



State of Oregon  
Department of  
Environmental  
Quality

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

Blair Edwards, Stormwater Program Coordinator  
[blair.edwards@deq.state.or.us](mailto:blair.edwards@deq.state.or.us); 503-229-5185

Oregon Department of Environmental Quality  
Stormwater Program  
700 NE Multnomah St., Suite 600  
Portland, OR 97232

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## Final Action

Issuance of National Pollutant Discharge Elimination System (NPDES) 1200-CN Stormwater General Discharge Permit for construction stormwater discharges to surface water and conveyance systems leading to waters of the state within jurisdictions having qualified local programs.

## Permit Category

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

## Sources Covered by this Permit

Activities that meet the permit conditions within the jurisdictions identified as “qualified local programs.” A DEQ designated qualified local program means the stormwater management requirements of the local jurisdiction are equivalent to the conditions of DEQ’s 1200-C Construction Stormwater General Discharge Permit. The list of qualified local programs in Oregon are listed in Schedule A, Sections 1.1 and 1.2 of the permit. These qualified local programs are referred to as 1200-CN Jurisdictions.

An owner or operator that has received a local permit authorizing construction activities meeting the conditions of the 1200-CN permit is not required to submit an application for permit coverage to DEQ. The owner or operator must comply with all applicable local jurisdiction permit requirements, codes and ordinances. The construction activities are automatically covered under the State 1200-CN permit, and are authorized to discharge in accordance with the conditions of Schedule A. The following activities are authorized under this General Discharge Permit within the 1200-CN Jurisdictions if they have the potential to discharge stormwater to surface waters or to a conveyance system that leads to surface waters of the state in Oregon and do not have coverage under another NPDES permit:

- a. Any construction activity, materials or equipment staging and stockpiling that will disturb less than 5 acres of land; or
- b. Any construction activity, materials or equipment staging and stockpiling that will disturb less than one acre of land but is part of a common plan of development or sale or is a necessary and required component (e.g. utilities, structure, or infrastructure) of a final project that will ultimately disturb one or more acres of land.

## Source Location

Coverage under this permit is not available in all Jurisdictions. Coverage under this permit is available in the following 1200-CN Jurisdictions:

- i. Albany
- ii. Central Point
- iii. Corvallis
- iv. Eugene
- v. Keizer
- vi. Milwaukie
- vii. Springfield
- viii. West Linn
- ix. Wilsonville
- x. Water Environment Services (WES), within the service area of the district
- xi. Clean Water Services, within the service area of the district and including:
  - a. Banks
  - b. Beaverton
  - c. Cornelius
  - d. Durham
  - e. Forest Grove
  - f. Gaston
  - g. Hillsboro
  - h. King City
  - i. North Plains
  - j. Sherwood
  - k. Tigard
  - l. Tualatin
  - m. Washington County within the Urban Growth Boundary
- xii. Portions of Marion County that are in Marion County's MS4 Phase II Permit area
- xiii. Oak Lodge Water Services District
- xiv. Rogue Valley Sewer Services, including:
  - (1) Phoenix
  - (2) Talent
  - (3) Portions of Jackson County in Rogue Valley Sewer Services' MS4 Phase II Permit area
- xv. Gresham
- xvi. Troutdale
- xvii. Wood Village

## Coverage

The effective date of the current permit expired December 14, 2020. This permit renewal is a replacement of the previous 1200-CN Stormwater General Discharge Permit issued on December 15, 2015 and modified on April 20, 2018. This permit is issued in accordance with Oregon Administrative Rule 340-045-0040. The permit covers construction stormwater discharges that have a potential to surface waters, or conveyance systems that eventually discharge to waters of the state.

## Permit Writer

Blair Edwards

[blair.edwards@deq.state.or.us](mailto:blair.edwards@deq.state.or.us)

503-229-5185

**September 27, 2021**

# SUMMARY OF PERMIT ACTION

This permit action renews the NPDES permit for the State of Oregon to allow and regulate the discharge of stormwater runoff from construction activities within 1200-CN jurisdictions that are qualified local programs.

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

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## 1. Introduction

The Oregon Department of Environmental Quality is proposing changes to the NPDES 1200-CN Stormwater General Discharge Permit for construction stormwater discharges within jurisdictions with qualified local programs upon reissuance. The current permit became effective on December 15, 2015, was modified on April 20, 2018 and expired December 14, 2020. The current version of the 1200-CN permit covers the discharge of stormwater runoff from construction activities including but not limited to clearing, grading, excavation, grubbing, and stockpiling that will disturb one or more acres, or will disturb less than one acre of land but be part of a common plan of development, or sale that will ultimately disturb one or more acres of land, and has the potential to discharge to surface waters or conveyance system leading to waters of the state. The construction activities covered by the 1200-CN permit include those identified in 40 Code of Federal Regulations (CFR) §122.26.

This Permit Evaluation Report (PER) describes the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the 1200-CN permit. After the public comment period closes as required by OAR 340-045-0027(1)(c), comments will be summarized and DEQ will respond to the comments received, and will specify any changes to the permit provisions and the reason for the changes will be included in the response to comments. DEQ will make this response to comments available to the public on request per OAR 340-045-0035(4)(i)(8).

## 2. General Permit Approach

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

To reduce the overlap and redundancy between local construction stormwater programs and state stormwater permitting regulations, DEQ is proposing that certain construction projects located in jurisdictions that have qualified local programs are automatically covered under the 1200-CN permit. Automatically covering construction projects in these jurisdictions helps operators by reducing dual permitting. Operators in these jurisdictions are required to meet local stormwater requirements, but are not required to apply for the 1200-CN permit. This simplifies the construction operator's permit process and eases the perceived compliance burden among the regulated industry. This approach results in strategic use of resources and improvements in environmental protection by state and local jurisdictions since all 1200-CN jurisdictions with qualified local programs identified in this permit have existing programs in place to meet the permit conditions.

In the majority of cases, the 1200-CN general permit will provide sufficient stormwater management requirements for discharges of stormwater from construction sites. DEQ is aware that there will be occasions when the general permit may not be appropriate for a specific construction project. DEQ may require a discharger to apply for and obtain 1200-C permit coverage or an individual permit if it determines that the 1200-CN general permit does not provide adequate assurance that water quality and beneficial uses will be protected, or the project has a reasonable potential to cause or contribute to a violation of water quality standards.

### 3. Overview and History

DEQ issued its first 1200-C Construction Stormwater General Discharge Permit on September 30, 1996, after the federal Phase I Stormwater regulations addressed construction activities that disturbed five or more acres of land as Category (x) of the definition of "stormwater discharges associated with industrial activity" (40 CFR 122.26(b)(14)(x)) in 1990. There have been six iterations of the 1200-C General Permit issued by DEQ. Previous issue dates were in 1996, 2000, 2005, 2010, 2015 and 2020. In accordance with state and federal law, NPDES permits will be effective for a fixed term not to exceed five years. Pursuant to federal regulations promulgated by EPA (40 §CFR 122.28 (b)(2)(v)), some dischargers may be authorized to discharge under a general permit without submitting a permit application or a notice of intent (NOI) and are automatically covered under the permit. Construction activities that are less than 5 acres that are regulated by a local erosion and sediment control program that has been reviewed by DEQ are eligible for automatic coverage and are not required to submit a permit application to DEQ. These construction activities must meet a different set of requirements in the 1200-C permit. To clarify the distinction between automatically covered construction activities and registered construction activities, the 1200-C permit was re-organized into two similar permits in 2010: the 1200-CN for automatically covered construction activities, and the 1200-C for registered construction activities. This 1200-CN permit is tentatively scheduled to become effective on September 27, 2021 and expire on September 26, 2026.

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

### 4. Legal and Policy Analysis

On December 1, 2009, EPA promulgated Effluent Limitation Guidelines and New Source Performance Standards to control the discharge of pollutants from construction sites (74 Fed. Reg. 62996, and 40 CFR 450.21). These requirements, known as the "Construction and Development Rule" or "C&D Rule," became effective on February 1, 2010. On March 6, 2014, pursuant to a settlement agreement to resolve litigation, EPA finalized amendments to the C&D Rule that withdrew the numeric turbidity limitation and monitoring requirements, and also provided clarification regarding several other requirements of the rule (79 Fed. Reg. 12661 and 80 Fed. Reg. 25235). DEQ must incorporate these requirements into this permit. Therefore, the 2021 1200-CN permit conditions reflect the 2014 C&D Rule amendments and maintains existing changes that were made to the 2015 permit to incorporate the other portions of C&D Rule requirements not affected by the 2014 amendments.

#### Summary of C&D Rule Requirements

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

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

## Erosion and Sediment Controls

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

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

## Soil Stabilization Requirements

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

## Dewatering Requirements

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

## Pollution Prevention Measures

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

- a. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

- b. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater. Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use); and
- c. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

### **Prohibited Discharges**

The following discharges from construction sites are prohibited:

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

### **Surface Outlets**

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

## **5. Antibacksliding Review**

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

The 1200-CN permit contains clear and specific provisions to prescribe implementation of BMPs. Additionally, the permit stipulates actions and required minimum control measures that must be met to prevent erosion and sedimentation transport from construction activities. Although the permit conditions are expressed differently than the comparable provisions in DEQ's previously issued permit iterations, DEQ determined that the provisions in this permit are, in all cases, at least as stringent as those established in the previous 1200-CN permits. The 1200-CN permit carries the reporting requirement forward from the 2015 permit per the anti-backsliding rules in 40 CFR 122.44(l).

## **6. Antidegradation Review**

DEQ's antidegradation policy in OAR 340-041-0004 requires DEQ to conduct a review of a proposed permit to determine if the proposed discharges to surface waters will protect existing water quality and to ensure protection of existing and designated uses. The stormwater controls required in the 1200-CN general permit are expected to result in discharges that will comply with Oregon's water quality standards, and protect designated and existing uses. The Erosion and Sediment Controls and performance

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<sup>1</sup> See 40 CFR § 122.44(k).

requirements in the permit are designed to ensure that Oregon's water quality standard for turbidity (OAR 340-041-0036) will be met, which prohibits a greater than 10% increase in turbidity compared to an upstream control point. Because no requirements in the 1200-CN permit are to be relaxed or eliminated from the previous applicable permit, DEQ determined that the renewal of this general permit will not result in increased pollutant loads.

Where construction activities may discharge to a water that is impaired (303(d) Category 4 or 5 listed) due to turbidity or sediment, increased BMPs are required (Section 4.2.c). DEQ may notify owners or operators of existing projects with significantly increased discharges that additional analyses, stormwater controls, or other permit conditions are necessary to comply with the applicable antidegradation requirements, or notify the owner or operator that an individual permit application is necessary.

DEQ does not anticipate increased discharges or pollutant loads will result from issuance of the 1200-CN permit. The number of permit applications for new construction activity each year is generally balanced by the cessation of construction activity at sites that had permit coverage in previous years. Although construction activities are inherently variable, DEQ has no information that the amount of construction activity covered under the 1200-CN permit will increase significantly above the highest levels experienced under the previous permits.

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

Under the state's antidegradation policy, where high quality waters constitute an outstanding state or national resource, such waters may be classified as Outstanding Resource Waters of Oregon. Currently, the North Fork Smith River, Waldo Lake and Crater Lake and its tributaries and associated wetlands are the only Outstanding Resource Waters of Oregon. In accordance with the policies established for these Outstanding Resource Waters, DEQ may not issue permits for discharges to these waters. Short term impacts may be allowed to respond to emergencies or for long term restoration or water quality improvement.

<sup>2</sup> See 40 CFR § 450.21

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

Any waterbody that does not, or is not, expected to meet the applicable state water quality standards is described as "impaired" or as a "water quality-limited segment." Section 303(d) of the CWA requires states to identify impaired waterbodies within the state and develop Total Maximum Daily Load management plans for those impaired waterbodies. TMDLs define both waste load allocations (WLAs) for point sources and load allocations (LAs) for non-point sources that specify how much of a particular pollutant can be discharged from both regulated and unregulated sources, respectively, such that the waterbody will again meet state water quality standards. Oregon's 2018/2020 Integrated Report and 303(d) list contains the water quality limited waterbodies with a TMDL and those approved for a TMDL<sup>3</sup>

but currently has not been developed. For construction discharges to waterbodies subject to a TMDL and/or listed on DEQ's 303(d) list, the owner/operator must comply with the more stringent requirements in accordance with 40 CFR 122.44(d)(1)(vii)(A)-(B).

## 8. Local Qualified Program Evaluation and Designation

Before initiating the 1200-CN permit renewal process, DEQ requested applications from local county, city and district agencies to be designated as local qualified programs. Application submittals required a comprehensive description of each local stormwater program. Local programs were evaluated to determine comprehensiveness and ability to meet the conditions of the 1200-C Construction Stormwater General Discharge Permit. The local stormwater permit application process, including the contents and technical review of the Erosion and Sediment Control Plan, inspection schedule and enforcement action procedures were assessed by DEQ. In addition, DEQ had discussions with representatives from each local program regarding the permit conditions prior to approval.

## 9. State Statutory Permit Requirements

All water quality permits must meet the requirements of state law. Oregon statutes in general give the Environmental Quality Commission and DEQ broad authority to impose permit requirements needed to prevent, abate, or control water pollution (See ORS 468B.010, 468B.015, 468B.020, and 468B110). However, direct statutory requirements applicable to discharge permits are more limited. ORS 468B.020 (2)(b) directs DEQ to require the use of all available and reasonable methods necessary to protect water quality and beneficial uses. At a minimum, NPDES general discharge permits must require owner/operators to develop, implement, and maintain an ESCP designed to prevent the discharge of pollutants from construction activities, to protect water quality, and to satisfy the appropriate water quality requirements under the Clean Water Act.

## 10. Summary of Key Changes to the 1200-CN Permit

Many of the conditions in the current 1200-CN permit are retained in the renewed permit. However, the permit is substantially reorganized and reworded to improve clarity. DEQ's goal is to have a permit that clearly meets all of the state and federal requirements (the Federal Construction General Permit was reissued in 2017) and is implementable. In addition, challenges with implementation of permit requirements identified by DEQ and 1200-CN Jurisdictions during the current permit term are addressed to increase the overall effectiveness of the 1200-CN permit. In addition to a section by section summary, the following significant changes are made to the renewed 1200-CN permit:

- **Environmental Management Plan (EMP):** The goal of this permit addition is to address potential submission requirements before 1200-CN permit coverage is issued in order to prevent pollutant discharges from contaminated project sites and to ensure the information is considered when permit coverage decisions are made. Additionally, by providing the information with the permit applications, the owner or operator may avoid work delays while plans submitted after the permit is issued are reviewed for approval.
- **Use of Engineered Soils:** The practice of cementitious stabilization of soil on project sites in Oregon has increased and is becoming more common throughout the state. The practice of engineering soils by the addition of cementitious compounds extends the building period into wet weather. The intent of this change is to establish clear requirements for the application of cementitious compounds, and the containment and discharge of potentially high pH stormwater runoff that comes in contact with engineered soils to ensure water quality is protected.
- **Clarity Regarding Permit Requirements Associated with Erosion and Sediment Control Plan, Visual Monitoring Inspections, and Visual Monitoring Reports:** The renewed permit

conditions have corresponding requirements added to the Requirements for Visual Monitoring (Section 8.4) and Visual Monitoring Inspection Report (Section 8.5). The goal of linking concomitant permit provisions is to ensure compliance, visual monitoring inspection and documentation of the permit requirements, thereby creating a step-wise approach from a control requirement to documentation of its implementation and maintenance.

- **Replaced “minimize” with “prevent” throughout the permit.** Since the goal of the 1200-CN permit is to prevent erosion and sedimentation, and the discharge of pollutants from construction sites, DEQ revised the permit accordingly. Furthermore, DEQ replaced subjective terms (e.g. as soon as possible, as soon as practical) throughout the current permit in order to improve clarity and better define the objective of the permit conditions.

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

## 11. Cover Page

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

### 11.1 Sources Covered by this Permit

The cover page of the 1200-CN permit describes the types of discharges eligible for permit coverage. The following are added to the renewed 1200-CN permit:

- **Construction Activities are listed in Definitions:** The list of construction activities is removed from the Sources Covered by this Permit section of the 1200-CN permit. Construction Activities are listed in the Definitions (Section 9.4) of the permit. The term Construction Activities is used throughout the 1200-CN permit; therefore DEQ decided to incorporate one central location where construction activities is defined to reduce the permit length. In addition, having one clear definition removes potential uncertainty.
- **Stumping is added to the definition of construction activities:** Stumping is defined as: “to clear the land of stumps once the forest harvest operation is completed”. Once stumping occurs on a site the project may no longer covered by the Forest Practices Act. Stumping is one defining activity of land conversion from forest practices (i.e. silviculture) that may require the project to be automatically covered under the 1200-CN permit dependent on future land use.
- **Construction Activity** does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility as defined in 40 CFR 122.26(b)(15), however any activity discharging stormwater to surface waters of the state that may be a significant contributor of pollutants to waters of the state or may cause an exceedance of a water quality standard will be required to obtain permit coverage. This qualification removes permitting barriers (e.g. obtaining a LUCS, inability to meet permit termination criteria) that prevent an appropriate response to emergency-related projects (e.g.,

wildfires, mud slides, earthquake, extreme flooding conditions, disruption in essential public services),

- **Any construction activity that results in the disturbance of less than one acre of land (e.g. utilities, structure, and infrastructure) that is a necessary and required component of a final project that will ultimately disturb one or more acres of land added to the list of activities that will be automatically covered by 1200-CN permit:** This addition to the 1200-CN permit prevents phasing of projects to circumvent 1200-CN permit coverage. If the final project is an acre or greater, than this clause explicitly states that phasing a project to avoid 1200-CN permit coverage is not allowed.

## 11.2 Limitation of Coverage

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

- The 1200-CN permit includes a recommendation that owners or operators identify, apply for and resolve any state (Department of State Lands) or federal (US Army Corps of Engineers) and DEQ 401 water quality certification requirements before applying for 1200-CN NPDES permit coverage to prevent unintended non-compliance situations with other regulatory programs. The intent is to prevent owner/operators from having to reapply for local building and development permits, or revise their ESCP due to the conditions imposed on projects requiring a 401 WQC.
- **401 Water Quality Certification:** Identifies a step-wise permit application process for projects that require federal, state and local permits and approvals. The intent is to provide clear requirements during the permit application process so that projects do not have revised plans late in the stormwater permitting process.

## 12. Permit Changes

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

### Schedule A – Controls and Effluent Limitations

The eligibility conditions to obtain automatic permit coverage under the 1200-CN general permit are stated in this section of the permit. In addition, the authorized stormwater, authorized non-stormwater, and prohibited discharges are explicitly stated. The following changes are to the Control and Effluent Limitations Section of the current 1200-CN permit.

### Section 1.1 Disturbance less than 5 acres

This section of the permit names the qualified local programs, referred to as 1200-CN Jurisdictions that are approved by DEQ. 1200-CN permit coverage is automatically authorized for projects performing construction activities less than 5 acres in size that are issued a local permit by a 1200-CN Jurisdiction listed in Section 1.1.

- The City of Central Point and the City of Gaston (included in Clean Water Services Jurisdiction) are added to the permit.
- Klamath Falls, Portions of Lane County that are in Lane County's MS4 Phase II Permit area and Multnomah County (unincorporated portions of the county) are deleted in the permit.
- The 1200-CN permit does not include the condition of the current permit that “construction activity does not have the potential to discharge to a portion of a waterbody listed for turbidity or

sedimentation on the most recently EPA-approved Oregon 303(d) list and is not addressed by a Total Maximum Daily Load (TMDL)”, as condition 4.2.c of the permit establishes natural buffer zone requirements for projects that have the potential to discharge to a waterbody that is listed as impaired and requiring a Total Daily Maximum Load (TMDL) for turbidity or sedimentation on the most recently approved Oregon 303(d) list.

## **Section 1.2 Disturbance less than 1 acre**

This section of the 1200-CN permit names the qualified local programs or 1200-CN Jurisdictions, that are approved by DEQ. 1200-CN permit coverage is automatically authorized for projects performing construction activities up to 1 acre in size that are issued a local permit by the 1200-CN Jurisdictions listed in Section 1.2.

- The renewed permit does not include the condition of the current permit that “construction activity does not have the potential to discharge to a portion of a waterbody listed for turbidity or sedimentation on the most recently EPA-approved Oregon 303(d) list and is not addressed by a Total Maximum Daily Load (TMDL)”, as condition 4.2.c of the permit establishes natural buffer zone requirements for projects that have the potential to discharge to a waterbody that is listed as impaired and requiring a Total Daily Maximum Load (TMDL) for turbidity or sedimentation on the most recently approved Oregon 303(d) list.

## **Section 2 Environmental Management Plan**

An additional plan submittal and fee are required to cover projects with contaminated soils, dewatering plans, and active treatment systems (including pH lowering of discharge from amended soils). Currently, the fee for Environmental Management Plan (EMP) Review is \$822.00 per OAR 340-045-0075 Table 70F. Discharges from sites utilizing these systems or encountering contaminated soil conditions have the potential to discharge pollutants, therefore plan review by DEQ is necessary. EMPs will be submitted directly to DEQ by the 1200-CN Jurisdiction or the owner/operator. Appendix A includes information, instruction and EMP review applications. Application materials and information will be available to owners and operators of projects automatically covered under the 1200-CN permit for all situations in which the EMP review requirement applies.

## **Section 3 Procedures for Denial or Revocation of Coverage**

The procedures for denial or revocation of coverage are added to the 1200-CN permit to clearly match that of OAR 340-045-0033(10). The intent is to explicitly state that the 1200-CN may not be the appropriate permit for all projects performing construction activities within a 1200-CN Jurisdiction. Each project will be evaluated for potential water quality impacts and, if necessary, 1200-C Construction Stormwater General Permit coverage or another appropriate permit more protective of water quality will be required.

## **Section 4 Performance Measures**

This section of the permit addresses how the overarching goal of the 1200-CN permit, no turbid discharge or sediment shall leave the project site, from initial land disturbance to termination of 1200-CN permit coverage, will be obtained. Specific requirements are listed by subsection for environmentally sensitive areas (e.g. Natural Buffer Zones, wetlands), and for common construction practices (e.g. soil amendments).

### **Section 4.1 Operator must prevent the discharge of sediment to surface waters or conveyance systems leading to surface waters of the state.**

The list of conditions which indicate sediment has or is likely to leave the site is increased. The following are added to the renewed 1200-CN permit:

- Stabilization of site soils, temporary or final, is the most effective way to prevent turbid discharge or sediment from leaving the site.
- Sediment basins or traps must be designed with adequate dry and/or wet storage and to discharge above the wet storage surface of the basin in order not to discharge turbid discharge or sediment.
- Sediment discharge observed at the discharge locations from the project site, or banks of waters within the project site or on any banks adjacent to the project site.

### **Section 4.2 Operator must establish and maintain natural buffer zones and controls to protect surface waters of the state.**

Appendix B is issued in conjunction with the 1200-CN permit as an informative document that provides clear and thorough natural buffer zone requirements to erosion and sediment control plan developers. For example, Appendix B explains how to measure buffer zone width, use the RUSLE2 application tool, and provides soil type, slope percentage, and natural vegetative cover tables that characterize site conditions and therefore direct the developer to the appropriate BMP choice. DEQ did not provide a prescriptive list that may limit the ESCP developers' options. Moreover, removing any prescriptive requirements provides ESCP developers flexibility on sites where difficult and unique situations occur. The permit provides soil and natural vegetation tables that determine buffer requirements or type and effectiveness of BMPs based on site characteristics. By basing the BMP type on site characteristics the guidance tool steers the ESCP developer to create an acceptable alternative to the sediment removal capability of the naturally vegetated 50' buffer zone found on site. The buffer guidance provided in Appendix B places the onus on the ESCP developer to choose the most effective means of preventing sediment from entering surface water. EPA has vetted and reviewed the guidance found in Appendix B and includes it as a component of the Federal Construction Stormwater General Permit.

### **Section 4.3 Construction dewatering requirements**

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

#### **Section 4.4 Engineered sediment basin or similar installed impoundment**

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

#### **Section 4.5 Engineered sediment basin or similar impoundment must be installed with engineered soils**

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

### **Section 5 Authorized Stormwater Discharges**

Snowmelt and surface water are added to the 1200-CN permit as authorized stormwater runoff from project sites with 1200-CN permit coverage.

### **Section 6 Authorized Non-Stormwater Discharges**

Certain types of authorized discharges unrelated to precipitation events (i.e., non-stormwater discharges), listed in permit Section 6 of the permit are conditionally allowed to discharge as the result of construction activities. Such authorized non-stormwater discharges cannot be sources of pollution to the waters of the state. The owner/operator is responsible for the quality of the discharge from their construction activities. The following are added to Authorized Non-stormwater Discharge conditions in the 1200-CN permit:

- The qualifier “uncontaminated” is added to the list of authorized non-stormwater discharges and means that the discharge does not cause or contribute to an exceedance of applicable water quality standards. Similarly, “non-turbid” means the discharge does not cause or contribute to an exceedance of turbidity-related water quality standards.
- Washwater waste is no longer authorized from the engine, undercarriage or wheels/tires of vehicle washing.
- Uncontaminated, non-turbid groundwater or spring water is added to the renewed permit.
- External building washdown, provided soaps, solvents, and detergents are not used, and external surfaces do not contain hazardous substances is added to the renewed permit.

#### **Section 6.1 Combined Discharges**

This change explicitly allows authorized stormwater and non-stormwater discharges to be comingled, conveyed, and discharged from site by the same system. DEQ expects this clarification may result in less conveyance systems and discharge points at construction sites. Due to the fewer number of BMPs as a result of this condition, DEQ expects that there will be less potential for BMP failure and a reduced need for general maintenance over the lifetime of the project.

## **Section 7 Prohibited Discharges**

DEQ added the following to the list of prohibited discharges in the 1200-CN permit:

Wheel and/or tire wash wastewater typically contains high turbidity and pollutant load (e.g. metals from brake pads and radial tires). The permit conditions require that wheel and/or tire wash wastewater be treated onsite or discharged to the local sewer system with appropriate approval. The intent is to prevent the discharge of washwater contaminated with pollutants to surface water or conveyance systems leading to waters of the state. The following prohibitions are added to the 1200-CN permit:

- a. Visually turbid discharge or discharge of sediment (see Section 4.1) from the construction site to surface waters or a conveyance system that leads to waters of the state;
- b. Causing or contributing to an exceedance above any applicable water quality standard;
- c. Wheel/tire wash wastewater, unless the discharge of wheel wash or tire bath wastewater is to a separate treatment system that prevents discharge to surface water, such as closed-loop recirculation or upland land application, or to the sanitary sewer with approval from the local jurisdiction; or
- d. Toxics or hazardous substances from a spill or other release.

The conditions of the permit clearly establishes the goals of the 1200-CN permit and creates narrative standards to which the owner/operator must adhere. This provision explicitly states that DEQ considers the discharge of any visually turbid water as a water quality standard violation, as it is assumed to be at least 10% greater than background turbidity levels. This condition does not conflict with or prevent enforcement of the water quality standard that allows of no more than a 10% turbidity cumulative turbidity increase as measured from a control point upstream in a receiving water body.

## **Schedule B Minimum Monitoring and Recordkeeping Requirements**

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

### **Section 8.1 Person(s) responsible for visually monitoring the project site**

Currently, the 1200-CN permit requires visual monitoring be performed on projects of at least 1-acre. This permit condition will require all sites be visually monitored by a certified inspector. EPA and most other states require experienced or qualified inspectors on all projects. The five certifications that DEQ has approved are added to the 1200-CN permit. A certified visual monitoring inspector must hold one of the certifications listed in the 1200-CN permit.

Construction sites that do not implement the ESCP and associated appropriate erosion and sediment controls as conditioned by the permit have the potential to create large erosion and sedimentation pollution problems, regardless of the size of the site. Having a certified inspector at all 1200-CN permitted sites has the added benefit of an on-site specialist that others can seek advice from or to report stormwater issues that arise. In addition, having a certified inspector on every site may reduce improper BMP implementation and maintenance issues.

## Section 8.2 Frequency of visual monitoring inspections

The inspection frequency for visual monitoring is presented in a Table format in the current permit with minimal narrative. The Frequency Table is eliminated from the 1200-CN permit, which now provides a clearer narrative description of visual monitoring frequency and requirements. The permit includes:

- Visual monitoring of the project site must occur on the initial day that land disturbing activities commence to ensure that all stormwater control measures are in place and installed correctly. Initial monitoring of the project site is a new permit requirement added to the 1200-CN permit.
- The amount of rainfall necessary to create runoff is site-specific and dependent on numerous factors (i.e. soil type, degree of compaction, vegetation coverage, percent slope, percentage of impervious surface). The current permit requires visually monitoring, “Daily when runoff is occurring”. This permit condition added “within 24 hours of any storm event that results in discharge from the site”. The change is to clarify that the Inspector must visually monitor the site within 24 hours of a storm event that results in discharge from the site and not on a daily basis during stormy weather. DEQ expects that visual monitoring will occur within 24 hours for each day that the project site discharges, which may result in consecutive daily visual monitoring inspections being performed.

DEQ’s 1200-C inspectors typically use 0.10” as the threshold of discharge generating storm events, and will request documented proof that the site did not discharge on days where the precipitation amount exceeded 0.1”. Added to the permit is a requirement that the visual monitoring inspector document that no discharge left the site after a storm event of at least 0.1”. The permit 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.

## Section 8.3 Reductions in Visual Monitoring Frequency

- Prior to a project site becoming inactive or in anticipation of inaccessibility, the permit requires that visual monitoring be performed once, but no less than 14 days, before inactivity or inaccessibility occurs. The 14-day requirement is new to the 1200-CN permit and is added with the intent of ensuring all stormwater controls are in place and functioning before reducing the monitoring frequency. In addition, the 1200-CN permit monitoring schedule requires that the project site be monitored twice during the first month of inactivity before being reduced to once a month. The intent of this addition is to verify that the BMPs are installed and maintained correctly before the reducing the monitoring frequency.
- Visual monitoring frequencies during frozen conditions are modified in the permit. If construction activities are occurring during frozen conditions, the requirement remains the same at once a month; however, if construction activities are suspended during frozen conditions, visual monitoring is no longer required until activities resume.
- The visual monitoring schedule of linear construction sites is addressed in the 1200-CN permit. DEQ determined that the unique nature of linear construction sites allows for a reduced inspection frequency once the site has met stabilization criteria and a month of monitoring to ensure that stormwater BMPs are installed and the ESCP is operating as designed.
- Procedural conditions added to the visual monitoring section of the permit create a process that requires the documentation of initial inactivity in areas of the project site. The goal is to have visual monitoring inspectors document the initial day of land disturbing activities have permanently ceased or will be temporarily inactive for 14 or more calendar days. The permit condition establishes a 14 day trigger that requires additional BMP control measures be

implemented. The 14 day trigger will ensure that sites that are inactive do not cause erosion and sediment issues. Documentation of site inactivity will start the clock on the stabilization measures required by each 1200-CN Jurisdiction. Under the current permit, it is difficult to determine when the initiation and cessation of construction activities in various areas of permitted sites occurs. Creating a process that requires visual monitoring to check for recently inactive areas and to document the initial inactive date will inform owner/operators and inspectors of the date by which stabilization measures must be initiated and completed.

### **Section 8.4 Requirements for Visual Monitoring**

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

### **Section 8.5 Visual Monitoring Inspection Report**

- Current permit requirements do not set a time limit for completing the inspection report after visual monitoring has occurred. DEQ is proposing that the inspection report be completed within 48 hours of visual monitoring of the site to ensure the documentation is available. Completing the inspection report within 48 hours ensures that current information is documented while still fresh in the inspector's notes and thoughts, and ensures that the information is available when inspections occur. In conjunction with the ESCP, electronic copies of inspection report are allowed by the permit condition, "The inspection report can be stored electronically as long as the personnel on-site can access it and make it available for 1200-CN Jurisdiction or DEQ inspector review." Electronic forms will have a verifiable creation date and time stamp that will document if completed with 48 hour requirement after visual monitoring is completed.
- Date-stamped photo documentation of all discharge points must be attached to the visual monitoring report as proof that no discharge occurred within 24 hours after a storm event.
- With the intent of identifying and implementing erosion and sediment controls on areas of the site that are temporarily or permanently inactive within the required 14 day period, visual monitoring reports must document any such portions of the project site.
- The visual monitoring report condition states that any pH sampling performed on sites with engineered soils be documented. The pH sampling results are not required to be submitted to DEQ or 1200-CN Jurisdiction, however they must be available as part of the visual monitoring report.
- The 1200-CN permit requires the visual monitoring inspector to sign each visual monitoring report they produce. The 1200-CN permit addition explicitly states the inspector's professional responsibilities, and ensures that the individual who conducted the visual monitoring is identified in association with the visual monitoring report.

### **Section 8.6 Monitoring Requirements**

#### **Section 8.6.1 Monitoring pH of stormwater captured in sediment basins/impoundments when engineered soils are used**

The rationale and justification for requiring sediment basins on sites with engineered soils is stated earlier in this Permit Evaluation Report (see Control Measures). This section of the permit outlines the pH sampling protocol. The goal of the sampling protocol is to analyze the runoff for

pH before it is discharged from the site and sample any discharge containing sediment basin runoff. This condition allows for the confinement of high pH stormwater runoff so it can be treated appropriately. The pH neutralized runoff can then be discharged from the basin to a conveyance system on site and must be sampled again upon discharge from the site.

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

## **Schedule D – Special Conditions**

### **Section 9.4 Permit – Specific Definitions**

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

- No defined words or terms are removed from current permit definition list. The following are added to the definition list concomitantly with new or modified permit conditions in the 1200-CN permit: Active Treatment System, Backwash Water, Cationic Treatment Chemicals, CO<sub>2</sub> Sparging, Construction Support Activity, Earth Disturbance, Encroach(ing), Engineered Soils, Hazardous Substances, Linear Construction Site, Local Permit, Native Topsoil, pH Neutralization, Sedimentation Basin/Impoundment, Storm Event, Stumping, and Toxic Substances.
- The terms Common Plan of Development or Sale is found in the current permit, however DEQ determined adding it to the definition list is warranted.

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

Appendix A provides Environmental Management Plan (Section 2) review guidance and application forms for Contaminated Media Management, Construction Dewatering, and Active Chemical Treatment Systems.

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

The purpose of this appendix is to assist owner/operators in complying with the requirements in Section 4.2 of the permit regarding the establishment of natural buffer zones and/or equivalent sediment controls.