

Report to the Legislature
Wastewater Permitting Program
Improvements and Measures
January 2006



State of Oregon
Department of
Environmental
Quality



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1. INTRODUCTION

1.1 Overview

Purpose The purpose of this annual report is to update the Oregon Legislature and public on specific wastewater permitting program measures, including the Department of Environmental Quality's (DEQ's) efforts in administering a watershed approach toward water pollution control permitting, as required by Senate Bill 45 passed by the Oregon Legislature in 2005.

Senate Bill 45 history Senate Bill 45 was introduced by Governor Kulongoski on behalf of DEQ as part of the funding and program improvements package recommended by DEQ's Blue Ribbon Committee on Wastewater Permitting. In addition to enacting Senate Bill 45, the Legislature approved increasing wastewater permit fee revenue by 11% and appropriated \$420,000 in additional General Funds for the wastewater permitting program for 2005-2007.

1.2 Background

What is the Wastewater Permitting Program? DEQ's wastewater permitting program controls wastewater and stormwater discharges from a variety of sources. Currently, the program regulates more than 4000 facilities and activities using the following types of permits:

- **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 with a high potential to discharge toxic pollutants in large quantities. Facilities that do not meet this definition of major are covered by 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.)

DEQ issues NPDES and WPCF permits that are either "individual" site-specific permits or "general" 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 regulate industrial and construction stormwater runoff to surface waters. 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's permit backlog was at an all time high with about 60% of major NPDES individual permits awaiting renewal (the highest backlog rate in the nation). The backlog was in part due to the increasing complexity of permitting standards and strain on program resources from the increasing permit universe, which increased from 2,700 permittees in 1994 to 4,000 in 2001. To address these concerns, DEQ launched an effort to improve the program by convening a "Blue Ribbon Committee" ("Committee") in December 2002 to assist the agency in identifying needed improvements to the wastewater permitting program. The Committee included industry, environmental and local government representatives. Since 2002, DEQ has focused resources on the permit backlog, dramatically reducing the major NPDES individual permit backlog to 26% by the end of 2005. This reduction was accomplished by shifting staff from compliance review and inspections. Continued backlog improvements cannot be made without instituting the Committee's recommendations.

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 its 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/wqpermit/BlueRibbonRpt080604.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 that would 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 Environmental Quality Commission, Oregon Legislature, and public on various aspects of the wastewater permitting program. The report would serve as the primary mechanism for DEQ to demonstrate strong leadership, track and report on program implementation progress, and provide greater accountability to the Oregon Legislature, businesses, and people of Oregon.
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DEQ's goals

As discussed earlier, the Committee's findings and recommendations were the basis for Senate Bill 45 and policy package #120 in DEQ's Agency Request Budget. The Legislature approved the policy package, adding General Fund and fee increases to phase in four additional staff for 2005-07 and restore four positions to keep existing service. With these increases, DEQ's specific goals include:

- Reducing the major NPDES individual permit backlog to 10% by the end of 2007.
- Improving accountability by developing and tracking permit issuance plans and establishing individual performance expectations.
- Improving emphasis on key water quality concerns and a more holistic solution by issuing permits using a watershed approach.
- Reviewing compliance data in a timely manner and improving compliance inspections.

To meet the Committee's long-term recommendations, DEQ will propose additional General Fund and fee resources in the 2007 legislative session to phase in three more staff.

2. STATUS OF SENATE BILL 45 REPORTING REQUIREMENTS

2.1 Overview of reporting requirements

The Committee's recommendation to report to the Environmental Quality Commission (EQC) and Oregon Legislature was included as a requirement in Senate Bill 45. DEQ is now required to annually report on:

- 1) Efforts to administer a watershed approach toward water pollution control permitting.
- 2) Whether DEQ is issuing permits on a watershed basis.
- 3) The level of permit backlog, if any.
- 4) The time frame that DEQ took to apply general permit coverage to applicants.
- 5) The timeliness of the review and tracking of discharge monitoring reports.
- 6) The timeliness of the issuance of 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 Update on watershed approach

Current status The Committee recommended a cyclic watershed-based approach to most permitting and compliance activities to bring about better permit planning and follow-up, as well as integration with other water quality programs and activities. DEQ developed permit issuance and inspection plans for 2005 through 2009 using a watershed approach. The focus of these plans is to better address key water quality concerns in a comprehensive way. On an ongoing basis, DEQ is strengthening connections between all water quality programs, including better communication and integration of permit implementation during development of total maximum daily loads (TMDLs) and water quality improvement plans.

Future goals Eventually, DEQ envisions full implementation of a watershed approach where all water quality activities are synchronized by environmental

significance. DEQ is committed to enhancing existing connections between the permit program and the TMDL and water quality standards programs, as well as continuing to strengthen the consideration of permit implementation when developing TMDLs and standards.

2.3 Are permits being issued on a watershed basis?

Current status DEQ developed a five-year permit issuance plan for 2005 through 2009 using a watershed approach. The plan includes NPDES individual permits, which allow discharge to surface waters, and larger wastewater treatment systems with WPCF individual permits, which do not discharge to surface waters directly, but have the potential to impact groundwater.

Future goals DEQ's initial goal was to issue 90% of targeted individual wastewater permits on a watershed basis by the end of 2007. DEQ is currently assessing whether this is an attainable goal based on the competing needs to reduce the major NPDES individual permit backlog, renew general permits, and address more complex permitting requirements as a result of court rulings.

2.4 Level of permit backlog

Current status The Blue Ribbon Committee's key concern was the high backlog of expired individual permits for major NPDES facilities. DEQ made significant progress in reducing the permit backlog of major NPDES individual permits from 60% in 2001 to 26% at the end of 2005. The overall permit backlog, which includes all individual and general WPCF and NPDES permits, was 37% at the end of 2005.

Future goals DEQ remains committed to reducing the backlog for major individual NPDES permits to 10% by the end of 2007. DEQ is evaluating the best way to achieve this goal in light of the competing needs to issue permits on a watershed basis, renew general permits, and address more complex permitting requirements as a result of recent court rulings.

2.5 Time frame that DEQ took to apply general permit coverage to applicants

Current status A survey of the past five years indicates that DEQ took an average of 20 days to assign general permit coverage to new applicants.

DEQ's 23 general permits cover approximately 3500 facilities and activities. The general permitting approach provides for a level of certainty for new applicants because they know the requirements up front and a general permit can be obtained fairly quickly (a new individual permit can take at least six months or more to issue). Recent court decisions, however, have created challenges to the time frame for assigning general permit coverage by requiring that states provide a public notice and comment period for stormwater general permits that rely on management plans to demonstrate compliance. This is a new requirement for DEQ. DEQ does provide public notice for general permit development, but has not previously provided public notice when an individual facility registers for a general permit. While the legal issues have yet to be resolved at the federal level, requiring public notice for stormwater general permits will likely delay the time frame it takes to assign general permit coverage. DEQ is also challenged with incorporating requirements for discharges to water quality limited streams [303(d) list], total maximum daily load allocations, and complex water quality standards into general permits.

Future goals DEQ's initial goal is to assign permit coverage within 30 days of receiving a new application. As discussed above, this target may be difficult to reach for general permits that regulate stormwater discharges. DEQ is considering a budget proposal to the 2007 legislature for General Funds to support an innovative and holistic approach to controlling stormwater pollution. Our goal would be to develop broad stakeholder support for such a request prior to January 2007.

2.6 Timeliness of the review and tracking of discharge monitoring reports

Current status Facilities permitted by DEQ are typically required to conduct laboratory analyses on wastewater discharges to determine if permit limitations are being met. The results of these analyses are submitted to DEQ in a discharge monitoring report (DMR). There is no current mechanism to determine if DMRs are tracked or reviewed in a timely manner.

Tracking and timely review of DMRs is an important aspect of an effective permit program. DMRs are submitted on a monthly or yearly basis and reviewed manually, which is resource-intensive. In the short term, DEQ reduced its manual review of DMRs and focused efforts on reducing the permit backlog and developing an electronic database, called the Discharge Monitoring System (DMS), that will automatically flag potential permit violations reported in DMRs. Once implemented, the DMS will provide greater efficiency and effectiveness for the DMR review process as recommended by the Committee. In 2006, DEQ will hire additional staff to input DMR data into DMS. This will enable DEQ to more quickly review whether facilities are meeting their permit limits and respond more promptly to potential problems reported in DMRs.

Future goals DEQ's goal is to review DMRs for individual permits within 30 days of receipt (DMRs for individual permits are usually required to be submitted once a month). To achieve this goal, additional staffing for routine data entry from DMRs into the DMS database will be needed. The legislatively approved fee and general fund increases will support this additional staffing, and data entry is expected to begin in the summer of 2006.

2.7 Timeliness of issuance of permit noncompliance notifications

Current status There is no current mechanism to easily determine if permit noncompliance notifications are occurring in a timely manner. DEQ is in the process of developing a central compliance database to track enforcement efforts. Current databases are not reliable due to a lack of quality control on the data (e.g., missing information).

Future goals The central compliance database is expected to be operational by mid-2006. DEQ will use information from the database to establish future timeliness goals.

3. ADDITIONAL PROGRAM IMPROVEMENTS

Overview

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

- Issue timely, quality permits by investing in the program's infrastructure, expertise, and policy guidance.
- Develop an explicit process for resolving issues that threaten to delay the review of complex issues that affect the permitting process.
- 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 up to 3% annual permit fee increase to help address inflation.

This section briefly describes major activities already taken or in progress. For more information on all activities being undertaken or planned, see *DEQ Implementation Plan for Recommendations from the Blue Ribbon Committee on Wastewater Permitting* (Appendix A).

3.1 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 deal with these issues.
- Completed two major IMDs: one for assessing potential toxicity of wastewater discharges and the other for land application of biosolids (solids and sludges from sewage treatment plants).

DEQ is currently:

- Drafting two IMDs: one to strengthen review of mixing zones in permits and the other to clarify land disposal options for domestic wastewater disposal and groundwater concerns associated with the options. Others are being scheduled (e.g., wet weather issues, dispute resolution process, etc.).

- Implementing the provision in Senate Bill 45 that revised Oregon Revised Statutes to allow issuance of general permits by administrative order rather than the more resource-intensive rulemaking process.
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3.2 Stable and ongoing funding

Maintain mix of fee and public funding

As approved by the 2005 Legislature, DEQ is conducting a rulemaking to increase wastewater permit fee revenue by 11% to maintain funding for four existing permit staff and add two and a half (2.5) new positions in 2006 and 2007. In addition to maintaining the mix of fee and public funding, the fee rulemaking will also simplify the fee schedule by consolidating fee types (e.g., filing fee added to annual fee) and modifying permit fee categories.

In 2007, DEQ plans to request “phase 2” of the Blue Ribbon Committee funding recommendations by requesting a 5% fee revenue increase and additional General Funds to support additional program improvements including enforcement activities.

Annual 3% fee increase for inflation

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 permit program or 3%, whichever is lower. DEQ plans to propose rules in 2007 to pursue the first inflationary increase, which would be effective for the 2008 state fiscal year (July 1, 2007 to June 30, 2008). Generally, DEQ’s experience with fees has shown that cost increases for benefits and salaries outpaces inflation, but an annual 3% fee increase will help offset these costs.

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 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.

(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 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

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Effective date January 1, 2006

Appendix B

DEQ Implementation Plan for Recommendations
from the Blue Ribbon Committee on Wastewater Permitting
(January 2006)

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

(revised January 2006)

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. 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. (Began January 2006)
4. Continue to increase the connections between the permit program and the TMDL and standards program, ultimately operating on the watershed cycle; increase consideration of permit implementation in development of standards and TMDLs. (Ongoing)

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)
 - Reasonable Potential Analyses (Complete)
 - Subsurface Discharges (public review Spring 2006)
 - Biosolids management (Completed December 2005)
 - SSOs/wet weather/bacteria standard (TBD)
 - Establishing Mixing Zones (public review Spring 2006)
 - Incorporating the Temperature Standard in Permits (public review Spring 2006)
 - Wastewater reuse (2006, in conjunction with rule revision)
 - Stormwater/MS4 permitting (TBD, memorializes permit decisions)
 - Flow Determinations (TBD)
 - Permit issuance planning (WPCFs on 10 years, prioritization) (TBD)
 - Determining Appropriate Monitoring Conditions (TBD)
 - Documenting Permit Decisions (TBD)
 - Use of Compliance Schedules in Permits (TBD)
 - Treatment of Effluent Dominated Streams (TBD)
 - Incorporating TMDL waste load allocations into permits (e.g., temp, nutrients, etc.) (TBD)
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.

4. Accumulate all IMDs, guidance and checklists into a permit writer's guidance. **Status:** Planned for 2006.
5. Complete an industrial permitting "wizard" and update the municipal wizard (if needed). **Status:** Work has started; planned for completion by January 2007.
6. Establish Dispute Resolution Process. (TBD)
7. Renew Expired General Permits and streamline process for registration of applications. (ongoing)
8. Bundle general permits and process them together when possible. Develop overall gameplan for General Permits that determines how we should utilize general permits 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 how to move existing sources onto any of these tools, etc.
Status: Construction stormwater permit was renewed in December 2005. Remaining storm water general permits scheduled for August 2006. Will take lessons about permit registration, processing, etc. and apply to other General Permits as appropriate.
9. Resolve MS4 litigation and issue permits to Phase 2 communities. **Status:** Phase 1 permits modified July 2005; Phase 2 scheduled for 2006; new litigation filed in January 2006.
10. Reissue as many WPCF permits with a 10 year duration whenever possible. (Ongoing)
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 electronic Discharge Monitoring System (DMS); begin entering data. **Status:** Programming completed; NPDES major permits data has been entered; NPDES minor permits almost complete. Some Discharge Monitoring Report (DMR) data entry for NPDES majors is being entered. Grant requested for setup of permit data for NPDES minors and some DMR data entry; new resources in 2006 will ensure ongoing support for system. We expect to fully implement the DMS in Summer 2006.
2. Develop inspection plan for 2005. (Complete)
3. Develop inspection plan for 2006. (Summer 2006)
4. Adopt standard DMR format (TBD); standard formats exist for some permit types.
5. Develop implementation guidance on:
 - Conducting and Documenting Inspections (TBD)
 - Proper Use and Format of Mutual Agreement Orders (MAOs) (TBD)
 - Implementing Phase 1 Division 12 revisions (Complete)
 - Using Split Samples (TBD)
 - DMS Implementation (prior to June 2006)
6. Train inspectors on new guidance. (complete for Phase 1 of DEQ's enforcement rule revisions)
7. Adopt methodology for electronic reporting. (TBD)

Accountability

Recommendation 1: Revise program performance measures

1. Establish data collection procedures for the recommended measures (Complete except for percent of DMRs reviewed in timely manner and length of time to respond to noncompliance):
 - 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. (March 2006)
3. Make any database or report changes to facilitate easy reporting of measures. (Spring 2006)

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 Environmental Quality Commission and the Legislature on or before January 31 of each year on:

- 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. (expectations established and given to staff December 2004)
4. Establish a random after-the-fact permit quality review and feedback to the permit writer and manager. (TBD)

Funding and Resources

Recommendation 1: Maintain the mix of fee and public funding at roughly 60%/40%

Recommendation 2: Allow for a modest annual permit fee inflator to help address inflationary costs (not to exceed 3%)

Recommendation 3: Annualize fees and simplify fee table structure

Recommendation 4: Increase resources, phased in over multiple biennia

The Blue Ribbon Committee recommended the following phase-in of resources. In addition to the table below, Senate Bill 45 gave the Environmental Quality Commission 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
2006	4.0/4.0 restored	7%; \$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%; \$148k	\$98k	Data management staff to run new DMS data system; adjustment to AG budget to true up costs and address asteroids	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	1.5/1.5	3%; \$228k	\$152k	One position in the laboratory to assist with permit related analyses; One-half FTE position to address enforcement	By 2007 we expect to be issuing most permits on a watershed basis and the additional lab resource should help with watershed analyses Compliance/enforcement position will ensure timely response to DMR issues, especially related

DEQ Implementation Plan – BRC Recommendations

Fiscal Year	Staffing Pos/FTE	Fees*	GF/FF	Program improvement	Comments
				and compliance issues	to implementation of new standards
2009	1.0/.5	2%; \$78k	\$52k	One policy position	Final policy position added to deal in a more focused manner with continuing issues such as reuse
2010	---	---	---	Maintain service	No increase expected

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. (Draft rule will be developed by December 2005)
2. Review process and timing for invoicing (December 2005)
3. Develop process for rulemaking updates to include the 3% inflator each year (during 0507 interim develop process for determining when inflator will be needed; evaluate need for inflator beginning in 0709)
4. Develop and carry 0709 policy package (spring 2008 and beyond)