

Wastewater Permitting Program Improvements and Measures

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Submitted to:

John A. Kitzhaber, MD, Governor
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By:

Dick Pedersen, Director



State of Oregon
Department of
Environmental
Quality



This report prepared by:

Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204
1-800-452-4011
www.oregon.gov/deq

Contact:
Christopher Clipper
(503) 229-5656

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Executive Summary

The 2005 Oregon Legislature passed Senate Bill 45 to improve the quality and issuance of wastewater discharge permits and address a significant permit backlog in the Oregon Department of Environmental Quality's water quality permit program. The bill was based on recommendations made by the Blue Ribbon Committee on Wastewater Permitting¹. DEQ convened this committee, which included representatives from industry, environmental advocacy groups and local government. The committee recommended DEQ implement program changes over a four-year period to accomplish the following:

- Create a watershed-based permitting cycle to improve permit planning, accountability and follow-up, as well as integration with other water quality programs
- Provide for up-to-date, consistent wastewater permitting to improve the timeliness and quality of DEQ-issued permits
- Develop a strong, effective and appropriate compliance and enforcement program
- Report annually on progress made to the Oregon Environmental Quality Commission and Legislature.

(Note: This SB45 reporting requirement ended on Jan. 2, 2010; however, DEQ continues to develop and provide this report biennially to keep the Environmental Quality Commission, Legislature and public informed of program status.)

This report includes background information on DEQ's wastewater permitting program and provides updated information on DEQ's progress toward achieving six performance measures established by Senate Bill 45.

Total number of permits managed by the program increased from 4,400 in 2010 to 6,700 in 2012. This increase was largely due to an increase in general permit applications as well as new federal permitting requirements for pesticide application in or near water.

DEQ failed to meet a number of key performance measures in part because of budget and staffing reductions in the water quality program and litigation on DEQ water quality standards for temperature. For example, DEQ's 2011-13 budget eliminated 3.5 full-time equivalent positions in the wastewater permitting program and litigation caused DEQ to substantially change its permit issuance strategy in 2012. DEQ suspended renewal efforts on a number of priority water quality permits and largely abandoned its watershed-based permitting efforts. This resulted in a significant decrease in the number of NPDES permits issued in 2012.

Since 2009, DEQ has been developing basin-based water quality status reports and action plans which describe water quality conditions and include recommendations that DEQ and stakeholders in these basins can take to improve water quality. Reports for the Deschutes, Rogue and North Coast basins are completed and available at <http://www.deq.state.or.us/wq/watershed/watershed.htm>. Reports for the South Coast, Tualatin/Clackamas and Powder/Burnt basins are currently underway and expect to be made public by spring 2013.

DEQ is in the process of developing an Agency Compliance and Enforcement System that will be able to store, track and retrieve noncompliance information from DEQ's air, land and water programs. The system is expected to be completed by the end of 2013 and will provide statewide

¹ The *Blue Ribbon Committee Report on Key Enhancements to the Oregon Wastewater Permitting Program* (2004) can be found online at: <http://www.deq.state.or.us/wq/pubs/reports/blueribbonrpt.pdf>.

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consistency with noncompliance notification timeliness besides enhancing DEQ's ability to evaluate permit program effectiveness.

In 2011, DEQ started to implement an outcome-based management system. As part of this effort, DEQ launched two major process improvement efforts in 2012 affecting both permitting and inspection work. An in-house permitting team is implementing process improvements by establishing consistent timeliness metrics for each DEQ program (air, land and water). Another internal team is addressing improvements in DEQ's inspection process. The improvements include scheduling manager-accompanied site visits and incorporating plain language into inspection and site visit documents. Rollout of these process improvements will continue over the next several years.

In addition, DEQ is nearing completion of its DEQ Information Technology Strategic Plan for 2013-2017. A top priority in the plan is to develop an enterprise-wide information system which will likely be a new permitting platform. This will benefit the wastewater permitting program by providing updated technology tools for permitting staff, the regulated community and the public.

1. Introduction

1.1 Overview

Purpose	The purpose of this report is to update the Oregon Legislature and the Oregon Environmental Quality Commission on specific wastewater permitting program performance measures, including the Oregon Department of Environmental Quality’s efforts in administering a watershed approach toward water pollution permitting, as required by Senate Bill 45 passed by the Legislature in 2005 (See Appendix A).
Senate Bill 45 History	Governor Ted Kulongoski introduced Senate Bill 45 on behalf of DEQ during the 2005 legislative session as part of the funding and program improvements package recommended by the Blue Ribbon Committee on Wastewater Permitting.

1.2 Background

What is the Wastewater Permitting Program?	DEQ’s wastewater permitting program controls wastewater and stormwater discharges from a variety of sources. DEQ issues permits that are either “individual” site-specific permits or “general” permits. Currently, the program regulates more than 6,700 facilities and activities (excluding onsite septic system permits) using the following types of permits:
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National Pollutant Discharge Elimination System permits NPDES permits are issued as directed by the federal Water Pollution Control Act and Oregon Revised Statute 468B for discharges to “waters of the United States,” which includes surface waters such as streams, rivers, lakes, oceans and wetlands. These permits are classified as either “major” or “minor.” Major permits typically cover large sewage treatment plants with discharge flows of more than one million gallons per day or large industrial discharges. Facilities that don’t meet this definition of “major” are classified as “minor” permits.

Water Pollution Control Facilities permits
WPCF permits are issued as directed by ORS 468B for disposal systems that don’t discharge directly to surface waters, such as land irrigation activities and lagoons. (Note: Permits for residential septic tanks and drainfields are part of DEQ’s onsite septic system program and are not included here.)

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General NPDES and WPCF permits

General permits are developed when DEQ can adequately control comparable discharges from similar activities with a standard set of requirements. For example, DEQ uses general permits to reduce industrial and construction stormwater runoff. While an individual permit could be issued for each activity, issuing a general permit is more efficient for DEQ and, as a result, substantially less costly for the permittee.

Why Was the Blue Ribbon Committee Established?

In 2001, DEQ had a high permit backlog with about 60 percent of major NPDES individual permits awaiting renewal (the highest backlog rate in the nation). Causes for the backlog included the increasing complexity of permitting requirements, implementing more stringent water quality standards, implementing Total Maximum Daily Loads and waste load allocations, and an increase in the number of sources requiring permitting (DEQ permitted 2,700 sources in 1994, more than 4,000 in 2001 and more than 6,700 in 2012). To address permitting concerns, DEQ convened the Blue Ribbon Committee in December 2002 to assist the agency in identifying needed improvements to the wastewater permit program. The committee included industry, environmental and local government representatives.

Blue Ribbon Committee's Major Recommendations

In July 2004, the committee completed its review of DEQ's wastewater permitting program and summarized its findings and recommendations in *Blue Ribbon Committee Report on Key Enhancements to the Oregon Wastewater Permitting Program* (available online at <http://www.deq.state.or.us/wq/pubs/reports/blueribbonrpt.pdf>).

Key areas of concern identified by the committee included:

- A backlog of major NPDES permit renewal applications
- Growing complexity of NPDES permit regulations
- An increasing number of sources subject to NPDES permit requirements
- Serious DEQ wastewater permitting program resource constraints

The committee recommended that DEQ implement structural changes to the permit program over a four-year period to do the following:

- Create a watershed-based permitting cycle to bring about better permit planning, accountability and follow-up, as well as integration with other water quality programs and activities.
- Provide for up-to-date and consistent wastewater permitting to improve the timeliness and quality of the permits issued by DEQ.
- Develop a strong, effective and appropriate compliance and inspection program.

This report serves as a mechanism for DEQ to track and report on program implementation progress and to provide greater accountability to the Oregon Legislature, businesses and the people of Oregon. Appendix B of this report contains DEQ's *Implementation Plan for Recommendations from the Blue Ribbon Committee on Wastewater*

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Permitting.

DEQ's Goals

The goals of the wastewater permitting program are:

Reducing the major NPDES individual permit backlog to 10 percent.
Improving accountability by developing and tracking permit issuance plans and establishing individual performance expectations.

Improving emphasis on key water quality concerns and developing a more holistic solution by issuing permits using a watershed approach.
Providing support to DEQ's permit writers to address challenging scientific analyses such as evaluating toxicity testing and calculating water quality-based limits.

Reviewing compliance data in a timely manner and improving compliance inspections.

Responding to violations in a timely manner.

Factors Affecting Permit Issuance

Since DEQ began implementing the committee's recommendations in 2005, there have been many successes as well as challenges. During 2009, DEQ encountered obstacles to meeting its goals, including the goal to reduce the backlog of expired major individual NPDES permits to 10 percent. These obstacles included litigation on the Willamette Basin TMDL and use of compliance schedules in permits, as well as an EPA objection over the permitting of sanitary sewer overflows. These obstacles were resolved in late 2009 and 2010 (see Appendix C for a complete list of current litigation affecting permit issuance). Current litigation on water quality standards for temperature has disrupted DEQ's approach to watershed-based permitting; there has been some progress on permit renewal and issuance, but overall efforts to reduce the NPDES permit backlog and implement a watershed-based permitting approach were stymied.

The permit program has been operating with an average of 58.4 positions during the 2011-13 biennium (July 1, 2011-June 30, 2013), compared to the 67.7 positions authorized in the 2011-2013 Legislatively Adopted Budget. DEQ held five positions vacant for portions of the biennium in response to a 3.5 percent reduction in the Water Quality Program's general fund in the Legislatively Adopted Budget and other reductions the legislature made during a February 2012 special session. Those vacancies were further extended because of continued low revenues in the stormwater program associated with the economic downturn.

2. Status of Senate Bill 45 Reporting Requirements

2.1 Overview of Reporting Requirements

The committee’s recommendation to report to the Oregon Environmental Quality Commission and Oregon Legislature was included as a requirement in Senate Bill 45. Following passage of the bill in 2005, DEQ was required to annually report on the measures below. The reporting requirement ended on Jan. 2, 2010. DEQ decided to submit this report biennially to keep the EQC, Legislature and general public informed on permit program status.

- Efforts to administer the water pollution control permit program with a watershed approach
- Efforts to issue permits on a watershed basis
- Level of permit backlog, if any
- Timeliness of applying general permit coverage to applicants
- Timeliness of reviewing and tracking discharge monitoring reports
- Timeliness of issuing permit noncompliance notifications

2.2 Administering the Wastewater Permit Program with a Watershed Approach

DEQ issues permits in every watershed in Oregon. The concept of a watershed approach is to conduct permitting, monitoring and inspections in particular watersheds on a set schedule. This type of schedule allows DEQ to concentrate resources in particular basins each year so that monitoring data and timely permit compliance information can be used during the process of renewing permits. DEQ anticipates that over time, the watershed approach will greatly enhance the permit renewal process and integration of various water quality programs.

Status

In January 2012, DEQ updated the permit issuance plan to issue permits on a watershed basis. DEQ began renewing permits on a watershed basis with an objective that most or all individual water quality permits in a particular sub-basin be renewed during the same year. DEQ also developed an annual watershed-based inspection plan aligned with the watershed permit issuance plan. DEQ set a goal to inspect at least 50 percent of all permits for large municipal and industrial facilities. DEQ did not meet this goal inspecting 42 percent of larger facilities during 2012.

DEQ set a goal of contacting 100 percent of facilities two years before their permit renewal date in order to get early involvement and collect data. During 2012, DEQ contacted zero percent of permitted facilities at least two years before their renewal date.

DEQ has also committed to focusing on one watershed per year in each of DEQ’s three regions to address water quality protection in a comprehensive manner. In each of these watersheds DEQ works to integrate multiple water quality programs (including wastewater permitting, water quality standards, Total Maximum Daily Load

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development and implementation, and nonpoint source protection) as well as applicable programs that focus on air and land quality. These efforts allow DEQ staff, with partners, to identify and document priority water quality problems on a watershed scale and address them. DEQ is developing water quality status reports and subprogram action plans for watersheds in each of DEQ's three regions, and aims to cover the state over a five year period. As part of this effort, data needs will be identified – including data that point sources can collect as part of their permit applications. The first of these efforts began during 2009 in the Deschutes basin. In 2012, the South Coast, Tualatin/Clackamas and Powder/Burnt basins were addressed.

DEQ has also taken steps to better focus efforts on meeting the Blue Ribbon Committee's suggestion to strengthen connections between internal water quality programs, with a particular focus on better communication and integration of permit implementation issues and needs during development of Total Maximum Daily Loads and water quality standards. The key goal is to have standards, permits and TMDL program staff work together to improve permit quality and achieve more consistent and efficient program implementation.

During 2010, wastewater permit program staff worked closely with the standards program staff and stakeholders on new water quality standards for toxics pollutants and naturally occurring metals. This work continued in 2012 as DEQ developed guidance tools in the form of management directives, permit templates and other implementation tools to facilitate proper and consistent and effective implementation of water quality standards in the permitting programs. DEQ also met several times in various forums with municipal and industrial stakeholder groups to communicate how changes to standards affect those with wastewater and stormwater permits. It should be noted that actual implementation of the new water quality standards has been set back substantially by the delay in permit issuance associated with the temperature litigation.

2.3 Issuing Permits on a Watershed Basis

Status	In 2005, DEQ developed a permit issuance plan using a watershed approach. It grouped all individual permits into their specific watershed and established a five-year cycle for each watershed. Legal issues caused DEQ to delay issuance of certain permits, preventing the agency from meeting its goal. Following the resolution of those legal issues, DEQ has annually developed permit issuance plans since 2010. In 2012, DEQ designated 61 permits (individual NPDES and WPCF) for reissuance but only reissued 26 (less than 43 percent of permits designated for renewal). Current litigation on water quality standards for temperature has disrupted DEQ's efforts to implement water quality permitting on a watershed approach in those basins where NPDES permit limits for temperature are derived from EPA-approved TMDLs.
DEQ's Goal	DEQ's goal was to issue 95 percent of targeted individual wastewater permits on a watershed basis by the end of 2010.

2.4 Level of Permit Backlog

Status

An original key concern of the Blue Ribbon Committee was the high backlog of expired individual permits for major NPDES facilities. DEQ was on track to meet the goal of reducing the backlog for major individual NPDES permits to 10 percent by the end of 2007 until EPA objected to specific DEQ permit language to address storm-related sanitary sewer overflows. DEQ also was engaged in several lawsuits that affected permit issuance during that time. DEQ changed its NPDES permit language to address EPA concerns and resolved legal issues in late 2009 and 2010 that broadly affected water quality permitting.

In 2012, water quality standards litigation has once again confounded DEQ efforts to efficiently implement its NPDES permit program and to meet its permit backlog objectives. DEQ stopped working on some permits and has deferred renewal of permits with waste load allocations derived from TMDLs that included a natural conditions criterion. In Oregon, there are over 2,000 river miles in more than 27 watersheds where the summertime maximum natural thermal potential is expected to exceed the biologically based numeric criteria and the natural conditions criterion applied. Waste load allocations and thus water quality-based effluent limits for more than 60 individual permits in key river basins such as the Willamette, Rogue and Umpqua may be affected by changes to Oregon temperature criteria. DEQ continues to issue permits where temperature effluent limits are based solely on biologically based numeric criteria or more stringent criteria.

The major NPDES permit backlog excluding Municipal Separate Storm Sewer Systems permits remained unchanged at 71 percent at the end of 2012 – compared to 71 percent at the end of 2010. When MS4 permits are also considered, the major NPDES permit backlog was 66 percent at the end of 2012. Individual WPCF permits are not affected by DEQ temperature standards litigation and that backlog for 2012 was 20 percent.

DEQ's Goal

DEQ will continue to work toward reducing the backlog for major individual NPDES permits to 10 percent.

2.5 Timeliness of Applying General Permit Coverage to Applicants

Status

DEQ's general permits cover approximately 6,100 facilities and activities, excluding onsite septic system permits. The general permitting approach provides certainty for new applicants because they know the permitting requirements up front and a general permit can be obtained fairly quickly. This compares favorably with a new individual permit that can take six months or more to develop and issue. During 2012, DEQ registered 2,301 facilities under general permits (new and renewal applications filed in 2012). The average time to assign coverage for applicants to a general permit (new and renewal applications filed in 2012) was 59 days. About 93 percent of the time new permit applicants filing applications in 2012 were registered to a permit within 30 days.

Since the original Blue Ribbon Committee made recommendations, federal courts have found that DEQ must provide a public notice and opportunity for the public to comment on stormwater management plans before DEQ can assign general permit coverage for stormwater discharges. This requirement was adopted by EQC for construction activities that disturb more than five acres and industrial stormwater permits. Requiring public notice for stormwater management plans delays the assignment of general permit coverage but provides greater transparency and allows public participation in the permitting process. For these stormwater permits, DEQ tracks the time it takes to assign coverage after the public comment period has closed.

DEQ's Goal

DEQ's goal is to assign general permit coverage within 30 days of receiving a new application or within 30 days after the close of the public comment period for applicable stormwater permits.

2.6 Timeliness of Reviewing and Tracking of Discharge Monitoring Reports

Status

DEQ-permitted facilities are typically required to analyze wastewater discharges to determine if they are meeting permit limits. Facilities submit these laboratory analyses results to DEQ monthly in a document called a discharge monitoring report. DEQ has completed the development of the discharge monitoring system database and now tracks electronically the discharge monitoring reports for major sources. The discharge monitoring report evaluation report identifies monitoring requirements that may be missing, exceedances of permit limits, and information that needs further examination. This information helps permit writers and inspectors in their review of discharge monitoring reports for major sources and makes the process more efficient. During the fourth quarter of 2012, DEQ reviewed 84 percent of the discharge monitoring reports for the 69 major sources within 30 days of receipt. DEQ still tracks and reviews discharge monitoring reports for minor sources manually, which is time consuming but necessary to ensure each is reviewed.

EPA requires states that implement the NPDES permit program to enter permit information into a federal database, called the integrated compliance information system. Beginning in 2004, DEQ failed to regularly enter Oregon's NPDES permit information into EPA's compliance system. During 2008, DEQ updated the data in EPA's database and uploaded backlogged discharge monitoring report data for these facilities. In 2009, DEQ completed entry of remaining data required to the compliance database. DEQ now keeps the integrated compliance information system current on a monthly basis.

DEQ is not currently entering NPDES individual minor sources' discharge monitoring report data into EPA's compliance system due to the volume of data involved. DEQ has concluded that it must develop the capability to receive discharge monitoring information electronically in order to generate an evaluation report for minor sources and be able to provide the data to the federal database.

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DEQ has begun this project. DEQ anticipates hiring a contractor and using internal resources to design and develop a software application to collect data electronically from NPDES individual permit holders. The system will comply with EPA's Cross Media Electronic Reporting Rule and provide a web-based portal to allow permitted sources to submit DMR documentation electronically.

DEQ's Goal DEQ's goal is to review discharge monitoring reports for individual permits within 30 days of receipt.

2.7 Timeliness of Issuing Permit Noncompliance Notification

Status Development of DEQ's electronic compliance and enforcement system started in December 2011 and will be implemented in two major functional modules. The first module is 50 percent complete with an estimated implementation, including staff training, of September 2013. The second module should be complete by the end of 2013. This module will help staff manage and track formal enforcement actions. Until the new electronic system is complete, staff will track noncompliance notifications through other means. DEQ has developed the discharge monitoring system that automates review of monthly discharge monitoring reports for major sources as described in Section 2.6 for timely report reviews. The automated review process improves the precision and accuracy of comprehensive discharge monitoring report reviews statewide, and helps DEQ respond timely to permit violations.

DEQ's Goal DEQ has an interim timeliness goal to issue warning letters or pre-enforcement notices within 10 days after an inspection is completed. These goals are informal guidelines until the electronic system is operational. The compliance and enforcement database will be able to store, track, and retrieve noncompliance information from DEQ's land, air and water programs. DEQ will set final timeliness goals once the electronic system is functional and DEQ can use the database information to assess status, set baselines, and develop reasonable targets. This system will provide statewide consistency with noncompliance notification timeliness.

3. Additional Program Improvements

3.1 Overview of Additional Program Improvements

In addition to the improvements associated with Senate Bill 45 reporting requirements discussed in Section 2, DEQ is implementing additional program enhancements to:

- Issue timely, quality permits by investing in the program's infrastructure, expertise, and policy guidance.

- Ensure stable, ongoing funding that improves fee predictability for rate payers and revenue for budget management by maintaining a mix of fee and public funding and allowing for an annual permit fee increase of up to three percent to help address increasing program costs.

3.2 Quality Permits on Time

To assist in issuing timely, quality permits, DEQ has:

- Revised and enhanced the permitting template to improve the quality and consistency of permits and allow staff to focus on issues specific to each individual permit. Template language is documented with more than 70 endnotes that explain the basis and meaning of various pieces of permit language. Schedule B language reflects all of the new toxics monitoring requirements as well as discharge monitoring system reporting requirements.
- Established a process for developing internal management directives that provide management and staff with guidance on complex issues that affect the permitting process. The directives also provide external stakeholders with information on how DEQ will approach issues.

- Completed directives since 2005 covering critical permitting topics such as mixing zones, conducting reasonable potential analysis and implementing the temperature standard in permits.

Completed the following directives in 2012:

- Reasonable Potential Analysis for Toxic Pollutants, Revision 3.1 (Revised February 2012)

- Regulatory Mixing Zone (Revised May 2012)

- Significant Figures and Rounding Conventions in Water Quality Permitting (Revised May 2012)

- Site Specific Background Pollutant Criterion (June 2012)

- Variations for NPDES Permit Holders (February 2012)

- DEQ published seven implementation memos that describe analytical methods for specific pollutants, including associated implementation and monitoring considerations. DEQ developed these memos to provide guidance to DEQ staff and other interested members of the public in response to analytical questions about specific water quality toxics criteria. Transitioned to issuing general permits by order rather than by rule. This implements the provision in Senate Bill 45 that allows issuing general permits by administrative order rather than the more resource-intensive rulemaking process. During 2012 DEQ issued general permits by order for graywater systems (2401 and 2402) and industrial stormwater (1200-A).

- Implemented a training program for permit writers.

An individual permit NPDES Municipal Separate Storm Sewer System Phase I applies to

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the discharge of urban stormwater from selected municipalities/counties in the Portland metropolitan area, and the cities of Eugene and Salem. One MS4 Phase I permit was reissued in 2012 for the Clackamas County MS4 Group which encompasses 13 co-permittees.

DEQ is currently developing an Irrigation System General Permit (2000-J) for pesticide applications within irrigation systems. Initially on public notice in March 2011, the permit was revised to include permit conditions from the Pesticide General Permit 2300-A that was issued October 2011. With these and other changes the permit was re-noticed from July 20 through Sept. 28, 2012. The Irrigation System General Permit 2000-J will be available prior to the 2013 pesticide application season.

DEQ is nearing completion of the DEQ Information Technology Strategic Plan for 2013-2017. One of the top priorities in the plan is to develop an enterprise-wide information system which will likely be a new permitting platform. This will benefit the wastewater permitting program by providing updated technology tools for permitting staff, the regulated community and the public.

3.3 Stable and Ongoing Funding

Maintain Mix of Fee and Public Funding

Based on the Blue Ribbon Committee recommendation, permit fees are intended to cover 60 percent of the program costs, while public funds are expected to cover the remaining 40 percent. In 2012, fees were increased by 2.7 percent (approximately \$135,000 in additional revenue), and based on the 60:40 percent funding split.

Annual 3 percent Fee Increase

Senate Bill 45 authorizes the Environmental Quality Commission to increase permit fees annually. The annual increase may not exceed the anticipated increase in the cost of administering the wastewater permit program or 3 percent, whichever is lower. Generally (except in 2009), cost increases for benefits and salaries outpace inflation, but the annual 3 percent fee increase helped offset these costs. The commission adopted fee increases in 2007, 2008, 2010, 2011 and 2012.

3.4 Outcome-based Management

DEQ convened a team of staff and managers in January 2012 to address the following problem: DEQ's current permit process is not able to sustain on-time delivery of new permits or permit renewals. The Permit Process Improvement Team met for 22 weeks, and was tasked with identifying high-impact, low-cost internal solutions to: 1) reduce the amount of time it takes to issue permits by 25 percent, and 2) issue permits within timeliness targets established by permit type. Using data, the team determined root causes of backlog and timeliness problems and potential solutions for these problems. Solutions were then prioritized according to greatest impact and ease of implementation within each program and validated by managers and staff outside the team. The team released its findings June 2012 and is currently implementing process improvements. This project demonstrates DEQ's continued commitment to the 2009 Legislature's passage of SB 676, which initiated the outcome-based management effort.

Appendix A

Senate Bill 45

(Chapter 523 Oregon Laws 2005)

Chapter 523 Oregon Laws 2005

AN ACT

SB 45

Relating to water pollution control permits; creating new provisions; and amending ORS 183.310, 468.065, 468B.050 and 468B.055.

Whereas the Department of Environmental Quality, on behalf of the State of Oregon and its citizens, is authorized to administer the National Pollutant Discharge Elimination System permit program under the Federal Water Pollution Control Act; and

Whereas the State of Oregon and its citizens have a substantial interest in implementing a high quality program that ensures that the state retains its authority under the program; and

Whereas the State of Oregon also administers a water pollution control facility permit program to control discharges to land and ground water; and

Whereas the Department of Environmental Quality convened a blue ribbon committee in December 2002 and charged the committee with the responsibility for recommending improvements to the permit programs and for recommending a stable and sustainable funding source for all program activities; and

Whereas the committee issued a final report in August 2004 containing recommendations on program improvements and funding, including issuing permits using a watershed based approach and methods to maximize the programs' efficiency and effectiveness; and

Whereas the committee recommends that the department issue permits using a watershed based approach in which permitting and compliance activities within a watershed are coordinated in a manner that facilitates permit development and public involvement; and

Whereas the committee finds that the existing method of issuing permits by rule is inefficient and onerous, and unnecessarily diverts program resources; and

Whereas the committee recommends that the Legislative Assembly clarify that all general permits be issued as departmental orders rather than rules; and

Whereas the committee recommends that the permit programs be funded through a mix of water quality fees and public dollars that covers all of the activities related to the programs; and

Whereas the committee recommends that the department be given authority to raise fees each year if necessary to resolve the permit programs' funding challenges; and

Whereas the department endorses the recommendations of the committee; and

Whereas the committee recommends that the Legislative Assembly embrace the watershed based approach to permitting by calling for the department to prepare a plan describing how the department will implement a watershed based approach to permitting and to report annually on progress toward implementing a watershed based approach; now, therefore,

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS chapter 468B.

SECTION 2. Not more than once each calendar year, the Environmental Quality Commission may increase the fees established under ORS 468.065 for permits issued under ORS 468B.050.

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The amount of the annual increase may not exceed the anticipated increase in the cost of administering the permit program or three percent, whichever is lower.

SECTION 3. ORS 468.065 is amended to read:

468.065. Subject to any specific requirements imposed by ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B:

(1) Applications for all permits authorized or required by ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B shall be made in a form prescribed by the Department of Environmental Quality. Any permit issued by the department shall specify its duration, and the conditions for compliance with the rules and standards, if any, adopted by the Environmental Quality Commission pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(2) By rule and after hearing, the commission may establish a schedule of fees for permits issued pursuant to ORS 468A.040, 468A.045, 468A.155 and 468B.050. Except as provided in ORS 468A.315 and section 2 of this 2005 Act, the fees contained in the schedule shall be based upon the anticipated cost of filing and investigating the application, of carrying out applicable requirements of Title V, of issuing or denying the requested permit, and of an inspection program to determine compliance or noncompliance with the permit. The fee shall accompany the application for the permit. The fees for a permit issued under ORS 468A.040 or 468B.050 may be imposed on an annual basis.

(3) An applicant for certification of a project under ORS 468B.040 or 468B.045, and any person submitting a notice of intent to seek reauthorization, a preliminary application or an application for reauthorization of a water right for a hydroelectric project under ORS 543A.030, 543A.035, 543A.075, 543A.080 or 543A.095 shall pay as a fee all expenses incurred by the commission and department related to the review and decision of the Director of the Department of Environmental Quality and commission. These expenses may include legal expenses, expenses incurred in evaluating the project, issuing or denying certification and expenses of commissioning an independent study by a contractor of any aspect of the proposed project. These expenses shall not include the costs incurred in defending a decision of either the director or the commission against appeals or legal challenges. The department shall bill applicants for costs incurred on a monthly basis, and shall provide a biennial report describing how the moneys were spent. An applicant may arrange with the department to pay the fee on a quarterly basis. The department shall not charge a fee under the fee authority in this subsection if the holder is being charged a fee under ORS 543.088 and 543.090 or 543A.405. In no event shall the department assess fees under this section and under ORS 543A.405 for performance of the same work.

(4) The department may require the submission of plans, specifications and corrections and revisions thereto and such other reasonable information as it considers necessary to determine the eligibility of the applicant for the permit.

(5) The department may require periodic reports from persons who hold permits under ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B. The report shall be in a form prescribed by the department and shall contain such information as to the amount and nature or common description of the pollutant, contaminant or waste and such other information as the department may require.

(6) Any fee collected under a schedule of fees established pursuant to this section or ORS 468A.315 shall be deposited in the State Treasury to the credit of an account of the department. [Such] The fees are continuously appropriated to meet the [administrative] expenses of the program for which they are collected[.], except as follows:

(a) The federal operating permit program shall include a commensurate amount of the fee for any permit [issued under] specified in this section for which the department incurs costs associated with the requirements of Title V and any fees collected under ORS 468A.315. Fees collected for the federal operating permit program in any biennium that exceed the legislatively approved budget, including amounts authorized by the Emergency Board for the federal operating permit

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program for such biennium, shall be credited toward the federal operating permit program budget for the following biennium.

(b) Fees collected for permits issued under ORS 468B.050 to authorize the discharge of wastes into the waters of the state may be used to pay the expenses of any of the programs associated with the issuance of permits under ORS 468B.050 to authorize the discharge of wastes into the waters of the state.

(c) The fees collected under a schedule of fees established pursuant to this section or ORS 468A.315 by a regional air pollution control authority pursuant to a permit program authorized by the commission shall be retained by and shall be income to the regional authority except as provided in ORS 468A.155 (2)(c). Such fees shall be accounted for and expended in the same manner as are other funds of the regional authority. However, if the department finds after hearing that the permit program administered by the regional authority does not conform to the requirements of the permit program approved by the commission pursuant to ORS 468A.155, such fees shall be deposited and expended as are permit fees submitted to the department.

(7) As used in this section, “Title V” has the meaning given in ORS 468A.300.

SECTION 4. ORS 468B.050 is amended to read:

468B.050. (1) Except as provided in ORS 468B.053 or 468B.215, without [*first obtaining*] holding a permit from the Director of the Department of Environmental Quality or the State Department of Agriculture, which permit shall specify applicable effluent limitations, [*no person shall*] a person may not:

(a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.

(b) Construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto.

(c) Increase in volume or strength any wastes in excess of the permissive discharges specified under an existing permit.

(d) Construct, install, operate or conduct any industrial, commercial, confined animal feeding operation or other establishment or activity or any extension or modification thereof or addition thereto, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state or which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized.

(e) Construct or use any new outlet for the discharge of any wastes into the waters of the state.

(2) The Department of Environmental Quality or the State Department of Agriculture may issue a permit under this section as an individual, general or watershed permit. A permit may be issued to a class of persons using the procedures for issuance of an order or for the adoption of a rule.

Notwithstanding the definition of “order” or “rule” provided in ORS 183.310, in issuing a general or watershed permit by order pursuant to this section, the State Department of Agriculture or Department of Environmental Quality:

(a) Is not required to direct the order to a named person or named persons; and

(b) May include in the order agency directives, standards, regulations and statements of general applicability that implement, interpret or prescribe law or policy.

[(2)] (3) [*As used in this section, “confined animal feeding operation” has the meaning given that term in rules adopted by*] The State Department of Agriculture or the Department of Environmental Quality may define “confined animal feeding operation” by rule for purposes of implementing this section.

SECTION 5. On or before January 31 of each year, the Department of Environmental Quality shall report to the Environmental Quality Commission and to an appropriate committee of the Legislative Assembly on the department’s efforts in administering a watershed approach toward water pollution control permitting. The report shall include, but need not be limited to, information that indicates:

(1) Whether the department is issuing permits on a watershed basis.

(2) The level of permit backlog, if any.

(3) The time frame that the department took to apply general permit coverage to

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applicants.

(4) The timeliness of the review and tracking of discharge monitoring reports.

(5) The timeliness of the issuance of permit noncompliance notifications.

SECTION 6. Section 5 of this 2005 Act is repealed on January 2, 2010.

SECTION 7. ORS 468B.055 is amended to read:

468B.055. (1) [*Except as provided in subsection (3) of this section, all*] The Department of Environmental Quality may require that plans and specifications for the construction, installation or modification of disposal systems, treatment works and sewerage systems [, *shall*] be submitted to the department [*of Environmental Quality*] for its approval or rejection [*pursuant to rules of the Environmental Quality Commission*].

(2) [*No*] If the department requires that plans and specifications be submitted under subsection (1) of this section, construction, installation or modification [*of the type described in subsection (1) of this section shall*] may not be commenced until the plans and specifications submitted to the department [*under subsection (1) of this section*] are approved. If the disposal or discharge is for a chemical process mine, as defined in ORS 517.953, [*such*] departmental review and approval shall be included as part of the consolidated application process under ORS 517.952 to 517.989. Any construction, installation or modification must be in accordance with the plans and specifications approved by the department.

[(3) By rule, the Environmental Quality Commission may exempt from the requirement of subsection (1) of this section the class or classes of disposal systems, treatment works and sewerage systems for which the commission finds plan submittal and approval unnecessary or impractical.]

SECTION 8. ORS 183.310 is amended to read:

183.310. As used in this chapter:

(1) “Agency” means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches.

(2)(a) “Contested case” means a proceeding before an agency:

(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard;

(B) Where the agency has discretion to suspend or revoke a right or privilege of a person;

(C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing; or

(D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.425, 183.450, 183.460 and 183.470.

(b) “Contested case” does not include proceedings in which an agency decision rests solely on the result of a test.

(3) “Economic effect” means the economic impact on affected businesses by and the costs of compliance, if any, with a rule for businesses, including but not limited to the costs of equipment, supplies, labor and administration.

(4) “Hearing officer” includes an administrative law judge.

(5) “License” includes the whole or part of any agency permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.

(6)(a) “Order” means any agency action expressed orally or in writing directed to a named person or named persons, other than employees, officers or members of an agency. “Order” includes any agency determination or decision issued in connection with a contested case proceeding. “Order” includes:

(A) Agency action under ORS chapter 657 making determination for purposes of unemployment compensation of employees of the state; [*and*]

(B) Agency action under ORS chapter 240 which grants, denies, modifies, suspends or revokes

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any right or privilege of an employee of the state; and

(C) Agency action under ORS 468B.050 to issue a permit.

(b) “Final order” means final agency action expressed in writing. “Final order” does not include any tentative or preliminary agency declaration or statement that:

(A) Precedes final agency action; or

(B) Does not preclude further agency consideration of the subject matter of the statement or declaration.

(7) “Party” means:

(a) Each person or agency entitled as of right to a hearing before the agency;

(b) Each person or agency named by the agency to be a party; or

(c) Any person requesting to participate before the agency as a party or in a limited party status which the agency determines either has an interest in the outcome of the agency’s proceeding or represents a public interest in such result. The agency’s determination is subject to judicial review in the manner provided by ORS 183.482 after the agency has issued its final order in the proceedings.

(8) “Person” means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

(9) “Rule” means any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public:

(A) Between agencies, or their officers or their employees; or

(B) Within an agency, between its officers or between employees.

(b) Action by agencies directed to other agencies or other units of government which do not substantially affect the interests of the public.

(c) Declaratory rulings issued pursuant to ORS 183.410 or 305.105.

(d) Intra-agency memoranda.

(e) Executive orders of the Governor.

(f) Rules of conduct for persons committed to the physical and legal custody of the Department of Corrections, the violation of which will not result in:

(A) Placement in segregation or isolation status in excess of seven days.

(B) Institutional transfer or other transfer to secure confinement status for disciplinary reasons.

(C) Disciplinary procedures adopted pursuant to ORS 421.180.

(10) “Small business” means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses and which has 50 or fewer employees.

Approved by the Governor July 15, 2005

Filed in the office of Secretary of State July 15, 2005

Effective date January 1, 2006

Appendix B

DEQ Implementation Plan for Recommendations from the Blue Ribbon Committee on Wastewater Permitting

(Revised December 2012)

The Blue Ribbon Committee made recommendations in three main areas:

1. A new focus and strategy for the wastewater permitting program
2. Accountability
3. Resources and funding

Focus and Strategy for the Wastewater Permitting Program

Recommendation 1: Operate program on a watershed basis.

1. Develop 2005 permit issuance plan that processes permits by watershed. (Complete)
2. As noted in Section 2.3, following the resolution of applicable legal issues, DEQ has annually developed permit issuance plans since 2010
3. Develop 5-year map and plan that shows where permit issuance focus will be in each year. (Complete)
4. Begin holding pre-application meetings with permittees in a watershed to communicate data needs and overall process. (DEQ is implementing this recommendation by communicating with sources two years ahead of when their permit is scheduled to be renewed about what data is needed in order to complete the permit process).

Recommendation 2: Ensure timely permit issuance through a reinvigorated permit program infrastructure.

The following implementation guidance (Internal Management Directives) has been completed:

- Antidegradation Policy Implementation IMD (March 2001)
- Arsenic - Interim Procedure for Addressing Naturally Occurring Arsenic in NPDES Permits IMD (May 2010)
- Bacteria Criteria for Marine and Estuarine Waters IMD (December 2010)
- Compliance Schedules in NPDES Permits IMD
- Implementing Oregon's Biosolids Program IMD (December 2005)
- Indirect Discharge to Surface Water via Groundwater or Hyporheic Water IMD (September 2007)
- Monitoring Background Groundwater Quality for Regulating Permitted Operations under OAR 340-040-0030 IMD (July 2003)
- Mutual Agreement and Order (MAO) IMD (December 2011)

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- Operations, Monitoring and Management (OM&M) Plans for Land Application of Non-Sanitary Wastewater IMD (November 2002)
- Procedures for Groundwater Management Area Declaration and Action Plan Development (December 2002)
- Reasonable Potential Analysis for Toxic Pollutants IMD, Revision 3.1 (February 2012)
- Recycled Water IMD (June 2009)
- Regulatory Mixing Zone IMD (May 2012)
- Sanitary Sewer Overflows (SSOs) IMD (November 2010)
- Significant Figures and Rounding Conventions in Water Quality Permitting (May 2012)
- Site Specific Background Pollutant Criterion IMD (SSBPC) (June 2012)
- Temperature Water Quality Standard Implementation IMD (April 2008)
- Use Attainability Analysis and Site Specific Criteria (April 2007)
- Variances for NPDES Permit Holders (February 2012)
- Water Quality Trading IMD (December 2009)

1. Establish Permittee Bill of Rights (Complete)
2. Conduct Oregon-based permit writer training. Supplement with Oregon-specific training. Establish plan for refresher training content and frequency. Re-institute permit writer meetings.

Status: Initial EPA training for all permit staff and others completed in January 2005. Internal permit writer training completed November 2005, May 2006, October 2006, November 2007, December 2008, mid-2009, February 2010, and May 2012. DEQ and EPA held a multiple day training class on conducting and documenting inspections in March 2008. DEQ and EPA held a Permit Writers' training in April 2009 and a Water Quality Standards Academy in October 2009. DEQ completed Internal Management Directive (IMD) implementation training in March and May 2010.

3. Accumulate all IMDs, guidance and checklists and trainings into a permit writer's guidance.

Status: A formal document has not been completed. DEQ has updated and expanded its internal website to include a variety of useful guidance for permit writers. In addition, DEQ has developed a permit template that serves as guidance for permit writers. It contains instructions to permit writers on many aspects of permit development and contains links to various guidance documents. Notes that document the basis for various pieces of permit language and provides additional background information are included.

4. Complete an industrial permitting "wizard" and update the municipal wizard (if needed).

Status: The goal of the industrial permit "wizard" was to standardize industrial permits. This goal was met in mid-2010 by developing an Electronic Permit Repository which makes individual industrial and municipal permits and supporting documents available electronically to water quality staff throughout the state. The effect of this easy access is saved time by the permit writers and availability of the work and experience that has been gained in the past, and the standardization of industrial permits around the state. (The underlying infrastructure also allows permits to be available to the public through the DEQ website.) Funding for this project was provided through an EPA grant. The municipal permit wizard was updated in mid-2010, after the Electronic Permit Repository was implemented. The permit repository is available to both DEQ staff and members of

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the public through the DEQ website.

5. Establish Dispute Resolution Process. This process involves providing the regulated community information regarding the process for resolving disputes with individual permit writers or inspectors when the permit writer's or inspector's direction to the regulated entity seems to conflict with what is being done in the other regions or what the regulated entity had been advised by DEQ Headquarters. DEQ discussed this issue with the BRC in 2006. To provide the opportunity for dispute resolution, permit managers will assure that permit decisions are clearly documented and will use this documentation to assure consistency. DEQ will not be issuing an internal management directive establishing a dispute resolution process.
6. Renew Expired General Permits and streamline process for registration of applicants. The general permits that were completed in 2007 include: WPCF permits for vehicle wash water, wineries and small food processors, underground storage tank cleanups, and sand and gravel operations. The general permits position was vacated in December 2007 and after three unsuccessful recruitments, the position was filled in March 2009. Because of this no general permits were issued during 2009. During 2010 DEQ issued general permits by order for suction dredge mining (700PM) and stormwater construction (1200C/CN). During 2011, DEQ issued general permits by order for industrial stormwater (1200-COLS, 1200-ZN) and pesticides (2300-A). During 2012 DEQ issued general permits by order for graywater systems (2401 and 2402) and industrial stormwater (1200-Z).
7. Bundle general permits and process them together when possible. Develop a strategy for general permits that determines how we should utilize these or a similar tool in the future, including ideas such as individual template permits, geographically-based permits for single pollutants to follow TMDLs, permit by rule, and evaluate which tools might work best.

Status: DEQ has evaluated options for bundling general permits and issuing permits together that reflect unique geographic conditions.

8. Resolve MS4 litigation and issue permits to Phase 2 communities.

Status: All litigation for the MS4 program has been resolved. Permits for Phase 2 communities are currently being drafted. DEQ management is assessing if a new course of action should be taken to improve permit reissuance process.

9. Reissue as many WPCF permits with a 10 year duration whenever possible (ongoing). Unless there is an outstanding reason (e.g., history of non-compliance or emerging implementation issues such as stormwater) DEQ issues all WPCF permits on a 10-year renewal schedule.
10. Examine existing universe of permittees and determine where additional general permits may be feasible. (TBD)

Recommendation 3: Ensure sufficient and appropriate compliance touchpoints.

1. Complete programming and set-up of Discharge Monitoring System (DMS); begin entering data.
2. **Status:** The DMS system is complete, backlogged data has been entered and current data is being entered as received. DEQ has received federal funding to develop an Electronic

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Discharge Monitoring Report (e-DMR) system that will allow permit holders to submit the required reports to DEQ electronically, directly into the DMS database. As mentioned in Section 2.6, the e-DMR project has begun and is currently in the software development phase.

3. Develop and implement inspection plans for 2006, 2007, 2008, 2009 and 2010 (completed).
4. Adopt standard DMR format (TBD). Standard formats exist for some permit types.
5. **Status:** DEQ has developed standardized DMR forms for the individual domestic permits and all the general permits. While DEQ recommends the use of these forms, we have not required their use. Many facilities have developed their own computer programs that perform the calculations and generate a form. Provided that all the necessary information is included, DEQ accepts these individualized forms.
6. Develop implementation guidance on:
 - Conducting and Documenting Inspections (DEQ plans to address this via training)
 - Proper Use and Format of Mutual Agreement Orders (MAOs) (In development)
 - Implementing Phase 1 Division 12 Revisions (Complete)
 - Using Split Samples (TBD)
7. Train inspectors on new guidance (initial training complete).
8. Adopt methodology for electronic reporting. Once DEQ begins work on the e-DMR system, we will work with permit holders and other key stakeholders to develop the methodology to submit DMR data to the e-DMR system.

Accountability

Recommendation 1: Revise program performance measures.

1. Establish data collection procedures for the recommended measures (Complete except for average length of time to respond to noncompliance situations):
 - Percent of wastewater permits that are scheduled on the basin cycle, as anticipated in the annual permit issuance plan
 - Percent of wastewater permits that are current
 - Number and average coverage timeframe for construction stormwater permits
 - Percent of DMRs that are reviewed in a timely manner
 - Average length of time to respond to noncompliance situations identified through a compliance assessment
 - Percent of major/minor/general permittees that receive a compliance inspection each year
2. Establish process for semi-annual review of measures by permit managers, Water Quality Division Administrator and Regional Division Administrators (Permit Managers and DEQ Administration review measures quarterly). (Ongoing; DEQ reviews performance measure tracking quarterly).

Recommendation 2: Prepare annual report to EQC and legislature on program performance and activities.

Pursuant to Senate Bill 45, passed by the Legislature in 2005, DEQ will report to the EQC and

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the Legislature on or before January 31 of each year:

Progress made in administering a watershed approach to water quality permitting.

Whether DEQ is issuing permits on a watershed basis.

The level of permit backlog.

The time frame to apply general permit coverage to applicants.

The timeliness of the review and tracking of discharge monitoring reports.

The timeliness of the issuance of permit noncompliance notifications.

(Note: The reporting requirement ended on Jan. 2, 2010, per the statute. DEQ decided to submit this report biennially to keep the Environmental Quality Commission, Legislature and general public informed on permit program status.)

Recommendation 3: Establish new accountability tools.

1. Monthly review status on interim milestones on permit issuance and report to permit managers; automate if possible (Ongoing).
2. Quarterly review progress on inspection plan and report to permit managers; automate if possible (Ongoing).
3. Establish individual performance expectations for permit writers and inspectors; incorporate into work agreements (Ongoing).
4. Establish a random after-the-fact permit quality review and feedback to the permit writer and manager (Ongoing). DEQ randomly reviews permits after issuance to evaluate whether the Internal Management Directive for conducting Reasonable Potential Analyses is being implemented consistently.

Funding and Resources

Recommendation 1:

Maintain the mix of fee and public funding at roughly 60 percent/40 percent.

Recommendation 2:

Allow for a modest annual permit fee inflator to help address inflationary costs (not to exceed 3 percent).

Recommendation 3:

Annualize fees and simplify fee table structure.

Recommendation 4:

Increase resources, phased in over multiple biennia.

The BRC recommended the following phase-in of resources. In addition to the table below, Senate Bill 45 gave the EQC authority to increase water quality permit fees once each calendar year to help cover costs of inflation. The amount of the annual increase may not exceed the anticipated increase of the cost of administering the permit program or 3 percent, whichever is lower.

Fiscal Year	Staffing Pos/FTE	Fees*	GF/FF	Program Improvement	Comments
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Fiscal Year	Staffing Pos/FTE	Fees*	GF/FF	Program Improvement	Comments
2006	4.0/4.0 restored	7 percent; \$482K	\$321K	Restores staff to current budgeted level	Some operational/ programmatic improvements are proceeding even before resource levels increase
2007	2.5/1.25	4 percent; \$148K	\$98K	Data management staff to run new DMS data system; adjustment to AG budget to true up costs and address unanticipated expenses	FF grant expected to populate start-up of the system (not reflected in \$ pending grant award); that work is expected to be completed in January, 2006
2008 ²	1.5/1.5	3 percent; \$228K	\$152K	One-half FTE Environmental Law Specialist	One half-time position to address compliance and enforcement issues and ensure timely response to Discharge Monitoring Report issues.
2009 ³	1.0/.5	2 percent; \$78K	\$52K	One Laboratory Analyst; one Senior Water Quality Analyst	One position in the laboratory to assist permit writers with permit-related analyses, such as Whole Effluent Toxicity (WET) tests; One final policy position added to address continuing policy and technical issues such as incorporating water quality-based effluent limits into permits.
2010	---	---	---	Maintain service	Due to general fund rescissions, DEQ chose not to refill certain positions, and never filled certain permanent positions approved by the legislature. The permit program operated with 65.5 of 72.5 authorized positions during the 2009-2011 biennium, which included fiscal year 2010.

¹The Blue Ribbon Committee recommendation for FY 2008 included one permanent half-time position and one permanent full-time position—two positions and 1.5 FTE. The new positions were to be funded by a 3 percent fee increase and General Fund. DEQ’s 2007-09 Legislatively Adopted Budget assumed the recommended 3 percent increase could not be implemented until FY 2009 because of the legislative and

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rulemaking processes. Therefore, the budget combined the BRC's recommended 3 percent FY 2008 increase and its recommended 2 percent FY 2009 increase into one 5 percent increase in FY 2009 and delayed the phase-in of the permanent, full-time position until FY 2009.

²The Blue Ribbon Committee recommendation for FY 2009 included phasing in one permanent full-time position (beginning July 1, 2008)—0.50 FTE for 2007-09 and 1.00 FTE thereafter—funded by a 2 percent fee increase and General Fund. (With the delayed phase-in of one permanent full-time position from FY 2008, DEQ's 2007-09 Legislatively Adopted Budget phased in two permanent full-time positions beginning in FY 2009.) DEQ's 2007-09 budget anticipated that the BRC's recommended 3 percent increase for FY 2008 would be combined with its recommended 2 percent FY 2009 increase into one 5 percent increase in FY 2009. The 5 percent fee increase was adopted by the Environmental Quality Commission in June 2008.

Conduct rulemaking to implement the simplified fee table and 2005 fee increase. The simplified fee table will produce the same amount of revenue but shift the program to an overall performance accountability and not fee-for-service/activity. (Rule adopted August 2006).

Review process and timing for invoicing (Complete).

Develop process for rulemaking updates to include the 3 percent inflator each year; during 05-07 interim develop process for determining when inflator will be needed; evaluate need for inflator beginning in 07-09. (Complete).

Develop and carry 07-09 policy package (Complete).

Appendix C

Oregon Water Quality Litigation

as of Dec. 20, 2012

Water Quality Standards Program

NWPPA v. DEQ, (Or.Ct.Apps, 5/31/11). Plaintiffs challenge a settlement agreement and resulting internal management directive concerning DEQ's use of compliance schedules in NPDES permits. Plaintiffs allege the settlement agreement commitments and internal management directive provisions constituted agency rulemaking that should have been subject to rulemaking public notice and comment. The court has abated the lawsuit to allow time for settlement negotiations which are ongoing.

NWEA v. EPA, (U.S. Dist. Ct. Oregon 12/13/05). Challenge to EPA's approval of Oregon water quality standards (primarily those relating to temperature) adopted in 2003. DEQ and Northwest Pulp and Paper Association have intervened as defendants. U.S. District Court issued a decision on the parties' motions for summary judgment on 2/28/12, finding in favor of NWEA on some issues and in favor of EPA on others. Judge ruled that EPA's approval of Oregon's natural conditions criteria was arbitrary and capricious. (Under the natural conditions criteria, the natural thermal potential supersedes the numeric standard for that portion of the water body.) The judge concluded EPA approval of the narrative NCC criteria was improper. The judge also found that EPA was required by the CWA to review state rules on agricultural and forestry nonpoint activities to determine if those rules might undermine application of the temperature standards. In addition, EPA must review DEQ's internal management directive on implementation of the anti-degradation policy. The judge also rejected the NMFS and USFWS biological opinions and incidental take statements EPA relied on to comply with the federal Endangered Species Act. The court has not yet entered a judgment, and until the court specifies the remedies, it is not clear how the decision will affect the state. DEQ is conferring with the other parties to the litigation and is considering its different options, including appeal of the ruling. On 11/16/12, NWEA filed its brief asking the court to vacate EPA's approval of the natural conditions criteria, and to require EPA to either approve or disapprove Oregon's anti-degradation implementation plan. DEQ's remedy brief is due on 1/18/13. Briefing by all parties is scheduled to be complete by 3/29/13.

TMDL Program

City of Albany v. DEQ, (Linn County Cir. Ct. 3/19/07); *Metropolitan Wastewater Mgmt. Commission v. DEQ*, (Lane County Cir. Ct. 3/19/07); *NW Pulp and Paper Assoc. v. DEQ*, (Lane County Cir. Ct. 3/16/07). These cases involve challenges to the Willamette TMDL. The cases are being held in abeyance pursuant to settlement agreements. The cases will be dismissed when and if DEQ complies with the terms of the settlement agreements, which include promulgation of a revised TMDL scheduled for 2012. That deadline will need to be extended due to lack of resources and due to the uncertainty created by the *NWEA v. EPA* case regarding what temperature standard DEQ should apply.

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Idaho Power v. State, (Baker County Cir. Ct. 10/7/03). Challenge to the Snake River TMDL. Case has been stayed until July 2013 pending negotiations between Idaho Power, DEQ, Idaho DEQ and EPA over the Section 401 certification for the Hells Canyon complex of dams. This case may also be affected by *NWEA v. EPA*.

NWEA v. EPA, (U.S.D.C. No. 3:12-cv-01751, 9/27/12). Complaint for declaratory and injunctive relief, alleging violations of the Clean Water Act, the Endangered Species Act and the federal Administrative Procedures Act. NWEA challenges EPA's approval of Oregon temperature TMDLs from 4/11/04 until 12/17/10, claiming: (1) the natural conditions criteria on which these TMDLs were based were required to be reviewed and approved by EPA as water quality standards, including ESA consultation; (2) failure to determine whether EPA's approval actions on most of the temperature TMDLs "may affect" threatened or endangered species, as required by the ESA; (3) the TMDLs do not include adequate margins of safety. In addition to the claims on the temperature TMDLs, NWEA asks the court to order EPA to either approve or disapprove the Klamath Basin temperature TMDL. DEQ submitted the TMDL to EPA for its approval in 12/10. In 3/11, EPA issued a decision declining to take action on the TMDL pending outcome of litigation between NWEA and EPA, despite a CWA requirement that EPA either approve or disapprove a TMDL within 30 days of submission. NWEA also challenges EPA's 9/29/06 approval of the Willamette Basin mercury TMDL because the TMDL does not address "all applicable standards." That TMDL focuses only on protection of humans consuming fish (and does so in an allegedly arbitrary and capricious manner) and not protection of fish and wildlife. NWEA alleges EPA was required to conduct an ESA consultation on the "full scope" of the Willamette Basin mercury TMDL. NWEA seeks to set aside EPA's approval (and, in the case of the Klamath Basin TMDL, failure to act) of 16 TMDLs. EPA has until 1/11/13 to file an answer to the complaint. DEQ intends to file a motion to intervene in this case.

Permitting Program

Stormwater Permits

NEDC v. Brown. (U.S. 9th Cir. Ct of Appeals), now *Decker v. NEDC* (U.S. Supreme Ct. No. 11-338). CWA citizen suit against Oregon Dept. of Forestry, Tillamook County and several timber companies alleging failure to obtain NPDES permits for forest roads. Case is a collateral challenge to EPA's silvicultural rule that defines discharges from most logging activities as nonpoint source pollution rather than industrial stormwater. DEQ is not a party but is monitoring the case. Court of Appeals issued decision on 8/17/10, invalidating the silvicultural rule as implemented by EPA and remanding the case to the District Court to determine which, if any, of the roads in question are subject to the NPDES permitting requirement. Oregon and other parties have filed petitions for review with the U.S. Supreme Court. Twenty-six states and some timber groups have filed amicus briefs. On 11/30/12, EPA adopted a new rule specifying that an NPDES permit is not required for discharges from forest logging roads. An appeal of the new rule is likely. The Supreme Court heard oral argument on this case on 12/3/12. The Supreme Court will issue a decision by summer 2013.

Industrial Permits

Klamath Forest Alliance v. Bureau of Reclamation, (U.S. Dist. Ct. Oregon 12/1/97, No. 1:97-cv-03090-CL.) CWA citizen suit challenging the discharge of water from the Klamath Strait Drain to Klamath River via Bureau of Reclamation pump station. The primary issue is whether an NPDES permit is required for this type of discharge, or whether EPA's water transfer rule exempts such discharges from permitting requirement. DEQ is not a party but is monitoring the case. In July 2012, the U.S. District Court adopted the Magistrate's opinion finding in favor of BOR (that no

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permit is required). Klamath Forest Alliance has appealed the decision to the 9th Circuit Court of Appeals.

General Permits

NEDC v. DEQ; Eastern Oregon Mining Association v. DEQ and Waldo Mining District v. DEQ. These three cases challenging the 2010 version of the 700 PM (suction dredging general permit) were consolidated in the Circuit Court of Marion County. NEDC claimed the permit does not ensure compliance with water quality standards and does not require sufficient monitoring and reporting. The mining plaintiffs claim that suction dredge mining is immune from regulation under the Mining Law of 1972, or in the alternative, that only the Army Corps of Engineers has jurisdiction over suction dredge mining, and that these mining operations do not cause water pollution. NEDC and DEQ entered into a settlement agreement requiring DEQ to commence a stakeholder process for renewal of the 700 PM general permit by January 2013 and to consider certain issues during that process. On 6/28/12, the court entered a judgment of dismissal for NEDC. EOMA filed a motion seeking to amend its complaint in order to add another claim challenging the settlement agreement reached between DEQ and NEDC. EOMA claims its constituents' permits will be terminated prematurely as a result of the settlement agreement. The court granted the motion allowing EOMA to add a claim challenging the settlement agreement between DEQ and NEDC. A hearing on the state's motion for partial summary judgment on the validity of the settlement agreement is scheduled for 3/14/13. The remaining issues in the case have not yet been scheduled for summary judgment motions.

CAFO Permits

William E. Holdner, dba Holdner Farms v. Attorney-General John Kroger; Assistant Attorney-General Patrick Flanagan; the Oregon Dept. of Justice; Columbia County District Attorney Steven Atchison; Oregon DEQ; the Environmental Quality Commission; DEQ Director Dick Pedersen; the Oregon Dept. of Agriculture; Director of ODA Katy Coba; Ray Jaindl, Administrator of the Natural Resources Division of the ODA; and William Mathews, Manager of ODA's CAFO Program (U.S. District Ct. of Oregon 6/28/12), 3:12-CF-1159. Suit by rancher convicted of felony water pollution and operating a CAFO without a permit alleging that because EPA has not expressly authorized the Oregon Dept. of Agriculture to administer Oregon's CAFO permitting program, ODA and DEQ did not have the authority to require plaintiff to obtain a CAFO permit. State filed a motion to dismiss the action and on 12/10/12, the U.S. District Court issued an order granting the State's motion to dismiss the case. The court found that it did not have jurisdiction to consider Holdner's claim. Holdner has until 1/9/13 to appeal the decision to the U.S. Court of Appeals.

B&K Livestock Auction, Inc., dba Eugene Livestock Auction v. Oregon DEQ; Dick Pedersen; Oregon Dept. of Agriculture; and Katy Coba (U.S. District Ct. of Oregon 11/16/12), 3:12-cv-02085-PK. Complaint for declaratory judgment that, absent specific and appropriate authorization from EPA, DEQ could not delegate its regulatory authority under the CWA to the ODA to administer an independent state-based, water pollution control program related to CAFOs, and that Oregon's CAFO regulation and permitting scheme, which is administered by ODA, is without authority. Oregon has not yet filed an answer.

Coastal Zone/Nonpoint Source

NWEA v. Gutierrez, (U.S. Dist. Ct. Oregon 1/6/09). CZMA/CWA suit against NOAA and EPA. Plaintiffs sought to force federal agencies to withhold grant funds from Oregon based on deficiencies previously identified by EPA and NMFS in Oregon's Coastal Nonpoint Source Pollution Control Plan (CNSPCP). Neither DEQ nor any other state agency is a party to this

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litigation. The case settled in 9/10, based on DEQ's commitment to resolving the three issues EPA and NOAA had cited as shortcomings in DEQ's Coastal Nonpoint Source Pollution Control Plan. The three issues DEQ committed to resolve are: (1) adoption of rules requiring regular inspections of on-site sewage disposal systems; (2) issuance of Water Quality Implementation Plan Guidance for Urban/Rural Residential Land Uses within the Coastal Area; and (3) adoption of additional measures for forestry, especially addressing riparian and landslide-prone areas and road issues. It is unclear to what extent one of those commitments – completion of the Mid-Coast Implementation-Ready TMDL – will be affected by the court's decision in *NWEA v. EPA* (temperature standard litigation).

401 Certification

John Steele v. DEQ, (Lane County Circuit Court, 1/17/12). John Steele filed a Supplemental Petition for Review challenging a 401 certification issued by DEQ for construction of the Dorena Dam hydro-electric project. Plaintiff alleges the record does not support DEQ's findings that if the project is constructed according to the conditions imposed in the 401 certification, construction will not contribute to a violation of water quality standards for temperature or methyl mercury. The parties argued motions for summary judgment on 11/30/12 and are awaiting the court's decision.

Citizens for Responsible Development in The Dalles, Oregon, and Luise Langheinrich v. DEQ and Dick Pedersen, (Marion County Circuit Court, 8/2/11). Plaintiffs filed a challenge to DEQ's 401 certification for construction of a Wal-Mart Store in The Dalles. This matter went to trial on 10/25/12; the trial has been continued to 1/25/13 to allow for additional testimony.

Others

National Wildlife Federation v. NMFS, (U.S. Dist. Ct. Oregon, 5/3/01). Long-running lawsuit concerning NMFS' biological opinion on the operations of the Federal Columbia River Hydropower System. State of Oregon is an intervenor-plaintiff. On 8/2/11, the judge ordered NOAA to "produce a new biological opinion that reevaluates the efficacy of the Reasonable and Prudent Alternatives in avoiding jeopardy, identifies reasonably specific mitigation plans for the life of the biological opinion, and considers whether more aggressive action, such as dam removal and/or additional flow augmentation and reservoir modifications are necessary to avoid jeopardy." The court has allowed the challenged Biological Opinion to remain in place through 2013.

State of Oregon v. FERC (pending before FERC). State of Oregon requested rehearing of FERC's order authorizing the Jordan Cove LNG import terminal and the Pacific Connector Certificate of Public Convenience and Necessity. On 4/16/12, FERC granted rehearing and vacated its previous Order authorizing the Jordan Cove Project, because Jordan Cove stated that under current market conditions, it is no longer planning to construct facilities necessary for the importation of natural gas but instead proposes to seek authorization to enable the use of the Jordan Cove terminal facilities for only the exportation of natural gas. Because the Pacific Connector pipeline was proposed as an integral part of the larger Jordan Cove Project, FERC also vacated its authorization to construct those facilities, as well as the related blanket construction and transportation certificates. FERC noted that Jordan Cove's pre-filing application for export authorization pursuant to section 3 of the Natural Gas Act is pending and will be considered on its own merits in that separate proceeding. FERC held public scoping hearings in October 2012 on the export terminal and Pacific Connector pipeline.

Prakash v. City of Scappoose, State of Oregon, et al. (Columbia County Circuit Court, No. 11-2452, 8/9/11). Claim for damages by property owners who claim DEQ permitted the City

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Scappoose to construct a pipe to drain stormwater from the hillside behind the property underneath the property. The stormwater drainage allegedly caused a sinkhole into which Mrs. Prakash fell, causing her personal injury. The Prakashes allege damages of approximately \$1,750,000 for personal injury and costs to repair the property of \$250,000. Plaintiffs also allege inverse condemnation by the “City and/or State” in the sum of \$500,000 plus interest. Finally, plaintiffs allege the same amount of damages (\$2 million) for a nuisance claim. The state has filed an answer and expects the judge to order a mandatory settlement conference in the near future.

Non-Litigation Legal Proceedings

Notice of Intent to Sue filed on 5/17/12 by the River Bend West Irrigation Association vs. Roseburg Urban Sanitary Authority (RUSA), City of Roseburg and DEQ, alleging RUSA’s application of biosolids on the Hayden property (adjacent to the River Bend West residential development) “did not comply with applicable federal and/or state laws...and has had a material adverse impact on the water utilized to irrigate properties owned by the Association and its members within the River Bend West residential development. In addition, prior to February 2012, some of the Association members also utilized water drawn from domestic wells and the Umpqua River abutting, or in close proximity to, the Hayden property, and an investigation into the potential harmful effects of water and soil contamination from the wrongful application of biosolids by RUSA on the Hayden Property on the health and wellbeing of Association members is ongoing. Notice is given of the claims...for damages arising out of the foregoing, which claims include trespass, nuisance, violation of the Clean Water Act and other state and federal environmental protection acts and regulations.” DEQ has submitted its response to DAS Risk Management. DAS will assess the claims and decide whether to accept or deny them. No suit has been filed.

Petition to Reconsider Fairview Pesticide General Permit Registration, filed by NWEA on 6/20/12 and supplemented on 7/17/12. In anticipation of Fairview Lake Property Owners Association’s application for registration under the Pesticide General Permit, NWEA filed a letter of objection on 2/17/12. The facts in NWEA’s letter raised the concern that Fairview’s application of the herbicide fluridone on Fairview Lake would likely result in violation of water quality standards. Therefore, on 3/7/12, DEQ denied Fairview’s application for registration under the 2300A GP. Fairview later submitted a pesticide management plan that included visual monitoring and provided for the herbicide diquat to be applied in two installments. DEQ issued the authorization letter on 5/15/12, and on 6/20/12, NWEA filed a petition to reconsider and requesting that DEQ rescind its registration authorization. The first herbicide application occurred shortly after the petition was filed, and the second herbicide application is pending.

The petition alleges that (1) DEQ’s authorization is based on findings not in the record; (2) the discharge will harm the designated uses of fish and wildlife (especially with regards to the Western Pond Turtle and the Western Painted Turtle); (3) the discharge will contribute to violation of WQS for biological criteria and algae; (4) will increase DO impairment of the lake and the receiving water of the Columbia Slough below the weir; (5) allowing a discharge to a lake without making the necessary anti-degradation findings; and (6) failure by the homeowners’ association to implement an IPM plan.

On 7/17/12, NWEA submitted an addendum to its Petition to add information concerning the Center for Biological Diversity’s petition to list the Western Pond Turtle as endangered, and alleging DEQ’s failure to require a LUCS. DEQ granted the petition for reconsideration on 8/20/12 and has not yet issued its decision.

Petition to Reconsider Issuance of the Klamath River TMDL filed by PacifiCorp, Columbia

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Plywood, South Suburban Sanitary District, City of Klamath Falls, Columbia Forest Products, Klamath County and Klamath Water Users in February 2011. DEQ accepted the petitions and has identified the issues it will reconsider. DEQ has not issued an order with its decision yet. EPA approved the non-temperature components of the TMDL, further complicating matters. [On 9/27/12, NWEA filed a complaint in U.S. District Court seeking a declaration from the court that, among other things, EPA should have disapproved the temperature portion of the Klamath Basin TMDL.]

Petition for Rulemaking filed on 10/26/12 by Ellen Currie on behalf of a group of citizens to amend DEQ's on-site rules to specify under what conditions DEQ may require installation of an alternative treatment technology (ATT) onsite waste treatment system. DEQ held the last of three public hearings on the petition on 12/12/12, and the public comment period closed on 12/14/12. The EQC will hold a special meeting to consider the petition on 1/22/13.