

**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 08/14/2003**



**State of Oregon
Department of
Environmental
Quality**

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State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commission **Date:** August 14, 2003
From: Lauri Aunan, Government Relations Manager
Subject: Budget and Legislative Update

DEQ's Budget

DEQ's budget (House Bill 5018) has passed both the House and Senate and should now go to the Governor for signature. The House vote was 43-16 and the Senate vote was 20-2.

Continue funding TMDLs and Oregon Plan for Salmon and Watersheds

- Funds \$1.38 million for Oregon Plan biomonitoring, steelhead supplement, volunteer monitoring, and Willamette TMDL with federal Pacific Coast Salmon Recovery Funds.
- Funds \$3.375 million for statewide Total Maximum Daily Load (TMDL), nonpoint source and monitoring work with Ballot Measure 66 Operating Fund.

Continue Hazardous Waste Business Assistance, \$808,000 General Fund. Last year, we assisted 360 businesses and trained 500 individuals in safe hazardous waste management. Loss of this General Fund would mean 50% fewer businesses receiving technical assistance. The initial Co-Chairs' budget proposed to cut this funding, but after stakeholders voiced their support, the Co-Chairs recommended continuing this work.

Fund Economic Development Coordination, \$617,000 General Fund. Last biennium, DEQ's budget included 2 staff for Environmental Partnerships for Oregon Communities (EPOC) and 4 Community Solutions Team (CST) staff. All of these positions were supported by General Funds, and were cut during the special sessions. During this session there was a question whether any of them would be funded. The budget funds four positions (three in the regions and one in headquarters) to do combined CST/EPOC work, in coordination with the Economic Revitalization Team in the Governor's Office.

Convert Clean Water State Revolving Fund Loans debt service payments from General Fund to self-financing from the Fund interest. The Governor's Revised Budget recommended cutting \$4.75 million in General Fund and to be replaced with self-financing. Self-financing reduces DEQ's capacity to make loans to communities for wastewater treatment plant upgrades, but without this General Fund cut, other DEQ programs would have been cut. Self-financing has been agreed to by EPA, is being done in other states, and is acceptable to bond counsel and the Department of Administrative Services.

Continue Vehicle Inspection Program. In 2001, the Legislature approved limited-duration state employee status for all Vehicle Inspection Program staff. Previously, half of the staff was state employees and half were contract employees through a personnel agency. This session, there have been efforts to privatize the program. The Subcommittee approved our policy package to continue

50 limited-duration state employees and 20 permanent state employees.

Laboratory Rent Increase. Portland State University has increased DEQ's rent for the laboratory space on its campus. The Subcommittee approved most of the requested funding to pay for this rent increase, but denied "bridge space" rent that would have paid for additional off-site office space for lab staff.

Approve relocation of DEQ/Health Lab. The Subcommittee recommended approval of \$6 million other funds capital construction limitation for purchase of a building suitable for retrofitting for use as a laboratory for DEQ and the Department of Human Services Public Health. Funds will be derived from the sale of Certificates of Participation by the Department of Administrative Services (DAS), and DAS must request limitation to complete the project from the legislative Emergency Board. DEQ and DHS are expected to pursue all possible federal sources of funding for the project. House Bill 5004, the mechanism for the \$6 million Certificates of Participation, passed both the House and Senate and has been signed by the Governor.

Work funded by Federal Funds or Other Funds. The Subcommittee approved all policy packages supported by Federal Funds or Other Funds. The majority of these policy packages allow continuation of current work – for example, TMDL implementation, drinking water protection, the La Pine on-site study, and pollution control tax credits.

General Fund cuts. The Subcommittee approved the following cuts to DEQ's proposed budget.

- Air Quality Business Assistance, \$63,000 General Funds, 0.18 FTE. Reduces pre-permitting assistance to new or expanding businesses.
- Environmental Cleanup, \$432,000 General Funds, and 2 FTE (**Note: The Subcommittee approved a shift of these positions to federal funding.**)
- Open Burning, \$210,000 General Funds, 1.5 FTE. Reduces investigation of open burning complaints by one-third.
- Water Quality non-point source policy coordinator, \$240,000, 1 FTE. Reduces coordination with federal and state agencies.
- TMDL Development position, \$170,000 General Funds, 1 FTE. Cuts base statewide TMDL work.
- Elimination of 10 vacant positions and \$141,000 in General Funds (and \$400,000 in Other Funds).

Adjustments for agency-wide reductions. All agencies have taken reductions in the elimination of merit and cost-of-living increases and the reduction of inflation allowances for the 2003-05 biennium, as well as reduced charges from the Department of Justice and Department of Administrative Services as a result of reductions made in those agencies' budgets.

Summary of special session and 2003 total cuts

As a result of all the special sessions and the reductions in our 03-05 budget, our total budget is reduced by about \$23.2 million and 49 positions from the 01-03 biennium. About \$15 million of the reduction is in General Funds. While these reductions are significant and will affect our ability to do some of our work, overall we achieved our budget priorities for the session. We have begun development of our operating budget, our "road map" to implementing the Legislatively Approved Budget. This exercise will inform exactly how our work changes as a result of the reductions. We

do know that the budget will be very tight. We need to comply with ongoing statewide administrative restrictions on travel and other expenditures. The budget includes assumptions about PERS savings, salary freezes and other reductions, and reality may differ somewhat from the assumptions. The possibility of future special sessions and further cuts cannot be ruled out at this time. Finally, we expect to be asked to offer up significant reductions as part of development of the 2005-07 budget.

Status of state budget

The Legislature is taking a "two-track" or "three-track" approach to the budget. Smaller or non-controversial budgets are being approved through the joint Ways & Means process. Larger or controversial budgets – including the Department of Human Services -- are being worked by the House Special Budget Committee and the Senate Special Budget Committee. Both the House and Senate are working on separate revenue-raising packages. The need to agree on revenue raising measures will make final agreement, and legislative adjournment, more difficult. The caucuses must provide the three-fifths votes for revenue raising measures.

Even for agency budgets that have passed, there may still be end-of-session budget balancing bills that affect all agencies or some agencies. The House has created a list of other fund ending balances in various accounts as a way to help balance the budget. To date, the only item for DEQ on the House list is \$2.4 million of the Vehicle Inspection Program ending balance. The Senate list has so far not included this ending balance.

Legislation Update

The transportation funding and economic development bill, House Bill 2041, has been signed by the Governor. The bill includes a new tax credit that goes into effect after the 2003-05 biennium, to be administered by DEQ for purchase of truck engines that meet new EPA standards for lower diesel emissions.

Senate Bill 467 creates the Community Solutions Team in statute, re-names it as the Economic Revitalization Team of the Governor's Office, and funds the Governor's Office staff for the Team. The bill also creates a process to identify "market ready" sites for industrial development, and requires the Oregon Economic and Community Development Department to develop a statewide economic development plan in consultation with local governments and businesses. This bill has passed Full Ways & Means and next goes to the Senate floor.

House Bill 2652 increases the maximum pollution control tax credit from 35 to 50 percent, adds biodiesel production facilities as eligible pollution control facilities, and increases the Business Energy Tax Credit for renewable energy facilities. The bill passed the House and is now in the Senate Revenue Committee. The Governor's office has voiced concerns about increasing the percentage of pollution control and business energy tax credits.

House Bill 3013 relates to land use approval and environmental standards applied to gravel mining operations. The bill has passed the House and Senate and has been assigned to Conference Committee. The Governor's Office has raised concerns about the bill.

House Bill 3645, brought forward by Waste Management, allows but does not require DEQ to approve the addition of liquids in landfills. The company would like to dispose of large quantities of

sediments at its Arlington solid waste disposal site. The addition of liquids to landfills in dry areas can be done in an environmentally sound manner. It has passed the House and Senate.

House Bill 3662 was introduced at the request of the Umatilla County Commissioners. The bill directs the Department of Revenue to estimate income and excise tax revenue derived from construction, operation or deconstruction of the Umatilla chemical weapons incinerator and distribute tax revenues to counties meeting a threshold level of incinerator economic activity. It has been assigned to the House Revenue Committee but is not yet scheduled for a hearing.

Senate Bill 196, the hazardous waste bill introduced by DEQ, has passed the House and Senate and been signed by the Speaker and President. It now goes to the Governor for signature. The bill increases hazardous waste fees to pay for some of DEQ's hazardous waste work. The Subcommittee removed provisions directing civil penalty money to DEQ to be used for hazardous waste business assistance, but it also maintained General Fund support for this assistance, so the two together were considered a budgetary compromise.

House Bill 5060 ratifies DEQ's air and water permit fee increases previously approved by the 2001 Legislature. The fees needed to be ratified for timely issuance of air and water permits. The bill has passed the House and Senate.

Senate Bill 751 addresses potential future state funding to clean up contaminated sediments in Portland Harbor. The bill was amended in committee to DEQ's satisfaction and has passed the Senate and the House. In its present form, SB 751:

- Does not change cleanup laws or liability for cleanup.
- Allows, but does not obligate, the state to pay any of the Superfund site's cleanup costs.
- Adds cleanup of Portland Harbor contaminated sediments as one of many authorized uses of the state Pollution Control Fund, but does not provide any money. The new use of this Fund is not inconsistent with other authorized uses, such as cleanup of state Orphan Sites.
- Creates a Willamette River Cleanup Authority comprised of the Governor and four legislators to receive periodic reports and make recommendations on bonding to pay for all or a portion of contaminated sediment cleanups.

Senate Bill 867 creates the Advisory Committee on Electronic Product Stewardship (members include DEQ, electronics industry, retailers, recyclers) within the Economic and Community Development Department. The Advisory Committee will examine reuse and recycling of electronic products and report findings to the 2005 Legislature. The bill also directs Metro to develop and implement a program for electronic products recycling and reuse. The bill has passed Full Ways & Means and now requires House and Senate approval.

Senate Bill 912 delays the 2004 requirement for glass containers to have 50% recycled content until 2008 (the current standard is 35 percent). The bill has passed the House and Senate.



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OREGON ASSOCIATION OF CLEAN WATER AGENCIES

**Remarks to the Environmental Quality Commission
Friday, August 15, 2003**

Regarding State Sovereignty in Water Quality Issues

Chairman Reeve and Members of the Commission:

The Oregon Association of Clean Water Agencies is a private, not-for-profit organization of 100 wastewater treatment and stormwater management municipalities throughout the state, and associated professionals.

We are represented today by our Chair Ron Bittler with the City of McMinnville, our past chair Charlie Logue with Clean Water Services and Executive Director Janet Gillaspie. We want to discuss with you the issue of state sovereignty in Oregon's water quality issues.

Oregon municipalities can only answer to one "boss" in water quality issues - - and the State of Oregon policy and our own organization policy - - recommends that "boss" should be the Department of Environmental Quality and the Environmental Quality Commission. We currently support, and continue to support delegation of the federal NPDES program to DEQ - - and that delegation puts DEQ and the Commission in the driver's seat. Both McMinnville and Clean Water Services are great examples of water quality improvements gained under Department and Commission direction. The Commission and the Department set deadlines - and those deadlines were met.

For McMinnville - the community approached DEQ to work out an agreed-to-schedule to build a sewage treatment plant that would meet the new phosphorus and ammonia discharge requirements of the TMDL for the Yamhill River.. The Department and Commission order signed in 1993 has guided the effort, and \$58 million has been spent to date in water quality improvements. The community, City Manager, Council, and Mayor provided the leadership for this local-initiated effort - - funded by an increase in sewer rates that resulted in McMinnville having the highest rate in Oregon. (McMinnville's rates are currently the 3rd highest in the state). The community acted to implement these improvements with the confidence that DEQ supported their plan.

For Clean Water Services - - when the Commission finalized one of the first TMDLs in the nation for phosphorus, Clean Water Services responded by stepping to the plate and initiating engineering and plant upgrades to meet the toughest phosphorus effluent limit in the nation - - 0.07 mg/l. After an investment approaching \$350 million dollars in CWS facilities, the water quality in the Tualatin River is improving.

-more-

Charles Logue, PE, Chair

Ron Bittler, Vice Chair

Ted Kyle, Secretary/Treasurer

We are not here to discuss the specifics of the Department and Commission's relationship with the City of Portland, nor its Amended Order. Our concern is with EPA attempting to step into the debate at this point...

Our members need assurance that when they reach agreement with DEQ and the Commission on the proper approach to solving an environmental problem - - that they are dealing with the correct people.

We would urge the Commission members and the Department to engage EPA staff to remind them of Oregon's delegated status. ACWA members can only answer to a single environmental "boss" - - and we would like that to remain DEQ and the Commission.

Environmental Quality Commission Meeting 8/15/2003 8:00am -3:00pm

Sign In:

Brad Harper

VIRGIL ADDRESS, City of Portland BKS, Presentation Support

Environmental Quality Commission Meeting 8/14/2003 11:00am -5:00pm

Sign In:

Brad Harper Water For Life, Inc.
P.O. Box 12748 Salem 97309

Jeff Owen, Oregon Env. Council

Kathryn VanNatta NWPPA

State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commission
David Van't Hof, Governor's Office

Date: July 29, 2003

Cc: DEQ Executive Management Team

From: Mikell O'Mealy, Assistant to the Commission and Director

Subject: Materials for August 14 EQC-EMT Retreat

On Thursday, we will hold a working retreat with DEQ's Executive Management Team (EMT) to discuss potential changes to the Strategic Directions DEQ adopted in December 2001 and the Key Actions designed to advance those Directions. The Commission has been vitally involved in the development of these priorities over the last two years, and your guidance at this point in the process will help frame the vision for how DEQ works cooperatively with all Oregonians for a healthy, sustainable environment. This retreat is the culmination of three "visioning" sessions the EMT has held this summer to consider changes to our priorities based on accomplishments to date and on Governor Kulongoski's Executive Orders pertaining to regulatory streamlining, sustainability and industrial lands.

On August 14, we will review a list of DEQ's accomplishments, work left to do, and proposed modifications for each Key Action under the Strategic Directions. We are now compiling that information into a summary document that we'll send to you during the week of August 4, along with some proposed discussion questions. For now, please review the attached background information to help set the context for our discussion.

- Current Strategic Directions document
- Revised Overview of DEQ's Strategic Directions
- Governor's Executive Orders on Regulatory Streamlining, Sustainability and Industrial Lands
- Director Hallock's email to staff entitled "Looking Forward," July 8, 2003

If you have any questions, please contact me at (503)-229-5301 or toll-free at 1-800-452-4011 ext. 5301 in the state of Oregon.

I look forward to seeing you soon.



Revised Overview of DEQ's Strategic Directions

Priorities and Key Actions		Performance Measures		2002	Target	Lead(s)	Report
<p>DEQ's</p> <p>Mission is to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, water and land.</p> <p>Vision is to work collaboratively with all Oregonians for a healthy, sustainable environment</p> <p>Values are: Environmental Results Customer Service Partnerships Excellence & Integrity Teamwork Employee Growth Diversity</p>	<p>I. Performance Excellence</p> <p>1. Make it easier to do business with DEQ. 2. Reinforce effect management. 3. Emphasize cross-program environmental problem solving. 4. Ensure understandable and equitable compliance and enforcement.</p>	1) Average % AQ/WQ permitted sources that rate DEQ's performance as meeting or exceeding expectations ¹	65%	75% ₂₀₀₄	Nina	Next in 2004	
		2a) % completed performance appraisals		95% ₂₀₀₃	Helen	Quarterly for 2003	
		2b) % of subprograms operating budget within a 10% variance		95% ₂₀₀₃	Holly	Quarterly for 2003	
		2c) % of satisfied employees		75% ₂₀₀₄	Helen	Next in 2004	
		2d) Placeholder: info. management and training measures - TBD			Helen	Baseline in 2003	
		3) Cross-program measure - TBD			Dick	Baseline in 2003	
		4a) Completion percentage for enforcement rule revisions project ¹	25%	100% ₂₀₀₃	Anne	Twice in 2003	
		4b) Time to complete compliance and enforcement process steps			Anne	Twice in 2003	
	<p>II. Protect Oregon's Water</p> <p>1. Implement a comprehensive watershed approach. 2. Develop a strategy to encourage broader reuse of wastewater.</p>	1a) Cumulative number of TMDLS completed according to the 2000 consent decree ¹	29%	41% ₂₀₀₅	Mike	Annually - Sept.	
		1b) Percent of total permits expired ¹	26%	15% ₂₀₀₃	Mike	Annually - Sept.	
		1c) Benchmark #78 - a. % monitored stream sites with significantly increasing trends in water quality/b. water quality in good to excellent condition/c. decreasing trends in water quality	51% 5% 46% ₂₀₀₁	75% 0% 40% ₂₀₀₅	Mary	Annually - Sept.	
		1d) Basin reports - TBD			Mike/RDAs	Baseline in 2003	
		2) % facilities reclaiming wastewater ¹	6.5%	10% ₂₀₀₅	Mike	Annually - Sept.	
		1a) Preparedness Annual Report			Dick	Annually - Sept.	
		1b) Umatilla project timeline project			Dennis	Annually - Sept.	
		1c) % chemical agent destroyed (Umatilla) ¹		20% ₂₀₀₅	Dennis	Annually - Sept.	
	<p>III. Protection from Toxics</p> <p>1. Prepare for and minimize the danger posed by the catastrophic release of dangerous chemicals. 2. Develop and implement a strategy to reduce toxic releases to air, water and land. 3. Reduce risks from toxic contaminants already in our environment.</p>	1d) % risk reduction over time (Umatilla)			Dennis	Annually - Sept.	
		2a) Lbs mercury removed through DEQ's reduction efforts ¹	35	40 ₂₀₀₃	Dick	Twice in 2003	
		2b) Toxics workgroup measures - TBD			Dick	Twice in 2003	
		2c) Air Toxics measures			Andy	Annually - Sept.	
		3a) Cumulative number of mines assessed ¹	53	77 ₂₀₀₃	Dick	Annually - Sept.	
		3b) Number of sediment milestones completed			Dick	Twice in 2003	
		<p>IV. Involve Oregonians</p> <p>1. Encourage personal actions by Oregonians to protect the environment. 2. Provide Oregonians with better access to information on local environmental conditions and issues. 3. Support communities in solving local problems.</p>	1) % of Oregonians who have modified behaviors			Nina	Baseline in 2003
			2a) Average number of web page-views per month ¹	247,585	350,000 ₂₀₀₃	Helen	Quarterly in 2003
			2b) Trends in web page-views for select pages			Nina	Baseline in 2003
			2c) % viewers that rate web-page as informative			Nina	Baseline in 2003
	3a) Number of communities with priority environmental issues that DEQ supports				Kerri	Quarterly in 2003	
	3b) CST impacts measure - TBD				Kerri	Baseline in 2003	

¹ APM = Agency Performance Measure, which are measures reported to the Legislature and annually to DAS.



EXECUTIVE ORDER NO. EO 03-01

REGULATORY STREAMLINING

Pursuant to my authority as Governor of the State of Oregon, I find that:

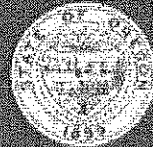
Oregon's economy is in distress. To meet this challenge, it is my highest priority over the next four years to facilitate the growth of jobs and stimulate the economy. The private sector is the engine of growth for the economy. As such, my economic development agenda seeks to create a stable climate for investment and a secure environment for business.

Governmental regulatory programs serve important goals in protecting Oregon citizens and making our state a better place to live. But, over time, regulatory processes can become outdated and inflexible. When this happens, those regulations impose unnecessary burdens on those who are regulated. Moreover, overlapping regulations and those which are inconsistently applied can result in confusion, wasted time, and duplication of effort.

The state must become more efficient and accountable to facilitate the growth of jobs and create a business suitable environment as well as to appropriately protect its citizens and our quality of life. To enable the private sector to more easily do business, and to encourage economic investment and opportunity in Oregon, state government must streamline its regulatory processes and eliminate duplicative practices. To continue protecting Oregon and our quality of life, streamlining must be accomplished without compromising necessary standards in areas such as environmental protection, land use, consumer rights, and health and safety.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. All state agencies that regulate business activities in Oregon shall review their regulations and regulatory processes and identify opportunities to streamline those processes to reduce regulatory burdens without compromising regulatory standards. A reviewing agency shall look for ways to achieve:
 - a. Consistency in interpretation and predictability in application of regulations on a statewide basis;
 - b. Flexible and problem-solving approaches in applying regulatory requirements, while maintaining compliance with underlying standards;
 - c. Better coordination and communication where government agencies have overlapping regulatory authority;



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- d. Faster resolution of conflicting standards;
 - e. More timely, understandable and fair permit and approval processes;
 - f. Elimination of any unnecessary paperwork, reporting or review requirements;
 - g. "User-friendly" processes, including increased use of technology to facilitate doing business with government; and
 - h. Rapid implementation of necessary changes to regulations and processes that achieve the purpose of this Executive Order.
2. All state agencies that regulate business activities in Oregon shall review and evaluate their delivery of customer service and customer satisfaction. Upon completion of review, each state agency shall develop and submit a plan to address any identified weakness and improve customer service. Agencies shall design customer surveys and other means of measuring customer satisfaction to ensure open, honest and constructive feedback. Each agency's plan shall be submitted to the Office of Regulatory Streamlining for inclusion in its annual report to the Governor as set forth in paragraph 6 of this Executive Order.
 3. There is established an Office of Regulatory Streamlining, reporting to the Director of the Department of Consumer and Business Services. The Office of Regulatory Streamlining shall work with state agencies and other public and private sector stakeholders to oversee the development and execution of actions to carry out this Executive Order. The Office of Regulatory Streamlining shall:
 - a. Assist agencies in identifying opportunities for streamlining regulations and regulatory processes;
 - b. Assist agencies to execute appropriate changes to reduce regulatory burdens;
 - c. Collect and share information concerning streamlining efforts and best practices;
 - d. Work with agencies to clarify and streamline regulatory and permitting processes that may benefit from a coordinated approach, including processes that cross agency lines, processes that involve other levels of government, or those that have been identified as creating significant and recurring barriers to economic development;
 - e. Investigate possible changes to administrative procedure laws to increase flexibility in administering regulations;



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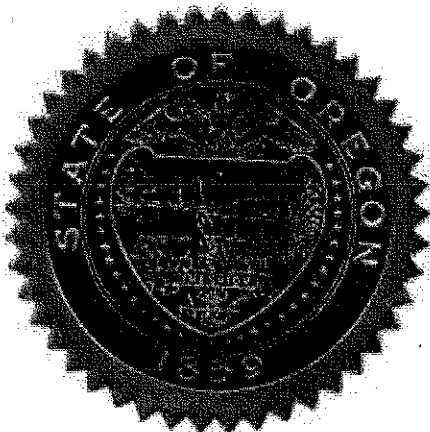
- f. Assist each agency in establishing its customer surveys and reports to be provided to the Office of Regulatory Streamlining under paragraph 2 of this Executive Order; and
 - g. Take all other necessary actions within the statutory authority of the Department of Consumer and Business Services to fulfill the purpose of this Executive Order.
4. The Community Solutions Office is directed to work with and provide assistance to the Office of Regulatory Streamlining in carrying out this Executive Order.
 5. To fulfill the purposes of this Executive Order, the Office of Regulatory Streamlining and state agencies shall seek input from regulated entities, other stakeholders, and citizens regarding the impact of current regulatory processes and the impact of making changes.
 6. All state agencies that regulate business activities in Oregon shall make regulatory streamlining efforts a priority, and shall periodically report to the Office of Regulatory Streamlining, as requested and in a form to be established by that Office, concerning regulatory streamlining activities and results achieved. The Office of Regulatory Streamlining shall report to the Governor, annually or as requested, concerning regulatory streamlining activities and accomplishments in accordance with the intent of this Executive Order.
 7. By separate Executive Order ("EO 03-02"), a Blue Ribbon Commission, to be known as the Industrial Lands Taskforce is established to address issues relating to the permitting of industrial lands. The focus of the Office of Regulatory Streamlining will be on permitting and regulatory streamlining in areas not addressed by EO 03-02.

Done at Salem, Oregon this _____ day of February, 2003

Theodore R. Kulonowski
GOVERNOR

ATTEST:

Bill Bradbury
SECRETARY OF STATE





EXECUTIVE ORDER NO. EO 03-03

A SUSTAINABLE OREGON FOR THE 21ST CENTURY

Pursuant to my authority as Governor of the State of Oregon, I find that:

While Oregon's economy is in distress, it has many assets: natural resources, a clean environment, extensive telecommunications and traditional infrastructure, and an educated and skilled workforce.

Oregon's economic recovery will be aided by establishing a commitment to lasting solutions that simultaneously address economic, environmental and community well-being. We should not continue to trade one essential aspect of well-being off against another, but we should take actions that will sustain Oregon's assets and put Oregon on the path to long-term prosperity in all aspects of life.

Sustainability is doing business with an eye to the triple bottom line — economy, community and environment. Oregon state government must define sustainability, produce goals within state government to achieve sustainability, identify challenges to achieving sustainability and measure our performance based on sustainability.

This executive order is intended to support and drive the goals of the Oregon Sustainability Act (Act) adopted by the Legislature in 2001. Using the powers vested in the Oregon Sustainability Board under the Act, this Order directs the Board and state employees to move us closer to a more "sustainable" state.

NOW, THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:

Board Actions

In accordance with the Oregon Sustainability Act (Act), ORS 184.423, Sections 2(5) and 3, the Oregon Sustainability Board (Board) is directed to manage and carry out this Order. To do so, it shall:

1. Constitute and convene a Sustainability Leadership Team ("Team") to provide recommendations to the Board and to manage and deliver Board directives to state agencies as approved by the Board. The Team shall be chaired by the Director appointed by the Board pursuant to Section 7 of the Act, or, in her or his absence, the Director of the Department of Administrative Services (DAS), and shall consist of the following members: the Director of DAS, the Chair of the Board, the Director of the Office of Energy, the Governor's Sustainability Advisor, the Director of the Economic and Community Development Department, the Director of the Oregon Progress Board, the Governor's Natural Resources Advisor, the Director of the Department of Housing and Community Services, and such other members as may be requested by the Board from time to time. The Team shall review, revise and recommend for Board approval the Plans prepared by each Agency Sustainability Coordinator as directed under this Order. Pursuant to its authority under the Act, the Board may request additional agencies to provide similar Plans from time to time, or request other actions consistent with its authority under the Act.



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2. Within 90 days of this Order, the Team shall deliver to the Board for its review and approval written guidance ("Sustainability Guidance") to state agencies regarding each agency's actions to comply with this Order. To the extent possible, the Team will seek expertise outside state government to assist in the development of the Sustainability Guidance. The Sustainability Guidance shall include the following:

- 2.1 a working definition of sustainability for state agencies to guide their actions;
- 2.2 suggested strategies for achieving greater sustainability;
- 2.3 a policy directive for economic, social and environmental sustainability that accounts for resource constraints and similar financial variables;
- 2.4 performance standards, targets and evaluation methods to determine agency compliance;
- 2.5 identification of key leverage points within and outside state government to enhance sustainability;
- 2.6 identification of cross-agency programs that intersect with sustainability goals;
- 2.7 state agency reporting protocols;
- 2.8 a means to assess the financial impact of proposed actions on state expenditures;
- 2.9 a directive to develop partnerships with other government and private entities;
- 2.10 identification of outreach programs to promote practices endorsed in this Order;
- 2.11 identification of training and staff development methods;
- 2.12 identification of potential incentives and acknowledgement for agencies that exceed performance expectations;
- 2.13 a directive that each state agency develop Implementation Plans ("Plans") to comply with these Sustaining Guidelines and any other directive on sustainability from the Board; and
- 2.14 any other guidance to enable state agencies to carry out this Order and sustainability directives from the Board.

3. Pursuant to Section 3 of the Act, the Board shall develop cooperative programs that involve local government, non-profit entities and private industry to achieve the objectives of the Act and this Order.

4. Under the direction of the Board, DAS shall update and maintain the current Oregon Solutions webpage.

5. Under the direction of the Board, the Economic and Community Development Department shall provide staff assistance for meeting scheduling, notification and drafting of documents for an Interagency Sustainability Network ("Network"). The Network shall be an informal forum of state agency personnel, including the Team and each Sustainability Coordinator, whose purpose is exchanging information and developing new approaches on sustainability among state agencies. State agencies should participate in the Network to the extent needed to support this Order. The Network forum will convene periodically to suggest recommendations to the Board on ways to enhance sustainability in Oregon through modification to the Sustainability Guidance, legislation, and other means.



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6. The Board shall recommend for the Governor's approval by December 1, 2003, and after approval for dispersal to all agencies through the Oregon Advisory Committee on Government Performance and Accountability, changes in performance management to better incorporate sustainability into the state's management practices. These recommendations shall include but are not limited to: performance standards for agencies, performance measurement and internal audit standards.
7. The Board shall provide guidance to state agencies on how to apply and support the Governor's Oregon Solutions and Community Solutions systems for community-based action to achieve the ten community objectives listed in ORS 184.423 (2).

State Agency Actions

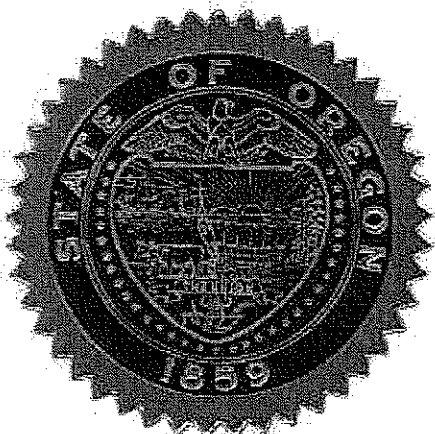
1. Within 90 days of the date of this Order, the director of the agencies identified in paragraph 3 below, shall designate a senior manager within each such agency as the agency's sustainability coordinator ("Sustainability Coordinator"). The Sustainability Coordinator is responsible for the agency's compliance with this Order.
2. Within 90 days of the Board's issuance of the Sustainability Guidance, each Sustainability Coordinator shall prepare a plan to implement such guidance and submit the plan to the Board ("Plan"). The agency's Plan shall include appropriate performance measures, and a strategy for meeting the Sustainability Guidance that is incorporated into the agency's 2- and 6-year strategic plans as well as the agency's biennial budget submission to DAS, as appropriate.
3. In accordance with ORS 184.423 Section 2 (5), the following agencies shall each develop and implement a Plan as described above in paragraph 1.: Administrative Services, Economic and Community Development, Environmental Quality, Land Conservation and Development, Housing, Forestry, Energy, Transportation, Progress Board, Agriculture, Watershed Enhancement, Parks and Recreation, Fish and Wildlife, State Lands, Water Resources, the Public Utilities Commission, Human Services, Corrections, Higher Education, and Community and Business Services.

Done at Salem, Oregon this 17th day of June, 2003

Theodore R. Kulongoski
GOVERNOR

ATTEST:

Bill Bradbury
SECRETARY OF STATE





EXECUTIVE ORDER NO. 03-02

INDUSTRIAL LANDS

Pursuant to my authority as Governor of the State of Oregon, I find that:

Oregon's economy is in distress. To meet this challenge, my highest priority over the next four years is to facilitate the growth of jobs and stimulate the economy. The private sector is the engine of growth for the economy. Accordingly, my economic development agenda seeks to create a stable climate for investment and a secure environment for business. I intend to position this state for a quick recovery from the downturn by actively promoting and aggressively working to retain, expand and recruit business to Oregon.

Under Sec. 1, Ch. 812, OR Laws 2001 (HB 3557), the Legislature appointed a special committee to investigate problems with the state's commercial and industrial land supply. That committee provided the legislature with recommendations to improve the land supply. Further, the Oregon Economic and Community Development Department, the Community Solutions Team, and the Department of Land Conservation and Development have each identified problems with the industrial land supply. Finally, the Oregon Business Plan for Growing Quality Jobs and Statewide Prosperity identifies critical land shortages for traded-sector industries that sell products and services outside the state, both in the near-term and for market ready sites.

We must continue to protect our natural resource base and a quality of life that is tied to our environment. But a strong economy is essential to assure the long-term sustainability and protection of Oregon's environment and its communities. It is critical that we sustain our local economies and communities to help move our economy forward again. Our efforts to date have raised valid questions as to whether our current supply of industrial land and our ways of preserving and developing it are suited to the needs of today's economy. It is time to act on recommendations and to tackle the questions raised. To respond to recommendations, questions and the needs of business so we can continue protecting our environment as well as our local economies and communities, we must take steps to create a ready supply of land for a variety of industrial uses.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. An Industrial Lands Taskforce ("Taskforce") is established, chaired by the Governor or a designee. The Taskforce shall be comprised of not more than 13 members. The Director of the Governor's Natural Resources Office shall identify and recommend individuals to the Taskforce that are knowledgeable about the issues faced by cities, counties, economic development organizations and businesses in providing an adequate supply of industrial lands.



EXECUTIVE ORDER NO. 03-02
PAGE TWO

- a. The Taskforce may take action at any meeting in which a quorum of the members on the Taskforce are present. A quorum shall exist if a majority of the Taskforce is present at a meeting. An affirmative vote of a majority of members present at a meeting in which a quorum is present shall be required to take any action, including a recommendation to the Governor.
 - b. The Taskforce shall evaluate concerns and proposals for developing, identifying and protecting our short and long-term industrial land supply. As part of that evaluation, the Taskforce shall call and conduct statewide regional meetings to solicit views regarding these matters. It shall also solicit and review correspondence concerning these matters from Oregon communities, economic development and land use experts, citizens, and business people. After conducting all necessary meetings and reviewing the solicited comments, the Taskforce shall present its findings to the Governor as soon as is reasonably practicable.
2. The Community Solutions Team ("CST"), with the assistance of the Community Solutions Office, shall:
- a. Designate, as its first priority, the Shovel Ready Industrial Sites Initiative, designed to identify and prepare sites to make ready for immediate development opportunities. To meet this directive, it shall:
 - i. Complete an inventory of initial sites and identify the issues to resolve in order to make each such site shovel-ready;
 - ii. Coordinate with local governments, state agencies, and other involved parties to resolve the issues identified to make these sites shovel-ready; and
 - iii. Complete development of a Site Certification Process.
 - b. Provide staff support to the Taskforce.
 - c. Develop legislative concepts to resolve industrial land problems and deliver the concepts to the Governor as soon as is reasonably practicable.
 - d. Submit a schedule to the Governor within 30 days of this Executive Order, that identifies a proposed timeline and dates upon which CST's actions required under this Executive Order shall be completed.
 - e. CST shall coordinate the efforts of those state agencies represented in CST to review each such agency's authority to modify economic development grant and loan programs to assist industrial job creation.



EXECUTIVE ORDER NO. 03-02
PAGE THREE

- f. CST shall deliver a report to the Governor, annually or as requested, regarding the actions taken and results achieved under this Executive Order.
3. The Director of the Division of State Lands shall implement the pilot wetlands and industrials lands project to the extent federal and state law permits. At the completion of this pilot project, DSL shall provide written recommendations to CST about the potential for extending the pilot project to other appropriate locations in the state. If appropriate, CST will include DSL's recommendations in its annual report to the Governor.
4. CST shall ensure that the actions taken and results achieved from the tasks required by this Executive Order shall compliment and be consistent with the actions taken and results achieved under Executive Order No. 03-01 regarding Regulatory Streamlining.

Done at Salem, Oregon this _____ day of February, 2003

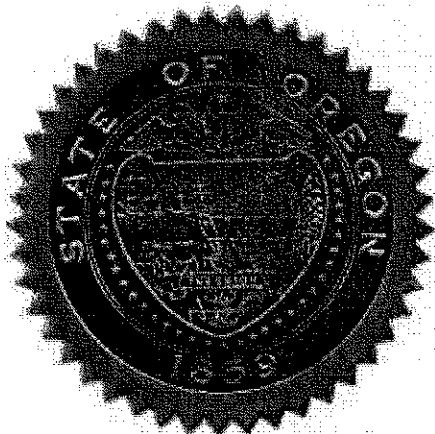
Handwritten signature of Theodore R. Kulonkoski.

Theodore R. Kulonkoski
GOVERNOR

ATTEST:

Handwritten signature of Bill Bradbury.

Bill Bradbury
SECRETARY OF STATE



OMEALY Mikell

From: HALLOCK Stephanie
Sent: Tuesday, July 08, 2003 12:55 PM
To: (All DEQ) staff Statewide
Subject: Looking Forward

Everyone:

Although much time has been dominated by the legislative session, the Executive Management Team has been able to hold a series of one-day "mini retreats" to fine tune the key actions that support our four strategic directions. We will get together three times prior to our strategic planning session with the EQC in August. I am meeting with regional offices and HQ divisions to discuss the budget and strategic directions, but it will take awhile before I connect with everyone, so I want to share where we are at this point.

As you know, our four strategic priorities are:

- Deliver Excellence in Performance and Product
- Protect Oregon's Water
- Protect Human Health and the Environment from Toxics
- Involve Oregonians in Solving Environmental Problems

Each of the strategic priorities is supported by a set of broad key actions, which in turn are implemented through specific targets and performance measures as reflected in program and individual work plans.

Some of the efforts we have undertaken to implement the strategic directions and current key actions are: revision of the Division 12 enforcement rules ("Ensure understandable and equitable compliance and enforcement"); providing customer service and writing training ("Make it easier to do business with DEQ"); air quality toxics rules soon to go to EQC ("Develop and implement a strategy to reduce toxic releases to air, water and land"); numerous Community Solutions and EPOC projects ("Support Communities in solving local problems"), restructuring our performance management system ("Reinforce Effective Management"), the Information Management Assessment Project ("Provide Oregonians with better access to information on local environmental conditions and issues"), and development of TMDLs ("Implement a comprehensive watershed approach"). These are just a few examples of activities many of you have participated in to help us succeed in fulfilling our strategic priorities.

The good work by each of you in conducting DEQ's business has served us well in the legislature and the budget battles. DEQ is continually mentioned by members of the legislature and by stakeholders as the model for how they would like to see state agencies work with customers and improve processes. Thank you all for your efforts.

Now it is time to update our priorities and key actions to reflect budget realities and Governor Kulongoski's expectations of agencies. In addition, the EMT wants to be sure that as we look to the future we are enhancing the science and information foundation of our work, and that we work with all staff to make DEQ the "employer of choice" for everyone who works here or contemplate a future career in government.

Some changes we have discussed are: Using the key action "Making it easier to do business with DEQ" to integrate implementation of the Governor's Executive Order on Regulatory Streamlining, and modify key actions in both the Water and Toxics strategic priorities to fulfill commitments in the Executive Order on Sustainability. (I have asked Andy Ginsburg to lead this effort). In Water, the key actions should reflect the effort we are putting into restructuring the wastewater permitting program and reducing the permit backlog. Our key action to "Encourage personal actions by Oregonians to protect the environment" might need to be more focused on partnerships we are forming with organizations like SOLV. Under the "Excellence" priority, the key action to "Reinforce Effective Management" needs to more precisely define what we need to do to make DEQ the "employer of choice" (we will be asking for lots of input from all of you on this one for sure, as well as the others.) Finally, the new DEQ and Health Regional Laboratory can serve as the foundation for a world-class science and information center for DEQ – this concept needs to be clearly articulated in our strategic priorities. These are just some of the changes we will be thinking about and discussing.

I stress that we are not creating new strategic priorities – they remain the four listed above. We are moving to the next generation of key actions that support these priorities. Some of the key actions may remain the same, and some may

7/25/2003

be modified as described here. This will be an inclusive dialogue with managers and staff, which is why I want to let you know that this dialogue is starting. As I have said all along, strategic planning is an iterative process and the strategic directions are intended to be dynamic – a roadmap for the future, not a document that is done once and stuck on a shelf. As we learn more and plan better, we will be able to articulate the key actions with more precision and clarity, as well as redefine some of the work that needs to be done.

This is the exciting and rewarding part of being the Director – to define and invest in the future of the people who work at DEQ and in the science that informs the policy choices we make. I look forward to our continuing dialogue and collaboration in protecting the environment and making DEQ a challenging and supportive workplace for each of you every day.

Stephanie

State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commission **Date:** August 4, 2003
From: Helen Lottridge, Management Service Division Administrator
Subject: Additional Retreat Materials for Strategic Directions Discussion

The attached document is the product of work accomplished at three previous Executive Management Team (EMT) retreats. The document presents information about what we committed to accomplish in the current Strategic Directions document, what we have accomplished to date, and proposed refinements to the Strategic Directions. This information compliments materials you should already have in your packets:

- Current copy of Strategic Directions
- Copy of Strategic Directions Overview (1 legal page)
- Copies of the Executive Orders on Sustainability, Regulatory Streamlining and Industrial Land Use.

At the retreat on August 14th, we plan to answer three questions for each of the four Strategic Priorities:

1. Do the proposed refinements to the Key Actions and Initiatives represent the "right" priority work for the Agency?
2. Are there other things that should be added as Key Actions or Initiatives?
3. Recognizing that resources are limited, should anything come off the list of proposed refinements to the Key Actions or Initiatives?

The information generated from this retreat will be used to create a Revised Strategic Directions document that expands our implementation timeframe out to 2007. A draft of this document will be presented to all Managers at the September 11th Managers Conference.

I look forward to working with you in August.

Helen



Strategic Directions Discussion Document: Prepared for EQC/EMT Retreat, August 2003

Priority 1: Excellence in Performance and Product		
Strategic Directions 2002 What We Said We Would Do	What We've Accomplished Thus Far	What the Revised Document Might Say (Proposed Changes are in Italics)
<p>1. Make it easier to do business with DEQ</p> <ul style="list-style-type: none"> • Strive to improve customer service and streamline our regulatory process • Make improvements to programs that affect small businesses and individuals • Conduct a survey to identify service improvement opportunities 	<ul style="list-style-type: none"> • Collected baseline data on customer satisfaction among permitted sources in air and water quality • Provided customer service training to front-line air and water quality staff 	<p><i>1. Deliver terrific service</i></p> <ul style="list-style-type: none"> • Continue survey and customer service training for the rest of staff statewide • <i>Implement Regulatory Streamlining EO</i> • <i>Develop and implement an agency-wide strategy for small, medium and large businesses and municipalities</i>
<p>2. Reinforce effective management</p> <ul style="list-style-type: none"> • Better operating budget management • Assess our performance evaluation methods 	<ul style="list-style-type: none"> • Revamped rule revisions process • Developed a new performance management system • Redesigned the employee survey to be a more effective indicator of employee satisfaction and to provide feedback on effective management. Collected and reported new baseline information in November 2002. • Achieved greater operating budget "control" using stoplight measure and periodic evaluations. Green lights trended from 79-91%, and red lights dropped from 6% to 0%. 	<p><i>2. Develop a work climate that supports excellence</i></p> <ul style="list-style-type: none"> • Continue strides made in fiscal accountability • Implement new performance management system • <i>Identify what's needed to make DEQ an 'employer of choice'</i> • <i>Develop a comprehensive succession plan, which includes a leadership development plan</i> • <i>Develop and implement an employee suggestion program-ENGAGE</i>

Strategic Directions Discussion Document: Prepared for EQC/EMT Retreat, August 2003

Priority 1: Excellence in Performance and Product		
Strategic Directions 2002 What We Said We Would Do	What We've Accomplished Thus Far	What the Revised Document Might Say (Proposed Changes are in Italics)
<p>3. Emphasize cross program environmental problem-solving</p> <ul style="list-style-type: none"> • Implement actions that focus on improving cross-program problem solving 	<ul style="list-style-type: none"> • Declared the list of 10 cross program actions to be complete. Any remaining follow-up action will be assumed under Reinforce Effective Management. • Formed a cross-program management team to guide cross-program work in the agency. 	<p>3. <i>Cultivate wise¹ environmental decisions</i></p> <ul style="list-style-type: none"> • <i>Continue our measurement development work</i> • <i>Expand our cross-program/media efforts include cross-agency work</i> • <i>Evaluate our policy work, which includes our public input process (may include a review of the advisory committee process, but this would not be highlighted in revisions to this document)</i> • <i>Create stronger links between science and information through establishing a Science and Information Center</i>
<p>4. Ensure understandable and equitable compliance and enforcement</p> <ul style="list-style-type: none"> • Assess and modify compliance and enforcement procedures to ensure consistent, understandable and timely enforcement actions. • Evaluate rules governing enforcement and determine whether to make changes to ensure equity 	<ul style="list-style-type: none"> • Division 12 enforcement rules revisions are scheduled to go before the EQC in December • Restructured enforcement database to allow for collection of information on timeliness. 	<p>4. <i>Ensure clarity and consistency in enforcement, compliance and technical assistance</i></p> <ul style="list-style-type: none"> • <i>Modify procedures</i> • <i>Implement revised rules</i> • <i>Continue data management and timeliness tracking efforts</i> • <i>Explore working toward cross-media technical assistance and inspections(needs more EMT discussion)</i>

¹ The EMT had an extensive discussion about the word "wise" – which is used by the "wise use" movement that advocates for resource extraction on protected lands. The concept is about making holistic, integrated, good decisions.

Strategic Directions Discussion Document: Prepared for EQC/EMT Retreat, August 2003

Priority 2: Protect Oregon's Water		
Strategic Directions What We Said We Would Do	What We've Accomplished Thus Far	What the New Document Might Say (Proposed Changes are in Italics)
<p>1. Implement a comprehensive watershed approach</p> <ul style="list-style-type: none"> • Committed to success of the Oregon Plan • Develop TMDLs for all impaired waterbodies in the state by 2007 • Shift permit renewal to a watershed basis • Work to minimize permit backlog 	<ul style="list-style-type: none"> • Achieved status of being ahead of the TMDL consent decree schedule • Conducted a sufficiency analysis of the Forest Practices Act (FPA), which indicated general consistency between TMDLs and the FPA • Formed the Blue Ribbon Committee to look at the water quality permit program. • Assigned an internal team to address permitting backlog. 	<p>1. <i>Improve water quality through a watershed approach</i> [Include in commentary that this is a focus on minimizing surface water pollution.]</p> <ul style="list-style-type: none"> • <i>Continuation of TMDL work – date for completion is now 2010</i> • <i>Begin to evaluate implementation of approved TMDL's to assure progress in addressing water quality</i> • <i>Aggressively market the SRF loan program for nonpoint source projects</i>
		<p>2. <i>Improve DEQ's wastewater management program resulting in minimizing the program's permitting backlog</i></p> <ul style="list-style-type: none"> • <i>Continue Blue Ribbon Committee</i> • <i>Implement strategies for minimizing permit backlog</i>
<p>2. Develop a strategy to encourage broader reuse of wastewater</p> <ul style="list-style-type: none"> • Foster opportunities for water reuse 	<ul style="list-style-type: none"> • Completed internal workgroup report that recommends alternative actions for expanding reuse. • Revised SRF rules to favor projects with reuse provisions. 	<p>3. Develop a strategy to encourage broader reuse of wastewater</p> <ul style="list-style-type: none"> • <i>Implement strategies for fostering greater water reuse (use the SRF example)</i>
		<p>4. <i>Develop a comprehensive Willamette River strategy</i></p> <ul style="list-style-type: none"> • <i>Complete TMDL for mainstem as well as 9 of 12 subbasins</i> • <i>Address issues related to Newberg Pool and abandoned mines on the Willamette</i> • <i>Manage Portland Harbor Cleanup</i>

Strategic Directions Discussion Document: Prepared for EQC/EMT Retreat, August 2003

Priority 3: Protect Human Health and the Environment from Toxics		
Strategic Directions 2002 What We Said We Would Do	What We've Accomplished Thus Far	What the New Document Might Say (Proposed Changes are in Italics)
<p>1. Prepare for and minimize the danger posed by catastrophic release of dangerous chemicals</p> <ul style="list-style-type: none"> • Participate in development of state preparedness plan • Expand DEQ's range of preparedness • Ensure DEQ's laboratory is prepared to safely analyze unidentified substances • Ensure that public and environment are protected from risks associated with storage and destruction of chemical agents 	<ul style="list-style-type: none"> • Developed DEQ's Emergency Response and Recovery Plan • Authorized surrogate operations, approved trial burn plans, completed one surrogate trial burn, and issued draft storage HW permit for public review at the Umatilla Depot Project • Installed small containment laboratory and developed protocols for handling unknown samples • Participated in national effort to raise laboratory capability gaps 	<p>1. Prepare for and minimize the danger posed by catastrophic release of dangerous chemicals</p> <ul style="list-style-type: none"> • Continue our preparedness and Umatilla Depot efforts • <i>Find funding to establish a 21st century Laboratory facility including adequate containment and analytical capabilities for unknown samples</i>
<p>2. Develop and implement a strategy to reduce toxic releases to air, water and land</p> <ul style="list-style-type: none"> • Develop community based air toxics reduction plans • Seek new ways to help Oregonians reduce the use of toxic chemicals and the amount of hazardous waste generated • Work with stakeholders to find cost-effective, comprehensive solutions to reducing toxic pollutants that pose the greatest hazard – focused first on mercury 	<ul style="list-style-type: none"> • Developed state air toxics program rules on track to be considered by EQC in October 2003 • Completed statewide emissions inventory • Monitored air toxics in Portland and Eugene • Formed cross-media toxics team • Selected mercury as an initial point of focus for toxics reduction and began working collaboratively with stakeholders to reduce mercury in the environment. • Developed proposed revisions to the surface water quality toxics criteria, which come before EQC in January 2004 	<p>2. <i>Prevent and</i> reduce toxic releases to air, water and land</p> <ul style="list-style-type: none"> • Continue air toxics and mercury prevention efforts • <i>Integrate relevant aspects of the Sustainability EO</i> • <i>Develop a broader Agency PBT strategy</i> • <i>Add reference to cross-program approach here</i>

Strategic Directions Discussion Document: Prepared for EQC/EMT Retreat, August 2003

Priority 3: Protect Human Health and the Environment from Toxics		
Strategic Directions 2002 What We Said We Would Do	What We've Accomplished Thus Far	What the New Document Might Say (Proposed Changes are in Italics)
<p>3. Reduce risk from toxic contaminants already in our environment</p> <ul style="list-style-type: none"> • Work to identify abandoned mines that pose the greatest potential risk • Identify and streamline strategies to address contaminated sediments cleanup and source control 	<ul style="list-style-type: none"> • Declared several abandoned mine sites as "Orphans"; cleanup is moving forward • Worked to form collaborative partnerships with federal land management agencies on Abandoned Mine Land (AML) issues. • Formed an internal cross media team to work on sediment contamination issues. 	<p>3. <i>Cleanup and</i> reduce risk from toxic contaminants already in our environment</p> <ul style="list-style-type: none"> • Continue work on mines and sediments • <i>Identify funding sources for cleanup efforts</i>

Strategic Directions Discussion Document: Prepared for EQC/EMT Retreat, August 2003

Priority 4: Involve Oregonians in Solving Environmental Problems		
Strategic Directions 2002 What We Said We Would Do	What We've Accomplished Thus Far	What the New Document Might Say (Proposed Changes are in Italics)
<p>1. Encourage personal actions by Oregonians to protect the environment</p> <ul style="list-style-type: none"> • Educate Oregonians on additional ways to reduce their impact on the environment • Survey Oregonians to identify where changes in individual actions will results in the most gains • Develop an educational campaign that leverages public-private partnerships 	<ul style="list-style-type: none"> • Identified pilot program to reduce use of cosmetic pesticides in two communities (Tualatin & Eugene) • Completed some initial behavior research 	<p>1. Encourage personal actions by Oregonians to protect the environment</p> <ul style="list-style-type: none"> • Continue working on previous activities • Implement pesticide program in the Spring of 2004 • <i>Integrate relevant aspects of the Sustainability EO</i> • <i>Incorporate recycling and reuse issues</i> • <i>Add reference to partnering with civic groups such as SOLV</i>
<p>2. Provide Oregonians with better access to information on local environmental conditions and issues</p> <ul style="list-style-type: none"> • Increase the quality and quantity of environmental information available to Oregonians • Make environmental monitoring data about pollution levels in geographic areas more accessible • Expand and improve methods for accessing information • Improve the electronic infrastructure and links among other state agencies • Evaluate our information systems to develop a more comprehensive, agency-wide information management strategy 	<ul style="list-style-type: none"> • Completed the evaluation of our information systems - IMAP • Formed Information Management Advisory Council • Provided detail about all regulatory programs through an integrated web site (Facility Profiler) • Published compliance data on the web • Launched a project with DHS (Health) to correlate environmental and health data. • Received an EPA grant to develop means to easily exchange WQ data with other agencies, local, state, and federal. 	<p>2. Provide Oregonians with better access to information on local environmental conditions and issues</p> <ul style="list-style-type: none"> • <i>Implement information management plan</i> • <i>Add references to some of the public information services we now provide (i.e. clean air action days)</i> • <i>Expand to discuss internal/external uses of information and other public involvement work</i> • <i>Reference the Science and Information Center</i>

Strategic Directions Discussion Document: Prepared for EQC/EMT Retreat, August 2003

Priority 4: Involve Oregonians in Solving Environmental Problems		
Strategic Directions 2002 What We Said We Would Do	What We've Accomplished Thus Far	What the New Document Might Say (Proposed Changes are in Italics)
<p>3. Support communities in solving local problems</p> <ul style="list-style-type: none"> • Participate on state agency Community Solutions Teams (CST) • Use CST and EPOC to support community-based problem solving 	<ul style="list-style-type: none"> • Prior to April 15, 2003, DEQ provided leadership on more than 50% regional CSTs projects. On April 15, 2003, DEQ budget cuts significantly reduced DEQ's CST efforts. Projects that DEQ led shifted to staff or manager leads, or were dropped. • Developed, over last 18 months, 15 EPOC projects bring total funded projects to 59. During the same time frame, compliance schedules went from 23 to 28. Similar to CST, DEQ's ability to make progress on funding EPOC projects is limited by staff reductions to the program. 	<p>3. Support communities in solving local problems [help communities, help environment]</p> <ul style="list-style-type: none"> • <i>Implement industrial Lands EO (SRF, brownfields)</i> • <i>Introduce community support concept for problem solving (formerly CST & EPOC)</i> • <i>In Partnership with the Division of Health Services complete Source Water Protection plans to protect public drinking water supplies</i>

Minutes are not final until approved by the Commission.

Oregon Environmental Quality Commission Minutes of the Three Hundredth and Twelfth Meeting

**July 17-18, 2003
Regular Meeting¹**

The following Environmental Quality Commission (EQC, Commission) members were present for the regular meeting, held at the Department of Environmental Quality (DEQ, Department) headquarters building, Room 3A, 811 S.W. Sixth Avenue, in Portland, Oregon.

Mark Reeve, Chair
Tony Van Vliet, Vice Chair
Deirdre Malarkey, Member
Lynn Hampton, Governor's Appointee

Thursday, July 17, 2003

On Thursday, the Commission met at Willamette Park near downtown Portland to hear an update on DEQ's development of pollution loads for the Willamette River and see a demonstration of water quality sampling methods. Greg Aldrich, DEQ TMDL manager; Jared Rubin, DEQ Western Region Water Quality specialist; Greg Pettit, DEQ Laboratory Water Quality Manager; and Steve Mrazik and Greg Coffeen, DEQ Laboratory staff members led the presentation and demonstrations. The Commission also discussed plans for reclaiming and restoring Ross Island in the Lower Willamette River and toured the island area by boat. Mike Rosen, DEQ Northwest Region Cleanup Manager, and Jennifer Sutter, DEQ Northwest Region Project Manager, led the discussion. Commissioners were joined by Portland City Commissioner Erik Sten, Mike Houck from Portland Audubon/Urban Greenspaces Institute, Jim Rue from Ross Island Sand & Gravel, and Julie Wilson from EnviroIssues for the discussion and tour.

Friday, July 18, 2003

At 8:00 a.m., the Commission held an executive session to consult with counsel concerning legal rights and duties with regard to litigation against the Department. The executive session was held pursuant to ORS 192.660(1)(h).

Chair Reeve called the regular meeting to order at approximately 9:15 a.m., and introduced Commission members and Lynn Hampton, Governor Kulongoski's appointee to the EQC; Stephanie Hallock, DEQ Director; Larry Knudsen, Assistant Attorney General serving as counsel to the Commission; and Mikell O'Mealy, Commission Assistant. Agenda items were taken in the following order.

A. Approval of Minutes

Commissioner Van Vliet moved that the Commission approve draft minutes of the May 8-9, 2003, EQC meeting. Commissioner Malarkey seconded the motion and it passed with three "yes" votes.

¹ Staff reports and written material submitted at the meeting are made part of the record and available from DEQ, Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204; phone: (503) 229-5990.

B. Rule Adoption: Consumer Price Index Fee Increase for Oregon's Clean Air Act Title V Permit Program

Andy Ginsburg, DEQ Air Quality Division Administrator, and Scott Manzano, DEQ Air Quality Specialist, proposed rules to raise fees for Oregon's Clean Air Act Title V permit program by 4.59 percent. Mr. Ginsburg and Mr. Manzano explained that Title V permit program applies to the largest industrial sources of air pollution and is entirely funded by fees from permittees. DEQ statutes direct the agency to raise fees as needed to cover program costs, and each year DEQ evaluates whether a fee increase is needed to maintain sufficient program staff. The increase relates to changes in "cost of living," referenced in agency statutes as a Consumer Price Index (CPI) adjustment. Last year, DEQ determined that a CPI adjustment was not needed. This year, however, changes in PERS and the cost of employee health care resulted in the need for a fee adjustment to cover projected 2004 program costs.

After discussion, Commissioner Malarkey moved that the Commission approve the CPI fee adjustment to fund the Title V permit program as proposed. Commissioner Van Vliet seconded the motion and it passed with three "yes" votes.

C. Director's Dialogue

Stephanie Hallock, DEQ Director, discussed current events and issues involving the Department and the state with Commissioners, including the status of state budget negotiations and key issues in the 2003 legislative session.

D. Informational Item: Status Update on the Umatilla Chemical Agent Disposal Facility

Dennis Murphey, DEQ Chemical Demilitarization Program Administrator, Sue Oliver, DEQ Senior Hazardous Waste Specialist, and Tom Beam, DEQ Senior Environmental Engineer, presented an update on the status of trial burns, public outreach efforts, legal proceedings, and other issues related to the Umatilla Chemical Agent Disposal Facility (UMCDF).

Public Forum

At approximately 11:30 a.m., Chair Reeve invited members of the audience to provide general comments to the Commission. Those who indicated a desire to speak asked to postpone their comment time until after the Umatilla Chemical Agent Disposal Facility action and informational items.

E. Action Item: Umatilla Chemical Agent Disposal Facility Brine Reduction Area Permit Modification

Dennis Murphey, Tom Beam and Larry Edelman, Department of Justice counsel, proposed a permit modification to require operation of the Brine Reduction Area to process all liquid wastes from the UMCDF pollution control systems. Mr. Beam explained that off-site shipment of liquid wastes would be allowed only when specific criteria are met. Commissioners discussed the modification with Mr. Murphey and Mr. Beam and suggested minor changes to the Permit Conditions proposed in page A-1 of the Department's staff report. Chair Reeve adjourned the meeting for lunch to give the Department time to consider the Commission's suggestions.

After lunch, Chair Reeve called the meeting to order and asked the Department to present the minor changes to the Commission as suggested. Mr. Beam proposed the following changes to Permit Conditions in page A-1 of the staff report: (additions underlined, deletions ~~striked-through~~)

- II.B.5. The Permittee may ship pollution abatement system brines to an off-site RCRA Subtitle C permitted hazardous waste management facility only when: ...
 - iv. The Permittee limits off-site shipments of pollution abatement system brines to the quantity necessary to avoid ~~slowing~~ inhibiting the destruction of chemical agent or chemical agent munitions/bulk items.
- II.B.6. As soon as the Permittee becomes aware of the need for off-site shipment, the Permittee shall provide ~~verbal or~~ written notification to the Department of about each off site shipment of pollution abatement system brines prior to loading the brine into the transport vehicle. ...

After considering the proposed amendments, Commissioner Malarkey moved that the Commission approve the permit modification as amended and presented in the Department's staff report. Commissioner Van Vliet seconded the motion and it passed with three "yes" votes.

F. Informational Item: Briefing on Draft Health and Ecological Risk Assessment Protocol for the Umatilla Chemical Agent Disposal Facility

Dennis Murphey and Sue Oliver presented the draft Health and Ecological Risk Assessment Protocol that the Department will use to evaluate potential health and environmental risks from operation of the UMCDF. Ms. Oliver explained that in 1996, DEQ developed an initial risk assessment using emissions data from other demilitarization facilities. The Department now planned to conduct a second risk assessment using new Environmental Protection Agency risk assessment guidance and data from UMCDF trial burns and other chemical agent disposal facilities nationwide. Ms. Oliver stated that DEQ was taking public comment on the risk assessment, and planned to finalize the protocol prior to the start of chemical agent operations at UMCDF. Commissioners thanked Mr. Murphey and Ms. Oliver for the briefing.

G. Informational Item: Briefing on the Approval Process for the Start of Chemical Agent Operations at the Umatilla Chemical Agent Disposal Facility

Dennis Murphey and Sue Oliver gave an overview of the process the Department will use to assess the readiness of the UMCDF to begin chemical agent operations. Ms. Oliver explained that the DEQ hazardous waste permit for the facility requires Commission approval for the start of agent operations. Commissioners discussed holding future meetings in Hermiston to take public comment on the readiness of the facility to start agent operations, and then to take action on approving the start of chemical agent incineration at UMCDF.

Public Forum

Karyn Jones and James Wilkinson, representing GASP, expressed concerns about the Department's permit for the UMCDF, the schedule for facility operations, and the safety of the people in the area living near the Depot. Commissioners discussed the facility operations plan with Ms. Jones and Mr. Wilkinson, and thanked them for their comments.

H. ~~Informational Item: Briefing on Chemical Agent Monitoring Technology Used at the Umatilla Chemical Agent Disposal Facility~~

~~The Commission will hear a briefing on the various chemical agent monitors used to detect chemical agents in and around the UMCDF. The Commission expressed interest in hearing more about chemical agent detectors at the May 9, 2003, EQC meeting.~~

This item was moved to the August 14-15, 2003, EQC meeting.

I. Commissioners' Reports

Chair Reeve reported on an upcoming retreat of the Oregon Watershed Enhancement Board (OWEB), and OWEB's lack of funding to support non-capital watershed council projects in this funding cycle. Chair Reeve expressed his hope that the Board would have more money to grant to local groups in the near future.

Chair Reeve presented Director Stephanie Hallock an award for 15 years of service to DEQ and the State of Oregon, and expressed his thanks and appreciation on behalf of the Commission for her work and dedication to protecting the environment. Director Hallock thanked the Chair for the award.

Chair Reeve adjourned the meeting at approximately 2:30 p.m.

Date: July 24, 2003

To: Environmental Quality Commission

From: Stephanie Hallock, Director

S. Hallock

Subject: Agenda Item B, Action Item: Petition for Reconsideration of Final Order on Tax Credit Approval. August 15, 2003 EQC Meeting

Proposed Action Decide whether to grant or deny Marion Resource Recovery Facility, LLC's petition to reconsider Pollution Control Facilities Tax Credit application number 6113. The EQC approved the application for a reduced amount on May 9, 2003.

Key Issues The Environmental Quality Commission (Commission, EQC) certified Marion Resource Recovery Facility (MRRF), LLC's material recovery facility on May 9, 2003, and the Department notified the applicant of the Commission's decision on May 30. MRRF filed the petition for reconsideration on June 19, within the 30-day petition period required by Oregon Revised Statutes (ORS) 468.170.

The Department mailed advance notice of the May 9 EQC meeting to MRRF as required by Oregon Administrative Rule (OAR) 340-016-0055(4)(d). MRRF stated they did not receive the notice, which included a copy of the final review report and the Department's recommendation to approve application 6113 at a reduced facility cost, the time and location of the EQC meeting, and a memorandum that provided MRRF the opportunity to address any errors in the report.

Had MRRF received and reviewed the notification prior to the Commission's action on May 9, they would have offered additional information to the Department. Based on this information, the Department may have made a different recommendation to the EQC.

EQC Action Alternatives The Commission may elect to reconsider, or could take no further action. The applicant could seek judicial review of the order under ORS 183.484.

Agenda Item B
August 15, 2003 EQC Meeting

- Department Recommendation** The Department recommends the Commission grant Marion Resource Recovery Facility, LLC's petition for reconsideration. If the Commission grants this petition then the Department intends to present the reconsideration of application number 6113 to the Commission on October 10, 2003.
- Attachments** A. Petition For Reconsideration of Final Order
B. May 9, 2003 EQC Documents: Review Report, Certificate
- Available Upon Request** 1. ORS 468.150 to 468.190, OAR 340-016-0005 to 340-016-0080. OAR 137-004-0080

Approved:

Section:

Maggie Vandehey

Division:

Debra Lottidge

Report Prepared By: Maggie Vandehey
Phone: 503-229-6878

Attachment A

Petition For Reconsideration Of Final Order

M A C K E Y P O R T H & C O .

Certified Public Accountants/Business Consultants

A Different Kind of Bean Counter

June 19, 2003

Maggie Vandehey
Tax Credit Coordinator
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204-1390

Ms. Vandehey,

Please accept this letter on behalf of Marion Resource Recovery Facility, LLC (applicant) as a **Petition for Reconsideration of a Final Order** as outlined in OAR 137-004-0080. This Petition is being requested pursuant to Pollution Control Facility Certificate No. 10362 issued May 9, 2003. Notice of this Certificate was mailed to the applicant on May 30, 2003.

The applicant has material information that it believes will clarify, and possibly modify, the Commission's decision. The specific areas the applicant believes to be grounds for reconsideration include:

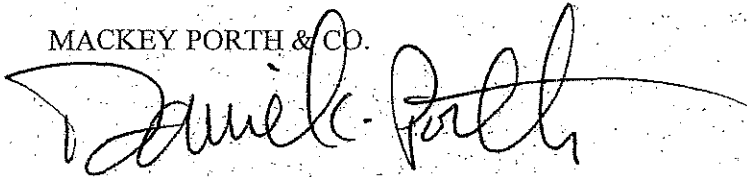
- ORS 468.155 (1)(a)(B) and OAR 340-016-0060 (2)(a) – This ORS and OAR discuss “sole purpose,” “principal purpose,” and “exclusive purpose” among other things. The applicant believes additional information should have been considered under the circumstances when applying these guidelines to the recovery facility.
- ORS 468.155 (3) and OAR 340-016-0070 (3) – This ORS and OAR deals with costs that are deemed ineligible for one of several potential reasons. The applicant believes certain costs may have been deemed ineligible more than once (once by the applicant when submitting the application and again by DEQ staff)
- Other – There may be other areas subject to modification resulting from possible changes pursuant to the previously mentioned OARs and ORSs.

I have also included a copy of a letter authorizing me to act on behalf of the applicant in dealing with the DEQ on this matter. An original of this letter will be mailed to your attention under separate cover.

Thank you for your consideration of this request. Please contact me if further information is needed to facilitate this Petition.

Regards,

MACKEY PORTH & CO.



Daniel C. Porth, CPA

c: Marion Resource Recovery Facility, LLC.

Attachment B

May 9, 2003 EQC Documents



State of Oregon
Department of
Environmental
Quality

As Approved - May 9, 2003 EQC Meeting

Director's
Recommendation: **Approve @ Reduced Cost**
Applicant **Marion Resource Recovery**
Facility, LLC

Application No.	6113
Facility Cost	\$932,202
Percentage Allocable	24%
Maximum Tax Credit	50%
Certificate Period	10 years

Tax Credit Review Report

Pollution Control Facility: Material Recovery Final Certification

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

Applicant Identification

Organized As: LLC

Business: **Material recovery facility**

Taxpayer ID: **93-1278502**

The applicant's address is:

**3680 Brooklake Road NE
Salem, OR 97305**

Facility Identification

The certificate will identify the facility as:

**Resource Recovery Facility including
a building, fixed equipment and mobile
equipment as follows:**

**One - 621 CXT Case Wheel Loader,
Serial # JEE0092596**

One - used MI 4141 Forklift

**One - Case 90XT Scrap Grapple, Serial #
JAF0299089**

One - Takenchi TB070 PSM Grapple

**One - C580SW Series II, 4-Wheel Drive
Loader, Serial # JJG0271797**

**One - 1978 International Tractor, Serial
E2327HGA22576**

**One - IT18F Group B, Fork Loader,
Serial # 06ZF00460;**

**One - IT18B Group B, Fork Loader,
Serial # 02NJ00374;**

**Ten - 4-yard Tote Bin Heavy Duty Cans
Model MR4HDTB, Serial numbers
165260-165269**

The applicant is the **owner and operator** of
the facility located at:

**3680 Brooklake Road NE
Salem, OR 97305**

Technical Information

Marion Resource Recovery Facility, LLC claims a new resource recovery facility including a building, and fixed and mobile equipment. The applicant accepts mixed solid waste from commercial refuse haulers. They do not accept residential or "wet" commercial loads.

Marion Resource Recovery uses the claimed loaders, grapples, and forklift to empty and sort the truckloads of mixed solid waste. The applicant spreads the load over the floor and reloads any unacceptable material back onto the truck for delivery to an authorized disposal facility. Large bulky items are sorted first into storage bins for recycling. The conveyor belt elevates the solid waste onto the shaker screen that is 18 feet above the sorting floor. The shaker screen separates smaller materials, and large items pass over the shaker screen onto a sorting conveyor. Employees remove recyclable material such as cardboard, ferrous and non-ferrous metals, wood, and sheetrock. Five bunkers, located directly below the sorting platform, provide interim storage for recovered materials. All material recovered from the waste stream is hauled to the appropriate recycling mill.

Eligibility

<i>Timely Filing</i> ORS 468.165 (6) and OAR 340-016-007	<u>Criteria</u> The application must be filed within two years of the date that construction of the facility was completed if construction was completed on or before December 31, 2001.
---	---

Applied to this Application

The applicant filed the application within the two-year timing requirement provided by law.

<i>Construction Started</i>	8/1/1999
<i>Construction Completed</i>	3/31/2000
<i>Facility Placed into Operation</i>	4/10/2000
<i>Application Filed</i>	3/29/2002

<i>Purpose: Voluntary</i> ORS 468.155 (1)(a)(B) OAR 340-016- 0060(2)(a)	<u>Criteria</u> The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a <u>substantial quantity</u> of solid waste, hazardous waste; or used oil.
--	--

Applied to this Application

The facility reduces, prevents, or controls a substantial quantity of solid waste from entering the landfill. Within the first two years of operation, the facility took in over 30,700 tons of mixed dry waste and recovered approximately 10,347 tons of recyclable material.

The claimed facility, however, does not have an exclusive pollution control purpose because it operates as a transfer station. 66% of material is transferred to landfill. 34% of material is recovered and recycled. 66% of eligible costs have been reduced under the facility cost section.

Method Criteria
 ORS 468.155 (1)(b)(D) The prevention, control, or reduction must be accomplished by the use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

Applied to this Application

Cardboard, metals, wood, concrete, appliances and sheetrock **meet the definition of solid waste** as defined in ORS 459.005.

OAR 340-016-0010(7) Criteria
 OAR 340-016-0060(4)(e) The facility produces an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state. The facility produces the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

(A) Have useful chemical or physical properties and which may be used for the same or other purposes; or

(B) May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The facility obtains recyclable material such as cardboard, ferrous and non-ferrous metals and other recyclable material from mixed dry waste. The applicant sorts and sells the recovered material at market value to respective recycling mills. The recyclable material is made into competitive end products with similar properties.

Exclusions Criteria
 ORS 468.155 (3) Ineligible costs are any distinct portion of a pollution control facility that makes an insignificant contribution to the sole purpose of the facility; or provides
 OAR 340-016-0070(3) benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed as a result of the facility.

Applied to this Application

The claimed cost included cost for office buildings and furnishings, such as computer equipment and telephones, are specifically excluded under ORS 468.155.

Components not making a significant contribution to the sole purpose of the facility include:

Scales used to weigh waste for billing purposes, scale shack and related costs. Pressure washer and grease pump are used for maintenance. Diesel tank and associated costs (listed as Misc. Equipment in the application record) are for continued operation. Plumbing, HVAC, fire protection, shower/eyewash station and extra transmission oil do not contribute to material recovery.

The Department subtracted the associated cost from the claimed facility cost as shown under the Facility Cost section below.

Replacement Criteria
ORS 468.155 (3)(e) The replacement or reconstruction of all or part of a facility that has previously been certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions: 1) the facility was replaced due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or 2) the facility was replaced before the end of its useful life.

Applied to this Application

The State of Oregon did not previously certify the claimed facility or any of its distinguishable parts as a Pollution Control Facility.

Maximum Credit Criteria
ORS 468.173(1) The maximum tax credit available to the applicant is 50% if construction of the facility commenced prior to January 1, 2001, construction was completed prior to January 1, 2004, and the application was filed on or before December 1, 2004.

Applied to this Application

The maximum tax credit is **50%** because the applicant commenced construction of the facility on **8/1/1999**, completed construction on **3/31/2000**, and filed the application on **3/29/2002**.

Facility Cost

Copies of invoices substantiated the claimed facility cost. The applicant submitted costs by three related vendors that are LLC members. These costs are for hauling, a used tractor and project management and represent less than 1% of the claimed cost. The costs are considered reasonable.

	Claimed Cost	\$3,042,922
<u>Insignificant contribution to sole purpose:</u>		
Office computers and telephones		-14,935
Weigh scales for billing purposes, scale house, scale wiring, electrical and related costs		-138,397
Pressure washer		-740
Plumbing		-25,898
HVAC		-22,557
Fire protection		-90,000
Shower/Eye wash area		-1,083
Extra transmission oil		-69
Grease pump		-599
Diesel Tank and related costs		-6873
	Subtotal	2,741,771
Less 66% of costs not allocable to material recovery		-1,809,569
	Eligible Cost	\$932,202

Facility Cost Allocable to Pollution Control

The following factors were used to determine that **24%** of the facility cost is allocable to pollution control. ORS 468.190 (2) provides that the portion of actual costs properly allocable shall be from zero to 100 percent in increments of one percent.

Factor	Applied to This Facility
ORS 468.190(1)(a)	Salable/Usable Commodity: The facility produces usable material for recycling mills and composting facilities. Relative market value of material is as follows on a per ton basis: appliances \$5, cardboard \$25, ferrous metal \$49, non-ferrous metal \$250, wood \$6.50. The applicant and the Department considered the revenue in the ROI calculation.
ORS 468.190(1)(b)	Return on Investment (ROI): The functional life of the facility used in considering the ROI is 10 years. The applicant calculated and the Department verified that the calculation was performed according to the integral section of OAR 340-016-0075(4). The percentage allocable to pollution control is 24% when calculated according to rule.
ORS 468.190(1)(c)	Alternative Methods: No alternative investigated; the claimed facility is considered the best available technology.
ORS 468.190(1)(d)	Savings/Increase Costs: No savings or increases in costs were identified.
ORS 468.190(1)(e)	Other Relevant Factors: The greater part of the income generated by the facility comes from fees paid by solid waste haulers.

Compliance and Other Tax Credits

The applicant states the facility and site are in compliance with Department rules and statutes and with EQC orders. The following DEQ permits have been issued to the site: Solid Waste Disposal, #400, Issued 12/30/93. The EQC certified no previous facilities at this location.

Reviewers: Maggie Vandehey, DEQ



State of Oregon
Department of
Environmental
Quality

811 SW Sixth Ave.
Portland, OR 97204
1 (800) 452-4011
www.deq.state.or.us

Pollution Control Facility Certificate No. 10362

Certificate Holder Marion Resource Recovery Facility, LLC
3680 Brooklake Road NE
Salem, OR 97305

Operating as: LLC
Taxpayer ID No: 93-1278502

Facility Location

3680 Brooklake Road NE
Salem, OR 97305

Certified Cost & Percentages

Facility Cost		\$932,202
Percentage Allocable	X	24%
Maximum Percentage	X	50%
Tax Credit		<u>\$111,864</u>

Facility Description

Resource Recovery Facility including a building, fixed equipment and mobile equipment as follows:
One - 621 CXT Case Wheel Loader, Serial # JEE0092596; One - used MI 4141 Forklift; One - Case 90XT Scrap Grapple, Serial # JAF0299089; One - Takenchi TB070 PSM Grapple; One - C580SW Series II, 4-Wheel Drive Loader, Serial # JJG0271797; One - 1978 International Tractor, Serial # E2327HGA22576;
One - IT18F Group B, Fork Loader, Serial # 06ZF00460; One - IT18B Group B, Fork Loader, Serial # 02NJ00374; Ten - 4-yard Tote Bin Heavy Duty Cans Model MR4HDTB, Serial numbers 165260-165269

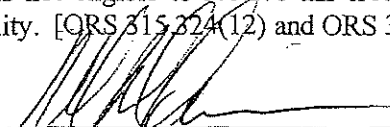
The Environmental Quality Commission (EQC) certifies the facility described herein based upon information contained in application number 6113.

The EQC certifies that:

- The facility was erected, constructed or installed in accordance with the requirements of subsection (1) of ORS 468.165; and
- The facility was designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing **Material Recovery** pollution; and
- The facility is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, the EQC issues this Pollution Control Facility Certificate on this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality, and the following special conditions.

1. The certificate holder shall:
 - Continuously operate the facility at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above;
 - Immediately notify the Department of Environmental Quality of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose; and
 - Promptly provide any reports or monitoring data that the Department of Environmental Quality may request.
2. Any portion of the facility described herein is not eligible to receive tax credit certification as an energy conservation facility or a reclaimed plastic facility. [ORS 315.324(12) and ORS 315.356(3) and (4)]


Mark Reeve, Chair
Environmental Quality Commission

Issued on 5/9/2003



Taxpayer's Annual Worksheet for Pollution Control Facility Tax Credit

Marion Resource Recovery Facility, LLC may claim the credit beginning in the 2003 tax year. The applicant placed the facility into service on 2000, claiming the facility has a 10-year useful life.

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
1. Annual credit - Tax Credit shown on certificate face divided by the remaining useful life at time of certificate issuance according to ORS 315.304(2)	\$15,980	\$15,980	\$15,980	\$15,980	\$15,980	\$15,980	\$15,984	\$ 0	\$ 0	\$ 0
2. Credit carryover from prior years										

The certificate holder may carry-forward any unused credit in any one tax-year for-up to three years. The taxpayer should carry-forward the oldest credit first. Prepare and attach a schedule to show how you computed the credit carryover amount entered on line 2.

3. Total credit available - line 1 plus line 2										
4. Net tax after other credits										

You may choose the order in which tax credits will reduce the current year tax. Prepare and attach a schedule to show which credits you want to apply to your tax liability before the pollution control credit. Enter the net tax from your schedule on line 4.

5. Pollution control facility tax credit for this year - lesser of line 3 or line 4										
---	--	--	--	--	--	--	--	--	--	--

Carry the amount on line 5 to the applicable tax credit line on your Oregon corporation, fiduciary, or individual tax return.

- See ORS 315.304(4) and OAR 150-315.304(4) for instructions regarding who may claim the credit.
- Shareholders in an S corporation can find information on claiming the credit in ORS 314.752.
- Partners in a partnership may claim a credit on their individual return based on the partner's share of the certified facility cost.
- All taxpayers should keep the original certification/worksheet in their files for audit verification. If you are a corporation, attach a copy to your Oregon corporation tax return if you claim a credit.
- You can deduct depreciation on a facility even though you claim the credit. [OAR 150-315-304(10)] Any credits you claim do not reduce your basis in the facility.
- You must notify the Department of Environmental Quality (DEQ) if you sell or otherwise dispose of the facility. DEQ will revise the certificate. The new owner may claim only the remaining credits not used by the first owner. [OAR 150.315-304(8)]

State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commission**Date:** August 13, 2003**From:** Stephanie Hallock, Director**Subject:** Director's Dialogue**New Ethanol Facility Coming to Malheur County**

After working closely with Malheur County officials and the Eastern Community Solutions Team, Idaho-based Treasure Valley Renewable Resources has chosen Malheur County as the location of their new ethanol production facility. The \$70 million facility will have 60 employees and is expected to increase demand for Treasure Valley agricultural products, including barley, wheat, and corn. Treasure Valley Renewable Resources cited the Community Solutions Team approach of proactively addressing business development needs as a significant reason for their decision to locate in Oregon. DEQ's Eastern Region Air and Water program staff who helped Treasure Valley through the permitting process were a large part of this success. Attachment A provides a press release from the Governor with more information.

Water Quality Improvement Plans Issued

In recent months, DEQ submitted two water quality improvement plans, or Total Maximum Daily Loads (TMDLs), to the Environmental Protection Agency (EPA) for review and approval. Both include pollution limits and improvement plans designed to reduce high water temperatures, which are a primary concern in many waterbodies throughout Oregon. These TMDLs represent a better understanding of the way high temperatures affect river systems and how the heating of rivers and reservoirs can be minimized to meet water quality standards. Their implementation will help salmon and other aquatic species.

- Oregon North Coast TMDL

The Oregon North Coast TMDL was issued on June 30, covering the Nehalem River, Necanicum River, Lower Columbia/Young's River, and Lower Columbia/Clatskanie River sub-basins. This TMDL addresses water quality problems (i.e., Clean Water Act "303(d) listings") relating to temperature, bacteria, and biological criteria (standards that protect aquatic species). The technical analyses for this TMDL provide an understanding of the magnitude of the water pollution in these river basins and the Water Quality Management Plan creates a roadmap for restoring these waterbodies to meet water quality standards. This was the first TMDL completed since a stay on the Hawes court case was issued.

Temperature increases from the operation of state fish hatcheries was an issue in developing this TMDL. State hatcheries are currently regulated under "general" water quality permits, but facility-specific permits may be issued in the future to better address temperature issues and other water quality problems at individual hatcheries. Another issue that surfaced during development of the North Coast TMDL was EPA's concern with the adequacy of Oregon's Forest Practice Act, which was enacted in 1971 as a statewide response to water quality issues. EPA is concerned that the Act may provide insufficient watershed health protections at

the basin scale, and has indicated that basin or sub-basin forestry plans are needed. It is likely that EPA's approval of the North Coast TMDL will require DEQ and ODF to move in this direction – a significant change in how forestry now deals with TMDLs. We will continue to work with ODF on this issue.

- Snake River/Hells Canyon TMDL

The Snake River/Hells Canyon TMDL was issued on July 15, covering nearly the entire length of the mainstem Snake River at the Idaho-Oregon border (from Adrian, Oregon in the south to the confluence with the Salmon River near the Oregon-Idaho-Washington border). This TMDL was developed and submitted to EPA jointly by Oregon and Idaho. It addresses water quality problems in Oregon related to high temperature, and in Idaho related to temperature, nutrients, dissolved oxygen, pesticides (DDT, dieldrin), sediment, and total dissolved gas. Although mercury levels are also a concern in both Oregon and Idaho, the Snake River TMDL for mercury has been deferred for collection of additional water column data.

The scope of this TMDL, which is limited to the mainstem Snake River and excludes analysis of major tributaries, became an issue during development. The TMDL includes target concentrations for phosphorus that are set at the mouths of the Malheur and Owyhee Rivers, but it is unknown at this point what natural phosphorus concentrations are in those rivers. Tributary TMDLs will be established over the next five to seven years, and if our analyses find that natural phosphorus conditions are high, the Snake River/Hells Canyon TMDL may need to be modified.

These TMDLs represent a significant step toward completing water quality improvement plans statewide by 2010, as required by the EPA consent decree for Oregon. The decree mandates that 1,153 TMDLs be completed and approved by 2010, with interim targets of 310 and 982 stream segments by 2004 and 2008, respectively. To date, EPA has approved 337 TMDLs, and DEQ is in the process of working on another six this year, including the Applegate (Rouge Basin), Alvord Lake, Columbia River Temperature TMDL, the Northeast corner (Wallowa, Imnaha, and Lower Grande Ronde), and the Willamette. These TMDLs will likely be completed in 2003 or 2004.

McCormick and Baxter Superfund Site Update

In May, I reported to you on the progress of clean-up work at the McCormick & Baxter Creosoting Company site – a federally listed Superfund site located on the banks of the Willamette River, within the boundaries of the more recently designated Portland Harbor Superfund site. To date, more than \$22 million, including \$8 million from Oregon, has been invested to address extensive creosote and pentachlorophenol contamination from wood treating activities conducted at the site from the 1940's to 1991. Working with EPA, other agencies, Tribes and various stakeholders, the project was moving forward successfully. In July, however, EPA decided not to fund the next step the project for fiscal year 2004 (approximately \$12 million to clean up sediments by covering them with a cap). As a result, we are aggressively pursuing future funding from EPA and are concerned that full cleanup of the site will not occur in a timely manner. Exposed contaminated sediments at the site continue to leach pollutants into the river,

threatening human health and species living in and around the Willamette. Attachment B provides a summary of the project and its funding status.

Climate Change

The Governor's office is exploring the potential for coordinated Governor/Premier-level actions on climate change by the Pacific Coast states and British Columbia, including regional activities, policies, and measures. A planning meeting was held in early August with representatives from Washington, California and the BC Premier on the potential scope and content of an initiative, with a goal of announcing commitments this fall and programmatic actions in following months. The Oregon Energy Office is the lead Oregon's lead state agency on the climate initiative, and Andy Ginsburg, DEQ Air Quality Division Administrator, is actively participating in the process as the initiative could lead to improvements in air, water and land quality. We will keep you informed of progress on climate change as this develops.

Report on ECOS Meeting

On August 10, 11 and 12, I attended the annual meeting of the Environmental Council of the States (ECOS) in Salt Lake City, Utah. ECOS is the national non-profit, non-partisan association of state and territorial environmental directors/commissioners, working together to improve coordination between states, territories, and the federal government on environmental management. I'll give a short report of my experience at the meeting, and mention "enlibra principles," developed by former Oregon Governor John Kitzhaber and Utah Governor Mike Leavitt, who was recently appointed head of the EPA. See Attachment C for more on enlibra.

Sundial Marine

On June 23, the Northwest Environmental Defense Center (NEDC) and Columbia Riverkeeper sent a petition to the Department seeking EQC review of the Department's decision to register Sundial Marine Tug & Barge Works, Inc., a ship construction and repair company located on the Columbia River, for coverage under the general storm water permit "1200-Z." Attachment D provides the petition and Attachment E provides a response to NEDC and Columbia Riverkeeper. The petition includes allegations that Sundial's application for coverage was inadequate, and challenges the underlying conditions and procedures for registration under the permit.

The Commission's legal counsel has advised that the Commission does not have legal authority to address the Petition; statutes allow only the Department to reconsider a DEQ order outside of a contested case action. This issue has come up in the past (*September 28-29, 2000, EQC Agenda Item I: Petition for Reconsideration of the Civil Penalty Assessed Against Smurfit News Print Corp.*), and the Commission, based on legal advice from counsel, concluded at that time that it lacked jurisdiction. In this case, the Department recommends that the Commission dismiss the petition based on lack of jurisdiction. Larry Knudsen, Commission counsel, is available to give more explanation or answer questions if needed.

NEWS RELEASE

July 25, 2003

Governor Announces Successful Recruitment of New Biorefinery Plant to be Built in Oregon

\$77 million capital investment by Treasure Valley Renewable Resources to generate 60 new jobs in Malheur County

(Ontario) - In a press conference at the Ontario Airport this afternoon, Governor Ted Kulongoski announced that Oregon has successfully recruited a new biorefinery plant to be located south of Ontario. The sustainable facility will create 60 family-wage jobs for Malheur County and includes a capital investment of \$77 million.

After considering locations throughout the Treasure Valley region shared by Idaho and Oregon, Idaho-based company Treasure Valley Renewable Resources (TVRR) decided to locate their new plant in Malheur County.

"I am so pleased Treasure Valley Renewable Resources has decided to join our state and our community - this is a tremendous 'win-win' for the State of Oregon, Malheur County and our neighbors in Idaho," said the Governor. "With a local unemployment rate above nine percent, these jobs are important to this area and will help keep this community livable and strong for future generations."

In a letter dated July 11, the TVRR board indicated that the Governor's personal support for the project was an important factor in the company's decision to locate in Malheur County. The letter is attached.

"We want to thank the Governor's Community Solutions Team for their hard work and dedication - their assistance was a key factor in our decision to locate the biorefinery plant in Oregon," said TVRR Project Manager John Hamilton. "Oregon is a great fit for us. Not only is this the perfect location for our plant, it will also give a boost to local agriculture by providing another market for their products."

The biorefinery plant being designed by TVRR will use barley, wheat, corn and milo as feed stock. Crops will be purchased from local producers in a six-county area, including five counties in Idaho and Malheur County in Oregon.

The plant will produce food-grade starch and fiber, as well as protein concentrate for human food and aquaculture industries. It will also capture CO2 for the production of ethanol and commercial sales. Finally, wet-spent grain, a by-product of the facility, will be used as livestock feed.

As a sustainable facility, the plant will be a good neighbor for the citizens in the region. With the production of ethanol, an alternate source of fuel, it will help secure a clean, affordable energy future for Oregon. By employing local residents, it will help promote a healthy economy. It is also a successful step in the Governor's goal to make Oregon a magnet for renewable industry.

"I am absolutely determined to build Oregon's economy not by trashing the environment, but by supporting industries, agriculture, and regulatory policies that preserve and promote our natural resources," said the Governor. "Sustainable developments, such as this biorefinery facility, prove that when we manage natural resources in a responsible, sustainable manner, we help ensure a successful future for our state."

Attachment B

McCormick and Baxter State-Lead Superfund Cleanup

The McCormick & Baxter Creosoting Company site is a federally listed Superfund site located on the banks of the Willamette River, within the boundaries of the more recently designated Portland Harbor Superfund site. Contaminated groundwater is actively migrating into the Willamette River sediments adjacent to the site. To date, more than \$22 million – including \$8 million from Oregon – has been invested to address extensive creosote and pentachlorophenol contamination from wood treating activities conducted at the site from the 1940's to 1991.

The McCormick and Baxter site is comprised of three major areas of contamination: uplands soil, groundwater, and river sediments.

Soil

In 1999, DEQ completed the first phase of the soil remedial action by excavating and disposing of over 30,000 cubic yards of highly contaminated surface and near surface soils. The second phase of the soil remedy was targeted for 2005 or 2006. Due to delays in implementing the sediment remedy (see below), Phase II of the soil remedy may be delayed to 2006 or 2007. Phase II will include covering approximately 40 acres of the site with a two to four foot soil cap, after which the site will be available for productive use.

Groundwater

Groundwater is contaminated with byproducts of wood treating chemicals at depths of over 90 feet below the ground surface. Over the past 8 years, DEQ has installed numerous extraction wells and has pumped over 2,000 gallons of creosote from the groundwater.

The most recent element of the overall groundwater remedy was completion of a 3,800' long (roughly circular), 80' deep barrier wall that surrounds approximately 16 acres of the site containing the worst of the contamination. 2,400 lineal feet of the wall is comprised of a 3' wide by 80' deep soil-bentonite slurry barrier, with the remaining 1,400 lineal feet constructed using 68' to 80' deep, interlocking steel sheet piles. The cost of installing the barrier wall was approximately \$2.6 million. This was considered an extraordinary success; the project was completed below budget, on schedule, and in a manner that met DEQ's technical requirements.

Sediment

Concurrent with the barrier wall construction, DEQ and its consultant (Ecology and Environment, Inc.), have been finalizing the design for a multi-million dollar sediment cap to be constructed in the Willamette River adjacent to the M&B site. DEQ has worked closely with EPA, natural resource agencies, Tribes, the City of Portland, and various stakeholders over the past two years to design an in-water sediment cap that will prevent migration of the significant volume of contaminants (outside the barrier wall) from breaking through the sediments into the River. The design is essentially complete and procurement of a construction contractor was scheduled to begin in Fall 2003, with construction to occur in Summer 2004.

Unfortunately, in July 2003, EPA announced that they have chosen not to fund the construction

of the approximately \$10 million sediment remedy in federal fiscal year 2004. As a result, the full sediment remedy will be delayed at least one year. DEQ is evaluating various options to continue work at the site:

Funding Status

Through a series of Cooperative Agreements with EPA, DEQ is designated as the lead agency in the M&B project and is provided funding necessary for the Remedial Investigation, Feasibility Study, Remedial Design, and Remedial Actions at the site. The current Cooperative Agreement calls for EPA to fund \$18 million over 3 1/2 years to complete cleanup at McCormick and Baxter. Funds received to date (\$5.8 million) are sufficient to continue work through September 2003. In the event that EPA does not continue to provide the necessary funding for ongoing activities, DEQ will have to explore options for severely limiting or ceasing work at the site. To address this concern DEQ is:

- Aggressively pursuing discussions with EPA to ensure the future funding of the cleanup of the site.
- As a result of an insurance settlement related to the site, EPA placed \$3 million in an escrow account which is earmarked solely for construction of the sediment remedy. DEQ is evaluating the possibility of fragmenting the current sediment remedial design to allow for up to \$3 million of work to occur in 2004, with the remainder to be performed when and if additional funding becomes available. It is DEQ's expectation that EPA would not object to releasing the \$3 million to DEQ for this purpose

In summary, McCormick and Baxter has been a highly successful example of the level of cooperation that can be achieved by DEQ and EPA, and to date the project has been considered a very successful State lead Superfund site. We are disappointed however by EPA's recent funding decisions and concerned the full cleanup of the site will not occur in a timely manner.

en·libra \in-'le-bra\ n
1: an environmental
philosophy; vb 2: to
move toward balance

What does Enlibra mean?

Enlibra, derived from Latin, was created to mean a balance and stewardship. It is a symbol for a balanced approach to successful environmental and natural resource management.

What is the history of Enlibra?

Utah Governor Mike Leavitt (R) and Oregon Governor John Kitzhaber (D) initiated the innovative approach to environmental management known as Enlibra in 1997 as a means to solve a range of complex environmental problems.

The Western Governors' Association, under the lead of Leavitt and Kitzhaber, researched the successful principles of environmental management. This research led to an Environmental Summit on the West in 1998 where over 400 people of diverse interest gathered to discuss and refine the Enlibra principles. After the revisions WGA adopted the Enlibra as its shared doctrine of environmental management in 1999. WGA sponsored a second Environmental Summit on the West in April of 2002 to offer case studies and opportunities for applying Enlibra to real life situations.

*For more information
visit the Oquirrh Institute Web site
oquirrhinstitute.org*

THE
OQUIRRH
INSTITUTE

A non-profit organization
Assisting in advancing
the principles of Enlibra

The
Enlibra
Principles

National Standards

Neighborhood Solutions - Assign responsibilities at the right level.

Collaboration, Not

Polarization - Use collaborative processes to break down barriers and find solutions.

Reward Results, Not

Programs - Move to a performance-based system.

Science for Facts, Process

for Priorities - Separate subjective choices from objective data gathering.

Markets Before Mandates

Pursue economic incentives whenever appropriate.

Change a Heart, Change a

Nation - Environmental understanding is crucial.

Recognition of Costs and

Benefits - Make sure all decisions affecting infrastructure, development and environment are fully informed.

Solutions Transcend

Political Boundaries - Use appropriate geographic boundaries for environmental problems.



WESTERN
GOVERNORS'
ASSOCIATION

IN THE STATE OF OREGON
BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

NORTHWEST ENVIRONMENTAL
DEFENSE CENTER, an Oregon non-profit
corporation, and COLUMBIA
RIVERKEEPER, an Oregon non-profit
corporation,

Petitioners,

v.

OREGON DEPARTMENT OF
ENVIRONMENTAL QUALITY, an agency
of the State of Oregon,

Respondent.

Case No.: _____

CERTIFICATE OF
SERVICE

RECEIVED

JUN 25 2003

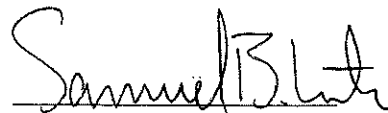
**Oregon DEQ
Office of the Director**

I hereby certify that on this 23rd day of June, I served true and correct copies of the following document: PETITION FOR RECONSIDERATION, by U.S. Mail, postage paid, to the parties listed below, addressed as follows:

Stephanie Hallock
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390

Holly Robinson
Sundial Marine Construction & Repair
5605 NE Sundial Road
Troutdale, OR 97060-1974

DATED: June 23, 2003



Samuel B. Lutz, Law Clerk
Northwest Environmental Defense Center

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IN THE STATE OF OREGON
BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

NORTHWEST ENVIRONMENTAL DEFENSE CENTER, an Oregon non-profit corporation, and COLUMBIA RIVERKEEPER, an Oregon non-profit corporation,	:	Case No.: _____
	:	PETITION FOR RECONSIDERATION
	:	
Petitioners,	:	
	:	
v.	:	
	:	
OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, an agency of the State of Oregon,	:	
	:	
Respondent.	:	

This action is brought pursuant to ORS 468.110, 183.480, and 183.484, authorizing appeals of final agency orders by adversely affected and aggrieved persons. Petitioners retain the right to request judicial review pursuant to ORS 183.484.

Petitioners allege the following:

PARTIES

1.

Petitioner Northwest Environmental Defense Center ("NEDC") is a 501(c)(3) non-profit Oregon corporation with its principal place of business located in Multnomah County, Oregon.

1 2.

2 Petitioner Columbia Riverkeeper ("CRK") is a 501(c)(3) non-profit Oregon
3 corporation with its principal place of business located in Hood River County, Oregon.

4 3.

5 Respondent Oregon Department of Environmental Quality ("DEQ") is a
6 department of the State of Oregon with its principal place of business located in
7 Multnomah County, Oregon.

8 4.

9 Petitioner NEDC is an organization dedicated to the responsible management of
10 the natural resources of the Pacific Northwest. To further this organizational objective,
11 NEDC works to preserve, protect, and improve the environmental quality of the Pacific
12 Northwest, and has done so for over thirty years. NEDC regularly comments on pending
13 government decisions affecting natural resource use in the Pacific Northwest, and has
14 litigated numerous claims pursuant to the federal Clean Water Act to preserve and
15 improve water quality in the region. In cases brought under the Clean Water Act, NEDC
16 acts as a representative of the public interest, as authorized by 33 U.S.C. §1365 and as
17 applied to state permitting programs under 40 CFR §123.30.

18 5.

19 Petitioner CRK is an organization dedicated to protecting the ecological integrity
20 of the Columbia River Basin and preserving the numerous ecosystems it supports. To
21 achieve these objectives, CRK operates numerous programs aimed at reducing the level
22 of pollution in the Columbia River Basin and studies the impact of that pollution on
23 resident fish and animal species. CRK also engages in litigation under the Clean Water
24 Act, acting as a representative of the public interest, as authorized by 33 U.S.C. §1365
25 and as applied to state permitting programs under 40 CFR §123.30.

6.

Petitioners are adversely affected and aggrieved by DEQ's issuance of Permit No. 107766, because their respective organizational objectives have been undermined by DEQ's decisionmaking process. As organizations incorporated, in part, for the express purpose of protecting water quality, Petitioners have an interest in ensuring that any permitting decision affecting water quality in the Columbia River is made in accordance with all applicable state and federal laws. These organizational interests have been injured by DEQ's issuance of Permit No. 107766, because both the procedure by which the permit was issued and the substantive provisions of the permit as-applied violate the statutory scheme established by the Clean Water Act. Petitioners are further adversely affected and aggrieved because the continued use of this method of issuing permits and the continued authorization of underprotective permit conditions may lead to legally impermissible degradation of the environmental quality of the Columbia River and other bodies of water in Oregon.

BACKGROUND

7.

The 1200-Z permit is a National Pollutant Discharge Elimination System ("NPDES") general permit covering stormwater discharges from industrial sources, which is issued by DEQ pursuant to 33 U.S.C. §1342 and ORS 468.065. To receive a 1200-Z permit, an applicant is required to submit a brief two-page application (also known as a Notice of Intent, or "NOI") to DEQ expressing their intent to be covered by and comply with the terms of the permit. The 1200-Z permit can be issued by DEQ only after DEQ has determined that the applicant's activities satisfy all of the substantive requirements specified in the permit.

1 8.

2 One of the provisions of the 1200-Z permit requires the applicant implement an
3 enumerated list of best management practices “[i]f technically and economically
4 feasible.” The inclusion of this open-ended feasibility exception in the 1200-Z permit
5 delegates decisionmaking authority with respect to the required site controls to the
6 applicant, who is thereby allowed to independently decide which of the enumerated
7 controls can be feasibly implemented. The site controls and management practices
8 selected by the applicant are then specified in the Storm Water Pollution Control Plan
9 (“SWPCP”), a document drafted by the applicant that must be submitted to DEQ and
10 implemented at the site within 90 days after the date on which the 1200-Z permit was
11 issued. The SWPCP is not subjected to public hearings and is not reviewed by DEQ to
12 determine whether the site controls and management practices adopted by the applicant
13 are in fact the most stringent controls technically and economically feasible.

14 9.

15 On April 18, 2003, Sundial Marine Tug & Barge Works, Inc. (“Sundial”), a ship
16 construction and repair facility located on the Columbia River, filed an application with
17 DEQ for coverage under the 1200-Z general permit (Permit Application No. 984697).

18 10.

19 In their application, Sundial failed to answer Question 5, which requested a brief
20 description of the treatment and control facilities in use at the facility for stormwater
21 discharges. No other information regarding the current or proposed site controls and
22 management practices was provided by Sundial in their application.

23 11.

24 On April 24, 2003, DEQ issued Permit No. 107766 to Sundial. At the time the
25 permit was issued, DEQ had acquired no information regarding the site controls or

1 management practices that Sundial had already adopted or planned to adopt in order to
2 comply with the substantive requirements of the 1200-Z permit. DEQ also did not
3 provide an opportunity for public comment or hold a public hearing in which interested
4 organizations and concerned citizens could comment on whether the site controls and
5 management practices to be employed by Sundial satisfied the undefined substantive
6 provisions of the 1200-Z permit.

7 **GROUND FOR RECONSIDERATION**

8 12.

9 In issuing Permit No. 107766, DEQ improperly exercised its discretion in
10 violation of 33 U.S.C. §1342(a)(1), because there was an inadequate record upon which
11 DEQ could reasonably conclude that Sundial would comply with the site control
12 requirements specified in the 1200-Z permit and mandated by 33 U.S.C. §1311(b)(2)(A).

13 13.

14 By failing to provide public hearings or an opportunity for public comment with
15 respect to the site controls and management practices to be implemented by Sundial prior
16 to issuing Permit No. 107766, DEQ violated 33 U.S.C. §1342(a)(1), as implemented by
17 OAR 340-045-0035 in compliance with 40 CFR §123.25.

18 14.

19 By accepting and approving an incomplete application for a NPDES permit, DEQ
20 violated OAR 340-045-0030(3) and (4).

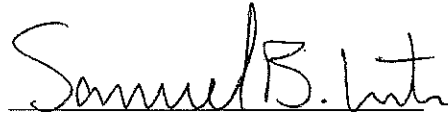
21 **REQUEST FOR RECONSIDERATION**

22 15.

23 Pursuant to ORS 468.110, 183.480, and 183.484, Petitioners hereby request that
24 the April 24, 2003 DEQ order issuing Permit No. 107766 be reversed, with instructions
25 that no further consideration of Sundial's application occur until such time as a complete

1 application has been submitted, and the proposed site controls and management practices
2 contained in Sundial's application and SWPCP have been presented at public hearings
3 and substantively reviewed by DEQ for compliance with the terms of the 1200-Z permit
4 and the requirements of the Clean Water Act.

5
6 DATED: June 23, 2003

7
8 

9 Samuel B. Lutz
10 Law Clerk
11 Northwest Environmental
Defense Center

12 On behalf of:
13 Mark Riskedahl
14 Executive Director
15 Northwest Environmental
16 Defense Center
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DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

August 11, 2003

Mark Riskedahl
Executive Director
Northwest Environmental Defense Center
2021 SE 44th Avenue
Portland, OR 97215

Re: Petition For Reconsideration of Sundial Marine Permit

Dear Mark:

This letter is to advise you that the matter of the NEDC and Columbia Riverkeeper June 23, 2003 petition for reconsideration concerning the Sundial Marine 1200 Z permit will be presented in the Director's report to the Environmental Quality Commission at its meeting on August 15, 2003. At that time the EQC may consider whether it has jurisdiction to accept the petition. It will be the recommendation of the Department of Environmental Quality that the petition be dismissed based on lack of jurisdiction. We have previously advised that the EQC does not have authority to reconsider a Department order in other than a contested case.

An EQC meeting agenda will be available on August 15, 2003.

If you have any questions please feel free to call me at (503) 229-5725.

Sincerely,

Larry Knudsen
Assistant Attorney General
Natural Resources Section

LJK:la/GENG5272.DOC

cc: Mikell O'Mealy
Holly Schroeder



State of Oregon
Department of
Environmental
Quality

**Umatilla Chemical Demilitarization Program
Status Update
Environmental Quality Commission
August 15, 2003
(Agenda Item D)**

Umatilla Chemical Demilitarization Program

Permit Modifications: The Department is currently processing 19 Hazardous Waste Permit Modification Requests, including 11 Class 1 and eight (8) Class 2 modifications.

Staff News: The permit coordinator position was posted on July 22 for applications only from existing state employees. The application period closed on August 5 with no applicants. We are reposting it as an "open competitive" announcement from August 15 until September 3. Ads for the position will run in the Sunday, August 17 editions of the East Oregonian and the Tri-City Herald.

We will also be filling our vacant Natural Resource Specialist 4 position to provide technical support for review of permit modification requests in the short term, with the position transitioning to compliance support as we move closer to agent operations.

Umatilla Chemical Depot Draft Storage Permit: The public hearing on the Draft Hazardous Waste Storage Permit for the Depot will be held on August 28, with the public comment period ending on September 15, 2003.

UMCDF Surrogate Shakedown and Trial Burn Status

Deactivation Furnace System (DFS): On August 5, 2003 the Department authorized the UMCDF Permittees to resume hazardous waste feed to the DFS. This was based upon the submittal of materials by the Permittees that resolved all of the key issues identified in the Department's stop feed letter issued on June 24, 2003. The Permittees have indicated a desire to begin the Surrogate Trial Burn for the DFS on August 21.

Metal Parts Furnace (MPF): On August 11, 2003, the Permittees notified the Department that the carbon filters on the MPF had been bypassed during shakedown activities for the furnace. Subsequent examination of UMCDF records by staff of the Department indicated that the carbon filters had been bypassed throughout the three week period that UMCDF had been conducting shakedown of the MPF. The Surrogate Trial Burn Plan allows the Permittees to bypass the carbon filters during the MPF trial burn, because it is necessary to do so in order to sample the emissions prior to the

carbon filters, as currently specified in the permit. However, this does not allow the carbon filters to be bypassed during routine shakedown activities.

Preliminarily, the Permittees have verbally reported to the Department that this mistake occurred due to communication breakdowns and inadequate training that will be corrected. UMCDF voluntarily shut down both the MPF and the DFS, pending their further investigation of this situation. The Department will be issuing a notice of non-compliance to the Permittees the week of August 18, 2003, including a requirement to stop further feed of hazardous waste until a written report is provided to the Department responding to an extensive list of questions regarding the particulars of how this situation occurred and what actions will be taken to prevent its recurrence. This case will also be referred to Headquarters for formal enforcement action.

Other Topics of Interest

Brine Reduction Area (BRA): The site has experienced liner failure problems with the storage tanks of the BRA. A corrosion consultant has evaluated the system and concluded that the failures are the result of several factors: improper cathodic protection, probable improper preparation of the steel tank surfaces prior to application of the liner material, "electrical continuity" between the tank walls and the metal blades of the tank mixers, and abrasion of the liners due to forces created by the mixer blades. DEQ is awaiting further information from the site regarding the corrective actions that will be taken and the schedule for completion of such actions. The site has indicated that liner repairs will be completed by December 1, 2003 and additional improvements (including an upgrade of cathodic protection) are still being evaluated.

CSEPP: The Chemical Stockpile Emergency Preparedness Program (CSEPP) Executive Review Panel is being re-convened on August 21 to review the results of the June 3, 2003 emergency response exercise and provide an update to the Governor's office on the status of CSEPP readiness.

Anniston Chemical Agent Disposal (ANCDF): On July 30, 2003, ANCDF received its final approval from the Alabama Department of Environmental Management to proceed with the destruction of chemical agents. The Army delayed startup of agent operations until an August 8, 2003 hearing could be held on a request for a temporary restraining order/preliminary injunction by the Chemical Weapons Working Group and other local groups opposed to incineration. On August 8, a federal district court judge in Washington, D.C. turned down the petitioners' requests, allowing ANCDF to begin agent operations. The facility successfully processed two GB rockets on August 9, 2003.

According to newspaper reports, Anniston resumed operations on August 14, 2003 following two days of shutdown to repair a problem with a motor in the cooling system for the carbon filters and to repair a leak in a hydraulic fluid line connected to the blade that shears the rockets into pieces that are subsequently fed into the deactivation furnace. The Army hoped to process 15 or more rockets on August 14.

Potential Worker Exposure at the Umatilla Chemical Depot: The Depot is awaiting the results of medical tests on a worker at the Depot to determine if he was exposed to Mustard agent during his participation on a decontamination team for a leaking one-ton Mustard container detected in igloo #1708 on July 22, 2003. The worker exhibited a small blister on his arm within approximately 24 - 48 hours of his August 7, 2003 activities at the igloo. Since this individual was not involved in direct contact with any Mustard containers and the agent monitoring at the igloo indicated no agent release coincident with his activities, the site does not expect the results to verify any agent exposure. However, Depot procedures provide the opportunity for any worker to have testing performed to evaluate potential exposures to chemical agent.

GASP III: The GASP III trial resumed in Judge Michael Marcus' courtroom in Multnomah County Circuit Court on August 11, 2003. It is likely that closing arguments may be heard on August 15, 2003, providing for a possible decision by Judge Marcus prior to the end of this year.



Department of Environmental Quality

Chemical Demilitarization Program

Umatilla Chemical Agent Disposal Facility Comprehensive Monitoring Program

Presented to:

Environmental Quality Commission

August 15, 2003

(Agenda Item "E")

By Sue Oliver, Chemical Demilitarization Program

8/15/03 EOL Meeting
Item E Handout.



Today's Presentation

Chemical Demilitarization Program

- The hazardous waste permit requirement for an environmental monitoring program
- The Comprehensive Monitoring Program (CMP) Workplan
- The CMP Sampling and Analysis Plan
- Results to date



Hazardous Waste Permit Requirement for the Comprehensive Monitoring Program

Chemical Demilitarization Program

The Oregon Environmental Quality Commission (EQC) wanted “on-the-ground” confirmation that there were no adverse impacts from operation of the UMCDF.

When the EQC approved the HW Permit in 1997 it included a requirement to develop a monitoring program to “confirm the results” of the health and ecological risk assessments.



Permit Requirements

Chemical Demilitarization Program

Established three sampling zones based on distance from UMCDF.

Required chemical agent air monitoring at the Umatilla Chemical Depot fenceline.

Required an “assessment of contamination” of environmental media.

Required a sampling and analysis plan with appropriate Data Quality Objectives (DQOs).



Permit Requirements (continued)

Chemical Demilitarization Program

Required that the facility Contingency Plan be updated to include appropriate reaction and notifications based on CMP results.

Required a written reporting and “file maintenance” program to effectively maintain the results of the Comprehensive Monitoring Program.



Establishing a Workgroup to develop the CMP Workplan

Chemical Demilitarization Program

- Workgroup members included three federal agencies, eight state agencies from both Oregon and Washington, the Umatilla Tribes, and a representative from the Chemical Demilitarization Citizens Advisory Commission.



CMP Workgroup Objectives

Chemical Demilitarization Program

- Determine the number and location of sampling sites.
- Select the media to be sampled.
- Establish the sampling frequency.
- Determine the documentation and reporting requirements.



CMP Sampling Zones (established by the HW Permit)

Chemical Demilitarization Program

- Zone 1 - the Umatilla Chemical Agent Disposal Facility (UMCDF) to the Umatilla Chemical Depot fenceline.
- Zone 2 - the Umatilla Chemical Depot fenceline out to a fifty kilometer radius from the UMCDF common stack.
- Zone 3 - locations beyond the fifty kilometer radius.



Sample Site Selection Criteria

Chemical Demilitarization Program

- The CMP Workgroup considered the following criteria in establishing sample site locations in each zone:
 - Prevailing wind direction
 - Location of population centers
 - Accessibility
 - Potential for impact from UMCDF
 - Sensitive ecological areas
 - Tribal areas of concern



Sample Sites by Zone

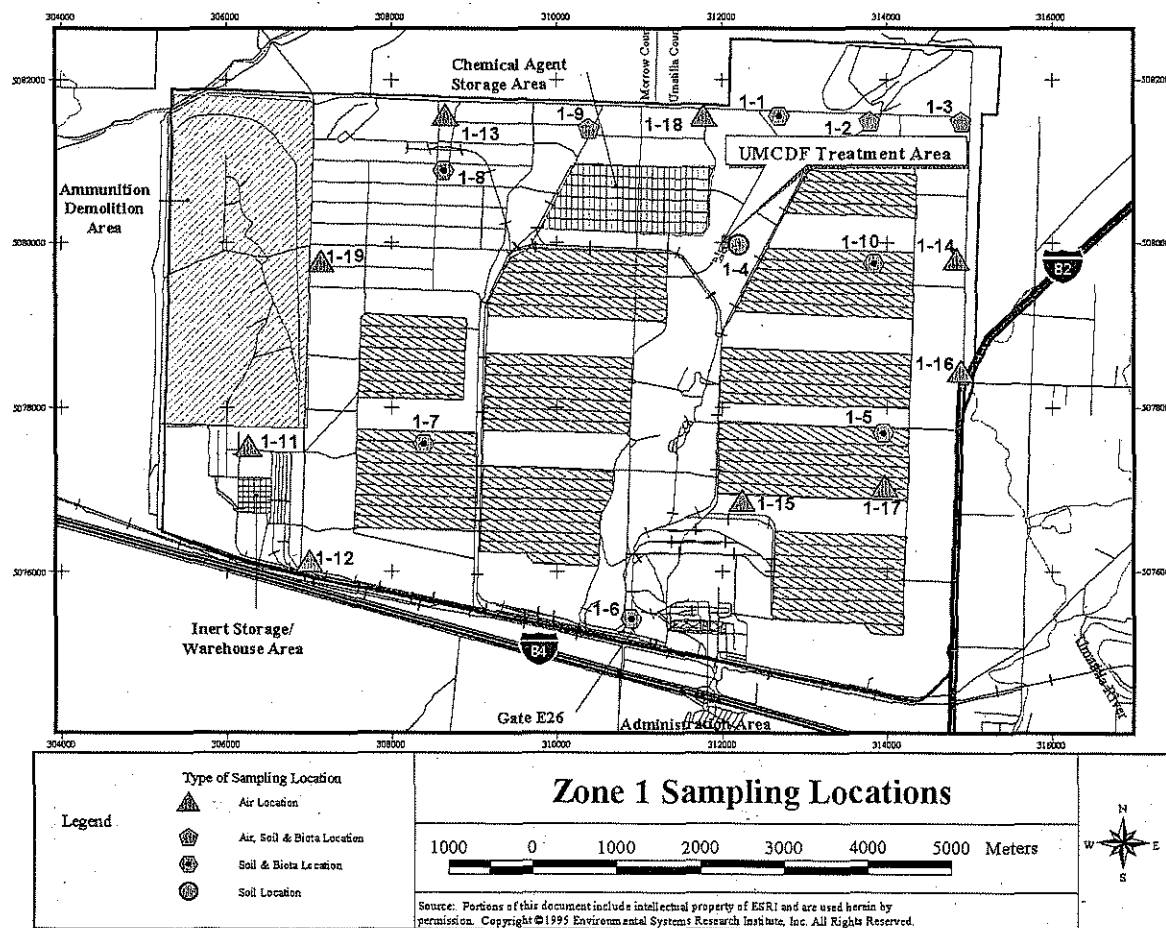
Chemical Demilitarization Program

- Zone 1
 - 19 sample sites for surface soil and biota (there is no surface water in Zone 1)
 - 12 air sampling stations (chemical agent only)
- Zone 2
 - Eight sample sites for soil, biota, and water
- Zone 3
 - Seven sample sites for soil and biota



Zone 1 Sample Sites

Chemical Demilitarization Program

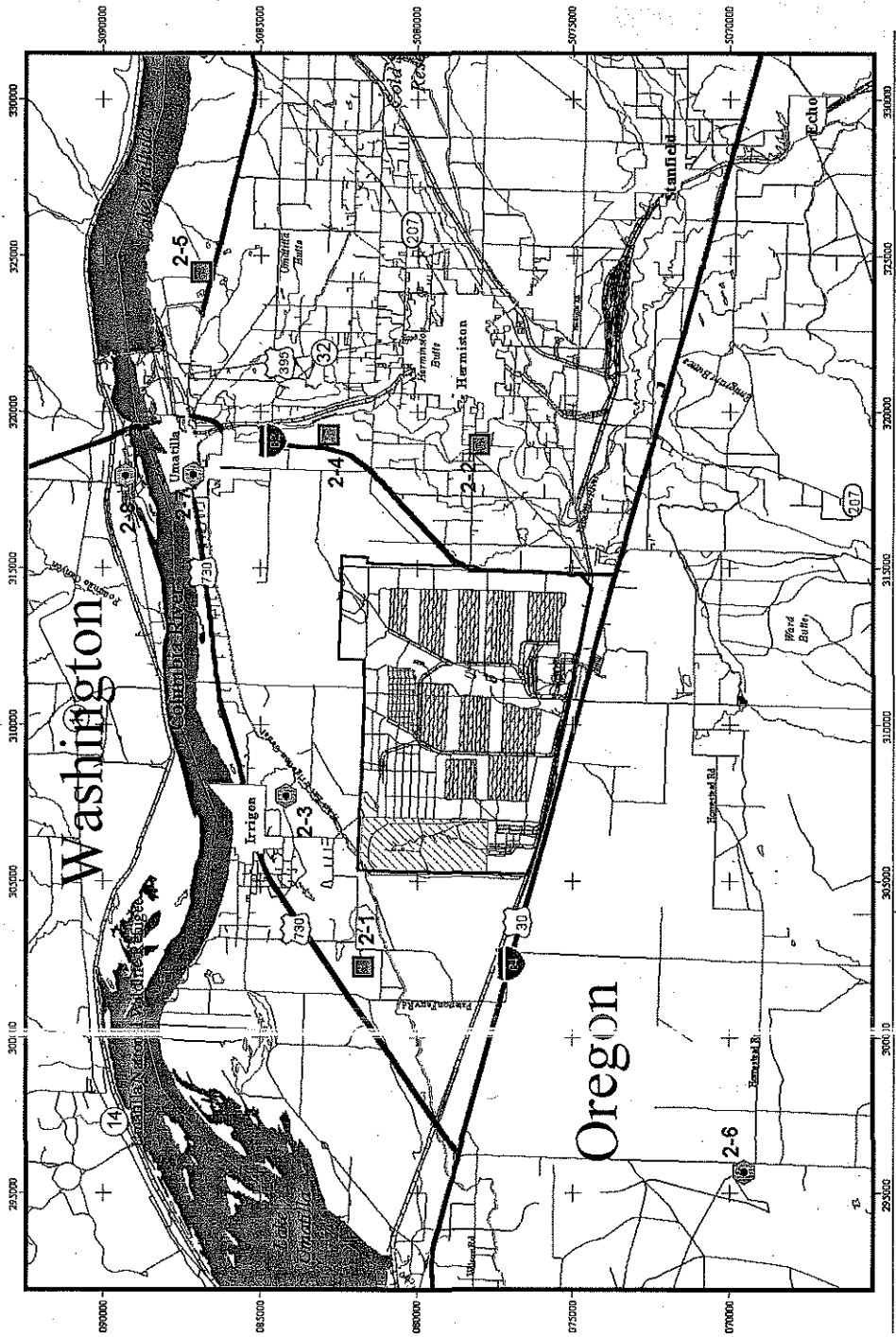




DEQ

Zone 2 Sample Sites

Chemical Demilitarization Program





Selection of Sample Media

Chemical Demilitarization Program

- Surface soil (25 sites, all zones)
- Surface water (four sites, all in Zone 2)
- Air (12 stations, Zone 1 only)
- Biota--vegetation, small mammals, terrestrial invertebrates (19 sites total, nine in Zone 1, eight in Zone 2, and two in Zone 3)



Selection of “Risk Driving Analytes”

Chemical Demilitarization Program

- Chemical agents (12 air sampling sites and four soil sites in Zone 1, four soil sites in Zone 2, and one soil site in Zone 3)
- Eight metals
- Two semi-volatile organics
- Polychlorinated biphenyls (13 coplanar congeners)
- Dioxins (seven congeners)
- Furans (10 congeners)



Sampling Frequency

Chemical Demilitarization Program

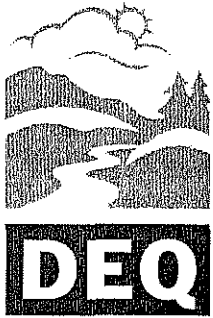
- Soil, water, and biota sampling is conducted quarterly.
- Agent air sampling is conducted daily (12-hour sampling periods) using the Army's "Depot Area Agent Monitoring System" (DAAMS) methodology.



CMP Sampling Phases

Chemical Demilitarization Program

- **Baseline Phase**
 - a minimum of two years prior to the beginning of thermal operations at UMCDF (eight quarterly sampling events).
- **Operational Phase**
 - the period of time that UMCDF is actively processing hazardous waste.
- **Post-operational**
 - one year after completion of hazardous waste operations at UMCDF.



Sampling and Analysis Plan

Chemical Demilitarization Program

- The CMP Workplan became the basis for a Permit Modification Request (PMR) to incorporate the SAP into the HW Permit.
- The CMP Workplan and SAP went through a formal public comment process.
- The SAP is now an enforceable document under RCRA and failure by the Permittees to follow the procedures in the approved SAP is subject to enforcement action.



Documentation and Reporting

Chemical Demilitarization Program

- Reports for each quarterly sampling event are due 90 days following the completion of that quarter's sampling.
- An annual report is prepared after completion of each fourth sampling event.
- Upon completion of the baseline sampling phase the quarterly data were used to determine "baseline threshold values" for each analyte in each media.



Baseline Phase Threshold Values vs. Operational Phase Results

Chemical Demilitarization Program

- Analytical results from the operational phase are compared with the baseline threshold values.
- If a threshold value is exceeded, follow-on actions are based on the magnitude of the increase and whether more than one sample site is involved.



Potential Follow-on Actions

Chemical Demilitarization Program

- Additional data analysis
- Additional sampling to confirm results
- Analysis of meteorological data
- Correlation with other events (e.g., unusual occurrences at UMCDF during the previous quarter, aerial spraying in nearby fields)



Results to Date

Chemical Demilitarization Program

- Baseline Sampling Phase began in April, 1999 and was concluded July, 2002 after completion of 14 quarterly sampling events
- The sampling program is complex and errors in sample collection, analysis, and data reporting have not been uncommon
- Some soil sampling sites are prone to disturbance by both humans and animals
- Collection of all samples during each sampling event is not always possible



Results to Date (Continued)

Chemical Demilitarization Program

- Four “operational phase” sampling events have been conducted to date
- Results from each quarter are compared to the Baseline Threshold Values (BTV) calculated from the baseline sample phase
- Because of the statistical methodology used to calculate the BTVs, and the relatively small sample size (14 baseline samples), “exceedances” of the BTVs are not uncommon



Results to Date (Continued)

Chemical Demilitarization Program

- Quarterly reports list “exceedances” and are providing trend analyses and data analysis
- Additional data (at least one more quarter) are needed so that meaningful analysis can be undertaken of the results to date



For more information...

Chemical Demilitarization Program

Chemical Demilitarization Program

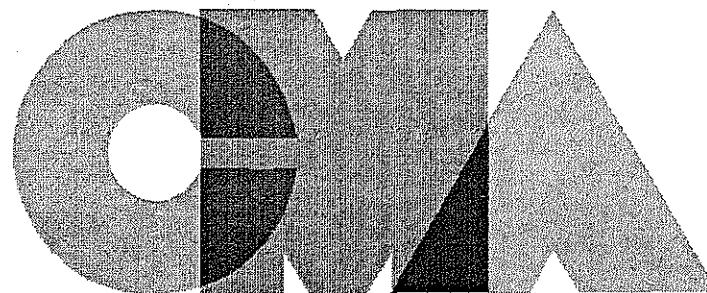
256 E. Hurlburt Ave.

Hermiston, OR 97838

Telephone: (541) 567-8297

Fax: (541) 567-4741

<http://www.deq.state.or.us>



U.S. ARMY
CHEMICAL MATERIALS AGENCY

UMCD/UMCDF Monitoring Overview

August 15, 2003

**Presented to
Environmental Quality Commission**

**Presented by
Mr. Darrel Johnston, UMCDF Laboratory Manager**

8/15/03 EAC Meeting, Item F hand-out

Monitoring Objective



- Safety
 - worker/public protection
- Environmental protection
- Process efficiency

Analyses of Interest (Examples)



- Safety
 - agent

- Environmental protection
 - metals

- Process efficiency
 - carbon dioxide

Agent Monitoring Locations (Examples)



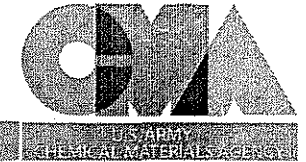
- **UMCDF**

- Agent Expected Areas
 - Incinerator rooms
 - Demilitarization equipment rooms
 - Laboratory hoods
- Agent Not Expected Areas
 - Incinerator stack
 - Carbon Filter System
 - Transport containers
 - Unpack Area
 - Corridors around demilitarization rooms
- Other Areas
 - Medical Facility
 - Control Room
 - Offices
 - Lunch rooms

- **UMCD**

- Storage locations
- Perimeter

Agent Monitoring Strategy



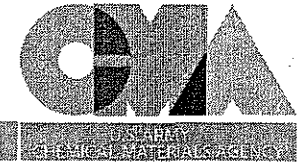
- UMCDF

- Agent Expected Areas
 - High level detection
 - Quick response system
 - Control Room Indication
- Agent Not Expected Areas
 - Low level detection
 - Quick response system
 - Control Room Indication
- Other Areas
 - Low level detection
 - Confirmatory system

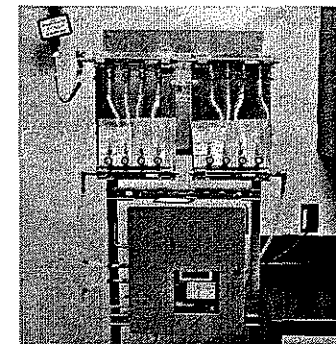
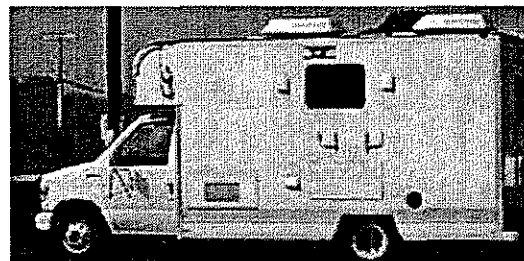
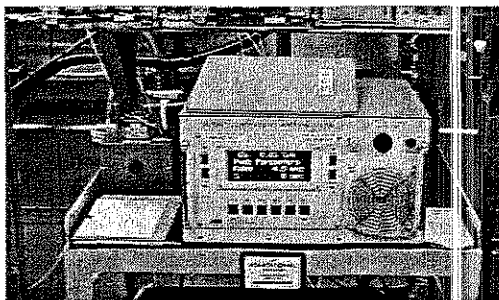
- UMCD

- Storage Locations
 - Low level detection
 - Quick response system
 - Routine and occupied
- Perimeter
 - Low level detection
 - Confirmatory system

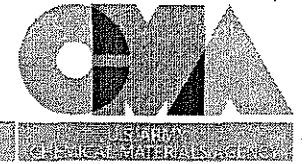
Agent Monitoring Equipment



- Automatic Continuous Air Monitoring System (ACAMS)
 - High and low level concentrations
 - Detection level protective of worker and public health
- Real Time Analytical Platform (RTAP)
 - Low level concentrations
 - Detection level protective of worker and public health
- Depot Area Air Monitoring System (DAAMS)
 - Low level concentrations
 - Detection level protective of worker and public health
 - Confirmatory system



Agent Monitoring Improvement Initiatives



- Quicker detection capabilities
- Improved accuracy
- Lower detection capabilities

Agent Monitoring Summary



- Monitoring System is
 - Proven/mature
 - Protective of human health
 - Reviewed by the Center for Disease Control
- Continuous Improvement

**NEW TEMPERATURE
CRITERIA FRAMEWORK**



**IN A NUTSHELL OR OTHER
SUITABLE SMALL CONTAINER**

WHY ALL THE FUSS???

- **MOST OF OREGON'S WATERS ARE DESIGNATED AS COLD WATER SALMONID FISHERIES.**
- **COLD WATER IS CRITICAL TO THE CONTINUED SURVIVAL OF SALMONID SPECIES IN OREGON, PARTICULAR DURING SPAWNING AND JUVENILE REARING.**

REGULATORY HISTORY

- **OR HAS HAD TEMP CRITERIA SINCE 1968**
- **CURRENT CRITERIA IS "NO MEASUREABLE INCREASE" TRIGGERED BY 3 SALMONID LIFESTAGES.**
- **APPLIED STATE-WIDE WHERE LIFE STAGES OCCUR (NO DATA IN RULE)**
- **ALSO PROTECTS IMPORTANT COLD WATER REFUGIA.**
- **EPA APPROVED IN JULY 1999**

WHY ALL THE FUSS???

- IN MARCH 2003, THE FEDERAL DISTRICT COURT OF OREGON INVALIDATED EPA'S APPROVAL OF OREGON'S EXISTING TEMPERATURE AND INTERGRAVEL DO CRITERIA.
- EPA ISSUED TEMPERATURE GUIDANCE TO STATES AND TRIBES IN APRIL 2003.

DEQ'S TEMPERATURE PHILOSOPHY

- PROTECT EXISTING COLD WATER HABITAT DURING CRITICAL PERIODS, AND TRY TO EXPAND IT TO THE EXTENT PRACTICAL.
- ESTABLISH TEMPERATURE CRITERIA THAT ENSURE THE NEEDS OF THE FISH ARE MET WHEREVER THEY CAN BE ACHIEVED, AND FOR OTHER WATERS/TIMES, ESTABLISH CRITERIA THAT COOLS OREGON WATERS AS MUCH AS POSSIBLE.

POINT AND NONPOINT SOURCES

- ALL SOURCES ARE HELD TO NO MORE THAN A DE MINIMIS (0.3 C) IMPACT ABOVE THE APPLICABLE CRITERIA.
- POINT SOURCE EFFLUENT LIMITS ARE CALCULATED TO SATISFY THIS REQUIREMENT AT THE EDGE OF A MIXING ZONE.
- NONPOINT SOURCES MAY NOT CAUSE MORE THAN A DE MINIMIS INCREASE IN TEMPERATURE.

APPLICABLE CRITERA

■ BEFORE A TMDL IS COMPLETED AND APPROVED, SIX BIOLOGICAL CRITERIA APPLY:

- "WHERE AND WHEN" BASED ON ODFW FISH DATA (SUBBASIN MAPS AND TABLES)
- CRITERIA KEYS OFF OF SUMMER REARING
- SPRING AND FALL SPAWNING CRITERIA ALSO INCLUDED.
- THESE CRITERIA ARE PERMANENT WHERE TMDL INDICATES THEY CAN BE ACHIEVED.

APPLICABLE CRITERA - Continued

- WHERE BIOLOGICAL CRITERIA CANNOT BE MET, TMDL WILL DETERMINE THE NATURAL TEMPERATURE CONDITIONS OF THE WATERSHED
- NATURAL CONDITION = THERMAL POTENTIAL AFTER MAXIMIZING TEMP REDUCTION EFFORTS IN SUBBASIN
- THE NATURAL CONDITIONS CRITERIA AUTOMATICALLY SUPERCEDE BIOLOGICAL CRITERIA WHERE ACHIEVABLE

APPLICABLE CRITERA - Continued

- IF NATURAL CONDITION CRITERIA ARE NOT ACHIEVEABLE, DEQ MUST DEVELOP SITE-SPECIFIC CRITERIA FOR THAT SUBBASIN OR STREAM
- IF THE SITE-SPECIFIC CRITERIA DO NOT FULLY SUPPORT SALMONIDS, DEQ MAY ALSO NEED TO PREPARE A USE ATTAINABILITY ANALYSIS (UAA) FOR THAT SUBBASIN OR REACH.

APPLICABLE CRITERIA - Continued

- EPA MUST REVIEW AND APPROVE SITE-SPECIFIC CRITERIA.
- IN ADDITION TO THE NUMERIC CRITERIA, EXISTING COLD WATER MUST BE PROTECTED AT ITS EXISTING TEMPERATURE IF:
 - IT IS NEEDED TO ENSURE DOWNSTREAM (SUMMER) COMPLIANCE, OR
 - TO PROVIDE HOLDING AREAS IN (SUMMER) MIGRATION CORRIDORS

OTHER ASPECTS OF THE RULE

- CLARIFIES THE APPLICATION OF THE ANTIDEGRADATION POLICY
- ~~ADD MIXING-ZONE CONSIDERATIONS~~
- SIGNIFICANT STREAMLINING (ELIMINATES OVER 170 PAGES OF RULES) WITHOUT LOSING STRINGENCY

Remind Stephanie to see if this is something we can use for Pat Allen.

DEQ & EPA RULE SCHEDULES

Oct. 3

- AUG 15 - DEQ PROPOSES RULE
- ~~SEPT 30~~ - END OR COMMENT PERIOD
- OCT 8 - EPA PROPOSES RULE
- NOV 7 - END FEDERAL COMMENT PERIOD
- DEC 4 - EQC CONSIDERS OR RULE
- MARCH 2 - EPA FINAL RULE DEADLINE

Date: July 30, 2003
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item G, Rule Adoption: Issuance of New NPDES General Permit for Confined Animal Feeding Operations (CAFOs) and Revisions to CAFO Rules August 15, 2003

Department Recommendation The Department recommends that the Environmental Quality Commission (Commission) adopt proposed rule revisions to issue a new National Pollutant Discharge Elimination System (NPDES) general permit for CAFOs in OAR 340-045-0033 and revise CAFO rules in OAR 340-045-0015 and OAR Chapter 340, Division 071 as presented in Attachment A.

Need for Rulemaking **What is the CAFO permit program?**
The CAFO permit program protects water quality by preventing CAFO wastes from contaminating groundwater and surface water. CAFOs are generally defined as the concentrated and confined feeding or holding of animals in buildings, pens or lots where the surface is prepared to support animals in wet weather or where there are waste water control facilities (e.g., manure lagoons). CAFO wastes include but are not limited to manure, silage pit drainage, wash down waters, contaminated runoff, milk wastewater, and bulk tank wastewater.

CAFO Permit Program History

The state program to regulate CAFOs began in the early 1970s by requiring CAFOs to be constructed, operated, and maintained according to best practicable waste control technologies. In the mid-1970s, the federal Environmental Protection Agency (EPA) also developed regulations requiring NPDES permits for *concentrated* animal feeding operations. Generally, a *concentrated* animal feeding operation is a very large CAFO (see definitions in Attachment A-2, p. 5). DEQ was delegated NPDES permitting authority from EPA during this time, but no NPDES permits were issued because CAFOs in Oregon were generally smaller than the federal size threshold or not discharging wastes to surface waters.

By the late 1980s, ongoing water quality problems associated with CAFOs around the state prompted the 1989 Oregon Legislature to adopt a permit

requirement for CAFOs that confine animals for more than four months in a year and operate with waste water control facilities (systems used to collect, store, or treat manure, litter, wastewater, etc.). DEQ and the Oregon Department of Agriculture (ODA) administer this CAFO permit program primarily through the issuance of state Water Pollution Control Facilities (WPCF) permits. These WPCF permits prohibit discharge of CAFO wastes to surface waters, and EPA approved of this approach for federally-defined *concentrated* animal feeding operations because it was more restrictive than the NPDES program (NPDES permits for concentrated operations allow discharges of wastes to surface water during large storm events).

Initially, in accordance with each agency's authority, ODA was responsible for overall CAFO permit program administration, including responding to complaints and inspecting CAFOs, while DEQ issued permits and conducted enforcement actions in response to ODA's requests. In 1993, the Oregon Legislature directed the complete transfer of CAFO permit program activities from DEQ to ODA, and ODA became the primary agency responsible for regulating CAFOs under the WPCF permit program with DEQ assisting as necessary.

Permit program implementation proceeded in this manner until the late 1990s when EPA clarified that CAFOs meeting the federal definition of *concentrated* must have NPDES permits even if discharges only occurred during large storm events. Previously, DEQ, ODA and many other states believed that NPDES permits for *concentrated* animal feeding operations were not required if discharges only occurred during large storm events since EPA's NPDES regulations allowed such discharges. As a result of EPA's position and new federal *concentrated* animal feeding operations adopted by EPA in February 2003, Oregon's CAFO permit program is shifting towards the issuance of NPDES permits. ODA is now seeking direct delegation of NPDES authority for *concentrated* animal feeding operations from EPA as directed by the 2001 Oregon Legislature. In the meantime, because DEQ is the delegated authority for the entire NPDES program, ODA is operating the federal portion of the CAFO permit program for *concentrated* operations through a Memorandum of Understanding with the Commission.

Why revise the rules and adopt an NPDES general permit?

These rule revisions and permit adoption are necessary for several reasons:

- *The WPCF permit approach is no longer acceptable to EPA. EPA has since clarified that CAFOs meeting the federal definition of concentrated animal feeding operations must have NPDES permits.*
Since ODA is responsible for regulating CAFOs under state law, but DEQ is still the delegated authority under the federal Clean Water Act for the

NPDES permit program, both agencies must work together on NPDES program implementation. DEQ and ODA believe adoption of a "general permit" will reduce the overall resources needed for program implementation by streamlining the administrative activities associated with the NPDES permit issuance process.

- *In response to EPA's clarification on the need for NPDES permits, the 2001 Oregon Legislature directed the transfer of the CAFO portion of the NPDES permit program from DEQ to ODA upon approval by EPA.* DEQ and ODA believe that the rule revisions and general permit adoption demonstrate to EPA that the State of Oregon is working towards a viable NPDES permit program for CAFOs. DEQ and ODA are actively working with EPA to obtain approval to transfer NPDES authority.
- *In February 2003, EPA also revised the federal animal feeding operation regulations.* The proposed DEQ and ODA rule revisions clarify that the new regulations apply in Oregon and update existing rules for consistency with federal regulations.

Effect of Rule

The proposed rule revisions would do the following:

- Adopt in rule an NPDES general permit for CAFOs.
- Amend rules to clearly reference applicable federal regulations and include federal definitions for the NPDES animal feeding operations.
- Adopt rules to clarify design, construction, operation, maintenance, and plan review requirements for CAFO waste water control facilities and operations, and to specify that ODA has authority to implement these rules.
- Amend rules to correct the statutory authority citations and make other minor wording changes.

Attachment A provides a summary of the rule revisions as well as the proposed rules.

Stakeholder Involvement

DEQ and ODA staff developed the proposed rule revisions and general permit with the assistance of an advisory committee convened by ODA. Committee members included representatives from environmental groups and the beef, dairy, poultry, and equine industries. ODA also held seventeen informational meetings on the proposed rulemaking and permit requirements throughout the state. The proposed rules and permits were further modified in response to public comment received during the two formal comment periods discussed below.

Public Comment **Overview of public comment period and hearings**

Two public comment periods along with public hearings were held as follows:

- *First public comment period – October 1, 2002 to February 20, 2003*
A public comment period was held from October 1, 2002 to November 15, 2002. This comment period was extended to February 20, 2003 to address revised federal regulations for *concentrated* animal feeding operations adopted by EPA on February 12, 2003. Public hearings were held in Redmond, Tillamook, and twice in Salem.

Twenty-four persons attended the hearing in Redmond; six provided oral comment. Nine persons attended the hearing in Tillamook; one provided oral comment. Eleven persons attended the first hearing in Salem on November 14; five provided oral comment. Nine persons attended the second hearing in Salem on February 13, 2003; three provided oral comment. Thirty-two written comments were submitted during this period.

- *Second public comment period – May 1, 2003 to June 6, 2003*
In response to comments received during the first comment period, DEQ and ODA substantially revised the proposed general permit and rule revisions. Due to these changes, the permit and rules were re-noticed for public comment on May 1, 2003. A public hearing was held on June 4 in Salem, and the comment period closed on June 6, 2003.

Two persons attended the hearing. No oral comment was given at the hearing, but the two persons in attendance submitted written comment. Two additional written comments were received during this comment period for a total of four written comments.

Summary of comments

Commenters representing a variety of environmental groups expressed concern about ODA implementing the NPDES CAFO permit program and felt DEQ should be the enforcing agency. Some commenters representing different types of CAFO operations were worried about over-regulation by ODA and DEQ and were concerned about private property and trespass issues. With respect to the proposed general permit, commenters' concerns ranged from the permit not providing sufficient protection of the environment to the permit requiring CAFOs to implement too many conditions.

Results of public input are provided in Attachment B.

Key Issues

Key issues from public comments

- *DEQ should not delegate the CAFO program to ODA; DEQ's sub-delegation of NPDES CAFO program is illegal.*
As directed by the 2001 Oregon Legislature, DEQ and ODA with EPA are pursuing transfer of NPDES program authority for animal feeding operations from DEQ to ODA. In the interim, the Commission and ODA entered into a memorandum of understanding in October 2002 to allow DEQ and ODA to jointly implement the NPDES program. DEQ cannot "delegate" or "sub-delegate" the NPDES animal feeding operation program to ODA; only EPA can approve such a program revision. ODA may act as an agent of DEQ to assist in the implementation and enforcement of the NPDES permit program for animal feeding operations. Nothing in the federal program prohibits this arrangement and EPA has indicated that it is acceptable. Until such time as EPA approval for the program revision is obtained, DEQ retains authority to implement and enforce the NPDES program and existing agreements between DEQ and EPA remain effective.

- *Operators are concerned about unannounced inspections, trespass, and public access information on their businesses.*
DEQ and ODA are required by the federal Clean Water Act to have the authority to conduct unannounced inspections. While unannounced inspections are often unwelcome, DEQ and ODA reserve the right to conduct such inspections when deemed necessary. Generally, both agencies prefer to schedule inspections with the operator because more information is available during this type of exchange. It is also the policy of both agencies to make a reasonable attempt to notify the landowner or operator before entering private property. If necessary, the law provides a method by which DEQ or ODA may seek a warrant. In all situations, agency actions are subject to the provisions of the Oregon and U.S. Constitutions that protect citizens against unreasonable searches. DEQ and ODA have agreed that ODA will be responsible for inspecting CAFOs.

DEQ and ODA are required to comply with state law pertaining to public records and the right to inspect those records (ORS Chapter 192). There are narrow exceptions allowing, for example, trade secrets to be kept confidential. Under the federal Clean Water Act, trade secrets may be protected, but certain information must be disclosed to the public upon request including the name and address of the applicant or permittee, permit applications, permits, and effluent data. For other information, the operator can assert a confidential claim for trade secrets upon submission of the information to DEQ or ODA. When such a request is received, DEQ or ODA will determine the validity of the claim and provide the requester with its decision.

- *The general permit is not adequate to regulate all types and sizes of CAFOs.*

The NPDES general permit would be used to regulate any size or type of CAFO that can meet the conditions of the permit. After considering the similarities and differences among CAFOs, ODA's advisory committee recommended that one general permit be developed. The advisory committee represented operations of almost every animal type raised in Oregon and believed that operations were similar enough that one general permit could regulate most CAFOs. For most CAFOs, a general permit would achieve environmental protection equivalent to an individual permit because, while animal types and numbers may differ, manure, litter, or process wastewater is typically managed through land application at the CAFO or transported off-site as fertilizer. In addition, while individual NPDES permits could be issued for these activities, adopting an NPDES general permit is less costly for the permittee and more administratively efficient for DEQ and ODA. In situations where a general permit does not provide sufficient regulation of a CAFO or is not flexible enough for an operator, DEQ and ODA may issue an individual permit. The advisory committee supported this approach.

Other key issues

- *Changes to the state CAFO program.*

ODA estimates that as many as 1,000 CAFOs may need to register under the new general permit. Approximately 500 of these 1,000 CAFOs are currently permitted under the state WPCF permit program; the majority under a WPCF general permit. These CAFOs are located throughout the state. Many are not considered *concentrated* according to federal regulation because they are smaller in size, but will be regulated under the new NPDES general permit because CAFOs in compliance with an NPDES permit would be shielded from third party lawsuits (this shield is not available with WPCF permits). In addition, the cost of NPDES general permit will be the same as the WPCF general permit (\$50 filing fee set in rule, \$25 annual fee set in statute).

ODA did not request any additional funding from the 2001 Oregon Legislature to implement the NPDES CAFO permit program, but it does expect to increase activities as a result of general permit adoption and the eventual transfer of the NPDES CAFO program. DEQ and ODA will likely pursue further rulemaking to transition the NPDES program to ODA (i.e., clarification of responsibilities, moving DEQ's CAFO rules into ODA's OAR Chapter 603, etc.), but no rulemaking to increase fees is anticipated at this time.

With current staffing, ODA is working on establishing an inventory of CAFOs that may need NPDES permits. ODA recently assigned additional staff (approved under its current budget) to manage the increased workload of transitioning to this permit. ODA also received a grant from EPA to cover additional activities.

- *Lawsuits against EPA's NPDES concentrated animal feeding operation regulations and general permit programs.*

EPA revised the NPDES regulations for concentrated animal feeding operations in February 2003. Several groups, including environmental as well as industry representatives, filed lawsuits against EPA shortly after the regulations were promulgated. No decision has been made on these lawsuits yet. EPA was also sued by a variety of groups after promulgating regulations for storm water discharges in 1999. In this instance, the U.S. Ninth Circuit Court of Appeals initially determined that EPA's general permit program for small municipal separate storm sewer systems did not allow for adequate public participation. EPA appealed and the decision was stayed so the law is unresolved on this matter, but EPA has advised states that it is appropriate to proceed with issuance of general permits. If EPA is required to modify the regulations in response to these lawsuits, DEQ and ODA may need to revise the general permit through rulemaking.

Next Steps

If the Commission adopts the general permit and other revisions into rule, ODA will adopt its proposed rules and transition existing WPCF CAFO permittees over a period of time to the NPDES general permit. ODA will be responsible for implementation of the general permit. ODA will also continue outreach to those operations that need to be covered by permit.

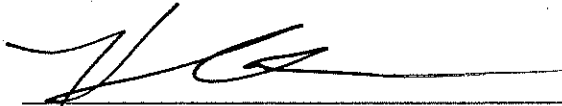
DEQ will continue to assist ODA in obtaining NPDES authority for CAFOs from EPA, and provide technical assistance on NPDES and other permitting issues as needed by ODA. After EPA approves the NPDES program revision, both agencies will continue to work together to address CAFO permitting issues in groundwater management areas and water quality limited streams, and maintain the State of Oregon's delegated authority to enforce the Clean Water Act.

- Attachments**
- A. Summary of Proposed Rule Revisions
 - A-1. Proposed Final Rules
 - A-2. Proposed General Permit
 - B. Public Input and Department's Response
 - C. Presiding Officer's Report on Public Hearings
 - D. Relationship to Federal Requirements
 - E. Fiscal and Economic Impact Statement
 - F. Land Use Evaluation Statement
 - G. Fact Sheet for General Permit
 - H. ODA Proposed Rule

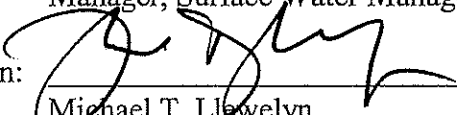
- Available Upon Request**
- A. Legal Notice of Hearing
 - B. Cover Memorandum from Public Notice
 - C. Written Comment Received
 - D. Public Hearing Audio Tapes
 - E. Previous Versions of Proposed Rule and General Permit

Approved:

Section:


Holly Schroeder
Manager, Surface Water Management

Division:


Michael T. Llewelyn
Administrator, Water Quality Division

Report Prepared By:

Ranei Nomura, Water Quality Division, DEQ
Phone: (503) 229-5657

Attachment A
Proposed Rule Revisions and General Permit

Summary

OAR 340-045 Regulations Pertaining to NPDES and WPCF Permits

1. OAR 340-045-0015(2) – revised to be consistent with NPDES regulations and allow the Director to designate an animal feeding operation as a significant contributor of pollutants needing an NPDES permit pursuant to 40 CFR §122.23(c).
2. OAR 340-045-0033(10) – amended to adopt an NPDES general permit for CAFOs.

OAR 340-051 Confined Animal Feeding or Holding Operations

1. Title of this division revised to read “Confined Animal Feeding Operations.”
2. OAR 340-051 – revised to correct statutory authority citations throughout the division and make the references to “confined animal feeding operations” and “waste water control facility(ies)” throughout the division consistent.
3. OAR 340-051-0005 – removed the term “best practicable” to prevent confusion with federal terminology and referenced federal regulations for animal feeding operations adopted by EPA in February 2003.
4. OAR 340-051-0007 – rule added to clarify that ODA has authority to implement OAR 340-051, and clarify design, construction, operation, maintenance, and plan review requirements for CAFO waste water control facilities and operations so they are consistent with ODA’s proposal to adopt OAR 603-074-0018. In lieu of DEQ or ODA approval of plans and specifications for the design and construction of waste water control facilities, DEQ and ODA are also proposing to allow certification by a licensed engineer that these facilities are designed and constructed in compliance with OAR 340-051-0055 through 340-051-0070.
5. OAR 340-051-0010(1) – revised the definition of “Department” to include ODA.
6. OAR 340-051-0010(2) – revised the “CAFO” definition so it is consistent with ODA’s definition in OAR 603-074-0010(3). ODA modified the definition of “CAFO” in an earlier rulemaking to include the federal definition of *concentrated* animal feeding operations (see Attachment A-2, p. 5 for the definition of *concentrated*).
7. OAR 340-051-0010(4) now numbered as (7) – changed the term “waste control facility” to “waste water control facility” and modified its definition to be consistent with ORS.
8. OAR 340-051-0010 – added the federal definitions of manure, process wastewater, and production area.
9. OAR 340-051-0030(1) – revised to refer to “person” instead of “man” and changed “Department of Environmental Quality” to “Department” to include ODA.
10. Revised the title preceding OAR 340-051-0050 to include the term “waste water control facilities.”
11. OAR 340-051-0050 – revised to cite “OAR 340-051-0020” instead of the title of 0020, changed “Department of Environmental Quality” to “Department” to include ODA, removed the term “best practicable” to avoid confusion with federal terminology, and changed cite to “OAR Chapter 340, Division 051” instead of the generic reference to “Regulations.”
12. OAR 340-051-0080 – changed “USDA Soil Conservation Service” to “USDA Natural Resource Conservation Service” and changed “Department of Environmental Quality” to “Department” to include ODA.

**Attachment A-1
Proposed Final Rules**

**OAR CHAPTER 340
(strikeout indicates deleted text; underline indicates proposed text)**

**DIVISION 045
REGULATIONS PERTAINING TO NPDES AND WPCF PERMITS**

**340-045-0015
Permit Required**

- (1) Without first obtaining a permit from the Director, no person shall:
 - (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, 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) NPDES Permit Requirement:
 - (a) Without first obtaining an NPDES permit, no person shall discharge pollutants from a point source into navigable waters.
 - (b) Without first obtaining an NPDES permit, no person owning or operating an animal feeding operation designated by the Director as a significant contributor of pollutants pursuant to the provisions of 40 CFR Section 122.23(c) shall discharge pollutants from a point source into navigable waters. Any person designated as such may seek review of the Director's determination by requesting a contested case hearing pursuant to ORS 183.413 to 183.470.
- (3) Any person who has a valid NPDES permit shall be considered to be in compliance with the requirements of section (1) of this rule. No additional permit for the discharge is required.
- (4) Although not exempted from complying with all applicable laws, rules, and regulations regarding water pollution, persons discharging wastes into a sewerage system are specifically exempted from requirements to obtain a WPCF or NPDES permit, provided the owner of such sewerage system has a valid WPCF or NPDES permit. In such cases, the owner of such sewerage system assumes ultimate responsibility for controlling and treating the wastes he allows to be discharged into said system. Notwithstanding the responsibility of the owner of such sewerage systems, each user of the sewerage system shall comply with applicable toxic and pretreatment standards and the recording, reporting, monitoring, entry, inspection, and sampling requirements of the Commission and the Federal Act and federal regulations and guidelines issued pursuant thereto.
- (5) Each person who is required by sections (1) and (2) of this rule to obtain a permit shall:
 - (a) Make prompt application to the Department therefor;
 - (b) Fulfill each and every term and condition of any permit issued to such person;
 - (c) Comply with applicable federal and state requirements, effluent standards, and limitations including, but not limited to, those contained in or promulgated pursuant to Sections 204, 301, 302, 304, 306, 307, 402, and 403 of the Federal Act, and applicable federal and state water quality standards;
 - (d) Comply with the Department's requirements for recording, reporting, monitoring, entry, inspection, and sampling, and make no false statements, representations, or certifications in any form, notice, report, or document required thereby.

Stat. Auth.: ORS 468 & ORS 468B

Stats. Implemented: ORS 468.065 & ORS 468B.050

Hist.: DEQ 53(Temp), f. & ef. 6-21-73 thru 10-18-73; DEQ 58, f. 9-21-73, ef. 10-25-73; DEQ 113, f. & ef. 5-10-76

340-045-0033

General Permits

- (1) The Director may issue general permits for certain categories of minor discharge sources or minor activities where individual NPDES or WPCF permits are not necessary to adequately protect the environment. Before the Director can issue a general permit, the following conditions must be met:
 - (a) There must be several minor sources or activities that involve the same or substantially similar types of operations.
 - (b) The sources or activities must have the potential to discharge or dispose of the same or similar types of wastes.
 - (c) The general permit must require the same or similar monitoring requirements, effluent limitations and operating conditions for the categories.
 - (d) The category of sources or activities would be more appropriately controlled under a general permit than an individual permit.
 - (e) The Commission has adopted the general permit into rule by reference.
- (2) General permits issued after the effective date of this rule will specify the following:
 - (a) The requirements to obtain coverage under a general permit, including application requirements and application submittal deadlines. The Department may determine that submittal of an application is not necessary after evaluating the type of discharge, potential for toxic and conventional pollutants in the discharge, expected discharge volume, availability of other means to identify dischargers, and estimated number of dischargers to be covered by the permit. The Department's evaluation must be provided in the public notice for the general permit.
 - (b) The process used by the Department to notify a person that coverage under a general permit has been obtained and the discharge or activity is authorized.
- (3) Although general permits may include activities throughout the state, they may also be restricted to more limited geographical areas.
- (4) Prior to issuing a general permit, the Department will follow the public notice and participation procedures outlined in OAR 340-045-0027, 340-045-0035(3), and ORS 183.325 to 183.410. In addition the Department will make a reasonable effort to mail notices of pending actions to those persons known by the Department who are likely to be covered by the general permit.
- (5) Any person operating a discharge source or conducting an activity described in a general permit must apply for coverage under the general permit, unless the general permit does not require submission of an application pursuant to (2)(a) of this rule or the source or activity is specifically covered by an individual NPDES or WPCF permit. Any person seeking coverage under a general permit must submit an application as required under the terms of the applicable NPDES or WPCF general permit. If application requirements are not specified in the general permit, procedures in OAR 340-045-0030 or OAR 340-071-0162, whichever is applicable, must be followed. A person who fails to submit application in accordance with the terms of the general permit, OAR 340-045-0030 or OAR 340-071-0162, whichever is applicable, is not authorized to conduct the activity described in the permit.
- (6) Any person required to have coverage under a general permit must pay permit fees as required in OAR 340-045-0070 to 340-045-0075 or OAR 340-071-0140 to obtain and maintain coverage under that permit.
- (7) Any permittee covered by an individual NPDES or WPCF permit may request that the individual permit be canceled or allowed to expire, and that it be covered by a general permit if its discharge or activity may be covered by an existing general permit. As long as the permittee is covered by an individual NPDES or WPCF permit, the conditions and limitations of the individual permit govern, until such time as it is canceled or expires.
- (8) Any person not wishing to be covered by a general permit may make application for an individual permit in accordance with OAR 340-045-0030 or OAR 340-071-0162, whichever is applicable.
- (9) The Director may revoke coverage and authorization under a general permit pursuant to OAR 340-045-0060 as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit.

Any interested person may petition the Director to take action under this section. Cases where an individual permit may be required include the following:

- (a) The discharge or activity is a significant contributor of pollution or creates other environmental problems;
 - (b) The permittee is not in compliance with the terms and conditions of the general permit, submitted false information, or is in violation of any applicable law;
 - (c) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;
 - (d) For NPDES general permits, effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit; or
 - (e) Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.
- (10) The following general permits are adopted by reference in this rule and available for review at the Department:
- (a) NPDES 200-J, Filter backwash (issued August 29, 1997)
 - (b) NPDES 500-J, Boiler blowdown (issued August 29, 1997)
 - (c) WPCF 600, Offstream placer mining (issued April 9, 1997)
 - (d) NPDES 700-J, Suction dredges (issued May 3, 1999)
 - (e) WPCF 800, Confined animal feeding operations (issued August 8, 1990)
 - (f) NPDES 900-J, Seafood processing (issued June 7, 1999)
 - (g) WPCF 1000, Gravel mining (issued July 26, 2002)
 - (h) NPDES 1200-A, Storm water runoff from sand, gravel & non-metallic quarrying & mining in Standard Industrial Classification (SIC) 14, asphalt mix batch plants, and concrete batch plants. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR §122.26(g); see permit for details. (issued July 26, 2002)
 - (i) NPDES 1200-C, Storm water runoff from construction activities, including clearing, grading, and excavation, and stockpiling that disturbs five or more acres, including activities that will disturb five or more acres over time as part of a larger common plan of development; effective December 1, 2002, construction activities that disturb one or more acre are covered (issued February 20, 2001)
 - (j) NPDES 1200-CA, Government agencies responsible for storm water runoff from construction activities that disturbs five or more acres; effective December 1, 2002, construction activities that disturb one or more acres are covered (issued February 20, 2001)
 - (k) NPDES 1200-COLS, Storm water runoff in the Columbia Slough watershed from industrial activities listed in 8(l) of this rule (issued December 22, 1999)
 - (l) NPDES 1200-Z, Storm water runoff from: Warehousing in SIC 4221-4225; Food processing in SIC 20; Landfills, land app. sites; Heavy industrial in SIC 28, 29, 30, 31, 32, 33 & steam electric power generating (includes coal/hogged fuel handling); Light mfg. in SIC 34, 35, 36, 37, 38 & 39 includes ship & boat building/repair; Printing in SIC 27; Textile & apparel mfg. in SIC 22 & 23; Transportation in SIC 40, 41, 42, 43, 44, 45 & 5171; Wood products mfg. in SIC 24 & 25; Metal scrap yards, battery reclaimers & auto salvage yards in SIC 5015 & 5093; Hazardous waste treatment, storage, & disposal facilities. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR §122.26(g); see permit for details. (issued July 26, 2002)
 - (m) NPDES 1300-J, Oily storm water runoff and oil/water separators (issued January 11, 2000)
 - (n) WPCF 1400-A, Seasonal food processing & wineries, less than 25,000 gallons/day (issued August 22, 2000)
 - (o) WPCF 1400-B, Other food processing, less than 25,000 gallons/day (issued August 22, 2000)
 - (p) NPDES 1500-A, Petroleum hydrocarbon cleanups discharged to surface waters (issued August 22, 2000)
 - (q) WPCF 1500-B, Petroleum hydrocarbon cleanups (issued August 22, 2000)
 - (r) NPDES 1700-A, Vehicle and equipment wash water discharged to surface waters (issued March 5, 1998)
 - (s) WPCF 1700-B, Vehicle and equipment wash water (issued March 5, 1998)
 - (t) NPDES 1900-J, Non-contact geothermal heat exchange (issued September 11, 1997)

- (u) NPDES 01. Confined animal feeding operations (issued *insert date of EOC meeting at which permit is adopted*)

Stat. Auth.: ORS 468.020, ORS 468B.020 & ORS 468B.035

Stats. Implemented: ORS 468.065, ORS 468B.015, ORS 468B.035 & ORS 468B.050

Hist.: DEQ 28-1980, f. & ef. 10-27-80; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 13-2001, f. & cert. ef. 10-16-01;
DEQ 8-2002, f. & cert. ef. 8-9-02

DIVISION 051 CONFINED ANIMAL FEEDING ~~OR HOLDING~~ OPERATIONS

340-051-0005

Purpose

It is the purpose of these rules to protect the quality of the environment and public health in Oregon by requiring compliance with federal requirements in 40 CFR §122, 123, and 412 [68 FR 7176 (February 12, 2003)] and application of the best practicable applicable waste control technology relative to location, construction, operations and maintenance of confined animal feeding or holding facilities and operations.

Stat. Auth.: ~~ORS 449 & ORS 468B~~ ORS 468.020 & ORS 468B.200 – ORS 468B.230

Stats. Implemented: ORS 468B.200 - ORS 468B.300

Hist.: DEQ 34, f. 2-3-72, ef. 2-15-72

340-051-0007

Implementation of OAR 340-051

- (1) Oregon Department of Agriculture Authority. Pursuant to ORS 468B.200 through 468B.230 and the Memorandum of Understanding between the Environmental Quality Commission and Oregon Department of Agriculture (October 2002), the Oregon Department of Agriculture is authorized to implement the provisions of OAR Chapter 340, Division 051 consistent with OAR Chapter 603, Division 074 *Confined Animal Feeding Operation Program*.
- (2) Certification of Plans and Specifications. In lieu of Department approval of plans and specifications as required by OAR 340-051-0015, the Department will accept certification by a licensed engineer that waste water control facilities specified in subsection (2)(a) of this rule were designed and constructed in compliance with OAR 340-051-0055 through 340-051-0070.
 - (a) Certifications may only be made for:
 - (A) Earthen impoundments, conveyances, and animal holding areas;
 - (B) Earthen-floored buildings and animal travel lanes between buildings in the production area; and
 - (C) Primary storage structures for liquid and solid manure. For purpose of this paragraph, a primary storage structure is any storage structure intended to hold an operation's waste for a period of five or more days.
 - (b) Certifications must be submitted on forms approved by the Department.
 - (c) Certification in lieu of Department approval is not allowed for waste water control facilities using experimental or unproven treatment methods or technology and may be disallowed for any other facility if the Department determines that the nature of the facility or operation is such that Department review is needed to ensure protection of waters of the state.

- (3) Exclusion from Department Approval Construction or modification of waste water control facilities, other than impoundments, conveyances, holding areas, buildings and animal travel lanes within the production area, and primary storage structures, are not subject to design or post-construction review and approval requirements unless the Department determines that the nature of the facility is such that review is needed to ensure protection of waters of the state.

Stat. Auth.: ORS 468.020 & ORS 468B.200 – ORS 468B.230

Stats. Implemented: ORS 468.005, ORS 468B.005 & ORS 468B.205

Hist.:

340-051-0010

Definitions

Unless the context or OAR Chapter 603, Division 074 requires otherwise, as used in these rules:

- (1) "Department" means the Oregon Department of Environmental Quality or the Oregon Department of Agriculture.
- (2) "Confined Animal Feeding Operation" means:
- (a) ~~The concentrated confined feeding or holding of animals or poultry, including, but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms;~~
 - (A) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or which
 - (B) That have wastewater treatment works; or
 - (C) That discharge any wastes into waters of the state; or-
 - (b) An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR §122.23.
- (3) "Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.
- ~~(3)~~(4) "Person" means the state, any individual, public or private corporation, political subdivision, governmental agency, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever.
- (5) "Process Wastewater" means water directly or indirectly used in the operation of the confined animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning or flushing pens, barns, manure pits, or other confined animal feeding operation facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater or process wastes also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.
- (6) "Production Area" means that part of a confined animal feeding operation that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment areas include but are not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of animal mortalities.

(4)(7) "Waste Water Control Facility" means a "disposal system" or "treatment works" as defined by ORS 468B.005 that may cause pollution of surface water or groundwater and is used for collecting, conveying, treating, stabilizing or storing manure, litter, process wastewater, or contaminated production area drainage (i.e., silage leachate, contaminated storm water runoff, etc.) at confined animal feeding operations, all or any part of a system or systems used in connection with a confined feeding or holding operation for the:

- (a) Control of drainage;
- (b) Collection, retention, treatment, and disposal of liquid wastes or contaminated drainage waters; or
- (c) Collection, handling, storage, treatment or processing and disposing of manure.

(5)(8) "Waters of the State" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlet, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which that do not combine or effect a junction with natural surface or underground waters) which that are wholly or partially within or bordering the state or within its jurisdiction.

Stat. Auth.: ORS 449 & ORS 468.020 & ORS 468B.200 – ORS 468B.230

Stats. Implemented: ORS 468.005, ORS 468B.005 & ORS 468B.205

Hist.: DEQ 34, f. 2-3-72, ef. 2-15-72; DEQ 21-1990, f. & cert. ef. 7-6-90

340-051-0015

New, Modified or Expanded Facilities and Operations

A person constructing or commencing to operate a confined animal feeding or holding operation or waste water control facility, or substantially modifying or expanding an existing confined animal feeding and holding operation or waste water control facility shall first submit detailed plans and specifications for said facility and operation and other necessary information to the Department and obtain approval effor the proposed facility and operation from the Department in writing:

- (1) Plans and specifications and other information to be submitted shall will constitute a complete, descriptive proposal and should include, to the extent that such information is pertinent and available, the following:
 - (a) Location map showing ownership, zoning and use of adjacent lands and location of the proposed confined animal feeding or holding facility or operation in relation to residences and domestic water supply sources;
 - (b) Topographic map of the proposed site showing the natural drainage pattern and the proposed surface water diversion and area and roof drainage control system or systems;
 - (c) Climatological data for the proposed site describing normal annual and seasonal precipitation quantities and patterns, evaporation rates and prevailing winds;
 - (d) Information regarding the occurrence of usable groundwaters and typical soil types in the area of the proposed site and disposal areas;
 - (e) Estimated maximum numbers and types of animals to be confined at the site at any one time and estimated volume of wastes to be collected and disposed of;
 - (f) Detailed plans and specifications and procedures for wastewater and manure collection, handling, retention, storage, treatment and disposal systems;
 - (g) Details of feed preparation, storage, handling and use and proposed methods and facilities for controlling wastes that are likely to result therefrom;
 - (h) Any additional information which that the Department may reasonably require to enable it to pass intelligently upon the effects of the proposed confined animal feeding or holding operation upon environmental quality.
- (2) Receipt of applications and a preliminary evaluation of completeness shall be made within 14 days to all applicants. Written notice of approval or disapproval will be issued by the Department to the applicant within 45 days of receipt of complete plans and specifications. Any notice of disapproval will contain itemized deficiencies.
- (3) New or substantially modified or expanded facilities or operations shall must be constructed in accordance with plans and specifications as approved in writing by the Department.

Stat. Auth.: ~~ORS 449 & ORS 468B~~ ORS 468.020 & ORS 468B.200 – ORS 468B.230
Stats. Implemented: ORS 468B.200 - ORS 468B.300
Hist.: DEQ 34, f. 2-3-72, ef. 2-15-72

340-051-0020

Construction, Operation and Maintenance Requirements

All waste water control facilities and confined animal feeding and holding operations ~~shall~~must be designed, constructed, maintained, and operated in accordance with the following:

- (1) All confinement areas, manure handling and accumulation areas and disposal areas and facilities ~~shall~~must be located, constructed, and operated such that manure, contaminated drainage waters or other wastes do not enter the waters of the state at any time, except as may be permitted by the conditions of a specific waste discharge permit issued in accordance with ~~ORS 449.0834~~ORS 468B.050.
- (2) Unless it can be demonstrated that contaminated drainage can be effectively controlled by other means, or unless a specific written variance is obtained from the Department as provided in OAR 340-051-0025, the design, construction, operation, and maintenance of confined animal feeding and holding operations and waste water control facilities ~~shall~~must be in conformance with "Guidelines for the Design and Operation of Animal Waste Water Control Facilities". (OAR 340-051-0050 through 340-051-0080)

Stat. Auth.: ~~ORS 449 & ORS 468B~~ ORS 468.020 & ORS 468B.200 – ORS 468B.230
Stats. Implemented: ORS 468B.200 - ORS 468B.300
Hist.: DEQ 34, f. 2-3-72, ef. 2-15-72

340-051-0025

Variances From Specified Requirements

- (1) The Department may, by specific written variance, waive certain requirements of these regulations when size of operation, location and topography, operational procedures, or other special conditions indicate that the purpose of these regulations can be achieved without strict adherence to all of the requirements.
- (2) The Department may, in accordance with a specific compliance schedule, grant reasonable time for existing confined animal feeding ~~or holding~~ operations to comply with these regulations.

Stat. Auth.: ~~ORS 449 & ORS 468B~~ ORS 468.020 & ORS 468B.200 – ORS 468B.230
Stats. Implemented: ORS 468B.200 - ORS 468B.300
Hist.: DEQ 34, f. 2-3-72, ef. 2-15-72

340-051-0030

Advisory Committee

- (1) At the request of the animal industry, provision is made for a 13-~~man~~person committee to serve in an advisory capacity to the Department of Environmental Quality on problems related to the location, construction, operation and maintenance of confined animal feeding and holding operations. The advisory committee will include one member each from:
 - (a) Oregon Horsemen's Association.
 - (b) Oregon Dairymen's Association.
 - (c) Oregon Sheep Growers Association.
 - (d) Oregon Purebred Swine Growers Association.
 - (e) Oregon State Fur Breeders Association.
 - (f) Oregon State Department of Agriculture.

- (g) Department of Animal Science, Oregon State University.
- (h) Western Oregon Livestock Association and divisional representation from:
 - (A) Oregon Cattlemen's Association (Producer representative and feeder representative);
 - (B) Oregon Poultry Council (Oregon Turkey Improvement Association representative, Oregon Poultry Growers Association and Oregon Broiler Growers Association representatives).
- (2) Each member will be appointed by the presiding officer of the organization he/she represents and will serve at the pleasure of the organization. The Department shall not be liable for any of the expenses of the advisory committee or its individual members.

Stat. Auth.: ~~ORS 449 & ORS 468B~~ ORS 468.020 & ORS 468B.200 – ORS 468B.230

Stats. Implemented: ORS 468B.200 - ORS 468B.300

Hist.: DEQ 34, f. 2-3-72, ef. 2-15-72; Administrative correction 8-14-97

Guidelines for the Design and Operation of Animal Waste Water Control Facilities

340-051-0050

Scope

The guidelines contained in this rule are recommendations for design and operation of animal waste water control facilities and are intended to supplement ~~OAR 340-051-0020 "Regulations Pertaining to Location, Construction, Operation and Maintenance of Confined Animal Feeding or Holding Operations"~~. They convey many of the criteria considered by the Department of Environmental Quality to conform to ~~best practicable~~ applicable design and operational practices. Alternative methods of control will be acceptable if they can be shown to provide fully equivalent control. Compliance with these guidelines will in most instances constitute satisfactory performance of the design and operation functions to which ~~OAR 340-051-0020 the "Regulations..."~~ apply. ~~Any disapproval of submitted plans, or requirement to improve facilities or their operation, by To the extent possible, the Department, will be, insofar as possible, referenced to applicable guidelines or appropriate sections of OAR Chapter 340, Division 051 the "Regulations" when it disapproves of submitted plans or requires improvements to facilities or their operations.~~

Stat. Auth.: ~~ORS 449 & ORS 468B~~ ORS 468.020 & ORS 468B.200 – ORS 468B.230

Stats. Implemented: ORS 468B.200 - ORS 468B.300

Hist.: DEQ 34, f. 2-3-72, ef. 2-15-72

340-051-0055

Drainage and Waste Volume Control

- (1) Roof drainage and uncontaminated surface drainage should be diverted such that it is not allowed to flow through confinement areas or enter waste water holding lagoons, sumps or tanks, unless it can be demonstrated by detailed design and proven operational practices that wastes and contaminated drainage waters can be effectively controlled by other means.
- (2) Where large winter use confinement areas are exposed to heavy rainfall, and wastewater storage and disposal capacities are limited, such areas should be covered to minimize wastewater volume.
- (3) Waste collection systems utilizing water for flushing manure from floors should minimize water use, and washwater reuse practices should be employed wherever possible.
- (4) Animal drinking water and atmospheric control sprays should be managed such that drainage through contaminated areas is minimized.

Stat. Auth.: ~~ORS 449 & ORS 468B~~ ORS 468.020 & ORS 468B.200 – ORS 468B.230

Stats. Implemented: ORS 468B.200 - ORS 468B.300

Hist.: DEQ 34, f. 2-3-72, ef. 2-15-72

340-051-0060

Collection and Storage Facilities

(1) Liquid Manure Systems:

- (a) When waste holding lagoons are used to accumulate manure and contaminated drainage waters they should have sufficient usable capacity to contain the maximum accumulated rainfall and manure runoff from the entire collection area for the maximum expected period of accumulation. (As a generalized rule of thumb for design, ponds with capacity equal to 1/2 the average annual rainfall over the entire collection area will usually provide adequate operating and reserve capacity to catch one in ten year peak storm runoff from a feedlot);
- (b) Waste holding lagoons and collection sumps should be constructed to provide for at least annual removal of accumulated solids to maintain effective storage capacity;
- (c) Earth dikes should be constructed of good quality soil material, well compacted during construction, with sideslopes consistent with accepted earthfill practices for the materials used and stabilized with vegetation recommended by the Agricultural Extension Service, immediately following construction;
- (d) Waste holding lagoons or collection sumps with earth dikes should be constructed with overflow relief structures to prevent a washout in the event of failure in other parts of the system;
- (e) Where unusually windy conditions prevail, or surface aeration equipment is used, dikes should be protected to prevent erosion;
- (f) Reinforced concrete manure holding tanks should be constructed in accordance with, or at least equivalent to, specifications for steel placement and concrete quality contained in a design ~~which~~that has been prepared by or has been reviewed and found acceptable by a qualified structural engineer;
- (g) Where seasonal groundwater levels rise above the bottom of a below-ground-level tank, drain tile should be laid at the base of the tank before it is backfilled.

(2) Solids Handling Systems:

- (a) Manure solids should be collected, stored, and utilized or disposed of with a minimum of water (or rainfall) addition, in a manner ~~which~~that will prevent water pollution and minimize the production of flies and odors;
- (b) Where large accumulations of manure are stored during winter months, contaminated drainage collection and holding or disposal facilities should be provided.

Stat. Auth.: ~~ORS 449 & ORS 468B~~ ORS 468.020 & ORS 468B.200 – ORS 468B.230

Stats. Implemented: ORS 468B.200 - ORS 468B.300

Hist.: DEQ 34, f. 2-3-72, ef. 2-15-72

340-051-0065

Conveyance Facilities and Practices

- (1) Liquid manure irrigation systems should have delivery mains buried wherever practicable to minimize the amount of pipe exposed to the hazards of surface damage and failure.
- (2) Trucks or tank wagons carrying manure or manure slurry on public roads should be of water tight construction and sufficiently closed or baffled to prevent spillage of any kind.
- (3) Manure slurry delivery pipelines crossing streams or gullies should be permanently placed with adequate protection from streamflow hazards and/or braced to prevent excessive bending stress in the pipe.

Stat. Auth.: ~~ORS 449 & ORS 468B~~ ORS 468.020 & ORS 468B.200 – ORS 468B.230

Stats. Implemented: ORS 468B.200 - ORS 468B.300

Hist.: DEQ 34, f. 2-3-72, ef. 2-15-72

340-051-0070

Disposal Facilities and Practices

(1) Liquid Manure Disposal:

- (a) When slurry is spread by tank wagon or truck, a predetermined plan of uniform coverage should be established and adhered to. Under no circumstances should a tank be drained when not in motion across suitable receiving land;
- (b) Liquid manure irrigation systems should be operated according to a predetermined plan of rotation to insure uniform coverage and prevent prolonged ponding or surface runoff from excessive applications. Leaks and sprinkler head malfunctions should be repaired immediately;
- (c) The selection of equipment for land disposal should be based upon land configuration, labor requirement, and long term dependability of the system and its components;
- (d) Adequate land should be provided on a year-round basis for effective assimilation of all manure slurry applied, regardless of the method of application used. Land with poor vertical drainage characteristics, high water table or steep slopes should not be selected for use in a year-round plan of manure disposal;
- (e) The vegetative cover on disposal land should be harvested or grazed regularly to prevent thatch accumulations of mature grasses and weeds;
- (f) Livestock should not be permitted to graze the disposal area during periods of saturated soil conditions;
- (g) Seepage basins should not be used except where it can be demonstrated that ground water pollution will not result.

(2) Solids Disposal:

- (a) Field spreading of manure should be uniform in distribution and limited in quantity to the capacity of the land to retain it;
- (b) Manure should not be stored or deposited where it can be washed into the surface drainage;
- (c) Manure solids should not be used as a fill or land raising material where they will pollute ground or surface waters;
- (d) All dead animals should be promptly collected and disposed of in an approved manner.

Stat. Auth.: ~~ORS 449 & ORS 468B~~ ORS 468.020 & ORS 468B.200 – ORS 468B.230

Stats. Implemented: ORS 468B.200 - ORS 468B.300

Hist.: DEQ 34, f. 2-3-72, ef. 2-15-72

340-051-0075

Incidental Control Practices

- (1) The application of manure or manure slurry to land areas should be accomplished when air movements is least likely to carry objectionable odors to residential or recreational areas.
- (2) New confined animal feeding operations or holding facilities should not be located where prevailing winds are likely to carry odors into residential or recreational areas. Attention should also be given to expansion of suburban areas and the stability of local zoning restrictions in locating new operations or substantially expanding existing operations.

Stat. Auth.: ~~ORS 499 & ORS 468B~~ ORS 468.020 & ORS 468B.200 – ORS 468B.230

Stats. Implemented: ORS 468B.200 - ORS 468B.300

Hist.: DEQ 34, f. 2-3-72, ef. 2-15-72

340-051-0080

Sources of Qualified Assistance for Design of Facilities

- (1) Where drainage control, structural or mechanical facilities are sufficiently large or complex to require specialized professional design, the Department of ~~Environmental Quality~~ may require that detailed plans and specifications be prepared by a qualified engineer for approval prior to construction.
- (2) Appropriate design services are available through:
 - (a) ~~USDA~~ — ~~Soil~~ Natural Resource Conservation Service;
 - (b) ~~USDA~~—Oregon State University Extension Service and associated plan services;
 - (c) Various equipment manufacturers;
 - (d) Independent consulting engineers. Useful design information is often available through:
 - (A) County extension offices and Agricultural Experiment Stations;
 - (B) ~~Department of Environmental Quality~~ engineering staff;
 - (C) Oregon State University Departments of Agricultural Engineering and Animal Science;
 - (D) Certain power companies and irrigation districts.
 - (e) Climatological data reporting services (Oregon State University and state climatologist);
 - (f) Other livestock operations ~~which~~ that have waste water control facilities in operation;
 - (g) Various livestock production associations;
 - (h) Soil and Water Conservation District offices.
- (3) Where long range operational planning appears necessary to development of a workable waste control and disposal system, the Department of ~~Environmental Quality~~ may request that special planning assistance be obtained from Oregon State University and recommendations therefrom be included in the proposal submitted.
- (4) Any dam or dike in excess of ten feet in height, or any impoundment volume in excess of 9.2 acre feet is required by state laws to be designed by a qualified engineer and approved by the office of the State Engineer. A copy of "**Rules and Regulations of the State Engineer**", published annually, should be obtained prior to designing a facility of this type.
- (5) Approval by the Department of ~~Environmental Quality~~ of a confined animal feeding ~~or holding~~ operation does not relieve the applicant from his obligation to comply with other pertinent federal, state or local statutes, regulations or ordinances.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ~~ORS 449 & ORS 468B~~ ORS 468.020 & ORS 468B.200 – ORS 468B.230

Stats. Implemented: ORS 468B.200 - ORS 468B.300

Hist.: DEQ 34, f. 2-3-72, ef. 2-15-72

Attachment A-2
Proposed General Permit

Permit Number: _____

Expiration Date: _____

Issuance Date: _____

Effective Date: _____

OREGON CONFINED ANIMAL FEEDING OPERATION
GENERAL PERMIT NUMBER 01

State of Oregon
Department of Agriculture
Natural Resources Division
and
Department of Environmental Quality
Water Quality Division

In compliance with the provisions of Oregon Revised Statutes (ORS) Chapter 468B,
Oregon Administrative Rules (OAR) Chapter 603, Division 74,
The Federal Water Pollution Control Act as amended
(The Clean Water Act)
Title 33 United States Code, Section 1251 et seq.,
and
The National Pollutant Discharge Elimination System
(NPDES)

Until this permit expires, is modified or revoked, permittees who have properly obtained coverage under this permit are authorized to discharge to waters of the state in accordance with the special and general conditions that follow.

Debbie L. Gorham, Administrator
Natural Resources Division
Oregon Department of Agriculture

Michael T. Llewelyn, Administrator
Water Quality Division
Oregon Department of Environmental Quality

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S1. PERMIT COVERAGE

S1.A. When is a Permit Required?

1. Any person who owns or operates a confined animal feeding operation (CAFO) that confines for more than four months and has waste water control facilities is required to obtain coverage under this permit. Any person who owns or operates a *concentrated* animal feeding operation is required to obtain coverage under this permit. Failure to obtain coverage under this permit is a violation of ORS 468B.050 and 468B.215 except as provided in S1.E Individual Permit Coverage, p. 4.
2. Any person who owns or operates an animal feeding operation (AFO) designated by the director pursuant to OAR 603-074-0012 as a *concentrated* AFO (see definition S1.F.5(c), p. 6) is required to obtain coverage under this permit. Failure to obtain coverage under this permit is a violation of ORS 468B.050 and 468B.215 except as provided in S1.E Individual Permit Coverage, p. 4.
3. Any person who owns or operates an AFO may be covered under this permit. Any person voluntarily registering for coverage under the permit is liable for compliance with all terms and conditions of the permit.
4. Any person not wishing to be covered by this permit may apply for an individual permit in accordance with OAR 340-045-0030.

S1.B. Schedule for General Permit Coverage

Owners and operators of CAFOs subject to coverage under this permit must submit an ODA Application to Register (ATR) according to the following schedule:

1. All newly constructed CAFOs
Newly constructed CAFOs, including "new sources" must submit an ATR at least 180 days prior to the time that the CAFO commences operation.
2. Existing CAFOs that met the previous definition of concentrated AFOs:
CAFOs that were defined as *concentrated* under federal regulations in effect prior to April 14, 2003, must submit an ATR immediately.
3. Existing CAFOs newly defined as concentrated AFOs as of April 14, 2003:
CAFOs that met the federal definition of *concentrated* as of April 14, 2003, that were not defined as *concentrated* in federal regulation prior to that date must submit an ATR by a date specified by the director, but no later than February 13, 2006.
4. Existing CAFOs that become defined as concentrated AFOs after April 14, 2003:
CAFOs that become defined as *concentrated* after April 14, 2003, must submit an ATR within 90 days after becoming defined as a CAFO unless the change in operation that causes the AFO to be defined as a *concentrated* AFO would not have caused it to be defined as a *concentrated* AFO prior to April 14, 2003.
5. All other existing CAFOs that are not concentrated AFOs:
Other existing CAFOs that are not *concentrated* AFOs covered by this permit must submit an ATR within 90 days of notification by the director that permit coverage is required.
6. AFOs designated by the director:
AFOs designated by the director as a *concentrated* AFO must submit an ATR by a date specified by the director.

S1.C. General Permit Coverage

1. This permit authorizes the discharge of only those pollutants resulting from the CAFO processes, wastes, and operations that have been clearly identified in the permit application process.
2. This general permit does not cover activities or discharges presently covered by an individual NPDES or Water Pollution Control Facilities (WPCF) permit until the individual permit has expired or been cancelled.

If appropriate, any person issued an individual permit may apply for coverage under this general permit and request cancellation of the individual permit.

3. This general permit does not cover disposal of human wastes or waste water control systems that mix human and animal wastes. Any person owning or operating such a system must apply to DEQ for coverage under an individual or general permit issued pursuant to ORS 468B.050. This general permit may be used in addition to an individual or general permit issued by DEQ pursuant to ORS 468B.050.
4. The applicant will be notified in writing when general permit coverage has been granted. Written notification will include a notice of registration entitled *Notice of Registration and Oregon CAFO General Permit Summary* and will include:
 - (a) The owner or operator's name;
 - (b) Facility name;
 - (c) Contact information (i.e., business and mailing addresses, phone numbers and e-mail address);
 - (d) Effective date of general permit coverage;
 - (e) Maximum number of animals allowed at the facility; and
 - (f) Regulatory status of CAFO (e.g. Large or Medium *concentrated* AFO, state CAFO, etc.)
5. Coverage under this general permit will be canceled as to the particular permittee upon the issuance of an individual permit to that permittee.
6. Except for any toxic effluent standards and prohibitions imposed under section 307 of the federal Clean Water Act (CWA) and groundwater protection requirements established under OAR 340-040, a permittee in compliance with this permit during its term is considered to be in compliance, for purposes of enforcement, with state water quality laws and relevant sections of the CWA, as provided in 40 CFR §122.5. The specific effect of permit compliance on enforcement authority is set out in OAR 340-045-0080.

S1.D. Request for Cancellation

1. Any permittee may request in writing to ODA that coverage under this permit be cancelled if:
 - (a) Conditions or standards have changed so that the source or activity no longer qualifies for this permit;
 - (b) The facility no longer has animals on site and all waste storage and control facilities have been decommissioned in accordance with NRCS conservation practice standard, code 360, entitled *Closure of Waste Impoundments*, dated February 2000; and
 - (c) The permittee certifies that it will not commence operations at the same location without making a new application for registration under this general permit and is granted coverage or applies for and is issued an individual permit.
2. ODA will respond to the request for cancellation by conducting a site inspection and a review of the permit file. The director will notify the permittee in writing of termination of coverage under the general permit or deny the request with an explanation of why the request was denied.

S1.E. Individual Permit Coverage

1. When appropriate, the director may require any person to obtain an individual permit pursuant to OAR 340-045-0033(9). In such cases, the person will be notified in writing by the director. This written notice will include the reason why an individual permit is being required, an application form, the amount of the permit fee due at application, and application due date.
2. If coverage under this permit has been obtained prior to the requirement for an individual permit, this permit will remain effective until the individual permit is issued provided the application for individual permit was properly made.

S1.F. Definitions

1. "25-year, 24-hour rainfall event" or "100-year, 24-hour rainfall event" means an event with a probable recurrence interval of once in twenty-five years or one hundred years, respectively, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, or equivalent regional or state rainfall probability information developed from this source.
2. "40 CFR §122" or "40 CFR §123" or "40 CFR §412" means the Code of Federal Regulations as amended by 68 FR 7176 (2/12/03).
3. "Animal feeding operation" or "AFO" as defined in 40 CFR §122.23(b)(1) means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:
 - (a) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
 - (b) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
4. "CAFO" or "Confined animal feeding operation" as defined in OAR 603-074-0010(3) means:
 - (a) The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms;
 - (i) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or
 - (ii) That have wastewater treatment works; or
 - (iii) That discharge any wastes into waters of the state; or
 - (b) An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR §122.23 (see definition S1.F.5, p. 5 below).
5. "Concentrated animal feeding operation" or "concentrated AFO" as defined by 40 CFR §122.23(b)(2) means an AFO that is defined as a Large or Medium concentrated AFO, or that is designated as a Small concentrated AFO (see definition S1.F.5(c), p. 6 below). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.
 - (a) An AFO is defined as a Large concentrated AFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:
 - (i) 700 mature dairy cows, whether milked or dry;
 - (ii) 1,000 veal calves;
 - (iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
 - (iv) 2,500 swine each weighing 55 pounds or more;
 - (v) 10,000 swine each weighing less than 55 pounds;
 - (vi) 500 horses;
 - (vii) 10,000 sheep or lambs;
 - (viii) 55,000 turkeys;
 - (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
 - (x) 125,000 chickens (other than laying hens) if the AFO uses other than a liquid manure handling system;
 - (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
 - (xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or
 - (xiii) 5,000 ducks (if the AFO uses a liquid manure handling system)
 - (b) An AFO is defined as a Medium concentrated AFO if:
 - (i) The type and number of animals that it stables or confines falls within any of the following ranges:
 1. 200 to 699 mature dairy cattle, whether milked or dry;
 2. 300 to 999 veal calves;
 3. 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
 4. 750 to 2,499 swine each weighing 55 pounds or more;

5. 3,000 to 9,999 swine each weighing less than 55 pounds;
 6. 150 to 499 horses;
 7. 3,000 to 9,999 sheep or lambs;
 8. 16,500 to 54,999 turkeys;
 9. 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
 10. 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
 11. 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system);
 12. 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or
 13. 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and
- (ii) Either one of the following conditions are met:
1. Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or
 2. Pollutants are discharged directly into waters of the United States that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
- (c) An AFO is a Small concentrated AFO if it is designated by the director as a concentrated AFO in accordance with the process outlined in 40 CFR §122.23(c) and is not a Medium or Large concentrated AFO.
6. "Director" means the director of the State of Oregon Department of Environmental Quality and the Department of Agriculture or their authorized designee(s).
7. "Discharge" means:
- (a) The discharge of a pollutant;
 - (b) Any addition of any pollutant or combination of pollutants to waters of the state from any point source;
 - (c) A discharge of pollutants into waters of the state through a manmade ditch, flushing system or similar manmade conveyance; or
 - (d) The application of process wastes to land not consistent with the times and/or rates specified in the waste management plan, in a manner that is likely to result in contamination of waters of the state.
8. "Groundwater" and "Underground water" means water in a saturated zone or stratum beneath the surface of land or below a surface water body.
9. "Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.
10. "New source" as defined 40 CFR §122.2 means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced after April 14, 2003.
11. "Overflow" means the discharge of manure or process waste water resulting from the filling of waste water or manure storage structures beyond the point at which no more manure, process waste water, or storm water can be contained by the structure.
12. "Person" as defined in OAR 603-074-0010(11) means the United States and agencies thereof, any state, any individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate or any other legal entity whatever.
13. "Pollutant" as defined in 40 CFR §122.2 means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:
- (a) Sewage from vessels; or
 - (b) Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is

located, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources.

14. "Pollution" or "water pollution" as defined in ORS 468.005(3) means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, that will or tends to, either by itself or in connection with any other substance, create a public nuisance or that will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.
15. "Process waste water" or "process wastes" means water directly or indirectly used in the operation of the CAFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning or flushing pens, barns, manure pits, or other CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process waste water or process wastes also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.
16. "Production area" means that part of a CAFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment areas include but are not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of animal mortalities.
17. "Waste Management Plan" or "animal waste management plan" or "AWMP" means a written plan containing the minimum elements necessary to manage manure, litter and process waste water from CAFOs in accordance with the terms and conditions of this permit. See S3.C, p. 10 for specific plan elements.
18. "Wastes" as defined in ORS 468B.005(7) means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances that will or may cause pollution or tend to cause pollution of any waters of the state.
19. "Waste storage facilities" means the physical system used for the isolation and retention of process wastes on the confined animal feeding operation until their ultimate utilization.
20. "Waste water control facility" means a "disposal system" or "treatment works" as defined in ORS 468B.005 that may cause pollution of surface water or groundwater and is used for collecting, conveying, treating, stabilizing or storing manure, litter, process waste water, or contaminated production area drainage (i.e., silage leachate, contaminated storm water runoff, etc.) at confined animal feeding operations.
21. "Water" or "waters of the state" as defined in ORS 468B.005(8) include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), that are wholly or partially within or bordering the state or within its jurisdiction.

S2. DISCHARGE LIMITATIONS AND OPERATING REQUIREMENTS

S2.A. Discharge Limitations

The permittee is prohibited from discharging process wastes to surface water or groundwater of the state, except as allowed in S2.B and S2.C and provided these discharges do not cause or contribute to a violation of state water quality standards. Discharges to surface water due to upset or bypass are authorized only in accordance with applicable requirements in G3, p. 14, and G4, p. 15.

Types of discharge that are prohibited include but are not limited to: contaminated runoff from confinement or waste accumulation areas; overflow or discharges from waste storage facilities; discharges due to improper land application activities from surface drainages, field tile outlets, or seepage below the root zone; discharges due to equipment failure; leakage or seepage from facilities in the production area in excess of approved designs.

S2.B. Production Area Limitations

1. For all CAFOs, except new source swine, poultry, and veal Large concentrated AFOs:
Discharges of process waste water to surface waters of the state are prohibited, except when rainfall events cause an overflow of process waste water from a facility designed, constructed, operated, and maintained to contain all process-generated waste waters plus the runoff and direct precipitation from a 25-year, 24-hour rainfall event.
2. For new source swine, poultry, and veal Large concentrated AFOs:
Discharges of process waste water to surface waters of the state are prohibited, except when rainfall events cause an overflow of process waste water from a facility designed, constructed, operated, and maintained to contain all process-generated waste waters plus the runoff and direct precipitation from a 100-year, 24-hour rainfall event.
3. All authorized discharges from the production area must be properly land applied or otherwise handled in a way that minimizes impacts on surface water or groundwater of the state.
4. Seepage to groundwater from waste storage or animal confinement facilities must not exceed design rates as approved by ODA or violate state groundwater quality protection standards.

S2.C. Land Application Limitations

1. When applying manure, litter, and process wastes to lands, the permittee must apply at agronomic rates in accordance with proper agricultural practices. If a waste management plan has been approved by ODA, applications must also be performed as specified in that plan. Land application areas include land under the control of the permittee, whether it is owned, rented, or leased, to which manure, litter, or process waste water from the production area is or may be applied.
2. Waste applications must not exceed the capacity of the soil and crops to assimilate nutrients and minimize water pollution, must be quantifiable, and based on the NRCS Phosphorous Index, Agronomy Technical Note #26, revised October 2001, and must account for all other nitrogen, phosphorus, and potassium sources.
3. Discharges to groundwater due to seepage below the root zone of the crop or by other means must not violate state groundwater quality protection standards.
4. If discharge to surface water or groundwater will result, application to flooded, saturated, frozen or snow covered land is prohibited. Land application of wastes or waste water during rainfall events that are expected to result in saturated soils or surface runoff is prohibited.

S2.D. Direct Access by Animals to Surface Water in the Production Area Prohibited

Direct animal contact with surface waters of the state in the production area of a CAFO is prohibited. Direct animal contact means any situation where animals in the production area have free access and are allowed to loiter or drop waste in surface waters. Direct contact with surface waters by animals on pasture or rangeland is not, by itself, a violation of this permit.

S2.E. Waste Storage Facilities

1. The permittee must provide adequate storage capacity for solid and liquid wastes at all times so that land application occurs only during periods when soil and weather conditions allow for agronomic application and are in compliance with the Land Application Limitations in Condition S2.C, p. 8 of this permit.
2. The permittee must site, design, construct, operate, and maintain all waste storage facilities consistent with the waste management plan. New and modified construction of waste facilities must be approved in advance and prior to construction by ODA in conformance with ORS 468B.055, OAR 340-051 and 603-074.
3. The permittee with a Large *concentrated* AFO must also have depth markers in all surface liquid impoundments (e.g., lagoons, ponds, tanks) designed to clearly indicate the:
 - (a) Maximum design volume,
 - (b) Minimum capacity necessary to contain the 25-year, 24-hour rainfall event, or in the case of new source swine, poultry, and veal Large *concentrated* AFOs, the 100-year, 24-hour rainfall event, including additional freeboard requirements, and
 - (c) Depth of manure and process waste water.

S2.F. Prevention of System Overloading

1. The permittee may not increase the number of animals over 10% or 25 animals, whichever is greater, of the maximum number assigned by ODA in the *Notice of Registration and General Permit Summary* until an updated plan is approved in writing by ODA (see S3.B Plan Submittal, p. 10, and S3.D Plan Updates, p. 11).
2. Animal numbers must not exceed the capacity of the waste storage facilities.

S2.G. Handling of Animal Mortalities

The permittee must not dispose of animal mortalities in liquid manure or waste water control facilities. Animal mortalities must be handled in such a way as to prevent discharge of pollutants to surface water or groundwater.

S2.H. Proper Operation and Maintenance

The permittee must at all times properly operate and maintain all facilities and systems used for process waste collection, storage and utilization, and correct any deficiencies found as soon as possible.

S2.I. Maintaining Compliance if System Fails

The permittee, in order to maintain compliance with the permit, must control all applications and discharges upon reduction, loss or failure of the waste storage or utilization facilities until the facilities are restored or an alternative method of storage or utilization is provided. This requirement applies where the primary source of power is reduced, lost, or fails.

S2.J. Setback Requirement for Large *Concentrated* AFOs

In addition to the above conditions, the permittee with a Large *concentrated* AFO must, in the land application area(s), maintain a setback area within 100 feet of any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters where manure, litter, and other process waste waters are prohibited. As a compliance alternative, and if demonstrated to the satisfaction of ODA, the permittee may:

1. Establish a 35-foot vegetated buffer where manure, litter, and other process waste waters are prohibited; or
2. Demonstrate that a setback or vegetated buffer is not necessary or may be reduced.

S3. WASTE MANAGEMENT PLANS

S3.A. Plan Implementation and Compliance

1. Upon receipt of notification by ODA or by December 31, 2006, whichever occurs first, the permittee must implement a current waste management plan developed for its CAFO.
2. The permittee must comply with all terms and conditions of its approved waste management plan. Failure to comply with the approved plan constitutes a violation of the terms and conditions of this permit.
3. Absence of a plan or absence of ODA approval of a plan does not allow the permittee to violate the provisions of S2 Discharge Limitations and Operating Requirements, p. 8 or other permit requirements.

S3.B. Plan Submittal

1. Plans must be submitted to ODA for review and approval according to the following schedule:
 - (a) Newly constructed and new source CAFOs must submit a waste management plan with the ATR.
 - (b) Existing CAFOs must submit a current waste management plan for the facility upon notification by ODA or by July 1, 2006, whichever occurs first.
2. Updates to plans (see S3.D Plan Updates, p. 11) must be submitted to ODA for approval at least 45 days before the facility expansion, production increase or process modification is to be implemented unless a different schedule is allowed by ODA in writing.

S3.C. Plan Elements

1. The waste management plan must be adequate for the existing population of animals and be prepared in accordance with the terms and conditions of this permit, OAR 340-051, and NRCS conservation practice standard guidance 590 for Oregon dated May 2001 entitled *Nutrient Management*.
2. The waste management plan may include a schedule for improvement projects.
3. The waste management plan must to the extent applicable:
 - (a) Ensure adequate collection, handling, and storage of manure, litter and process waste water;
 - (b) Include procedures to ensure proper operation and maintenance of the storage facilities;
 - (c) Ensure proper management of animal mortalities to ensure that they are not disposed of in a liquid manure, storm water, or process waste water storage or treatment system that is not specifically designed to treat animal mortalities;
 - (d) Ensure that clean water is diverted, as appropriate, from the production area;
 - (e) Prevent direct contact of confined animals with surface waters;
 - (f) Ensure that chemicals and other contaminants handled on-site, are not disposed of in any manure, litter, process waste water, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
 - (g) Identify appropriate site-specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface water and groundwater;
 - (h) Establish protocols to land apply manure, litter or process waste water in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process waste water. For Large *concentrated* AFOs, these protocols must be based on actual test data. For other CAFOs, data or "book values" from established reference sources (e.g., Oregon Animal Waste Management program) may be used instead of actual testing;
 - (i) For Large *concentrated* AFOs, also identify protocols for appropriate testing of manure, litter, process waste water, and soil. For other CAFOs, identify the references used instead of actual testing data or test protocols if testing; and
 - (j) Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.

S3.D. Plan Updates

1. The permittee must update the waste management plan when facility expansions, production increases, or process modifications will:
 - (a) Result in new or increased generation of waste, litter, or process waste water beyond the scope of the current waste management plan, or
 - (b) Violate the terms and conditions of this permit.
2. The updated waste management plan must be submitted to ODA for approval (see S3.B.2, p. 10, above).
3. The permittee may not increase the number of animals over 10% or 25 animals, whichever is greater, of the maximum number assigned by ODA in the *Notice of Registration and General Permit Summary* until an updated plan is approved in writing by ODA.

S4. MONITORING, INSPECTION, RECORDKEEPING, AND REPORTING REQUIREMENTS

S4.A. Monitoring Requirements

1. Discharge Monitoring

If a discharge to surface or groundwaters occurs that is not allowed by Condition S2.B or S2.C, p. 8, the permittee must record the following information:

- (a) A description and cause of the discharge;
- (b) The period of discharge including exact dates, times and duration of discharge;
- (c) An estimate of discharge volume;
- (d) Name or location of receiving water; and
- (e) Corrective steps taken, if appropriate, to reduce, eliminate or prevent reoccurrence of the discharge.

2. Analytical Monitoring for Large concentrated AFOs

The permittee with a Large *concentrated* AFO, must conduct the following:

- (a) Collect and analyze manure, litter, and other process waste waters annually for nutrient content, including nitrogen and phosphorus.
- (b) At least once during the term of this permit, collect and analyze representative soil samples for phosphorus and nitrogen content from all fields where manure, litter, and other process waste waters are applied.

3. Analytical Monitoring for all other CAFOs

At least once during the term of this permit, the permittee must collect and analyze representative soil samples for phosphorus and nitrogen content from all fields where manure, litter, and other process waste waters are applied.

S4.B. Inspection Requirements

The permittee must:

1. Periodically inspect of all storm water diversion devices, runoff diversion structures, animal waste storage structures, and devices channeling contaminated storm water to the waste water and manure storage and containment structure. The permittee with a Large *concentrated* AFO must conduct and record these inspections weekly.
2. Periodically inspect water lines, including drinking water or cooling water lines. The permittee with a Large *concentrated* AFO must conduct and record these inspections daily.
3. Periodically conduct leak inspections of equipment used for land application of manure, litter, or process waste water. The permittee with a Large *concentrated* AFO must record the results of these periodic inspections.
4. The permittee with a Large *concentrated* AFO must inspect liquid impoundments for manure and process waste water on a weekly basis and record the depth of manure and process waste water in those impoundments as indicated by the depth marker required by S2.E.3, p. 9.
5. Any deficiencies found as a result of these inspections must be corrected as soon as possible. The permittee with a Large *concentrated* AFO must record any actions taken to correct these deficiencies and, if deficiencies are not corrected within 30 days, provide an explanation of the factors preventing immediate correction.

S4.C. Record Keeping and Availability Requirements

1. The permittee must maintain all information required by this permit at the facility for at least five years and make this information available to ODA upon request.
2. Upon obtaining general permit coverage, Large *concentrated* AFOs must begin recording the following information. Other CAFOs must begin recording the following information upon ODA approval of the waste

management plan or by December 31, 2006, whichever occurs first. The permittee must maintain this information at the facility for at least five years and make this information available to ODA upon request. (Note: If any of the following information is provided in the permittee's waste management plan, a separate record keeping effort is not required.)

- (a) Expected crop yields.
- (b) Date, amount, and nutrient loading of manure, litter, or process waste water applied to each field.
- (c) For Large *concentrated* AFOs, weather conditions at the time of application and 24 hours before and after application.
- (d) Explanation of the basis for determining annual manure application rates, as provided in the technical standards established by ODA.
- (e) Calculations showing the total nitrogen and phosphorus to be applied annually to each field, including sources other than manure, litter, or process waste water.
- (f) Total amount of nitrogen and phosphorus actually applied annually to each field, including documentation of calculations of the total amount applied.
- (g) Method(s) used to apply the manure, litter, or process waste water.
- (h) Total amount of manure or waste water transferred to other persons. Large *concentrated* AFOs must also include the date and amount of each transfer and the name and address of each recipient.
- (i) For Large *concentrated* AFOs, animal mortalities management and practices used to meet the requirements of S2.G, p. 9.

S4.D. Reporting Requirements

1. 24-hour Reporting

- (a) If a discharge to surface water or groundwater occurs that is not allowed by Condition S2.B and S2.C, p. 8, the permittee must notify ODA within 24 hours of the discharge.

The permittee must submit a written report within five (5) days to ODA. The information to be submitted is listed in the monitoring requirements (Condition S4.A, p. 12 above) of this permit.

- (b) The permittee must report to ODA within 24 hours of becoming aware of any significant physical failure at any time of a waste water control facility required under this permit.

2. Annual Report

The permittee must submit an annual report by March 15 of each year to ODA. The annual report must include the following for the previous calendar year:

- (a) Maximum number and type of animals, whether in open confinement or housed under roof (i.e., beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
- (b) Estimated amount of total manure, litter and process waste water generated by the CAFO (tons/gallons);
- (c) Estimated amount of total manure, litter and process waste water transferred to other persons by the CAFO (tons/gallons);
- (d) Total number of acres for land application covered by the waste management plan developed in accordance with the terms of this permit;
- (e) Total number of acres under control of the CAFO that were used for land application of manure, litter and process waste water in the previous 12 months;
- (f) Summary of all manure, litter and process waste water discharges from the production area that have occurred, including date, time and approximate volume; and
- (g) If the CAFO has a current waste management plan, a statement indicating whether the plan was developed or approved by a certified waste management planner.

S4.E. Additional Monitoring

ODA may establish specific monitoring requirements in addition to those contained in this permit by administrative order. An administrative order is an agency action expressed in writing directed to a named person or named persons (ORS 183.310).

GENERAL CONDITIONS

G1. Discharge Violations

All land application of wastes and other activities authorized by this permit must be consistent with the terms and conditions of this permit. The application or discharge of any process waste more frequently than, or at a concentration in excess of, that authorized by this permit will constitute a violation of the terms and conditions of this permit.

G2. Noncompliance Notification

- A. If for any reason, the permittee does not comply with, or will be unable to comply with any of the requirements or conditions specified in the permit, the permittee must, at a minimum, provide ODA with the following information:
1. A description of the nature and cause of noncompliance, including the quantity and quality of any unauthorized waste discharges;
 2. The period of noncompliance, including exact dates and times, and the anticipated time when the permittee will return to compliance; and
 3. The steps taken, or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.
- B. In addition, the permittee must take immediate action to stop, contain, and clean up any unauthorized discharges and take all reasonable steps to minimize any adverse impacts to waters of the state and correct the problem. The permittee must notify ODA by telephone so that an investigation may be made to evaluate any resulting impacts and the corrective actions taken to determine if additional action should be taken.
- C. In the case of any discharge subject to any applicable toxic pollutant effluent standard under Section 307(a) of the Clean Water Act, or that could constitute a threat to human health, welfare, or the environment, 40 CFR §122 requires that the information specified in conditions G2.A.1, G2.A.2, and G2.A.3 above, be provided not later than 24 hours from the time the permittee becomes aware of the circumstances. If this information is provided orally, a written submission covering these points must be provided within five days of the time the permittee becomes aware of the circumstances, unless ODA waives or extends this requirement on a case-by-case basis.
- D. Compliance with these requirements does not relieve the permittee from responsibility to maintain continuous compliance with the conditions of this permit or resulting liability for failure to comply.

G3. Bypass

- A. Definitions.
1. "Bypass" means intentional diversion of waste streams from any portion of the treatment facility. The term "bypass" does not include nonuse of singular or multiple units or processes of a treatment works when the nonuse is insignificant to the quality and/or quantity of the effluent produced by the treatment works. The term "bypass" does not apply if the diversion does not cause effluent limitations to be exceeded, provided the diversion is to allow essential maintenance to assure efficient operation.
 2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities or treatment processes that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- B. Prohibition of bypass.
1. Bypass is prohibited unless:
 - (a) Bypass was necessary to prevent loss of life, personal injury, or severe property damage;
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventative maintenance; and
 - (c) The permittee submitted notices and requests as required under G3.C below.

2. The director may approve an anticipated bypass, after considering its adverse effects and any alternatives to bypassing, when the director determines that it will meet the three conditions listed above in G3.B.1.

C. Notice and request for bypass.

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, the permittee must submit prior written notice, if possible at least ten days before the date of the bypass.
2. Unanticipated bypass. The permittee must submit notice of an unanticipated bypass as required in S4.D.1.

G4. Upset

A. Definition.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operation error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

B. Effect of an upset.

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of G4.C are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

C. Conditions necessary for a demonstration of upset.

A permittee who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the causes(s) of the upset;
2. The permitted facility was at the time being properly operated;
3. The permittee submitted notice of the upset as required in S4.D.1; and
4. The permittee complied with any remedial measures required under G2.B.

D. Burden of proof.

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

G5. Right of Inspection

The permittee must allow the director or an authorized representative of the director, upon the presentation of credentials and such other documents as may be required by law:

- A. To enter upon the property where a potential or actual discharge is located;
- B. To have access to and copy at reasonable times any records that must be kept under the terms of the permit;
- C. To inspect at reasonable times any monitoring equipment or method of monitoring required in the permit;
- D. To inspect at reasonable times any collection, treatment, pollution management, or application facilities; and
- E. To sample any waters of the state or discharge of pollutants.

G6. Permit Registration Modified or Revoked

- A. After notice, registration under this permit may be modified or revoked as it applies to any person for cause as follows:

1. Violation of any terms or conditions of the permit,
2. Failure of the permittee to disclose fully all relevant facts, or misrepresentations of any relevant facts by the permittee during the permit issuance process and during the life of the permit;
3. Failure to pay permit fees when due;
4. Information indicating that the permitted operation poses a threat to human health or welfare;
5. A change in ownership or control of the operation, or
6. Other causes listed in 40 CFR §122.62 and 122.63.

- B. Modification or revocation of coverage under this permit as it applies to any person may be initiated by ODA.

- C. Issuance of coverage under an individual permit may be initiated by ODA in accordance with Condition S1.E.

G7. Revocation for Non-Payment of Fees

The director may revoke registration under this permit if the permit fees established under Oregon Administrative Rules are not paid when due.

G8. Compliance With Other Laws and Statutes

Nothing in the permit will be construed as excusing the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

G9. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and have the permit renewed. The application must be submitted at least 180 days before the expiration date of this permit. The director may grant permission in writing to submit an application less than 180 days in advance but no later than the permit expiration date.

G10. Change of Ownership or Control

The permittee must notify ODA in writing thirty (30) days prior to a change in facility ownership or control.

G11. Other Requirements of 40 CFR

All other requirements of 40 CFR §122.41 *Conditions applicable to all permits* and §122.42 *Additional conditions applicable to specified categories of NPDES permits* are incorporated in this permit by reference.

Attachment B
Public Input and Departments' Response

State of Oregon

Department of Environmental Quality

Memorandum

To: Mike Llewelyn, Water Quality Division Administrator, DEQ **Date:** June 16, 2003
Debbie Gorham, Natural Resources Division Administrator, ODA

From: Ranei Nomura, Water Quality Division, DEQ
Lynda Horst, Natural Resources Division, ODA
Jamie Bansen, Natural Resources Division, ODA

Subject: Summary of comments and response to comments received for the proposed new NPDES general permit for CAFOs and revisions to CAFO rules

**Comment
period and
public hearings**

First public comment period – October 1, 2002 to February 20, 2003

A public comment period was held from October 1, 2002 to November 15, 2002. This comment period was extended to February 20, 2003 to address revised federal regulations for *concentrated* animal feeding operations adopted by EPA on February 12, 2003. Public hearings were held in Redmond, Tillamook, and twice in Salem.

Twenty-four persons attended the hearing in Redmond; six provided oral comment. Nine persons attended the hearing in Tillamook; one provided oral comment. Eleven persons attended the first hearing in Salem on November 14; five provided oral comment. Nine persons attended the second hearing in Salem on February 13, 2003; three provided oral comment. Thirty-two written comments were submitted during this period.

Second public comment period – May 1, 2003 to June 6, 2003

In response to comments received during the first comment period, DEQ and ODA substantially revised the proposed general permit and rule revisions. Due to these changes, the permit and rules were re-noticed for public comment on May 1, 2003. A public hearing was held on June 4 in Salem, and the comment period closed on June 6, 2003.

Two persons attended the hearing. No oral comment was given at the hearing, but the two persons in attendance submitted written comment. Two additional written comments were received during this comment period for a total of four written comments. One written comment was received after the

public comment period closed so it was not considered for the record, but is noted in Table 2: List of Commenters, p. 25.

Process of summarizing comments and providing responses

Due to the similar nature of the comments, comments are summarized in categories and responses provided in Table 1, below. To focus on the comment rather than who made it, numbers are cited in the summaries that reference the people who provided comment.

List of Commenters

The list of people providing comment and their corresponding reference numbers follow at the end of this memo in Table 2, p. 25.

Table 1
Comments received on CAFO rulemaking proposal
 (see Table 2 for commenter ID#)

	COMMENT	ID#	RESPONSE
1	Proposed rule 603-074-0014 should indicate whether it applies to "commercial operations as well as hobby farms."	1	The definition of a confined animal feeding operation (CAFO) in OAR 603-074-0010(3) does not differentiate between commercial and hobby farms. Commercial operations as well as hobby farms that meet the federal definition of a <i>concentrated</i> animal feeding operation or confine for more than four months and have waste water control facilities are required to be permitted. ODA believes that most hobby farms do not need permit coverage because they do not meet the federal size requirement or do not have waste water control facilities. Regardless of whether a permit is required, all operations must protect water quality. Hobby farms as well as commercial operations are not allowed to pollute waters of the state.
2	All facilities over 1000 animal units that confine more than 45 days should be required to get a permit.	15	The definition of a CAFO needing a permit includes those facilities over 1000 animals that confine more than 45 days.

	COMMENT	ID#	RESPONSE
3	Reference to hobby farms should have been included in statement of need and fiscal impact; compliance costs were not included.	1, 6	The statement of need and fiscal impact did not differentiate between those facilities operated for profit and those operated for other reasons. The possible cost of compliance depends on the operation's ability to contain, treat, hold, and dispose of waste, not on its fiscal or corporate structure. ODA and DEQ believe the proposed expenses outlined in the fiscal impact statement correctly reflect the anticipated cost of compliance.
4	Suggests that proposed OAR 603-074-0018 clarify that ODA has an engineer on staff who would approve designs for those operations that do not wish or cannot afford to hire an engineer; livestock producers can't afford to hire engineers. Difficult to determine if design and post-construction plan is required to be certified by a licensed engineer or if the department will accept such certification if submitted. ODA should not delegate its authority for engineering review and should not accept certification.	1, 2, 12 5, 6, 12 13	ODA has never provided engineering design services to operators, but requires that certain structures be designed by a licensed engineer. In the past, ODA reviewed and approved these designs, which would delay the construction schedule. Existing rules required that design and post-construction plans be certified by a licensed engineer. The proposed rules do not change this requirement, but allow operators to submit certification forms signed by their licensed engineer(s) to expedite the department approval process. The language in OAR 603-074-0018 is intended to provide operators the choice of having their own engineer certify design and post-construction work. Actual engineering work must be done by a licensed engineer; this requirement has not changed. By providing operators the choice to have the work certified by their own engineer and avoid the time associated with detailed ODA review, ODA believes that some operators will choose this option. Those operators who do not wish to have engineering work certified are still able to submit the work to ODA for approval. In either case, ODA will continue to review the documents and certification provided to ensure that quality work is being performed.
5	Claims no agreement between ODA, DEQ, and EPA. Sub-delegation of the CAFO program to ODA is illegal.	2 15	As directed by the 2001 Oregon Legislature, DEQ and ODA are pursuing transfer of NPDES program authority for animal feeding operations from DEQ to ODA. In the interim, the Environmental Quality Commission and ODA entered into a memorandum of understanding to allow DEQ and ODA to jointly implement the NPDES program. DEQ cannot "delegate" or "sub-delegate" the NPDES animal feeding operation program to ODA; only EPA can approve such a program revision. ODA may act as an agent of DEQ to assist in the implementation and enforcement of the NPDES permit program for animal feeding operations. Nothing in the federal program prohibits this arrangement and EPA has indicated that it is acceptable. Until such time as EPA approval for the program revision is obtained, DEQ retains authority to implement and enforce the NPDES program and existing agreements between DEQ and EPA remain effective.

	COMMENT	ID#	RESPONSE
6	Disagrees with zero pollution tolerance.	2	ORS 468B.025 prohibits pollution of waters of the state except as provided in ORS 468B.050 or 468B.053. ORS 468B.050 and 468B.053 describe situations in which discharges of wastes are allowed. ORS 468B.200 further states that it is the policy of the State of Oregon to protect the quality of waters of the state by preventing animal wastes from discharging into waters of the state. Changes to these statutes can only be made by the legislature, not DEQ or ODA.
7	Asks about timetable for permitting all operators.	2	ODA is working out a systematic method of getting all facilities permitted over the next few years. While all facilities that qualify have a duty to apply for coverage, it is likely that those facilities meeting the federal definition of a <i>concentrated</i> animal feeding operation will be the first to transition to the new permit. The most recent version of the proposed permit provided a more detailed timeframe for submitting applications depending on the type of CAFO. DEQ approves of this approach and it is consistent with federal regulation.
8	Document does not state the number of mature beef cattle in an operation that will be regulated.	2	Any size of beef cattle operation may be regulated under permit if the animals are confined for more than four months and there are waste water control facilities at the operation. Operations that are defined by federal regulation as <i>concentrated</i> are also required to have a permit. The federal definition of a <i>concentrated</i> animal feeding operation includes the number of animals needed for the purposes of being regulated as a "large" or "medium" operation. The federal regulations also allow the director to designate an activity as <i>concentrated</i> even if the animal numbers are under the "medium" thresholds. These numbers are provided in the definition section of the general permit.
9	Worried about 3 rd party lawsuits.	2, 20	<i>Concentrated</i> animal feeding operations that operate without an NPDES permit are subject to third party lawsuits. In addition, any CAFO operating under an NPDES permit that is not in compliance with a permit is subject to third party lawsuits. CAFOs covered by the new general permit that comply with the permit conditions are shielded from 3 rd party lawsuits.
10	Disagrees that ODA can change documents at any time.	2	The permit and its rules are being adopted through rulemaking. Any future changes to the rules or permit must be made through the same rulemaking process, which will afford the public an opportunity to participate in the process. Guidance documents or informational fact sheets may be revised by ODA without a formal process. Concerns about these documents should be brought to ODA's attention.
11	Concerned about the definition of confined;	1, 2, 12,	The definition of "confined animal feeding operation" was modified through the state rulemaking process in late 2001

	COMMENT	ID#	RESPONSE
	confined areas need to be specifically defined.	20	to incorporate the federal definition. This modification did not change the existing state definition; rather, the definition was clarified to indicate that federally-defined <i>concentrated</i> animal feeding operations were indeed included in the state definition of confined animal feeding operations. The most recent changes to the federal regulations include a definition of the production area stating that the animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The federal definition of production area has also been included in the proposed state rules.
12	Does not believe all facilities need to be reviewed.	2	ODA strives to conduct annual inspections as a matter of policy developed over many years of administering the CAFO program. DEQ agrees with this approach. In addition, 40 CFR §123.26 requires that state NPDES programs have compliance evaluation programs that include inspection procedures. ODA and DEQ are always interested in receiving information to support the suggestion that a particular sector of CAFOs does not need regular inspections.
13	There should be no fees associated with this permit. Fees are too low to support program.	2 13	The fees are set by statute and OAR. There is no provision in the law that requires the program be funded by fees. The fees have remained unchanged since the legislature established them in 1989.
14	Is opposed to change in educational review process; there should not be a notice of non-compliance issued during an educational review; program should be similar to OR-OSHA which provides educational reviews without threat of regulatory action.	3, 21	The educational review process is not a subject of this rulemaking, but instead is determined by agency policy. ODA is currently reviewing its policy in this regard to see if adjustments can be made.
15	Recommends change from animal numbers to animal units.	4, 23	EPA, in its recent revision to the <i>concentrated</i> animal feeding operation regulations, eliminated animal <i>units</i> and instead uses animal <i>numbers</i> . ODA and DEQ are also constrained by ORS 468B.210, which uses the term <i>numbers</i> instead of <i>units</i> .
16	Only <i>newly constructed</i> CAFOs should have to apply within 180 days of beginning operations, instead of simply <i>new</i> CAFOs.	4, 23	Those facilities that have been out of operation long enough that their permit registration has lapsed are required to apply for coverage before they begin operating again, as well as those operations that are newly constructed.

	COMMENT	ID#	RESPONSE
17	Wants change from "may approve" plans done by certified plan writers to "shall approve" such plans.	4, 23	ODA reserves the right to review a plan submitted for approval, regardless of the plan preparer. If ODA finds the plan insufficient, inadequate or incomplete, plan approval will be denied until the necessary information is provided.
18	Instead of complete records to be submitted to ODA, a summary should be required instead.	4, 16, 23	ODA and DEQ are requiring the records they believe necessary to determine compliance with the general permit. ODA intends to work with the CAFO advisory committee to develop a satisfactory method of providing the required information.
19	Waste management plans should be based on the most limiting nutrient; waste management should be based on the phosphorus index instead of nitrogen index.	4, 4a, 15, 23	All facilities are required to have a waste management plan that conforms to NRCS conservation practice standard 590, <i>Nutrient Management</i> . This practice standard uses an analytical methodology that looks at the mobility and nutrient uptake properties of nitrogen and phosphorus to determine best management of the wastes. The language proposed in the latest revision of the permit was developed to address these concerns.
20	Commenter is unhappy with language in fact sheet that suggests dead animals are kept with confined animals. Disposal of dead animals should be regulated.	5, 6 15	The permit fact sheet has been clarified to indicate that there are some animal operations that stockpile dead animals for future disposal separate from live animals. Animal disposal is governed by local county health regulations, but the area within the production area where dead animals are stockpiled is considered part of the CAFO operation. In addition, the general permit requires that dead animals not be disposed of in liquid manure or waste water control facilities and that they be handled in such a way to prevent discharge of pollutants to surface water or groundwater.
21	Will operators be exempt for weather events that occur in a 24 hour period that can be classified as a 10, 25, or 100 year event?	5, 6, 16	The production area must be designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from 25-year, 24-hour rainfall event (100-year, 24-hour rainfall event for new source swine, poultry, and veal large concentrated animal feeding operations), as defined by the national weather service for a given area. If a discharge were to occur during a less frequent but more intense event or after a series of smaller events, it would not be considered a permit violation, provided the production area was designed correctly and being operated and maintained properly at the time of the discharge and the discharge did not cause or contribute to a violation of state water quality standards.
22	ORS 468B is a poorly crafted statute and should be stricken.	5	Statutory changes must be made by the legislature. Changes to the statutes are beyond the scope of this rulemaking.

	COMMENT	ID#	RESPONSE
23	Rules do not reflect the educational outreach portion of HB 2156.	6	HB 2156 does not require the outreach portion of the bill to be created through rulemaking. ODA continues to work with representatives from the livestock and dairy industries to develop effective outreach strategies to the extent that funds are available.
24	Opposed to ability of public to call in anonymous complaints about operations.	7, 8, 20	The 2001 Legislature changed the statute to allow anonymous complaints. This change was made to facilitate transfer of the NPDES program from DEQ to ODA. The NPDES program requires that anonymous complaints be allowed. OAR 603-074-0015 details the process ODA uses to receive and investigate the validity of such complaints.
25	Expressed concern about the smell; suggests that CAFOs should be sited one and one-half mile away from residences; feed pens should be sited 150 feet from roads.	9, 13, 15	The statutory authority for regulating CAFOs is limited to issues affecting the quality of waters of the state (ORS 468B.200 through 230). Setback and siting requirements are based on ORS chapter 215 (state Exclusive Farm Use zoning statutes) and implementing rules and local land use regulations. In addition, local regulation and private nuisance and trespass lawsuits are limited by Oregon's "right to farm" statutes (ORS 30.930 through 947).
26	Waste ponds must be lined with plastic and have sufficient capacity; waste disposal should be monitored; lagoons should be banned.	9, 13, 15, 16	The choice of storage and disposal methods may be made by operators and their engineers, providing pollution does not result. Technical standards for soil permeability determine when synthetic liners are necessary. All earthen construction must have soil compaction tests performed to determine if the structure will meet permeability standards. Compliance with construction standards will be certified by the operator's engineer. Regular inspections by ODA staff will assess whether facility management is in compliance with the plan.
27	Considers it important to keep the water clean; ranchers want to see clean water.	10, 18	ODA and DEQ agree that preventing water pollution is important.
28	Does not believe unannounced inspections will be well received by the industry. Concerned about constitutional rights; doesn't want anyone to come on his property; private property rights are important.	11 17, 21	DEQ and ODA are required by the federal Clean Water Act to have the authority to conduct unannounced inspections. While unannounced inspections are often unwelcome, DEQ and ODA reserve the right to conduct such inspections when deemed necessary. Generally, both agencies prefer to schedule inspections with the operator because more information is available during this type of exchange. It is also the policy of both agencies to make a reasonable attempt to notify the landowner or operator before entering private property. If an operator refuses to allow access for inspection, the law provides a method by which DEQ or ODA may seek a warrant. In all situations, agency actions are subject to the provisions of the Oregon and U.S. Constitutions that protect citizens against unreasonable searches. DEQ and ODA have agreed that ODA will be responsible for inspecting CAFOs.

	COMMENT	ID#	RESPONSE
29	<p>Questions method for sampling.</p> <p>Not enough sampling.</p> <p>Requests that landowners are made aware by ODA of at least two laboratories that have the capability to determine species origin of bacteria.</p>	<p>11, 15</p> <p>15</p> <p>11</p>	<p>Sampling is a necessary tool for determining compliance in some cases. Where such samples will be taken and by what method are left to the inspector's discretion. Inspectors follow sampling protocols that are based on EPA-approved methods and laboratory analyses are also performed based on EPA-approved methods. Sample results will be available to the landowner upon request. ODA will attempt to identify laboratories available for the landowner should they choose to have their own sampling done. There are methods available to genetically analyze bacteria to determine its source, but research is still being done to develop an inexpensive method. ODA does not currently use genetic analyses for regulatory purposes.</p>
30	<p>How will inspectors assure they are sanitized before entering operations?</p>	11	<p>ODA has an existing protocol based on the state veterinarian's recommendations to prevent spread of disease. ODA agrees that preventing disease spread is a critical element in safe inspections and is always investigating further safeguards to assure that inspectors are not responsible for spreading disease.</p>
31	<p>Concerned about confidentiality of information provided to department; wants information available to public only upon request.</p> <p>Wants privacy rights of farmers and ranchers protected and none of their personal information disclosed through Freedom of Information Act. Believes ODA has the discretion to keep personal information from being disclosed to public.</p> <p>How can information in nutrient management plan be confidential?</p>	<p>11</p> <p>29</p> <p>15, 24</p>	<p>DEQ and ODA are required to comply with state law pertaining to public records and the right to inspect those records (ORS chapter 192). There are narrow exceptions allowing, for example, trade secrets to be kept confidential. Under the federal Clean Water Act, trade secrets may be protected, but certain information must be disclosed to the public upon request including the name and address of the applicant or permittee, permit applications, permits, and effluent data (40 CFR §122.7). For other information, the operator can assert a confidential claim for trade secrets upon submission of the information to DEQ or ODA. When such a request is received, DEQ or ODA will determine the validity of the claim and provide the requester with its decision.</p>

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32	Large operations or those in sensitive environmental areas should be required to obtain individual permits; CAFOs are not a category of sources that may be regulated by general permits; how does the department justify its decision to lump exceptionally diverse facilities under a single blanket general permit?	13, 15, 16, 13a, 24	Each CAFO operation must submit an application for registration. Based on the facility's location, size, method of waste management, and other related factors, ODA will determine whether the applicant will be allowed to register to the general permit or be required to obtain an individual permit. The conditions for an individual permit are typically more flexible and site-specific. It would not benefit the industry, the public, or the environment to compartmentalize operations solely based on size or location because these operations can all comply with the same discharge prohibitions and limitations. Further, each operation will be required to have a waste management plan that must detail how the facility intends to manage its waste. ODA will review these plans when determining the appropriate permit for the facility. Other states have successfully issued general permits to CAFOs; there is no prohibition against doing so provided the facilities meet the criteria for coverage under the general permit. In any event, OAR 340-045-0033(9) provides a mechanism for any "interested person" to petition the department to require a facility be placed under an individual permit.
33	Operators currently under an individual permit should not be allowed to apply for general permit coverage and instead should be required to obtain a new individual permit.	13	It is likely that some facilities presently under an individual permit will need to remain under an individual permit. However, it is possible that such operations have made changes to their facilities that would now qualify them to register to the general permit. For example, a facility may have downsized and thus no longer needs an individual permit. Some individual permits are issued based on prior compliance problems. After many years without problems it is possible that the facility could move to a general permit. These operations will be evaluated on a case-by-case basis.
34	What waste control facilities qualify under OAR 603-074-0018(7)? Including control of drainage in the definition of waste control facilities makes it much too broad because it contradicts existing regulations.	13 14	The term "waste control facilities" was changed in the most recent version of the proposed permit to "waste water control facility" and redefined to make it consistent with statute. It now means a "disposal system" or "treatment works" as defined in ORS 468B.005 that may cause pollution of surface water or groundwater and is used for collecting, conveying, treating, stabilizing or storing manure, litter, process waste water, or contaminated production area drainage (i.e., silage leachate, contaminated storm water runoff, etc.) at confined animal feeding operations. Control of clean water would not be considered a part of a "waste water control facility" since the term "waste" implies contamination. However, it may be necessary to control the drainage of water that would otherwise come into contact with waste; also it may be necessary to control wastewater drainage.

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35	(1 st version of proposed permit) Section (B)(7) of the permit implies that the permit restrictions apply only to activities under control of the applicant.	13	This language was modified in the most recent version of the proposed permit to indicate that the permit only authorizes the discharge of pollutants resulting from the CAFO process, wastes, and operations that have been clearly identified in the permit application process.
36	Permit must not include references to other regulations and should instead exist as a stand alone document.	13	ODA and DEQ disagree. Permits may reference other regulations and typically do. Referenced documents and regulations are available from ODA.
37	Definition of chronic event includes reference to current population of animals instead of maximum capacity of facility.	13	The term "chronic event" was removed from the most recent version of the proposed permit because federal regulations no longer use it in their effluent limitation guidelines.
38	Definition of groundwater is weaker than other states.	13	ODA and DEQ believe the definition is adequate. The use of the term in the permit is not intended to limit the protection afforded to waters of the state, which is defined in statute to include underground water. The distinction between surface water and groundwater in the permit was made to reflect the applicable water quality standards.
39	How will agency determine compliance with effluent limitations?	13, 15	Agency staff will review waste management plans and conduct routine inspections that will include a review of the plan and its implementation. Inspections may also occur during large storm events to determine if the permittee is in compliance with the effluent limitations.
40	Public and neighbors should be allowed to participate in permitting process.	13	OAR chapter 340, division 45, details public participation in the permitting process. The adoption of a general permit through rulemaking provides the opportunity for public participation and comment, and the issuance of individual permits affords the same participation. ODA also routinely responds to complaints or concerns from the public.
41	Land application limitations do not address problems associated with high concentration of salts in liquid manure applications, these problems are clearly identified as issues in NRCS guidance; permit does not provide calculated discharge limits and seepage limits.	13	The land application limitations in the permit require that waste management plans be developed and implemented in accordance with NRCS standards, which include consideration of land application requirements. EPA's effluent limitation guideline does not require calculated discharge or seepage limits in either individual or general permits.
42	The proposed rules would also sweep up the horse racing industry; racetracks are different than feedlots.	14	The horse racing industry has always been subject to Oregon's confined animal feeding operation rules and EPA regulations for concentrated animal feeding operations. While ODA and DEQ agree that racetracks are different than feedlots, there are similar environmental concerns

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			associated with both activities. The proposed general permit provides the flexibility to regulate either activity.
43	The definition of production area and process wastes can have a significant impact on the property subject to permitting requirements and should be modified as detailed.	14	The definitions in the current version of the proposed permit include "production area" and "process waste water" or "process wastes" that were taken directly from the new federal regulations.
44	Land application limitations impose upon the permittee the affirmative obligation to land apply wastes. Permit requires that waste be land-applied at "agronomic rates" in accordance with a Nutrient Management Plan, but does not require plan to be submitted until 12 months from the submission of an ATR. The department is attempting to extend a permit shield for compliance purposes for up to a full year over land application that is beyond the reach of regulation. This misapplication of the permit shield concept actually serves as a disincentive to develop or submit a Nutrient Management Plan in a timely fashion.	14 16	ODA and DEQ do not believe an affirmative obligation to land apply wastes is created by the permit and neither agency intended to create a "loophole" to allow land application at greater than agronomic rates. To clarify, condition S2.C.1 of the final permit now reads: <i>When applying manure, litter, and process wastes to land, the permittee must apply at agronomic rates in accordance with proper agriculture practices. If a waste management plan has been approved by ODA, applications must follow the plan. Land application areas include land under the control of the permittee, whether it is owned, rented, or leased, to which manure, litter, or process waste water from the production area is or may be applied.</i>
45	The departments should require operations to implement pollution prevention measures at least as protective as other permit conditions from other jurisdictions.	15	The water pollution prevention measures are based on current state and federal regulations. ODA and DEQ believe the permit is as protective as other permits issued in Oregon. Condition G8 of the permit also specifies that nothing in the permit is to be construed as excusing the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.
46	Require reporting of all discharge events within one hour of discovery.	15, 16	The permit requires that operators report discharges to ODA as soon as possible following the event. It is not always possible for operators to report such problems within one hour of discovery, particularly in cases where immediate remedies must be instituted to stop or prevent further discharge.

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47	Refuse to provide waivers for written follow up notification of violations.	15	NPDES regulations allow for waivers of written notifications.
48	Eliminate the upset and bypass defense since CAFOs are required to be zero discharge facilities.	15	The upset and bypass defenses are standard conditions afforded to all NPDES permittees. ODA and DEQ will allow CAFO operators to make use of such defenses if they so choose. There is nothing in these provisions requiring ODA or DEQ to accept such a defense without challenge.
49	Define frozen ground as any ground where there have been freezing temperatures within the previous 96 hours.	15	ODA and DEQ disagree that ground will remain frozen for a period of 96 hours simply because the area experienced freezing temperatures. A site-specific determination should be made if there is a question about proper application of waste to frozen ground.
50	Require that all animals at a CAFO be prohibited from direct contact with surface waters, including connected drainage ditches, that are part of the area used for waste applications or are contiguous with the rest of the CAFO facility.	15	The permit prohibits animal contact with surface waters in the production area. Prohibiting contact with water on all ground contiguous with the CAFO may prevent some operations from pasturing or winter grazing their animals and is beyond the scope of this rulemaking. The NPDES permit program and state CAFO rules do not regulate these activities. They are typically dealt with through nonpoint source management programs.
51	Oregon should require integrators to jointly hold general permits with their contract growers.	15	ODA and DEQ disagree that integrators should be jointly permitted. EPA also rejected this approach when revising federal regulations. It is appropriate for the permit to be issued to the person who has decision making authority over the operation of the waste management system, be it the owner or operator. The complex business relationships between producers, growers, and others are not for the agencies to determine when they extend beyond the management of the facility.
52	Failed to conduct an appropriate antidegradation review - no antidegradation review worksheet.	24	DEQ has determined that issuance of the NPDES CAFO general permit is consistent with the antidegradation policy and will not degrade existing water quality because: 1) it is replacing an existing general permit and is not considered a new or increased discharge load; 2) it prohibits discharge in most cases, and when discharges are allowed, they must not cause or contribute to a violation of state water quality standards, and 3) there is no on-going discharge. When a finding is made that existing water quality will not be lowered, DEQ does not conduct an analysis to determine the social or economic benefit of allowing such a discharge.

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53	<p>Oregon should prohibit new CAFOs in impaired watersheds.</p> <p>How will the general permit take into account the requirements of Total Maximum Daily Loads (TMDLs) in a particular watershed?</p> <p>New NPDES general permit allows for loads beyond those presently allowed in the existing WPCF permit; failure to adequately consider the implications of this new waste load allocation on TMDLs – there is no documentation, mixing zone studies, computer modeling, etc. to support the assertion that discharges from CAFOs during larger rainfall events will not exceed water quality standards.</p>	<p>15, 24</p> <p>16, 24</p> <p>24</p>	<p>The TMDL allocation process uses two to five year storm events when modeling because violations of instream standards are seen in this range. Since the general permit prohibits discharge during smaller events, waste load allocations will not be made to CAFOs registered under the general permit. The general permit is adequate to prevent additional pollutant loads in most watersheds, even impaired watersheds. DEQ has yet to determine that modeling for larger storm events is necessary when allocating loads; however, if it is necessary and an allocation is made to a CAFO registered under a general permit, that CAFO may be required to apply for an individual permit as provided in OAR 340-045-0033(9) and condition S1.E.2 of the permit.</p> <p>DEQ believes that the new NPDES general permit will decrease waste discharges because it is more prescriptive than the existing WPCF general permit. The NPDES general permit requires that the CAFO comply with specific operational, maintenance and inspection conditions. The permit also requires that a waste management plan be developed and implemented to specific standards, and record keeping and reporting requirements be followed. None of these provisions are in the WPCF general permit.</p>
54	<p>CAFOs should not be allowed in the areas outlined in the "three basin rule" (OAR 340-041-0470).</p>	<p>15, 24</p>	<p>The proposed NPDES CAFO general permit is replacing the WPCF CAFO general permit. Existing CAFOs currently registered under the WPCF permit will be transferred to the NPDES general permit. OAR 340-041-047(4) allows renewal or transfer of permits within these three basins provided there is no increase in discharge load. Since the proposed permit requires that wastes be irrigated on land at agronomic rates and discharge is essentially prohibited, there will be no environmentally significant increase in discharge load. Also, as discussed above, DEQ expects the new permit to decrease discharges because it is more prescriptive than the WPCF general permit. New CAFOs will be allowed to register under the proposed general permit provided that their wastes are irrigated on land at agronomic rates, which is not considered an increase in wasteload pursuant to OAR 340-041-0470(4)(c), or their wastes are managed in such a way that an increase in discharge load does not occur (e.g., waste transported out of the basin, incinerated, etc.).</p>

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55	If the department seeks to permit a CAFO in these three subbasins with this new CAFO general permit or an individual NPDES permit, the CAFO at issue must first be inspected. OAR 340-041-0470(4)(a). Has the Department inspected all the CAFOs in these subbasins? If these inspections have not been completed, extending coverage under this permit to uninspected CAFOs contravenes the rule.	24	ODA inspects permitted CAFOs in these three subbasins on a regular schedule. In these three subbasins, ODA intends to inspect all applicants registering for the NPDES general permit that have not been previously inspected.
56	Oregon must ensure that waste transferred offsite does not foul our waterways.	15	Operators are allowed to dispose of their waste through sale, offsite transport or other means. Once the waste is transported to another party, that party becomes responsible for the waste and its management must be in accordance with applicable state and federal regulation. These include solid waste, composting, fertilizer, and other agricultural-related regulations, as well as the federal Clean Water Act.
57	Adequate storage should be a permit requirement.	15	Adequate storage is a permit requirement; see condition S2.E of the permit.
58	BAT should be the standard, not BPT.	15	"Best Available Technology Economically Achievable" or "BAT" is the federal effluent limitation guideline that most concentrated animal feeding operations are required to implement. ODA and DEQ have removed the term "practicable" from existing state rule to prevent confusion with this federal terminology.
59	The permit must include a sound cumulative environmental impacts analysis, not a generalized statewide approach; under the current monitoring scheme, how would the department detect leaks or other non-catastrophic discharge violations absent adequate ambient condition data?	15, 16	DEQ conducts an ongoing statewide groundwater monitoring and assessment program to identify and characterize the quality of Oregon's groundwater resources. Areas are prioritized for assessments using criteria such as sensitivity of the aquifer to contamination, growth pressures in the area, evidence of existing or emerging groundwater contamination, land uses that pose a risk to groundwater quality, and population density. Assessments typically involve a brief hydrogeologic and land use evaluation, careful well screening, and quality-controlled sampling and analysis. Since 1980, DEQ has conducted 45 groundwater quality assessments. DEQ and ODA will use existing and future assessments in prioritizing review of CAFOs for groundwater concerns.

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60	Require that under no circumstances may water quality standards be violated. Will the final permit contain a notwithstanding clause that requires this? If not, how can the Department insure that water quality standards are not being violated by CAFO general NPDES permittees?	15, 16	The most recent revision of the proposed permit included a statement that discharges not cause or contribute to a violation of state water quality standards. See condition S2.A.
61	(1 st version of proposed permit) The definition of discharge is unlawfully limited. Second component of definition is irrelevant and unnecessary; it raises questions as to whether or not land application is conducted in a manner that is likely to result in contamination. Under the proposed language, who determines whether or not the land application is likely to result in contamination of Oregon's waters? The permit, the department, the drafter of the waste management plan or some other party?	16	The definition was modified in the most recent version of the proposed permit to include the 40 CFR §1222.2 definition of discharge. The second part of the definition referred to in this comment was retained because ODA and DEQ believe it is necessary to explain what activities are regulated under this permits. ODA will make the determination when evaluating the permittee's waste management plan for approval. Plans that allow land applications that will likely result in contamination would not be approved.
62	If a permittee's land application is conducted in a manner that was not likely to result in contamination of Oregon's waters, but nonetheless does result in contamination, does the Department intend for this permit to shield or protect the permittee from the legal ramifications of such a discharge? Is a discharge to groundwater with a direct hydrologic connection to surface waters that causes a violation of water quality standards allowed under this permit?	16	If the CAFO is in compliance with its permit, the permit would provide a shield for any inadvertent contamination of waters of the state provided the contamination does not cause or contribute to a violation of state water quality standards. If an activity is found to have an adverse effect on water quality, ODA and DEQ would require that the permittee's plan be amended to improve land application practices. The permit is intended to prevent adverse impacts on and protect both surface water and groundwater.

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63	Does publication of these proposed rules constitute notification sufficient to trigger the obligation to submit an Application to Register? If not, does the Department anticipate individually contacting every operation in the state that may qualify as a CAFO?	16	Once the rules and general permit are adopted by both agencies and become effective upon filing with the Secretary of State's office, all CAFOs needing a permit have a duty to apply according to the schedule prescribed in the permit. In addition to the public notice distributed to interested parties and publication of notice of rulemaking in the Secretary of State's Bulletin, ODA anticipates contacting every operation that it knows of that may qualify as a CAFO needing a permit.
64	Is the 25-year, 24-hour storm event exception to the discharge prohibition/tied only to the actual occurrence of a 25-year, 24-hour storm event, or is it simply a facility design requirement?	16	The 25-year, 24-hour storm event is both a partial exception to the discharge prohibition and a minimum design requirement (note: facility must be designed, constructed and operated to contain all process generated wastewater plus the runoff from a 25-year, 24-hour storm event).
65	If the Department incorrectly or improperly approves a facility as one which was designed to prevent the overflow of process wastewater except in the event of a 25-year, 24-hour storm event, and discharge actually occurs during a lesser storm event (for example a 5-year event, 10-year event, etc.) will the operator be in violation of the permit?	16	The permittee is only allowed to discharge when precipitation causes an overflow from a production area that is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event. While ODA does review and approve waste management plans, ODA does not actually design, construct, operate or maintain waste water control facilities for permittees. These functions are the responsibility of the permittee; however, discharges after a series of smaller more intense storms that may be greater in quantity than a 25-year, 24-hour rainfall event are not automatically considered violations of the permit.
66	Is the waste management plan enforceable as part of a CAFO's NPDES permit?	16	The waste management plan is an enforceable part of the general permit as stated in condition S3.A.2.
67	Will all waste management plans be made available to the public?	16	The plans will be made available to the public upon request consistent with public records law. Portions of a plan may not be available due to their exemption from public records law based on confidential business information pertaining to trade secrets, provided disclosure is not required under 40 CFR §122.7.
68	How does the department justify issuing a general permit to an operation before that operation can affirmatively demonstrate compliance with its waste management plan or with water quality standards?	16, 24	The permit establishes requirements and limits on the operator to ensure that water quality standards are not violated. The operator is required to comply with these permit requirements and limits upon receiving permit coverage regardless of whether or not a waste management plan is approved and in place. ODA will inspect and, if necessary, take enforcement action on those operations that are not in compliance.

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69	Why is the department choosing not to require a simple calculation showing what 24-hour rainfall total represents a 25-year storm event in the WMP?	15, 16	ODA believes that each waste management plan must be site specific. The determination for what constitutes a 25-year storm event is based on the location of the facility. ODA expects that each plan will account for management of its wastes based on the 25-year storm event for that locale, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, or equivalent regional or state rainfall probability information developed therefrom.
70	Is it possible that a CAFO permittee might be meeting all the terms of the permit, but may still be violating state water quality standards?	16	The permit requires compliance with state water quality standards.
71	How will the department and the public know if a violation is being caused by the CAFO unless they are required to submit regular monitoring reports?	16	ODA conducts regular inspections of each of the permitted CAFO facilities in order to determine compliance. The inspectors have discretion to require submission of monitoring reports if there is a compliance concern.
72	What justification does the department have for including less stringent conditions in the Oregon general permit than the minimum standards outlined in the EPA guidance manual and sample permit for CAFOs?	16	ODA and DEQ believe that the Oregon CAFO general permit is at least as stringent as the minimum standards outlined in EPA rule and guidance. EPA has also been provided the opportunity to review the proposed general permit and has not expressed a concern that the state is being less stringent than federal regulation. In addition, the state regulates a broader range of animal feeding operations than EPA does, and provides for protection of groundwater as well as surface water.
73	How can interested citizens ensure that the department is properly exercising its enforcement authority without information on the pollution levels in affected surface and ground waters?	16	The public has access to department records through the public records law. Where the department has observed problems such information would also be available. DEQ routinely assesses surface water and groundwater conditions throughout the state. This information is available to the public.
74	Permit should require the submission of a closure plan for manure and waste-handling facilities.	15, 16	Permit condition S1.D.1(b) requires decommissioning in accordance with NRCS conservation practice standard 360 entitled <i>Closure of Waste Impoundments</i> , dated February 2000. ODA and DEQ believe that conformance with this standard will result in safe closures of waste facilities.
75	The federal data quality act applies to DEQ.	17	This act applies to federal agencies; ODA and DEQ are state agencies and therefore are not subject to this act.

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76	Thanks ODA for its efforts in building trust with the producers and its efforts to overcome the trust barrier; statewide enforcement is better than federal enforcement.	18, 20	ODA appreciates the cooperation of industry representatives in crafting the CAFO program in a manner that will benefit the industry and the environment.
77	It is important that the county be involved up front to assure application of its comprehensive plan.	19	All CAFO applicants must obtain a Land Use Compatibility Statement (LUCS) from the local planning department. Although it is not a rulemaking issue, ODA will explore ways of improving communication with county governments.
78	If federal regulations change, it is important that those changes be incorporated into the state regulations.	23	ODA and DEQ agree that changes in the federal rules may require changes to state rules and permit. Both agencies are committed to making any revisions necessary to assure that the state and federal programs are compatible.
79	Suggests language for "Permit Overview" as follows: a) This permit is a combination of state and federal regulations; b) This permit covers all CAFOs designated either by state permit authority or EPA regardless of size; c) This permit is entirely based on the required animal waste management plan; d) The plan, in accordance with requirements of this permit will determine the activities that need to be followed by the permittee; e) The annual inspection program that will be conducted by the permit authority will assist in ensuring compliance; f) The permit authority will do all possible to gain support of the CAFO advisory committee before making changes in the CAFO program.	4a	The most recent version of the proposed permit was substantially modified to address most of these concerns, except for those concerns relating to program management. Such issues are beyond the scope of this rulemaking and will be addressed at a later date.

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80	(2 nd version of proposed permit) Suggests language for S1.A that all CAFOs must meet requirements of this permit, except those CAFOs designated as large that have additional requirements listed in Section C.	4a	<i>Designated</i> is the term used by EPA to define a specific process. The most recent version of the proposed permit was substantially modified to address concerns of this nature.
81	(2 nd version of proposed permit) Suggests that S1.C.3. must reflect what is in the application to register.	4a	The information provided in the <i>Notice of Registration and Oregon CAFO General Permit Summary</i> is not intended to duplicate the <i>Application to Register (ATR)</i> . This notice is intended to advise the applicant that s/he is registered to the general permit, general contact information on file, the maximum number of animals allowed, and regulatory status. ODA advises that applicants keep a copy of the ATR they submit for their records.
82	(2 nd version of proposed permit) suggests changing <i>plan submittal to plan implementation</i> ; provides a suggested schedule.	4a	The plans must be submitted by a given date, regardless of their implementation date. Implementation is a separate issue. The proposed schedule provides that certain classes of facilities will 'phase in all sections of the permit' at different times. Instead, the agencies believe that, upon obtaining permit coverage, compliance with the permit conditions is required of all registrants, whereas plan submittal is based on a schedule determined by ODA.
83	(2 nd version of proposed permit) Suggests the addition of S3.B.2(k) detailing record keeping requirements.	4a	DEQ and ODA believe that this information is best left in the record keeping section of the permit instead of moving it to the plan elements section.
84	(2 nd version of proposed permit) Suggests the deletion of "additional" in S3.C for large concentrated animal feeding operations to avoid confusion about what is required.	4a	The most recent version of the proposed permit was substantially modified to address concerns of this nature. Requirements for large concentrated animal feeding operations were previously proposed as a separate set of requirements, which caused some confusion. An additional change was made to the final version of the permit to further clarify requirements in S4.C Record Keeping and Availability Requirements. Condition S4.C.2 was modified to include the requirements of S4.C.3 (S4.C.3 was deleted) and a clarification was made that only Large <i>concentrated</i> feeding operations have to record weather conditions.
85	(2 nd version of proposed permit) Suggests reducing the number of years between which soil tests must be performed, from five to three, and adds in <i>nitrogen</i> in S3.C.2(c).	4a	The federal regulations and NRCS guidelines require testing every five years. ODA encourages operators to test as often as they feel necessary, however, more frequent testing will not be required. Nitrogen testing has been added to the permit.

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86	(2 nd version of proposed permit) Suggests addition to S3.C, a #4 for off-site transfer of manure.	4a	S4.C.2 in the final version of the permit includes a record keeping requirement for off-site transfer of manure and S4.D.2 requires a summary of transfers be provided to ODA in the annual report.
87	(2 nd version of proposed permit) Suggests replacement language for S3.D that deals with plan compliance.	4a	S3.A.2 in the most recent version of the proposed permit contains a simplified version of the language proposed in the 2 nd version. No comment was received objecting to the proposed revision so it remains in the final version.
88	(2 nd version of proposed permit) Suggests language for S5.B.3 to change from January 15 th due date to March 15 th due date for annual reporting.	4a	The due date for annual reports was changed from January 15 to March 15 of each year. Language was also added to clarify that reporting is for the previous calendar year. (see S4.D.2)
89	(2 nd version of proposed permit) Suggests that a nutrient balance record be included in the annual report.	4a	The annual report will contain only the information required by S4.D.2 of the permit.
90	(2 nd version of proposed permit) Suggests replacement language for S5.D. Commenter wants to replace <i>additional monitoring</i> section with reference to a CAFO program advisory committee to be established.	4a	A condition for the creation of an advisory committee is not appropriate for the general permit because it is not a requirement for the permittee. ODA will consider this suggestion in a future rulemaking effort.
91	(2 nd version of proposed permit) Asks that general permit conditions be deleted if they are referenced elsewhere in permit.	4a	Federal rule requires inclusion of these standard general conditions in all NPDES permits; however, the most recent version of the proposed permit did eliminate those conditions that were addressed elsewhere in the permit. A reference to these standard conditions was retained (see G11).
92	Inadequate quantitative assessment of waste loading – permit evaluation report fails to include information about the total quantity of wastes that may be discharged under the permit across the state as required by OAR 340-045-0035(4)(b).	24	OAR 340-045-0035(4) requires this information “where applicable.” In the case of the proposed general permit, it is difficult to estimate the quantities of waste that may be discharged because there is no direct correlation with the amount of wastes generated and the general permit prohibits discharge of wastes in most situations. Discharges are only allowed during very large storm events and even then those discharges must not cause or contribute to a violation of water quality standards. ODA can provide an estimate of the number of CAFOs that may need a permit and an estimate of how much waste may be generated. The following information was added to the fact sheet: There are approximately 500 CAFOs currently permitted in Oregon. ODA estimates that an additional 200 to 500 facilities may need to be permitted. ODA estimates that 10 million tons of waste may be generated yearly by CAFOs registered under the general permit. A majority of

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			these wastes are land applied at agronomic rates to crop ground under control of CAFO operators, while the remaining is exported off-site for use by other agricultural entities.
93	Inadequate explanation of variances for "no potential to discharge" exemptions from coverage under permit.	24	"No potential to discharge determinations" for <i>large concentrated</i> animal feeding operations must comply with 40 CFR §122.23(f). The operator must submit a request to the director and the director must issue a public notice stating that a request has been received and other relevant information. Within 90 days of receiving the request, the director must notify the <i>large concentrated</i> animal feeding operation of his/her decision. Confined animal feeding operations that do not meet the definition of <i>large concentrated</i> animal feeding operations are not subject to this requirement.
94	Inadequate contact information in the permit evaluation – no name and phone number of person to contact for additional information; only names of preparers.	24	The final fact sheet includes the telephone numbers of the preparers and a statement that they are to be contacted for additional information.
95	Reporting requirements are inadequate – all discharges must be recorded and reported; even discharge that might occur under a department approved plan could constitute a threat to the environment and is required to be reported by G4(C) [G2.C in final version of permit].	24	Condition S4.D requires that discharges not allowed by conditions S2.B and S2.C be reported to ODA. ODA and DEQ believe this requirement is adequate and consistent with the reporting requirement in G2.C.
96	Annual report should also require the listing of off-site transfer locations.	24	Large concentrated animal feeding operations are required to maintain the name and address of each off-site recipient. This information is available to ODA upon request.
97	Confined animal feeding operations are akin to factory farms, which are cruel to the animals, and asks that Masami Foods facility not be allowed. Factory farms are inhumane and should be prohibited.	25 27	CAFOs are specifically allowed by law in Oregon. Any CAFO that needs a water quality permit under state or federal regulation may submit an application to ODA. ODA evaluates applications and determines the appropriate permitting approach for each facility. ODA and DEQ do not have the authority to deny an application based on issues outside of their jurisdictions. Prohibition of this industry is beyond the scope of this rulemaking and outside of ODA and DEQ authority.

	COMMENT	ID#	RESPONSE
98	All size operations should be subject to the same production area and land application effluent limitations.	13a	All CAFOs that are required to be permitted under state and federal regulation are subject to the limitations of conditions S2.A through C. EPA has determined, however, that new source swine, poultry, and veal large concentrated animal feeding operations are able to design their operations for larger rainfall events because these activities are typically conducted under cover resulting in smaller quantities of storm water runoff contaminated in the production area.
99	Permit should make it clear that operators must provide sufficient storage capacity to hold manure for the entire period of time that land is frozen, snowcovered or saturated.	13a	The general permit requires that the permittee provide adequate storage capacity for solid and liquid wastes at all times so that land application occurs only during periods when soil and weather conditions allow for agronomic application and are in compliance with the land application limitations (see condition S2.E). ODA and DEQ believe this requirement is adequate.
100	Waste management plan submittal should be required.	13a	Submittal of a waste management plan is a requirement of the general permit.
101	Waste management plan elements should include requirement that operator demonstrate no hydrological connection between groundwater beneath production area and surface waters.	13a	The general permit requires that all operations be conducted in manner to protect both surface waters and groundwater. In addition, waste applications must occur at agronomic rates to prevent groundwater and hydrologically connected surface water from being contaminated. ODA may also require additional groundwater monitoring under the general permit if deemed necessary (e.g., if the CAFO is located in a groundwater management area and CAFOs have been identified as a potential problem).
102	Supports federal rules, but is opposed to incorporating additions or modification to the federal rule into the Oregon rule at this time.	26	Now that the federal regulations have been finalized, ODA and DEQ are ready to proceed with rule adoption to facilitate transfer of the NPDES permit program for concentrated animal feeding operations from DEQ to ODA as directed by the 2001 Legislature.
103	Not clear in permit if there are some facilities defined as CAFOs that do not need a permit.	22a	The general permit now clarifies in condition S1.A that the following are required to obtain permit coverage: <ul style="list-style-type: none"> • Confined animal feeding operations that confine for more than four months and have waste water control facilities is required to obtain permit coverage; • Federally-defined concentrated animal feeding operations; and • Any animal feeding operation designated as "concentrated."
104	Why is a notice of registration called a General Permit Summary?	22a	The general permit has been revised to indicate that ODA will be sending out a <i>Notice of Registration and Oregon CAFO General Permit Summary</i> to permit applications. The purpose of this document is to notify the applicant that permit coverage has been obtained, summarize the information about the CAFO that ODA has received, and provide an overview of the permit requirements.

	COMMENT	ID#	RESPONSE
105	Permit language is confusing and references to different OARs should be simplified, perhaps in a booklet or less legalese-like in the permit.	22a	The most recent version of the proposed permit made an attempt to address this comment. To further streamline the permit and make it easier to understand, the final version was revised as follows: <ul style="list-style-type: none"> • The note in the definition of "pollutant" referring to radioactive materials was removed. • The definition of "Confined Animal Feeding Operation" or "CAFO" was moved above the definition of "concentrated animal feeding operation" to assist the reader in understanding that the definition of "CAFO" includes both a state and federal component.
106	CAFO permits and rules should follow all state, local and federal rules to prevent contamination of our water.	28	It is the goal of ODA and DEQ to assure that the permit and rules comply with all applicable laws and rules.
107	ODA should remove the word "receiving" from the present copy of the ATR from Page 1, 11A "closest water body or receiving stream."	22b	ODA will continue to work with industry representatives on improving the ATR. This flexibility is available because the ATR is not part of the rulemaking process.
108	Believe the public participation component of this permit is inadequate and contradicts the recent Ninth Circuit law as noted in their previous comments. Public participation inadequately considered; applications to register are not subject to public process.	15b, 24	EPA has appealed the Ninth Circuit Court's decision and the decision has been stayed so the law is unresolved on this issue. EPA has advised states that it is appropriate to proceed with issuance of general permits. If EPA is required to modify the NPDES general permit regulations, DEQ and ODA will revise their respective regulations as necessary.
109	When approving waste management plans, if existing structures need to be certified by engineers retroactively, believe that the physical testing requirements for engineer certification of existing structures need to be more clearly spelled out, absent certified documentation of design and construction.	15b	ODA requirements detail the type of construction activity that requires certification by an engineer and the design standards for such construction. If there is a case where a structure needs retroactive certification, the operator will still have to ensure that it has met those requirements.

	COMMENT	ID#	RESPONSE
110	Believe that OAR 603-074-0014 and permit condition S1.B.3 allow too much time to comply with the requirement to apply for a permit.	15b	ODA and DEQ are satisfied that the schedule is in compliance with state and federal regulation. CAFOs that are newly defined as "concentrated" permits are likely currently under WPCF permit so they are being regulated. In addition, this summer ODA intends to notify CAFOs throughout the state of the need to register for permit. With this approach, ODA will provide a submittal date for application in advance of the February 13, 2006 date.
111	Section 603-074-0018 (2) needs a comma before "other" and after "structures", in order to clear up potential drafting ambiguities and to prevent interpretation problems by a court reviewing this language.	15b	Both ODA and DEQ rules were revised as suggested.
112	Concerned with terminology in permit that states the "permittee must develop and fully implement a current animal waste management plan for its facility by 12.31.06." Concerned that if an operator has an AWMP that they have begun implementing, but have not completed that it may put them in violation. ODA needs to discuss with DEQ and EPA and decide exactly what this statement requires.	22b, 29	This section in the general permit was revised to clarify the expectations of ODA, DEQ and EPA in determining compliance with the requirement to "develop and fully implement" a current waste management plan." To "develop and fully implement" a current waste management plan means to be operating in accordance with the plan. Schedules for improvement projects are allowed in a plan; however, absence of a plan or ODA approval of a plan does not allow the permittee to violate the limitations and requirements of S2 Discharge Limitations and Operating Requirements. The following changes have been made to the final version of the permit: <ul style="list-style-type: none"> • Condition S3.A.1 now reads "Upon receipt of notification by ODA or by December 31, 2006, whichever occurs first, the permittee must implement a current waste management plan developed for its CAFO." The term "implement" was retained over "operating in accordance with" because it reflects federal terminology. • Condition S3.A.3 was added to let the permittee know that absence of a plan or absence of ODA approval of a plan does not allow the permittee to violate the provisions of S2 Discharge Limitations and Operating Requirements or other permit requirements. • Condition S3.C.2 was added to clarify that the waste management plan may include a schedule for improvement projects.
113	Does not believe ODA has discretion in the way they enforce the CAFO laws.	29	ODA and DEQ are required to enforce their respective regulations. Both agencies have the flexibility to determine the nature of the enforcement action to be taken depending on the severity of the violation. DEQ is guided by OAR 340-012 when making such decisions; ODA by OAR 603-074.

Table 2
List of Commenters

Comments #1-23 were received during first comment period that closed 11/15/02.

Comments #a and 24-28 were received during the extension of the first comment period to 2/20/03.

Comments #b and 29 were received during second comment period that closed 6/6/03.

ID#	Name	Organization(s) Represented	Address
1	Franklin, Helen	Law Finders, an entity not registered in Oregon	P.O. Box 1237 North Bend, OR 97459
2	McCarthy, Pete, President	Coos County Livestock Association, a domestic nonprofit corporation	290 North Central Coquille, OR 97423
3	Kennedy, William D.	Lost River Ranch, a foreign limited liability company	25400 North Poe Valley Rd. Klamath Falls, OR 97603
4, 4a, 4b	Krahn, Jim, Manager	Oregon Dairy Farmers Association, a domestic nonprofit corporation	10505 SW Barbur Blvd., Portland, OR 97219
5	Wilkinson, Jean, and Addington, Greg, Associate Directors	Oregon Farm Bureau, a domestic nonprofit corporation	3415 Commercial St. SE, Suite 117 Salem, OR 97302-5169
6	Larson, Pat and Hammond, Susan	Oregon Cattlemen's Association, a domestic nonprofit corporation	61931 Cottonwood Rd. LaGrande, OR 97850
7	Knutson, DeVon	OSU extension	4330 Sage Rd. Ontario, OR 97914
8	Rohner, Kate	Eastern Oregon Dairymen Association, an entity not registered in Oregon	n/a
9	Morter, Perry		Box 94 Ione, OR 97843
10	Remington, Jack		64568 Findlay Lane Bend, OR 97701
11	Hawthorne, Bob	Oregon Cattlemen's Association, a domestic nonprofit corporation	42021 Cupper Creek Rd. Kimberly, OR
12	Waterman, Sharon		87518 Davis Creek Lane Bandon, OR 97411
13, 13a	Jones, Dena M. and Dougherty, James B.	The Humane Farming Association, an entity not registered in Oregon	1550- California Street, St 6 San Francisco, CA 94109
14	Daruty, Scott J., Chief Counsel	Magna Entertainment Corp., an entity not registered in Oregon	285 West Huntington Drive Arcadia, CA 91007
15, 15a, 15b	Tebbutt, Charles M, Staff Attorney	Western Environmental Law Center, a domestic nonprofit corporation ; also representing the following organizations: Headwaters, Inc., Hells Canyon Preservation Council, Inc.; Oregon Natural Desert Association, Inc.; Oregon Natural Resources Council Fund, Inc., the Sierra Club, the Oregon chapter of the Sierra Club, and the Oregon Toxics Alliance	1216 Lincoln St. Eugene, OR 97401
16	Riskedahl, Mark Executive Director	Northwest Environmental Defense Center, a domestic nonprofit corporation	10015 SW Terwilliger Blvd. Portland, OR 97219
17	Scheufele, Bill		P.O. Box 433 Monument, OR
18	Skinner, Bob	Oregon Cattlemen's Association, a domestic nonprofit corporation	P.O. Box 216 Jordan Valley, OR
19	Hursh, Russell F.	Malheur County Court	251 B. Street West Vale, OR 97918

ID#	Name	Organization(s) Represented	Address
20	Maag, Deanne	Malheur County Cattlemen's Association, an entity not registered in Oregon	5160 Maag Road Vale, OR 97918
21	Stonebrink, Glen	Oregon Cattlemen's Association, a domestic nonprofit corporation	3415 Commercial St. SE, #217 Salem, OR 97302
22, 22a, 22b	Buck, Dale		25590 Chinook St. Cloverdale, OR
23	Wagner, Steve Director	Skylane Farms, an assumed business name of Valley Fresh Foods, Inc., a foreign corporation authorized to do business in Oregon	8539 Crosby Road NE Woodburn, OR 97071
24	Riskedahl, Mark, Executive Director	Northwest Environmental Defense Center, Western Environmental Law Center, Headwaters, Inc., Hells Canyon Preservation Council, Inc.; Oregon Natural Desert Association, Inc.; Oregon Natural Resources Council Fund, Inc., the Sierra Club, the Oregon chapter of the Sierra Club, and the Oregon Toxics Alliance	10015 SW Terwilliger Blvd. Portland, OR 97219
25	Gigler, Andrew		4230 South Sixth St Klamath Falls, OR 97601
26	Stiner, Dave	Beef Northwest Feeders, LLC	P.O. Box 469 Boardman, OR 97818
27	Fowler, Debbie	Klamath Humane Society	P.O. Box 482, Klamath Falls, OR 97601, and P.O. Box 1333, Chiloquin, OR 97624.
28	Brown, Louise	Ranch owner	Eastern Oregon ranch, Buttercreek near Echo
29	Boyer, Charlie	Oregon Soil and Water Conservation Commission	11630 Agate Road Eagle Point, Oregon
late	Lind, Christopher	General Chemical, Water Chemicals Group	90 East Halsey Road Parsippany, NJ 07054

Attachment C
Presiding Officers' Report on Public Hearings

State of Oregon

Department of Environmental Quality

Memorandum

To: Environmental Quality Commission Date: June 16, 2003
From: Lynda Horst, Oregon Department of Agriculture
Ranei Nomura, Water Quality Division, DEQ

Subject: Presiding Officers' Report for Rulemaking Hearings
Title of Proposal: Adoption of New NPDES General Permit for Confined Animal Feeding Operations (CAFOs) and Revisions to CAFO Rules

Overview of Public Hearing Locations, Times and Presiding Officers

Presiding Officer	Lynda Horst	Lynda Horst	Lynda Horst
Date and Time	November 7, 2002; 9:00 a.m.	November 13, 2002; 7:00 p.m.	November 14, 2002; 1:00 p.m.
Place	Eagle Crest Resort High Desert Room 1522 Cline Falls Hwy Redmond, OR 97556	OSU Extension Meeting Room 2204 4th Street Tillamook, OR 97141	ODA Basement Hearings Room 635 Capitol St. NE Salem, OR 97301

Presiding Officer	Lynda Horst	Ranei Nomura
Date and Time	February 13, 2003; 4:00 p.m.	June 4, 2003; 10 a.m.
Place	ODA Conference Room D 635 Capitol St. NE Salem, OR 97301	ODA Basement Hearings Room 635 Capitol St. NE Salem, OR 97301

At all five hearings, people were asked to sign in and fill out registration forms if they wished to present comments. People were also advised that the hearing was being recorded. Summaries of oral comments are provided below in alphabetical order unless the oral comment was also submitted as written comment. Both oral and written comments will be included in the *Public Input and Departments' Response* for this rulemaking.

Redmond Hearing (November 7, 2002)

Twenty-four persons attended the hearing; six provided the following oral comments:

1. Bob Hawthorne, Grant County farmer (see written comment dated 11/7/02)
2. Russell F. Hursh, Malheur County Court Judge – Judge Hursch agreed with the previous comments provided by Mr. Schufele, Mr. Hawthorne and Mr. Skinner. He emphasized that a comprehensive plan for the county to blend different activities appropriately was important,

and believes that the county needs to be involved in changes including remediation situations.

3. Deanne Maag, Malheur County Cattlemen's Association – Ms. Maag applauded ODA for becoming responsible for enforcement activities in the state indicating that it was better than having EPA in the state. She expressed concern about anonymous and frivolous complaints that were not factual opening up the private landowner. She also asked that confined areas be defined otherwise it was open to interpretation and, while ODA approach is usually a common sense one, current interpretation might not stay that way.
4. Bill Schufele, rancher and farmer – Mr. Schufele expressed concern about constitutional property rights begin violated when inspectors come onto property. He doesn't water polluted. He also said that Portland's discharge needs to be addressed and that decisions must be based on science. He stated that the federal data quality act requires agencies to comply with the integrity of data releases and guidelines must be submitted to the Bush office.
5. Bob Skinner, Oregon Cattlemen's Association – Mr. Skinner supports the concept of clean water, but feels that federal agencies previously crossed the law and that the current administration is trying to turn that around. He expressed that there is a lack of trust by producers and that ODA faces barriers so it needs to build trust and get back what was lost. He asked that ODA help keep producers in compliance and that if that spirit and intent is there it should be a win-win situation.
6. Glen Stonebrink, Oregon Cattlemen's Association – Mr. Stonebrink expressed concern that first-time inspections would be subject to enforcement action if they had a direct discharge to surface water. He would like to be able to assure producers that no monetary penalty will occur unless the violation is egregious. He also wants first-time inspections to be an educational process. He stated that OCA has a goal that every producer will be in compliance and wants to educate producers as to what is required. He supports protection of private property rights and doesn't believe that inspectors can or should enter private property without permission. He believes that pollution is only considered to be pollution when it leaves your property, otherwise it's not, and that operators can prevent inspectors from entering property, but OCA hopes to have decent relationships with inspectors.

Tillamook Hearing (November 13, 2003)

Nine persons attended the hearing; one provided the following oral comments:

1. Jim Krahn, Oregon Dairy Farmers Association (see written comment dated 11/13/02)

Salem Hearing (November 14, 2003)

Eleven persons attended the hearing; five provided the following oral comments:

1. Dale Buck, private citizen – Mr. Buck stated that he wanted to echo the comments of ODFA and recommended that the agencies accept their suggestions, including the annual reporting document revised as necessary by ODA and the CAFO advisory committee. He also thanked ODA and DEQ for working with ODFA and producers in revising the rules.
2. Jim Krahn, Oregon Dairy Farmers Association (see written comment dated 11/13/02)

3. Mark Riskedahl, Northwest Environmental Defense Center (see written comment dated 11/15/03)
4. Charlie Tebbutt, Western Environmental Law Center (see written comment dated 11/14/02)
5. Steve Wagner, Oregon Poultry Association and Skylane Farms – Mr. Wagner stated that he's been working with ODA the last 18 months and finds the proposed CAFO plan very workable. He appreciates ODA's assistance so far. He also asked that ODA carefully review and incorporate the federal regulations into the state rules.

Salem Hearing (February 13, 2003)

Nine persons attended the hearing; three provided the following oral comments:

1. Dale Buck, Private Citizen (see written comment dated 2/13/03)
2. Jim Krahn, Oregon Dairy Farmers Association (see written comment dated 2/13/03)
3. Glen Stonebrink, Oregon Cattlemen's Association – Mr. Stonebrink stated that the beef industry believes the simpler the rules and permit are made, the better response ODA will. He thanked ODA and Oregon Dairy Farmers Association (ODFA) for their effort to improve the permit and rule language. He expressed concern that there was not enough time to comment on the federal regulations that were formally promulgated on February 12 and wanted more time to review and comment. He stated that OCA is opposed to all CAFOs being subject to the same requirements regardless of size. He feels that more stringent standards should be placed on large facilities rather than small and medium facilities. He expressed concern that placing the same rules on all facilities will cause an undue burden on small operations, thus increasing the frequency of large facilities, which will not improve water quality. He also stated that OCA was opposed to having a wide range of CAFOs fill out the application, rather than just those who do or may qualify for the permit. He thinks it will create confusion and skepticism among producers. He expressed general support for the work that ODFA did in editing forms and the permit with a few exceptions. He feels that the beef industry should be treated separately from others as they have not been under regulation as long and the industry is not as familiar with the program. He opposes ODFA's proposed timeline for waste management plan submittal and prefers the December 2006 deadline or when notified by ODA. He also opposes more frequent soil sampling than the federal regulations require and oppose state rules being any more stringent than federal regulations.

Salem Hearing (June 4, 2003)

Two persons attended the public hearing; no one provided oral comment, but the two persons in attendance did submit written comment.

Attachment D
State of Oregon
**DEPARTMENT OF AGRICULTURE and DEPARTMENT OF ENVIRONMENTAL
QUALITY**
Rulemaking Proposal for
OAR Chapters 340 and 603 General CAFO NPDES Permit Adoption

**Questions to be Answered to Reveal
Potential Justification for Differing from Federal Requirements**

Relationship to Federal Requirements

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and potential justification for differing from federal requirements. The questions are required by OAR 340-011-0029.

1. **Are there federal requirements that are applicable to this situation? If so, exactly what are they?**

The Departments of Agriculture and Environmental Quality are proposing to adopt through rulemaking a National Pollutant Discharge Elimination System (NPDES) general permit for confined animal feeding operations (CAFO). The following federal requirements apply to this general permit:

40 CFR §122 EPA Administered Permit Programs: National Pollutant Discharge Elimination System

40 CFR §122.23 Concentrated Animal Feeding Operations

40 CFR §122.28 General Permits

40 CFR §412 Effluent Guidelines and Standards – Feedlots Point Source Category

There are no applicable federal requirements for department approval of design and construction plans for waste water control facilities (adoption of OAR 603-074-0018 and 340-051-0007).

2. **Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?**

The applicable federal requirements are technology based.

3. **Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?**

The applicable federal requirements do address permit specific issues in Oregon. Data and information used to establish the federal requirements can be reasonably assumed to reflect Oregon's concerns.

4. **Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?**

The adoption of the CAFO NPDES general permit will improve the ability of the regulated community to comply with both state and federal requirements by combining these requirements into one permit. The general permit will clarify potentially conflicting requirements over when a permit is required and specify the minimum design standard for waste water control facilities. This

permit is also more efficient to administer because its conditions are generally applicable to all types of CAFOs so the development of individual, site-specific permits are not required. These cost savings are passed on to the regulated community.

5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?

There is no timing issue. The federal requirement for NPDES permitting of concentrated animal feeding operations has been in place since the 1970s. There is no required federal timeframe for adopting a general permit.

6. Will the proposed requirement assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?

The proposal to adopt this general permit does not affect the issue of accommodation of uncertainty and future growth.

7. Does the proposed requirement establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

The proposed general permit establishes reasonable equity amongst the different types of CAFOs by requiring similar conditions and design standards for nutrient management and waste water control facilities.

8. Would others face increased costs if a more stringent rule is not enacted?

No.

9. Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?

No. However, the general permit does cover a larger group of animal feeding operations. The state definition of CAFO (confined animal feeding operation) includes federal concentrated animal feeding operations as well as animal feeding operations. The state's CAFO program was authorized by the Oregon Legislature to include a broader range of animal feeding operations and ODA will be making this permit available to these operations.

10. Is demonstrated technology available to comply with the proposed requirement?

Yes.

11. Will the proposed requirement contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

The proposed general permit prevents pollution by prohibiting the discharge of wastes and wastewaters in most cases. Discharges are allowed whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewater plus the runoff from a 25-year, 24-hour storm event (100-year, 24-hour storm event for swine, poultry, and veal calf operations). The permit may also be used to regulate potential problem CAFOs. In addition, as discussed previously in #4, a general permit is more cost effective to administer which results in a more cost effective environmental gain.

Attachment E
State of Oregon
**DEPARTMENT OF AGRICULTURE and DEPARTMENT OF ENVIRONMENTAL
QUALITY**

**Rulemaking Proposal for
OAR Chapters 340 and 603 General CAFO NPDES Permit Adoption**

Statement of Need and Fiscal and Economic Impact Statement

Title of Proposed Rulemaking

OAR Chapters 340 and 603 General CAFO NPDES Permit Adoption

Introduction

The Oregon Department of Agriculture (ODA) and Department of Environmental Quality (DEQ) are proposing to issue a new National Pollutant Discharge Elimination System (NPDES) general permit through rulemaking for confined animal feeding operations (CAFOs). CAFOs are defined in OAR 603-074-0010(3), and include those facilities that meet the federal definition of a "concentrated animal feeding operation." The proposed permit is referred to as the "Oregon CAFO General Permit" and will replace the existing Water Pollution Control Facilities (WPCF) 0800 general permit to which most Oregon CAFOs are currently registered. There are approximately 500 permittees registered to the existing WPCF 0800 general permit. ODA anticipates that an additional 200-500 operations may be required to register to the new Oregon CAFO General Permit.

In addition, DEQ is proposing changes to OAR Chapter 340, Division 51 to clarify definitions and reference ODA rules. These changes will not have a fiscal impact so they are not discussed in the fiscal and economic impact portion of this document. ODA is also proposing a new rule, OAR 603-074-0018, to outline its approval process for design, construction, operation, and maintenance plans for CAFO waste control facilities and operations.

Statutory Authority

ORS 468.020, 468B, 561.190, and 2001 Oregon Laws, Chapter 248 (House Bill 2156).

Statutes Being Implemented

ORS 468.005, 468.065, 468B.005, 468B.015, 468B.035, 468B.050, 468B.200, *et seq.*, and 2001 Oregon Laws, Chapter 248 (House Bill 2156).

Need for Rules

The 2001 Oregon legislature, through HB 2156 (2001 Oregon Laws, Chapter 248), directed ODA to seek approval from the federal Environmental Protection Agency (EPA) to transfer the CAFO portion of the NPDES permitting program from DEQ to ODA. As DEQ does not have an NPDES CAFO permit already in place and ODA has not yet received NPDES program delegation for CAFOs, development and adoption of such a permit requires rulemaking by both agencies. In addition, DEQ must amend its rules to reference ODA rules to facilitate this NPDES CAFO program transfer.

Principal Documents Relied On

ORS Chapter 183, Chapter 468, Chapter 468B, Chapter 561, OAR Chapter 603, Division 74, OAR Chapter 340, Divisions 41 and 45; *Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure under the Administrative Procedures Act*, October 3, 2001; minutes of the CAFO

advisory committee meetings in which Oregon CAFO General Permit development and rulemaking needs for ODA to obtain NPDES delegation were discussed; and 40 Code of Federal Regulation (CFR) §§122 – 124 and 412.

These documents are available for public inspection at the Oregon Department of Agriculture, Natural Resources Division, 635 Capitol St. NE, Salem, Oregon, between 8:00 a.m. and 5:00 p.m. on normal business days, Monday through Friday.

Overview of Fiscal Impact

Existing Permittees: ODA does not anticipate much of an increase in expenses for compliance with this new permit over and above the expenses incurred with the existing WPCF 0800 permit for those facilities currently registered to the existing permit.

The fees for registration and renewal will remain the same at \$50 for registration and \$25 annual renewal fee. Most existing permittees are already in compliance with the terms and conditions of the new permit. Those facilities that are not in compliance with their current registration may have expenses associated with bringing the facility into compliance, but those costs and expenses will not increase as a result of the new permit. The same compliance standards exist under both permits.

However, the new permit requires that all facilities have an animal waste management plan prepared and implemented. Most existing CAFOs that are permitted have such a plan. For those facilities that do not yet have a plan for management of their waste, there may be costs incurred in preparing and implementing a plan. Plan preparation may cost anywhere from \$400 to \$4,800 assuming a range of 4 to 48 hours for a licensed engineer to develop a plan at a cost of \$100 per hour. Implementation of a plan will vary so greatly that an estimate of cost was not developed.

Changes in the federal NPDES program rules may require those facilities that meet the definition of a *large concentrated* animal feeding operation to make changes to the operations to comply with the new rules. EPA's financial analysis indicates that, for *large concentrated* animal feeding operations in the veal, dairy, turkey, and egg laying sectors, the financial impacts due to the rule changes are characterized as "affordable" or "moderate." EPA expects that no facility closures will occur. For *large concentrated* animal feeding operations in the beef cattle, heifer, hog and broiler industries, EPA's analysis indicates that some facilities will "experience financial stress." Nationwide, EPA expects about 3% of beef operations, 9% of heifer operations, 5% of hog operations, and 1% of broiler operations may be vulnerable to closure. Within the state of Oregon, ODA does not expect any facilities to be vulnerable to closure, in part because there are very few facilities in Oregon that meet the federal definition of a *large concentrated* animal feeding operation. Smaller operations, while still required to comply with the law, are not required to maintain the same level of accountability as those defined as *large concentrated* animal feeding operations.

Along with the changes made to the federal NPDES program rules the federal government has provided sources of funds available to operators to make needed changes. The 2002 Farm Bill provides funding for EQIP (Environmental Quality Incentives Program) to animal agriculture, including large and small feedlots. An operation is potentially eligible for a total of up to \$450,000 over a six year period (2002 through 2007). Grants are also available.

As part of the nutrient management plan requirement under the new rules, operations may be required to establish vegetative buffers or setbacks from surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters. The costs to implement these measures will vary

considerably, depending upon the location of the facility, its proximity to waters of the state, and its ability to employ alternative practices, as provided in the new rules.

New Permittees: It is expected that new applicants will incur costs to comply with the permit, in addition to the registration and renewal fees as noted above. The cost of permit compliance will vary considerably for new facilities depending on the size and complexity of the operation. Other factors that will determine the cost for compliance include the type of facility, the level of employee expertise available to conduct compliance tasks, the costs for training employees, and the potential need to hire external contractors or consultants to perform some compliance tasks, such as developing an animal waste management plan. Because of this variability, estimates of costs were not developed.

It is expected that for both existing and new permittees there will be increased costs resulting from changes in the rules relating to construction approval. ODA is proposing to accept design and post-construction certification from licensed engineers for earthen impoundments, conveyances, animal holding areas and earthen-floored buildings and animal travel lanes between buildings in the production area. This change in the rules means that the permittees will be responsible for obtaining the engineering certification rather than having ODA review and approve these documents. The costs to the permittees for obtaining such engineering certification will vary greatly, depending on the cost of the engineer and the complexity of the project. Based on an estimated fee of \$100 per hour for a licensed engineer, these costs may range from a few hundred to several thousands of dollars. The variability is so great that it is not possible to develop accurate estimates.

General Public

The general public may be indirectly affected by the proposal. CAFOs could pass the additional permit costs to consumers in the form of marginally higher prices for goods and services. However, the potential price impact for consumers is expected to be minimal.

Small Business

The majority of CAFOs currently registered to the existing permit are small businesses. For those facilities, costs to comply with the new permit will be minimal if they are currently in compliance. There will be costs associated with preparation and implementation of an animal waste management plan, but these costs are site specific and will vary widely.

Small operations obtaining coverage under the Oregon CAFO general permit for the first time may see costs in excess of \$1,000 if an animal waste management plan has not been developed or implemented for that facility. Construction of waste management structures or systems would require additional expense, depending on the type and size of the facility and the type of waste being managed. For example, costs associated with a dairy may be higher than those associated with a beef feed lot or a horse boarding facility.

Except for the costs associated with development and implementation of an animal waste management plan, permit conditions that require expenditures will not vary much between the existing permit and the new permit. Annual compliance costs, once an approved plan has been implemented, will not necessarily be higher than those required under the 0800 general permit.

Large Business

Large CAFOs obtaining permit coverage under this permit for the first time likely will have the greatest costs. However, compliance criteria remain the same, regardless of the size of the operation. Clearly, the greater number of animals, the greater the generation of waste to manage, and therefore the larger in size the waste

storage structures must be, or, if larger storage is not available, the more intensively managed the facility must be. Such management may include increased costs for training, staff, and related expenses.

Local Governments and State Agencies

Any governments or state agencies operating CAFOs will have the same expenses as those small and large businesses in the private sector.

DEQ does not expect an increase in revenues or expenses as a result of the proposed permit. ODA will see an increase in revenue and expenses if additional CAFOs are permitted under the proposed permit.

Advisory Committees

ODA's director appointed a CAFO rules advisory committee representing producers, landowners, extension agencies, environmental groups, and the public, from all segments of the community involved in animal feeding operations for the purpose of assisting the department with development of the permit and rules.

Housing Cost Impact Statement

ODA and DEQ have determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.

Attachment F
State of Oregon
**DEPARTMENT OF AGRICULTURE and DEPARTMENT OF ENVIRONMENTAL
QUALITY**

**Rulemaking Proposal for
OAR Chapters 340 and 603 General CAFO NPDES Permit Adoption**

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

For the Oregon Department of Agriculture (ODA), this proposal would:

- Adopt 603-074-0012 and 603-074-0014 to outline the procedures for applying for the NPDES permit being adopted by 0014.
- Adopt 603-074-0018 to clarify design, construction, operation, maintenance, and plan review requirements for CAFO waste water control facilities and operations are consistent with OAR 340-051-0007, which is being proposed for adoption by DEQ.
- Amend 603-074-0010, 0020, 0040, 0060, 0070, and 0080 to make terminology consistent with OAR 340-051 and 340-045, and with federal concentrated animal feeding operations regulations [68 FR 7175 (February 12, 2003)].

For DEQ, this proposal would:

- Consistent with federal National Pollutant Discharge Elimination System (NPDES) permit program regulations, amend OAR 340-045-0015 to allow the Director to designate an animal feeding operation as a significant contributor of pollutants needing an NPDES permit pursuant to 40 CFR §122.23(c).
- Amend OAR 340-045-0033 to adopt a NPDES general permit for Confined Animal Feeding Operations (CAFOs). This general permit was developed jointly with the Oregon Department of Agriculture (ODA). ODA is also proposing to adopt this permit through rulemaking (OAR 603-074-0014).
- Adopt OAR 340-051-0007 to clarify design, construction, operation, maintenance, and plan review requirements for CAFO waste water control facilities and operations consistent with OAR 603-074-0018. OAR 603-074-0018 is currently being proposed for rule adoption by ODA.
- Amend OAR 340-051-0010 to clarify that "Department" when reviewing CAFO plans means either the Oregon Department of Environmental Quality or Oregon Department of Agriculture, revise the definition of "CAFO" to be consistent with the definition in OAR 603-074-0010(3), and change the term "waste control facility" to "waste water control facility" and modify its definition to be consistent with ORS.
- Amend OAR 340-051-0015, 0020, and 0050 to use the term "waste water control facility" instead of "waste control facility."
- Amend OAR 340-051-0005, 0015, 0020, 0025, 0030, 0050, 0075 and 0080 to use the term "confined animal feeding operation(s)" instead of "confined animal feeding or holding facilities and operations," "confined feeding or holding operation(s)," "confined animal feeding and (or) holding operation(s)," and "confined feeding or holding facilities."
- Potentially amend OAR 340-045-0015 and 0033 and 340-051-0005, 0010, 0015, 0020, 0025, 0030, 0050, 0055, 0060, 0065, 0070, 0075, and 0080 to make terminology consistent with OAR 603-074 and federal concentrated animal feeding operation regulations [68 FR 7175 (February 12, 2003)].

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes No

a. If yes, identify existing program/rule/activity:
NPDES permitting activities

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes No (if no, explain):

A land use compatibility statement signed by the local land use authority is required from each applicant prior to registration under the NPDES CAFO general permit.

c. If no, apply the following criteria to the proposed rules.

N/A

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

N/A

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the department will use to ensure compliance and compatibility.

Attachment G
Fact Sheet for General Permit

May 1, 2003
revised June 25, 2003

**National Pollutant Discharge Elimination System
Fact Sheet and Permit Evaluation Report**

**Oregon Confined Animal Feeding Operations
General Permit**

Prepared by:

Lynda Horst, Oregon Department of Agriculture
Jamie Bansen, Oregon Department of Agriculture (503) 986-4780
Ranei Nomura, Oregon Department of Environmental Quality (503) 229-5657
For information, please contact ODA or DEQ staff.

**NPDES Fact Sheet and Permit Evaluation Report
Oregon CAFO General Permit**

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NPDES Fact Sheet and Permit Evaluation Report

Confined Animal Feeding Operations General Permit

1.0 Overview

1.1 *Proposed permit action*

The Oregon Department of Agriculture (ODA) and Department of Environmental Quality (DEQ) are proposing to issue a National Pollutant Discharge Elimination System (NPDES) general permit for confined animal feeding operations (CAFOs) in Oregon. CAFOs that meet the definition found in Oregon Administrative Rule (OAR) 603-074-0010(3) and confine for four months or more and have wastewater treatment works are required to register to a general permit or obtain an individual permit.

1.2 *Description of activity needing permit*

The activity associated with CAFOs is the confinement of animals, including poultry, for meat, milk, or egg production, or stabling, in pens or houses, where the animals are fed or maintained at the place of confinement. Generally animals are congregated in confined areas along with their feed and manure. Some facilities also consolidate their dead animals in a central location. Feed is brought to the animals rather than the animals grazing or otherwise seeking feed in pastures.

ODA estimates that anywhere from 700 to 1,000 CAFOs may need to register under this general permit. Approximately 500 CAFOs are currently registered under the existing Water Pollution Control Facilities (WPCF) general permit #800.

1.3 *Description of pollutants*

Process wastes, consisting primarily of animal manure, wash down water, contaminated storm water, and silage leachate are the primary sources of wastes being regulated under this permit. ODA estimates that CAFOs registered under this permit may generate 10 million tons of waste on a yearly basis. A majority of these wastes are land applied at agronomic rates to crop ground under control of CAFO operators, while the remaining is exported off-site for use by other agricultural entities. The estimate of waste generated is based on 500 dairies (most of the CAFOs currently under permit; 6.5 million tons for dairy operations) and 250 additional facilities of different animal types, all of medium size (3 million tons for 220 beef operations and .5 million tons for 30 poultry operations).

Contamination of surface and ground waters can occur due to improper collection and storage of wastes, contamination of storm water runoff, undersized or leaking waste storage facilities, improper timing or over-application of wastes, or improper containment of silage effluent.

The most commonly recognized contaminants from CAFOs include biochemical oxygen demand (BOD), total suspended solids (TSS), organics, bacteria, and nutrients (nitrogen and phosphorous compounds).

Nutrients such as nitrogen and phosphorus can cause increased aquatic plant growth. Decomposition of algae and plants can decrease dissolved oxygen levels. In addition, the biochemical oxygen demand of organic waste depletes dissolved oxygen in water. Low dissolved oxygen levels in streams and lakes can cause fish kills.

Inorganic forms of nitrogen are taken up by plants as nutrients when wastes are applied to cropland. Excessive or improper application of wastes and improper storage of wastes can cause runoff to surface water or leaching to ground water. Ammonia (a form of nitrogen) at high levels in surface water can be toxic to fish. High nitrate levels in drinking water can be toxic to humans.

Bacteria, viruses, and parasites found in animal waste can increase the risk of waterborne diseases. Fecal coliform bacteria are used as a biological indicator to determine water quality impact. In fresh water, high fecal coliform levels can cause a threat to public health and restrict beneficial uses, such as recreational, industrial, domestic, and agricultural use of the water. In marine water, high fecal coliform levels necessitate the closure of shellfish beds restricting recreational use and causing adverse economic impact to shellfish growers.

1.4 Why is a permit needed?

Previously, ODA administered a WPCF general permit issued by the DEQ and issued individual WPCF permits as necessary. Most Oregon CAFOs are registered to the WPCF general permit. EPA has since directed that *concentrated* AFOs must be covered under an NPDES permit instead of the WPCF permit. This permit will replace the existing WPCF CAFO general permit. In addition, the 2001 Oregon Legislature, through House Bill 2156, has directed ODA to seek delegated authority from the federal Environmental Protection Agency (EPA) to administer an NPDES program for CAFOs in accordance with the Clean Water Act (CWA).

1.5 Why is a general permit being issued?

Section 301(a) of the CWA provides that discharge of pollutants is unlawful except in accordance with an NPDES permit. Although such permits have been issued to individual operators, EPA's regulations authorize the issuance of "general permits" to categories of discharges when the point sources responsible for the discharge are located within the same geographic area and warrant similar pollution control measures; involve the same or substantially similar types of operations; discharge the same type of waste; require the same effluent limitations or operating conditions; require the same or similar monitoring requirements, and in the opinion of the permitting authority are more appropriately controlled under a general permit than under individual permits.

The use of a general permit for regulating Oregon CAFOs is appropriate because the waste characteristics from different CAFOs are substantially similar. In addition, the effluent limitation guidelines, best management practices and other requirements for CAFOs covered by this general permit are similar as well.

1.6 When is an individual permit necessary?

Any CAFO required to obtain coverage under this general NPDES permit may request issuance of an individual permit. Most facilities will be sufficiently regulated under this general permit; however, the director may decide that a particular operation must be covered by an individual permit. Pursuant to Oregon Administrative Rule (OAR) 340-045-0033(9), situations where an individual permit would be required include:

- The discharge or activity is a significant contributor of pollution or creates other environmental problems;
- The operator is not in compliance with the terms and conditions of the general permit, submitted false information, or is in violation of any applicable law;

- A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;
- New effluent limitation guidelines are promulgated for point sources covered by this general permit and the guidelines are not already in the permit; or
- Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

1.7 *Permitting options in designated groundwater management areas*

Permitting options for CAFOs in groundwater management areas will be evaluated on a case-by-case basis. ODA expects that a majority of these operations will be adequately regulated by the general permit. In situations where a CAFO might affect groundwater quality, additional monitoring requirements may be required under the general permit or an individual permit may be required. CAFOs, including those in groundwater management areas, will need to submit an *Application to Register* discussed further in Section 2.3, p. 6.

2.0 Discussion of Proposed Permit

2.1 *Outline of permit*

The proposed NPDES permit is organized with a face page, a table of contents, and several pages of conditions. Special Conditions are followed by General Conditions. The Special Conditions are unique and particular to this CAFO permit, whereas the General Conditions are required in all NPDES permits.

2.2 *Who needs a permit?*

Any person who engages in, operates or conducts an animal feeding operation that meets the definition of a **confined animal feeding operation** is required to obtain coverage under this general permit, with some exceptions. Facilities that are not otherwise subject to regulation under the CWA (33 USC § 1342) and that confine for four months or less or that do not have wastewater treatment works are not required to have permit coverage.

Also, other operations that may under certain circumstances or in the future meet the definition of a confined animal feeding operation may opt for coverage under this permit. If such operations elect coverage they become subject to all terms and conditions of the permit.

Facilities subject to regulation under 33 USC § 1342 are those that meet the federal definition of a **concentrated animal feeding operation**. To be a **concentrated animal feeding operation**, one must first be an **animal feeding operation (AFO)**. Under federal law, AFO means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period,
and
- Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Concentrated animal feeding operation pursuant to 40 CFR §122.23 [68 FR 7176 (2/12/03)] means an *animal feeding operation* that meets the criteria below, or which has been designated by the director as a significant contributor of pollution. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

An *animal feeding operation* is a large or medium *concentrated animal feeding operation* for purposes of federal law if it meets the following criteria:

An AFO is defined as a Large concentrated AFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

- (i) 700 mature dairy cows, whether milked or dry;
- (ii) 1,000 veal calves;
- (iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- (iv) 2,500 swine each weighing 55 pounds or more;
- (v) 10,000 swine each weighing less than 55 pounds;
- (vi) 500 horses;
- (vii) 10,000 sheep or lambs;
- (viii) 55,000 turkeys;
- (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (x) 125,000 chickens (other than laying hens) if the AFO uses other than a liquid manure handling system;
- (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- (xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or
- (xiii) 5,000 ducks (if the AFO uses a liquid manure handling system)

An AFO is defined as a Medium concentrated AFO if the type and number of animals that it stables or confines falls within any of the following ranges:

- (i) 200 to 699 mature dairy cattle, whether milked or dry;
 - (ii) 300 to 999 veal calves;
 - (iii) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
 - (iv) 750 to 2,499 swine each weighing 55 pounds or more;
 - (v) 3,000 to 9,999 swine each weighing less than 55 pounds;
 - (vi) 150 to 499 horses;
 - (vii) 3,000 to 9,999 sheep or lambs;
 - (viii) 16,500 to 54,999 turkeys;
 - (ix) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
 - (x) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
 - (xi) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system);
 - (xii) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or
 - (xiii) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and
- either one of the following conditions is met:

1. pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

2. pollutants are discharged directly into waters of the United States that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

An AFO is a Small *concentrated AFO* if it is designated as a *concentrated AFO* and is not a Medium or Large *concentrated AFO*.

The state definition of *confined animal feeding operation (CAFO)* in OAR 603-074-0010(3) means

- (a) The concentrated confined feeding or holding of animals or poultry, including but not limited to horses, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms
 - (A) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or
 - (B) That have wastewater treatment works; or
 - (C) That discharge any wastes into waters of the state; or
- (b) An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR §122.23 [68 FR 7176 (2/12/03)].

The federal definition identifies the acronym "CAFOs" as *concentrated* animal feeding operations, whereas the state definition refers to *confined* animal feeding operations. Because the state definition includes those operations meeting the federal definition [OAR 603-074-0010(3)(b)], the term *confined animal feeding operation* is used in this permit to describe both federal and state defined CAFOs. This means that any *concentrated animal feeding operation* is a *confined animal feeding operation* under Oregon law.

Any *confined animal feeding operation* that confines for more than four months and has waste water treatment works is required to obtain coverage under the permit. Operations that confine for four months or less or operations that do not have wastewater treatment works are not required to obtain permit coverage. Oregon Revised Statutes (ORS) 468B.215(2). Any operation meeting the federal definition of *concentrated animal feeding operation*, however, must obtain coverage under this permit regardless of the length of confinement or existence of wastewater treatment works.

Waste water control facility is defined in the permit to mean a "disposal system" or "treatment works" as defined in ORS that may cause pollution of surface water or groundwater and is used for collecting, conveying, treating, stabilizing or storing manure, litter, process waste water, or contaminated production area drainage (i.e., silage leachate, contaminated storm water runoff, etc.) at confined animal feeding operations.

Confinement area is defined in the permit as part of the *production area* and includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. EPA reiterates in the preamble to the revised rules that pasture and rangeland are not part of the confinement area; "in some pasture based operations, animals may freely wander in and out of particular areas for food or shelter; this is not considered confinement." However, pasture and grazing-based operations may also have confinement areas, such as feedlots, barns, and pens.

The *production area* is defined to include not only the confinement area, but also the manure storage area, the raw materials storage area, and the waste containment areas. The manure storage area includes, but is not limited to, lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not

limited to, feed silos, silage bunkers, and bedding materials. The waste containment areas include, but are not limited to, settling basins, and areas within berms and diversions, which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of animal mortalities.

2.3 *Application to Register (ATR)*

All persons required to have coverage under this permit must submit an *application to register (ATR)* to the permit. The proposed schedule complies with the changes made to the EPA regulations that were published on February 12, 2003. The schedule is as follows:

- All newly constructed CAFOs
Newly constructed CAFOs, including "new sources" must submit an ATR at least 180 days prior to the time that the CAFO commences operation.
- Existing CAFOs that met the previous definition of concentrated AFOs:
CAFOs that were defined as *concentrated* under federal regulations in effect prior to April 14, 2003, must submit an ATR immediately.
- Existing CAFOs newly defined as concentrated AFOs as of April 14, 2003:
CAFOs that met the federal definition of *concentrated* as of April 14, 2003, that were not defined as *concentrated* in federal regulation prior to that date must submit an ATR by a date specified by the director, but no later than February 13, 2006.
- Existing CAFOs that become defined as concentrated AFOs after April 14, 2003:
CAFOs that become defined as *concentrated* after April 14, 2003, must submit an ATR within 90 days after becoming defined as a CAFO unless the change in operation that causes the AFO to be defined as a *concentrated* AFO would not have caused it to be defined as a *concentrated* AFO prior to April 14, 2003.
- All other existing CAFOs that are not concentrated AFOs:
Other existing CAFOs that are not *concentrated* AFOs covered by this permit must submit an ATR within 90 days of notification by the director that permit coverage is required.
- AFOs designated by the director:
AFOs designated by the director must submit an ATR by a date specified by the director.

The ATR form will be provided by ODA. Applicants must provide the following information:

- (a) Name and address of applicant and name of owner, if different
- (b) Information about the corporate structure of the applicant and owner
- (c) Facility information, including name, address, and latitude and longitude of production area or entrance to production area;
- (d) Identity of receiving streams;
- (e) A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area;
- (f) Specific information about the number and type of animals, whether in open confinement and housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

- (g) The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other), and total capacity for manure, litter, and process wastewater storage (tons/gallons);
- (h) The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;
- (i) Estimated amount of manure, litter, and process wastewater generated per year
- (j) Estimated amount of manure, litter, and process wastewater transferred to other persons per year (tons/gallons); and
- (k) For CAFOs that must apply to register after December 31, 2006, certification that a waste management plan has been completed and will be implemented upon the date of permit coverage.

Applicants must certify that all of the information provided was properly gathered and evaluated by the applicant and is true, accurate and complete.

2.4 Notification of registration (General Permit Summary)

Once an *application to register* (ATR) is received, evaluated, and approved by ODA, a notice of registration entitled *Notice of Registration and Oregon CAFO General Permit Summary* will be issued to the applicant. The *Notice of Registration and Oregon CAFO General Permit Summary* will contain the operation name, address, and contact information as provided to the department. It will include the effective date of registration, maximum number of animals the operation is permitted to allow at the facility based on the information provided in the ATR, and regulatory status of the CAFO (e.g., whether the CAFO is considered a Large or Medium *concentrated* animal feeding operation, state CAFO, etc.). The *Notice of Registration and Oregon CAFO General Permit Summary* also provides a summary of permit terms and conditions to be used as a quick reference guide for registered operators.

2.5 Cancellation of coverage

A registrant may request that coverage under this permit be cancelled, providing certain criteria are met:

- Conditions or standards have changed so that the source or activity no longer qualifies for general permit coverage;
- The facility no longer has animals on site and waste storage facilities have been properly decommissioned; or
- The registrant certifies that it will not commence operations at the same location without making a new application for registration under this permit or applies for an individual permit.

The department will respond to a written request for cancellation by conducting a site inspection and a review of the operator's file. A written determination on the request will be provided to the registrant after due consideration by the department.

2.6 Discharge limitations and prohibitions

The general permit prohibits the discharge of process wastes to surface water or groundwater except as allowed by federal regulation and provided the discharges during these exception events do not cause or contribute to a violation of state water quality standards. See Section 2.7 and 2.8, pp. 8 and 9. *Discharge* is defined in the permit to mean:

- The discharge of a pollutant;
- Any addition of any pollutant or combination of pollutants to waters of the state from any point source;

- A discharge of pollutants into waters of the state through a manmade ditch, flushing system or similar manmade conveyance, or
- The application of process wastes to land not consistent with the times and/or rates specified in the waste management plan in a manner that is likely to result in contamination of waters of the state.

Types of discharges that are prohibited include contaminated runoff from confinement areas or waste accumulation areas; overflow from waste storage facilities; discharges due to improper land application from surface drains, field tile outlets, or seepage below the root zone. Also prohibited are discharges due to equipment failure or leakage or seepage from the production area in excess of the approved design. Any storage or application of wastes that results in contamination of surface or ground water is expressly prohibited.

Direct animal contact with surface waters in the *production area* of the CAFO is prohibited. *Direct contact* means any situation where animals in the production area have free access and are allowed to loiter or drop waste in surface waters. Direct animal contact with surface waters by animals on pasture or rangeland is not, by itself, a violation of the permit.

Production area is defined in the permit to mean that part of the facility that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions, which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of animal mortalities

2.7 ***Production area limitations***

All operations must comply with the effluent limitation guidelines in 40 CFR §412 and 40 CFR §§122, 123 and 412 [68 FR 7176 (2/12/03)]. These include requirements for applicable control technologies, performance standards, pretreatment standards, additional measures required for manure, litter, and process wastewater management at CAFOs.

There are several production area limitations proposed in the general permit. The first two prohibit discharge to surface water except when rainfall events cause an overflow of process waste water from a facility designed, constructed, operated, and maintained to contain all process-generated waste water plus the runoff and direct precipitation from a 25-year, 24-hour rainfall event (as defined by the National Weather Service). For new source swine, poultry, and veal large concentrated AFOs, facilities must be designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 100-year, 24-hour rainfall event for the location of the facility. This means that if a facility is designed, constructed, operated, and maintained according to these requirements, a discharge from the facility would not automatically be a permit violation provided it does not cause or contribute to an instream violation of state water quality standards. However, if the facility is designed correctly, but not properly managed, such a discharge may be considered a permit violation. It is not enough to have the facility constructed and designed correctly; it must be managed and maintained correctly as well. This means operators must be vigilant in assuring that the waste management system is sufficient and

operating properly in order to comply with the permit conditions.

In addition, all authorized discharges from the production area must be properly land applied or otherwise handled in a way that minimizes impacts on surface water or groundwater of the state, and seepage to groundwater from waste storage or animal confinement facilities must not exceed design rates as approved by ODA or violate state groundwater quality protection standards.

New source swine, poultry, and veal large concentrated AFOs

EPA has determined that designs for the 100-year, 24-hour storm are “technologically feasible and will not pose a barrier to entry” into the swine, poultry and veal industry. EPA found that it is common for such operations to construct facilities that keep animals in total confinement (covered housing) that is not exposed to rainfall or storm water runoff. In addition, many new operations are based on manure handling systems that greatly reduce or eliminate water use, such as hog and poultry high-rise houses, or that contain manure in covered or indoor facilities, such as underhouse pit storage systems and litter storage sheds. New facilities may also choose flush systems with lagoons that are covered or sited and designed to achieve total containment.

2.8 Land application limitations

There are several requirements for land application. When applying wastes, the operator must apply at agronomic rates in accordance with proper agricultural practices. If a waste management plan has been approved by ODA, applications must also be performed as specified in that plan. Waste applications must not exceed the capacity of the soil and crops to assimilate nutrients and minimize water pollution, must be quantifiable (based on nutrient testing of wastes, soils, and crops), must be based on the most limiting nutrient (e.g., nitrogen or phosphorus), and must account for all other nutrient sources.

In addition, discharges to groundwater due to seepage below the root zone of the crop or by other means must not violate state groundwater quality protection, and if discharge to surface water or groundwater sources will result, application to flooded, saturated, frozen or snow covered land is prohibited. Land application of wastes or wastewater during rainfall events that are expected to result in saturated soils or surface runoff is prohibited.

2.9 Direct access by animals to surface water in the production area

Direct animal contact with surface waters of the state in the production area of a CAFO is prohibited. Animals that graze on rangeland and come into contact with surface waters while grazing is not prohibited by the permit.

2.10 Waste storage facilities

The facility must have the capacity to store liquid and solid wastes at all times so that land application occurs only during periods when soil and weather conditions allow for agronomic application and are in compliance with the land application effluent limitations as described in Section 2.8 above. While the permit does not require a minimum amount of storage for any facility, it is required that the facility be managed in such a way so that the storage available is sufficient to prevent over application, runoff or discharge. The permittee with a Large *concentrated* AFO must also have depth markers in all surface impoundments to indicate the maximum design volume, minimum capacity necessary to contain the applicable rainfall event, and the depth of manure and process waste water.

All waste storage facilities constructed after the effective date of this permit that are required to be addressed in a new or updated waste management plan must be sited, designed, constructed, operated and maintained consistent with the waste management plan developed as provided in the permit.

New and modified construction of waste facilities likewise must be sited, designed, constructed, operated and maintained consistent with the waste management plan and must comply with the terms and conditions outlined in OAR 603-074-0018.

All facilities are subject to the provisions of OAR chapter 340, division 51, relating to the use of best practicable waste control technology and review and approval of facility location, design, construction, operation and maintenance.

The department will accept design and post-construction certification by a licensed engineer for:

- Earthen impoundments (e.g., ponds, basins and lagoons with permeable or impermeable liners)
- Earthen conveyances (e.g., ditches)
- Animal holding areas (e.g., lots, pens, exercise yards, alleys, and earthen-floored buildings within the production area)
- Primary storage structures for liquid and solid manure (e.g., concrete or steel tanks, earthen- or concrete-surfaced solid manure storage facilities). A primary storage structure is any storage structure intended to hold an operation's waste for a period of five or more days.

For facilities intending to use experimental or unproven treatment methods or technology, design and post-certification by a licensed engineer is not allowed. In these cases, the operator must contact the department prior to construction for approval on a case-by-case basis.

For all other modifications or new construction, no approval will be required. However, any such modification or construction must be described in the current, approved waste management plan, or a revised plan must be prepared and submitted to the department for approval prior to construction.

2.11 Prevention of system overloading

The permittee may not increase the number of animals over 10% or 25 animals, whichever is greater, of the maximum number assigned by ODA in the *Notice of Registration and General Permit Summary* until an updated plan is approved in writing by ODA. In addition, animal numbers must not exceed the capacity of the waste storage facilities or the maximum number of animals assigned by ODA.

2.12 Handling of animal mortalities

The permittee must not dispose of animal mortalities in liquid manure or waste water control facilities. Animal mortalities must be handled in such a way as to prevent discharge of pollutants to surface water or groundwater.

2.13 Proper operation and maintenance

The permittee must at all times properly operate and maintain all facilities and systems used for process waste collection, storage and utilization, and correct any deficiencies found as soon as possible.

2.14 Maintain compliance if system fails

The permittee must control all applications and discharges upon reduction, loss or failure of the waste storage or utilization facilities until the facilities are restored or an alternative method of storage or

utilization is provided. This requirement applies where the primary source of power is reduced, lost, or fails.

2.15 Setback requirement for large concentrated AFOs

EPA developed a setback requirement for Large *concentrated* AFOs. Large *concentrated* AFOs must, in the land application area(s), maintain a setback area within 100 feet of any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters where manure, litter, and other process waste waters are prohibited. As a compliance alternative, and if demonstrated to the satisfaction of the department, the permittee may:

1. Establish a 35-foot vegetated buffer where manure, litter, and other process waste waters are prohibited; or
2. Demonstrate that a setback or vegetated buffer is not necessary or may be reduced.

2.16 Waste management plans

Everyone registered to the permit must develop and implement a waste management plan. Newly constructed and new source CAFOs must submit their plan to ODA with the ATR. Existing CAFOs must submit a current plan upon notification by the department or by July 1, 2006, whichever occurs first. Updates to plans must be submitted to ODA for approval at least 45 days before the facility expansion, production increase or process modification is to be implemented unless a different schedule is allowed by ODA in writing.

All plans must be implemented upon receipt of notification by ODA or by December 31, 2006, whichever occurs first. The final permit clarifies that the plan may include a schedule for projects, but that absence of a plan or absence of ODA approval of a plan does not allow the permit to violate the provisions of S2 Discharge Limitations and Operating Requirements or other permit requirements.

Permittees must prepare their waste management plan in accordance with the terms and conditions of the permit and guidelines contained in OAR chapter 340, division 51 and chapter 603, division 74. In addition, plans must conform to the Natural Resource Conservation Service (NRCS) conservation practice standard guidance 590 for Oregon, dated May 2001, and entitled *Nutrient Management*. ODA will accept plans from NRCS-certified Comprehensive Nutrient Management Plan (CNMP) writers and may approve such plans without review.

Basic elements of a plan include:

- An inventory of animals, facilities, and lands, including lands owned or leased and lands available for land application, whether on- or off-site;
- Drawings and maps showing all facilities and lands;
- Calculations of required and necessary storage capacity;
- Calculations of volumes and nutrient contents of generated wastes and wastewater;
- Guidelines for land application of wastes and wastewater;
- Operation and maintenance guidelines;
- Monitoring and record-keeping guidelines;
- Plans and specifications for proposed new or modified waste handling facilities.

To the extent applicable, the waste management plan must also:

- Ensure adequate collection, handling, and storage of manure, litter and process wastewater;
- Include procedures to ensure proper operation and maintenance of the storage facilities;

- Ensure proper management of animal mortalities to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- Ensure that clean water is diverted, as appropriate, from the production area;
- Prevent direct contact of confined animals with waters of the United States;
- Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
- Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface water and groundwater;
- Establish protocols to land apply manure, litter or process waste water in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process waste water. For Large *concentrated* AFOs, these protocols must be based on actual testing data. For other CAFOs, data or "book values" from established reference sources (e.g., Oregon Animal Waste Management program) may be used instead of actual testing;
- For Large *concentrated* AFOs, also identify protocols for appropriate testing of manure, litter, process waste water, and soil. For other CAFOs, identify the references used instead of actual testing data or test protocols if testing; and
- Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.

The need for additional or alternative plan information will be established on a case-by-case basis for plans required as part of a corrective order, or to account for extraordinary circumstances. The level of detail of information required in the various plan sections will depend on the size, complexity, and other specifics of each CAFO.

Waste management plans must show, when applicable, how the CAFO will achieve an agronomic balance of nutrients land-applied with nutrients removed in harvested crops. ODA will typically require an agronomic balance for nitrogen, but in some cases for phosphorus. Phosphorus balance will be required when the CAFO is within a watershed that has been designated by the state as water quality limited for phosphorus, and when the NRCS phosphorus index for the land application soils is exceeded.

Once the plan has been submitted to and approved by ODA, the facility must be managed in compliance with the plan at all times. The application of process wastewater more frequently than specified in the waste management plan or at a concentration in excess of plan specifications or at times not specified in the waste management plan will constitute a violation of the permit.

2.17 Monitoring requirements

Discharge Monitoring

Any discharge or runoff that is not allowed by the permit must be recorded and reported to the department. The record must contain a description and cause of the discharge; the period of discharge, including exact dates, times, and duration of discharge; an estimate of the volume of the discharge; name or location of receiving water, and corrective steps taken to reduce, eliminate or prevent recurrence. In the event a discharge occurs, the department must be notified within 24 hours of the event. A written report must be submitted to the department within five days. In the event of equipment failure, the department must be notified within 24 hours.

Analytical Monitoring

At least once during the term of this permit, the permittee must collect and analyze representative soil samples for phosphorus and nitrogen content from all fields where manure, litter, and other process waste waters are applied. The testing is a requirement of NRCS *Nutrient Management* conservation practice guidance 590 and the results from this testing will assist the permittee in developing the waste management plan. The permittee with a Large *concentrated* AFO must also collect and analyze manure, litter, and other process waste waters annually for nutrient content, including nitrogen and phosphorus.

2.18 Inspection requirements

Permittees are required to conduct inspections to ensure proper operation of activities associated with waste management at the production and land application areas. The permittee must:

- Periodically inspect of all storm water diversion devices, runoff diversion structures, animal waste storage structures, and devices channeling contaminated storm water to the waste water and manure storage and containment structure. The permittee with a Large *concentrated* AFO must conduct and record these inspections weekly.
- Periodically inspect water lines, including drinking water or cooling water lines. The permittee with a Large *concentrated* AFO must conduct and record these inspections daily.
- Periodically conduct leak inspections of equipment used for land application of manure, litter, or process waste water. The permittee with a Large *concentrated* AFO must record the results of these periodic inspections.
- The permittee with a Large *concentrated* AFO must inspect liquid impoundments for manure and process waste water on a weekly basis and record the depth of manure and process waste water in those impoundments as indicated by the depth marker.

Any deficiencies found as a result of these inspections must be corrected as soon as possible. The permittee with a Large *concentrated* AFO must record any actions taken to correct these deficiencies and, if deficiencies are not corrected within 30 days, provide an explanation of the factors preventing immediate correction.

2.19 Record keeping requirements

All required records must be kept and maintained at the facility for a period of five years, and must be available to ODA upon request.

Upon approval of the waste management plan, the permittee must record and maintain the following information at the facility for at least five years and make this information available to the department upon request. If any of the following information is provided in the permittee's waste management plan, a separate record keeping effort is not required.

- Expected crop yields.
- Date, amount, and nutrient loading of manure, litter, or process waste water applied to each field;
- For large CAFOs, weather conditions at the time of application and 24 hours before and after application;
- Explanation of the basis for determining annual manure application rates, as provided in the technical standards established by the department;

- Calculations showing the total nitrogen and phosphorus to be applied annually to each field, including sources other than manure, litter, or process waste water;
- Total amount of nitrogen and phosphorus actually applied annually to each field, including documentation of calculations of the total amount applied;
- Method(s) used to apply the manure, litter, or process waste water; and
- Total amount of manure or waste water transferred to other persons. For large CAFOs, include the date and amount of each transfer and the name and address of each recipients.

In addition to the requirements above, the Large *concentrated* AFO must also keep records of animal mortalities management and practices. This record keeping requirement begins when the Large *concentrated* AFO obtains general permit coverage.

2.20 24-hour reporting requirement

As discussed previously in Section 2.17 Monitoring Requirements, p. 12, if a discharge to surface water or groundwater occurs that is not allowed by the permit, the permittee must notify ODA within 24 hours of the discharge. The permittee must also submit a written report within five days to ODA. The information to be submitted is listed in Section 2.17. The permittee must also report to ODA within 24 hours of becoming aware of any significant physical failure at any time of a waste water control facility required under this permit.

2.21 Annual report requirement

All facilities must provide an annual report to ODA. The annual report must be submitted by March 15 of each year. This report may be consolidated and incorporated into the annual inspection process, but the operator has the obligation to create and maintain the record and submit it to ODA unless instructed by the department to do otherwise (e.g., the inspector may collect the report during an annual inspection). The annual report must include the following for the previous calendar year:

- Maximum number and type of animals, whether in open confinement or housed under roof (i.e., beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
- Estimated amount of total manure, litter and process waste water generated by the CAFO (tons/gallons);
- Estimated amount of total manure, litter and process waste water transferred to other persons by the CAFO (tons/gallons);
- Total number of acres for land application covered by the waste management plan developed in accordance with the terms of this permit;
- Total number of acres under control of the CAFO that were used for land application of manure, litter and process waste water in the previous 12 months;
- Summary of all manure, litter and process waste water discharges from the production area that have occurred, including date, time and approximate volume; and
- If the CAFO has a current waste management plan, a statement indicating whether the current version of the CAFO's waste management plan was developed or approved by a certified waste management planner.

2.22 Additional monitoring

Specific monitoring requirements may be established on a case-by-case basis for certain facilities, such as those located in groundwater management areas, or those that have been issued a corrective order relating to waste management. ODA may establish these requirements by administrative order.

2.23 General conditions

General conditions are standard permit conditions required by 40 CFR §122.41 and 122.42 in every NPDES permit and are not repeated in this fact sheet. The applicable general conditions have been detailed in the permit, but the remaining conditions have only been referenced because they are not directly applicable to this permit or are stated elsewhere in the permit. (Note: The reference is required by federal regulation.)

3.0 Environmental Concerns

3.1 Antidegradation policy review

The antidegradation policy in OAR 340-041-0026 requires that degradation of existing water quality be prevented unless necessary for economic and social benefit. DEQ has determined that issuance of the NPDES CAFO general permit is consistent with the antidegradation policy and will not degrade existing water quality because: 1) it is replacing an existing general permit and is not considered a new or increased discharge load; 2) it prohibits discharge in most cases, and when discharges are allowed, they must not cause or contribute to a violation of state water quality standards, and 3) there is no on-going discharge.

The NPDES CAFO general permit will be replacing an existing WPCF general permit for CAFOs (WPCF #800). The proposed NPDES permit continues to prohibit the discharge of process wastes to surface waters except when rainfall events cause an overflow of process waste water from a facility designed, constructed, operated, and maintained to contain all process-generated waste water plus the runoff and direct precipitation from a 25-year, 24-hour rainfall event. (For new source swine, poultry, and veal large concentrated AFOs, facilities must be designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 100-year, 24-hour rainfall event for the location of the facility.) This is essentially a “no discharge” technology-based effluent limit required by the federal EPA.

3.2 Antidegradation policy: Special policies and guidelines (OAR 340-041-0470)

To preserve or improve the existing high quality water for municipal water supplies, recreation and preservation of aquatic life in the Clackamas River, McKenzie River (above Hayden Bridge) and North Santiam River subbasins, OAR 340-041-0470 *Special Policies and Guidelines* prohibits new or increased waste discharges in these subbasins.

As discussed in the previous section, the proposed NPDES CAFO general permit is replacing the WPCF CAFO general permit. Existing CAFOs currently registered under the WPCF permit will be transferred to the NPDES general permit. OAR 340-041-047(4) allows renewal or transfer of permits within these three basins provided there is no increase in discharge load. Since the proposed permit requires that

wastes be irrigated on land at agronomic rates and discharge is essentially prohibited, there will be no environmentally significant increase in discharge load. New CAFOs also will be allowed to register under the proposed general permit provided that their waste loads are irrigated on land at agronomic rates, which is not considered an increase in wasteload pursuant to OAR 340-041-0470(4)(c).

3.3 *Total maximum daily loads (TMDLs)*

OAR 340-045-0035(3) requires DEQ to explain whether the NPDES CAFO general permit allows the discharge of pollutants that affect parameters for which a waterbody may be water quality limited under Section 303(d)(1) of the Clean Water Act, and if so, how the department can allow these permittees to discharge these pollutants to these waterbodies.

The CAFOs to be covered by this general permit have the potential to discharge to a variety of receiving streams. Many of these streams are listed as water quality limited for dissolved oxygen and temperature and many for bacteria. While CAFOs have the potential to discharge a variety of pollutants as discussed in the previous section, the CAFO general permit only allows the discharge of waste or wastewater to surface waters when rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewater plus the runoff from a 25-year, 24-hour storm event (100-year, 24-hour storm event for swine, poultry, and veal calf operations). In addition, the general permit does not allow discharges that will cause or contribute to the violation of water quality standards.

The Department does not expect waterbodies to fail to meet water quality standards as a result of CAFO discharges during large rainfall events because of high flows in the receiving waterbody and the diluted nature of the wastewater at the time of discharge. Discharges are also not expected during summer months (when waterbodies are typically limited for these parameters) because of fewer rain events.

Permit coverage under the NPDES CAFO general permit may be terminated if TMDLs are established and a CAFO's discharge during large rainfall events is determined to be a contributor to a stream that is water quality limited. In these situations, an individual permit or different general permit may be required that would include waste load allocations.

4.0 **What Happens Next?**

4.1 *Public comment period*

The initial public comment period opened on October 1, 2002 and was scheduled to close on November 15, 2002. However, on December 15, 2002, the administrator of EPA signed revised rules that directly affected *concentrated* animal feeding operations and confined animal feeding operations indirectly. As a result, ODA and DEQ extended the comment period to allow for comments concerning the incorporation of the federal rule changes and additional clarifications into the permit and related documents. The extension ended on February 20, 2003. During this time period, ODA and DEQ held four public hearings and received both written and oral comments on the proposed permit. The departments determined that a second public notice period was warranted since the proposed permit was significantly revised to respond to federal regulation and public comment. This comment period opened on May 1, 2003 and closed on June 6, 2003 at 5 p.m.

4.2 Public hearings

Four public hearings during the first comment period were held as follows:

- November 7, 2002 at Eagle Crest Resort, High Desert Room, 1522 Cline Falls Highway, Redmond, Oregon 97556, from 9:00 a.m. until 11:00 a.m.
- November 13, 2002 at the OSU Extension meeting room, 2203 4th Street, Tillamook, Oregon 97141, 7:00 p.m.
- November 14, 2002 in the basement hearings room at ODA, 635 Capitol St. NE, Salem, Oregon 97301, 1:00 p.m.
- February 13, 2003 in conference room D at ODA, 635 Capitol St. NE, Salem, Oregon 97301, 4:00 p.m.

A hearing for the second comment period was held on June 4, 2003, in the basement hearings room at ODA, 635 Capitol St. NE, Salem, Oregon 97301, at 10:00 a.m.

Informational sessions were provided at the beginning of each hearing with the opportunity for the public to ask questions about the permit and proposed rules. Oral and written comments were accepted at the hearings. The public hearings were tape recorded but not transcribed. At the conclusion of the comment periods, the presiding officers prepared a report summarizing all comments received.

4.3 Response to comments

In accordance with ORS 183.335(13), no comments were accepted after the deadline for submission of comments. ODA and DEQ received and evaluated comments received during both comment periods. In response to comments, the departments revised the fact sheet and permit evaluation report, permit, and other proposed rules. A response to comments document was also prepared.

The Environmental Quality Commission will consider DEQ and ODA's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is August 14 or 15, 2003. ODA's director will consider ODA's recommendation for rule adoption thereafter.

4.4 Changes to the fact sheet and permit evaluation report

This fact sheet was revised to incorporate changes related to the February 2003 revision of the federal CAFO regulations and to provide further clarification to permit terms and conditions. Further revisions were made to this fact sheet and permit evaluation report to respond to comments received during the two comment periods.

Attachment H
ODA Proposed Rule
(For EQC information only; no action by EQC required)

OAR CHAPTER 603
(strikeout indicates deleted text; underline indicates proposed text)

DIVISION 074
CONFINED ANIMAL FEEDING OPERATION PROGRAM

603-074-0005

Purpose

These rules guide the Oregon State Department of Agriculture, Natural Resources Division in administering its Confined Animal Feeding Operation Program. In interpreting and applying these rules the Department may consider variations in soils and climate, and the potential for a particular confined animal feeding operation to cause a discharge of animal wastes into the waters of the state.

Stat. Auth.: ORS 468B

Stats. Implemented: ORS 561.175

Hist.: AD 12-1990, f. & cert. ef. 6-4-90

603-074-0010

Definitions

Unless the context or OAR Chapter 340, Division 051 or 052 require otherwise, as used in these rules:

1) "Annual fee" means that fee required each year of each animal feeding operation with a national pollutant discharge elimination system permit or a water pollution control facilities waste disposal permit including, but not limited to, that fee required under ORS 561.175.

(2) "Compliance" means meeting the requirements of ORS Chapter 468 or 468B or any rule, order, or permit adopted thereunder and relating to the control and prevention of water pollution from an animal feeding operation, a concentrated animal feeding operation, or a confined animal feeding operation.

(3) "Confined animal feeding operation" means

(a) The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms;

(A) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or

(B) That have wastewater treatment works; or

(C) That discharge any wastes into waters of the state; or

(b) An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR § 122.23.

(4) "Department" means the State Oregon Department of Agriculture or the Oregon Department of Environmental Quality.

(5) "Director" means the director of the State Oregon Department of Agriculture or the director of the Oregon Department of Environmental Quality.

(6) "Flagrant violation" means any violation where the respondent had actual knowledge of the law and knowingly committed the violation.

(7) "Formal enforcement action" means any order of the director or the director's designee ~~which that~~ is issued to a respondent in connection with a violation and requires the respondent to cease the violation, refrain from further violations, pay a civil penalty, or take other actions with respect to the violation. Formal enforcement actions include, but are not limited to, notices of noncompliance, civil penalty assessment, compliance schedules and stipulated or consent orders.

(8) "Intentional" means conduct by a person with a conscious objective to cause the result of the conduct.

(9) "Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

(9)(10) "Negligence" or "negligent" means failure to take reasonable care to avoid a foreseeable risk of committing a violation.

(11) "New source" as defined 40 CFR §122.2 means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced after February 12, 2003.

(12) "Order" has the meaning given in ORS 183.310(5).

(13) "Person" means the United States and agencies thereof, any state, any individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate or any other legal entity whatever.

(14) "Past occurrence of violations," as used in OAR 603-074-0080(4), means any violation for which a notice of noncompliance or assessment of civil penalty was issued within the preceding ten years. It does not include a violation if the notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.

(15) "Pollution" or "water pollution" has the meaning given in ORS 468B.005(3).

(16) "Previous notice of the same or similar violation," as used in OAR 603-074-0070(2), means a notice of noncompliance or assessment of civil penalties for the same or a similar type of violation that was issued within the preceding five years. It includes a notice for the same or a similar type of violation ~~which that~~ is the subject of a pending appeal. It does not include a notice that has been withdrawn or successfully appealed.

(17) "Process wastewater" or "process wastes" means water directly or indirectly used in the operation of the CAFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning or flushing pens, barns, manure pits, or other CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater or process wastes also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

(18) "Production area" means that part of a CAFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment areas include but are not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the

definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of animal mortalities.

(1519) "Reckless" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstances exist. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.

(1620) "Repeat violation" as used in OAR 603-074-0080(3), means the recurrence of the same type of violation as a violation for which a notice of noncompliance or assessment of civil penalty was issued within the preceding ten years. It does not include a violation if the previous notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.

(1721) "Respondent" means a person to whom a formal enforcement action is directed.

(1822) "Rule" has the meaning given in ORS 183.310(8).

(1923) "Violation" means the failure to comply with any requirement of ORS Chapter 468 or 468B, or any rule, order or permit adopted thereunder and relating to the control and prevention of pollution of the waters of the state from a confined animal feeding operation. Each day a violation continues after the time established for compliance shall be considered a separate violation unless the department finds that a different period of time is more appropriate to describe a specific violation event.

(240) "Wastewater disposal system," or "wastewater treatment works," or "waste water control facility" means a "disposal system" or "treatment works" as defined in ORS 468B.005 that may cause pollution of surface water or groundwater and is used for collecting, conveying, treating, stabilizing or storing manure, litter, process wastewater, or contaminated production area drainage (e.g., silage leachate, contaminated storm water runoff, etc.) at confined animal feeding operations.

~~all or any part of a system used in connection with a confined animal feeding operation for the:~~

~~(a) Collection, retention, treatment, and disposal of liquid wastes or contaminated water; or~~

~~(b) Collection, handling, storage, treatment or processing and disposing of liquid manure.~~

(251) "Wastes" has the meaning given in ORS 468B.005(7).

(262) "Water" or "the waters of the state" has the meaning given in ORS 468B.005(8).

Stat. Auth.: ORS 561.190 & ORS 561.191

Stats. Implemented: OL Ch. 248, HB 2156

Hist.: AD 12-1990, f. & cert. ef. 6-4-90; AD 8-1994, f. & cert. ef. 7-26-94; DOA 15-2001(Temp), f. & cert. ef. 7-2-01 thru 12-28-01; DOA 28-2001, f. & cert. ef. 12-31-01

603-074-0012

Permit Procedures

(1) Except as provided in OAR 603-074-0020 below, permits for Confined Animal Feeding Operations will be issued under the applicable provisions of OAR chapter 340, division 45.

(2) The director may designate an animal feeding operation as a significant contributor of pollutants pursuant to the provisions of 40 CFR § 122.23(c). An operator may seek review of the director's determination by requesting a contested case hearing pursuant to ORS 183.413 to 183.470.

603-074-0014

Adoption of General Permit

- (1) The following general permit is adopted by reference in this rule and available for review at the department:
 - (a) NPDES number 01 (Confined Animal Feeding Operations) (issued on __, 2003).
 - (b) A complete copy of the general permit is available for inspection at the Oregon Department of Agriculture, Natural Resources Division, 635 Capitol St. NE, Salem, Oregon.
- (2) Any person owning or operating a confined animal feeding operation has a duty to seek coverage under the Oregon CAFO General permit (NPDES number 01).
- (3) Any person owning or operating a CAFO must submit an ODA Application to Register (ATR) according to the following schedule:
 - (a) All newly constructed CAFOs: Newly constructed CAFOs, including "new sources," must submit an ATR at least 180 days prior to the time that the CAFO commences operation.
 - (b) Existing CAFOs that met the previous definition of *concentrated* AFOs: CAFOs that were defined as *concentrated* under federal regulations in effect prior to April 14, 2003, must submit an ATR immediately.
 - (c) Existing CAFOs newly defined as *concentrated* AFOs as of April 14, 2003: CAFOs that met the federal definition of *concentrated* as of April 14, 2003, that were not defined as *concentrated* in federal regulations prior to that date must submit an ATR by a date specified by the director, but no later than February 13, 2006.
 - (d) Existing CAFOs that become defined as *concentrated* AFOs after April 14, 2003: CAFOs that become defined as *concentrated* after April 14, 2003, must submit an ATR within 90 days after becoming defined as a CAFO unless the change in operation that causes the AFO to be defined as a *concentrated* AFO would not have caused it to be defined as a *concentrated* AFO prior to April 14, 2003.
 - (e) All other existing CAFOs that are not *concentrated* AFOs: Other existing CAFOs that are not *concentrated* AFOs covered by this permit must submit an ATR within 90 days of notification by the director that permit coverage is required.
 - (f) AFOs designated by the director: AFOs designated by the director as a *concentrated* AFO must submit an ATR by a date specified by the director.

Stat. Auth.: ORS 468B.050; 468B.217; ORS 561.190; ORS 561.191; Or. Laws 2001, chapter 248, Section 1(2).
Stats. Implemented: ORS 468B.050; 468B.200 to 468B.230; ORS 561.191, Or. Laws 2001, chapter 248.

603-074-0015

[renumbered to 603-074-0016] :

Complaint Evaluation

(1) "Complaint" means information provided by a person concerning possible violations of ORS chapter 468 or 468B or any rule, order, or permit adopted thereunder and relating to the control and prevention of water pollution from a confined animal feeding operation as defined in OAR 603-074-0010.

~~(2) If the department finds, upon investigation of the complaint, that the complaint was groundless and made for the purposes of harassing the operator, the department may refuse to consider future complaints made by the complainant. Such a determination may include an evaluation of:~~

~~(a) Relationship between the operator and complainant;~~

~~(b) Number and validity of previous complaints filed by complainant against the operator;~~

~~(c) Frequency of complaints filed by complainant against the operator.~~

Stat. Auth.: ORS 561.190 & ORS 561.191

Stats. Implemented: OL Ch. 248, HB 2156

Hist.: DOA 15-2001(Temp), f. & cert. ef. 7-2-01 thru 12-28-01

603-074-0016

Complaint Evaluation

(1) "Complaint" means information provided by a person concerning possible violations of ORS Chapter 468 or 468B or any rule, order, or permit adopted thereunder and relating to the control and prevention of water pollution from a confined animal feeding operation as defined in OAR 603-074-0010.

(2) If the department finds, upon investigation of the complaint, that the complaint was groundless and made for the purposes of harassing the operator, the department may refuse to consider future complaints made by the complainant. Such a determination may include an evaluation of:

(a) Relationship between the operator and complainant;

(b) Number and validity of previous complaints filed by complainant against the operator;

(c) Frequency of complaints filed by complainant against the operator.

Stat. Auth.: ORS 561.190 & ORS 561.191

Stats. Implemented: OL Ch. 248, HB 2156

Hist.: DOA 28-2001, f. & cert. ef. 12-31-01

603-074-0020

Permit Fees: Application Eligibility and Requirements

~~(1) Any person owning or operating a CAFO under an NPDES or WPCF permit must pay the following fees:~~

~~(1) Initial filing fee: \$50.00 All persons operating a confined animal feeding operation with wastewater treatment works and with animals contained in a confined area for four months or more shall submit an annual registration fee of \$25 to the department.~~

~~(2) Annual fee: \$25.00~~

~~(a) The annual registration fee shall be paid to the department and be effective with the state's fiscal year July 1 - June 30 and shall be paid no later than July 31. The fee shall be paid on an annual basis by those persons described in section (1) of this rule.~~

~~(3) All fees shall be paid to the department and are non-refundable and non-transferable.~~

~~(3) Any additional fees required by OAR 340-045-0075.~~

Stat. Auth.: ORS 561.190 & ORS 561.191

Stats. Implemented: OL Ch. 248, HB 2156

Hist.: AD 12-1990, f. & cert. ef. 6-4-90; AD 8-1994, f. & cert. ef. 7-26-94; DOA 15-2001(Temp), f. & cert. ef. 7-2-01 thru 12-28-01; DOA 28-2001, f. & cert. ef. 12-31-01

603-074-0018

Certification of Plans and Specifications

(1) Certification of Plans and Specifications In lieu of department approval of plans and specifications as required by OAR 340-051-0015, the department will accept certification by a licensed engineer that waste water control facilities specified in subsection (2)(a) of this rule were designed and constructed in compliance with OAR 340-051-0055 through 340-051-0070.

(a) Certifications may only be made for:

(A) Earthen impoundments, conveyances, and animal holding areas;

(B) Earthen-floored buildings and animal travel lanes between buildings in the production area; and

(C) Primary storage structures for liquid and solid manure. For purpose of this paragraph, a primary storage structure is any storage structure intended to hold an operation's waste for a period of five or more days.

(b) Certifications must be submitted on forms approved by the department.

(c) Certification in lieu of department approval is not allowed for waste water control facilities using experimental or unproven treatment methods or technology and may be disallowed for any other facility if the department determines that the nature of the facility or operation is such that department review is needed to ensure protection of waters of the state.

(2) Exclusion from Department Approval Construction or modification of waste water control facilities, other than impoundments, conveyances, holding areas, buildings and animal travel lanes within the production area, and primary storage structures, are not subject to design or post-construction review and approval requirements unless the department determines that the nature of the facility is such that review is needed to ensure protection of waters of the state.

Stat. Auth.: ORS 468.020 & ORS 468B.200 – ORS 468B.230

Stats. Implemented: ORS 468.005, ORS 468B.005 & ORS 468B.205

Enforcement Procedures

603-074-0030

Consolidation of Enforcement Proceedings

Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violations, that each day's continuance is a separate and distinct violation unless otherwise determined by the department, proceedings for the assessment of multiple civil penalties for multiple violations against an owner or operator may be consolidated into a single proceeding.

Stat. Auth.: ORS 468B.217, ORS 468B.230 & ORS 561

Stats. Implemented: ORS 561.175

Hist.: AD 8-1994, f. & cert. ef. 7-26-94

603-074-0040

Enforcement Actions

(1) A Notice of Noncompliance:

(a) ~~Shall~~ informs the owner or operator of the violation, including a reference to a particular statute, administrative rules or order involved, the location of the violation when appropriate, and the consequences of the violation or future violations;

(b) ~~Shall~~ directs the subject owner or operator to perform those actions necessary to comply with the particular statute, administrative rules or orders involved.

(c) ~~Shall~~ specifies a reasonable period of time by which compliance is to be achieved not to exceed 30 business days after the respondent receives the notice, or if the violation requires more than 30 days to correct, a period of time contained in a plan of correction acceptable to the department;

(d) ~~Shall be~~ is issued by the director or the director's designee;

(e) ~~Shall be~~ is in writing and ~~shall~~ must be served personally or by registered or certified mail;

(f) ~~Shall~~ in all cases ~~must~~ also be mailed or delivered to the legal owner of the property;

(g) ~~Shall be~~ is an order in other than a contested case for purposes of judicial review.

(2) A plan of ~~C~~ correction:

(a) ~~Shall~~ includes a statement of the actions that must be taken by the owner or operator to eliminate the violation and shall include a schedule stating the time by which each of the actions is required to be accomplished to achieve compliance;

(b) May include requirements for the owner or operator to report the completion of specific actions;

(c) ~~Shall be~~ is in writing and ~~shall~~ must be sent to the owner or operator by registered or certified mail or served personally;

(d) In all cases must be mailed or delivered to the legal owner of the property.

(~~e~~) ~~Shall be~~ is an order in other than a contested case for the purposes of judicial review.

(3) The department shall make a reasonable attempt to consult with the subject owner or operator in the development of a plan of correction.

(4) Failure to perform any of the requirements of a plan of correction may be considered by the department to be a failure to correct the violation within the period of time set for correction by the department.

(5) A Notice of Civil Penalty Assessment:

(a) ~~Shall be~~ is issued by the director or the director's designee;

(b) ~~Shall be~~ is issued in a manner consistent with the provisions of ORS 183.415, ORS 468B.230 and OAR Chapter 137;

(c) ~~Shall be~~ is in writing and ~~shall~~ must be served personally or by registered or certified mail to the owner and operator.

Stat. Auth.: ORS 468B.217, ORS 468B.230 & ORS 561
Stats. Implemented: ORS 561.175
Hist.: AD 8-1994, f. & cert. ef. 7-26-94

603-074-0050
Hearing Procedures

All formal hearings requested by the respondent concerning a civil penalty assessment shall be conducted in accordance with applicable contested case procedures as outlined in ORS 183.310 to 183.550, and OAR Chapter 137

Stat. Auth.: ORS 468B.217, ORS 468B.230 & ORS 561
Stats. Implemented: ORS 561.175
Hist.: AD 8-1994, f. & cert. ef. 7-26-94

603-074-0060
Entry of Order and Appeal Rights

(1) If a person having received a notice of civil penalty assessment fails to request a hearing as specified in OAR 603-074-0050, or if after the hearing the person is found to be in violation of the provisions of these rules, an order may be entered by the department assessing a civil penalty.

(2) The order ~~shall~~must be signed by the director or the director's designee.

(3) The order may be appealed pursuant to ORS 183.480 to 183.497.

(4) An order assessing a civil penalty becomes due and payable and may be enforced as provided by ORS 183.090.

Stat. Auth.: ORS 468B.217, ORS 468B.230 & ORS 561
Stats. Implemented: ORS 561.175
Hist.: AD 8-1994, f. & cert. ef. 7-26-94

603-074-0070
Civil Penalty Assessment

(1) In addition to any other penalty provided by law, the department may assess a civil penalty against the owner or operator of a confined animal feeding operation for failure to comply with a provision of ORS Chapter 468 or 468B or any rule adopted under or a permit issued under ORS Chapter 468 or 468B, relating to the control and prevention of water pollution from a confined animal feeding operation. The amount of the civil penalty shall be determined using the two matrices contained in OAR 603-074-0080 in conjunction with the formula contained in OAR 603-074-0080(4).

(a) Except for those animal feeding operations defined in OAR 603-074-0010(3)(b), the amount of the initial civil penalty may not exceed \$2,500 and any subsequent civil penalties for a repeat occurrence may not exceed \$10,000 per violation.

(b) For those animal feeding operations defined in OAR 603-074-0010(3)(b), civil penalties may not exceed \$5,000 per violation and any subsequent civil penalties for a repeat occurrence may not exceed \$10,000 per violation.

(2) Prior to assessment of a civil penalty for a violation, the department must ~~shall~~ provide a notice of noncompliance to the owner or operator. No advance notice or period to achieve compliance prior to assessment of a civil penalty ~~shall be~~ is required under section (1) of this rule and the department may issue a notice of civil penalty assessment if:

(a) The violation is intentional; or

(b) The owner or operator has received a previous notice of the same or similar violation; or

(c) The facility meets the definition of an animal feeding operation as defined in OAR 603-074-0010(3)(b).

(3) The amount of any civil penalty imposed shall be reduced by the amount of any civil penalty imposed by the Environmental Quality Commission or the Department of Environmental Quality or the United States Environmental Protection Agency, if the latter penalties are imposed on the same person and are based on the same violation.

(4) Magnitude of Violation: The magnitude of a violation shall be categorized as follows:

(a) Category I (Major):

(A) A violation of a department order issued as part of or in connection with a formal enforcement action;

(B) Failure to provide access to premises or records when required by statute, rule or order;

(C) Any direct discharge of wastes that enters the waters of the state, either without a waste discharge permit, or from a point not authorized by a waste discharge permit;

(D) Submitting records, reports or application forms ~~which~~ that are false, misleading, or fraudulent;

(E) Failure to provide notification of a spill or upset condition that results in a nonpermitted discharge of waste to waters of the state;

(F) Violation of a permit compliance schedule;

(G) Any violation of any pretreatment standard or requirement by a user of a municipal treatment works ~~which~~ that either impairs or damages the treatment works, or causes major harm or poses a major risk of harm to public health or the environment.

(b) Category II (Moderate):

(A) Failure to submit a plan or report as required by rule, permit or order;

(B) Placing wastes such that the wastes are likely to enter the waters of the state by any means:

(C) Any violation related to water quality ~~which~~ that is not classified elsewhere in these rules as major or minor.

(c) Category III (Minor):

(A) Failure to operate in accordance with an animal waste management plan when one has been approved by the department;

(B) Failure to submit a discharge monitoring report on time or failure to submit a completed discharge monitoring report.

(5) The gravity of effect of the violation shall be determined by consideration of the individual or cumulative possibility of harm to public health or the environment caused by a violation or violations. Gravity of effect shall be classified as high, medium or low. The existence of one or more factors determined to be high level shall result in the gravity of effect considered to be of high level. Lacking any factor determined to be of high level, the existence

of one or more factors of medium level shall result in the gravity of effect to be considered to be of medium level. Lacking any factor of high or medium level shall result in the gravity being of low level:

(a) Gravity of Effect – High Level:

(A) Evidence of significant injury to crops, wildlife or livestock;

(B) Surface or groundwater contamination of a level that poses a significant risk of harm to public health or the environment.

(b) Gravity of Effect – Medium Level: Surface or groundwater contamination that causes a loss of beneficial uses or a violation of applicable water quality standards, but does not pose a significant threat to human health or the environment.

(c) Gravity of Effect – Low Level: Water contamination not found or not found at a level in excess of applicable water quality standards.

(6) Pursuant to ORS 468B.220, any owner or operator of a confined animal feeding operation who has not applied for or does not have a permit required by ORS 468B.050 shall may be assessed a civil penalty of \$500 in addition to other penalties that the director may assess.

(7) Notwithstanding section (1) above, the department may assess a penalty larger than that specified by the matrices in OAR 603-074-0070 and 603-074-0080 if the violation is committed by an operation defined in OAR 603-074-0010(3)(b) and the department determines that a larger penalty is appropriate given the extraordinary nature of the violation or its environmental consequences. In no event, however, may the penalty be increased above the maximum amount specified in subsection (1)(b) of this rule.

Stat. Auth.: ORS 561.190 & ORS 561.191

Stats. Implemented: OL Ch. 248, HB 2156

Hist.: AD 8-1994, f. & cert. ef. 7-26-94; DOA 15-2001(Temp), f. & cert. ef. 7-2-01 thru 12-28-01; DOA 28-2001, f. & cert. ef. 12-31-01

603-074-0080

Civil Penalty Determination Procedure

In determining the amount of a civil penalty to be assessed for any violation, the department shall apply the following procedure:

(1) Determine the magnitude of the violation as specified in OAR 603-074-0070(4).

(2) Determine the gravity of effect pertinent to the violation as specified in OAR 603-074-0070(5).

(3) Using the magnitude of the violation and the gravity of effect identified, and depending on whether it is the first or a repeat violation, determine the base penalty (B) by reference to the appropriate matrix contained in OAR 603-074-0080.

Civil Penalty Matrix for First Violation

Gravity of Effect
Magnitude of Violation
High
Medium
Low

Category I (Major)

\$1,200
\$800
\$400

Category II (Moderate)

\$ 600
\$400
\$200

Category III (Minor)

\$ 240
\$120
\$ 50

Civil Penalty Matrix for Repeat Violations

Gravity of Effect
Magnitude of Violation
High
Medium
Low

Category I (Major)

\$5,000
\$2,400
\$800

Category II (Moderate)

\$1,600
\$ 800
\$400

Category III (Minor)

\$ 400
\$ 200
\$100

(4) Calculate the amount of the civil penalty to be assessed utilizing the formula:
 $B + [(.1 \times B) (P + H + R)] = \text{Penalty Amount}$

where:

(a) B = Base penalty is the primary penalty for a given violation derived from the appropriate matrix contained in OAR 603-074-0080;

(b) P = Past occurrence of violations. P will be weighted from 0 to 6 in the following manner:

(A) 0 = no prior violation or insufficient evidence on which to base a finding;

(B) 1 = past occurrence of a category III violation;

(C) 2 = past occurrence of a Category II violation or two category III violations;

(D) 3 = past occurrence of a Category I violation, two Category II violations, or three Category III violations:

(E) 4 = past occurrence of two Category I violations, three Category II violations or four Category III violations;

(F) 5 = past occurrence of three Category I violations, four Category II violations, or five or more Category III violations;

(G) 6 = past occurrence of more than three Category I violations or five or more Category II violations.

(c) H = History of the person in taking all feasible steps or procedures necessary and appropriate to prevent or correct a violation. H will be weighted from -2 to 2 in the following way:

(A) -2 = the person took all feasible steps to correct any prior violations:

(B) 0 = there is no prior history or insufficient information on which to base a finding;

(C) 1 = the person took some, but not all feasible steps to correct prior violations;

(D) 2 = the person took no action to correct prior violations.

(d) R = Preventability of the violation and whether negligence or misconduct was involved. R will be weighted from -2 to 7 in the following way:

(A) -2 = the person's actions determined to be in violation ~~violative~~ were unavoidable and the person notified the department of the violation in accordance with the terms of the person's permit;

(B) -1 = the person's actions determined to be in violation were unavoidable;

(BC) 0 = information is insufficient to make any finding;

(CD) 3~~2~~ = the person's actions determined to be in violation ~~violative~~ were reasonably avoidable and the person notified the department of the violation in accordance with the terms of the person's permit;

(E) 4 = the person's actions determined to be in violation were reasonably avoidable;

(DF) 7 = the person's actions were flagrant or reckless.

(5) A civil penalty imposed under the applicable statues and these rules may be remitted or reduced at the director's discretion upon such terms and conditions that are proper and consistent with public health and safety.

(6) At the discretion of the director, a respondent who is unable to pay the full amount of a civil penalty may be allowed to pay the civil penalty by means of a schedule of payments ~~which~~ that may include payment of interest on the unpaid balance for any delayed payments.

Stat. Auth.: ORS 468B.217, ORS 468B.230 & ORS 561

Stats. Implemented: ORS 561.175

Hist.: AD 8-1994, f. & cert. ef. 7-26-94

State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commission

Date: August 5, 2003

From: Stephanie Hallock

S. Hallock

Subject: Revision to NPDES General Permit and Fact Sheet
Agenda Item G, Rule Adoption: Issuance of New NPDES General Permit for
Confined Animal Feeding Operations (CAFOs) and Revisions to CAFO Rules
August 15, 2003

Attached is a revised copy of the general permit and fact sheet. The permit was revised to include the following federal requirements:

1. Designated concentrated animal feeding operations must submit application no later than 90 days after receiving notice of designation (see Condition S1.B.6, p. 3); and
2. Large concentrated animal feeding operations must provide nutrient testing data to recipients of manure (see Condition S4.D.3, p. 13).

These requirements were mistakenly omitted from the version provided in the Environmental Quality Commission report dated July 30, 2003. Staff and legal counsel recommend that they be included to make the permit consistent with federal regulation. In addition, the fact sheet was revised to address these additions and provide clarification on the need for NPDES permit (changes to the fact sheet are not being adopted into rule).

Additional public notice is not required because DEQ and ODA previously re-noticed the permit and rules for the express purpose of revising the rulemaking proposal as needed to conform to the federal regulations adopted on February 12, 2003.

1/5/04

*Original copy filed
with Oregon Court
of Appeals*

SH:ml:rn

R. Sankala

Revision to NPDES General Permit

Agenda Item G, Rule Adoption: New NPDES General Permit for CAFOs and Revisions to CAFO Rules

August 15, 2003

REVISED
Attachment A-2
Proposed General Permit

Permit Number: _____

Expiration Date: _____

Issuance Date: _____

Effective Date: _____

OREGON CONFINED ANIMAL FEEDING OPERATION
GENERAL PERMIT NUMBER 01

State of Oregon
Department of Agriculture
Natural Resources Division
and
Department of Environmental Quality
Water Quality Division

In compliance with the provisions of Oregon Revised Statutes (ORS) Chapter 468B,
Oregon Administrative Rules (OAR) Chapter 603, Division 74,
The Federal Water Pollution Control Act as amended
(The Clean Water Act)
Title 33 United States Code, Section 1251 et seq.,
and
The National Pollutant Discharge Elimination System
(NPDES)

Until this permit expires, is modified or revoked, permittees who have properly obtained coverage under this permit are authorized to discharge to waters of the state in accordance with the special and general conditions that follow.

Debbie L. Gorham, Administrator
Natural Resources Division
Oregon Department of Agriculture

Michael T. Llewelyn, Administrator
Water Quality Division
Oregon Department of Environmental Quality

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S1. PERMIT COVERAGE

S1.A. When is a Permit Required?

1. Any person who owns or operates a confined animal feeding operation (CAFO) that confines for more than four months and has waste water control facilities is required to obtain coverage under this permit. Any person who owns or operates a *concentrated* animal feeding operation is required to obtain coverage under this permit. Failure to obtain coverage under this permit is a violation of ORS 468B.050 and 468B.215 except as provided in S1.E Individual Permit Coverage, p. 4.
2. Any person who owns or operates an animal feeding operation (AFO) designated by the director pursuant to OAR 603-074-0012 as a *concentrated* AFO (see definition S1.F.5(c), p. 6) is required to obtain coverage under this permit. Failure to obtain coverage under this permit is a violation of ORS 468B.050 and 468B.215 except as provided in S1.E Individual Permit Coverage, p. 4.
3. Any person who owns or operates an AFO may be covered under this permit. Any person voluntarily registering for coverage under the permit is liable for compliance with all terms and conditions of the permit.
4. Any person not wishing to be covered by this permit may apply for an individual permit in accordance with OAR 340-045-0030.

S1.B. Schedule for General Permit Coverage

Owners and operators of CAFOs subject to coverage under this permit must submit an ODA Application to Register (ATR) according to the following schedule:

1. All newly constructed CAFOs
Newly constructed CAFOs, including "new sources" must submit an ATR at least 180 days prior to the time that the CAFO commences operation.
2. Existing CAFOs that met the previous definition of concentrated AFOs:
CAFOs that were defined as *concentrated* under federal regulations in effect prior to April 14, 2003, must submit an ATR immediately.
3. Existing CAFOs newly defined as concentrated AFOs as of April 14, 2003:
CAFOs that met the federal definition of *concentrated* as of April 14, 2003, that were not defined as *concentrated* in federal regulation prior to that date must submit an ATR by a date specified by the director, but no later than February 13, 2006.
4. Existing CAFOs that become defined as concentrated AFOs after April 14, 2003:
CAFOs that become defined as *concentrated* after April 14, 2003, must submit an ATR within 90 days after becoming defined as a CAFO unless the change in operation that causes the AFO to be defined as a *concentrated* AFO would not have caused it to be defined as a *concentrated* AFO prior to April 14, 2003.
5. All other existing CAFOs that are not concentrated AFOs:
Other existing CAFOs that are not *concentrated* AFOs covered by this permit must submit an ATR within 90 days of notification by the director that permit coverage is required.
6. AFOs designated by the director:
AFOs designated by the director as a *concentrated* AFO must submit an ATR by a date specified by the director but no later than 90 days after receiving notice of the designation.

S1.C. General Permit Coverage

1. This permit authorizes the discharge of only those pollutants resulting from the CAFO processes, wastes, and operations that have been clearly identified in the permit application process.
2. This general permit does not cover activities or discharges presently covered by an individual NPDES or Water Pollution Control Facilities (WPCF) permit until the individual permit has expired or been cancelled.

If appropriate, any person issued an individual permit may apply for coverage under this general permit and request cancellation of the individual permit.

3. This general permit does not cover disposal of human wastes or waste water control systems that mix human and animal wastes. Any person owning or operating such a system must apply to DEQ for coverage under an individual or general permit issued pursuant to ORS 468B.050. This general permit may be used in addition to an individual or general permit issued by DEQ pursuant to ORS 468B.050.
4. The applicant will be notified in writing when general permit coverage has been granted. Written notification will include a notice of registration entitled *Notice of Registration and Oregon CAFO General Permit Summary* and will include:
 - (a) The owner or operator's name;
 - (b) Facility name;
 - (c) Contact information (i.e., business and mailing addresses, phone numbers and e-mail address);
 - (d) Effective date of general permit coverage;
 - (e) Maximum number of animals allowed at the facility; and
 - (f) Regulatory status of CAFO (e.g. Large or Medium *concentrated* AFO, state CAFO, etc.)
5. Coverage under this general permit will be canceled as to the particular permittee upon the issuance of an individual permit to that permittee.
6. Except for any toxic effluent standards and prohibitions imposed under section 307 of the federal Clean Water Act (CWA) and groundwater protection requirements established under OAR 340-040, a permittee in compliance with this permit during its term is considered to be in compliance, for purposes of enforcement, with state water quality laws and relevant sections of the CWA, as provided in 40 CFR §122.5. The specific effect of permit compliance on enforcement authority is set out in OAR 340-045-0080.

S1.D. Request for Cancellation

1. Any permittee may request in writing to ODA that coverage under this permit be cancelled if:
 - (a) Conditions or standards have changed so that the source or activity no longer qualifies for this permit;
 - (b) The facility no longer has animals on site and all waste storage and control facilities have been decommissioned in accordance with NRCS conservation practice standard, code 360, entitled *Closure of Waste Impoundments*, dated February 2000; and
 - (c) The permittee certifies that it will not commence operations at the same location without making a new application for registration under this general permit and is granted coverage or applies for and is issued an individual permit.
2. ODA will respond to the request for cancellation by conducting a site inspection and a review of the permit file. The director will notify the permittee in writing of termination of coverage under the general permit or deny the request with an explanation of why the request was denied.

S1.E. Individual Permit Coverage

1. When appropriate, the director may require any person to obtain an individual permit pursuant to OAR 340-045-0033(9). In such cases, the person will be notified in writing by the director. This written notice will include the reason why an individual permit is being required, an application form, the amount of the permit fee due at application, and application due date.
2. If coverage under this permit has been obtained prior to the requirement for an individual permit, this permit will remain effective until the individual permit is issued provided the application for individual permit was properly made.

S1.F. Definitions

1. "25-year, 24-hour rainfall event" or "100-year, 24-hour rainfall event" means an event with a probable recurrence interval of once in twenty-five years or one hundred years, respectively, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, or equivalent regional or state rainfall probability information developed from this source.
2. "40 CFR §122" or "40 CFR §123" or "40 CFR §412" means the Code of Federal Regulations as amended by 68 FR 7176 (2/12/03).
3. "Animal feeding operation" or "AFO" as defined in 40 CFR §122.23(b)(1) means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:
 - (a) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
 - (b) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
4. "CAFO" or "Confined animal feeding operation" as defined in OAR 603-074-0010(3) means:
 - (a) The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms;
 - (i) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or
 - (ii) That have wastewater treatment works; or
 - (iii) That discharge any wastes into waters of the state; or
 - (b) An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR §122.23 (see definition S1.F.5, p. 5 below).
5. "Concentrated animal feeding operation" or "concentrated AFO" as defined by 40 CFR §122.23(b)(2) means an AFO that is defined as a Large or Medium concentrated AFO, or that is designated as a Small concentrated AFO (see definition S1.F.5(c), p. 6 below). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.
 - (a) An AFO is defined as a Large concentrated AFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:
 - (i) 700 mature dairy cows, whether milked or dry;
 - (ii) 1,000 veal calves;
 - (iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
 - (iv) 2,500 swine each weighing 55 pounds or more;
 - (v) 10,000 swine each weighing less than 55 pounds;
 - (vi) 500 horses;
 - (vii) 10,000 sheep or lambs;
 - (viii) 55,000 turkeys;
 - (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
 - (x) 125,000 chickens (other than laying hens) if the AFO uses other than a liquid manure handling system;
 - (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
 - (xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or
 - (xiii) 5,000 ducks (if the AFO uses a liquid manure handling system)
 - (b) An AFO is defined as a Medium concentrated AFO if:
 - (i) The type and number of animals that it stables or confines falls within any of the following ranges:
 1. 200 to 699 mature dairy cattle, whether milked or dry;
 2. 300 to 999 veal calves;
 3. 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
 4. 750 to 2,499 swine each weighing 55 pounds or more;

5. 3,000 to 9,999 swine each weighing less than 55 pounds;
 6. 150 to 499 horses;
 7. 3,000 to 9,999 sheep or lambs;
 8. 16,500 to 54,999 turkeys;
 9. 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
 10. 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
 11. 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system);
 12. 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or
 13. 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and
- (ii) Either one of the following conditions are met:
1. Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or
 2. Pollutants are discharged directly into waters of the United States that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
- (c) An AFO is a Small concentrated AFO if it is designated by the director as a concentrated AFO in accordance with the process outlined in 40 CFR §122.23(c) and is not a Medium or Large concentrated AFO.
6. "Director" means the director of the State of Oregon Department of Environmental Quality and the Department of Agriculture or their authorized designee(s).
7. "Discharge" means:
- (a) The discharge of a pollutant;
 - (b) Any addition of any pollutant or combination of pollutants to waters of the state from any point source;
 - (c) A discharge of pollutants into waters of the state through a manmade ditch, flushing system or similar manmade conveyance; or
 - (d) The application of process wastes to land not consistent with the times and/or rates specified in the waste management plan, in a manner that is likely to result in contamination of waters of the state.
8. "Groundwater" and "Underground water" means water in a saturated zone or stratum beneath the surface of land or below a surface water body.
9. "Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.
10. "New source" as defined 40 CFR §122.2 means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced after April 14, 2003.
11. "Overflow" means the discharge of manure or process waste water resulting from the filling of waste water or manure storage structures beyond the point at which no more manure, process waste water, or storm water can be contained by the structure.
12. "Person" as defined in OAR 603-074-0010(11) means the United States and agencies thereof, any state, any individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate or any other legal entity whatever.
13. "Pollutant" as defined in 40 CFR §122.2 means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:
- (a) Sewage from vessels; or
 - (b) Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is

located, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources.

14. "Pollution" or "water pollution" as defined in ORS 468.005(3) means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, that will or tends to, either by itself or in connection with any other substance, create a public nuisance or that will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.
15. "Process waste water" or "process wastes" means water directly or indirectly used in the operation of the CAFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning or flushing pens, barns, manure pits, or other CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process waste water or process wastes also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.
16. "Production area" means that part of a CAFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment areas include but are not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of animal mortalities.
17. "Waste Management Plan" or "animal waste management plan" or "AWMP" means a written plan containing the minimum elements necessary to manage manure, litter and process waste water from CAFOs in accordance with the terms and conditions of this permit. See S3.C, p. 10 for specific plan elements.
18. "Wastes" as defined in ORS 468B.005(7) means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances that will or may cause pollution or tend to cause pollution of any waters of the state.
19. "Waste storage facilities" means the physical system used for the isolation and retention of process wastes on the confined animal feeding operation until their ultimate utilization.
20. "Waste water control facility" means a "disposal system" or "treatment works" as defined in ORS 468B.005 that may cause pollution of surface water or groundwater and is used for collecting, conveying, treating, stabilizing or storing manure, litter, process waste water, or contaminated production area drainage (i.e., silage leachate, contaminated storm water runoff, etc.) at confined animal feeding operations.
21. "Water" or "waters of the state" as defined in ORS 468B.005(8) include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), that are wholly or partially within or bordering the state or within its jurisdiction.

S2. DISCHARGE LIMITATIONS AND OPERATING REQUIREMENTS

S2.A. Discharge Limitations

The permittee is prohibited from discharging process wastes to surface water or groundwater of the state, except as allowed in S2.B and S2.C and provided these discharges do not cause or contribute to a violation of state water quality standards. Discharges to surface water due to upset or bypass are authorized only in accordance with applicable requirements in G3, p. 14, and G4, p. 15.

Types of discharge that are prohibited include but are not limited to: contaminated runoff from confinement or waste accumulation areas; overflow or discharges from waste storage facilities; discharges due to improper land application activities from surface drainages, field tile outlets, or seepage below the root zone; discharges due to equipment failure; leakage or seepage from facilities in the production area in excess of approved designs.

S2.B. Production Area Limitations

1. For all CAFOs, except new source swine, poultry, and veal Large concentrated AFOs:
Discharges of process waste water to surface waters of the state are prohibited, except when rainfall events cause an overflow of process waste water from a facility designed, constructed, operated, and maintained to contain all process-generated waste waters plus the runoff and direct precipitation from a 25-year, 24-hour rainfall event.
2. For new source swine, poultry, and veal Large concentrated AFOs:
Discharges of process waste water to surface waters of the state are prohibited, except when rainfall events cause an overflow of process waste water from a facility designed, constructed, operated, and maintained to contain all process-generated waste waters plus the runoff and direct precipitation from a 100-year, 24-hour rainfall event.
3. All authorized discharges from the production area must be properly land applied or otherwise handled in a way that minimizes impacts on surface water or groundwater of the state.
4. Seepage to groundwater from waste storage or animal confinement facilities must not exceed design rates as approved by ODA or violate state groundwater quality protection standards.

S2.C. Land Application Limitations

1. When applying manure, litter, and process wastes to lands, the permittee must apply at agronomic rates in accordance with proper agricultural practices. If a waste management plan has been approved by ODA, applications must also be performed as specified in that plan. Land application areas include land under the control of the permittee, whether it is owned, rented, or leased, to which manure, litter, or process waste water from the production area is or may be applied.
2. Waste applications must not exceed the capacity of the soil and crops to assimilate nutrients and minimize water pollution, must be quantifiable, and based on the NRCS Phosphorous Index, Agronomy Technical Note #26, revised October 2001, and must account for all other nitrogen, phosphorus, and potassium sources.
3. Discharges to groundwater due to seepage below the root zone of the crop or by other means must not violate state groundwater quality protection standards.
4. If discharge to surface water or groundwater will result, application to flooded, saturated, frozen or snow covered land is prohibited. Land application of wastes or waste water during rainfall events that are expected to result in saturated soils or surface runoff is prohibited.

S2.D. Direct Access by Animals to Surface Water in the Production Area Prohibited

Direct animal contact with surface waters of the state in the production area of a CAFO is prohibited. Direct animal contact means any situation where animals in the production area have free access and are allowed to loiter or drop waste in surface waters. Direct contact with surface waters by animals on pasture or rangeland is not, by itself, a violation of this permit.

S2.E. Waste Storage Facilities

1. The permittee must provide adequate storage capacity for solid and liquid wastes at all times so that land application occurs only during periods when soil and weather conditions allow for agronomic application and are in compliance with the Land Application Limitations in Condition S2.C, p. 8 of this permit.
2. The permittee must site, design, construct, operate, and maintain all waste storage facilities consistent with the waste management plan. New and modified construction of waste facilities must be approved in advance and prior to construction by ODA in conformance with ORS 468B.055, OAR 340-051 and 603-074.
3. The permittee with a Large *concentrated* AFO must also have depth markers in all surface liquid impoundments (e.g., lagoons, ponds, tanks) designed to clearly indicate the:
 - (a) Maximum design volume,
 - (b) Minimum capacity necessary to contain the 25-year, 24-hour rainfall event, or in the case of new source swine, poultry, and veal Large *concentrated* AFOs, the 100-year, 24-hour rainfall event, including additional freeboard requirements, and
 - (c) Depth of manure and process waste water.

S2.F. Prevention of System Overloading

1. The permittee may not increase the number of animals over 10% or 25 animals, whichever is greater, of the maximum number assigned by ODA in the *Notice of Registration and General Permit Summary* until an updated plan is approved in writing by ODA (see S3.B Plan Submittal, p. 10, and S3.D Plan Updates, p. 11).
2. Animal numbers must not exceed the capacity of the waste storage facilities.

S2.G. Handling of Animal Mortalities

The permittee must not dispose of animal mortalities in liquid manure or waste water control facilities. Animal mortalities must be handled in such a way as to prevent discharge of pollutants to surface water or groundwater.

S2.H. Proper Operation and Maintenance

The permittee must at all times properly operate and maintain all facilities and systems used for process waste collection, storage and utilization, and correct any deficiencies found as soon as possible.

S2.I. Maintaining Compliance if System Fails

The permittee, in order to maintain compliance with the permit, must control all applications and discharges upon reduction, loss or failure of the waste storage or utilization facilities until the facilities are restored or an alternative method of storage or utilization is provided. This requirement applies where the primary source of power is reduced, lost, or fails.

S2.J. Setback Requirement for Large *Concentrated* AFOs

In addition to the above conditions, the permittee with a Large *concentrated* AFO must, in the land application area(s), maintain a setback area within 100 feet of any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters where manure, litter, and other process waste waters are prohibited. As a compliance alternative, and if demonstrated to the satisfaction of ODA, the permittee may:

1. Establish a 35-foot vegetated buffer where manure, litter, and other process waste waters are prohibited; or
2. Demonstrate that a setback or vegetated buffer is not necessary or may be reduced.

S3. WASTE MANAGEMENT PLANS

S3.A. Plan Implementation and Compliance

1. Upon receipt of notification by ODA or by December 31, 2006, whichever occurs first, the permittee must implement a current waste management plan developed for its CAFO.
2. The permittee must comply with all terms and conditions of its approved waste management plan. Failure to comply with the approved plan constitutes a violation of the terms and conditions of this permit.
3. Absence of a plan or absence of ODA approval of a plan does not allow the permittee to violate the provisions of S2 Discharge Limitations and Operating Requirements, p. 8 or other permit requirements.

S3.B. Plan Submittal

1. Plans must be submitted to ODA for review and approval according to the following schedule:
 - (a) Newly constructed and new source CAFOs must submit a waste management plan with the ATR.
 - (b) Existing CAFOs must submit a current waste management plan for the facility upon notification by ODA or by July 1, 2006, whichever occurs first.
2. Updates to plans (see S3.D Plan Updates, p. 11) must be submitted to ODA for approval at least 45 days before the facility expansion, production increase or process modification is to be implemented unless a different schedule is allowed by ODA in writing.

S3.C. Plan Elements

1. The waste management plan must be adequate for the existing population of animals and be prepared in accordance with the terms and conditions of this permit, OAR 340-051, and NRCS conservation practice standard guidance 590 for Oregon dated May 2001 entitled *Nutrient Management*.
2. The waste management plan may include a schedule for improvement projects.
3. The waste management plan must to the extent applicable:
 - (a) Ensure adequate collection, handling, and storage of manure, litter and process waste water;
 - (b) Include procedures to ensure proper operation and maintenance of the storage facilities;
 - (c) Ensure proper management of animal mortalities to ensure that they are not disposed of in a liquid manure, storm water, or process waste water storage or treatment system that is not specifically designed to treat animal mortalities;
 - (d) Ensure that clean water is diverted, as appropriate, from the production area;
 - (e) Prevent direct contact of confined animals with surface waters;
 - (f) Ensure that chemicals and other contaminants handled on-site, are not disposed of in any manure, litter, process waste water, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
 - (g) Identify appropriate site-specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface water and groundwater;
 - (h) Establish protocols to land apply manure, litter or process waste water in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process waste water. For Large *concentrated* AFOs, these protocols must be based on actual test data. For other CAFOs, data or "book values" from established reference sources (e.g., Oregon Animal Waste Management program) may be used instead of actual testing;
 - (i) For Large *concentrated* AFOs, also identify protocols for appropriate testing of manure, litter, process waste water, and soil. For other CAFOs, identify the references used instead of actual testing data or test protocols if testing; and
 - (j) Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.

S3.D. Plan Updates

1. The permittee must update the waste management plan when facility expansions, production increases, or process modifications will:
 - (a) Result in new or increased generation of waste, litter, or process waste water beyond the scope of the current waste management plan, or
 - (b) Violate the terms and conditions of this permit.
2. The updated waste management plan must be submitted to ODA for approval (see S3.B.2, p. 10, above).
3. The permittee may not increase the number of animals over 10% or 25 animals, whichever is greater, of the maximum number assigned by ODA in the *Notice of Registration and General Permit Summary* until an updated plan is approved in writing by ODA.

S4. MONITORING, INSPECTION, RECORDKEEPING, AND REPORTING REQUIREMENTS

S4.A. Monitoring Requirements

1. Discharge Monitoring

If a discharge to surface or groundwaters occurs that is not allowed by Condition S2.B or S2.C, p. 8, the permittee must record the following information:

- (a) A description and cause of the discharge;
- (b) The period of discharge including exact dates, times and duration of discharge;
- (c) An estimate of discharge volume;
- (d) Name or location of receiving water; and
- (e) Corrective steps taken, if appropriate, to reduce, eliminate or prevent reoccurrence of the discharge.

2. Analytical Monitoring for Large concentrated AFOs

The permittee with a Large *concentrated* AFO, must conduct the following:

- (a) Collect and analyze manure, litter, and other process waste waters annually for nutrient content, including nitrogen and phosphorus.
- (b) At least once during the term of this permit, collect and analyze representative soil samples for phosphorus and nitrogen content from all fields where manure, litter, and other process waste waters are applied.

3. Analytical Monitoring for all other CAFOs

At least once during the term of this permit, the permittee must collect and analyze representative soil samples for phosphorus and nitrogen content from all fields where manure, litter, and other process waste waters are applied.

S4.B. Inspection Requirements

The permittee must:

1. Periodically inspect of all storm water diversion devices, runoff diversion structures, animal waste storage structures, and devices channeling contaminated storm water to the waste water and manure storage and containment structure. The permittee with a Large *concentrated* AFO must conduct and record these inspections weekly.
2. Periodically inspect water lines, including drinking water or cooling water lines. The permittee with a Large *concentrated* AFO must conduct and record these inspections daily.
3. Periodically conduct leak inspections of equipment used for land application of manure, litter, or process waste water. The permittee with a Large *concentrated* AFO must record the results of these periodic inspections.
4. The permittee with a Large *concentrated* AFO must inspect liquid impoundments for manure and process waste water on a weekly basis and record the depth of manure and process waste water in those impoundments as indicated by the depth marker required by S2.E.3, p. 9.
5. Any deficiencies found as a result of these inspections must be corrected as soon as possible. The permittee with a Large *concentrated* AFO must record any actions taken to correct these deficiencies and, if deficiencies are not corrected within 30 days, provide an explanation of the factors preventing immediate correction.

S4.C. Record Keeping and Availability Requirements

1. The permittee must maintain all information required by this permit at the facility for at least five years and make this information available to ODA upon request.
2. Upon obtaining general permit coverage, Large *concentrated* AFOs must begin recording the following information. Other CAFOs must begin recording the following information upon ODA approval of the waste

management plan or by December 31, 2006, whichever occurs first. The permittee must maintain this information at the facility for at least five years and make this information available to ODA upon request. (Note: If any of the following information is provided in the permittee's waste management plan, a separate record keeping effort is not required.)

- (a) Expected crop yields.
- (b) Date, amount, and nutrient loading of manure, litter, or process waste water applied to each field.
- (c) For Large *concentrated* AFOs, weather conditions at the time of application and 24 hours before and after application.
- (d) Explanation of the basis for determining annual manure application rates, as provided in the technical standards established by ODA.
- (e) Calculations showing the total nitrogen and phosphorus to be applied annually to each field, including sources other than manure, litter, or process waste water.
- (f) Total amount of nitrogen and phosphorus actually applied annually to each field, including documentation of calculations of the total amount applied.
- (g) Method(s) used to apply the manure, litter, or process waste water.
- (h) Total amount of manure or waste water transferred to other persons. Large *concentrated* AFOs must also include the date and amount of each transfer and the name and address of each recipient.
- (i) For Large *concentrated* AFOs, animal mortalities management and practices used to meet the requirements of S2.G, p. 9.

S4.D. Reporting Requirements

1. 24-hour Reporting

- (a) If a discharge to surface water or groundwater occurs that is not allowed by Condition S2.B and S2.C, p. 8, the permittee must notify ODA within 24 hours of the discharge.

The permittee must submit a written report within five (5) days to ODA. The information to be submitted is listed in the monitoring requirements (Condition S4.A, p. 12 above) of this permit.

- (b) The permittee must report to ODA within 24 hours of becoming aware of any significant physical failure at any time of a waste water control facility required under this permit.

2. Annual Report

The permittee must submit an annual report by March 15 of each year to ODA. The annual report must include the following for the previous calendar year:

- (a) Maximum number and type of animals, whether in open confinement or housed under roof (i.e., beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
- (b) Estimated amount of total manure, litter and process waste water generated by the CAFO (tons/gallons);
- (c) Estimated amount of total manure, litter and process waste water transferred to other persons by the CAFO (tons/gallons);
- (d) Total number of acres for land application covered by the waste management plan developed in accordance with the terms of this permit;
- (e) Total number of acres under control of the CAFO that were used for land application of manure, litter and process waste water in the previous 12 months;
- (f) Summary of all manure, litter and process waste water discharges from the production area that have occurred, including date, time and approximate volume; and
- (g) If the CAFO has a current waste management plan, a statement indicating whether the plan was developed or approved by a certified waste management planner.

3. Manure, Litter, or Process Waste Water Transfers

Prior to transferring manure, litter, or process waste water to other persons, Large *concentrated* AFOs must provide the recipient of manure, litter, or process wastewater with the most current nutrient analysis available.

S4.E. Additional Monitoring

ODA may establish specific monitoring requirements in addition to those contained in this permit by administrative order. An administrative order is an agency action expressed in writing directed to a named person or named persons (ORS 183.310).

GENERAL CONDITIONS

G1. Discharge Violations

All land application of wastes and other activities authorized by this permit must be consistent with the terms and conditions of this permit. The application or discharge of any process waste more frequently than, or at a concentration in excess of, that authorized by this permit will constitute a violation of the terms and conditions of this permit.

G2. Noncompliance Notification

- A. If for any reason, the permittee does not comply with, or will be unable to comply with any of the requirements or conditions specified in the permit, the permittee must, at a minimum, provide ODA with the following information:
1. A description of the nature and cause of noncompliance, including the quantity and quality of any unauthorized waste discharges;
 2. The period of noncompliance, including exact dates and times, and the anticipated time when the permittee will return to compliance; and
 3. The steps taken, or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.
- B. In addition, the permittee must take immediate action to stop, contain, and clean up any unauthorized discharges and take all reasonable steps to minimize any adverse impacts to waters of the state and correct the problem. The permittee must notify ODA by telephone so that an investigation may be made to evaluate any resulting impacts and the corrective actions taken to determine if additional action should be taken.
- C. In the case of any discharge subject to any applicable toxic pollutant effluent standard under Section 307(a) of the Clean Water Act, or that could constitute a threat to human health, welfare, or the environment, 40 CFR §122 requires that the information specified in conditions G2.A.1, G2.A.2, and G2.A.3 above, be provided not later than 24 hours from the time the permittee becomes aware of the circumstances. If this information is provided orally, a written submission covering these points must be provided within five days of the time the permittee becomes aware of the circumstances, unless ODA waives or extends this requirement on a case-by-case basis.
- D. Compliance with these requirements does not relieve the permittee from responsibility to maintain continuous compliance with the conditions of this permit or resulting liability for failure to comply.

G3. Bypass

- A. Definitions.
1. "Bypass" means intentional diversion of waste streams from any portion of the treatment facility. The term "bypass" does not include nonuse of singular or multiple units or processes of a treatment works when the nonuse is insignificant to the quality and/or quantity of the effluent produced by the treatment works. The term "bypass" does not apply if the diversion does not cause effluent limitations to be exceeded, provided the diversion is to allow essential maintenance to assure efficient operation.
 2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities or treatment processes that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- B. Prohibition of bypass.
1. Bypass is prohibited unless:
 - (a) Bypass was necessary to prevent loss of life, personal injury, or severe property damage;
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventative maintenance; and
 - (c) The permittee submitted notices and requests as required under G3.C below.

2. The director may approve an anticipated bypass, after considering its adverse effects and any alternatives to bypassing, when the director determines that it will meet the three conditions listed above in G3.B.1.

C. Notice and request for bypass.

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, the permittee must submit prior written notice, if possible at least ten days before the date of the bypass.
2. Unanticipated bypass. The permittee must submit notice of an unanticipated bypass as required in S4.D.1.

G4. Upset

A. Definition.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operation error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

B. Effect of an upset.

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of G4.C are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

C. Conditions necessary for a demonstration of upset.

A permittee who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the causes(s) of the upset;
2. The permitted facility was at the time being properly operated;
3. The permittee submitted notice of the upset as required in S4.D.1; and
4. The permittee complied with any remedial measures required under G2.B.

D. Burden of proof.

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

G5. Right of Inspection

The permittee must allow the director or an authorized representative of the director, upon the presentation of credentials and such other documents as may be required by law:

- A. To enter upon the property where a potential or actual discharge is located;
- B. To have access to and copy at reasonable times any records that must be kept under the terms of the permit;
- C. To inspect at reasonable times any monitoring equipment or method of monitoring required in the permit;
- D. To inspect at reasonable times any collection, treatment, pollution management, or application facilities; and
- E. To sample any waters of the state or discharge of pollutants.

G6. Permit Registration Modified or Revoked

A. After notice, registration under this permit may be modified or revoked as it applies to any person for cause as follows:

1. Violation of any terms or conditions of the permit,
2. Failure of the permittee to disclose fully all relevant facts, or misrepresentations of any relevant facts by the permittee during the permit issuance process and during the life of the permit;
3. Failure to pay permit fees when due;
4. Information indicating that the permitted operation poses a threat to human health or welfare;
5. A change in ownership or control of the operation, or
6. Other causes listed in 40 CFR §122.62 and 122.63.

B. Modification or revocation of coverage under this permit as it applies to any person may be initiated by ODA.

C. Issuance of coverage under an individual permit may be initiated by ODA in accordance with Condition S1.E.

G7. Revocation for Non-Payment of Fees

The director may revoke registration under this permit if the permit fees established under Oregon Administrative Rules are not paid when due.

G8. Compliance With Other Laws and Statutes

Nothing in the permit will be construed as excusing the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

G9. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and have the permit renewed. The application must be submitted at least 180 days before the expiration date of this permit. The director may grant permission in writing to submit an application less than 180 days in advance but no later than the permit expiration date.

G10. Change of Ownership or Control

The permittee must notify ODA in writing thirty (30) days prior to a change in facility ownership or control.

G11. Other Requirements of 40 CFR

All other requirements of 40 CFR §122.41 *Conditions applicable to all permits* and §122.42 *Additional conditions applicable to specified categories of NPDES permits* are incorporated in this permit by reference.

Revision to NPDES General Permit
Agenda Item G, Rule Adoption: New NPDES General Permit for CAFOs and Revisions to CAFO Rules
August 15, 2003

REVISED
Attachment G
Fact Sheet for General Permit

May 1, 2003
revised June 25, 2003
revised August 4, 2003

**National Pollutant Discharge Elimination System
Fact Sheet and Permit Evaluation Report**

**Oregon Confined Animal Feeding Operations
General Permit**

Prepared by:

Lynda Horst, Oregon Department of Agriculture
Jamie Bansen, Oregon Department of Agriculture (503) 986-4780
Ranei Nomura, Oregon Department of Environmental Quality (503) 229-5657
For information, please contact ODA or DEQ staff.

**NPDES Fact Sheet and Permit Evaluation Report
Oregon CAFO General Permit**

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NPDES Fact Sheet and Permit Evaluation Report

Confined Animal Feeding Operations General Permit

1.0 Overview

1.1 Proposed permit action

The Oregon Department of Agriculture (ODA) and Department of Environmental Quality (DEQ) are proposing to issue a National Pollutant Discharge Elimination System (NPDES) general permit for confined animal feeding operations (CAFOs) in Oregon. CAFOs that meet the definition found in Oregon Administrative Rule (OAR) 603-074-0010(3) and confine for four months or more and have wastewater treatment works are required to register to a general permit or obtain an individual permit. In addition, any operation meeting the federal definition of a *concentrated* animal feeding operation must obtain coverage under this permit regardless of the length of confinement or existence of waste water control facilities.

1.2 Description of activity needing permit

The activity associated with CAFOs is the confinement of animals, including poultry, for meat, milk, or egg production, or stabling, in pens or houses, where the animals are fed or maintained at the place of confinement. Generally animals are congregated in confined areas along with their feed and manure. Some facilities also consolidate their dead animals in a central location. Feed is brought to the animals rather than the animals grazing or otherwise seeking feed in pastures.

ODA estimates that anywhere from 700 to 1,000 CAFOs may need to register under this general permit. Approximately 500 CAFOs are currently registered under the existing Water Pollution Control Facilities (WPCF) general permit #800.

1.3 Description of pollutants

Process wastes, consisting primarily of animal manure, wash down water, contaminated storm water, and silage leachate are the primary sources of wastes being regulated under this permit. ODA estimates that CAFOs registered under this permit may generate 10 million tons of waste on a yearly basis. A majority of these wastes are land applied at agronomic rates to crop ground under control of CAFO operators, while the remaining is exported off-site for use by other agricultural entities. The estimate of waste generated is based on 500 dairies (most of the CAFOs currently under permit; 6.5 million tons for dairy operations) and 250 additional facilities of different animal types, all of medium size (3 million tons for 220 beef operations and .5 million tons for 30 poultry operations).

Contamination of surface and ground waters can occur due to improper collection and storage of wastes, contamination of storm water runoff, undersized or leaking waste storage facilities, improper timing or over-application of wastes, or improper containment of silage effluent.

The most commonly recognized contaminants from CAFOs include biochemical oxygen demand (BOD), total suspended solids (TSS), organics, bacteria, and nutrients (nitrogen and phosphorous compounds).

Nutrients such as nitrogen and phosphorus can cause increased aquatic plant growth. Decomposition of algae and plants can decrease dissolved oxygen levels. In addition, the biochemical oxygen demand of

organic waste depletes dissolved oxygen in water. Low dissolved oxygen levels in streams and lakes can cause fish kills.

Inorganic forms of nitrogen are taken up by plants as nutrients when wastes are applied to cropland. Excessive or improper application of wastes and improper storage of wastes can cause runoff to surface water or leaching to ground water. Ammonia (a form of nitrogen) at high levels in surface water can be toxic to fish. High nitrate levels in drinking water can be toxic to humans.

Bacteria, viruses, and parasites found in animal waste can increase the risk of waterborne diseases. Fecal coliform bacteria are used as a biological indicator to determine water quality impact. In fresh water, high fecal coliform levels can cause a threat to public health and restrict beneficial uses, such as recreational, industrial, domestic, and agricultural use of the water. In marine water, high fecal coliform levels necessitate the closure of shellfish beds restricting recreational use and causing adverse economic impact to shellfish growers.

1.4 Why is a permit needed?

Previously, ODA administered a WPCF general permit issued by the DEQ and issued individual WPCF permits as necessary. Most Oregon CAFOs are registered to the WPCF general permit. The federal Environmental Protection Agency (EPA) has since directed that concentrated AFOs must be covered under an NPDES permit instead of the WPCF permit. Federal regulations adopted in February 2003 now clarify application requirements and impose upon most concentrated AFOs an affirmative duty to apply for a Clean Water Act (CWA) NPDES permit. Because WPCF permits cannot provide CWA authorization for many CAFO discharges, this permit will replace the existing WPCF CAFO general permit. In addition, the 2001 Oregon Legislature, through House Bill 2156, has directed ODA to seek delegated authority from the federal Environmental Protection Agency (EPA) to administer an NPDES program for CAFOs in accordance with the Clean Water Act (CWA).

1.5 Why is a general permit being issued?

Section 301(a) of the CWA provides that discharge of pollutants is unlawful except in accordance with an NPDES permit. Although such permits have been issued to individual operators, EPA's regulations authorize the issuance of "general permits" to categories of discharges when the point sources responsible for the discharge are located within the same geographic area and warrant similar pollution control measures; involve the same or substantially similar types of operations; discharge the same type of waste; require the same effluent limitations or operating conditions; require the same or similar monitoring requirements, and in the opinion of the permitting authority are more appropriately controlled under a general permit than under individual permits.

The use of a general permit for regulating Oregon CAFOs is appropriate because the waste characteristics from different CAFOs are substantially similar. In addition, the effluent limitation guidelines, best management practices and other requirements for CAFOs covered by this general permit are similar as well.

1.6 When is an individual permit necessary?

Any CAFO required to obtain coverage under this general NPDES permit may request issuance of an individual permit. Most facilities will be sufficiently regulated under this general permit; however, the director may decide that a particular operation must be covered by an individual permit. Pursuant to

Oregon Administrative Rule (OAR) 340-045-0033(9), situations where an individual permit would be required include:

- The discharge or activity is a significant contributor of pollution or creates other environmental problems;
- The operator is not in compliance with the terms and conditions of the general permit, submitted false information, or is in violation of any applicable law;
- A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;
- New effluent limitation guidelines are promulgated for point sources covered by this general permit and the guidelines are not already in the permit; or
- Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

1.7 Permitting options in designated groundwater management areas

Permitting options for CAFOs in groundwater management areas will be evaluated on a case-by-case basis. ODA expects that a majority of these operations will be adequately regulated by the general permit. In situations where a CAFO might affect groundwater quality, additional monitoring requirements may be required under the general permit or an individual permit may be required. CAFOs, including those in groundwater management areas, will need to submit an *Application to Register* discussed further in Section 2.3, p. 6.

2.0 Discussion of Proposed Permit

2.1 Outline of permit

The proposed NPDES permit is organized with a face page, a table of contents, and several pages of conditions. Special Conditions are followed by General Conditions. The Special Conditions are unique and particular to this CAFO permit, whereas the General Conditions are required in all NPDES permits.

2.2 Who needs a permit?

Any person who engages in, operates or conducts an animal feeding operation that meets the definition of a ***confined animal feeding operation*** is required to obtain coverage under this general permit, with some exceptions. Facilities that are not otherwise subject to regulation under the CWA (33 USC § 1342) and that confine for four months or less or that do not have wastewater treatment works are not required to have permit coverage.

Also, other operations that may under certain circumstances or in the future meet the definition of a confined animal feeding operation may opt for coverage under this permit. If such operations elect coverage they become subject to all terms and conditions of the permit.

Facilities subject to regulation under 33 USC § 1342 are those that meet the federal definition of a ***concentrated animal feeding operation***. To be a ***concentrated animal feeding operation***, one must first

be an **animal feeding operation (AFO)**. Under federal law, AFO means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period,
and
- Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Concentrated animal feeding operation pursuant to 40 CFR §122.23 [68 FR 7176 (2/12/03)] means an **animal feeding operation** that meets the criteria below, or which has been designated by the director as a significant contributor of pollution. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

An **animal feeding operation** is a large or medium **concentrated animal feeding operation** for purposes of federal law if it meets the following criteria:

An AFO is defined as a Large concentrated AFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

- (i) 700 mature dairy cows, whether milked or dry;
- (ii) 1,000 veal calves;
- (iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- (iv) 2,500 swine each weighing 55 pounds or more;
- (v) 10,000 swine each weighing less than 55 pounds;
- (vi) 500 horses;
- (vii) 10,000 sheep or lambs;
- (viii) 55,000 turkeys;
- (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (x) 125,000 chickens (other than laying hens) if the AFO uses other than a liquid manure handling system;
- (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- (xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or
- (xiii) 5,000 ducks (if the AFO uses a liquid manure handling system)

An AFO is defined as a Medium concentrated AFO if the type and number of animals that it stables or confines falls within any of the following ranges:

- (i) 200 to 699 mature dairy cattle, whether milked or dry;
- (ii) 300 to 999 veal calves;
- (iii) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- (iv) 750 to 2,499 swine each weighing 55 pounds or more;
- (v) 3,000 to 9,999 swine each weighing less than 55 pounds;
- (vi) 150 to 499 horses;
- (vii) 3,000 to 9,999 sheep or lambs;
- (viii) 16,500 to 54,999 turkeys;
- (ix) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (x) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

- (xi) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system);
 - (xii) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or
 - (xiii) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and
- either one of the following conditions is met:
- 1. pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or
 - 2. pollutants are discharged directly into waters of the United States that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

An AFO is a Small *concentrated AFO* if it is designated as a *concentrated AFO* and is not a Medium or Large *concentrated AFO*.

The state definition of *confined animal feeding operation (CAFO)* in OAR 603-074-0010(3) means

- (a) The concentrated confined feeding or holding of animals or poultry, including but not limited to horses, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms
 - (A) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or
 - (B) That have wastewater treatment works; or
 - (C) That discharge any wastes into waters of the state; or
- (b) An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR §122.23 [68 FR 7176 (2/12/03)].

The federal definition identifies the acronym "CAFOs" as *concentrated* animal feeding operations, whereas the state definition refers to *confined* animal feeding operations. Because the state definition includes those operations meeting the federal definition [OAR 603-074-0010(3)(b)], the term *confined animal feeding operation* is used in this permit to describe both federal and state defined CAFOs. This means that any *concentrated animal feeding operation* is a *confined animal feeding operation* under Oregon law.

Any *confined animal feeding operation* that confines for more than four months and has waste water treatment works is required to obtain coverage under the permit. Operations that confine for four months or less or operations that do not have wastewater treatment works are not required to obtain permit coverage. Oregon Revised Statutes (ORS) 468B.215(2). Any operation meeting the federal definition of *concentrated animal feeding operation*, however, must obtain coverage under this permit regardless of the length of confinement or existence of wastewater treatment works.

Waste water control facility is defined in the permit to mean a "disposal system" or "treatment works" as defined in ORS that may cause pollution of surface water or groundwater and is used for collecting, conveying, treating, stabilizing or storing manure, litter, process waste water, or contaminated production area drainage (i.e., silage leachate, contaminated storm water runoff, etc.) at confined animal feeding operations.

Confinement area is defined in the permit as part of the *production area* and includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. EPA reiterates in the preamble to the revised rules that pasture and rangeland are not part of the confinement area; "in some pasture based operations, animals may freely wander in and out of particular areas for food or shelter; this

is not considered confinement.” However, pasture and grazing-based operations may also have confinement areas, such as feedlots, barns, and pens.

The *production area* is defined to include not only the confinement area, but also the manure storage area, the raw materials storage area, and the waste containment areas. The manure storage area includes, but is not limited to, lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment areas include, but are not limited to, settling basins, and areas within berms and diversions, which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of animal mortalities.

2.3 *Application to Register (ATR)*

All persons required to have coverage under this permit must submit an *application to register (ATR)* to the permit. The proposed schedule complies with the changes made to the EPA regulations that were published on February 12, 2003. The schedule is as follows:

- All newly constructed CAFOs
Newly constructed CAFOs, including “new sources” must submit an ATR at least 180 days prior to the time that the CAFO commences operation.
- Existing CAFOs that met the previous definition of concentrated AFOs:
CAFOs that were defined as *concentrated* under federal regulations in effect prior to April 14, 2003, must submit an ATR immediately.
- Existing CAFOs newly defined as concentrated AFOs as of April 14, 2003:
CAFOs that met the federal definition of *concentrated* as of April 14, 2003, that were not defined as *concentrated* in federal regulation prior to that date must submit an ATR by a date specified by the director, but no later than February 13, 2006.
- Existing CAFOs that become defined as concentrated AFOs after April 14, 2003:
CAFOs that become defined as *concentrated* after April 14, 2003, must submit an ATR within 90 days after becoming defined as a CAFO unless the change in operation that causes the AFO to be defined as a *concentrated* AFO would not have caused it to be defined as a *concentrated* AFO prior to April 14, 2003.
- All other existing CAFOs that are not concentrated AFOs:
Other existing CAFOs that are not *concentrated* AFOs covered by this permit must submit an ATR within 90 days of notification by the director that permit coverage is required.
- AFOs designated by the director:
AFOs designated by the director must submit an ATR by a date specified by the director but no later than 90 days after receiving notice of the designation.

The ATR form will be provided by ODA. Applicants must provide the following information:

- (a) Name and address of applicant and name of owner, if different
- (b) Information about the corporate structure of the applicant and owner

- (c) Facility information, including name, address, and latitude and longitude of production area or entrance to production area;
- (d) Identity of receiving streams;
- (e) A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area;
- (f) Specific information about the number and type of animals, whether in open confinement and housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
- (g) The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other), and total capacity for manure, litter, and process wastewater storage (tons/gallons);
- (h) The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;
- (i) Estimated amount of manure, litter, and process wastewater generated per year
- (j) Estimated amount of manure, litter, and process wastewater transferred to other persons per year (tons/gallons); and
- (k) For CAFOs that must apply to register after December 31, 2006, certification that a waste management plan has been completed and will be implemented upon the date of permit coverage.

Applicants must certify that all of the information provided was properly gathered and evaluated by the applicant and is true, accurate and complete.

2.4 Notification of registration (General Permit Summary)

Once an *application to register* (ATR) is received, evaluated, and approved by ODA, a notice of registration entitled *Notice of Registration and Oregon CAFO General Permit Summary* will be issued to the applicant. The *Notice of Registration and Oregon CAFO General Permit Summary* will contain the operation name, address, and contact information as provided to the department. It will include the effective date of registration, maximum number of animals the operation is permitted to allow at the facility based on the information provided in the ATR, and regulatory status of the CAFO (e.g., whether the CAFO is considered a Large or Medium *concentrated* animal feeding operation, state CAFO, etc.). The *Notice of Registration and Oregon CAFO General Permit Summary* also provides a summary of permit terms and conditions to be used as a quick reference guide for registered operators.

2.5 Cancellation of coverage

A registrant may request that coverage under this permit be cancelled, providing certain criteria are met:

- Conditions or standards have changed so that the source or activity no longer qualifies for general permit coverage;
- The facility no longer has animals on site and waste storage facilities have been properly decommissioned; or
- The registrant certifies that it will not commence operations at the same location without making a new application for registration under this permit or applies for an individual permit.

The department will respond to a written request for cancellation by conducting a site inspection and a review of the operator's file. A written determination on the request will be provided to the registrant after due consideration by the department.

2.6 *Discharge limitations and prohibitions*

The general permit prohibits the discharge of process wastes to surface water or groundwater except as allowed by federal regulation and provided the discharges during these exception events do not cause or contribute to a violation of state water quality standards. See Section 2.7 and 2.8, pp. 8 and 9. **Discharge** is defined in the permit to mean:

- The discharge of a pollutant;
- Any addition of any pollutant or combination of pollutants to waters of the state from any point source;
- A discharge of pollutants into waters of the state through a manmade ditch, flushing system or similar manmade conveyance, or
- The application of process wastes to land not consistent with the times and/or rates specified in the waste management plan in a manner that is likely to result in contamination of waters of the state.

Types of discharges that are prohibited include contaminated runoff from confinement areas or waste accumulation areas; overflow from waste storage facilities; discharges due to improper land application from surface drains, field tile outlets, or seepage below the root zone. Also prohibited are discharges due to equipment failure or leakage or seepage from the production area in excess of the approved design. Any storage or application of wastes that results in contamination of surface or ground water is expressly prohibited.

Direct animal contact with surface waters in the *production area* of the CAFO is prohibited. *Direct contact* means any situation where animals in the production area have free access and are allowed to loiter or drop waste in surface waters. Direct animal contact with surface waters by animals on pasture or rangeland is not, by itself, a violation of the permit.

Production area is defined in the permit to mean that part of the facility that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions, which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of animal mortalities

2.7 *Production area limitations*

All operations must comply with the effluent limitation guidelines in 40 CFR §412 and 40 CFR §§122, 123 and 412 [68 FR 7176 (2/12/03)]. These include requirements for applicable control technologies, performance standards, pretreatment standards, additional measures required for manure, litter, and process wastewater management at CAFOs.

There are several production area limitations proposed in the general permit. The first two prohibit discharge to surface water except when rainfall events cause an overflow of process waste water from a facility designed, constructed, operated, and maintained to contain all process-generated waste water plus the runoff and direct precipitation from a 25-year, 24-hour rainfall event (as defined by the National

Weather Service). For new source swine, poultry, and veal large concentrated AFOs, facilities must be designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 100-year, 24-hour rainfall event for the location of the facility. This means that if a facility is designed, constructed, operated, and maintained according to these requirements, a discharge from the facility would not automatically be a permit violation provided it does not cause or contribute to an instream violation of state water quality standards. However, if the facility is designed correctly, but not properly managed, such a discharge may be considered a permit violation. It is not enough to have the facility constructed and designed correctly; it must be managed and maintained correctly as well. This means operators must be vigilant in assuring that the waste management system is sufficient and operating properly in order to comply with the permit conditions.

In addition, all authorized discharges from the production area must be properly land applied or otherwise handled in a way that minimizes impacts on surface water or groundwater of the state, and seepage to groundwater from waste storage or animal confinement facilities must not exceed design rates as approved by ODA or violate state groundwater quality protection standards.

New source swine, poultry, and veal large concentrated AFOs

EPA has determined that designs for the 100-year, 24-hour storm are "technologically feasible and will not pose a barrier to entry" into the swine, poultry and veal industry. EPA found that it is common for such operations to construct facilities that keep animals in total confinement (covered housing) that is not exposed to rainfall or storm water runoff. In addition, many new operations are based on manure handling systems that greatly reduce or eliminate water use, such as hog and poultry high-rise houses, or that contain manure in covered or indoor facilities, such as underhouse pit storage systems and litter storage sheds. New facilities may also choose flush systems with lagoons that are covered or sited and designed to achieve total containment.

2.8 Land application limitations

There are several requirements for land application. When applying wastes, the operator must apply at agronomic rates in accordance with proper agricultural practices. If a waste management plan has been approved by ODA, applications must also be performed as specified in that plan. Waste applications must not exceed the capacity of the soil and crops to assimilate nutrients and minimize water pollution, must be quantifiable (based on nutrient testing of wastes, soils, and crops), must be based on the most limiting nutrient (e.g., nitrogen or phosphorus), and must account for all other nutrient sources.

In addition, discharges to groundwater due to seepage below the root zone of the crop or by other means must not violate state groundwater quality protection, and if discharge to surface water or groundwater sources will result, application to flooded, saturated, frozen or snow covered land is prohibited. Land application of wastes or wastewater during rainfall events that are expected to result in saturated soils or surface runoff is prohibited.

2.9 Direct access by animals to surface water in the production area

Direct animal contact with surface waters of the state in the production area of a CAFO is prohibited. Animals that graze on rangeland and come into contact with surface waters while grazing is not prohibited by the permit.

2.10 Waste storage facilities

The facility must have the capacity to store liquid and solid wastes at all times so that land application occurs only during periods when soil and weather conditions allow for agronomic application and are in compliance with the land application effluent limitations as described in Section 2.8 above. While the permit does not require a minimum amount of storage for any facility, it is required that the facility be managed in such a way so that the storage available is sufficient to prevent over application, runoff or discharge. The permittee with a Large *concentrated* AFO must also have depth markers in all surface impoundments to indicate the maximum design volume, minimum capacity necessary to contain the applicable rainfall event, and the depth of manure and process waste water.

All waste storage facilities constructed after the effective date of this permit that are required to be addressed in a new or updated waste management plan must be sited, designed, constructed, operated and maintained consistent with the waste management plan developed as provided in the permit.

New and modified construction of waste facilities likewise must be sited, designed, constructed, operated and maintained consistent with the waste management plan and must comply with the terms and conditions outlined in OAR 603-074-0018.

All facilities are subject to the provisions of OAR chapter 340, division 51, relating to the use of best practicable waste control technology and review and approval of facility location, design, construction, operation and maintenance.

The department will accept design and post-construction certification by a licensed engineer for:

- Earthen impoundments (e.g., ponds, basins and lagoons with permeable or impermeable liners)
- Earthen conveyances (e.g., ditches)
- Animal holding areas (e.g., lots, pens, exercise yards, alleys, and earthen-floored buildings within the production area)
- Primary storage structures for liquid and solid manure (e.g., concrete or steel tanks, earthen- or concrete-surfaced solid manure storage facilities). A primary storage structure is any storage structure intended to hold an operation's waste for a period of five or more days.

For facilities intending to use experimental or unproven treatment methods or technology, design and post-certification by a licensed engineer is not allowed. In these cases, the operator must contact the department prior to construction for approval on a case-by-case basis.

For all other modifications or new construction, no approval will be required. However, any such modification or construction must be described in the current, approved waste management plan, or a revised plan must be prepared and submitted to the department for approval prior to construction.

2.11 Prevention of system overloading

The permittee may not increase the number of animals over 10% or 25 animals, whichever is greater, of the maximum number assigned by ODA in the *Notice of Registration and General Permit Summary* until an updated plan is approved in writing by ODA. In addition, animal numbers must not exceed the capacity of the waste storage facilities or the maximum number of animals assigned by ODA.

2.12 Handling of animal mortalities

The permittee must not dispose of animal mortalities in liquid manure or waste water control facilities. Animal mortalities must be handled in such a way as to prevent discharge of pollutants to surface water or groundwater.

2.13 Proper operation and maintenance

The permittee must at all times properly operate and maintain all facilities and systems used for process waste collection, storage and utilization, and correct any deficiencies found as soon as possible.

2.14 Maintain compliance if system fails

The permittee must control all applications and discharges upon reduction, loss or failure of the waste storage or utilization facilities until the facilities are restored or an alternative method of storage or utilization is provided. This requirement applies where the primary source of power is reduced, lost, or fails.

2.15 Setback requirement for large concentrated AFOs

EPA developed a setback requirement for Large *concentrated* AFOs. Large *concentrated* AFOs must, in the land application area(s), maintain a setback area within 100 feet of any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters where manure, litter, and other process waste waters are prohibited. As a compliance alternative, and if demonstrated to the satisfaction of the department, the permittee may:

1. Establish a 35-foot vegetated buffer where manure, litter, and other process waste waters are prohibited; or
2. Demonstrate that a setback or vegetated buffer is not necessary or may be reduced.

2.16 Waste management plans

Everyone registered to the permit must develop and implement a waste management plan. Newly constructed and new source CAFOs must submit their plan to ODA with the ATR. Existing CAFOs must submit a current plan upon notification by the department or by July 1, 2006, whichever occurs first. Updates to plans must be submitted to ODA for approval at least 45 days before the facility expansion, production increase or process modification is to be implemented unless a different schedule is allowed by ODA in writing.

All plans must be implemented upon receipt of notification by ODA or by December 31, 2006, whichever occurs first. The final permit clarifies that the plan may include a schedule for projects, but that absence of a plan or absence of ODA approval of a plan does not allow the permit to violate the provisions of S2 Discharge Limitations and Operating Requirements or other permit requirements.

Permittees must prepare their waste management plan in accordance with the terms and conditions of the permit and guidelines contained in OAR chapter 340, division 51 and chapter 603, division 74. In addition, plans must conform to the Natural Resource Conservation Service (NRCS) conservation practice standard guidance 590 for Oregon, dated May 2001, and entitled *Nutrient Management*. ODA will accept plans from NRCS-certified Comprehensive Nutrient Management Plan (CNMP) writers and may approve such plans without review.

Basic elements of a plan include:

- An inventory of animals, facilities, and lands, including lands owned or leased and lands available for land application, whether on- or off-site;
- Drawings and maps showing all facilities and lands;
- Calculations of required and necessary storage capacity;

- Calculations of volumes and nutrient contents of generated wastes and wastewater;
- Guidelines for land application of wastes and wastewater;
- Operation and maintenance guidelines;
- Monitoring and record-keeping guidelines;
- Plans and specifications for proposed new or modified waste handling facilities.

To the extent applicable, the waste management plan must also:

- Ensure adequate collection, handling, and storage of manure, litter and process wastewater;
- Include procedures to ensure proper operation and maintenance of the storage facilities;
- Ensure proper management of animal mortalities to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- Ensure that clean water is diverted, as appropriate, from the production area;
- Prevent direct contact of confined animals with waters of the United States;
- Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
- Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface water and groundwater;
- Establish protocols to land apply manure, litter or process waste water in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process waste water. For Large *concentrated* AFOs, these protocols must be based on actual testing data. For other CAFOs, data or "book values" from established reference sources (e.g., Oregon Animal Waste Management program) may be used instead of actual testing;
- For Large *concentrated* AFOs, also identify protocols for appropriate testing of manure, litter, process waste water, and soil. For other CAFOs, identify the references used instead of actual testing data or test protocols if testing; and
- Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.

The need for additional or alternative plan information will be established on a case-by-case basis for plans required as part of a corrective order, or to account for extraordinary circumstances. The level of detail of information required in the various plan sections will depend on the size, complexity, and other specifics of each CAFO.

Waste management plans must show, when applicable, how the CAFO will achieve an agronomic balance of nutrients land-applied with nutrients removed in harvested crops. ODA will typically require an agronomic balance for nitrogen, but in some cases for phosphorus. Phosphorus balance will be required when the CAFO is within a watershed that has been designated by the state as water quality limited for phosphorus, and when the NRCS phosphorus index for the land application soils is exceeded.

Once the plan has been submitted to and approved by ODA, the facility must be managed in compliance with the plan at all times. The application of process wastewater more frequently than specified in the waste management plan or at a concentration in excess of plan specifications or at times not specified in the waste management plan will constitute a violation of the permit.

2.17 Monitoring requirements

Discharge Monitoring

Any discharge or runoff that is not allowed by the permit must be recorded and reported to the department. The record must contain a description and cause of the discharge; the period of discharge, including exact dates, times, and duration of discharge; an estimate of the volume of the discharge; name or location of receiving water, and corrective steps taken to reduce, eliminate or prevent recurrence. In the event a discharge occurs, the department must be notified within 24 hours of the event. A written report must be submitted to the department within five days. In the event of equipment failure, the department must be notified within 24 hours.

Analytical Monitoring

At least once during the term of this permit, the permittee must collect and analyze representative soil samples for phosphorus and nitrogen content from all fields where manure, litter, and other process waste waters are applied. The testing is a requirement of NRCS *Nutrient Management* conservation practice guidance 590 and the results from this testing will assist the permittee in developing the waste management plan. The permittee with a Large *concentrated* AFO must also collect and analyze manure, litter, and other process waste waters annually for nutrient content, including nitrogen and phosphorus.

2.18 Inspection requirements

Permittees are required to conduct inspections to ensure proper operation of activities associated with waste management at the production and land application areas. The permittee must:

- Periodically inspect of all storm water diversion devices, runoff diversion structures, animal waste storage structures, and devices channeling contaminated storm water to the waste water and manure storage and containment structure. The permittee with a Large *concentrated* AFO must conduct and record these inspections weekly.
- Periodically inspect water lines, including drinking water or cooling water lines. The permittee with a Large *concentrated* AFO must conduct and record these inspections daily.
- Periodically conduct leak inspections of equipment used for land application of manure, litter, or process waste water. The permittee with a Large *concentrated* AFO must record the results of these periodic inspections.
- The permittee with a Large *concentrated* AFO must inspect liquid impoundments for manure and process waste water on a weekly basis and record the depth of manure and process waste water in those impoundments as indicated by the depth marker.

Any deficiencies found as a result of these inspections must be corrected as soon as possible. The permittee with a Large *concentrated* AFO must record any actions taken to correct these deficiencies and, if deficiencies are not corrected within 30 days, provide an explanation of the factors preventing immediate correction.

2.19 Record keeping requirements

All required records must be kept and maintained at the facility for a period of five years, and must be available to ODA upon request.

Upon approval of the waste management plan, the permittee must record and maintain the following

information at the facility for at least five years and make this information available to the department upon request. If any of the following information is provided in the permittee's waste management plan, a separate record keeping effort is not required.

- Expected crop yields.
- Date, amount, and nutrient loading of manure, litter, or process waste water applied to each field;
- For large CAFOs, weather conditions at the time of application and 24 hours before and after application;
- Explanation of the basis for determining annual manure application rates, as provided in the technical standards established by the department;
- Calculations showing the total nitrogen and phosphorus to be applied annually to each field, including sources other than manure, litter, or process waste water;
- Total amount of nitrogen and phosphorus actually applied annually to each field, including documentation of calculations of the total amount applied;
- Method(s) used to apply the manure, litter, or process waste water; and
- Total amount of manure or waste water transferred to other persons. For large CAFOs, include the date and amount of each transfer and the name and address of each recipients.

In addition to the requirements above, the Large *concentrated* AFO must also keep records of animal mortalities management and practices. This record keeping requirement begins when the Large *concentrated* AFO obtains general permit coverage.

2.20 24-hour reporting requirement

As discussed previously in Section 2.17 Monitoring Requirements, p. 13, if a discharge to surface water or groundwater occurs that is not allowed by the permit, the permittee must notify ODA within 24 hours of the discharge. The permittee must also submit a written report within five days to ODA. The information to be submitted is listed in Section 2.17. The permittee must also report to ODA within 24 hours of becoming aware of any significant physical failure at any time of a waste water control facility required under this permit.

2.21 Annual report requirement

All facilities must provide an annual report to ODA. The annual report must be submitted by March 15 of each year. This report may be consolidated and incorporated into the annual inspection process, but the operator has the obligation to create and maintain the record and submit it to ODA unless instructed by the department to do otherwise (e.g., the inspector may collect the report during an annual inspection). The annual report must include the following for the previous calendar year:

- Maximum number and type of animals, whether in open confinement or housed under roof (i.e., beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
- Estimated amount of total manure, litter and process waste water generated by the CAFO (tons/gallons);
- Estimated amount of total manure, litter and process waste water transferred to other persons by the CAFO (tons/gallons);
- Total number of acres for land application covered by the waste management plan developed in accordance with the terms of this permit;
- Total number of acres under control of the CAFO that were used for land application of manure, litter and process waste water in the previous 12 months;

- Summary of all manure, litter and process waste water discharges from the production area that have occurred, including date, time and approximate volume; and
- If the CAFO has a current waste management plan, a statement indicating whether the current version of the CAFO's waste management plan was developed or approved by a certified waste management planner.

2.22 *Manure, litter, or process waste water transfers*

Federal regulations require that prior to transferring manure, litter, or process waste water to other persons, Large concentrated AFOs must provide the recipient of manure, litter, or process wastewater with the most current nutrient analysis available.

2.22.23 *Additional monitoring*

Specific monitoring requirements may be established on a case-by-case basis for certain facilities, such as those located in groundwater management areas, or those that have been issued a corrective order relating to waste management. ODA may establish these requirements by administrative order.

2.23.24 *General conditions*

General conditions are standard permit conditions required by 40 CFR §122.41 and 122.42 in every NPDES permit and are not repeated in this fact sheet. The applicable general conditions have been detailed in the permit, but the remaining conditions have only been referenced because they are not directly applicable to this permit or are stated elsewhere in the permit. (Note: The reference is required by federal regulation.)

3.0 Environmental Concerns

3.1 *Antidegradation policy review*

The antidegradation policy in OAR 340-041-0026 requires that degradation of existing water quality be prevented unless necessary for economic and social benefit. DEQ has determined that issuance of the NPDES CAFO general permit is consistent with the antidegradation policy and will not degrade existing water quality because: 1) it is replacing an existing general permit and is not considered a new or increased discharge load; 2) it prohibits discharge in most cases, and when discharges are allowed, they must not cause or contribute to a violation of state water quality standards, and 3) there is no on-going discharge.

The NPDES CAFO general permit will be replacing an existing WPCF general permit for CAFOs (WPCF #800). The proposed NPDES permit continues to prohibit the discharge of process wastes to surface waters except when rainfall events cause an overflow of process waste water from a facility designed, constructed, operated, and maintained to contain all process-generated waste water plus the runoff and direct precipitation from a 25-year, 24-hour rainfall event. (For new source swine, poultry, and veal large concentrated AFOs, facilities must be designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 100-year, 24-hour rainfall event for the location of the facility.) This is essentially a "no discharge" technology-based effluent limit required by the federal EPA.

3.2 *Antidegradation policy: Special policies and guidelines (OAR 340-041-0470)*

To preserve or improve the existing high quality water for municipal water supplies, recreation and preservation of aquatic life in the Clackamas River, McKenzie River (above Hayden Bridge) and North Santiam River subbasins, OAR 340-041-0470 *Special Policies and Guidelines* prohibits new or increased waste discharges in these subbasins.

As discussed in the previous section, the proposed NPDES CAFO general permit is replacing the WPCF CAFO general permit. Existing CAFOs currently registered under the WPCF permit will be transferred to the NPDES general permit. OAR 340-041-047(4) allows renewal or transfer of permits within these three basins provided there is no increase in discharge load. Since the proposed permit requires that wastes be irrigated on land at agronomic rates and discharge is essentially prohibited, there will be no environmentally significant increase in discharge load. New CAFOs also will be allowed to register under the proposed general permit provided that their waste loads are irrigated on land at agronomic rates, which is not considered an increase in wasteload pursuant to OAR 340-041-0470(4)(c).

3.3 *Total maximum daily loads (TMDLs)*

OAR 340-045-0035(3) requires DEQ to explain whether the NPDES CAFO general permit allows the discharge of pollutants that affect parameters for which a waterbody may be water quality limited under Section 303(d)(1) of the Clean Water Act, and if so, how the department can allow these permittees to discharge these pollutants to these waterbodies.

The CAFOs to be covered by this general permit have the potential to discharge to a variety of receiving streams. Many of these streams are listed as water quality limited for dissolved oxygen and temperature and many for bacteria. While CAFOs have the potential to discharge a variety of pollutants as discussed in the previous section, the CAFO general permit only allows the discharge of waste or wastewater to surface waters when rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewater plus the runoff from a 25-year, 24-hour storm event (100-year, 24-hour storm event for swine, poultry, and veal calf operations). In addition, the general permit does not allow discharges that will cause or contribute to the violation of water quality standards.

The Department does not expect waterbodies to fail to meet water quality standards as a result of CAFO discharges during large rainfall events because of high flows in the receiving waterbody and the diluted nature of the wastewater at the time of discharge. Discharges are also not expected during summer months (when waterbodies are typically limited for these parameters) because of fewer rain events.

Permit coverage under the NPDES CAFO general permit may be terminated if TMDLs are established and a CAFO's discharge during large rainfall events is determined to be a contributor to a stream that is water quality limited. In these situations, an individual permit or different general permit may be required that would include waste load allocations.

4.0 What Happens Next?

4.1 *Public comment period*

The initial public comment period opened on October 1, 2002 and was scheduled to close on November 15, 2002. However, on December 15, 2002, the administrator of EPA signed revised rules that directly affected *concentrated* animal feeding operations and confined animal feeding operations indirectly. As a result, ODA and DEQ extended the comment period to allow for comments concerning the incorporation of the federal rule changes and additional clarifications into the permit and related documents. The extension ended on February 20, 2003. During this time period, ODA and DEQ held four public hearings and received both written and oral comments on the proposed permit. The departments determined that a second public notice period was warranted since the proposed permit was significantly revised to respond to federal regulation and public comment. This comment period opened on May 1, 2003 and closed on June 6, 2003 at 5 p.m.

4.2 *Public hearings*

Four public hearings during the first comment period were held as follows:

- November 7, 2002 at Eagle Crest Resort, High Desert Room, 1522 Cline Falls Highway, Redmond, Oregon 97556, from 9:00 a.m. until 11:00 a.m.
- November 13, 2002 at the OSU Extension meeting room, 2203 4th Street, Tillamook, Oregon 97141, 7:00 p.m.
- November 14, 2002 in the basement hearings room at ODA, 635 Capitol St. NE, Salem, Oregon 97301, 1:00 p.m.
- February 13, 2003 in conference room D at ODA, 635 Capitol St. NE, Salem, Oregon 97301, 4:00 p.m.

A hearing for the second comment period was held on June 4, 2003, in the basement hearings room at ODA, 635 Capitol St. NE, Salem, Oregon 97301, at 10:00 a.m.

Informational sessions were provided at the beginning of each hearing with the opportunity for the public to ask questions about the permit and proposed rules. Oral and written comments were accepted at the hearings. The public hearings were tape recorded but not transcribed. At the conclusion of the comment periods, the presiding officers prepared a report summarizing all comments received.

4.3 *Response to comments*

In accordance with ORS 183.335(13), no comments were accepted after the deadline for submission of comments. ODA and DEQ received and evaluated comments received during both comment periods. In response to comments, the departments revised the fact sheet and permit evaluation report, permit, and other proposed rules. A response to comments document was also prepared.

The Environmental Quality Commission will consider DEQ and ODA's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is August 14 or 15, 2003. ODA's director will consider ODA's recommendation for rule adoption thereafter.

4.4 *Changes to the fact sheet and permit evaluation report*

This fact sheet was revised to incorporate changes related to the February 2003 revision of the federal CAFO regulations and to provide further clarification to permit terms and conditions. Further revisions were made to this fact sheet and permit evaluation report to respond to comments received during the two comment periods.

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 24, 2003
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item I, Informational Item: City of Portland Combined Sewer Overflow (CSO) Control Program: Presentation by the City on Current Activities August 15, 2003 EQC Meeting

Purpose of Item To provide the Commission with up-to-date information on the status of the City of Portland's implementation of its Combined Sewer Overflow (CSO) control program. Focus will be on major current and up-coming construction activities.

To provide new Commission members with an opportunity to become familiar with this immense and important water quality improvement program.

**Background
Summary**

A large part of the City of Portland is served by a combined sewer system that historically discharged large quantities of untreated sanitary sewage and storm water to the Columbia Slough and the Willamette River during most rain events. Such overflows are a significant public health and water quality concern.

In 1991, the Commission and the City entered into a legal agreement (Stipulation and Final Order, or SFO) which established the framework for a twenty-year CSO control program that would drastically reduce overflow frequency and volume. The agreement was amended in 1994 (the ASFO).

Now just past the halfway point of the program, the City has made significant progress in controlling CSOs. All milestones and requirements of the SFO and ASFO have thus far been met.

The presentation by City staff will summarize accomplishments of the CSO control program thus far, and focus on the design and construction of the control facilities for the Willamette sewer basins. The placement of massive sewage conveyance facilities in a densely developed urban setting and complex geological environment poses great challenges.

Over the course of implementation of the CSO control program, the Department has maintained close coordination with the City on a host of policy, regulatory and technical matters. The Department also provides engineering

review of the sewerage facilities constructed as part of the City's program.

Attachments

- A. DEQ Fact Sheet on Portland CSOs giving additional background information
- B. Summary Report from the City to accompany the presentation
- C. ASFO (included in Commissioners' notebook only)

Available Upon Request

- 1994 ASFO and original 1991 agreement
- CSO Management Plan (City of Portland, 1994), or Executive Summary
- CSO Management Plan Update (City of Portland, 2001)
- Numerous engineering and other technical analyses developed as part of the program

Approved:

Section:

Neil Mullane

Division:

Neil Mullane

Report Prepared By: Richard J. Santner

Phone: 503-229-5219



State of Oregon
Department of
Environmental
Quality

**Northwest Region
Water Quality**
2020 SW Fourth Avenue
Suite 400
Portland, OR 97201-4987
Phone: (503) 229-5263
(800) 452-4011
Fax: (503) 229-6957
Contact:
Richard J. Santner
(503) 229-5219
santner_richard@deq.state.or.us

See also City's Bureau of
Environmental Services
CSO Website at:
www.cleanriverworks.com

Fact Sheet

Portland Combined Sewer Overflow (CSO) Management

Background

For many years, a large part of the City of Portland, about 30,000 acres, has been served by a combined sewer system in which sanitary sewage from homes and businesses, and stormwater from streets, roofs and driveways flow into a single set of sewer pipes. During periods of dry weather, all of the sanitary sewage is delivered by the sewer system to the Columbia Boulevard Wastewater Treatment Plant (CBWTP) for proper treatment and discharge to the Columbia River.

However, almost any time it rains, the inflow of stormwater into the combined sewers causes the capacity of the large interceptor sewers that run along the Willamette River to be exceeded, and a combination of stormwater and untreated sanitary sewage is discharged to the river. (In the past, there were similar frequent CSO discharges to Columbia Slough but these have been virtually eliminated as of December 2000.)

While CSO discharges raise several environmental concerns, the most important is the risk of contracting disease from pathogenic organisms that may be found in raw sanitary sewage. Such risk impairs the beneficial use of waters subject to CSOs for safe contact recreation.

In regulatory terms, the CSO discharges result in violation of the Water Quality Standards established by the Environmental Quality Commission (EQC) for bacteria, floatables and solids, and other pollutants. The Wastewater Discharge Permit issued to Portland by DEQ for the CBWTP expressly prohibits violation of Water Quality Standards by the CSO discharges.

To address these violations, the EQC and Portland entered into a mutually agreed upon enforcement order called a Stipulation

and Final Order (SFO) in August of 1991. The SFO was amended in August 1994.

The Amended Stipulation and Final Order (ASFO) requires that the frequency of CSOs to the Willamette River be drastically reduced by the year 2011. A detailed compliance schedule of implementation milestones is set forth, with stipulated penalties identified for failure to meet the schedule or to attain the level of CSO control required.

Portland complies with CSO Order

The City of Portland has thus far met all CSO compliance schedule milestones set forth in the original and amended versions of the order.

The City has made substantial progress constructing the stormwater inflow reduction facilities that are intended to reduce combined sewage volume. These "Cornerstone Projects" include stormwater infiltration sumps, down spout disconnections, sewer separations and stream diversions.

Construction of the major CSO control facilities for the Columbia Slough sewer basins--the "Big Pipe" and appurtenances--was completed at the end of 2000. Overflows to the Slough will now occur only with the largest storms, averaging about three overflow events per decade.

Construction of the massive CSO control facilities for the west side Willamette River sewer basins is now under way, with completion scheduled for December 2006.

Detailed planning and pre-design for the even larger CSO control facilities for the east side Willamette River sewer basins is well advanced. Construction will begin no later than May 2008, with completion by late 2011.

EQC--Portland CSO chronology

August 1991

The EQC and the City execute original SFO to address permit violations caused by CSOs. SFO requires that CSO discharges to Columbia Slough and Willamette River be controlled except when 10 year return summer storm/5 year return winter storm or larger occur. Development of CSO Management Plan is required.

June 1993

Draft Management Plan is completed. It analyzes facilities and costs needed to meet level of CSO control specified in SFO, and other more and less stringent levels of control for the Willamette River discharges.

November 1993-March 1994

The non-decision making "Collaborative Process" Committee (2 EQC members, 2 City Council members, DEQ Director, a Portland Bureau of Environmental Services senior manager) hold a series of well-attended public meetings to evaluate options identified in the Draft Management Plan. Committee recommends to EQC and City Council that a less stringent level of CSO control than specified in the SFO be adopted for Willamette discharges, but that Columbia Slough control requirement remain as in SFO.

June-August 1994

EQC and Council concur in Collaborative Process Committee recommendation and execute ASFO. CSO control requirement for Willamette is set at 3 year return summer storm and 4-in-year winter storm because it is the most "cost effective" level of control. This reduces estimated overall CSO control program cost from about \$1billion to about \$700million (in 1993 dollars).

December 1994

City completes Final CSO Management Plan, which elaborates on facilities needed to meet ASFO. EQC approves "Schedule and Control Strategy" set forth in Final Plan in April 1995.

January 1996

EQC adopts new "Bacteria Rule" Water Quality Standard which establishes 10 year summer/5 year winter storm prohibition of raw sewage discharges as regulatory standard, but allows EQC to approve less stringent standard for individual CSO systems. DEQ considers prior EQC concurrence in ASFO and Final Management Plan to constitute such approval for Portland's CSOs to Willamette.

1995-2003

1. "Cornerstone Projects" (sewer separations, storm water sumps, down spout disconnections, stream diversions, sewer system inline storage optimization) make significant progress to remove storm water from combined sewer system and reduce volume of CSO discharges.
2. March 1998: NWEA and City settle 1991 citizen lawsuit on CSOs. Terms of settlement include commitment by City to implement ASFO and plaintiffs standing to seek relief from court for City's failure to comply with ASFO schedule.
3. City begins working on a comprehensive Clean River Plan in 1999. It looks at CSO Control Program in that context.
4. In December 2001 City prepares CSO Management Plan Update pertaining to configuration of Willamette sewer basins control facilities.
5. Columbia Slough CSO control facilities completed December 2000. Seven CSO discharge points on the Willamette controlled by December 2001. Construction of major west side Willamette control facilities begun in 2001 with completion in 2006. Construction of major east side control facilities to follow with completion by 2011.

Alternative Formats

Alternative formats of this document can be made available. Contact DEQ Public Affairs for more information (503) 229-5696.



Presentation to the Environmental Quality Commission On Portland's CSO Program Status

Scheduled Date: August 15, 2003, Afternoon Session (setup by 1:00 PM, likely 1:45 – 3:00 PM)

Presentation Purpose

This presentation will inform the members on the Environmental Quality Commission of the progress and current status of Portland's CSO Program. The current construction activities for the Westside Willamette CSO system will be the primary focus. The presentation will also include the status and next steps for the Eastside Willamette CSO system.

Bureau of Environmental Services

Environmental Services is Portland, Oregon's Clean River agency. We treat Portland's wastewater, provide stormwater drainage services, and we work in Portland watersheds to reduce stormwater pollution, restore native vegetation, and improve the quality of water in our rivers and streams. Environmental Services owns and operates more than 2,200 miles of pipes and 93 pump stations that transport sewage to two treatment plants. We provide sewer and stormwater drainage services to more than 500,000 people in an area that covers 85,000 acres

Combined Sewer Overflow

Portland's combined sewer overflow (CSO) system serves about one-third of the City area, primarily the older central core. The combined system was constructed over 100 years ago to collect stormwater runoff combined with sanitary sewage from homes and businesses. During dry periods and small storms, the combined sewage flows through the system to the Columbia Boulevard Treatment Plant where it receives primary and secondary treatment. During moderate and large storms, the amount of stormwater flowing into the system exceeds the capacity of the pipes. The system is designed to relieve the pressure in the pipes by overflowing the excess combined sewage to the river. If the combined system did not overflow, sewage would be forced back up the system and into basements and onto streets.

Portland's Combined Sewer Overflow Program is a 20-year effort to reduce and control CSO to the Willamette River and Columbia Slough by over 96% citywide by December 2011. Today, CSO volumes estimated in 1994 have been reduced by 99% in the Columbia Slough and by more than 40% in the Willamette River system.

Presentation Outline

1. Introductions & Overview of Portland's CSO Program (10 min)

Dean Marriott, Director, Bureau of Environmental Services

- Introduction & Background
- Portland's Combined Sewer Program Components

- 20-Year Schedule & Milestones Since 1991
- Accomplishments
 - Columbia Slough Consolidation Conduit has never overflowed since October 2000
 - All 13 outfalls on the Columbia Slough Controlled to meet ASFO
 - Seven CSO outfalls on the Willamette River have been eliminated
 - On schedule & on-track to meet 2006 and 2011 deadlines

2. Westside Willamette CSO Program – Objectives & Status of Construction Activities
(17 min)

Paul Gribbon, Westside CSO Program Manager

- Overview & Components of the Westside Willamette CSO Program
- Construction Completed and Currently Underway:
 - Tanner Creek Stream Diversion
 - Southwest Parallel Interceptor
 - Westside Big Pipe (Tunnel)
 - CSO Tunnel Shafts
 - Swan Island Pump Station
 - Ground Improvements
- Contract Management
- Costs and Schedule

3. Eastside Willamette CSO Tunnel Predesign Project (8 min)

Tammy Cleys, Eastside CSO Tunnel Predesign Project Manager

- Project Overview
- Project Corridor & Alignment Alternatives
- Final Tunnel Sizing
- Predesign, Design & Construction Schedule

4. Status of Regulatory Issues & Wrap Up (5 min)

Dean Marriott

- Status of EPA Review
- Permitting Allowed CSO Discharges via NPDES Permit
- Meeting Proposed Bacteria TMDL for the Willamette
- Overall CSO Program Costs to Portland Ratepayers

5. Questions & Answers & Discussion (20-30 min)

Enclosed Graphics

- Sample PowerPoint presentation slides
- Westside CSO Projects Map – 11x17 aerial photo-based map of project sites
- Eastside CSO Tunnel Alignments – 11x17 CAD map of the alternative alignment routes

Achievements and Status of Portland's CSO Program

Presented by the
Bureau of Environmental Services to the
Environmental Quality Commission

August 15, 2003

Portland's Combined Sewers

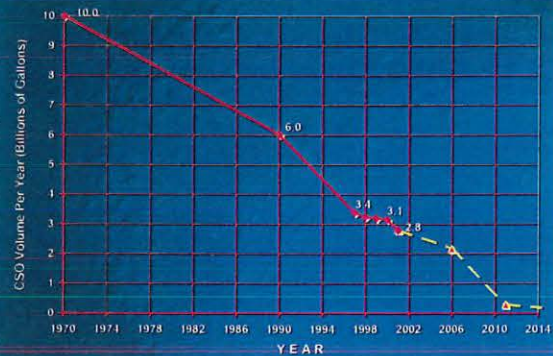
- Combined sewer system serves oldest neighborhoods
- Covers 42 square miles
- 35% of the City area
- 60% of the population



Portland's CSO Program

- Cornerstone Projects
 - Cost-effective stormwater inflow control measures
- Columbia Slough CSO Projects
 - Large storage conduit, pumping and treatment
- Willamette River CSO Projects
 - Deep tunnel storage, pumping and treatment

Portland's CSO Reductions



CSO Program Milestones



Countdown to Control CSO Outfalls

- All 13 Columbia Slough Outfalls controlled by December 2000
- 7 Willamette Outfalls Controlled by December 2001
- Next 16 Willamette River Outfalls by December 2006

West Side CSO Facilities

- Tanner Creek Stream Diversion
- Southwest Parallel Interceptor
- West Side CSO Tunnel - Big Pipe
- Swan Island Pump Station
- CSO Tunnel Shafts

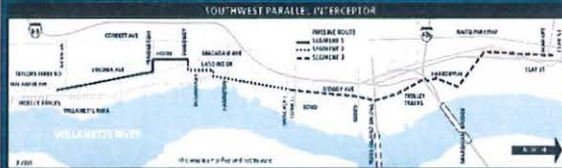


Tanner Creek Stream Diversion

- 5-phase project to separate Tanner Creek stream flow
- Phase 1 - completed in 1998
 - Phases 2 & 5 - completed in 2002
 - Phase 3 - construction tentatively scheduled to start in spring 2004 on Highway 26 from the zoo to SW Jefferson
 - Phase 4 - summer 2003, winter 2004



Southwest Parallel Interceptor



- 6 to 7-foot diameter pipe
- Segment 3 Construction - Fall 2002 to Fall 2004
- 1.5 miles long
- SW Bancroft to SW Clay
- Tunnel construction
- Provides CSO control and new sanitary capacity

West Side Big Pipe

- 14 foot diameter tunnel, 4 miles long, 120 feet deep
- Connects with SW Parallel Interceptor at Clay Street
- Carries CSOs to Swan Island Pump Station
- Runs under Waterfront Park



Swan Island Pump Station

- Will pump sewage from the West Side Big Pipe to the Columbia Boulevard Treatment Plant
- 220 MGD pump station
- 137 foot diameter
- 150 feet deep
- 2 forcemains to Peninsular Interceptor



CSO Tunnel Shafts

- 4 west side shafts at Nicolai, Upshur, Ankeny and Clay streets
- Convey flow from surface diversions to tunnel
- Consolidation of existing outfalls
- Access to tunnel



Nicolai Shaft

- NW Front Av and Nicolai St
- Entry point for 2 tunnel boring machines (TBMs)
- Minimal traffic impacts on NW Front Av.



SW Clay Street Shaft

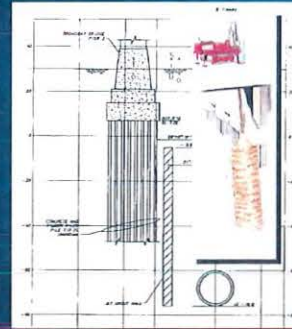
- Preconstruction activity started in April
- One lane closed on SW Naito Parkway and Harbor Drive starting mid June
- Construction complete in 2006



Ground Improvement Schedule

- Steel Bridge: summer 2003 - winter 2004
- Broadway Bridge: winter 2004 - spring 2004
- Burnside Bridge: spring 2004 - fall 2004
- Lane restrictions on Naito Parkway

Ground Improvement

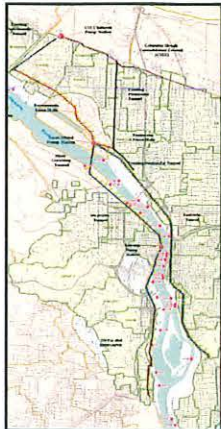


West Side CSO Estimated Costs

■ Tunnel/Shafts	\$158M
■ Swan Island PS	95M
■ SW Parallel Interceptor	26M
■ Peninsular FM/Other Pipelines	<u>14M</u>
■ Total	\$293M

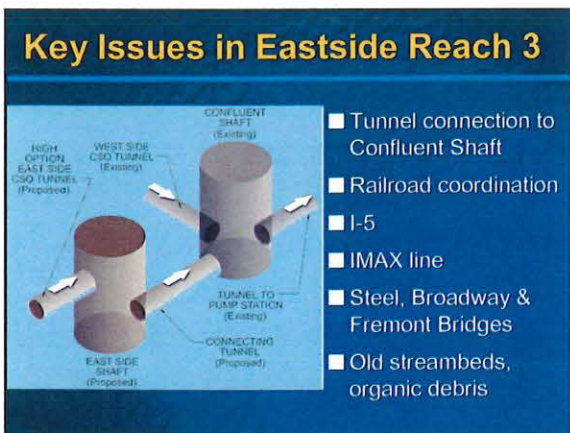
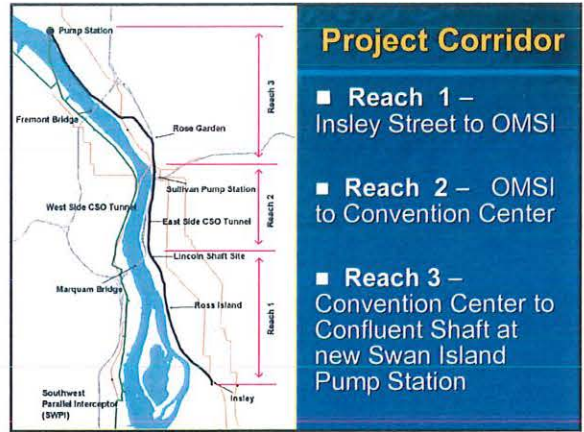
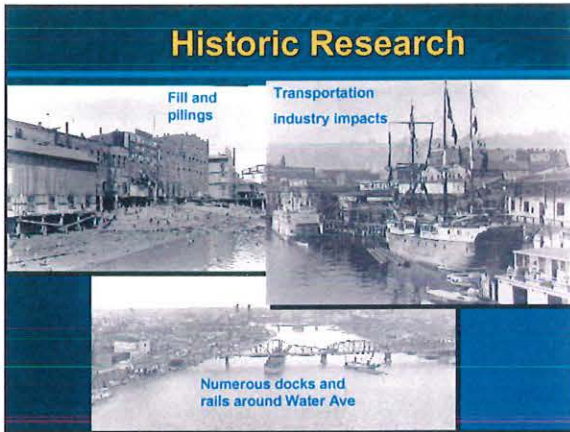
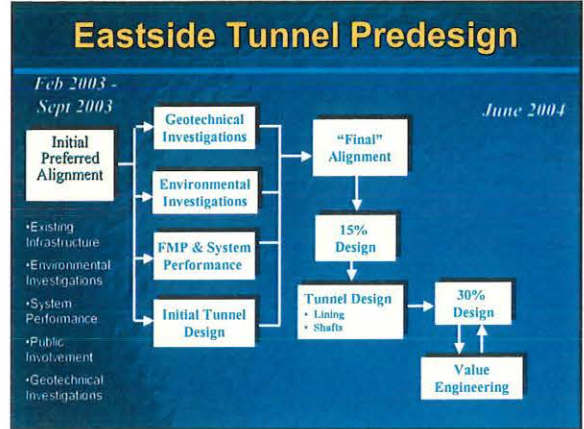
Cost and Schedule Controls

- Material/Equipment/Subcontracts compared against the Estimated Cost
- Bi-monthly invoices compared against cost-loaded schedule
- Monthly reports with cost forecast
- Quarterly Program Audits
















Eastside CSO Tunnel Predesign Project

- Control overflows at remaining 14 CSO outfalls
- Parsons Brinckerhoff, CH2M Hill, Tetra Tech/KCM
- Relieve existing eastside interceptors
- 30,000 lf of 17' to 20' diameter tunnel
- 85' to 150' deep
- Terminus at WCSO Confluent Structure at Swan Island



- ## Wrap Up
- Status of EPA Review
 - Permit for ASFO-Allowed CSO Discharges
 - Proposed Bacteria TMDL for the Willamette
 - Overall CSO Program Costs to Portland Ratepayers

West Side CSO Projects

CSO PROJECT	PROJECT FACTS	SCHEDULE
ROUTE  COMPLETED 	TANNER CREEK STREAM DIVERSION Separating the creek from the sewer pipes, reducing CSOs by about 165 million gallons a year	Four phases completed 1996-2001. Construction of two phases remaining: Phase 3 2003-2004 Phase 4 2002-2003
ROUTE 	TANNER EXTENSION	2004 - 2005
ROUTE  COMPLETED 	WEST SIDE BIG PIPE Tunneling to 120 feet deep and going under the river with a 4 mile long, 14 foot diameter pipe	Tunnel excavation Summer 2003 to Fall 2005. Completion of Big Pipe 2006
SHAFTS 	TUNNEL SHAFTS Provide access to the BIG PIPE and connect sewers to the tunnel	Shaft construction: Nicolai 2002-2006 Upshur 2003-2006 Ankeny 2003-2006 Clay 2003-2006
PUMP STATION 	SWAN ISLAND CSO PUMP STATION	Construction from 2002 to 2006
ROUTE 	BALCH CONDUIT & SHAFT	2004-2007
ROUTE 	PENINSULAR FORCE MAIN	2004-2005
ROUTE  COMPLETED 	SW PARALLEL INTERCEPTOR Nearly 3 miles long connects to the BIG PIPE at Clay Street	Started 2001 to be completed in 2005
ROUTE 	EXISTING PIPELINES	
PROPOSED EAST SIDE ROUTE 	EAST SIDE BIG PIPE Tunneling 150 feet deep, nearly 6 miles long, 17 foot diameter pipe	Construction starts on East Side projects in 2006 to be completed in 2011

For more information call 503-823-2777 or visit www.cleanriverworks.com



TANNER CREEK STREAM DIVERSION PROJECT
Phases 3 & 4 Scheduled For Construction 2002 - 2004

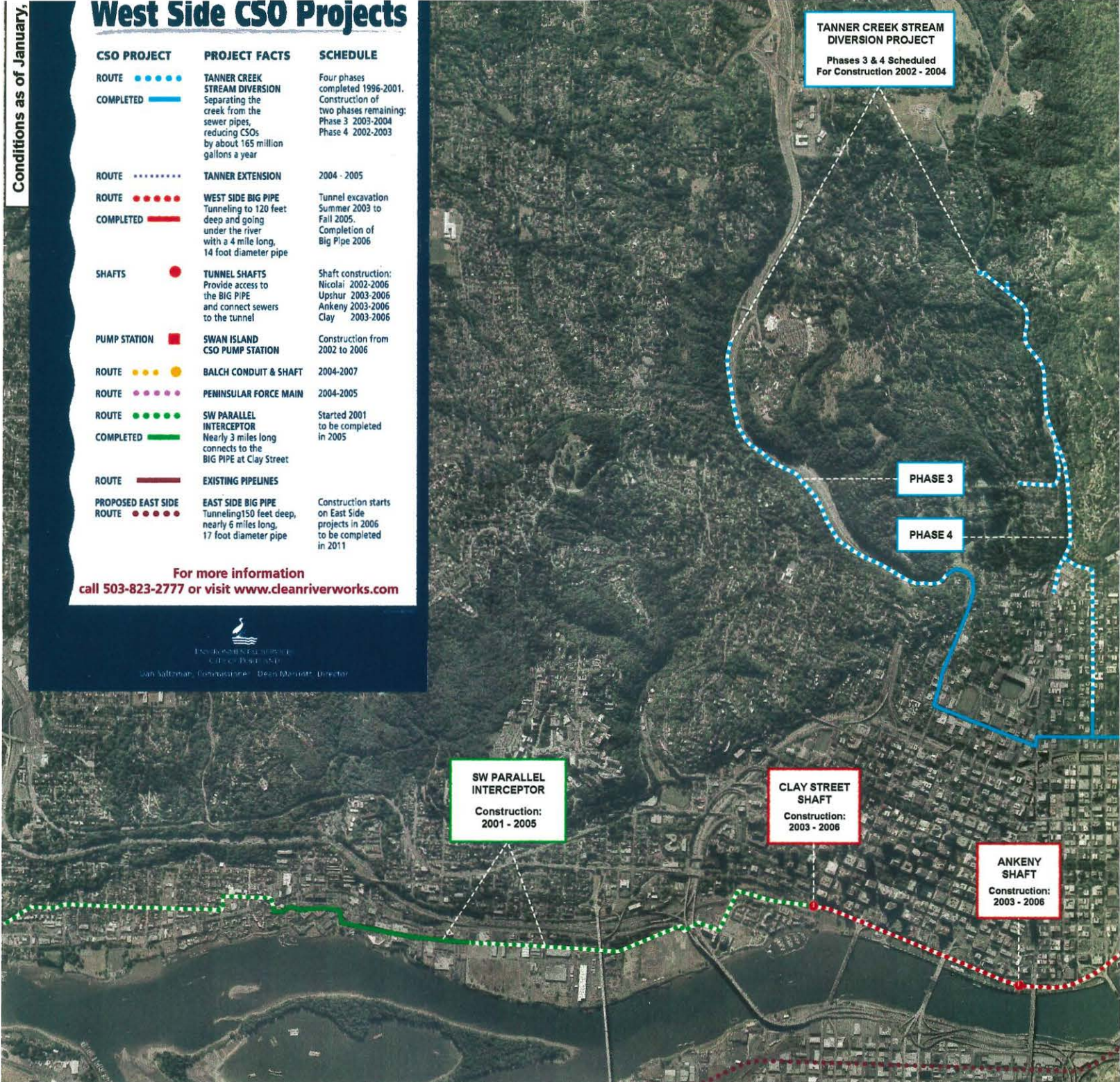
PHASE 3

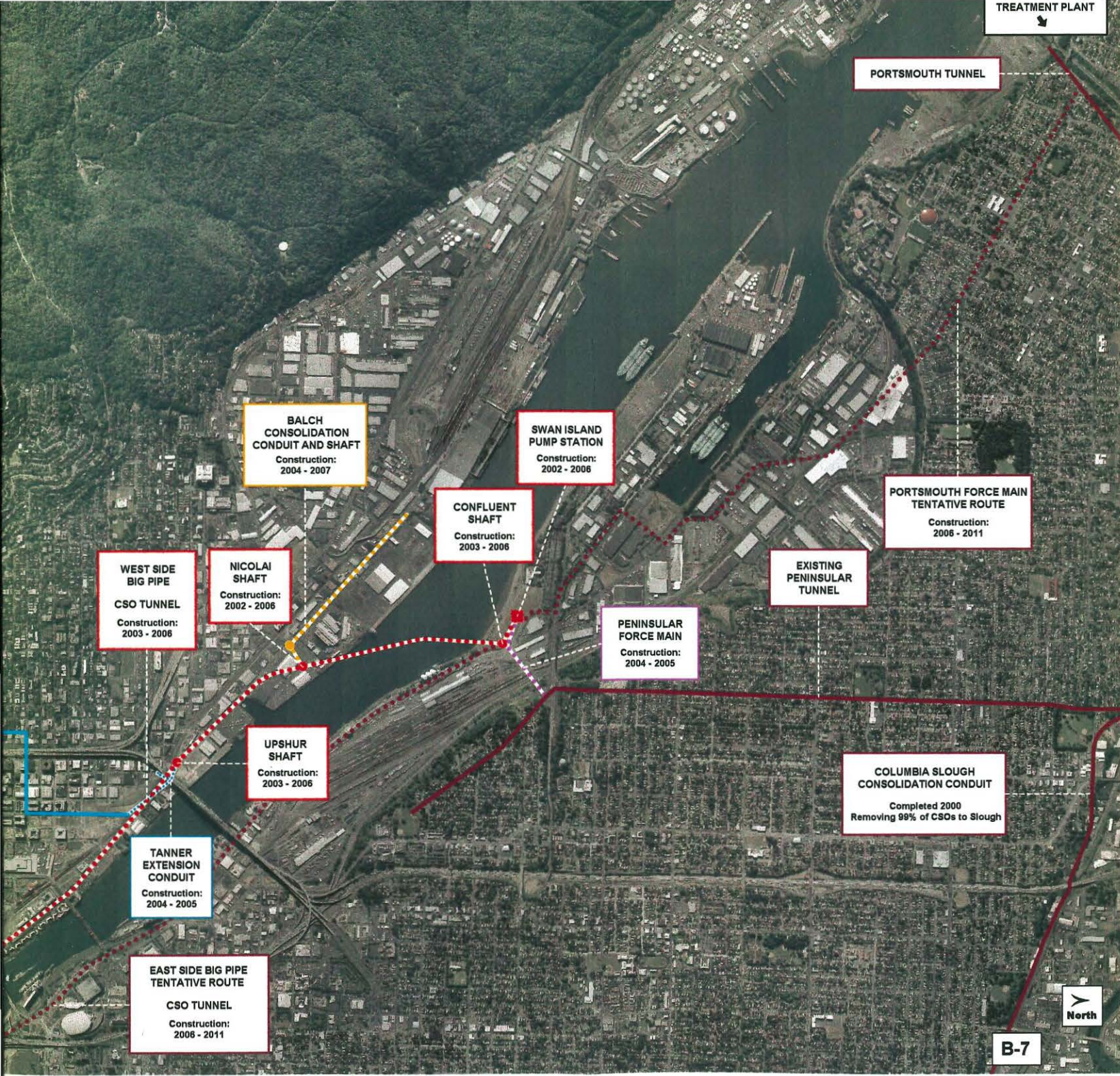
PHASE 4

SW PARALLEL INTERCEPTOR
Construction: 2001 - 2005

CLAY STREET SHAFT
Construction: 2003 - 2006

ANKENY SHAFT
Construction: 2003 - 2006







Reach 1 - Oaks Bottom/Insley to Lincoln

Reach 2 - Lincoln to Glisan

Reach 3 - Glisan to Riverside

**East Side CSO Tunnel
Alignment Alternatives**

ATTACHMENT C:

1994 AMENDED STIPULATION AND FINAL ORDER
(Included in Commissioners notebook only.)

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 DEPARTMENT OF ENVIRONMENTAL QUALITY,)
4 OF THE STATE OF OREGON,)
5 Department,)
6 v.)
7 CITY OF PORTLAND,)
8 Respondent.)
9)

AMENDED STIPULATION
AND FINAL ORDER
No. WQ-NWR-91-75
MULTNOMAH COUNTY

9 WHEREAS:

10 1. On August 5, 1991, the Department of Environmental
11 Quality (Department or DEQ) issued National Pollutant Discharge
12 Elimination System (NPDES) Waste Discharge Permit Number 100807
13 (Permit) to the City of Portland (Respondent), pursuant to
14 Oregon Revised Statutes (ORS) 468B.050 and the Federal Water
15 Pollution Control Act Amendments of 1972, P.L. 92-500, as
16 amended. The Permit authorizes the Respondent to construct,
17 install, modify or operate waste water treatment control and
18 disposal facilities (facilities) and discharge adequately
19 treated waste waters into the Columbia River, Columbia Slough
20 and Willamette River, waters of the state, in conformance with
21 the requirements, limitations and conditions set forth in the
22 Permit. The Permit expires on March 31, 1996.

23 2. Respondent's sewage collection system is comprised in
24 part of combined sewers designed to collect both sanitary sewage
25 and storm runoff water. The combined sewer system is designed
26 and intended to collect and transport all sanitary sewage to

1 Respondent's sewage treatment plant during periods of dry
2 weather; however, during some periods of wet weather, the
3 combined sanitary sewage and storm runoff entering the system
4 exceeds the system's capacity to collect and transport sewage to
5 the sewage treatment plant. At such times, the excess combined
6 sanitary sewage and storm runoff are discharged through bypass
7 pipes, commonly referred to as Combined Sewer Overflows or
8 CSO's, directly to the Willamette River and Columbia Slough,
9 waters of the state, without treatment. Respondent's system
10 includes 54 Combined Sewer Overflows. In addition, Respondent
11 owns and operates sewage pump stations, one of which, the Ankeny
12 Pump Station, may not be capable of pumping all incoming
13 combined sanitary sewage and storm runoff during periods of wet
14 weather. At such times, combined sanitary sewage and storm
15 runoff are discharged from the Ankeny Pump Station directly to
16 the Willamette River without treatment. The discharges of
17 combined sanitary sewage and storm runoff from the Combined
18 Sewer Overflows and the Ankeny Pump Station (Discharges) may
19 cause violations of Oregon's water quality standards for Fecal
20 Coliform bacteria and possibly other parameters in the Columbia
21 Slough and the Willamette River.

22 3. Respondent's prior NPDES permit, issued on September
23 18, 1984, did not expressly identify the combined sewer overflow
24 discharge points that are part of the sewer system. Prior to
25 the development of the Department's final draft 'Oregon Strategy
26 for Regulating Combined Sewer Overflows (CSOs)' on February 28,

1 1991, as a matter of policy the Department did not always list
2 CSO discharge points in an NPDES permit but, in many instances,
3 issued permits for an entire sewer system. EPA's Region 10
4 office approved the issuance of such permits. Respondent's 1984
5 NPDES permit is a permit for the sewer system, which includes
6 CSO outfalls, but did not contain specific effluent limitations
7 for CSOs.

8 4. Since the adoption of water quality standards for the
9 Willamette Basin (included in Oregon Administrative Rules 340-
10 41-445) by the Environmental Quality Commission in 1976,
11 Respondent has discharged combined sanitary sewage and storm
12 runoff and may have caused violations of water quality
13 standards. These water quality standards include narrative
14 limitations on visible solids and floatable material and numeric
15 limitations for bacteria and other parameters.

16 5. DEQ and the Respondent recognize that until new or
17 modified facilities are constructed and put into full operation,
18 Respondent may cause violations of the water quality standards
19 at times.

20 6. On August 5, 1991, Stipulation and Final Order No. WQ-
21 NWR-91-75 (Order) came into effect. Under terms of the Order,
22 Respondent is required to carry out necessary studies and
23 corrective actions to eliminate the discharge of untreated
24 overflows from Respondent's combined sewer system, up to a one
25 in ten year summer storm event and up to a one in five year
6 winter storm event (allowable overflow frequency).

7. The August 5, 1991, Stipulation and Final Order, No. WQ-NWR-91-75, called for the following activities to be implemented by Respondent, each of which was accomplished in a timely manner:

a. By no later than September 1, 1991, the Respondent shall submit to the Department a draft scope of study for the facilities plan. The scope of study shall include an outline of the final facilities plan content, and sufficient detail on how the necessary information is to be obtained to complete the facilities plan. The facilities plan shall, at a minimum, include a characterization of the Discharges including volume, times of discharge, and bacterial and chemical content; alternatives for eliminating water quality violations attributable to CSO's; the environmental and other impacts of the alternatives evaluated; the estimated cost of the alternatives; an evaluation of the impact of the CSO control alternatives on the Columbia Blvd. wastewater treatment plant; if the CSO alternatives will cause permit violations at the treatment plant, an evaluation of alternatives to expand or upgrade the treatment plant so as to maintain compliance with existing discharge standards; recommended control alternatives including any required plant upgrades that will result in compliance with water quality standards for the CSO discharges and compliance with the existing treatment plant discharge standards; a

1 detailed implementation schedule for completing the
2 recommended actions; a detailed demonstration that the
3 recommended actions are the least cost/environmentally
4 sound alternatives that will achieve the discharge
5 limitations specified in this order; and a mechanism for
6 financing the recommended improvements. The facilities
7 plan shall include detailed implementation plans and
8 financing plans for attaining compliance with applicable
9 water quality standards at all CSO's alternatively: (1) for
10 attaining compliance at all CSO's by December 1, 2006; and
11 (2) for attaining compliance at all CSO's by December 1,
12 2011;

13 b. By no later than October 1, 1991, the Respondent
14 shall submit to the Department a draft scope of study for
15 an interim control measures study. The interim control
16 measures study shall include a brief narrative description
17 of each control measure; which CSO's would be affected by
18 each control measure; the estimated impact of each control
19 measure on quantity, quality, and timing of discharge; the
20 estimated impact of each control measure on beneficial
21 uses; the estimated capital cost and annual operation and
22 maintenance cost for each control measure; and the
23 estimated time needed to install or initiate each control
24 measure. The interim control measures to be evaluated and
25 included in the interim control measures study shall
26 include but are not limited to the following: screens and

1 other technologies for removing large solids and
2 floatables; maximization of in-line storage including
3 passive and automatic regulators; removal of new and/or
4 existing roof drain connections from the sewer system;
5 increased line flushing including an evaluation of timing
6 and location of flushing activities; increased street
7 sweeping; the review and modification of pretreatment
8 program; and increased cleaning of catch basins;

9 c. Within thirty (30) days of receiving written
10 comments from the Department, the Respondent shall submit
11 to the Department final approvable scopes of study for
12 interim control measures study and the facilities plan;

13 d. By no later than December 31, 1992, the
14 Respondent shall submit the portion of the facilities plan
15 that characterizes Combined Sewer Overflows;

16 e. By no later than December 31, 1992, the
17 Respondent shall submit the draft interim control measures
18 study to be used by the Department and the Commission to
19 determine appropriate and reasonably practicable interim
20 control measures to reduce water quality impacts until such
21 time as final compliance is attained.

22 f. Within thirty (30) days of receiving written
23 comments from the Department, the Respondent shall submit
24 to the Department and the Commission the final interim
25 control measures study that is approvable by the Department
26 as to content and completeness;

1 g. Upon submission of the final interim control
2 measures study, the Commission, upon recommendation of the
3 Department, shall establish the required interim control
4 measures and the schedule for their implementation;

5 h. By no later than July 1, 1993, the Respondent
6 shall submit a draft facilities plan to the Department;

7 i. Requiring Respondent to implement the interim
8 control measures as specified in Attachment 1 to this
9 Order;

10 8. On July 1, 1993, as required by paragraph 7. h. above,
11 Respondent submitted a facilities plan that included information
12 on how Respondent intended to meet the terms of the Order.
13 Included in the facilities plan was an evaluation of other
14 possible allowable overflow frequencies, including environmental
15 impacts, control technologies, costs, and other impacts of the
16 control measures required to meet the alternative allowable
17 overflow frequencies.

18 9. At the time the parties agreed to the terms of the
19 SFO, it was understood that the Respondent did not have
20 sufficient information necessary to adequately characterize the
21 City's combined sewer system. Several of the activities in the
22 schedule set out in the SFO were designed to develop that data
23 so that an appropriate facilities plan could be implemented.
24 Paragraph 13 of the SFO provided for amendment of the
25 requirements of the Order, in recognition that information
26

1 acquired during the facilities planning process could lead to
2 beneficial strategies that differed from the terms of the SFO.

3 a. In the course of gathering data and conducting
4 the activities set out in the SFO, the Respondent has
5 developed a substantial body of information about the
6 combined sewer system: the number and duration of
7 overflows, the character [composition] of overflows, the
8 impact of overflows on water quality, technology for CSO
9 control, project costs and potential economic impacts.
10 Also during this time the federal government developed a
11 draft policy providing guidance to the States about CSO
12 control.

13 b. In light of relevant information developed during
14 the facilities planning process, the Department, the
15 Commission and the Respondent agreed to conduct a
16 collaborative process to evaluate the requirements of the
17 SFO in an effort to achieve an appropriate level of CSO
18 control, pursuant to paragraph 13 of the SFO. In the fall
19 of 1993 a Collaborative Committee (Committee) was formed,
20 consisting of two Environmental Quality Commission
21 Commissioners, two City of Portland Commissioners, the
22 Director of DEQ and the intergovernmental affairs
23 coordinator for the City's Bureau of Environmental
24 Services.

25 c. The Committee held four public informational
26 meetings between October 18, 1993, and December 14, 1993,

1 in which they heard presentations and public testimony
2 about the history of the Willamette River; the value of the
3 environment and the importance of the river to the City of
4 Portland, the State and its residents; water quality and
5 pollution; health risks related to CSOs; economic issue and
6 alternative strategies for CSO control. The committee held
7 two additional public meetings in January 1994 to discuss
8 issues and recommendations. The Committee members held
9 open discussions of the issues during each meeting during
10 which there was also an opportunity for public testimony.

11 d. As a result of information offered during the
12 presentations, public comment and Committee discussions in
13 the course of the collaborative process, the following
14 issues were identified as fundamental to achieving
15 consensus regarding CSO control:

- 16 • The people of the Portland Region place a high
17 value on the Willamette River and good water
18 quality. The River's importance to the people of
19 Portland and the value of water quality both
20 continue to increase over time.
- 21 • Recreational use of the river is an important use
22 which demands high quality water.
- 23 • It is prudent public policy to establish the goal
24 of eliminating untreated sewage discharges to
25 public waters.

- Discharge of untreated sewage to public waters in Oregon constitutes a potential threat to public health and safety -- even when bacteria standards are met. Bacteria standards are an imperfect measure of public health protection.
- Untreated sewage discharges will occasionally occur, whether due to unavoidable equipment breakdowns, natural disasters, or other causes. Even under the most stringent regulatory approach imaginable, complete elimination is not realistically achievable.
- It is therefore good public policy to require that, whenever decisions are made regarding sewerage facilities, cost effective options to reduce the frequency and quantity of untreated sewage discharges be evaluated and implemented.
- CSOs are a significant contributor of untreated sewage discharges to the Willamette River in the Portland area and to the Columbia Slough. Prudent public policy dictates the need to reduce combined sewer overflows significantly.
- Responsible public policy calls for a cost effective approach to CSO reduction.
- Based on analysis of alternatives presented in the facility plan, CSO control beyond the level achieved with the Enhanced Draft Federal Policy

1 alternative (96% reduction of overflow volume)
2 appears to be very costly for a relatively small
3 increment of water quality improvement.

4 • New technology may emerge that will provide more
5 cost effective methods of reducing CSOs than are
6 available today.

7 • The Cornerstone Projects, outlined in the draft
8 facilities plan, and a phased implementation for
9 CSO control provide an opportunity to
10 periodically review progress and provide cost
11 effective results.

12 e. The Respondent is committed to an overall policy
13 of water quality improvement and is implementing a
14 comprehensive clean river strategy. Elements of this
15 program include:

16 • In-process projects to increase secondary
17 treatment capacity to serve the growing sewer
18 population of Portland:

19 - Modifications to the Columbia Boulevard
20 secondary treatment plant to increase the
21 effective hydraulic capacity of the
22 secondary portion of the plant from the
23 initial design capacity of 100 mgd to 160
24 mgd.

25 - Construct a second force main from the
26 Inverness Site to the Columbia Boulevard

Secondary Treatment Plant to serve the
expanding sewerred population in Mid-
Multnomah County. Design is scheduled for
completion in June 1996. Construction
completion and startup is scheduled for July
1998.

- Other in-process enhancement programs:

- Clean Rivers Program -- This program is a comprehensive approach to surface water quality management within the city and includes stormwater management (development controls, industrial controls, erosion and sediment controls, etc.); flood control and drainage; and watershed management projects including but not limited to those in Columbia Slough, Johnson Creek, Balch Creek, and Fanno Creek in the Tualatin Basin.

- Collection System Structural Assessment and Enhancements -- These projects are intended to identify and correct problems in the existing system to increase the storage and transport capacity and eliminate any untreated overflows during times when no rain is falling (ie. dry weather).

- Cornerstone Projects: Cost effective projects to reduce the magnitude of the problem by getting

1 storm water out of the combined sewer system:
2 (estimated capital cost = \$240 million in 1993
3 dollars)

- 4 - Roof Drain Disconnects;
- 5 - Storm Water Sumps;
- 6 - Stream Diversions;
- 7 - Selective Localized Sewer Separation.

- 8 • Columbia Slough: Implementation of a high level
9 of control of combined sewer overflows to the
10 Columbia Slough. Columbia Slough is considered a
11 sensitive water body because of low natural
12 stream flow and the very limited ability to
13 assimilate wastes and cleanse itself. Because the
14 Slough is a sensitive water body, Portland agrees
15 that it requires a high level of control
16 equivalent to the level specified in the 1991
17 SFO. The estimated capital cost to achieve that
18 level of control is \$150 million in 1993 dollars
19 for facilities for capture, storage, and
20 treatment of combined sewer overflows, and
21 discharge of the treated effluent to the Columbia
22 River.

23 f. Willamette River CSO Control Options: The
24 Portland Facility Plan evaluated 4 alternatives for
25 Willamette River Control. The Cornerstone Program Projects
26 and Columbia Slough Cleanup mentioned above are included

1 within the capital cost estimates for each of these
2 options. Attention was given to developing alternatives so
3 that other community benefits would result, including
4 relocating any remaining overflows to minimize impact on
5 high priority beneficial use areas. The "Enhanced Draft
6 Federal Policy Level" alternative reflects a policy
7 decision which seeks to responsibly balance competing
8 demands and priorities, costs and benefits. This option
9 consists of the following basic components:

- 10 • 96% reduction of overflow volume
- 11 • An estimated \$700 million capital investment (in
12 1993 dollars, including Cornerstone Projects and
13 Columbia Slough Cleanup).
- 14 • Winter design storm equivalent: 3-4 overflows
15 per year. 250 mg overflow in typical year;
- 16 • Summer design storm equivalent: storm that would
17 have a 1 in three year occurrence frequency.
18 Based on last 15 years of data, rainfall would
19 have produced 2 overflow events of 2 days
20 duration each in the last 15 years.
- 21 • Overflows would cause bacteria standards to be
22 exceeded 65 hrs in winter.
- 23 • 5 mile tunnel, primary treatment and
24 disinfection, discharge to Willamette. (Larger
25 facilities than in the Draft Federal Policy Level
26 alternative.)

- Average monthly sewer rate projected to be \$38-41 by 2010 (in 1993 dollars).

g. The Respondent is committed to a public outreach and notification program to encourage community action and involvement and increase public awareness about CSO control and water quality issues.

h. The Respondent is committed to incorporating CSO reduction activities into its ongoing sewer system planning and water quality management efforts beyond the termination of the requirements of this Order.

i. The Department, with the assistance of an advisory committee, is presently reviewing several water quality standards, including the bacteria standard, as part of the federally required triennial review process. Following receipt of the committee report, the Department expects to propose revisions to the bacteria standard to make it a more meaningful indicator of beneficial use protection.

j. The Department, within the limits of budgetary authority and federal constraints, is attempting to increase the effectiveness of controls on nonpoint sources of water pollution in all areas of the state. In these efforts, the Department's fundamental commitment is to approach all sources of pollution on a comprehensive, watershed management basis.

1 10. The Department and Respondent recognized that the
2 Environmental Quality Commission (Commission) had the power to
3 impose a civil penalty and to issue an abatement order for
4 violations of water quality standards. Therefore, pursuant to
5 ORS 183.415(5), the Department and Respondent have settled
6 those possible past violations referred to in Paragraph 4 and
7 wish to limit and resolve the future violations referred to in
8 Paragraph 5 in advance by this Amended Stipulation and Final
9 Order. In light of the recent development of EPA and
10 Departmental strategies and policies governing permitting and
11 evaluation of CSO impacts on water quality, imposition of a
12 civil penalty at this time is not deemed appropriate by the
13 Department.

14 11. This Amended Stipulation and Final Order is not
15 intended to limit, in any way, the Department's right to proceed
16 against Respondent in any forum for any past or future
17 violations not expressly settled herein.

18
19 NOW THEREFORE, it is stipulated and agreed that:
20

21 12. The Commission hereby issues a final order:

- 22 a. Requiring the Respondent to eliminate all
23 untreated CSO discharges to the Columbia Slough from
24 November 1 through April 30 except during storms
25 greater than or equal to a storm with a five year
26 return frequency and to eliminate all untreated CSO

1 discharges from May 1 through October 31 except during
2 storms greater than or equal to a storm with a ten
3 year return frequency; and requiring Respondent to
4 eliminate all untreated CSO discharges to the
5 Willamette River from November 1 through April 30
6 except during storms greater than or equal to a storm
7 with a four in one year return frequency and to
8 eliminate all untreated CSO discharges from May 1 to
9 October 31 except during storms greater than or equal
10 to a storm with a three year return frequency, as soon
11 as reasonably practicable, but no later than the
12 following schedule:

13 (1) Within six months of receiving written
14 comments from the Department on the draft
15 facilities plan submitted to the Department on
16 July 1, 1993, the Respondent shall submit to the
17 Department a final facilities plan that is
18 approvable by the Department as to content and
19 completeness. The Department will review the
20 facilities plan and prepare recommendations to
21 the Commission for CSO control strategies and
22 schedules for implementing them. Final approval
23 of the control strategies and schedules to
24 eliminate untreated CSO discharges will be by the
25 Commission;

26

1 (2) By no later than December 1, 1997, the
2 Respondent shall submit final engineering plans
3 and specifications for construction work required
4 to comply with Section 12.a.(4);

5 (3) By no later than May 1, 1998, the
6 Respondent shall begin construction required to
7 comply with Section 12.a.(4);

8 (4) By no later than December 1, 2001, the
9 Respondent shall eliminate untreated CSO
10 discharges, subject to the storm return
11 frequencies specified in Paragraph 12.a. of this
12 Amended Order, at 20 of the CSO discharge points,
13 including discharges to Columbia Slough,
14 consistent with the facilities plan approved by
15 the Commission; however, the Respondent shall
16 eliminate all untreated CSO discharges to the
17 Columbia Slough, subject to the storm return
18 frequencies specified in Paragraph 12.a. of this
19 Amended Order, by no later than December 1, 2000;

20 (5) By no later than December 1, 2001, the
21 Respondent shall submit final engineering plans
22 and specifications for construction work required
23 to comply with Section 12.a.(7);

24 (6) By no later than May 1, 2003, the
25 Respondent shall begin construction required to
26 comply with Section 12.a.(7);

1 (7) By no later than December 1, 2006, the
2 respondent shall eliminate untreated CSO
3 discharges, subject to the storm return
4 frequencies specified in Paragraph 12.a. of this
5 Amended Order, at 16 of the remaining CSO
6 discharge points, consistent with the facilities
7 plan approved by the Commission;

8 (8) By no later than December 1, 2006, the
9 Respondent shall submit engineering plans and
10 specifications for construction work required to
11 comply with Section 12.a.(10);

12 (9) By no later than May 1, 2008, the
13 Respondent shall begin construction required to
14 comply with Section 12.a.(10);

15 (10) By no later than December 1, 2011, the
16 Respondent shall eliminate untreated CSO
17 discharges, subject to the storm return
18 frequencies specified in Paragraph 12.a. of this
19 Amended Order, at all remaining CSO discharge
20 points, consistent with the facilities plan
21 approved by the Commission;

22 (11) By no later than September 1 of each
23 year that this Amended Order is in effect, the
24 Respondent shall submit to the Department and to
25 the Commission for review an annual progress
26 report on efforts to eliminate untreated CSO

1 discharges, subject to the storm return
2 frequencies specified in Paragraph 12.a. of this
3 Amended Order. These annual reports shall
4 include at a minimum work completed in the
5 previous fiscal year and work scheduled to be
6 completed in the current fiscal year.

7 b. Requiring Respondent to implement the following
8 interim control measures:

9 (1) Respondent shall inspect all diversion
10 structures on a weekly basis and clean the
11 structures as necessary to maintain hydraulic
12 performance. Respondent shall report all
13 blockages at diversion structures that result in
14 dry weather discharges on Respondent's Daily
15 Monitoring Report submitted to the Department on
16 a monthly basis. Respondent shall record whether
17 or not a discharge is occurring from each
18 diversion structure to an outfall, as observed at
19 each diversion structure during the weekly
20 inspections, and shall make this report available
21 to the Department upon request by the Department.

22 (2) Respondent shall prohibit all
23 dischargers who request Respondent's approval
24 prior to a non-permit, periodic, or one-time
25 batch discharge from discharging during rain
26 events. Exceptions shall be made only if

1 extenuating circumstances can be demonstrated to
2 show that it is unreasonable to apply this
3 restriction.

4 c. Requiring Respondent to comply with all the
5 terms, schedules and conditions of the Permit, except those
6 modified by Paragraph 12.a. above, or of any other NPDES
7 waste discharge permit or modified permit issued to
8 Respondent while this Amended Order is in effect.

9 d. Requiring Respondent to demonstrate that each
10 untreated CSO discharge has been eliminated, subject to the
11 storm return frequencies specified in Paragraph 12.a. of
12 this Amended Order, by a means approved by the Department,
13 within twelve months of the scheduled date when compliance
14 is required in this Amended Order. (Nothing in this
15 paragraph shall prevent the Department from enforcing this
16 Amended Order during the twelve month demonstration
17 period.)

18 e. Requiring Respondent to identify each discharge
19 that is converted to a storm sewer discharge only.

20 f. Requiring Respondent, in the event that
21 Respondent chooses to retain a Discharge with any connected
22 sanitary wastes, to apply for a modification of
23 Respondent's permit requesting a waste load increase and
24 appropriately sized mixing zone. (Nothing in this
25 paragraph shall affect the Department's or the Commission's
26 discretion over granting such a request.)

g. Requiring Respondent, upon receipt of a written notice from the Department for any violations of the Amended Order, to pay the following civil penalties:

(i) \$1,000 for each day of each violation of each provision of the compliance schedules set forth in Paragraph 12.a.

(ii) \$2,500 per outfall per day for each CSO outfall for which Respondent fails to demonstrate elimination of untreated CSO discharges as specified in Paragraph 12.d. Discharges that are listed and regulated in Respondent's Permit as may be allowed in Paragraph 12.f. shall not be subject to stipulated civil penalties under the terms of this Order.

13. Respondent agrees that the requirements and dates specified in Paragraph 12 above are firm commitments to undertake and complete those tasks within the time required for the completion of each task subject only to extraordinary events beyond Respondent's reasonable control which causes or may cause a delay or deviation in performance of the requirements of this Amended Order. In the event of such an extraordinary event, Respondent shall immediately notify the Department verbally of the cause of delay or deviation and its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which

1 Respondent proposes to carry out such measures. Respondent
2 shall confirm in writing this information within five (5)
3 working days of the onset of the event. It is Respondent's
4 responsibility in the written notification to demonstrate to the
5 Department's satisfaction that the delay or deviation has been
6 or will be caused by circumstances beyond the control and
7 despite due diligence of Respondent. If Respondent so
8 demonstrates, the Department shall extend times of performance
9 of related activities under the Stipulation and Final Order as
10 appropriate. Circumstances or events beyond Respondent's
11 control include, but are not limited to, acts of nature,
12 unforeseen strikes, work stoppages, fires, explosion, riot,
13 sabotage, or war. Increased cost of performance or consultant's
14 failure to provide timely reports shall not be considered
15 circumstances beyond Respondent's control.

16 14. Regarding the violations set forth in Paragraphs 4 and
17 5 above, which are expressly settled herein without penalty,
18 Respondent and the Department hereby waive any and all of their
19 rights to any and all notices, hearing, judicial review, and to
20 service of a copy of the final order herein. The Department
21 reserves the right to enforce this order through appropriate
22 administrative and judicial proceedings.

23 15. Regarding the schedule set forth in Paragraph 12.a.
24 above, Respondent acknowledges that Respondent is responsible
25 for complying with that schedule regardless of the availability
26 of any federal or state grant monies.

16. The terms of this Amended Stipulation and Final Order
2 may be amended by the mutual agreement of the Commission and
3 Respondent, after notice and opportunity for public comment; or
4 with respect to the compliance schedules or limitations herein,
5 by the Commission if it finds, after review and evaluation of
6 the facilities plan including alternative discharge limitations
7 and the alternative schedules required under Paragraph 7.a.,
8 that modification of this Amended Order is reasonable. It is
9 understood that the draft facility plan submitted on July 1,
10 1993, has provided substantial additional information that was
11 not available when the original order was entered. Therefore,
12 it is intended that any modification of this order under this
13 paragraph be justified by a showing of substantial and new
14 circumstances or substantial and new technologies.

17. Respondent acknowledges that it has actual notice of
16 the contents and requirements of the Amended Order and that
17 failure to fulfill any of the requirements hereof would
18 constitute a violation of this Amended Order and subject
19 Respondent to payment of civil penalties pursuant to Paragraph
20 12.g. above.

18. This Amended Order shall terminate 60 days after
22 Respondent demonstrates full compliance with the requirements of
23 the schedule set forth in Paragraph 12.a. above.

19. If it becomes necessary to allocate wasteloads as a
25 result of either the Willamette River or the Columbia River
26 being designated as Water Quality Limited, the parties agree

1 that Respondent's reductions in discharges pursuant to this
2 agreement will be considered as contributing to Respondent's
3 share of the obligation to achieve water quality standards.
4 Nothing in this paragraph shall affect the Commission's
5 authority to revise water quality standards pursuant to
6 applicable law.

7 20. The Respondent shall continue to implement the
8 Cornerstone Projects, as outlined in the draft facilities plan
9 which was submitted to DEQ on July 1, 1993, on a schedule that
10 is approved in the final facilities plan.

11 21. The Respondent may submit to the Department no later
12 than December 1, 2001, and December 1, 2006, or at other
13 appropriate times during the implementation of the facilities
14 plan, an updated facilities plan report evaluating the
15 effectiveness of CSO control technologies, including, if
16 appropriate, recommendations for reevaluation of activities
17 necessary to accomplish the requirements of this Order if new
18 information or technology has become available. DEQ shall
19 approve or disapprove the recommendations within six months of
20 receipt of the updated facilities plan.

21 22. The Respondent shall implement CSO control measures as
22 outlined in the facilities plan in a phased approach, with the
23 highest priority for control of CSO discharges in high contact
24 recreation areas.

25 23. Respondent, the Commission, and the Department agree
26 that further reductions in untreated discharges beyond the level

1 to be achieved through the Enhanced Draft Federal Level
2 alternative, particularly in the period of May 1 through October
3 31, are desirable if the reductions can be done in a cost
4 effective manner. Further, it is recognized that during the
5 term of the Order advances in technology may result in
6 additional cost-effective control measures not currently known
7 or available.

8 a. During the period of this order, whenever
9 sewerage planning, capital improvement projects, operation
10 and maintenance planning, and other water quality
11 management activities are undertaken that are not included
12 with the approved facility plan, an evaluation shall be
13 made of opportunities to achieve further reductions in the
14 frequency and volume of CSOs. Such evaluation shall take
15 into account generally accepted technologies, potential
16 innovative technologies, cost effectiveness, and
17 environmental benefit achieved. Potential innovative
18 technologies will include measures used elsewhere that may
19 have application in Portland as well as those pioneered by
20 Portland. Technologies evaluated should include, but not
21 be limited to, the following:

- 22 • Separation of sewers in selected basins where
23 determined to be beneficial.
- 24 • Continual replacement of deteriorated trunk and
25 interceptor lines with larger diameter pipes to
26

1 provide additional inline storage to convey more
2 wastewater for treatment.

- 3 • Implementation of operational enhancements to
4 reduce the quantity of pollutants discharged when
5 overflows do occur: e.g., sewer flushing, street
6 cleaning by vacuuming/washing, etc.
- 7 • Addition of further treatment technology to the
8 wet weather treatment facility to further reduce
9 the pollutants being discharged.
- 10 • Enhanced inflow and pollutant source control:
11 e.g., organic composting stormwater filters and
12 permeable pavements.
- 13 • Comprehensive and multi objective water quality
14 improvement strategies in all tributaries to the
15 Willamette River within Portland. Such
16 strategies should include preservation and
17 enhancement of riparian environments and wetland
18 systems, storm water management, water
19 conservation, implementation of BMPs, source
20 control of roadway runoff including pretreatment
21 facilities, implementation of land use policies
22 and requirements that benefit water quality,
23 development of private property stewardship
24 programs, and other strategies designed to
25 prevent pollutants from reaching the Willamette
26 River.

1 The respondent shall implement all measures which are
2 cost effective.

3 b. The Respondent shall report on the
4 evaluations undertaken and the projects implemented as
5 part of the annual report required by Section
6 12.a.(11).

7 c. For the purposes of this Order, cost
8 effective shall be as defined in the final facilities
9 plan required by Paragraph 12.a.(1), subject to review
10 and approval by the Commission.

11 d. Respondent shall submit to DEQ no later than
12 September 1, 2010, an approvable facilities plan
13 report outlining the methods for achieving further
14 reductions in the frequency and volumes of CSOs after
15 the term of this Amended Order. Methods evaluated
16 should include, but not be limited to, those listed in
17 Section a. of this paragraph. This facilities plan
18 shall be subject to approval by the Environmental
19 Quality Commission.

20 24. The Respondent shall report to the Commission in a
21 public forum its progress for CSO reductions as outlined in
22 paragraph 23, above, at a time established by the Commission and
23 the Respondent in the years 2001 and 2010.

RESPONDENT

1
2
3
4 8-1-94
Date

Mike Lindberg
(Name) Mike Lindberg
(Title) Commissioner of Public Utilities

6
7
8
9 August 11, 1994
10 Date

DEPARTMENT OF ENVIRONMENTAL QUALITY
Fred Hansen
Fred Hansen, Director

11
12
13
14 IT IS SO ORDERED:

FINAL ORDER

15
16
17 August 11, 1994
18 Date

ENVIRONMENTAL QUALITY COMMISSION
William W. Wessinger
William W. Wessinger, Chairman
Environmental Quality Commission

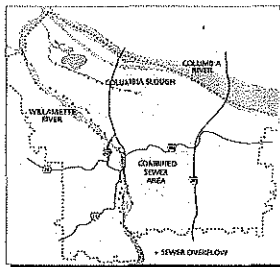
Current Achievements and Status of Portland's CSO Program

Presented by the
Bureau of Environmental Services to the
Environmental Quality Commission

August 15, 2003

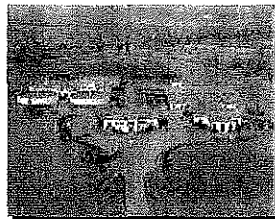
Portland's Combined Sewers

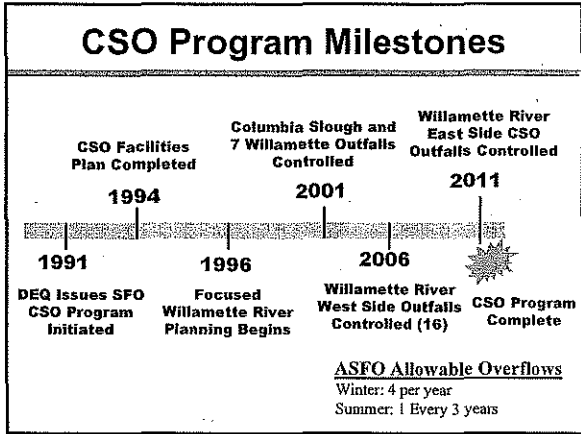
- Combined sewer system serves oldest neighborhoods
- Covers 42 square miles
- 35% of the City area
- 55% of the population
— 270,000 people



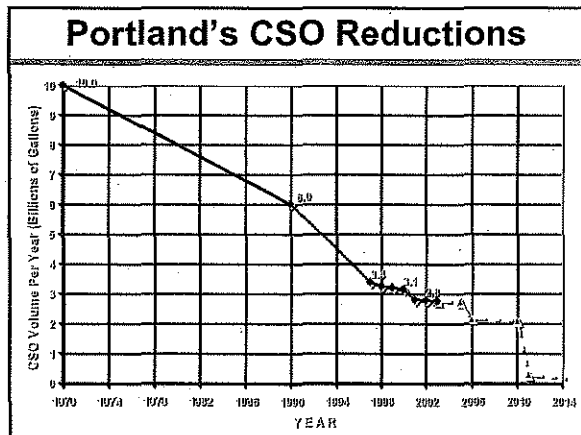
Portland's Sewer History

- 1952 First Treatment Plant built in Portland
- 1970's Secondary Treatment added
- 1991 CSO Program established through SFO
- 1994 CSO Program amended - ASFO





- ### Portland's CSO Program
- **Cornerstone Projects**
 - Cost-effective stormwater inflow control measures
 - Completed All but Stream Separation
 - **Columbia Slough CSO Projects**
 - Large storage conduit, pumping and treatment
 - Completed
 - **Willamette River CSO Projects**
 - Deep tunnel storage, pumping and treatment
 - Under Construction



Countdown to Control CSO Outfalls

- All 13 Columbia Slough Outfalls controlled by December 2000 - Completed
- 7 Willamette Outfalls Controlled by December 2001 - Completed
- Next 16 Willamette River Outfalls by December 2006

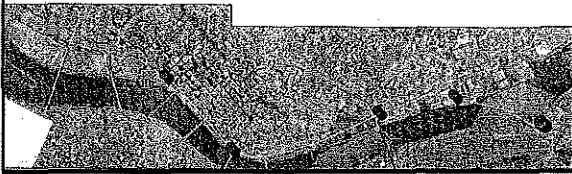
CSO Program Costs

Program costs include operations, maintenance and capital

- \$ Spent to Date
\$500 million
- Estimated Total Cost
\$1 billion

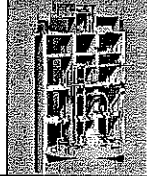
West Side CSO Facilities

- Tanner Creek Stream Diversion
- Southwest Parallel Interceptor
- West Side CSO Tunnel - Big Pipe
- Swan Island Pump Station
- CSO Tunnel Shafts



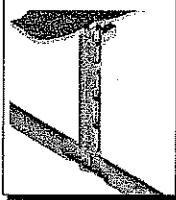
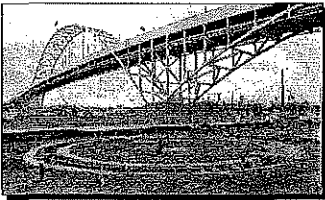
Swan Island Pump Station

- Will pump sewage from the West Side Big Pipe to the Columbia Boulevard Treatment Plant
- 220 MGD pump station
- 137 foot diameter
- 150 feet deep
- 2 forcemains to Peninsular Interceptor



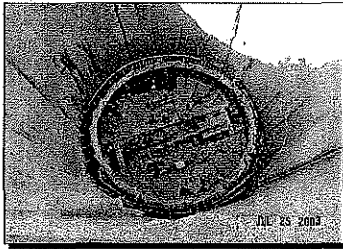
CSO Tunnel Shafts

- 4 west side shafts at Nicolai, Upshur, Ankeny and Clay streets
- Convey flow from surface diversions to tunnel
- Consolidation of existing outfalls.
- Access to tunnel



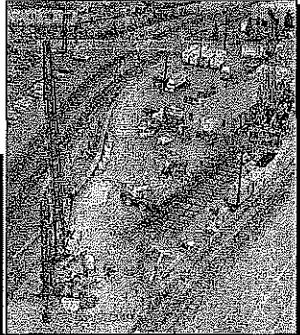
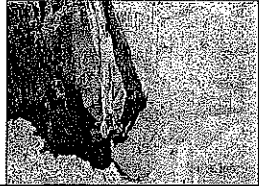
Nicolai Shaft

- NW Front Av and Nicolai St
- Entry point for 2 tunnel boring machines (TBMs)
- TBMs on-site
- Interior lining underway



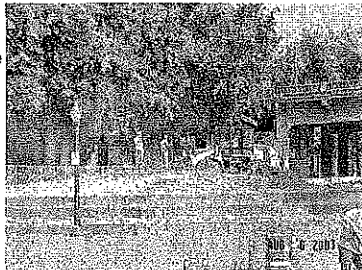
Upshur Shaft

- NW Front Av. north of Fremont Bridge
- Slurry wall complete
- Shaft excavation underway



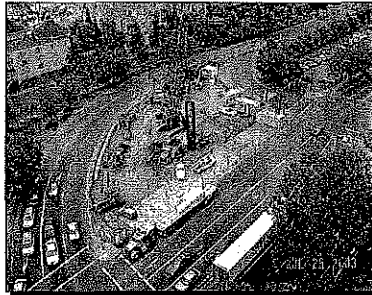
Ankeny Shaft

- Waterfront Park immediately south of Burnside Bridge
- Site work, utility relocation, fencing underway



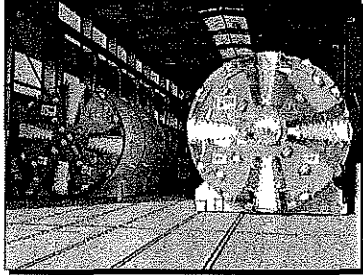
SW Clay Street Shaft

- Preliminary site work complete
- Slurry wall excavation underway
- One lane closed on SW Naito Parkway as necessary

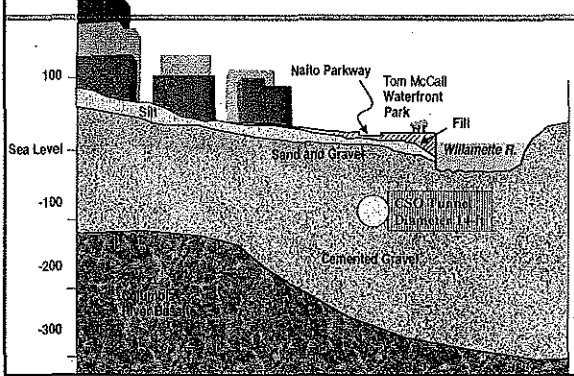


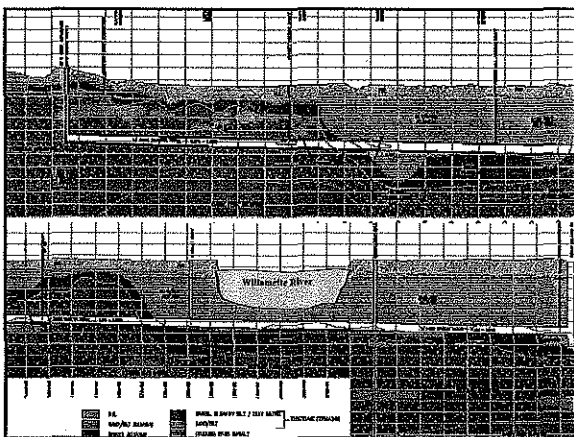
West Side CSO Tunnel

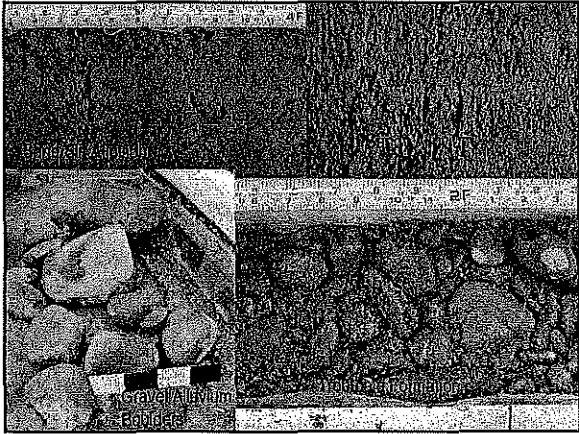
- Two tunnel boring machines (Lewis & Clark) currently at Nicolai Shaft site
- Assembly to begin late August
- Actual tunneling to begin early October

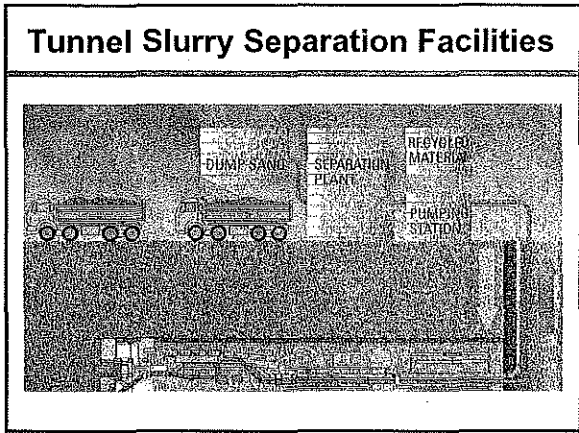


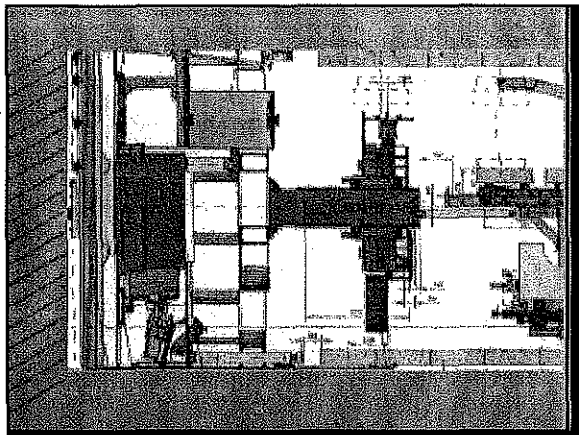
West Side CSO Tunnel Section

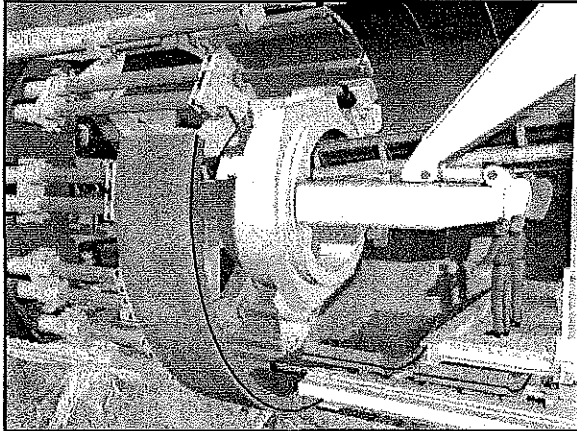




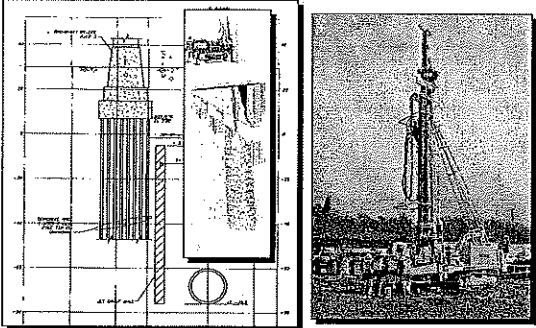








Bridge Footing Stabilization



Bridge Footing Stabilization Schedule

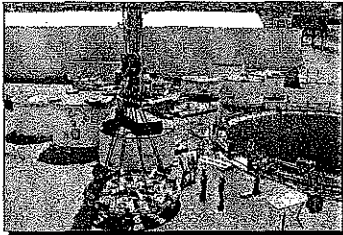
- Steel Bridge: fall 2003 - winter 2004
- Broadway Bridge: winter 2004 - spring 2004
- Burnside Bridge: spring 2004 - fall 2004
- Lane restrictions on Naito Parkway

West Side CSO Estimated Costs

■ Tunnel/Shafts	\$158M
■ Swan Island PS	95M
■ SW Parallel Interceptor	26M
■ Peninsular FM/Other Pipelines	14M
■ Total	\$293M

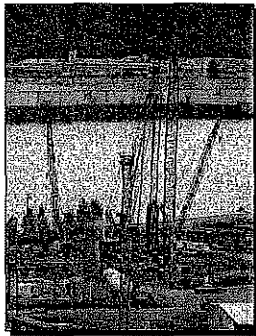
West Side CSO Status

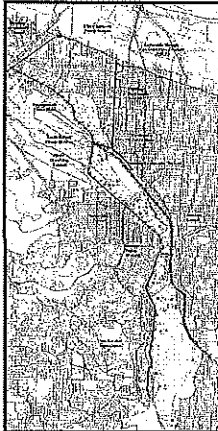
- On schedule for ASFO milestone
- Cost projection currently within range of cost estimating accuracy
- Groundwater leakage test at pump station in mid-August



Cost and Schedule Controls

- Material, equipment, and subcontracts compared against the construction budget
- Bi-monthly invoices compared against expected expenditures
- Monthly reports with schedule and cost forecast
- Quarterly Program Audits



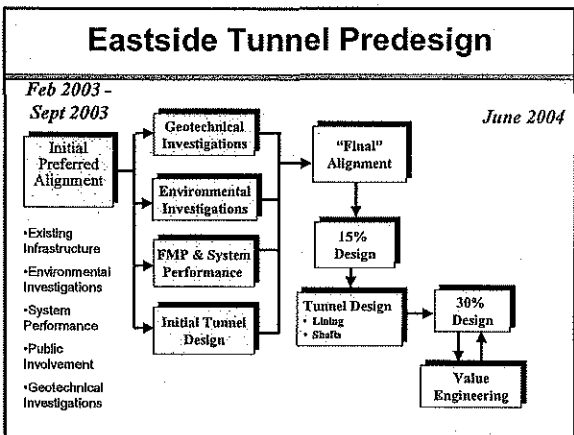


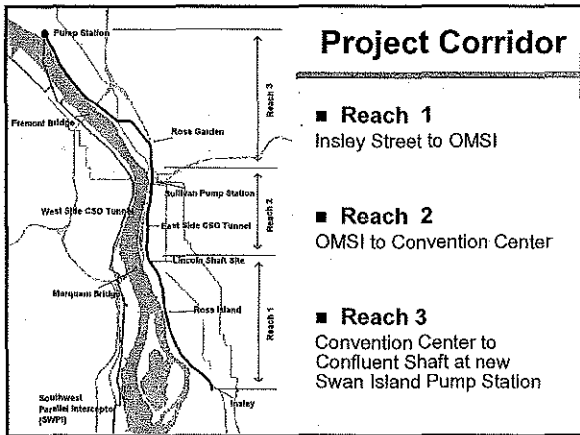
Eastside CSO Tunnel Predesign Project

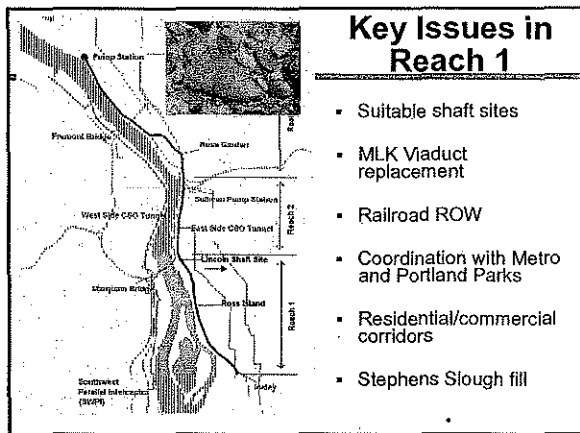
- 30,000 lf = 5.7 miles
- 17-ft to 20-ft diameter tunnel
- 85 ft to 150 ft deep
- Begins in the area of Insley Street in Sellwood
- Terminus at West Side CSO Confluent Structure at Swan Island

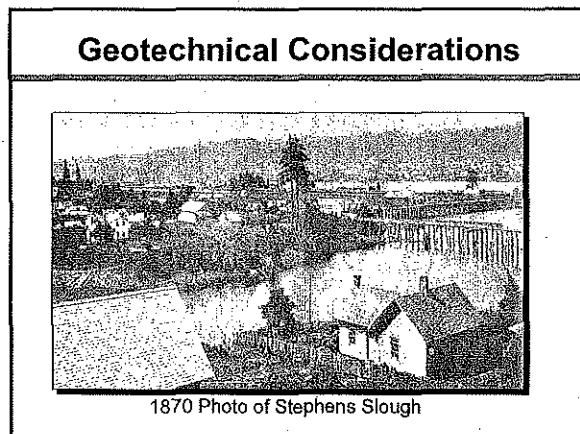
Project Objectives

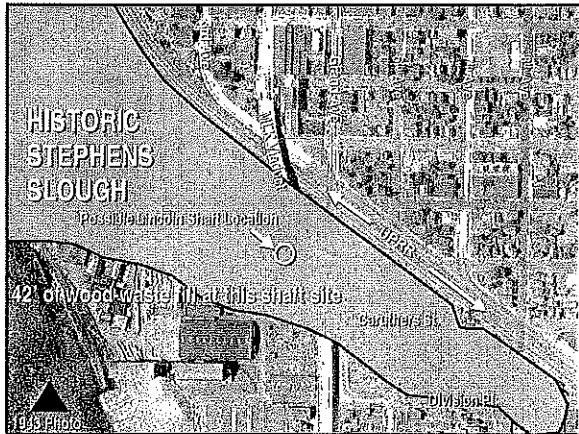
- Control remaining CSO discharges by 2011 as required by ASFO
- Control overflows at remaining 14 CSO outfalls
- Relieve existing eastside interceptors to reduce basement flooding risk
- Optimize flows to the treatment plant











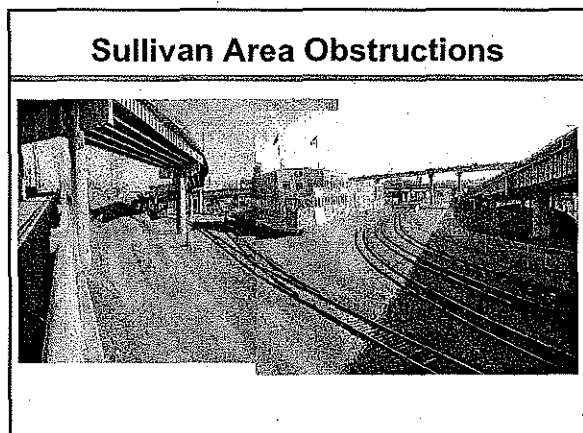
Key Issues in Reach 2

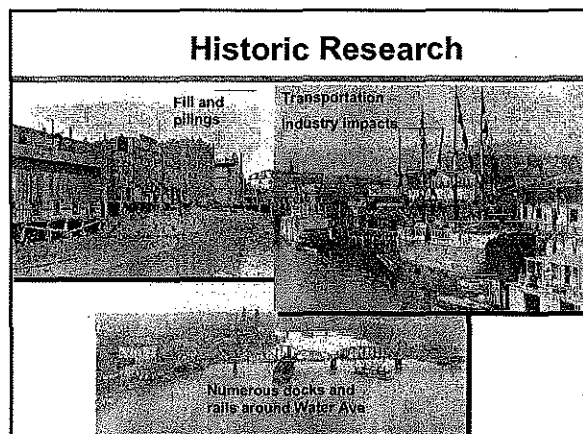
- Settlement of large masonry buildings
- Settlement & avoidance of Hawthorne, Morrison and Burnside Bridges ramp foundations
- Abandoned foundations – Old Morrison Bridge
- Outfall consolidation
- Sullivan Gulch - finding a "window" through the I-84 corridor

ROW Corridors in Reach 2

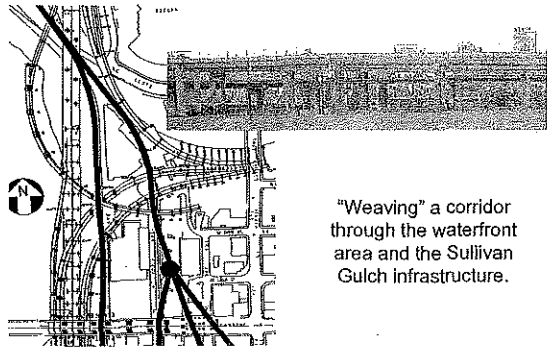
Key Issues in Reach 3

- Tunnel connection to Confluent Shaft
- Steel, Broadway & Fremont Bridges
- Railroad coordination
- Connecting to I-84 corridor "window"
- IMAX line





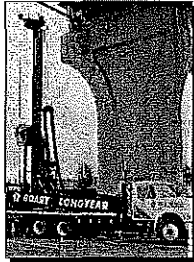
Alignment Obstructions



"Weaving" a corridor through the waterfront area and the Sullivan Gulch infrastructure.

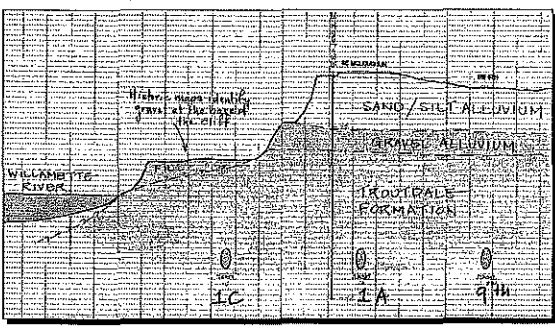
Current Project Work

- Task 1 – Data Investigation
 - Historical records
 - Permitting plan
 - Utility conflicts and relocation
 - Coordination with other projects



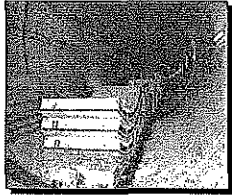
- Task 2 – Geologic Investigations
 - Existing data
 - Geotechnical drilling program
 - Profiles for alignment selection
 - Geologic assessment (GDR, GBR)

Preliminary Geologic Profile



Current Project Work

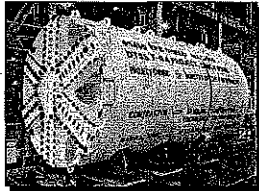
- Task 3 – Environmental Investigations
 - Level 1 Corridor Assessment
 - Sampling and analysis at five shaft locations



- Task 4 – System Performance and Tunnel Design
 - Determine tunnel alignment and shaft locations
 - Size tunnel (FMP)
 - Evaluate hydraulic performance
 - Settlement analysis and ground improvement
 - Construction design drawing for the tunnel

Preliminary ESCSO Design Timeline

- Data Collection: March 03 - June 03
- Geologic Desk Study: March 03 - June 03
- Tunnel Alignment Evaluation: July 03 - Sept 03
- Hydraulic Modeling:
 - May 03 – Jun 04
- Subsurface Field Exploration:
 - Aug 03 - Jan 04
- Tunnel Sizing (FMP): Jan 04
- Preliminary Design Development: Feb 04 - Jun 04



Overall ESCSO Project Timeline

Description	Early Start	Early Finish	
PREDESIGN PHASE			
Pre-design Phase Hammer	02JUN03	30JUN04	Pre-design Phase Hammer
Tunnel Alignment Study	02JUN03	22SEP03	Tunnel Alignment Study
Modeling & System Optimization	16JUL03	15MAR04	Modeling & System Optimization
Drawings/Specs & Pre-design Rpt	14JAN04	30JUN04	Drawings/Specs & Pre-design Rpt
DESIGN PHASE			
Design Phase Hammer	16JUL04	02JAN05	Design Phase Hammer
60% Design Development	16JUL04	07APR05	60% Design Development
90% Design Development	08APR05	22SEP05	90% Design Development
Final Design Development	22SEP05	02JAN06	Final Design Development
CONSTRUCTION PHASE			
Construction Phases	02JAN06	27OCT11	Construction Phases

Program Status

- More than half way through the program.
- City has met every requirement to date.
- Portland ratepayers assuming the costs.
- Monthly residential sewer rates.
 - 1991 \$14 per month
 - 2003 \$42 per month
 - 2011 \$66 per month (estimated)

Pending Issues

- Status of EPA Review
- Permit for ASFO-Allowed CSO Discharges
- Proposed Bacteria TMDL for the Willamette
- UIC and Stormwater Regulations

Questions & Answers

State of Oregon
Department of Environmental Quality

Memorandum

Date: August 5, 2003
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item J, Action Item: Refunding of selected DEQ Pollution Control Bonds
Friday, August 15, 2003 EQC Meeting

Proposed Action Environmental Quality Commission (EQC, Commission) adoption of a Resolution authorizing the Department of Environmental Quality (DEQ) and the State Treasurer to issue and sell State of Oregon General Obligation Pollution Control Bonds, to be used to 'refund' a number of existing Bonds (see Attachment A) to take advantage of lower interest rates and reduce future debt service obligations. If the Resolution is approved, DEQ and the State Treasurer could proceed to sell the Bonds as early as September 2003.

Reason for EQC Action Under ORS 286.033, state agency issuance of bonds requires a resolution of the agency's governing body. The Commission's resolution will give DEQ the authority to authorize both the issuance of Pollution Control Bonds and use of Bond proceeds under ORS 468.195 to 468.260.

Background DEQ has utilized bonding for several decades in order to finance solid waste disposal facilities, municipal sewage treatment facilities, water pollution control facilities, and cleanup of contaminated "orphan sites." DEQ works with financial advisors, Bond counsel, the State Treasurer, and the Department of Administrative Services in issuing and selling Bonds. For a more detailed explanation of the uses and history of Pollution Control Bonds, see Attachment B.

Much like home mortgages, the current low interest rate environment is conducive to "refinancing" existing Bonds that have higher interest rates. For Bonds, the technical term is 'refunding', which refers to replacing old debt with new debt at lower interest rates, without materially increasing the term of repayment. The net result: the repayment schedule remains the same, but with a lower average interest cost.

DEQ's financial advisors and Bond counsel have assessed the agency's Bond portfolio and have identified 8 specific bond issues (see Attachment A) as potential candidates for refunding.

Most bonds sold by DEQ have a 'call' feature, allowing the state to retire the bond early, without penalty, after some period of time, but before the maturity date. Bonds that are currently within their call period (usually after 10 years of issuance for DEQ bonds) when refunded are termed 'current' refunding.

Bonds that haven't yet reached their call date fall under the category of 'advance' refunding, which have specific additional provisions, mostly surrounding the requirement to continue paying bond holders the original interest rate until the call date of the old bond.

State Treasury requires that 'advance' refundings must achieve at least 3% savings (under OAR 170-062-0000). 'Current' refundings have no such minimum savings requirement. DEQ proposes to proceed with 'current' refunding only if the interest savings with future debt service are more than \$25,000 for that Series.

As of August 1, 2003, only the four Bond Series under consideration for 'current' refunding met the above targets and are candidates for refunding. The 1992D and 1994B Orphan Cleanup Bonds would achieve about \$519,000 in savings over the remaining life of the Bonds, reducing DEQ's future Debt Service requirement from the General Fund. Two Clean Water State Revolving Fund (CWSRF) Bonds (1993A and 1994A) would achieve savings of about \$306,000 in future debt service requirements. Because the 2003 Legislature directed the CWSRF to self-finance all outstanding debt service, the savings will benefit the CWSRF Account and be available for additional loans.

The final amount of savings will vary daily with market interest rates. Between now and the sale dates, Bonds may move into or out of contention for refunding.

Key Issue Approval of this Bond sale will allow DEQ to realize debt service savings on existing Pollution Control Bonds. Lower debt service payments will provide additional loan capacity for the CWSRF, and reduce the DEQ use of General Funds for payment of debt service. It is uncertain if the General Fund savings will simply revert back to the State, become available to fund other DEQ work, or forestall potential future General Fund reductions.

EQC Action Alternatives If the EQC does not adopt the Resolution, refunding of the existing Bonds cannot proceed, and DEQ will continue making Bond debt service payments under the existing interest rates and schedules. The opportunity to realize debt service savings will be lost or deferred to some future date when interest rates are again favorable for refunding.

Department Recommendation The Department recommends that the Commission adopt the attached Resolution authorizing the Department and the State Treasurer to refund some or all of the General Obligation Pollution Control Bonds listed in Attachment A, provided that each Series refunded individually meets the savings targets set under OAR 170-062-0000 and as set out in this agenda item, and provided

the refundings occur in the 2003-2005 biennium.

Attachments

Resolution Authorizing and Requesting Issuance of Bonds

A. Candidate Pollution Control Bonds for possible Refunding

B. Pollution Control Fund and State Pollution Control Bonds

Approved:



Section: Budget

Division: Office of the Director

Prepared By: Jim Roys and Islay Robertson

Phone: (503) 229-6817

**RESOLUTION AUTHORIZING
AND REQUESTING ISSUANCE OF BONDS**

Section 1. Findings. The Environmental Quality Commission of the State of Oregon finds:

A. The Department of Environmental Quality (the "Department") may be empowered, by resolution of the Environmental Quality Commission, to authorize and request the issuance of general obligation pollution control bonds for the purpose of refunding some or all of the existing bonds set out in Attachment A;

B. It is now desirable to authorize and request the issuance of general obligation pollution control bonds for this purpose.

C. Oregon Revised Statutes, Section 286.031, provides that all bonds of the State of Oregon shall be issued by the State Treasurer.

Section 2. Resolutions. The Environmental Quality Commission of the State of Oregon hereby resolves:

A. The State Treasurer of the State of Oregon is hereby authorized and requested to issue State of Oregon general obligation pollution control bonds ("Pollution Control Bonds") in amounts that the State Treasurer determines, after consultation with the Director of the Department or the Director's designee, will be sufficient to provide funding for the purposes described in Section 1.A of this resolution, and to pay costs associated with issuing the Pollution Control Bonds. The Pollution Control Bonds may be issued in one or more series at any time during the current biennium, mature, bear interest, be subject to redemption, and otherwise be issued and sold upon the terms established by the State Treasurer after consultation with the Director of the Department or the Director's designee.

B. The Department shall comply with all provisions of the Internal Revenue Code of 1986, as amended (the "Code") that are required for interest on tax-exempt Pollution Control Bonds to be excludable from gross income under the Code, and shall pay any rebates or penalties that may be due to the United States under Section 148 of the Code in connection with the Pollution Control Bonds. The Director of the Department or the Director's designee may, on behalf of the Department, enter into covenants for the benefit of the owners of Pollution Control Bonds to maintain the tax-exempt status of the Pollution Control Bonds.

Section 3. Other Action. The Director of the Department or the Director's designee may, on behalf of the Department, execute any agreements or certificates, and take any other action the Director or the Director's designee determines is desirable to issue and sell the Pollution Control Bonds and to provide funding for the purposes described in this resolution.

Attachment A: Candidate Pollution Control Bonds for possible Refunding.

Bond Purpose	Bond Series	Refunding Type	Original Amount Issued (\$)	Outstanding Principal as at 06/30/03 (\$)
Orphan Site Cleanup program	1992D	Current	7,350,000	5,115,000
	1994B	Current	5,000,000	3,525,000
	1995A	Advance	8,000,000	6,330,000
	1998A	Advance	5,000,000	4,490,000
Clean Water State Revolving Fund (CWSRF, SRF) Match payments	1993A	Current	2,980,000	2,005,000
	1994A	Current	6,000,000	4,235,000
	1995B	Advance	5,000,000	3,955,000
	1997A	Advance	8,000,000	6,950,000

Prepared on 7/29/03

Attachment B

Pollution Control Fund and State Pollution Control Bonds

The **Pollution Control Fund** is authorized in statute (ORS 468.215) to separately account for the receipt and expenditure of **State Pollution Control Bonds**.

State Pollution Control Bonds are authorized under Article XI-H of the Oregon Constitution, which empowers the state “to lend credit for financing pollution control facilities or related activities.” Indebtedness can be incurred to provide funds “for the purpose of planning, acquisition, construction, alteration or improvement of facilities for or activities related to, the collection, treatment, dilution and disposal of all forms of waste in or upon the air, water and lands of this state.” It allows funds to be advanced “by contract, grant, loan, or otherwise” to state agencies and local units of government. It also permits the state to purchase financial instruments issued by units of local government, to enable them to take advantage of the state’s credit rating in financing pollution control facilities. Article XI-H was adopted in 1970 and amended in 1990.

Authorized Uses of the Pollution Control Fund: The Department of Environmental Quality is responsible for the administration of the Pollution Control Fund. ORS 468.220 authorizes its use for several purposes, including:

- Financing municipal sewage treatment facilities or sewerage systems (as defined in ORS 468B.005), and related planning
- Financing local government solid waste disposal facilities and related planning
- Funding the Orphan Site Account for the cleanup of contaminated sites where the responsible party is either unknown, unwilling, or unable to pay for necessary cleanup
- Funding the Assessment Deferral Loan Program Revolving Fund, which funds local government financial assistance programs associated with water pollution control projects, typically to homeowners who can’t afford increased assessments
- Providing matching funds for federal grants made available to capitalize the Water Pollution Control Revolving Fund, commonly called the Clean Water State Revolving Loan Fund or SRF.

Historical and Current Uses of the Pollution Control Fund: The Fund was used in the 1970s and 1980s to finance solid waste disposal facilities and municipal sewage treatment facilities. Those debts have been retired. In the early 1990s, State Pollution Control Bonds were issued to provide funds to purchase debt issued by the Cities of Portland and Gresham to finance water pollution control facilities. Only a small amount of the Cities’ debt remains outstanding.

Bonds have been issued since the early 1990s primarily to provide funding for the Clean Water State Revolving Loan Fund, the Orphan Site Account and, to a lesser extent, the Assessment Deferral Loan Program Revolving Fund. The attached “Pollution Control Bonds History and Status” chart shows the amounts issued and outstanding for each of these programs.

Repayment of Bonds Issued. The Oregon Constitution (Article XI-H) allows for repayment of Pollution Control Bonds through an ad valorem tax to be levied on all taxable property in the

State. The tax has never been levied, and bond debt has been serviced with diverse funding: repayments of loans from the Water Pollution Control Fund and Assessment Deferral Loan Revolving Fund; General Fund and Lottery appropriations; fees levied specifically to repay Orphan Site debt; payments of interest and principal from municipalities whose bonds were purchased by the state; and user fees on borrowers. Funds used for debt service, except General Fund and Lottery, are deposited to and expended from the **Pollution Control Sinking Fund**, as directed by ORS 468.230.

Accounting for Bonds and Debt Service: Proceeds from the sale of Pollution Control Bonds are deposited to the Pollution Control Fund. Each bond issue is tracked separately. Similarly, funds received for repayment of bond issues (except General Fund and Lottery) are deposited to the Pollution Control Sinking Fund, and tracked by bond issue. Maintaining separate funds for bond proceeds and debt payments (sinking fund) is standard government accounting practice. Some additional accounting practices are mandated by statute for the Orphan Site Account, at least in part to ensure that no cost recoveries from responsible parties are used for debt service. This additional control was established to ensure that bond administration meets IRS tests for tax free bonds.

Pollution Control Bonds History and Status

Category	Purpose	Amount Issued	Outstanding* as of 6/30/03
Original "Pollution Control Bonds"	Grants and loans for solid waste disposal & municipal sewage treatment facilities	187,500,000	0
Special Assessment Improvement Bonds	To purchase debt issued by the Cities of Portland and Gresham to finance water pollution control facilities	95,640,000	455,000
Sewer Assessment Deferral Loan Program	Local government financial assistance programs associated with water pollution control projects	5,500,000	3,330,000
Orphan Site Cleanup	Cleanup of contaminated sites where the responsible party is either unknown, or unwilling or unable, to pay for necessary cleanup	37,350,000	29,920,000
State Revolving Loan Program	Matching funds for federal grants made available to capitalize the Water Pollution Control Revolving Fund (SRF)	29,980,000	23,765,000
Total, excluding original "Pollution Control Bonds"		355,970,000	57,470,000

* Includes principal repayments and excludes scheduled interest amounts

State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commission **Date:** July 29, 2003
From: Mikell O'Mealy, Assistant to the Commission
Subject: Agenda Item K. Discussion Item: 2004 EQC Meeting Dates

Each summer or early fall, the Commission decides meeting dates for the following year and considers possible meeting locations. In past years, the Commission has tried to hold one meeting per year in each of DEQ's three regions, meeting with local officials and touring sites that exemplify DEQ's work statewide. In 2003, budget and administrative restrictions kept us from planning more than one meeting outside of Portland (we'll meet in John Day for the October 9-10, 2003, meeting), but we hope to have more flexibility in 2004. Below are proposed dates and potential locations for EQC meetings in 2004. Please consider these for discussion at the August 15 meeting, and let me know if you have conflicts with the dates proposed.

Proposed 2004 EQC Meeting Dates

February 5-6; April 8-9; May 20-21; July 15-16; September 9-10; October 28-29;
December 9-10

Potential 2004 Meeting Locations

Suggestions below are in priority order based on the amount of time since the Commission's last visit, opportunities to showcase important environmental successes or challenges, and local desire for an EQC visit. All meetings would include a reception with local officials. For reference, attached is a list of EQC meetings held outside of Portland over the last 10 years.

Eastern Region

Prineville – The EQC has not met here in the past 10 years; met in Bend in 2001 and 1995. Tour possibilities include the La Pine Demonstration Project (relates to rulemaking for La Pine septic systems that will come before the EQC in late 2004), the Les Schwab Re-Tread Tire Facility, or Lumber Mill plants.

Lakeview – The EQC has not met here in the past 10 years. Tour possibilities could focus on water quality work, waste management, or clean-up work at Alkali Lake.

Pendleton – The EQC last met in Pendleton in 1996, and local officials have expressed desire to see EQC meet here again. A tour could be planned with the Confederated Tribes of the Umatilla Indian Reservation to showcase their development of Total Maximum Daily Loads (TMDLs), which are scheduled for completion in late 2004.



Western Region

Port Orford – The EQC has not met here in the past 10 years; met in Coos Bay in 1999. Tour possibilities could highlight challenges with municipal wastewater treatment facilities, nonpoint source water quality issues, and generally, the difficulty many small communities have complying with environmental regulations.

Newport – The EQC has not met here in the past 10 years. A tour could focus on the project “YES,” or Yaquina Environmental Solutions – technical assistance to small businesses to reduce toxic pollution through partnerships with watershed councils, local government, and businesses. A diverse team of DEQ experts will be working with businesses to reduce air, water and toxic chemical pollution, and the results of this first true “cross program” effort will be evaluated.

Salem – Although the EQC met in Salem in 2002 in a joint meeting with the Oregon Watershed Enhancement Board, a new approach to watershed restoration initiated there may be of interest. DEQ, local government, watershed councils, and over 100 businesses are involved in encouraging homeowners and small businesses to “take the pledge” for the environment and make changes in their daily routine. A tour could showcase key partners in this effort, successes to date, and assessment of the project’s effectiveness.

Eugene – The EQC last met here in 1994. Tour possibilities include large-scale industrial projects, clean-up successes to protect water quality and fish, or Carmen Smith Dam outside of Eugene which DEQ must certify prior to its 2007 relicensing.

Northwest Region

Oregon City – The EQC has not met in Clackamas County in at least 10 years. Tour possibilities include Oregon City, Willamette Falls, Blue Heron Mill, Rossman’s Landfill, and a variety of cleanup or solid waste management sites.

Astoria – The EQC has not met in Astoria since 1996. Tour possibilities include the Astoria Mill Pond Village (a showcase cleanup and redevelopment site visited by former Governor Kitzhaber and Congressman Wu), waste water treatment facilities for floating homes, and development opportunities associated with Community Solution Teams. As an added benefit, Commissioners could consider taking the new Amtrak Excursion train (4 hours) from Portland to Astoria for a river’s edge view of the Columbia.

If you have any questions or would like to discuss 2004 meetings with me in advance, please contact me at (503)-229-5301 or toll-free at 1-800-452-4011 ext. 5301 in the state of Oregon.

I look forward to seeing you soon.

EQC Meetings Held Outside of Portland

2003

John Day (October)

2002

Hines (April)

Salem (June)

Columbia County (October)

2001

Bend (January)

Hermiston (March)

Gresham (June)

Enterprise/Joseph (August)

Ashland (September)

2000

The Dalles (March)

Tillamook (July)

Roseburg (September)

1999

Hillsboro (May)

Hermiston (June)

Klamath Falls (August)

Coos Bay (September)

1998

McMinnville (April)

Medford (June)

Ontario (October)

1997

La Grande (October)

Hermiston (February)

1996

Pendleton (November)

Astoria (October)

Hermiston (August)

1995

White City, Jackson County
(July)

Bend (August)

1994

La Grande (April)

Eugene (August)

**Oregon Department of
Environmental Quality**

Strategic Directions

2002



**State of Oregon
Department of
Environmental
Quality**



March 2002

Dear Oregonians:

Over the years, Oregon's ethic of environmental responsibility has led to groundbreaking legislation and significant gains in protecting public health and Oregon's environment. The Oregon Department of Environmental Quality (DEQ) has helped achieve these gains by regulating pollution from the largest and most obvious sources. Regulations have been successful; Oregon's air, land and water are cleaner and safer today than before regulation.



In the 21st century, however, the challenges we face are more complex. We are feeling the cumulative effects of human activity. Increased population and traffic mean more toxic air pollutants from cars and trucks. Protecting water quality for beneficial uses — including native salmon — now must include control of pollution from urban runoff, agricultural and forest practices, and other sources that traditionally have not been regulated. To respond to these challenges, we need creative thinking, good management and involvement by all Oregonians.

During challenging times, government must provide leadership and clear direction to ensure that important work gets done in a cost-effective manner. This means we must set priorities and measure performance. DEQ has developed these Strategic Directions to sharpen our focus on the priority actions needed to protect public health and the environment. For the next few years, DEQ will focus on four priorities:

- Deliver Excellence in Performance and Product
- Protect Oregon's Water
- Protect Human Health and the Environment from Toxics
- Involve Oregonians in Solving Environmental Problems

This document presents the key actions that we are taking for each of these priorities and includes checkpoints we will use to measure performance. Strategic Directions are by definition dynamic, and we will review our progress periodically. I look forward to working with you as we continue Oregon's proud environmental legacy.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Hallock".

Stephanie Hallock
DEQ Director

DEQ's mission is to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, water and land.

Beginning of DEQ

Oregon's history of environmental regulation began in 1938, when the Oregon State Sanitary Authority was formed in response to a successful citizen initiative known as the "Water Purification and Prevention of Pollution Bill." In 1969, the Authority became the Oregon Department of Environmental Quality (DEQ), an independent state agency.

DEQ Overview

DEQ monitors and assesses environmental conditions, establishes policies and rules, issues permits, cleans up contamination, enforces environmental laws, and educates businesses and citizens to encourage pollution prevention. DEQ's team of scientists, engineers, technicians, managers and support staff is highly committed to restoring and protecting public health and Oregon's environment.

The Oregon Environmental Quality Commission, a five-member Governor-appointed board, issues orders, judges appeals of fines, adopts rules and appoints the agency director. The Commission also participates in the development of DEQ's Strategic Directions.

In 1993, DEQ moved most of its staff into field offices in order to better understand problems facing Oregon communities and provide more local service. Today, DEQ operates a laboratory, 18 offices around the state, and eight Vehicle Inspection Stations in the Portland area and Medford. Headquarters programs include air, land and water quality, and management services. These divisions develop environmental policy and provide administrative support. Regional offices implement environmental protection programs, working with local

communities and businesses to solve environmental problems. DEQ's laboratory provides monitoring and analytical support for the entire agency.

Accomplishments

In 1980, only 30% of Oregonians lived in clean air areas. Today, 100% of Oregonians live where the air meets national health standards. In Oregon, 64% of rivers monitored by DEQ are improving in water quality and only 1% are declining. Since 1991, citizens have properly disposed of more than three million pounds of household hazardous waste through DEQ-sponsored statewide collection events. These successes were achieved through the collective efforts of DEQ, communities, businesses and citizens.

Although we are proud of what Oregonians have achieved, significant environmental concerns remain. For example, more than 13,000 miles of Oregon rivers fail to meet clean water standards. More people are recycling; however, per capita waste generation continues to rise. Continued population growth makes it a challenge to keep our water, air and land clean.

DEQ's Vision

DEQ's vision is to work cooperatively with all Oregonians for a healthy, sustainable environment. DEQ promotes the following cultural values: Environmental Results, Customer Service, Partnership, Excellence and Integrity, Employee Growth, Teamwork, Diversity.

DEQ's Strategic Directions define DEQ's priority work. Checkpoints established for each priority ensure that we deliver results. These checkpoints will complement Oregon Benchmark performance measurement.



Priority 1

Deliver Excellence in Performance and Product



DEQ recognizes that even well-managed agencies must continue to improve. We are committed to managing and motivating employees to perform professionally in their daily work as well as fostering collaboration internally across program lines.

Whether you are receiving a compliance inspection or technical assistance with a permit, DEQ is dedicated to providing high-quality service. Protecting public health and the environment requires a commitment to science and to effective regulation; however, we recognize that how we do our work is equally important. The key actions that follow outline DEQ's efforts for delivering excellence in all that we do.

Key Action: Make it easier to do business with DEQ

DEQ interacts with many customers – the public, members of the regulated community, tribes, government agencies and other organizations. As an agency, we are striving to improve customer service and streamline our regulatory process. Efforts are already underway to make improvements to programs that affect small businesses and individuals. In 2002, DEQ will conduct a survey of customers to help us identify other service improvement opportunities.

Key Action: Reinforce effective management

The range and complexity of issues facing DEQ are diverse and have grown over time. Managing DEQ's budget, with its large number of dedicated funds, demands constant attention in order to provide accountability to the Legislature and all Oregonians. We have improved our operating budget process; our programs now have more information for managing within budget forecasts.

We also recognize that effective staff and management are keys to success. Over the next year, we will be assessing our performance evaluation methods to ensure that our employees are getting the support they need to work effectively.

Key Action: Emphasize cross-program environmental problem solving.

DEQ implements laws and regulations developed and funded along program lines to protect the air, water and land. However, many environmental problems require the attention of more than one DEQ program. For example, abandoned mines and contaminated sediments affect both water and land. To address a need for

greater collaboration among programs, DEQ has identified and is implementing actions that focus on improving cross-program problem solving.

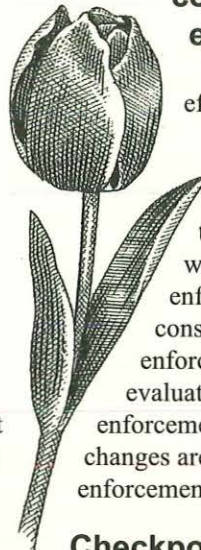
Key Action: Ensure understandable and equitable compliance and enforcement

DEQ is committed to having an effective compliance and enforcement program that is understandable, encourages compliance, is equitable, and appropriately reflects the severity of the violation. DEQ will assess and modify compliance and enforcement procedures to ensure consistent, understandable and timely enforcement actions. DEQ will also evaluate current rules governing enforcement activities to determine whether changes are needed to ensure equity in enforcement.

Checkpoints

DEQ will carefully monitor efforts that promote performance excellence by asking the following questions:

- Are our customers satisfied with the service DEQ provides?
- Is DEQ operating within its budget?
- Do DEQ employees receive the direction and feedback they need to be effective?
- Is cross-program coordination improving?
- Are DEQ enforcement actions equitable, consistent, understandable and timely?





DEQ

State of Oregon
Department of
Environmental
Quality

Priority 2

Protect Oregon's Water



Water's many beneficial uses include drinking water, support of industrial processes, agricultural and recreational activities, healthy ecosystems and wildlife habitat. DEQ is committed to doing its part to ensure that Oregon's rivers, lakes, streams and groundwater are clean enough to support these uses.

Historically, water pollution control has been directed at industrial and municipal wastewater. This traditional permitting approach has helped but has not effectively addressed the impacts of other known sources of pollution. Addressing multiple sources of pollution on a watershed basis offers a more integrated and efficient approach to manage expected impacts from water pollution. To improve and maintain water quality, DEQ is implementing the following key actions.

Key Action: Implement a comprehensive watershed approach

DEQ's primary initiative to protect Oregon's water quality takes a watershed approach by focusing our efforts geographically in river basins. Under this approach, DEQ integrates water quality data, pollution load limits, permitting and groundwater protection efforts to manage water quality on a watershed basis.

This approach is consistent with *The Oregon Plan for Salmon and Watersheds*, which brings agencies together to restore healthy aquatic habitats on a watershed basis. The *Oregon Plan* encourages incentives and education to motivate voluntary actions that go beyond regulation. DEQ is committed to success of the *Oregon Plan*.

One of DEQ's tools to improve impaired waterbodies is to develop pollution load limits known as Total Maximum Daily Loads (TMDLs). TMDLs define the amount of each pollutant a waterway can receive and still maintain water quality standards. TMDLs take into account pollution from all sources, including industrial and sewage treatment facilities, runoff from farms, forests and urban areas, and natural sources. DEQ is developing TMDLs for all impaired waterbodies in the state by 2007. As of December 2001, the US Environmental Protection Agency had approved 263 TMDLs completed by DEQ.

DEQ is also shifting water quality permit renewal to a watershed basis, simultaneously working to minimize a backlog of permits watershed by watershed.

Key Action: Develop a strategy to encourage broader reuse of wastewater

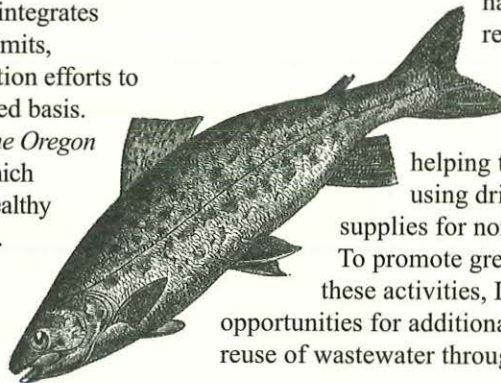
The direct release of treated wastewater into surface water is a common water quality management practice. This wastewater, while

technically clean, often contains nutrient and temperature levels that exceed natural water conditions. As an alternative, many treatment plants have developed strategies to "reuse" treated water to irrigate or to restore wetland

habitats. This reclamation of wastewater has many potential benefits, including

helping to offset the need for using drinking water supplies for non-drinking purposes.

To promote greater investment in these activities, DEQ will foster opportunities for additional reclamation and reuse of wastewater throughout the state.



Checkpoints

DEQ has developed the Oregon Water Quality Index to evaluate improvements in water quality over time. The index integrates eight distinct criteria into a single number expressing water quality. Data points from routine monitoring are used to determine the water quality rating. This index is DEQ's primary indicator of trends in water quality.

In addition, we will be evaluating performance results by asking the following questions:

- Are we meeting our schedule for reducing permit backlogs and completing TMDLs?
- Are plans being implemented as developed to meet TMDL specifications?
- Has wastewater reuse increased?



Priority 3

Protect Human Health and the Environment from Toxics



Human exposure to toxic chemicals is of increasing concern in Oregon. On a daily basis, Oregonians are exposed to toxics through many sources such as chemical emissions from cars, trucks and industrial plants, or through the food chain where persistent toxics can accumulate. Additionally, the threat of terrorism has elevated the importance of DEQ's preparedness to handle any potential chemical crisis efficiently and effectively. The key actions that follow are DEQ's short-term priority activities for protecting human health and the environment from toxics.

Key Action: Prepare for and minimize the danger posed by catastrophic release of dangerous chemicals

In response to the Sept. 11, 2001 terrorist attacks, Oregon is developing a state preparedness plan to ensure readiness for biological or chemical attacks. DEQ is participating in the development of this statewide plan. In addition, DEQ's Emergency Response Team works to expand the agency's range of preparedness.

Other related activities include our efforts to ensure DEQ's laboratory is prepared to safely analyze unidentified substances for the presence of chemical agents. At the Umatilla Chemical Depot, DEQ works to ensure that the public and the environment are protected from risks associated with the storage and destruction of chemical agents.

Key Action: Develop and implement a strategy to reduce toxic releases to air, water and land

DEQ has a number of initiatives underway to reduce toxics. For example, in Air Quality we are developing a program to reduce exposure to toxic air pollution. We intend to develop community-based air toxics reduction plans built on a foundation of monitoring and technical analysis. The plans will include regulatory and non-regulatory strategies to help achieve emission reductions in communities at greatest risk. This effort will also include strategies for reduction of toxic emissions from groups of pollution sources such as diesel engines.

DEQ will continue to seek new ways to help Oregonians reduce the use of toxic chemicals and the amount of hazardous waste generated. We will look at ways to better inform Oregonians about what toxics are and how they can be reduced. And, we will work with stakeholders to

find cost-effective, comprehensive solutions to reducing toxic pollutants that pose the greatest hazard and have the longest lasting impact on the environment and human health. This effort will focus initially on mercury.

Key Action: Reduce risks from toxic contaminants already in our environment

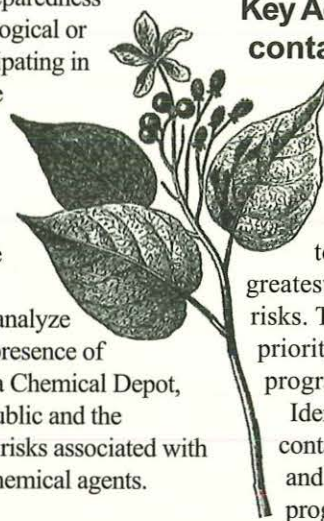
Toxic pollution from sources such as contaminated sediments and abandoned mines represents a long-term environmental concern. DEQ is working to identify abandoned mines that pose the greatest potential environmental and health risks. These "highest risk" mines will be a priority to enter DEQ's Environmental Cleanup program.

Identifying the causes of and cleaning up contaminated sediments can be complex, costly and technologically challenging. A cross-program DEQ group has identified integrated and streamlined strategies to address contaminated sediments cleanup and source control.

Checkpoints

DEQ will monitor the progress and success of measures for each key action by answering the following questions:

- Are we prepared to appropriately respond to chemical attacks?
- Have we reduced risk through elimination of chemical agents at the Umatilla Army Depot?
- Are we reducing the use of toxic chemicals and the generation of hazardous waste?
- Have we identified and prioritized abandoned mines that pose the greatest risk?
- Have we started cleanup at high-priority abandoned mine sites?
- Have cross-program approaches been implemented, resulting in integrated and streamlined contaminated sediments cleanup and source control?





Priority 4

Involve Oregonians in Solving Environmental Problems



In the 21st century, responsibility for environmental protection needs to expand beyond traditional “command-and-control” regulatory approaches. This older approach has been successful but has not addressed pollution from non-regulated sources. Cumulatively, pollution impacts from non-industrial sources account for the largest percentage of pollution in Oregon. For this reason, the greatest future environmental benefits will come from engaging individuals and small businesses as environmental stewards. To promote greater citizen involvement in solving environmental problems, DEQ will implement the following key actions.

Key Action: Encourage personal actions by Oregonians to protect the environment

DEQ will educate Oregonians on additional ways to reduce their impact on the environment. Simple actions such as using less fertilizer, disposing of household hazardous waste properly, riding a bike, and keeping your car well-tuned all add up. DEQ will survey Oregonians to identify where changes in individual actions will result in the most gains in local environmental protection. An educational campaign that leverages public-private partnerships will be developed to educate and provide incentives to Oregonians.

Key Action: Provide Oregonians with better access to information on local environmental conditions and issues

DEQ is working to increase the quality and quantity of environmental information available to Oregonians. Specifically, we are committed to making environmental monitoring data about pollution levels in geographic areas more accessible. DEQ will expand and improve methods for accessing this information, such as using location-based tools on our Web site.

DEQ will strive to improve the electronic infrastructure and links among programs within the agency and with other state, federal and tribal agencies. Improving connections between information systems will allow for easier access to data from different sources.

We will conduct a thorough evaluation of our information systems to develop a more comprehensive, agency-wide information management strategy.

Key Action: Support communities in solving local problems

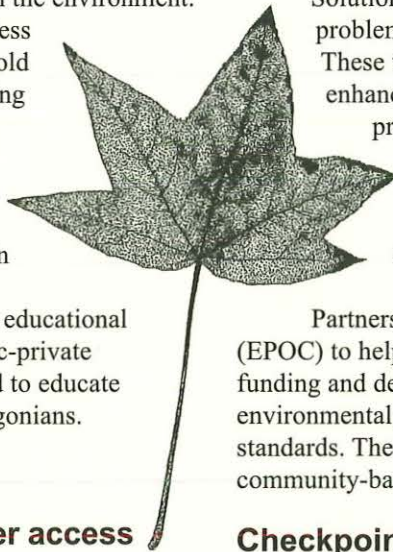
DEQ participates on state agency Community Solutions Teams (CSTs) for collaborative problem solving with local communities. These teams work with communities to enhance livability by coordinating and promoting economic, environmental, land use, transportation and affordable housing goals and projects.

DEQ also formed Environmental Partnerships for Oregon Communities (EPOC) to help small rural communities pursue funding and develop projects that improve environmental protection and meet regulatory standards. The goal of both efforts is to support community-based problem solving.

Checkpoints

DEQ will monitor the progress and success of measures for each key action by answering the following questions:

- Are Oregonians more aware of actions they can take to protect the environment, and have they modified their actions?
- How are Oregonians asking for information, and are they getting the information they want and need?
- Are CST and EPOC efforts helping DEQ assist communities to solve local problems?



For More Information

While this document sets forth DEQ's priorities, it does not reflect all of the work we do. If you would like more specific information, visit DEQ's Web site at www.deq.state.or.us, call 1-800-452-4011 toll-free in Oregon, or contact one of the following:

Strategic Planning (general inquiry): Dawn Farr, 503-229-6935
farr.dawn@deq.state.or.us

Air Quality: Greg Aldrich, 503-229-5687
aldrich.greg@deq.state.or.us

Water Quality: Karen Tarnow, 503-229-5988
tarnow.karen.e@deq.state.or.us

Land Quality: Dave Rozell, 503-229-5918
rozell.dave@deq.state.or.us

Management Services: Holly Schroeder, 503-229-6785
schroeder.holly@deq.state.or.us

DEQ Laboratory: Mary Abrams, 503-229-5983, ext.225
abrams.mary@deq.state.or.us

Office of Compliance & Enforcement: Anne Price, 503-229-6585
price.anne@deq.state.or.us



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