

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2107

WILLAMETTE FALLS PAPER COMPANY,)
AND WEST LINN PAPER COMPANY)
Complainants,)
v.)
PORTLAND GENERAL ELECTRIC)
COMPANY,)
Defendant.

REDACTED
REPLY TESTIMONY OF
BRIAN KONEN
ON BEHALF OF
WILLAMETTE FALLS PAPER COMPANY

November 02, 2020

EXHIBIT LIST

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1. WFalls/301 Conf Attorney E-mails
2. WFalls/302 Conf WLP Assignment/PGE Rejection
3. WFalls /303 Environmental Permits transferred from WLP to WFalls
4. WFalls/304 Conf Equipment Purchased by B. Konen for WFalls

1 **Q. ARE YOU THE SAME WITNESS THAT SUBMITTED OPENING TESTIMONY**
2 **IN THIS DOCKET?**

3 A. Yes, I provided opening testimony in my capacity as President of Willamette Falls Paper
4 Company (“WFalls”) and President of West Linn Paper Company (“WLP”) identified as
5 WFalls/100-112 in this proceeding.

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 A. The purpose of my testimony is to provide a reply to the Opening Testimony of Portland
8 General Electric (“PGE”) witnesses Clark, Faist, and Wenzel-Macfarlane in this
9 proceeding.

10 **Q. PLEASE SUMMARIZE YOUR REPLY TO DEFENDANT’S TESTIMONY.**

11 A. I have a couple of observations about PGE’s testimony. First, I completely disagree that
12 PGE had clearly communicated to me its position that the Paper Mill would no longer
13 eligible for direct access service unless the Paper Mill reapplied as a new customer and
14 paid the applicable transition charges. As I testified in my Opening Testimony, I was in
15 discussions with PGE concerning restarting the Paper Mill since the shut down in October
16 of 2017. These discussions became more frequent after PGE and BPH determined that a
17 redevelopment agreement was not feasible. As I discuss, PGE was not merely the electric
18 utility for the Paper Mill, it was also the landlord for a portion of the Paper Mill property.
19 The operation of PGE’s Sullivan Plant has historically been dependent on the operation of
20 the Paper Mill. Thus, I always viewed and treated PGE as a “partner” with respect to
21 restarting the Paper Mill. PGE has long agreed that it was in the best interest of both parties
22 to restart the Paper Mill. To that end, I made it clear from the beginning--and PGE
23 understood and agreed--that restarting the Paper Mill would require the same operating

1 conditions as before. PGE repeatedly assured me that they agreed with this approach, and
2 did not raise any questions about the continuation of direct access for the Paper Mill until
3 March 2019.

4 Second, PGE tries to significantly downplay my role and efforts in restarting the
5 Paper Mill. PGE's testimony portrays the "real" counterparty to the transaction as
6 Columbia Ventures. As PGE knows, Columbia Ventures is essentially a passive investor
7 that has delegated to me day-to-day operations of the Paper Mill. After the Paper Mill shut
8 down, and even after the Lease Termination Agreement with PGE was signed, I continued
9 to show up at the Paper Mill almost every day to protect the assets and to pursue a restart
10 of the Paper Mill. I even personally purchased assets needed to operate the Paper Mill, and
11 with the exception of a few meetings, I was involved in the PGE discussions with Columbia
12 Ventures, which provided the capital to restart the Paper Mill.

13 Finally, PGE's testimony intentionally glosses over the messy realities of the Paper
14 Mill site. PGE's testimony seems to indicate that PGE had the right to change the Service
15 Point for the Paper Mill as the landlord of the property. But the Paper Mill is located on a
16 120-acre site that is owned partially by PGE and partially by BPH, the senior secured lender
17 of WLP. The Paper Mill's water, sewer, electrical, air system, fire systems and effluent
18 systems exist in part on property owned by PGE and in part on property owned by BPH.
19 The one and only PGE Service Point for the Paper Mill provides service to Paper Mill
20 assets and buildings both on PGE property and to Paper Mill assets and building on BPH
21 property.¹ BPH is WFalls' landlord for the portion of Paper Mill property not owned by
22

23 ¹ There are several other meters in WLP's name that serve very small loads in remote areas on the property.

1 PGE. As discussed in the testimony of Brad Mullins, I understand that PGE had no right
2 as the landlord of an adjacent property to “take over” electric service to property owned by
3 BPH.

4 **Q. HOW DO YOU RESPOND TO PGE’S ARGUMENT THAT IT WAS DOING WLP,**
5 **BPH AND STERN A FAVOR BY NOT DISCONNECTING POWER SERVICE TO**
6 **THE PAPER MILL?**

7 A. This is exactly backwards. After the shut-down of the Paper Mill, and when only essential
8 personnel were on site, BPH was paying approximately [REDACTED] in payroll and benefits
9 for WLP employees to keep operating certain Paper Mill assets almost entirely for the
10 benefit of PGE’s Sullivan Plant. As explained in my opening testimony, PGE needed
11 certain Paper Mill facilities to remain operational to provide cooling water to the Sullivan
12 Plant and to provide other essential functions. In exchange, PGE was paying for electricity
13 (which was almost entirely for the benefit of PGE), waiving lease payments and certain
14 property tax obligations. In my view, PGE was cooperative during this process because it
15 recognized that it was receiving the better end of the bargain. Further, had BPH directed
16 me to completely shut down the Paper Mill, the Sullivan Plant operations would have been
17 severely compromised and likely interrupted for an extended period of time. The bottom
18 line is that the discussion in PGE’s testimony of PGE’s right to terminate electrical services
19 for failure to pay—while technically true in a vacuum-- is really misleading because it does
20 not recognize what was really happening during this time frame and the benefits PGE was
21 receiving. The parties were cooperating, and PGE was receiving other significant benefits
22 from WLP. Further, the unpaid PGE electric bills about which PGE now complains were
23

1 incurred almost entirely to provide cooling water and other essential services to PGE's
2 Sullivan Plant—and much of this money was recovered in the Creditors Trust.

3 **Q. WHAT HAPPENED BETWEEN THE TIME THE REDEVELOPMENT**
4 **AGREEMENT WAS BEING NEGOTIATED AND THE LEASE TERMINATION**
5 **WENT INTO EFFECT?**

6 A. In the first meetings with PGE after the October 2017 shut down, WLP/BPH told PGE that
7 BPH will continue to fund certain functions for WLP (needed by PGE for the Sullivan
8 Plant) while BPH and PGE try and negotiate a redevelopment agreement. The thinking
9 was that there are so many entanglements on the site, that to try and create some value, the
10 parties would need to work together to resolve the entanglements. BPH informed PGE that
11 the power to the site, rent on PGE owned properties, and property taxes on PGE owned
12 lands would not be paid. In exchange, WLP would continue to provide valuable essential
13 services to PGE's Sullivan plant. PGE implicitly accepted this offer by continuing to
14 accept the benefits provided by BPH and by maintaining electric service to the Paper Mill
15 without payment. From February of 2018 to approximately October of 2018, WLP
16 continued to provide services to the Sullivan plant as BPH had originally offered. After
17 several months, and only after PGE had installed a water filtering system to backup the
18 need for filter water supplied by WLP, PGE informed BPH that it was discontinuing
19 discussions and going to work on a lease termination agreement.

20 **Q. HOW DO YOU RESPOND TO PGE'S CLAIM THAT IT VIEWED THE WLP**
21 **SHUTDOWN AS PERMANENT?**

22 A. This position is not only self-serving but contrary to PGE's actions at the time and the
23 many conversations that I personally had with PGE's managers. PGE knew I was working

1 to restart the Paper Mill and the only question was whether or not I would be successful.
2 Further, if PGE really considered the shutdown to be permanent, it would have likely
3 applied for operating permits in its name and rewired the electrical facilities so that only
4 PGE's property was served by the Service Point.

5 **Q. AFTER THE EFFECTIVE DATE OF THE LEASE TERMINATION**
6 **AGREEMENT, DID WLP STILL OCCUPY THE PAPER MILL?**

7 A. Yes. PGE is simply wrong when it says that it took possession of the Paper Mill property.
8 First, PGE did not own all of the Paper Mill property, and therefore only had rights as to
9 the portion that it owned. Even with respect to the part of the Paper Mill property PGE
10 owned, by the terms of the Lease Termination Agreement, WLP or its successors continued
11 to have rights to occupy the Paper Mill site. After the Lease Termination Agreement went
12 into effect, I found a buyer for the assets – Maynards—which purchased the Paper Mill
13 assets on February 13, 2019. After the sale to Maynards, I showed up on site to protect the
14 assets, to dispose of and sell any remaining raw materials and to market the Paper Mill. I
15 had an arrangement with Maynards to market the Paper Mill up until the date set for
16 auction—June 30, 2019.

17
18 **Q AFTER THE EFFECTIVE DATE OF THE LEASE TERMINATION**
19 **AGREEMENT, DID WLP PAY FOR NATURAL GAS SERVICES?**

20 A. Yes. WLP continued to pay for natural gas usage at the Paper Mill up until WFalls
21 reopened. The natural gas usage was obviously significantly less than when the Paper Mill
22 was making paper, but remained in WLP's name. Unlike the electric service, PGE never
23 put gas service into its own name.

1 **Q. AFTER THE EFFECTIVE DATE OF THE LEASE TERMINATION**
2 **AGREEMENT DID WLP PAY FOR WATER?**

3 A. Yes. WLP continued to pay for water at the Paper Mill for the benefit of those on the site—
4 including PGE contract employees. PGE even used WLP’s water for the Sullivan Plant and
5 reimbursed WLP for these services. Unlike the electric service, PGE never put water
6 service into its own name.

7 **Q. AFTER THE EFFECTIVE DATE OF THE LEASE TERMINATION**
8 **AGREEMENT, DID WLP PAY FOR INTERNET TO OPERATE AND**
9 **CONNECT PAPER MILL SYSTEMS?**

10 A. Yes. WLP continued to pay for internet to operate and connect the Paper Mill computer
11 systems until WFalls reopened. This benefited both WLP and PGE. Unlike the electric
12 service, PGE never put internet service into its own name.

13 **Q. WHY DID PGE SWITCH THE ELECTRIC SERVICE INTO ITS NAME?**

14 A. I wasn’t aware of what PGE did with the account but assumed PGE was providing the
15 power in exchange for the services WLP was providing for the benefit of both parties. At
16 the time, it was a very cooperative effort. PGE was providing the electricity to run
17 effluent systems, fire systems, security, air compressors, filter plant, and sewer lifts.

18 **Q. WHAT IS THE RELEVANCE OF THE EARLY CONVERSATIONS ABOUT**
19 **RESTARTING THE FACILITY?**

20 A. Much of PGE’s testimony focuses on the claim that I misunderstood the early discussions
21 and negotiations about restarting the Paper Mill and that PGE was clear in stating its
22 position that continued Long Term Direct Access (“LTDA”) service was not an option. I
23 simply do not agree. If PGE had clearly asserted that position, I would not have put any

1 effort into restarting the Paper Mill because the economics simply do not work without
2 LTDA service. I have been in the paper industry for more than 30 years, and PGE's cost
3 of service pricing is not viable in the long term. I do agree that in March 2019 PGE began
4 to question whether or not direct access was still available and Mr. Faist told me for the
5 first time I would need to deal with the energy side of the business.

6 **Q. WHAT HAPPENED AFTER PGE BEGAN TO QUESTION WHETHER DIRECT**
7 **ACCESS WAS STILL AVAILABLE?**

8 A. In March 2019, when PGE began to question whether the Paper Mill would be eligible for
9 WLP's LTDA, my counsel requested a copy of the LTDA Agreement. PGE refused to
10 provide me a copy.² In response to my request, PGE admitted that there was an LTDA
11 Agreement between WLP and PGE. PGE never said that the LTDA Agreement had been
12 "terminated" or "extinguished." Instead, PGE choose to hide the contents of the LTDA
13 Agreement from me.

14 I am not satisfied with PGE's explanation for failing to provide a copy of the LTDA
15 Agreement. WLP is a party to the LTDA Agreement. PGE was well aware that I was and
16 still am the president of WLP. I also find PGE's explanation about reaching out to Stern
17 to confirm it was appropriate to share the agreement with me and then not taking the next
18 step of sending me the agreement dubious at best. PGE then claims they "assumed" I
19 received a copy of the LTDA Agreement from another source but never bothered to ask
20 the question. The first time I saw the LTDA Agreement was through discovery in this
21 proceeding.

22
23

² See WFalls/301.

1 **Q. WHAT IMPACT DID THAT HAVE IN YOUR NEGOTIATIONS WITH PGE?**

2 A. In my view it had a significant impact and put WLP and the owners of WFalls at a
3 significant disadvantage in terms of both the Lease negotiations and arranging power
4 service to the Paper Mill. WLP/Columbia Ventures were forced to decide whether or not
5 to purchase the Paper Mill assets, negotiate a lease with PGE, negotiate a lease with BPH
6 and proceed with restarting the Paper Mill and hiring more than 100 employees without a
7 full understanding of the contents of the LTDA Agreement. PGE used this leverage to
8 force WFalls on cost of service rates. Had we had the opportunity to review the LTDA
9 Agreement during negotiations with PGE, we could have at least attempted to timely
10 assigned the LTDA Agreement from WLP to WFalls and potentially avoided this litigation.

11 **Q. HOW DO YOU RESPOND TO MR. FAIST'S STATEMENT THAT PGE TOLD**
12 **WLP'S ATTORNEY MR. PEPPE THAT THE LTDA AGREEMENT WAS**
13 **TERMINATED?**

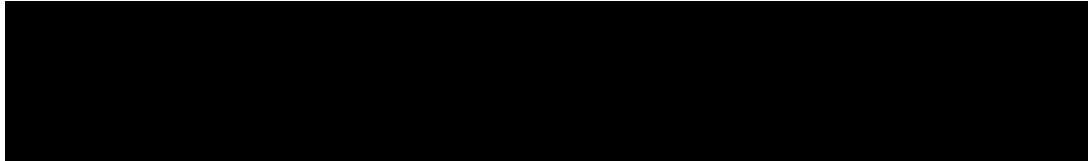
14 A. Mr. Faist's testimony about what was communicated to Mr. Pepple is not credible. PGE
15 has admitted in its data responses that Mr. Faist was not even at the meeting with Mr.
16 Pepple on March 19, 2019.³ This alone raises serious doubts about the testimony.

17 Second, Mr. Pepple sent me an email on March 25, 2019, summarizing that
18 meeting. In that email, Mr. Pepple told me that [REDACTED]

19 [REDACTED]

20 [REDACTED]

23 ³ See WFalls/401, Mullins 53.



1
2
3 This email is a contemporaneous account of the meeting discussion—from a person who
4 was actually at the meeting—and provides no indication that PGE told Mr. Pepple that the
5 LTDA Agreement terminated or expired. In fact, it directly contradicts PGE’s testimony.
6 It also illustrates the difficult position I was in because my lawyer was not allowed to
7 review my LTDA Agreement to help advise me before the Paper Mill assets were
8 purchased and the new leases with both BPH and PGE were negotiated. PGE hid the
9 contents of that LTDA Agreement and took the position that WFalls had to energize as a
10 cost of service customer.

11 **Q. HOW DO YOU RESPOND THAT PGE DID NOT KNOW WHAT YOUR ROLE**
12 **WAS?**

13 A. There is absolutely no way that my role in restarting the Paper Mill or my position could
14 have been mistaken. At the many meetings I had with PGE and other persons, our standard
15 practice was to introduce ourselves and our positions. I therefore “introduced” myself to
16 PGE representatives many times as the President and CEO of WLP, and a partial owner of
17 BPH, WLP’s parent company. The only reason I stayed around after the Paper Mill shut
18 down was to restart the Paper Mill. After the Lease Termination Agreement between WLP
19 and PGE was signed, I confirmed that PGE still supported a restart, and continued to show
20 up at the Paper Mill site almost every work day to work on restarting the Paper Mill.

21
22
23

⁴ See WFalls/301.

1 **Q. PGE CLAIMS THAT WLP WAS JUST A SHELL COMPANY—HOW DO YOU**
2 **RESPOND?**

3 A. This is just not correct. First, I remained employed by WLP and worked in cooperation
4 with PGE’s contractors responsible for operating its water, sewer, fire, security and other
5 systems. Second, all the environmental permits and water rights for the site were still in
6 WLP’s name. Further, WLP was cooperating and billing PGE (even after the Lease
7 Termination Agreement) for the backup water from the WLP city water meter for the
8 Sullivan Plant.⁵ PGE’s backup water for the Sullivan Plant had a problem and PGE needed
9 to use WLP’s water—even after the Lease Termination Agreement was in effect. WLP
10 was also allowed to occupy the Paper Mill until June 30, 2019 under the Lease Termination
11 Agreement even though the effective date was November 2018. Further, the Lease
12 Termination Agreement with PGE provided that WLP was “solely responsible for and
13 provide reasonable cooperation to PGE at no cost to Lessee in obtaining releases for any
14 liens, mortgages or security interest attached to the Improvements and Equipment as a
15 result of the actions of Lessee or its affiliates.”

16 **Q. PGE DENIES THAT THE LTDA AGREEMENT WAS TRANSFERRED IN THE**
17 **ASSET SALES AGREEMENT. HOW DO YOU RESPOND?**

18 A. While I am not a lawyer, as president of WLP, the intent was to transfer all operating assets,
19 contracts, and permits that would be necessary for the purchaser to operate the Paper Mill.
20 This was intended to be a turn-key operation—meaning a new operator would be able to
21 restart the facility with the same operating conditions as WLP enjoyed. When BPH
22

23

⁵ See WFalls/402.

1 transferred the Paper Mill assets to Maynards, the goal was to restart the facility. An auction
2 of the physical assets without a restart was only a fall-back option if restarting the Paper
3 Mill operations was not feasible. This is demonstrated in part by a provision in the
4 purchase agreement that if Maynards [REDACTED]

5 [REDACTED]
6 [REDACTED] Finally,
7 out of an abundance of caution, WLP assigned the LTDA Agreement to WFalls and asked
8 for PGE's consent, but PGE rejected the assignment.⁷

9 **Q. IF THE LTDA AGREEMENT WAS SO IMPORTANT, WHY WASN'T IT**
10 **SPECIFICALLY LISTED IN THE PURCHASE AND SALE DOCUMENTS?**

11 A First, the general list of assets that was included in the purchase and sale documents was
12 put together by our environmental engineer and it was not intended to be a comprehensive
13 list of every contract, permit, or asset owned by WLP. It was intended to be a general
14 summary. Second, there are many assets and permits and contracts that were not
15 specifically mentioned in the purchase and sale documents that have been assigned by WLP
16 to WFalls. In fact, one of the reasons that WLP is still in existence is to ensure that
17 everything needed to operate the Paper Mill is appropriately transferred from WLP to
18 WFalls. I understood WLP had direct access rights but did not necessarily realize that there
19 was a corresponding agreement until March 2019 when my attorney asked PGE of a copy
20 of the agreement.

21
22
23 ⁶ WFalls/103 (Conf) Purchase Agreement
⁷ WFalls/302.

1 **Q. PGE TALKS ABOUT ITS RIGHT TO TAKE OVER THE SERVICE POINT AS**
2 **WLP'S LANDLORD. HOW DO YOU RESPOND?**

3 A. When WLP shut down and as part of the Lease Termination Agreement, only the real
4 property that was owned by PGE went back to PGE. WLP also transferred its ownership
5 of any buildings on PGE land to PGE. The real property (and any structures on that
6 property) that was owned by WLP was transferred to BPH. So, PGE was only the landlord
7 for a portion of the property. I understand the Service Point providing PGE electricity
8 provides electricity to the BPH property and assets as well. As described in Mr. Mullin's
9 testimony, it is unclear how PGE as a landlord could take over the Service Point to the
10 extent that it provided service to BPH owned property.

11 **Q. WHAT PAPER MILL ASSETS ARE ON BPH PROPERTY?**

12 A. The Paper Mill assets, facilities and processes on BPH's real property include: the coating
13 plant, the final sewer lift, 25-30 percent of the lagoon which is used for water treatment
14 and a portion of the administration building. In fact, PGE does not even have access to the
15 Sullivan Plant property without going through an easement across BPH property.

16 **Q. PGE CLAIMS THAT THE OPERATION OF THE PAPER MILL DOES NOT**
17 **CHANGE ITS ENVIRONMENTAL LIABILITIES. HOW TO YOU RESPOND?**

18 A. Back around 2005, PGE conducted a study to quantify the liability they should identify on
19 their balance sheet if the mill were to close. We were told the [REDACTED]
20 [REDACTED] at the time. Because of this liability, PGE offered to give its real property to WLP
21 for a nominal sum. WLP would not accept the property as we determined it was more of
22 a liability than an asset. Blue Heron operated a paper mill directly across the Willamette
23 River from the Paper Mill site. Blue Heron took a different approach when PGE offered

1 them the real property for its site. Blue Heron accepted the land for a nominal sum. What
2 exists now is just an empty and abandoned mill. Blue Heron learned the hard way that the
3 cost to repurpose the property far outweighs the value. If the Paper Mill is forced to shut
4 down, PGE will join Blue Heron as an owner of an abandoned industrial facility with little
5 prospect for redevelopment.

6 **Q. ARE THERE ANY OTHER ASPECTS OF THE PROPERTY THAT ARE**
7 **UNIQUE?**

8 A. Yes. The Paper Mill and PGE have coexisted on the site for over 130 years. The site is
9 extremely complex and shared by 4 entities (PGE's Sullivan plant, the Willamette Falls
10 Locks owned by the United States Army Corps of Engineers, the Paper Mill, and the fish
11 ladder operated by Oregon Department of Fish and Wildlife). All these entities are
12 required to access their own properties through Mill street, using easements through the
13 former West Linn Paper properties that are now owned by BPH.

14 **Q. HAS THE STATE OF OREGON RECOGNIZED WFALLS AS THE SUCCESSOR**
15 **TO WLP?**

16 A. Yes. As I discuss in my testimony, the intent of the WLP to BPH, BPH to Maynards, and
17 Maynards to WFalls transfers was to transfer the assets to a new entity to operate the Paper
18 Mill with the same operating permits and same utilities (water, gas, electric). Everything
19 worked out as planned and transferred over—except for the electric services. For example,
20 the State of Oregon has allowed for the transfer of the following permits from WLP to
21 Wfalls⁸ including:

22
23 ⁸ See WFalls 303.

- 1 1. Industrial Wastewater Discharge Permit (DEQ Permit #100976 / DEQ File
2 #21489 / EPA#OR0000787) was transferred from WLP to WFalls on 7/16/2019;
- 3 2. Industrial Stormwater Discharge 1200-Z Permit (DEQ File #21489) was
4 transferred from WLP to WFalls on 8/8/2019;
- 5 3. Title V Air Permit (Permit # 03-2145-TV-01) was transferred from WLP to
6 WFalls on 7/8/2019
- 7 4. WLP and WFalls are in the process of transferring Radioactive Materials License
8 #ORE-90821.
- 9 5. WLP and WFalls have transferred the Dam Registration to WFalls and WFalls is
10 currently paying the invoice for another predecessor company Crown Zellerbach
11 (Lagoon), Dam ID OR03937.

12 To be clear, these permits were all transferred directly from WLP to WFalls.
13 Even after it took control of the real property that it owned and the buildings thereon,
14 PGE never tried to put any of these operating permits in its own name.

15 **Q. DID YOU PERSONALLY ACQUIRE ASSETS TO FACILITATE A RESTART**
16 **OF THE PAPER MILL?**

17 A. Yes. As I explained in my opening testimony, the only reason I stayed around was to
18 facilitate reopening the Paper Mill. In my personal capacity, I paid for operating permits
19 and paid approximately \$90,000 to purchase 10 tankers, 4 tractors and 11 empty trailers
20 in March 2018 because I was trying to restart the Paper Mill and the equipment was
21 needed for Paper Mill operations.⁹ This occurred before the formation of WFalls. The
22

23

⁹⁹ See WFalls/304.

1 equipment described in this paragraph was owned by WLP affiliate Columbia River
2 Logistics, Inc., but transferred and assigned to BPH when WLP ceased operations. I
3 purchased the equipment directly from BPH and the equipment is currently being used by
4 WFalls.

5 **Q. HOW DO YOU RESPOND TO PGE'S ARGUMENT THAT WFALLS SHOULD**
6 **BE INELIGIBLE FOR A NLDA WAIVER?**

7 A. PGE has repeatedly indicted that the Commission should decide whether a waiver is
8 appropriate here. I am disappointed that PGE now affirmatively argues that WFalls
9 should not be granted a waiver because WFalls started as a cost of service customer. As
10 explained in the Reply Testimony of Brad Mullins, waiving the one-year requirement
11 will not expand the NLDA program participation or shift any costs to PGE's other
12 customers. PGE's argument is actually against the company's own economic interests by
13 endangering the viability and existence of the Paper Mill.

14 **Q. WHY DID YOU ENERGIZE BEFORE A YEAR?**

15 A. At the time WFalls was formed and the lease with PGE and the lease with BPH were
16 signed, the NLDA program was not up and running and I was told that there were issues
17 that needed to be resolved and or litigated. It was unclear to me whether this program
18 would be ready in 6 months, a year or longer. On July 1, 2019 we were ready to begin
19 operations and put people back to work. It simply didn't make sense to wait to energize
20 for an indefinite period of time at that point.

21 **Q. DO YOU HAVE ANY CLOSING COMMENTS?**

22 A. Yes. I was hired at the Paper Mill as a summer intern in 1986 and was the Mill Manager
23 of WLP since 2002. I have always been honored and have had great respect for those who

1 have worked at the Paper Mill and understand the great responsibility to all the employees,
2 suppliers, customers and the community. The impact the Paper Mill has had in the
3 community over its long history is so large, groups such as the Willamette Falls Heritage
4 Foundation have been formed to recognize and keep the history of the Paper Mill for future
5 generations to appreciate. My role is more than just a job, and I take the responsibility very
6 seriously. You just need to look across at the empty Blue Heron site to see what would
7 have become of the Paper Mill if a restart had not occurred. It has been nearly 10 years
8 since Blue Heron has closed and the property still sits there abandoned and without any
9 prospects for redevelopment. We are working hard to keep over a hundred people
10 employed. Blue Heron employs nobody. I remember the call from Congressman Kurt
11 Shrader after the Blue Heron closing asking me if there was anything that could be done to
12 bring back those manufacturing jobs. It is ironic that I met with Congressman Shrader the
13 Friday before the auction of WLP was to be held. I asked him contact Maria Pope, the
14 President of PGE, to support bringing back the manufacturing jobs the Paper Mill provides.
15 I am proud of the fact I was part of reopening the Paper Mill. I never expected that the
16 highest hurdle to keeping it open would be our own “partner” on the Paper Mill site.

17 **Q. DOES THIS CONCLUDE YOUR REPLY TESTIMONY?**

18 **A.** Yes.

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

UM 2107

WILLAMETTE FALLS PAPER COMPANY)
and WEST LINN PAPER COMPANY,)
)
 Complainants,)
)
 vs.)
)
PORTLAND GENERAL ELECTRIC)
COMPANY,)
)
 Defendant.)
)
)
)

EXHIBIT 301
Attorney Emails

CONFIDENTIAL
Confidential Pursuant
To General Protective Order

Willamette Falls Paper Company
Testimony of Brian Konen

November 02, 2020

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON
UM 2107**

WILLAMETTE FALLS PAPER COMPANY)
and WEST LINN PAPER COMPANY,)
)
Complainants,)
)
vs.)
)
PORTLAND GENERAL ELECTRIC)
COMPANY,)
)
Defendant.)
)
)
)
_____)

EXHIBIT 302
WLP Assignment/PGE Rejection

CONFIDENTIAL
Confidential Pursuant
To General Protective Order

**Willamette Falls Paper Company
Testimony of Brian Konen**

November 02, 2020

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

UM 2107

WILLAMETTE FALLS PAPER COMPANY)
and WEST LINN PAPER COMPANY,)
)
Complainants,)
)
vs.)
)
PORTLAND GENERAL ELECTRIC)
COMPANY,)
)
Defendant.)
)
)
)
_____)

EXHIBIT 303
Environmental Permits transferred from WLP to W Falls

**Willamette Falls Paper Company
Testimony of Brian Konen**

November 02, 2020



Oregon

Kate Brown, Governor

WFalls/303

Konen/1

Department of Environmental Quality

Northwest Region Portland Office/Water Quality

700 NE Multnomah St Suite 600

Portland, OR 97232

(503) 229-5263

FAX (503) 229-6957

TTY (800) 736-2900

August 8, 2019

Brian Konen
Willamette Falls Paper Company, Inc
4800 Mill Street
West Linn, OR 97068

Re: NPDES 1200-Z PERMIT COVERAGE TRANSFER

Dear Permit Registrant:

We have received your request and the appropriate fees for a coverage transfer for the NPDES 1200-Z registration for DEQ File # 21489.

Effective August 8, 2019 , the names associated with File No.21489 have been changed as follows:

Former Legal Name: West Linn Paper Company
Former Common Name: West Linn Paper Company
New Legal Name: Willamette Falls Paper Company, Inc
New Common Name: Willamette Falls Paper Company

All contact names and information provided on your request form have also been updated.

A copy of the permit with the updated front page is attached. Please read it carefully so as to understand all the requirements and stipulations with which you must comply. Please be aware that you will be billed an annual fee each year as long as this permit is in effect.

If you have any questions or concerns regarding this action, please contact me directly at (503) 229-5886. For questions regarding your permit requirements, please contact Michael Kennedy at 503-229-6843.

Sincerely,

Jenni Seven
Stormwater Permit Coordinator, NW Region
Oregon Department of Environmental Quality
503-229-5886
seven.jenni@deq.state.or.us

Attachments: NPDES 1200-Z
ecc: DEQ Permit File

WFALLS 000239

Permit Number: 1200-Z
Effective: August 1, 2017
Reissuance: October 22, 2018
Expiration: July 31, 2022
Page 1 of 129

GENERAL PERMIT
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
STORMWATER DISCHARGE GENERAL PERMIT No. 1200-Z
Department of Environmental Quality
700 NE Multnomah St., Suite #600 Portland, OR 97232
Telephone: (503) 229-5630 or 1-800-452-4011 toll free in Oregon
Issued pursuant to ORS 468B.050 and the Federal Clean Water Act

ISSUED TO:	DATE ASSIGNED: August 8, 2019
Willamette Falls Paper Company, Inc	Clackamas COUNTY
4800 Mill Street	EPA NUMBER: ORR240316
West Linn, OR 97068	FILE NUMBER: 21489

SITE NAME: Willamette Falls Paper Company SITE LOCATION: 4800 Mill Street, West Linn, OR 97068

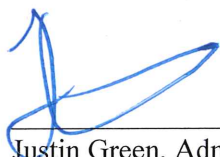
SOURCES COVERED UNDER THIS PERMIT:

A facility that may discharge industrial stormwater to surface waters or to conveyance systems that discharge to surface waters of the state and

1. The stormwater is associated with an industrial activity identified in Table 1: Sources Covered or listed in Table 2: Additional Activities Covered; or
2. The facility is notified in writing by the Director that coverage under this permit is required for its stormwater discharges (see Note 1 below).

Note 1:

1. The Director designates the facility as requiring stormwater permit pursuant to 40 CFR §122.26(a)(9)(i)(D).
2. Facilities may apply for conditional exclusion from the requirement to obtain coverage under this permit if there is no exposure of industrial activities and materials to stormwater pursuant to 40 CFR §122.26(g); see Permit Coverage and Exclusion from Coverage.
3. The following are not eligible to obtain coverage under this permit:
 - i. Construction activities; Primary Standard Industrial Classification codes 2951 and 3273, including mobile asphalt and concrete batch plants; and Standard Industrial Classification code 14, Mining and Quarrying of Nonmetallic Minerals, Except Fuels. These activities are covered under a separate general permit.
 - ii. Any source that has obtained an individual NPDES permit for the discharge, unless the source is otherwise eligible for coverage under this permit and DEQ has approved the source's application for coverage under this general permit.
 - iii. Any source that discharges to a sanitary sewer system and the discharge is approved by the sanitary sewer operator.



Justin Green, Administrator
Water Quality Division

Issuance Date: August 1, 2017
Reissuance: October 22, 2018

PERMITTED ACTIVITIES

Until this permit expires, is modified or revoked, the permit registrant is authorized to construct, install, modify, or operate stormwater treatment or control facilities, and to discharge stormwater and non-stormwater discharges specifically authorized by the permit to public surface waters in conformance with all the requirements, limitations, and conditions set forth in the following schedules:

PERMIT COVERAGE AND EXCLUSION FROM COVERAGE	5
SCHEDULE A	10
TECHNOLOGY BASED EFFLUENT LIMITATIONS.....	10
WATER QUALITY BASED EFFLUENT LIMITATIONS	14
STORMWATER POLLUTION CONTROL PLAN	15
STORMWATER DISCHARGE BENCHMARKS	18
CORRECTIVE ACTIONS FOR IMPAIRMENT POLLUTANT AND BENCHMARK EXCEEDANCES.....	19
SCHEDULE B	22
MONITORING REQUIREMENTS	22
INSPECTIONS	27
REPORTING AND RECORDKEEPING REQUIREMENTS	28
SCHEDULE D.....	32
SPECIAL CONDITIONS	32
SCHEDULE E	37
SECTOR-SPECIFIC REQUIREMENTS	37
SCHEDULE F	118
NPDES GENERAL CONDITIONS.....	118

Unless specifically authorized by this permit, by regulation issued by EPA, by another NPDES permit, or by Oregon Administrative Rule, any other direct or indirect discharge to waters of the state is prohibited, including non-stormwater discharges to an underground injection control system.

Schedule F contains General Conditions that are included in all general permits issued by DEQ. Schedule E contains sector-specific federal requirements. Should conflicts arise between Schedule F or Schedule E and any other schedule of the permit, the requirements in Schedule F or Schedule E may not apply.

Table 1: Sources Covered

Types of Industrial Sources Covered Under this Permit
<p>Facilities with the following primary Standard Industrial Classification (SIC) codes:</p> <ul style="list-style-type: none"> 10 Metal Mining 12 Coal Mining 13 Oil and Gas Extraction 20 Food and Kindred Products 21 Tobacco Products 22 Textile Mill Products 23 Apparel and Other Finished Products Made From Fabrics and Similar Material 24 Lumber and Wood Products, Except Furniture (Activities with SIC 2411 Logging that are defined in 40 CFR §122.27 as silvicultural point source discharges are covered by this permit.) 25 Furniture and Fixtures 26 Paper and Allied Products 27 Printing, Publishing and Allied Industries 28 Chemicals and Allied Products Manufacturing and Refining (excluding 2874: Phosphatic Fertilizers) 29 Petroleum Refining and Related Industries (excluding 2951, covered by 1200-A) 30 Rubber and Miscellaneous Plastics Products 31 Leather and Leather Products 32 Glass, Clay, Cement, Concrete and Gypsum Products (excluding 3273, covered by 1200-A) 33 Primary Metal Industries 34 Fabricated Metal Products, Except Machinery and Transportation Equipment 35 Industrial and Commercial Machinery and Computer Equipment 36 Electronic and Other Electrical Equipment and Components, Except Computer Equipment 37 Transportation Equipment 38 Measuring, Analyzing, and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks 39 Miscellaneous Manufacturing Industries 4221 Farm Product Warehousing and Storage 4222 Refrigerated Warehousing and Storage 4225 General Warehousing and Storage 5015 Motor Vehicle Parts, Used 5093 Scrap and Waste Materials
<p>Facilities with the following primary SIC codes that have vehicle maintenance shops (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or airport deicing operations:</p> <ul style="list-style-type: none"> 40 Railroad Transportation 41 Local and Suburban Transit and Interurban Highway Passenger Transportation 42 Trucking and Courier Services, Except Air (excluding 4221, 4222, and 4225) 43 United States Postal Service 44 Water Transportation 45 Transportation by Air 5171 Petroleum Bulk Stations and Terminals, except petroleum sold via retail method.
Steam Electric Power Generation including coal handling sites
Landfills, land application sites and open dumps
Hazardous Waste Treatment, storage and disposal facilities
Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, recycling, and reclamation of municipal or domestic sewage (including land dedicated to the disposal of sewage sludge that are located within the confines of the facility) with the design flow capacity of 1.0 mgd or more, or required to have a pretreatment program under 40 CFR §403.

In addition to the industrial sources listed in Table 1, facilities that discharge stormwater into the Columbia Slough or Portland Harbor that is exposed to any of the industrial activities listed in Table 2 below, are eligible to obtain permit coverage under the NPDES 1200-Z.

Table 2: Additional Industrial Activities Covered

Discharges to Columbia Slough and Portland Harbor
Maintenance of vehicles, machinery, equipment, and trailers (including repairs, servicing, washing, testing and painting)
Storage of vehicles, machinery, equipment (including disposal/refuse containers stored by a disposal/refuse contractor/vendor), and trailers (including rental, sales, wrecked vehicles, fleet, and general storage)
Materials storage (including raw materials; bulk fuels, chemicals, detergents, and plastic pellets; finished materials; lumber and food products; wholesale gravel, sand, and soil stockpiles; and bulk liquids other than water)
Waste handling (including recycled product storage, composting, tires, and bulk hazardous waste)
Commercial animal operations (such as kennels, race tracks, and veterinarians not covered under a Confined Animal Feeding Operation permit)
Fuel distribution and sales (including bulk stations, fuel oil dealers, manned and unmanned retail stations, fleet fueling, mobile fueling, and truck stops)
Any former activity that resulted in significant materials (as defined in Schedule D) remaining on-site

PERMIT COVERAGE AND EXCLUSION FROM COVERAGE

1. New Discharger to Impaired Waters (see Schedule D.3, Definitions)

- a. A new discharger to an impaired water without a Total Maximum Daily Load (TMDL), based on the EPA-approved 303(d) list (Category 5) that is in effect on May 1, 2017, for pollutant(s) must meet one of the following conditions to obtain coverage under this permit:
 - i. Prevent all pollutants for which the waterbody is impaired from exposure to stormwater and document in the Stormwater Pollution Control Plan (SWPCP) procedures taken to prevent exposure on-site; or
 - ii. Document in SWPCP that the pollutant(s) for which the waterbody is impaired are not present at the site; or
 - iii. Provide data and other technical information that demonstrates that the discharge is not expected to cause or contribute to an exceedance of the water quality standard for which the waterbody is impaired at the point of discharge to the waterbody if the pollutant(s) for which the waterbody is impaired are likely to be present at the site and DEQ has not issued a TMDL for the pollutant(s).
- b. Prior to granting permit coverage to a new discharger to impaired waters without a TMDL, DEQ or agent will make a determination and document that one of the conditions in paragraph 1.a. has been satisfied.
- c. A new discharger that is unable to meet one of the conditions in paragraph 1.a. is ineligible for coverage under this permit; either the discharge must cease or the new discharger will be required to obtain coverage under an individual NPDES permit.
- d. A new discharger to an impaired water with a TMDL (based on the EPA-approved TMDLs as of May 1, 2017) may receive permit coverage under this permit under one of the following circumstances:
 - i. The TMDL does not establish industrial stormwater wasteload allocations, the compliance with the terms and conditions of the permit is presumed consistent with the TMDL.
 - ii. If the TMDL establishes industrial stormwater wasteload allocations, and if DEQ or agent determines that there are sufficient remaining wasteload allocations in the TMDL to allow for the new industrial stormwater discharge, then the new discharge may be authorized by this permit.
- e. If a new discharge to impaired waters is authorized by DEQ under this permit, DEQ or agent will establish any additional monitoring, site controls or compliance schedules as necessary.
- f. Instead of granting permit coverage to a new discharge under paragraph 1.d., DEQ may determine that coverage under an individual NPDES permit is necessary.
- g. Conditions 1.a and 1.f above do not apply if the waterbody is impaired for:
 - i. Biological communities and no pollutant, including indicator or surrogate pollutants, is specified as causing the impairment; or
 - ii. Temperature, hydrologic modifications, or impaired hydrology.

2. New Application for Permit Coverage Requirements

- a. The following conditions apply to:

Permit Number: 1200-Z

Effective: August 1, 2017

Reissuance: October 22, 2018

Expiration: July 31, 2022

Page 6 of 129

- i. New facility: Submit a complete application to DEQ or agent (see Schedule D.4 for description of agent) at least 60 calendar days before initiating the activity that requires permit coverage, unless DEQ or agent approved a later date.
 - ii. Existing facility with stormwater discharges associated with industrial activities identified in Table 1 and operating without coverage under any NPDES permit for those discharges: Immediately submit a complete application to DEQ or agent, unless DEQ or agent approved a later date.
 - iii. Existing facility with stormwater discharges associated with industrial activities identified in Table 2 operating without coverage under any NPDES permit for those discharges: No later than 60 calendar days from written notification by DEQ or agent that permit coverage is required, submit a complete application to DEQ or agent.
 - iv. Existing facility that is designated by the Director as needing a stormwater permit pursuant to 40 CFR §122.26(a)(9)(i)(D): No later than 60 calendar days of being notified by DEQ that permit coverage is required, submit a complete application to DEQ or agent.
 - v. Existing facility operating under permit coverage that intends to change industrial processes at the site to a new primary industrial sector: Submit a complete application to DEQ or agent at least 60 calendar days before initiating the planned change, unless DEQ or agent approved a later date.
 - vi. Existing facility whose stormwater discharges are authorized by an individual NPDES permit and seeks coverage under this permit: Submit a complete application to DEQ or agent and a copy of the individual NPDES permit.
 - vii. A complete application must include the following:
 - (1) Applicable permit fees;
 - (2) DEQ-approved application form;
 - (3) A determination, on a DEQ-approved form, from the local government agency with land use jurisdiction that states the use is compatible with acknowledged local land use plans and;
 - (4) One paper copy and one electronic pdf copy of the SWPCP.
- b. Permit Coverage
- i. Prior to granting the applicant coverage under this permit, DEQ will provide a 30 calendar day public review period on the applicant's SWPCP and the proposed permit assignment letter. DEQ or agent will respond in writing to any applicable public comments.
 - ii. DEQ will notify the applicant in writing if coverage is granted or denied. When coverage is granted, DEQ or agent will establish monitoring year and outline monitoring requirements in the permit assignment letter (see Schedule D.3, Definitions).
- c. If coverage is denied or the applicant does not wish to be regulated by this permit, the applicant must apply for an individual permit in accordance with OAR 340-045-0030 or cease discharge.

3. Existing Facilities Covered Under the 1200-COLS or 1200-Z NPDES General Permits

- a. To ensure uninterrupted permit coverage for industrial stormwater discharges, an owner or operator of a facility covered under the 1200-Z permit that expired on June 30, 2017, must have submitted a DEQ-approved renewal application form to DEQ or agent, by January 3, 2017, unless DEQ or agent approved a later date.

Permit Number: 1200-Z

Effective: August 1, 2017

Reissuance: October 22, 2018

Expiration: July 31, 2022

Page 7 of 129

- b. To ensure uninterrupted permit coverage for industrial stormwater discharges, an owner or operator of a facility covered under the 1200-COLS permit that expired on September 30, 2016, must have submitted a DEQ-approved renewal application form to DEQ or agent, by August 1, 2016, unless DEQ or agent approved a later date.
- c. DEQ will notify registrants in writing if coverage is approved or denied. Renewed facilities must submit updated SWPCP to DEQ or agent by December 29, 2017, unless DEQ or agent approved a later date.
- d. For Tier II corrective action requirements triggered during the second year of coverage from the 1200-COLS permit that expired on September 30, 2016 or during the second year of coverage under the 1200-Z permit that expired on June 30, 2017, permit registrants must comply with the implementation deadline in the previous permit.
- e. Permit registrants for which the Tier II corrective action implementation deadline was after June 30, 2017, under the 1200-COLS permit that expired on September 30, 2016 or under the 1200-Z permit that expired on June 30, 2017, are exempt from Schedule A.11 for the parameter(s) and discharge point(s) that triggered Tier II.

4. Existing Facilities Covered Under the 1200-ZN or 1200-COLSB

- a. Permit registrants for which DEQ or agent has received a renewal application, facilities will automatically be re-assigned coverage under this permit in accordance to condition 3.c.

5. Name Change or Transfer of Permit Coverage

- a. For a name change or transfer of permit coverage between legal entities, the new owner or operator must submit to DEQ no later than 30 calendar days after the name change or planned transfer. A complete application must include the following:
 - i. One paper copy of a DEQ-approved Name Change and/or Permit Transfer form;
 - ii. One paper copy and one electronic pdf copy of an updated SWPCP; and
 - iii. Applicable fee.
- b. DEQ will notify the applicant in writing if the name change or transfer is approved or denied. Transfer of permit will be effective upon DEQ approval.
- c. For a name change or transfer of permit coverage between legal entities where there will also be a change in an industrial process at the site to a new primary industrial sector, the owner or operator must submit a new application for coverage under this permit as required in condition 2.a.iv above.

6. “No Exposure” Conditional Exclusion from Permit Coverage

- a. An owner or operator that applies for a “no exposure” conditional exclusion under 40 CFR §122.26(g) from coverage under this permit must:
 - i. Protect industrial materials and activities from exposure to rain, snow, snowmelt, and runoff by using a storm resistant shelter, except as provided in the Environmental Protection Agency (EPA) Guidance Manual for Conditional Exclusion from Stormwater Permitting Based on “No Exposure” of Industrial Activities to Stormwater (EPA 833-B-00-001, June 2000) and EPA’s Fact Sheet on Conditional No Exposure Exclusion for Industrial Activity (EPA 833-F-00-015, revised December 2005). Storm resistant shelters with unsealed zinc or copper roofing materials are not eligible for the “no exposure” conditional exclusion;

Permit Number: 1200-Z

Effective: August 1, 2017

Reissuance: October 22, 2018

Expiration: July 31, 2022

Page 8 of 129

- ii. Ensure that known significant materials from previous operations are controlled, removed or otherwise not exposed to stormwater.
 - iii. Complete and sign a DEQ-approved certification, that there is no stormwater exposure to industrial materials and activities from the entire facility.
 - iv. Submit the signed certification to DEQ or agent once every five years, beginning five years after the date of first submittal. If DEQ or agent does not comment on the “no exposure” certification within 60 calendar days, the “no exposure” conditional exclusion is deemed approved. DEQ or agent may notify the applicant in writing or by email of its approval. The owner or operator must keep a copy of the approved certification on-site.
 - v. Allow DEQ or agent to inspect the facility to determine compliance with the “no exposure” conditions; and
 - vi. If facility discharges through a municipal separate storm sewer system (MS4) submit a copy of the “no exposure” certification to the MS4 operator (for example, local municipality or district), upon their request, and allow inspection and public reporting by the MS4 operator.
- b. Limitations for obtaining or maintaining the exclusion:
- i. This exclusion is available on a facility-wide basis only, not for individual discharge points.
 - ii. If any industrial materials or activities become exposed to rain, snow, snowmelt, or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement. Any conditionally exempt discharger who anticipates changes in circumstances must apply for and obtain permit coverage before the change of circumstances.
 - iii. DEQ or agent retains the authority to make a determination that the “no exposure” conditional exclusion no longer applies and require the owner or operator to obtain permit coverage.

7. Electronic Submissions

- a. The applicant for coverage must submit the application and related documents in an electronic format to the initial recipient as specified below or as directed otherwise by DEQ as the National Pollutant Discharge Elimination System (NPDES) regulatory authority in Oregon according to 40 CFR 127.
- b. Beginning after December 21, 2020, or when directed by DEQ, the permit registrant must submit application and related documents on DEQ-approved web-based forms including pre-approved attachments.
 - i. Submit any documents, including the SWPCP, not entered on the NeT format as a separate attachment in the NeT electronic tool. DEQ must pre-approve the attachment forms as an integral part of the DEQ-approved application.
 - ii. The permit registrant must sign and certify all electronic submissions in accordance with the requirements of Section D8 within Schedule F of this permit.
- c. In accordance with 40 CFR 122.41(1)(9), DEQ will identify the initial recipient that is the designated entity for receiving electronic NPDES data. Until further notice from DEQ, EPA is the initial recipient to receive electronic submissions, and the permit registrant will use EPA’s NeT for electronic reporting. DEQ will notify the permit registrant in advance of changes to the initial recipient status and use of another electronic reporting system other than NeT.

8. Authorized Non-Stormwater Discharges

- a. Subject to the terms and conditions of the permit and Oregon law, the following non-stormwater discharges are authorized:
 - i. Discharges from emergency or unplanned fire-fighting activities;
 - ii. Fire hydrant flushing and maintenance;
 - iii. Potable water, including water line flushing;
 - iv. Uncontaminated condensate from air conditioners, coolers, chillers and other compressors, and from outside storage of refrigerated gases and liquids;
 - v. Landscape watering and irrigation drainage;
 - vi. Exterior vehicle wash water that does not use hot water or detergent; restricted to less than 8 per week;
 - vii. Pavement wash water that does not use hot water, detergent or other cleaning products, no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed), and surfaces are swept before washing;
 - viii. Routine external building wash down that does not use hot water, detergent or other cleaning products;
 - ix. Uncontaminated ground water or spring water;
 - x. Foundation or footing drains where flows are not contaminated with process materials; and
 - xi. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., “piped” cooling tower blowdown or drains).
- b. Separate any piping of interior floor drains and process wastewater discharge points from the storm drainage system to prevent unpermitted discharge of pollutants to waters of the state. Discharge from floor drains to the stormwater drainage system is a violation of this permit.
- c. Any other wastewater discharge or disposal, including stormwater mixed with wastewater, must be permitted in a separate permit, unless the wastewater is reused or recycled without discharge or disposal, or is discharged to the sanitary sewer with approval from the sanitary sewer system operator.

9. Limitations on Coverage

- a. Pursuant to OAR 340-045-0033(10), DEQ may deny permit coverage to an applicant or revoke a permit registrant’s coverage under this permit and require the owner or operator to apply for and obtain an individual permit.
- b. Coverage under this permit is not available under the following circumstances:
 - i. If all stormwater discharges are regulated by another NPDES permit, except a MS4 permit.
 - ii. If stormwater discharges were included in a permit that has been or is in the process of denial, termination or revoked unless the source is otherwise eligible for coverage under this permit and DEQ approves the source’s application to register under it and simultaneously revokes coverage under the other permit.
 - iii. For a new discharger to waters designated as Outstanding Resource Waters for antidegradation purposes under 40 CFR 131.12(a)(3) and OAR 340-041-0004.
- c. Any operator not seeking coverage under this general permit must apply for an individual NPDES permit in accordance with the procedures in OAR 340-045-0030.

SCHEDULE A

TECHNOLOGY BASED EFFLUENT LIMITATIONS

1. Narrative Technology-Based Effluent Limits

The permit registrant must meet the following narrative technology based effluent limits and additional sector-specific limits in Schedule E of this permit, if applicable.

- a. Minimize exposure - Minimize exposure of manufacturing, processing, material storage areas, including loading and unloading, disposal, cleaning, maintenance and fixed fueling areas to rain, snow, snowmelt and runoff. To the extent technologically available and economically practicable and achievable in light of best industry practice, the permit registrant must do the following:
 - i. Locate materials and activities indoors or protect them with storm resistant covers if stormwater from affected areas may discharge to surface waters. Acceptable covers include, permanent structures such as roofs or buildings and temporary covers such as tarps;
 - ii. Use grading, berming, or curbing to divert stormwater away from these areas and prevent stormwater contamination;
 - iii. Store all hazardous substances (see Schedule D.3, Definitions), petroleum/oil liquids, and other chemical solid or chemical liquid materials that have potential to contaminate stormwater within berms or other secondary containment devices to prevent leaks and spills. If the use of berms or secondary containment devices is not practicable, then store such substances in areas that do not drain off-site or into the storm sewer system;
 - iv. Locate materials, equipment and activities in containment and diversion systems, including the storage of leaking or leak-prone vehicles and equipment awaiting maintenance, to prevent leaks and spills from contaminating stormwater;
 - v. Use drip pans or absorbents under or around leaking or leak-prone vehicles/equipment or store indoors. Drain fluids from equipment and vehicles prior to on-site storage or disposal;
 - vi. Perform all cleaning operations indoors, under cover or in bermed areas that prevent runoff and run-on and also captures overspray;
 - vii. Clean up spills or leaks promptly using absorbents or other effective methods to prevent discharge of pollutants and use spill/overflow protection equipment;
 - viii. Ensure that all wash water is managed indoors or in bermed areas, disposed into sanitary sewer or drain to a proper collection system such as a closed-loop system or vegetated area and does not discharge into the stormwater drainage system unless allowed under condition 8, authorized non-stormwater discharge.
- b. Oil and Grease - Employ oil/water separators, booms, skimmers or other methods to eliminate or minimize oil and grease contamination in stormwater discharges.
- c. Waste Chemicals and Material Disposal - Recycle or properly dispose of wastes to eliminate or minimize exposure of pollutants to stormwater. Cover all waste contained in bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to these pollutants. Acceptable covers include, storage of bins or dumpsters under roofed areas or use of lids or temporary covers such as tarps.
- d. Erosion and Sediment Control - Stabilize exposed areas, including areas where industrial activity has taken place in the past and significant materials remain, and contain runoff using structural and nonstructural controls to minimize erosion of soil at the site and sedimentation. Employ

erosion control methods, such as vegetating exposed areas, graveling or paving to minimize erosion of soil at the site. Employ sediment control methods, such as detention facilities, vegetated filter strips, bioswales, flow velocity dissipation devices or other permanent erosion or sediment controls to minimize sediment loads in stormwater discharges. For activities that involve land disturbance, the permit registrant must contact the local municipality to determine if there are other applicable requirements related to stormwater control.

- e. Debris Control - Employ screens, booms, settling ponds, or other methods to eliminate or minimize waste, garbage and floatable debris in stormwater discharges and ensure that this debris is not discharged to receiving waters.
- f. Dust Generation and Vehicle Tracking of Industrial Materials - Minimize generation of dust, off-site tracking and discharge of soil, particulates and raw, final or waste materials.
- g. Housekeeping - Routinely clean all exposed areas that may contribute pollutants to stormwater with measures such as sweeping at regular intervals, litter pick-up, keeping materials orderly and labeled, prompt clean-up of spills and leaks, proper maintenance of vehicles and stowing materials in appropriate containers.
- h. Spill Prevention and Response Procedure - Minimize the potential for leaks, spills and other releases that may be exposed to stormwater and develop plans that include methods for spill prevention and clean-up and notification procedures. At a minimum, the permit registrant must use spill prevention and response measures including the following:
 - i. Procedures for plainly labeling containers that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur as required by local, state and federal rules;
 - ii. Preventative measures, such as barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling;
 - iii. Procedures for expeditiously stopping, containing, and cleaning up leaks, spills and other releases. Make the methods and procedures available to appropriate personnel. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures. Have the necessary clean-up material on-site and readily available; and
 - iv. Procedures for notification of appropriate facility personnel, DEQ or agent, and the Oregon Emergency Response System (1-800-452-0311), when a spill may endanger health or the environment. Contact information must be in locations that are readily accessible and available.
- i. Preventative Maintenance - Regularly inspect, clean, maintain, and repair all industrial equipment and systems and materials handling and storage areas that are exposed to stormwater to avoid situations that may result in leaks, spills, and other releases of pollutants discharged to receiving waters. Clean, maintain and repair all control measures, including stormwater structures, catch basins, and treatment facilities to ensure effective operation as designed and in a manner that prevents the discharge of pollution.
- j. Employee Education - Develop and maintain an employee orientation and education program to inform personnel on the pertinent components and goals of this permit and the SWPCP.
 - i. Training must cover:
 - (1) Specific control measures used to achieve the narrative technology based effluent limits, such as spill response procedures and good housekeeping practices, and
 - (2) Monitoring, inspection, reporting and documentation requirements.

- ii. Permit registrant must ensure that the following personnel are trained and understand the facility's specific requirements and their responsibilities:
 - (1) Personnel who are responsible for the design, installation, maintenance, or repair of controls including, pollution prevention and treatment measures;
 - (2) Personnel responsible for the storage and handling of chemicals and materials that could contribute pollutants to stormwater;
 - (3) Personnel who are responsible for conducting or documenting monitoring or inspections as required in Schedule B; and
 - (4) Personnel who are responsible for conducting and documenting corrective actions.
- iii. Education and training must be documented and must occur:
 - (1) No later than 30 calendar days of hiring an employee who works in areas where stormwater is exposed to industrial activities or conducts duties related to the implementation of the SWPCP;
 - (2) No later than 30 calendar days of change in duties for key personnel in Schedule A.1.j.ii; and
 - (3) Annually thereafter.
- iv. Education and training must be documented and include which specific employees received training. A log of training dates must kept on-site and submitted to DEQ or agent upon request.
- k. Non-Stormwater Discharges - Eliminate any non-stormwater discharges not authorized by a NPDES permit (see condition 8; Permit Coverage and Exclusion from Coverage section of this permit for a list of authorized non-stormwater discharges).

2. Numeric Technology-Based Effluent Limits based on Stormwater Specific Effluent Limitations

Guidelines - The permit registrant with the following industrial activities must meet the effluent limits referenced in the Table 3 below. An exceedance of the effluent limitation is a permit violation. See Schedule B.9 for corrective action requirements.

Table 3: Numeric Effluent Limit Guidelines

Regulated Activity	40 CFR Part/Subpart	Effluent Limit
Runoff from asphalt emulsion facilities (co-located SIC code only, 2951 covered under the 1200-A)	Part 443, Subpart A	See Schedule E.D.2
Runoff from material storage piles at cement manufacturing facilities	Part 411, Subpart C	See Schedule E.E.5
Runoff from hazardous waste landfills	Part 445, Subpart A	See Schedule E.K.3
Runoff from non-hazardous waste landfills	Part 445, Subpart B	See Schedule E.L.7
Runoff from coal storage piles at steam electric generating facilities	Part 423, Subpart E	See Schedule E.O.5

Regulated Activity	40 CFR Part/Subpart	Effluent Limit
Runoff containing urea from airfield pavement deicing at existing and new primary airports with 1,000 or more annual non-propeller aircraft departures	Part 449, Subpart S	See Schedule E.S.7

3. Control Measures for Technology Based Effluent Limits

- a. The permit registrant must select, design, install, implement and maintain control measures, including all best management practices, (BMPs), to meet the narrative technology-based and numeric effluent limits in Schedule A.1, A.2 and Schedule E of this permit and describe these measures, maintenance schedules and frequency of housekeeping measures in the SWPCP.
- b. For technology-based effluent limits that require permit registrants to minimize pollutants in the discharge, permit registrants must reduce or eliminate pollutants to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practice.
- c. The term “minimize” means reduce or eliminate, or both, to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice. The term “feasible” means technologically possible and economically practicable and achievable in light of best industry practice. In selecting the appropriate control measures to meet these limits, permit registrant may consider the age of the equipment and facilities involved, the processes employed, the engineering aspects of the application of various types of control techniques, the pollutant reductions likely to be achieved, any adverse environmental or energy effects of potential measures, and the costs of achieving pollutant reductions.
- d. The permit registrant must install, implement and maintain the control measures in accordance with good engineering practices and manufacturers’ specifications. Justify any deviation from the manufacturer’s specifications in the SWPCP.
- e. DEQ or agent may require the permit registrant to take corrective actions to meet the narrative technology-based and numeric effluent limits in Schedule A.1, A.2 and Schedule E of this permit.
 - i. If the permit registrant is failing to implement the control measures in the SWPCP, they must take corrective actions and implement the measures before the next storm event if practicable, unless otherwise approved by DEQ or agent.
- f. If modifications to the control measures are necessary to meet the technology-based effluent limits in this permit, the permit registrant must revise the SWPCP no later than 30 calendar days from completion of the modifications, unless otherwise approved by DEQ or agent. Permit registrant must implement the corrective actions before the next storm event if practicable or no later than 60 calendar days from discovering the violation, unless DEQ or agent approved a later date.

WATER QUALITY BASED EFFLUENT LIMITATIONS

4. Water Quality Standards

- a. The permit registrant must not cause or contribute to a violation of instream water quality standards as established in OAR 340-041.
- b. If at any time the permit registrant becomes aware, or DEQ or agent determines, that the discharge causes or contributes to an excursion of water quality standards permit registrant must take the following corrective actions:
 - i. No later than 24-hours of discovering the violation:
 - (1) Investigate the conditions that triggered the violation; and
 - (2) Review the SWPCP and the selection, design, installation and implementation of control measures to ensure compliance with this permit.
 - ii. No later than 30 calendar days after receiving the monitoring results, submit a Water Quality Standards Corrective Action report to DEQ or agent that documents the following:
 - (1) The results of the investigation, including the date the violation was discovered and a brief description of the conditions that triggered the violation;
 - (2) Corrective actions taken or to be taken, including the date the corrective action was completed or is expected to be completed; and
 - (3) Document whether SWPCP revisions are necessary. If permit registrant determines that SWPCP revisions are necessary based on the corrective action review, submit a revised SWPCP to DEQ or agent with the report.
 - iii. Permit registrant must implement the corrective action before the next storm event, if possible, or no later than 30 calendar days after discovering the violation, whichever comes first, unless DEQ or agent approved a later date.
- c. DEQ or agent may impose additional monitoring, site controls or compliance schedules on a site-specific basis, or require the permit registrant to obtain coverage under an individual permit, if information in the application, required reports, or from other sources indicates that the discharge is causing or contributing to a violation of water quality standards, either in the receiving waterbody or a downstream waterbody. If DEQ or agent determines that additional site specific requirements are necessary, DEQ or agent will require the permit registrant to revise the SWPCP. DEQ will hold a 30 calendar day public review period on the revised SWPCP.

5. Discharges to Impaired Waters

- a. Existing Discharger to an Impaired Water without a TMDL for Pollutant(s) - Permit registrant that discharges to an impaired water without a TMDL, based on the EPA-approved 303(d) list (Category 5) that is in effect on May 1, 2017, for the pollutant(s) must meet Schedule A.4 and B.1.b of this permit.
- b. Existing Discharger to an Impaired Water with a TMDL for Pollutant(s) - Must comply with all applicable requirements of the EPA-approved TMDL(s). If a TMDL establishes wasteload allocation(s) for industrial stormwater discharges, DEQ will list the permit registrant's requirements to comply with this condition in the permit assignment letter. If DEQ determines that additional monitoring, site controls or compliance schedules are necessary to comply with applicable TMDL wasteload allocations for industrial stormwater discharges, DEQ will include such requirements in the permit assignment letter and require a SWPCP revision. DEQ will hold a

Permit Number: 1200-Z
Effective: August 1, 2017
Reissuance: October 22, 2018
Expiration: July 31, 2022
Page 15 of 129

30 calendar day public review period on the revised SWPCP. Permit registrant must meet Schedule A.4 and B.1.b of this permit.

- c. New Discharger to an Impaired Water - New discharges to impaired waters authorized to discharge under this permit must implement and maintain any control measures or conditions on the site that enabled the permit registrant to become eligible for permit coverage and modify such measures or conditions as necessary pursuant to corrective action requirements in this permit. Permit registrant must meet Schedule A.4 and B.1.b of this permit.
- d. For the purposes of this permit, impaired waters and approved TMDLs will be based on those in effect as of May 1, 2017.

STORMWATER POLLUTION CONTROL PLAN

6. Preparation and Implementation of SWPCP

- a. The SWPCP must be prepared by a person knowledgeable in stormwater management and familiar with the facility.
- b. The SWPCP must be signed and certified in accordance with 40 CFR §122.22.
- c. The SWPCP must include each narrative technology-based effluent limit to eliminate or reduce the potential to contaminate stormwater and prevent any violation of instream water quality standards.
- d. Permit registrants must implement the SWPCP and any revisions to the plan. Failure to implement any of the control measures or practices described in the SWPCP is a violation of this permit.
- e. The SWPCP must be kept current and revised as necessary to reflect applicable changes to the site.
- f. Revisions must be made in accordance with Schedule A.8.

7. Required Elements

The SWPCP, at a minimum, must include the components below and describe how the permit registrants intends to comply with the narrative technology-based effluent limit to eliminate or reduce the potential to contaminate stormwater and prevent any violation of instream water quality standards.

- a. Title Page - The title page of the SWPCP must contain the following information:
 - i. Plan date.
 - ii. Name of the site.
 - iii. Name of the site operator or owner.
 - iv. The name of the person(s) preparing the SWPCP.
 - v. File number and EPA permit number as indicated in permit coverage documents.
 - vi. Primary SIC code and any co-located SIC codes.
 - vii. Contact person(s) name, telephone number and email.
 - viii. Physical address, including county, and mailing address if different.
- b. Site Description - The SWPCP must contain the following information, including any applicable information required in Schedule E of the permit:
 - i. Site map(s) including the following:
 - (1) general location of the site in relation to surrounding properties, transportation routes, surface waters and other relevant features;

- (2) drainage patterns;
 - (3) conveyance and discharge structures, such as piping or ditches;
 - (4) all discharge points assigned a unique three-digit identifying number starting with 001, 002 used for electronic reporting;
 - (5) outline of the drainage area for each discharge point;
 - (6) paved areas and buildings within each drainage area;
 - (7) areas used for outdoor manufacturing, treatment, storage, or disposal of significant materials;
 - (8) existing structural control measures for minimizing pollutants in stormwater runoff;
 - (9) structural features that reduce flow or minimize impervious areas;
 - (10) material handling and access areas;
 - (11) hazardous waste treatment, storage and disposal facilities;
 - (12) location of wells including waste injection wells, seepage pits, drywells;
 - (13) location of springs, wetlands and other surface waterbodies both on-site and adjacent to the site;
 - (14) location of groundwater wells;
 - (15) location and description of authorized non-stormwater discharges;
 - (16) exact location of monitoring points, indicating if any discharge points are “substantially similar” and not being monitored;
 - (17) location and description of spill prevention and cleanup materials; and
 - (18) locations of the following materials and activities if they are exposed to stormwater and applicable:
 - (A) fueling stations;
 - (B) vehicle and equipment maintenance cleaning areas;
 - (C) loading/unloading areas;
 - (D) locations used for the treatment, storage, or disposal of wastes;
 - (E) liquid storage tanks;
 - (F) processing and storage areas;
 - (G) immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility;
 - (H) transfer areas for substances in bulk;
 - (I) machinery; and
 - (J) locations and sources of run-on to your site from adjacent property.
- ii. A description of industrial activities conducted at the site and significant materials stored, used, treated or disposed of in a manner which exposes those activities or materials to stormwater. Include in the description the methods of storage, usage, treatment or disposal.
 - iii. Location and description, with any available characterization data, of areas of known or discovered significant materials from previous operations.
 - iv. Regular business hours of operation.
 - v. For each area of the site where a reasonable potential exists for contributing pollutants to stormwater runoff, a description of the potential pollutant sources that could be present in stormwater discharges and if associated with a co-located SIC code.
 - vi. A description of control measures installed and implemented to meet the technology and water quality based requirements in Schedule A.1 –A.5 and any applicable sector-specific

- requirements in Schedule E of this permit. Include a description of how the stormwater control measures address potential pollutant sources from industrial activities and significant materials on-site, spills and leaks and authorized non-stormwater discharges.
- vii. A description of treatment controls or source control, including low impact development, in response to corrective action requirements and operation and maintenance procedures.
 - viii. An estimate of the amount of impervious surface area (including paved areas and building roofs) and the total area drained by each stormwater discharge point to be reported in area units.
 - ix. The name(s) of the receiving water(s) for stormwater drainage. If drainage is to a municipal storm sewer system, the name(s) of the ultimate receiving waters and the name of the municipality; and
 - x. The identification of each discharge point and the location(s) where stormwater monitoring will occur as required by Schedule B.2. The monitoring location must also be labeled in the SWPCP as "monitoring location." Existing discharge points excluded from monitoring must include a description of the discharge point(s) and data or analysis supporting that the discharge point(s) are substantially similar as described in Schedule B.2.c.ii of this permit.
- c. Procedures and Schedules -The SWPCP must contain the following information to meet the narrative technology-based effluent limits in Schedule A.1 of this permit:
- i. Spill Prevention and Response - Procedures for preventing and responding to spills and clean-up and notification procedures. Indicate who is responsible for on-site management of significant materials and include their contact information. Spills prevention plans required by other regulations may be substituted for this provision if the spill prevention plan addresses stormwater management concerns and the plan is included with the SWPCP.
 - (1) Indicate how spill response will be coordinated between the permit registrant and otherwise unpermitted tenants. The permit registrant is ultimately responsible for spills of tenant and appropriate response.
 - ii. Preventative maintenance - Procedures for conducting inspections, maintenance and repairs to prevent leaks, spills, and other releases from drums, tanks and containers exposed to stormwater and the scheduled regular pickup and disposal of waste materials. Include the schedule or frequency for maintaining all control measures and waste collection.
 - iii. Operation and Maintenance Plans - Include an operation and maintenance plan for active treatment systems, such as electro-coagulation, chemical flocculation, or ion-exchange. The O&M plan must include, as appropriate to the type of treatment system, items such as system schematic, manufacturer's maintenance/operation specifications, chemical use, treatment volumes and a monitoring or inspection plan and frequency. For passive treatment and low impact development control measures, include routine maintenance standards.
 - iv. Employee Education - The elements of the training program must include the requirements in Schedule A.1.j. Include a description of the training content and the required frequency.

8. SWPCP Revisions

- a. Permit registrants must prepare SWPCP revisions in compliance with Schedule A.6; and
- b. SWPCP revisions must be submitted if they are made for any of the following reasons:
 - i. Change in site contact(s);
 - ii. In response to a corrective action or inspection;

- iii. Changes to the site, operations or control measures that may significantly change the nature of pollutants present in stormwater discharge; or significantly increase the pollutant(s) levels, discharge frequency, discharge volume or flow rate; and
- iv. Changes to the monitoring locations or discharge points.
- c. If submission of SWPCP revisions is required, permit registrant must submit the revised pages of the SWPCP and site map if applicable, to DEQ or agent no later than 30 calendar days after the completion of modification.
- d. Review of the revisions by DEQ or agent prior to implementation is not required, except revision to location of monitoring locations. The proposed revisions are deemed accepted after 30 calendar days of receipt unless the permit registrant receives a response from DEQ or agent.
- e. DEQ or agent may require the permit registrant to revise the SWPCP at any time. The permit registrant must submit the revisions no later than 30 calendar days from the request date, unless DEQ or agent approved a later date.
- f. SWPCP revisions are not subject to public notice and comment unless revisions are in response to water quality based effluent limit requirements in Schedule A.4 and A.5 of this permit.
- g. For Tier II SWPCP submittal requirements, refer to Schedule A.11.

STORMWATER DISCHARGE BENCHMARKS

9. Benchmarks

Benchmarks and reference concentrations for impairment pollutants are guideline concentrations, not numeric effluent limits. A benchmark or reference concentration exceedance, therefore, is not a permit violation. Benchmark monitoring assist the permit registrant in determining whether site controls are effectively reducing pollutant concentrations in stormwater discharged from the site.

Permit registrants must monitor for the following applicable benchmarks at all discharge points. See Schedule E of this permit for sector-specific benchmarks that apply to certain industrial sectors and co-located industrial activities.

Table 4: Statewide Benchmarks

Parameter	Units	Columbia River	Columbia Slough	Portland Harbor	Regional
Total Copper	mg/L	0.020	0.020	0.020	0.020
Total Lead	mg/L	0.040	0.060	0.040	0.015
Total Zinc	mg/L	0.12	0.24	0.12	0.12
pH	SU	5.5 – 9.0	5.5 – 8.5	5.5 – 9.0	5.5 – 9.0
TSS	mg/L	100	30	30	100
Total Oil & Grease	mg/L	10	10	10	10
E. coli	counts/100 ml	406*	406	406*	406*
BOD5	mg/L	N/A	33	N/A	N/A
Total Phosphorus	mg/L	N/A	0.16	N/A	N/A

*The benchmark for E. coli applies only to active landfills and sewage treatment plants.

N/A: Not Applicable (no benchmark or required sampling for this parameter)

CORRECTIVE ACTIONS FOR IMPAIRMENT POLLUTANT AND BENCHMARK EXCEEDANCES

10. Tier I Corrective Action Response to Exceedances of Impairment Pollutants and Benchmarks:

- a. If stormwater monitoring results exceed any of the applicable statewide benchmarks in Schedule A.9 of this permit, sector-specific benchmarks in Schedule E of this permit, or reference concentrations for impairment pollutants identified in the permit assignment letter, the permit registrant must, no later than 30 calendar days after receiving the monitoring results or visual observations show signs of pollution:
 - i. Investigate the cause of the elevated pollutant levels, including conducting, commencing or planning for any needed pollutant source tracing activities. Develop a plan to ensure that known or discovered significant materials from previous operations are controlled, removed or otherwise not exposed.
 - ii. Review the SWPCP and the selection, design, installation and implementation of control measures to ensure compliance with this permit and manufacturers' specifications. Evaluate whether any previous removal or pollutant source isolation actions are complete and whether additional removal or modifications to pollutant source isolation are necessary. Evaluate any treatment measures, including if they were properly installed, maintained and implemented and whether maintenance, corrections, or modifications to treatment measures are necessary.
 - iii. If permit registrant determines that additional control measures or other changes are necessary based on corrective action review, revise the SWPCP and submit the revised pages of the SWPCP to DEQ or agent, including a schedule for implementing the control measures.
 - iv. Tier I report - Summarize the following information in a Tier I report:
 - (1) The results of the investigation referred to in condition 10.a.i, above.
 - (2) Corrective actions taken or to be taken, including date corrective action completed or expected to be completed. Where the permit registrant determines that corrective action is not necessary, provide the basis for this determination.
 - (3) Document whether SWPCP revisions are necessary.
 - v. The Tier I report must be kept on site, and a copy provided to DEQ or agent upon request. In the event of an exceedance of a reference concentration for any impairment pollutant identified in the permit assignment letter, the Tier I report must be submitted to DEQ or agent no later than 60 calendar days after receiving monitoring results.
- b. Implement corrective actions before the next storm event, if possible, or no later than 30 calendar days after receiving the monitoring results, whichever comes first. If permit registrant fails to complete the corrective action within this time frame, the reasoning should be documented in the Tier 1 Report, and corrective actions must be completed as soon as practicable.
- c. Permit registrants are exempt from the Tier I investigation and reporting requirements for exceedances of benchmark parameter(s) addressed by proposed Tier II corrective action requirements in Schedule A.11. The exemption applies from the end of second monitoring year through the Tier II implementation deadline only. Tier I investigation and reporting must resume once Tier II is implemented.

11. Tier II Corrective Action Response based on second year Geometric Mean Benchmark

Evaluation:

- a. Permit registrants must evaluate the sampling results collected during the second monitoring year of permit coverage and determine if the geometric mean of the qualifying samples collected at each monitored discharge point exceeds any applicable statewide benchmarks in Schedule A.9 of this permit. DEQ or agent will identify in the permit assignment letter the registrant's Tier II evaluation year. The permit registrant must report the geometric mean of qualifying samples in the 4th quarter Discharge Monitoring Report due on August 15 of the second monitoring year of permit coverage. Permit registrants are not required to conduct this evaluation for the benchmark parameter(s) for which DEQ or agent has granted a monitoring waiver in accordance with Schedule B.4 of this permit.
- b. For the pH benchmark, Tier II corrective action requirements are triggered if 50 percent or more of qualifying samples during the first two monitoring years of permit coverage are outside of the pH benchmark range.
- c. For permit registrants that received new coverage under a previous industrial stormwater general permit (that is, the 1200-COLS, 1200-COLSB or 1200-Z) on or after July 1, 2016, time spent covered under the previous permit is included in determining the second year of permit coverage and other Tier II deadlines.
- d. The permit registrant must use all qualifying samples to calculate the geometric mean.
- e. If fewer than four qualifying samples were collected during the second monitoring year of permit coverage, qualifying sample results from the previous monitoring year may be used to obtain four consecutive values for the Tier II calculation.
- f. If the geometric mean of the qualifying sampling results for any monitored discharge point exceeds any applicable statewide benchmark in Schedule A.9 of this permit (or if 50 percent or more of any pH sampling results for any monitored discharge point are outside of the pH benchmark range), permit registrant must submit a Tier II report, a Tier II mass reduction waiver request, or a Tier II natural background waiver request, along with associated revisions of the SWPCP, to DEQ or agent no later than December 31 of the third year of permit coverage, unless a later date is approved in writing by DEQ or agent. DEQ or agent will notify permit registrant within 60 calendar days of receipt if the Tier II corrective action response is accepted or denied.
- g. Tier II corrective action(s) or mass reduction action(s) must be installed and implemented no later than June 30 of the fourth monitoring year, unless DEQ or agent approved a later date in writing. If the permit registrant changes the specifics of the corrective actions before implementation, revisions must be submitted and accepted by DEQ or agent before implementation. Corrective action revisions do not change the implementation deadline.
- h. No later than 30 calendar days from implementing all Tier II corrective actions or mass reduction measures, the permit registrant must submit written confirmation to DEQ or agent with the date Tier II corrective action response was implemented in accordance with the revised approved SWPCP.
- i. Properly apply and size approved Tier II corrective action responses and mass reduction measures to all substantially similar discharge points.
- j. Tier II Report
 - i. The Tier II report must include a proposal for active or passive treatment. This may include a combination of source removal, control and treatment measures, with the goal of achieving

- the benchmark(s) in Schedule A.9 of this permit. The report must include the rationale for the selection of the control and treatment measures, the projected reduction of pollutant concentration(s) and the schedule for implementing these measures.
- ii. An Oregon registered professional engineer (PE) must design and stamp the portion of the SWPCP that addresses these control measures.
 - iii. At discharge points where Tier II has been implemented:
 - (1) Permit registrants must take Tier I corrective actions in accordance with A.10.
 - (2) Monitoring must resume at substantially similar discharge points.
 - (3) Permit registrants may request a monitoring waiver if the geometric mean of four consecutive qualifying samples is equal to or below the benchmark.
- k. Tier II Mass Reduction Waiver
- i. A permit registrant may request a mass reduction waiver from the requirements in Schedule A.11.j above if the permit registrant implements or has implemented volume reduction measures, such as low impact development practices, that will or has resulted in reductions of the mass load of pollutants in the discharge below the mass equivalent of the applicable statewide benchmarks in Schedule A.9 of this permit.
 - ii. The mass reduction waiver request and the revised SWPCP must include data and analysis to support the rationale for the mass load reduction selection. Include in the waiver request a description of the measure(s), and a mass load analysis, and expected implementation date(s).
 - iii. An Oregon Professional Engineer (PE) or Oregon certified engineering geologist (CEG) must design and stamp the portion of the SWPCP that addresses the mass reduction measures.
 - iv. At discharge points at which a Tier II mass reduction waiver has been implemented:
 - (1) Permit registrants must take Tier I corrective actions in accordance with A.10.
 - (2) Monitoring must resume at substantially similar discharge points.
 - (3) Permit registrants may request a monitoring waiver if the geometric mean of four consecutive qualifying samples is equal to or below the benchmark.
- l. Tier II Natural Background Waiver
- i. A permit registrant may request a natural background waiver from the requirements in Schedule A.11.j above if the benchmark exceedance(s) is attributed solely to the presence of the pollutant(s) in natural background and is not associated with industrial activities at the site (see Schedule D.3, Definitions). The Tier II natural background waiver request must include the investigation and analysis used to demonstrate that the exceedances are due only to natural background conditions and data collected by the permit registrant or others (including peer-reviewed literature studies) that describe the levels of natural background pollutants in the discharge.

12. Permit Compliance

- a. Any noncompliance with any of the requirements of this permit constitutes a violation of the Clean Water Act.
- b. Any corrective actions and time periods specified for remedying noncompliance with the permit do not absolve permit registrants of the initial underlying violations.
- c. Where corrective action is triggered by an event that does not itself constitute a violation, such as a benchmark exceedance, there is no permit violation associated with the trigger event provided that the permit registrant takes the corrective action within the deadlines identified in this permit.

- d. A new permit registrant with a new facility (that begins operation after August 1, 2017) or an existing facility (that was in operation before August 1, 2017, without a stormwater discharge permit) must implement stormwater control measures to meet new technology and water quality based requirements in Schedule A.1 – A.5, including applicable sector-specific requirements in Schedule E of this permit, no later than 90 calendar days after receiving permit coverage. Control measures that require capital improvements must be completed no later than two years after receiving permit coverage, unless DEQ or agent approved a later date.

13. Corrective Action Triggers

The permit contains many types of corrective action triggers: statewide benchmarks, sector-specific benchmarks, numeric effluent limits and impairment reference concentrations. The numeric value of the corrective action trigger for a particular pollutant is often different for different types of triggers. For a particular facility, multiple corrective action triggers may apply for a particular pollutant. When exceeding multiple applicable corrective action triggers, the permit registrant must follow the corrective actions for each trigger.

SCHEDULE B

MONITORING REQUIREMENTS

1. Pollutant Parameters

- a. Benchmarks - Permit registrants must monitor for the applicable statewide benchmark pollutants identified in Schedule A.9 of this permit. Permit registrants must also monitor for benchmarks specified for applicable industrial sector(s) identified in Schedule E, for both primary industrial activity and any co-located industrial activities.
- b. Impairment Pollutants
 - i. Permit registrants that discharge to impaired waterbodies, based on the EPA-approved 303(d) list (Category 5) that is in effect as of May 1, 2017, (see Schedule D.3, Definitions) for pollutant(s), must monitor for impairment pollutant(s) identified in the permit assignment letter for which a standard analytical method exists (see 40 CFR Part 136).
 - ii. Before granting coverage under this permit, DEQ or agent will identify in the permit assignment letter the impairment pollutants that the permit registrant is required to monitor and reference concentrations for these pollutants. Reference concentrations reflect the approved acute aquatic life criterion for the pollutant when applicable. If there is not an acute criterion for the pollutant, DEQ or agent will use an applicable chronic criterion. If there is not a chronic criterion for the pollutant, DEQ or agent will use an applicable human health criterion.
 - (1) If the pollutant for which the waterbody is impaired is suspended solids, turbidity or sediment/sedimentation, permit registrants must monitor for Total Suspended Solids (TSS).
 - (2) If the pollutant for which the waterbody is impaired is expressed in the form of an indicator or surrogate pollutant, permit registrants must monitor for that indicator or surrogate pollutant.
 - (3) No monitoring is required when a waterbody's impairment is due to one of the following:

- (A) Biological communities and no pollutant, including indicator or surrogate pollutants, is specified as causing the impairment; or
- (B) Temperature, hydrologic modifications, or impaired hydrology.
- iii. Permit registrants must meet Schedule B.1.b.i. unless the permit registrant:
 - (1) Prevents all pollutants for which the waterbody is impaired from being exposed to stormwater, and documents in the SWPCP those procedures it has taken to prevent exposure on site; or
 - (2) Provides monitoring data demonstrating that the pollutant(s) for which the waterbody is impaired are not present in the discharge.
- c. Numeric Effluent limits pursuant to Federal Effluent Limit Guidelines - Permit registrants subject to effluent limit guidelines must monitor for the parameters in Schedule A.2 of this permit at each discharge point containing the discharges from industrial activities identified in the guidelines and report the monitoring results in the Discharge Monitoring Report required by Schedule B.8.
- d. Multiple Requirements - When more than one type of monitoring for the same pollutant at the same discharge point applies, the permit registrant may use a single sample to satisfy both monitoring requirements. Permit registrant must complete corrective action and reporting requirement for each parameter.

2. Sampling Procedures

- a. Grab Sampling
 - i. For each discharge point monitored, collect a single grab sample of stormwater discharge or a series of composite samples.
 - ii. Composite samples may be used as an alternative to grab sampling, except when monitoring for pH, oil and grease and E. coli. Compositing samples must be collected from same storm event. Registrants may not switch between grab sampling to composite sampling during a monitoring year without DEQ or agent approval.
 - iii. Permit registrants may use a single grab sample or composite to satisfy multiple pollutant parameter monitoring requirements (for example, required to monitor for zinc as benchmark and impairment pollutant).
- b. Representative Sample
 - i. Samples must be representative of the discharge.
 - ii. Monitoring locations must be identified in the SWPCP.
 - iii. Stormwater discharges regulated by this permit include stormwater run-on that commingles with stormwater discharges associated with industrial activity.
 - iv. If discharges authorized by this permit commingle with discharges authorized under a separate NPDES permit, any required sampling of the authorized discharges must be performed at a point before they mix with other waste streams, to the extent practicable. When combined flows are unavoidable, sampling must include all permitted parameters.
 - v. Authorized non-stormwater discharges under condition 8 of this permit must be sampled when commingled with stormwater discharges associated with industrial activity.
 - vi. Stormwater flows may combine into a common on-site treatment facility.
 - vii. The permit registrant shall, to the extent practicable, sample stormwater associated with industrial activity as it flows off-site before it combines with stormwater, wastewater or other waste streams from another facility or mixes with any surface water.
- c. Multiple Discharges - Each discharge point must be monitored unless:

- i. Discharge point serves an area without exposure of stormwater to industrial activities; or
 - ii. Discharge point has effluent that is substantially similar to the effluent(s) of a monitored discharge point and the same BMPs are implemented and maintained at the substantially similar discharge points or drainage areas that lead to the discharge points. Substantially similar effluent(s) are discharges from drainage areas serving comparable activities where the discharges are expected to be similar in composition. The determination of substantial similarity of effluent(s) must be based on past monitoring data or an analysis supporting that the discharge points are substantially similar. The supporting data or analysis must be included in the SWPCP. This provision does not apply to discharge point(s) covered by a numeric effluent limit.
- d. Timing - Monitor the discharge during the first 12 hours of the discharge event, which is a storm event or snowmelt resulting in an actual discharge from a site. If it is not practicable to collect the sample within this period, collect the sample as soon as practicable and provide documentation with the Discharge Monitoring Report why it was not practicable to take samples within the period. Permit registrant is not required to sample outside of regular business hours of operation or during unsafe conditions.
- e. Sampling for pH - Approved methods for pH sampling require either measuring the pH directly in the flow, or analyzing the sample within 15 minutes of sample collection.
- i. Obtain accurate pH readings with a properly calibrated pH meter.
 - ii. Permit registrant must follow manufacturers' specifications and keep meter in good working order.
 - iii. pH paper may not be used for determining the precise parameters established in this permit.
- f. Monitoring Frequency - Permit registrants must monitor their stormwater discharge according to the frequency described in Table 5 below unless DEQ or agent grant a monitoring waiver in writing or approve a monitoring variance.
- i. Stormwater samples must be collected at least 14 calendar days apart.
 - ii. Permit registrant may collect more samples than the minimum frequency described below, but must report this additional data in the Discharge Monitoring Report. All qualifying samples must be included to establish a monitoring waiver in Schedule B.4 or to conduct the geometric mean evaluation in Schedule A.11 of this permit.
 - iii. Exceedance of Numeric Effluent Limit in Schedule A.2 of this permit – Permit registrants must conduct follow-up monitoring of any pollutant that exceeds the numeric effluent limit(s) no later than 30 calendar days (or during the next storm event should none occur within 30 calendar days) of receiving the monitoring results. If the follow-up monitoring exceeds the numeric effluent limit, the permit registrant must monitor the discharge four times per year until compliance with the numeric effluent limit is achieved. Once monitoring achieves the effluent limit value, semi-annual frequency may resume.

Table 5: Monitoring Frequency

Pollutant Category	Minimum Frequency
All applicable statewide benchmarks in Schedule A.9, any applicable sector-specific benchmarks in Schedule E and any applicable impairment pollutants	Four times per year, two samples between January 1 and June 30, and two samples between July 1 and December 31
Any applicable numeric effluent limitations based upon Effluent Limitation Guidelines (see Schedule A.2. and Schedule E)	Two times per year, One sample between January 1 and June 30, and one sample between July 1 and December 31

3. Monitoring Variance

- a. Permit registrants may request a monitoring variance for missed samples due to no storm events of sufficient magnitude to produce run-off during regular business hours of operation and safe conditions. For each missed sample, variance requests are due on February 15 and August 15. Report no discharge in the Discharge Monitoring Report and include supporting data and analysis demonstrating why the monitoring did not occur at the time of DMR submission. If DEQ or agent has evidence contradicting the permit registrant's no discharge claim, failure to complete the required monitoring may be a permit violation. Supporting data may include:
 - i. State or federal authorities declared the year a drought year.
 - ii. Demonstration that rainfall in the area where the permit registrant's facility is located was 20 percent or more below the three-year average rainfall for that area.
 - iii. Photo documentation, rain gauge data, detention basin storage volumes, storm infiltration rate or retention capacity.

4. Monitoring Waiver for Benchmark and Impairment Pollutant Monitoring

- a. A monitoring waiver may be requested from DEQ or agent in the following circumstances:
 - i. When the benchmark or impairment reference concentration has been achieved, as demonstrated by:
 - (1) The geometric mean of four consecutive qualifying samples is equal to or below the impairment reference concentration, applicable statewide or sector-specific benchmarks.
 - (2) pH results are within the range for four consecutive qualifying readings.
 - (3) For Tier II parameters and discharge points once the corrective action has been implemented, and the geometric mean of four consecutive qualifying samples is equal to or below the applicable statewide benchmark, or pH results are within the range for four consecutive readings.
 - ii. If the exceedance(s) is attributed solely to the presence of the pollutant(s) in natural background and is not associated with industrial activities at the site. Permit registrant may submit a natural background waiver report to DEQ or agent that describes the investigation and analysis to demonstrate that the exceedances are due to natural background conditions and includes any data collected by the permit registrant or others (including peer-review literature studies) that describe the levels of natural background pollutants in the discharge.

Permit Number: 1200-Z

Effective: August 1, 2017

Reissuance: October 22, 2018

Expiration: July 31, 2022

Page 26 of 129

- iii. If a facility is inactive and unstaffed and no industrial materials or activities are exposed to stormwater, the permit registrant is not required to conduct monitoring for the remainder of the permit term.
 - (1) Permit registrant must provide documentation with the Discharge Monitoring Report indicating that the site is inactive and unstaffed, and that there are no industrial materials or activities exposed to stormwater, in accordance with the substantive requirements in 40 CFR 122.26(g)(4)(iii).
 - (2) Sign and certify the statement in accordance with D8 in Schedule F of this permit.
 - b. The permit registrant's request must include documentation to support the request. Monitoring waivers may be allowed for individual parameters and separate discharge points.
 - c. If the facility has triggered Tier II during this permit term, permit registrants are ineligible for monitoring waivers at all discharge points and parameters that exceeded the geometric mean in Schedule A.11. The ineligibility applies to the end of second monitoring year through Tier II implementation date.
 - d. DEQ or agent will notify the permit registrant in writing if a monitoring waiver is approved or denied. Until written approval of the monitoring waiver is received, the permit registrant must continue monitoring.
 - e. Monitoring waivers are valid for the remainder of the permit term. Upon renewal into a subsequent permit, permit registrants must reinstate all monitoring, and re-establish the basis for all monitoring waivers.
 - f. There is no reduction in monitoring allowed for:
 - i. Visual observations, unless the site is inactive or unstaffed and there are no industrial materials or activities exposed to stormwater and permit registrant meets requirements in Schedule B.4.a.iii of this permit.
 - ii. Monitoring for federal numeric effluent limit guidelines.
 - g. Reinstatement of Monitoring
 - i. It is the responsibility of the permit registrant to reinstate discharge monitoring under the following circumstances or if notified by DEQ or agent:
 - (1) Prior monitoring used to establish the monitoring waiver was improper or sampling results were incorrect;
 - (2) Changes to site conditions are likely to affect stormwater discharge characteristics, such as change in SIC code, process change or increased pollutants sources exposed to stormwater;
 - (3) Additional monitoring occurs and the sampling results exceed benchmark(s) or impairment reference concentration(s); or
 - (4) For inactive or unstaffed sites, the facility becomes active or staffed, or industrial materials or activities become exposed to stormwater.
 - h. Revocation of Monitoring Waiver
DEQ or agent may revoke the monitoring waiver based on any of the above conditions or in response to an inspection or corrective action. In this event, DEQ or agent will notify the permit registrant in writing that the monitoring waiver is revoked.
- 5. Additional Monitoring-** DEQ may notify permit registrants in writing of additional discharge monitoring requirements. Any such notice will state the reasons for the monitoring, locations and

Permit Number: 1200-Z

Effective: August 1, 2017

Reissuance: October 22, 2018

Expiration: July 31, 2022

Page 27 of 129

pollutants to be monitored, frequency and period of monitoring, sample types and reporting requirements.

- 6. For new permit registrants discharging to Clackamas River, McKenzie River above Hayden Bridge (River Mile 15), North Santiam River or North Fork Smith River subbasin** under OAR 340-041-0350 (For potential or existing dischargers that did not have a permit prior to January 28, 1994, and existing dischargers that have a NPDES stormwater discharge permit but request an increased load limitation.)
- a. No later than 180 calendar days after obtaining permit coverage, permit registrant must submit to DEQ a monitoring and water quality evaluation program. This program must be effective in evaluating the in-stream impacts of the discharge as required by OAR 340-041-0350.
 - b. No later than 30 calendar days from DEQ approval, the permit registrant must implement the monitoring and water quality evaluation program.

INSPECTIONS

- 7. Permit registrant must meet the following monthly inspection requirements:**
- a. Inspect areas where industrial materials or activities are exposed to stormwater and areas where stormwater control measures, structures, catch basins, and treatment facilities are located. Inspections must include all discharge points and the following areas:
 - i. Industrial materials, residue, or trash that may have or could come into contact with stormwater;
 - ii. Leaks or spills from industrial equipment, drums, tanks, and other containers;
 - iii. Offsite and internal tracking of industrial or waste materials, or sediment where vehicles enter or exit the site;
 - iv. Tracking or blowing of raw, final, or waste materials that results in exposure of stormwater falling on the site;
 - v. Evidence of, or the potential for, pollutants entering the drainage system;
 - vi. Evidence of pollutants discharging to receiving waters at all discharge point(s);
 - vii. Visual observation for the presence of floating, suspended or settleable solids, color, odor, foam, visible oil sheen, or other obvious indicators of pollution in the stormwater discharge at all discharge point(s), including discharge points that have been authorized to be substantially similar in accordance with Schedule B.2.c.ii; and
 - viii. Stormwater control measures, including treatment, to ensure they are functioning properly.
 - b. Conduct all inspections by personnel that have completed employee training and are familiar with aspects of the SWPCP.
 - c. Conduct and document visual inspections at the site on a monthly basis when the facility is in operation. Visual observations above must be conducted during a discharge event if one occurs during the month, regardless whether the monthly site inspection has already occurred.
 - d. For exceptionally large facilities where monthly inspections of all areas or visual observation at all substantially similar discharge points are infeasible, DEQ or agent may approve in writing a modified inspection frequency.
 - e. Conduct visual observations during regular business hours of operation and safe conditions.

- f. Document the following in an inspection report that is retained on-site and submitted to DEQ or agent upon request:
 - i. The inspection date and time;
 - ii. The name(s) of inspector(s);
 - iii. Control measures and treatment facilities needing cleaning, replacement, maintenance, reconditioning or repair;
 - iv. The condition of the drainage and conveyance system and need for maintenance;
 - v. Previously unidentified sources of pollutants;
 - vi. Stormwater discharge visual observations, a Tier I report is required if visual observation shows evidence of stormwater pollution as indicated condition Schedule B.7.a.vii.;
 - vii. Nature of the discharge; whether snow or rain; and
 - viii. Any corrective action, source control or maintenance taken or scheduled to remedy problems found.

REPORTING AND RECORDKEEPING REQUIREMENTS

8. Reporting Monitoring Data

- a. Paper Submissions
 - i. Permit registrant must submit all monitoring results required in this permit via DEQ-approved Discharge Monitoring Report (DMR) forms until directed by DEQ to do otherwise.
 - (1) DMRs are due quarterly as outlined in Table 6 for samples taken during the preceding calendar quarter.
 - (2) Reports must include laboratory results from the testing laboratory, including minimum detection level, Quality Assurance/Quality Control and analytical methods for the parameters analyzed.
 - (3) Submit pH field notes and chain of custody.
 - (4) Report non-detections as directed by DEQ. In calculating the geometric mean, use one-half of the detection level for non-detections.
 - (5) Report all sample results from discharge points.
 - (6) The permit registrant must sign and certify submittals of Discharge Monitoring Reports, any additional reports, and other information in accordance with the requirements of Section D8 within Schedule F of this permit.
 - ii. Until directed by DEQ to begin electronic submission, paper DMR forms must be received by the due dates in Table 6, regardless of whether semi-annual monitoring has been satisfied in the 1st or 3rd quarter.
 - iii. All monitoring results received between July 1, 2018, and December 31, 2018, must be reported in the 2nd quarter DMR, February 2019.
 - iv. Permit registrant must report Tier II geometric mean benchmark evaluation on the 4th quarter DMR after the second monitoring year of permit coverage.

Table 6: DMR Submission Deadlines

Reporting Quarters	Months	DMR Due Dates
1 st	July-September	November 15
2 nd	October-December	February 15*
3 rd	January-March	May 15
4 th	April-June	August 15*

*Variance request may be submitted semi-annually as applicable

b. Electronic Submission

- i. Permit registrant must submit the sampling and analysis results and other required information of Schedule B in an electronic format to the initial recipient as specified below or as directed otherwise by DEQ as the NPDES regulatory authority in Oregon according to 40 CFR 127.
- ii. When directed by DEQ, the permit registrant must submit monitoring results and other information required by this permit on DEQ-approved web-based Discharge Monitoring Report forms including pre-approved attachments.
- iii. The permit registrant must report monitoring requirements listed in Schedule B of this permit via NetDMR when directed by DEQ. Submit laboratory results from the testing laboratory and other required reporting not entered on the NetDMR form via NetDMR as a separate attachment.
 - (1) The permit registrant must submit a Discharge Monitoring Report to DEQ or agent as outlined in Table 6. Report the sampling results for the previous monitoring year and include the laboratory results from the testing laboratory, including minimum detection level, QA/QC and analytical methods for the parameters analyzed.
 - (2) Submit pH field notes and chain of custody.
 - (3) Report non-detections as directed by DEQ. In calculating the geometric mean, use one-half of the detection level for non-detections.
 - (4) Report all sample results from discharge points.
 - (5) The permit registrant must sign and certify submittals of Discharge Monitoring Reports, any additional reports, and other information in accordance with the requirements of Section D8 within Schedule F of this permit.
- iv. In accordance with 40 CFR 122.41(1)(9), DEQ will identify the initial recipient that is the designated entity for receiving electronic NPDES data. Until further notice from DEQ, EPA is the initial recipient to receive electronic submissions, and the permit registrant will use EPA's NetDMR for electronic reporting of Discharge Monitoring Report information. DEQ will notify the permit registrant in advance of changes to the initial recipient status and use of another electronic reporting system other than NetDMR.

- 9. Exceedance Report for Numeric Effluent Limits** - If follow-up monitoring pursuant to Schedule B.2.f.iii of this permit exceeds a numeric effluent limit, permit registrant must submit an Exceedance

Report to DEQ or agent no later than 30 calendar days after receiving the monitoring results. The report must include the monitoring data from this monitoring event and the preceding monitoring event(s), an explanation of the situation, and what the permit registrant has done to correct the violation or intends to do if the corrective actions are not complete.

10. Record Keeping Procedures -Permit registrant must record and maintain at the facility the following information. All records must be retained by the permit registrant for at least three years and made available to DEQ, agent or local municipality upon request.

- a. A copy of the SWPCP and any revisions, including revised stamped SWPCP from Tier II corrective action;
- b. A copy of this permit;
- c. Permit assignment letter and coverage documents from DEQ for the current permit term;
- d. Documentation of maintenance and repairs of control measures and treatment systems;
- e. Tier I reports;
- f. All inspection reports;
- g. Documentation of any benchmark exceedance and corrective action taken;
- h. All copies of any reports or corrective action submitted to DEQ or agent;
- i. Spills or leaks of significant materials (See Schedule D.3, Definitions) that impacted or had the potential to impact stormwater or surface waters. Include the corrective actions to clean up the spill or leak as well as measures to prevent future problems of the same nature;
- j. Documentation to support your claim that your facility has changed its status from active to inactive and unstaffed with respect to the requirements to conduct routine facility inspections;
- k. Discharge Monitoring Reports, laboratory reports and field sampling notes; and
- l. Employee education materials and records of training.

11. Summary of Reporting Requirements and Submittal Date.

Table 7: Reporting

Permit Condition	Permit Schedule	Report Required	Due Date
Must not cause or contribute to a violation of instream water quality standard	Schedule A.4	Water Quality Standards Corrective Action Report	No later than 30 calendar days after receiving monitoring results
SWPCP submission	Schedule A.8	SWPCP revision	No later than 30 calendar days after the completion of modification
Sample results exceed applicable statewide or sector-specific benchmarks	Schedule A.10	Tier I Report*	No later than 30 calendar days after receiving monitoring results; Retain on-site and submit upon request
Sample results exceed applicable impairment reference concentrations	Schedule A.10.a.v	Tier I report	No later than 60 calendar days after receiving monitoring results
Second year geometric mean exceeds benchmarks	Schedule A.11	Tier II Report	No later than December 31 of third monitoring year of coverage
		Tier II Mass Reduction Waiver	
		Tier II Natural Background Waiver	
Written confirmation of Tier II implementation	Schedule A.11	Email or letter confirming Tier II proposal installation	No later than 30 calendar days of implementation
Sample results continue to exceed benchmark for Tier II parameters post implementation	Schedule A.11.j.iii	Tier I Report*	No later than 30 calendar days after receiving monitoring results; Retain on-site and submit upon request
Sample results exceed numeric effluent limits	Schedule B.9	Exceedance Report	No later than 30 calendar days after receiving monitoring results
Submission of monitoring results after the preceding calendar quarter	Schedule B.8	Discharge Monitoring Report	No later than February 15, May 15, August 15, and November 15

*Do not submit Tier I report for exceedance of statewide or sector-specific benchmarks unless requested by DEQ or agent

SCHEDULE D

SPECIAL CONDITIONS

1. **Releases in Excess of Reportable Quantities.** This permit does not relieve the permit registrant of the reporting requirements of 40 CFR §117 Determination of Reportable Quantities for Hazardous Substances and 40 CFR §302 Designation, Reportable Quantities, and Notification.
2. **Availability of SWPCP and Monitoring Data.** The Stormwater Pollution Control Plan and stormwater monitoring data must be made available to government agencies responsible for stormwater management in the permit registrant's area.
3. **Definitions**

For the purpose of this permit:

 - a. Arid areas means portion of the state where annual precipitation averages range from 0 to 10 inches.
 - b. Capital Improvements means the following improvements that require capital expenditures:
 - i. Removal or permanent isolation from exposure to stormwater of significant materials left from previous activities on the site.
 - ii. Treatment best management practices including to settling basins, oil/water separation equipment, grassy swales, detention/retention basins, and media filtration devices.
 - iii. Manufacturing modifications that incur capital expenditures, including process changes for reduction of pollutants or wastes at the source.
 - iv. Concrete pads, dikes and conveyance or pumping systems utilized for collection and transfer of stormwater to treatment systems.
 - v. Roofs and appropriate covers for manufacturing areas.
 - vi. Volume reduction measures, including low impact development control measures.
 - c. Best management practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. See 40 CFR 122.2.
 - d. Co-located Industrial Activities means any industrial activities, excluding the primary industrial activity(ies), located on-site that are defined by the stormwater regulations at 122.26(b)(14)(i - ix, xi) and identified in Table 1: Sources Covered of the permit. An activity at a facility is not considered co-located if the activity, when considered separately, does not meet the description of a category of industrial activity covered by the stormwater regulations or identified in Table 1.
 - e. Columbia Slough means the waterway in northern Multnomah County flowing roughly parallel to the Columbia River between Fairview Lake and the Willamette River. *Confirm discharges to Columbia Slough by contacting the cities of Portland or Gresham.*
 - f. Control Measure means any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the state.

- g. Discharge Point means the location where collected and concentrated stormwater flows discharge from the facility such that the first receiving waterbody into which the discharge flows, either directly or through a separate storm sewer system, is a waters of the state.
- h. Existing Discharger means an operator applying for coverage under this permit for discharges authorized previously under an NPDES general or individual permit.
- i. Feasible means technologically possible and economically practicable and achievable in light of best industry practices.
- j. Hazardous Substances is defined in 40 CFR §302 Designation, Reportable Quantities, and Notification.
- k. High Quality Waters means those waters that meet or exceed levels that are necessary to support the propagation of fish, shellfish, and wildlife; recreation in and on the water; and other designated beneficial. Waters identified on the 303(d) (Category 5) list as not meeting applicable state water quality standards for a given pollutant are not high quality waters.
- l. Impaired Waters means those waters identified by a State or EPA pursuant to Section 303(d) (Category 5) of the Clean Water Act as not meeting applicable State water quality standards for one or more pollutants. This may include both waters with approved TMDLs (Category 4), and those for which a TMDL has not yet been approved.
- m. Industrial Activity means the categories of industrial activities included in the definition of “stormwater discharges associated with industrial activity” as defined in 40 CFR 122.26(b)(14)(i)-(ix) and (xi) or activities identified by DEQ as a significant contributor of pollutants, such as Table 2.
- n. Industrial Stormwater means stormwater discharge associated with industrial activity (40 CFR 122.26(b)(14)).
- o. Material Handling Activities include the storage, loading and unloading, transportation or conveyance of raw material, intermediate product, finished product, by-product or waste product.
- p. Minimize means reduce or eliminate, or both, to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.
- q. Monitoring year is from July 1 of one year to June 30 of the following year (for example, the 2017/2018 monitoring year is from July 1, 2017, through June 30, 2018).
- r. Natural background pollutants include substances that are naturally occurring in soils or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity on the site, or pollutants in run-on from neighboring sources that are not naturally occurring.
- s. New Discharger means a facility from which there is or may be a discharge, that did not commence the discharge of pollutants at a particular site prior to August 13, 1979, which is not a new source, and which has never received a finally effective NPDES permit for discharges at that site. See 40 CFR 122.2.
- t. New Source means any building, structure, facility, or installation from which there is or may be a “discharge of pollutants,” the construction of which commenced: after promulgation of standards of performance under section 306 of the CWA which are applicable to such source, or after proposal of standards of performance in accordance with section 306 of the CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal. See 40 CFR 122.2.

Permit Number: 1200-Z

Effective: August 1, 2017

Reissuance: October 22, 2018

Expiration: July 31, 2022

Page 34 of 129

- u. No Exposure means all industrial materials or activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. See 40 CFR 122.26(g).
- v. Operator means any entity with a stormwater discharge associated with industrial activity that meets either of the following two criteria:
 - i. The entity has operational control over industrial activities, including the ability to modify those activities; or
 - ii. The entity has day-to-day operational control of activities at a facility necessary to ensure compliance with this permit (e.g., the entity is authorized to direct workers at a facility to carry out activities required by this permit).
- w. Outstanding Resource Waters means those waters designated by the Environmental Quality Commission where existing high quality waters constitute an outstanding state or national resource based on their extraordinary water quality or ecological values or where special water quality protection is needed to maintain critical habitat areas.
- x. Permit Assignment Letter means a document sent by DEQ when coverage is granted or renewed that establishes registrant's monitoring year, sampling requirements, pollutant concentrations and monitoring frequency based on applicants' site information. Monitoring parameters include applicable statewide benchmarks, sector-specific benchmarks (primary and co-located), impairment reference concentrations and numeric effluent limits. This document may contain additional site-specific requirements.
- y. Portland Harbor means the study area of EPA's Portland Harbor Superfund site located in the Lower Willamette River from approximately river mile 1.9 to 11.8.
- z. Primary industrial activity means any activities performed on-site that are (1) identified by the facility's primary SIC code; or (2) included in the narrative descriptions of 122.26(b)(14)(i), (iv), (v), or (vii), and (ix). Narrative descriptions in 40 CFR 122.26(b)(14) identified above include: (i) activities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards; (iv) hazardous waste treatment storage, or disposal facilities including those that are operating under interim status or a permit under subtitle C of the Resource Conservation and Recovery Act (RCRA); (v) landfills, land application-sites and open dumps that receive or have received industrial wastes; (vii) steam electric power generating facilities; and (ix) sewage treatment works with a design flow of 1.0 mgd or more.
- aa. Qualifying samples are samples that are collected at least 14 calendar days apart, are analyzed using approved methods (see Schedule F), and satisfy the Quality Assurance/Quality Control requirements of the method.
- bb. Regular business hours of operation means those time frames when the facility is engaged in its primary production process, with personnel that have completed the required SWPCP training.
- cc. Run-on sources of stormwater means stormwater that drains from land located upslope or upstream from the regulated facility.
- dd. Semi-arid areas means where annual rainfall averages range from 10 to 20 inches.
- ee. Significant Materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical that a facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ash, slag, and sludge that have the potential to be released with stormwater discharges.

- ff. Stormwater means stormwater runoff, snow melt runoff and surface runoff drainage. See 40 CFR 122.26(b)(13).
- gg. Stormwater associated with industrial activity (40 CFR 122.26(b)(14)), means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to:
- i. Industrial plant yards;
 - ii. Immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility;
 - iii. Material handling sites (Material handling activities include the storage, loading and unloading, transportation or conveyance of raw material, intermediate product, finished product, by-product or waste product.);
 - iv. Refuse sites;
 - v. Sites used for the application or disposal of process waste waters (as defined in 40 CFR part401);
 - vi. Sites used for storage or maintenance of material handling equipment;
 - vii. Sites used for residual treatment, storage, or disposal; shipping and receiving areas;
 - viii. Manufacturing buildings;
 - ix. Storage areas (including tank farms) for raw materials, and intermediate and finished products;
 - x. Areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. Significant materials include, but are not limited to: raw materials storage; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical that a facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ash, slag, and sludge that have the potential to be released with stormwater discharges; or
 - xi. Stormwater run-on that commingles with stormwater discharges associated with industrial activity at the facility.
 - xii. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas.
- hh. Stormwater Conveyance means a sewer, ditch, or swale that is designed to carry stormwater; a stormwater conveyance may also be referred to as a storm drain or storm sewer.
- ii. Total Maximum Daily Load (TMDL) is the sum of the individual Waste Load Allocations (WLAs) for point sources and Load Allocations (LAs) for nonpoint sources and background. See OAR 340-041-0002(65) and OAR 340-042-0030(15).
- jj. Treatment Measures mean Best Management Practices that are intended to remove pollutants from stormwater. These measures include: settling basins, oil/water separation equipment, detention/retention basins, media filtration devices, electrocoagulation, constructed wetlands and bioswales.
- kk. Wasteload Allocation (WLA) means the portion of receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation. See OAR 340-041-0002(67).

Permit Number: 1200-Z

Effective: August 1, 2017

Reissuance: October 22, 2018

Expiration: July 31, 2022

Page 36 of 129

4. Local Public Agencies Acting as DEQ's Agent

DEQ has authorized certain local governments and special districts to act as its agent in implementing portions of this permit. The agent conducts the following activities, including: application and SWPCP review, inspections, monitoring data review, stormwater and wastewater monitoring, and verification and approval of no-exposure certifications. Where DEQ has entered into such an agreement, DEQ or agent will notify the permit registrant of where to submit no-exposure certifications, and other notifications or correspondence associated with this permit.

5. Terminating Permit Coverage

- a. Registrants must meet one or more of the following conditions:
 - i. Cease all industrial operations and stormwater discharge associated with industrial activity as defined in 40 CFR 122.26(b)(14);
 - ii. Obtain NPDES coverage under an individual permit;
 - iii. A new owner or operator legally acquires responsibility of property or industrial activity;
 - iv. Conditions for termination under sector G and H have been met.
- b. To terminate permit coverage, registrants must:
 - i. Complete and submit a Notice of Termination to DEQ or agent for approval.
 - ii. Resolve all outstanding compliance issues.
- c. Until termination has been approved by DEQ, permit registrants must comply with all permit conditions.

SCHEDULE E**SECTOR-SPECIFIC REQUIREMENTS**

1. Permit registrants must meet the sector-specific requirements in Schedule E associated with their primary industrial activity and any co-located industrial activities, as defined in Schedule D of this permit. The sector-specific requirements apply to the areas of the facility where the sector-specific activities occur.
2. These sector-specific requirements in Schedule E are in addition to the requirements in Schedule A and B of this permit.
3. Samples may qualify for one or more monitoring requirement; however, corrective action is based on each exceedance.
4. Table E-1 below identifies SIC codes and activities descriptions that are required to meet the sector-specific requirements in Schedule E of the permit.

Table E-1. Sectors of Industrial Activity with Description

SIC Code or Activity Code	Activity Represented
SECTOR A: TIMBER PRODUCTS	
2421	General Sawmills and Planing Mills
2411	Logging
2426	Hardwood Dimension and Flooring Mills
2429	Special Product Sawmills, Not Elsewhere Classified
2431-2439 (except 2434, see Sector W)	Millwork, Veneer, Plywood, and Structural Wood
2448	Wood Pallets and Skids
2449	Wood Containers, Not Elsewhere Classified
2451, 2452	Wood Buildings and Mobile Homes
2491	Wood Preserving
2493	Reconstituted Wood Products
2499	Wood Products, Not Elsewhere Classified
2441	Nailed and Lock Corner Wood Boxes and Shook
SECTOR B: PAPER AND ALLIED PRODUCTS	
2631	Paperboard Mills
2611	Pulp Mills
2621	Paper Mills
2652-2657	Paperboard Containers and Boxes
2671-2679	Converted Paper and Paperboard Products, Except Containers and Boxes

Table E-1. Sectors of Industrial Activity with Description

SIC Code or Activity Code	Activity Represented
SECTOR C: CHEMICALS AND ALLIED PRODUCTS MANUFACTURING AND REFINING	
2873-2879 (excluding 2874)	Agricultural Chemicals
2812-2819	Industrial Inorganic Chemicals
2841-2844	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations
2821-2824	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Manmade Fibers Except Glass
2833-2836	Medicinal Chemicals and Botanical Products; Pharmaceutical Preparations; in vitro and in vivo Diagnostic Substances; and Biological Products, Except Diagnostic Substances
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products
2861-2869	Industrial Organic Chemicals
2891-2899	Miscellaneous Chemical Products
3952 (limited to list of inks and paints)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints and Artist's Watercolors
2911	Petroleum Refining
SECTOR D: PETROLEUM REFINING AND RELATED INDUSTRIES	
Asphalt Paving Mixtures and Blocks, Primary SIC code 2951, Covered by 1200-A General Permit	
2951 (co-located SIC code only), 2952	Asphalt Paving and Roofing Materials
2992, 2999	Miscellaneous Products of Petroleum and Coal
SECTOR E: GLASS, CLAY, CEMENT, CONCRETE, AND GYPSUM PRODUCTS	
Ready-Mixed Concrete, Primary SIC code 3273, Covered by 1200-A General Permit	
3251-3259	Structural Clay Products
3261-3269	Pottery and Related Products
3271-3275 (3273 co-located SIC code only)	Concrete, Gypsum and Plaster Products
3211	Flat Glass
3221, 3229	Glass and Glassware, Pressed or Blown
3231	Glass Products Made of Purchased Glass
3241	Hydraulic Cement
3281	Cut Stone and Stone Products
3291-3299	Abrasive, Asbestos, and Miscellaneous Nonmetallic Mineral Products
SECTOR F: PRIMARY METALS	
3312-3317	Steel Works, Blast Furnaces, and Rolling and Finishing Mills
3321-3325	Iron and Steel Foundries

Table E-1. Sectors of Industrial Activity with Description

SIC Code or Activity Code	Activity Represented
3351-3357	Rolling, Drawing, and Extruding of Nonferrous Metals
3363-3369	Nonferrous Foundries (Castings)
3331-3339	Primary Smelting and Refining of Nonferrous Metals
3341	Secondary Smelting and Refining of Nonferrous Metals
3398, 3399	Miscellaneous Primary Metal Products
SECTOR G: METAL MINING (ORE MINING AND DRESSING)	
1021	Copper Ore and Mining Dressing Facilities
1011	Iron Ores
1021	Copper Ores
1031	Lead and Zinc Ores
1041, 1044	Gold and Silver Ores
1061	Ferroalloy Ores, Except Vanadium
1081	Metal Mining Services
1094, 1099	Miscellaneous Metal Ores
SECTOR H: COAL MINES AND COAL MINING-RELATED FACILITIES	
1221-1241	Coal Mines and Coal Mining-Related Facilities
SECTOR I: OIL AND GAS EXTRACTION AND REFINING	
1311	Crude Petroleum and Natural Gas
1321	Natural Gas Liquids
1381-1389	Oil and Gas Field Services
SECTOR J: MINERAL MINING AND DRESSING- Discharges Covered by 1200-A General Permit	
SECTOR K: HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES	
HZ	<p>Hazardous Waste Treatment, Storage, or Disposal Facilities:</p> <ul style="list-style-type: none"> • Hazardous waste storage • Hazardous waste disposal • Hazardous waste facilities operating under interim status • Hazardous waste facilities operating under a permit under Subtitle C of RCRA <p>HZ is the Activity Code for this Sector. It potentially applies to any facility regardless of SIC, in addition to these specifically related to hazardous waste:</p> <ul style="list-style-type: none"> • SIC 4953 Refuse Systems (hazardous waste treatment and disposal)
SECTOR L: LANDFILLS, LAND APPLICATION SITES, AND OPEN DUMPS	

Table E-1. Sectors of Industrial Activity with Description

SIC Code or Activity Code	Activity Represented
LF	All Landfill, Land Application Sites and Open Dumps
LF	All Landfill, Land Application Sites and Open Dumps, except Municipal Solid Waste Landfill (MSWLF) Areas Closed in Accordance with 40 CFR 258.60
SECTOR M: MOTOR VEHICLE PARTS, USED	
5015	Automobile Salvage Yards
SECTOR N: SCRAP AND WASTE MATERIALS	
5093	Scrap Recycling and Waste Recycling Facilities except Source-Separated Recycling
5093	Source-separated Recycling Facility
SECTOR O: STEAM ELECTRIC GENERATING FACILITIES	
SE	<p>Steam Electric Generating Facilities, including coal handling sites:</p> <ul style="list-style-type: none"> • steam electric power generation using coal, including coal handling areas • steam electric power generation using natural gas • steam electric power generation using oil • steam electric power generation using nuclear energy • steam electric power generation using any other fuel to produce a steam source • coal pile runoff (includes effluent limitations established by 40 CFR 423) • dual fuel co-generation (i.e., steam generation using fossil fuel to augment a heat-capture generation system) <p>SE is the Activity Code for this Sector. It may apply to any facility SIC Code, in addition to these specifically related to steam electric generation:</p> <ul style="list-style-type: none"> • SIC 4911 Electric Services (fossil fuel power generation, nuclear electric power generation & other electric power generation)
SECTOR P: LAND TRANSPORTATION AND WAREHOUSING	
4011, 4013	Railroad Transportation
4111-4173	Local and Highway Passenger Transportation
4212-4215	Trucking and Courier Services, Except Air
4226, 4231	Special Warehousing and Storage, Not Otherwise Classified, Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation
4311	United States Postal Service
5171	Petroleum Bulk Stations and Terminals

Table E-1. Sectors of Industrial Activity with Description

SIC Code or Activity Code	Activity Represented
SECTOR Q: WATER TRANSPORTATION	
4412-4499	Water Transportation Facilities
SECTOR R: SHIP AND BOAT BUILDING AND REPAIRING YARDS	
3731, 3732	Ship and Boat Building or Repairing Yards
SECTOR S: AIR TRANSPORTATION FACILITIES	
4512-4581	Air Transportation Facilities
SECTOR T: TREATMENT WORKS	
TW	Treatment Works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR Part 403.
SECTOR U: FOOD AND KINDRED PRODUCTS	
2041-2048	Grain Mill Products
2074-2079	Fats and Oils Products
2011-2015	Meat Products
2021-2026	Dairy Products
2032-2038	Canned, Frozen, and Preserved Fruits, Vegetables, and Food Specialties
2051-2053	Bakery Products
2061-2068	Sugar and Confectionery Products
2082-2087	Beverages
2091-2099	Miscellaneous Food Preparations and Kindred Products
2111-2141	Tobacco Products
SECTOR V: TEXTILE MILLS, APPAREL, AND OTHER FABRIC PRODUCT MANUFACTURING; LEATHER AND LEATHER PRODUCTS	
2211-2299	Textile Mill Products
2311-2399	Apparel and Other Finished Products Made from Fabrics and Similar Materials
3131-3199	Leather and Leather Products (note: see Sector Z1 for Leather Tanning and Finishing)
SECTOR W: FURNITURE AND FIXTURES	

Table E-1. Sectors of Industrial Activity with Description

SIC Code or Activity Code	Activity Represented
2434	Wood Kitchen Cabinet and countertop Manufacturing
2511-2519	Household Furniture
2521, 2522	Office Furniture
2531	Public Building and Related Furniture
2541, 2542	Partitions, Shelving, Lockers, and Office and Store Fixtures
2591, 2599	Miscellaneous Furniture and Fixtures
SECTOR X: PRINTING AND PUBLISHING	
2711-2796	Printing, Publishing, and Allied Industries
SECTOR Y: RUBBER, MISCELLANEOUS PLASTIC PRODUCTS, AND MISCELLANEOUS MANUFACTURING INDUSTRIES	
3011	Tires and Inner Tubes
3021	Rubber and Plastics Footwear
3052, 3053	Gaskets, Packing and Sealing Devices, and Rubber and Plastic Hoses and Belting
3061, 3069	Fabricated Rubber Products, Not Elsewhere Classified
3081-3089	Miscellaneous Plastics Products
3931	Musical Instruments
3942-3949	Dolls, Toys, Games, and Sporting and Athletic Goods
3951-3955 (except 3952 – see Sector C)	Pens, Pencils, and Other Artists' Materials
3961, 3965	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal
3991-3999	Miscellaneous Manufacturing Industries
SECTOR Z: LEATHER TANNING AND FINISHING	
3111	Leather Tanning and Finishing
SECTOR AA: FABRICATED METAL PRODUCTS	
3411-3499 (except 3479)	Fabricated Metal Products, Except Machinery and Transportation Equipment, and Coating, Engraving, and Allied Services.
3911-3915	Jewelry, Silverware, and Plated Ware
3479	Fabricated Metal Coating and Engraving
SECTOR AB: TRANSPORTATION EQUIPMENT, INDUSTRIAL OR COMMERCIAL MACHINERY	
3511-3537	Engines and Turbines, Farm and Garden Machinery and Equipment, Construction, Mining and Materials Handling Machinery and Equipment
3541-3549	Metalworking Machinery and Equipment

Table E-1. Sectors of Industrial Activity with Description

SIC Code or Activity Code	Activity Represented
3552-3559	Special Industry Machinery, Except Metalworking Machinery
3561-3569	General Industrial Machinery and Equipment
3581-3599	Refrigeration and Service Industry Machinery, Miscellaneous Industrial and Commercial Machinery and Equipment
3711-3716	Motor Vehicles and Motor Vehicle Equipment
3721-3751	Aircraft and Parts, Ship and Boat Building and Repairing, Railroad Equipment, Motorcycles, Bicycles and Parts
3761-3799	Guided Missiles and Space Vehicles and Parts, Miscellaneous Transportation Equipment
SECTOR AC: ELECTRONIC, ELECTRICAL, PHOTOGRAPHIC AND OPTICAL GOODS <i>No Sector-specific requirements</i>	
3571-3579	Computer and Office Equipment
3612-3699	Electronic and Other Electrical Equipment and Components, Except Computer Equipment
3812-3829	Measuring, Analyzing, Optical and Controlling Instruments
3841-3861	Photographic, Medical and Optical Goods
3873	Watches and Clocks

Sector A – Timber Products.**Additional Technology-Based Effluent Limits**

E.A.1 *Good Housekeeping.* In areas where storage, loading and unloading, and material handling occur, perform good housekeeping to limit the discharge of wood debris, minimize the leachate generated from decaying wood materials, and minimize the generation of dust.

E.A.2 Additional SWPCP Requirements

E.A.2.1 *Drainage Area Site Map.* Document in your SWPCP where any of the following may be exposed to precipitation or surface runoff: processing areas, treatment chemical storage areas, treated wood and residue storage areas, wet decking areas, dry decking areas, untreated wood and residue storage areas, and treatment equipment storage areas.

E.A.2.2 *Inventory of Exposed Materials.* Where such information exists, if your facility has used chlorophenolic, creosote, or chromium-copper-arsenic formulations for wood surface protection or preserving, document in your SWPCP the following: areas where contaminated soils, treatment equipment, and stored materials still remain and the management practices employed to minimize the contact of these materials with stormwater runoff.

E.A.2.3 *Description of Stormwater Management Controls.* Document measures implemented to address the following activities and sources: log, lumber, and wood product storage areas; residue storage areas; loading and unloading areas; material handling areas; chemical storage areas; and equipment and vehicle maintenance, storage, and repair areas. If your facility performs wood surface protection and preservation activities, address the specific control measures, including any BMPs, for these activities.

E.A.3 Additional Inspection Requirements.

E.A.3.1. If your facility is a wood preserving facility under SIC 2491, inspect processing areas, transport areas, and treated wood storage areas monthly to assess the usefulness of practices to minimize the deposit of treatment chemicals on unprotected soils and in areas that will come in contact with stormwater discharges.

E.A.4 Sector-Specific Benchmarks

Table E.A-1 identifies benchmarks that apply to the specific subsectors of Sector A. These benchmarks apply to both your primary industrial activity and any co-located industrial activities, which describe your site activities.

Table E.A-1

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
General Sawmills and Planing Mills (SIC 2421)	Chemical Oxygen Demand (COD)	120.0 mg/L
Hardwood Dimension and Flooring Mills; Special Products Sawmills, not elsewhere classified; Millwork, Veneer, Plywood, and Structural Wood; Wood Pallets and Skids; Wood Containers, not elsewhere classified; Wood Buildings and Mobile Homes; Reconstituted Wood Products; and Wood Products Facilities not elsewhere classified (SIC 2426, 2429, 2431-2439 (except 2434), 2441, 2448, 2449, 2451, 2452, 2493, and 2499)	Chemical Oxygen Demand (COD)	120.0 mg/L
Wood Preserving (SIC 2491)	Total Arsenic	0.15 mg/L

Permit Number: 1200-Z

Effective: August 1, 2017

Reissuance: October 22, 2018

Expiration: July 31, 2022

Page 46 of 129

Schedule E – Sector-Specific Requirements for Industrial Activity
Sector B – Paper and Allied Products

E.B.1 Sector-Specific Benchmarks

Table E.B-1 identifies benchmarks that apply to the specific subsectors of Sector B. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table E.B-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Paperboard Mills (SIC Code 2631)	Chemical Oxygen Demand (COD)	120 mg/L

Schedule E – Sector-Specific Requirements for Industrial Activity
Sector C – Chemical and Allied Products Manufacturing, and Refining

E.C.1 Sector-Specific Benchmarks

Table E.C-1 identifies benchmarks that apply to the specific subsectors of Sector C. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table E.C-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Agricultural Chemicals (SIC 2873-2879, excluding 2874)	Nitrate plus Nitrite Nitrogen	0.68 mg/L
	Total Iron	1.0 mg/L
	Phosphorus	2.0 mg/L
Industrial Inorganic Chemicals (SIC 2812-2819)	Total Aluminum	0.75 mg/ L
	Total Iron	1.0 mg/L
	Nitrate plus Nitrite Nitrogen	0.68 mg/L
Soaps, Detergents, Cosmetics, and Perfumes (SIC 2841-2844)	Nitrate plus Nitrite Nitrogen	0.68 mg/L

Permit Number: 1200-Z

Effective: August 1, 2017

Reissuance: October 22, 2018

Expiration: June 30, 2022

Page 48 of 129

Schedule E – Sector-Specific Requirements for Industrial Activity
Sector D – Petroleum Refining and Related Industries

E.D.1 Limitation of Coverage

Asphalt Paving Mixtures and Blocks, Primary SIC code 2951, must apply for coverage under the 1200-A General Permit.

E.D.2 Effluent Limitations Based on Effluent Limitations Guidelines

Table E.D-1 identifies effluent limits that apply to the industrial activities described below. Compliance with these effluent limits is to be determined based on discharges from these industrial activities independent of commingling with any other wastestreams that may be covered under this permit.

Table E.D-1¹

Industrial Activity	Parameter	Effluent Limit
Discharges from asphalt emulsion facilities. Co-located SIC code only.	Total Suspended Solids (TSS)	23.0 mg/L, daily maximum
		15.0 mg/L, 30-day avg.
	pH	6.0 - 9.0 s.u.
	Oil and Grease	15.0 mg/L, daily maximum
		10 mg/L, 30-day avg.

¹Monitor semi-annually.

Schedule E – Sector-Specific Requirements for Industrial Activity Sector E – Glass, Clay, Cement, Concrete, and Gypsum Products

E.E.1 Limitations of coverage

Ready-Mixed Concrete, primary SIC code 3273, must apply for coverage under the 1200-A General Permit.

E.E.2 Additional Technology-Based Effluent Limits

E.E.2.1 *Good Housekeeping Measures.* With good housekeeping, prevent or minimize the discharge of spilled cement, aggregate (including sand or gravel), kiln dust, fly ash, settled dust, or other significant material in stormwater from paved portions of the site that are exposed to stormwater. Consider sweeping regularly or using other equivalent measures to minimize the presence of these materials. Indicate in your SWPCP the frequency of sweeping or equivalent measures. Determine the frequency based on the amount of industrial activity occurring in the area and the frequency of precipitation, but it must be performed at least once a week if cement, aggregate, kiln dust, fly ash, or settled dust are being handled or processed. You must also prevent the exposure of fine granular solids (cement, fly ash, kiln dust, etc.) to stormwater, where practicable, by storing these materials in enclosed silos, hoppers, or buildings, or under other covering.

E.E.3 Additional SWPCP Requirements

E.E.3.1 *Drainage Area Site Map.* Document in the SWPCP the locations of the following, as applicable: bag house or other dust control device; recycle/sedimentation pond, clarifier, or other device used for the treatment of process wastewater; and the areas that drain to the treatment device.

E.E.3.1 *Discharge Testing.* For facilities producing ready-mix concrete, concrete block, brick, or similar products, include in the non-stormwater discharge testing a description of measures that ensure that process wastewaters resulting from washing trucks, mixers, transport buckets, forms, or other equipment are discharged in accordance with NPDES wastewater permit requirements or are recycled.

E.E.4 Sector-Specific Benchmarks

Table E.E-1 identifies benchmarks that apply to the specific subsectors of Sector E. These benchmarks apply to both your primary industrial activity and any co-located industrial activities, which describe your site activities.

Table E.E-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Clay Product Manufacturers (SIC 3251-3259, 3261-3269)	Total Aluminum	0.75 mg/L
Concrete and Gypsum Manufacturers (SIC 3271-3275) 3273: co-located SIC code only.	Total Iron	1.0 mg/L

E.E.5 Effluent Limitations Based on Effluent Limitations Guidelines

Table E.E-2 identifies effluent limits that apply to the industrial activities described below. Compliance with these limits is to be determined based on discharges from these industrial activities independent of commingling with any other wastestreams that may be covered under this permit.

Table E.E-2¹

Industrial Activity	Parameter	Effluent Limit
Discharges from material storage piles at cement manufacturing facilities(3241)	Total Suspended Solids (TSS)	50 mg/L, daily maximum
	pH	6.0 - 9.0 s.u.
¹ Monitor semi-annually.		

Schedule E – Sector-Specific Requirements for Industrial Activity

Sector F – Primary Metal

E.F.1 Additional Technology-Based Effluent Limits

E.F.1.1 *Good Housekeeping Measures.* As part of your good housekeeping program, include a cleaning and maintenance program for all impervious areas of the facility where particulate matter, dust, or debris may accumulate, especially areas where material loading and unloading, storage, handling, and processing occur; and, where practicable, the paving of areas where vehicle traffic or material storage occur but where vegetative or other stabilization methods are not practicable (institute a sweeping program in these areas too). For unstabilized areas where sweeping is not practicable, consider using stormwater management devices such as sediment traps, vegetative buffer strips, filter fabric fence, sediment filtering boom, gravel outlet protection, or other equivalent measures that effectively trap or remove sediment.

E.F.2 Additional SWPCP Requirements

E.F.2.1 *Drainage Area Site Map.* Identify in the SWPCP where any of the following activities may be exposed to precipitation or surface runoff: storage or disposal of wastes such as spent solvents and baths, sand, slag and dross; liquid storage tanks and drums; processing areas including pollution control equipment (e.g., baghouses); and storage areas of raw material such as coal, coke, scrap, sand, fluxes, refractories, or metal in any form. In addition, indicate where an accumulation of significant amounts of particulate matter could occur from such sources as furnace or oven emissions, losses from coal and coke handling operations, etc., and could result in a discharge of pollutants to waters of the United States.

E.F.2.2 *Inventory of Exposed Material.* Include in the inventory of materials handled at the site that potentially may be exposed to precipitation or runoff, areas where deposition of particulate matter from process air emissions or losses during material-handling activities are possible.

E.F.3 Additional Inspection Requirements

As part of conducting your monthly inspections address all potential sources of pollutants, including (if applicable) air pollution control equipment (e.g., baghouses, electrostatic precipitators, scrubbers, and cyclones), for any signs of degradation (e.g., leaks, corrosion, or improper operation) that could limit their efficiency and lead to excessive emissions. Consider monitoring air flow at inlets and outlets (or use equivalent measures) to check for leaks (e.g., particulate deposition) or blockage in ducts. Also inspect all process and material handling equipment (e.g., conveyors, cranes, and vehicles) for leaks, drips, or the potential loss of material; and material storage areas (e.g., piles, bins, or hoppers for storing coke, coal, scrap, or slag, as well as chemicals stored in tanks and drums) for signs of material losses due to wind or stormwater runoff.

Permit Number: 1200-Z

Effective: August 1, 2017

Reissuance: October 22, 2018

Expiration: June 30, 2022

Page 52 of 129

E.F.4 Sector-Specific Benchmarks

Table E.F-1 identifies benchmarks that apply to the specific subsectors of Sector F. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table E.F-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Cutoff Concentration
Steel Works, Blast Furnaces, and Rolling and Finishing Mills (SIC 3312-3317)	Total Aluminum	0.75 mg/L
Iron and Steel Foundries (SIC 3321-3325)	Total Aluminum	0.75 mg/L
	Total Iron	1.0 mg/L

Schedule E – Sector-Specific Requirements for Industrial Activity

Sector G – Metal Mining

E.G.1 Covered Stormwater Discharges

The requirements in Sector G apply to stormwater discharges associated with industrial activity from Metal Mining facilities, including mines abandoned on Federal lands, as identified by the SIC Codes specified under types of industrial sources required to obtain coverage, Table 1. Coverage is required for metal mining facilities that discharge stormwater contaminated by contact with, or that has come into contact with, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the operation.

E.G.1.1 *Covered Discharges from Inactive Facilities.* All stormwater discharges.

E.G.1.2 *Covered Discharges from Active and Temporarily Inactive Facilities.* Only the stormwater discharges from the following areas are covered:

- Waste rock and overburden piles if composed entirely of stormwater and not combined with mine drainage;
- Topsoil piles;
- Offsite haul and access roads;
- Onsite haul and access roads constructed of waste rock, overburden or spent ore if composed entirely of stormwater and not combining with mine drainage;
- Onsite haul and access roads not constructed of waste rock, overburden or spent ore except if mine drainage is used for dust control;
- Runoff from tailings dams or dikes when not constructed of waste rock or tailings and no process fluids are present;
- Runoff from tailings dams or dikes when constructed of waste rock or tailings and no process fluids are present, if composed entirely of stormwater and not combining with mine drainage;
- Concentration building if no contact with material piles;
- Mill site if no contact with material piles;
- Office or administrative building and housing if mixed with stormwater from industrial area;
- Chemical storage area;
- Docking facility if no excessive contact with waste product that would otherwise constitute mine drainage;
- Explosive storage;
- Fuel storage;
- Vehicle and equipment maintenance area and building;
- Parking areas (if necessary);
- Power plant;
- Truck wash areas if no excessive contact with waste product that would otherwise constitute mine drainage;
- Unreclaimed, disturbed areas outside of active mining area;
- Reclaimed areas released from reclamation requirements prior to December 17, 1990;
- Partially or inadequately reclaimed areas or areas not released from reclamation requirements.

E.G.1.3 *Covered Discharges from Earth-Disturbing Activities Conducted Prior to Active Mining Activities.* All stormwater discharges.

E.G.1.4 *Covered Discharges from Facilities Undergoing Reclamation.* All stormwater discharges.

E.G.2 Limitations on Coverage

E.G.2.1 *Prohibition of Stormwater Discharges.* Stormwater discharges not authorized by this permit: discharges from active metal mining facilities that are subject to effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR Part 440).

Note: Stormwater runoff from these sources are subject to 40 CFR Part 440 if they are mixed with other discharges subject to Part 440. In this case, they are not eligible for coverage under this permit. Discharges from overburden/waste rock and overburden/waste rock-related areas are not subject to 40 CFR Part 440 unless they: (1) drain naturally (or are intentionally diverted) to a point source; and (2) combine with "mine drainage" that is otherwise regulated under the Part 440 regulations. For such sources, coverage under this permit would be available if the discharge composed entirely of stormwater does not combine with other sources of mine drainage that are not subject to 40 CFR Part 440. Operators bear the initial responsibility for determining if they are eligible for coverage under this permit, or must seek coverage under another NPDES permit.

E.G.2.2 *Prohibition of Non-Stormwater Discharges.* Not authorized by this permit: adit drainage, and contaminated springs or seeps discharging from waste rock dumps that do not directly result from precipitation events.

E.G.3 Definitions

The following definitions are not intended to supersede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii).

E.G.3.1 *Mining operation* – For this permit, mining operations are grouped into two distinct categories, with distinct technology based effluent limits and requirements applicable to each: a) earth-disturbing activities conducted prior to active mining activities); and b) active mining activities, which includes reclamation. “Mining operations” can occur at both inactive mining facilities and temporarily inactive mining facilities.

E.G.3.2 *Earth-disturbing activities conducted prior to active mining activities* – Consists of two classes of earth-disturbing (i.e., clearing, grading and excavation) activities:

a. activities performed for purposes of mine site preparation, including: cutting new rights of way (except when related to access road construction); providing access to a mine site for vehicles and equipment (except when related to access road construction); other earth disturbances associated with site preparation activities on any areas where active mining activities have not yet commenced (e.g., for heap leach pads, waste rock facilities, tailings impoundments, wastewater treatment plants); and

b. construction of staging areas to prepare for erecting structures such as to house project personnel and equipment, mill buildings, etc., and construction of access roads. Earth-disturbing activities associated with the construction of staging areas and the construction of access roads conducted prior to active mining are considered to be “construction” and have additional technology based effluent limits in E.G.4.2.

E.G.3.3 *Active mining activities* – Activities related to the extraction, removal or recovery, and beneficiation of metal ore from the earth; removal of overburden and waste rock to expose mineable minerals; and site reclamation and closure activities. All such activities occur within

the “active mining area.” Reclamation involves activities undertaken, in compliance with applicable mined land reclamation requirements, to return the land to an appropriate post-mining contour and land use in order to meet applicable federal and state reclamation requirements. In addition, once earth-disturbing activities conducted prior to active mining activities have ceased and all related requirements in E.G.4 have been met, and a well-delineated “active mining area” has been established, all activities (including any clearing, grading, and excavation) that occur within the active mining area are “active mining activities.”

E.G.3.4 *Active mining area* – A place where work or other activity related to the extraction, removal or recovery of metal ore is being conducted, except, with respect to surface mines, any area of land on or in which grading has been completed to return the earth to desired contour and reclamation work has begun.

Note: Earth-disturbing activities described in the definition in E.G.3.2 that occur on areas outside the active mining area (e.g., for expansion of the mine into undeveloped territory) are considered “earth-disturbing conducted prior to active mining activities”, and must comply with the requirements in E.G.4

E.G.3.5 *Inactive metal mining facility* – A site or portion of a site where metal mining and/or milling occurred in the past but there are no active mining activities occurring as defined above, and where the inactive portion is not covered by an active mining permit issued by the applicable state or federal agency. An inactive metal mining facility has an identifiable owner / operator. Sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials and sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim are not considered either active or inactive mining facilities and do not require an NPDES industrial stormwater permit.

E.G.3.6 *Temporarily inactive metal mining facility* – A site or portion of a site where metal mining and/or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable State or Federal agency.

E.G.4 Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities

Stormwater discharges from earth-disturbing activities conducted prior to active mining activities (defined in E.G.3.3) are covered under this permit. For such earth-disturbing activities, permit registrants do not need to comply the technology-based effluent limits or Schedule B, monitoring or inspection frequency in Schedule B or E.G.5, E.G.7 or E.G.8.

Authorized discharges from areas where earth-disturbing activities have ceased and stabilization as specified in E.G.4.1.9 or E.G.4.2.11, where appropriate, has been completed (stabilization is not required for areas where active mining activities will occur), are no longer subject to E.G.4 requirements. At such time, authorized discharges become subject to all other applicable requirements in the permit, including not need to comply the technology-based effluent limits or Schedule B, monitoring or inspection frequency in Schedule B and Sector E.G.5, E.G.7 and E.G.8.

E.G.4.1 *Technology-Based Effluent Limits Applicable to All Earth-Disturbing Activities Conducted Prior to Active Mining Activities.* The following technology-based effluent limits apply to authorized discharges from all earth-disturbing activities conducted prior to active mining activities defined in E.G.3. These limits supersede the technology-based limits listed in Schedule A.

E.G.4.1.1 *Erosion and sediment control installation requirements.*

- By the time construction activities commence, install and make operational downgradient sediment controls, unless this timeframe is infeasible. If infeasible

you must install and make such controls operational as soon as practicable or as soon as site conditions permit.

- All other stormwater controls described in the SWPCP must be installed and made operational as soon as conditions on each portion of the site allows.

E.G.4.1.2 *Erosion and sediment control maintenance requirements.* You must:

- Ensure that all erosion and sediment controls remain in effective operating condition.
- Wherever you determine that a stormwater control needs maintenance to continue operating effectively, initiate efforts to fix the problem immediately after its discovery, and complete such work by the end of the next work day.
- When a stormwater control must be replaced or significantly repaired, complete the work within 7 days, unless infeasible. If 7 days is infeasible, you must complete the installation or repair as soon practicable.

E.G.4.1.3 *Perimeter controls.* You must:

- Install sediment controls along those perimeter areas of your disturbed area that will receive stormwater, except where site conditions prevent the use of such controls (in which case, maximize their installation to the extent practicable).
- Remove sediment before it accumulates to one-half of the above-ground height of any perimeter control.

E.G.4.1.4 *Sediment track-out.* For construction vehicles and equipment exiting the site directly onto paved roads, you must:

- Install sediment controls along those perimeter areas of your disturbed area that will receive stormwater, except where site conditions prevent the use of such controls (in which case, maximize their installation to the extent practicable).
- Remove sediment before it accumulates to one-half of the above-ground height of any perimeter control.
- Note: DEQ recognizes that some fine grains may remain visible on the surfaces of off-site streets, other paved areas, and sidewalks even after you have implemented sediment removal practices. Such “staining” is not a violation of E.G.4.1.4.

E.G.4.1.5 *Soil or sediment stockpiles.* You must:

- Minimize erosion of stockpiles from stormwater and wind via temporary cover, if feasible.
- Prevent up-slope stormwater flows from causing erosion of stockpiles (e.g., by diverting flows around the stockpile).
- Minimize sediment from stormwater that runs off of stockpiles, using sediment controls (e.g., a sediment barrier or downslope sediment control).

E.G.4.1.6 *Sediment basins.* If you intend to install a sediment basin to treat stormwater from your earth-disturbing activities, you must:

- Provide storage for either (1) the 2-year, 24-hour storm, or (2) 3,600 cubic feet per acre drained.
- Prevent erosion of (1) basin embankments using stabilization controls (e.g., erosion control blankets), and (2) the inlet and outlet points of the basin using erosion controls and velocity dissipation devices.

E.G.4.1.7 *Minimize dust.* You must minimize the generation of dust through the appropriate application of water or other dust suppression techniques that minimize pollutants being discharged into surface waters.

E.G.4.1.8 *Restrictions on use of treatment chemicals.* If you intend to use sediment treatment chemicals at your site, you are subject to the following minimum requirements:

- Use conventional erosion and sediment controls prior to and after application of chemicals;
- Select chemicals suited to soil type, and expected turbidity, pH, flow rate;
- Minimize the discharge risk from stored chemicals;
- Comply with state/local requirements;
- Use chemicals in accordance with good engineering practices and specifications of chemical supplier;
- Ensure proper training;
- Provide proper SWPCP documentation.

If you plan to use cationic treatment chemicals, you are ineligible for coverage under this permit, unless you notify your applicable DEQ regional office or agent in advance and receive authorization under this permit after you have included appropriate controls and implementation procedures designed to ensure that your use of cationic treatment chemicals will not lead to a violation of water quality standards.

E.G.4.1.9 *Site stabilization requirements for earth-disturbing activities performed for purposes of mine site preparation as defined in E.G.3.2(a) (i.e., not applicable to construction of staging areas for structures and access roads as defined in E.G.3.2(b)).* You must comply with the following stabilization requirements except where the intended function of the site accounts for such disturbed earth (e.g., the earth disturbances will become actively mined, or the controls implemented at the active mining area effectively control the disturbance) (although you are encouraged to do so within the active mining area, where appropriate):

- *Temporary stabilization of disturbed areas.* Stabilization measures must be initiated immediately in portions of the site where earth-disturbing activities performed for purposes of mine site preparation (as defined in E.G.3.2(a)) have temporarily ceased, but in no case more than 14 days after such activities have temporarily ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after earth-disturbing activities performed for purposes of mine site preparation has temporarily ceased, temporary vegetative stabilization measures must be initiated as soon as practicable. Until temporary vegetative stabilization is achieved, interim measures such as erosion control blankets with an appropriate seed base and tackifiers must be employed. In areas of the site where earth-disturbing activities performed for purposes of mine site preparation have permanently ceased prior to active mining, temporary stabilization measures must be implemented to minimize mobilization of sediment or other pollutants until active mining activities commence.
- *Final stabilization of disturbed areas.* Stabilization measures must be initiated immediately where earth-disturbing activities performed for purposes of mine site preparation (as defined in E.G.3.2(a)) have permanently ceased, but in no case more than 14 days after the earth-disturbing activities have permanently ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after earth-disturbing activities have permanently ceased, final vegetative stabilization measures must be initiated as soon as possible. Until

final stabilization is achieved, temporary stabilization measures, such as erosion control blankets with an appropriate seed base and tackifiers, must be used.

E.G.4.2 *Additional Technology-Based Effluent Limits Applicable Only to the Construction of Staging Areas for Structures and Access Roads.* The following technology-based effluent limits apply to authorized discharges from earth-disturbing activities associated with the construction of staging areas and the construction of access roads, as defined in E.G.3.2(b). These limits supersede the technology-based limits listed in Schedule B and E.G.5 of this sector. These limits do not apply to earth-disturbing activities performed for purposes of mine site preparation (as defined in E.G.3.2(a)).

E.G.4.2.1 *Area of disturbance.* You must minimize the amount of soil exposed during construction activities.

E.G.4.2.2 *Erosion and sediment control design requirements.* You must:

- Design, install and maintain effective erosion and sediment controls to minimize the discharge of pollutants from earth-disturbing activities. Account for the following factors in designing your erosion and sediment controls:
 - The expected amount, frequency, intensity and duration of precipitation;
 - The nature of stormwater runoff and run-on at the site, including factors such as impervious surfaces, slopes and site drainage features;
 - The range of soil particle sizes expected to be present on the site.
- Direct discharges from your stormwater controls to vegetated areas of your site to increase sediment removal and maximize stormwater infiltration, including any natural buffers, unless infeasible. Use velocity dissipation devices if necessary to prevent erosion when directing stormwater to vegetated areas.
- If any stormwater flow becomes or will be channelized at your site, you must design erosion and sediment controls to control both peak flowrates and total stormwater volume to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.
- If you install stormwater conveyance channels, they must be designed to avoid unstabilized areas on the site and to reduce erosion, unless infeasible. In addition, you must minimize erosion of channels and their embankments, outlets, adjacent streambanks, slopes, and downstream waters during discharge conditions through the use of erosion controls and velocity dissipation devices within and along the length of any constructed stormwater conveyance channel, and at any outlet to provide a non-erosive flow velocity.

E.G.4.2.3 *Natural Buffers.* For any stormwater discharges from earth-disturbing activities within 50 feet of a water of the U.S., you must comply with one of the following compliance alternatives:

1. Maintain a 50-foot undisturbed natural buffer between earth-disturbing activities and the water of the U.S.; or
2. Provide an undisturbed natural buffer that is less than 50 feet, permit registrant must implement one or more of the BMPs listed below to control and treat sediment and turbidity:
 - Compost berms, compost blankets, or compost socks;
 - Erosion control mats;
 - Takifiers used in combination with perimeter sediment controls;

- Approved water treatment by electro-coagulation, flocculation, or filtration; and/or
 - Other substantially equivalent sediment or turbidity control measures approved by DEQ or agent.
3. Ensure all discharges are treated by control measures prior to entering the natural buffer.
 4. Delineate and clearly mark off all natural buffers.

There are exceptions when buffer requirements do not apply:

- The natural buffer has already been eliminated by preexisting development disturbances;
- The disturbance is for a water-dependent structure or earth-disturbing approved under a CWA section 404 permit.

E.G.4.2.4 *Soil or sediment stockpiles.* In addition to the requirements in E.G.4.1.5, you must locate any piles outside of any natural buffers established under E.G.4.2.3.

E.G.4.2.5 *Sediment basins.* In addition to the requirements in E.G.4.1.6, you must locate sediment basins outside of any surface waters and any natural buffers established under E.G.4.2.3, and you must utilize outlet structures that withdraw water from the surface, unless infeasible.

E.G.4.2.6 *Native topsoil preservation.* You must preserve native topsoil removed during clearing, grading, or excavation, unless infeasible. Store topsoil in a manner that will maximize its use in reclamation or final vegetative stabilization (e.g., by keeping the topsoil stabilized with seed or similar measures). This requirement does not apply if the intended function of the disturbed area dictates that topsoil be disturbed or removed.

E.G.4.2.7 *Steep slopes.* You must minimize the disturbance of steep slopes. The permit does not prevent or prohibit disturbance on steep slopes. Depending on site conditions and needs, disturbance on steep slopes may be necessary (e.g., a road cut in mountainous terrain; for grading steep slopes prior to erecting the mine office). Where steep slope disturbances are necessary, you can minimize the disturbances to steep slopes through the implementation of a number of standard erosion and sediment control practices, such as by phasing disturbances in these areas and using stabilization practices specifically for steep grades.

E.G.4.2.8 *Soil compaction.* Where final vegetative stabilization will occur or where infiltration practices will be installed, you must either restrict vehicle/ equipment use in these areas to avoid soil compaction or use soil conditioning techniques to support vegetative growth. Minimizing soil compaction is not required where compacted soil is integral to the functionality of the site.

E.G.4.2.9 *Dewatering Practices.* You are prohibited from discharging ground water or accumulated stormwater that is removed from excavations, trenches, foundations, vaults or other similar points of accumulation, unless such waters are first effectively managed by appropriate controls (e.g., sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, or filtration systems). Uncontaminated, non-turbid dewatering water can be discharged without being routed to a control.

You must also meet the following requirements for dewatering activities:

- Discharge requirements:
 - No discharging visible floating solids or foam;

- Remove oil, grease and other pollutants from dewatering water via an oil-water separator or suitable filtration device (such as a cartridge filter);
- Utilize vegetated upland areas of the site, to the extent feasible, to infiltrate dewatering water before discharge. In no case shall waters of the U.S. be considered part of the treatment area;
- Implement velocity dissipation devices at all points where dewatering water is discharged;
- Haul backwash water away for disposal or return it to the beginning of the treatment process; and
- Clean or replace the filter media used in dewatering devices when the pressure differential equals or exceeds the manufacturers' specifications.
- Treatment chemical restrictions: If you use polymers, flocculants or other chemicals to treat dewatering water, you must comply with the requirements in E.G.4.1.8.

E.G.4.2.10 *Pollution prevention requirements.*

- Prohibited discharges:
 - Wastewater from washout of concrete;
 - Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other materials;
 - Fuels, oils, or other pollutants used for operation and maintenance of vehicles or equipment;
 - Soaps, solvents, or detergents used in vehicle or equipment washing;
 - Toxic or hazardous substances from a spill or other release.
 - Design and location requirements: Minimize the discharge of pollutants from pollutant sources by:
- *Minimizing exposure;*
 - Using secondary containment, spill kits, or other equivalent measures;
 - Locating pollution sources away from surface waters, storm sewer inlets, and drainageways;
 - Cleaning up spills immediately (do not clean by hosing area down).
- *Pollution prevention requirements for wash waters:* 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;
- *Pollution prevention requirements for the storage, handling, and disposal of construction products, materials, and wastes:* 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 stormwater. Minimization of exposure is not required in cases where the exposure 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).

E.G.4.2.11 *Site Stabilization requirements for the construction of staging areas for structures and access roads as defined in E.G.3.2(b) (i.e., not applicable to earth-disturbing activities performed for purposes of mine site preparation as defined in E.G.3.2(a)).*

You must comply with the following stabilization requirements, except where the intended function of the site accounts for such disturbed earth (e.g., the area of

construction will become actively mined, or the controls implemented at the active mining area effectively control the disturbance):

- By no later than the end of the next work day after construction work in an area has stopped permanently or temporarily (“temporarily” means the land will be idle for a period of 14 days or more but earth-disturbing activities will resume in the future), immediately initiate stabilization measures;
- If using vegetative measures, by no later than 14 days after initiating stabilization:
 - Seed or plant the area, and provide temporary cover to protect the planted area;
 - Once established, vegetation must be uniform (evenly distributed without large bare areas) perennial vegetation, which provides 70 percent or more coverage based on density of native vegetation.
- If using non-vegetative stabilization, by no later than 14 days after initiating stabilization:
 - Install or apply all non-vegetative measures;
 - Cover all areas of exposed soil.

Note: For the purposes of this permit, DEQ will consider any of the following types of activities to constitute the initiation of stabilization: 1. Prepping the soil for vegetative or non-vegetative stabilization; 2. Applying mulch or other non-vegetative product to the exposed area; 3. Seeding or planting the exposed area; 4. Starting any of the activities in #1 – 3 on a portion of the area to be stabilized, but not on the entire area; and 5. Finalizing arrangements to have stabilization product fully installed in compliance with the applicable deadline for completing stabilization.

Exceptions:

- Arid, semi-arid or drought-stricken areas:
 - Within 14 days of stopping construction work in an area, install any necessary non-vegetative stabilization measures;
 - Initiate vegetative stabilization as soon as conditions on the site allow;
 - Document the schedule that will be followed for initiating and completing vegetative stabilization;
 - Cover planted or seeded area with bio or photo degradable erosion controls designed to prevent erosion without active maintenance.
- Sites affected by severe storm events or other unforeseen circumstances:
 - Initiate vegetative stabilization as soon conditions on the site allow;
 - Document the schedule that will be followed for initiating and completing vegetative stabilization;
 - Add a suitable interim measures (such as mulch or bark) are in place if 70 percent coverage of vegetation is expected to expand.

E.G.4.3 *Water Quality-Based Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities.* The following water quality-based limits apply to earth-disturbing activities conducted prior to active mining activities defined in E.G.3.2(a) and E.G.3.2(b), in addition to the water quality-based limits in Schedule A.4 and Schedule A.5.

Stricter requirements apply if your site will discharge to an impaired waters that are listed for turbidity or sedimentation or have an EPA-approved TMDL for sedimentation or turbidity:

- More rapid stabilization of exposed areas: Complete initial stabilization activities within 7 days of stopping earth-disturbing work.

- More frequent site inspections: Once every 7 days and within 24 hours of a storm event of 0.25 inches or greater.

E.G.4.4 *Inspection Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities.* The following requirements supersede the inspection requirements in Schedule B and E.G.7 for earth-disturbing activities conducted prior to active mining activities defined in E.G.3.2(a) and E.G.3.2(b).

E.G.4.4.1 *Inspection frequency*

- At least once every 7 calendar days, or
- Once every 14 calendar days and within 24 hours of a storm event of 0.25 inches or greater.

Note:

- Inspections only required during working hours;
- Inspections not required during unsafe conditions; and
- If you choose to inspect once every 14 days, you must have a method for measuring rainfall amount on site (either rain gauge or representative weather station)

Note: To determine if a storm event of 0.25 inches or greater has occurred on your site, you must either keep a properly maintained rain gauge on your site, or obtain the storm event information from a weather station that is representative of your location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, you must record the total rainfall measured for that day.

Note: You are required to specify in your SWPCP which schedule you will be following.

Note: “Within 24 hours of the occurrence of a storm event” means that you are required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if you have elected to inspect bi-weekly and there is a storm event at your site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, you are required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.

E.G.4.4.2 *Reductions in inspection frequency.*

- Stabilized areas: You may reduce the frequency of inspections to once per month in any area of your site where stabilization has occurred pursuant to E.G.4.1.9 or E.G.4.2.11.
- Arid, semi-arid, and drought stricken areas: If earth-disturbing activities are occurring during the seasonally dry period or during a period in which drought is predicted to occur, you may reduce inspections to once per month and within 24 hours of a 0.25 inch storm event.
- Frozen conditions: You may temporarily suspend or reduce inspections to once per month until thawing conditions occur if frozen conditions are continuous and disturbed areas have been stabilized. For extreme conditions in remote areas, e.g., where transit to the site is perilous/restricted or temperatures are routinely below freezing, you may suspend inspections until the conditions are conducive to safe access, and more frequent inspections can resume.

E.G.4.4.3 *Areas to be inspected.* You must at a minimum inspect the all of the following areas:

- Disturbed areas;
- Stormwater controls and pollution prevention measures;

- Locations where stabilization measures have been implemented;
- Material, waste, borrow, or equipment storage and maintenance areas;
- Areas where stormwater flows;
- Points of discharge.

E.G.4.4.4 *What to check for during inspections.* At a minimum you must check:

- Whether all stormwater controls are installed, operational and working as intended;
- Whether any new or modified stormwater controls are needed;
- For conditions that could lead to a spill or leak;
- For visual signs of erosion/sedimentation at points of discharge.
- If a discharge is occurring, check:
 - The quality and characteristics of the discharge;
- Whether controls are operating effectively.

E.G.4.4.5 *Inspection report.* Within 24 hours of an inspection, complete a report that includes:

- Inspection date;
- Name and title of inspector(s);
- Summary of inspection findings;
- Rainfall amount that triggered the inspection (if applicable);
- If it was unsafe to inspect a portion of the site, include documentation of the reason and the location(s);
- Each inspection report must be signed;
- Keep a current copy of all reports at the site or at an easily accessible location.

E.G.5 Technology-Based Effluent Limits for Active Mining Activities

Note: These requirements do not apply for any discharges from earth-disturbing activities conducted prior to active mining as defined in E.G.3.2(a) or E.G.3.2(b).

E.G.5.1 *Employee training.* (See also Schedule A.1.j) Conduct employee training at least annually at active and temporarily inactive facilities.

E.G.5.2 *Stormwater controls.* Apart from the control measures you implement to meet Schedule A technology-based effluent limits, where necessary to minimize pollutant discharges in stormwater, implement the following control measures at your site. The potential pollutants identified in E.G.6.3 shall determine the priority and appropriateness of the control measures selected. For mines subject to dust control requirements under DEQ or county air quality permits, provided the requirements are equivalent, compliance with such air permit dust requirements shall constitute compliance with the dust control effluent limit in Schedule A.1.f. Stormwater diversions: Divert stormwater away from potential pollutant sources through implementation of control measures such as the following, where determined to be feasible including: interceptor or diversion controls (e.g., dikes, swales, curbs, berms); pipe slope drains; subsurface drains; conveyance systems (e.g., channels or gutters, open-top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts); or their equivalents.

Capping: When capping is necessary to minimize pollutant discharges in stormwater, identify the source being capped and the material used to construct the cap.

Treatment: If treatment of stormwater (e.g., chemical or physical systems, oil - water separators, artificial wetlands) is necessary to protect water quality, describe the type and location of treatment used. Passive and/or active treatment of stormwater runoff is encouraged, where feasible. Treated runoff may be discharged as a stormwater source regulated under this permit

provided the discharge is not combined with discharges subject to effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR Part 440).

- E.G.5.3 *Discharge testing.* Test or evaluate all off-site discharge points covered under this permit for the presence of specific mining-related but unauthorized non-stormwater discharges such as seeps or adit discharges, or discharges subject to effluent limitations guidelines (40 CFR Part 440), mine drainage or process water. Alternatively (if applicable), you may keep a certification with your SWPCP consistent with E.G.6.6.

E.G.6 Additional SWPCP Requirements for Mining Operations

Note: The requirements in E.G.6 are not applicable to inactive metal mining facilities. Some requirements may be already a requirement under Schedule A.7.

- E.G.6.1 *Nature of industrial activities.* Briefly document in your SWPCP the mining and associated activities that can potentially affect the stormwater discharges covered by this permit, including a general description of the location of the site relative to major transportation routes and communities.
- E.G.6.2 *Site map.* Document in your SWPCP the locations of the following (as appropriate): mining or milling site boundaries; access and haul roads; outline of the drainage areas of each stormwater outfall within the facility with indications of the types of discharges from the drainage areas; location(s) of all permitted discharges covered under an individual NPDES permit; outdoor equipment storage, fueling, and maintenance areas; materials handling areas; outdoor manufacturing, outdoor storage, and material disposal areas; outdoor chemicals and explosives storage areas; overburden, materials, soils, or waste storage areas; location of mine drainage (where water leaves mine) or other process water; tailings piles and ponds (including proposed ones); heap leach pads; off-site points of discharge for mine drainage and process water; surface waters; boundary of tributary areas that are subject to effluent limitations guidelines; and location(s) of reclaimed areas.
- E.G.6.3 *Potential pollutant sources.* For each area of the mine or mill site where stormwater discharges associated with industrial activities occur, identify the types of pollutants (e.g., heavy metals, sediment) likely to be present in significant amounts. Consider these factors: the mineralogy of the ore and waste rock (e.g., acid forming); toxicity and quantity of chemicals used, produced, or discharged; the likelihood of contact with stormwater; vegetation of site (if any); and history of significant leaks or spills of toxic or hazardous pollutants. Also include a summary of any existing ore or waste rock or overburden characterization data and test results for potential generation of acid rock. If any new data is acquired due to changes in ore type being mined, update your SWPCP with this information.
- E.G.6.4 *Documentation of control measures.* Document all control measures that you implement consistent with E.G.5.2. If control measures are implemented or planned but are not listed in E.G.5.2 (e.g., substituting a less toxic chemical for a more toxic one), include descriptions of them in your SWPCP. If you are in compliance with dust control requirements under state or county air quality permits, you must include (or summarize, as necessary) what the state or county air quality permit dust control requirements are and how you've achieved compliance with them.
- E.G.6.5 *Employee training.* All employee training(s) must be documented in the SWPCP.
- E.G.6.6 *Certification of permit coverage for commingled non-stormwater discharges.* If you are able, consistent with E.G.5.3 above, to certify that a particular discharge composed of commingled stormwater and non-stormwater is covered under a separate NPDES permit, and that permit subjects the non-stormwater portion to effluent limitations prior to any commingling, retain such certification with your SWPCP. This certification must identify the non-stormwater

discharges, the applicable NPDES permit(s), the effluent limitations placed on the non-stormwater discharge by the permit(s), and the points at which the limitations are applied.

E.G.7 Additional Inspection Requirements

Except for earth-disturbing activities conducted prior to active mining activities as defined in E.G.3.2(a) and E.G.3.2(b), which are subject to E.G.4.4, inspect sites at least monthly unless adverse weather conditions make the site inaccessible. See E.G.8.4 for inspection requirements for inactive and unstaffed sites.

E.G.8 Monitoring and Reporting Requirements. (See also Schedule B)

Note: There are no monitoring and reporting or impaired waters monitoring requirements for inactive and unstaffed sites.

E.G.8.1 **Benchmark Monitoring for Active Copper Ore Mining and Dressing Facilities.** Table E.G-1 identifies benchmarks that apply to active copper ore mining and dressing facilities. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table E.G-1

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Active Copper Ore Mining and Dressing Facilities (SIC 1021)	Nitrate plus Nitrite Nitrogen	0.68 mg/L
	Chemical Oxygen Demand (COD)	120 mg/L

E.G.8.2 **Benchmark Monitoring Requirements for Discharges From Waste Rock and Overburden Piles at Active Metal Mining Facilities.** For discharges from waste rock and overburden piles, perform benchmark monitoring once in the first year for the parameters listed in Table E.G-2, and twice annually in all subsequent years of coverage under this permit for any parameters for which the benchmark has been exceeded. You are also required to conduct analytic monitoring for the parameters listed in Table E.G-3 in accordance with the requirements in E.G.8.3. DEQ may also notify you that you must perform additional monitoring to accurately characterize the quality and quantity of pollutants discharged from your waste rock and overburden piles.

Table E.G-2

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Iron Ores; Copper Ores; Lead and Zinc Ores; Gold and Silver Ores; Ferroalloy Ores, Except Vanadium; and Miscellaneous Metal Ores (SIC Codes 1011, 1021, 1031, 1041, 1044, 1061, 1081, 1094, 1099)	Turbidity	50 NTU
	pH	6.0-9.0 s.u.
	Total Antimony	0.64 mg/L
	Total Arsenic	0.15 mg/L
	Total Beryllium	0.13 mg/L
	Total Iron	1.0 mg/L
	Total Mercury	0.0014 mg/L
	Total Nickel	0.5 mg/L
	Total Selenium	0.005 mg/L
Total Silver	0.0005 mg/L	

E.G.8.3 *Additional Analytic Monitoring Requirements for Discharges From Waste Rock and Overburden Piles at Active Metal Mining Facilities.* In addition to the monitoring required in E.G.8.2 for discharges from waste rock and overburden piles, you must also conduct monitoring for additional parameters based on the type of ore you mine at your site. Where a parameter in Table E.G-3 is the same as a pollutant you are required to monitor for in Table E.G-2 (i.e., for all of the metals), you must use the corresponding benchmark in Table E.G-2 and you may use any monitoring results conducted for E.G.8.2 to satisfy the monitoring requirement for that parameter for E.G.8.3. For radium and uranium, which do not have corresponding benchmarks in Table E.G-2, there are no applicable benchmarks. The frequency and schedule for monitoring for these additional parameters is the same as that specified in Table 5.

Table E.G-3. Additional Monitoring Requirements for Discharges from Waste Rock and Overburden Piles

Type of Ore Mined	Supplemental Requirements		
	Total Suspended Solids (TSS)	pH	Metals, Total
Tungsten Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H)
Nickel Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H)
Aluminum Ore	X	X	Iron
Mercury Ore	X	X	Nickel (H)
Iron Ore	X	X	Iron (Dissolved)
Platinum Ore			Cadmium (H), Copper (H), Mercury, Lead (H), Zinc (H)
Titanium Ore	X	X	Iron, Nickel (H), Zinc (H)
Vanadium Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H)
Molybdenum	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Mercury, Zinc (H)
Uranium, Radium, and Vanadium Ore	X	X	Chemical Oxygen Demand, Arsenic, Radium (Dissolved and Total), Uranium, Zinc (H)

Note: An "X" indicated for TSS and/or pH means that you are required to monitor for those parameters. (H) indicates that hardness must also be measured when this pollutant is measured.

E.G.8.4 *Inactive and Unstaffed Sites – Conditional Exemption from No Exposure Requirements for Monthly Visual Assessments and Routine Facility Inspections.* As a Sector G facility, if you are seeking to exercise a monitoring or inspection waiver, you are conditionally exempt from the requirement to certify that “there are no industrial materials or activities exposed to stormwater” in Schedule B.4.iii of the permit. This exemption is conditioned on the following:

- If circumstances change and your facility becomes active and/or staffed, this exception no longer applies and you must immediately begin complying with the monitoring and inspection requirements; and
- DEQ retains the authority to revoke this exemption and/or the monitoring waiver where it is determined that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

Table E.G-4. Applicability of the Permit to Stormwater Runoff From Active Mining and Dressing Sites, Temporarily Inactive Sites, and Sites Undergoing Reclamation

Discharge/Source of Discharge	Note/Comment
Piles	
Waste rock/overburden	If composed entirely of stormwater and not combining with mine drainage. See note below.
Topsoil	--
Roads constructed of waste rock or spent ore	
Onsite haul roads	If composed entirely of stormwater and not combining with mine drainage. See note below.
Offsite haul and access roads	--
Roads not constructed of waste rock or spent ore	
Onsite haul roads	Except if mine drainage is used for dust control
Offsite haul and access roads	--
Milling/concentrating	
Runoff from tailings dams and dikes when constructed of waste rock/tailings	Except if process fluids are present and only if composed entirely of stormwater and not combining with mine drainage. See Note below.
Runoff from tailings dams/dikes when not constructed of waste rock and tailings	Except if process fluids are present
Concentration building	If stormwater only and no contact with piles
Mill site	If stormwater only and no contact with piles
Ancillary areas	
Office and administrative building and housing	If mixed with stormwater from the industrial area
Chemical storage area	--
Docking facility	Except if excessive contact with waste product that would otherwise constitute mine drainage
Explosive storage	--
Fuel storage (oil tanks/coal piles)	--
Vehicle and equipment maintenance area/building	--
Parking areas	But coverage unnecessary if only employee and visitor-type parking
Power plant	
Truck wash area	Except when excessive contact with waste product that would otherwise constitute mine drainage
Reclamation-related areas	
Any disturbed area (unreclaimed)	Only if not in active mining area
Reclaimed areas released from reclamation requirements prior to Dec. 17, 1990	--
Partially/inadequately reclaimed areas or areas not released from reclamation requirements	--

Note: Stormwater runoff from these sources are subject to the NPDES program for stormwater unless mixed with discharges subject to 40 CFR Part 440 that are regulated by another permit prior to mixing. Non-stormwater discharges from these sources are subject to NPDES permitting and may be subject to the effluent limitation guidelines under 40 CFR Part 440. Discharges from overburden/waste rock and overburden/waste rock-related areas are not subject to 40 CFR Part 440 unless: (1) it drains naturally (or is intentionally diverted) to a point source; and (2) combines with "mine drainage" that is otherwise regulated under the Part 440 regulations. For such sources, coverage under this permit would be available if the discharge composed entirely of stormwater does not combine with other sources of mine drainage that are not subject to 40 CFR Part 440, as well as meeting other eligibility criteria contained in Part 1.1 of the permit. Operators bear the initial responsibility for determining the applicable technology-based standard for such discharges.

E.G.9. Termination of Permit Coverage

- E.G.9.1 *Termination of Permit Coverage for Sites Reclaimed After December 17, 1990.* A site or a portion of a site that has been released from applicable state or federal reclamation requirements after December 17, 1990, is no longer required to maintain coverage under this permit. If the site or portion of a site reclaimed after December 17, 1990, was not subject to reclamation requirements, the site or portion of the site is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed as defined in E.G.3.3.
- E.G.9.2 *Termination of Permit Coverage for Sites Reclaimed Before December 17, 1990.* A site or portion of a site that was released from applicable state or federal reclamation requirements before December 17, 1990, or that was otherwise reclaimed before December 17, 1990, is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed. A site or portion of a site is considered to have been reclaimed if: (1) stormwater runoff that comes into contact with raw materials, intermediate byproducts, finished products, and waste products does not have the potential to cause or contribute to violations of state water quality standards, (2) soil disturbing activities related to mining at the sites or portion of the site have been completed, (3) the site or portion of the site has been stabilized to minimize soil erosion, and (4) as appropriate depending on location, size, and the potential to contribute pollutants to stormwater discharges, the site or portion of the site has been revegetated, will be amenable to natural revegetation, or will be left in a condition consistent with the post-mining land use.

Schedule E – Sector-Specific Requirements for Industrial Activity

Sector H – Coal Mines and Coal Mining-Related Facilities

E.H.1 Definitions

The following definitions are not intended to supersede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii).

- E.H.1.1 *Mining operations* - For this permit, mining operations are grouped into two distinct categories, with distinct effluent limits and requirements applicable to each: a) earth-disturbing activities conducted prior to active mining activities; and b) active mining activities, which includes reclamation. “Mining operations” can occur at both inactive mining facilities and temporarily inactive mining facilities.
- E.H.1.2 *Earth-disturbing activities conducted prior to active mining activities* – Consists of two classes of earth-disturbing (i.e., clearing, grading and excavation) activities:
- activities performed for purposes of mine site preparation, including: cutting new rights of way (except when related to access road construction); providing access to a mine site for vehicles and equipment (except when related to access road construction); other earth disturbances associated with site preparation activities on any areas where active mining activities have not yet commenced (e.g., for heap leach pads, waste rock facilities, tailings impoundments, wastewater treatment plants); and
 - construction of staging areas to prepare for erecting structures such as to house project personnel and equipment, mill buildings, etc., and construction of access roads. Earth-disturbing activities associated with the construction of staging areas and the construction of access roads conducted prior to active mining are considered to be “construction” and have additional technology based effluent limits in E.H.2.2.
- E.H.1.3 *Active mining activities* – Activities related to the extraction, removal or recovery, and preparation of coal; removal of overburden and waste rock to expose mineable minerals; and site reclamation and closure activities. All such activities occur within the “active mining area.” Reclamation involves activities undertaken, in compliance with applicable mined land reclamation requirements, to return the land to an appropriate post-mining contour and land use in order to meet applicable federal and state reclamation requirements. In addition, once earth-disturbing activities conducted prior to active mining activities have ceased and all related requirements in E.H.2 have been met, and a well-delineated “active mining area” has been established, all activities (including any clearing, grading, and excavation) that occur within the active mining area are “active mining activities.”
- E.H.1.4 *Active mining area* – A place where work or other activity related to the extraction, removal or recovery of coal is being conducted, except, with respect to surface mines, any area of land on or in which grading has been completed to return the earth to desired contour and reclamation work has begun.
- Note: Earth-disturbing activities described in the definition in E.H.1.2 that occur on areas outside the active mining area (e.g., for expansion of the mine into undeveloped territory) are considered “earth-disturbing conducted prior to active mining activities”, and must comply with the requirements in E.H.2.
- E.H.1.5 *Inactive coal mining facility* – A site or portion of a site where coal mining and/or milling occurred in the past but there are no active mining operations occurring as defined above, and where the inactive portion is not covered by an active mining permit issued by the applicable state or federal agency. An inactive coal mining facility has an identifiable owner / operator. Sites where mining claims are being maintained prior to disturbances associated with the

extraction, beneficiation, or processing of mined materials and sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim are not considered either active or inactive mining facilities and do not require an NPDES industrial stormwater permit.

E.H.1.6 *Temporarily inactive coal mining facility* – A site or portion of a site where coal mining and/or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable state or federal agency.

E.H.2 Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities

Stormwater discharges from earth-disturbing activities conducted prior to active mining activities (defined in E.H.1.2) are covered under this permit. For such earth-disturbing activities, you must comply with all applicable requirements in technology-based effluent limits in E.H.3 and Schedule A, the inspection and monitoring requirements in Schedule B and in E.H.5 and E.H.6

Authorized discharges from areas where earth-disturbing activities have ceased and stabilization as specified in E.H.2.1.9 or E.H.2.2.11, where appropriate, has been completed (stabilization is not required for areas where active mining activities will occur), are no longer subject to the E.H.2 requirements. At such time, authorized discharges become subject to all other applicable requirements in the permit, including the technology based effluent limits in limits in E.H.3 and Schedule A, the inspection and monitoring requirements in Schedule B and in E.H.5 and E.H.6.

E.H.2.1 *Technology-Based Effluent Limits Applicable to All Earth-Disturbing Activities Conducted Prior to Active Mining Activities.* The following technology-based effluent limits apply to authorized discharges from all earth-disturbing activities conducted prior to active mining activities defined in E.H.1.2(a) and E.H.1.2(b). These limits supersede the technology-based effluent limits listed in Schedule A.

E.H.2.1.1 *Erosion and sediment control installation requirements.*

- By the time construction activities commence, install and make operational downgradient sediment controls, unless this timeframe is infeasible. If infeasible you must install and make such controls operational as soon as practicable or as soon as site conditions permit.
- All other stormwater controls described in the SWPCP must be installed and made operational as soon as conditions on each portion of the site allows.

E.H.2.1.2 *Erosion and sediment control maintenance requirements.* You must:

- Ensure that all erosion and sediment controls remain in effective operating condition.
- Wherever you determine that a stormwater control needs maintenance to continue operating effectively, initiate efforts to fix the problem immediately after its discovery, and complete such work by the end of the next work day.
- When a stormwater control must be replaced or significantly repaired, complete the work within 7 days, unless infeasible. If 7 days is infeasible, you must complete the installation or repair as soon practicable.

E.H.2.1.3 *Perimeter controls.* You must:

- Install sediment controls along those perimeter areas of your disturbed area that will receive stormwater, except where site conditions prevent the use of such controls (in which case, maximize their installation to the extent practicable).
- Remove sediment before it accumulates to one-half of the above-ground height of any perimeter control.

- E.H.2.1.4 *Sediment track-out*. For construction vehicles and equipment exiting the site directly onto paved roads, you must:
- Use appropriate stabilization techniques to minimize sediment track-out from vehicles and equipment prior to exit;
 - Use additional controls to remove sediment from vehicle and equipment tires prior to exit, where necessary;
 - Remove sediment that is tracked out onto paved roads by end of the work day.
- Note: DEQ recognizes that some fine grains may remain visible on the surfaces of off-site streets, other paved areas, and sidewalks even after you have implemented sediment removal practices. Such “staining” is not a violation of E.H.2.1.4.
- E.H.2.1.5 *Soil or sediment stockpiles*. You must:
- Minimize erosion of stockpiles from stormwater and wind via temporary cover, if feasible.
 - Prevent up-slope stormwater flows from causing erosion of stockpiles (e.g., by diverting flows around the stockpile).
 - Minimize sediment from stormwater that runs off of stockpiles, using sediment controls (e.g., a sediment barrier or downslope sediment control).
- E.H.2.1.6 *Sediment basins*. If you intend to install a sediment basin to treat stormwater from your earth-disturbing activities, you must:
- Provide storage for either (1) the 2-year, 24-hour storm, or (2) 3,600 cubic feet per acre drained.
 - Prevent erosion of (1) basin embankments using stabilization controls (e.g., erosion control blankets), and (2) the inlet and outlet points of the basin using erosion controls and velocity dissipation devices.
- E.H.2.1.7 *Minimize dust*. You must minimize the generation of dust through the appropriate application of water or other dust suppression techniques that minimize pollutants being discharged into surface waters.
- E.H.2.1.8 *Restrictions on use of treatment chemicals*. If you intend to use sediment treatment chemicals at your site, you are subject to the following minimum requirements:
- Use conventional erosion and sediment controls prior to and after application of chemicals;
 - Select chemicals suited to soil type, and expected turbidity, pH, flow rate;
 - Minimize the discharge risk from stored chemicals;
 - Comply with state/local requirements;
 - Use chemicals in accordance with good engineering practices and specifications of chemical supplier;
 - Ensure proper training;
 - Provide proper SWPCP documentation.
- If you plan to use cationic treatment chemicals (as defined in Appendix A), you are ineligible for coverage under this permit, unless you notify your applicable DEQ regional office or agent in advance and the DEQ regional office or agent authorizes coverage under this permit after you have included appropriate controls and implementation procedures designed to ensure that your use of cationic treatment chemicals will not lead to a violation of water quality standards.
- E.H.2.1.9 *Site stabilization requirements for earth-disturbing activities performed for purposes of mine site preparation as defined in E.H.1.2(a) (i.e., not applicable to construction*

of staging areas for structures and access roads as defined in E.H.1.2(b)). You must comply with the following stabilization requirements except where the intended function of the site accounts for such disturbed earth (e.g., the earth disturbances will become actively mined, or the controls implemented at the active mining area effectively control the disturbance):

- *Temporary stabilization of disturbed areas.* Stabilization measures must be initiated immediately in portions of the site where earth-disturbing activities performed for purposes of mine site preparation (as defined in E.H.1.2(a)) have temporarily ceased, but in no case more than 14 days after such activities have temporarily ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after earth-disturbing activities performed for purposes of mine site preparation has temporarily ceased, temporary vegetative stabilization measures must be initiated as soon as practicable. Until temporary vegetative stabilization is achieved, interim measures such as erosion control blankets with an appropriate seed base and tackifiers must be employed. In areas of the site where earth-disturbing activities performed for purposes of mine site preparation have permanently ceased prior to active mining, temporary stabilization measures must be implemented to minimize mobilization of sediment or other pollutants until active mining activities commence.
- *Final stabilization of disturbed areas.* Stabilization measures must be initiated immediately where earth-disturbing activities performed for purposes of mine site preparation (as defined in E.H.1.2(a)) have permanently ceased, but in no case more than 14 days after the earth-disturbing activities have permanently ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after earth-disturbing activities have permanently ceased, final vegetative stabilization measures must be initiated as soon as possible. Until final stabilization is achieved, temporary stabilization measures, such as erosion control blankets with an appropriate seed base and tackifiers, must be used.

E.H.2.2 *Additional Technology-Based Effluent Limits Applicable Only to the Construction of Staging Areas for Structures and Access Roads.* The following technology-based effluent limits apply to authorized discharges from earth-disturbing activities associated with the construction of staging areas and the construction of access roads, as defined in E.H.1.2(b). These limits supersede the technology-based limits listed in Schedule A and E.H.3. These limits do not apply to earth-disturbing activities performed for purposes of mine site preparation (as defined in E.H.1.2(a)).

E.H.2.2.1 *Area of disturbance.* You must minimize the amount of soil exposed during construction activities.

E.H.2.2.2 *Erosion and sediment control design requirements.* You must:

- Design, install and maintain effective erosion and sediment controls to minimize the discharge of pollutants from construction activities. Account for the following factors in designing your erosion and sediment controls:
 - The expected amount, frequency, intensity and duration of precipitation;

- The nature of stormwater runoff and run-on at the site, including factors such as impervious surfaces, slopes and site drainage features;
- The range of soil particle sizes expected to be present on the site.
- Direct discharges from your stormwater controls to vegetated areas of your site to increase sediment removal and maximize stormwater infiltration, including any natural buffers, unless infeasible. Use velocity dissipation devices if necessary to prevent erosion when directing stormwater to vegetated areas.
- If any stormwater flow becomes or will be channelized at your site, you must design erosion and sediment controls to control both peak flowrates and total stormwater volume to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.
- If you install stormwater conveyance channels, they must be designed to avoid unstabilized areas on the site and to reduce erosion, unless infeasible. In addition, you must minimize erosion of channels and their embankments, outlets, adjacent streambanks, slopes, and downstream waters during discharge conditions through the use of erosion controls and velocity dissipation devices within and along the length of any constructed stormwater conveyance channel, and at any outlet to provide a non-erosive flow velocity.

E.H.2.2.3 *Natural Buffers*. For any stormwater discharges from earth-disturbing activities within 50 feet of a water of the U.S., you must comply with one of the following compliance alternatives:

1. Maintain a 50-foot undisturbed natural buffer between earth-disturbing activities and the water of the U.S.; or
2. Provide an undisturbed natural buffer that is less than 50 feet, permit registrant must implement one or more of the BMPs listed below to control and treat sediment and turbidity:
 - Compost berms, compost blankets, or compost socks;
 - Erosion control mats;
 - Takifiers used in combination with perimeter sediment controls;
 - Approved water treatment by electro-coagulation, flocculation, or filtration; and/or
 - Other substantially equivalent sediment or turbidity control measures approved by DEQ or agent.
3. Ensure all discharges are treated by control measures prior to entering the natural buffer.
4. Delineate and clearly mark off all natural buffers.

There are exceptions when buffer requirements do not apply:

- The natural buffer has already been eliminated by preexisting development disturbances;
- The disturbance is for a water-dependent structure or earth-disturbing approved under a CWA section 404 permit.

E.H.2.2.4 *Soil or sediment stockpiles*. In addition to the requirements in E.H.2.1.5, you must locate any piles outside of any natural buffers established under E.H.2.2.3.

E.H.2.2.5 *Sediment basins*. In addition to the requirements in E.H.2.1.6, you must locate sediment basins outside of any surface waters and any natural buffers established

under E.H.2.2.3, and you must utilize outlet structures that withdraw water from the surface, unless infeasible.

- E.H.2.2.6 *Native topsoil preservation.* You must preserve native topsoil removed during clearing, grading, or excavation, unless infeasible. Store topsoil in a manner that will maximize its use in reclamation or final vegetative stabilization (e.g., by keeping the topsoil stabilized with seed or similar measures). This requirement does not apply if the intended function of the disturbed area dictates that topsoil be disturbed or removed.
- E.H.2.2.7 *Steep slopes.* You must minimize the disturbance of steep slopes. The permit does not prevent or prohibit disturbance on steep slopes. Depending on site conditions and needs, disturbance on steep slopes may be necessary (e.g., a road cut in mountainous terrain; for grading steep slopes prior to erecting the mine office). Where steep slope disturbances are necessary, you can minimize the disturbances to steep slopes through the implementation of a number of standard erosion and sediment control practices, such as by phasing disturbances in these areas and using stabilization practices specifically for steep grades.
- E.H.2.2.8 *Soil compaction.* Where final vegetative stabilization will occur or where infiltration practices will be installed, you must either restrict vehicle/ equipment use in these areas to avoid soil compaction or use soil conditioning techniques to support vegetative growth. Minimizing soil compaction is not required where compacted soil is integral to the functionality of the site.
- E.H.2.2.9 *Dewatering Practices.* You are prohibited from discharging ground water or accumulated stormwater that is removed from excavations, trenches, foundations, vaults or other similar points of accumulation, unless such waters are first effectively managed by appropriate controls (e.g., sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, or filtration systems). Uncontaminated, non-turbid dewatering water can be discharged without being routed to a control.
- You must also meet the following requirements for dewatering activities:
- Discharge requirements:
 - No discharging visible floating solids or foam;
 - Remove oil, grease and other pollutants from dewatering water via an oil-water separator or suitable filtration device (such as a cartridge filter);
 - Utilize vegetated upland areas of the site, to the extent feasible, to infiltrate dewatering water before discharge. In no case shall waters of the U.S. be considered part of the treatment area;
 - Implement velocity dissipation devices at all points where dewatering water is discharged;
 - Haul backwash water away for disposal or return it to the beginning of the treatment process; and
 - Clean or replace the filter media used in dewatering devices when the pressure differential equals or exceeds the manufacturers' specifications.
 - Treatment chemical restrictions: If you use polymers, flocculants or other chemicals to treat dewatering water, you must comply with the requirements in E.H.2.1.8.

E.H.2.2.10 *Pollution prevention requirements.*

- Prohibited discharges:
 - Wastewater from washout of concrete;
 - Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other materials;
 - Fuels, oils, or other pollutants used for operation and maintenance of vehicles or equipment;
 - Soaps, solvents, or detergents used in vehicle or equipment washing;
 - Toxic or hazardous substances from a spill or other release.
- Design and location requirements: Minimize the discharge of pollutants from pollutant sources by:
 - Minimizing exposure;
 - Using secondary containment, spill kits, or other equivalent measures;
 - Locating pollution sources away from surface waters, storm sewer inlets, and drainageways;
 - Cleaning up spills immediately (do not clean by hosing area down).
- Pollution prevention requirements for wash waters: 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;
- Pollution prevention requirements for the storage, handling, and disposal of construction products, materials, and wastes: 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 stormwater. Minimization of exposure is not required in cases where the exposure 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).

E.H.2.2.11 *Site Stabilization requirements for the construction of staging areas for structures and access roads as defined in E.H.1.2(b) (i.e., not applicable to earth-disturbing activities performed for purposes of mine site preparation as defined in E.H.1.2(a)).*

You must comply with the following stabilization requirements, except where the intended function of the site accounts for such disturbed earth (e.g., the area of construction will become actively mined, or the controls implemented at the active mining area effectively control the disturbance):

- By no later than the end of the next work day after construction work in an area has stopped permanently or temporarily (“temporarily” means the land will be idle for a period of 14 days or more but earth-disturbing activities will resume in the future), immediately initiate stabilization measures;
- If using vegetative measures, by no later than 14 days after initiating stabilization:
 - Seed or plant the area, and provide temporary cover to protect the planted area;
 - Once established, vegetation must be uniform (evenly distributed without large bare areas) perennial vegetation, which provides 70 percent or more coverage based on density of native vegetation.

- If using non-vegetative stabilization, by no later than 14 days after initiating stabilization:
 - Install or apply all non-vegetative measures;
 - Cover all areas of exposed soil.

Note: For the purposes of this permit, DEQ will consider any of the following types of activities to constitute the initiation of stabilization: 1. Prepping the soil for vegetative or non-vegetative stabilization; 2. Applying mulch or other non-vegetative product to the exposed area; 3. Seeding or planting the exposed area; 4. Starting any of the activities in #1 – 3 on a portion of the area to be stabilized, but not on the entire area; and 5. Finalizing arrangements to have stabilization product fully installed in compliance with the applicable deadline for completing stabilization.

Exceptions:

- Arid, semi-arid or drought-stricken areas:
 - Within 14 days of stopping construction work in an area, install any necessary non-vegetative stabilization measures;
 - Initiate vegetative stabilization as soon as conditions on the site allow;
 - Document the schedule that will be followed for initiating and completing vegetative stabilization;
 - Cover planted or seeded area with bio or photo degradable erosion controls designed to prevent erosion without active maintenance.
- Sites affected by severe storm events or other unforeseen circumstances:
 - Initiate vegetative stabilization as soon conditions on the site allow;
 - Document the schedule that will be followed for initiating and completing vegetative stabilization;
 - Add a suitable interim measures (such as mulch or bark) are in place if 70 percent coverage of vegetation is expected to expand.

E.H.2.3 *Water Quality-Based Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities.*

The following water quality-based limits apply to earth-disturbing activities conducted prior to active mining activities defined in E.H.1.2(a) and E.H.1.2(b), in addition to the water quality-based limits Schedule A.4 and A.5.

Stricter requirements apply if your site will discharge to an impaired waters that are listed for turbidity or sedimentation or have an EPA-approved TMDL for sedimentation or turbidity:

- More rapid stabilization of exposed areas: Complete initial stabilization activities within 7 days of stopping earth-disturbing work.
- More frequent site inspections: Once every 7 days and within 24 hours of a storm event of 0.25 inches or greater.

E.H.2.4 *Inspection Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities.*

The following requirements supersede the inspections requirements in Schedule B and E.H.7 of the permit for earth-disturbing activities conducted prior to active mining activities defined in E.H.1.2(a) and E.H.1.2(b).

E.H.2.4.1 *Inspection Frequency*

- At least once every 7 calendar days, or

- Once every 14 calendar days and within 24 hours of a storm event of 0.25 inches or greater.

Note:

- Inspections only required during working hours;
- Inspections not required during unsafe conditions; and
- If you choose to inspect once every 14 days, you must have a method for measuring rainfall amount on site (either rain gauge or representative weather station)

Note: To determine if a storm event of 0.25 inches or greater has occurred on your site, you must either keep a properly maintained rain gauge on your site, or obtain the storm event information from a weather station that is representative of your location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, you must record the total rainfall measured for that.

Note: You are required to specify in your SWPCP which schedule you will be following.

Note: “Within 24 hours of the occurrence of a storm event” means that you are required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if you have elected to inspect bi-weekly in and there is a storm event at your site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, you are required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.

E.H.2.4.2 *Reductions in Inspection Frequency*

- Stabilized areas: You may reduce the frequency of inspections to once per month in any area of your site where stabilization has occurred pursuant to E.H.2.1.9 or E.H.2.2.11.
- Arid, semi-arid, and drought stricken areas: If earth-disturbing activities are occurring during the seasonally dry period or during a period in which drought is predicted to occur, you may reduce inspections to once per month and within 24 hours of a 0.25 inch storm event.
- Frozen conditions: You may temporarily suspend or reduce inspections to once per month until thawing conditions occur if frozen conditions are continuous and disturbed areas have been stabilized. For extreme conditions in remote areas, e.g., where transit to the site is perilous/restricted or temperatures are routinely below freezing, you may suspend inspections until the conditions are conducive to safe access, and more frequent inspections can resume.

E.H.2.4.3 *Areas to be Inspected.* You must at a minimum inspect the following areas:

- Disturbed areas;
- Stormwater controls and pollution prevention measures;
- Locations where stabilization measures have been implemented;
- Material, waste, borrow, or equipment storage and maintenance areas;
- Areas where stormwater flows;
- Points of discharge.

E.H.2.4.4 *What to Check for During Inspections.* At a minimum you must check:

- Whether all stormwater controls are installed, operational, and working as intended;
- Whether any new or modified stormwater controls are needed;

- For conditions that could lead to a spill or leak;
- For visual signs of erosion/sedimentation at points of discharge.

If a discharge is occurring:

- The quality and characteristics of the discharge;
- Whether controls are operating effectively.

E.H.2.4.5 *Inspection Report.* Within 24 hours of an inspection, complete a report that includes:

- Inspection date;
- Name and title of inspector(s);
- Summary of inspection findings;
- Rainfall amount that triggered the inspection (if applicable);
- If it was unsafe to inspect a portion of the site, include documentation of the reason and the location(s);
- Each inspection report must be signed;
- Keep a current copy of all reports at the site or at an easily accessible location.

E.H.2.5 *Cessation of Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities.* The requirements in E.H.2 no longer apply for any earth-disturbing activities conducted prior to active mining activities as defined in E.H.1.2(a) or E.H.1.2(b) where:

1. Earth-disturbing activities have ceased; and
2. Stabilization has been met consistent with E.H.2.1.9 or E.H.2.2.11 (not required for areas where active mining activities will occur).

E.H.3 Technology-Based Effluent Limits for Active Mining Activities

Note: These requirements do not apply for any discharges from earth-disturbing activities conducted prior to active mining as defined in E.H.1.2(a) or E.H.1.2(b).

E.H.3.1 *Good Housekeeping Measures.* As part of your good housekeeping program, in order to minimize discharges of pollutants in stormwater, implement control measures such as the following, where determined to be feasible including: using sweepers and covered storage; watering haul roads to minimize dust generation; and conserving vegetation to minimize erosion. For mines subject to dust control requirements under state or county air quality permits, provided the requirements are equivalent, compliance with such air permit dust requirements shall constitute compliance with the dust control effluent limit in Schedule A.1.f.

E.H.3.2 *Preventive Maintenance.* Perform inspections or other equivalent measures of storage tanks and pressure lines of fuels, lubricants, hydraulic fluid, and slurry to prevent leaks due to deterioration or faulty connections.

E.H.4 Additional SWPCP Requirements for Mining Operations

Note: The requirements in E.H.6 are not applicable to inactive coal mining facilities. Some requirements may be already a requirement under Schedule A.7.

E.H.4.1 *Other Applicable Regulations.* Most active coal mining-related areas (SIC Codes 1221-1241) are subject to sediment and erosion control regulations of the U.S. Office of Surface Mining (OSM) that enforces the Surface Mining Control and Reclamation Act (SMCRA). OSM has granted authority to most coal-producing states to implement SMCRA through State SMCRA regulations. All SMCRA requirements regarding control of stormwater-related pollutant discharges must be addressed and then documented with the SWPCP (directly or by reference).

- E.H.4.2 *Site Map.* Document in your SWPCP where any of the following may be exposed to precipitation or surface runoff: haul and access roads; railroad spurs, sliding, and internal hauling lines; conveyor belts, chutes, and aerial tramways; equipment storage and maintenance yards; coal handling buildings and structures; inactive mines and related areas; acidic spoil, refuse, or unreclaimed disturbed areas; and liquid storage tanks containing pollutants such as caustics, hydraulic fluids, and lubricants.
- E.H.4.3 *Potential Pollutant Sources.* Document in your SWPCP the following sources and activities that have potential pollutants associated with them: truck traffic on haul roads and resulting generation of sediment subject to runoff and dust generation; fuel or other liquid storage; pressure lines containing slurry, hydraulic fluid, or other potential harmful liquids; and loading or temporary storage of acidic refuse or spoil.
- E.H.4.4 If you are in compliance with dust control requirements under state or county air quality permits, you must include (or summarize, as necessary) what the state or county air quality permit dust control requirements are and how you've achieved compliance with them.

E.H.5 Additional Inspection Requirements

- E.H.5.1 *Inspections of Active Mining-Related Areas.* Except for earth-disturbing activities conducted prior to active mining activities as defined in E.H.1.2(a) and E.H.1.2(b), which are subject to E.H.2.4, perform routine inspections of active mining areas covered by this permit, corresponding with the inspections as performed by SMCRA inspectors, of all mining-related areas required by SMCRA. Also maintain the records of the SMCRA authority representative. See E.H.8.1 for inspection requirements for inactive and unstaffed sties.
- E.H.5.2 *Sediment and Erosion Control.* As indicated in E.H.4.1, SMCRA requirements regarding sediment and erosion control measures must be complied with for those areas subject to SMCRA authority, including inspection requirements.
- E.H.5.3 *Routine Site Inspections.* Your inspection program must include inspections for pollutants entering the drainage system from activities located on or near coal mining-related areas. Among the areas to be inspected are haul and access roads; railroad spurs, sliding, and internal hauling lines; conveyor belts, chutes, and aerial tramways; equipment storage and maintenance yards; coal handling buildings and structures; and inactive mines and related areas.

E.H.6 Sector-Specific Benchmarks

Table E.H-1 identifies benchmarks that apply to the specific subsectors of Sector H. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Note: There are no monitoring and reporting or impaired waters monitoring requirements for inactive and unstaffed sites.

Table E.H-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Coal Mines and Related Areas (SIC 1221-1241)	Total Aluminum	0.75 mg/L
	Total Iron	1.0 mg/L

- E.H.6.1 *Inactive and Unstaffed Sites – Conditional Exemption from No Exposure Requirements for Monthly Visual Assessments and Routine Facility Inspections.* As a Sector H facility, if you are seeking to exercise a monitoring or inspection waiver, you are conditionally exempt from the

requirement to certify that “there are no industrial materials or activities exposed to stormwater” in Schedule B.4.iii of the permit. This exemption is conditioned on the following:

- If circumstances change and your facility becomes active and/or staffed, this exception no longer applies and you must immediately begin complying with the monitoring and inspection requirements; and
- DEQ retains the authority to revoke this exemption and/or the monitoring waiver where it is determined that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

Subject to the two conditions above, if your facility is inactive and unstaffed, you are waived from the requirement to conduct routine facility inspections, monthly visual assessments, and benchmark and impaired waters monitoring. You are encouraged to inspect your site more frequently where you have reason to believe that severe weather or natural disasters may have damaged control measures or increased discharges.

E.H.7 Termination of Permit Coverage

E.H.7.1 *Termination of Permit Coverage for Sites Reclaimed After December 17, 1990.* A site or a portion of a site that has been released from applicable state or federal reclamation requirements after December 17, 1990, is no longer required to maintain coverage under this permit. If the site or portion of a site reclaimed after December 17, 1990, was not subject to reclamation requirements, the site or portion of the site is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed.

E.H.7.2 *Termination of Permit Coverage for Sites Reclaimed Before December 17, 1990.* A site or portion of a site that was released from applicable state or federal reclamation requirements before December 17, 1990, or that was otherwise reclaimed before December 17, 1990, is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed. A site or portion of a site is considered to have been reclaimed if: (1) stormwater runoff that comes into contact with raw materials, intermediate byproducts, finished products, and waste products does not have the potential to cause or contribute to violations of state water quality standards, (2) soil disturbing activities related to mining at the sites or portion of the site have been completed, (3) the site or portion of the site has been stabilized to minimize soil erosion, and (4) as appropriate depending on location, size, and the potential to contribute pollutants to stormwater discharges, the site or portion of the site has been revegetated, will be amenable to natural revegetation, or will be left in a condition consistent with the post-mining land use.

Schedule E – Sector-Specific Requirements for Industrial Activity

Sector I – Oil and Gas Extraction

E.I.1 Additional Technology-Based Effluent Limits

E.I.1.1 *Vegetative Controls.* Implement vegetative practices designed to preserve existing vegetation, where attainable, and revegetate open areas as soon as practicable after grade drilling. Consider the following (or equivalent measures): temporary or permanent seeding, mulching, sod stabilization, vegetative buffer strips, and tree protection practices. Begin implementing appropriate vegetative practices on all disturbed areas within 14 days following the last activity in that area.

E.I.2 Additional SWPCP Requirement

E.I.2.1 *Drainage Area Site Map.* Document in your SWPCP where any of the following may be exposed to precipitation or surface runoff: Reportable Quantity (RQ) releases; locations used for the treatment, storage, or disposal of wastes; processing areas and storage areas; chemical mixing areas; construction and drilling areas; all areas subject to the effluent guidelines requirements for “No Discharge” in accordance with 40 CFR 435.32; and the structural controls to achieve compliance with the “No Discharge” requirements.

E.I.2.2 *Potential Pollutant Sources.* Also document in your SWPCP the following sources and activities that have potential pollutants associated with them: chemical, cement, mud, or gel mixing activities; drilling or mining activities; and equipment cleaning and rehabilitation activities. In addition, include information about the reportable quantity (RQ) release that triggered the permit application requirements: the nature of the release (e.g., spill of oil from a drum storage area), amount of oil or hazardous substance released, amount of substance recovered, date of the release, cause of the release (e.g., poor handling techniques and lack of containment in the area), areas affected by the release (i.e., land and water), procedure to clean up release, actions or procedures implemented to prevent or improve response to a release, and remaining potential contamination of stormwater from release (taking into account human health risks, the control of drinking water intakes, and the designated uses of the receiving water).

E.I.2.3 *Erosion and Sedimentation Control.* Unless covered by the NPDES Construction Stormwater 1200-C General Permit, the additional documentation requirements for sediment and erosion controls for well drillings and sand/shale mining areas include the following:

E.I.2.3.1 *Site Description.* Also include a description in your SWPCP of the nature of the exploration activity, estimates of the total area of site and area disturbed due to exploration activity, an estimate of runoff coefficient of the site, a site drainage map, including approximate slopes, and the names of all receiving waters.

E.I.2.3.2 *Vegetative Controls.* Document vegetative practices used in the SWPCP.

E.I.3 Additional Inspection Requirements.

All erosion and sediment controls must be inspected either: 1) every 7 days; or 2) once every 14 calendar days and within 24 hours of a storm event of 0.25 inches or greater.

Schedule E – Sector-Specific Requirements for Industrial Activity
Sector K – Hazardous Waste Treatment, Storage, or Disposal Facilities

E.K.1 Definitions

- K.1.1 *Contaminated stormwater* - stormwater that comes into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in E.K.1.4. Some specific areas of a landfill that may produce contaminated stormwater include (but are not limited to) the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment, or machinery that has been in direct contact with the waste; and waste dumping areas.
- K.1.2 *Drained free liquids* - aqueous wastes drained from waste containers (e.g., drums) prior to landfilling.
- K.1.3 *Landfill* - an area of land or an excavation in which wastes are placed for permanent disposal, but that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, salt bed formation, underground mine, or cave as these terms are defined in 40 CFR 257.2, 258.2, and 260.10.
- K.1.4 *Landfill wastewater* - as defined in 40 CFR Part 445 (Landfills Point Source Category), all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated stormwater, contaminated groundwater, and wastewater from recovery pumping wells. Landfill wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated stormwater, and contact wash water from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.
- K.1.5 *Leachate* - liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.
- K.1.6 *Non-contaminated stormwater* - stormwater that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in E.K.1.4. Non-contaminated stormwater includes stormwater that flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

E.K.2 Sector-Specific Benchmarks

Table E.K-1 identifies benchmarks that apply to the specific subsectors of Sector K. These benchmarks apply to both your primary industrial activity and any co-located industrial activities, which describe your site activities.

Table E.K-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
ALL - Industrial Activity Code "HZ". Benchmarks only applicable to discharges not subject to effluent limitations in 40 CFR Part 445 Subpart A.	Ammonia	2.14 mg/L
	Total Magnesium	0.064 mg/L
	Chemical Oxygen Demand (COD)	120 mg/L
	Total Arsenic	0.15 mg/L
	Total Cadmium	0.001 mg/L
	Total Cyanide	0.022 mg/L
	Total Mercury	0.0014 mg/L
	Total Selenium	0.005 mg/L
	Total Silver	0.0005 mg/L

E.K.3 Effluent Limitations Based on Effluent Limitations Guidelines

Table E.K-2 identifies effluent limits that apply to the industrial activities described below. Compliance with these effluent limits is to be determined based on discharges from these industrial activities independent of commingling with any other wastestreams that may be covered under this permit.

Table E.K-2¹		
Industrial Activity	Parameter	Effluent Limit
Discharges from hazardous waste landfills subject to effluent limitations in 40 CFR Part 445 Subpart A.	Biochemical Oxygen Demand (BOD ₅)	220 mg/L, daily maximum
		56 mg/L, monthly avg. maximum
	Total Suspended Solids (TSS)	88 mg/L, daily maximum
		27 mg/L, monthly avg. maximum
	Ammonia	10 mg/L, daily maximum
		4.9 mg/L, monthly avg. maximum
	Alpha Terpineol	0.042 mg/L, daily maximum
		0.019 mg/L, monthly avg. maximum
	Aniline	0.024 mg/L, daily maximum
		0.015 mg/L, monthly avg. maximum
	Benzoic Acid	0.119 mg/L, daily maximum
		0.073 mg/L, monthly avg. maximum
	Naphthalene	0.059 mg/L, daily maximum
		0.022 mg/L, monthly avg. maximum
	p-Cresol	0.024 mg/L, daily maximum
		0.015 mg/L, monthly avg. maximum
	Phenol	0.048 mg/L, daily maximum
		0.029 mg/L, monthly avg. maximum
	Pyridine	0.072 mg/L, daily maximum
		0.025 mg/L, monthly avg. maximum
Total Arsenic	1.1 mg/L, daily maximum	
	0.54 mg/L, monthly avg. maximum	

Table E.K-2¹		
Industrial Activity	Parameter	Effluent Limit
	Total Chromium	1.1 mg/L, daily maximum
		0.46 mg/L, monthly avg. maximum
	Total Zinc	0.535 mg/L, daily maximum
		0.296 mg/L, monthly avg. maximum
	pH	Within the range of 6-9 standard pH units (s.u.)

¹ Monitor semi-annually. As set forth at 40 CFR Part 445 Subpart A, these numeric limitations apply to contaminated stormwater discharges from hazardous waste landfills subject to the provisions of RCRA Subtitle C at 40 CFR Parts 264 (Subpart N) and 265 (Subpart N) except for any of the following facilities:

- (a) landfills operated in conjunction with other industrial or commercial operations when the landfill receives only wastes generated by the industrial or commercial operation directly associated with the landfill;
- (b) landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes, provided that the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation or that the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;
- (c) landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR Part 437, so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or
- (d) landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities, so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Schedule E – Sector-Specific Requirements for Industrial Activity Sector L – Landfills, Land Application Sites, and Open Dumps

E.L.1 Definitions

- E.L.1.1 *Contaminated stormwater* - stormwater that comes into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater. Some areas of a landfill that may produce contaminated stormwater include (but are not limited to) the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment, or machinery that has been in direct contact with the waste; and waste dumping areas.
- E.L.1.2 *Drained free liquids* - aqueous wastes drained from waste containers (e.g., drums) prior to landfilling.
- E.L.1.3 *Landfill wastewater* - as defined in 40 CFR Part 445 (Landfills Point Source Category) all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated stormwater, contaminated groundwater, and wastewater from recovery pumping wells. Landfill process wastewater includes, but is not limited to, leachate; gas collection condensate; drained free liquids; laboratory-derived wastewater; contaminated stormwater; and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.
- E.L.1.4 *Leachate* - liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.
- E.L.1.5 *Non-contaminated stormwater* - stormwater that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater. Non-contaminated stormwater includes stormwater that flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

E.L.2 Additional Technology-Based Effluent Limits

- E.L.2.1 *Preventive Maintenance Program*. As part of your preventive maintenance program, maintain the following: all elements of leachate collection and treatment systems, to prevent commingling of leachate with stormwater; the integrity and effectiveness of any intermediate or final cover (including repairing the cover as necessary), to minimize the effects of settlement, sinking, and erosion.
- E.L.2.2 *Erosion and Sedimentation Control*. Provide temporary stabilization (e.g., temporary seeding, mulching, and placing geotextiles on the inactive portions of stockpiles) for the following: materials stockpiled for daily, intermediate, and final cover; inactive areas of the landfill or open dump; landfills or open dump areas that have gotten final covers but where vegetation has yet to establish itself; and land application sites where waste application has been completed but final vegetation has not yet been established.
- E.L.2.3 *Unauthorized Discharge Test Certification*. The discharge test and certification must also be conducted for the presence of leachate and vehicle washwater.

E.L.3 Additional SWPCP Requirements

- E.L.3.1 *Drainage Area Site Map*. Document in your SWPCP where any of the following may be exposed to precipitation or surface runoff: active and closed landfill cells or trenches, active and closed land application areas, locations where open dumping is occurring or has occurred,

locations of any known leachate springs or other areas where uncontrolled leachate may commingle with runoff, and leachate collection and handling systems.

- E.L.3.2 *Summary of Potential Pollutant Sources.* Document in your SWPCP the following sources and activities that have potential pollutants associated with them: fertilizer, herbicide, and pesticide application; earth and soil moving; waste hauling and loading or unloading; outdoor storage of significant materials, including daily, interim, and final cover material stockpiles as well as temporary waste storage areas; exposure of active and inactive landfill and land application areas; uncontrolled leachate flows; and failure or leaks from leachate collection and treatment systems.

E.L.4 Additional Inspection Requirements

- E.L.4.1 *Inspections of Active Sites.* Except in arid and semi-arid climates, inspect operating landfills, open dumps, and land application sites at least once every 7 days. Focus on areas of landfills that have not yet been finally stabilized; active land application areas, areas used for storage of material and wastes that are exposed to precipitation, stabilization, and structural control measures; leachate collection and treatment systems; and locations where equipment and waste trucks enter and exit the site. Ensure that sediment and erosion control measures are operating properly. For stabilized sites and areas where land application has been completed, or where the climate is arid or semi-arid, conduct inspections at least once every month.
- E.L.4.2 *Inspections of Inactive Sites.* Inspect inactive landfills, open dumps, and land application sites at least monthly. Qualified personnel must inspect landfill (or open dump) stabilization and structural erosion control measures, leachate collection and treatment systems, and all closed land application areas.

E.L.5 Additional Post-Authorization Documentation Requirements

- E.L.5.1 *Recordkeeping and Internal Reporting.* Keep records with your SWPCP of the types of wastes disposed of in each cell or trench of a landfill or open dump. For land application sites, track the types and quantities of wastes applied in specific areas.

E.L.6 Sector-Specific Benchmarks

Table E.L-1 identifies benchmarks that apply to the specific subsectors of Sector L. These benchmarks apply to both your primary industrial activity and any co-located industrial activities, which describe your site activities.

Table E.L-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration¹
All Landfill, Land Application Sites and Open Dumps, except Municipal Solid Waste Landfill (MSWLF) Areas Closed in Accordance with 40 CFR 258.60 (Industrial Activity Code "LF")	Total Iron	1.0 mg/L
¹ Benchmark monitoring required only for discharges not subject to effluent limitations in 40 CFR Part 445 Subpart B (see Table L-2 below).		

E.L.7. Effluent Limitations Based on Effluent Limitations Guidelines

Table E.L-2 identifies effluent limits that apply to the industrial activities described below. Compliance with these effluent limits is to be determined based on discharges from these industrial activities independent of commingling with any other wastestreams that may be covered under this permit.

Table E.L-2¹

Industrial Activity	Parameter	Effluent Limit
Discharges from non-hazardous waste landfills subject to effluent limitations in 40 CFR Part 445 Subpart B.	Biochemical Oxygen Demand (BOD ₅)	140 mg/L, daily maximum
		37 mg/L, monthly avg. maximum
	Total Suspended Solids (TSS)	88 mg/L, daily maximum
		27 mg/L, monthly avg. maximum
	Ammonia	10 mg/L, daily maximum
		4.9 mg/L, monthly avg. maximum
	Alpha Terpineol	0.033 mg/L, daily maximum
		0.016 mg/L monthly avg. maximum
	Benzoic Acid	0.12 mg/L, daily maximum
		0.071 mg/L, monthly avg. maximum
	p-Cresol	0.025 mg/L, daily maximum
		0.014 mg/L, monthly avg. maximum
	Phenol	0.026 mg/L, daily maximum
		0.015 mg/L, monthly avg. maximum
	Total Zinc	0.20 mg/L, daily maximum
		0.11 mg/L, monthly avg. maximum
pH	Within the range of 6-9 standard pH units (s.u.)	

¹ Monitor semi-annually. As set forth at 40 CFR Part 445 Subpart B, these numeric limitations apply to contaminated stormwater discharges from MSWLFs that have not been closed in accordance with 40 CFR 258.60, and to contaminated stormwater discharges from those landfills that are subject to the provisions of 40 CFR Part 257 except for discharges from any of the following facilities:

- (a) landfills operated in conjunction with other industrial or commercial operations, when the landfill receives only wastes generated by the industrial or commercial operation directly associated with the landfill;
- (b) landfills operated in conjunction with other industrial or commercial operations, when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes, provided that the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation, or that the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;
- (c) landfills operated in conjunction with CWT facilities subject to 40 CFR Part 437, so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or
- (d) landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities, so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Schedule E – Sector-Specific Requirements for Industrial Activity

Sector M – Automobile Salvage Yards

E.M.1 Additional Technology-Based Effluent Limits

- E.M.1.1 *Spill and Leak Prevention Procedures.* Drain vehicles intended to be dismantled of all fluids upon arrival at the site (or as soon thereafter as feasible), or employ some other equivalent means to prevent spills and leaks.
- E.M.1.2 *Employee Training.* If applicable to your facility, address the following areas (at a minimum) in your employee training program: proper handling (collection, storage, and disposal) of oil, used mineral spirits, anti-freeze, mercury switches, and solvents.
- E.M.1.3 *Management of Runoff.* Consider the following management practices: berms or drainage ditches on the property line (to help prevent run-on from neighboring properties); berms for uncovered outdoor storage of oily parts, engine blocks, and above-ground liquid storage; installation of detention ponds; and installation of filtering devices and oil and water separators.

E.M.2 Additional SWPCP Requirements

- E.M.2.1 *Drainage Area Site Map.* Identify locations used for dismantling, storage, and maintenance of used motor vehicle parts. Also identify where any of the following may be exposed to precipitation or surface runoff: dismantling areas, parts (e.g., engine blocks, tires, hub caps, batteries, hoods, mufflers) storage areas, and liquid storage tanks and drums for fuel and other fluids.
- E.M.2.2 *Potential Pollutant Sources.* Assess the potential for the following to contribute pollutants to stormwater discharges: vehicle storage areas, dismantling areas, parts storage areas (e.g., engine blocks, tires, hub caps, batteries, hoods, mufflers), and fueling stations.

E.M.3 Additional Inspection Requirements

Immediately (or as soon thereafter as feasible) inspect vehicles arriving at the site for leaks. Inspect monthly for signs of leakage all equipment containing oily parts, hydraulic fluids, any other types of fluids, or mercury switches. Also, inspect monthly for signs of leakage all vessels and areas where hazardous materials and general automotive fluids are stored, including, but not limited to, mercury switches, brake fluid, transmission fluid, radiator water, and antifreeze.

E.M.4 Sector-Specific Benchmarks

Table E.M-1 identifies benchmarks that apply to the specific subsectors of Sector M. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table E.M-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Automobile Salvage Yards (SIC 5015)	Total Aluminum	0.75 mg/L
	Total Iron	1.0 mg/L

Schedule E – Sector-Specific Requirements for Industrial Activity

Sector N – Scrap and Waste Materials

E.N.1 Additional Technology-Based Effluent Limits

E.N.1.1 *Scrap and Waste Recycling Facilities (Non-Source Separated, Nonliquid Recyclable Materials).*

Requirements for facilities that receive, process, and do wholesale distribution of nonliquid recyclable wastes (e.g., ferrous and nonferrous metals, plastics, glass, cardboard, and paper). These facilities may receive both nonrecyclable and recyclable materials. This section is not intended for those facilities that accept recyclables only from primarily non-industrial and residential sources.

E.N.1.1.1 *Inbound Recyclable and Waste Material Control Program.* Minimize the chance of accepting materials that could be significant sources of pollutants by conducting inspections of inbound recyclables and waste materials. Following are some control measure options: (a) provide information and education to suppliers of scrap and recyclable waste materials on draining and properly disposing of residual fluids (e.g., from vehicles and equipment engines, radiators and transmissions, oil filled transformers, and individual containers or drums) and removal of mercury switches from vehicles before delivery to your facility; (b) establish procedures to minimize the potential of any residual fluids from coming into contact with precipitation or runoff; (c) establish procedures for accepting scrap lead-acid batteries (additional requirements for the handling, storage, and disposal or recycling of batteries are contained in the scrap lead-acid battery program provisions in E.N.3.1.6); (d) provide training targeted for those personnel engaged in the inspection and acceptance of inbound recyclable materials; and (e) establish procedures to ensure that liquid wastes, including used oil, are stored in materially compatible and non-leaking containers and are disposed of or recycled in accordance with the Resource Conservation and Recovery Act (RCRA).

E.N.1.1.2 *Scrap and Waste Material Stockpiles and Storage (Outdoor).* Minimize contact of stormwater runoff with stockpiled materials, processed materials, and nonrecyclable wastes. Following are some control measure options: (a) permanent or semi-permanent covers; (b) sediment traps, vegetated swales and strips, catch basin filters, and sand filters to facilitate settling or filtering of pollutants; (c) dikes, berms, containment trenches, culverts, and surface grading to divert runoff from storage areas; (d) silt fencing; and (e) oil and water separators, sumps, and dry absorbents for areas where potential sources of residual fluids are stockpiled (e.g., automobile engine storage areas).

E.N.1.1.3 *Stockpiling of Turnings Exposed to Cutting Fluids (Outdoor Storage).* Minimize contact of surface runoff with residual cutting fluids by: (a) storing all turnings exposed to cutting fluids under some form of permanent or semi-permanent cover, or (b) establishing dedicated containment areas for all turnings that have been exposed to cutting fluids. Any containment areas must be constructed of concrete, asphalt, or other equivalent types of impermeable material and include a barrier (e.g., berms, curbing, elevated pads) to prevent contact with stormwater run-on. Stormwater runoff from these areas can be discharged, provided that any runoff is first collected and treated by an oil and water separator or its equivalent. You must regularly maintain the oil and water separator (or its equivalent) and properly dispose of or recycle collected residual fluids.

- E.N.1.1.4 *Scrap and Waste Material Stockpiles and Storage (Covered or Indoor Storage)*. Minimize contact of residual liquids and particulate matter from materials stored indoors or under cover with surface runoff. Following are some control measure options: (a) good housekeeping measures, including the use of dry absorbents or wet vacuuming to contain, dispose of, or recycle residual liquids originating from recyclable containers, or mercury spill kits for spills from storage of mercury switches; (b) not allowing washwater from tipping floors or other processing areas to discharge to the storm sewer system; and (c) disconnecting or sealing off all floor drains connected to the storm sewer system.
- E.N.1.1.5 *Scrap and Recyclable Waste Processing Areas*. Minimize surface runoff from coming in contact with scrap processing equipment. Pay attention to operations that generate visible amounts of particulate residue (e.g., shredding) to minimize the contact of accumulated particulate matter and residual fluids with runoff (i.e., through good housekeeping, preventive maintenance, etc.). Following are some control measure options: (a) regularly inspect equipment for spills or leaks and malfunctioning, worn, or corroded parts or equipment; (b) establish a preventive maintenance program for processing equipment; (c) use dry-absorbents or other cleanup practices to collect and dispose of or recycle spilled or leaking fluids or use mercury spill kits for spills from storage of mercury switches; (d) on unattended hydraulic reservoirs over 150 gallons in capacity, install protection devices such as low-level alarms or equivalent devices, or secondary containment that can hold the entire volume of the reservoir; (e) containment or diversion structures such as dikes, berms, culverts, trenches, elevated concrete pads, and grading to minimize contact of stormwater runoff with outdoor processing equipment or stored materials; (f) oil and water separators or sumps; (g) permanent or semi-permanent covers in processing areas where there are residual fluids and grease; (h) retention or detention ponds or basins; sediment traps, and vegetated swales or strips (for pollutant settling and filtration); (i) catch basin filters or sand filters.
- E.N.1.1.6 *Scrap Lead-Acid Battery Program*. Properly handle, store, and dispose of scrap lead-acid batteries. Following are some control measure options (a) segregate scrap lead-acid batteries from other scrap materials; (b) properly handle, store, and dispose of cracked or broken batteries; (c) collect and dispose of leaking lead-acid battery fluid; (d) minimize or eliminate (if possible) exposure of scrap lead-acid batteries to precipitation or runoff; and (e) provide employee training for the management of scrap batteries.
- E.N.1.1.7 *Spill Prevention and Response Procedures*. (See also Schedule A.1.h) Install alarms and/or pump shutoff systems on outdoor equipment with hydraulic reservoirs exceeding 150 gallons in the event of a line break. Alternatively, a secondary containment system capable of holding the entire contents of the reservoir plus room for precipitation can be used. Use a mercury spill kit for any release of mercury from switches, anti-lock brake systems, and switch storage areas.
- E.N.1.1.8 *Supplier Notification Program*. As appropriate, notify major suppliers which scrap materials will not be accepted at the facility or will be accepted only under certain conditions.
- E.N.1.2 *Waste Recycling Facilities (Liquid Recyclable Materials)*.
- E.N.1.2.1 *Waste Material Storage (Indoor)*. Minimize or eliminate contact between residual liquids from waste materials stored indoors and from surface runoff. The plan may refer to applicable portions of other existing plans, such as Spill Prevention, Control,

and Countermeasure (SPCC) plans required under 40 CFR Part 112. Following are some control measure options (a) procedures for material handling (including labeling and marking); (b) clean up spills and leaks with dry absorbent materials, a wet vacuum system; (c) appropriate containment structures (trenching, curbing, gutters, etc.); and (d) a drainage system, including appurtenances (e.g., pumps or ejectors, manually operated valves), to handle discharges from diked or bermed areas. Drainage should be discharged to an appropriate treatment facility or sanitary sewer system, or otherwise disposed of properly. These discharges may require coverage under a separate NPDES wastewater permit or industrial user permit under the pretreatment program.

- E.N.1.2.2 *Waste Material Storage (Outdoor)*. Minimize contact between stored residual liquids and precipitation or runoff. The plan may refer to applicable portions of other existing plans, such as SPCC plans required under 40 CFR Part 112. Discharges of precipitation from containment areas containing used oil must also be in accordance with applicable sections of 40 CFR Part 112. Following are some control measure options (a) appropriate containment structures (e.g., dikes, berms, curbing, pits) to store the volume of the largest tank, with sufficient extra capacity for precipitation; (b) drainage control and other diversionary structures; (c) corrosion protection and/or leak detection systems for storage tanks; and (d) dry-absorbent materials or a wet vacuum system to collect spills.
- E.N.1.2.3 *Trucks and Rail Car Waste Transfer Areas*. Minimize pollutants in discharges from truck and rail car loading and unloading areas. Include measures to clean up minor spills and leaks resulting from the transfer of liquid wastes. Following are two control measure options: (a) containment and diversionary structures to minimize contact with precipitation or runoff, and (b) dry clean-up methods, wet vacuuming, roof coverings, or runoff controls.
- E.N.1.3 *Recycling Facilities (Source-Separated Materials)*. The following identifies considerations for facilities that receive only source-separated recyclables, primarily from non-industrial and residential sources.
- E.N.1.3.1 *Inbound Recyclable Material Control*. Minimize the chance of accepting nonrecyclables (e.g., hazardous materials) that could be a significant source of pollutants by conducting inspections of inbound materials. Following are some control measure options: (a) providing information and education measures to inform suppliers of recyclables about acceptable and non-acceptable materials, (b) training drivers responsible for pickup of recycled material, (c) clearly marking public drop-off containers regarding which materials can be accepted, (d) rejecting nonrecyclable wastes or household hazardous wastes at the source, and (e) establishing procedures for handling and disposal of nonrecyclable material.
- E.N.1.3.2 *Outdoor Storage*. Minimize exposure of recyclables to precipitation and runoff. Use good housekeeping measures to prevent accumulation of particulate matter and fluids, particularly in high traffic areas. Following are some control measure options (a) provide totally enclosed drop-off containers for the public; (b) install a sump and pump with each container pit and treat or discharge collected fluids to a sanitary sewer system; (c) provide dikes and curbs for secondary containment (e.g., around bales of recyclable waste paper); (d) divert surface water runoff away from outside material storage areas; (e) provide covers over containment bins, dumpsters, and roll-off boxes; and (f) store the equivalent of one day's volume of recyclable material indoors.

- E.N.1.3.3 *Indoor Storage and Material Processing.* Minimize the release of pollutants from indoor storage and processing areas. Following are some control measure options (a) schedule routine good housekeeping measures for all storage and processing areas, (b) prohibit tipping floor washwater from draining to the storm sewer system, and (c) provide employee training on pollution prevention practices.
- E.N.1.3.4 *Vehicle and Equipment Maintenance.* Following are some control measure options for areas where vehicle and equipment maintenance occur outdoors (a) prohibit vehicle and equipment washwater from discharging to the storm sewer system, (b) minimize or eliminate outdoor maintenance areas whenever possible, (c) establish spill prevention and clean-up procedures in fueling areas, (d) avoid topping off fuel tanks, (e) divert runoff from fueling areas, (f) store lubricants and hydraulic fluids indoors, and (g) provide employee training on proper handling and storage of hydraulic fluids and lubricants.

E.N.2 Additional SWPCP Requirements

- E.N.2.1 *Drainage Area Site Map.* Document in your SWPCP the locations of any of the following activities or sources that may be exposed to precipitation or surface runoff: scrap and waste material storage, outdoor scrap and waste processing equipment; and containment areas for turnings exposed to cutting fluids.
- E.N.2.2 *Maintenance Schedules/Procedures for Collection, Handling, and Disposal or Recycling of Residual Fluids at Scrap and Waste Recycling Facilities.* If you are subject to E.N.1.1.3, your SWPCP must identify any applicable maintenance schedule and the procedures to collect, handle, and dispose of or recycle residual fluids.

E.N.3 Sector-Specific Benchmarks

Table E.N-1 identifies benchmarks that apply to the specific subsectors of Sector N. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table E.N-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Scrap Recycling and Waste Recycling Facilities except Source-Separated Recycling (SIC 5093)	Chemical Oxygen Demand (COD)	120 mg/L
	Total Recoverable Aluminum	0.75 mg/L
	Total Recoverable Iron	1.0 mg/L

**Schedule E – Sector-Specific Requirements for Industrial Activity
Sector O – Steam Electric Generating Facilities.**

E.O.1 Additional Technology-Based Effluent Limits.

The following good housekeeping measures are required in addition to Schedule A.1 of permit:

- E.O.1.1 *Fugitive Dust Emissions.* Minimize fugitive dust emissions from coal handling areas. To minimize the tracking of coal dust offsite, consider procedures such as installing specially designed tires or washing vehicles in a designated area before they leave the site and controlling the wash water.
- E.O.1.2 *Delivery Vehicles.* Minimize contamination of stormwater runoff from delivery vehicles arriving at the plant site. Consider procedures to inspect delivery vehicles arriving at the plant site and ensure overall integrity of the body or container and procedures to deal with leakage or spillage from vehicles or containers.
- E.O.1.3 *Fuel Oil Unloading Areas.* Minimize contamination of precipitation or surface runoff from fuel oil unloading areas. Consider using containment curbs in unloading areas, having personnel familiar with spill prevention and response procedures present during deliveries to ensure that any leaks or spills are immediately contained and cleaned up, and using spill and overflow protection devices (e.g., drip pans, drip diapers, or other containment devices placed beneath fuel oil connectors to contain potential spillage during deliveries or from leaks at the connectors).
- E.O.1.4 *Chemical Loading and Unloading.* Minimize contamination of precipitation or surface runoff from chemical loading and unloading areas. Consider using containment curbs at chemical loading and unloading areas to contain spills, having personnel familiar with spill prevention and response procedures present during deliveries to ensure that any leaks or spills are immediately contained and cleaned up, and loading and unloading in covered areas and storing chemicals indoors.
- E.O.1.5 *Miscellaneous Loading and Unloading Areas.* Minimize contamination of precipitation or surface runoff from loading and unloading areas. Consider covering the loading area; grading, berming, or curbing around the loading area to divert run-on; locating the loading and unloading equipment and vehicles so that leaks are contained in existing containment and flow diversion systems; or equivalent procedures.
- E.O.1.6 *Liquid Storage Tanks.* Minimize contamination of surface runoff from above-ground liquid storage tanks. Consider protective guards around tanks, containment curbs, spill and overflow protection, dry cleanup methods, or equivalent measures.
- E.O.1.7 *Large Bulk Fuel Storage Tanks.* Minimize contamination of surface runoff from large bulk fuel storage tanks. Consider containment berms (or their equivalent). You must also comply with applicable State and Federal laws, including Spill Prevention, Control and Countermeasure (SPCC) Plan requirements.
- E.O.1.8 *Spill Reduction Measures.* Minimize the potential for an oil or chemical spill, or reference the appropriate part of your SPCC plan. Visually inspect as part of your routine facility inspection the structural integrity of all above-ground tanks, pipelines, pumps, and related equipment that may be exposed to stormwater, and make any necessary repairs immediately.
- E.O.1.9 *Oil-Bearing Equipment in Switchyards.* Minimize contamination of surface runoff from oil-bearing equipment in switchyard areas. Consider using level grades and gravel surfaces to retard flows and limit the spread of spills, or collecting runoff in perimeter ditches.

- E.O.1.10 *Residue-Hauling Vehicles*. Inspect all residue-hauling vehicles for proper covering over the load, adequate gate sealing, and overall integrity of the container body. Repair vehicles without load covering or adequate gate sealing, or with leaking containers or beds.
- E.O.1.11 *Ash Loading Areas*. Reduce or control the tracking of ash and residue from ash loading areas. Clear the ash building floor and immediately adjacent roadways of spillage, debris, and excess water before departure of each loaded vehicle.
- E.O.1.12 *Areas Adjacent to Disposal Ponds or Landfills*. Minimize contamination of surface runoff from areas adjacent to disposal ponds or landfills. Reduce ash residue that may be tracked on to access roads traveled by residue handling vehicles, and reduce ash residue on exit roads leading into and out of residue handling areas.
- E.O.1.13 *Landfills, Scrap yards, Surface Impoundments, Open Dumps, General Refuse Sites*. Minimize the potential for contamination of runoff from these areas.

E.O.2 Additional SWPCP Requirements

- E.O.2.1 *Drainage Area Site Map*. Document in your SWPCP the locations of any of the following activities or sources that may be exposed to precipitation or surface runoff: storage tanks, scrap yards, and general refuse areas; short- and long-term storage of general materials (including but not limited to supplies, construction materials, paint equipment, oils, fuels, used and unused solvents, cleaning materials, paint, water treatment chemicals, fertilizer, and pesticides); landfills and construction sites; and stock pile areas (e.g., coal or limestone piles).

E.O.3 Additional Inspection Requirements

- E.O.3.1 *Inspection*. Inspect the following areas monthly: coal handling areas, loading or unloading areas, switchyards, fueling areas, bulk storage areas, ash handling areas, areas adjacent to disposal ponds and landfills, maintenance areas, liquid storage tanks, and long term and short term material storage areas.

E.O.4 Sector-Specific Benchmarks

Table E.O-1 identifies benchmarks that apply to the specific subsectors of Sector O. These benchmarks apply to both your primary industrial activity and any co-located industrial activities, which describe your site activities.

Table E.O-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Steam Electric Generating Facilities (Industrial Activity Code "SE")	Total Iron	1.0 mg/L

E.O.5 Effluent Limitations Based on Effluent Limitations Guidelines

Table E.O-2 identifies effluent limits that apply to the industrial activities described below. Compliance with these effluent limits is to be determined based on discharges from these industrial activities independent of commingling with any other wastestreams that may be covered under this permit.

Permit Number: 1200-Z

Effective: August 1, 2017

Reissuance: October 22, 2018

Expiration: June 30, 2022

Page 95 of 129

Table E.O-2¹

Industrial Activity	Parameter	Effluent Limit
Discharges from coal storage piles at Steam Electric Generating Facilities	TSS	50 mg/l ²
	pH	6.0 min - 9.0 max

¹ Monitor semi-annually.² If your facility is designed, constructed, and operated to treat the volume of coal pile runoff that is associated with a 10-year, 24-hour rainfall event, any untreated overflow of coal pile runoff from the treatment unit is not subject to the 50 mg/L limitation for total suspended solids.

Schedule E – Sector-Specific Requirements for Industrial Activity
Sector P – Land Transportation and Warehousing.

E.P.1 Additional Technology-Based Effluent Limits

E.P.1.1 *Good Housekeeping Measures.* In addition to the Good Housekeeping requirements in Schedule A.1 of the permit, you must do the following:

- E.P.1.1.1 *Vehicle and Equipment Storage Areas.* Minimize the potential for stormwater exposure to leaky or leak-prone vehicles/equipment awaiting maintenance. Consider the following (or other equivalent measures): use of drip pans under vehicles/equipment, indoor storage of vehicles and equipment, installation of berms or dikes, use of absorbents, roofing or covering storage areas, and cleaning pavement surfaces to remove oil and grease.
 - E.P.1.1.2 *Fueling Areas.* Minimize contamination of stormwater runoff from fueling areas. Consider the following (or other equivalent measures): Covering the fueling area; using spill/overflow protection and cleanup equipment; minimizing stormwater run-on/runoff to the fueling area; using dry cleanup methods; and treating and/or recycling collected stormwater runoff.
 - E.P.1.1.3 *Material Storage Areas.* Maintain all material storage vessels (e.g., for used oil/oil filters, spent solvents, paint wastes, hydraulic fluids) to prevent contamination of stormwater and plainly label them (e.g., “Used Oil,” “Spent Solvents,” etc.). Consider the following (or other equivalent measures): storing the materials indoors; installing berms/dikes around the areas; minimizing runoff of stormwater to the areas; using dry cleanup methods; and treating and/or recycling collected stormwater runoff.
 - E.P.1.1.4 *Vehicle and Equipment Cleaning Areas.* Minimize contamination of stormwater runoff from all areas used for vehicle/equipment cleaning. Consider the following (or other equivalent measures): performing all cleaning operations indoors; covering the cleaning operation, ensuring that all washwater drains to a proper collection system (i.e., not the stormwater drainage system); treating and/or recycling collected washwater, or other equivalent measures.
 - E.P.1.1.5 *Vehicle and Equipment Maintenance Areas.* Minimize contamination of stormwater runoff from all areas used for vehicle/equipment maintenance. Consider the following (or other equivalent measures): performing maintenance activities indoors; using drip pans; keeping an organized inventory of materials used in the shop; draining all parts of fluid prior to disposal; prohibiting wet clean up practices if these practices would result in the discharge of pollutants to stormwater drainage systems; using dry cleanup methods; treating and/or recycling collected stormwater runoff, minimizing run on/runoff of stormwater to maintenance areas.
 - E.P.1.1.6 *Locomotive Sanding (Loading Sand for Traction) Areas.* Consider the following (or other equivalent measures): covering sanding areas; minimizing stormwater run on/runoff; or appropriate sediment removal practices to minimize the offsite transport of sanding material by stormwater.
- E.P.1.2 *Employee Training.* Address the following activities, as applicable: used oil and spent solvent management; fueling procedures; general good housekeeping practices; proper painting procedures; and used battery management.

E.P.2 Additional SWPCP Requirements

- E.P.2.1 *Drainage Area Site Map.* Identify in the SWPCP the following areas of the facility and indicate whether activities occurring there may be exposed to precipitation/surface runoff: Fueling stations; vehicle/equipment maintenance or cleaning areas; storage areas for vehicle/equipment with actual or potential fluid leaks; loading/unloading areas; areas where treatment, storage or disposal of wastes occur; liquid storage tanks; processing areas; and storage areas.
- E.P.2.2 *Potential Pollutant Sources.* Assess the potential for the following activities and facility areas to contribute pollutants to stormwater discharges: Onsite waste storage or disposal; dirt/gravel parking areas for vehicles awaiting maintenance; illicit plumbing connections between shop floor drains and the stormwater conveyance system(s); and fueling areas. Describe these activities in the SWPCP.
- E.P.2.3 *Description of Good Housekeeping Measures.* You must document in your SWPCP the good housekeeping measures you implement consistent with E.P.1.
- E.P.2.4 *Vehicle and Equipment Wash Water Requirements.* If wash water is handled in a manner that does not involve separate NPDES permitting (e.g., hauled offsite), describe the disposal method and include all pertinent information (e.g., frequency, volume, destination, etc.) in your SWPCP. Discharges of vehicle and equipment wash water, including tank cleaning operations, are not authorized by this permit for this sector.

E.P.3 Additional Inspection Requirements Inspect all the following areas/activities: storage areas for vehicles/equipment awaiting maintenance, fueling areas, indoor and outdoor vehicle/equipment maintenance areas, material storage areas, vehicle/equipment cleaning areas and loading/unloading areas.

Schedule E – Sector-Specific Requirements for Industrial Activity

Sector Q – Water Transportation

E.Q.1 Additional Technology-Based Effluent Limits

- E.Q.1.1 *Good Housekeeping Measures.* You must implement the following good housekeeping measures in addition to requirements in Schedule A.1 of the permit:
- E.Q.1.1.1 *Pressure Washing Area.* If pressure washing is used to remove marine growth from vessels, the discharge water must be permitted by a separate NPDES permit. Collect or contain the discharges from the pressure washing area so that they are not commingled with stormwater discharges authorized by this permit.
 - E.Q.1.1.2 *Blasting and Painting Area.* Minimize the potential for spent abrasives, paint chips, and overspray to discharge into receiving waters or the storm sewer systems. Consider containing all blasting and painting activities or use other measures to minimize the discharge of contaminants (e.g., hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris). When necessary, regularly clean stormwater conveyances of deposits of abrasive blasting debris and paint chips.
 - E.Q.1.1.3 *Material Storage Areas.* Store and plainly label all containerized materials (e.g., fuels, paints, solvents, waste oil, antifreeze, batteries) in a protected, secure location away from drains. Minimize the contamination of precipitation or surface runoff from the storage areas. Specify which materials are stored indoors, and consider containment or enclosure for those stored outdoors. If abrasive blasting is performed, discuss the storage and disposal of spent abrasive materials generated at the facility. Consider implementing an inventory control plan to limit the presence of potentially hazardous materials onsite.
 - E.Q.1.1.4 *Engine Maintenance and Repair Areas.* Minimize the contamination of precipitation or surface runoff from all areas used for engine maintenance and repair. Consider the following (or their equivalents): performing all maintenance activities indoors, maintaining an organized inventory of materials used in the shop, draining all parts of fluid prior to disposal, prohibiting the practice of hosing down the shop floor, using dry cleanup methods, and treating and/or recycling stormwater runoff collected from the maintenance area.
 - E.Q.1.1.5 *Material Handling Area.* Minimize the contamination of precipitation or surface runoff from material handling operations and areas (e.g., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). Consider the following (or their equivalents): covering fueling areas, using spill and overflow protection, mixing paints and solvents in a designated area (preferably indoors or under a shed), and minimizing runoff of stormwater to material handling areas.
 - E.Q.1.1.6 *Drydock Activities.* Routinely maintain and clean the drydock to minimize pollutants in stormwater runoff. Address the cleaning of accessible areas of the drydock prior to flooding, and final cleanup following removal of the vessel and raising the dock. Include procedures for cleaning up oil, grease, and fuel spills occurring on the drydock. Consider the following (or their equivalents): sweeping rather than hosing off debris and spent blasting material from accessible areas of the drydock prior to flooding and making absorbent materials and oil containment booms readily available to clean up or contain any spills.
- E.Q.1.2 *Employee Training.* At a minimum, address the following activities (as applicable): used oil management, spent solvent management, disposal of spent abrasives, disposal of vessel

wastewaters, spill prevention and control, fueling procedures, general good housekeeping practices, painting and blasting procedures, and used battery management.

- E.Q.1.3 *Preventive Maintenance*. As part of your preventive maintenance program, perform timely inspection and maintenance of stormwater management devices (e.g., cleaning oil and water separators and sediment traps to ensure that spent abrasives, paint chips, and solids will be intercepted and retained prior to entering the storm drainage system), as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

E.Q.2 Additional SWPCP Requirements

- E.Q.2.1 *Drainage Area Site Map*. Document in your SWPCP where any of the following may be exposed to precipitation or surface runoff: fueling; engine maintenance and repair; vessel maintenance and repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading and unloading areas; locations used for the treatment, storage, or disposal of wastes; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron).
- E.Q.2.2 *Summary of Potential Pollutant Sources*. Document in the SWPCP the following additional sources and activities that have potential pollutants associated with them: outdoor manufacturing or processing activities (e.g., welding, metal fabricating) and significant dust or particulate generating processes (e.g., abrasive blasting, sanding, and painting.)

E.Q.3 Additional Inspection Requirements

Inspect pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; drydock area; and general yard area.

E.Q.4 Sector-Specific Benchmarks

Table E.Q-1 identifies benchmarks that apply to the specific subsectors of Sector Q. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table E.Q-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Water Transportation Facilities (SIC 4412-4499)	Total Aluminum	0.75 mg/L
	Total Iron	1.0 mg/L

Schedule E – Sector-Specific Requirements for Industrial Activity
Sector R – Ship and Boat Building and Repair Yards

E.R.1 Additional Technology-Based Effluent Limits

E.R.1.1 Good Housekeeping Measures.

E.R.1.1.1 *Pressure Washing Area.* If pressure washing is used to remove marine growth from vessels, the discharged water must be permitted as a process wastewater by a separate NPDES permit.

E.R.1.1.2 *Blasting and Painting Area.* Minimize the potential for spent abrasives, paint chips, and overspray to discharging into the receiving water or the storm sewer systems. Consider containing all blasting and painting activities, or use other measures to prevent the discharge of the contaminants (e.g., hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris). When necessary, regularly clean stormwater conveyances of deposits of abrasive blasting debris and paint chips.

E.R.1.1.3 *Material Storage Areas.* Store and plainly label all containerized materials (e.g., fuels, paints, solvents, waste oil, antifreeze, batteries) in a protected, secure location away from drains. Minimize the contamination of precipitation or surface runoff from the storage areas. If abrasive blasting is performed, discuss the storage and disposal of spent abrasive materials generated at the facility. Consider implementing an inventory control plan to limit the presence of potentially hazardous materials onsite.

E.R.1.1.4 *Engine Maintenance and Repair Areas.* Minimize the contamination of precipitation or surface runoff from all areas used for engine maintenance and repair. Consider the following (or their equivalents): performing all maintenance activities indoors, maintaining an organized inventory of materials used in the shop, draining all parts of fluid prior to disposal, prohibiting the practice of hosing down the shop floor, using dry cleanup methods, and treating and/or recycling stormwater runoff collected from the maintenance area.

E.R.1.1.5 *Material Handling Area.* Minimize the contamination of precipitation or surface runoff from material handling operations and areas (e.g., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). Consider the following (or their equivalents): covering fueling areas, using spill and overflow protection, mixing paints and solvents in a designated area (preferably indoors or under a shed), and minimizing stormwater run-on to material handling areas.

E.R.1.1.6 *Drydock Activities.* Routinely maintain and clean the drydock to minimize pollutants in stormwater runoff. Clean accessible areas of the drydock prior to flooding and final cleanup following removal of the vessel and raising the dock. Include procedures for cleaning up oil, grease, or fuel spills occurring on the drydock. Consider the following (or their equivalents): sweeping rather than hosing off debris and spent blasting material from accessible areas of the drydock prior to flooding, and having absorbent materials and oil containment booms readily available to clean up and contain any spills.

E.R.1.2 *Employee Training.* As part of your employee training program, address, at a minimum, the following activities (as applicable): used oil management, spent solvent management, disposal of spent abrasives, disposal of vessel wastewaters, spill prevention and control, fueling procedures, general good housekeeping practices, painting and blasting procedures, and used battery management.

E.R.1.3 *Preventive Maintenance.* As part of your preventive maintenance program, perform timely inspection and maintenance of stormwater management devices (e.g., cleaning oil and water separators and sediment traps to ensure that spent abrasives, paint chips, and solids will be intercepted and retained prior to entering the storm drainage system), as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

E.R.2 Additional SWPCP Requirements

E.R.2.1 *Drainage Area Site Map.* Document in your SWPCP where any of the following may be exposed to precipitation or surface runoff: fueling; engine maintenance or repair; vessel maintenance or repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading and unloading areas; treatment, storage, and waste disposal areas; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron).

E.R.2.2 *Potential Pollutant Sources.* Document in your SWPCP the following additional sources and activities that have potential pollutants associated with them (if applicable): outdoor manufacturing or processing activities (e.g., welding, metal fabricating) and significant dust or particulate generating processes (e.g., abrasive blasting, sanding, and painting).

E.R.2.3 *Documentation of Good Housekeeping Measures.* Document in your SWPCP any good housekeeping measures implemented to meet the effluent limits in E.R.1.1.

E.R.2.3.1 *Blasting and Painting Areas.* Document in the SWPCP any standard operating practices relating to blasting and painting (e.g., prohibiting uncontained blasting and painting over open water or prohibiting blasting and painting during windy conditions, which can render containment ineffective).

E.R.2.3.2 *Storage Areas.* Specify in your SWPCP which materials are stored indoors, and consider containment or enclosure for those stored outdoors.

E.R.3 Additional Inspection Requirements

Include the following in all monthly inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; drydock area; and general yard area.

Schedule E – Sector-Specific Requirements for Industrial Activity

Sector S – Air Transportation

E.S.1 Limitation on Coverage

E.S.1.1 *Limitations on Coverage.* This permit authorizes stormwater discharges from only those portions of the air transportation facility that are involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations or deicing operations.

Note: the term “deicing” in this permit will generally be used to mean both deicing (removing frost, snow or ice) and anti-icing (preventing accumulation of frost, snow or ice) activities, unless specific mention is made otherwise.

E.S.2 Multiple Operators at Air Transportation Facilities

Air transportation facilities often have more than one operator who could discharge stormwater associated with industrial activity. Operators include the airport authority and airport tenants, including air passenger or cargo companies, fixed based operators, and other parties who routinely perform industrial activities on airport property.

The airport authority and tenants of the airport are encouraged to work in partnership in the development of the SWPCP. Tenants of the airport facility include air passenger or cargo companies, fixed based operators and other parties who have contracts with the airport authority to conduct business operations on airport property and whose operations result in stormwater discharges associated with industrial activity. An airport tenant may obtain authorization under this permit and develop a SWPCP for discharges from his/her own areas of the airport.

E.S.3 Additional Technology-Based Effluent Limits

E.S.3.1 *Good Housekeeping Measures.*

E.S.3.1.1 *Aircraft, Ground Vehicle and Equipment Maintenance Areas.* Minimize the contamination of stormwater runoff from all areas used for aircraft, ground vehicle and equipment maintenance (including the maintenance conducted on the terminal apron and in dedicated hangers). Consider the following practices (or their equivalents): performing maintenance activities indoors; maintaining an organized inventory of material used in the maintenance areas; draining all parts of fluids prior to disposal; prohibiting the practice of hosing down the apron or hanger floor; using dry cleanup methods; and collecting the stormwater runoff from the maintenance area and providing treatment or recycling.

E.S.3.1.2 *Aircraft, Ground Vehicle and Equipment Cleaning Areas.* Clearly demarcate these areas on the ground using signage or other appropriate means. Minimize the contamination of stormwater runoff from cleaning areas.

E.S.3.1.3 *Aircraft, Ground Vehicle and Equipment Storage Areas.* Store all aircraft, ground vehicles and equipment awaiting maintenance in designated areas only and minimize the contamination of stormwater runoff from these storage areas. Consider the following control measures, including any BMPs (or their equivalents): storing aircraft and ground vehicles indoors; using drip pans for the collection of fluid leaks; and perimeter drains, dikes or berms surrounding the storage areas.

- E.S.3.1.4 *Material Storage Areas.* Maintain the vessels of stored materials (e.g., used oils, hydraulic fluids, spent solvents, and waste aircraft fuel) in good condition, to prevent or minimize contamination of stormwater. Also plainly label the vessels (e.g., “used oil,” “Contaminated Jet A,” etc.). Minimize contamination of precipitation/runoff from these areas. Consider the following control measures (or their equivalents): storing materials indoors; storing waste materials in a centralized location; and installing berms/dikes around storage areas.
- E.S.3.1.5 *Airport Fuel System and Fueling Areas.* Minimize the discharge of fuel to the storm sewer/surface waters resulting from fuel servicing activities or other operations conducted in support of the airport fuel system. Consider the following control measures (or their equivalents): implementing spill and overflow practices (e.g., placing absorptive materials beneath aircraft during fueling operations); using only dry cleanup methods; and collecting stormwater runoff.
- E.S.3.1.6 *Source Reduction.* Minimize, and where feasible eliminate, the use of urea and glycol-based deicing chemicals, in order to reduce the aggregate amount of deicing chemicals used and/or lessen the environmental impact. Chemical options to replace ethylene glycol, propylene glycol and urea include: potassium acetate; magnesium acetate; calcium acetate; and anhydrous sodium acetate.
- E.S.3.1.6.1 *Runway Deicing Operation:* To minimize the discharge of pollutants in stormwater from runway deicing operations, implement source reduction control measures such as the following, where determined to be feasible and that accommodate considerations of safety, space, operational constraints, and flight considerations (list not exclusive): metered application of chemicals; pre-wetting dry chemical constituents prior to application; installing a runway ice detection system; implementing anti-icing operations as a preventive measure against ice buildup; heating sand; and product substitution.
- E.S.3.1.6.2 *Aircraft Deicing Operations.* Minimize the discharge of pollutants in stormwater from aircraft deicing operations. Determine whether excessive application of deicing chemicals occurs and adjust as necessary, consistent with considerations of flight safety. Determine whether alternatives to glycol and whether containment measures for applied chemicals are feasible. Implement control measures for reducing deicing fluid such as the following, where determined to be feasible and that accommodate considerations of safety, space, operational constraints, and flight considerations (list not exclusive): forced-air deicing systems, computer-controlled fixed-gantry systems, infrared technology, hot water, varying glycol content to air temperature, enclosed-basket deicing trucks, mechanical methods, solar radiation, hangar storage, aircraft covers, and thermal blankets for MD-80s and DC-9s. Consider using ice-detection systems and airport traffic flow strategies and departure slot allocation systems where feasible and that accommodate considerations of safety, space, operational constraints, and flight considerations. The evaluations and determinations required by this Part should be carried out by the personnel most familiar with the particular aircraft and flight operations and related systems in question (versus an outside entity such as the airport authority).

- E.S.3.1.7 *Management of Runoff*. Minimize the discharge of pollutants in stormwater from deicing chemicals in runoff. To minimize discharges of pollutants in stormwater from aircraft deicing, implement runoff management control measures such as the following, where determined to be feasible and that accommodate considerations of safety, space, operational constraints, and flight considerations (list not exclusive): installing a centralized deicing pad to recover deicing fluid following application; plug-and-pump (PnP); using vacuum/collection trucks (glycol recovery vehicles); storing contaminated stormwater/deicing fluids in tanks; recycling collected deicing fluid where feasible; releasing controlled amounts to a publicly owned treatment works; separation of contaminated snow; conveying contaminated runoff into a stormwater impoundment for biochemical decomposition (be aware of attracting wildlife that may prove hazardous to flight operations); and directing runoff into vegetative swales or other infiltration measures. To minimize discharges of pollutants in stormwater from runway deicing, implement runoff management control measures such as the following, where determined to be feasible and that accommodate considerations of safety, space, operational constraints, and flight considerations (list not exclusive): mechanical systems (snow plows, brushes); conveying contaminated runoff into swales and/or a stormwater impoundment; and pollution prevention practices such as ice detection systems, and airfield prewetting. When applying deicing fluids during non-precipitation events (also referred to as “clear ice deicing”), implement control measures to prevent unauthorized discharge of pollutants (dry-weather discharges of pollutants would need coverage under an NPDES wastewater permit), or to minimize the discharge of pollutants from deicing fluids in later stormwater discharges, implement control measures such as the following, where determined to be feasible and that accommodate considerations safety, space, operational constraints, and flight considerations (list not exclusive): recovering deicing fluids; preventing the fluids from entering storm sewers or other stormwater discharge conveyances (e.g., covering storm sewer inlets, using booms, installing absorptive interceptors in the drains); releasing controlled amounts to a publicly owned treatment works. Used deicing fluid should be recycled whenever practicable.
- E.S.3.2 *Deicing Season*. You must determine the seasonal timeframe (e.g., December- February, October - March, etc.) during which deicing activities typically occur at the facility. Implementation of control measures, including any BMPs, facility inspections and monitoring must be conducted with particular emphasis throughout the defined deicing season. If you meet the deicing chemical usage thresholds of 100,000 gallons glycol and/or 100 tons of urea, the deicing season you identified is the timeframe during which you must obtain the four required benchmark monitoring event results for deicing-related parameters, i.e., BOD, COD, ammonia and pH.

E.S.4 Additional SWPCP Requirements

- E.S.4.1 *Drainage Area Site Map*. Document in the SWPCP the following areas of the facility and indicate whether activities occurring there may be exposed to precipitation/surface runoff: aircraft and runway deicing operations; fueling stations; aircraft, ground vehicle and equipment maintenance/cleaning areas; storage areas for aircraft, ground vehicles and equipment awaiting maintenance.

- E.S.4.2 *Potential Pollutant Sources.* In your inventory of exposed materials, describe in your SWPCP the potential for the following activities and facility areas to contribute pollutants to stormwater discharges: aircraft, runway, ground vehicle and equipment maintenance and cleaning; aircraft and runway deicing operations (including apron and centralized aircraft deicing stations, runways, taxiways and ramps). If you use deicing chemicals, you must maintain a record of the types (including the Safety Data Sheets [SDS]) used and the monthly quantities, either as measured or, in the absence of metering, as estimated to the best of your knowledge. This includes all deicing chemicals, not just glycols and urea (e.g., potassium acetate), because large quantities of these other chemicals can still have an adverse impact on receiving waters. Tenants or other fixed-based operations that conduct deicing operations must provide the above information to the airport authority for inclusion with any comprehensive airport SWPCPs.
- E.S.4.3 *Vehicle and Equipment Washwater Requirements.* Attach to or reference in your SWPCP, a copy of the NPDES permit issued for vehicle/equipment washwater, if applicable. If an industrial user permit is issued under a local pretreatment program, include a copy in your SWPCP. If washwater is handled in another manner (e.g., hauled offsite, retained onsite), describe the disposal method and attach all pertinent documentation/information (e.g., frequency, volume, destination, etc.) in your SWPCP.
- E.S.4.4 *Documentation of Control Measures Used for Management of Runoff:* Document in your SWPCP the control measures used for collecting or containing contaminated melt water from collection areas used for disposal of contaminated snow.

E.S.5 Sector-Specific Benchmarks

At a minimum conduct facility inspections at least monthly during the deicing season (e.g., October through April for most mid-latitude airports). If your facility needs to deice before or after this period, expand the monthly inspections to include all months during which deicing chemicals may be used. DEQ may specifically require you to increase inspection frequencies.

E.S.6 Sector-Specific Benchmarks

Table E.S-1 identifies benchmarks that apply to the specific subsectors of Sector S. These benchmarks apply to both your primary industrial activity and any co-located industrial activities, unless a facility has an Individual NPDES Permit for de-icing activities.

Table E.S-1

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Where a single permittee, or a combination of permitted facilities, use more than 100,000 gallons of glycol-based deicing chemicals and/or 100 tons or more of urea on an average annual basis, monitor these parameters in outfalls that collect runoff from areas where deicing activities occur (SIC 4512-4581) and when deicing activities are occurring.	Biochemical Oxygen Demand (BOD ₅)	30 mg/L
	Chemical Oxygen Demand (COD)	120 mg/L
	Ammonia	2.14 mg/L
	pH	5.5 - 9.0 s.u.

E.S.7 Effluent Limitations Based on Effluent Limitations Guidelines and New Source Performance Standards

- E.S.7.1 *Airfield Pavement Deicing*. For both existing and new “primary airports” (as defined at 40 CFR 449.2) with 1,000 or more annual non-propeller aircraft departures that discharge stormwater from airfield pavement deicing activities, there shall be no discharge of airfield pavement deicers containing urea. To comply with this limitation, such airports must do one of the following: (1) certify annually on the annual report that you do not use pavement deicers containing urea, or (2) meet the effluent limitation in Table E.S-2.
- E.S.7.2 *Aircraft Deicing*. Airports that are both “primary airports” (as defined at 40 CFR 449.2) and new sources (“new airports”) with 1,000 or more annual non-propeller aircraft departures must meet the applicable requirements for aircraft deicing at 40 CFR 449.11(a). Discharges of the collected aircraft deicing fluid directly to waters of the U.S. are not eligible for coverage under this permit.
- E.S.7.3 *Monitoring, Reporting and Recordkeeping*. For new and existing airports subject to the effluent limitations in E.S.7.1 or E.S.7.2 of this permit, you must comply with the applicable monitoring, reporting and recordkeeping requirements outlined in 40 CFR 449.20.

Table E.S-2¹

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Effluent Limitation
Runoff containing urea from airfield pavement deicing at existing and new primary airports with 1,000 or more annual non-propeller aircraft departures	Ammonia as Nitrogen	14.7 mg/L. daily maximum

¹Monitor semi-annually.

Schedule E – Sector-Specific Requirements for Industrial Activity

Sector T – Treatment Works

E.T.1 Additional Technology-Based Effluent Limits

- E.T.1.1 *Control Measures.* In addition to the other control measures, consider the following: routing stormwater to the treatment works; or covering exposed materials (i.e., from the following areas: grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; and septage or hauled waste receiving station).
- E.T.1.2 *Employee Training.* At a minimum, training must address the following areas when applicable to a facility: petroleum product management; process chemical management; spill prevention and controls; fueling procedures; general good housekeeping practices; and proper procedures for using fertilizer, herbicides, and pesticides.

E.T.2 Additional SWPCP Requirements

- E.T.2.1 *Site Map.* Document in your SWPCP where any of the following may be exposed to precipitation or surface runoff: grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and storage areas for process chemicals, petroleum products, solvents, fertilizers, herbicides, and pesticides.
- E.T.2.2 *Potential Pollutant Sources.* Document in your SWPCP the following additional sources and activities that have potential pollutants associated with them, as applicable: grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and access roads and rail lines.
- E.T.2.3 *Wastewater and Washwater Requirements.* If wastewater and/or vehicle and equipment washwater is not covered by another NPDES permit but is handled in another manner (e.g., hauled offsite, retained onsite), the disposal method must be described and all pertinent information (e.g., frequency, volume, destination) must be included in your SWPCP. Discharges of vehicle and equipment washwater, including tank cleaning operations, are not authorized by this permit for this sector.

E.T.3 Additional Inspection Requirements

Include the following areas in all inspections: access roads and rail lines; grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; and septage or hauled waste receiving station.

Schedule E – Sector-Specific Requirements for Industrial Activity

Sector U – Food and Kindred Products

E.U.1 Additional Technology-Based Limitations

E.U.1.1 *Employee Training*. Address pest control in your employee training program.

E.U.2 Additional SWPCP Requirements

E.U.2.1 *Drainage Area Site Map*. Document in your SWPCP the locations of the following activities if they are exposed to precipitation or runoff: vents and stacks from cooking, drying, and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage areas.

E.U.2.2 *Potential Pollutant Sources*. Document in your SWPCP, in addition to food and kindred products processing-related industrial activities, application and storage of pest control chemicals (e.g., rodenticides, insecticides, fungicides) used on plant grounds.

E.U.3 Additional Inspection Requirements

Inspect on a monthly basis, at a minimum, the following areas where the potential for exposure to stormwater exists: loading and unloading areas for all significant materials; storage areas, including associated containment areas; waste management units; vents and stacks emanating from industrial activities; spoiled product and broken product container holding areas; animal holding pens; staging areas; and air pollution control equipment.

E.U.4 Sector-Specific Benchmarks

Table E.U-1 identifies benchmarks that apply to the specific subsectors of Sector U. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table E.U-1.

Subsector (You may be subject to requirements for more than one Sector / Subsector)	Parameter	Benchmark Monitoring Concentration
Fats and Oils Products (SIC 2074-2079)	Biochemical Oxygen Demand (BOD ₅)	30 mg/L
	Chemical Oxygen Demand (COD)	120 mg/L
	Nitrate plus Nitrite Nitrogen	0.68 mg/L

Schedule E – Sector-Specific Requirements for Industrial Activity Sector V – Textile Mills, Apparel, and Other Fabric Products

E.V.1 Additional Technology-Based Limitations

E.V.1.1 Good Housekeeping Measures.

- E.V.1.1.1 *Material Storage Areas.* Plainly label and store all containerized materials (e.g., fuels, petroleum products, solvents, and dyes) in a protected area, away from drains. Minimize contamination of the stormwater runoff from such storage areas. Also consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances. For storing empty chemical drums or containers, ensure that the drums and containers are clean (consider triple-rinsing) and that there is no contact of residuals with precipitation or runoff. Collect and dispose of washwater from these cleanings properly.
 - E.V.1.1.2 *Material Handling Areas.* Minimize contamination of stormwater runoff from material handling operations and areas. Consider the following (or their equivalents): use of spill and overflow protection; covering fueling areas; and covering or enclosing areas where the transfer of material may occur. When applicable, address the replacement or repair of leaking connections, valves, transfer lines, and pipes that may carry chemicals, dyes, or wastewater.
 - E.V.1.1.3 *Fueling Areas.* Minimize contamination of stormwater runoff from fueling areas. Consider the following (or their equivalents): covering the fueling area, using spill and overflow protection, minimizing run-on of stormwater to the fueling areas, using dry cleanup methods, and treating and/or recycling stormwater runoff collected from the fueling area.
 - E.V.1.1.4 *Above-Ground Storage Tank Area.* Minimize contamination of the stormwater runoff from above-ground storage tank areas, including the associated piping and valves. Consider the following (or their equivalents): regular cleanup of these areas; including measures for tanks, piping and valves explicitly in your SPCC program; minimizing runoff of stormwater from adjacent areas; restricting access to the area; inserting filters in adjacent catch basins; providing absorbent booms in unbermed fueling areas; using dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.
- E.V.1.2 *Employee Training.* As part of your employee training program, address, at a minimum, the following activities (as applicable): use of reused and recycled waters, solvents management, proper disposal of dyes, proper disposal of petroleum products and spent lubricants, spill prevention and control, fueling procedures, and general good housekeeping practices.

E.V.2 Additional SWPCP Requirements

- E.V.2.1 *Potential Pollutant Sources.* Document in your SWPCP the following additional sources and activities that have potential pollutants associated with them: industry-specific significant materials and industrial activities (e.g., backwinding, beaming, bleaching, backing bonding, carbonizing, carding, cut and sew operations, desizing, drawing, dyeing locking, fulling, knitting, mercerizing, opening, packing, plying, scouring, slashing, spinning, synthetic-felt processing, textile waste processing, tufting, turning, weaving, web forming, winging, yarn spinning, and yarn texturing).

E.V.2.2 *Description of Good Housekeeping Measures for Material Storage Areas.* Document in the SWPCP your containment area or enclosure for materials stored outdoors.

E.V.3 Additional Inspection Requirements

Inspect, at least monthly, the following activities and areas (at a minimum): transfer and transmission lines, spill prevention, good housekeeping practices, management of process waste products, and all structural and nonstructural management practices.

Schedule E – Sector-Specific Requirements for Industrial Activity
Sector W – Furniture and Fixtures

E.W.1 Additional Technology-Based Limitations

E.W.1.1 *Drainage Area Site Map*. Document in your SWPCP where any of the following may be exposed to precipitation or surface runoff: material storage (including tanks or other vessels used for liquid or waste storage) areas; outdoor material processing areas; areas where wastes are treated, stored, or disposed of; access roads; and rail spurs.

Schedule E – Sector-Specific Requirements for Industrial Activity

Sector X – Printing and Publishing

E.X.1 Additional Technology-Based Effluent Limits

E.X.1.1 Good Housekeeping Measures.

E.X.1.1.1 *Material Storage Areas.* Plainly label and store all containerized materials (e.g., skids, pallets, solvents, bulk inks, hazardous waste, empty drums, portable and mobile containers of plant debris, wood crates, steel racks, and fuel oil) in a protected area, away from drains. Minimize contamination of the stormwater runoff from such storage areas. Also consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances.

E.X.1.1.2 *Material Handling Area.* Minimize contamination of stormwater runoff from material handling operations and areas (e.g., blanket wash, mixing solvents, loading and unloading materials). Consider the following (or their equivalents): using spill and overflow protection, covering fueling areas, and covering or enclosing areas where the transfer of materials may occur. When applicable, address the replacement or repair of leaking connections, valves, transfer lines, and pipes that may carry chemicals or wastewater.

E.X.1.1.3 *Fueling Areas.* Minimize contamination of stormwater runoff from fueling areas. Consider the following (or their equivalents): covering the fueling area, using spill and overflow protection, minimizing runoff of stormwater to the fueling areas, using dry cleanup methods, and treating and/or recycling stormwater runoff collected from the fueling area.

E.X.1.1.4 *Above Ground Storage Tank Area.* Minimize contamination of the stormwater runoff from above-ground storage tank areas, including the associated piping and valves. Consider the following (or their equivalents): regularly cleaning these areas, explicitly addressing tanks, piping and valves in the SPCC program, minimizing stormwater runoff from adjacent areas, restricting access to the area, inserting filters in adjacent catch basins, providing absorbent booms in unbermed fueling areas, using dry cleanup methods, and permanently sealing drains within critical areas that may discharge to a storm drain.

E.X.1.2 *Employee Training.* As part of your employee training program, address, at a minimum, the following activities (as applicable): spent solvent management, spill prevention and control, used oil management, fueling procedures, and general good housekeeping practices.

E.X.2 Additional SWPCP Requirements

E.X.2.1 *Description of Good Housekeeping Measures for Material Storage Areas.* In connection with E.X.1.1.1, describe in the SWPCP the containment area or enclosure for materials stored outdoors.

Schedule E – Sector-Specific Requirements for Industrial Activity**Sector Y – Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries****E.Y.1 Additional Technology-Based Effluent Limits**

- E.Y.1.1 *Controls for Rubber Manufacturers.* Minimize the discharge of zinc in your stormwater discharges. Following are some general control measure options to consider: using chemicals purchased in pre-weighed, sealed polyethylene bags; storing in-use materials in sealable containers, ensuring an airspace between the container and the cover to minimize “puffing” losses when the container is opened, and using automatic dispensing and weighing equipment.
- E.Y.1.1.1 *Zinc Bags.* Ensure proper handling and storage of zinc bags at your facility. Following are some control measure options: employee training on the handling and storage of zinc bags, indoor storage of zinc bags, cleanup of zinc spills without washing the zinc into the storm drain, and the use of 2,500-pound sacks of zinc rather than 50- to 100-pound sacks.
- E.Y.1.1.2 *Dumpsters.* Minimize discharges of zinc from dumpsters through implementation of control measures such as the following, where determined to be feasible (list not exclusive): covering the dumpster; moving the dumpster indoors; and providing a lining for the dumpster.
- E.Y.1.1.3 *Dust Collectors and Baghouses.* Minimize contributions of zinc to stormwater from dust collectors and baghouses. Replace or repair, as appropriate, improperly operating dust collectors and baghouses.
- E.Y.1.1.4 *Grinding Operations.* Minimize contamination of stormwater as a result of dust generation from rubber grinding operations. Where determined to be feasible, install a dust collection system.
- E.Y.1.1.5 *Zinc Stearate Coating Operations.* Minimize the potential for stormwater contamination from drips and spills of zinc stearate slurry that may be released to the storm drain. Where determined to be feasible, use alternative compounds to zinc stearate.
- E.Y.1.2 *Controls for Plastic Products Manufacturers.* Minimize the discharge of plastic resin pellets in your stormwater discharges through implementation of control measures such as the following, where determined to be feasible (list not exclusive): minimizing spills; cleaning up of spills promptly and thoroughly; sweeping thoroughly; pellet capturing; employee education; and disposal precautions.

E.Y.2 Additional SWPCP Requirements

- E.Y.2.1 *Potential Pollutant Sources for Rubber Manufacturers.* Document in your SWPCP the use of zinc at your facility and the possible pathways through which zinc may be discharged in stormwater runoff.

Schedule E – Sector-Specific Requirements for Industrial Activity

Sector Z – Leather Tanning and Finishing

E.Z.1 Additional Technology-Based Effluent Limits

E.Z.1.1 Good Housekeeping Measures.

- E.Z.1.1.1 Storage Areas for Raw, Semiprocessed, or Finished Tannery By-products.* Minimize contamination of stormwater runoff from pallets and bales of raw, semiprocessed, or finished tannery by-products (e.g., splits, trimmings, shavings). Store or protect indoors with polyethylene wrapping, tarpaulins, roofed storage, etc. where practicable. Place materials on an impermeable surface and enclose or put berms (or equivalent measures) around the area to prevent stormwater run-on and runoff where practicable.
- E.Z.1.1.2 Material Storage Areas.* Label storage containers of all materials (e.g., specific chemicals, hazardous materials, spent solvents, waste materials) minimize contact of such materials with stormwater.
- E.Z.1.1.3 Buffing and Shaving Areas.* Minimize contamination of stormwater runoff with leather dust from buffing and shaving areas through implementation of control measures such as the following, where determined to be feasible (list not exclusive): implementing dust collection enclosures; implementing preventive inspection and maintenance programs; or other appropriate preventive measures.
- E.Z.1.1.4 Receiving, Unloading, and Storage Areas.* Minimize contamination of stormwater runoff from receiving, unloading, and storage areas. If these areas are exposed, implement control measures such as the following, where determined to be feasible (list not exclusive): covering all hides and chemical supplies; diverting drainage to the process sewer; or grade berming or curbing the area to prevent stormwater runoff.
- E.Z.1.1.5 Outdoor Storage of Contaminated Equipment.* Minimize contact of stormwater with contaminated equipment through implementation of control measures such as the following, where determined to be feasible (list not exclusive): covering equipment, diverting drainage to the process sewer, and cleaning thoroughly prior to storage.
- E.Z.1.1.6 Waste Management.* Minimize contamination of stormwater runoff from waste storage areas through implementation of control measures such as the following, where determined to be feasible (list not exclusive): covering dumpsters; moving waste management activities indoors; covering waste piles with temporary covering material such as tarpaulins or polyethylene; and minimizing stormwater runoff by enclosing the area or building berms around the area.

E.Z.2 Additional SWPCP Requirements

- E.Z.2.1 Drainage Area Site Map.* Identify in your SWPCP where any of the following may be exposed to precipitation or surface runoff: processing and storage areas of the beamhouse, tanyard, and re-tan wet finishing and dry finishing operations.
- E.Z.2.2 Potential Pollutant Sources.* Document in your SWPCP the following sources and activities that have potential pollutants associated with them (as appropriate): temporary or permanent storage of fresh and brine-cured hides; extraneous hide substances and hair; leather dust, scraps, trimmings, and shavings.

Schedule E – Sector-Specific Requirements for Industrial Activity

Sector AA – Fabricated Metal Products

E.AA.1 Additional Technology-Based Effluent Limits

E.AA.1.1 Good Housekeeping Measures.

E.AA.1.1.1 *Raw Steel Handling Storage.* Minimize the generation of and/or recover and properly manage scrap metals, fines, and iron dust. Include measures for containing materials within storage handling areas.

E.AA.1.1.2 *Paints and Painting Equipment.* Minimize exposure of paint and painting equipment to stormwater.

E.AA.1.2 Spill Prevention and Response Procedures. Ensure that the necessary equipment to implement a cleanup is available to personnel. The following areas should be addressed

E.AA.1.2.1 *Metal Fabricating Areas.* Maintain clean, dry, orderly conditions in these areas. Consider using dry clean-up techniques.

E.AA.1.2.2 *Storage Areas for Raw Metal.* Keep these areas free of conditions that could cause, or impede appropriate and timely response to, spills or leakage of materials through implementation of control measures such as the following, where determined to be feasible (list not exclusive): maintaining storage areas so that there is easy access in the event of a spill, and labeling stored materials to aid in identifying spill contents.

E.AA.1.2.3 *Metal Working Fluid Storage Areas.* Minimize the potential for stormwater contamination from storage areas for metal working fluids.

E.AA.1.2.4 *Cleaners and Rinse Water.* Control and clean up spills of solvents and other liquid cleaners, control sand buildup and disbursement from sand-blasting operations, and prevent exposure of recyclable wastes. Substitute environmentally benign cleaners when possible.

E.AA.1.2.5 *Lubricating Oil and Hydraulic Fluid Operations.* Minimize the potential for stormwater contamination from lubricating oil and hydraulic fluid operations. Use monitoring equipment or other devices to detect and control leaks and overflows where feasible. Install perimeter controls such as dikes, curbs, grass filter strips, or equivalent measures where feasible.

E.AA.1.2.6 *Chemical Storage Areas.* Minimize stormwater contamination and accidental spillage in chemical storage areas. Include a program to inspect containers and identify proper disposal methods.

E.AA.1.3 Spills and Leaks. In your spill prevention and response procedures, pay attention to the following materials (at a minimum): chromium, toluene, pickle liquor, sulfuric acid, zinc and other water priority chemicals, and hazardous chemicals and wastes.

E.AA.2 Additional SWPCP Requirements

E.AA.2.1 *Drainage Area Site Map.* Document in your SWPCP where any of the following may be exposed to precipitation or surface runoff: raw metal storage areas; finished metal storage areas; scrap disposal collection sites; equipment storage areas; retention and detention basins; temporary and permanent diversion dikes or berms; right-of-way or perimeter diversion devices; sediment traps and barriers; processing areas, including outside painting areas; wood preparation; recycling; and raw material storage.

E.AA.2.2 *Potential Pollutant Sources.* Document in your SWPCP the following additional sources and activities that have potential pollutants associated with them: loading and unloading operations for paints, chemicals, and raw materials; outdoor storage activities for raw materials, paints,

empty containers, corn cobs, chemicals, and scrap metals; outdoor manufacturing or processing activities such as grinding, cutting, degreasing, buffing, and brazing; onsite waste disposal practices for spent solvents, sludge, pickling baths, shavings, ingot pieces, and refuse and waste piles.

E.AA.3 Additional Inspection Requirements

E.AA.3.1 *Inspections.* At a minimum, include the following areas in all inspections: raw metal storage areas, finished product storage areas, material and chemical storage areas, recycling areas, loading and unloading areas, equipment storage areas, paint areas, and vehicle fueling and maintenance areas. Also inspect areas associated with the storage of raw metals, spent solvents and chemicals storage areas, outdoor paint areas, and drainage from roof. Potential pollutants include chromium, zinc, lubricating oil, solvents, aluminum, oil and grease, methyl ethyl ketone, steel, and related materials.

E.AA.4 Sector-Specific Benchmarks

Table E.AA-1 identifies benchmarks that apply to the specific subsectors of Sector AA. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table E.AA-1

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Fabricated Metal Products, except Coating (SIC 3411-3499; 3911-3915)	Total Aluminum	0.75 mg/L
	Total Iron	1.0 mg/L
	Nitrate plus Nitrite Nitrogen	0.68 mg/L
Fabricated Metal coating and Engraving (SIC 3479)	Nitrate plus Nitrite Nitrogen	0.68 mg/L

Schedule E – Sector-Specific Requirements for Industrial Activity

Sector AB – Transportation Equipment, Industrial or Commercial Machinery

E.AB.1 Additional SWPCP Requirements

E.AB.1.1 *Drainage Area Site Map*. Identify in your SWPCP where any of the following may be exposed to precipitation or surface runoff: vents and stacks from metal processing and similar operations.

SCHEDULE F
NPDES GENERAL CONDITIONS

SECTION A. STANDARD CONDITIONS**A1. Duty to Comply with Permit**

The permittee must comply with all conditions of this permit. Failure to comply with any permit condition is a violation of Oregon Revised Statutes (ORS) 468B.025 and the federal Clean Water Act and is grounds for an enforcement action. Failure to comply is also grounds for DEQ to terminate, modify and reissue, revoke, or deny renewal of a permit.

A2. Penalties for Water Pollution and Permit Condition Violations

The permit is enforceable by DEQ or EPA, and in some circumstances also by third-parties under the citizen suit provisions of 33 USC § 1365. DEQ enforcement is generally based on provisions of state statutes and Environmental Quality Commission (EQC) rules, and EPA enforcement is generally based on provisions of federal statutes and EPA regulations.

ORS 468.140 allows DEQ to impose civil penalties up to \$25,000 per day for violation of a term, condition, or requirement of a permit.

Under ORS 468.943, unlawful water pollution in the second degree, is a Class A misdemeanor and is punishable by a fine of up to \$25,000, imprisonment for not more than one year, or both. Each day on which a violation occurs or continues is a separately punishable offense.

Under ORS 468.946, unlawful water pollution in the first degree is a Class B felony and is punishable by a fine of up to \$250,000, imprisonment for not more than 10 years, or both.

The Clean Water Act provides that any person who violates permit condition, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$25,000 per day for each violation.

The Clean Water Act provides that any person who *negligently* violates any condition, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both.

In the case of a second or subsequent conviction for a *negligent* violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both.

Any person who *knowingly* violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both.

In the case of a second or subsequent conviction for a *knowing* violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.

Any person who *knowingly* violates section any permit condition, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both.

In the case of a second or subsequent conviction for a *knowing* endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both.

An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

Any person may be assessed an administrative penalty by the Administrator for violating any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act.

Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000.

Penalties for Class II violations are not to exceed \$10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$125,000.

A3. Duty to Mitigate

The permittee must take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit. In addition, upon request of DEQ, the permittee must correct any adverse impact on the environment or human health resulting from noncompliance with this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

A4. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and have the permit renewed. The application must be submitted at least 180 days before the expiration date of this permit.

DEQ may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date.

A5. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:

- a. Violation of any term, condition, or requirement of this permit, a rule, or a statute.
- b. Obtaining this permit by misrepresentation or failure to disclose fully all material facts.
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

- d. The permittee is identified as a Designated Management Agency or allocated a wasteload under a total maximum daily load (TMDL).
- e. New information or regulations.
- f. Modification of compliance schedules.
- g. Requirements of permit reopener conditions
- h. Correction of technical mistakes made in determining permit conditions.
- i. Determination that the permitted activity endangers human health or the environment.
- j. Other causes as specified in 40 CFR §§ 122.62, 122.64, and 124.5.
- k. For communities with combined sewer overflows (CSOs):
 - (1) To comply with any state or federal law regulation for CSOs that is adopted or promulgated subsequent to the effective date of this permit.
 - (2) If new information that was not available at the time of permit issuance indicates that CSO controls imposed under this permit have failed to ensure attainment of water quality standards, including protection of designated uses.
 - (3) Resulting from implementation of the permittee's long-term control plan and/or permit conditions related to CSOs.

The filing of a request by the permittee for a permit modification, revocation or reissuance, termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

A6. Toxic Pollutants

The permittee must comply with any applicable effluent standards or prohibitions established under Oregon Administrative Rule (OAR) 340-041-0033 and section 307(a) of the federal Clean Water Act for toxic pollutants, and with standards for sewage sludge use or disposal established under section 405(d) of the federal Clean Water Act, within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

A7. Property Rights and Other Legal Requirements

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege, or authorize any injury to persons or property or invasion of any other private rights, or any infringement of federal, tribal, state, or local laws or regulations.

A8. Permit References

Except for effluent standards or prohibitions established under section 307(a) of the federal Clean Water Act and OAR 340-041-0033 for toxic pollutants, and standards for sewage sludge use or disposal established under section 405(d) of the federal Clean Water Act, all rules and statutes referred to in this permit are those in effect on the date this permit is issued.

A9. Permit Fees

The permittee must pay the fees required by OAR.

SECTION B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

B1. Proper Operation and Maintenance

The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve

compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires

the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

B2. Need to Halt or Reduce Activity Not a Defense

For industrial or commercial facilities, upon reduction, loss, or failure of the treatment facility, the permittee must, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced or lost. It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

B3. Bypass of Treatment Facilities

a. Definitions

- (1) "Bypass" means intentional diversion of waste streams from any portion of the treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, provided the diversion is to allow essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs b and c of this section.
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Prohibition of bypass.

- (1) Bypass is prohibited and DEQ may take enforcement action against a permittee for bypass unless:
 - i. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventative maintenance; and
 - iii. The permittee submitted notices and requests as required under General Condition B3.c.
- (2) DEQ may approve an anticipated bypass, after considering its adverse effects and any alternatives to bypassing, if DEQ determines that it will meet the three conditions listed above in General Condition B3.b.(1).

c. Notice and request for bypass.

- (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, a written notice must be submitted to DEQ at least ten days before the date of the bypass.

- (2) Unanticipated bypass. The permittee must submit notice of an unanticipated bypass as required in General Condition D5.

B4. Upset

- a. Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operation error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of General Condition B4.c are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and that the permittee can identify the causes(s) of the upset;
 - (2) The permitted facility was at the time being properly operated;
 - (3) The permittee submitted notice of the upset as required in General Condition D5, hereof (24-hour notice); and
 - (4) The permittee complied with any remedial measures required under General Condition A3 hereof.
- d. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

B5. Treatment of Single Operational Upset

For purposes of this permit, a single operational upset that leads to simultaneous violations of more than one pollutant parameter will be treated as a single violation. A single operational upset is an exceptional incident that causes simultaneous, unintentional, unknowing (not the result of a knowing act or omission), temporary noncompliance with more than one federal Clean Water Act effluent discharge pollutant parameter. A single operational upset does not include federal Clean Water Act violations involving discharge without a NPDES permit or noncompliance to the extent caused by improperly designed or inadequate treatment facilities. Each day of a single operational upset is a violation.

B6. Overflows from Wastewater Conveyance Systems and Associated Pump Stations

- a. Definition. "Overflow" means any spill, release or diversion of sewage including:
 - (1) An overflow that results in a discharge to waters of the United States; and
 - (2) An overflow of wastewater, including a wastewater backup into a building (other than a backup caused solely by a blockage or other malfunction in a privately owned sewer or building lateral), even if that overflow does not reach waters of the United States.
- b. Reporting required. All overflows must be reported orally to DEQ within 24 hours from the time the permittee becomes aware of the overflow. Reporting procedures are described in more detail in General Condition D5.

B7. Public Notification of Effluent Violation or Overflow

If effluent limitations specified in this permit are exceeded or an overflow occurs that threatens public health, the permittee must take such steps as are necessary to alert the public, health agencies and other affected entities (for example, public water systems) about the extent and nature of the discharge in accordance with the notification procedures developed under General Condition B8.

Such steps may include, but are not limited to, posting of the river at access points and other places, news releases, and paid announcements on radio and television.

B8. Emergency Response and Public Notification Plan

The permittee must develop and implement an emergency response and public notification plan that identifies measures to protect public health from overflows, bypasses, or upsets that may endanger public health. At a minimum the plan must include mechanisms to:

- a. Ensure that the permittee is aware (to the greatest extent possible) of such events;
- b. Ensure notification of appropriate personnel and ensure that they are immediately dispatched for investigation and response;
- c. Ensure immediate notification to the public, health agencies, and other affected public entities (including public water systems). The overflow response plan must identify the public health and other officials who will receive immediate notification;
- d. Ensure that appropriate personnel are aware of and follow the plan and are appropriately trained;
- e. Provide emergency operations; and
- f. Ensure that DEQ is notified of the public notification steps taken.

B9. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters must be disposed of in such a manner as to prevent any pollutant from such materials from entering waters of the state, causing nuisance conditions, or creating a public health hazard.

SECTION C. MONITORING AND RECORDS**C1. Representative Sampling**

Sampling and measurements taken as required herein must be representative of the volume and nature of the monitored discharge. All samples must be taken at the monitoring points specified in this permit, and must be taken, unless otherwise specified, before the effluent joins or is diluted by any other waste stream, body of water, or substance. Monitoring points must not be changed without notification to and the approval of DEQ. Samples must be collected in accordance with requirements in 40 CFR part 122.21 and 40 CFR part 403 Appendix E.

C2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices must be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices must be installed, calibrated and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected must be capable of measuring flows with a maximum deviation of less than ± 10 percent from true discharge rates throughout the range of expected discharge volumes.

C3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR part 136 or, in the case of sludge (biosolids) use and disposal, approved under 40 CFR part 503 unless other test procedures have been specified in this permit.

For monitoring of recycled water with no discharge to waters of the state, monitoring must be conducted according to test procedures approved under 40 CFR part 136 or as specified in the most

recent edition of Standard Methods for the Examination of Water and Wastewater unless other test procedures have been specified in this permit or approved in writing by DEQ.

C4. Penalties for Tampering

The federal Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit may, upon conviction, be punished by a fine of not more than \$10,000 per violation, imprisonment for not more than two years, or both. If a conviction of a person is for a violation committed after a first conviction of such person, punishment is a fine not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or both.

C5. Reporting of Monitoring Results

Monitoring results must be summarized each month on a Discharge Monitoring Report form approved by DEQ. The reports must be submitted monthly and are to be mailed, delivered or otherwise transmitted by the 15th day of the following month unless specifically approved otherwise in Schedule B of this permit.

C6. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or, in the case of sludge (biosolids) use and disposal, approved under 40 CFR part 503, or as specified in this permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report. Such increased frequency must also be indicated. For a pollutant parameter that may be sampled more than once per day (for example, total residual chlorine), only the average daily value must be recorded unless otherwise specified in this permit.

C7. Averaging of Measurements

Calculations for all limitations that require averaging of measurements must utilize an arithmetic mean, except for bacteria which must be averaged as specified in this permit.

C8. Retention of Records

Records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities must be retained for a period of at least 5 years (or longer as required by 40 CFR part 503). Records of all monitoring information including all calibration and maintenance records, all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit and records of all data used to complete the application for this permit must be retained for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of DEQ at any time.

C9. Records Contents

Records of monitoring information must include:

- a. The date, exact place, time, and methods of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

C10. Inspection and Entry

The permittee must allow DEQ or EPA upon the presentation of credentials to:

- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by state law, any substances or parameters at any location.

C11. Confidentiality of Information

Any information relating to this permit that is submitted to or obtained by DEQ is available to the public unless classified as confidential by the Director of DEQ under ORS 468.095. The permittee may request that information be classified as confidential if it is a trade secret as defined by that statute. The name and address of the permittee, permit applications, permits, effluent data, and information required by NPDES application forms under 40 CFR § 122.21 are not classified as confidential [40 CFR § 122.7(b)].

SECTION D. REPORTING REQUIREMENTS**D1. Planned Changes**

The permittee must comply with OAR 340-052, "Review of Plans and Specifications" and 40 CFR § 122.41(l)(1). Except where exempted under OAR 340-052, no construction, installation, or modification involving disposal systems, treatment works, sewerage systems, or common sewers may be commenced until the plans and specifications are submitted to and approved by DEQ. The permittee must give notice to DEQ as soon as possible of any planned physical alternations or additions to the permitted facility.

D2. Anticipated Noncompliance

The permittee must give advance notice to DEQ of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

D3. Transfers

This permit may be transferred to a new permittee provided the transferee acquires a property interest in the permitted activity and agrees in writing to fully comply with all the terms and conditions of the permit and EQC rules. No permit may be transferred to a third party without prior written approval from DEQ. DEQ may require modification, revocation, and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary

under 40 CFR § 122.61. The permittee must notify DEQ when a transfer of property interest takes place.

D4. Compliance Schedule

Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date. Any reports of noncompliance must include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.

D5. Twenty-Four Hour Reporting

The permittee must report any noncompliance that may endanger health or the environment. Any information must be provided orally (by telephone) to the DEQ regional office or Oregon Emergency Response System (1-800-452-0311) as specified below within 24 hours from the time the permittee becomes aware of the circumstances.

a. Overflows.

(1) Oral Reporting within 24 hours.

i. For overflows other than basement backups, the following information must be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311. For basement backups, this information should be reported directly to the DEQ regional office.

- (a) The location of the overflow;
- (b) The receiving water (if there is one);
- (c) An estimate of the volume of the overflow;
- (d) A description of the sewer system component from which the release occurred (for example, manhole, constructed overflow pipe, crack in pipe); and
- (e) The estimated date and time when the overflow began and stopped or will be stopped.

ii. The following information must be reported to the DEQ regional office within 24 hours, or during normal business hours, whichever is earlier:

- (a) The OERS incident number (if applicable); and
- (b) A brief description of the event.

(2) Written reporting postmarked within 5 days.

i. The following information must be provided in writing to the DEQ regional office within 5 days of the time the permittee becomes aware of the overflow:

- (a) The OERS incident number (if applicable);
- (b) The cause or suspected cause of the overflow;
- (c) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the overflow and a schedule of major milestones for those steps;
- (d) Steps taken or planned to mitigate the impact(s) of the overflow and a schedule of major milestones for those steps; and
- (e) For storm-related overflows, the rainfall intensity (inches/hour) and duration of the storm associated with the overflow.

DEQ may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

b. Other instances of noncompliance.

(1) The following instances of noncompliance must be reported:

- i. Any unanticipated bypass that exceeds any effluent limitation in this permit;
 - ii. Any upset that exceeds any effluent limitation in this permit;
 - iii. Violation of maximum daily discharge limitation for any of the pollutants listed by DEQ in this permit; and
 - iv. Any noncompliance that may endanger human health or the environment.
- (2) During normal business hours, the DEQ regional office must be called. Outside of normal business hours, DEQ must be contacted at 1-800-452-0311 (Oregon Emergency Response System).
- (3) A written submission must be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission must contain:
 - i. A description of the noncompliance and its cause;
 - ii. The period of noncompliance, including exact dates and times;
 - iii. The estimated time noncompliance is expected to continue if it has not been corrected;
 - iv. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; and
 - v. Public notification steps taken, pursuant to General Condition B7.
- (4) DEQ may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

D6. Other Noncompliance

The permittee must report all instances of noncompliance not reported under General Condition D4 or D5 at the time monitoring reports are submitted. The reports must contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times;
- c. The estimated time noncompliance is expected to continue if it has not been corrected; and
- d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

D7. Duty to Provide Information

The permittee must furnish to DEQ within a reasonable time any information that DEQ may request to determine compliance with the permit or to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit. The permittee must also furnish to DEQ, upon request, copies of records required to be kept by this permit.

Other Information: When the permittee becomes aware that it has failed to submit any relevant facts or has submitted incorrect information in a permit application or any report to DEQ, it must promptly submit such facts or information.

D8. Signatory Requirements

All applications, reports or information submitted to DEQ must be signed and certified in accordance with 40 CFR § 122.22.

D9. Falsification of Information

Under ORS 468.953, any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, is subject to a Class C felony punishable by a fine not to exceed \$125,000 per violation and up to 5 years in prison per ORS chapter 161. Additionally, according to 40 CFR § 122.41(k)(2), any person who knowingly

makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit including monitoring reports or reports of compliance or non-compliance will, upon conviction, be punished by a federal civil penalty not to exceed \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

D10. Changes to Indirect Dischargers

The permittee must provide adequate notice to DEQ of the following:

- a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of the federal Clean Water Act if it were directly discharging those pollutants and;
- b. Any substantial change in the volume or character of pollutants being introduced into the POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
- c. For the purposes of this paragraph, adequate notice must include information on (i) the quality and quantity of effluent introduced into the POTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

SECTION E. DEFINITIONS

- E1. *BOD* or *BOD₅* means five-day biochemical oxygen demand.
- E2. *CBOD* or *CBOD₅* means five-day carbonaceous biochemical oxygen demand.
- E3. *TSS* means total suspended solids.
- E4. *Bacteria* means but is not limited to fecal coliform bacteria, total coliform bacteria, *Escherichia coli* (*E. coli*) bacteria, and *Enterococcus* bacteria.
- E5. *FC* means fecal coliform bacteria.
- E6. *Total residual chlorine* means combined chlorine forms plus free residual chlorine
- E7. *Technology based permit effluent limitations* means technology-based treatment requirements as defined in 40 CFR § 125.3, and concentration and mass load effluent limitations that are based on minimum design criteria specified in OAR 340-041.
- E8. *mg/l* means milligrams per liter.
- E9. *µg/l* means microgram per liter.
- E10. *kg* means kilograms.
- E11. *m³/d* means cubic meters per day.
- E12. *MGD* means million gallons per day.
- E13. *Average monthly effluent limitation* as defined at 40 CFR § 122.2 means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.
- E14. *Average weekly effluent limitation* as defined at 40 CFR § 122.2 means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.
- E15. *Daily discharge* as defined at 40 CFR § 122.2 means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge must be calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge must be calculated as the average measurement of the pollutant over the day.
- E16. *24-hour composite sample* means a sample formed by collecting and mixing discrete samples taken periodically and based on time or flow.

E17. *Grab sample* means an individual discrete sample collected over a period of time not to exceed 15 minutes.

E18. *Quarter* means January through March, April through June, July through September, or October through December.

E19. *Month* means calendar month.

E20. *Week* means a calendar week of Sunday through Saturday.

E21. *POTW* means a publicly-owned treatment works.



Oregon

Kate Brown, Governor

WFalls/303

Konen/131

Department of Environmental Quality

4026 Fairview Industrial Dr SE

Salem, OR 97302-1142

July 16, 2019

Brian Konen
Willamette Falls Paper Company
4800 Mill St
West Linn, OR 97068-3357

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Permit Transfer NPDES-IW-B01 permit # 100976
File #: 21489
EPA #: OR0000787
Location: Willamette Falls Paper Company, 4800 Mill ST, West Linn
Clackamas County

Dear Mr. Konen:

In response to your transfer application and fee, DEQ has transferred NPDES-IW-B01 Permit # 100976 from West Linn Paper Company to Willamette Falls Paper Company.

A copy of the permit is enclosed. Compliance with your permit is required at all times.

Please be aware that you will be billed an annual fee every year for this permit. If you have any questions, please contact Mike Pinney at 503-229-5310 or pinney.mike@deq.state.or.us.

Sincerely,

Tiffany Yelton-Bram
Water Quality Manager
Northwest Region

TYB:ab

cc: Source File, Portland Office, DEQ
ec: Mike Pinney, Portland, DEQ
Tanya Petersen, Willamette Falls Paper, Environmental Director
ORMS

WFALLS 000369



OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
OREGON TITLE V OPERATING PERMIT

ADDENDUM NO. 1
ADMINISTRATIVE AMENDMENT

Northwest Region
700 NE Multnomah Street, Suite 600
Portland OR 97232-4100
Telephone: (503) 229-5263

Issued in accordance with the provisions of ORS 468A.040, 468A.300 and based on the land use compatibility findings included in the permit Recordkeeping.

ISSUED TO:

Willamette Falls Paper Company, Inc.
P.O. Box 68
West Linn, Oregon 97068

INFORMATION RELIED UPON:

Application Number: 030803
Received: 7/1/2019


PLANT SITE LOCATION:

4800 West Mill Street
West Linn, Oregon 97068

LAND USE COMPATIBILITY STATEMENT:

From: City of West Linn
Dated: 12/16/94

ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY



Matt Hoffman, Northwest Region Air Quality Manager



Date

Nature of Business: Paper Mill
Primary SIC: 2621

RESPONSIBLE OFFICIAL:

President

FACILITY CONTACT PERSON

Name: Tanya Peterson
Title: Environmental Director
Phone (503) 701-2044

In accordance with OAR 340-218-0150(1)(d), DEQ has revised Oregon Title V Operating Permit No. 03-2145. This administrative amendment changes the owner of the facility from West Linn Paper Company to Willamette Falls Paper Company, Inc.

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
OREGON TITLE V OPERATING PERMIT
REVIEW REPORT

Northwest Region
700 NE Multnomah Street, Suite 600
Portland OR 97232-4100

Source Information

SIC	2621
NAICS	322121

Source Categories (Part and code)	B-60, B-12, B-52

Compliance and Emissions Monitoring Requirements

Unassigned emissions	y
Emission credits	n
Compliance schedule	n
Source test [date(s)]	n

COMS	n
CEMS	n
Ambient monitoring	n

Reporting Requirements

Annual report (due date)	February 15
Emission fee report (due date)	February 15
SACC (due date)	July 30
Quarterly report (due dates)	n

Monthly report (due dates)	n
Excess emissions report	y
Other reports	n

Air Programs:

NSPS (list subparts)	n
NESHAP (list subparts)	JJJJJ
CAM	n
Regional Haze (RH)	n
Synthetic Minor (SM)	y
Part 68 Risk Management	n
CFC	n
RACT	y
TACT	n

Title V	y
ACDP (SIP)	n
Major HAP source	n
Federal major source	y
NSR	n
PSD	n
Acid Rain	n
Clean Air Mercury Rule (CAMR)	n

PERMIT MODIFICATION REQUEST

1. On July 1, 2019 Willamette Falls Paper Company submitted an Administrative Amendment (MD904), assigned Application No.030803, requesting a change of ownership from the West Linn Paper Company to the Willamette Falls Paper Company for the paper mill located at 4800 West Mill Street, West Linn, Oregon 97068.

DEPARTMENT EVALUATION

2. Per OAR 340-218-0150(1)(d), an administrative amendment is a permit revision that allows for a change in the ownership or operational control of a source where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department.

In a letter dated July 3, 2019, Willamette Falls Paper Company, Inc., as represented by Lindsay Hart, LLP has assumed coverage, responsibility and liability for compliance with the Title V Permit 03-2145, as issued by the Department to the former owner, West Linn Paper Company, and signed on February 24, 2016. Willamette Falls Paper Company, Inc. is not proposing to make changes to the paper mill at this time, therefore no changes have been made to the permit other than the cover page indicating the new ownership.

PUBLIC NOTICE

3. Public Notice is not required for administrative amendments to Oregon Title V Operating Permits.

STATE OF OREGON
WATER RESOURCES DEPARTMENT
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1266

Contact: Dam Safety Program
at (503)986-0829 or
e-mail: damsafety@wrd.state.or.us

Invoice #: 130415

Date: 01/30/2020

WILLAMETTE FALLS PAPER COMPANY ATTN: MIKAYLA
DOMINGO
4800 MILL ST
WEST LINN, OR 97068

Fees Due:	\$100.00
Late Fees:	
Amount Received:	
Total Due:	\$100.00

Billing Year 2020 Dam Information

Dam ID	Dam Name	Hazard	Fee Amount	Amount Received	Amount Due
OR03937	CROWN ZELLERBACH (LAGOON)	Low	\$100.00		\$100.00

Dam Safety Fee

Total Due: \$100.00

Approved by: *[Signature]*
Date: 1/31/20

Terms: Due in 180 days to avoid penalty fee

Internal Office Use Only

Reprint Check Remittance

WFalls/303

Konen/136

Page: 1

Willamette Falls Paper Company, Inc.
 4800 Mill Street
 West Linn OR 97068

Vendor ID	Vendor Name	Check Name	Payment Number	Check Date	Check Number		
OREG0200	Oregon Water Resources Departm	Oregon Water Resources Department	43002236	3/3/2020	1755		
Payment Type	Check Amount						
Check	\$100.00						
Our Voucher Number	Your Voucher Number	Date	Amount	Amount Paid	Discount	Writeoff	Net
41003032	130415	1/30/2020	\$100.00	\$100.00	\$0.00	\$0.00	\$100.00
			\$100.00	\$100.00	\$0.00	\$0.00	\$100.00

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON
UM 2107**

WILLAMETTE FALLS PAPER COMPANY)
and WEST LINN PAPER COMPANY,)
)
Complainants,)
)
vs.)
)
PORTLAND GENERAL ELECTRIC)
COMPANY,)
)
Defendant.)
)
)
)
)
)

EXHIBIT 304
Equipment Purchased by B. Konen for WFalls

CONFIDENTIAL
Confidential Pursuant
To General Protective Order

**Willamette Falls Paper Company
Testimony of Brian Konen**

November 02, 2020

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

UM 2107

WILLAMETTE FALLS PAPER COMPANY)
and WEST LINN PAPER COMPANY,)
)
Complainants,)
)
vs.)
)
PORTLAND GENERAL ELECTRIC)
COMPANY,)
)
Defendant.)
)
)
)
_____)

REDACTED

**REPLY TESTIMONY OF
BRADLEY G. MULLINS
ON BEHALF OF
WILLAMETTE FALLS PAPER COMPANY**

November 02, 2020

TABLE OF CONTENTS

I.	Introduction and Summary	1
II.	WLP’s Electric Service Agreement Did Not Terminate	6
	a. PGE Did Not Actually Disconnect Services	9
	b. Neither WLP, Nor Its Successors, Vacated the Paper Mill Premises	12
	c. The Paper Mill Was Providing PGE’s Power Operations with Other Support Services, Which More Than Compensated for WLP’s Electric Services	15
	d. PGE Assented To, and Benefited From, the Creditor Trust.....	21
	e. PGE Never Requested WFalls or WLP To Pay the Outstanding Amounts	23
III.	PGE Did Not Assume the Paper Mill’s Electric Services	24
	a. The Non-Revenue Account In PGE’s Name Was Irrelevant To WLP’s Electric Service Agreement	25
	b. PGE Handled Other Utility Services At the Paper Mill Differently	27
	c. PGE Never Owned the Paper Mill	29
	d. PGE Confused Its Non-Regulated Landlord and Regulated Electric Service Functions	33
	e. PGE’s Actions Were Undocumented and Unsupported.....	36
	f. PGE’s Expectations About the Paper Mill Were Wrong and Irrelevant	40
	g. The Non-Revenue Account Status Did Not Preclude WFalls From Taking Services On Schedule 489	43
IV.	Assignment of LTDA Services Will Not Harm Other Customers	44
V.	NLDA Program.....	46
VI.	Conclusion	55

EXHIBIT LIST

WFalls/401 Conf – Portland General Electric Responses to Data Requests

WFalls/402 Conf – PGE Request to Reimburse, and Not Take Over, City of West Linn Water Bill

WFalls/403 Conf – WFalls Account Reconciliation on Schedule 489

I. INTRODUCTION AND SUMMARY

Q. ARE YOU THE SAME WITNESS THAT FILED OPENING TESTIMONY IN THIS DOCKET?

A. Yes. I previously submitted testimony on behalf of the Willamette Falls Paper Company (“WFalls”) and West Linn Paper Company (“WLP”) concerning the paper mill (“Paper Mill”) located on the northern side of the Willamette Falls in West Linn, Oregon.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I respond to the Response Testimony of Portland General Electric Company (“PGE”) witnesses Faist, Clark, Wenzel, and Macfarlane regarding the electric services of the Paper Mill during the period of restructuring described in my Opening Testimony. PGE’s claim in its Response Testimony that the Paper Mill’s long-term direct access (“LTDA”) Agreement was simply terminated in the normal course of business, and that PGE subsequently opened a new service account in its own name, is not supported by facts and oversimplifies its relationship with the Paper Mill property. Specifically, I discuss how it is consistent with PGE’s Tariffs and Commission regulations to allow WLP to assign the Paper Mill’s LTDA services to WFalls, the new owner and operator of the Paper Mill assets. I also discuss WFalls eligibility for the New Load Direct Access (“NLDA”) Program.

Q. PLEASE SUMMARIZE YOUR REPLY TESTIMONY.

A. As a result of the historical and complex relationships between the Paper Mill and PGE’s Sullivan Plant, PGE was confused and conflicted about to handle WLP’s business restructuring. PGE faced a unique situation, and ended up taking a series of actions with respect to power service to the Paper Mill property that were unprecedented.¹ These actions

¹ WFalls/401, Mullins/1 (PGE’s Revised Resp. to WFalls DR 13).

1 were not consistent with PGE’s Tariff or Commission regulations, which did not allow PGE,
2 either as a landlord or the electric service provider, to simply take over the electric services to
3 the former WLP property, including the real property and equipment that was transferred from
4 WLP to Belgravia Pulp Holdings (“BPH”). WLP’s LTDA rights were intended to transfer,
5 along with all of the other Paper Mill assets, to WFalls. And even if the LTDA Agreement did
6 not transfer, WLP and WFalls have executed an assignment agreement assigning any LTDA
7 rights still owned by WLP. WLP is still an operating company in Oregon and in the process of
8 assigning other contracts and permits to WFalls.

9 The Complainants continue to request the Commission require PGE to honor the
10 assignment of the LTDA Agreement to WFalls. This is not an unreasonable request and will
11 not harm other customers in any way. PGE, however, has continued to refuse the
12 Complainants requests alleging, among other things, that the former LTDA Agreement
13 “terminated” by virtue of non-payment.

14 PGE’s claims in its Response Testimony that it was not compensated for the electric
15 services provided to the Paper Mill after WLP stopped paper production fundamentally
16 misrepresent the relationship between PGE’s T.W. Sullivan Hydroelectric Plant (“Sullivan
17 Plant”) and the Paper Mill site. Over the period of restructuring, PGE received valuable
18 services from the Paper Mill assets, and PGE never terminated the LTDA Agreement, or took
19 any other action, because PGE recognized the value of the services it was receiving, in kind,
20 from the Paper Mill assets. The value of these services more than compensated for the electric
21 services PGE was providing to the Paper Mill under the LTDA Agreement. While the paper
22 machines were not operating in the restructuring period, the Paper Mill site remained active,
23 and PGE provided electric services to the site for the entire timeframe. The fact that almost

1 100% of the electricity consumption in the restructuring period was attributable to providing
2 supplemental services to PGE and the Sullivan Plant—such as bearing water, sewer services,
3 and fire suppression—only evidences the benefits PGE received from WLP during the
4 restructuring period, but in no way altered the terms or conditions of the regulated electric
5 services that PGE provided to the Paper Mill pursuant to Schedule 489 and the LTDA
6 Agreement.

7 PGE’s action of establishing a “non-revenue” account for the Paper Mill’s electric
8 services was simply PGE’s way of reimbursing WLP for the electricity costs associated with
9 the supplementary services WLP was providing to PGE, just as PGE reimbursed WLP for the
10 cost of utility water services from the City of West Linn.² When PGE established the non-
11 revenue account, PGE confirmed that it did not become a retail customer and did not take
12 assignment of the Paper Mill’s electric services for the Paper Mill. In fact, PGE could not have
13 taken over the Paper Mill’s electric service because PGE never actually owned any of the
14 Paper Mill operating assets—i.e. the transformers, the paper-making machines, and other
15 personal property that consumed the vast majority of the electric service to the Paper Mill site.
16 Further, as Mr. Konen discusses in his Reply Testimony, PGE was and is the landlord for only
17 a portion of the entire 120 acre Paper Mill site. WLP also never vacated the premises, as its
18 tenancy extended to June 30, 2019 by the express terms of the Lease Termination Agreement.³
19 PGE had no right or authority, either as the landlord or electric service provider, to take over or
20 modify the regulated electric services it was providing to the Paper Mill in restructuring period.

² See WFalls/402.

³ WFalls/104.

1 In PGE's words, it was merely "assuming responsibility"⁴ (i.e. reimbursing WLP) for the cost
2 of the electric service, which did not have the effect of modifying or cancelling WLP's LTDA
3 service election or the LTDA Agreement. The LTDA Agreement did not terminate and WFalls
4 was within its rights, as the new owner of the Paper Mill to take assignment of that agreement.

5 **Q. DO YOU HAVE ANY CLARIFICATIONS TO YOUR OPENING TESTIMONY?**

6 A. Yes. PGE's Response Testimony was helpful for understanding PGE's actions and inactions
7 with respect to the unique circumstances facing WLP, BPH and PGE during the shutdown and
8 the restructuring period. While I presented evidence in Opening Testimony suggesting that
9 there may have been willful misconduct, based on the explanations in PGE's Response
10 Testimony, I withdraw my recommendation for that conclusion along with any associated
11 damages, which would be under the jurisdiction of a state court. That is not to say, however,
12 that PGE's actions and handling of the Paper Mill's electric services were proper or consistent
13 with PGE's tariffs or Commission regulations.

14 **Q. ARE YOU CONTINUING TO RECOMMEND WFALLS BE PROVIDED WITH A**
15 **REFUND?**

16 A. Yes. PGE claims that the Commission does not have the ability to issue damages (refunds).⁵
17 While I am not a lawyer, my understanding is that the Commission can order refunds if a
18 customer is improperly placed on an incorrect rate schedule in contrast to contract damages
19 which require court actions. In Exhibit WFalls/403, I updated my calculation of the amount
20 that WFalls has overpaid as a result of being billed on Schedule 89, rather than Schedule 489
21 (Company Supplied Energy option) over the period July 2019 through September 2020. Over

4 PGE/200, Clark/10:19.

5 PGE/300, Wenzel-Macfarlane/32:17-18.

1 that period, WFalls has overpaid by \$ [REDACTED], including interest. I do not discuss this
2 calculation further, since PGE did not take issue or identify any errors in the calculations I
3 performed for Opening Testimony. The overpayment calculations I performed in Exhibit
4 WFalls/403 were modified only by adding two additional months of billing data and removing
5 the treble damages calculation. WFalls will address the proper treatment of this overpayment
6 in briefing.

7 From a policy perspective, however, PGE's conduct with respect to the electric services
8 has made it very difficult for the Paper Mill to operate, and it is appropriate for the
9 Commission to rectify the situation through a refund. According to Mr. Konan, PGE never
10 questioned the availability of direct access until March 2019. Then, PGE refused to provide a
11 copy of the LTDA Agreement and rejected the Paper Mill's requests to resume the LTDA
12 direct access services. PGE later accepted the Paper Mill's application for the NLDA program.
13 Nine months later, however, PGE claimed that the Paper Mill was no longer eligible even for
14 the NLDA program. In the meantime, PGE recovered claims from the WLP Creditor Trust for
15 electric service amounts that it was probably obliged to reimburse anyway, and only assumed
16 responsibility for the electric service amounts the day after its ability to submit a claim to the
17 Creditor Trust expired but months before the Effective Date of the Lease Termination
18 Agreement. The reason this dispute has taken so long, is in part due to these conflicting
19 positions, interpretations and actions from PGE. The Paper Mill deserves a straight and
20 consistent answer from PGE that clearly recognizes and separates the roles of the regulated
21 utility and its unregulated operations. Accordingly, I recommend that the Commission require
22 PGE to refund the amounts that the Paper Mill has overpaid by being improperly billed on
23 Schedule 89.

1 **Q. DO YOU CONTINUE TO SUPPORT A WAIVER OF THE NEW LOAD DIRECT**
2 **ACCESS RULES?**

3 A. Yes. I believe it is most appropriate for the Paper Mill to continue its LTDA services.
4 Notwithstanding, if the Paper Mill is deemed to be a new load that is ineligible to continue
5 services under its predecessor's LTDA service election, then the Paper Mill is qualified to
6 participate in the NLDA program. WFalls recognizes that its participation in the NLDA
7 program is contingent upon the Commission issuing a rule waiver for the one-year notice
8 requirement, as well as the energization requirements. The NLDA program has the potential to
9 provide significant benefits to customers in Oregon and must be administered in a fair, just,
10 and reasonable manner. Given the unique circumstances of this case, and for good cause
11 shown, I believe a waiver of the one-year notice period before taking services, as well as any
12 other waivers necessary for WFalls to participate in the program, is appropriate.

13 **II. WLP'S ELECTRIC SERVICE AGREEMENT DID NOT TERMINATE**

14 **Q. IS IT REASONABLE TO ALLOW WFALLS TO TAKE ASSIGNMENT OF THE**
15 **PAPER MILL'S LTDA SERVICES?**

16 A. Yes. When the owners of the soon to be formed WFalls first began lease negotiations with
17 PGE in April 2019, they had requested that PGE transfer the Paper Mill's former LTDA
18 electric service agreement to WFalls.⁶ PGE refused this request, however, claiming that the
19 Paper Mill could only be served as a cost of service customer with the potential to participate
20 in the NLDA Program.⁷ Under the terms of the LTDA electric service agreement, PGE was

⁶ See WFalls/202, Mullins/54 (Ken Peterson states "As I understand it, PGE's view is that WLP cannot simply start up as a Direct Access customer now." This is evidence that WLP requested to resume LTDA services, but that PGE refused).

⁷ WFalls/202, Mullins/69-70.

1 not allowed to unreasonably refuse a request to assign services.⁸ In this case, PGE refused
2 even to provide the president and chief executive officer of WLP or the soon to be formed
3 WFalls with a copy of the LTDA Agreement.⁹

4 **Q. WHY DOES PGE ALLEGE THAT WFALL IS NOT ELIGIBLE TO RESUME THE**
5 **DIRECT ACCESS SERVICE ELECTION OF WLP?**

6 A. PGE now alleges that WFalls is ineligible to resume the direct access services because WLP's
7 LTDA Agreement was "terminated."¹⁰ In its Response Testimony, PGE points to its
8 "disconnection" procedures in Rule H and Oregon Administrative Rule 860-021-0305. PGE
9 asserts that these procedures provide PGE with the unilateral right to terminate a customer's
10 electric service election and electric service agreement.

11 **Q. ARE PGE'S CLAIMS THAT THE LTDA CONTRACT TERMINATED VALID?**

12 A. No. PGE's claims are not supported by the facts. The disconnection procedures, which sound
13 good on their face, are irrelevant because they were never applied. PGE never disconnected
14 and never stopped providing electric services to the Paper Mill up to, and through, the time that
15 WFalls purchased the Paper Mill assets and began operations. PGE's claims that it had a right
16 to terminate WLP's electric service agreement for non-payment are also incorrect because PGE
17 never actually exercised that right. By its own admission, PGE deliberately and expressly
18 choose *not* to disconnect service to the Paper Mill's Point of Service because the Paper Mill
19 was providing valuable supplemental services to the Sullivan Plant and PGE property.
20 Terminating the Paper Mill's electric services would have essentially shut-down the Sullivan
21 Plant. In recognition of these valuable services, PGE assumed responsibility for the cost of the

8 WFalls/204.

9 WFalls 202, Mullins/69-70.

10 PGE/300, Wenzel-Macfarlane/2:6-8.

1 electric services WLP was receiving at the Paper Mill through the establishment of a “non-
2 revenue account”.

3 Its not clear why PGE chose to establish a non-revenue account for the Paper Mill’s
4 electric services, rather than simply reimbursing WLP for the cost of the supplemental services
5 PGE was receiving. WLP continued to purchase water utility services from the City of West
6 Linn over that time period, for example, and as demonstrated in Confidential Exhibit
7 WFalls/402, and PGE reimbursed WLP for those services.¹¹ Other than the emails from Mr.
8 Clark I provided in Opening Testimony, PGE has been unable to provide a single document
9 supporting this unique and unusual decision.¹² Whatever its justification was, however, PGE
10 has confirmed that this decision was inconsequential to the Paper Mill’s electric service
11 election. In response to WFalls Data Request 52, PGE stated that, “because PGE is not a retail
12 electricity customer with respect to the non-revenue accounts at the site, the tariff schedule on
13 which the accounts were placed is irrelevant.”¹³ PGE was not a retail electricity customer at
14 the Paper Mill site. PGE did nothing more than change/update the billing information for the
15 site to assign a non-revenue status. Thus, the establishment of a non-revenue account did not
16 terminate the Paper Mill’s electric services, nor alter them in any way.

11 WFalls/402

12 WFalls/401, Mullins/13 (PGE’s Resp. to WFalls DR 52).

13 *Id.*

1 **a. PGE Did Not Actually Disconnect Services**

2 **Q. DO THE DISCONNECTION PROCEDURES PROVIDE PGE WITH AUTHORITY TO**
3 **TERMINATE WLP'S ELECTRIC SERVICE AGREEMENT?**

4 A. No. PGE's Response Testimony equivocates a service disconnection under the Rules with a
5 contract termination. These are not the same thing. PGE, for example, cites Oregon
6 Administrative Rule 860-021-0305, Grounds for Disconnecting Utility Service, and Rule H,
7 Disconnection and Reconnection. Those regulations only discuss the grounds for
8 disconnecting and reconnecting services to a customer and do not provide grounds for
9 terminating a service election or terminating an electric service agreement.

10 **Q. DID PGE EVER ACTUALLY DISCONNECT THE PAPER MILL'S ELECTRIC**
11 **SERVICES?**

12 A. No. PGE provided electric services to the Paper Mill site (to both PGE and BPH property)
13 continuously throughout the entire restructuring period, up to, and through, the time that
14 WFalls took ownership the Paper Mill assets. And WLP had the right to remain at the Paper
15 Mill under the Lease Termination Agreement until WFalls took ownership of the Paper Mill
16 assets. Thus, PGE's Response Testimony about its disconnection procedure is refuted by the
17 plain facts that PGE never actually disconnected WLP's electric services. PGE conceded, in
18 response to WFalls Data Request 38, that it never actually disconnected services to the Paper
19 Mill pursuant to OAR 860-021-0305 or otherwise.¹⁴ PGE's Response Testimony erroneously
20 implies that PGE had exercised its rights under OAR 860-021-0305 to disconnect service and
21 therefore terminated the LTDA Agreement. Since disconnection never occurred, however, the
22 disconnection procedures are irrelevant to the status of the Paper Mill's LTDA Agreement.

¹⁴ WFalls/202, Mullins/96.

1 **Q. DID THE MARCH 2018 SHUT-OFF NOTICES PROVIDE PGE WITH AUTHORITY**
2 **TO TERMINATE THE LTDA ELECTRIC SERVICE AGREEMENT?**

3 A. No. While it appears 15-day and 5-day shut-off notices may have been sent to WLP in March
4 2018, those notices were not a notice to terminate the electric service agreement, and
5 notwithstanding any such notices, PGE has admitted that it did not intend to, and in fact did
6 not, follow through with disconnection of services to the Paper Mill. Again, certain Paper Mill
7 assets, permits, facilities and employees were being used at WLP's expense to support critical
8 operations at the Sullivan hydroelectric power plant. WLP's account executive at PGE stated
9 the following in a March 30, 2018 email:

10 
11
12
13
14

5

15 Since PGE never disconnected the services, and other discussions between BPH, WLP
16 and PGE were happening at this same time, these 15- and 5-day disconnection notices are
17 simply irrelevant. Again, PGE's Response Testimony suggesting that it followed through on
18 these disconnection notices is misleading and refuted by its own admissions.

19 **Q. DID PGE EVER PROVIDE WLP, OR ITS SUCCESSORS, WITH A NOTICE OF ITS**
20 **INTENTION TO TERMINATE THE LTDA AGREEMENT?**

21 A. No. In response to WFalls Data Request 35, PGE was unable to provide any formal notice
22 provided to WLP or its successors, notifying WLP that it wished to terminate the LTDA
23 Agreement for breach, or otherwise. PGE was only able to identify an irrelevant email to John

¹⁵ WFalls/202, Mullins/12. (Emphasis in Original).

1 Otnes where the LTDA electric services were discussed in passing.¹⁶ At the time those emails
2 was sent, John Otnes, however, was a contract employee of PGE and not WLP.

3 On the contrary, as shown below, PGE expressly informed WLP and BHP that it would
4 continue to provide electric services, under the LTDA agreement, irrespective of WLP's ability
5 to pay. Following the Paper Mill closure and establishment of the Creditor Trust, PGE held
6 discussions with BHP the possibility of modifying WLP's billing status for electrical service.¹⁷
7 In a March 22, 2018 email to WLP, however, Mr. Clark notified WLP that PGE was not
8 willing to make modifications to PGE's electric services in the absence of WLP agreeing to
9 PGE's proposed Lease Amendments. Mr. Clark stated,

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]¹⁸

13 Its not clear if Mr. Clark was representing PGE as the landlord or electric service
14 provider when making these statements, and statements such as this undermine any claim PGE
15 might have that it acted carefully to separate its regulated and unregulated business functions.
16 What is clear, however, is that at the same time PGE sent out the disconnection notices for
17 non-payment, PGE notified WLP that it would not modify and would continue to provide
18 electric services under the LTDA Agreement until agreement could be reached with respect to
19 the Lease agreement. PGE did not take any action because it was getting the better end of the
20 bargain.

¹⁶ WFalls/202, Mullins/63.

¹⁷ PGE/204, Clark/9.

¹⁸ PGE/204, Clark/9.

1 **b. Neither WLP, Nor Its Successors, Vacated the Paper Mill Premises**

2 **Q. DID WLP OR ITS SUCCESSORS EVER VACATE THE PAPER MILL PREMISES?**

3 A. No. PGE claims that the LTDA agreement would have terminated “when possession of the
4 property reverted back to PGE.”¹⁹ In discovery, PGE also makes statements such as “WLP
5 vacated the site in November 2018 and PGE terminated WLP’s service under Schedule 489.”²⁰
6 Notwithstanding, allegations that WLP vacated the Paper Mill premises are untrue. Such
7 claims are not supported by the actual events nor the actual terms of Lease Termination
8 Agreement.²¹

9 PGE established the non-revenue account for the Paper Mill services several months
10 before the Lease Termination Agreement was finalized. Accordingly, it is possible that PGE
11 had developed expectations at that time that “WLP was going to vacate the site, [and] a change
12 in possession was imminent.”²² Those expectations would have been wrong, however, since
13 WLP never actually vacated the site and a change in possession never actually occurred. Mr.
14 Konen, on behalf of WLP, continued to work at the Paper Mill to oversee and protect the assets
15 and continue permits after the Effective Date of the Lease Termination Agreement up until the
16 time WFalls began operations.

17 **Q. WHAT DOES THE LEASE TERMINATION AGREEMENT ACTUALLY SAY?**

18 A. Following discussions in early 2018, PGE and WLP were not able to reach an agreement to
19 amend the lease agreement or to modify the electric services at the Paper Mill site. On January
20 23, 2019, PGE and WLP mutually agreed to terminate WLP’s 1997 Lease Agreement.

19 PGE/300, Wenzel-Macfarlane/15:2-3.

20 WFalls/401, Mullins/64 (PGE’s Resp. to WFalls DR 91).

21 WFalls/104.

22 PGE/300, Wenzel-Macfarlane/15:6-7.

1 Pursuant to the Lease Termination Agreement provided in Exhibit WFalls/104, the 1997 Lease
2 Agreement was terminated with an Effective Date of November 26, 2018. Notwithstanding,
3 the Lease Termination Agreement provided WLP with continued tenancy to the property
4 through a holdover period, which extended to June 30, 2019. Over that time, WLP was
5 provided with the right to keep the Paper Mill assets located on PGE’s premises, while a new
6 Paper Mill owner was being solicited. As discussed in the Reply Testimony of Brian Konen,
7 even after the Lease Termination Agreement was signed, Mr. Konen showed up almost every
8 working day at the Paper Mill to protect the assets and to work on restarting the Paper Mill.
9 Accordingly, PGE’s claims that it “had retaken possession of the property,”²³ are not accurate,
10 and confuted by the terms of Lease Termination Agreement. PGE did not have any right to
11 take possession of the Paper Mill assets until the end of the holdover period. Until June 30,
12 2019, WLP remained a tenant at will, and PGE had no authority to terminate the Paper Mill’s
13 electric services based on the Lease Termination Agreement because neither WLP, nor its
14 successors, had vacated the Paper Mill premises. This is also demonstrated by the fact that
15 PGE made no effort to transfer any of the permits from WLP to PGE, and all other utility
16 accounts stayed in WLP’s name—including water, natural gas, sewer, and internet.

17 **Q. DID THE LEASE TERMINATION AGREEMENT TERMINATE WLP’S ELECTRIC**
18 **SERVICE AGREEMENT?**

19 A. No. Unlike the term-sheets circulated in early 2018, the Lease Termination Agreement did not
20 discuss terminating or modifying WLP’s electric services. It was silent. In Response to
21 WFalls Data Request 98, PGE acknowledged that “[t]he lease termination agreement did not

²³ PGE/300, Wenzel-Macfarlane/3:16.

1 include any discussion about electric services.”²⁴ In its response, PGE also confirmed that the
2 Lease Termination Agreement did not contain “any provision [...] that provide[d] PGE with the
3 authority to assume or to establish in its own name electric services to the portion of the Paper
4 Mill not owned by PGE.” Thus, the Lease Termination Agreement did not have the effect of a
5 disconnection, nor did it impact WLP’s ability to assign the LTDA Agreement to WFalls.

6 **Q. DO THE DISCONNECTION PROCEDURES PGE CITED ALSO PROVIDE FOR**
7 **RECONNECTION OF SERVICES?**

8 A. Yes. Even if PGE had exercised its right to disconnect service to the Paper Mill, as PGE
9 incorrectly alleges, nothing in the rules PGE cited prohibit reconnection of services at a later
10 date under the same service agreement. Thus, even if services had been temporarily
11 disconnected, that should not prevent WFalls from reconnecting under the same service
12 agreement.

13 **Q. DO PGE’S ARGUMENTS REGARDING ITS DISCONNECTION PROCEDURES**
14 **HAVE MERIT?**

15 A. No. PGE has admitted both that it continued providing services under Schedule 489 for
16 months after the disconnect notices were sent, and that PGE never actually disconnected the
17 Paper Mill Point of Service. In fact, PGE later submitted a claim to the Creditor Trust to
18 recover the costs of providing the services under Schedule 489—which increased PGE’s
19 claims. As I discuss below, PGE did not disconnect services for non-payment because PGE,
20 was being provided with valuable consideration in the form of support services for its Sullivan
21 Plant. Accordingly, it remained viable for WFalls to take assignment of WLP’s LTDA electric
22 service agreement at the time that WFalls began taking services in July 2019.

²⁴ WFalls/401, Mullins/72 (PGE Resp. to WFalls DR 98).

1 **c. The Paper Mill Was Providing PGE's Power Operations with Other Support**
2 **Services, Which More Than Compensated for WLP's Electric Services**

3 **Q. IS WLP'S NON-PAYMENT A VALID REASON TO TERMINATE THE PAPER**
4 **MILL'S ELECTRIC SERVICE AGREEMENT?**

5 A. No. PGE's Response Testimony characterizes its actions as a routine account termination for
6 non-payment. The circumstances regarding the electric services provided at the Paper Mill
7 over the period January 25, 2018 through June 18, 2019, however, were more complicated than
8 PGE implies. Following the closure of the Paper Mill, PGE chose not to terminate the electric
9 services at the Paper Mill. If it had, the Paper Mill would have incurred no incremental
10 liability for electric services after March 2018, and PGE's claim to the Creditor Trust would
11 have been a fraction of the amount it actually submitted. On March 22, 2018, however, PGE
12 notified WLP in writing that it was not willing to terminate or modify these electric services
13 due to the fact that certain Paper Mill assets were providing valuable support services for the
14 Sullivan Plant.²⁵ At that time the parties were cooperating. WLP had no obligation to continue
15 to provide these services to support the ongoing operations of PGE's Sullivan Plant, but in
16 recognition of the long-standing relationship, WLP continued to provide these services for
17 PGE's benefit. In addition, by not terminating electric services and not reimbursing WLP for
18 the associated support service, PGE stood to recover more funds from the Creditor Trust.
19 Thus, in recognition of the valuable services that PGE was receiving from the Paper Mill
20 assets, including assets located on WLP's property, and PGE's expectation to recover funds
21 from the Creditor Trust, PGE chose not to terminate electric services or the LTDA Agreement
22 for non-payment.

²⁵ PGE/204, Clark/9.

1 **Q. WHAT SUPPLEMENTAL SERVICES WAS THE PAPER MILL PROVIDING TO**
2 **PGE'S POWER OPERATIONS?**

3 A. The Paper Mill has historically provided supplemental services, such as cooling water for the
4 Sullivan Plant turbines bearings, city water, sewer services, wastewater services, fire
5 suppression, air compressors, and effluent treatment. The most significant service that was
6 being provided was the cooling water for the Sullivan power plant. WLP owned a water
7 treatment facility and PGE had been using the potable water to cool the bearings on the
8 Sullivan plant turbines. The water treatment facility was owned exclusively by WLP, and was
9 located in part on land owned WLP and in part on land owned by PGE. If WLP did not
10 continue to operate the water treatment facility, PGE had no other economically viable source
11 to obtain cooling water for the Sullivan plant. Other WLP assets, such as sewer facilities, were
12 being used to support PGE's operations and were not even located on PGE's property. The
13 final sewer lift station, for example, continues to be located on property that is now owned by
14 BHP. Similarly, even after PGE built a back up water supply and after the Effective Date of
15 the Lease Termination Agreement, PGE had to use WLP's back-up water from the City of
16 West Linn, the costs of which PGE ultimately agreed to reimburse to WLP (even though PGE
17 claims that WLP is just a shell company).

18 **Q. WAS WLP OBLIGATED TO PROVIDE COOLING WATER TO THE SULLIVAN**
19 **PLANT, OR ANY OTHER SUPPORT SERVICES?**

20 A. No. Section 3.5.1 of WLP's 1997 Lease Agreement provided that "[REDACTED]

21 [REDACTED]

22 [REDACTED]

1 [REDACTED]²⁶ After that date, however, WLP had no obligation to continue
2 providing cooling water back to PGE under the terms of its lease agreement. Following March
3 31, 2002, however, WLP continued to provide the cooling water free of charge, recognizing
4 the longstanding relationship between the two entities. Following the cessation of paper
5 production, however, it became imperative for PGE to reimburse WLP for the cost of
6 providing these services, including the electric service costs. Yet, PGE was unwilling to
7 assume responsibility for the costs of these services until September 1, 2018, the day after its
8 ability to submit a claim to the Creditor Trust had lapsed.

9 **Q. WAS THE PAPER MILL PROVIDING ELECTRICITY TO THE SULLIVAN POWER**
10 **PLANT?**

11 A. No. PGE makes statement such as “[m]ost—though not all—of the power being consumed at
12 the site was being used by PGE for Sullivan and to protect PGE’s property.”²⁷ It is a
13 misstatement, however, for PGE to imply that the electricity consumed at the Paper Mill was
14 being used by PGE at the Sullivan Plant. To be clear, the Paper Mill was not providing any
15 station service to the Sullivan Plant. In response to WFalls Data Request 65, PGE confirmed
16 that PGE did not consider the electricity consumed at the Paper Mill to be station services for
17 the Sullivan Plant.²⁸ Instead, the Paper Mill continued to use assets owned by WLP and its
18 successors to provide PGE with these critical support services necessary to keep its power
19 plant operational. Yet, after paper production stopped, PGE refused to pay.²⁹

²⁶ PGE/101, Faist/16.

²⁷ PGE/200, Clark/17:16-17.

²⁸ WFalls/401, Mullins/28 (PGE’s Resp. to WFalls Dr 65).

²⁹ PGE/204, Clark/9.

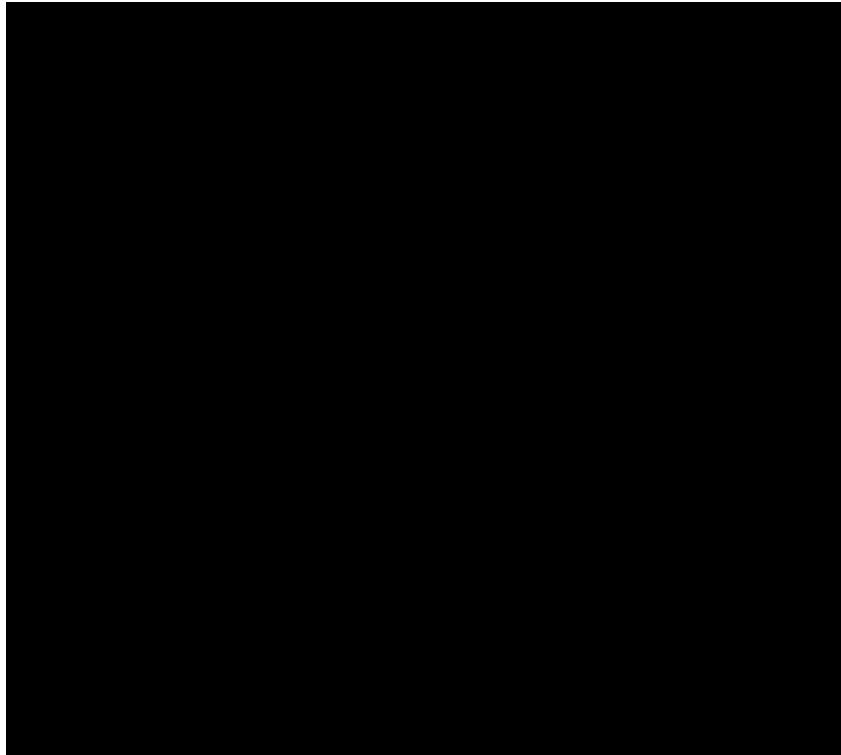
1 **Q. WERE THE SERVICES WLP PROVIDED TO PGE VALUABLE?**

2 A. Yes. Absent these services, PGE would not be able to operate its Sullivan Plant, which is why
3 PGE was willing to waive WLP's non-payment and to continue to providing services to WLP
4 pursuant to the LTDA agreement. Thus, even though PGE, the electric service provider, was
5 not being paid in cash for electric services, PGE was receiving significant compensation in the
6 form of these services, which PGE found to valuable enough to waive WLP's non-payment.

7 **Q. HOW MUCH WERE THE SUPPLEMENTAL SERVICES WORTH TO PGE?**


8 A. The Sullivan Plant produces zero cost electricity. In response to WFalls Data Request 93, I
9 obtained the final MONET power cost model runs used to establish the level of net power cost
10 recovery in Docket No UE 319 for calendar year 2018. The Sullivan Plant produces
11 approximately 15 aMW of electricity. Based on the MONET model runs, the market value of
12 the Sullivan Plant output was worth \$ [REDACTED] in 2018, several times the cost of WLP's
13 electric services over that period. This calculation is detailed in Confidential Table 1R, below:

Confidential Table 1R





1 Thus, the value of the services that WLP was providing to keep the Sullivan Plant
2 operational far exceeded the amounts that WLP had been accruing for the associated electric
3 services.

4 **Q. DID PGE RECOGNIZE THE VALUE OF THESE SERVICES WHEN IT DECIDED**
5 **TO WAIVE WLP’S NON-PAYMENT ?**

6 A. Yes. PGE recognized that the value of the support services were reasonable compensation for
7 the Paper Mill’s electric services over the period of restructuring. In the February 23, 2018
8 term sheet that Mr. Clark provided to WLP, for example, PGE proposed to “

9 

10 ”³⁰ On April 9, 2018, Mr. Clark further affirmed this understanding
11 stating that “

³⁰ PGE/205, Clark/3.

1 [REDACTED]³¹ PGE’s ultimate action of assuming
2 responsibility for the electric service costs on September 1, 2018,³² further confirms that the
3 support services PGE received fully compensated it for the electric services PGE was
4 providing.

5 **Q. WHY DID PGE WAIT SO LONG TO ASSUME RESPONSIBILITY FOR THE**
6 **ELECTRIC SERVICE COSTS?**

7 A. PGE states that it “seemed reasonable to allow the issues some time to develop so that PGE
8 could make the right decisions in a complicated situation.” PGE alleges this was to WLP’s
9 benefit, stating PGE “delayed the exercise of its rights longer than it ordinarily would have to
10 ensure its Sullivan operations were able to continue without interruption and to give Stern and
11 other potential investors some time to come up with a workable plan for the mill site.”
12 Notwithstanding, it was actually in PGE’s interest to wait. Waiting, allowed PGE to keep the
13 Sullivan Plant operational without having to pay for any supplemental support services.
14 Further, by waiting, PGE had the potential to recover more lease and electric service revenues
15 through the Creditors Trust agreement, which it ultimately did. Finally, PGE waited until it
16 had constructed a backup water supply for its Sullivan operations so it wasn’t entirely
17 dependent on the Paper Mill. But in the lease between PGE and Willamette Falls Real Estate,
18 WFalls agreed to provide filtered water to the Sullivan Plant just like its predecessor, which
19 demonstrates a commitment to value added grid services for PGE.

³¹ PGE/204, Clark/6.

³² WFalls/401, Mullins/1 (See e.g. PGE’s Revised Resp. to WFalls DR 13. PGE changed its position of being the customer at the site to assuming the cost of the electric services that were being provided.)

1 **d. PGE Assented To, and Benefited From, the Creditor Trust**

2 **Q. DID THE CREDITOR TRUST BENEFIT PGE?**

3 A. Yes. WLP lease and electric service bills over the period January 25, 2018 through August 30,
4 2018 represented unsecured debts that were being resolved through the March 8, 2018 Creditor
5 Trust Agreement. PGE implies it was harmed through the restructuring process because WLP
6 did not pay its bills over the period. This, however, is not accurate. The reality is that PGE
7 benefitted greatly from the support services it received from WLP and from the establishment
8 of the Creditor Trust. Had WLP been liquidated in a Chapter 7 bankruptcy proceeding or
9 otherwise, it is probable that PGE would have received no compensation for the services WLP
10 continued to provide primarily for PGE's own benefit in 2018. In a complete liquidation, the
11 Paper Mill would have likely been shut down entirely, potentially resulting in the closure of the
12 Sullivan Plant because no backup water supply had been constructed. The Creditor Trust
13 allowed PGE to continue operating the Sullivan Plant while still recovering a significant
14 portion of the revenues associated with its lease and electric services. PGE's testimony makes
15 statements such as its "increasing concern after WLP was forced into liquidation and
16 continually failed to pay its electric bills." Yet, of any party, PGE likely benefitted the most
17 from the Creditor Trust process.

18 **Q. HOW MUCH DID PGE RECOVER FROM THE CREDITOR TRUST?**

19 A. PGE recovered \$ [REDACTED] from the Creditor Trust.³³ In Response to WFalls Data Request 74,
20 PGE states that it received the funds on 09/13/2019 and 09/20/2019. In the response,
21 however, PGE was not able to separate the funds received between its electric service and

³³ PGE/300, Wenzel-Macfarlane/22, Footnote 43.

1 landlord functions. Through simple proration, however, 71% of this award from the Creditor
2 Trust, or ██████ can be attributed to WLP's electric services. Thus, PGE recovered 54%,
3 the majority, of WLP's unpaid LTDA electric service invoices in the restructuring period.
4 Based on this, the remaining amount outstanding for WLP's electric services during the period
5 was just \$ ██████ relative to the \$ ██████ billed over the period. It follows that PGE's
6 statements that WLP accrued "████████████████████" ³⁴ is
7 misleading and disregards the substantial amount of funds PGE recovered through Creditor
8 Trust.

9 **Q. DID PGE CONSIDER THE SUPPORT SERVICES FROM THE PAPER MILL WHEN**
10 **IT SUBMITTED ITS CLAIM TO THE CREDITOR TRUSTS?**

11 A. In the term sheets circulated in March 2018, PGE acknowledged its responsibility to reimburse
12 the Paper Mill for the cost of electric services that were being used to provide supplemental
13 services back to the Sullivan Plant in the restructuring period. Yet, PGE originally refused to
14 pay the Paper Mill for these costs absent its proposed amendments to the 1997 Lease
15 Agreement. Notwithstanding, PGE still submitted a claim to the Creditor Trust for the cost of
16 the services that were provided back to its hydro operations. This raises some questions as to
17 whether it was even appropriate for PGE to submit a claim for the electric service bills,
18 particularly since PGE was later willing to assume responsibility for the electric service costs
19 beginning the day after PGE's ability to recover the electric services bills from the Creditor
20 Trust had lapsed.

³⁴ PGE/300, Wenzel-Macfarlane/11:14-15.

1 **Q. WAS THE CREDITOR TRUST SUCCESSFUL?**

2 A. I believe the Creditor Trust process has been successful. PGE kept the Sullivan Plant
3 operational. PGE recovered 54% of its claims. The Paper Mill was restarted. PGE was able to
4 execute a new lease agreement for its property at a substantially higher rental rate. PGE has
5 also avoided the expense and liability associated with decommissioning or redeveloping the
6 leased properties. Many of the former WLP employees were hired back and WFalls has
7 developed an environmentally friendly line of paper products. It is true that the process was
8 complicated and took time, but that should not factor against the ability of the Paper Mill to
9 continue LTDA services.

10 **e. PGE Never Requested WFalls or WLP To Pay the Outstanding Amounts**

11 **Q. HAS PGE EVER REQUESTED WFALLS TO PAY THE REMAINING AMOUNTS**
12 **DUE FROM WLP BEFORE TAKING ASSIGNMENT?**

13 A. No. PGE had waived the amounts due and never requested further payments from WLP. If
14 PGE believed that it was necessary for WLP/WFalls to pay the outstanding amounts before
15 consenting to an assignment, PGE could have made that a condition of its consent to
16 assignment. Yet, PGE never provided WLP or WFalls with the opportunity to pay the
17 remaining amounts outstanding in order to effectuate assignment of electric services. PGE
18 simply concluded that the services could not be assigned, without providing WLP or WFalls
19 the opportunity to review the LTDA Agreement, more less an opportunity to pay any amounts
20 PGE believed to be outstanding.

21 **Q. IS WFALLS WILLING TO PAY THE REMAINING AMOUNTS DUE FROM WLP IN**
22 **ORDER TO TAKE ASSIGNMENT?**

23 A. In my view, PGE was more than compensated for those costs, given the value of the
24 supplement services the Paper Mill provided to PGE during the restructuring period.

1 Notwithstanding, if the Commission were to condition the assignment of WLP's LTDA
2 Agreement on paying the remaining amount owed by WLP, \$ [REDACTED] WFalls would be
3 willing to pay that amount. If such a condition were imposed, I recommend that it be applied as
4 a deduction against any refunds due to WFalls for being improperly billed on Schedule 89.

5 **III. PGE DID NOT ASSUME THE PAPER MILL'S ELECTRIC SERVICES**

6 **Q. DO YOU AGREE WITH PGE THAT PGE DID NOT TAKE ASSIGNMENT OF THE**
7 **PAPER MILL'S ELECTRIC SERVICES?**

8 A. Yes. PGE has clarified that it never actually took services at the Paper Mill, but rather simply
9 took responsibility for the cost, just as PGE did when it took responsibility for the cost of water
10 utility service from the City of West Linn.³⁵ PGE never owned the Paper Mill assets. In
11 addition, PGE was not the landlord to much of the Paper Mill, including, the coating plant and
12 the underlying real property, the final sewer lift, a portion of the administrative building, and a
13 portion of the lagoon used for water treatment. Therefore, PGE could not have taken
14 assignment of the electric services used to serve such facilities and equipment, either as the
15 landlord or electric service provider. For this reason, I agree with PGE that it is irrelevant
16 whether PGE gave two-years notice to terminate the LTDA Agreement, because PGE never
17 assumed the underlying services. For the same reason, however, the services PGE paid for
18 during the approximate seven-month period when PGE put the services in a non-revenue
19 account could not have had the effect of terminating or modifying the LTDA Agreement
20 through which the Paper Mill received services. PGE's decision to put the services into a non-

³⁵ WFalls/402.

1 revenue account is questionable, but ultimately irrelevant, in determining whether the LTDA
2 agreement is properly assignable to WFalls.

3 **a. The Non-Revenue Account In PGE’s Name Was Irrelevant To WLP’s Electric**
4 **Service Agreement**

5 **Q. WHEN PGE ASSUMED RESPONSIBILITY FOR THE ELECTRIC SERVICE COSTS**
6 **AT THE PAPER MILL, WAS IT ACTING AS THE LANDLORD OR THE ELECTRIC**
7 **SERVICE PROVIDER?**

8 A. It is not clear. In response to WFalls Data Request 39, PGE was unable to specify whether it
9 was acting as the landlord or the electric service provider.³⁶ The fact that PGE has been unable
10 to specify under what authority—that of the landlord or the electric service provider—it took
11 over services is revealing. In fact, in neither instance was PGE provided with authority to take
12 over and modify WLP’s electric service agreement.

13 **Q. WAS IT SIGNIFICANT THAT PGE “CLOSED WLP’S ACCOUNTS AND OPENED**
14 **NEW ACCOUNTS IN PGE’S NAME WITH DIFFERENT ACCOUNT NUMBERS”?**³⁷

15 A. No. The account numbers and the account names in PGE’s billing system are nothing more
16 than database entries. Changes to those database entries do not have the effect of modifying or
17 cancelling a customer’s electric service agreement. The fact that PGE never stopped
18 providing, and WLP never stopped receiving, electric services for the Paper Mill assets is
19 evidence that the electric service agreement remained effective, irrespective of the account
20 numbers in PGE’s billing database.

³⁶ WFalls/202, Mullins/97 (PGE’s Resp. to WFalls DR 39).

³⁷ PGE/200, Clark/19:3-4.

1 **Q. WAS PGE ACTING IN CUSTOMERS' INTEREST WHEN IT ESTABLISHED THE**
2 **PAPER MILL SERVICES IN A NON-REVENUE ACCOUNT?**

3 A. No. PGE claims that customers benefited from PGE assuming responsibility for the cost of the
4 Paper Mill services because it avoided uncollectibles expenses.³⁸ This claim has no merit,
5 however, since PGE has not filed a rate case that would incorporate the alleged uncollectibles
6 expense. Even if PGE did file a rate case, any potential uncollectibles expense associated with
7 the Paper Mill would appropriately be normalized out of results due to the non-recurring nature
8 of the circumstances. In addition, it makes no difference whether the electric service revenues
9 are considered bad debt expense, or a non-revenue item. Either treatment results in the same
10 reduction to net operating income, either through a reduction to revenues or an increase to
11 expense.

12 **Q. WAS IT APPROPRIATE FOR PGE TO ESTABLISH A NON-REVENUE ACCOUNT**
13 **FOR THE PAPER MILL?**

14 A. Probably not. To the extent that PGE is claiming that it took responsibility for electric services
15 acting in its capacity as the landlord to part of the Paper Mill property, considering the electric
16 service costs of the Paper Mill to be a non-revenue account was not appropriate, because the
17 landlord activities are non-regulated. Other customers must absorb the costs of providing
18 services to the non-revenue accounts, which normally are limited to the electric service for
19 PGE regulated activities, such as PGE's office space. Considering services PGE acquired in its
20 capacity as the non-regulated business in a non-revenue account, however, is equivalent to
21 Pacific Power & Light considering the cost associated with providing services to Precision
22 Castparts (a Berkshire Hathaway affiliate) to be a non-revenue account.

³⁸ PGE/300, Wenzel-Macfarlane/15:19-20.

1 **Q. DID THE RATE SCHEDULE APPLICABLE TO THE NON-REVENUE ACCOUNT**
2 **HAVE ANY BEARING ON THE PAPER MILL'S ELECTRIC SERVICES?**

3 A. No. Since PGE was not a customer at the Paper Mill, the service election associated with the
4 non-revenue account was irrelevant. In response to WFalls Data Request 52, PGE stated that
5 "because PGE is not a retail electricity customer with respect to the non-revenue accounts at
6 the site, the tariff schedule on which the accounts were placed is irrelevant."³⁹ PGE argues that
7 it closed WLP's account and opened new accounts and that those actions terminated the LTDA
8 rights, when in fact those actions are irrelevant. The account changes were just entries in
9 PGE's billing system, and had no bearing on the effectiveness of the LTDA Agreement. The
10 fact that PGE put the non-revenue account on Schedule 89 was irrelevant. Had the electric
11 services been provided by an unaffiliated entity, PGE would not be able to establish a non-
12 revenue account for the electric services. This concept is demonstrated clearly by the fact that
13 PGE reimbursed WLP for the cost of its City of West Linn water utility services that WLP
14 used to provide cooling water back to the Sullivan Plant.

15 **b. PGE Handled Other Utility Services At the Paper Mill Differently**

16 **Q. DID PGE PUT ANY OTHER UTILITY ACCOUNTS AT THE PAPER MILL INTO ITS**
17 **OWN NAME?**

18 A. No. In response to WFalls Data Request 77, PGE confirmed that it did not take assignment or
19 put any other utility services associated with the Paper Mill in its own name.⁴⁰ Thus, the water
20 utility services, natural gas services, internet for the computer and fire systems and sewer
21 services all stayed in WLP's name. All these services were provided for the benefit of WLP

³⁹ WFalls/401, Mullins/13 (PGE's Resp. to WFalls DR 52).

⁴⁰ WFalls/401, Mullins/45-46 (PGE's Resp. to WFalls DR 77).

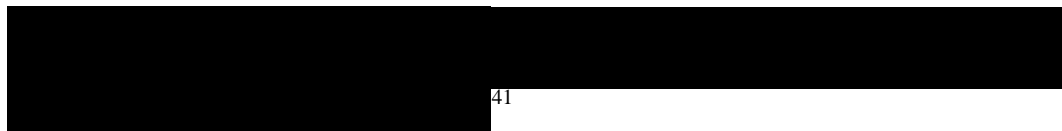
1 and PGE. PGE as the landlord was only able to put the electric services into a non-revenue
2 account in its own name because it happened also to be the electric utility.

3 **Q. DID PGE TAKE RESPONSIBILITY FOR ANY OF THOSE UTILITY SERVICES?**

4 A. Yes. WLP received water utility service provided by the city of West Linn. Even after the
5 Lease Termination Agreement and PGE's construction of backup water for the Sullivan Plant,
6 PGE used the city water as a source of cooling for the Sullivan Plant, and reimbursed WLP for
7 those services.

8 **Q. WHY DIDN'T PGE PUT THE WATER ACCOUNTS INTO ITS OWN NAME AS IT**
9 **DID FOR THE ELECTRIC SERVICES?**

10 A. Even after the Effective Date of the Lease Termination Agreement, for the water services,
11 WLP was required to pay for the water services attributable to the Paper Mill property and
12 PGE was later reimbursing the amounts. Mr. Clark instructed WLP as follows:

13 
14
15 ⁴¹

16 Thus, since PGE did not own the Paper Mill assets or the entire Paper Mill property,
17 and WLP had rights to occupy the Paper Mill until June 30, 2019, PGE lacked any authority to
18 take over the city water services, either as the landlord or as the operator of the Sullivan Plant.
19 Yet, PGE claims, without providing any specificity or authority, that it did have authority to
20 take over the Paper Mill's electric utility service. This disparate treatment of the utility
21 services at the site is a clear contradiction and evidence that PGE did not, actually, have any
22 authority to take over and modify the electric services at the Paper Mill.

⁴¹ WFalls/402, Mullins/1.

1 **Q. COULD PGE HAVE HANDLED THE ELECTRIC SERVICES IN THE SAME WAY**
2 **AS THE CITY WATER SERVICES?**

3 A. Yes. It would have been more transparent and consistent with the relationship between the
4 various parties involved for PGE simply to reimburse the Paper Mill for the cost of the
5 electricity used at the Paper Mill site. This would have avoided the appearance of any potential
6 conflict and would have better reflected the relationships between the parties involved. Putting
7 the services into a non-revenue account, however, appears to have been done for the
8 convenience of PGE because PGE did not need to issue invoices for WLP to pay subject to
9 later reimbursement. As demonstrated with the water utility services, however, had PGE not
10 also been the electric utility, it would have had no ability to put the Paper Mill's electric
11 services into a non-revenue account in its own name because PGE never owned the entire
12 Paper Mill property or the assets.

13 **c. PGE Never Owned the Paper Mill**

14 **Q. DID PGE HAVE ANY AUTHORITY TO BEGIN TAKING SERVICES AT THE**
15 **PAPER MILL SITE AS THE NON-REGULATED LANDLORD?**

16 A. No. PGE never owned the entire Paper Mill property or any of the operating assets. First and
17 foremost, PGE has never owned all of the real property at the Paper Mill site. The continuous
18 Paper Mill property was and remains under ownership by more than one party. PGE was the
19 landlord on only part of the Paper Mill property. In addition, PGE never owned any of the
20 facilities and operating equipment served by the LTDA Agreement and corresponding Service
21 Point.

1 **Q. DID THE LEASE TERMINATION AGREEMENT SUPPORT PGE’S CLAIM THAT**
2 **IT TOOK OVER SERVICES AS THE LANDLORD?**

3 A. No. Even with respect to PGE-owned properties, PGE clearly did not have authority to
4 establish itself as the account holder on a retroactive basis on September 1, 2018, because the
5 Lease Termination Agreement was not effective until several months later. In other words,
6 PGE established itself as the account holder at a time when it was clearly had no right to do so.
7 Further, PGE did not take assignment of the Paper Mill’s electric services in the Lease
8 Termination Agreement. The Lease Termination Agreement, which was executed on January
9 23, 2019, did not stipulate that PGE would assume the electric services of the Paper Mill as the
10 landlord, either on a prospective or retractive basis. As noted previously, while the Lease
11 Termination Agreement stipulated to terminate the 1997 lease agreement as of November 26,
12 2018, the Lease Termination Agreement also provided WLP, and its successors, with tenancy
13 through a holdover period that lasted until the June 30, 2019. Absent an agreement to the
14 contrary, PGE as the non-regulated landlord, could not have taken over the services for the
15 Paper Mill assets because the premises were never vacated and it only owned a portion of the
16 120 acre site.

17 **Q. DID PGE EVER OWN ANY OF THE PAPER MILL OPERATING ASSETS?**

18 A. No. When the lease terminated, PGE had an interest in the buildings and fixtures located on
19 parts of the Paper Mill property owned by PGE. PGE, however, never had any interest in any
20 of the paper making equipment and other property owned by WLP and its successors at the
21 Paper Mill site. PGE, for example, did not own the transformers that the Paper Mill was using
22 to provide services to the Paper Mill assets and had no right to use the “WLP-owned

1 transformers”⁴² to begin taking services at the Paper Mill site, whether as the landlord or
2 otherwise. PGE confirmed that, since WLP never vacated the site, PGE never did any analysis
3 to determine what the equipment at the site was personal property or a fixture.⁴³ Thus, PGE did
4 not even know what equipment was located and consuming electricity on the Paper Mill
5 premises.

6 **Q. WAS PGE THE ONLY OWNER OF THE LAND WHERE THE PAPER MILL IS**
7 **LOCATED?**

8 A. No. PGE has never owned all of the real property where the Paper Mill is located. Much of
9 the Paper Mill property that was formerly owned by WLP, is now owned by BPH. The Paper
10 Mill is located in part on property that is owned by PGE and in part on property that is owned
11 by BHP. Thus, PGE’s ability to take over the electric services as the landlord was limited by
12 the fact that it did not have a property rights for much of the Paper Mill property.

13 **Q. WAS PGE ELIGIBLE TO ASSUME THE ELECTRIC SERVICES FOR BHP’S**
14 **PROPERTY?**

15 A. No. Even assuming for arguments sake that PGE did have a claim to assume electric services
16 for the property it was leasing to the Paper Mill, it had no claim to assume electric services on
17 property that it did not own.

18 **Q. HOW WOULD THE CIRCUMSTANCES HAVE BEEN DIFFERENT IF THE**
19 **LANDLORD WAS UNRELATED TO PGE?**

20 A. This is an important question and shows how PGE would have behaved if the two functions
21 were unrelated. Had the landlord and PGE been unaffiliated, the circumstances likely would
22 have been entirely different. PGE would have had few other options but to reimburse the

⁴² WFalls/401, Mullins/69 (PGE’s Resp. to WFalls DR 96).

⁴³ *Id.*

1 Paper Mill for the costs of the supplemental services it was providing, including the electric
2 service costs, and the landlord would not have assumed ownership of the electrical services,
3 unless and until the site was vacated.

4 **Q. DID PGE ACTUALLY PUT THE PAPER MILL ACCOUNT INTO ITS NAME AS**
5 **THE LANDLORD?**

6 A. No. PGE assigned responsibility of the Paper Mill account to its hydro operations, under the
7 account name “PGE Hydro Control Project” under the responsibility of Nick Loos, an
8 employee in the Hydro operations department.⁴⁴ Therefore, PGE did not, in fact, exercise its
9 right as the landlord to take over the account services. PGE took over the account in the
10 context of its hydro operations.

11 **Q. WAS IT IMPROPER FOR PGE TO ESTABLISH A NON-REVENUE ACCOUNT**
12 **UNDER THE RESPONSIBILITY OF ITS HYDRO OPERATIONS?**

13 A. Not necessarily. Absent PGE putting the Paper Mill’s services into a hydro operations non-
14 revenue account, PGE would have invoiced WLP and presumably reimbursed any payments
15 associated with support services. Putting the services into a non-revenue account, was simply
16 an easy way for PGE to take responsibility for the cost of the electric services, which the Paper
17 Mill was using to support PGE’s hydro operations. In my view, the non-revenue account
18 merely recognized this complex relationship. Since PGE never actually became the electric
19 service customer at the Paper Mill, however, the non-revenue account PGE established has no
20 bearing on WLP’s ability to assign the LTDA agreement to its successor, WFalls.

⁴⁴ PGE/305, Wenzel-Macfarlane/4,

1 **d. PGE Confused Its Non-Regulated Landlord and Regulated Electric Service Functions**

2 **Q. WHY IS IT CRITICAL TO DISTINGUISH BETWEEN PGE'S ROLE AS THE NON-**
3 **REGULATED LANDLORD AND REGULATED ELECTRIC SERVICE PROVIDER?**

4 A. In Response Testimony, PGE tries to dismiss its conflicting roles as the non-regulated landlord
5 and the regulated electric service provider. This distinction, however, is critical in
6 understanding this dispute. PGE cannot give its non-regulated leasing business preferential
7 treatment, and therefore, must deal with itself at arms-length when establishing electric
8 services at the Paper Mill. Notwithstanding, there was no process in place at PGE to ensure
9 separation between these two business activities.

10 **Q. WHY IS IT CRITICAL FOR PGE TO SEPARATE THESE TWO FUNCTIONS?**

11 A. Since the 1997 Lease Agreement with WLP was executed, I estimate that PGE has recognized
12 \$ [REDACTED] of revenues in connection with its non-regulated leasing activities at the Paper
13 Mill.⁴⁵ As noted in Opening Testimony, none of these lease revenues from the Paper Mill have
14 been included in electric service operating results for the benefit of electric service customers.
15 Therefore, it is not proper for PGE to consider these leasing activities in conjunction with its
16 regulated business activities because electric service customers do not benefit from the leasing
17 activities.

18 **Q. DOES THIS RELATIONSHIP CREATE A CONFLICT OF INTEREST?**

19 A. Yes. PGE alleges that no conflict of interest exists with respect to its non-regulated landlord
20 activities and its regulated electric service activities. I disagree. Just as there is a conflict of
21 interest between PGE's transmission and merchant functions, requiring the separation of those
22 two functions, a conflict does exist between PGE's retail electric service and landlord

⁴⁵ See eg. WFalls/401, Mullins/65 (PGE Resp. to WFalls DR 92. PGE notes that it was receiving \$ [REDACTED] in annual lease revenues under the agreement, which had been effective for 21 years).

1 functions. Absent common ownership of the two businesses, the interest of the landlord is to
2 maximize the value of the property, and having cost-effective electric services certainly
3 increases the value of the property for a tenant, who would presumably pay more in rent to
4 access this benefit. If the landlord were unrelated to PGE, the landlord would be interested in
5 maintaining the direct access service election for the site and ensuring proper compensation for
6 the services that were being provided to PGE's power plant. The interest of PGE's electric
7 service function, however, is to maximize electric service margins and to continue to receive
8 supplemental services from the Paper Mill property at no cost if possible. Thus, a conflict did,
9 and does, exist. The existence of a conflict, however, does not necessarily equate to improper
10 activity, but rather, merely means that there needs to be an arms-length separation between the
11 two business functions. In this particular case, PGE did not take proper steps to separate these
12 business functions.

13 **Q. DID PGE ENGAGE IN SELF-DEALING WITH RESPECT TO ITS ELECTRIC**
14 **SERVICE AND LANDLORD OPERATIONS?**

15 A. PGE criticized me for asserting that PGE was engaged in "some sort of self-dealing".⁴⁶ Those
16 are PGE's words, however, not mine. PGE also stated that it "has been careful to separate the
17 private rights and obligations [...] from its regulatory rights and obligations as an electric
18 service provider."⁴⁷ Such a statement, however, is far from truth. By its own admission, PGE
19 exercised little to no care to separate its landlord and electric service functions. As
20 demonstrated from the email record, Brian Clark was negotiating with WLP both as the
21 landlord and the electric service provider during the time period when a redevelopment

⁴⁶ PGE/300 Wenzel-Macfarlane/19:11-13.

⁴⁷ PGE/300 Wenzel-Macfarlane/19:14-18.

1 agreement was being negotiated.⁴⁸ Mr. Clark made any potential modifications to WLP's the
2 electric services contingent on the execution of PGE's proposed lease amendments. Later
3 when Mr. Faist was in discussions with Mr. Konen, he suggested that a lower rent rate was
4 available if WFalls was a cost of service customer. These actions speak for themselves.

5 **Q. DOES PGE TRACK THE COSTS OF ITS NON-REGULATED LANDLORD**
6 **ACTIVITIES?**

7 A. No. In response to WFalls Data Request 070, PGE confirmed that it has never tracked the
8 costs associated with administering its non-regulated landlord activities at the Paper Mill.⁴⁹
9 Thus, while ratepayers do not recognize the benefits of the leasing revenues, PGE was holding
10 ratepayers responsible for the cost of administering this non-regulated business activity.

11 **Q. WHEN MR. CLARK AND MR. FAIST WERE NEGOTIATING WITH WLP AND**
12 **WFALLS, WERE THEY REPRESENTING PGE'S REGULATED OR NON-**
13 **REGULATED OPERATIONS?**

14 A. Its unclear. In responses to WFalls Data Request 67, PGE was requested to clarify whether
15 Mr. Clark, in his interactions with WLP and WFalls was representing PGE, in its capacity as
16 the landlord, or PGE, in its capacity as the electric service provider. In response, PGE was
17 unable to specify what function Mr. Clark represented.⁵⁰ In WFalls Data Request 68, PGE was
18 asked the same question about Mr. Faist's interactions with WLP and WFalls, and similarly,
19 PGE was unable to specify whether Mr. Faist was representing PGE's regulated or non-
20 regulated business operations.⁵¹ What is clear, however, is that neither of these individuals
21 tracked their time spent on the non-regulated landlord activities. In Response to WFalls Data

48 PGE/204, Clark/9.

49 WFalls/401, Mullins/33 (PGE's Resp. to WFalls DR 70).

50 WFalls/401, Mullins/30 (PGE's Resp. to WFalls DR 67).

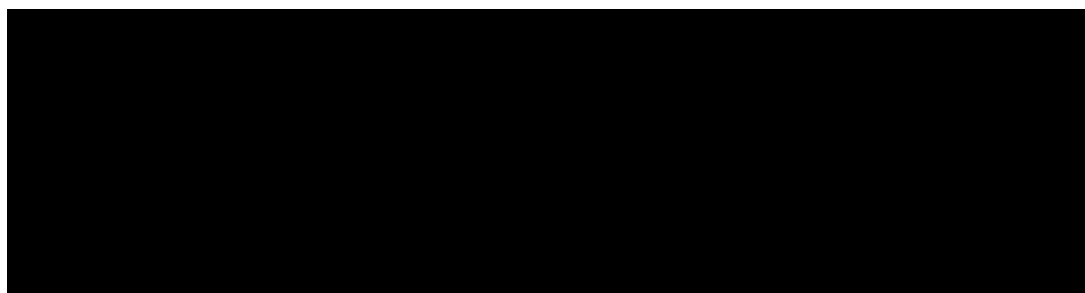
51 WFalls/401, Mullins/31 (PGE's Resp. to WFalls DR 68).

1 Request 69, PGE was unable to provide any “time tracking detailing the number of hours per
2 month that Mr. Clark, Mr. Faist, and any other PGE employees, spent on the non-regulated
3 lease activities associated with the Paper Mill over the period September 2017 through
4 September 2020.”⁵² This is hardly evidence of PGE being careful to separate its two business
5 functions.

6 **e. PGE’s Actions Were Undocumented and Unsupported**

7 **Q. WHO MADE THE DECISION FOR PGE TO ASSUME RESPONSIBILITY FOR THE**
8 **PAPER MILL SERVICES IN A NON REVENUE ACCOUNT?**

9 A. The email trail indicates Mr. Clark was the individual who originated the request to transfer the
10 Paper Mill electrical service into PGE’s name. On October 16, 2018, Mr. Clark wrote an email
11 to Elyssia Lawrence stating:



12
13
14
15
16
17
18
19 **Q. WAS MR. CLARK EXPERIENCED IN DEALING WITH CUSTOMER BILLING**
20 **MATTERS?**

21 A. No. In Response Testimony, Mr. Clark states that, at the time he instructed the billing
22 department to change ownership of the electricity meters, he had never before “dealt with any
23 issues related to a customer’s electric bill.”⁵⁴ Yet, Mr. Clark instructed the billing team to

52 WFalls/401, Mullins/32 (PGE’s Resp. to WFalls DR 69).

53 WFalls/202, Mullins/17-18.

54 WFalls/202, Mullins/16.

1 make unprecedented changes to the electric services at the Paper Mill site, with no
2 documentation and no apparent management oversight.

3 **Q. DID THE MORE EXPERIENCED INDIVIDUALS IN THE BILLING DEPARTMENT**
4 **RAISE QUESTIONS WITH MR. CLARK'S REQUEST?**

5 A. Yes. Individuals in the billing department, such as Elyssa Lawrence, raised concerns with Mr.
6 Clark's requests, stating "[REDACTED]
7 [REDACTED]"⁵⁵ After Mr. Clark continued to insist on
8 making the change, Ms. Lawrence stated "[REDACTED]
9 [REDACTED]" The fact is that the lease change
10 did ultimately disagree with Mr. Clark's requests. Yet, the email trail indicates that Mr. Clark
11 continued to insist that the account be changed to PGE's name, and on a retroactive basis
12 before the Effective Date of the Lease Termination Agreement, despite his inexperience in
13 billing and tariff matters. In response to WFalls Data Request 53, PGE confirmed that Mr.
14 Clark prepared no formal documentation supporting this decision to establish the Paper Mill's
15 services in a non-revenue account.⁵⁶ PGE also confirmed that no written management
16 approvals were ever sought with regard to this unprecedented decision.⁵⁷ Simply put, PGE's
17 actions with respect to the Paper Mill's electric services in the fall of 2018 were careless at
18 best.

⁵⁵ WFalls/202, Mullins/15.

⁵⁶ WFalls/401, Mullins/15-16 (PGE's Response to WFalls DR 53).

⁵⁷ *Id.*

1 **Q. DID MR. CLARK CONSULT THE LEASE TERMINATION AGREEMENT WHEN**
2 **HE MADE THESE DECISIONS?**

3 A. No. The Lease Termination Agreement was not executed until January 23, 2019.

4 Accordingly, Mr. Clark was not justified in making his decision based on the terms of the
5 Lease Termination Agreement. PGE's claims that the Lease Termination Agreement prompted
6 these changes are misleading. The account changes were made on, or around, November 15,
7 2018, while the Lease Termination Agreement was not executed until about two months later,
8 on January 23, 2019. In addition, the Lease Termination Agreement never provided PGE with
9 the ability to take over the Paper Mill's electric services during the holdover period, let alone
10 retroactively back to September 1, 2018. Thus, Mr. Clark's had no basis to represent to the
11 billing department in October 2018 that PGE would be the landlords of the vacant facility.
12 Such a representation was simply not true because the Paper Mill had two separate owners.
13 Further, neither WLP, nor its successors, ever vacated the premises, nor were they required to
14 until the end of the hold over period on June 30, 2019.

15 **Q. DID MR. CLARK CONSULT WLP'S LTDA ELECTRIC SERVICE AGREEMENT OR**
16 **RATE SCHEDULE 489 WHEN HE MADE THESE DECISIONS?**

17 A. No.⁵⁸ PGE's action of establishing a non-revenue was not supported by any careful analysis
18 or review of the LTDA Agreement. "Mr. Clark was not familiar with WLP's LTDA
19 Agreement."⁵⁹ Mr. Faist also confirmed that he did not consult either of these documents when
20 the account changes was made.⁶⁰ Thus, contrary to PGE's claims, the non-revenue account
21 change was not established with the intention of terminating the WLP's LTDA agreement,

58 *Id.*

59 WFalls/401, Mullins/17 (PGE's Resp. to WFalls DR 54).

60 WFalls/401, Mullins/19 (PGE's Resp. to WFalls DR 56).

1 since the individuals responsible for making the account change did not review and were not
2 familiar with the document.

3 **Q. DID PGE SUBMIT A REQUEST FOR NEW SERVICES?**

4 A. Since there was no separation between PGE the landlord, and PGE's electric services function,
5 I have not seen any evidence that PGE ever submitted an application for new services for the
6 Paper Mill. Under Rule D, PGE requires that a customer "provide the Company with five
7 business days notice of intent to purchase Utility Provided Service." Since PGE arbitrarily
8 backdated its name on the electric service account to September 1, 2018, this requirement
9 clearly was not met. Further, PGE typically requires non-residential customers to submit an
10 electric service application, which would include items such as a load forecast and other
11 relevant information. None of this happened with respect to the non-revenue account PGE
12 established.

13 **Q. DID PGE EVER ESTABLISH ITSELF AS A VALID CUSTOMER AT THE PAPER**
14 **MILL?**

15 A. No. The fact that Mr. Clark instructed the billing department put electric services into its own
16 name appears to have simply been an improvised solution to allow PGE as the hydro operator
17 to take responsibility for the costs, rather than keeping the account in WLP's name and
18 reimbursing WLP for such amounts. The account PGE established was transitory in nature and
19 did not have the effect of terminating WLP's LTDA electric service agreement. PGE never
20 owned the Paper Mill assets, and only owned a portion of the real property for the entire site.
21 Further, the Paper Mill assets retained tenancy at PGE's property pursuant to the Lease
22 Termination Agreement and never vacated the facility prior to WFalls assuming ownership.
23 The Paper Mill assets and facilities on both PGE and BPH's property continued to receive

1 services through the date of its ultimate sale to WFalls. Accordingly, WFalls should be able to
2 take assignment of WLP's LTDA electric service agreement.

3 **f. PGE's Expectations About the Paper Mill Were Wrong and Irrelevant**

4 **Q. WHAT ASSUMPTIONS DID PGE MAKE ABOUT THE PAPER MILL RESUMING**
5 **OPERATIONS?**

6 A. It was always a possibility that, following the restructuring, the Paper Mill would resume
7 operations. Throughout its Response Testimony, PGE makes several statements that it was
8 unaware, or had no way of knowing, that the Paper Mill would resume operations. For
9 example, Mr. Clark states "it was not at all clear to PGE that a new company would be found
10 that would choose to resume paper-making operations."⁶¹ Similarly, Mr. Faist makes
11 statements such as "Mr. Konen continued to search on his own for a buyer who would
12 purchase the mill's equipment from Maynards and resume mill operations with a new paper
13 company, but we viewed this as an unlikely possibility."⁶²

14 **Q. WERE PGE'S ALLEGED ASSUMPTIONS ABOUT THE PAPER MILL CORRECT?**

15 A. No. PGE's view about the likelihood that Mr. Konen would find a new owner for the Paper
16 Mill during the six-month holdover period is irrelevant. We know now that Mr. Konen did, in
17 fact, find an investor to purchase the Paper Mill assets and that a new company was formed to
18 operate the Paper Mill. PGE's assumptions were wrong.

19 **Q. WHEN WAS MR. FAIST AWARE THAT THE PAPER MILL WAS SEEKING OUT A**
20 **NEW OWNER AND/OR OPERATOR THAT WOULD RESTART THE PAPER MILL?**

21 A. In response to WFalls Data Request 55, PGE stated "Mr. Faist did not understand that a new
22 owner might actually be found to potentially begin operating the paper mill until Mr. Konen

⁶¹ PGE/200, Clark/2:17-18.

⁶² PGE/100, Faist/16:5-6.

1 began introducing PGE to potential new owners in October 2018.”⁶³ At that point, PGE must
2 have had an expectation that it was at least possible for the Paper Mill to resume operations.
3 Yet, one month later, in November 2018, PGE took the unprecedented action of establishing
4 the Paper Mills service in a non-revenue account, which it now believes invalidated the Paper
5 Mill’s LTDA Agreement. This timeframe certainly has the appearance that PGE made the
6 account changes with the intention of preventing the future paper mill owners from resuming
7 the LTDA agreement, although it may simply have been a matter of inexperience and
8 coincidence.

9 **Q. ARE PGE’S FAULTY ASSUMPTIONS ABOUT THE PAPER MILL REASON TO**
10 **INVALIDATE THE PAPER MILL’S ELECTRIC SERVICES?**

11 A. No. The reality is that PGE was well aware of everything that was happening with respect to
12 the Paper Mill. PGE was aware from the beginning that it was WLP’s intention to find a new
13 owner. December 7, 2017, for example, WLP’s account executive informed Mr. Clark that
14 WLP’s “plans were not to close the mill, but work to get out of bankruptcy, then operate again
15 or sell.”⁶⁴ On December 20, 2017, Mr. Clark noted that WLP is “maintaining readiness for a
16 sale to others.”⁶⁵ Before the Lease Termination Agreement, WLP employees were stationed at
17 the facility for the entire time that it was shut down, in order sell remaining raw materials,
18 handling waste, maintaining the site for a potential sale and providing support services to PGE.
19 Even after the Lease Termination Agreement, Mr. Konen, as president of WLP continued to
20 show up to protect and secure the assets and worked alongside former WLP employees that
21 had been hired by PGE as contractors to help operate the site.

⁶³ WFalls/401, Mullins/18 (PGE’s Resp. to WFalls DR 55).

⁶⁴ WFalls/202, Mullins/8.

⁶⁵ *Id.*

1 **Q. IS PGE RIGHT TO CHARACTERIZE MAYNARDS AS AN “AUCTION HOUSE”?**

2 A. No. PGE characterization of Maynards as an “action-house” is not accurate. While Maynards
3 does conduct auctions, Maynards has successfully restarted and operated several other paper
4 plants around the country. In Direct Testimony, I noted that Maynards had successfully
5 restarted the Appleton Paper Mill, near Green Bay, Wisconsin. The sale to Maynards did not
6 preclude reopening the facility, and in this case, Maynards actions speak for themselves. Mr.
7 Konen was able to find an investor to purchase the assets from Maynards. The fact that an
8 auction had been scheduled was a function of the June 30, 2019 deadline that PGE imposed in
9 the Lease Termination Agreement. Further, PGE began earnest discussions with Columbia
10 Ventures in April 2019, shortly after Maynards purchased the Paper Mill assets. At that point,
11 PGE was aware that there was a high probability that the Paper Mill would be restarted.

12 **Q. DID PGE’S EXPECTATIONS PROVIDE IT WITH JUSTIFICATION TO REJECT**
13 **THE COMPLAINANTS REQUEST TO ASSIGN THE LTDA AGREEMENT TO WLP?**

14 A. No. It is possible that Mr. Clark and Mr. Faist had developed expectations that the Paper Mill
15 would not resume operations. It is clear now, however, that those assumptions were wrong,
16 since the Paper Mill did in fact resume operations. To the extent that PGE made decisions
17 based on an incorrect assumption about the future of the Paper Mill, it is not appropriate for
18 those assumptions to factor against the Paper Mill’s ability to assign its electric service
19 agreement to the new owners.

1 **g. The Non-Revenue Account Status Did Not Preclude WFalls From Taking Services On**
2 **Schedule 489**

3 **Q. DO THE SERVICES THAT PGE PAID FOR DURING THE RESTRUCTURING**
4 **PERIOD PRECLUDE THE PAPER MILL FROM RESUMING LTDA SERVICES?**

5 A. No. The services that PGE paid for during the restructuring period were a temporary
6 arrangement established based on the historical and complex relationship between the Paper
7 Mill and PGE's hydro operations. Through the non-revenue account, PGE was reimbursing
8 the Paper Mill for its electricity costs in consideration of the supplemental water, sewer, and
9 other services that the Paper Mill was providing back to PGE. PGE's assumption of the
10 financial responsibility to pay for the cost of the supplemental services it was receiving,
11 however, did not have the effect of terminating WLP's service agreement. WLP and its
12 successors never vacated the premises and received electric services to its property at the Paper
13 Mill site continuously and without interruption, up to and through the time that WFalls
14 assumed ownership of the assets. WLP and its successors retained the right to occupy the
15 Paper Mill site through the holdover period, and PGE did not have authority to take assignment
16 of WLP's services during that period, either as the landlord or the electric service provider.
17 PGE did not actually own the Paper Mill assets, and the Paper Mill assets are located in part on
18 PGE's property, and in part on BHP's property. PGE never established itself as a customer at
19 the Paper Mill site and acknowledges that electric service elections it assumed were not
20 relevant to the non-revenue account it established. Accordingly, the non-revenue account
21 changes that PGE made in late 2018, shortly after having learned that new investors were being
22 solicited to restart the Paper Mill, did not have the effect of terminating or altering the electric
23 service election and LTDA agreement of WLP.

1 **IV. ASSIGNMENT OF LTDA SERVICES WILL NOT HARM OTHER CUSTOMERS**

2 **Q DOES PGE ARGUE THAT APPROVING THE ASSIGNMENT OF THE PAPER**
3 **MILL'S ELECTRIC SERVICE AGREEMENT WILL HARM OTHER CUSTOMERS?**

4 A. Not necessarily. PGE states that its "LTDA program addresses cost shifts for long-term opt
5 outs and includes Commission-approved transition adjustments for five years."⁶⁶ PGE also
6 notes that PGE's "LTDA program is designed to protect customers from cost shifts caused by
7 the LTDA program in aggregate."⁶⁷ I agree. The Paper Mill has already participated in a
8 Commission-approved transition period and has resolved its obligation with respect to the
9 requisite transitions adjustments long ago. Therefore, there is no harm to other customers
10 pursuant to the approved LTDA program if the Commission grants the Complainants request to
11 assign the LTDA Agreement to WFalls.

12 **Q. DOES PGE AGREE THAT IT HAS NOT ACQUIRED ANY PHYSICAL**
13 **GENERATION RESOURCES TO SERVE WFALLS LOAD?**

14 A. Yes. PGE concedes that it has not acquired any long-term resources for WFalls load.
15 Notwithstanding, PGE states that "[s]hort-term market purchases are a tool commonly used".⁶⁸
16 This statement is somewhat vague, but PGE appears to imply that the only new resources it has
17 acquired have been short-term market purchases, though its not clear the extent to which PGE
18 is arguing that those purchases represent a cost to other customers.

19 **Q. DO SHORT-TERM MARKET PURCHASES CREATE STRANDED COSTS?**

20 A. No. Stranded costs are usually associated with recovering the fixed costs of long-term
21 resources, not short-term purchases. Short-term purchases are the same sort of products that

⁶⁶ PGE/300, Wenzel-Macfarlane/29:13-14.

⁶⁷ *Id.* at 14-15.

⁶⁸ PGE/300, Wenzel-Macfarlane/29:13-14.

1 PGE would have acquired if the Paper Mill had been taking electric services on Schedule 489
2 under the Company supplied generation option. PGE did not specify what particular market
3 purchases it executed for the purpose of serving WFalls' loads. Accordingly, the extent to
4 which PGE is claiming that customers were harmed by such transactions is not clear.

5 **Q. IS THE AUT LOAD FORECAST RELEVANT?**

6 A. No. In Response Testimony, PGE conceded that "other customers did not benefit "materially"
7 from the inclusion of the [WFalls] load" in the AUT load forecast.⁶⁹ Because the AUT only
8 deals with variable power costs, removing the variable cost of serving the Paper Mill from the
9 AUT will not have material impacts on the net variable power cost rates paid by other
10 customers.

11 **Q. WAS WFALLS' LOAD APPROPRIATELY CONSIDERED IN THE AUT TO BEGIN**
12 **WITH?**

13 A. No. It was improper for PGE to deny the Complainants request for the Paper Mill to resume
14 direct access under the LTDA Agreement. The extent that PGE considered WFalls' load in the
15 AUT load forecast is merely a result of PGE putting the paper mill on an improper rate
16 schedule. Removing the Paper Mill from the AUT in future proceedings will not negatively
17 impact other customers, since it was not appropriate to include the Paper Mill in the load
18 forecast to begin with.

⁶⁹ PGE/300, Wenzel-Macfarlane/30:12.

1 **Q. DOES PGE ACKNOWLEDGE THAT, DUE TO THE FACT THAT IT HAS NOT**
2 **FILED A RATE CASE, IT IS THE ONE THAT BENEFITED FROM WFALLS' COST**
3 **OF SERVICE MARGINS?**

4 A. PGE acknowledges that WFalls' load has "not been used to develop customer prices."⁷⁰
5 Notwithstanding, PGE does not acknowledge that it is the one that has benefited from the
6 additional margins WFalls has paid as a result of being billed on cost of service Schedule 89.
7 The reality is that any contribution to fixed costs that have been paid by WFalls since it
8 energized has benefitted PGE, not ratepayers. Accordingly, correcting the service election will
9 not harm other ratepayers.

10 **V. NLDA PROGRAM**

11 **Q. IS WFALLS CONTINUING TO REQUEST A RULE WAIVER TO PARTICIPATE IN**
12 **THE NLDA PROGRAM?**

13 A. For the reasons discussed above, I believe it is most appropriate for the 130 year-old load at the
14 Paper Mill to be allowed to resume LTDA services under its new owners. Notwithstanding, if
15 the Commission determines the Paper Mill may not take assignment of its predecessor's
16 services, then WFalls is appropriately considered a new load, eligible to participate in the
17 NLDA program. As I discussed in Direct Testimony, to accommodate such a request, WFalls
18 would require a waiver of the one-year notice and energization requirements, and in light of the
19 unusual circumstances surrounding the Paper Mill's resumed operations, good cause exists to
20 grant such a waiver.

⁷⁰ PGE/300, Wenzel-Macfarlane/31:2-3.

1 **Q. DOES PGE SUPPORT WFALLS REQUEST FOR A WAIVER OF THE NLDA**
2 **NOTICE AND ENERGIZATION REQUIREMENTS?**

3 A. PGE discusses the program and the circumstances, but does not provide a specific
4 recommendation regarding WFalls waiver request of the one-year notice and energization
5 requirements. PGE does not, for example, allege that good cause does not exist to grant
6 WFalls requested waiver. PGE does, however, suggest that the general process under
7 consideration by the Commission for cap waivers might be reasonable to apply to this case,
8 including advancing the goals reflected in state policy, value added grid services and support
9 for system capacity needs.

10 **Q. IS THE PROCESS APPLICABLE TO CAP WAIVERS IS RELEVANT TO WFALLS’**
11 **WAIVER REQUESTS?**

12 A. No. PGE acknowledges this but states that “the general criteria established by the Commission
13 for cap waivers would seem to be reasonable criteria to apply here in the interim”⁷¹. Its not
14 clear what “criteria” PGE is referring to, however. In its August 28, 2020 Order in UE 358, the
15 Commission explicitly did not establish any specific criteria that must be met to approve a
16 waiver of the participation cap. Page 9 of the underlying August 13, 2020 Staff Report stated
17 “Staff does not make a proposed recommendation to the Commission regarding the
18 Commission’s waiver request process.” Staff raised a number of issues in its memo, but the
19 Commission order did not endorsed those concerns as mandatory requirements that must be
20 met for a waiver request to be granted.

21 To be clear, WFalls addresses and satisfies all of the concerns outlined in the August
22 13, 2020 Staff Report. Notwithstanding, those concerns are not necessarily applicable to this

⁷¹ PGE/300 Wenzel-Macfarlane/40:12-15.

1 proceeding. The standard for any waiver request is “good cause shown.” The purpose of the
2 rules surrounding the notice and energization requirements are significantly different than the
3 purposes of the rules surrounding the program cap. Therefore, the good cause for granting a
4 waiver of the one-year notice requirement and energization requirements is inherently different
5 than the good cause for granting a waiver of the program caps. Rather than focusing on the
6 criteria applicable to cap waivers in this case, I believe it is more important to consider whether
7 the intent of the one-year notice requirement and energization requirements has been satisfied.
8 For the reasons discussed in my Opening Testimony, I believe it has.

9 **Q. WHAT WAS THE INTENT OF THE ONE-YEAR NOTICE REQUIREMENT?**

10 A. As I discussed in Opening Testimony, the one-year notice requirement in OAR 860-038-0740
11 was a generic standard to provide sufficient lead time to be assured that the utility was not
12 planning to serve the NLDA loads. PGE did not dispute this description. In its December 19,
13 2017 report, Staff stated that “[n]otification of enrolling in the NLDA program and opting out
14 of COS rates must be given to utility simultaneously with the binding notification to utility of
15 planned service of new load and must be given at some time prior to energizing the meter.”⁷²
16 Accordingly, the purpose of one-year requirement was to ensure that notice be given at some
17 time prior to energizing the meter and at the same time as the request for services. The purpose
18 of the rule was to avoid the situation, where the Customer has announced to the utility that
19 intends to take service, and having the utility plan for the new customers load, only for the
20 customer to later elect to take services on the NLDA program.

⁷² UM 1837, Staff December 19, 2017 Report at 7.

1 **Q. WILL WFALLS SATISFY THE INTENT OF THE ONE-YEAR NOTICE**
2 **REQUIREMENT?**

3 A. Yes. In Response Testimony, PGE did not take issue with WFalls' request for a waiver of the
4 one-year requirement. WLP on behalf of WFalls provided its NLDA notice on April 15, 2019.
5 The first meeting between PGE and the owners of the soon to be formed WFalls discussing a
6 potential lease of the Paper Mill site occurred on April 16, 2019, contemporaneous to when the
7 NLDA application was submitted. For other new large loads, it would normally take several
8 years to get a site planned and constructed to take electrical services. Given the short amount
9 of time required to restart operations at the Paper Mill before the end of the June 30, 2019
10 holdover period, WFalls did not have such an amount of lead time. Since WFalls notified PGE
11 of its intention to take NLDA service at the same time it began discussions to lease the Paper
12 Mill site, however, the intent of the one year requirement is reasonably satisfied and good
13 cause exists to grant a waiver.

14 **Q. WAS PGE ALSO CONCERNED THAT WFALLS HAD ENERGIZED PRIOR TO THE**
15 **FINAL IMPLEMENTATION OF THE NLDA PROGRAM TARIFF?**

16 A. PGE states that, “[o]nce WFalls energized on a COS rate schedule, WFalls became ineligible
17 for the NLDA program.”⁷³ To be eligible for NLDA, PGE’s position is that “WLP would also
18 need a waiver from this energization requirement.” Presumably this is a typo because it is
19 unclear why WLP would require a waiver for WFalls’ services. In any case, WFalls is
20 requesting a waiver from the energization requirement.

⁷³ PGE/300, Wenzel-Macfarlane/30:12.

1 **Q. WHY DIDN'T PGE ADVISE THE PAPER MILL THAT THE PAPER MILL'S NLDA**
2 **APPLICATION WOULD BE INVALID IF IT ENERGIZED BEFORE THE**
3 **PROGRAM WAS FINALIZED?**

4 A. Its not clear. As I understand it, the Paper Mill began taking services with the expectation that
5 it qualified for the NLDA program and based upon PGE's representation that it could not take
6 assignment of LTDA services. Yet, as far as I am aware, PGE did not inform WFalls that, in
7 order to participate in the NLDA program, it must wait until the final implementation of the
8 program to energize. It was not until nine months later that PGE, who was well aware of the
9 program rules when it accepted the Paper Mill's NLDA application as number one in the
10 queue, claimed that the Paper Mill might be ineligible for even the NLDA program. PGE's
11 claim that the January 7, 2020 Order in UE 358 prompted this change in position is also
12 unpersuasive, because the UE 358 Order did not address the energization requirements. If
13 PGE had been forthcoming of its position on this matter, WFalls may have taken different
14 actions with respect to its electric services.

15 **Q. DO THE PAPER MILL'S CIRCUMSTANCES REQUIRING ENERGY PRIOR TO**
16 **THE NLDA PROGRAM IMPLEMENTATION WARRANT SPECIAL**
17 **CONSIDERATION?**

18 A. Yes. The purpose of the energization requirements is simply to assure that the load in question
19 is a new load. The requirement to be considered a new load in OAR 860-038-0710(2)(a) is
20 that the facility "[h]as never been contracted for or committed to in writing by a cost-of-service
21 consumer with an electric company". The Paper Mill's circumstances, however, are highly
22 unique and warrant special consideration, particularly in light of the issues surrounding their
23 predecessor's LTDA services. PGE accepted the Paper Mill's NLDA application, and
24 subsequently the Paper Mill had no other option than to take service under cost of service rates
25 when the Paper Mill resumed paper production. At the time, it was unclear if the NLDA

1 program would be ready for implementation in a few months or a year or more. It was also not
2 at all certain that customers who, by virtue of special circumstances, required energy prior to
3 the final implementation of the NLDA program tariff would become ineligible for the program.

4 **Q. COULD WFALLS HAVE WAITED UNTIL THE FINAL IMPLEMENTATION OF**
5 **THE NLDA PROGRAM TARIFF?**

6 A. No. It simply was not feasible for WFalls to wait until the final implementation of the NLDA
7 program tariff to energize with lease payments due and payable to PGE and BPH. If WFalls
8 did not move forward, there simply would not have been any “new load” under consideration.
9 The Paper Mill would have had to permanently cease operations, and therefore, the benefits of
10 having the Paper Mill’s load in the NLDA program would never have materialized. The
11 purpose of the NLDA program is to encourage, and recognize the benefits of, new loads on
12 PGE’s system, as well as the economic benefits to state. By waiving the energization
13 requirement for the Paper Mill, the Commission will achieve those objectives, since the Paper
14 Mill may have otherwise shutdown permanently.

15 **Q. DOES THE FACT THAT WFALLS HAS ENERGIZED MEAN IT IS NOT A NEW**
16 **LOAD?**

17 A. The fact that WFalls received services prior to the finalization of the NLDA tariff does not
18 necessarily mean that WFalls is not a new load ineligible to participate in the NLDA program.
19 Since PGE accepted the NLDA application, it also presumably accepted that it was not
20 contracting for, or committing to, serve WFalls on cost of service rates. The fact that, in the
21 interim, PGE provided services, which it billed on Rate Schedule 89 does not necessarily mean
22 that WFalls has been “contracted for or committed to in writing.” PGE acknowledges that it
23 has not contracted for any resources, other than short-term market purchases, to serve WFalls
24 load. WFalls also has not entered into any electric service agreement to be served on cost of

1 service rates. I am also not aware of any written commitment that PGE submitted that it would
2 perpetually serve WFalls on cost of service rates. In fact, its acceptance of WFalls NLDA
3 application was a commitment to the contrary, that PGE was not committing to serve WFalls
4 on cost of service rates.

5 **Q. HAS THE COMMISSION ADDRESSED WHETHER IT WILL GRANT WAIVERS OF**
6 **THE ENERGIZATION REQUIREMENTS?**

7 A. No. The Commission's January 7, 2020 order in UE 358 did not address the issue of whether
8 the Commission would grant waivers for customers who, by virtue of special circumstances,
9 required energy prior to the final implementation of the NLDA program. Staff's testimony
10 UE 358 stated however, stated that:

11 "Should the Commission decide to provide special consideration for customers
12 who require energy prior to program implementation, Staff encourages the
13 Commission to do so based on a waiver application and considered on a case-by-
14 case basis"

15 Thus, I believe it is appropriate for the Commission to consider WFalls request in this
16 docket.

17 **Q. DO THE TEMPORARY SERVICES WFALLS RECEIVED RESULT IN COST**
18 **SHIFTING TO OTHER CUSTOMERS?**

19 A. No. As mentioned above, PGE has yet to file a rate case incorporating the Paper Mill's load.
20 PGE affirmed that it has not acquired any resources to serve the Paper Mill's load, other than
21 market purchases. Further, PGE has affirmed that the inclusion of WFalls' load in the AUT
22 load forecast had no material impacts on other customers rates. For these reasons, granting
23 WFalls a waiver to receive electric services prior to the NLDA program implementation will
24 not harm other customers. As an NLDA customer, WFalls will contribute to the distribution
25 cost recovery of PGE, helping to lower other customers' bills. WFalls would also pay the 20

1 percent transition charge which also benefits other customers, by reducing customers rates.

2 Thus, approving WFalls' waiver request will actually benefit other customers, not harm them.

3 Had the Paper Mill waited, and potentially permanently ceased operation, in order to be able to
4 participate in the NLDA program, none of the benefits associated with its load and the positive
5 economic impact of its facility would be recognized by other ratepayers and the state of
6 Oregon.

7 **Q. WILL WFALLS SATISFY THE CONCERNS IN THE AUGUST 13, 2020 STAFF**
8 **REPORT APPLICABLE TO CAP WAIVERS REQUESTS?**

9 A. These concerns were discussed in my Opening Testimony, but PGE ignored them.

10 To be clear, WFalls is committed to advancing the policies of the state. WFalls is
11 engaged in the production of producing environmentally sustainable paper products. WFalls
12 has developed a novel process of using local agricultural waste as a way to help reduce the
13 carbon footprint of shipping and importing materials from other locations. WFalls products
14 are certified to the Sustainable Forestry Initiative Chain-of-Custody Standard, which
15 demonstrates the Paper Mills commitment to sustainable forest management. The Paper Mill
16 is also developing paper using recycled post consumer waste, which would otherwise end up in
17 Oregon's landfills. WFalls employs approximately 130 individuals who are working hard
18 every day to improve the efficiency and sustainability of its facility, and by maintaining
19 operation at the site WFalls allows PGE to avoid expensive environmental remediation and
20 redevelopment efforts. These are actions of a company that is 100% dedicated to advancing
21 state policy in Oregon.

22 WFalls is also committed to providing value added grid services to PGE. The Paper
23 Mill's longstanding relationship with PGE and PGE's hydro operations demonstrates WFalls

1 commitment to provide PGE with valuable services for the benefit of PGE's hydro operations.
2 WFalls will continue to provide essential services to PGE's Sullivan hydro plant, such as
3 sewer, security, and water, to keep the Sullivan Plant in operation. If the Paper Mill were to
4 close permanently, ratepayers would need to incur significant costs.

5 WFalls is also committed to contributing towards resource adequacy. WFalls has not
6 yet determined the source of power it will purchase but plans to purchase power resources that
7 provides a level of resource adequacy that equals or exceeds the resource adequacy provided
8 by the resources PGE procures in its IRP.

9 WFalls will be paying its fair share of all of the costs associated with the power it
10 purchases, and in the process, will be benefitting other customers. Ratepayers benefit because
11 PGE will avoid building new resources to serve WFalls' load. WFalls will pay a 20%
12 transition adjustment, so ratepayers will also benefit through a reduction in fixed costs during
13 the transition period. WFalls will also contribute to economies of scale associated with
14 administrative, distribution, and transmission costs, which have been key cost drivers in past
15 rate cases. WFalls will also contribute towards the state RPS requirements, including the
16 provision requiring an ESS to acquire bundled RECs, the same standard that is driving PGE's
17 renewable resource acquisitions. WFalls will not have an advantage with respect to the fixed
18 costs associated with acquiring renewable resources.

19 **Q. IS GRANTING A WAIVER IN THE PUBLIC INTEREST?**

20 A. Yes. It is in the public interest to grant a waiver of the one-year notice and energization
21 requirements for the Paper Mill load. If it is determined that WFalls is truly a new customer
22 and not eligible to retain any of the obligations of its predecessor, any previous planning PGE
23 might have made for the Paper Mill load would not be applicable to WFalls. Further, the Paper

1 Mill's unique circumstances provide justification for energizing on cost of service rates prior to
2 the final implementation of the NLDA program. If the Paper Mill had waited to energize, it
3 may have resulted in the permanent closure of the facility and other customers would recognize
4 no benefits in conjunction with WFalls' load.

5 **VI. CONCLUSION**

6 **Q. PLEASE SUMMARIZE YOUR TESTIMONY?**

7 A. PGE's claim that WFalls' LTDA Agreement terminated are not supported by the facts. In
8 recognition of the valuable support services that the Paper Mill was providing to the Sullivan
9 Plant, PGE never stopped providing electric services to the Paper Mill and continued to
10 provide services under the LTDA Agreement. Further, when PGE put the Paper Mill's
11 services into a non-revenue account, doing so did not result in the termination of WLP's LTDA
12 agreement. PGE assumed responsibility for the cost of the electric services at the Paper Mill in
13 a non-revenue account as a convenience, instead of invoicing WLP and reimbursing such costs,
14 as it did for West Linn water utility services used for the Sullivan Plant. PGE never became
15 the customer at the Paper Mill, and never had the authority to modify WLP's electric service
16 agreement by taking over the services because PGE never owned the Paper Mill assets and the
17 120 acre Paper Mill site is on property not owned exclusively by PGE. WLP, and its
18 successors, also never vacated the Paper Mill premises and continued to receive electric
19 services for the Paper Mill assets until, and through, the time that WFalls took ownership of the
20 assets. Accordingly, it remained viable for WFalls to take assignment of the LTDA agreement
21 of WLP. This will not harm other customers and is in the public interest.

1 If the Commission determines that the 130-year-old Paper Mill is a new load and
2 ineligible to take assignment of its predecessor's electric services, however, it in the public
3 interest to allow the Paper Mill to participate in the NLDA program, subject to necessary
4 waivers. The Paper Mill is interested in advancing the policies of the State and continuing to
5 support PGE's hydro operations. Given its complex restructuring, granting a waiver of the
6 one-year notice and energization requirements will not undermine the purpose of the
7 Commission's rules with respect to the NLDA program, and given the unique circumstances,
8 good cause exists to grant a waiver.

9 **Q. DOES THIS CONCLUDE YOUR REPLY TESTIMONY?**

10 A. Yes.

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

UM 2107

WILLAMETTE FALLS PAPER COMPANY)
and WEST LINN PAPER COMPANY,)
)
Complainants,)
)
vs.)
)
PORTLAND GENERAL ELECTRIC)
COMPANY,)
)
Defendant.)
)
)
)
_____)

EXHIBIT 401

REDACTED

**Willamette Falls Paper Company
Testimony of Bradley G. Mullins**

November 02, 2020

October 28, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Revised Response to WFalls and WLP Data Request No. 013
Dated July 10, 2020**

Request:

Besides WLP, has PGE ever transferred a Direct Access customers account to its own name? If so, please provide the date and describe the circumstances for such transfer.

Revised Response:

No. PGE has had no other instances in which PGE was the landlord of a property leased to a customer who was participating in LTDA and that customer then went out of business necessitating PGE to take responsibility for the service to the site to power its own operations.

Response:

No. PGE has had no other instances in which PGE was the landlord of a property leased to a customer who was participating in LTDA and that customer then went out of business necessitating PGE to become the customer on the account, to power its operations.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 048
Dated October 16, 2020**

Request:

Please provide any and all service manuals and documentation that establish the procedures that PGE follows when it receives new service requests for industrial customers.

Response:

PGE objects on the basis that the requested information is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case. Notwithstanding and without waiving this objection, PGE responds as follows:

Please see Attachments 048A and 048B, which walk through the process followed by PGE customer service employees when a commercial customer calls and requests to start service.

Move In - New Commercial

KM1002197

Move In - New Commercial: Use this to process a move in for a new commercial customer.

1. Locate the address and perform [Address/Account Review](#).
2. Determine the type of [Business Structure](#) by asking if the business is a Sole Proprietorship, Corporation or LLC. If Sole Proprietorship, refer to [Move In - Residential New Customer](#).
3. In a second session, search for the business's **Name** to determine if they already have a Person Record. Refer to [CC&B Search Best Practices](#).
 - If no record is found, continue to *Person Review*.
 - If a record is found, process move in using [Move In - Commercial Existing Inactive/Active](#).

Person Review

1. Verify caller's identity using [Commercial ID Verification](#).
2. Verify business name, entity type and entity status is active on the [Oregon Secretary of State](#) website.
Note: Federal entities may not be required to register with the Oregon Secretary of State. Seek guidance from Business Services Leadership on any requests received from Federal entities.
3. Determine if security deposit will be required. If deposit amount is \$999 or less, offer cash deposit. If customer at that time would like to explore other options, a non cash deposit is available. Refer to [Establishing Credit - Commercial Customers](#).
Note: The cost to obtain non cash security is often more expensive than the cash required to pay the deposit.
4. **Menu > Move In Move Out Portal.**

Customer Information

1. **Person/Business:** Select *Business*.
2. **Person Name:** Enter the business name as it appears on the Oregon Secretary of State website. Refer to [Data Standards](#).
3. **ID Type:** Enter the Employer Identification Number (EIN).
Note: This is required to start service for a new business customer. If customer does not have an EIN, refer them to [How to Apply for an EIN](#).
4. Add **Primary Notification Phone** and additional phone numbers as necessary.
FCC Scripting: "What is the preferred phone number you would like PGE to use to communicate with you with information relating to your account?" OR "So that's the preferred phone number you would like PGE to use to communicate with you with information relating to your account?"

Only add up to 10 phone numbers to a person.

5. **Contact Routing:**

- a. **Person Contact Type:** Business Email
- b. **Contact Information:** Enter email address
 - Mark as primary (only one can be marked as Primary).
 - Recap spelling.
 - Applicants who start service at a new address will receive a confirmation email that includes their account number, service address and start date.
Note: This email will not be sent if the account is a Landlord account.
 - **Suggested scripting:** *What is your email address? Is that the best email to use to set your account up for paperless statements? If customer agrees, state: You are now set up for paperless billing and will no longer receive a paper bill to [premise address].*
- c. Leave the remaining fields (**Extension, Do Not Disturb**) blank.
6. **Create Account** and ask if customer wants to add an additional person.
 - a. If applicable, use a different CC&B session to create [Person Record](#).
 - b. Save Person ID(s) to add after account is created.
7. MIMO will automatically assign a customer class of *Residential* for residential type persons and *Commercial* for Business type persons. If the service point that is being started requires a different customer class refer to [Change Customer Class in MIMO](#).

Service Address Information

1. **Service Address:** Premise ID.
2. Enter the **Nature of Business**.
3. Check the **Owner** box, if the caller is the owner of the property.
1. If rental, offer **Landlord Agreement** and check box. Refer to [Add/Remove Landlord Account and Alerts](#).
Note: If the customer declines landlord agreement, record the decline reason as a manual Customer Contact at the end of the process.
4. Ask if there are any meter access issues. If yes, add a **Premise Characteristic** at the end of the process.
5. Click **Meter History**. If a **Service Off** notification is returned, refer to [Meter Inspection](#).
 1. If inspection is required but not complete, do not complete move in.
 2. If the meter has been inspected and tagged, proceed past the alert.

Move In Details

If the customer does not want to continue with the request for service any time after this point, refer to [Move In/Out Pending Order](#).

1. **Campaign:** Use the **magnifying glass** to select a commercial campaign from the list based on the nature of the business. Refer to [Target Customer by Segmentation](#).
2. **Start Date:** Use the **calendar** to enter a start date.
Note: If back dating more than 30 days or past prior billed date, refer to [Commercial Backdated Move In](#).
3. **Start Requested By:** Enter caller's first name, last name, title and date of contact.
Note: This information is stored in **Service Agreement > Misc** tab.
4. Determine how the bill will be sent:
 - Refer to [Mailing Address Decision Tree](#) for assistance with mailing address scenarios.
 - For paperless, refer to [Paperless Bill in MIMO](#).
 - For postal:

For this field	Select
Bill Route Type	<i>Route Via Postal</i>
Preferred Contact Method	<i>Postal</i>
Address Source	<p><i>Mailing Premise on Account</i> if all mail will be sent to the service address. <i>Account Override</i> if all mail will be sent to an address other than the service address; enter in the mailing address fields. Enter the house number, street name, unit type and number in Address Line 1. Do not use the Unit Type dropdown.</p> <p>Foreign (includes Canada), Military Leave as <i>Mailing Premise on Account</i> and refer to Foreign/Canada and Military Mailing Address after MIMO.</p>

- 5.
6. Recap the **Start Date** and the **Service Address**.
7. Offer account number.
Efficiency Opportunity: While recapping and offering/giving account number use a second CC&B session to add additional persons to account and Alerts if needed.
8. Click **Create a Request**.

Program Enrollment

Efficiency Opportunity: While asking program enrollment questions, use a second CC&B session to add a renewable customer contact, if needed.
 See [Program Enrollment in MIMO](#) to assess and process enrollments.

Service Agreement/Securing the Account

1. **Options of SAs to Start:** use to create additional Service Agreements on the account when applicable, such as deposits. Only one electric service agreement can be added to an account.
 - Commercial customers will always be evaluated for a deposit. Refer to [Establish Credit - Commercial Customers](#).
 - If cash deposit is needed, refer to [Create/Cancel Cash Deposit Service Agreement](#).
 - If a non-cash option is selected, refer to [Execute Non-Cash Deposit Case](#).
 - If eligible for a deposit waiver, refer to [Commercial Deposit Waiver Guidelines](#).
2. **List of SAs to Start:** Review to ensure all necessary SAs are being started.
3. Click **Start Service**. If either of the following error messages display, see [Error Message Index](#).
 - *Field Activity Cancellability not Allowed*
 - *Geo Type Missing* error
 - *Service Point does not exist on Service Agreement*

Start Service Review

Refer to [Post MIMO Review](#) to verify the move information and process additional follow up, including service off.

Establish Credit - Commercial Customers

KM1003561

Establish Credit - Commercial Customers: Use to establish credit on a commercial account.

Commercial customers (unless receiving RPA credit) must establish credit with PGE at the time of application for service in one of three ways:

- [Evidence of previous PGE credit history](#)
 - [Cash deposit](#)
 - [Non-cash security deposit](#) (Surety Bond, ILOC, segregated accounts)
- Note:** KCM - If unable to use the above options, reach out to Commercial Program Manager to see if [Parental Guarantee](#) is an option before discussing with customer.

When a commercial account has paid a deposit which is inconsistent with the usage (i.e. the customer paid a \$210 deposit and the average two month bill is now \$900), the deposit may be increased or decreased to reflect the actual consumption.

Determine Deposit

Evaluate deposit needed and options for the customer.

- **\$999 or less:** Offer cash deposit.
 - If customer wants to explore other options, a non-cash deposit is available.
 - The cost to obtain the non-cash security for smaller deposits, however, is often more expensive than the cash required to pay the deposit.
- **\$1,000 or more:** Offer both the non-cash deposit or cash deposit options.

Suggested scripting: *I have a few options for the deposit. I can set it up in 1 or 3 installments to be billed out. Or, instead of a cash deposit, I can send you paperwork for non-monetary options, such as ILOC or Surety Bond (this is basically a line of credit with your bank or an insurance policy to cover the security).*

Waivers

Under some circumstances commercial deposits can be waived. To help determine if a deposit may be eligible for waiver, refer to [Commercial Deposit Waiver Guidelines](#).

RPA Credit

To determine if the customer receives the RPA credit:

- Schedule 32 services that qualify for the RPA/BPA (schedule 102) credit includes: multi-family common areas, sheds, shops, barns, irrigation, drainage ditches, and agriculture grows that don't change the state of product.
- Existing customers: **Go To Service Agreement > Chars, Qty & Rec. Charges**
- **Characteristic Type:** *Eligible for RPA Credit*
- **Characteristic Value:** *Y or N*

Previous PGE History

1. Find credit history: **Go to Account > C&C** tab.
2. Determine if credit history falls under these parameters.

- Applicant has received a minimum of 12 months of continuous electric service within the last 24 months from PGE. The service is the same type for which they are currently applying and excludes residential service history or telecommunication history.
- Applicant received no more than 2 late notices or 2 disconnection notices during the 12-month period.
- If the applicant is a corporation, LLC, or LLP, the previous history must be for a like service, or for another service with at least 50% of the same principals (officers/members) as the applicant.

Note: If 50% or more of the primaries of an existing corporation, LLC or LLP are still there when a name change takes place, there is no need to re-establish credit.

Example: 2 of 3, or 1 of 2 primaries are the same.

Cash Deposit

Use these guidelines for cash deposits. For steps on how to set up cash deposits, refer to [Create/Cancel Cash Deposit Service Agreement](#).

- Deposit equal to two months average electric usage.
- If a new business, it must be similar to the business that was previously at the premise.
- If new business is not similar, use the [Commercial Deposit Calculator](#) to calculate deposit.
- Deposit is held on account until customer establishes credit in accordance with Division 21 rules and PGE Tariff. See [Deposit Review and Release](#) for additional information.
- In CC&B when a deposit is refunded, it is placed as a credit on the account, including interest.
- The customer has the option of a refund check and is notified via the Deposit Setup Commercial letter; refer to [Automated Letter Directory](#).
- Any commercial customer with a deposit of \$10,000 or more (on a single account or as a sum on multiple accounts) are set for [Deposit Manual Review](#) which triggers a specific review process.

Non-Cash Security Deposit

Non-cash security deposits include: Surety Bonds, Irrevocable Letter of Credit (ILOC), and segregated accounts.

To set up a non-cash deposit case refer to [Create Non-Cash Deposit Case](#).

Surety Bond

- A Surety Bond, or Surety, is a promise by a surety or guarantor to pay one party a certain amount if a second party fails to meet some obligation, such as fulfilling the terms of a contract.
- The Surety Bond must be issued by an insurance company with an "A" Financial Strength Rating.
- The Surety Bond is held until credit is established in accordance with Division 21 rules and PGE Tariff. See [Deposit Review and Release](#) for additional information.

Irrevocable Letter of Credit (ILOC)

- ILOC is a line of credit set aside by an applicant's bank to guarantee money if a balance exists on a closed account.
- ILOC is held until credit is established in accordance with Division 21 rules. See [Deposit Review and Release](#) for additional information.

Segregated Account

- Any requests for segregated account non-cash deposits must come from the courts. Do not offer this option to a customer.
- Typically this is done when a commercial customer filed bankruptcy and is re-establishing credit with PGE.
- Courts will send the non-cash documents requiring the relationship between the customer and PGE.

Non-Cash Deposit Requests

PGE must receive the original documents; a scanned or faxed copy will not be accepted. Original copies need to be mailed to the Commercial Credit Department at:

Portland General Electric Attention: Commercial Credit 121 SW Salmon St. Portland, OR 97204
--

- Surety Bonds and ILOCs are set up as non-cash deposit cases by the front office. The process is then be executed by Credit.
- The Credit department is not able to email the Non-Cash Security forms; Credit can mail and fax.
- New customers are given 30 days to complete and return the Surety Bond/Irrevocable Letter of Credit forms. If we do not receive valid documents by the due date, a cash deposit will be assessed.
- Once the cash deposit is on the account, the customer can still submit non-cash security deposit. The cash deposit will not be returned to the customer until the non-cash security documents are received and verified.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 049
Dated October 16, 2020**

Request:

Please provide any and all forms that an industrial customer must submit to PGE when requesting new services.

Response:

PGE objects on the basis that the requested information is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case. PGE also objects that the term “new services” is vague and ambiguous. Notwithstanding and without waiving these objections, PGE responds as follows:

PGE assumes that this request is asking about any forms required when a new industrial customer requests electricity service from PGE. Please see PGE’s response to Data Request No. 048 and Attachments 048A and 048B for the information the new customer will need to provide to PGE—typically over the phone. In addition, if the customer requires service at the site that differs from the service currently available or if the customer is not certain, the customer will need to have an electrician complete this form: <https://www.portlandgeneral.com/construction/request-for-new-commercial-service> so that PGE can ensure the facilities are adequate for the customer’s needs. If PGE needs to complete upgrades to extend service to the new customer, then additional forms or agreements may be required.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 050
Dated October 16, 2020

Request:

- (a) When PGE put Service Point ID 9130567661 into its own name, did PGE submit to itself a request for new service? If yes, please provide a copy of the request for new service.
- (b) With respect to any other Service Point in which PGE is the customer paying the industrial rate, did PGE submit to itself a request for service? If yes, please provide a copy of the request for new service.
- (c) Did PGE undertake a credit review of PGE as an industrial retail customer or otherwise demand a deposit or financial security of PGE as an industrial retail customer? If so, please provide a copy of such credit review. If not, does PGE have any other large industrial customers for which it has not undertaken a credit review or demanded a deposit?

Response:

PGE objects that the term “request” is vague and ambiguous. Notwithstanding and without waiving this objection, PGE responds as follows:

- (a) Mr. Clark contacted the Billing Team and informed them that PGE needed to take responsibility for the electric service at the site. When PGE is contacted by someone asking to take financial responsibility for service, which is usually in the form of a call to PGE, PGE asks a series of questions to process the “move in,” (see Attachments 048A and 048B), opens the account(s) in the requesting customer’s name, and transfers responsibility for the service to the new customer. While PGE is not a retail electric customer, it nevertheless followed this standard practice followed by PGE when a landlord takes responsibility for a tenant’s service.
- (b) PGE objects on the ground that the assumption in this request that PGE pays the industrial rate is not accurate. PGE is not a retail electricity customer with respect to its non-revenue accounts and does not pay itself. Notwithstanding and without waiving this objection, PGE responds as

follows: In the past when PGE has needed to start service at a PGE site, PGE has similarly requested that the Billing Team start the service, but PGE is not aware what form past requests took—whether a phone call, email, oral communication, or other.

(c) PGE objects on the grounds that the assumption in this request that PGE was an industrial retail customer is not accurate. PGE was not a retail electricity customer with respect to its non-revenue accounts at the site and did not pay itself. Therefore, there was no reason for PGE to undertake a credit review of itself or request a deposit from itself, and PGE did not do so at any of the sites for which PGE has a non-revenue account.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 052
Dated October 16, 2020**

Request:

- (a) Please provide all correspondence, analysis, memoranda, and other documents specifically concerning or supporting PGE's decision to put Service Point ID 9130567661 into its own name?
- (b) Please provide all correspondence, analysis, memoranda, and other documents specifically concerning or supporting PGE's decision to change Service Point ID 9130567661 from the Schedule 489 Tariff to Schedule 89.
- (c) Please identify all PGE personnel who were consulted or were otherwise involved in the decision to put Service Point ID 9130567661 into its own name and to change Service Point ID 9130567661 from the Schedule 489 Tariff to Schedule 89. Please state what role each person played in making those decisions, and who ultimately approved the decisions on behalf of PGE.

Response:

- (a) Please see PGE's response to Data Request No. 005, in which PGE provided all non-privileged correspondence responsive to this request.
- (b) PGE is not aware of any documents responsive to this request. As an initial matter, because PGE is not a retail electricity customer with respect to the non-revenue accounts at the site, the tariff schedule on which the accounts were placed is irrelevant. However, PGE's non-revenue account bills reflected Schedule 89 because the service is at subtransmission voltage. PGE was opening completely new accounts at the site. As such, the only possible action the Billing Team could take when opening this PGE non-revenue account was to open it to reflect Schedule 89—opening a new account on Schedule 489 was not an option since PGE is not a retail electricity customer.

(c) As explained above in part (b), opening PGE's non-revenue account to reflect Schedule 89, rather than some other schedule, was not a decision and therefore did not require approval. The decision to have PGE take responsibility for the service as the lease-termination date neared was agreed upon by Brian Clark, Kristin Ingram, Nick Loos, Michaela Lynn, Tyesha Woods, and others. As Mr. Clark explains in his testimony, Mr. Konen and Stern had been asking PGE to take responsibility for the electric service for many months, WLP had not paid its electric bills, and WLP and Stern had repeatedly indicated that they did not intend to pay at the time PGE made the decision to close WLP's accounts and take responsibility for the service. The following PGE personnel participated in determining how to open PGE's non-revenue accounts to allow PGE to take responsibility for the service:

Danny Casale – Principal Customer Research Analyst
Nicole Ebinger – Billing Lead
Rikilee Eriksen – Billing Supervisor
Cristina Fajardo – Billing Supervisor
Heidi Fouts – Business Analyst, Billing
Kristin Ingram – Associate General Counsel
Elyssia Lawrence – Billing and Meter Data Manager
Christopher Liddle – Assistant Treasurer & Director, Treasury and Investor Relations
Mark Lindley – Principal Property Services Specialist
Nick Loos – Manager, Hydro Operations
Christopher Lundquist – Application Quality Assurance Analyst
Michaela Lynn – Director of Customer Service
Natalia Pavlova – Senior Accountant
Jimmy Rudig – Senior Customer Service Representative, Billing
Andrew Schafer – Key Customer Manager
David Sparley – Supervisor, Business Services
Jeff Stevens – Manager, Corporate Accounting
Tyesha Woods – Commercial Credit Program Manager

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 053
Dated October 16, 2020

Request:

Reference PGE/200, Clark/16: Mr. Clark testifies that, at the time he requested via email to put the former WLP services into PGE's name, he had "never before [dealt] with any issues related to a customer's electric bill":

- (a) Did PGE prepare any contemporaneous documentation, such as an internal memoranda, that was reviewed and approved by PGE management and that supported the decision to put the former WLP services into PGE's name? If yes, please provide all such documentation.
- (b) Please provide copies of any written PGE management approvals regarding the decision to put the WLP services into PGE's name.
- (c) Please explain why Mr. Clark, who had no experience with customer electric bills, was put in charge of making decisions about such a complicated business relationship.
- (d) Was Mr. Clark acting on behalf of PGE the utility, or PGE as the landlord/property manager.
- (e) At the time that WLP's services were put into PGE's name, did Mr. Clark review the terms of the electric service agreement between PGE and WLP provided at PGE/302? If no, please explain why not.
- (f) At the time that WLP's services were put into PGE's name, did Mr. Clark review the terms of Schedule 489? If no, please explain why not.

Response:

PGE objects that this request has inaccurately quoted Mr. Clark's testimony, which reads: "Q. Had

you dealt with any issues related to a customer's electric bill before?" A. No."

(a) PGE is not aware of any such documentation.

(b) PGE is not aware of any such documents.

(c) PGE objects to the assumptions embedded in this request, which do not accurately characterize PGE's testimony. PGE also objects that this request is vague and ambiguous in that it is not clear what is meant by "put in charge of making decisions about such a complicated business relationship." Notwithstanding and without waiving these objections, PGE responds as follows: PGE assumes this request is asking why Mr. Clark contacted PGE's Billing Team to request that PGE take responsibility for WLP's electric service. As Mr. Clark explains in his testimony, PGE/200, Clark/3-4, he led PGE's efforts to coordinate with WLP and Stern in the wake of the shutdown and ensure that PGE could keep its Sullivan Plant operating without interruption. Therefore, in the October 2018 time frame, when it was clear that no mutual redevelopment opportunity between Stern and PGE would be possible and focus had shifted to lease termination, Mr. Clark initiated the effort to have PGE take responsibility for the electric service to ensure continuity of power to the site and eliminate the accrual of bad debt.

(d) PGE objects that this request is vague and ambiguous. The relationship between PGE and WLP was governed by both private contractual obligations under WLP's lease and regulatory obligations under PGE's tariff and the LTDA Agreement WLP executed. Mr. Clark and other PGE employees acted consistent with all such obligations.

(e) No. Mr. Clark's role at PGE did not include setting up new accounts for electric service customers.

(f) No. Mr. Clark's role at PGE did not include setting up new accounts for electric service customers.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 054
Dated October 16, 2020**

Request:

Reference PGE/200, Clark/18:7-12: Mr. Clark testifies that “neither Stern nor WLP raised concerns about WLP’s LTDA rights during [his] conversations with them.” In Mr. Clark’s discussions and decision-making regarding PGE, did he ever inform Stern or WLP that the direct access service agreement between PGE and WLP allowed WLP to assign its rights? If no, please explain why not.

Response:

No. Mr. Clark was not familiar with WLP’s LTDA Agreement. Nor was it Mr. Clark’s responsibility to be aware of or inform Stern or WLP regarding the terms of an Agreement that WLP had signed. Mr. Clark is not involved in billing or customer account maintenance in his role at PGE.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 055
Dated October 16, 2020

Request:

Reference PGE/100, Faist/6:9-10: Mr. Faist testifies that the “Creditor’s Trust Agreement does not mention or provide for a mill re-start”:

- (a) When Did Mr. Faist first become aware that Mr. Konen, and others at the Paper mill were seeking out a new owner and/or operator that would restart the Paper Mill?
- (b) Was Mr. Faist aware that on November 16, 2018, John Otnes informed PGE that WLP was going through due diligence for a party who was exploring the reopening of the Paper Mill?
- (c) How many different creditor trust agreements has Mr. Faist reviewed in his professional career? Was this creditor trust agreement materially different from such other creditor trust agreements? If so, please explain how it differed.

Response:

(a) Mr. Faist does not recall the exact date on which he became aware that Mr. Konen was seeking a new owner to begin operating the paper mill. Mr. Faist did not understand that a new owner might actually be found to potentially begin operating the paper mill until Mr. Konen began introducing PGE to potential new owners in October 2018.

(b) See PGE/100, Faist/25.

(c) PGE objects that this request is vague and ambiguous, in that it is not clear what “creditor trust agreements” refers to, and that the relevance of this request to this case is unclear. Notwithstanding and without waiving these objections, PGE responds as follows: Mr. Faist has not reviewed any other creditor trust agreements.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 056
Dated October 16, 2020**

Request:

Reference PGE/100, Faist/13:14-20:

- (a) Was Mr. Faist involved in reviewing and approving of the decision to put the former WLP services into PGE's name? If yes, please provide any approval emails or documentation from Mr. Faist supporting the decision. If no, please explain why Mr. Faist was not involved.
- (b) At the time that WLP's services were put into PGE's name, did Mr. Faist review the terms of the electric service agreement between PGE and WLP provided at PGE/302? If no, please explain why not?
- (c) At the time that WLP's services were put into PGE's name, did Mr. Faist review the terms Schedule 489? If no, please explain why not.

Response:

- (a) No. Mr. Faist was included in some email correspondence so he was aware that WLP's accounts were being closed and that PGE was taking responsibility for the electric service, but he was not involved in reviewing or approving the decision. As explained in his testimony, Mr. Faist participated in the lease-amendment and lease-termination discussions with WLP and Stern Partners, and then he negotiated with new entities interested in operating the paper mill, including Columbia Ventures. Mr. Faist is not and has not previously been involved in billing or customer account maintenance in his roles at PGE.
- (b) No. Please see response to part (a).
- (c) No. Please see response to part (a).

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 057
Dated October 16, 2020**

Request:

Reference PGE/200, Clark/16:22-24: Mr. Clark testifies that “most of the charges post-shutdown were caused by a high demand charge that was appropriate for the mill’s large industrial production but not for PGE’s usage.” Please explain how the Paper Mill’s large industrial production impacted the demand charges that PGE was required to pay after it put the former WLP services into PGE’s own name.

Response:

Please see PGE’s response to WFalls and WLP Data Request No. 008 and 058, part b. When put into PGE’s name, the service was a Non-Revenue Account. As such, PGE’s billing system creates a bill, and each bill includes the service period, usage, all applicable meter readings, all charges, and a Non-Revenue Charge Adjustment. This Non-Revenue Charge Adjustment is used in lieu of PGE remitting payment to itself. When the service was in PGE’s name, the bills reflected \$0.00 due, because Non-Revenue Charge Adjustments offset the charges. Generally speaking, demand charges for a customer are calculated based on the preceding 13-month period. However, when a new customer takes over service at a particular site, then the period for calculating demand charges starts over.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 058
Dated October 16, 2020**

Request:

Reference PGE/200, Clark/19:1-4:

- (a) Please explain the difference between PGE transferring WLP's accounts into PGE's own name in contrast to disconnecting WLP's service pursuant to OAR 860-021-0505.
- (b) Following PGE's exercise of its right to disconnect service under OAR 860-021-0505, has PGE ever subsequently established itself as the retail customer of record for the disconnected Service Point?
- (c) What would have happened to PGE's Sullivan Plant if PGE had exercised its right under OAR 860-021-0505 to disconnect service to Service Point ID 9130567661? Would PGE have been able to continue operating and maintaining the Sullivan Plant without interruption?

Response:

- (a) PGE had the right to terminate WLP's electric service for nonpayment under PGE's tariff when it did so on November 15, 2018. *See* PGE/300, Wenzel-Macfarlane/14-15. Under PGE's tariff, electric service could have been shut off to the site entirely due to nonpayment; however, doing so would have imperiled critical services at the site. Consequently, WLP's accounts were closed but electric service was not shut off. PGE legally assumed control of the property eleven days later, at which point PGE would have taken responsibility for service at the site as the property owner in any event.
- (b) No. PGE does not consider itself a retail electricity customer when self-providing electricity, with very limited exception such as capital work. These accounts were non-revenue accounts. As such, PGE's billing system creates a bill; however, as stated in DR 008, each bill includes the service period, usage, all applicable meter readings, all charges, and a non-Revenue Charge

Adjustment. This Non-Revenue Charge Adjustment is used in lieu of PGE remitting payment to itself. When the service was in PGE's name, the bills reflected \$0.00 due, because Non-Revenue Charge Adjustments offset the charges. PGE's right and responsibilities with respect to self-supply of electric service are not governed by Division 21 of the OAR or its tariff.

(c) Sullivan has its own meter that is under PGE's control, so the Sullivan Plant itself would have been able to operate even if Service Point ID 9130567661 were disconnected. However, disconnecting service would have had several impacts on PGE's operation of Sullivan. For example, it would have been very dark and potentially unsafe for PGE employees to enter Sullivan, which required walking or driving through the mill. Disconnecting would have stopped sewer pumps that benefited Sullivan and would have required PGE to use an alternate option such as portable toilets. Also, the wood buildings surrounding Sullivan would have been left without fire protection, which would have placed Sullivan at risk of fire.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 059
Dated October 16, 2020**

Request:

Reference PGE/200, Clark/19:1-4: Were the services received at Service Point ID 9130567661 modified physically in any way when PGE put the service point into its own name on September 1, 2018?

Response:

No, Service Point ID 9130567661 was not modified physically in any way when PGE opened new accounts in PGE's name to take responsibility for this service point.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 060
Dated October 16, 2020

Request:

Reference PGE/200, Clark/17: Mr. Clark states “Although I first raised the question of PGE taking over the electric service in January 2018, because of the negotiations with Stern that I explain above, we did not move forward with the change at that time.”

- (a) With whom did Mr. Clark raise such questions?
- (b) How did the individuals with whom Mr. Clark raised such questions respond?
- (c) Why did PGE decide not to take over the electric service in January 2018?
- (d) Does Mr. Clark have any documentation, such as email or internal memoranda, to support this assertion? If yes, please provide.

Response:

(a) Andrew Schafer (WLP’s Key Customer Manager), Leslie Heilbrunn (Director Customer Solutions), Teresa Griffels (Regulatory Consultant), Cece Coleman (Assistant General Counsel), and Tyesha Woods (Commercial Credit Program Manager).

(b) They provided Mr. Clark with information about WLP’s electric bill and the charges assessed under Schedule 489.

(c) As Mr. Clark explained in his testimony, the situation with WLP and Stern Partners was very dynamic and uncertain at that time. For example, the involuntary bankruptcy was still pending, and PGE and Stern were just beginning to discuss amending WLP’s lease and having PGE take responsibility for the electric service while the parties jointly explored redevelopment. However, those negotiations ultimately were not successful, and WLP’s lease was never amended.

(d) PGE objects that “this assertion” is vague and ambiguous. Notwithstanding and without waiving this objection, PGE is not aware of any non-privileged documents regarding the discussions referenced in this request.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 061
Dated October 16, 2020**

Request:

Was Mr. Clark responsible for making the decision to bill the account on schedule 89, rather than schedule 489, when PGE took over the electric services at the Paper Mill? If no, please identify who at PGE was responsible for making the decision, and provide any documentation supporting the decision making process.

Response:

Please see PGE's Response to Data Request No. 052, part (b).

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 064
Dated October 16, 2020**

Request:

Did the Industrial load forecast in PGE's 2019 IRP include loads associated with the New Load Direct Access program? Please explain.

Response:

PGE objects on the basis that the requested information is neither relevant to this case, nor reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding and without waiving this objection, PGE responds as follows:

The Industrial load forecast used in PGE's 2019 IRP was based on the September 2018 load forecast and did not include loads associated with the New Load Direct Access Program. At that point in time, loads in the NLDA queue were considered too speculative to be incorporated individually into PGE's 5-year forecast. Based on the premise of the NLDA program, new loads meeting the size criteria of the NLDA program (10 MWa) are assumed to be incremental to PGE's long-term growth rate forecast.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 065
Dated October 16, 2020**

Request:

When PGE assumed site control at the Paper Mill, did PGE consider the electricity consumed at the Paper Mill to be station services for the Sullivan plant? Please explain your answer.

Response:

No. Station service is energy that a generating plant uses onsite. Sullivan's station service is measured by a different PGE-owned meter and account. However, the electricity consumed at the mill site was important to PGE's safe operation of Sullivan. The mill's electric service supported lighting to ensure PGE employees could safely walk through the mill to reach Sullivan, fire suppression systems for the wooden buildings surrounding Sullivan so that Sullivan was not at risk of fire, and the sewage system that was used by the PGE employee at Sullivan in addition to the mill.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 066
Dated October 16, 2020**

Request:

Reference PGE/200, Clark/5:10: In the referenced testimony, Mr. Clark testifies that he “understood that the mill was being permanently shut down.” On December 20, 2017, however, Mr. Clark emailed Andrew Schafer, WLP’s Account Executive, stating that WLP was “maintaining readiness for a sale to others,” and was therefore ineligible for a reduced facilities charge. Please explain how Mr. Clark’s testimony is consistent with the email from December 20, 2017.

Response:

The quoted portion of Mr. Clark’s testimony is responding to the question “Based on this information, did you understand that WLP or another entity would potentially be resuming paper-making at the mill in the future?” “This information” referenced in the question is the press releases and notices issued in October 2017 regarding WLP’s shutdown, which are discussed in the immediately preceding Q&A in Mr. Clark’s testimony. Mr. Clark’s testimony makes clear that, based on the press releases and notices issued at the time of the shutdown, he understood that the mill was being permanently shut down. The email referenced in the data request was sent approximately two months later. Because Mr. Clark’s testimony addresses a point in time two months before he sent the email, his testimony is consistent with the email when the testimony is read in context. As reflected in the email, Mr. Clark later learned that one of the options for WLP’s equipment following the shutdown was that it could be sold to a new owner who might operate the mill. However, as Mr. Clark’s testimony explains, this was not the only option being considered for the former paper mill property at that time.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 067
Dated October 16, 2020**

Request:

In Mr. Clark's correspondences with the Paper Mill, including both WLP and WFalls, was he representing PGE in its capacity as the landlord to the Paper Mill properties, PGE in its capacity as the electric service provider to the Paper Mill, or both. Please explain your answer.

Response:

PGE objects that this request is vague and ambiguous. The relationship between PGE and WLP was governed by both private contractual obligations under WLP's lease and regulatory obligations under PGE's tariff and the LTDA Agreement WLP executed. Mr. Clark and other PGE employees acted consistently with all such obligations. Mr. Clark was, at all times, acting in his capacity as an employee of PGE and within the scope of the duties assigned to him in his role as General Manager of Power Supply Engineering Services.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 068
Dated October 16, 2020**

Request:

In Mr. Faist's correspondences with the Paper Mill, including both WLP and WFalls, was he representing PGE in its capacity as the landlord to the Paper Mill properties, PGE in its capacity as the electric service provider to the Paper Mill, or both. Please explain your answer.

Response:

PGE objects that this request is vague and ambiguous. The relationship between PGE and WLP was governed by both private contractual obligations under WLP's lease and regulatory obligations under PGE's tariff and the LTDA Agreement WLP executed. Mr. Faist and other PGE employees acted consistently with all such obligations. Mr. Faist was, at all times, acting in his capacity as an employee of PGE and within the scope of the duties assigned to him in his role as Principal Originator.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 069
Dated October 16, 2020**

Request:

Please provide time tracking detailing the number of hours per month that Mr. Clark, Mr. Faist, and any other PGE employees, spent on the non-regulated lease activities associated with the Paper Mill over the period September 2017 through September 2020.

Response:

PGE objects that this request is vague and ambiguous and seeks information that is neither relevant to this case nor reasonably calculated to lead to the discovery of admissible evidence. The relationship between PGE and WLP was governed by both private contractual obligations under WLP's lease and regulatory obligations under PGE's tariff and the LTDA Agreement WLP executed. Mr. Clark, Mr. Faist, and other PGE employees acted consistently with all such obligations.

October 28, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 070
Dated October 16, 2020**

Request:

Please explain how the employee costs associated with administering the non-regulated properties and lease of the Paper Mill site are split between regulated and non-regulated operations.

Response:

PGE objects that this request is vague and ambiguous and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case. Notwithstanding and without waiving this objection, PGE responds as follows: PGE did not track employee costs associated with time spent on a regulated versus non-regulated basis in this context. Even if it did, it would not be possible to separate the time spent on issues related to WLP and Sullivan following WLP's shutdown into one category or the other, because the relationship between PGE and WLP was governed by both private contractual obligations under WLP's lease and regulatory obligations under PGE's tariff and the LTDA Agreement WLP executed.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 071
Dated October 16, 2020**

Request:

On March 22, 2018, Mr. Clark emailed Neil de Gelder of Stern Partners stating that “PGE is unable to modify WLP’s current billing status for electrical services in the absence of an Amendment to the Lease justifying the modification so getting something formal in place is most certainly in our mutual best interests.

- (a) Please explain why the electric services were relevant in the lease negotiations with Stern Partners?
- (b) Was PGE was using its regulated electric services to influence the negotiation of the non-regulated lease agreement with WLP.
- (c) Please explain why an amendment to the lease was necessary to modify WLP’s billing status for electrical services.
- (d) Please explain why PGE ultimately did modify WLP’s billing status, in the absence of an amendment to the lease.

Response:

(a) WLP was obligated under the terms of WLP’s lease to pay for electric service. When PGE and Stern began discussing amending the lease, responsibility for electric service was just one issue the parties were negotiating. PGE was not willing to absolve WLP of responsibility for one of its obligations under WLP’s lease without reaching a more comprehensive agreement regarding amending the lease that also addressed other important issues.

(b) No. Mr. Clark was conveying that PGE was unable to alter one of the lease terms in isolation (WLP’s responsibility to pay for electric service) without reaching a more comprehensive agreement that addressed other issues at the site. The lease agreement contained a full set of freely

negotiated terms and conditions that established the parties' private contractual rights and obligations at the site.

(c) An amendment to WLP's lease was not necessary to modify WLP's billing status for electric services. Separate from the private contractual arrangements in the lease, WLP had established an electric service account with PGE subject to the Public Utility Commission's regulatory authority and the terms and conditions of PGE's regulated tariff. That tariff gave PGE the right to terminate WLP's regulated utility service account for non-payment in March 2018—regardless of the status of the lease. However, as explained in Mr. Clark's testimony and in parts (a) and (b) above, PGE was seeking to work cooperatively with Stern to explore redevelopment, discuss a lease amendment, and ensure continued operations of the Sullivan plant. It was in the context of the lease-amendment discussions that Mr. Clark made the statement quoted above.

(d) By the time PGE closed WLP's accounts and opened accounts in PGE's name to take responsibility for the electric service, it had become clear that the parties could not agree upon an amendment to WLP's lease, the parties had transitioned to negotiating a lease termination agreement, PGE had issued a default notice to WLP, and the lease was scheduled to terminate by action of the default notice. *See also* PGE/300, Wenzel-Macfarlane/15-16.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 072
Dated October 16, 2020**

Request:

Under what circumstances is PGE allowed to voluntarily forgive the amounts due from an electric service customer through an agreement such as the Creditors' Trust Agreement? Please refer to specific tariffs, rules, or billing manuals that detail PGE's policy towards entering into such agreements.

Response:

PGE has a fiduciary duty to mitigate credit risk to safeguard rate payers from a risk of loss. Once an electric service customer provides notice of liquidation through an agreement such as the Creditors' Trust Agreement, there are provisions a creditor is required to agree with in order to file a qualifying claim. In this case, PGE as a creditor agreed to be bound by the provisions of the Creditors' Trust Agreement regarding releases to and covenants not to sue certain parties named in the Creditors' Trust Agreement. By accepting a liquidation payment from the trustee, PGE had to agree not to seek additional collection of any remaining balance due, deeming it uncollectible.

The probability of collecting any portion of an unsecured balance from a customer in liquidation is zero if a claim is not filed. PGE does not voluntarily forgive the amounts due from an electric service customer. It is required to accept the distribution payment under the provisions of an agreement such as the Creditors' Trust Agreement. Filing a qualifying claim reduces the uncollectible credit risk from 100% to a smaller value.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 073
Dated October 16, 2020

Request:

On December 20, 2017, WLP's account executive sent an email stating that "I indicated in a team email 12/7 that John's plans were not to close the mill, but work to get out of bankruptcy, then operate again or sell. My understanding is that this precludes rule 3 of TIB 29."

- (a) Please explain the acronym TIB 29 and provide a copy of the associated manual or document in its entirety, including any and all other sections of the document.
- (b) Please explain why the Paper Mill's plan to operate again or sell, precluded rule 3 of TIB 29.

Response:

(a) TIB stands for "Tariff Information Bulletin". TIBs are internal only documents used to help ensure consistency in interpretation of PGE's tariff. TIB 29 Establishing Capacity for Discontinued Operations explains PGE's options when a Customer plans to permanently close a facility.

(b) The intent of rule 3 of TIB 29 is to allow for lower load level to facilitate sale of operations or equipment when a customer is discontinuing operations. TIB 29 does not eliminate a customer's obligation to pay its electric bills but may in some instances lower the overall amount of that bill if the customer is deemed eligible to be billed at a lower demand level. TIB 29 contains certain eligibility requirements. One requirement is that the Customer must agree to not start up load that is in excess of the negotiated lower peak Demand level for billing purposes for at least one year. This ensures the customer is truly discontinuing service and does not intend to increase its load back to prior levels. Another TIB 29 requirement is that a customer must be current on its electric bills. In this case, WLP's status was initially unclear. The fact that it had announced its liquidation led PGE to believe that WLP was not planning to continue operations; however, Mr. Konen had indicated to others at PGE his intent to find someone to take over the plant. WLP's status was also

complicated by an involuntary bankruptcy filing. By early 2018, however, WLP had ceased paying certain of its electric bills and was thus ineligible for a lowered Demand level for billing purposes under TIB 29.

See Attachment A for TIB 29.

TIB-29
ESTABLISHING CAPACITY FOR DISCONTINUED OPERATIONS

The purpose of this bulletin is to explain the Company's options when a Customer plans to permanently close a facility. The following options are available:

1. **No new Customer** - Close the account and have the service/meter removed or de-energized.
2. **New Customer taking over plant** - The new customer will need to contact Customer Service to open an account. Once an account has been established, the Company will consult with new Customer on their load requirements. The Company reserves the right to reduce transformer/service/etc. size to match the planned load. If the new Customer does not want unneeded equipment removed, the Company will bill the new Customer an Excess Capacity charge.

If PGE determines that the principal parties of the new corporation, partnership, or other commercial enterprise, are substantially the same as an existing corporation, partnership, or commercial enterprise that is currently receiving or has received service from the Company, they are deemed to be the same corporation, partnership, or commercial enterprise.

It is not an option for a customer to close the account only to reopen it in a different name to avoid paying charges (Rule E (2)(F) Like Ownership).

3. **Customer wants to maintain facilities but at a lower load level** to facilitate sale of operations or equipment - Upon approval of the Company and execution of a signed agreement, the Facility Capacity can be lowered to post shutdown levels **if** the Customer agrees to not start up load that is in excess of a negotiated peak Demand (not-to-exceed Demand) for at least one year.

In the event the Customer does exceed the not-to-exceed Demand within the year, the Facility Capacity for each month of the agreement will be recalculated as if there was no agreement.

The revised Facility Capacity would be set to the not-to-exceed peak Demand level. This negotiated peak Demand would allow for load fluctuations due to machine testing or property marketing.

The Company reserves the right to reduce the Company's on-site equipment to the level required to meet the negotiated peak Demand level.

TIB-29
ESTABLISHING CAPACITY FOR DISCONTINUED OPERATIONS

Example

The Customer had a peak Demand of 2 MW. The plant discontinues production and their new load for the first month is 100 kW. They still have the machines inside the plant and plan to operate them for prospective buyers. The largest single piece of equipment is 250 kW. The Customer and the Company negotiate a not-to-exceed Demand of 400 kW. The 400 kW Facility Capacity is determined adequate for minimal plant operation combined with the largest piece of equipment, and some leeway. The new Facility Capacity is reset at 400 kW. If the Customer exceeds the 400 kW range once within a year of the agreement, then all the bills that used the 400 kW are recalculated based on the pre-agreement Facility Capacity of 2 MW.

Special Conditions:

1. Capacity for discontinued operations is applicable to non-seasonal Customers only.
2. Where applicable, the Nonpermanent Line Extension Rule I(7)(B) applies. The Service Termination Charge may be reduced if the Company removes on-site equipment.
3. To qualify for Option 3, the Customer must be current on all charges including interest and deposits.
4. Customer Service Specialized Billing will need to process the Option 3 billing.
5. Key Customer Managers will monitor monthly Option 3 bills for compliance with the signed agreement and notify Specialized Billing in the event of non-compliance.
6. In the event of non-compliance, Specialized Billing will recalculate bills and Key Customer Management will inform the Customer that they no longer qualify for the reset Demand.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 074
Dated October 16, 2020**

Request:

Reference PGE/300, Wenzel-Macfarlane/22, Footnote 43:

- (a) Please provide all communications to or from the Creditors' Trust dealing or discussing the amount of funds PGE ultimately received from the Creditors' Trust.
- (b) Please state the date that the funds were received.
- (c) Please detail the amounts received for the lease and the amounts received for electric services and the time period covered by the reimbursement.

Response:

- (a) There was no communication to or from the Creditors' Trust dealing with or discussing the amount of funds PGE ultimately received from the Creditors' Trust.
- (b) Funds were received on 09/13/2019 and 09/20/2019.
- (c) The Creditors' Trust did not identify the amount allocated for the lease or the amount allocated for electric services; nor did they reference the time period covered by the distribution.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 075
Dated October 16, 2020**

Request:

Does PGE agree that it was possible PGE might have been fully reimbursed for WLP's electric services over the period January 2018 through August 2018 through the Creditors' Trust agreement. If no, please explain.

Response:

No. As explained in PGE/300, Wenzel-Macfarlane/22, PGE submitted a claim to the Creditors' Trust for [REDACTED] of which [REDACTED] was for electric service provided to WLP by PGE from January through August 2018. PGE ultimately recovered [REDACTED] from the Creditors' Trust. Therefore, even if the full amount recovered was put toward WLP's unpaid electric bills, PGE was not fully reimbursed for electric services provided to WLP. Finally, PGE notes that it did not receive the Creditors' Trust reimbursement until September 2019, and prior to that time, PGE had no certainty that it would receive *any* reimbursement—nor did it know how much it would receive.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 076
Dated October 16, 2020**

Request:

Please detail each and every account or service that PGE closed and put into its own name when PGE took over site control of the Paper Mill.

Response:

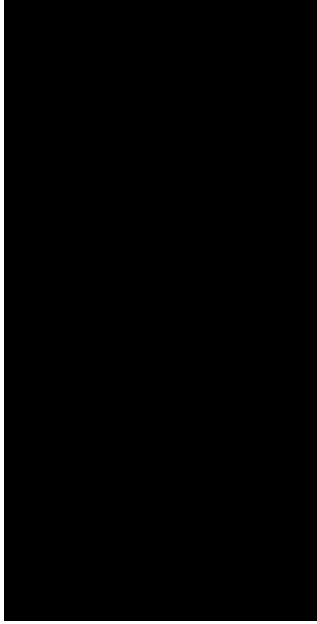
Please see Confidential Attachment 076A.

**PROTECTED INFORMATION SUBJECT
TO GENERAL PROTECTIVE ORDER**

WFalls/401
Mullins/412107
PGE to WFalls DR 076 Attach A

Account ID

SP ID



October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 077
Dated October 16, 2020**

Request:

When PGE assumed site control of the Paper Mill as landlord, please confirm whether it took assignment of the following accounts, services and/or permits. If PGE did not take assignment of the accounts, services or permits, please provide any documentation showing that PGE applied for and received a new permit, and/or account.

- (a) NPDES Industrial Wastewater Discharge Permit No 100976
- (b) Industrial Stormwater Discharge 1200-Z Permit Deq file # 21489
- (c) Title V Air Permit No 03-2145-TV-01
- (d) Radioactive Materials License ORE-90821
- (e) Dam Registration ID OR03937
- (f) West Linn Water Services
- (g) Sewer Services
- (h) Natural Gas Distribution Services
- (i) Natural Gas Transportation and Commodity Services
- (j) Waste Disposal / Garbage Services
- (k) Internet/Telecommunications services

Response:

PGE did not take assignment of the listed accounts, services, or permits, and PGE did not apply for new permits or accounts—nor was PGE required to. The five permits listed in (a) through (e) above, and the service in (h) and (i) were required for operation of the paper mill, and PGE did not operate the paper mill. With respect to (f) and (g), WLP covered the small base charge, and PGE compensated WLP anytime PGE used water associated with the account to cool Sullivan

generators. See Confidential Attachment 079A. PGE had its own waste disposal and garbage services and internet and telecommunications services and did not use (j) or (k).

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 078
Dated October 16, 2020**

Request:

If PGE did not take assignment of the permits/services described above, on what basis did PGE use these permits/services.

Response:

Please see PGE's Response to Data Request No. 077. As explained in that request, PGE did not use the majority of the listed permits/services. PGE compensated WLP for the bills reflecting PGE's use of water to cool Sullivan. See PGE's Response to Data Request No. 079 and Confidential Attachment.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 079
Dated October 16, 2020**

Request:

Please provide any and all invoices PGE received for water, sewer, stormwater, natural gas services, telecommunications services, internet and waste disposal services at the Paper Mill site over the period September 1, 2018 through June 2019.

Response:

Please see Confidential Attachment 079A, which contains invoices for water that PGE received from WLP and paid. These invoices reflect months in which PGE used the city water account in WLP's name to cool Sullivan generators and compensated WLP for the excess usage. PGE did not receive any other invoices for services at the Paper Mill site—interpreted to mean the PGE-owned property aside from Sullivan—during this period.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 080
Dated October 16, 2020**

Request:

Please provide the daily Schedule 489 Company Supplied Energy on- and off-peak prices over the period August 1, 2020 through the September 30, 2020.

Response:

Please see Confidential Attachment 080A.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 081
Dated October 16, 2020**

Request:

Please provide daily on- and off-peak kilowatt-hour usage for Service Point ID 9130567661, Meter ID 60770154SW over the period August 1, 2020 through the September 30, 2020.

Response:

Please see Confidential Attachment 081A.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 082
Dated October 16, 2020**

Request:

Please provide monthly Schedule 89 Billing determinants and associated rates for Service Point ID 9130567661, Meter ID 60770154SW over the period August 1, 2020 through the September 30, 2020.

Response:

PGE objects that this request seeks information available from WFalls' bills, which are equally available to WFalls. The billing determinants and associated rates for the referenced service point and meter ID are available on each bill or in PGE's tariff.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 083
Dated October 16, 2020**

Request:

Reference Faist/25. Was Mr. Faist at the meeting with Tyler Pebble?

If not, who was at that meeting and on what basis does Mr. Faist discuss the conversation at that meeting? Please provide any documents that corroborate the statement that “PGE informed Mr. Pebble that WLP’s LTDA Agreement has been terminated.”

Response:

Mr. Faist was not at the March 19, 2019 meeting with Tyler Pepple. To the best of PGE’s knowledge, that meeting was attended by Doug Tingey for PGE. Mr. Faist was involved in privileged internal discussions to prepare for the meeting with Mr. Pepple, and he received a privileged communication after the meeting updating him about the discussion.

October 28, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE's First Supplemental Response to WFalls and WLP Data Request No. 083
Dated October 16, 2020**

Request:

Reference Faist/25. Was Mr. Faist at the meeting with Tyler Pebble?

If not, who was at that meeting and on what basis does Mr. Faist discuss the conversation at that meeting? Please provide any documents that corroborate the statement that "PGE informed Mr. Pebble that WLP's LTDA Agreement has been terminated."

First Supplemental Response:

Mr. Faist was not at the March 19, 2019 meeting with Tyler Pepple. To the best of PGE's knowledge, that meeting was attended by Doug Tingey, Cece Coleman, Karla Wenzel, and Andrew Speer for PGE. Mr. Faist was involved in privileged internal discussions to prepare for the meeting with Mr. Pepple, and he received a privileged communication after the meeting updating him about the discussion.

Response:

Mr. Faist was not at the March 19, 2019 meeting with Tyler Pepple. To the best of PGE's knowledge, that meeting was attended by Doug Tingey for PGE. Mr. Faist was involved in privileged internal discussions to prepare for the meeting with Mr. Pepple, and he received a privileged communication after the meeting updating him about the discussion.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 084
Dated October 16, 2020

Request:

See Wenzel-Macfarlane/17, where it states “There was no reason for PGE to believe that Wfalls was WLP’s legal successor such that Wfalls could automatically take over WLP’s account. Wfalls was not created as part of a reorganization or merger, for example.”

- (a) Please provide the basis for the conclusion that WFalls is not WLP’s legal successor.
- (b) Is it PGE’s position that a “legal successor” can only exist when there is a reorganization or merger?
- (c) Is Ms. Wenzel testifying as a lawyer?
- (d) Does PGE agree that the question of whether an entity is a “successor” is a mixed question of fact and law? If so, does PGE agree that it is appropriate for a witness to submit testimony as to the facts that would allow the Commission to reach a certain legal conclusion?

Response:

PGE objects that this request inaccurately quotes PGE’s testimony, which reads “There was no reason for PGE to believe that WFalls was WLP’s legal successor such that WFalls could automatically take over WLP’s electric service account. WFalls was not created as part [of] a reorganization or merger, for example.”

- (a) WLP’s service was terminated for nonpayment in November 2018 and it vacated the property that same month; when WFalls applied for service many months later and took over possession of the site from PGE, WFalls was understood to be a new company and a new customer.
- (b) PGE objects that this request seeks a legal conclusion. Notwithstanding and without waiving this objection, PGE responds as follows: Please see the response to (a). PGE’s position is that as a practical matter, it had no reason to believe WFalls was a legal “successor” to WLP, and as a

legal matter, WFalls is not a “successor” as PGE understands the term. This is ultimately a legal question that PGE will address in briefing.

(c) Ms. Wenzel is not testifying as a lawyer.

(d) PGE objects that this request seeks a legal conclusion. Notwithstanding and without waiving this objection, PGE responds as follows: PGE agrees that the question of whether an entity is a successor is a mixed question of fact and law. It is appropriate for witnesses to testify to facts. It is also appropriate for a utility’s regulatory expert to explain how a utility’s tariffs were applied in the context of a particular set of facts.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 085
Dated October 16, 2020**

Request:

Reference Wenzel/Macfarlane/17, footnote 31, is it PGE's position that if WLP and or WFalls paid the outstanding balances associated with electric and lease payments owed by WLP to PGE, PGE would consent you assignment of the LTDA agreement?

Response:

No. It is PGE's position that WLP's right to receive LTDA service under the LTDA Agreement and Schedule 489 ended after WLP's service was properly terminated for nonpayment in November 2018. Termination of the account would have occurred in any event when PGE legally took over possession of the site in November 2018. Schedule 489 provides that, "[a]t the time service terminates under this schedule, the Customer will be considered a new Customer for purposes of determining available service options." WLP's service under Schedule 489 terminated in 2018, and after that time, PGE was required to treat WLP as a new customer. Therefore, even if the LTDA Agreement still existed in some form and could be assigned to WFalls, it would not convey the right to receive LTDA under Schedule 489.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 086
Dated October 16, 2020

Request:

Reference Faist/26 “Initially, when Mr. Pepple and Mr. Konen requested WLP’s LTDA Agreement, PGE was not clear that they were authorized to represent WLP and receive WLP’s customer confidential information, and so PGE did not provide the LTDA Agreement immediately upon request. This uncertainty was informed by a conversation with Stern where they stated that Mr. Konen was no longer representing Stern’s interest, a comment that I understood to mean Mr. Konen was no longer involved with WLP. To remove that uncertainty and support Mr. Konen in his re-start efforts, I called Stern to understand whether sharing the LTDA Agreement was something that Stern would support. Although Mr. Konen was no longer an employee of Stern, Stern was supportive of providing him a copy of the agreement, but by that time, I understood that Mr. Konen and Columbia Ventures had received a copy directly from Stern.”

- (a) How long after WLP requested a copy of the LTDA Agreement did Mr. Faist contact Stern? Please provide any emails or correspondence related to this answer.
- (b) How did Mr. Faist come to understand that Stern provided Mr. Konen and Columbia Ventures a copy of the LTDA Agreement?
- (c) Did Mr. Faist ever ask either Mr. Konen or Columbia Ventures whether they had received a copy of LTDA Agreement? Please provide any emails or correspondence related to this answer.

Response:

- (a) Mr. Faist contacted Stern Partners via telephone on or before May 1, 2019.
- (b) In Mr. Faist’s conversation with Stern Partners in which Stern agreed that the LTDA Agreement could be shared with Mr. Konen, Stern also indicated that Mr. Konen had already received the Agreement.

(c) No. Because Mr. Konen did not renew his request for the LTDA Agreement, Mr. Faist reasonably assumed that Mr. Konen had received a copy. See PGE/100, Faist/26-27.

October 27, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 087
Dated October 16, 2020

Request:

Reference Wenzel/Macfarlane/9 “voluntary termination [of the LTDA] required WLP to give “not less than 2 years advance written notice of termination to PGE.”

- (a) Could WLP unilaterally terminate the LTDA by withholding payment from PGE?
- (b) Could WLP unilaterally terminate the LTDA by transferring electric service at the same Service Point to a successor?
- (c) Could WLP unilaterally terminate the LTDA by transferring or assigning electric service at the same Service Point to a creditor?
- (d) If a creditor of WLP were to take over electric service at the same Service Point governed by the LTDA, could that creditor unilaterally terminate the LTDA other than by giving two (2) years notice?

Response:

PGE objects to these questions as they call for legal analysis and response and go beyond the scope of submitted testimony. Subject to these objections, PGE responds as follows:

- (a) The status of a LTDA agreement turns on whether the customer has complied with the terms of the LTDA agreement and the terms and conditions of the customer’s electric service taken under that agreement. Withholding payment from PGE is a breach of the LTDA agreement and a violation of the terms and conditions of WLP’s electric service. A party’s actions with respect to its contractual obligations can support a finding of termination.
- (b) PGE objects to this particular hypothetical as vague and unclear and as seeking information not reasonably calculated to lead to the discovery of admissible evidence. Subject to these additional objections, PGE responds as follows: the status of a LTDA agreement turns on whether

the customer has complied with the terms of the LTDA agreement and the terms and conditions of the customer's electric service taken under that agreement.

(c) PGE objects to this particular hypothetical as vague and unclear and objects to the assumption that WLP can unilaterally assign the LTDA agreement. Subject to these additional objections, PGE responds as follows: the status of a LTDA agreement turns on whether the customer has complied with the terms of the LTDA agreement and the terms and conditions of the customer's electric service taken under that agreement.

(d) PGE objects to this particular hypothetical as vague and unclear and objects to the assumption that a creditor could unilaterally take over a LTDA agreement. Subject to these additional objections, PGE responds as follows: the status of a LTDA agreement turns on whether the customer has complied with the terms of the LTDA agreement and the terms and conditions of the customer's electric service taken under that agreement.

October 29, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 088
Dated October 20, 2020**

Request:

Reference PGE/300, Wenzel-Macfarlane/10:16: Does PGE agree that WFalls has established credit worthiness to receive electric services?

Response:

Establishing creditworthiness of a customer to receive electric services is not a one-time event. PGE may verify the nonresidential customer's creditworthiness at any time. As a result, a nonresidential customer may be required to re-establish credit where conditions of electric services or the basis upon which credit was originally established have materially changed. This may lead to the requirement of a new or additional deposit, or an expansion of other forms of security at PGE's discretion.

Such was the case with WFalls. In late 2019, PGE's Credit Team determined that WFalls' lack of creditworthiness required additional security for the electric bills. WFalls refused to post additional security, and after negotiations, both parties agreed that PGE's concerns could be addressed through an addendum to the parental guaranty that Columbia Ventures had provided for WFalls' lease obligations. The addendum clarifies that PGE has the right to collect under the Guaranty for any overdue Lease Obligation (which includes payment of the electrical bill) without PGE needing to first either provide an opportunity for WFalls to remedy the default or providing notice to WFalls (other than a demand notice). The addendum provides more certainty and clarity regarding the obligations under the Guaranty. In June 2020, PGE received the signed addendum to the parental guaranty from Columbia Ventures. *See* PGE/109. This document effectively allows PGE to claim up to \$2.5 million for lease or utility payments and satisfied security requirements relating to creditworthiness.

October 29, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 089
Dated October 20, 2020**

Request:

Reference PGE/300, Wenzel-Macfarlane/11:2-3: Does PGE agree that the referenced administrative rule only discusses “Grounds for Disconnecting Utility Service” not grounds for terminating an electric service election or electric service agreement? If no, please explain.

Response:

The specific administrative rule referenced discusses “Grounds for Disconnecting Utility Service.” PGE reasonably terminated WLP’s service based on several factors, as discussed in PGE/300, Wenzel-Macfarlane/11-16. The OARs do not differentiate between disconnection and termination, as demonstrated, for example, in OAR 860-021-0505, Disconnection Procedures for All Commercial Electric and Gas Utility Customers and All Customers of Large Telecommunications Utilities, which states, “(1) This rule applies to the involuntary *termination* of all commercial electric and natural gas customers and all utility services provided by large telecommunications utilities.” (emphasis added).

October 29, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 090
Dated October 20, 2020**

Request:

Reference PGE/300, Wenzel-Macfarlane/11:7-10: Please identify specifically where in PGE Rule H, the termination of an electric service election or electric service agreement is discussed.

Response:

Rule H.1. Grounds for Disconnection of Electricity Service lists 11 specific instances where electricity service may be disconnected. The concepts of disconnection and termination are equivalent in this context. See, for example, OAR 860-021-0505, Disconnection Procedures for All Commercial Electric and Gas Utility Customers and All Customers of Large Telecommunications Utilities, which states, “(1) This rule applies to the involuntary *termination* of all commercial electric and natural gas customers and all utility services provided by large telecommunications utilities.” (emphasis added).

October 29, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 091
Dated October 20, 2020**

Request:

Reference PGE/300, Wenzel-Macfarlane/11:7-10: Does PGE agree that Rule H provides for the reconnection of services that have been previously been disconnected? Does a reconnection allow a customer to resume a service election or service agreement?

Response:

Yes. However, reconnection after disconnection requires a customer to pay its arrears and seek reconnection, which WLP never did; moreover, WLP vacated the site in November 2018 and PGE terminated WLP's service under Schedule 489, at which point any right to reconnection presumably became impossible because WLP was no longer the PGE customer or the lessee at the site. See also PGE's Response to WFalls and WLP Data Request No. 089.

October 29, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 093
Dated October 20, 2020**

Request:

Please provide the final Monet model in used to establish variable net power cost rates for 2018 in Docket UE 319. Please provide a fully functional version of the final Monet model.

Response:

PGE objects that this request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case. Notwithstanding and without waiving this objection, PGE responds as follows:

See Attachments:

Attachment 093 A – Instructions for MONET model

Confidential Attachment 093 B – Ustr.zip

Confidential Attachment 093 C – #M610PUC10-152-2018 GRC (Note, this is a password-protected file, Password: [REDACTED])

October 29, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 094
Dated October 20, 2020**

Request:

Please provide the Open Access Transmission Service ("OATT") agreements between WLP and Portland General Electric Company's transmission function for WLP's direct access services.

Response:

PGE objects on the basis that this request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case. Notwithstanding and without waiving this objection, PGE responds as follows:

PGE's transmission function does not and did not have an OATT agreement with WLP. The ESS that provided service for WLP would have had this agreement. Similarly, when WLP received energy at PGE's Daily Market Rate, it received service pursuant to PGE Merchant's transmission agreements with PGE Transmission.

October 29, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 095
Dated October 20, 2020**

Request:

Please provide any maps, descriptions, or diagrams showing the electrical facilities located at the Paper Mill site.

Response:

PGE objects on the basis that this request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case. PGE also objects that “the Paper Mill site” is vague and ambiguous. Notwithstanding and without waiving these objections, PGE responds as follows:

PGE supplies sub-transmission power at 57kV from the Sullivan Substation via overhead lines to the West Linn Paper substation for principal mill service. There are several other tap lines off PGE’s primary distribution network feeding smaller services on the property. See the following for reference:

1. Confidential Attachment 095 A – General Layout of Sullivan Substation
2. Confidential Attachment 095 B – Electrical one-line diagram of the PGE Sullivan switchyard
3. Confidential Attachment 095 C – GIS screenshot showing location of WLP substation and other primary distribution feeds to the property.

October 29, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 096
Dated October 20, 2020**

Request:

Does PGE own all substations and other electrical equipment that are located at the Paper Mill site? If yes, please explain how PGE came to be the owner of all such equipment. If no, please identify in reasonable detail which electric equipment on the Paper Mill site is owned by PGE and which electric equipment on the Paper Mill site is owned by a person other than PGE.

Response:

PGE objects on the basis that this request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case. PGE also objects that the phrases “Paper Mill site” and “electrical equipment” are vague and ambiguous and are not defined. Notwithstanding and without waiving these objections, PGE responds as follows:

PGE Sullivan Substation sends 57kV power to the West Linn Paper Substation. PGE wires connect to the 57kV (high side) of the WLP-owned transformers. The transformers step down the voltage to 11kV (low side) and the power goes to the mill. PGE's point of delivery is the connection on the high side of the transformers.

To the extent this request asks about the Premises as defined in the Industrial Lease between PGE and Willamette Falls Real Estate, Inc., and to the extent the substation or electrical equipment is personal property as described in the Industrial Lease, ownership of said personal property is addressed in the Industrial Lease. PGE owns the Premises, as defined in the Industrial Lease.

PGE has not done an analysis to determine whether the equipment at the site is personal property or a fixture. To the extent the equipment meets the legal definition of a fixture under Oregon law, it attaches to the realty. See, e.g., *Highway Comm'n v. Empire Bldg.*, 17 Or. App. 616, rev den. (1974). Notwithstanding the fact that the assets are physically located on and operated from the leasehold Premises, PGE owns all rights to those certain licenses and intellectual property rights (software and otherwise) for use of, and unlimited access to and PGE use of, all hardware,

equipment, computer and software systems, and licenses required or useful for the operation of the fire suppression system, waste water disposal and effluent system, and/or sewer lifts, or performing any work or operation deemed appropriate by PGE for the operation, security, and/or maintenance of PGE hydro-electric generation plant and related facilities, free and clear of any claim or interest of the tenant or subtenant.

October 29, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 097
Dated October 20, 2020**

Request:

Please identify all former WLP employees that were hired by PGE. For each such employee, please identify their date of hire and job description. For each such employee, please explain why it was necessary or expedient for PGE to hire former WLP employees.

Response:

PGE objects on the basis that this request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case. Notwithstanding and without waiving this objection, PGE responds as follows:

Penny Machinski was hired by PGE as a full-time employee in a Senior Environmental Science Specialist role on April 2, 2018. She has deep knowledge of the environmental history at the Mill site and adjacent property, as well as being fully qualified to perform similar environmental functions for PGE. John Otnes and Gene Turner were hired as contract employees by PGE for the period from 11/01/2018 through 06/28/2019 to assist in interacting with the mill facility and operating mill systems at the mill site. Mr. Otnes was a Facility Manager and Mr. Turner was a Control System Specialist at WLP. Their November 1, 2018, start date was in preparation for what PGE anticipated to be the imminent but mutual termination of the lease and for the removal of equipment from the site, as required by the negotiated lease termination. No one at PGE was knowledgeable of all the systems and details at the mill facility, and PGE contracted these knowledgeable WLP employees to help. Brian Konen had offered and requested PGE to hire Mr. Otnes and Mr. Turner because both would have been terminated by Belgravia at year end 2018, and Mr. Konen wanted to keep them and their mill knowledge around to assist.

October 29, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 098
Dated October 20, 2020**

Request:

Please identify any provision in the lease termination agreement between West Linn Paper and PGE that provides PGE with the authority to assume or to establish in its own name electric services to the portion of the Paper Mill not owned by PGE.

Response:

The lease termination agreement was put into place after West Linn Paper defaulted on the lease through the failure to pay both lease payments and electric payments as well as to reimburse PGE for real property taxes—all requirements under the lease. The lease termination agreement did not include any discussion about electric services.

October 29, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 099
Dated October 20, 2020**

Request:

Is it PGE's position that the termination of WLP's lease with PGE resulted in the termination of the electric services associated with the personal property of the Paper Mill? If no, please explain.

Response:

PGE objects that “the termination of the electric services associated with the personal property of the Paper Mill” is vague and ambiguous.” PGE assumes that this phrase refers to the termination of WLP’s electric accounts with PGE. Subject to this objection and understanding, PGE responds as follows: No. Please see PGE/300, Wenzel-Macfarlane/2-3, 11, 14-15, 17 & 22 for explanation of PGE’s position regarding the termination of the electric services.

October 29, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 100
Dated October 20, 2020**

Request:

Does PGE agree that a person can establish or maintain a customer account for electrical services to a property that the customer does not own or legally control? If no, please explain

Response:

Yes.

October 29, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 101
Dated October 20, 2020**

Request:

Under the lease termination agreement with PGE, did WLP have the right keep its personal property and equipment on PGE's property following the effective date of the lease termination? Please explain.

Response:

Yes.

See WFalls/104, Konen/2-3.

October 29, 2020

TO: Willamette Falls Paper Company and
West Linn Paper Company

FROM: Karla Wenzel
Manager, Regulatory Policy and Strategy

**PORTLAND GENERAL ELECTRIC
UM 2107
PGE Response to WFalls and WLP Data Request No. 102
Dated October 20, 2020**

Request:

Please provide the "accepted current application for Electricity Service" that PGE prepared when it assumed the electric services associated with the Paper Mill. If no such accepted application exists please confirm that rule D6 would apply to the services that PGE received over the approximate 6 month period when it put it's the paper mill electric services into its account: "Any person who occupies or is responsible for Premises where Electricity Service is supplied and/or delivered by the Company where the Company has no accepted current application for Electricity Service is liable for all charges for such Electricity Service, based on the applicable rate schedule. Such persons, however, do not have the rights and privileges accorded to Customers."

Response:

As stated in PGE's Response to Data Request No. 50(a): When PGE is contacted by someone asking to take financial responsibility for service, which is usually in the form of a call to PGE, PGE asks a series of questions to process the "move in," see Attachments 048A and 048B, opens the account(s) in the requesting customer's name, and transfers responsibility for the service to the new customer. While PGE is not a retail electric customer, it nevertheless adhered to this standard practice followed by PGE when a landlord takes responsibility for a tenant's service. See also PGE's Response to WFalls and WLP Data Request No. 058 part b.

Since PGE followed this standard practice and since PGE is not a retail electricity customer, rule D6 would not apply to PGE.

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON
UM 2107**

WILLAMETTE FALLS PAPER COMPANY)
and WEST LINN PAPER COMPANY,)
)
Complainants,)
)
vs.)
)
PORTLAND GENERAL ELECTRIC)
COMPANY,)
)
Defendant.)
)
)
)
_____)

EXHIBIT 402

CONFIDENTIAL
Confidential Pursuant to
Protective Order 20-218

**Willamette Falls Paper Company
Testimony of Bradley G. Mullins**

November 02, 2020

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

UM 2107

WILLAMETTE FALLS PAPER COMPANY)
and WEST LINN PAPER COMPANY,)
)
Complainants,)
)
vs.)
)
PORTLAND GENERAL ELECTRIC)
COMPANY,)
)
Defendant.)
)
)
)
)
_____)

EXHIBIT 403

REDACTED

**Willamette Falls Paper Company
Testimony of Bradley G. Mullins**

November 02, 2020

MW ANALYTICS
Energy & Utility Consulting

WILLAMETTE FALLS PAPER COMPANY
SCHEDULE 89-T TO 489-T ANALYSIS
PGE ACCOUNT 5138146227, METER 60770154SW, SPID 9130567661

Portland General Electric, Schedule 89-T to Schedule 489-T Analysis

November, 01 2020

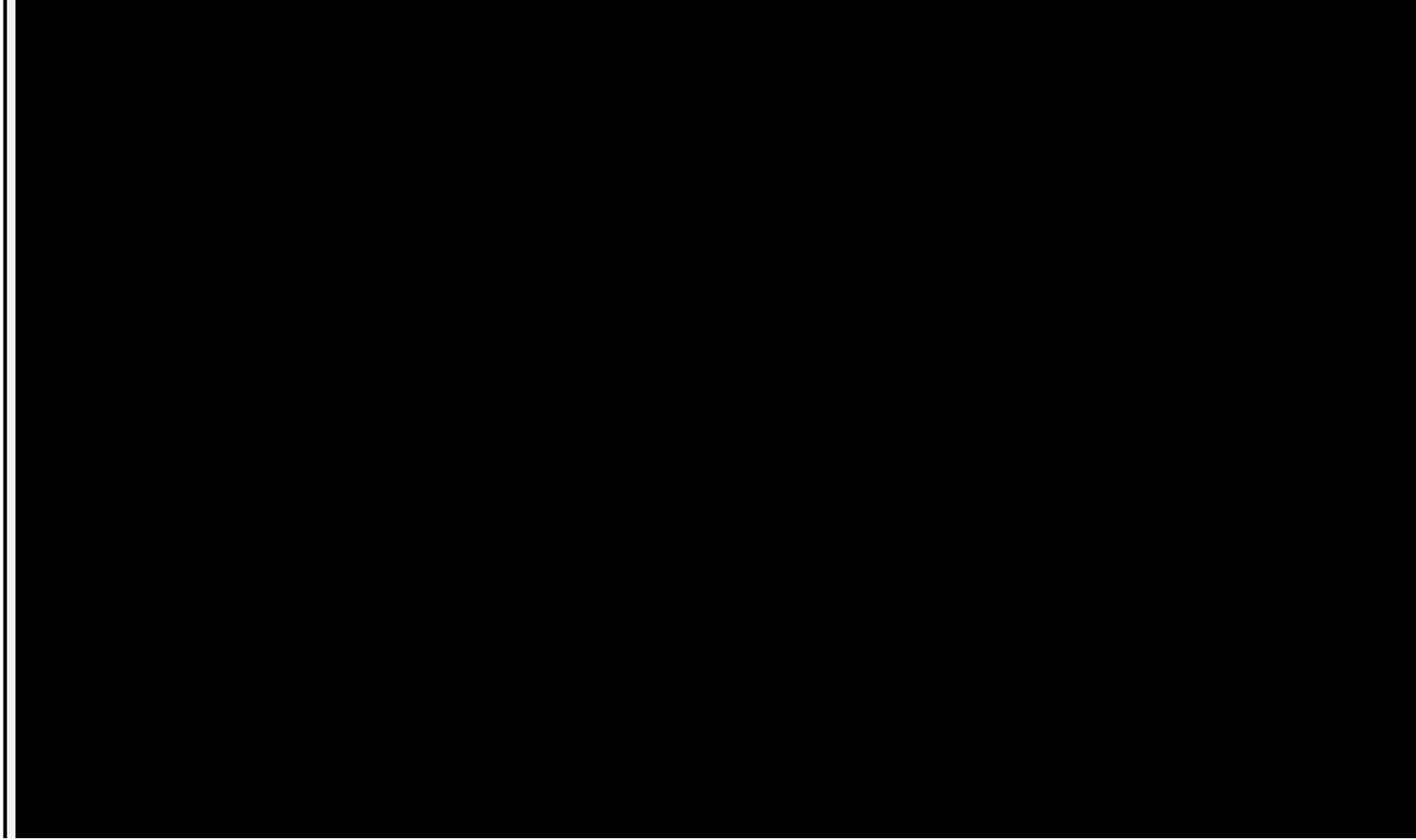
BRADLEY G. MULLINS

Principal Consultant

Vasamatie 1, D36
FIN-90410 Oulu, Finland
USA +1 503 841-1465 | FI +358 44-940-2503
brmullins@mwanalytics.com

Model Results Summary (Whole Dollars)

Schedule 89-T to 489-T Comparison



WILLAMETTE FALLS PAPER COMPANY

Schedule 89-T to 489-T

PGE Account 5138146227, Meter 60770154SW, SPID 9130567661

WFalls/403
Mullins/3

Interest Calculation (Whole Dollars)

Interest calculation at 9%	
[Redacted Content]	

WILLAMETTE FALLS PAPER COMPANY

Schedule 89-T to 489-T

PGE Account 5138146227, Meter 60770154SW, SPID 9130567661

WFalls/403
Mullins/4

Period: 1

Month **July 19**
 Period Start **Jul 01, 2019**
 Period End **Aug 06, 2019**

Rates	Base	Sensitivity
Rate 1	2019.07.89T.C	2019.07.489T
Rate 2		

	Schedule 89			Schedule 489			Delta	
	Detr.	Rate	Dollars	Detr.	Rate	Dollars	Rate	Dollars
PGE Cost								
Basic Charge		Mo.						
Transmission		kW.on						
Distribution		kW.on						
Facilities Block 1		F.kW.1						
Facilities Block 2		F.kW.2						
On-Peak \$/kWh		kWh.on						
Off-Peak \$/kWh		kWh.Off						
Wheeling		kW.on						
System Usage \$/MWh		kWh1						
Reactive Demand		kVa.B						
Volumtrc Surchs \$/kWh		kWh1						
Sch 108 - Public Purpose		\$						
Sch 115 - Low Income		Mo						
West Linn City		\$						
Total Cost (\$/kWh)		kWh						

WILLAMETTE FALLS PAPER COMPANY

Schedule 89-T to 489-T

PGE Account 5138146227, Meter 60770154SW, SPID 9130567661

WFalls/403
Mullins/5

Period: 2

Month **August 19**
 Period Start **Aug 06, 2019**
 Period End **Sep 04, 2019**

Rates	Base	Sensitivity
Rate 1	2019.07.89T.C	2019.07.489T
Rate 2		

	Schedule 89			Schedule 489			Delta	
	Detr.	Rate	Dollars	Detr.	Rate	Dollars	Rate	Dollars
PGE Cost								
Basic Charge		Mo.						
Transmission		kW.on						
Distribution		kW.on						
Facilities Block 1		F.kW.1						
Facilities Block 2		F.kW.2						
On-Peak \$/kWh		kWh.on						
Off-Peak \$/kWh		kWh.Off						
Wheeling		kW.on						
System Usage \$/MWh		kWh1						
Reactive Demand		kVa.B						
Volumtrc Surchs \$/kWh		kWh1						
Sch 108 - Public Purpose		\$						
Sch 115 - Low Income		Mo						
West Linn City		\$						
Total Cost (\$/kWh)		kWh						

WILLAMETTE FALLS PAPER COMPANY

Schedule 89-T to 489-T

PGE Account 5138146227, Meter 60770154SW, SPID 9130567661

WFalls/403
Mullins/6

Period: 3

Month **September 19**
 Period Start **Sep 04, 2019**
 Period End **Oct 04, 2019**

Rates	Base	Sensitivity
Rate 1	2019.07.89T.C	2019.07.489T
Rate 2		

	Schedule 89			Schedule 489			Delta	
	Detr.	Rate	Dollars	Detr.	Rate	Dollars	Rate	Dollars
PGE Cost								
Basic Charge		Mo.						
Transmission		kW.on						
Distribution		kW.on						
Facilities Block 1		F.kW.1						
Facilities Block 2		F.kW.2						
On-Peak \$/kWh		kWh.on						
Off-Peak \$/kWh		kWh.Off						
Wheeling		kW.on						
System Usage \$/MWh		kWh1						
Reactive Demand		kVa.B						
Volumtrc Surchs \$/kWh		kWh1						
Sch 108 - Public Purpose		\$						
Sch 115 - Low Income		Mo						
West Linn City		\$						
Total Cost (\$/kWh)		kWh						

WILLAMETTE FALLS PAPER COMPANY

Schedule 89-T to 489-T

PGE Account 5138146227, Meter 60770154SW, SPID 9130567661

WFalls/403
Mullins/10

Period: 7

Month **January 20**
 Period Start **Jan 06, 2020**
 Period End **Feb 04, 2020**

Rates	Base	Sensitivity
Rate 1	2020.01.89T.C	2020.01.489T
Rate 2		

	Schedule 89			Schedule 489			Delta	
	Detr.	Rate	Dollars	Detr.	Rate	Dollars	Rate	Dollars
PGE Cost								
Basic Charge		Mo.						
Transmission		kW.on						
Distribution		kW.on						
Facilities Block 1		F.kW.1						
Facilities Block 2		F.kW.2						
On-Peak \$/kWh		kWh.on						
Off-Peak \$/kWh		kWh.Off						
Wheeling		kW.on						
System Usage \$/MWh		kWh1						
Reactive Demand		kVa.B						
Volumtrc Surchs \$/kWh		kWh1						
Ocat		\$						
Sch 108 - Public Purpose		\$						
Sch 115 - Low Income		Mo						
West Linn City		\$						
Total Cost (\$/kWh)		kWh						

WILLAMETTE FALLS PAPER COMPANY

Schedule 89-T to 489-T

PGE Account 5138146227, Meter 60770154SW, SPID 9130567661

WFalls/403
Mullins/11

Period: 8

Month **February 20**
 Period Start **Feb 04, 2020**
 Period End **Mar 04, 2020**

Rates	Base	Sensitivity
Rate 1	2020.02.89T.C	2020.02.489T
Rate 2		

	Schedule 89			Schedule 489			Delta	
	Detr.	Rate	Dollars	Detr.	Rate	Dollars	Rate	Dollars
PGE Cost								
Basic Charge		Mo.						
Transmission		kW.on						
Distribution		kW.on						
Facilities Block 1		F.kW.1						
Facilities Block 2		F.kW.2						
On-Peak \$/kWh		kWh.on						
Off-Peak \$/kWh		kWh.Off						
Wheeling		kW.on						
System Usage \$/MWh		kWh1						
Reactive Demand		kVa.B						
Volumtrc Surchs \$/kWh		kWh1						
OCA		\$						
Sch 108 - Public Purpose		\$						
Sch 115 - Low Income		Mo						
West Linn City		\$						
Total Cost (\$/kWh)		kWh						

WILLAMETTE FALLS PAPER COMPANY

Schedule 89-T to 489-T

PGE Account 5138146227, Meter 60770154SW, SPID 9130567661

WFalls/403
Mullins/13

Period: 10

Month **April 20**
 Period Start **Apr 07, 2020**
 Period End **May 06, 2020**

Rates	Base	Sensitivity
Rate 1	2020.02.89T.C	2020.02.489T
Rate 2		

	Schedule 89			Schedule 489			Delta	
	Detr.	Rate	Dollars	Detr.	Rate	Dollars	Rate	Dollars
PGE Cost								
Basic Charge			Mo.					
Transmission			kW.on					
Distribution			kW.on					
Facilities Block 1			F.kW.1					
Facilities Block 2			F.kW.2					
On-Peak \$/kWh			kWh.on					
Off-Peak \$/kWh			kWh.Off					
Wheeling			kW.on					
System Usage \$/MWh			kWh1					
Reactive Demand			kVa.B					
Volumtrc Surchs \$/kWh			kWh1					
Ocat			\$					
Sch 108 - Public Purpose			\$					
Sch 115 - Low Income			Mo					
West Linn City			\$					
Total Cost (\$/kWh)			kWh					

WILLAMETTE FALLS PAPER COMPANY

Schedule 89-T to 489-T

PGE Account 5138146227, Meter 60770154SW, SPID 9130567661

WFalls/403
Mullins/14

Period: 11

Month **May 20**
 Period Start **May 06, 2020**
 Period End **Jun 03, 2020**

Rates	Base	Sensitivity
Rate 1	2020.02.89T.C	2020.02.489T
Rate 2		

	Schedule 89			Schedule 489			Delta	
	Detr.	Rate	Dollars	Detr.	Rate	Dollars	Rate	Dollars
PGE Cost								
Basic Charge		Mo.						
Transmission		kW.on						
Distribution		kW.on						
Facilities Block 1		F.kW.1						
Facilities Block 2		F.kW.2						
On-Peak \$/kWh		kWh.on						
Off-Peak \$/kWh		kWh.Off						
Wheeling		kW.on						
System Usage \$/MWh		kWh1						
Reactive Demand		kVa.B						
Volumtrc Surchs \$/kWh		kWh1						
OCA		\$						
Sch 108 - Public Purpose		\$						
Sch 115 - Low Income		Mo						
West Linn City		\$						
Total Cost (\$/kWh)		kWh						

