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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

COLUMBIA RIVERKEEPER, a Washington  
non-profit corporation, NORTHWEST  
ENVIRONMENTAL DEFENSE CENTER, an  
Oregon non-profit corporation, and MARK  
RISKEDAHL, an individual,

Petitioners,

v.

OREGON DEPARTMENT OF  
ENVIRONMENTAL QUALITY, an agency of  
the State of Oregon, OREGON  
ENVIRONMENTAL QUALITY  
COMMISSION, an agency of the State of  
Oregon, and RICHARD WHITMAN, in his  
capacity as Director of Oregon Department of  
Environmental Quality,

Respondents.

**17CV42254**

Case No.

PETITION FOR JUDICIAL REVIEW

(Oregon Administrative Procedures Act,  
ORS 183.484)

Fees: ORS 21.135(2)(a)

**NOT SUBJECT TO MANDATORY  
ARBITRATION**

Petitioners Columbia Riverkeeper, Northwest Environmental Defense Center, and Mark Riskedahl petition the Court pursuant to ORS 183.484 for review of General Permit No. 1200-Z (“1200-Z Permit”), issued on August 1, 2017, by Respondents Oregon Department of Environmental Quality (“DEQ”), Oregon Environmental Quality Commission (“EQC”), and Richard Whitman in his official capacity as Director of DEQ. In support Petitioners allege:

PETITION FOR REVIEW-1

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1 **PARTIES**

2 1.

3 Petitioner COLUMBIA RIVERKEEPER (“Riverkeeper”) is a non-profit corporation,  
4 with its principal business office located in Hood River County, Oregon. Riverkeeper’s mission  
5 is to restore and protect the water quality of the Columbia River and all life connected to it, from  
6 the headwaters to the Pacific Ocean. To achieve these objectives, Riverkeeper implements  
7 scientific, educational, and legal programs aimed at protecting water quality in the Columbia  
8 River Basin.

9 2.

10 Petitioner NORTHWEST ENVIRONMENTAL DEFENSE CENTER (“NEDC”) is a  
11 non-profit corporation, with its principal business office located in Multnomah County, Oregon.  
12 NEDC works to preserve, protect, and improve the environmental quality of the Pacific  
13 Northwest, and has done so for nearly 50 years.

14 3.

15 Petitioner MARK RISKEDAHL is a member of both NEDC and Riverkeeper, and an  
16 individual residing in Multnomah County, Oregon. Mr. Riskedahl regularly uses and enjoys  
17 waters around Oregon that are negatively affected by discharges authorized by the 1200-Z  
18 Permit.

19 4.

20 Respondents OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (“DEQ”)  
21 and OREGON ENVIRONMENTAL QUALITY COMMISSION (“EQC”) are agencies of the  
22 State of Oregon, and have their principal places of business located in Multnomah County,  
23 Oregon.

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5.

Respondent RICHARD WHITMAN is the Director of Respondent DEQ and is sued in his official capacity. Mr. Whitman has his principal place of business located in Multnomah County, Oregon.

### JURISDICTION

6.

The 1200-Z Permit authorizes the discharge of “industrial stormwater to surface waters or to conveyance systems that discharge to surface waters of the state” and to waters of the United States pursuant to the National Pollutant Discharge Elimination System (“NPDES”) under Clean Water Act (“CWA”) section 402, codified at 33 U.S.C. § 1342.

7.

Respondents’ issuance of the 1200-Z Permit is a final order in “other than contested cases” that is reviewable under ORS 183.484. This Court has jurisdiction over this petition pursuant to ORS 183.484(1) because Petitioners NEDC and Mark Riskedahl reside and/or have their principle business office in Multnomah County.

8.

This petition is timely because it is filed within 60 days of DEQ’s issuance of the 1200-Z Permit on August 1, 2017.

9.

The relief Petitioners seek is authorized by ORS 183.484(5), 183.486, and 183.497.

1 **ADVERSE EFFECTS ON PETITIONERS**

2 10.

3 Petitioner NEDC is an organization dedicated to the responsible management of the  
4 Pacific Northwest’s natural resources. To further this organizational objective, NEDC works to  
5 preserve, protect, and improve the environmental quality of the Pacific Northwest, and has done  
6 so for over thirty years. Many of NEDC’s members reside in the vicinity of Oregon’s rivers,  
7 lakes and streams and use and enjoy them for recreational, scientific, and aesthetic purposes.  
8 Many of NEDC’s members enjoy recreational, aesthetic, and scientific activities, including  
9 canoeing, kayaking, biking, sightseeing, and wildlife observation in areas directly affected by  
10 Respondents’ action challenged here. NEDC regularly comments on governmental decisions  
11 affecting the natural resources of the Pacific Northwest, participates in governmental processes  
12 (including agency meetings and public hearings) related to decisions that may affect the quality  
13 of the environment in and beyond Oregon, and, where necessary, uses litigation as a tool to  
14 preserve and protect the quality of the environment. NEDC has interest and expertise in  
15 protecting water quality and is concerned with the effects of discharges authorized by the 1200-Z  
16 Permit into the Willamette and Columbia Rivers and other Oregon water bodies.

17 11.

18 Petitioner Riverkeeper is an organization dedicated to protecting the ecological integrity  
19 of the Columbia River Basin and preserving the numerous ecosystems it supports. To achieve  
20 these objectives, Riverkeeper operates numerous programs aimed at reducing the level of  
21 pollution in the Columbia River and its tributaries and studies the impact of that pollution on  
22 these ecological systems. Riverkeeper also engages in litigation under the CWA. Key goals of  
23 Riverkeeper are to ensure that environmental laws are enforced and to uphold the basic public

1 trust on the Columbia River. Additionally, Riverkeeper works to educate the public about  
2 waterways within and connected to the Columbia River Basin and teaches the public how to  
3 protect these bodies of water. Riverkeeper's members use the Columbia River and its tributaries  
4 for fishing, canoeing, swimming, aesthetic enjoyment, and other recreational activities, all of  
5 which have been and continue to be negatively affected by the discharges from industrial  
6 stormwater dischargers regulated under the 1200-Z Permit, and harm to those interests results in  
7 Riverkeeper not meeting some of its organizational objectives.

8 12.

9 Petitioner Mark Riskedahl is a member and Executive Director of NEDC, a member of  
10 Riverkeeper, and personally uses Oregon's waters in areas directly affected by discharges  
11 authorized pursuant to the 1200-Z Permit. Mr. Riskedahl rides his bike, kayaks, and enjoys  
12 photography and wildlife observation in the vicinity of the Columbia Slough, the Willamette and  
13 Columbia Rivers, and many other waters that are affected by Respondents' challenged actions.  
14 Mr. Riskedahl has been involved in the protection of the Willamette, Columbia, and many other  
15 rivers for a number of years and has communicated with DEQ staff on his own behalf and on  
16 behalf of NEDC and Riverkeeper several times regarding the issues set forth in this Petition.  
17 Petitioner Riskedahl's ability to use and enjoy the Willamette, Columbia, and other rivers in the  
18 State of Oregon for various activities has been and will continue to be harmed or adversely  
19 affected by activities authorized under the 1200-Z Permit.

20 13.

21 Petitioners Riverkeeper and NEDC are also adversely affected and aggrieved by  
22 Respondents' issuance of the 1200-Z Permit because their respective organizational objectives  
23 have been undermined by Respondents' actions. As organizations incorporated, in part, for the

1 express purpose of protecting water quality, Petitioners Riverkeeper and NEDC have an interest  
2 in ensuring that any permitting decision affecting water quality in Oregon, including in the  
3 Willamette and Columbia Rivers, is made in accordance with applicable state and federal laws.  
4 These organizational interests have been injured by Respondents' issuance of the 1200-Z Permit  
5 because the Permit fails to limit and regulate the discharge of pollutants to the extent required by  
6 the CWA and its implementing regulations, thereby allowing the ongoing degradation of the  
7 Willamette, Columbia, and other rivers throughout Oregon.

8 14.

9 Petitioners Riverkeeper, Riskedahl, and NEDC are further injured by Respondents'  
10 issuance of the 1200-Z Permit because Respondents' actions have wasted the limited resources  
11 of both the organizations and Petitioner Riskedahl. Petitioners have invested significant amounts  
12 of their organizational and personal time resources in working to reduce pollution in the  
13 Willamette and Columbia Rivers and other Oregon waterways. Both organizations have sought  
14 judicial review of prior iterations of the 1200-Z Permit; have negotiated settlement agreements  
15 with Respondents that Petitioners expected would result in significant improvements to the 1200-  
16 Z Permit; have submitted extensive comments on behalf of their members on draft versions of  
17 this and prior 1200-Z Permits; have contributed staff resources to serving on DEQ-sponsored  
18 workgroups related to implementation of the 1200-Z Permit and the regulation of industrial  
19 stormwater within Oregon; and have engaged in advocacy, education, and litigation related to  
20 industrial stormwater pollution.

1 15.

2 Petitioners submitted detailed comments to Respondent DEQ on the draft version of the  
3 1200-Z Permit by letters dated March 20 and June 19, 2017. Each of the grounds alleged herein  
4 for review of the 1200-Z Permit, and many others, were raised in those comment letters.

5 **LEGAL BACKGROUND**

6 16.

7 The CWA prohibits all discharges of pollutants into “waters of the United States” without  
8 authorization, and one such form of authorization is a permit issued under the NPDES program.  
9 This prohibition applies to the discharge of stormwater associated with industrial activity.  
10 Section 402(p) of the CWA authorizes the issuance of permits for industrial stormwater  
11 dischargers pursuant to the NPDES program.

12 17.

13 The CWA allows states to administer the NPDES program upon EPA approval. A state  
14 may become authorized to issue NPDES permits if it meets the criteria set forth in CWA section  
15 402(b). Under that provision state NPDES programs must “apply, and insure compliance with”  
16 the substantive requirements of the Act, and a number of federal regulations promulgated by the  
17 EPA to implement the NPDES program are made directly applicable to those states with EPA-  
18 approved permit programs by 40 C.F.R. § 123.25.

19 18.

20 Respondent EQC is empowered by Oregon law, including ORS 468B.030 and  
21 468B.035(1) to implement the CWA and any “federal regulations or guidelines issued pursuant  
22 to the Act” within Oregon, and to “perform or cause to be performed any and all acts necessary  
23

1 to be performed by the state to implement” the CWA and any “federal regulations and guidelines  
2 issued pursuant thereto” within this State.

3 19.

4 Respondent DEQ has been approved by the United States Environmental Protection  
5 Agency (“EPA”) to administer the NPDES permit program within this State under CWA section  
6 402(b), and is authorized by ORS 468B.050(1)(a) to issue such permits authorizing, *inter alia*,  
7 the discharge of “any wastes into the waters of the state from any industrial or commercial  
8 establishment or activity or any disposal system.”

9 20.

10 Oregon uses “general permits” to regulate dischargers that engage in substantially similar  
11 practices and discharge substantially the same pollutants. When issuing general permits, DEQ  
12 develops and publishes a draft general permit, then solicits public comments on the draft. DEQ  
13 then reviews and responds to those comments, and issues a final permit. Individual facilities may  
14 apply to DEQ for coverage under the terms and conditions of the general permit. DEQ then  
15 determines if the facility satisfies the criteria in the permit before it extends coverage to the  
16 facility.

17 21.

18 The required conditions and limitations of all NPDES are established primarily by the  
19 CWA and its federal implementing regulations. Sections 301(b)(2) and 402(a)(1) of the CWA  
20 require all NPDES permits to contain technology-based effluent limitations (“TBELs”) based  
21 upon application the best available technology economically achievable (“BAT”) for discharges  
22 of toxic and non-conventional pollutants, or based upon the best conventional pollutant control  
23 technology (“BCT”) for discharges of conventional pollutants.

PETITION FOR REVIEW-8

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8 22.

9 EPA periodically establishes or revises TBELs for specific categories or classes of point  
10 sources through national rulemaking under CWA sections 301(b)(2) and 304(b). The resulting  
11 rules are called “effluent limitation guidelines” (“ELGs”). In the absence of applicable ELGs,  
12 however, permitting agencies must develop TBELs on a case-by-case basis using their best  
13 professional judgment, taking the factors set forth by EPA in 40 C.F.R. § 125.3(d)(3) into  
14 account.

15  
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18 23.

19 In addition to the necessary TBELs, sections 301(b)(1)(C) and 402(a)(1) of the CWA  
20 further require NPDES permits to contain “any more stringent limitations . . . necessary to meet  
21 water quality standards” established by the states under the CWA or other state law. These  
22 limitations are commonly called water quality-based effluent limitations (“WQBELs”).

23  
24  
25  
26 24.

27 Federal law, including 40 C.F.R. § 122.44(d)(1)(i), requires that NPDES permits contain  
28 WQBELs to control all pollutants or pollutant parameters that the permitting agency determines  
29 “are or may be discharged at a level which will cause, have the reasonable potential to cause, or  
30 contribute to an excursion above any State water quality standard, including State narrative  
31 criteria for water quality.” The procedure used by the permitting authority to determine the need  
32 for WQBELs must, according to 40 C.F.R. § 122.44(d)(1)(ii), “account for existing controls on  
33 point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in  
34 the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent  
35 toxicity), and where appropriate, the dilution of the effluent in the receiving water.” This process  
36 is commonly called a “reasonable potential analysis.”

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25.

Section 402(p)(3)(A) of the CWA requires all NPDES permits for the discharge of stormwater associated with industrial activity to meet all applicable provisions of CWA sections 301 and 402, including those provisions related to the establishment of TBELs and WQBELs. Both TBELs and WQBELs ordinarily take the form of numeric restrictions on the quantities, rates, or concentrations of pollutants discharged by the permitted facilities. NPDES regulations such as 40 C.F.R. § 122.44(k)(3)-(4) allow the use of non-numeric conditions and best management practices in lieu of numeric effluent limitations in limited circumstances, such as where “[n]umeric effluent limitations are infeasible; or . . . [the] practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.”

26.

Under 40 C.F.R. § 122.44(d), WQBELs must be included for all pollutants the permitting authority determines “are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” NPDES permits may not be issued if “the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States.” Similarly, ORS 468B.025 prohibits DEQ from authorizing a discharge that “reduces the quality of [the receiving] waters below the water quality standards established by rule for such waters[.]”

27.

NPDES permits must also include monitoring and reporting requirements as necessary to ensure compliance with the permit’s limitations. Specifically for discharges of stormwater

1 associated with industrial activity, 40 C.F.R. § 122.44(i) mandates that monitoring requirements  
2 must be “established on a case-by-case basis with a frequency dependent on the nature and effect  
3 of the discharge.” Waivers from monitoring requirements are permitted only for TBELs that are  
4 derived from EPA-promulgated ELGs, and only if “the discharger has demonstrated through  
5 sampling and other technical factors that the pollutant is not present in the discharge or is present  
6 only at background levels from intake water and without any increase in the pollutant due to  
7 activities of the discharger.”

8 28.

9 Section 402 of the CWA, its implementing regulations, and federal case law construing  
10 the CWA prohibit self-regulation, and make clear that the burden is upon the permitting agency  
11 to issue only those NPDES permits that will assure compliance with all applicable substantive  
12 requirements. Where an NPDES permit depends on a set of best management practices or other  
13 steps that the permittee, itself, develops, the CWA mandates that those practices be subject to  
14 meaningful review and approval by the permitting agency.

15 29.

16 NPDES permits are required to be issued for fixed terms not exceeding five years. When  
17 a general NPDES permit expires, new dischargers cannot register for coverage under that expired  
18 permit.

## 19 **FACTUAL BACKGROUND**

20 30.

21 The discharge of stormwater associated with industrial activity is a pervasive source of  
22 pollution to Oregon’s rivers, lakes, streams, and wetlands. Pollutants commonly discharged in  
23 industrial stormwater include toxics and other metals like copper, lead, and zinc; nutrients such

1 as nitrogen and phosphorus; oil & grease; and sediment and suspended solids, among many  
2 others. These pollutants contribute to the impairment of surface waters, cause harm to  
3 endangered salmon and other aquatic species, pose a risk to human health, and diminish the  
4 aesthetic and recreational value of rivers and streams around the State.

5 31.

6 Petitioners have a long history of advocacy and litigation related to controlling industrial  
7 stormwater pollution, and in particular have worked to strengthen this and prior iterations of the  
8 1200-Z Permit. In 2003, Petitioners sought review of that year's version of the 1200-Z Permit in  
9 *NEDC v. Hallock*, Multnomah Co. Circuit Court No. 0310-11402. After more than a year of  
10 litigation, the parties agreed to settle the suit. The agreement required DEQ to revise three  
11 general industrial stormwater NPDES permits, including an earlier version of the 1200-Z Permit  
12 at issue here. Riverkeeper and NEDC invested considerable organizational resources, time, and  
13 energy in that process.

14 32.

15 DEQ reissued the 1200-Z Permit in August 2006. It was still legally deficient, and so  
16 Petitioners again sought review in *NEDC v. Or. Dept. of Env'tl. Quality*, Multnomah Co. Circuit  
17 Court No. 0801-00974. After 18 months of litigation settlement was reached. As part of that  
18 settlement DEQ agreed to revise and reissue the 1200-Z Permit yet again, and to include in the  
19 draft permit several provisions requested by Petitioners.

20 33.

21 The version of the 1200-Z Permit at issue here was released by DEQ in draft form for  
22 public comment. Petitioners submitted extensive written comments on the draft 1200-Z Permit.  
23 The final 1200-Z Permit was issued on August 1, 2017, and became effective that same date.

PETITION FOR REVIEW-12

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1 34.

2 The current 1200-Z Permit includes a suite of narrative TBELs applicable to all facilities  
3 that receive coverage under it, as well as several numeric TBELs that are derived from various  
4 EPA-promulgated ELGs but which are applicable only to certain industry sectors. The 1200-Z  
5 Permit includes no numeric TBELs applicable to all covered facilities statewide.

6 35.

7 The 1200-Z Permit contains no numeric WQBELs. Instead, it includes a single narrative  
8 condition that states: “The permit registrant must not cause or contribute to a violation of  
9 instream water quality standards as established in OAR 340-041.”

10 36.

11 DEQ did not conduct a reasonable potential analysis in conjunction with the drafting or  
12 issuance of the 1200-Z Permit. DEQ made no effort to determine whether the pollutants likely to  
13 be discharged by covered facilities are or may be discharged at levels which will cause, have the  
14 reasonable potential to cause, or contribute to an excursion above any State water quality  
15 standard, including State narrative criteria for water quality.

16 37.

17 The 1200-Z Permit requires permittees to prepare and implement a Storm Water  
18 Pollution Control Plan (“SWPCP”) with certain elements outlined in the Permit. While DEQ  
19 requires first-time permittees to submit their SWPCP along with their application for permit  
20 coverage, nothing in the 1200-Z Permit, or in any DEQ regulation or policy, requires or provides  
21 that DEQ will review submitted SWPCPs to determine whether or not the SWPCP complies with  
22 the 1200-Z Permit conditions.

1 38.

2 The 1200-Z Permit also contains a series of numeric “benchmarks,” which according to  
3 the Permit are “guideline concentrations, not numeric effluent limits.” DEQ claims in the 1200-Z  
4 Permit that “Benchmark monitoring assist[s] the permit registrant in determining whether site  
5 controls are effectively reducing pollutant concentrations in stormwater discharged from the  
6 site.” The 1200-Z Permit contains both statewide benchmarks that apply to all permittees, as well  
7 as sector-specific benchmarks that apply only to those industry sectors identified in the Permit.

8 39.

9 As part of the process of developing the 1200-Z Permit, DEQ performed a statistical  
10 analysis to “identify a consistently achievable and justifiable benchmark that can be reached at a  
11 reasonable cost by Oregon industrial facilities.” The result was a “modeled technologically  
12 achievable benchmark” for copper, lead, and zinc. DEQ determined that Oregon facilities can  
13 meet the technologically achievable benchmarks for copper, lead, and zinc “using treatment  
14 technologies that are affordable, feasible, and readily available.” But DEQ failed to include those  
15 benchmark concentrations as numeric TBELs in the 1200-Z Permit.

16 40.

17 As part of the process of developing the 1200-Z Permit, DEQ failed to perform a  
18 statistical analysis or any other analysis to determine technologically achievable benchmarks for  
19 any pollutants other than copper, lead, and zinc.

20 41.

21 Under the 1200-Z Permit a benchmark exceedance is not a permit violation, but it does  
22 trigger certain corrective actions. A single benchmark exceedance triggers “Tier 1” corrective  
23 action, which requires the permitted facility to investigate the cause of the exceedance and

1 submit to DEQ a “Tier 1 report” documenting the investigation and any corrective actions taken.  
2 Multiple benchmark exceedances over a period of time triggers “Tier II” corrective action, which  
3 requires the permitted facility to investigate the cause of the exceedances, and prepare and  
4 submit to DEQ either a Tier II Report, a Tier II mass reduction waiver request, or a Tier II  
5 natural background waiver request.

6 42.

7 Despite the requirements of the CWA and other applicable law, the 1200-Z Permit does  
8 not require DEQ to approve—or even review for basic compliance with the Permit’s substantive  
9 conditions or other regulatory requirements—a facility’s initial SWPCP, or any revised SWPCP,  
10 or a Tier I report, or a Tier II report, or a Tier II mass reduction waiver request, or a Tier II  
11 natural background waiver request. Under the 1200-Z Permit, a facility’s proposed SWPCP  
12 revisions are deemed accepted after 30 days unless the facility receives a response from DEQ.

13 43.

14 The 1200-Z Permit only requires permitted facilities to monitor for benchmark pollutants  
15 four times per year. In the Evaluation Report for the 1200-Z Permit, DEQ claims that “[w]ater  
16 quality samples collected from the facility’s discharge along with samples at upstream and  
17 downstream locations in the receiving waterbody are required to establish that a permit  
18 registrants’ [sic] discharge caused or contributed to a water quality standards exceedance.”  
19 However, the 1200-Z Permit does not require any sampling or monitoring at upstream and  
20 downstream locations in the receiving waterbody, so ultimately DEQ, the facility, and the public  
21 will be unable to determine if the proposed or actual discharge has “caused or contributed to a  
22 water quality standards exceedance.”  
23

1 44.

2 Even though the 1200-Z Permit requires benchmark monitoring four times per year, the  
3 Permit only requires that facilities report the results to DEQ once per year via a Discharge  
4 Monitoring Report (“DMR”).

5 45.

6 Facilities regulated under the 1200-Z Permit may also request a monitoring waiver from  
7 DEQ for benchmark and impairment pollutant monitoring in certain circumstances. The waiver  
8 applies to all benchmarks, not just those benchmarks established under EPA-promulgated ELGs.  
9 Under the 1200-Z Permit a monitoring waiver granted by DEQ remains valid for the duration of  
10 the permit term, unless the permittee concludes that site conditions “are likely to affect  
11 stormwater discharge characteristics.”

12 **GROUND S UPON WHICH RELIEF IS SOUGHT**

13 46.

14 In issuing the 1200-Z Permit, Respondents erroneously interpreted provisions of law,  
15 acted outside the range of discretion delegated to them by law, or otherwise violated the CWA  
16 and its implementing regulations in at least the following ways:

17 47.

18 With respect to TBELs in the 1200-Z Permit, Respondents:

- 19 (A) Failed to include TBELs, including numeric TBELs, reflecting the best available  
20 technology economically achievable (“BAT”) for discharges of toxic and non-  
21 conventional pollutants, or based upon the best conventional pollutant control  
22 technology (“BCT”) for discharges of conventional pollutants, in violation of  
23 CWA § 301(b)(2)(A), 40 C.F.R. § 122.44(a)(1) and (e), and/or Oregon law;



- 1 (B) Failed to include TBELs, including numeric TBELs, developed on a case-by-case  
2 basis using their best professional judgment, taking the factors set forth by EPA in  
3 40 C.F.R. § 125.3(d)(3) into account, applicable to those categories and classes of  
4 point sources for which EPA-promulgated ELGs do not apply;
- 5 (C) Failed to include numeric TBELs for copper, lead, and zinc, even though  
6 Respondents found certain concentrations of those metals are “consistently  
7 achievable . . . at a reasonable cost by Oregon industrial facilities . . . using  
8 treatment technologies that are affordable, feasible, and readily available;” and
- 9 (D) For most regulated facilities, included only narrative conditions and best  
10 management practices even though numeric TBELs are feasible, in violation of 40  
11 C.F.R. § 122.44(k) and/or Oregon law.

12 48.

13 With respect to WQBELs in the 1200-Z Permit, Respondents:

- 14 (A) Failed to conduct an analysis as required by 40 C.F.R. § 122.44(d)(1) to  
15 determine whether the pollutants discharged by facilities covered by the 1200-Z  
16 Permit will cause, have the reasonable potential to cause, or contribute to in-  
17 stream excursions above State water quality standards;
- 18 (B) Failed to include those WQBELs necessary to meet water quality standards  
19 established by Oregon under the CWA or other State law, as required by CWA §  
20 301(b)(1)(C) and/or ORS 468B.025(1)(b); and
- 21 (C) Issued a permit that lacks the limitations and conditions sufficient to ensure  
22 compliance with the requirements of CWA § 301(b)(1)(C), as required by CWA §  
23 402(b)(1)(A), 40 C.F.R. §§ 122.4(a), (d) and 122.44(d)(1), and/or Oregon law.

1 49.

2 With respect to the monitoring and reporting requirements in the 1200-Z Permit,

3 Respondents:

- 4 (A) Failed to include monitoring and reporting requirements as necessary to ensure  
5 compliance with the permit's limitations, in violation of CWA § 402(a)(2), 40  
6 C.F.R. § 122.44(i)(1), and/or Oregon law;
- 7 (B) Failed to require monitoring with a frequency that takes into account the nature  
8 and effect of the discharge, in violation of 40 C.F.R. § 122.44(i)(4); and
- 9 (C) Included monitoring waiver provisions that are contrary to 40 C.F.R. §  
10 122.44(a)(2)(i).

11 50.

12 With respect to the SWPCP, Tier I report, Tier II report, Tier II mass reduction waiver  
13 request, and Tier II natural background waiver request provisions in the 1200-Z Permit, by not  
14 requiring DEQ review and approval of each (or any) of these filings Respondents established an  
15 impermissible self-regulatory scheme that fails to ensure compliance with the requirements of  
16 the CWA, in violation of CWA § 402(a)(2) and (b)(1)(A), 40 C.F.R. §§ 122.4(a), (d) and  
17 122.44(d)(1), and/or Oregon law.

18 51.

19 The 1200-Z Permit is alternatively not supported by substantial evidence in at least the  
20 following ways:

- 21 (A) Respondents' decision to include only "technologically achievable benchmarks"  
22 for copper, lead, and zinc, as opposed to numeric TBELs for those pollutants, is  
23 not supported by substantial evidence;

- 1 (B) Respondents' conclusion, as reflected in DEQ's response to comments on the  
2 1200-Z Permit, that additional WQBELs are not necessary because compliance  
3 with the permit's narrative provisions "will result in discharges that are controlled  
4 as necessary to meet applicable water quality standards" is not supported by  
5 substantial evidence; and
- 6 (C) Respondents' reliance on a monitoring and reporting scheme that (1) does not  
7 require monitoring at upstream and downstream locations in the receiving  
8 waterbody; (2) requires reporting of monitoring results only once per year; and (3)  
9 allows for an indefinite, complete waiver from all monitoring requirements is not  
10 supported by substantial evidence.

11  
12 **REQUEST FOR RELIEF**

13 WHEREFORE, Petitioners request that this Court, exercising its authority under ORS  
14 183.484, 183.486, 183.490, and 183.497:

- 15 (A) Declare that DEQ violated the CWA, its implementing regulations, and/or Oregon  
16 law in issuing the 1200-Z Permit;
- 17 (B) Set aside the 1200-Z Permit and remand it to DEQ with instructions to comply  
18 with the law;
- 19 (C) Award Petitioners their reasonable attorney's fees and costs pursuant to ORS  
20 183.497; and
- 21 (D) Award Petitioners such other ancillary relief as this Court deems just and proper.  
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23

1 DATED: September 27, 2017  
2

3 Respectfully submitted,

4 s/ James N. Saul

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