



**PORT OF TILLAMOOK BAY
ORDINANCE NO. 9**

**AN ORDINANCE REGULATING STORMWATER POLLUTION; PRESCRIBING
CHARGES, RATES AND FEES;
AND ESTABLISHING PENALTIES FOR NONCOMPLIANCE**

WHEREAS, the Federal Water Pollution Control Act (also known as the Clean Water Act) prohibits unpermitted stormwater discharges into waters of the United States; and

WHEREAS, the Oregon Department of Environmental Quality (“DEQ”) has been delegated authority for implementing the Clean Water Act within Oregon; and

WHEREAS, pursuant to its Clean Water Act delegated authority the DEQ has issued National Pollutant Discharge Elimination System (“NPDES”) Industrial Stormwater Discharge Permit No. 1200-Z (“NPDES 1200-Z Permit”); and

WHEREAS, the Port of Tillamook Bay (“Port”) operates stormwater facilities within its industrial park complex; and

WHEREAS, all stormwater within the Port’s industrial park complex drains into the Port’s stormwater facilities regardless of ownership of individual parcels; and

WHEREAS, the Port is a facility registered under the NPDES 1200-Z Permit; and

WHEREAS, pursuant to ORS 777.190, the Port has authority to regulate property owned, operated, maintained, or controlled by the Port; and

WHEREAS, the Port deems it necessary to establish a new Ordinance to require all stormwater entering the Port’s stormwater facilities to comply with the terms of the NPDES 1200-Z Permit.

NOW THEREFORE, THE PORT OF TILLAMOOK BAY COMMISSION ORDAINS AS FOLLOWS:

Section 1. Purpose.

The purpose of this Ordinance is to regulate the discharge of stormwater into the Port’s stormwater facilities to minimize water pollution due to pollutants discharged in stormwater, and to comply

with the Clean Water Act and with the NPDES 1200-Z Industrial Stormwater Discharge Permit requirements.

Section 2. Definitions. The following words and phrases as used within this Resolution have the following definitions and meanings:

Best management practices (“BMPs”). Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. 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.

Clean Water Act. The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Hazardous Substance. Any material, including any substance, waste or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge. Any discharge to the Port’s stormwater system that is not composed entirely of Stormwater, except as exempted within this Ordinance.

Illicit Connections. Any drain or conveyance connected from a commercial or industrial land use to the stormwater system which has not been documented in plans, maps, or equivalent records and approved by the Port.

In-holdings. Privately owned land inside the boundary of the Port District property.

National Pollutant Discharge Elimination System (“NPDES”). The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the Act.

Non-Stormwater Discharge. Any discharge to the stormwater system that is not composed entirely of stormwater.

NPDES 1200-Z Permit. The general permit which regulates stormwater discharges from industrial facilities that may reach Oregon waterways, directly or through conveyance systems such as ditches or storm drains.

Port Users. The Port, co-located Port tenants, and in-holdings.

Premises. Any leased, unleased, Port-owned, and/or tenant owned building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Publicly Owned Treatment Works. A treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act).

Stormwater. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Conveyance. 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.

Stormwater Facilities. A conveyance or system of conveyances owned or operated by the Port, designed or used for collecting or conveying stormwater, which is not a combined sewer, and which is not part of a Publicly Owned Treatment Works.

Stormwater Manager. The employee of the Port designated by the Port General Manager to assist with the implementation of this Ordinance.

Stormwater Pollution Control Plan (“SWPCP”). The stormwater management plan that contains detailed information regarding the specific industrial site, the potential impacts that the site may pose to water quality and best management practices that will be implemented on site to address stormwater pollution.

Section 3. Applicability.

This Ordinance shall apply to all water entering the Port’s stormwater facilities generated on the Premises, regardless of discharge, unless explicitly exempted by the Port.

Section 4. Illegal Discharges Prohibited.

No Port User shall discharge or cause to be discharged into the stormwater facilities any materials other than stormwater except as follows:

- a) Discharges from emergency or unplanned firefighting activities
- b) Fire hydrant flushing and maintenance.
- c) Potable water, including water line flushing.
- d) Uncontaminated condensate from air conditioners, coolers, and other compressors, and from outside storage of refrigerated gases and liquids.
- e) Landscape watering and irrigation drainage.
- f) Exterior vehicle wash water that does not use hot water or detergent; restricted to less than eight per week.

- g) 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 has been removed), and surfaces are swept before washing.
- h) Routine external building wash down that does not use hot water, detergent, or other cleaning products.
- i) Uncontaminated ground water or spring water.
- j) Foundation or footing drains where flows are not contaminated with process materials.
- k) Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower.

Section 5. Illicit Connection Prohibitions.

The construction, use, maintenance, or continued existence of illicit connections to the Port's stormwater facilities is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. Illicit connections must be disconnected and redirected, as necessary, to an approved discharge location. Port Users, other than the Port, are considered to be in violation of this Policy if the Port User connects a line conveying any materials other than stormwater (except as provided above) to the Port's stormwater facilities, or allows such a connection to continue.

Section 6. Spills, Dumping, And Improper Disposal.

Spilling, dumping, or otherwise improperly disposing on the Premises of any hazardous substance under any federal, state, or local law or regulation is prohibited. The dumping or improper disposal of solid waste, litter, pet or human waste, or yard waste without permission on the Premises is also prohibited.

Section 7. Access and Monitoring of Discharges.

Upon reasonable notice to the Port User, the Port may inspect the land and stormwater facilities on the land for violations of this Ordinance or of any law or regulation governing the conveyance or disposal of stormwater. The right to inspect under this section is in addition to any right under a lease, use agreement, or other contract between the Port and the Port User in possession of the land.

Section 8. Routine Inspections, Maintenance and Training Requirements.

- A. Routine Inspection. Port Users are responsible for ensuring compliance with all permits and plans prepared for the facility, including conducting inspections as required by the Port's SWPCP and NPDES 1200-Z Permit. Inspection reports must be retained on-site, a copy sent

to the Port office, and submitted to DEQ or agent upon request. Inspection reports must contain the information required by the NPDES 1200-Z Permit.

- B. Preventative Maintenance. Port Users are responsible for regularly inspecting, cleaning, maintaining, and repairing 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 potential releases of pollutants discharged to receiving waters as required by the Port's SWPCP and NPDES 1200-Z Permit. Maintenance reports must be retained on-site, a copy sent to the Port office, and submitted to DEQ or agent upon request.
- C. Training Requirements: Employee training programs must be developed and maintained for new employees, key personnel with a change in duties, and annually for all employees. Training programs must include, at a minimum, the information required by the NPDES 1200-Z Permit, including specific control measures used to achieve the narrative technology-based effluent limits, such as spill response and good housekeeping practices; and monitoring, inspection, reporting and documentation requirements. Education and training must be documented and include which specific employees received training. A log of training dates must be kept on-site, a copy sent to the Port office, and submitted to DEQ or agent upon request.

Section 9. Charge for Services.

The Port may by Resolution establish fees and charges necessary to provide and operate the Stormwater Facilities.

- A. Private Stormwater Facilities Agreement. Review and recording fees will be charged to record each private stormwater facilities agreement with Tillamook County.
- B. Stormwater Sampling & Testing Fee. Fees will be charged for any required stormwater sampling and testing due to the requirements of the DEQ 1200-Z permit.
- C. Line Cleaning Fee. Line cleaning fees will be charged when Port personnel or contracted services are utilized to clean a portion of the stormwater facilities to allow video inspection.
- D. Site Development Plan Check Fees. A Plan Check Fee will be charged for Port to review construction plans and erosion control plans for any site development that connects stormwater discharges from the site to the Ports Stormwater Facilities.
- E. Inspection Fees. Inspection fees will be charged to inspect construction including erosion control and other site improvements for conformance to approved plans and specifications and DEQ 1200-C permits that may affect the Port's Stormwater Facilities and 1200-Z permit requirements.
- F. Monthly SWPCP Inspection Fees. SWPCP Inspection Fees may be charged for services provided by the Port, either requested by the Port's users or if required inspection are not performed and submitted to the Port within 5 business days of major rain event or end-of month as required by the DEQ 1200-Z permit.

- G. Annual SWPCP Training. Annual and New-Hire SWPCP training is required for all Port Users. The Port provides Free of Charge Annual SWPCP training for all Port Users, which usually occurs near the end of the calendar year. This is to promote compliance with the DEQ 1200-Z permit requirements.
- H. Miscellaneous Fees. Except for services specified above, any other services performed by Port staff will be charged at the employee's salary plus other personnel expenses (including health insurance, retirement, vacation, sick leave and other payroll taxes) for actual time spent on the service (minimum of 0.25 hours), plus the cost of materials and use of Port equipment.

Section 10. Delinquency, Collection, Interest and Penalties

- A. Charges imposed under this Ordinance are deemed delinquent when not paid in full by the due date provided in a bill for the charge.
- B. It shall be unlawful and a violation of this Ordinance for any person to use, discharge stormwater to, or maintain a connection to, the Port's Stormwater Facilities without paying the appropriate charges and fees established in this section or any rule adopted pursuant hereto. If no billing is sent, such charges are deemed delinquent 30 days from the date services were provided to a Port user.
- C. Delinquent charges may be collected pursuant to this section by the General Manager or designee, with the assistance of the Ports Legal Counsel, without further action or authorization by the Port's Board.
- D. Delinquent charges may be recovered by the Port in any manner provided by law, including any action in the small claims or circuit court of Tillamook County.
- E. The Port may prescribe by Resolution a schedule of interest and penalty charges to be imposed upon delinquent charges.
- F. In a collection action under this Ordinance the prevailing party shall be entitled to its costs and reasonable attorney fees.
- G. In addition to the right of the Port to bring civil action to collect delinquent charges or enforce any provision of this Ordinance, the Port may take any of the following actions to secure payment:
 - 1. The Port may terminate the provision of stormwater discharges to premises used by the Port User. Port User would then be required to obtain their own DEQ 1200-Z permit.
 - 2. The Port may terminate sanitary sewer service to premises used by the Port User;
 - 3. The Port may terminate water service to the premises used by the Port user.

Section 11. Enforcement.

Whenever the Port finds that a Port User has violated a prohibition or failed to meet a requirement of this Ordinance, the Port may order compliance by written notice of violation to the responsible Port User. Such notice may require without limitation:

- a) The performance of monitoring, analyses, and reporting;
- b) The elimination of illicit connections or discharges;
- c) That violating discharges, practices, or operations shall cease and desist;
- d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- e) Payment of a fine to cover administrative and remediation costs; and
- f) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by the Port and the expense thereof shall be charged to the violator.

If a violation of this Ordinance violates applicable DEQ rules and regulations, then the Port shall notify DEQ.

If a violation of this Ordinance is committed by a non-Port User, then the Port shall notify the appropriate Tillamook County or DEQ enforcement authorities.

Section 12. Penalties.

A violation of this Ordinance shall be a Class A misdemeanor pursuant to ORS 777.990(2). If violation of this Ordinance is continuing or recurrent, each calendar day during which the violation occurs or continues shall be deemed a separate violation. In addition, any fines or penalties assessed to the Port by DEQ for violation of the NPDES permit, shall also be passed on to the party violating this Ordinance.

Section 13. Adoption of Rules – Interpretations and Appeals.

A. Adoption of Rules.

1. Upon the recommendation of the General Manager, or upon its own motion, the Board may, by Resolution and Order, promulgate rules pertaining to matters within the scope of this Ordinance.
2. Any rule adopted pursuant to this section shall require a public hearing. Not less than 5 nor more than 30 days before such hearing, public notice of such hearing shall be given by publication in newspaper of general circulation within the Port District. Such notice shall

include the place, time, and purpose of the hearing and the location at which copies of the full text of the proposed rules may be obtained.

3. At the public hearing, the Board shall hear testimony concerning the proposed rules. At the conclusion of the public hearing, the Board shall either adopt the proposal, modify, or reject it. If a modification is made, an additional public hearing shall be held but no additional notice shall be required if such additional hearing is announced at the meeting at which the modification is made. All rules shall be effective upon adoption by the Board and shall be filed in the office of the Port of Tillamook Bay.
4. Notwithstanding subsection (A)(2) and (3) of this section, a rule may be adopted without prior notice upon a finding that failure of the Board to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this subsection shall be effective for a period of no longer than 180 days.

B. Interpretations and Appeals.

1. This Ordinance, all rules, regulations and applications and interpretations thereof shall be initially made by the Port. No review of the application of any rule, interpretation, or variance from a rule shall be authorized under this section unless the Port User seeking the review has first requested in writing an interpretation by the Port.
2. Administrative appeals relating to stormwater facilities charges shall be limited to the following:
 - a. A determination that the Port User is obligated for the service charge;
 - b. A determination of the proper calculation of the amount due from the Port Users;
or
 - c. A discretionary decision implementing a rule adopted by the Port under this Ordinance.
3. The appeal shall be filed in writing and must be actually received by the Port no later than 30 days after the action appealed.
4. Any person aggrieved by a ruling or interpretation of the Port under this Ordinance and requesting review of such decision shall submit a written statement of the appeal to the General Manager. The appeal shall contain:
 - a. The applicants name and address.
 - b. The facts and circumstances leading to the appeal.
 - c. The specific Port rule, provision, or interpretation at issue; and
 - d. The relief requested.

The appellant shall bear the burden of proof.

- 5. The General Manager shall review each complete appeal request and may designate a Port staff member to investigate the matter and request additional information from the appellant, and from Port staff.
- 6. The appeal shall be heard by the General Manager in an informal proceeding. The appellant shall be provided with a reasonable opportunity to submit written and oral support for the appellant’s position. The General Manager shall issue a written decision within 30 days of the proceedings. The written decision of the General Manager may be appealed to the Port’s Board of Commissioners. Failure to properly exhaust the administrative remedy provided for herein shall constitute a bar to judicial relief.

Section 14. Judicial Review.

Final decisions of the Board, or the General Manager, under this Ordinance shall be reviewable solely and exclusively under the provisions of ORS 34.010 through 34.100.

Section 15. Severability.

In the event any section, subsection, paragraph, sentence or phrase of this Ordinance or any administrative policy adopted herein is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remainder of the Ordinance shall continue to be effective.

Section 16. Effective Date.

This Ordinance shall take effect on the 30th day after its adoption by the Port Board of Commissioners.

APPROVED AND ADOPTED by the Port of Tillamook Bay Board of Commissioners this ____ day of _____, 2024.

Yes: _____ No: _____ Absent/Abstain: _____

Date of First Reading: [DATE]

Date of Second Reading: [DATE]

PORT OF TILLAMOOK BAY

ATTEST:

Sierra Lauder
Board President

Kevin Stoecker
Board Secretary