

**Report to the Legislature**  
**Wastewater Permitting Program**  
**Improvements and Measures**  
January, 2010



State of Oregon  
Department of  
Environmental  
Quality





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# INTRODUCTION

## 1.1 Overview

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

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**Senate Bill 45 history** Governor Kulongoski introduced Senate Bill 45 on behalf of DEQ during the 2005 legislative session as part of the funding and program improvements package recommended by the Blue Ribbon Committee (BRC, Committee) on Wastewater Permitting.

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## 1.2 Background

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**What is the Wastewater Permitting Program?** DEQ's wastewater permitting program controls wastewater and stormwater discharges from a variety of sources. DEQ issues NPDES and WPCF permits that are either "individual" site-specific permits or "general" permits. Currently, the program regulates more than 6,300 facilities and activities (excludes onsite septic system permits) 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. Facilities that do not meet this definition of "major" are classified as "minor" permits.
- **Water Pollution Control Facilities (WPCF) permits**  
WPCF permits are issued pursuant to ORS 468B for disposal systems that do not discharge directly to surface waters, such as land irrigation activities and lagoons. (Note: Permits for residential septic tanks and drainfields are part of DEQ's onsite septic system program and are not included here.)

- **General NPDES and WPCF Permits**

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

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**Why was the Blue Ribbon Committee established?**

In 2001, DEQ had a high permit backlog with approximately 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 requirements, implementing more stringent water quality standards, implementing Total Maximum Daily Loads (TMDLs) and waste load allocations, and an increase in the number of sources that were required to be permitted; DEQ permitted 2,700 sources in 1994, more than 4,000 in 2001 and more than 5,000 in 2009. To address permitting concerns, DEQ convened a “Blue Ribbon Committee” in December, 2002 to assist the agency in identifying needed improvements to the wastewater permit program. The Committee included industry, environmental and local government representatives.

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**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 to do the following:

- Create a watershed-based permitting cycle to bring about better permit planning, accountability, and follow-up, as well as integration with other water quality programs and activities.
- Provide for up-to-date and consistent wastewater permitting to improve the timeliness and quality of the permits issued by DEQ.
- Develop a strong, effective and appropriate compliance and inspection program.
- Report annually to the EQC and the Oregon Legislature on various aspects of the wastewater permitting program. This report serves as the primary mechanism for DEQ to 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*.

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**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. In 2007 the Legislature added General Fund, approved a 5% increase in fee revenue, and phased in 2.5 additional positions. With these increases, DEQ's goals are:

- Reducing the major NPDES individual permit backlog to 10%.
  - Improving accountability by developing and tracking permit issuance plans and establishing individual performance expectations.
  - Improving emphasis on key water quality concerns and developing a more holistic solution by issuing permits using a watershed approach.
  - Providing support to DEQ's permit writers to address challenging scientific analyses such as evaluating toxicity testing and calculating water quality based limits.
  - Reviewing compliance data in a timely manner and improving compliance inspections.
  - Responding to violations in a timely manner.
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**DEQ Challenges**

Since DEQ began implementing the BRC Recommendations in 2005, there have been many successes as well as challenges. During 2009, DEQ encountered several obstacles to meeting its goals, including the goal to reduce the backlog to no more than 10%. These obstacles include:

- Litigation - During 2009, the DEQ wastewater permit program was involved in a great deal of litigation. Some of the litigation has required the permit program to postpone issuance of permits and divert resources from permit development to litigation response. Specifically, the TMDL lawsuits for the Willamette by several major permit holders held up issuance of seven major permits. A complete list of litigation affecting permit issuance is attached as Appendix C.
- EPA objections regarding the permitting of Sanitary Sewer Overflows (SSOs) – EPA raised objections to the template language in Schedule F – General Conditions section of the NPDES permits that DEQ has used since 2004 to incorporate the state water quality standard for bacteria into permits for municipal sewage treatment plants. This issue was resolved in late 2009 and DEQ resumed processing municipal permits after two years of negotiations.
- Compliance Schedules -The wastewater permit program had to also withhold issuance of any permit containing a compliance schedule since late 2007 as a result of litigation against the Environmental Protection

Agency (EPA). This litigation challenges EPA's approval process for Oregon's Water Quality Rules pertaining to the use of compliance schedules. DEQ has been working with the plaintiffs in the case and EPA to develop acceptable settlement terms.

- Staff turnover – Statewide, there were 6 (out of 62) positions vacant in the wastewater permit program for some or all of the year during 2009. Replacing these positions has been a challenge, particularly for the engineering positions. In cases when qualified staff have been hired, there is an impact on the availability of existing staff who are redirected to train new hires instead of working directly on permits.

All of these challenges have combined to significantly affect DEQ's success in achieving the backlog goal of 10%. However, a number of program successes have occurred and will be described in more detail in this report.

## 2. STATUS OF SENATE BILL 45 REPORTING REQUIREMENTS

### 2.1 Overview of reporting requirements

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

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

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

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### 2.2 Efforts to administer the water pollution control permit program on a watershed approach

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

**Status** DEQ developed an annual watershed-based inspection plan. DEQ has aligned the inspection plan with the watershed permit issuance plan by inspecting smaller facilities the year before their permit is scheduled for renewal. DEQ 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 to inspect at least 50% of all permits for large municipal facilities and industrial facilities, and all permits for smaller facilities in selected watersheds. DEQ met this goal inspecting 50% of larger facilities and 267 smaller facilities.

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. During 2009, DEQ contacted the majority of facilities at least two years before their renewal date. DEQ intends to meet this goal for all facilities in 2010. During 2009, DEQ developed a new approach to addressing water quality issues in Oregon. Under this new strategy water quality protection will be addressed in a comprehensive manner which integrates the multiple water quality programs (including wastewater permitting, water quality standards, Total Maximum Daily Load development, and nonpoint source protection program) as well as applicable programs that focus on air and land quality. The new strategy will allow DEQ staff, with partners, to identify priority water quality problems on a watershed scale and address them. A pilot project supporting the new strategy began during 2009 in the Deschutes basin.

DEQ has also taken steps to better focus efforts on meeting the BRC commitment to strengthen connections between internal water quality programs, with a particular focus on better communication and integration of permit implementation during development of Total Maximum Daily Loads (TMDLs) and water quality standards. The key goal is to have the standards, permits, and TMDL programs (which have operated in separate sections) work together to achieve better integration of those programs. To achieve these important goals, we have begun holding joint section staff meetings and trainings to enhance coordination and understanding between these subprograms. In addition, during 2009, the wastewater permit program worked very closely with the standards program and stakeholders in the development of new water quality standards for toxics and naturally occurring metals. This work will continue beyond the adoption of the new standards, planned for late 2010, to ensure implementation of the new standards is consistent in all permits issued after the implementation date.

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## 2.3 Are permits being issued on a watershed basis?

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**Status** In 2005, DEQ developed a permit issuance plan using a watershed approach. All individual permits were grouped into their specific watershed and a five-year cycle was established for each watershed.

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**DEQ's goal** DEQ's goal is to issue 95% of targeted individual wastewater permits on watershed basis by the end of 2010. However, legal issues caused DEQ to delay the issuance of certain permits over the past three years and DEQ was unable to issue permits according to the 2005 plan. Those legal issues have been largely resolved and DEQ recently revised its watershed-based permit issuance plan to reflect the current status.

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## 2.4 Level of permit backlog

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**Status** The BRC's key concern was the high backlog of expired individual permits for major NPDES facilities. DEQ was on track to meet the goal of reducing the backlog for major individual NPDES permits to 10% by the end of 2007 until EPA objected to the Sanitary Sewer Overflows permit language and DEQ became engaged in several lawsuits. Because some of the lawsuits were resolved during 2009 and the Sanitary Sewer Overflow permit language was agreed to late in the year, the major NPDES permit backlog has increased to 76% at the end of 2009 – up from 50% at the end of 2008. However, overall permit backlog, which includes all major, minor and general WPCF and NPDES permits, was 10% at the end of 2009. In addition, DEQ has made significant progress in other permit program areas not impacted by the lawsuits and EPA objections, including data management, developing implementation approaches for the new toxics criteria in future permits, permit program training and program development.

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**DEQ's goal** DEQ will continue to work toward reducing the backlog for major individual NPDES permits to 10%. DEQ expects to make significant progress on reducing the backlog during 2010 as the agreement with EPA on the Sanitary Sewer overflow language will allow DEQ to process all municipal permits that do not require compliance schedules.

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## 2.5 Timeframe that DEQ took to apply general permit coverage to applicants

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**Status**

DEQ's 24 general permits cover approximately 5,800 facilities and activities (excludes onsite septic system permits). The general permitting approach provides for a level of certainty for new applicants because they know the permitting requirements up front and a general permit can be obtained fairly quickly. This is compared to a new individual permit which can take six months or more to issue. During 2009, DEQ registered 953 facilities under general permits (new and renewal applications filed in 2009). The average time to assign coverage for applicants to an existing general permit was 10 days. 92 percent of new permit applicants were registered within 30 days.

Recent court decisions have created challenges to the timeframe for assigning general permit coverage to existing general permits 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 delays the time that it takes to assign general permit coverage. For these permits, DEQ tracks the amount of time it takes to assign coverage after the public comment period has closed.

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**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, the Legislature approved additional General Fund and fee revenue to phase in 14 permanent positions and 2.5 limited duration positions to develop and maintain a consistent and coordinated stormwater program that includes timely application reviews, public notice, technical assistance and inspections. The budget also included general funds to develop an online tool to provide technical assistance to applicants to develop erosion control plans, stormwater management plans and best management practices. The fee increase that supports these new positions was adopted by the EQC in June 2008. Six of the positions that had been scheduled to phase in Fall 2008 have been held vacant due to the low revenues in the stormwater program associated with the economic downturn. Two of those positions were cut during the General Fund reductions in early 2009. In addition, DEQ was unable to develop the online tool because of the 1.2% General Fund reduction that all state agencies are required to take in the 2007-09 biennium.

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## 2.6 Timely review and tracking of discharge monitoring reports

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### Status

Facilities permitted by DEQ are typically required to conduct laboratory analyses on wastewater discharges to determine if permit limits are being met. The results of these analyses are submitted to DEQ monthly in a document called a discharge monitoring report (DMR). DEQ currently tracks and reviews DMR reports manually, which is time consuming but necessary to ensure each is reviewed. During the fourth quarter of 2009, DEQ reviewed 97 percent of the DMRs for the 68 major sources within 30 days of receipt.

The Oregon Discharge Monitoring System (DMS), a database that stores DMR information for the permit program, has been completed and is fully operational. The DMR Evaluation Report from DMS identifies any monitoring requirements that may be missing, exceedances of permit limits, and any information that needs to be further examined. The information provided assists the permit writers and inspectors in the review of DMRs for major sources and makes the process more efficient.

EPA requires all states that implement the NPDES permit program to enter permit information into a federal database, called the Permit Compliance System (PCS). Oregon's NPDES permit information had not been regularly entered into EPA's PCS since 2004. During 2008, DEQ updated all of the data related to the 68 NPDES major permits in EPA's database and uploaded the backlogged DMR data for these facilities. In 2009, DEQ entered all remaining backlogged data required by EPA to be reported to the PCS database. DEQ is on track to ensure that all of the data is accurate and will keep PCS current on a monthly basis going forward by the end of February 2010.

DMRs for the 299 NPDES Individual minor sources are not being entered due to the volume of data involved. In order to generate an evaluation report for minor sources and be able to provide the data to the federal database, DEQ must develop the capability to receive DMR information electronically. DEQ received federal limitation in 2009's Legislatively-Adopted Budget to obtain a grant to develop an Electronic Discharge Monitoring Report (e-DMR) system from the 2007 Legislature. In addition, DEQ has received partial funding through a grant from EPA to develop the e-DMR system.

DEQ will look at multiple options for acquiring an e-DMR system, including a project being worked on in Texas that would be modified to meet the needs of Oregon. We do not expect to be able to begin working on this until 2010 or later due to limited development team resources. DEQ plans to work closely with permitted sources to ensure that Oregon's e-DMR 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 e-DMR is fully implemented.

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

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## 2.7 Timely issuance of permit noncompliance notifications

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**Status** DEQ is in the early planning stages for developing an Agency Compliance and Enforcement System that will include information from DEQ's Land Quality, Air Quality and Water Quality programs. Until the new database is complete, DEQ staff will track noncompliance notifications through other means. DEQ has developed the Discharge Monitoring System that automates review of monthly discharge monitoring reports (DMR) for major sources as described in 2.6 for timely DMR reviews. That automated DMR review process not only improves the precision and accuracy of comprehensive DMR reviews statewide, but also assists DEQ with timely response to permit violations.

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

## 3. ADDITIONAL PROGRAM IMPROVEMENTS

### 3.1 Overview of additional program improvements

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

- Issue timely, quality permits by investing in the program's infrastructure, expertise, and policy guidance.
  - Ensure stable, ongoing funding that improves fee predictability for rate payers and revenue for budget management by maintaining a mix of fee and public funding and allowing for an annual permit fee increase of up to 3% to help address increasing program costs.
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### 3.2 Quality permits on time

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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.
- Since the Water Quality Program began working on IMDs in 2005, eight have been completed covering critical permitting topics such as mixing zones, conducting reasonable potential analysis and implementing the temperature standard in permits.
- During 2009 DEQ completed IMDs addressing:
  - Sanitary Sewer Overflow (SSO) Enforcement
  - Recycled Water
  - Water Quality Trading in NPDES Permits
- DEQ is currently drafting IMDs addressing:
  - Implementation of bacteria standards and addressing sanitary sewer overflows in the permit process (wet weather issues)
  - Use of compliance schedules in permitting
  - Implementing federal and state bacteria standards for marine and estuarine environments

- 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. DEQ made changes to administrative rule OAR 340-045-0033, “Regulations Pertaining to NPDES and WPCF Permits” to address the transition of general permits that were adopted by rule to those adopted by administrative order. The rulemaking was adopted at the December 2009 EQC meeting. This will assist in DEQ’s ability to streamline the issuance of general permits in the water program.
- During 2009, DEQ brought national experts to Oregon to enhance DEQ’s understanding of how water quality standards are developed and applied and how to develop permits and that meet the federal requirements.
- DEQ is also in the process of developing a training program for permit writers that includes a curriculum on how to write permits and document decisions.

DEQ has worked closely with the Oregon Department of Agriculture to renew the general permit for confined animal feeding operations (CAFO). The CAFO general permit was renewed in June 2009. The Memorandum of Understanding between the EQC and the Department of Agriculture, which establishes the roles and responsibilities between DEQ and the Department of Agriculture was updated and approved at the December 2009 EQC meeting.

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### 3.3 Stable and ongoing funding

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#### **Maintain mix of fee and public funding**

The 2005 and 2007 Legislatures approved the BRC recommendations for additional public funds and a fee increase in DEQ’s wastewater program budget. There were no fee increases during 2009, but the wastewater permit lost approximately \$500K in general funds from General Fund reductions specifically for stormwater work. The current funding mix is approximately 60% fees and 40% general funds.

#### **Annual 3% fee increase**

Senate Bill 45 authorizes the EQC to increase permit fees on an annual basis. The amount of the annual increase may not exceed the anticipated increase in the cost of administering the wastewater permit program or 3%, whichever is lower. Generally, cost increases for benefits and salaries outpace inflation, but an annual 3% fee increase will help offset these costs. DEQ did not increase fees by 3% during 2009 because salary increases were frozen and mandatory furlough days were implemented, thus the program costs during 2009 were flat.

# 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

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(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.

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(C) Disciplinary procedures adopted pursuant to ORS 421.180.

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

Approved by the Governor July 15, 2005

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

Effective date January 1, 2006

# **Appendix B:**

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

(Revised December, 2009)

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)  
This needs to be updated once DEQ has settled the EPA issues and compliance schedule lawsuit.
2. Develop 5-year map and plan that shows where permit issuance focus will be in each year. (Complete) This needs to be updated once DEQ has settled the EPA issues and compliance schedule lawsuit.
3. Begin holding pre-application meetings with permittees in a watershed to communicate data needs and overall process. (DEQ is implementing this recommendation by communicating with all sources two years ahead of when their permit is scheduled to be renewed about what data is needed in order to complete the permit process).

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

1. Develop implementation guidance (Internal Management Directives) on:
  - Water Quality Pollution Trading (Complete; updated 2008)
  - Reasonable Potential Analyses (Complete; update in progress)
  - Subsurface Discharges (Complete)
  - Biosolids Management (Complete)
  - SSOs/Wet Weather/Bacteria Standard (in progress)
  - Establishing Regulatory Mixing Zones (Complete)
  - Incorporating the Temperature Standard in Permits (Complete)
  - Wastewater Reuse (Complete)
  - Stormwater/MS4 Permitting (TBD, memorializes permit decisions)
  - Sanitary Sewer Overflow (SSO) Enforcement (Complete)
  - Flow Determinations (TBD)
  - Determining Appropriate Monitoring Conditions (TBD)
  - Documenting Permit Decisions (TBD)
  - Use of Compliance Schedules in Permits (draft completed;)
  - Treatment of Effluent-Dominated Streams (TBD)

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- Incorporating TMDL Waste Load Allocations into Permits (e.g., temp, nutrients, etc.) (TBD)
  - Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems (TBD)
2. Establish Permittee Bill of Rights (Complete)
  3. Conduct Oregon-based permit writer training. Supplement with Oregon-specific training. Establish plan for refresher training content and frequency. Re-institute permit writer meetings.  
**Status:** Initial EPA training for all permit staff and others completed in January 2005. Internal permit writer training completed November 2005, May 2006, October 2006 November 2007, and December 2008. DEQ and EPA held a multiple day training class on conducting and documenting inspections in March 2008. During 2009, DEQ and EPA held a Permit Writers’ training in April 2009 and a Water Quality Standards Academy in October 2009. DEQ also conducted a permit writers training in the regional offices in mid-2009. The next permit writers training is scheduled for early February 2010.
  4. Accumulate all IMDs, guidance and checklists and trainings into a permit writer’s guidance.  
**Status:** Planned for 2010.
  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 after the Electronic Permit Repository is implemented. The project to implement a commercial software package is underway and is expected to be completed during the first quarter of 2010. The municipal permit wizard is planned to be completed by mid-2010.
  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.

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7. Renew Expired General Permits and streamline process for registration of applicants. The general permits that were completed in 2007 include: WPCF permits for vehicle wash water, wineries and small food processors, underground storage tank cleanups, and sand and gravel operations. The general permits position was vacated in December 2007 and after three unsuccessful recruitments, the position was filled in March 2009. Because of this no general permits were issued during 2009. The remaining general permits are prioritized in the following order, but do not yet have target dates:

- 700PM Suction Dredge permit (1872 permittees)
- Pesticide General permit (number of permittees to be determined)
  
- 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 (36 permittees)
- 400-J: Log ponds (27 permittees)

The pesticide general permit is a new general permit that needs to be issued and have the regulated community covered by no later than April 2011. The need for this new permit is derived from a court-ordered decision and date to the Environmental Protection Agency (EPA). States with EPA authorized NPDES permit programs also have to issue coverage under the new permits by this date. Oregon is part of an EPA work group that is following the development of this permit and keeping the Oregon Department of Agriculture and agricultural stakeholders informed. The development of this permit will continue through 2010. The new pesticide permit will be issued by no later than January 2011.

Additionally, 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 was renewed in February 2007. DEQ also renewed a bundle of WPCF permits by Administrative Order in December 2007.

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

**Status:** Phase 1 permits modified July 2005; issuance of Phase 2 permits completed May 2007; litigation on some of the Phase 1 permits is pending. DEQ is actively working with the Phase 1 communities in preparation for permit renewal in 2010.

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 issued the WPCF at the end of 2007 with 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:** The DMS system is completed and implemented, backlogged data has been entered and current data is being entered as received. DEQ has received federal funding to develop an Electronic Discharge Monitoring Report (e-DMR) system that will allow permit holders to submit the required reports to DEQ electronically, directly into the DMS database. Work will not start on the e-DMR application until 2010 or later due to other commitments of DEQ's Information Technology resources.
2. Developed and implemented inspection plans for 2006, 2007, 2008 and 2009 (completed). DEQ anticipates finalizing the 2010 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) (TBD)
  - Implementing Phase 1 Division 12 Revisions (Complete)
  - Using Split Samples (TBD)
5. Train inspectors on new guidance (initial training complete).
6. Adopt methodology for electronic reporting. Once DEQ begins work on the e-DMR system, we will work with permit holders and other key stakeholders to develop the methodology to submit DMR data to the e-DMR system.

## ***Accountability***

### **Recommendation 1: Revise program performance measures**

1. Establish data collection procedures for the recommended measures (Complete except for average length of time to respond to noncompliance situations):
  - Percent of wastewater permits that are scheduled on the basin cycle, as anticipated in the annual permit issuance plan
  - 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. A reporting system has been designed and has been given to the agency software development group for programming and implementation. Due to limited software development resources we do not have a firm completion date for this project.

### **Recommendation 2: Prepare annual report to EQC and Legislature on program performance and activities**

Pursuant to Senate Bill 45, passed by the Legislature in 2005, DEQ will report to the EQC and the Legislature on or before January 31 of each year:

- Progress made in administering a watershed approach to water quality permitting.
- Whether DEQ is issuing permits on a watershed basis.
- The level of permit backlog.
- The time frame to apply general permit coverage to applicants.
- The timeliness of the review and tracking of discharge monitoring reports.
- The timeliness of the issuance of permit noncompliance notifications.

### **Recommendation 3: Establish new accountability tools**

1. Monthly review status on interim milestones on permit issuance and report to permit managers; automate if possible (Ongoing).
2. Quarterly review progress on inspection plan and report to permit managers; automate if possible (Ongoing).
3. Establish individual performance expectations for permit writers and inspectors; incorporate into work agreements (Ongoing).

4. Establish a random after-the-fact permit quality review and feedback to the permit writer and manager (Ongoing). DEQ randomly reviews permits after issuance to evaluate whether the Internal Management Directive for conducting Reasonable Potential Analyses is being implemented consistently.

## ***Funding and Resources***

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

<b>Fiscal Year</b>	<b>Staffing Pos/FTE</b>	<b>Fees*</b>	<b>GF/FF</b>	<b>Program Improvement</b>	<b>Comments</b>
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 <sup>1</sup>	1.5/1.5	3%; \$228K	\$152K	One-half FTE Environmental	One half-time position to address compliance and

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<b>Fiscal Year</b>	<b>Staffing Pos/FTE</b>	<b>Fees*</b>	<b>GF/FF</b>	<b>Program Improvement</b>	<b>Comments</b>
				Law Specialist	enforcement issues and ensure timely response to Discharge Monitoring Report issues.
2009 <sup>2</sup>	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

<sup>1</sup> 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 new positions were to be funded by a 3% fee increase and General Fund. DEQ’s 2007-09 Legislatively Adopted Budget assumed the recommended 3% increase could not be implemented until FY 2009 because of the legislative and rulemaking processes. Therefore, the budget combined the BRC’s recommended 3% FY 2008 increase and its recommended 2% FY 2009 increase into one 5% increase in FY 2009 and delayed the phase-in of the permanent, full-time position until FY 2009.

<sup>2</sup> 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—funded by a 2% fee increase and General Fund. (With the delayed phase-in of one permanent full-time position from FY 2008, DEQ’s 2007-09 Legislatively Adopted Budget phased in two permanent full-time positions beginning in FY 2009.) DEQ’s 2007-09 budget anticipated that the BRC’s recommended 3% increase for FY 2008 would be combined with its recommended 2% FY 2009 increase into one 5% increase in FY 2009. The 5% fee increase was adopted by the Environmental Quality Commission in June 2008.

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

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

## **Appendix C: Oregon Water Quality Litigation as of 12.31.09**

### **WQ STANDARDS PROGRAM**

*NEDC v. EPA*, (U.S. Dist. Ct. Oregon 9/20/07). CWA and ESA challenge to EPA's approval of DEQ's compliance schedule rule. DEQ has intervened as a defendant. Settlement negotiations are ongoing.

*NWEA v. EPA*, (U.S. Dist. Ct. Oregon 12/13/05). Challenge to EPA's approval of Oregon water quality standards (primarily those relating to temperature) adopted in 2003. DEQ has intervened as a defendant. Until recently, EPA and Plaintiffs were fighting over record and discovery issues. These issues have been largely resolved and litigation on the merits is now moving forward.

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

### **TMDL PROGRAM**

*City of Albany v. DEQ*, (Linn County Cir. Ct. 3/19/07); *Metropolitan Wastewater Mgmt. Commission v. DEQ*, (Lane County Cir. Ct. 3/19/07); *NW Pulp and Paper Assoc. v. DEQ*, (Lane County Cir. Ct. 3/16/07). These cases involve challenges to the Willamette TMDL. The cases are being held in abeyance pursuant to settlement agreements. The cases will be dismissed when and if DEQ complies with the terms of the settlement agreements, which include promulgation of a revised TMDL scheduled for 2012.

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

### **PERMITTING PROGRAM**

#### **Stormwater Permits**

*Tualatin River Keeper v. DEQ*. (Oregon Court of Appeals 7/18/07). Challenge to MS4 permits issue for the Portland metropolitan area. Primary issue is whether numeric effluent limits are required by state water quality statutes.

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*NEDC v. Brown*. (U.S. 9<sup>th</sup> Cir. Ct of Appeals). CWA citizen suit against Oregon DOF alleging failure to obtain NPDES permits for forest roads. Case is a collateral challenge to EPA's silvicultural rule that defines discharges from most logging activities as nonpoint source pollution rather than industrial stormwater. DEQ is not a party but is monitoring the case.

*NEDC v. Grabhorn*, (U.S. Dist. Ct. Oregon 5/7/08). CWA citizen suit against landfill operator alleging discharge of stormwater without an NPDES permit. Discharge is alleged to have occurred through irrigation ponds that have a hydrologic connection to river. DEQ is not a party but is monitoring the case.

Industrial Permits

*NEDC v. EQC; Eastern Oregon Mining Association v. DEQ*. (Oregon Court of Appeals 9/2/05). Challenge to the 700 PM permit. The permit is a general permit, adopted by the EQC, that authorizes discharges from small scale suction dredges.

*State v. Ryan*, (Hood River Cir. Ct. 12/5/08). Criminal prosecution against the operator of a juice-making company for multiple counts of violating ORS 468B.025 by unlawfully discharging wastewater to waters of the State.

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

Domestic Permits

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

*Willamette River Keeper v. City of Aurora*, (U.S. Dist. Ct. Oregon 10/31/08). CWA citizen suit alleging violation of NPDES permit conditions. DEQ is not a party but is monitoring this case.

Onsite Permits

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

**Coastal Zone/Nonpoint Source**

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

**Others**

*NWF v. NMFS*, (U.S. Dist. Ct. Oregon, 5/3/01). Litigation involving a Biological Opinion regarding federally operated dams on the Columbia River system.

*State of Oregon v. FERC*, (U.S. 9<sup>th</sup> Cir. Ct. of Appeals). Challenge to FERC license for Bradwood LNG facility.