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Numeric Limits and Other Oregon Industrial Stormwater Permit Issues

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Revisions to Oregon's General Industrial Stormwater Permit

- Aug. 2017: DEQ renewed Oregon's general industrial stormwater permit (the 1200-Z permit)
- Aug. 2018: Settlement Agreement resolved legal challenges to the permit by environmental advocacy and industrial entities
- Oct. 2018: Initial permit revisions pursuant to the Agreement
- Oct. 2020: Agreement requires DEQ to propose additional permit revisions
- March 2021: Deadline for permit revisions
- DEQ intends that:
  - The revisions will be issued as a renewal of the permit, which would otherwise not expire until July 2022
  - In contrast to current practice, the Environmental Quality Commission, not DEQ, will issue the renewed permit, and the Commission will issue it as a rule, not an order

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ISSUES THAT THE REVISED PERMIT MUST ADDRESS

- ***Numeric*** "technology-based effluent ***limits***" (TBELs)
  - For copper, lead, zinc, and total suspended solids (TSS)
  - If numeric TBELs are not "consistently achievable and justifiable" and cannot be "reached at a reasonable cost," then the permit must include numeric discharge ***benchmarks*** for these pollutants
- ***Numeric*** "water quality-based effluent ***limits***" (WQBELs)
  - For pollutants for which the receiving water is listed as impaired
  - Only if DEQ determines that numeric WQBELs are "appropriate"
- Monitoring and reporting requirements necessary to verify compliance with new or revised numeric TBELs, WQBELs, or benchmarks

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CLEAN WATER ACT (CWA) REQUIREMENTS

- **TBELs**
  - CWA **goal**: Eliminate all discharges of pollutants by 1985
  - CWA **requirement**: Employ specified levels of pollutant discharge control technologies, *e.g.*:
    - Best available technology economically achievable (BAT)
    - Best conventional pollutant control technology (BCT)
- **WQBELs**
  - CWA **"interim" goal**: Wherever "attainable," achieve water quality that protects aquatic life and recreation by 1983
  - CWA **requirement**: Point source discharges may not contribute to excursions from instream water quality standards
- To implement these requirements, discharge restrictions may be expressed as **numeric** limits or "**narrative**" required "best management practices" (BMPs)

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TBELs, WQBELs in the Current Permit

- **TBELs**
  - Enforceable ***narrative*** TBELs (BMPs) that are further implemented through:
    - Facility-specific stormwater pollution control plans (SWPCPs)
    - Discharge benchmarks coupled with enforceable "corrective actions"
  - A very few ***numeric*** TBELs for certain industries
- **WQBELs**
  - ***Narrative*** prohibition on contributing to a violation of instream water quality standards, which is further implemented through:
    - Requirements for new dischargers to impaired waters
    - Discharge benchmarks coupled with enforceable "corrective actions"
      - Many generally applicable discharge benchmarks are derived from water quality standards
      - Benchmarks for pollutants for which the facility's receiving water is listed as impaired ("reference concentrations")

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General Environmental Advocacy Organization Objectives

- Numeric discharge limits in lieu of narrative BMPs and discharge benchmarks; numeric limits are generally
  - Clearer
  - More easily enforced and evaluated for compliance
- Increasingly stringent TBELs in support of the CWA's goal of eliminating all discharges of pollutants
- Numeric WQBELs set equal to instream water quality standards, particularly for impairment pollutants
- More extensive monitoring and reporting requirements to support compliance evaluations and enforcement

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Industry Concerns and Objectives—Narrative TBELs

- Narrative TBELs are often (and sometimes necessarily) vague
  - Individual facilities, DEQ inspectors, and DEQ agents may interpret requirements differently, leading to uneven implementation and enforcement
  - Specific requirements are often clarified only in the context of an agency enforcement action or citizen suit
- To make narrative TBELs more certain, SWPCPs should be used to apply them to individual facilities, and the facilities should be shielded from enforcement if they are in compliance with their SWPCP
- Discharge benchmarks are not based on a determination of what discharge concentrations are feasible using specific stormwater controls, such as BAT
  - Corrective action requirements generally require implementing controls sufficient to achieve the benchmark
  - Notwithstanding permit language to the contrary, benchmarks often effectively become limits in citizen suits
- Corrective action requirements should allow the facility to demonstrate that it is meeting the narrative TBELs notwithstanding benchmark exceedances

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Industry Concerns and Objectives—Numeric TBELs

- Numeric TBELs, if established, should:
  - Be derived from specified stormwater controls that DEQ has determined to be BAT or BCT
  - Account for the extreme variability in the quality of stormwater discharges by, for example,
    - Applying only to specific industries and locations
    - Being expressed as long-term mean values
  - Include a feasible variance process
- DEQ's consultant's initial evaluation suggests that developing numeric TBELs that are both reasonably achievable and a meaningful limit on industrial stormwater discharges may not be feasible

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Industry Concerns and Objectives—Narrative WQBELs

- The existing narrative WQBEL is too general to be meaningfully implemented by individual facilities
- The specification of what is required to comply with the narrative WQBEL typically occurs only in the context of an agency enforcement action or citizen suit
- If a narrative WQBEL is retained, it should include a process that identifies potential contributions to water quality problems and allows an individual facility time to:
  - Evaluate whether and to what extent it is contributing to an excursion from water quality standards;
  - Identify what measures it needs to take to eliminate its contribution; and
  - Implement those measures

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Industry Concerns and Objectives—Numeric WQBELs

- Establishing a numeric WQBEL is a complex, facility-specific process that should consider, for example:
  - Receiving water flow and quality when discharges occur
  - The exposure period of the relevant water quality standard (*e.g.,* some human health criteria are based on a lifetime of exposure)
  - The episodic and limited duration of stormwater discharges
- Even for discharges to waterbodies listed as impaired, a numeric stormwater WQBEL set equal to the instream water quality standard will often be excessively conservative
- For a general permit, a process that identifies potential problems and allows time to develop a facility-specific solution, where warranted, may be the best solution
- DEQ's consultant's initial evaluation suggests that, in general, industrial stormwater discharges in Oregon are not substantial contributors to water quality impairments

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OTHER INDUSTRY CONCERNS

- Overall complexity of the permit and the general tendency to specify requirements through agency enforcement actions and citizen suits
- Need to better integrate treatment systems into the permit
  - Sampling discharges during storms in excess of the design storm
    - Inability to obtain required number of samples for infiltration systems
    - Continued application of discharge benchmarks
  - Application of narrative TBELs to facilities with treatment systems
- Absence of effective processes for addressing background pollutants (*e.g.*, "natural background" waivers)
- Expansion of the permit requirement to nonindustrial facilities in the absence of facility-specific water quality concerns

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QUESTIONS?

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