



Environmental Cleanup and Emergency Response Program Update July 2007

Operating Budget

In early 2006, DEQ evaluated information about the state of the budget of the Environmental Cleanup and Emergency Response Program (Program). At that time, DEQ Program expenses were projected to exceed revenues by \$163,000/month for the remainder of the 2005-07 biennium. DEQ determined that, unless steps were taken to shore up Program finances, the Program would exhaust the Cleanup Program fund balance before the end of the 2005-07 biennium.

As one of the first steps in creating a sustainable program, DEQ evaluated the priorities of the work it performed for the Program. DEQ convened an Environmental Cleanup Work Group (Work Group) to provide input to the DEQ about Program priorities. The Work Group met monthly from February through May, 2006 and prepared a final report with recommended priorities for the Program.

After establishing Program priorities, DEQ began implementing measures to reduce personnel and related expenditures consistent with the established priorities. A position reduction plan of 17.4 full time employees (FTE) was developed, representing about 35% of existing cleanup and emergency response staff, as a target for reductions needed to balance the budget. These reductions impacted administrative, managerial and technical staff throughout the Program (i.e., headquarters and regional offices).

Through retirements, normal staff attrition and reassignments of staff to other programs, these target staff reductions were fully implemented by January 2007. DEQ did not have to "lay off" any personnel, which was a significant and important accomplishment, given the magnitude of the required reductions.

Coinciding with these changes, the Program's budget has regained more solid footing. From a projected \$163,000/month Hazardous Substance Remedial Action Fund (HSRAF) cash "burn rate," the Program has evolved to a situation where average total monthly operating revenue more closely matches average expenditures. DEQ is closely monitoring financial indicators to avoid future program budget problems.

Project Work

The Work Group discussed DEQ difficulties managing projects and project manager workloads given the staffing cuts previously discussed and, conversely, for the private sector and other participants in the state's Voluntary Cleanup Program (VCP) to obtain timely DEQ oversight and other assistance.

For example, as DEQ attempted to re-size the cleanup part of the Program, parties recognized that "waiting lists" for voluntary cleanup projects and turnaround times for projects could grow. Even though voluntary cleanup work "pays for itself", DEQ can no longer afford to staff regional offices in the traditional way for peak demand periods and must also consider periods of reduced demand for participation in the VCP.

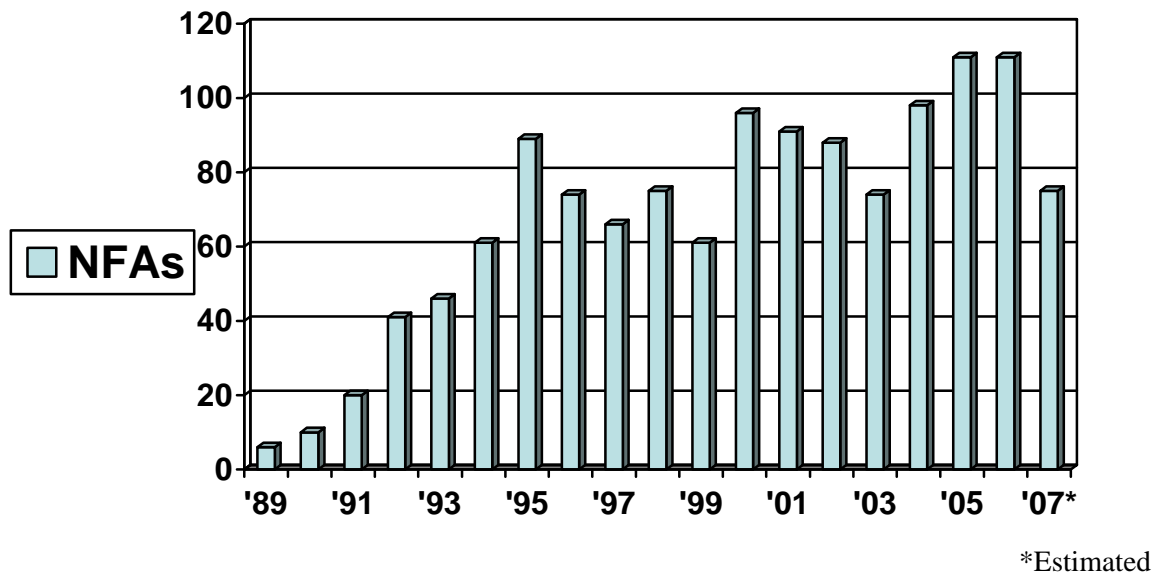
Waiting lists for DEQ oversight have grown. Through its prioritization scheme, DEQ tries to provide oversight for the highest priority environmental sites and sites with a time sensitive nature such as those involved in a real estate transaction. DEQ has also encouraged more low and medium priority sites to consider using the state's Independent Cleanup Pathway program.

Members of the Work Group encouraged DEQ to explore options such as using contractors to assist with some work, contractor certification programs, or the use of existing “receipts authority” legislation for cleanup work. In some cases, DEQ has been able to increase use of contractors for project work, shift cleanup staff assignments among regional offices to fill short-term needs, and task other DEQ staff to help out.

Over the next few months, DEQ’s cleanup managers are also planning to review and update our sustainable cleanup program model for the 07-09 biennium, including estimated volume of cost recoverable work, to see if there is any financial flexibility to allow for hiring additional technical staff to meet demand for cleanup services. Nonetheless, addressing “waiting list” issues has been, and continues to be, a challenge for DEQ.

DEQ still manages to complete investigation and cleanup of a large number of projects, including complex site cleanups, as indicated in the following figure documenting the number of “no further action” determinations issued by DEQ over time.

**NFA Determinations by Fiscal Year
(includes Conditional NFA Determinations)**



During the 05-07 biennium, DEQ completed 186 investigations and cleanups compared to 209 completions in the 03-05 biennium. It seems reasonable to attribute the decline in the number of estimated NFA determinations issued in the past fiscal year to: 1) an overall reduction in Program personnel as discussed above; and 2) the Program’s emphasis on managing high priority cleanup projects, many of which are complex and time intensive, thereby limiting the number of NFA determinations resulting from completed site assessment and simple site cleanup projects.

Legislative Session

During the Work Group meetings, DEQ described preliminary plans to seek the Governor’s office support for three Legislative concepts: 1) shifting the funding for the Emergency Response part of the Program from Arlington hazardous waste management fee revenue (“disposal fee”) to General Fund; 2) authorizing a bond sale to pay for Orphan Site Account (OSA) project work; and 3) increasing oil spill

prevention fees needed for managing the state's marine spill prevention and emergency preparedness programs. The first concept was not included in the Governor's final budget package; the other two concepts were included.

The second concept, to authorize a bond sale for OSA work, was approved as part of DEQ's budget request. The Legislature authorized a \$4.5 million bond sale, which definitely improves OSA funding capabilities for the 2007-09 biennium. The available funding will be used to continue operating groundwater treatment and monitoring systems already installed and help pay required federal match obligation for remedial action and operation and maintenance costs associated with National Priority List (NPL) sites, specifically McCormick and Baxter and Taylor Lumber. Some new orphan site work will also be initiated.

The third concept, to increase fees for marine spill prevention and emergency preparedness activities, was approved and restores funding for DEQ spill prevention activities. The legislation was enacted as SB 105. For additional information about SB 105, please see: <http://www.deq.state.or.us/pubs/legislativepubs/legfactsheets.htm>.

Administrative Rulemaking

The Work Group discussed potential "All Appropriate Inquiry" rulemaking. The Work Group recommended initiating rulemaking, after the Legislative session, to clarify that, in cases where a prospective new owner or operator meets federal "all appropriate inquiry" requirements and had no reason to believe a property was contaminated at the time the owner or operator acquired an interest in the property (innocent purchaser), the owner or operator would not be liable for remedial action costs. The Work Group recommended that the rule should indicate that federal "all appropriate inquiry" requirements are one way, but may not be the only way, to meet Oregon's all appropriate inquiry requirements as they relate to innocent purchasers.

DEQ intends to initiate this rulemaking in the near future. The proposed new rule should be available for public comment in the summer of 2008. DEQ regards the proposed change as relatively minor. Work Group members and others will be kept informed.

Guidance and Policy Development

In January 2007, DEQ completed a major guidance development project resulting in approval of the "Guidance for Assessing Bioaccumulative Contaminants of Concern in Sediment". DEQ also recently issued, for informal public comment through July 31, draft guidance for "Protection of Archaeological and Cultural Resources". For additional information on these and other DEQ-approved cleanup program guidance documents, please see <http://www.deq.state.or.us/pubs/reports.htm#LQ>.

2007-09 Program Challenges

The Cleanup and Emergency Response Program faces new and evolving challenges. The following are among the important program challenges in the foreseeable future:

- 1) Spill prevention, emergency preparedness and emergency response activities need constant attention. The State of Oregon, including DEQ and local responders, should be adequately staffed, trained or equipped at all times to respond to natural disasters, terrorist events, or major oil or hazardous materials spills.
- 2) Adequate stable funding for investigation and cleanup of orphan sites, including state match requirements for fund-lead NPL sites, remains a challenge for Oregon. While the recently approved bond sale improves the Orphan funding outlook, it is only a temporary fix through the 07-09 biennium.

- 3) Maintaining a sustainable cleanup program with adequate staff resources, including voluntary cleanup resources available to meet the needs of the regulated community, will continue to be a significant statewide issue.
- 4) DEQ's Emergency Response and Cleanup Program is highly trained and experienced, but many of our most qualified staff are retiring or will be retiring within the next five years. As planned retirements and other attritions occur, DEQ will need to hire and train new employees while maintaining the high quality of work for which DEQ is known and respected.

Comments and Questions

If you have comments, questions or suggestions, please contact Jeff Christensen, Land Quality Division's Emergency Response and Environmental Cleanup Manager at christensen.jeff@deq.state.or.us or (503) 229-6391.