

Wastewater Permitting Program Improvements and Measures

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Submitted to:

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Executive Summary

Background

To improve the issuance of wastewater discharge permits and address concerns about the number of backlogged permits in the Oregon Department of Environmental Quality's water quality permit program, the 2005 Oregon Legislature passed Senate Bill 45. Senate Bill 45 was based on recommendations made by the Blue Ribbon Committee on Wastewater Permitting which included industry, environmental and local government representatives. The committee, working with DEQ, recommended that 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; and
- Report annually on progress made to the Oregon Environmental Quality Commission and Legislature.

This report satisfies DEQ's commitment to annually report progress. The full report can be found at: <http://www.deq.state.or.us/wq/wqpermit/permits.htm>.

DEQ's Wastewater Permitting Program

DEQ is responsible for protecting and restoring Oregon's waters, and carries out the federal Clean Water Act in Oregon. DEQ's wastewater permitting program protects Oregon's waters from pollution discharged by "point sources." Point sources are sources that discharge wastewater into surface water or onto land through a pipe or a discernible channel. These point sources operate under terms of a federal National Pollutant Discharge Elimination System permit or state Water Pollution Control Facilities permit issued by DEQ. DEQ issues permits for more than 4,400 facilities.

Permit Program Update

1. Administering the Wastewater Permit Program with a Watershed Approach

Goal: Conduct permitting, monitoring and inspections in particular watersheds on a set schedule.

Status: DEQ has developed an annual watershed-based inspection plan, and aligned the inspection plan with the watershed permit issuance plan, by inspecting smaller facilities the year before the permit is scheduled for renewal. DEQ set a goal to inspect at least 50 percent of all permits for large municipal facilities and industrial facilities, and all permits for smaller facilities in selected watersheds. DEQ did not meet this goal, inspecting only 47 percent larger facilities and 273 smaller facilities during 2010. 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 2010, DEQ contacted 65 percent of 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 is working to integrate multiple water quality programs as well as applicable programs that focus on air and land quality. DEQ will develop water quality status reports and subprogram action plans in one geographic area in each of DEQ's three regions per year, and will 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 2010, the Deschutes, North Coast and Rogue Basins were addressed.

2. Issuing Permits on a Watershed Basis

Goal: Issue 95 percent of targeted individual wastewater permits on a watershed basis by the end of 2010.

Status: Legal issues caused DEQ to delay issuing permits over the past several years, preventing DEQ from meeting its goal. Following the resolution of legal issues and disputes, a revised plan was developed in January 2010. DEQ designated 89 permits (individual NPDES and WPCF) for reissuance in 2010 in the revised plan, and 77 were reissued. The goal of the revised plan is to issue 80 percent of the total number of

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watershed cycle permits by 2014.

3. Level of Permit Backlog

Goal: Reduce the backlog for major individual NPDES permits to 10 percent.

Status: DEQ was on track to meet this goal by the end of 2007 until EPA objected to DEQ's permit language and DEQ became engaged in several lawsuits. Those lawsuits were resolved in late 2009 and 2010. The major NPDES permit backlog decreased to 71 percent at the end of 2010 – compared to 76 percent at the end of 2009. Overall permit backlog, which includes all major, minor and general WPCF and NPDES permits, was 23 percent at the end of 2010.

4. Timeliness of Applying General Permit Coverage to Applicants

Goal: 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.

Status: During 2010, the average time to assign coverage for applicants to a general permit was 43 days. 91 percent of new permit applicants were registered within 30 days.

5. Timeliness of Review and Tracking of Discharge Monitoring Reports

Goal: Review Discharge Monitoring Reports for individual permits within 30 days of receipt.

Status: DEQ now tracks DMRs for major sources electronically. A DMR Evaluation Report is generated monthly and identifies any monitoring requirements that may be missing, exceedance of permit limits, and any information that needs to be further examined. The information provided assists the permit writers and inspectors in the review of DMRs for major sources and makes the process more efficient. During the fourth quarter of 2010, DEQ reviewed 89 percent of the DMRs for the 68 major sources within 30 days of receipt. DEQ still tracks and reviews DMRs for minor sources manually, which is time consuming but necessary to ensure each is reviewed. DMRs for the minor sources are not being entered into DEQ's database due to the volume of data involved. In order to generate a DMR Evaluation Report for minor sources, DEQ must develop the capability to receive DMR information electronically. To develop this capability, DEQ has started a project that will provide a web-based portal allowing permitted sources to submit all required DMR documentation electronically.

6. Timeliness of Issuing Permit Noncompliance Notifications

Goal: DEQ does have an interim timeliness goal of 10 days after an inspection is completed to issue Warning Letters or Pre-Enforcement Notices, though those goals are currently informal guidelines until the Agency Compliance and Enforcement System is operational. DEQ will set final timeliness goals once ACES is functional and DEQ can use the database information to assess status, set baselines, and develop reasonable targets.

Status: DEQ is in the early planning stages for developing ACES that will be able to store, track, and retrieve noncompliance information from DEQ's Land Quality, Air Quality and Water Quality programs. Until the database is complete, DEQ staff will track noncompliance notifications through other means.

1. Introduction

1.1 Overview

Purpose	The purpose of this report is to update the Legislature and the Environmental Quality Commission (EQC) on specific wastewater permitting program performance measures, including the Department of Environmental Quality’s (DEQ’s) efforts in administering a watershed approach toward water pollution permitting, as required by Senate Bill 45 passed by the Oregon Legislature in 2005 (See Appendix A).
Senate Bill 45 History	Governor 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 (BRC, Committee) on Wastewater Permitting.

1.2 Background

What is the Wastewater Permitting Program?	<p>DEQ’s wastewater permitting program controls wastewater and stormwater discharges from a variety of sources. DEQ issues NPDES and WPCF permits that are either “individual” site-specific permits or “general” permits. Currently, the program regulates more than 4,400 facilities and activities (excludes onsite septic system permits) using the following types of permits:</p> <ul style="list-style-type: none">• National Pollutant Discharge Elimination System (NPDES) permits NPDES permits are issued pursuant to the federal Water Pollution Control Act and Oregon Revised Statutes (ORS) 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 do not meet this definition of “major” are classified as “minor” permits.• Water Pollution Control Facilities (WPCF) permits WPCF permits are issued pursuant to ORS 468B for disposal systems that do not 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.)• 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, less costly for the permittee.
Why Was the Blue Ribbon Committee Established?	In 2001, DEQ had a high permit backlog with approximately 60 percent of major NPDES individual permits awaiting renewal (the highest backlog rate in the nation). The backlog was due to the increasing complexity of permitting requirements, implementing more stringent water quality standards, implementing Total Maximum Daily Loads (TMDLs) and waste load allocations, and an increase in the number of

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sources that were required to be permitted; DEQ permitted 2,700 sources in 1994, more than 4,000 in 2001 and more than 4,400 in 2010. To address permitting concerns, DEQ convened a “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 the wastewater permitting program and summarized its findings and recommendations in a report titled *Blue Ribbon Committee Report on Key Enhancements to the Oregon Wastewater Permitting Program* (available upon request or at DEQ’s website <http://www.deq.state.or.us/wq/pubs/reports/blueribbonrpt.pdf>).

Key areas of concern identified by the Committee included:

- The backlog of major NPDES permit renewal applications.
- The growing complexity of NPDES permit regulations.
- The increasing number of sources subject to NPDES permit requirements.
- Serious DEQ wastewater permitting program resource constraints.

In summary, 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.

Report annually to the EQC and the Oregon Legislature on various aspects of the wastewater permitting program. This report serves as the primary 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 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 BRC 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 no more than 10 percent. These obstacles included litigation on the Willamette Basin TMDL and use of compliance schedules in permits, as well as an EPA objection regarding the permitting of sanitary sewer overflows prevented permit issuance. These obstacles were resolved in late 2009 and 2010 (see Appendix C for a complete list of current litigation affecting permit issuance). As a result, DEQ was able to issue a number of permits in 2010, attempting to reduce the backlog of expired

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permits.

- Position Management –The permit program expects to operate with 65.5 positions during the 2009-2011 biennium (July 1, 2009-June 30, 2011), compared to the 72.5 positions that are authorized. In anticipation of general fund reductions during the 2009-2011 biennium, DEQ chose not to refill certain positions in order to manage the budget. DEQ also never filled 4 of 12 permanent positions responsible for stormwater permitting due to loss of general fund and low revenues in the stormwater program associated with the economic downturn.

With the legal issues resolved and operating at less than full staff, DEQ made progress toward meeting the Committee's recommendations in 2010.

2. Status of Senate Bill 45 Reporting Requirements

2.1 Overview of Reporting Requirements

The Committee's recommendation to report to the EQC and Oregon Legislature was included as a requirement in Senate Bill 45. As a result, DEQ is required to annually report on:

- 1) Efforts to administer the water pollution control permit program with a watershed approach.
- 2) Efforts to issue permits on a watershed basis.
- 3) The level of permit backlog, if any.
- 4) The timeliness of applying general permit coverage to applicants.
- 5) The timeliness of reviewing and tracking discharge monitoring reports.
- 6) The timeliness of issuing permit noncompliance notifications.

DEQ will continue to refine how to measure progress and develop realistic goals for the wastewater permitting program based on existing commitments and available resources.

2.2 Efforts to Administer the Water Pollution Control Permit Program On a Watershed Approach

Permits are issued 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 2010, DEQ updated the permit issuance plan to issue permits on a watershed basis. DEQ is transitioning to renewing permits on a watershed basis which means that all permits in a particular sub-basin will be renewed during the same year. DEQ's plan to issue permits by watershed is noted below. DEQ also developed an annual watershed-based inspection plan. DEQ has aligned the inspection plan with the watershed permit issuance plan by inspecting smaller facilities the year before their permit is scheduled for renewal.

DEQ set a goal to inspect at least 50 percent of all permits for large municipal facilities and industrial facilities, and all permits for smaller facilities in selected watersheds. DEQ did not meet this goal inspecting only 47 percent larger facilities and 273 smaller facilities.

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 2010, DEQ contacted 65 percent of facilities at least two years before their renewal date. DEQ intends to meet this goal for all facilities in 2011.

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 is working to integrate multiple water quality programs (including wastewater permitting, water quality standards, Total Maximum Daily Load development and implementation, and nonpoint source protection program) 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 will develop water quality status reports and subprogram

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action plans in one geographic area in each of DEQ's three regions per year, and will 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 2010, the Deschutes, North Coast and Rogue Basins were addressed. For 2011, assessments will be completed for the Tualatin, Malheur/Owyhee, and South Coast basins.

DEQ has also taken steps to better focus efforts on meeting the BRC commitment to strengthen connections between internal water quality programs, with a particular focus on better communication and integration of permit implementation during development of Total Maximum Daily Loads (TMDLs) and water quality standards. The key goal is to have the standards, permits, and TMDL programs (which have operated in separate sections) work together to achieve better integration. During 2010, the wastewater permit program worked very closely with the standards program and stakeholders on new water quality standards for toxics (in development) and naturally occurring metals (approved by Environmental Quality Commission in December 2010; approval by EPA pending). This work will continue beyond the adoption of the new standards, to ensure implementation of the new standards is consistent in all permits issued after the implementation date.

2.3 Are Permits Being Issued On a Watershed Basis?

Status	In 2005, DEQ developed a permit issuance plan using a watershed approach. All individual permits were grouped into their specific watershed and a five-year cycle was established for each watershed. Legal issues caused DEQ to delay the issuance of certain permits over the past several years, preventing DEQ from meeting its goal. Following the resolution of applicable legal issues, a revised watershed-based permit issuance plan was developed in January 2010. DEQ designated 89 permits (individual NPDES and WPCF) for reissuance in 2010 in the revised plan, and 77 were reissued. The goal of the revised plan is to issue 80 percent of the total number of watershed cycle permits by 2014. DEQ will strive to stay on schedule with the permit issuance plan, but acknowledges the goal may not be able to be met by 2014.
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	The BRC's key concern 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 the Sanitary Sewer Overflows permit language and DEQ became engaged in several lawsuits. Those lawsuits were resolved in late 2009 and 2010. The major NPDES permit backlog (excluding Municipal Separate Storm Sewer Systems (MS4) permits) decreased to 71 percent at the end of 2010 – compared to 76 percent at the end of 2009. When including MS4 permits, the major NPDES permit backlog was 68 percent at the end of 2010. Overall permit backlog, which includes all major, minor and general WPCF and NPDES permits, was 23 percent at the end of 2010. DEQ continues to make progress in other permit program areas not impacted by the litigation and EPA objections, including data management, developing implementation approaches for the new toxics criteria in future permits, permit program training and program development.
DEQ's Goal	DEQ will continue to work toward reducing the backlog for major individual NPDES permits to 10 percent.

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2.5 Timeframe That DEQ Took to Apply General Permit Coverage to Applicants

Status DEQ's 26 general permits cover approximately 3,900 facilities and activities (excludes onsite septic system permits). The general permitting approach provides for a level of certainty for new applicants because they know the permitting requirements up front and a general permit can be obtained fairly quickly. This is compared to a new individual permit which can take six months or more to issue. During 2010, DEQ registered 2,160 facilities under general permits (new and renewal applications filed in 2010). The average time to assign coverage for applicants to an existing general permit was 43 days. 91 percent of new permit applicants were registered within 30 days.

Court decisions have created challenges to the timeframe for assigning general permit coverage for stormwater discharges by requiring public notice and comment on stormwater management plans. This requirement was adopted by the EQC for construction activities that disturb more than five acres and for industrial stormwater permits. Requiring public notice for stormwater management plans delays the assignment of general permit coverage. For these permits, DEQ tracks the amount of time it takes to assign coverage after the public comment period has closed.

DEQ reissued the construction stormwater general permit in December 2010. DEQ worked with local governments to create a new permitting approach to eliminate dual regulation for small sites in jurisdictions that have their own erosion and sediment control ordinances for construction activities.

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 Timely Review and Tracking of Discharge Monitoring Reports

Status Facilities permitted by DEQ are typically required to conduct laboratory analyses on wastewater discharges to determine if permit limits are being met. The results of these analyses are submitted to DEQ monthly in a document called a discharge monitoring report (DMR). DEQ has completed the development of the Discharge Monitoring System (DMS) database and now tracks DMRs for major sources electronically. The DMR Evaluation Report from DMS identifies any monitoring requirements that may be missing, exceedance of permit limits, and any information that needs to be further examined. The information provided assists the permit writers and inspectors in the review of DMRs for major sources and makes the process more efficient. During the fourth quarter of 2010, DEQ reviewed 89 percent of the DMRs for the 68 major sources within 30 days of receipt. However, DEQ still tracks and reviews DMRs for minor sources manually, which is time consuming but necessary to ensure each is reviewed.

EPA requires all states that implement the NPDES permit program to enter permit information into a federal database, called the Permit Compliance System (PCS). Oregon's NPDES permit information had not been regularly entered into EPA's PCS since 2004. During 2008, DEQ updated all of the data related to the NPDES major permits in EPA's database and uploaded the backlogged DMR data for these facilities. In 2009, DEQ entered all remaining backlogged data required by EPA to be reported to the PCS database. DEQ now keeps PCS current on a monthly basis.

DMRs for the 297 NPDES individual minor sources are not being entered into DMS due to the volume of data involved. In order to generate an evaluation report for minor sources and be able to provide the data to the federal database, DEQ must develop the capability to receive DMR information electronically.

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DEQ has begun the Electronic Discharge Monitoring Report (e-DMR) project. Over the next twenty-four months, DEQ will utilize a contractor as well as internal resources to design and develop a software application and document the processes for collecting DMR data electronically from NPDES individual permit holders. The system will comply with EPA's Cross Media Electronic Reporting Rule (CROMERR) and will provide a web-based portal that will allow permitted sources to submit all required DMR documentation electronically. Implementation of the system is out-of-scope for the current project but will begin once the system development is complete.

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

2.7 Timely Issuance of Permit Noncompliance Notification

Status DEQ is in the early planning stages for developing an Agency Compliance and Enforcement System (ACES) that will be able to store, track, and retrieve noncompliance information from DEQ's Land, Air and Water Quality programs. Until the new database is complete, DEQ staff will track noncompliance notifications through other means. DEQ has developed the Discharge Monitoring System that automates review of monthly discharge monitoring reports (DMR) for major sources as described in Section 2.6 for timely DMR reviews. The automated DMR review process improves the precision and accuracy of comprehensive DMR reviews statewide, and assists DEQ with timely response to permit violations.

DEQ's Goal DEQ does have interim timeliness goals of 10 days after an inspection is completed to issue Warning Letters or Pre-Enforcement Notices, though those goals are currently informal guidelines until the ACES is operational. DEQ will set final timeliness goals once the new system is functional and DEQ can use the database information to assess status, set baselines, and develop reasonable targets. The ACES will provide statewide consistency with noncompliance notifications 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 3 percent to help address increasing program costs.

3.2 Quality Permits On Time

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

- Established a process for developing internal management directives (IMDs) 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 these issues.
- Completed Internal Management Directives (IMDs) since 2005 covering critical permitting topics such as mixing zones, conducting reasonable potential analysis and implementing the temperature standard in permits.
- Completed the following IMDs in 2010:
 - Use of compliance schedules in permitting
 - Implementation of federal and state bacteria standards for marine and estuarine environments
- Started drafting or updating IMDs addressing:
 - Reasonable Potential Analyses
 - Establishing Regulatory Mixing Zones
- 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 2010 DEQ issued general permits by order for suction dredge mining (700PM) and stormwater construction (1200C/CN).
- Implemented a training program for permit writers.

An individual permit NPDES Municipal Separate Storm Sewer System (MS4) Phase I applies to the discharge of urban stormwater from selected municipalities/counties in the Portland metropolitan area, and the cities of Eugene and Salem. Four MS4 Phase I permits that expired in 2009 were renewed in 2010.

DEQ is currently developing a general permit for the application of pesticides on or near waters and a separate permit for application of pesticides by irrigation districts. Both of these permits will be issued during 2011. DEQ is partnering with the Oregon Department of Agriculture (ODA) to establish implementation roles that align with the natural responsibilities of each agency. DEQ has permitting authority and maintains a database of all permit holders. ODA conducts outreach and education as well as inspections.

DEQ is currently working with an advisory committee to revise the general permit for stormwater runoff from industrial activities. DEQ anticipates renewing the permit in August 2011.

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3.3 Stable and Ongoing Funding

Maintain Mix of Fee and Public Funding

The 2005 and 2007 legislatures approved the BRC recommendations for additional public funds and a fee increase in DEQ's wastewater program budget. There were no fee increases during 2009, but the wastewater permit lost approximately \$500K in general funds from General Fund reductions specifically for stormwater work. In 2010, a 3 percent permit fee increase was adopted (approximately \$150K in additional revenue), but the permit program lost approximately \$860K of General Fund in efforts to re-balance the state budget. The current funding mix is approximately 60 percent fees and 40 percent general funds.

Annual 3 percent Fee Increase

Senate Bill 45 authorizes the EQC to increase permit fees on an annual basis. The amount of 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 Environmental Quality Commission (EQC) adopted 3 percent fee increases in 2007, 2008 and 2010.

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. 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

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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 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.

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(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 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

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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 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, 2010)

The BRC 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)
As noted in Section 2.3, following the resolution of applicable legal issues, a revised watershed-based permit issuance plan was developed in January 2010.
2. Develop 5-year map and plan that shows where permit issuance focus will be in each year. (Complete)
3. 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 all 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.

1. Develop implementation guidance (Internal Management Directives) on:
 - Water Quality Pollution Trading (Complete; updated 2008)
 - Reasonable Potential Analyses (Complete; update in progress)
 - Subsurface Discharges (Complete)
 - Biosolids Management (Complete)SSOs/Wet Weather/Bacteria Standard (Complete)
 - Establishing Regulatory Mixing Zones (Complete; update in progress)
 - Incorporating the Temperature Standard in Permits (Complete)
 - Wastewater Reuse (Complete)
 - Stormwater/MS4 Permitting (Will not be completed)
 - Flow Determinations (TBD)
 - Determining Appropriate Monitoring Conditions (included in update of Reasonable Potential Analyses IMD)
 - Documenting Permit Decisions (TBD)
 - Use of Compliance Schedules in Permits (Complete)
 - Treatment of Effluent-Dominated Streams (TBD)
 - Incorporating TMDL Waste Load Allocations into Permits (e.g., temp, nutrients, etc.) (TBD)
 - Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems (TBD)
 - Implementing federal and state bacteria standards for marine and estuarine environments (Complete)
2. Establish Permittee Bill of Rights (Complete)
3. 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, and December 2008. DEQ

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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 also conducted a permit writers training in the regional offices in mid-2009. DEQ conducted general permit writer training in February 2010, and completed Internal Management Directive (IMD) implementation training in March and May 2010.

4. 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.

5. 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 Web Site.) 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 the public through the DEQ website.

6. 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.
7. 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. As noted in Section 3.2, during 2010 DEQ issued general permits by order for suction dredge mining (700PM) and stormwater construction (1200C/CN). The remaining general permits are prioritized in the following order:

- Pesticide permit (anticipated issuance April 2011)
- Irrigation District Pesticide permit (anticipated issuance June 2011)
- 1500-A: Underground storage tank cleanups
- 100: Non-contact cooling water
- 500: Boiler blowdown
- 1700-A: Vehicle wash water
- 200: Filter backwash
- 300: Fish Hatcheries
- 400: Log ponds

In August, 2010, the Ninth Circuit Court of Appeals issued an opinion invalidating EPA's silvicultural exemption for forest roads. This decision comes out of the case brought by Northwest Environmental Defense Center against Marvin Brown in his capacity as Director of the Oregon Department of Forestry. The State, Tillamook County and the private timber company defendants in the lawsuit are seeking reconsideration en banc from the Ninth Circuit. The Ninth Circuit has asked for additional briefing and there is no particular deadline for a decision. The state and other defendants are not challenging the portion of the decision that says culvert and roadside ditches are point sources, in spite of EPA's definition. We are seeking reconsideration of the portion of the decision that concludes they are sources of industrial stormwater subject to phase I of the stormwater requirements in CWA Section 402(p). In light of the court's opinion DEQ will likely need to develop a permit that covers these activities.

8. 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

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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. Due to resource constraints DEQ has not made much progress addressing the backlog of expired general permits.

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

Status: Issuance of Phase 2 permits completed May 2007; litigation regarding Phase I permits has been resolved; six Phase I permits were renewed during 2010 as noted in Section 3.2.

10. 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.
11. 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.

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 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.

2. Develop and implement inspection plans for 2006, 2007, 2008, 2009 and 2010 (completed).
3. Adopt standard DMR format (TBD). Standard formats exist for some permit types. **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.
4. 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)
5. Train inspectors on new guidance (initial training complete).
6. 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

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- 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)
 3. A reporting system has been designed and given to the agency software development group for programming and implementation. Due to limited software development resources we do not have a firm completion date for this project.

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 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.

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 three percent, whichever is lower.

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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 ¹	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 ²	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. As noted in Section 1.2, the permit program expects to operate with 65.5 of 72.5 authorized positions during the 2009-2011 biennium, which includes 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 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.

1. 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).

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2. Review process and timing for invoicing (Complete).
3. 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).
4. Develop and carry 07-09 policy package (Complete).

Appendix C Oregon Water Quality Litigation

as of 12.17.10

WQ STANDARDS PROGRAM

NEDC v. EPA, (U.S. Dist. Ct. Oregon 9/20/07). CWA and ESA challenge to EPA's approval of DEQ's compliance schedule rule. DEQ has intervened as a defendant. The case has been settled but hasn't yet been dismissed. The motion still needs to be filed.

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 has intervened as a defendant. Motions for summary judgment are scheduled for January 2011.

NWEA v. EPA, (U.S. Dist. Ct. Oregon 4/7/06). Suit against EPA, NMFS and USFS arising out of EPA's failure to consult under the ESA and take action to approve or disapprove EQC's toxics rules adopted in 2004. DEQ is not a party but is monitoring the case. The case is stayed while EPA completes consultation on aquatic life criteria.

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 stayed pending the revision of the Willamette TMDL, which is scheduled for 2012.

Idaho Power v. State, (Baker County Cir. Ct. 10/7/03). Challenge to the Snake River TMDL. Case has been stayed pending negotiations between Idaho Power, DEQ, Idaho DEQ, and EPA over the Section 401 certification for the Hells Canyon complex of dams.

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Stormwater Permits

NEDC v. Brown. (U.S. 9th Cir. Ct of Appeals). CWA citizen suit against Oregon DOF 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. The Court of Appeals reversed the District Court decision and ruled that ditches and culverts associated with forest roads are industrial stormwater point sources subject to CWA Section 402(p). Oregon and other parties have filed motions seeking *en banc* review.

NEDC v. Grabhorn, (U.S. Dist. Ct. Oregon 5/7/08). CWA citizen suit against landfill operator alleging discharge of stormwater without an NPDES permit. Discharge is alleged to have occurred through irrigation ponds that have a hydrologic connection to river. DEQ is not a party but is monitoring the case. The Court resolved most issues on motions for summary judgment; remainder of the case has been stayed until February 2011.

Industrial Permits

NEDC v. DEQ; Eastern Oregon Mining Association v. DEQ and Waldo Mining District v. DEQ. Challenges to the 700 PM permit issued by department order in July 2010 were filed in the Baker County District Court; Multnomah County District Court and Court of Appeals. DEQ has moved to dismiss the Court of Appeals case and consolidate the matter in Marion County. The Baker County Circuit Court has ordered transfer to Marion County; the Multnomah County Court has yet to rule on venue.

Klamath Forest Alliance v. BOR, (U.S. Dist. Ct. Oregon 12/1/97). CWA citizen suit challenging the discharge of water from the Klamath Strait Drain to Klamath River via BOR pump station. The primary issue is whether an NPDES permit is required for this type of discharge. DEQ is not a party but is monitoring the case. Motions for

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summary judgment have been completed and DEQ is waiting for a decision.

Domestic Permits

State v. Lucas et al. (Umatilla County Cir. Ct. 5/22/09). Civil enforcement action against operator of Lehman Hot Springs, brought at request of DEQ. Circuit Court issued a preliminary injunction against the operator on 10/29/09. The injunction required draining of upper lagoon and lowering the level in lower lagoon by 11/15/09. Operator failed to comply and asked court for additional time and other relief. A contempt case was set over pending the trial in the criminal case.

Onsite Permits

Deschutes County Citizens Action Group v. Deschutes County, (Deschutes County Cir. Ct. 8/18/08). Challenge by citizens group to an ordinance enacted by the County for the purpose of implementing its authority as DEQ's onsite agent. The ordinance requires more effective onsite systems for the purpose of protecting groundwater and surface water in the South County area near the Deschutes River. DEQ intervened on the side of the County. This case is still pending.

OTHER PROGRAMS

NWF v. NMFS, (U.S. Dist. Ct. Oregon, 5/3/01). Litigation involving a Biological Opinion regarding federally operated dams on the Columbia River system. This case is still pending. In September 2010, environmental groups filed their sixth supplemental complaint and the state filed its third supplemental complaint.

State of Oregon v. FERC, (U.S. 9th Cir. Ct. of Appeals). Challenge to FERC license for Bradwood LNG facility. This case is still pending. The court removed the case from the calendar when Bradwood declared bankruptcy. The State asked the case be put back on the calendar and schedule motions.