

Report to the Legislature
Wastewater Permitting Program
Improvements and Measures
January, 2007



State of Oregon
Department of
Environmental
Quality



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1. INTRODUCTION

1.1 Overview

Purpose The purpose of this report is to update the Environmental Quality Commission (EQC) and Legislature 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 control permitting, as required by Senate Bill 45 passed by the Oregon Legislature in 2005 (See Appendix A).

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 the Blue Ribbon Committee (BRC, 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 4,000 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 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'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 due to the increasing complexity of permitting standards and an increase in the number of sources that were required to be permitted. In 1994 DEQ permitted 2,700 sources; this number had increased to over 4,000 in 2001. To address these concerns, DEQ launched an effort to improve the program by convening a "Blue Ribbon Committee" in December, 2002 to assist the agency in identifying needed improvements. 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 30% by the end of 2006. Though the percent of backlog was lower at the end of 2005 and at various points during 2006, DEQ is still on track to meet the goals of 10% backlog by the end of 2007 and 95% of permits on the watershed cycle by 2010. Since existing permits continue to expire, the percent of backlog will fluctuate.

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 and the Oregon Legislature on various aspects of the wastewater permitting program. This report serves as the primary mechanism for DEQ to demonstrate leadership, track and report on program implementation progress, and 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

In 2005 the Legislature added General Fund, approved an 11% increase in fee revenue to phase in four additional staff for 2005-07, and restored four existing positions. 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 is requesting additional General Fund and fee revenue during 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 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 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 Efforts to administer a watershed approach toward water pollution control permitting

Status DEQ developed an annual watershed-based inspection plan. This plan outlines when DEQ will inspect 100% of all permits for large municipal facilities and industrial facilities, and all permits for smaller facilities in selected watersheds. 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 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 set a goal of contacting 100% of facilities two years before their permit renewal date in order to get early involvement and collect data. It will likely be 2010 before we can fully accomplish this goal.

DEQ has also taken steps to better focus efforts on meeting the BRC commitment to strengthen connections between 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. To achieve these important goals, an existing manager has been assigned to oversee the permitting section, TMDL section and standards program. The key goal is to have the standards, permits, and TMDL programs (which have operated in separate sections) work as a unit to achieve better integration of those programs.

2.3 Are permits being issued on a watershed basis?

Status DEQ developed a five-year permit issuance plan for 2005 through 2009 using a watershed approach.

DEQ's goal DEQ's goal is to issue 95% 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 made significant progress in reducing the permit backlog of major NPDES individual permits from 60% in 2001 to 30% at the end of 2006. The overall permit backlog, which includes all individual and general WPCF and NPDES permits, was 12% at the end of 2006. Though the percent of backlog was lower at the end of 2005 and at various points during 2006, DEQ is still on track to meet the goals of 10% backlog by the end of 2007 and 95 % of permits on the watershed cycle by 2010. Since existing permits continue to expire, the percent of backlog will fluctuate.

DEQ's goal DEQ remains committed to reducing the backlog for major individual NPDES permits to 10% by the end of 2007.

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

Status DEQ's 23 general permits cover approximately 3,500 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 six months or more to issue). During 2006, DEQ registered 1,213 facilities under general permits. The average time to assign coverage for all applicants was 17 days. (Sixteen percent of applicants applying for a general permit in 2006 were registered in more than 30 days.)

Recent court decisions have created challenges to the time frame 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 (effective October 2006) and for industrial stormwater permits (effective July 2007). Requiring public notice for individual stormwater management plans will delay the time frame it takes to assign general permit coverage. For these permits, DEQ will be tracking the amount of time it takes to assign coverage after the public comment period has closed.

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

stormwater permits.

During the 2007 legislative session, DEQ is requesting additional General Fund and fee revenue to support an innovative and holistic approach to controlling stormwater pollution and to adequately implement the existing stormwater permit requirements, including the new requirement to provide opportunity for public comment.

2.6 Timeliness of the 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 limitations are being met. The results of these analyses are submitted to DEQ in a discharge monitoring report (DMR). DEQ is currently manually tracking DMR review, which is highly resource intensive. During the 4th quarter of 2006, DEQ reviewed 100% of the DMRs for the 71 major sources within 30 days of receipt.

During 2006 DEQ finished development of an electronic database (Discharge Monitoring System (DMS)) that tracks whether DMRs for both major and minor sources are received in a timely manner. It also alerts the permit writer or inspector about potential compliance issues through a DMS Evaluation Report for the 71 major sources, which provides for efficiency in determining which DMRs need to be reviewed. At this time, DEQ has completed data entry of permits and backlogged DMRs from August 2004 to the present for all major sources and is in the process of entering and updating permit information for minor sources. Beginning with the October 2006 reporting month, DEQ is entering DMRs for the 71 major sources as they arrive on a daily basis with the goal of keying DMRs within 10 days of receipt. Since October 2006:

- The average time to key DMRs from receipt is 3 days.
- We have exceeded the goal of keying DMRs in less than 10 days on 5 occasions. The reasons varied but in most cases it was due to issues arising that required decisions prior to the DMRs being keyed. These delays should decline as new staff continue to gain experience in reading and interpreting permits and DMRs.
- In January 2007, we began sending DMR Evaluation Reports to the regions for major sources when the DMR has been entered into the database.

The DMR Evaluation Report provides information on parameters that are

missing, parameters which exceed permit limits and parameters that can not be evaluated programmatically. The information provided will assist the permit writers/inspectors in the review of DMRs for major sources. DEQ is working on an implementation plan that will coordinate and document the various internal review processes and expectations.

DMRs for the 314 minor sources are not being entered due to the volume of data involved. In order to generate an evaluation report for minor sources, DEQ must develop the capability to receive DMR information electronically. DEQ is requesting authorization during the 2007 legislative session to receive additional federal grant funding to support the development of an Electronic Discharge Monitoring Report (EDMR) application. The planned approach is to transfer an EDMR system from another state and modify it to meet the needs of Oregon DEQ. DEQ plans to work closely with permitted sources to ensure that Oregon's EDMR system works for them. DEQ will meet the performance measure of reviewing 100% of the DMRs for all individual sources within 30 days of receipt once EDMR is fully implemented.

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

2.7 Timeliness of issuance of permit noncompliance notifications

Status DEQ's Management Services Division is developing a centralized compliance database (CCD) for DEQ's land, air and water programs to track all agency enforcement efforts. The system was expected to be operational by mid-2006, but is not completely functional. When it is, we will use information from the database to establish timeliness goals.

DEQ's goals DEQ will set timeliness goals once CCD is functional and we can use the database information to assess status, set baselines, and develop reasonable targets.

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 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 up to 3% annual permit fee increase to help address inflation.
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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.
- DEQ completed three major IMDs addressing:
 - Water pollution trading.
 - Assessment of potential toxicity of wastewater discharges (Reasonable Potential Analysis).
 - Land application of biosolids (solids and sludges from sewage treatment plants).
- DEQ is currently drafting IMDs addressing:
 - Incorporating the Temperature Standard in permits.
 - Strengthening the review of mixing zones in individual permits.
 - Implementation of bacteria standards and addressing sanitary sewer overflows in the permit process (wet weather issues).
 - Use of compliance schedules in permitting.
 - Effluent reuse.

- DEQ is implementing the provision in Senate Bill 45 that allows issuing general permits by administrative order rather than the more resource-intensive rulemaking process. Currently we are working on a general permit for off-stream placer mining activities and plan to issue it by administrative order in February 2007. Additionally, by January, 2008, we plan to issue a “WPCF bundle” for five general permits for discharges from food processing, vehicle wash water, petroleum hydrocarbon cleanups and gravel mining by administrative order. The construction and industrial general stormwater permits, renewed in December, 2005 and August, 2006 were adopted by rule because there has been a lot of public interest and litigation regarding stormwater permits.
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3.2 Stable and ongoing funding

Maintain mix of fee and public funding

The 2005 Legislature approved the BRC recommendations for additional public funds and a fee increase in DEQ’s wastewater program budget. In August 2006, DEQ completed 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. The fee rulemaking also simplified the permit fee structure in a number of ways:

- Multiple periodic fee requirements were changed to one annual fee.
- Obsolete fee categories were removed or combined with similar permit types to better reflect the mix of industries in Oregon.
- Fee invoicing is now phased so that the invoicing workload is spread evenly throughout the year.

The Legislature’s approval of public funds, in addition to the fee increase, maintained the BRC’s recommended mix of fee and public funding.

In 2007, DEQ is requesting “phase 2” of the BRC funding recommendations by requesting a 5% fee revenue increase and additional General Funds to support 2.5 FTE to assist permit writers with permit-related analyses, such as Whole Effluent Toxicity (WET) tests, to address compliance and enforcement issues, and to address continuing policy and technical issues such as incorporating water quality-based effluent limits into permits.

**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 wastewater permit program or 3%, whichever is lower. DEQ will 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, cost increases for benefits and salaries outpace 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

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 January, 2007)

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)
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).
4. DEQ has also taken steps to better focus efforts on meeting the BRC commitment to strengthen connections between 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. To achieve these important goals, an existing manager has been assigned to oversee the permitting section, TMDL section and standards program. The key goal is to have the standards, permits, and TMDL programs (which have operated in separate sections) work as a unit to achieve better integration of those programs.

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, 2007)
 - Biosolids Management (Complete)
 - SSOs/Wet Weather/Bacteria Standard (public review Spring, 2007)
 - Establishing Regulatory Mixing Zones (estimated completion February, 2007)
 - Incorporating the Temperature Standard in Permits (public review Spring, 2007)

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- Wastewater Reuse (2007, in conjunction with rule revision)
 - Stormwater/MS4 Permitting (TBD, memorializes permit decisions)
 - Flow Determinations (TBD)
 - Determining Appropriate Monitoring Conditions (TBD)
 - Documenting Permit Decisions (TBD)
 - Use of Compliance Schedules in Permits (2007)
 - Treatment of Effluent-Dominated Streams (TBD)
 - Incorporating TMDL Waste Load Allocations into Permits (e.g., temp, nutrients, etc.) (2007)
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 and October 2006. DEQ has two internal permit writer trainings planned during 2007.
 4. Accumulate all IMDs, guidance and checklists into a permit writer's guidance.
Status: Planned for 2007.
 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 can be met by developing an Electronic Permit Repository which will make individual industrial and municipal permits and supporting documents available electronically to water quality staff throughout the state. The effect of this easy access will be 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 will allow permits to be available to the public through the DEQ Web Site.) Funding for this project is provided through an EPA grant. The municipal permit wizard is scheduled to be updated during 2007.
 6. Establish Dispute Resolution Process. This 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 heard from 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 work on this during 2007.
 7. Renew Expired General Permits and streamline process for registration of applicants. The general permits that will be worked on and targeted for completion by the end of 2007 include: WPCF permits for vehicle wash water, wineries and small food processors,

underground storage tank cleanups, and sand and gravel operations. The rest of the general permits are prioritized in the following order, but do not yet have target dates:

- 1500-A: NPDES permit for underground storage tank cleanups (35 permittees)
- 100: Non-contact cooling water & 500: Boiler blowdown (96 permittees)
- 1700-A: NPDES permit for vehicle wash water (63 permittees)
- 200: Filter backwash (74 permittees)
- 300-J: Fish Hatcheries (expires 9/07) (36 permittees)
- 400-J: Log ponds (expires 9/07) (27 permittees)

We are working on a strategic plan for data systems and administration infrastructure which will help us evaluate options for the most effective way to streamline registration.

8. Bundle general permits and process them together when possible. Develop overall game plan for general permits that determines how we should utilize these or a similar tool in the future, including ideas such as individual template permits, geographically-based permits for single pollutants to follow TMDLs, permit by rule, and evaluate which tools might work best.

Status: The construction stormwater permit was renewed in December, 2005.

Remaining stormwater general permits were renewed in August, 2006. The off stream placer mining permit will be renewed in February, 2007. DEQ plans to bundle a series of WPCF permits for renewal by the end of 2007. If the Stormwater Program policy package is approved during the 2007 Legislative Session, DEQ will be able to evaluate opportunities for streamlining the program.

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

Status: Phase 1 permits modified July 2005; issuance of Phase 2 permits began in 2006; litigation on some of the Phase 1 permits is pending.

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 now issues all WPCF permits on a 10-year renewal schedule. DEQ's WPCF 600 general permit for off-stream placer mining activities that will be issued in February, 2007 will have 10-year duration. Additionally, DEQ plans to issue the WPCF bundle by the end of 2007 with a 10-year duration.

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: Programming completed; data entry completed. We expect to fully implement the DMS for major sources in early 2007. DEQ is requesting federal funding to develop an Electronic Discharge Monitoring Report (e-DMR) system that will allow permit

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holders to submit the required reports to DEQ electronically, directly into the DMS database. Currently, DEQ must manually enter all of the data that is submitted

2. Developed and implemented inspection plan for 2006 (completed). DEQ anticipates finalizing the 2007 inspection plan by mid-February.
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) (2007)
 - 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 (TBD). Once the grant request is funded, DEQ will work with permit holders and other key stakeholders to develop the methodology to submit DMR data to the EDMR system.

Accountability

Recommendation 1: Revise program performance measures

1. Establish data collection procedures for the recommended measures (Complete except for average length of time to respond to noncompliance situations):
 - Percent of wastewater permits that are scheduled on the basin cycle, as anticipated in the annual permit issuance plan
 - Percent of wastewater permits that are current
 - Number and average coverage timeframe for construction stormwater permits
 - Percent of DMRs that are reviewed in a timely manner
 - Average length of time to respond to noncompliance situations identified through a compliance assessment
 - Percent of major/minor/general permittees that receive a compliance inspection each year
2. Establish process for semi-annual review of measures by permit managers, Water Quality Division Administrator and Regional Division Administrators (Permit Managers and DEQ Administration review measures quarterly).
3. Make any database or report changes to facilitate easy reporting of measures (additional changes will occur during 2007).

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%/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 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.

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

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Fiscal Year	Staffing Pos/FTE	Fees*	GF/FF	Program Improvement	Comments
2008 ¹	1.5/1.5	3%; \$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%; \$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	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. (Rule adopted August 2006).
2. Review process and timing for invoicing (Completed).

¹ The 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 BRC recommendation anticipated that a 3% increase beginning in FY 2008 would generate \$228,000 in fee revenue in 2007-09. DEQ’s 2007-09 Agency Request Budget anticipates that the recommended 3% increase cannot be implemented until FY 2009 because of the legislative and rulemaking processes. Therefore, the request proposes to combine the BRC’s recommended 3% FY 2008 increase and its recommended 2% FY 2009 increase into one 5% increase in FY 2009 and delay the phase-in of the permanent, full-time position until FY 2009.

² The 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. (With the delayed phase-in of one permanent full-time position from FY 2008, DEQ’s Agency Request Budget, if approved, would phase in two permanent full-time positions beginning in FY 2009.) The BRC recommendation anticipated that a 2% increase that became effective for FY 2009 would generate \$78,000 in fee revenue. DEQ’s 2007-09 Agency Request Budget anticipates that the BRC’s recommended 3% increase for FY 2008 will be combined with its recommended 2% FY 2009 increase into one 5% increase in FY 2009. DEQ estimates the combined increase will generate \$199,000 in fee revenue in 2007-09.

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3. Develop process for rulemaking updates to include the 3% inflator each year (during 05-07 interim develop process for determining when inflator will be needed; evaluate need for inflator beginning in 07-09).
4. Develop and carry 07-09 policy package (Spring, 2006 and beyond).