is evident from a review of the Permit's requirements for Visual Monitoring, in section 6.4, and the subsequent Visual Monitoring Inspection Report, in section 6.5. As just one example, Section 6.4(c) requires that visual monitoring include identification of "any locations where new or modified stormwater controls are necessary to meet the requirements of [Permit] Sections 2, 3, and 4" (emphasis added). Permit Sections 2, 3, and 4 —related to technology-based effluent limitations, water quality-based effluent limitations, and Erosion and Sediment Control Plans—contain complex, technical requirements that are specific to the 1200-C Permit. A firm understanding of the Permit is necessary to determine whether new or modified stormwater controls are necessary, as Section 6.4(c) requires. DEQ should modify the Permit language to make clear that anyone performing these important visual monitoring duties is sufficiently educated in the Permit's structure and all relevant requirements.

DEQ Response:

In an attempt to increase permit compliance, DEQ provides Oregon specific curriculum topics to erosion and sediment control training programs. Feedback from DEQ and Agent inspectors and 1200-C enforcement actions are compiled and distributed to program instructors that target the most frequently identified noncompliance issues in Oregon. In addition, an implantation period is expected and DEQ will help facilitate with the permit transition by offering public outreach workshops, tutorial videos on-line, fact sheets and permit implementation documents.

Section 6.2 FREQUENCY OF VISUAL MONITORING INSPECTIONS

Comments from Oregon Home Builders Association:

133. Section 6.2. This note stating that in western Oregon discharge will be caused by a rain event of 0.1-inches is a generalization that is not true for many project sites. Typically, we see discharge beginning to occur at three times (0.3-inches) rainfall events in a 24 hour period. It is very much project and site specific. This note should be removed.

    There are several references (Sections 6.2 and 7.5.1 definition rr.) that inspections are required for storm events of 0.10 inches. Basing this standard on EPA's definition of storm event is a broad generalization that will increase the amount of time, effort, and cost to inspect and monitor the construction projects, without measurable benefit. The inspection requirement should not be changed without evidence, or a source study, of the benefit of such a change. DEQ should retain the current inspections standard of every 14 days or within 24-hours of a storm event that results in discharge from the site.

Comment from Paslisch Homes:

134. Section 6.2 Frequency of Visual Monitoring Inspections
    Concern: The general note "a storm event of 0.10 inches will result in discharge" is confusing, and if applied literally to inspections/monitoring outlined in Section 6.2.c, could easily render a project unfeasible for winter development. This should be assessed, more appropriately, on a project/case basis.

DEQ Response:

All project sites are unique and each discharge based on numerous factors, including soil type, compaction, percent of saturation, slope, vegetative cover and other factors. The permit requires the permit registrant perform a visual monitoring inspection within 24 hours of a storm event that results in discharge from the project site. The statement that storm events of 0.10 inches may result in discharge is included to ensure that inspectors are tracking storm events appropriately and documenting when sites discharge. "Within 24 hours of the occurrence of a storm event" means that an inspection must be conducted within 24 hours once a storm event has resulted in discharge from the project site, even if the storm event is still continuing. Thus, if there is a storm event at a site that continues for multiple days, and each day of the storm results in discharge, an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm must be conducted.

Comment from Jeremy Russell:

135. Section 6.2. FREQUENCY OF VISUAL MONITORING INSPECTIONS
The current inspection frequency is not effective to ensure bmps are properly maintained. Consider changing the frequency to:
    - Once every 7 calendar days
    - Within 24 hours of each storm event measuring .10 inches if a discharge occurs
    - Within 24 hours of each storm event measuring .25 inches or greater regardless of discharge from site.

Comment from I. E. Engineering, Inc.:

136. Section 6.2. "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." This sounds like a requirement to inspect after every 0.10" event because your are putting the burden of proof on the inspector to document no discharge occurred. Why not make it a requirement to inspect each time there is a 0.10" event.

    I'd like to recommend an option for inspections like Alaska's construction general permit.There are two inspection options: every 14 days plus one after every storm event or once every 7 days. Alaska receives similar rainfall to Oregon and in southeast Alaska significantly more. This takes the guesswork out of the inspection frequency and allows for projects to tailor it to what best suits their needs. Note, this was during and after Alaska was in a consent decree.

    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."

    2. I'd like to recommend an option for inspections like Alaska's construction general permit. There are two inspection options: every 14 days plus one after every storm event or once every 7 days. This takes the guesswork out of the inspection frequency and allows for projects to tailor it to what best suits their needs.

See section 6.0 of Alaska's CGP

Comment from S. Alison Rhea LCP, LLC:

137. I attended the online public hearing for comments on Wednesday and wanted to echo a request from one of the attendees regarding inspection frequency. Currently I do ESC Inspections for a municipality (CoHV) as a consultant. So, I am not an inspector for a contractor, thus the frequency impacts me less than a contractor inspector, but I do work with these inspectors, so the frequency does affect me somewhat. I too am from Alaska and yes we do get rainfall there. My last job was in Ketchikan with an annual rainfall of 180" per year. While soil conditions do vary I still find the frequency relevant. There is a choice of either every two weeks and after .5" of rain OR every week. Most find it simpler to just have an inspection every week.
ESC is ongoing, every day, regardless of rain, and must be attended to every day/all day, not just weekly. There was a tremendous amount of paperwork involved for this inspection every week. Having to do these inspections after every rain event becomes redundant, IMO. Please consider a revised frequency rate, thanks!
Info could be found under Alaska SWPPP.

DEQ Response:

DEQ established the frequency of site inspections based on three principal factors: the nature of a construction site is such that large-scale environmental changes occur over short durations at the site; rainfall and other natural or environmental forces may cause BMPs to fail; and, best professional judgment indicates that sites that are inspected regularly typically tend to cause fewer water quality violations. Site inspections provide timely feedback to the registrant on the effectiveness of installed BMPs. The 1200-C permit requires adaptive management mechanisms including the inspection, evaluation, reporting, and documentation of corrective actions taken to ensure permit compliance throughout the duration of 1200-C permit coverage.
Furthermore, in some areas of Oregon it is common to see multiple days with 0.5- to 1-inch of rain within a 7-day period. The frequency requirements are that each of these days need to have an inspection to determine the effectiveness of the BMPs and observe the quality of the runoff. A set 7-day visual monitoring schedule will miss back-to-back multiple storm events, vital observations and potentially necessary corrective actions.

BMP effectiveness and failure typically occurs when the runoff is at its peak volume and velocity, which is within 24 hours of a storm event. Within the 24 hour window a visual monitoring inspector can correct a failure and prevent additional pollutant discharge immediately. The allowance of a set visual monitoring schedule of every 7 days is a step back from the current permit's inspection schedule effectiveness. DEQ must determine that the provisions in this permit are, in all cases, at least as stringent as those established in the previous 1200-C permits per the anti-backsliding rules in 40 CFR 122.44(l). In addition, 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 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 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. No requirements in this 1200-C permit are to be relaxed or eliminated from the previous applicable permit.

Section 6.4 REQUIREMENTS FOR VISUAL MONITORING

Comment from Jeremy Russell:

138. Section 6.4. REQUIREMENTS FOR VISUAL MONITORING

- Consider providing guidance, either in permit or appendix, on discharge sampling. Characteristics of discharges can rarely be observed accurately by simply looking at the discharge while it is occuring. Guidance should include:
    1. Who is qualified to sample
    2. Timeline for sampling
    3. Where to sample and where not to sample
    4. Size of sample
    5. How to characterize discharge – clear, turbid, opaque, sheen, smell
    6. How to document observations
- Consider the Visual Monitoring Guidance from Oklahoma DEQ (JR)

DEQ Response:

Sampling of stormwater discharge is not required by the 1200- permit.

Section 6.5 VISUAL MONITORING INSPECTION REPORT

Comment from Point Environmental:

139. Section 6.5.p. All inspection reports should be kept in chronological order at the site or at an easily accessible location (electronically is acceptable), and made available at the time of inspection or upon request by DEQ or Agent; and; strike out-at an easily accessible location, is acceptable, at the time of inspection or.

DEQ Response:

Some project sites do not have an office or location to store the inspections reports. The permit registrant may keep the reports in a vehicle, electronic device or wherever deemed appropriate and easily accessible.

Section 6.6.1 Monitoring the pH of stormwater captured in sediment basins/impoundments when engineered soils are used.

Comment from City of Hillsboro:

140. Section 6.6.1. pH calibrated meter: to what degree accuracy is required for calibration and for the meter? Any specific standard?

DEQ Response:

DEQ will post information that outlines the types of pH monitoring instruments allowed, calibration requirements, schedule of monitoring, and documentation of monitoring results on our website.

Comment from City of Hillsboro:

141. How will linear roadway projects using a cement or lime treated base subgrade implement an EMP to manage pH? For example, if the project is a capital improvement project within a right-of-way adjacent to existing neighborhoods where will they have the room within the project limits to perform this requirement? How will they collect and centralize the stormwater to test prior to discharge (some linear projects are over 1 mile long and collect stormwater drainage from outside the project area)?

DEQ Response:

An Environmental Management Plan is not required for sites with engineered soils. DEQ is aware that linear transportation projects, especially roadways with limited right-of-way area will pose a challenge in complying with the temporary sedimentation requirement of the 1200-C permit. However, the ESCP developer must include a temporary sedimentation basin (trap/pond) for the containment of stormwater runoff exposed to cementitious soil amendments for pH monitoring and treatment (if necessary) before discharge from the site. The requirements of the 1200-C permit are intentionally flexible to accommodate a variety of engineered solutions.

Comment from Port of Portland:

142. Section 6.6.1. Monitoring the pH of stormwater captured in sediment basins/impoundments when engineered soils are used and 2.2.18 Engineered sediment basin or similar impoundment must be installed with engineered soils, should be stricken from the permit. DEQ has not provided sufficient evidence or data showing that stormwater runoff from construction sites using engineered soils violates water quality standards for pH.

DEQ Response:

DEQ has determined that pH monitoring is an important condition to ensure water quality is not negatively impacted when engineered soils are used at construction sites. When fresh alkaline materials (e.g. concrete, Portland cement, cement kiln dust, fly ash) are exposed to stormwater runoff, they can raise the pH of the stormwater. Therefore, DEQ is requiring pH sampling of stormwater runoff, and if necessary treatment of, on sites where engineered soils are used before discharge to ensure water quality

is protected. The water quality standard for pH is determined by the river basin of the receiving waterbody per OAR 340-041-0021.

Comment from City of Troutdale:

143. Please clarify "...must continue every 7 calendar days..."

DEQ Response:

If engineered soils are used on a construction site, the permit registrant must monitor pH at least weekly from the time soil amendments are first exposed to precipitation and must continue until the area of engineered soils is fully stabilized.

Section 7.3.1 Conditions for Terminating 1200-C Coverage

Comments from Rogue Valley Sewer Services:

144. Section 7.3.1. Conditions for Terminating 1200-C Coverage
Termination of 1200-C permits covering common plans of development are a frequent issue and one that the permit attempts to address in section 7.3.1.d, however the language needs a bit more clarity. Frequently, the original permit registrant wants to terminate the permit prior to completion of the entire project. The original permit registrant may only have been contracted to install the street and utilities and does not want to hold the permit throughout building construction. For a common plan of development, the existing 1200-C should be allowed to terminate when items 7.3.1 a through c are met and when the remaining unstabilized area:

- Is covered under a new 1200-C permit; or
- Is less than one acre in area and is covered under a local erosion control permit.

145. Section 7.3.1.d. This would seem to imply that if any portion of the site is stabilized the 1200-C can be terminated, even if the remaining portion of active work is on 1 acre or more.
For a common plan of development or sale, when portions of the original common plan of development or sale meet final stabilization criteria per Section 2.2.21, or are covered by the 1200-C or 1200-CN. A separate instead of by the.

Comment from City of Troutdale:

146. Confused why only a portion of the original common plan needs to meet final stabilization criteria. Is this referring to the 70% or more criteria? Maybe it should include that language here.

DEQ Response:

DEQ revised this section to improve clarity.

Comment from City of Troutdale

147. "prior to termination approval:"?

Comment from Rogue valley Sewer Services:

148. The following must be completed prior to a termination will be approved: Change prior to before.

DEQ Response:

The 1200-C permit has been revised accordingly.

Comment from City of Hillsboro:

149. How does DEQ know if a permit is ready to be terminated? We suggest that DEQ or their local agent also sign-off to ensure all stabilization and temporary erosion control measure removal requirements have been correctly completed before a permit is closed out.

DEQ Response:

It is the permit registrants' responsibility to submit a notice of termination when the project is complete and the soils are stabilized. Permit conditions 7.3.1.a-d state the criteria for permit termination. Proof of final stabilization and removal of temporary erosion control measures are required by an inspection performed by a DEQ representative or Agent, or the submission of photo-documentation that must be approved by DEQ or Agent before permit coverage is terminated.

Comment from City of Troutdale:

150. Sections 7.3.1.alternate.b. Would this be a 1200Z or individual permit? Perhaps a good idea to include what those options are for direction to registrant.

DEQ Response:

Section 7.3.1.alternative.b states that an individual permit is an alternative to 1200-C Construction Stormwater General Permit. The permit applicant may apply for an individual permit in accordance with OAR 340-045-0030 if they do not wish to be regulated by the 1200-C general permit, or if DEQ or Agent determine that the conditions of the 1200-C general permit are not adequate to achieve water quality standards or protect beneficial uses. Discharges covered by the 1200-C Construction Stormwater General Permit are not eligible for coverage under the 1200-Z Industrial General Discharge Permit, except for specific sectors listed in the 1200-Z permit.

Section 7.5 Local Public Agencies Acting as DEQ's Agent

Comment from Rogue Valley Sewer Services:

151. Add "permit issuance" and 'enforcement" to list.

Comment from City of Troutdale:

152. Or respond to complaints about a site? Or initiate enforcement? Those activities are not called out here if needed.

DEQ Response:

The 1200-C permit has been revised accordingly.

Comment from City of Troutdale:

153. Do Agents not have to review dewatering or EMPs?

DEQ Response:

Agents review dewatering plans per Section 2.4. Agents are not required to review Environmental Management Plans (See Comment #34). The review process for projects with Environmental Management Plans will be a coordinated effort between DEQ and the Agent. Agents will accept and review 1200-C applications, erosion and sediment control plan, and land use compatibility statement and DEQ will review the Environmental Management Plan. DEQ can and will provide Agents technical assistance regarding all aspects of applications and permit registrations when requested.

Comment from City of Troutdale:

154. Agent capitalized in other sections.

DEQ Response:

The permit has been revised accordingly.

Section 7.5.1 Permit-Specific Definitions

Comment from City of Troutdale:

155. Conveyance Systems Are conveyance systems limited to manmade structures and not natural?

DEQ Response:

The permit has been revised to specify only human-made: Conveyance System-for the purposes of this permit, human-made structures, such as a sewer, ditch, pipe, channel, swale, or similar component that is designed to carry water to and from stormwater control measures on a construction site; or any combination of such components.

Comment from Rogue Valley Sewer Services:

156. Erosion and Sediment Control BMPs: Use sediment runoff instead of sedimentation. Sedimentation is what we are trying to promote, we want the sediment to settle out of the runoff. What we are trying to prevent is sediment runoff.

DEQ Response:

The permit has been revised accordingly.

Comment from Oregon Home Builders Association:

157. Remove run-on from the permit to avoid confusion, unless it is specifically defined under 7.5.1 Permit-Specific Definitions

DEQ Response:

To improve the clarity of Section 2.1.1 the permit has been revised accordingly. The following definition has been added to Section 7.5.1. (See Comment #42).

Stormwater run-on-are sources of stormwater that drain from adjacent land located upslope or upstream from the regulated site.

Comment from Oregon Forest & Industries Council:

158. On behalf of the Oregon Forest & Industries Council ("OFIC") and the more than 45 forestland owners and forest product manufacturers that our organization represents, we are submitting the following comments regarding the Oregon Department of Environmental Quality's ("DEQ" or the "agency") draft revised NPDES Construction Stormwater Discharge General Permit No. 1200-C (the "Proposed 1200-C Permit" or the "Draft Permit") that was issued for public comment on September 23, 2020.

    OFIC has not typically expressed interest in the particulars of the 1200-C Construction Stormwater Discharge Permit, as it has not historically applied to the daily operations of our members' facilities. That said, the current revised version of the permit contains a novel definition that we find to be potentially problematic and that we would ask the agency to address in the final permit: to wit, the definition that the agency has added for "stumping."
    Our assumption is that DEQ has added a definition for "stumping" as a construction activity that falls under the purview of the 1200-C permit insofar as stumping may be performed as part of site preparation prior to actual construction. The draft permit's definition of "construction activity" clearly indicates that this is the case. However, the definition of "stumping" is facially overbroad, and we have legitimate concern that it could be improperly cited as evidence of DEQ authority over forestry management practices and activities that fall under the jurisdiction of the Oregon Department of Forestry ("ODF") vis à vis the Oregon Forest Practices Act ("FPA").

    The FPA – and the rules promulgated pursuant thereto – vest in ODF the authority to monitor and enforce water quality protections that arise in the course of timber harvest, road building, and chemical use on privately owned timberlands. Although removing stumps post-harvest is not a common forestry practice in Oregon on commercial and non-commercial timberland, it may be utilized in certain circumstances, and to the extent that it is, it would, likewise fall within the purview of the FPA and ODF's regulatory authority.

    By defining "stumping" broadly as "the removal of stumps, post-harvest" in the Proposed 1200-C Permit without further qualification, DEQ threatens to create uncertainty regarding where ODF's authority ends and DEQ's begins with regard to certain potential post-harvest activities on forestland. Such uncertainty is unnecessary and could easily be avoided.

    We would therefore request that DEQ eliminate the definition of "stumping" in the draft permit and eliminate the reference to "stumping" in the definition of "construction activity." To the extent that

a developer or landowner removes stumps from a parcel as an element of site preparation, this activity would be captured by the references to "clearing" "grading" and "excavating" and is therefore little more than surplusage.

In the alternative, we would recommend adding a qualifier to the definition of "stumping" to make it clear that this is a regulated activity only if it is being performed pursuant to an active construction project as an element of site preparation.

DEQ Response:

DEQ's regulatory authority regarding land disturbances and stormwater discharges associated with development projects is only related to projects that are not forest activities regulated by the Oregon Department of Forestry (ODF) and the Forest Practices Act (FPA). ODF has clearly defined regulatory authority over the forest activities on non-federal forestlands in Oregon. For the purposes of this permit, stumping is defined as a construction activity only when performed on land development projects, not forest activities. DEQ is aware that stumping may occasionally occur on land to remain as privately owned timberland; however, stumping regularly occurs at construction activities in advance of land development as part of the site preparations. The intent of including stumping as a construction activity in the 1200-C permit is to ensure there is clarity for all involved when properties are converted or prepped for conversion from forestlands to developments that 1200-C permit coverage is required for those non-forestland activities, thus DEQ retained the definition in the permit.

Comment from City of Troutdale:

159. Local Government: special not service, and I don't think a service district is a local government.

DEQ Response:

Special districts (also known as special service districts, special district governments, limited purpose entities, or special-purpose districts in the United States) are independent, special-purpose governmental units that exist separately from local governments such as county, municipal, and township governments, with substantial administrative and fiscal independence. They are formed to perform a single function or a set of related functions.

Summary of 1200-C Permit

Comment from Oregon Home Builders Association:

160. In conclusion, due to implementation issues, this draft permit will not increase DEQ's objective of cleaner water and will only increase administrative requirements for both the permit holder and agent. OHBA is concerned that permit compliance challenges mentioned above will result in unintentional non-compliance. OHBA members remain committed to our legal obligation to comply with state and federal law and responsibility to protect Oregon's waters. We are committed to working productively with DEQ staff and our local government partners to improve water quality in Oregon.

DEQ Response:

DEQ appreciates the feedback and has developed a robust training and technical assistance plan to ensure all permit registrants and associated contractors have information associated with the new construction stormwater general permit requirements. In addition, DEQ anticipates that the clarity and organization of the new permit will improve noncompliance. DEQ appreciates that the Oregon Home Builders Association is committed to working productively with DEQ and local governments and looks forward to discussions regarding implementation of the renewed 1200-C permit.

Comment from Columbia Riverkeeper, the Northwest Defense Center, Willamette Riverkeeper, Rogue Riverkeeper, and Tualatin Riverkeeper:

161. Overall, while DEQ has made overall improvements of clarity and modernization to the 1200-C Permit there are still several changes needed. Commentators urge DEQ to incorporate the above comments into the Permit to ensure the utmost protections for Oregon waters from the harmful impacts of stormwater discharges from construction sites.

DEQ Response:

DEQ appreciates the feedback.

Permit Evaluation Report Comments

Comment from Port of Portland:

PER.1 The PER states on page 13 of 28 that, "Oregon soils are typically saturated due to high groundwater and frequent precipitation." DEQ uses this statement in part as the basis for requiring pH monitoring when engineered soils are used. Oregon soil types and precipitation vary widely by region across the state. The Port requests that DEQ not use overly broad and generalized statements for the basis to require complex, expensive monitoring and BMPs.

DEQ Response:

Thank you for the recommendation. The Permit Evaluation Report has been updated to state "Oregon soils west of the Cascade Mountain range are typically……".

Appendix A Environmental Management Plan Review Applications for Contaminated Media Management, Construction Dewatering and Active Chemical Treatment Systems Comments

Comment from City of Troutdale:

A.1 Where does the Agent's responsibility lie in this section?

DEQ Response:

Agents are not required to review Environmental Management Plans. The review process for projects with Environmental Management Plans will be coordinated between DEQ and the Agent. Agents will accept and review 1200-C applications, erosion and sediment control plans, and land use compatibility statements and DEQ will review and when appropriate, approve the Environmental Management Plan.

Comment from Rogue Valley Sewer Services:

A.2 Remove "DEQ may assign coverage under this permit after the registrant has included appropriate controls and implementation procedures designed to ensure that the above activities will not lead to discharges that cause an exceedance of water quality standards." From page 6.

DEQ Response:

Appendix A has been revised accordingly.

Comments from City of Hillsboro:

A.3 What type of training is required/necessary to show that someone is authorized to operate any dewatering activity? There should be a minimum standard in place to ensure consistency for operators and approval of supplemental plans. This will also help inspectors understand if the appropriate individuals are operating the designed system.

DEQ Response:

In lieu of placing the onus on permit registrants to provide staff training to Active Treatment System operators and perform the duties specified, DEQ has taken a proactive approach of requiring the design and dosing amounts of active treatment systems be performed by a professional engineer. Furthermore, numerous factors determine the active treatment system's efficacy and potential for unintended treatment chemical (e.g. polymers, flocculants, coagulants) discharge, such as soils on-site, expected turbidity, pH, stormwater flowrate) which complicate engineering the system design and dosing specifications. Enlisting a professional engineer for this work will ensure ATSs used in Oregon are operated appropriately and are protective of water quality.

Comment from City of Hillsboro:

A.4 Page 1: Contaminated Media Management: For clarification what constitutes contaminated soil? What is Oregon DEQ's definition of contaminated soil to know if you have or have not encountered it and therefore need to cease all discharges and notify DEQ within 48 hours? Seems like there should be some specific limits to not exceed that should be included in the permit language. Perhaps a new table in Appendix A that includes all the discharge parameters and known limits to know if it's considered contaminated or within an allowed range to discharge.

DEQ Response:

If a proposed construction site has a DEQ assigned Environmental Cleanup Site Information (ECSI) number associated with the property, an Environmental Management Plan must be submitted to DEQ. DEQ maintains the ECSI database to track sites in Oregon with known or potential contamination from hazardous substances, and to document sites where DEQ has determined that no further action is required.

On sites without a DEQ ECSI number where potential contamination is encountered, DEQ provides the following guidance added to Appendix A:

Unanticipated and unknown contaminated soil is soil that exhibits any of the following: Any soil distinctly different in its physical characteristics, such as observation of unusual soil staining, color variations, unusual odors, building debris (bricks, stained timber, or charcoal), or oily liquids. Odors, such as a petroleum hydrocarbons odor may coincide with elevated constituent concentrations indicated of gasoline or diesel fuel. Anticipated and unknown contaminated soil is present if it exhibits a volatile organic compound (VOC) vapor concentration in excess of 50 parts per million (ppm), as measured with a photoionization detector (PID) using soil sample head space. Upon discovery of suspected unanticipated and unknown contaminated soil, immediately suspend all activities in the vicinity, notify DEQ. Additional work at the property should be performed in accordance with an approved contaminated media management plan (CMMP).

For groundwater, additional management protocols for unknown or unanticipated contamination should be followed if any unusual odors or sheen (or free product) is present on the water surface. In the event of discovery of unknown groundwater contamination, suspend work activities and notify DEQ. Following notification, proceed with site activities following the management requirements identified in a DEQ-approved CMMP. In the event of sheen or free product, the construction contractor should remove the sheen and/or free product and containerize the water in a temporary aboveground storage tank for testing to determine the appropriate management requirements.

If free-phase product petroleum is encountered in groundwater, the free product should be removed for disposal in a manner consistent with local, state, and federal regulations. To remove free product from the surface of the groundwater, the construction contractor may choose to use a vacuum truck to skim the product from the surface of the groundwater (if sufficient product is present). The removed product should be vacuumed directly into the vacuum truck or into drums. Alternatively, the construction contractor may choose to use adsorbent booms/pads to remove the product/sheen. However, adsorbent booms/pads are not encouraged, because of the elevated health and safety risks of handling the used booms and the higher costs associated with disposal of used booms/pads. Alternatively, the groundwater can be treated through a DEQ-approved treatment system prior to discharge through an approved permit to stormwater or sanitary sewer.

Comment from City of Hillsboro:

A.5 I think the Environmental Management Plan should emphasize a tiered treatment plan approach to prioritize the use of passive dewatering treatment methods first (e.g. settlement, skimming, and filtration techniques) before advancing to use chemical additives. This can amount to significant cost savings as sites may need to eventually ramp up towards using chemical additives to dewater but not all of the time (note- this approach may not resolve pH situations).

Here is some language from the City of Hillsboro Design and Construction Standards that may be

- When passive treatment method designs are initially used the design shall support potential upgrade to an active treatment method with minimal site plan changes.
- Dewatering systems shall be installed and ready for operational use prior to beginning mass grading and trenching activities during site development
- Once a vegetative stormwater management facility has been planted, it shall not be used as a temporary sediment basin, stilling basin, or holding pond.

DEQ Response:

An Environmental Management Plan application require that Active Treatment Systems be designed and stamped by a Professional Engineer. Numerous factors determine the ATS's efficacy and potential for unintended treatment chemical (e.g. polymers, flocculants, coagulants) discharge, such as soils on-site, expected turbidity, pH, stormwater flowrate) which complicate engineering the system design and dosing specifications. Enlisting in a professional engineer for this work will ensure ATSs used in Oregon are operated appropriately and protect water quality. An additional benefit of professionally designed ATSs is that an experienced engineer will recommend the appropriate system based on cost effectiveness. If passive treatment methods are adequate to meet permit requirements they will be implemented until more expensive methods are required.

Section 2.2.1.c of the permit requires protection of post-construction stormwater facilities during construction to prevent embedded soils and loss of hydraulic conductivity.

Comment from City of Hillsboro:

A.6 There should be a required residual chitosan discharge limit to prevent residual chitosan from being discharged from any proposed treatment system.

DEQ Response:

The design and dosing amounts of active treatment systems be performed by a professional engineer. Numerous factors determine the system's efficacy and potential for unintended treatment chemical (e.g. polymers, flocculants, coagulants) discharge, such as soils on-site, expected turbidity, pH, stormwater flowrate) which complicate engineering the system design and dosing specifications. Enlisting a professional engineer for this work will ensure ATSs used in Oregon are operated appropriately and protect water quality.

Comment from City of Hillsboro:

A.7 Appendix A page 11: Can this requirement be expanded to include approval by others like an Environmental Engineer, CPESCP, CESCL, Certified Stormwater Manager (CSM) or other relevant certification types etc.?

DEQ Response:

DEQ is the regulatory authority that will approve all 1200-C required Environmental Management Plans.

Comment from City of Hillsboro:

A.8 Vehicle wheel wash systems (BMP's) need to include a maintenance plan with the permit to ensure all wash water is correctly managed and discharged in conformance with this permit such as:

- Replace wash water when water reaches/exceeds a specific NTU level (requires sampling/monitoring)
- Maintenance Plan: Describe how the wheel wash will be drained and how accumulated sediment will be removed and where it will be dewatered prior to discharge or other method of disposal (e.g. removed by Vactor Truck).
- Recirculation wheel wash systems often use flocculants (these systems should be shown/submitted with the EMP for approval and use)

DEQ Response:

Section 1.5.g of the 1200-C permit addresses appropriate management methods for wheel wash water.

Comment from City of Hillsboro:

A.9 What needs to be shown to demonstrate that a facility has adequate capacity? Does the capacity need to be sized for a specific storm event with storm sizing calculations included (if so, what size storm event does the holding facility need to be correctly sized for)?

DEQ Response:

The necessary calculations performed in designing an Active Treatment System will be done by a professional engineer based on all relevant site-specific information.

Comment from City of Hillsboro:

A.10 Provide a basic diagram to help illustrate the difference in the design options for each of the 4 Proposed Treatment types in Section V.

DEQ Response:

Active Treatment Systems must be designed by a professional engineer. Professional engineers are aware of the various design options and will chose the appropriate site-specific system.

Comment from City of Hillsboro:

A.11 Washington DOE has pre-approved treatment system designs from vendors which help to streamline and expedite the review and approval process for these systems. Does DEQ plan to implement something similar?

DEQ Response:

The effective design of an Active Treatment System (ATS) requires a detailed survey and analysis of site conditions. With proper planning, ATS performance can provide exceptional water quality discharge and prevent significant impacts to surface water quality, even under extreme environmental conditions. These systems can be very effective in reducing the sediment in storm water runoff, but the systems that use additives/polymers to enhance sedimentation also pose a potential risk to water quality (e.g., operational failure, equipment failure, additive/polymer release, etc.). Vendor-specific systems use various methods of dose control, sediment/floc removal, filtration, etc., that are detailed in project-specific documentation; however, the particular coagulant/flocculant to be used for a given project is determined based on the water chemistry of the site because the coagulants are specific in their reactions with various types of sediments. The appropriate selection of dosage must be carefully matched to the characteristics of each site.

It is for these reasons that DEQ has decided to require case-by case authorization or individual permits for sites that elect to use such chemicals. DEQ has taken a proactive approach of requiring the design and dosing amounts of active treatment systems be performed by a professional engineer. Furthermore, numerous factors determine the system's efficacy and potential for unintended treatment chemical (e.g. polymers, flocculants, coagulants) discharge, such as soils on-site, expected turbidity, pH, stormwater flowrate) which complicate engineering the system design and dosing specifications. Enlisting in a professional engineer for this work will ensure ATSs used in Oregon are operated appropriately and protect water quality.

Comment from City of Hillsboro:

A.12 DEQ needs its own CESCL certification program that is specific to the 1200C/CN permits for Oregon. We recommend that whenever this program begins that it also includes an additional option/endorsement for treatment system operator certification.

DEQ Response:

DEQ appreciates the feedback. As background, DEQ provides Oregon specific curriculum topics to erosion and sediment control training programs. Feedback from DEQ and Agent inspectors and 1200-C enforcement actions are compiled and distributed to program instructors that target the most frequently identified noncompliance issues in Oregon.

Comment from City of Hillsboro:

A.13 Why is the EMP for Construction Dewatering (for the purpose of lowering groundwater) so much more complicated than the plans for addressing contaminated water and active chemical treatment systems? Our experience with groundwater point wells for lowering groundwater adjacent to construction sites is that they generally discharge near drinkable water with very low turbidity.

DEQ Response:

Section 1.2.9 has been revised to require an Environmental Management Plan for the lowering of contaminated groundwater. An EMP will not be required for the lowering of uncontaminated groundwater.

Appendix B Natural Buffer Zone Requirements Comments

Comment from the City of Troutdale:

B.1 Who has jurisdictional authority, DEQ 1200-C permit buffer requirements or local planning development code?

DEQ Response:

Local natural buffer zone requirements supersede the conditions of Section 2.2.4.

Comment from the City of Troutdale:

B.2 Section B.1.2-Sheet flow discharge or point source discharge?

DEQ Response:

Assuming your comment is in regard to Section B.2.1, a point source discharge would not be allowed to discharge directly to a surface water that has a required natural buffer zone. The discharge may be directed to the natural buffer zone and allowed to sheet flow through BMPs and the existing vegetated natural buffer for filtration and infiltration before entering surface waters. In addition, appropriate perimeter controls are required by the 1200-C that will prevent sediment transport into the natural buffer zone (See Sections 2.2.1 and 2.2.6).

Comment from the City of Troutdale:

B.3 Discharges to the buffer (pg.8)-Does this apply to point discharges or general sheet flow from site?

DEQ Response:

If stormwater runoff is conveyed to the natural buffer zone, it must sheet flow and if necessary to prevent erosion caused by stormwater flows within the buffer, the registrant must use velocity dissipation devices. The purpose of this requirement is to decrease the rate of stormwater flow and encourage infiltration so that the pollutant filtering functions of the buffer will be achieved. To comply with this requirement, construction registrants typically use devices that physically dissipate stormwater flows so that the discharge entering the buffer is spread out and slowed down.

Comment from the City of Troutdale:

B.4 Step 2 page 11-Will DEQ or Agent need to verify the validity of this calculation? If so, how?

DEQ Response:

No. It is incumbent upon the ESCP developer to present the appropriate and correct calculations to DEQ or Agent for approval.

Comment from City of Troutdale

B.5 Isn't this more post-construction related than 1200-C during construction?

DEQ Response:

No. The sediment removal capability of the 50 foot natural buffer zone is determined so that appropriate BMPs will be implemented during construction activities that result in discharge to equal the buffer's sediment removal effectiveness.

Comment from City of Troutdale:

B.6 Attachment 1 page 16-Why so many grasses for Western OR? Aren't there more shrubs than grasses?

Comment from Rogue Valley Sewer Services:

B.7 The vegetation types described in Table B-9 are not typical of riparian areas in Western Oregon. Typically, these areas are primarily vegetated by shrubs and forbs that may perform differently from an area dominated by grasses. Table B-9 should include a typical vegetation category. Page 17-All but one of the vegetation categories in B-9 are grasses. Typical riparian vegetation is shrubs and forbs, there is no vegetation type in B-9 that closely represents typical riparian vegetation western Oregon.

DEQ Response:

DEQ is aware that the choices available in Tables B-8 and B-9 do not represent all types vegetative cover typically found in Oregon. It is impractical to create a comprehensive list. Resources are provided in Appendix B to assist registrants and ESCP developers in choosing the appropriate vegetative cover. (See the Q and A section on page 17).

Comment from Rogue Valley Sewer Services:

B.8 This is not a sufficient category description. Vegetation is measured in percent ground cover, as in the permit itself (70% cover for final stabilization).

DEQ Response:

To represent different types of buffer vegetation, DEQ presents 4 or more common vegetative types for the State of Oregon covered under the permit. For each vegetation type evaluated, DEQ considered only permanent, non-grazed, and non-harvested vegetation, on the assumption that a natural buffer zone adjacent to the surface water of the state will typically be undisturbed.

Comment from City of Hillsboro:

B.9 It is not clear if projects that are 5 acres or greater require double rows of perimeter control along the boundary of the buffer/sensitive area if the buffer width is 50 feet or more. Can the language be clarified?

DEQ Response:

Section B.1.3 of Appendix B applies to projects of any acreage size that provide and maintain a minimum 50 foot natural buffer zone. The guidance language of Appendix B is clear with regard to natural buffer zone protection, "**Discharges to the Buffer**: The registrant must ensure that all discharges from the area of earth disturbance to the natural buffer zone are first treated by the site's erosion and sediment controls (for example, you must comply with the Section 2.2.6 requirement to install sediment controls along any perimeter areas of the site that will receive pollutant discharges), and if necessary to prevent erosion caused by stormwater flows within the buffer, you must use velocity dissipation devices. The purpose of this requirement is to decrease the rate of stormwater flow and encourage infiltration so that the pollutant filtering functions of the buffer will be achieved. To comply with this requirement, construction registrants typically will use devices that physically dissipate stormwater flows so that the discharge entering the buffer is spread out and slowed down." If at any time the perimeter sediment and erosion controls fail to prevent sedimentation and erosion within the natural buffer zone, they must be modified (See Sections 2.2.6 and 2.2.11) as a corrective action (See Section 5.d) and must be documented in a corrective action report; therefore, double rows of perimeter controls may be an appropriate stormwater control alternative if the initially implemented sediment and erosion controls are inadequate.

Comment from City of Hillsboro:

B.10 Natural Buffer Zones: Buffer zones that are used for "treatment" can too easily become degraded with concentrated stormwater discharge and sediment deposition. This concept will be challenging with different soil types potentially plugging up natural (duff) systems. How will these loose sediment deposits not eventually wash into the stream/wetland during a large rain event? Isn't the point of the 1200C permit to prevent this from happening?

B.11 Install sediment controls that reduce loading equivalent to 50' natural buffer? Is this saying that the buffer can be used as an erosion control method in-lieu of an engineered erosion control BMP if the buffer is 50ft or greater?

DEQ Response:

The natural buffer zone will treat stormwater runoff directed from the construction site; however, only after it is treated by the appropriate erosion and sediment controls. The accumulation of sediment visible in a natural buffer zone due to stormwater filtration indicates the perimeter sediment controls are inadequate. Since there are no sediment and erosion controls between a surface water and the perimeters controls, runoff entering the natural buffer zone is considered discharge from the project site and must not be visibly turbid.