

From: [BROWN Courtney](#)
To: [ROOT Jenny](#)
Subject: FW: Rationale for NPDES General Permit 700-PM
Date: Friday, January 03, 2014 3:45:20 PM

For the admin record

From: BACHMAN Jeff
Sent: Monday, April 08, 2013 11:08 AM
To: HUTCHENS-WOODS Cheryl; YELTON-BRAM Tiffany; SCHNURBUSCH Steve; BILLINGS Jim
Cc: NOMURA Ranei; ANDERSEN Keith; ADES Dennis R; BROWN Courtney; HICKMAN Jane
Subject: RE: Rationale for NPDES General Permit 700-PM

A word of caution. The guidance cannot affect the size of the penalty. We won't have discretion to assess lower penalties to the "hobbyists." We could use guidance to distinguish between hobbyists and commercial miners with different enforcement responses for each, but once a violation is referred, there is no way to make that distinctions. I am don't understand why we would make such a distinction. Unlike the other people on the \$1,000 matrix, hobbyists' potential violations do not arise from maintaining a place to live. At the risk of repeating myself, people don't have a choice when it comes to residing somewhere. They do have a choice when it comes to their hobbies. Few hobbies have the potential to adversely impact sensitive environments like suction dredging and few hobbies have the same potential financial reward. I also think that makes it difficult to determine who is a hobbyist and who is not. What make somebody a hobbyist versus a commercial miner?

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From: HUTCHENS-WOODS Cheryl
Sent: Monday, April 08, 2013 10:47 AM
To: YELTON-BRAM Tiffany; SCHNURBUSCH Steve; BILLINGS Jim
Cc: NOMURA Ranei; ANDERSEN Keith; BACHMAN Jeff; ADES Dennis R
Subject: RE: Rationale for NPDES General Permit 700-PM

I agree. The change seems appropriate as long as we are able to maintain flexibility within the guidance to assess a penalty relative to the size of the operation to capture the hobbyist that Steve and Tiffany mention.

Cheryl

From: YELTON-BRAM Tiffany
Sent: Friday, April 05, 2013 2:45 PM
To: SCHNURBUSCH Steve; BILLINGS Jim; HUTCHENS-WOODS Cheryl
Cc: NOMURA Ranei; ANDERSEN Keith; BACHMAN Jeff; ADES Dennis R
Subject: RE: Rationale for NPDES General Permit 700-PM

I second Steve's support for the overall change and caveat about the hobbyist.

From: SCHNURBUSCH Steve
Sent: Friday, April 05, 2013 2:14 PM
To: BILLINGS Jim; HUTCHENS-WOODS Cheryl; YELTON-BRAM Tiffany
Cc: NOMURA Ranei; ANDERSEN Keith; BACHMAN Jeff; ADES Dennis R
Subject: RE: Rationale for NPDES General Permit 700-PM

Thank you Jim. I really appreciate the perspective you've summarized below – especially about the penalties needed to deter the serious violations and the role that OSP plays. Like I indicated in my email, I'm not opposed to the change (in fact I'm actually in favor of it considering your info below). However, if there ever comes a time that we would need to enforce on a hobbyist suction dredger, I hope we have the flexibility in our guidance to assess a penalty relative to the size of the operation. It might be a moot point since it appears that OSP seems to be handling these smaller violations.

From: BILLINGS Jim
Sent: Friday, April 05, 2013 1:57 PM
To: SCHNURBUSCH Steve; HUTCHENS-WOODS Cheryl; YELTON-BRAM Tiffany
Cc: NOMURA Ranei; BROWN Courtney; HICKMAN Jane; ANDERSEN Keith; BACHMAN Jeff; ADES Dennis R; MOORE Beth
Subject: RE: Rationale for NPDES General Permit 700-PM

Steve and all, I need to share some information that may shed some light. It is difficult to convey in email. It would be better to teleconference, but here are some key points that I reckon that many of you are unaware of.

Conclusion

As Denny and I discussed these scenarios and findings with Jeff (see Details), the increase in the base penalty is needed to deter the persons causing serious violations particularly those persons with repeat incidents especially those individuals who have been considered for criminal cases. In addition to serious water quality violations, respondents that most often adversely affect beneficial use of protected fish where Federal Services and ODFW are trying to restore the fish from detrimental past gold rush mining episodes back to the 19th century. I believe it is more likely to find a fish kill from illicit suction dredging activities in these sensitive fish habitat areas rather than discharge exceedance from Wauna Mill on Columbia River or bypass from Corvallis STP on Willamette River. We have few cases that may be considered for this penalty that have not already been handled by OSP Troopers and misdemeanor citations. Experience has shown that it's not the majority of weekend warriors for recreational purposes that are being cited. However, they too could be penalized if they are negligent or intentionally do something egregious.

This will not be limited to WR. There could be 700PM noncompliance incidents in NWR but few if any. For past two years, I have worked to expand this compliance system of using OSP and outreach to other state and federal mining authorities in NE Oregon for off-stream mining under WPCF 600, but there will likely be additional serious suction dredging violators in ER after outreach and training. OSP Trooper Brad Duncan (Baker) and USFS Geologists (Baker, John Day, Ukiah) have contacted me several times in past two weeks about water quality permitting and compliance concerns for metal mining activities in ER.

Details

Denny articulated the rationale and the following two items are really germane to this

discussion. Sorry, but I need to get down in the weeds a bit.

- Serious permit violations may occur in some of the most sensitive streams in Oregon including waters with ESA-listed fish and public water supplies.
- There may be financial incentives to violate with the terms of the permit....remove logs and boulders or undercut banks to access placer deposits or operate outside the in-water work window or in waters off-limits to mining.

First of all, a person that registers under the 700PM may use their suction dredge for recreational or livelihood/commercial purposes. We do not define conflictions of (1) recreational or commercial; (2) prospecting or mining; and (3) prospecting/mining or mineral processing. This is same problem for WPCF 600 coverage but that's another story.

The majority (~75% in 2011) of 700PM registrants focus on SW Oregon waters. I have provided compliance assurance advice over the phone to hundreds of 700PM registrants for past six years. The majority are families or retired couples that want to comply with the permit. They are not the problem or who we find or hear about causing significant/serious noncompliance.

I have done ride-alongs with OSP Troopers and USFS and BLM mineral personnel for past two summers looking at suction dredging operations, I have not seen any serious permit violations especially turbidity mixing zones greater than 75 feet long. Most are 10 feet long. As realized talking to officers and land use authorities, the folks that are vacationing/weekend outings with family and friends are not causing the compliance problems. It's the persons with commercial inclination.

I am usually the initial DEQ contact for noncompliance concerns from the mining authorities and environmental groups that discovery potential water quality noncompliance. It is usually serious and egregious single/multiple and repeat violations by a few individuals that were initially considered for criminal cases like suction dredging:

- defiantly in state scenic waterways;
- outside ODFW in-water work periods in essential salmon habitat on ESA streams;
- using a suction dredge with a nozzle greater than 6-inch in ESH; and
- producing a turbidity plume from bank to bank and over 1,400 feet long in a 50-foot wide stream.

The compliance system in place in WR is complaints are referred to OSP Central Point or Grants Pass. They investigate and cite if need be. Most complaints are noise related where they are directed to local authorities. If serious violation of 700PM or DSL general authorization, OSP cites them with misdemeanor.

Unless you want to change the system we have developed amongst the local, state, and federal mining authorities in SW Oregon, DEQ does not perform compliance inspections and rarely respond to mining complaints. I reckon you are aware of this fact Steve, but perhaps others copies here do not.

On ride-alongs with OSP, I found that Troopers will use discretion and warn persons for 700PM noncompliance on first offense. The problem is usually minor like setting the gas can within 25 feet of bank edge when they are not restricted for storing further back or in vehicle (note this condition is problematic and needs to be re-written with renewal). They take down information and if catch them repeating after warning, they will cite them for misdemeanor offense and see them in court.

There have not been any cases of exceeding the 300 foot mixing zone found by OSP. However, OSP has responded to claims by Rogue Riverkeeper/KS Wild about 300-foot plume exceedences but did not see it on response. They will question the miner to ensure he is aware that he needs to be conscience of his plume length and the miner knowing that people are watching is a deterrent from repeating since OSP would cite if find them with plume length exceedence.

Please call if you have any questions.

Best regards,



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From: SCHNURBUSCH Steve
Sent: Thursday, April 04, 2013 11:53 AM
To: BACHMAN Jeff; YELTON-BRAM Tiffany; HUTCHENS-WOODS Cheryll; ADES Dennis R
Cc: NOMURA Ranei; BROWN Courtney; HICKMAN Jane; BILLINGS Jim; ANDERSEN Keith
Subject: RE: Rationale for NPDES General Permit 700-PM

My concern is that I don't want to see a single user recreational suction dredger receiving a \$3000 penalty because they have a visible turbidity plume of 50 feet beyond the 300 ft allowance. Also, we need to consider that an NPDES permit that discharges 1.5 mgd is in the same matrix as a single user recreational suction dredger with the proposed change. Those are two completely different types of permit holders. An operator of a treatment plant has a much higher level of sophistication and knowledge than a recreational suction dredger. If we can address that issue within the guidance, then I'm ok with it.

I'm really looking for a way to distinguish the size of the mining operation because a single recreational user fits closer with the rational for the \$1,000 matrix. I agree with Denny that the penalty seems appropriate for larger operations and egregious violations. I just don't know if there's any easy way to distinguish size. Maybe the draft permit could address that and the guidance good reflect that.

And as Ranei has pointed out, if we make the change, we need to be prepared to address questions as to why we made the move to the higher matrix.

From: BACHMAN Jeff
Sent: Wednesday, April 03, 2013 10:47 AM
To: YELTON-BRAM Tiffany; SCHNURBUSCH Steve; HUTCHENS-WOODS Cheryll; ADES Dennis R
Cc: NOMURA Ranei; BROWN Courtney; HICKMAN Jane; BILLINGS Jim
Subject: Rationale for NPDES General Permit 700-PM

OCE recommends that the Division 12 enforcement rules be revised to move violations of NPDES General Permit 700-PM for suction dredge miners from the \$1,000 civil penalty matrix to the

proposed \$3,000 matrix. The \$1,000 matrix is generally reserved for violations by residential owner/occupants who commit violations that are incidental to the use/improvement of their property for residential purposes. The policy is that everyone has to live somewhere and that non-commercial uses of property that result in violations should be penalized less than violations that result from commercial and/or non-essential activities. Suction dredge mining is not a residential use or essential, but typically is an activity that people engage in for monetary gain.

For this reason, OCE believes that it is consistent with our policy and practice to place 700 PMs on a matrix other than the \$1,000 and recommend that we move it to the next higher matrix, the proposed \$3,000. By placing the 700 PMs on the \$3,000 matrix, the permittees would still be subject to lower penalties than all other water quality permittees, including all other NPDES and WPCF general permittees, except for municipalities that discharge less than 2 mgd per day and NPDES 1200-C stormwater general permittees disturbing less than 5 acres, who are also on the proposed \$3,000 matrix.

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